Haystacks

Taxation Law I

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This collection contains fifty (50) cases
summarized in this format by
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[1]

Abra v. Hernando [GR L-49336, 31 August 1981]
Second Division, Fernando (p): 3 concur, 1 concur in result, 1 on leave

Facts: The provincial assessor made a tax assessment on the properties of the Roman Catholic Bishop of Bangued. The bishop claims tax exemption from real estate tax, through an action for declaratory relief. Judge Hernando of the CFI Abra presided over the case. The petitioner province filed a motion to dismiss, based on lack of jurisdiction, which was denied. It was followed by a summary judgment granting the exemption without hearing the side of the petitioner.

The Supreme Court granted the petition, set aside the 19 June 1978 resolution, and ordered the respondent judge, or whoever is acting on his behalf, to hear the case on merit; without costs.

1. Exemptions in 1973 Constitution different from 1935 Charter; Actually and directly

Under the 1935 Constitution: "Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation." The 1973 Constitution added "charitable institutions, mosques, and non-profit cemeteries" and required that for the exemption of "lands, buildings, and improvements," they should not only be "exclusively" but also "actually" and "directly" used for religious or charitable purposes. The Constitution is worded differently. The change should not be ignored, and must be duly taken into consideration. Reliance on past decisions would have sufficed were the words "actually" as well as "directly" not added. There must be proof therefore of the actual and direct use of the lands, buildings, and improvements for religious or charitable purposes to be exempt from taxation.

2. Construction of tax exemption

Exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed strictissimi juris.

3. Procedural due process violated

Judge accepted at its face the allegation of Bishop – that the certain parcels of land owned by it, are used "actually, directly and exclusively" as sources of support of the parish priest and his helpers and also of the Bishop – instead of demonstrating that there is compliance with the constitutional provision that allows an exemption. There was an allegation of lack of jurisdiction (contesting that the validity of the assessment may be questioned before the Local Board of Assessment Appeals and not the court), and of lack of cause of action (contesting that declaratory relief is not proper, as there had been breach or violation of the right of government to assess and collect taxes on such property), which should have compel the judge to accord a hearing to the petitioner rather than deciding the case immediately in favor of the Bishop.

4. Action for declaratory relief

An action for declaratory relief would be proper only before a breach or violation of any statute, executive order or regulation. In the case at bar, there being a tax assessment made by the Provincial Assessor on the properties of the Bishop, the latter failed to exhaust the administrative remedies available under PD 464 before filing the court action. *[Petitioner's contention, not resolved]*

5. Exhaustion of administrative remedies

PD 464 provides that no court shall entertain any suit assailing the validity of a tax assessed under this Code until the taxpayer, shall have paid, under protest, the tax assessed against him nor shall any court declare any tax invalid by reason of irregularities or informalities in the proceedings of the officers charged with the assessment or collection of taxes, or of failure to perform their duties within this time herein specified for their performance unless such irregularities, informalities or failure shall have impaired the substantial rights of the taxpayers; nor shall any court declare any portion of the tax assessed under the provisions of this Code invalid except upon condition that the taxpayer shall pay the just amount of the tax, as determined by the court in the pending proceeding. *[Petitioner's contention, not resolved]*

[2]

Abra Valley College v. Aquino [GR L-39086, 15 June 1988]
Second Division, Paras (p): 4 concur

Facts: Petitioner Abra Valley College is an educational corporation and institution of higher learning duly incorporated with the SEC in 1948. On 6 July 1972, the Municipal and Provincial treasurers (Gaspar Bosque and Armin Cariaga, respectively) and issued a Notice of Seizure upon the petitioner for the college lot and building (OCT Q-83) for the satisfaction of said taxes thereon. The treasurers served upon the petitioner a Notice of Sale on 8 July 1972, the sale being held on the same day. Dr. Paterno Millare, then municipal mayor of Bangued, Abra, offered the highest bid of P 6,000 on public auction involving the sale of the college lot and building. The certificate of sale was correspondingly issued to him.

The petitioner filed a complaint on 10 July 1972 in the court a quo to annul and declare void the "Notice of Seizure" and the "Notice of Sale" of its lot and building located at Bangued, Abra, for non-payment of real estate taxes and penalties amounting to P5,140.31. On 12 April 1973, the parties entered into a stipulation of facts adopted and embodied by the trial court in its questioned decision. The trial court ruled for the government, holding that the second floor of the building is being used by the director for residential purposes and that the ground floor used and rented by Northern Marketing Corporation, a commercial establishment, and thus the property is not being used "exclusively" for educational purposes. Instead of perfecting an appeal, petitioner availed of the instant petition for review on certiorari with prayer for preliminary injunction before the Supreme Court, by filing said petition on 17 August 1974.

The Supreme Court affirmed the decision of the CFI Abra (Branch I) subject to the modification that half of the assessed tax be returned to the petitioner. The modification is derived from the fact that the ground floor is being used for commercial purposes (leased) and the second floor being used as incidental to education (residence of the director).

1. Interpretation of the phrase "used exclusively for educational purposes"

Section 22, paragraph 3, Article VI, of the then 1935 Philippine Constitution, expressly grants exemption from realty taxes for "Cemeteries, churches and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable or educational purposes." This constitution is relative to Section 54, paragraph c, Commonwealth Act 470 as amended by RA 409 (Assessment Law). An institution used exclusively for religious, charitable and educational purposes, and as such, it is entitled to be exempted from taxation; notwithstanding that it keeps a lodging and a boarding house and maintains a restaurant for its members (YMCA case). A lot which is not used for commercial purposes but serves solely as a sort of lodging place, also qualifies for exemption because this constitutes incidental use in religious functions (Bishop of Nueva Segovia case). Exemption in favor of property used exclusively for charitable or educational purposes is 'not limited to property actually indispensable' therefor but extends to facilities which are incidental to and reasonably necessary for the accomplishment of said purposes (Herrera v. Quezon City Board of Assessment Appeals). While the Court allows a more liberal and non-restrictive interpretation of the phrase "exclusively used for educational purposes," reasonable emphasis has always been made that exemption extends to facilities which are incidental to and reasonably necessary for the accomplishment of the main purposes. The use of the school building or lot for commercial purposes is neither contemplated by law, nor by jurisprudence. In the case at bar, the lease of the first floor of the building to the Northern Marketing Corporation cannot by any stretch of the imagination be considered incidental to the purpose of education.

2. Test of tax exemption

The test of exemption from taxation is the use of the property for purposes mentioned in the Constitution (Apostolic Prefect v. City Treasurer of Baguio).

3. Issues not raised in the lower court cannot be taken on appeal; rule relaxed in the interest of justice

It is axiomatic that facts not raised in the lower court cannot be taken up for the first time on appeal. Nonetheless, as an exception to the rule, the Court has held that although a factual issue is not squarely raised below, still in the interest of substantial justice, the Court is not prevented from considering a pivotal factual matter. The Supreme Court is clothed with ample authority to review palpable errors not assigned as such if it finds that their consideration is necessary in arriving at a just decision (Perez vs. CA).

[3]

ABS CBN Broadcasting vs. CTA [G.R. No. L-52306. October 12, 1981.]
First Division, Melencio-Herrera (J): 4 concurring

Facts: ABS-CBN Broadcasting Corporation was engaged in the business of telecasting local as well as foreign films acquired from foreign corporations not engaged in trade or business within the Philippines, for which it paid rentals after withholding income tax of 30% of one-half of the film rentals. On 12 April 1961, in implementation of Section 24 (b) of the National Internal Revenue Code, the Commissioner of Internal Revenue issued General Circular V-334. Pursuant to the foregoing, the company dutifully withheld and turned over to the Bureau of Internal Revenue the amount of 30% of one-half of the film rentals paid by it to foreign corporations not engaged in trade or business within the Philippines. The last year that the company withheld taxes pursuant to the foregoing Circular was in 1968. On 27 June 1968, RA 5431 amended Section 24(b) of the Tax Code increasing the tax rate from 30% to 35% and revising the tax basis from "such amount" referring to rents. etc. to "gross income." On 8 February 1971, the Commissioner of Internal Revenue issued Revenue Memorandum Circular 4-71, revoking General Circular V-334, and holding that the latter was "erroneous for lack of legal basis," because "the tax therein prescribed should be based on gross income without deduction whatever." On the basis of the new Circular, the Commissioner issued against the company a letter of assessment and demand dated 16 April 1971, but allegedly released by it and received by the Commissioner on 12 April 1971, requiring them to pay deficiency withholding income tax on the remitted film rentals for the years 1965 through 1968 and film royalty as of the end of 1968 in the total amount of P525,897.06. On 5 May 1971, the company requested for a reconsideration and withdrawal of the assessment.

However, without acting thereon, the Commissioner, on 6 April 1976, issued a warrant of distraint and levy over the company's personal as well as real properties. The company then filed its Petition for Review with the Court of Tax Appeals (CTA Case 2809) whose Decision, dated 29 November 1979, affirmed the assessment by the Commissioner of Internal Revenue of a deficiency withholding income tax against the company for the years 1965 to 1968 for a total amount of P525,897.06 (P75,895.24, P99,239.18, P128,502.00 and P222,260.64), plus the surcharge and interest which have accrued thereon incident to delinquency, pursuant to Section 51(e) of the National Internal Revenue Code, as amended; with the costs against the company. Hence, the Petition for Review on Certiorari.

The Supreme Court reversed the judgment of the Court of Tax Appeals, and set aside the questioned assessment; without costs.

1. General Circular V-334 (12 April 1961)

General Circular V-334 issued by Commissioner of Internal Revenue reads: "In connection with

Section 24(b) of Tax Code, the amendment introduced by Republic Act No. 2343, under which an income tax equal to 30% is levied upon the amount received by every foreign corporation not engaged in trade or business within the Philippines from all sources within this country as interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits and income, it has been determined that the tax is still imposed on income derived from capital, or labor, or both combined, in accordance with the basic principle of income taxation (Sec. 39, Income Tax Regulations), and that a mere return of capital or investment is not income (Par. 5.06, 1 Mertens Law of Federal Taxation). Since according to the findings of the Special Team who inquired into business of the non-resident foreign film distributors, the distribution or exhibition right on a film is invariably acquired for a consideration, either for a lump sum or a percentage of the film rentals, whether from a parent company or an independent outside producer, a part of the receipts of a non-resident foreign film distributor derived from said film represents, therefore, a return of investment. xxx 4. The local distributor should withhold 30% of one-half of the film rentals paid to the non-resident foreign film distributor, and pay the same to this office in accordance with law unless the non-resident foreign film distributor makes a prior settlement of its income tax liability."

2. Revenue Memorandum Circular 4-71 (8 February 1971)

Revenue Memorandum Circular 4-71 by the Commissioner of Internal Revenue stated that "After a restudy and analysis of Section 24(b) of the National Internal Revenue Code, as amended by Republic Act No. 5431, and guided by the interpretation given by tax authorities to a similar provision in the Internal Revenue Code of the United States, on which the aforementioned provision of our Tax Code was patterned, this Office has come to the conclusion that the tax therein prescribed should be based on gross income without deduction whatever. Consequently, the ruling in General Circular No. V-334, dated April 12, 1961, allowing the deduction of the proportionate cost of production or exhibition of motion picture films from the rental income of non-resident foreign corporations, is erroneous for lack of legal basis. In view thereof, General Circular No. V-334, dated April 12, 1961, is hereby revoked and henceforth, local films distributors and exhibitors shall deduct and withhold 35% of the entire amount payable by them to non-resident foreign corporations, as film rental or royalty, or whatever such payment may be denominated, without any deduction whatever, pursuant to Section 24(b), and pay the withheld taxes in accordance with Section 54 of the Tax Code, as amended. All rulings inconsistent with his Circular is likewise revoked."

3. Statutory basis of General Circular V-334 and Memorandum Circular 4-71, affecting Section 24(b) of the Tax Code

RA 2343, dated 20 June 1959, which was the basis of General Circular No. V-334, was just one in a series of enactments regarding Sec. 24(b) of the Tax Code. RA 3825 came next on 22 June 1963; and RA 3841 similarly dated 22 June 1963. It was only on 27 June 1968 under RA 5431 which became the basis of Revenue Memorandum Circular No. 4-71, that Sec. 24(b) was amended to refer specifically to 35% of the "gross income."

4. Section 24 (b) of the National Internal Revenue, as amended by RA 2343 (20 June 1959)

In so far as the income tax on non-resident corporations is concerned, Section 24(b) of the National Internal Revenue Code, as amended by RA 2343 dated 20 June 1959, used to provide: (b) Tax on foreign corporations. — (1) Non-resident corporations. — There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by the preceding paragraph, upon the amount received by every foreign corporation not engaged in trade or business within the Philippines, from all sources within the Philippines, as interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits and income, a tax equal to thirty per centum of such amount."

5. Section 24 (b) of the National Internal Revenue, as amended by RA 3825 (22 June 1963)

Section 24(b) of the National Internal Revenue Code, as amended by RA 3825 dated 22 June 1963, provides: "(b) Tax on foreign corporation. — (1) Non-resident corporations. — There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by the preceding paragraph, upon the amount received by every foreign corporation not engaged in trade or business within the Philippines, from all sources within the Philippines, as interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits and income, a tax equal to thirty per centum of such amount: PROVIDED, HOWEVER, THAT PREMIUMS SHALL NOT INCLUDE REINSURANCE PREMIUMS."

6. Section 24 (b) of the National Internal Revenue, as amended by RA 3841 (22 June 1963)

Section 24(b) of the National Internal Revenue Code, as amended by RA 3841 similarly dated 22 June 1963, provides: Tax on foreign corporations. — (1) Non-resident corporations. — There shall be levied, collected and paid for each taxable year, in lieu of the tax imposed by the preceding paragraph, upon the amount received by every foreign corporation not engaged in trade or business within the Philippines, from all sources within the Philippines, as interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical OR CASUAL gains, profits and income, AND CAPITAL GAINS, a tax equal to thirty per centum of such amount."

7. Section 24 (b) of the National Internal Revenue, as amended by RA 5431 (27 June 1968)

Section 24(b) of the National Internal Revenue Code, as amended by RA 5431 dated 27 June 1968, provides: "(b) Tax on foreign corporations. — (1) Non-resident corporations. — A foreign corporation not engaged in trade or business in the Philippines including a foreign life insurance company not engaged in the life insurance business in the Philippines shall pay a tax equal to thirty-five per cent of the gross income received during each taxable year from all sources within the Philippines, as interests, dividends, rents, royalties, salaries, wages, premiums, annuities, compensations, remunerations for technical servicesor otherwise, emoluments or other fixed or determinable annual, periodical or casual gains, profits and income, and capital gains, Provided, however, That premiums shall not include reinsurance premiums."

8. Section 338-A, as inserted by RA 6110 (9 August 1969); Non-retroactivity of Rulings

Section 338-A (now Sec. 327; Non-retroactivity of rulings) of the Tax Code, as inserted by RA 6110 on 9 August 1969, provides: "Any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the preceding Section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers, except in the following cases: (a) where the taxpayer deliberately mis-states or omits material facts from his return or any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith."

9. Rulings without retroactive application if application prejudicial to taxpayer; Company does not fall under exceptions to allow retroactivity

Rulings or circulars promulgated by the Commissioner of Internal Revenue have no retroactive application where to so apply them would be prejudicial to taxpayers. In the present case, the prejudice to the company of the retroactive application of Memorandum Circular 4-71 is beyond question. It was issued only in 1971, or 3 years after 1968, the last year that the company had withheld taxes under General Circular V-334. The assessment and demand on company to pay deficiency withholding income tax was also made 3 years after 1968 for a period of time commencing in 1965. The company was no longer in a position to withhold taxes due from foreign corporations because it had already remitted all film rentals and no longer had any control over them when the new Circular was issued. And in so far as the enumerated exceptions are concerned, admittedly, the company does not fall under any of them.

10. Rationale behind General Circular V-334

The rationale behind General Circular V-334 was clearly stated in the CTA ruling, i.e. "It had been determined that the tax is still imposed on income derived from capital, or labor, or both combined, in accordance with the basic principle of income taxation . . . and that a mere return of capital or investment is not income. . . .” “A part of the receipts of a non-resident foreign film distributor derived from said film represents, therefore, a return of investment.” The circular thus fixed the return of capital at 50% to simplify the administrative chore of determining the portion of the rentals covering the return of capital. Were the “gross income” base clear from Sec. 24(b), perhaps, the ratiocination of the Tax Court could be upheld.

10. Principle of legislative approval of administrative interpretation by re-enactment

The principle of legislative approval of administrative interpretation by re-enactment clearly obtains in the present case. It provides that “the re-enactment of a statute substantially unchanged is persuasive indication of the adoption by Congress of a prior executive construction.” Note should be taken of the fact that the case involves not a mere opinion of the Commissioner or ruling rendered on a mere query, but a Circular formally issued to “all internal revenue officials” by the then Commissioner of Internal Revenue.

11. Government never estopped from collecting taxes because of errors on part of its agents; Exception: good faith

The Government is never estopped from collecting taxes because of mistakes or errors on the part of its agents. But, like other principles of law, this also admits of exceptions in the interest of justice and fairplay. The insertion of Sec. 338-A into the National Internal Revenue Code, as held in the case of Tuason, Jr. vs. Lingad, is indicative of legislative intention to support the principle of good faith. In fact, in the United States, from where Sec. 24(b) was patterned, it has been held that the Commissioner or Collector is precluded from adopting a position inconsistent with one previously taken where injustice would result therefrom, or where there has been a misrepresentation to the taxpayer.

12. Order to pay interest and surcharge uncalled for

The Decision of the Court of Tax Appeals requiring the company to pay interest and surcharge, as provided for in Sec. 51(e) of the Tax Code in addition to the deficiency withholding tax of P525,897.06, is much less called for because the company relied in good faith and religiously complied with no less than a Circular issued “to all internal revenue officials” by the highest official of the Bureau of Internal Revenue and approved by the then Secretary of Finance.

[4]

American Bible Society v. City of Manila [GR L-9637, 30 April 1957]
Second Division, Felix (p): 7 concur, 1 concur in result

Facts: Plaintiff-appellant, American Bible Society, is a foreign, non-stock, non-profit, religious, missionary corporation duly registered and doing business in the Philippines through its Philippine agency established in Manila in November 1898. The defendant-appellee, City of Manila, is a municipal corporation with powers that are to be exercised in conformity with the provisions of RA 409, (Revised Charter of the City of Manila). In the course of its ministry, plaintiff’s Philippine agency has been distributing and selling bibles and/or gospel portions thereof (except during the Japanese occupation) throughout the Philippines and translating the same into several Philippine dialects.

On 29 May 1953, the acting City Treasurer of the City of Manila informed plaintiff that it was conducting the business of general merchandise since November 1945, without providing itself with the necessary Mayor’s permit and municipal license, in violation of Ordinance 3000, as amended, and Ordinances 2529, 3028 and 3364, and required plaintiff to secure, within 3 days, the corresponding permit and license fees, together with compromise covering the period from the 4th quarter of 1945 to the 2nd quarter of 1953, in the total sum of P5,821.45. On 24 October 1953, plaintiff paid to the defendant under protest the said permit and license fees, giving at the same time notice to the City Treasurer that suit would be taken in court to question the legality of the ordinances under which the said fees were being collected, which was done on the same date by filing the complaint that gave rise to this action. After hearing, the lower court dismissed the complaint for lack of merit. Plaintiff appealed to the CA,, which in turn certified the case to the Supreme Court for the reason that the errors assigned involved only questions of law.

The Supreme Court reversed the decision appealed and ordering the defendant to return to plaintiff the sum of P5,891.45 unduly collected from it; without pronouncement as to costs.

1. Repeal of Statutes; Reenactment neutralizes the repeal, law in force without interruption

Often the legislature, instead of simply amending the preexisting statute, will repeal the old statute in its entirety and by the same enactment re-enact all or certain portions of the preexisting law. Of course, the problem created by this sort of legislative action involves mainly the effect of the repeal upon rights and liabilities which accrued under the original statute. The authorities are divided as to the effect of simultaneous repeals and re- enactments. Some adhere to the view that the rights and liabilities accrued under the repealed act are destroyed, since the statutes from which they sprang are actually terminated, even though for only a very short period of time. Others, and they seem to be in the majority, refuse to accept this view of the situation, and consequently maintain that all rights and liabilities which have accrued under the original statute are preserved and may be enforced, since the re-enactment neutralizes the repeal, therefore continuing the law in force without interruption. In the case at bar, based on the latter view, the Court held that the questioned ordinances of the City of Manila are still in force and effect.

2. Approval of President of municipal tax measures not needed in case at bar

An ordinance prescribing a municipal tax on a business does not have to be approved by the President to be effective if it is not among those referred to in subsection (ii), Section 18, RA 409 (Retail dealers in general merchandise is expressly enumerated in subsection (o) of the same section).

3. Freedom of religious profession and worship

Article III, section 1, clause (7) of the Constitution guarantees the freedom of religious profession and worship. Religion has been spoken of as ‘a profession of faith to an active power that binds and elevates man to its Creator (Aglipay v. Ruiz). It has reference to one’s views of his relations to His Creator and to the obligations they impose of reverence to His being and character, and obedience to His Will (Davis v. Beason). The constitutional guaranty of the free exercise and enjoyment of religious profession and worship carries with it the right to disseminate religious information. Any restraint of such right can only be justified like other restraints of freedom of expression on the grounds that there is a clear and present danger of any substantive evil which the State has the right to prevent. (Tañada and Fernando).

4. Tax on property is different from tax to exercise religious rights; Nature of license tax

A tax on the income of one who engages in religious activities is different from a tax on property used or employed in connection with those activities. It is one thing to impose a tax on the income or property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering a sermon. The power to tax the exercise of a privilege is the power to control or suppress its enjoyment.

The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down. It is not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question. It is in no way apportioned. It is flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the constitutional liberties of press and religion and inevitably tends to suppress their exercise. Such is the inherent vice and evil of a flat license tax.

5. Religious freedom preferred over property rights

Dissemination of religious information cannot be conditioned upon the approval of an official or manager. The right to enjoy freedom of the press and religion occupies a preferred position as against the constitutional right of property owners.

6. Financial burden upon religious groups and press; plaintiff exempted

Religious groups and the press are not free from all financial burdens of government. Section 27 (e) of Commonwealth Act 466 (NIRC) exempts corporations or associations organized and operated exclusively for religious, charitable, or educational purposes, *Provided however, That the income of whatever kind and character from any of its properties, real or personal, or from any activity conducted for profit, regardless of the disposition made of such income, shall be liable to the tax imposed under the Code.* In the case at bar, the act of distributing and selling bibles, etc. is purely religious and does not fall under said legal provisions.

7. Ordinance 2529 not applicable to plaintiff

Ordinance 2529, as amended, cannot be applied to the Society, for in doing so it would impair its free exercise and enjoyment of its religious profession and worship as well as its rights of dissemination of religious beliefs. The fact that the price of the bibles and other religious pamphlets are little higher than the actual cost of the same does not necessarily mean that it is already engaged in the business or occupation of selling said “merchandise” for profit.

8. Ordinance 3000 not unconstitutional, not applicable to plaintiff

Ordinance 3000 of the City of Manila is of general application and it does not contain any provisions whatsoever prescribing religious censorship nor restraining the free exercise and enjoyment of any religious profession. The Ordinance, which requires the obtention of the Mayor’s permit before any person can engage in any of the businesses, trades or occupations enumerated therein, does not impose any charge upon the enjoyment of a right granted by the Constitution, nor tax the exercise of religious practices. The ordinance is not applicable to the plaintiff, as its business, trade or occupation is not particularly mentioned in Section 3 of the Ordinance, and the record does not show that a permit is required therefor under existing laws and ordinances for the proper supervision and enforcement of their provisions governing the sanitation, security and welfare of the public and the health of the employees engaged in the business of the plaintiff. It must be noted that, however, that Ordinance 3000 cannot be considered unconstitutional even if applied to the plaintiff.

9. Municipal permits do not impair religious freedom (US)

An ordinance declaring that the practice of distributing either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold within the limits of a city, without first obtaining written permission from the city manager of the City, can be deemed a nuisance and punishable as an offense, does not deprive defendant of his constitutional right of the free exercise and enjoyment of religious profession and worship, even though it prohibits him from introducing and carrying out a scheme or purpose which he sees fit to claim as a part of his religious system (case involving City of Griffin).

[5]

American Mail Line vs. Basilan [G.R. No. L-12647. May 31, 1961.]
En Banc, Dizon (J): 9 concur, 1 took no part

Facts: On 12 September 1955 the City Council of Basilan City enacted Ordinance 180, Series of 1955, amending Title IV, Ordinance 7, Series of 1948 by adding thereto Section 1 (D) and Sections 2 (C) and (D). Section 1 (D) provides that “any foreign vessel engaged in coastwise trade which may anchor at any open bay, channel, or any loading point within the territorial waters of the City of Basilan for the purpose of loading or unloading logs or passengers and other cargoes shall pay an anchorage fee of 1/2 centavo (P.005) per registered gross ton of the vessel for the first twenty-four (24) hours, or part thereof, PROVIDED, that maximum charge shall not exceed, seventy-five pesos (P75.00) per day, irrespective of the greater tonnage of the vessels." American Mail Line, et. al., are foreign shipping companies licensed to do business in the Philippines, with offices in Manila. Their vessels call at Basilan City and anchor in the bay or channel within its territorial waters. As the city treasurer assessed and attempted to collect from them the anchorage fees prescribed in the amendatory ordinance, they filed the action for Declaratory Relief to have the courts determine its validity. Upon their petition the CFI Manila issued a writ of preliminary injunction restraining appellants from collecting or attempting to collect from them the fees prescribed therein. After the denial of the city's motion to dismiss the complaint on the ground of wrong venue, they filed their answer alleging therein that the City of Basilan had authority, through its city council, to enact the questioned ordinance in the exercise of either its revenue-raising power or of its police power. They also filed a counterclaim to recover alleged uncollected anchorage dues amounting to P7,500.00, and the sum of P2,000.00 for expenses incurred in defending the suit. The lower court declared Ordinance 180, Series of 1955, of the City of Basilan illegal and void and dismissing the city's counterclaim for lack of merit.

The Supreme Court affirmed the decision appealed from, and made final the preliminary injunction issued; without costs.

1. City of Basilan not granted a blanket power of taxation; Meaning of the phrase "In accordance with law"

Under paragraph (a) of the Charter of the City of Basilan (RA 288), which provides that the council has the legislative powers to only levy and collect taxes for general and special purposes in accordance with or as provided by law. The City of Basilan was not granted a blanket power of taxation. The use of the phrase "in accordance with law" means the same "as provided by law" clearly discloses the legislative intent to limit the taxing power of the City.

2. Section 14 (v) does not authorize the city to promulgate ordinance for the collection of Anchorage fees

Section 14 (v) of RA 288, which provides that the council has the legislative power to fix the charges to be paid by all watercraft landing at or using public wharves, docks, levees, or landing places, does not authorize the City of Basilan to promulgate ordinances providing for the collection of "Anchorage" fees. This is clearly not included in the power granted by the provision under consideration "to fix the charges to be paid by all watercraft landing at or using public wharves, docks, levees or landing places". That this is so is shown by the need which the City of Basilan had to enact the amendatory ordinance.

3. Power to regulate as exercise of police power does not include power to impose fees for revenue purposes

The power to regulate as an exercise of police power does not include the power to impose fees for revenue purposes (Cu Unjieng vs. Patstone, 42 Phil., 818; Pacific Commercial Co. vs. Romualdez, etc., et al., 46 Phil., 917; Arquiza etc. vs. Municipality of Zamboanga, 55 Phil., 653).

4. Fees for regulatory purpose enough for expenses of issuing license, cost of inspection or surveillance

In the Cu Unjieng case it was held that fees for purely regulatory purposes "may only be of sufficient amount to include the expenses of issuing the license and the cost of the necessary inspection or police surveillance, taking into account not only the expense of direct regulation but also incidental expenses. In Manila Electric Co. vs. Auditor General (73 Phil., 129-135), it was also held that the regulatory fee "must be no more than sufficient to cover the actual cost of inspection or examination as nearly as the same can be estimated. If it were possible to prove in advance the exact cost, that would be the limit of the fee."

5. Ordinance intended for revenue purposes

The fees required are intended for revenue purposes. In the first place, being based upon the tonnage of the vessels, the fees have no proper or reasonable relation to the cost of issuing the permits and the cost of inspection or surveillance. In the second place, the fee imposed on foreign vessels — 1/2 centavo per registered gross ton for the first 24 hours, and which shall not exceed P75.00 per day — exceeds even the harbor fee imposed by the National Government, which is only P50.00 for foreign vessels (Sec. 2702 of the Tariff and Customs Code, RA 1937, taken from Sec. 2, RA 1317 which was enacted by Congress to raise revenues for the Port Works Fund). Moreover, Mariano Mancao, Port Inspector of the City of Basilan, in his affidavit dated 17 February 1956, states that were it not for the injunction issued by the lower court in the present case, the city "would have collected considerable amounts from the plaintiffs for anchorage fees". All these circumstances point to the conclusion that the fees were intended for revenue purposes.

6. Estoppel

The city's own contention that the questioned ordinance was enacted in the exercise of its power of taxation, makes it obvious that the fees imposed therein are not merely regulatory.

[6]

Bagatsing vs. Ramirez [G.R. No. L-41631. December 17, 1976.]
En Banc, Martin (J): 7 concurring, 1 qualified his concurrence, 1 reserved his vote

Facts: On 12 June 1974, the Municipal Board of Manila enacted Ordinance 7522, "An ordinance regulating the operation of public markets and prescribing fees for the rentals of stalls and providing penalties for violation thereof and for other purposes." The City Mayor, Ramon D. Bagatsing, approved the ordinance on 15 June 1974. On 17 February 1975, the Federation of Manila Market Vendors Inc. commenced Civil Case 96787 before the CFI Manila (Branch XXX, presided over by Judge Pedro Ramirez), seeking the declaration of nullity of Ordinance 7522 for the reason that (a) the publication requirement under the Revised Charter of the City of Manila has not been complied with; (b) the Market Committee was not given any participation in the enactment of the ordinance, as envisioned by RA 6039; (c) Section 3 (e) of the Anti-Graft and Corrupt Practices Act has been violated; and (d) the ordinance would violate PD 7 of 30 September 1972 prescribing the collection of fees and charges on livestock and animal products. Resolving the accompanying prayer for the issuance of a writ of preliminary injunction, the Judge issued an order on 1 March 1975, denying the plea for failure of the Federation to exhaust the administrative remedies outlined in the Local Tax Code. After due hearing on the merits, the Judge rendered its decision on 29 August 1975, declaring the nullity of Ordinance 7522 of the City of Manila on the primary ground of non-compliance with the requirement of publication under the Revised City Charter.

Mayor Bagatsing, the Secretary to the Mayor (Roman G. Gargantiel), the Market Administrator and the Municipal Board of Manila moved for reconsideration of the adverse decision, stressing that (a) only a post-publication is required by the Local Tax Code; and (b) the Federation failed to exhaust all administrative remedies before instituting an action in court. On 26 September 1975, the Judge denied the motion. Forthwith, Mayor Bagatsing, et. al. brought the matter to the Supreme Court through the present petition for review on certiorari.

The Supreme Court reversed and set aside the decision of the lower court, and holding that Ordinance 7522 of the City of Manila, dated 15 June 1975 to have been validly enacted; without costs.

1. Section 17 of the Revised Charter of Manila (RA 409, as amended)

Section 17 of the Revised Charter of Manila provides: "Each proposed ordinance shall be published in two daily newspapers of general circulation in the city, and shall not be discussed or enacted by the Board until after the third day following such publication. . . . Each approved ordinance . . . shall be published in two daily newspapers of general circulation in the city, within ten days after its approval; and shall take effect and be in force on and after the twentieth day following its publication, if no date is fixed in the ordinance."

2. Section 43 of the Local Tax Code (PD 231)

Section 43 of the Local Tax Code directs "Within ten days after their approval, certified true copies of all provincial, city, municipal and barrio ordinances levying or imposing taxes, fees or other charges shall be published for three consecutive days in a newspaper or publication widely circulated within the jurisdiction of the local government, or posted in the local legislative hall or premises and in two other conspicuous places within the territorial jurisdiction of the local government. In either case, copies of all provincial, city, municipal and barrio ordinances shall be furnished the treasurers of the respective component and mother units of a local government for dissemination."

3. Comparison of the laws as to the issue of publication

While the Revised Charter of the City of Manila requires publication before the enactment of the ordinance and after the approval thereof in two daily newspapers of general circulation in the city, the Local Tax Code only prescribes for publication after the approval of "ordinances levying or imposing taxes, fees or other charges" either in a newspaper or publication widely circulated within the jurisdiction of the local government or by posting the ordinance in the local legislative hall or premises and in two other conspicuous places within the territorial jurisdiction of the local government.

4. General and special laws defined

The Revised Charter of the City of Manila is a special act since it relates only to the City of Manila, whereas the Local Tax Code is a general law because it applies universally to all local governments. Blackstone defines general law as a universal rule affecting the entire community and special law as one relating to particular persons or things of a class.

5. Special law not ordinarily repealed by subsequent general law; Rule yields if special statute refers to a subject in general which the general statute treats in particular

A prior special law is not ordinarily repealed by a subsequent general law. The fact that one is special and the other general creates a presumption that the special is to be considered as remaining an exception of the general, one as a general law of the land, the other as the law of a particular case. However, the rule readily yields to a situation where the special statute refers to a subject in general, which the general statute treats in particular. The exactly is the circumstance obtaining in the present case. Section 17 of the Revised Charter of the City of Manila speaks of "ordinance" in general, i.e., irrespective of the nature and scope thereof, whereas, Section 43 of the Local Tax Code relates to "ordinances levying or imposing taxes, fees or other charges" in particular. In regard, therefore, to ordinances in general, the Revised Charter of the City of Manila is doubtless dominant, but, that dominant force loses its continuity when it approaches the realm of "ordinances levying or imposing taxes, fees or other charges" in particular. There, the Local Tax Code controls. Here, as always, a general provision must give way to a particular provision. Special provision governs. This is especially true where the law containing the particular provision was enacted later than the one containing the general provision. The City Charter of Manila was promulgated on 18 June 1949 as against the Local Tax Code which was decreed on 1 June 1973.

6. Law making power does not intend establishment of conflicting and hostile systems upon same subject

The law-making power cannot be said to have intended the establishment of conflicting and hostile systems upon the same subject, or to leave in force provisions of a prior law by which the new will of the legislating power may be thwarted and overthrown. Such a result would render legislation a useless and idle ceremony, and subject the law to the reproach of uncertainty and unintelligibility.

7. Case of City of Manila vs. Teotico is opposite of present case; Facts and ruling

The case of City of Manila v. Teotico is opposite. In that case, Teotico sued the City of Manila for damages arising from the injuries he suffered when he fell inside an uncovered and unlighted catchbasin or manhole on P. Burgos Avenue. The City of Manila denied liability on the basis of the City Charter (RA 409) exempting the City of Manila from any liability for damages or injury to persons or property arising from the failure of the city officers to enforce the provisions of the charter or any other law or ordinance, or from negligence of the City Mayor, Municipal Board, or other officers while enforcing or attempting to enforce the provisions of the charter or of any other law or ordinance. Upon the other hand, Article 2189 of the Civil Code makes cities liable for damages for the death of, or injury suffered by any persons by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision. On review, the Court held the Civil Code controlling. It is true that, insofar as its territorial application is concerned, the Revised City Charter is a special law and the subject matter of the two laws, the Revised City Charter establishes a general rule of liability arising from negligence in general, regardless of the object thereof, whereas the Civil Code constitutes a particular prescription for liability due to defective streets in particular. In the same manner, the Revised Charter of the City prescribes a rule for the publication of “ordinance” in general, while the Local Tax Code establishes a rule for the publication of “ordinance levying or imposing taxes fees or other charges in particular.

8. Implied repeal

There is no rule which prohibits the repeal even by implication of a special or specific act by a general or broad one. A charter provision may be impliedly modified or superseded by a later statute, and where a statute is controlling, it must be read into the charter notwithstanding any particular charter provision.

9. Subsequent general law must be consistent with general laws and public policy of the State

A subsequent general law similarly applicable to all cities prevails over any conflicting charter provision, for the reason that a charter must not be inconsistent with the general laws and public policy of the state. A chartered city is not an independent sovereignty. The state remains supreme in all matters not purely local. Otherwise stated, a charter must yield to the constitution and general laws of the state, it is to have read into it that general law which governs the municipal corporation and which the corporation cannot set aside but to which it must yield. When a city adopts a charter, it in effect adopts as part of its charter general law of such character.

10. Principle of exhaustion of administrative remedies

Section 47 of the Local Tax Code provides that any question or issue raised against the legality of any tax ordinance, or portion thereof, shall be referred for opinion to the city fiscal in the case of tax ordinance of a city. The opinion of the city fiscal is appealable to the Secretary of Justice, whose decision shall be final and executory unless contested before a competent court within thirty (30) days.

11. Principle of exhaustion of administrative remedies not absolute; Pure questions of law

Exhaustion of administrative remedies before resort to judicial bodies is not an absolute rule. It admits of exceptions. Where the question litigated upon is purely a legal one, the rule does not apply. The principle may also be disregarded when it does not provide a plain, speedy and adequate remedy. It may and should be relaxed when its application may cause great and irreparable damage. Hence, in the present case, the controversy between the parties is deeply rooted in a pure question of law: whether it is the Revised Charter of the City of Manila or the Local Tax Code that should govern the publication of the tax ordinance. In other words, the dispute is sharply focused on the applicability of the Revised City Charter or the Local Tax Code on the point at issue, and not on the legality of the imposition of the tax.

12. Raising of revenues is the principal object of taxation

Raising of revenues is the principal object of taxation. Under Section 5, Article XI of the New Constitution, “Each local government unit shall have the power to create its own sources of revenue and to levy taxes, subject to such provisions as may be provided by law.” And one of those sources of revenue is what the Local Tax Code points to in particular: “Local governments may collect fees or rentals for the occupancy or use of public markets and premises . . .” They can provide for and regulate market stands, stalls and privileges, and, also, the sale, lease or occupancy thereof. They can license, or permit the use of, lease, sell or otherwise dispose of stands, stalls or marketing privileges.

13. Ordinance does not violate PD 8 insofar as it affects livestock and animal products

The ordinance does not violate PD 7, dated 30 September 1972, insofar as it affects livestock and animal products, because the said decree prescribes the collection of other fees and charges thereon "with the exception of ante-mortem and post-mortem inspection fees, as well as the delivery, stockyard and slaughter fees as may be authorized by the Secretary of Agriculture and Natural Resources." Clearly, even the exception clause of the decree itself permits the collection of the proper fees for livestock. And the Local Tax Code (PD 231, 1 July 1973) authorizes in its Section 31: "Local governments may collect fees for the slaughter of animals and the use of corrals . . ."

14. Non-participation of the Market Committee does not render ordinance invalid; Committee merely recommendatory; Potestas delegata non delegare potest

The non-participation of the Market Committee in the enactment of Ordinance 7522 supposedly in accordance with RA 6039, an amendment to the City Charter of Manila, providing that "the market committee shall formulate, recommend and adopt, subject to the ratification of the municipal board, and approval of the mayor, policies and rules or regulation repealing or amending existing provisions of the market code" does not infect the ordinance with any germ of invalidity. The function of the committee is purely recommendatory as the underscored phrase suggests, its recommendation is without binding effect on the Municipal Board and the City Mayor. Its prior acquiescence of an intended or proposed city ordinance is not a condition sine qua non before the Municipal Board could enact such ordinance. The native power of the Municipal Board to legislate remains undisturbed even in the slightest degree. It can move in its own initiative and the Market Committee cannot demur. At most, the Market Committee may serve as a legislative aide of the Municipal Board in the enactment of city ordinances affecting the city markets or, in plain words, in the gathering of the necessary data, studies and the collection of consensus for the proposal of ordinances regarding city markets. Much less could it be said that RA 6039 intended to delegate to the Market Committee the adoption of regulatory measures for the operation and administration of the city markets. Potestas delegata non delegare potest.

15. Entrusting the collection of fees to a private entity does not destroy the public purpose of the ordinance

The fees collected in the ordinance do not go direct to the private coffers of the Asiatic Integrated Corporation. Ordinance 7522 was not made for the corporation but for the purpose of raising revenues for the city. That is the object it serves. The entrusting of the collection of the fees does not destroy the public purpose of the ordinance. So long as the purpose is public, it does not matter whether the agency through which the money is dispensed is public or private. The right to tax depends upon the ultimate use, purpose and object for which the fund is raised. It is not dependent on the nature or character of the person or corporation whose intermediate agency is to be used in applying it. The people may be taxed for a public purpose, although it be under the direction of an individual or private corporation.

16. Ordinance not violative of Section 3 (e) of the Anti-Graft and Corrupt Practices Act

Nor can the ordinance be stricken down as violative of Section 3(e) of the Anti-Graft and Corrupt Practices Act because the increased rates of market stall fees as levied by the ordinance will necessarily inure to the unwarranted benefit and advantage of the corporation. The measure may not be invalidated just because of consequences that may arise from its enforcement.

[7]

Bishop of Nueva Segovia v. Provincial Board, Ilocos Norte [GR 27588, 31 December 1927]
En Banc, Avancena (p): 5 concur

Haystacks (Berne Guerrero)

Facts: The Roman Catholic Apostolic Church (plaintiff), represented by the Bishop of Nueva Segovia, possesses and is the owner of a parcel of land in the municipality of San Nicolas, Ilocos Norte, all four sides of which face on public streets. On the south side is a part of the church yard, the convent and an adjacent lot used for a vegetable garden, containing an area of 1,624 square meters, in which there is a stable and a well for the use of the convent. In the center is the remainder of the churchyard and the church. On the north side is an old cemetery with two of its walls still standing, and a portion where formerly stood a tower, the base of which may still be seen, containing a total area of 8,955 square meters.

As required by the provincial board (defendant), the Church paid on 3 July 1925, under protest, the land tax on the lot adjoining the convent and the lot which formerly was the cemetery with the portion where the tower stood. The plaintiff filed an action for the recovery of the sum paid by it to the defendants by way of land tax, alleging that the collection of this tax is illegal. The lower court absolved the defendants from the complaint in regard to the lot adjoining the convent and declared that the tax collected on the lot, which formerly was the cemetery and on the portion where the tower stood, was illegal. Both parties appealed from this judgment.

The Supreme Court reversed the appealed judgment in all its parts and held that both lots are exempt from land tax and the defendants are ordered to refund to plaintiff whatever was paid as such tax, without any special pronouncement as to costs.

1. Land used limited to necessity of priest, convent are tax exempted

The exemption in favor of the convent in the payment of the land tax (sec. 344 [c] Administrative Code) refers to the home of the priest who presides over the church and who has to take care of himself in order to discharge his duties. It therefore must, in this sense, include not only the land actually occupied by the church, but also the adjacent ground destined to the ordinary incidental uses of man. Except in large cities where the density of the population and the development of commerce require the use of larger tracts of land for buildings, a vegetable garden belongs to a house and, in the case of a convent, its use is limited to the necessities of the priest, which comes under the exemption.

2. Land used incidentally in religious functions are tax exempted

Land used as a lodging house by the people who participate in religious festivities, which constitutes an incidental use in religious functions, not for commercial purposes, comes within the exemption. It cannot be taxed according to its former use (cemetery).

[8]

Cagayan Electric vs. CIR [G.R. No. L-60126. September 25, 1985.]
Second Division, Aquino (J): 5 concurring

Facts: Cagayan Electric Power and Light Co. is the holder of a legislative franchise, RA 3247, under which its payment of 3% tax on its gross earnings from the sale of electric current is "in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted." On 27 June 1968, RA 5431 amended section 24 of the Tax Code by making liable for income tax all corporate taxpayers not specifically exempt under paragraph (c) (1) of said section and section 27 of the Tax Code notwithstanding the "provisions of existing special or general laws to the contrary". Thus, franchise companies were subjected to income tax in addition to franchise tax. However, in the company's case, its franchise was amended by RA 6020, effective 4 August 1969, by authorizing the company to furnish electricity to the municipalities of Villanueva and Jasaan, Misamis Oriental in addition to Cagayan de Oro City and the municipalities of Tagoloan and Opol. The amendment reenacted the tax exemption in its original charter or neutralized the modification made by RA 5431 more than a year before. By reason of the amendment to section 24 of the Tax Code, the Commissioner of Internal Revenue in a demand letter dated 15

February 1973 required the company to pay deficiency income taxes for 1968 to 1971. The company contested the assessments. The Commissioner cancelled the assessments for 1970 and 1971 but insisted on those for 1968 and 1969. The company filed a petition for review with the Tax Court, which on 26 February 1982 held the company liable only for the income tax for the period from 1 January to 3 August 1969 or before the passage of RA 6020 which reiterated its tax exemption. The liability of the company for income tax amounted to P75,149.73 for the more than seven-month period of the year 1969 in addition to franchise tax. The company appealed to the Supreme Court.

The Supreme Court affirmed with modification the judgment of the Tax Court that the company is liable only for the tax proper and that it should not pay the delinquency penalties; without costs.

1. Constitution allows Congress to amend, alter or repeal franchises when public interest so requires

Congress could impair the company's legislative franchise by making it liable for income tax from which heretofore it was exempted by virtue of the exemption provided for in section 3 of its franchise. The Constitution provides that a franchise is subject to amendment, alteration or repeal by the Congress when the public interest so requires (Sec. 8, Art. XIV, 1935 Constitution; Sec. 5, Art. XIV, 1973 Constitution). Section 1 of the company's franchise, RA 3247, provides that it is subject to the provisions of the Constitution and to the terms and conditions established in Act 3636 whose section 12 provides that the franchise is subject to amendment, alteration or repeal by Congress.

2. Effect of RA 5431 amending the Tax Code

RA 5431, in amending section 24 of the Tax Code by subjecting to income tax all corporate taxpayers not expressly exempted therein and in section 27 of the Code, had the effect of withdrawing the company's exemption from income tax.

3. Company's tax exemption restored with the enactment of RA 6020

The exemption was restored by the subsequent enactment on 4 August 1969 of RA 6020 which reenacted the said tax exemption. Hence, the company is liable only for the income tax for the period from 1 January to 3 August 1969 when its tax exemption was modified by RA 5431.

4. Other franchises are paying income tax in addition to franchise tax

It is relevant to note that franchise companies, like the Philippine Long Distance Telephone Company, have been paying income tax in addition to the franchise tax.

5. 1969 assessment highly controversial; Company liable only for tax proper and not for surcharge and interest

The assessment appears to be highly controversial. The Commissioner at the outset was not certain as to the company's income tax liability. It had reason not to pay income tax because of the tax exemption in its franchise. For this reason, it should be liable only for tax proper and should not be held liable for the surcharge and interest. (Advertising Associates, Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals, G. R. No. 59758, December 26, 1984, 133 SCRA 765; Imus Electric Co., Inc. vs. Commissioner of Internal Revenue, 125 Phil. 1024; C.M. Hoskins & Co., Inc. vs. Commissioner of Internal Revenue, L-28383, June 22, 1976, 71 SCRA 511.)

[9]

CIR v. Algue [GR L-28896, 17 February 1988]
First Division, Cruz (p): 4 concur

Facts: The Philippine Sugar Estate Development Company (PSEDC) appointed Algue, a domestic corporation engaged in engineering, construction and other allied activities, as its agent, authorizing it to sell its land, factories and oil manufacturing process. Pursuant to such authority, Alberto Guevara, Jr., Eduardo Guevara, Isabel Guevara, Edith O'Farell, and Pablo Sanchez worked for the formation of the Vegetable Oil Investment Corporation (VOICP), inducing other persons to invest in it. Ultimately, after its incorporation largely through the promotion of the said persons, this new corporation purchased the PSEDC properties. For this sale, Algue received as agent a commission of P125,000.00, and it was from this commission that the P75,000.00 promotional fees were paid to the aforenamed individuals.

On 14 January 1965, Algue received a letter from the petitioner assessing it in the total amount of P83,183.85 as delinquency income taxes for the years 1958 and 1959. On 18 January 1965, Algue filed a letter of protest or request for reconsideration, which letter was stamp-received on the same day in the office of the petitioner. On 12 March 1965, a warrant of distraint and levy was presented to Algue, through its counsel, who refused to receive it on the ground of the pending protest. A search of the protest in the dockets of the case proved fruitless. The counsel produced his file copy and gave a photostat to BIR agent Reyes, who deferred service of the warrant. On 7 April 1965, the Counsel was finally informed that the BIR was not taking any action on the protest and it was only then that he accepted the warrant of distraint and levy earlier sought to be served. On 23 April 1965, Algue filed a petition for review of the decision of the Commissioner of Internal Revenue with the Court of Tax Appeals.

The Supreme Court affirmed in toto the appealed decision of the Court of Tax Appeals, without costs.

1. Purpose of taxes

Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. Despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

2. Taxes should be reasonable

Tax collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate that the law has not been observed.

3. Warrant of distraint and levy

As a rule, the warrant of distraint and levy is proof of the finality of the assessment and renders hopeless a request for reconsideration, being tantamount to an outright denial thereof and makes the said request deemed rejected. Special circumstances, however, prevents application of the doctrine. In the case at bar, 4 days after the private respondent received the petitioner's notice of assessment, it filed its letter of protest. This was apparently not taken into account before the warrant of distraint and levy was issued. The protest filed by private respondent was not pro forma and was based on strong legal considerations. It had the effect of suspending when it was filed (18 January 1965), the reglementary period which started on the date the assessment was received (14 January 1965). The period started running again only when the private respondent was definitely informed of the implied rejection of the said protest and the warrant was finally served on it (7 April 1965). Hence, when the appeal was filed (23 April 1965), only 20 days of the reglementary period had been consumed.

4. Tax code provides for deductions; Procedures in family corporations informal

Section 30 (a, 1) of the Tax Code provides for the deduction from gross income, which includes all ordinary and necessary expenses in a taxable year in carrying on trade or business, including reasonable allowable for salaries and other compensation for personal services actually rendered. Revenue Regulations 2, Section 70 (1) provides for compensation for personal services. In the case at bar, the claimed deduction had been legitimately paid by Algue for actual services rendered. The payment was in the form of promotional fees, which were not excessive. These were collected by the payees for their work in the creation of the VOICP and its subsequent purchase of the properties of the PSEDC. The payments were not fictional; they were not paid in lump sum but periodically and in different amounts a each payee's need arose. A family corporation does not apply strict business procedures and the immediate issuance was not required; but it is adequate that each payee made an accounting of all fees received by him before the books are closed at the end of the year. The arrangement is understandable in view of the close relationship among the persons in the family corporation.

5. Burden of proof involving tax exemption belongs to taxpayer

The burden is on the taxpayer to prove the validity of the claimed deduction. In the case at bar, Algue has proved that the payment of the fees was necessary and reasonable in the light of the efforts exerted by the payees in inducing investors and prominent businessmen to venture in an experimental enterprise and involve themselves in a new business requiring millions of pesos.

[10]

CIR vs. American Rubber Company [G.R. No. L-19667. November 29, 1966.]
American Rubber vs. CIR [G.R. Nos. L-19801-03.]
En Banc, Reyes JBL (J): 8 concurring

Facts: American Rubber Company, a domestic corporation, from 1 January 1955 to 1 December 1958, was engaged in producing rubber from its approximate 900-hectare rubber tree plantation, which it owned and operated in Latuan, Isabela, City of Basilan. Its products, known in the market as Preserved Latex, Pale Crepe No. 1, Pale Crepe No. 2, Ribbed Smoked Sheets Nos. 1 and 2, Flat Bark Rubber, 2X Brown Crepe and 3X Brown Crepe. The company during the said period sold its foregoing rubber products locally and as prescribed by the Commissioner's regulations declared same for tax purposes which respondent accordingly assessed. The company paid, under protest, the corresponding sales taxes thereon claiming exemption therefrom under Section 188, (b) of the National Internal Revenue Code. The sales taxes under protest are in the amount of P83,193.48 for the period of 1 January 1955 to 31 December 1956; P20,504.99 from 1 January 1957 to 30 June 1957; P53,378.90 from July 1957 to 31 December 1958. After paying under protest, the company claimed refund of the sales taxes paid by it on the ground that, under Section 188, paragraph b, of the Internal Revenue Code, as amended, its rubber products were agricultural products exempt from sales tax, and upon refusal of the Commissioner of Internal Revenue, brought the case on appeal to the Court of Tax Appeals (CTA Cases 356, 440, 632). The Commissioner interposed defenses, denying that petitioner's products were agricultural ones within the exemption; claiming that there had been no exhaustion of administrative remedies, and argued that the sales tax having been passed to the buyers during the period that elapsed from 1 January 1955 to 2 August 1957, the company did not have personality to demand, sue for and recover the aforesaid sales taxes, plus interest.

In its decision, the Tax Court held Preserved Latex, Flat Bark Rubber, and 3x Brown Crepe to be agricultural products, "because the labor employed in the processing thereof is agricultural labor", and, hence, the sales of such products were exempt from sales tax but declared Pale Crepe 1, Ribbed Smoked Sheets 1 and 3, as well as 2X Brown Crepe (which is obtained from rolling excess pieces of Smoked Sheets) to be manufactured products, sales of which were subject to tax. It overruled the defense of non-exhaustion of administrative remedies and upheld the Revenue Commissioner's stand that company was not entitled to recover the sales tax that had been separately billed to its customers, and paid by the latter. Hence, it dismissed the appeal in CTA Cases 356 and 440, and ordered the Commissioner to refund only P3,916.49 without interest, or costs. Both parties appealed.

The Supreme Court affirmed the decision of the Court of Tax Appeals in GR L-19667 and modified the decisions in GR L-19801, 19802 and 19803, by declaring the sales taxes therein involved to have been improperly levied and collected and ordering the Commissioner of Internal Revenue to refund the same, except the taxes corresponding to the period from 24 August 1956 to 22 June 1957, during which RA 1612 was in force. The amount of P37,075.47 paid by the taxpayer for this period is hereby declared properly collected and not refundable; Without special pronouncement as to costs.

1. Production of rubber products (Step 1)

The initial step common to the production of all the foregoing rubber products is tapping, i.e., the collection of latex (rubber juice) from rubber trees. This is done by the daily cutting early in the morning, of a spiral incision in the bark of rubber trees and placing a cup below the lower end of the incision to receive the flow of latex. The collecting cup is filled after two hours. The tapper then collects the latex into buckets and carries them to the collecting shed. The tapper subsequently pours the latex collected into big milk cans. The filled milk cans are then taken in motor vehicles to a coagulating shed, also within the premises of petitioner's plantation, where the latex is strained into coagulating tanks to remove foreign matter such as leaves and dirt. After these initial steps, the processes vary in the production of the various rubber products.

2. Production of Preserved Rubber Latex (Step 2, end)

Fresh latex is diluted with 5 to 5-1/4 ounces of ammonia per gallon of latex. The mixture is thoroughly stirred and then poured into metal drums. The addition of ammonia preserves the latex in liquid form and prevents its deterioration or its acquisition of a repulsive smell, and at the same time preserves its uniform color. Latex which has been thus artificially preserved in its liquid form generally lasts for about a month without spoiling. On the other hand, fresh latex in its original state lasts for only about two hours, after which it becomes spoiled (American Rubber Co. sells preserved latex only upon previous orders of customers who supply empty metal drum containers).

3. Production of Pale Crepe Nos. 1 and 2 and Ribbed Smoked Sheets Nos. 1 and 2 (Step 2, common)

To produce Pale Crepe Nos. 1 and 2 and Ribbed Smoked Sheets Nos. 1 and 2, the company adds to the latex in the coagulating tank about 15 or 16 ounces of glacial acetic acid per gallon of latex. The mixture is stirred thoroughly. Thereafter aluminum are placed crosswise inside the tank so that the latex will coagulate into uniform slabs. Acetic acid is added to the latex to hasten coagulation which otherwise takes place naturally, and to preserve its fresh state and color. The similarity in the production of Pale Crepe Nos. 1 and 2 and Ribbed Smoked Sheets Nos. 1 and 2 ends at the point of removing the coagulum (coagulated rubber sheets) from the coagulating tanks. The companys's rollers are powered by engines although they could be turned by hand as it is done in small rubber plantations. If Pale Crepe Nos. 1 and 2 and Ribbed Smoked Sheets Nos. 1 and 2 are not air-dried and smoked, they deteriorate, get spoiled, and the color varies.

4. Production of Pale Crepe 1 and 2 (Step 3, end)

To produce Pale Crepe No. 1, the coagulum is passed through a series of rollers until the desired thickness is attained, whereupon it is moved to the air-drying house situated inside petitioner's plantation and hung for a period of about twelve or thirteen days to dry. There are no mechanical driers used; the air-drying is done naturally. As soon as the Pale Crepe is dried, the sheets are sorted; those which are of uniform pale color are classified as Pale Crepe No. 2, whereupon they are baled and stored, ready for the market.

5. Production of Ribbed & Smoked Sheets Nos. 1 and 2 (Step 3, end)

Ribbed & Smoked Sheets Nos. 1 and 2 are produced practically in the same manner as Pale Crepe, except that the coagulum is passed only once through a roller provided with ribs after which the flattened and ribbed coagulum is removed to petitioner's smoke-house where it is hung and cured by exposure to heat and smoke from wood fires for about six or seven days. The resulting smoked sheets are sorted and classified dependent upon color and opaqueness into ribbed smoked sheets (RSS) No. 1 and No. 2, baled, and stored ready for the market. No mechanical equipment is used in generating the smoke in the smoke-house.

6. Production of Flat Bark Rubber (Step 2, end)

Each morning before a tapper makes a fresh incision in the bark of a rubber tree, he gathers the latex drippings from the ground around the tree, called "ground rubber", as well as the dried latex from the incisions made the previous day called "bark rubber". Ground and bark rubber are not intentionally produced. No chemicals are added to the latex transformed into ground and bark rubber. This kind of dried latex is spoiled and has a bad odor. Ground and bark rubber when gathered in sufficient quantities are passed numerous times through the rollers or mills until they form a uniform mass or sheet which, finally is called Flat Bark Rubber. No chemical is used to coagulate the dried ground and bark rubber because they are already coagulated. They are formed into sheets by means only of pressure of the mills or rollers through which they are passed. Flat Rubber commands the lowest prices in the rubber market.

7. Production of 3X Brown Crepe (Step 2, end)

Every morning, before a fresh incision is made in the bark of the rubber trees, the tapper collects not only ground and bark rubber but removes and collects the latex in the cups, known as "cup rubber". The cup rubber coagulates and dries through natural processes and, when gathered in sufficient quantities, is milled and rolled through a series of rollers until by force of pressure it is formed into a mass of the desired thickness called "3x Brown Crepe". Like ground and bark rubber, no chemicals are added to cup rubber to produce 3x Brown Crepe. Cup rubber in its original form, like ground and bark rubber, is spoiled and has a bad odor.

8. Production of 2X Brown Crepe (Step 2, end)

2X Brown Crepe is obtained by milling or rolling the excess pieces of coagulated rubber latex which had been cut or trimmed from the ribbed smoked sheets No. 2 into a uniform mass. 2X Brown Crepe is produced in the same manner as the other sheets of crepe rubber, i.e., without the addition of any chemicals.

9. Exemption from sales tax in favor of sales of agricultural products; Philippine Packing Corp. vs. CIR

In Philippine Packing Corporation vs. Collector of Internal Revenue (100 Phil. 545 et seq.), it was ruled that the exemption from sales tax established in Section 188(b) of the Internal Revenue Tax Code in favor of sales of agricultural products, whether in their original form or not, made by the producer or owner of the land where produced is not taken away merely because the produce undergoes processing at the hand of said producer or owner for the purpose of working his product into a more convenient and valuable form suited to meet the demand of an expanded market; that the exemption was not designed in favor of the small agricultural producer, already exempted by the subsequent paragraphs of the same Section 188, but that said exemption is not incompatible with large scale agricultural production that incidentally required resort to preservative processes designed to increase or prolong marketability of the product.

10. Fresh latex an agricultural product with severely limited marketability; Preserved latex not removed from tax exemption

Fresh latex directly obtained from the rubber tree, which is clearly an agricultural product, becomes spoiled after only two hours. It has, therefore, a severely limited marketability. The addition of ammonia prevents its deterioration for about a month, and there is no reason why this preservative process should wrest away from the preserved latex the protective mantle of the tax exemption.

11. Coagulation does not alter agricultural nature of the result

Taking also into account the great distance that separates the company's plantation from the main rubber processing centres in Japan, the United States and Europe, and the difficulty in handling products in liquid form, it can be discerned without difficulty that preserved latex, with its 30-day spoilage limit, is still severely handicapped for export and dollar earning purposes. To overcome these shortcomings, and extend its useful life almost indefinitely, it becomes necessary to separate and solidify the rubber granules diffused in the latex, and hence, acetic acid is added to hasten coagulation. There is nothing on record to show that the acetic acid in any way produces anything that was not originally in the source, the liquid latex. The coagulum is then rolled and compacted and afterwards air dried to make Pale Crepe (1 and 2), or else cured and smoked to produce rubber sheets. Once again there is nothing in this processing to alter the agricultural nature of the result, what takes place is merely an accelerated coagulation and desiccation that would naturally occur anyway, only within a longer period of time, coupled with greater spoilage of the product.

12. Production purely preservative nature and thus sales tax exempt

The operations carried out by company appear to be purely preservative in nature, made necessary by its production of fresh rubber latex in a large scale. They are purely incidental to the latter, just as the canning of skinned and cored pineapples in syrup was held to be incidental to the large-scale cultivation of the fruit in the Philippine Packing Corporation case (ante). Being necessary to suit the product to the demands of the market, the operations in both cases should lead to the same result, non-taxability of the sales of the respective agricultural products.

13. Flat Bark and 3x Brown Crepe rubber are agricultural products

Flat Bark and 3X Brown Crepe rubber are agricultural products. These sheets results from the drippings and waste rubber that have dried naturally, that are rolled and compacted into the desired thickness, without any other processing. As to 2X Brown Crepe which is compacted out of the trimmings and waste left from the production of ribbed smoked sheets, no reason is seen why it should be treated differently from the ribbed smoked sheets themselves.

14. Definition of manufacturer under Section 194 (n) of the Revenue Code

Section 194 (n) of the Revenue Code defining a "manufacturer" as "every person who by physical or chemical process alters the exterior texture or form or inner substance of any raw material, or manufactured or partially manufactured product in such manner as to prepare it for a special use or uses to which it could not have been put to in its original condition, or who . . . alters the quality of any such raw material . . . as to reduce it to marketable shape . . ."

15. Sales tax exempt prior to promulgation of RA 1612 and after promulgation of RA 1856

In the Philippine Packing Corporation case, the definition is not applicable to the exemption of agricultural products, "whether in their original form or not". The use of this last phrase in the statute clearly indicates that the agricultural product may be altered in texture or form without being divested of the exemption (cas. cit. 101 Phil., p. 548). The exception would be sales of agricultural products while RA 1612 was in effect because under this Act the freedom from sales tax became restricted to agricultural products "in their original form" only. Therefore, the company's sales from 24 August 1956 (approval of RA 1612) to 22 June 1957 (when RA 1856 became effective and restored the exemption of agricultural products "whether in their original form or not") became properly taxable. Under paragraphs A(2) and B(4) of the additional stipulation of facts, the sales tax properly collected during this period on the company's transactions amounted to P18,187.19 from 24 August to 31 December 1956; and P18,888.28 from 1 January to 21 June 1957, or a total of P37,075.47. This last amount is, therefore, non-recoverable.

16. Medina vs. City of Baguio not applicable; Municipal tax levied upon theatergoers

Medina ruling (which was merely followed in Rojas & Bros. vs. Cavite, supra, and in Mendoza, Santos & Co. vs. Municipality of Meycawayan, 94 Phil. 1047) is not applicable to the present case, since the municipal taxes therein imposed were taxes on the admission tickets sold, so that, in effect, they were levies upon the theater goers who bought them; so much so that (as the decision expressly ruled) the tax was collected by the theater owners as agents of the respective municipal treasurers. This does not obtain in the present case.

17. Tax paid involve sale by manufacturer, producer or importer, and not the thing sold itself

By contrast with the municipal taxes involved in the case of Medina vs. Baguio, the sales tax is by law imposed directly, not on the thing sold, but on the act (sale) of the manufacturer, producer or importer (Op. of the Secretary of Justice, June 15, 1946; 47 C. J. S., p. 1141), who is exclusively made liable for its timely payment. There is no proof that the tax paid by the company is the very money paid by its customers. Where the tax money paid by the company came from is really no concern of the Government, but solely a matter between the company and its customers. Anyway, once recovered, the company must hold the refunded taxes in trust for the individual purchasers who advanced payment thereof, and whose names must appear in company's records.

18. Separate billing of sales tax pursuant to Commissioner's Circular 440

The separate billing of the sales tax in appellant's involves was a direct result of the Commissioner's Circular No. 440, providing that "if a manufacturer, producer, or importer, in fixing the gross selling price of an article sold by him, has included an amount intended to cover the sales tax in the gross selling price of the article, the sales tax shall be based on the gross selling price less the amount intended to cover the tax, if the same is billed to the purchaser as a separate item in the invoice . . ." In other words, the separate itemization of the sales tax in the invoices was submitted to avoid the taxpayer being compelled to pay a sales tax on the tax itself. It does not seem either just or proper that a step suggested by the Internal Revenue authorities themselves to protect the taxpayer from paying a double tax should now be used to block his action to recover taxes collected without legal sanction.

19. Indiscriminate application of Medina ruling perpetuates illegal taxation; CTA ruling violates morals and public policy

A more important reason that militates against extensive and indiscriminate application of the Medina vs. City of Baguio ruling is that it would tend to perpetuate illegal taxation; for the individual customers to whom the tax is ultimately shifted will, ordinarily not care to sue for its recovery, in view of the small amount paid by each and the high cost of litigation for the reclaiming of an illegal tax. Insofar, therefore, as it favors the imposition, collection and retention of illegal taxes, and encourages a multiplicity of suits, the Tax Court's ruling under appeal violates morals and public policy.

20. No patent arbitrariness shown to merit inclusion of interest in the refund of taxes

While the Court has allowed recovery of interest in some cases, it has done so only in cases of patent arbitrariness on the part of the Revenue authorities; and in this instance. no such patent arbitrariness has been shown.

[11]

CIR vs. Burroughs Ltd. [G.R. No. L-66653. June 19, 1986.]
Second Division, Paras (J): 4 concurring

Facts: Burroughs Limited is a foreign corporation authorized to engage in trade or business in the Philippines through a branch office located at De la Rosa corner Esteban Streets, Legaspi Village, Makati, Metro Manila. Sometime in March 1979, said branch office applied with the Central Bank for authority to remit to its parent company abroad, branch profit amounting to P7,647,058.00. Thus, on 14 March 1979, it paid the 15% branch profit remittance tax, pursuant to Sec. 24 (b) (2) (ii) and remitted to its head office the amount of P6,499,999.30. Claiming that the 15% profit remittance tax should have been computed on the basis of the amount actually remitted (P6,499,999.30) and not on the amount before profit remittance tax (P7,647,058.00), Burroughs Ltd. filed on 24 December 1980, a written claim for the refund or tax credit of the amount of

P172,058.90 representing alleged overpaid branch profit remittance tax. On 24 February 1981, Burroughs Ltd. filed with the Court of Tax Appeals, a petition for review (CTA Case) 3204 for the recovery of the amount of P172,058.81. On 27 June 1983, the tax court rendered its Decision, ordering the Commission of Internal Revenue to grant a tax credit in favor of Burroughs Ltd. the said amount claimed; without pronouncement as to costs. Unable to obtain a reconsideration from the decision, the Commissioner filed the petition for certiorari before the Supreme Court.

The Supreme Court affirmed the assailed decision of the Court of Tax Appeals; without pronouncement as to costs.

1. Section 24 (b) (2) (ii) of the National Revenue Code

The pertinent provision of the National Revenue Code is Sec. 24 (b) (2) (ii) which states: "Sec. 24. Rates of tax on corporations. . . . (b) Tax on foreign corporations. . . . (2) (ii) Tax on branch profits remittances. — Any profit remitted abroad by a branch to its head office shall be subject to a tax of fifteen per cent (15%) . . . ."

2. Interpretation of the provision as per ruling of the BIR 21 January 1980

In a Bureau of Internal Revenue ruling dated 21 January 1980 by then Acting Commissioner of Internal Revenue Hon. Efren I. Plana, Section 24 (b) (2) (ii) had been interpreted to mean that "the tax base upon which the 15% branch profit remittance tax . . . shall be imposed . . . (is) the profit actually remitted abroad and not on the total branch profits out of which the remittance is to be made." Based on such ruling Burroughs Ltd. should have paid only the amount of P974,999.89 in remittance tax computed by taking the 15% of the profits of P6,499,999.89 in remittance tax actually remitted to its head office in the United States, instead of P1,147,058.70, on its net profits of P7,647,058.00. Undoubtedly, it has overpaid its branch profit remittance tax in the amount of P172,058.90.

3. Memorandum Circular 8-82 (17 March 1982) does not apply

What is applicable in the present case is still the Revenue Ruling of 21 January 1980 because Burroughs Limited paid the branch profit remittance tax in question on 14 March 1979. Memorandum Circular 8-82 dated 17 March 1982, which states that "considering that the 15% branch profit remittance tax is imposed and collected at source, necessarily the tax base should be the amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted abroad," cannot be given retroactive effect in the light of Section 327 of the National Internal Revenue Code.

4. Section 327 of the National Internal Revenue Code

Section 327 (Non-retroactivity of rulings) of the National Internal Revenue Code provides "any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayer except in the following cases (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based, or (c) where the taxpayer acted in bad faith." (ABS-CBN Broadcasting Corp. v. CTA, 108 SCRA 151-152)

5. Burroughs Limited will be prejudiced by the retroactive application of Memorandum Circular 8-82

The prejudice that would result to Burroughs Limited by a retroactive application of Memorandum Circular 8-82 is beyond question for it would be deprived of the substantial amount of P172,058.90. Insofar as the enumerated exceptions are concerned, admittedly, Burroughs Limited does not fall under any of them.

[12]

CIR vs. Cebu Portland Cement [G.R. No. L-29059. December 15, 1987.]
First Division, Cruz (J): 4 concurring

Facts: By virtue of a decision of the Court of Tax Appeals rendered on 21 June 1961, as modified on appeal by the Supreme Court on 27 February 1965, the Commissioner of Internal Revenue was ordered to refund to the Cebu Portland Cement Company the amount of P359,408.98, representing overpayments of ad valorem taxes on cement produced and sold by it after October 1957. On 28 March 1968, following denial of motions for reconsideration filed by both the Commissioner and the company, the latter moved for a writ of execution to enforce the said judgment. The motion was opposed by the Commissioner on the ground that the company had an outstanding sales tax liability to which the judgment debt had already been credited (i.e. balance owing on the sales taxes in the amount of P4,789,279.85 plus 28% surcharge). On 22 April 1968, the Court of Tax Appeals granted the motion, holding that the alleged sales tax liability of the company was still being questioned and therefore could not be set-off against the refund. Hence, the petition for review.

The Supreme Court granted the petition and set aside the resolution dated 22 April 1968, in CTA Case 786, without any pronouncement as to costs.

1. Sales tax imposed as cement is considered a manufactured product

The sales tax was properly imposed upon the company for the reason that cement has always been considered a manufactured product and not a mineral product. This matter was extensively discussed and categorically resolved in Commissioner of Internal Revenue v. Republic Cement Corporation, decided on 10 August 1983.

2. Cement not a mineral product within the meaning of Section 246 of the Tax Code

Cement qua cement was never considered as a mineral product within the meaning of Section 246 of the Tax Code, notwithstanding that at least 80% of its components are minerals, for the simple reason that cement is the product of a manufacturing process and is no longer the 'mineral product' contemplated in the Tax Code (i.e.; minerals subjected to simple treatments) for the purpose of imposing the ad valorem tax.

3. Cebu Portland Cement vs. Collector case does not support contention that cement is a mineral product

The decision in Cebu Portland Cement Co. v. Collector of Internal Revenue (L-20563, 29 October 1968,28 SCRA 789) is no authority for the proposition that after the enactment of RA 1299 in 1955 (defining mineral product as things with at least 80% mineral content), cement became a 'mineral product,' as distinguished from a 'manufactured product,' and therefore ceased to be subject to sales tax. Even assuming RA 1299 had re-classified cement was a mineral product, the reclassification could not be given retrospective application (so as to justify the refund of sales taxes paid before Republic Act 1299 was adopted) because laws operate prospectively only, unless the legislative intent to the contrary is manifest, which was not so in the case of RA 1266. [The situation would have been different if the Court instead had ruled in favor of refund, in which case it would have been absolutely necessary (1) to make an unconditional ruling that Republic Act 1299 re-classified cement as a mineral product (not subject to sales tax), and (2) to declare the law retroactive, as a basis for granting refund of sales tax paid before Republic Act 1299.]

4. Assessment for sales tax have not prescribed

The assessment for sales taxes made on 16 January 1968 and 4 March 1968, were not out of time. What CEPOC filed was not the sales returns required in Section 183(n) but the ad valorem tax returns required under Section 245 of the Tax Code. In order to avail itself of the benefits of the 5-year prescription period under Section 331 of the Tax Code, the taxpayer should have filed the required return for the tax involved, that is, a sales tax return. (Butuan Sawmill, Inc. v. CTA, et al., G.R. No. L-21516, April 29, 1966, 16 SCRA 277). Thus the cement company should have filed sales tax returns of its gross sales for the subject periods. It has been held in Butuan Sawmill, Inc. v. CTA, that the filing of an income tax return cannot be considered as substantial compliance with the requirement of filing sales tax returns, in the same way that an income tax return cannot be considered as a return for compensating tax for the purpose of computing the period of prescription under Section 331. (Citing Bisaya Land Transportation Co., Inc. v. Collector of Internal Revenue, G.R. Nos. L-12100 and L-11812, May 29, 1959). There being no sales tax returns filed by cement company, the statute of limitations in Section 331 did not begin to run against the government. The assessment made by the Commissioner on the cement company's cement sales is not barred by the 5-year prescriptive period. Absent a return, or when the return is false or fraudulent, the applicable period is 10 days from the discovery of the fraud, falsity or omission.

5. Urgency to collect taxes; Injunction not available to restrain collection of taxes; Section 291, Tax Code

The argument that the assessment cannot as yet be enforced because it is still being contested loses sight of the urgency of the need to collect taxes as "the lifeblood of the government." If the payment of taxes could be postponed by simply questioning their validity, the machinery of the state would grind to a halt and all government functions would be paralyzed. That is the reason why, save for the exception already noted, the Section 291 (Injunction not available to restrain collection of tax) of the Tax Code provides that "No court shall have authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this Code." Thus, there is all the more reason to apply the rule in the present case because it appears that even after crediting of the refund against the tax deficiency, a balance of more than P4 million is still due from the company. To require the Commissioner to actually refund to the company the amount of the judgment debt, which he will later have the right to distrain for payment of its sales tax liability is an idle ritual.

[13]

CIR vs. Connel Bros. Co. [G.R. Nos. L-27752-53. August 30, 1971.]
En Banc, Reyes JBL (J): 10 concurring

Facts: Connel Bros. Company (Phil.), a domestic corporation, filed petitions in the Court of Tax Appeals for review of the assessments made against it by the Commissioner of Internal Revenue for deficiency income taxes for 1955 in the sum of P28,065.00, said to be due and payable on 20 August 1957 (Case 411), and for 1954 in the sum of P45,629.00, said to be due on 2 August 1956 (Case 610). The deficiency assessments arose from the disallowance by the Commissioner of Internal Revenue of deductions for bad debts, depreciation, and excess in valuation of leasehold improvements claimed by the taxpayer in its income tax return for said taxable years. After due trial, the Court of Tax Appeals rendered on 20 April 1966 a joint decision in the two cases, reducing the liability of the taxpayer for deficiency tax for 1954, from P45,629.00 to P2,109.00, but sustaining the assessment of P28,065.00 as deficiency income taxes for 1955. Connel Bros. was thus ordered to pay to the Internal Revenue Commissioner the amount of P2,109.00 and P28,065.00 as deficiency income taxes for 1954 and 1955, respectively, plus the corresponding interests thereon, pursuant to Section 51 of the Tax Code, with provision that if the said deficiency taxes were not paid in full within 30 days from the finality of the decision, petitioner shall pay a surcharge of 5% of the unpaid amount, plus interest at the rate of 1% a month computed from the date the decision becomes final until it is fully paid, but not to exceed an amount corresponding to the interest for a period of 3 years. On motions for clarification by both parties, the Tax Court in its resolution of 30 June 1967 modified its decision in CTA Case 610, by ordering Connel Bros. to pay the Commissionerthe taxes for 1954 and 1955 plus the corresponding interests of 1/2% a month provided in Section 51 (d) of the Revenue Code, as amended by RA 2343, which in no case shall exceed 18% corresponding to a period of three years. If the said deficiency taxes are not paid in full within 30 days from the date this decision becomes final and executory, Connel Bros. shall pay a surcharge of 5% of the unpaid amount, plus interest at the rate of 1% a month, computed from the date the decision becomes final until paid; provided, that the maximum amount that may be collected as interests shall not exceed the amount corresponding to a period of 3 years.

Not satisfied with the ruling of the court, the Commissioner of Internal Revenue interposed the present appeals only from that portion of the decision prescribing the rate of interest on the delinquent taxes and the surcharges thereon payable by the taxpayer, and the period within which said additional payments must be made.

The Supreme Court modified the decision appealed from; ordering the taxpayer to pay the amounts of P2,109.00 and P28,065.00 as deficiency income taxes for 1954 and 1955, respectively, plus 5% surcharge on the amount of unpaid tax and interest at the rate of 1% a month until fully paid, computed from 20 August 1957, as regards tax year 1955, and from 2 August 1956, as regards tax year 1954, deducting therefrom whatever amount the taxpayer might have already paid on the said tax obligation; without costs.

1. Section 51 (e) of the Internal Revenue Code, prior to amendment by RA 2343

Section 51 (e) (Assessment and payment of income tax; Surcharge and interest in case of delinquency.) of the Internal Revenue Code, prior to its amendment provides "To any sum or sums due and unpaid after the dates prescribed in subsections (b), (c) and (d) for the payment of the same, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum a month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons."

2. Section 51 (d) and (e) of the Internal Revenue Code, as amended by RA 2343 effective 20 June 1959

As amended by Republic Act 2343, effective 20 June 1959, Section 51 (d) (Interest on deficiency) reads as "interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner of Internal Revenue; and shall be collected as part of the tax, at the rate of six per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed: Provided, that the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding." Section 51 (e) (Additions to the tax in case of non-payment) reads as "(2) Deficiency. — Where a deficiency, or any interest assessed in connection therewith under paragraph (d) of this section, or any addition to the taxes provided for in section seventy-two of this Code is not paid in full within thirty-two days from the date of notice and demand from the Commissioner of Internal Revenue, there shall be collected upon the unpaid amount, as part of the tax, interest at the rate of one per centum, a month from the date of such notice and demand until it is paid: Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding. (3) Surcharge. — If any amount included in the notice and demand from the Commissioner of Internal Revenue is not paid in full within thirty days after such notice and demand, there shall be collected in addition to the interest prescribed herein and in paragraph (d) above and as part of the tax a surcharge of five per centum of the amount of tax unpaid."

3. Amendment explained

Under the old Section 51 (e), a delinquent taxpayer would have to pay, in addition to the unpaid tax, a 5% surcharge thereon computed from the time the tax became due, plus interest on the whole unpaid amount at the rate of 1% a month. Under the amendatory act (RA 2343), the delinquent taxpayer shall pay, in addition to the tax, a deficiency interest thereon at the rate of 6% per annum computed from the date prescribed for payment of the income tax up to the assessment of the delinquency tax, but which shall not exceed the amount corresponding to a period of 3 years. The interest of 1% a month and surcharge of 5% on the whole unpaid amount shall be imposed only in case the delinquency tax and deficiency interest are not paid within 30 days from the date they become due.

4. When interest and surcharges on delinquent tax payments chargeable

The rule as to when interests and surcharges on delinquent tax payments became chargeable is already well-settled. Construing the same provisions of the old Section 51 (e) and the present Section 51 (d) of the Tax Code, as amended by RA 2343, the Court has declared that the interests and surcharges on deficiency tax are to be imposed upon failure of the taxpayer to pay the tax on the date fixed in the law for payment thereof, which is, under the unamended Section 51, on or before 15 May after the close of the calendar year, or on or before the 15th day of the fifth month following the close of the fiscal year, as the case may be. The rule has to be so because a deficiency indicates non-payment of the correct and collectible tax, and such state of deficiency exists not only from the assessment of the deficiency but from the very time the taxpayer failed to pay the correct amount due from him.

5. Date when correct taxes fixed by law not subject to the discretion of the Commissioner of Internal Revenue

Public policy demands that the date within which the correct taxes, as well as the surcharges and interests in case of deficiency, are payable, being specifically fixed by law, should not be moved or changed or made subject to the discretion of the Commissioner of Internal Revenue. Neither should the accrual of the interests be made dependent on the final outcome of an action contesting the correctness of the assessment of deficiency tax by the Revenue Commissioner. For there is nothing in the Internal Revenue Code nor in RA 1125, creating the Court of Tax Appeals, which invests the said body with authority to supersede the period for payment of the tax prescribed in Section 51, or to exercise the primary function of the Commissioner of Internal Revenue of assessing and collecting taxes.

6. Delinquency taxes due and assessment made before amendment of Section 51; Old Section 51 (e) of the Internal Revenue Code applies

The delinquency taxes became due and the assessments therefor were made before the amendment of Section 51 on 20 June 1959. Since the taxpayer has failed to pay the correct amount of taxes due and collectible in 1955 and 1956, his liability therefor should be determined pursuant to the law then in force when the tax originally fell due, which was the old Section 51(e) of the Internal Revenue Code.

7. Section 13 of RA 2342 shows that there is no intent to make RA 2342 retroactive

Section 13 of Republic Act 2343 expressly provides that “this Act shall take effect upon its approval: Provided, That the rate hereinabove stipulated shall apply to income received from January first, nineteen hundred and fifty-nine, and for the fiscal periods ending after June thirty, nineteen hundred and fifty-nine.” It is evident from Section 13 above quoted that there was no intent to make Republic Act 2343 retroactive.

[14]

CIR vs. CA [G.R. No. 108358. January 20, 1995.]
Third Division, Vitug (J): 4 concurring

Facts: On 22 August 1986, during the period when the President of the Republic still wielded legislative powers, Executive Order 41 was promulgated declaring a one-time tax amnesty on unpaid income taxes, later amended to include estate and donor’s taxes and taxes on business, for the taxable years 1981 to 1985. Availing itself of the amnesty, R.O.H. Auto Products Philippines Inc., filed, in October 1986 and November 1986, its Tax Amnesty Return 34-F-00146-41 and Supplemental Tax Amnesty Return 34-F-00146-64-B, respectively, and paid the corresponding amnesty taxes due. Prior to this availment, the Commissioner of Internal Revenue, in a communication received by the company on 13 August 1986, assessed the latter deficiency income and business taxes for its fiscal years ended 30 September 1981 and 30 September 1982 in an aggregate amount of P1,410,157.71. The taxpayer wrote back to state that since it had been able to avail itself of the tax amnesty, the deficiency tax notice should forthwith be cancelled and withdrawn. The request was denied by the Commissioner, in his letter of 22 November 1988, on the ground that Revenue Memorandum Order 4-87, dated 09 February 1987, implementing EO 41, had construed the amnesty coverage to include only assessments issued by the Bureau of Internal Revenue after the promulgation of the executive order on 22 August 1986 and not to assessments theretofore made.

The company appealed the Commissioner's denial to the Court of Tax Appeals. Ruling for the taxpayer, the tax court held that the Commissioner failed to present any case or law which proves than an assessment can withstand or negate the force of a tax amnesty. On appeal by the Commissioner to the Court of Appeals, the decision of the tax court was affirmed. Hence, the present petition.

The Supreme Court affimed the decision of the court of Appeals, sustaining that of the court of Tax Appeals, in toto; without costs.

1. CTA ruling: Commissioner failed to present case and law which proves assessment can withstand effects of tax amnesty; Burden of proof

The Commissioner failed to present any case or law which proves that an assessment can withstand or negate the force and effects of a tax amnesty. This burden of proof on the company was created by the clear and express terms of the executive order's intention — qualified availers of the amnesty may pay an amnesty tax in lieu of said unpaid taxes which are forgiven (Section 2, Section 5, EO 41, as amended). More specifically, the plain provisions in the statute granting tax amnesty for unpaid taxes for the period 1 January 1981 to 31 December 1985 shifted the burden of proof on the Commissioner to show how the issuance of an assessment before the date of the promulgation of the executive order could have a reasonable relation with the objective periods of the amnesty, so as to make the company still answerable for a tax liability which, through the statute, should have been erased with the proper availment of the amnesty.

2. CTA Ruling: Exceptions do not indicate any reference to an assessment or pending investigation aside from one arising from information furnished by an informer

The exceptions enumerated in Section 4 of EO 41, as amended, do not indicate any reference to an assessment or pending investigation aside from one arising from information furnished by an informer. Thus, the rule in Revenue Memorandum Order 4-87 promulgating that only assessments issued after August 21, 1986 shall be abated by the amnesty is beyond the contemplation of EO 41, as amended.

3. CA Ruling: Commissioner's additional exception against company an act of administrative legislation

There is nothing which justifies the Commissioner's ground for denying the company's claim to the benefits of the amnesty law. Section 4 of the subject law enumerates, in no uncertain terms, taxpayers who may not avail of the amnesty granted. The company does not fall under any of the exceptions. The added exception urged by the Commissioner based on Revenue Memorandum Order 4-87, further restricting the scope of the amnesty, clearly amounts to an act of administrative legislation quite contrary to the mandate of the law which the regulation ought to implement.

4. CA Ruling: Tax Amnesty

By its very nature, a tax amnesty, being a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law, partakes of an absolute forgiveness or waiver by the Government of its right to collect what otherwise would be due it, and in this sense, prejudicial thereto, particularly to give tax evaders, who wish to relent and are willing to reform a chance to do so and thereby become a part of the new society with a clean slate. (Republic vs. Intermediate Appellate Court. 196 SCRA 335, 340 [1991] citing Commissioner of Internal Revenue vs. Botelho Shipping Corp., 20 SCRA 487) To follow the restrictive application of Revenue Memorandum Order 4-87 pressed by the Commissioner would be to work against the raison d'etre of EO 41, as amended, i.e., to raise government revenues by encouraging taxpayers to declare their untaxed income and pay the tax due thereon.

5. Administrative agencies power to promulgate needful rules and regulations to carry out the law

The authority of the Minister of Finance (now the Secretary of Finance), in conjunction with the Commissioner of Internal Revenue, to promulgate all needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Neither can it be disputed that such rules and regulations, as well as administrative opinions and rulings, ordinarily should deserve weight and respect by the courts. Much more fundamental than either of the above is that all such issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. Administrative rules and regulations are intended to carry out, neither to supplant nor to modify, the law.

6. EO 41 (promulgated 22 August 1986); Sections 1-4, 9 and 11

Section 1 (Scope of Amnesty) of EO 41 provides that "a one-time tax amnesty covering unpaid income taxes for the years 1981 to 1985 is hereby declared." Section 2 (Conditions of the Amnesty) provides that "a taxpayer who wishes to avail himself of the tax amnesty shall, on or before October 31, 1986; a) file a sworn statement declaring his net worth as of December 31, 1985; b) file a certified true copy of his statement declaring his net worth as of December 31, 1980 on record with the Bureau of Internal Revenue, or if no such record exists, file a statement of said net worth therewith, subject to verification by the Bureau of Internal Revenue; c) file a return and pay a tax equivalent to ten per cent (10%) of the increase in net worth from December 31, 1980 to December 31, 1985: Provided, That in no case shall the tax be less than P5,000.00 for individuals and P10,000.00 for judicial persons." Section 3 (Computation of Net Worth) provides that "In computing the net worths referred to in Section 2 hereof, the following rules shall govern: a) Non-cash assets shall be valued at acquisition cost. b) Foreign currencies shall be valued at the rates of exchange prevailing as of the date of the net worth statement." Section 4 (Exceptions) provides that "the following taxpayers may not avail themselves of the amnesty herein granted: "a) Those falling under the provisions of Executive Order Nos. 1, 2 and 14; b) Those with income tax cases already filed in Court as of the effectivity hereof; c) Those with criminal cases involving violations of the income tax already filed in court as of the effectivity filed in court as of the effectivity hereof; d) Those that have withholding tax liabilities under the National Internal Revenue Code, as amended, insofar as the said liabilities are concerned; e) Those with tax cases pending investigation by the Bureau of Internal Revenue as of the effectivity hereof as a result of information furnished under Section 316 of the National Internal Revenue Code, as amended; f) Those with pending cases involving unexplained or unlawfully acquired wealth before the Sandiganbayan; g) Those liable under Title Seven, Chapter Three (Frauds, Illegal Exactions and Transactions) and Chapter Four (Malversation of Public Funds and Property) of the Revised Penal Code, as amended." Section 9 provides that "the Minister of finance, upon the recommendation of the Commissioner of Internal Revenue, shall promulgate the necessary rules and regulations to implement this Executive Order." Section 11 provides that the "This Executive Order shall take effect immediately."

7. Amnesty extended by later EO 54 (period) and EO 64 (coverage)

The period of the amnesty was later extended to 05 December 1986 from 31 October 1986 by Executive Order 54, dated 04 November 1986, and, its coverage expanded, under Executive Order 64, dated 17 November 1986, to include estate and honors taxes and taxes on business.

8. Exclusion clause required to exclude tax liabilities already assessed; EO 41 in the nature of a general grant of tax amnesty

If EO 41 had not been intended to include 1981-1985 tax liabilities already assessed (administratively) prior to 22 August 1986, the law could have simply so provided in its exclusionary clauses. It did not. Thus, the executive order has been designed to be in the nature of a general grant of tax amnesty subject only to the cases specifically excepted by it.

9. Events that lead to the promulgation of the tax amnesty

The taxable periods covered by the amnesty include the years immediately preceding the 1986 revolution during which time there had been persistent calls for civil disobedience, most particularly in the payment of taxes, to the martial law regime. It should be understandable then that those who ultimately took over the reigns of government following the successful revolution would promptly provide for abroad, and not a confined, tax amnesty.

10. Section 6 of EO 41; Immunities and Privileges

Section 6 of EO 41 provides that "upon full compliance with the conditions of the tax amnesty and the rules and regulations issued pursuant to this Executive order, the taxpayer shall enjoy the following immunities and privileges: a) The taxpayer shall be relieved of any income tax liability on any untaxed income from January 1, 1981 to December 31, 1985, including increments thereto and penalties on account of the non-payment of the said tax. Civil, criminal or administrative liability arising from the non-payment of the said tax, which are actionable under the National Internal Revenue Code, as amended, are likewise deemed extinguished. b) The taxpayer's tax amnesty declaration shall not be admissible in evidence in all proceedings before judicial, quasi-judicial or administrative bodies, in which he is a defendant or respondent, and the same shall not be examined, inquired or looked into by any person, government official, bureau or office. c) The books of account and other records of the taxpayer for the period from January 1, 1981 to December 31, 1985 shall not be examined for income tax purposes: Provided, That the Commissioner of Internal Revenue may authorize in writing the examination of the said books of accounts and other records to verify the validity or correctness of a claim for grant of any tax refund, tax credit (other than refund on credit of withheld taxes on wages), tax incentives, and/or exemptions under existing laws." There is no pretension that the tax amnesty returns and due payments made by the taxpayer did not conform with the conditions expressed in the amnesty order.

[15]

CIR vs. Fireman's Fund Insurance [G.R. No. L-30644. March 9, 1987.]
Second Division, Paras (J): 5 concurring, 1 on leave

Facts: Fireman's Fund Insurance Company is a resident foreign insurance corporation organized under the laws of the United States, authorized and duly licensed to do business in the Philippines. It is a member of the American Foreign Insurance Association, through which its business is cleared. From January 1952 to December 1958, Fireman's Fund entered into various insurance contracts involving casualty, fire and marine risks, for which the corresponding insurance policies were issued. From January 1952 to 1956, documentary stamps were bought and affixed to the monthly statements of policies issued; and from 1957 to 1958 documentary stamps were bought and affixed to the corresponding pages of the policy register, instead of on the insurance policies issued. On 3 July 1959, the company discovered that its monthly statements of business and policy register were lost. The loss was reported to the Building Administration of Ayala Building and the National Bureau of Investigation on 6 July 1959. The Commissioner of Internal Revenue was also informed of such loss by the company, through the latter's auditors, Sycip, Gorres and Velayo, in a letter dated 14 July 1959. After conducting an investigation of said loss, the company's examiner's examiner ascertained that the company failed to affix the required documentary stamps to the insurance policies issued by it and failed to preserve its accounting records within the time prescribed by Section 337 of the Revenue Code by using loose leaf forms as registers of documentary stamps without written authority from the Commissioner as required by Section 4 of Revenue Regulations V-1. As a consequence of these findings, the Commissioner, in a letter dated 7 December 1962, assessed and demanded from petitioner the payment of documentary stamp taxes for the years 1952 to 1958 in the total amount of P79,806.87 and plus compromise penalties, a total of P81,406.87. The compromise penalties consisted of the sum of P1,000.00 as penalty for the alleged failure to affix documentary stamps and the further sum of P600.00 as penalty for an alleged violation of Revenue Regulations V-1 otherwise known as the Bookkeeping Regulations. In a letter dated 14 January 1963, the company contested the assessment.

After the Commissioner denied the protest in a decision dated 17 March 1965, the company appealed to the Court of Tax Appeals on 8 May 1965 (CTA Case 1629). After hearing the court rendered its decision dated 24 May 1969 reversing the decision of the Commissioner of Internal Revenue. Hence, the petition filed on 26 June 1969.

The Supreme Court resolved to dismiss the petition and to affirm the assailed decision of the Court of Tax Appeals.

1. CTA Ruling: affixture of documentary stamps to paper other those authorized by law not tantamount to failure to pay the same

The affixture of documentary stamps to papers other than those authorized by law is not tantamount to failure to pay the same. It is true that the mode of affixing the stamps as prescribed by law was not followed, but the fact remains that the documentary stamps corresponding to the various insurance policies were purchased and paid by the company. There is no legal justification for the Commissioner to require the company to pay again the documentary stamp tax which it had already paid. To sustain the Commissioner's stand would require the company to pay the same tax twice. If at all, the company should be proceeded against for failure to comply with the requirement of affixing the documentary stamps to the taxable insurance policies and not for failure to pay the tax. (See Sec. 239 and 332, Rev. Code).

2. CTA Ruling: Compromise penalties cannot be imposed if the company has not consented thereto

With respect to the 'compromise penalties' in the total sum of P1,600.00, the penalties cannot be imposed in the absence of a showing that the company consented thereto. A compromise implies agreement. If the offer is rejected by the taxpayer, the Commissioner cannot enforce it except through a criminal action. (See Comm. of Int. Rev. vs. Abad, L-19627, 27 June 1968.)

3. Section 210 of the National Internal Revenue Code; Stamp taxes upon documents, instruments, and papers

Section 210 of the National Internal Revenue Code provides "Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto, there shall be levied, collected and paid, for and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same, and at the same time such act is done or transaction had." (Now. Sec. 222).

4. Section 232 of the National Internal Revenue Code; Stamp tax on life insurance policies

Section 232 of the National Internal Revenue Code provides "On all policies of insurance or other instruments by whatever name the same may be called, whereby any insurance shall be made or renewed upon any life or lives, there shall be collected a documentary stamp tax of thirty-five centavos on each two hundred pesos or fractional part thereof, of the amount issued by any such policy. (220) (As amended by PD 1457). Insurance policies issued by a Philippine company to persons in other countries are not subject to documentary stamp tax. (Rev. Regs. 26). Medical certificate attached to an insurance policy is not a part of the said policy. Insurance policy is subject to Section 232 of the Tax Code while medical certificate is taxable under Section 237 of the same Code. Insurance policies are issued in the place where delivered to the person insured." (As amended.)

5. Section 221 of the National Internal Revenue Code; Stamp tax on policies of insurance upon property

Section 221 of the National Internal Revenue Code provides "On all policies of insurance or other instruments by whatever name the same may be called, by which insurance shall be made or renewed upon property of any description, including rents or profits, against peril by sea or on inland waters, or by fire or lightning, there shall be collected a documentary stamp tax of six centavos on each four persons, or fractional part thereof, of the amount of premium charged." (Now Sec. 250.).

6. Section 237 of the National Internal Revenue Code; Payment of documentary stamp tax

Section 237 of the National Internal Revenue Code provides "Documentary stamp taxes shall be paid by the purchase and affixture of documentary stamps to the document or instrument taxed or to such other paper as may be indicated by law or regulations as the proper recepient of the stamp, and by the subsequent cancellation of same, such cancellation to be accomplished by writing, stamping, or perforating the date of the cancellation across the face of each stamp in such manner that part of the writing, impression, or perforation shall be on the stamp itself and part on the paper to which it is attached; Provided, That if the cancellation is accomplished by writing or stamping the date of cancellation, a hole sufficiently large to be visible to the naked eye shall be punched, cut or perforated on both the stamp and the document either by the use of a hand punch, knife, perforating machine, scissors, or any other cutting instrument but if the cancellation is accomplished by perforating the date of cancellation, no other hole need be made on the stamp." (Now Sec. 249.).

7. Section 239 of the National Internal Revenue Code; Failure to affix or cancel documentary stamps

Section 239 of the National Internal Revenue Code provides "Any person who fails to affix the correct amount of documentary stamps to any taxable document, instrument, or paper, or to cancel in the manner prescribed by section 237 any documentary stamp affixed to any document, instrument, or paper, shall be subject to a fine of not less than twenty pesos or more than three hundred pesos. (Now Sec. 250.)

8. Documentary taxes, when deemed paid

Documentary tax is deemed paid by: (a) the purchase of documentary stamps; (b) affixture of documentary stamps to the document or instrument taxed or to such other paper as may be indicated by law or regulations; and (c) cancellation of the stamps as required by law.

9. Purpose of the law is to collect tax; Documentary stamps paid for and cancelled

The over-riding purpose of these provisions of law is the collection of taxes. The three steps involving documentary stamps are but the means to that end. Thus, the purchase of the stamps is the form of payment made; the affixture thereof on the document or instrument taxed is to insure that the corresponding tax has been paid for such document while the cancellation of the stamps is to obviate the possibility that said stamps will be reused for similar documents for similar purposes. In the present case, there appears to be no dispute on the fact that the documentary stamps corresponding to the various policies were purchased and paid for by the Company. Neither is there any argument that the same were cancelled as required by law. This conclusion are also the findings of the Commissioner's examiner (Amando B. Melgar), and confirmed by the Memorandum of Acting Commissioner of Internal Revenue Jose B. Lingad, dated 7 November 1962 to the Chief of Business Tax Division. The purchase of documentary stamps and their being affixed to the monthly statements of business and policy registers were also admitted by counsel for the Government as could clearly be gleaned from his Memorandum submitted to the Court of Tax Appeals. Simply said, the purpose of imposing documentary stamp taxes is to raise revenue and the corresponding amount has already been paid by the company and has actually become part of the revenue of the government.

10. Evidence to prove payment of documentary stamp tax

The insurance policies with the corresponding documentary stamps affixed are the best evidence to prove payment of said documentary stamp tax. This rule however does not preclude the admissibility of other proofs which are uncontradicted and of considerable weight, such as: copies of the applications for manager's checks, copies of the manager's check vouchers of the bank showing the purchases of documentary stamps corresponding to the various insurance policies issued, in the present case, during the years 1952-1958 duly and properly identified by the witnesses for the company during the hearing and admitted by the Court of Tax Appeals.

11. Statutes levying taxes or duties, in case of doubt, construed strongly against the government

It is a general rule in the interpretation of statutes levying taxes or duties, that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed beyond what statutes expressly and clearly import (Manila Railroad Co. v. Collector of Customs, 52 Phil. 950 [1929]).

12. Affixture of signature not attended by bad faith; Justification for the acts of agents claimed for the acts of the principal itself

The affixture of the stamps on documents not authorized by law is not attended by bad faith as the practice was adopted from the authority granted to Wise & Company, one of the company's general agents. Indeed, the Commissioner argued that such authority was not given to the company specifically, but under the general principle of agency, where the acts of the agents bind the principal, the conclusion is inescapable that the justification for the acts of the agents may also be claimed for the acts of the principal itself.

13. Doctrine that no person shall unjustly enrich himself at the expense of another applies also to the Government

There is no justification for the government which has already realized the revenue which is the object of the imposition of subject stamp tax, to require the payment of the same tax for the same documents. Enshrined in our basic legal principles is the time honored doctrine that no person shall unjustly enrich himself at the expense of another. It goes without saying that the government is not exempted from the application of this doctrine (Ramie Textiles, Inc. v. Mathay Sr., 89 SCRA 587 [1979]).

[16]

CIR vs. Gotamco [G.R. No. L-31092. February 27, 1987.]
First Division, Yap (J): 6 concurring

Facts: The World Health Organization (WHO) is an international organization which has a regional office in Manila. As an international organization, it enjoys privileges and immunities which are defined more specifically in the Host Agreement entered into between the Republic of the Philippines and the said Organization on 22 July 1951. Section 11 of that Agreement provides, inter alia, that "the Organization, its assets, income and other properties shall be: (a) exempt from all direct and indirect taxes. It is understood, however, that the Organization will not claim exemption from taxes which are, in fact, no more than charges for public utility services; . . ." When the WHO decided to construct a building to house its own offices, as well as the other United Nations offices stationed in Manila, it entered into a further agreement with the Government of the Republic of the Philippines on 26 November 1957. This agreement contained provides that "the Organization may import into the country materials and fixtures required for the construction free from all duties and taxes and agrees not to utilize any portion of the international reserves of the Government (Article III, paragraph 2)." In inviting bids for the construction of the building, the WHO informed the bidders that the building to be constructed belonged to an international organization with diplomatic status and thus exempt from the payment of all fees, licenses, and taxes, and that therefore their bids "must take this into account and should not include items for such taxes, licenses and other payments to Government agencies." The construction contract was awarded to John Gotamco & Sons, Inc. (Gotamco) on 10 February 1958 for the stipulated price of P370,000.00, but when the building was completed the price reached a total of P452,544.00.

Sometime in May 1958, the WHO received an opinion from the BIR Commissioner stating that "as the 3%

contractor’s tax is an indirect tax on the assets and income of the Organization, the gross receipts derived by contractors from their contracts with the WHO for the construction of its new building, are exempt from tax in accordance with the Host Agreement.” Subsequently, however, on 3 June 1958, the Commissioner reversed his opinion and stated that “as the 3% contractor’s tax is not a direct nor an indirect tax on the WHO, but a tax that is primarily due from the contractor, the same is not covered by the Host Agreement.” On 2 January 1960, the WHO issued a certification stating that the bid of John Gotamco & Sons, made under the condition stated above, should be exempted from any taxes in connection with the construction of the WHO office building as they were informed that there would be no taxes or fees levied upon them for their work in connection with the construction of the building. On 17 January 1961, the Commissioner sent a letter of demand to Gotamco demanding payment of P16,970.40, representing the 3% contractor’s tax plus surcharges on the gross receipts it received from the WHO in the construction of the latter’s building.

Gotamco appealed the Commissioner’s decision to the Court of Tax Appeals, which after trial rendered a decision, in favor of Gotamco and reversed the Commissioner’s decision. The Commissioner filed the petition for review on certiorari before the Supreme Court.

The Supreme Court found no reversible error committed by the Court of Tax Appeals, and affirmed the appealed decision.

1. Less formal types of international agreements, such as Host Agreements, entered by President binding even without concurrence of Senate; Privileges and immunities granted binding on authorities

While treaties are required to be ratified by the Senate under the Constitution, less formal types of international agreements may be entered into by the Chief Executive and become binding without the concurrence of the legislative body. The Host Agreement comes within the latter category; it is a valid and binding international agreement even without the concurrence of the Philippine Senate. The privileges and immunities granted to the WHO under the Host Agreement have been recognized by the Supreme Court as legally binding on Philippine authorities.

2. Direct and indirect taxes distinguished; Contractor’s tax levied on Gotamco is an indirect tax against the WHO

In context, direct taxes are those that are demanded from the very person who, it is intended or desired, should pay them; while indirect taxes are those that are demanded in the first instance from one person in the expectation and intention that he can shift the burden to someone else. (Pollock vs. Farmers, L & T Co., 1957 US 429,15 S. Ct. 673, 39 Law. Ed. 759.) The contractor’s tax is of course payable by the contractor but in the last analysis it is the owner of the building that shoulders the burden of the tax because the same is shifted by the contractor to the owner as a matter of self-preservation. Thus, it is an indirect tax. And it is an indirect tax on the WHO because, although it is payable by Gotamco, the latter can shift its burden on the WHO. In the last analysis it is the WHO that will pay the tax indirectly through the contractor and it certainly cannot be said that “this tax has no bearing upon the World Health Organization.” Thus, the 3% contractor’s tax should be viewed as a form of an “indirect tax” on the Organization, as the payment thereof or its inclusion in the bid price would have meant an increase in the construction cost of the building.

3. Philippine Acetylene case not controlling

The case of Philippine Acetylene Company versus Commissioner of Internal Revenue is not controlling in the present case, since the Host Agreement specifically exempts the WHO from “indirect taxes.” The Philippine Acetylene case involved a tax on sales of goods which under the law had to be paid by the manufacturer or producer; the fact that the manufacturer or producer might have added the amount of the tax to the price of the goods did not make the sales tax “a tax on the purchaser.” The Court held that the sales tax must be paid by the manufacturer or producer even if the sale is made to tax-exempt entities like the National Power Corporation, an agency of the Philippine Government, and to the Voice of America, an agency of the United States Government.

4. Rationale of the WHO exemption from indirect taxes

The Host Agreement, in specifically exempting the WHO from "indirect taxes," contemplates taxes which, although not imposed upon or paid by the Organization directly, form part of the price paid or to be paid by it. This is made clear in Section 12 of the Host Agreement which provides "While the Organization will not, as a general rule, in the case of minor purchases, claim exemption from excise duties, and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless, when the Organization is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable the Government of the Republic of the Philippines shall make appropriate administrative arrangements for the remission or return of the amount of duty or tax." Section 12, although referring only to purchases made by the WHO, elucidates the clear intention of the Agreement to exempt the WHO from "indirect" taxation.

[17]

CIR vs. Itogon-Suyoc Mines [G.R. No. L-25299. July 29, 1969.]
En Banc, Fernando (J): 9 concurring, 1 took no part

Facts: Itogon-Suyoc Mines Inc., a mining corporation duly organized and existing in accordance with the laws of the Philippines, filed on 13 January 1961, its income tax return for the fiscal year 1959-1960. It declared a taxable income of P114,368.04 and a tax due there on amounting to P26,310.41, for which it paid on the same day, the amount of P13,155.20 as the first installment of the income tax due. On 17 May 1961, the corporation filed an amended income tax return, reporting therein a net loss of P331,707.33. It thus sought a refund from the Commissioner of Internal Revenue. On 14 February 1962, Itogon-Suyoc Mines, Inc. filed its income tax return for the fiscal year 1960-1961, setting forth its income tax liability to the tune of P97,345.00, but deducting the amount of P13,155.20 representing alleged tax credit for overpayment of the preceding fiscal year 1959-1960. On 18 December 1962, the Commissioner assessed against the corporation the amount of P1,512.83 as 1% monthly interest on the amount of P13,155.20 from 16 January 1962 to 31 December 1962. The basis for such an assessment was the absence of legal right to deduct said amount before the refund or tax credit thereof was approved by Commissioner of Internal Revenue. Such an assessment was contested by the corporation before the Court of Tax Appeals. The assessment representing interest was set aside in the decision of 30 September 1965 by the Court of Tax Appeals. Hence, the petition for review.

The Supreme Court affirmed the 30 September 1965 decision of the Court of Tax Appeals; without pronouncement as to costs.

1. Assessment on interest over sum already paid unfair and unjust

The Commissioner assessed against the corporation the amount of P1,512.83 as 1% monthly interest on the sum of P13,155.20 from 16 January 1962 to 31 December 1962 on the ground that the corporation had no legal right to deduct the said amount from its income tax liability for the fiscal year 1960-1961 until the refund or tax credit thereof has been approved by the Commissioner. The corporation paid the amount of P13,155.20 as first installment on its reported income tax liability for the fiscal year 1959-1960. But, it turned out that instead of deriving a net gain, it sustained a net loss during the said fiscal year. Accordingly, it filed an amended income tax return and a claim for the refund of the sum of P13,155.20, which sum it subsequently deducted from its income tax liability for the succeeding fiscal year 1960-1961. The overpayment for the fiscal year 1959-1960 and the deduction of the overpaid amount from its 1960-1961 tax liability are not denied by the Commissioner. In this circumstance, it is unfair and unjust for the Commissioner to exact an interest on the said sum of P13,155.20, which, after all, was paid to and received by the government even before the incidence of the tax in question.

2. Imposition of interest is not supported by law

The National Internal Revenue Code provides that interest upon the amount determined as a deficiency shall be assessed and shall be paid upon notice and demand from the Commissioner of Internal Revenue at the rate therein specified. It is made clear, however, in an earlier provision found in the same section that if in any preceding year, the taxpayer was entitled to a refund of any amount due as tax, such amount, if not yet refunded, may be deducted from the tax to be paid.

3. Corporation entitled to refund, to which the Commissioner did not allege otherwise, thus has right according to law to deduct overpayment from tax payment

The corporation was entitled to a refund. Instead of waiting for the sum involved to be delivered to it, it deducted the said amount from the tax that it had to pay. That it had a right to do according to the law. It is true a doubt could have arisen due to the fact that as of the time such a deduction was made, the Commissioner of Internal Revenue had not as yet approved such a refund. It is an admitted fact though that corporation was clearly entitled to it, and the Commissioner did not allege otherwise. Nor could he do so. Under all the circumstances disclosed therefore, the applicability of the legal provision allowing such a deduction from the amount of the tax to be paid cannot be disputed.

4. Monthly interest not a penalty but a compensation

Though not in point to the present case, It was held in Castro vs. Collector of Internal Revenue that the imposition of the monthly interest was considered as not constituting a penalty "but a just compensation to the state for the delay in paying the tax, and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands."

5. Corporation not guilty of delay so as to utilize money that should have been in government treasury

What is the law sought to be avoided is for the taxpayer to make use of funds that should have been paid to the government. In the present case, in view of the overpayment for the fiscal year 1959-1960, the sum of P13,155.20 had already formed part of the public funds. It cannot be said, therefore, that the taxpayer was guilty of any delay enabling it to utilize a sum of money that should have been in the government treasury.

[18]

CIR vs. Lednicky [G.R. Nos. L-18169, L-18286, & L-21434. July 31, 1964.]
En Banc, Reyes JBL (J): 8 concurring

Facts: V. E. Lednicky and Maria Valero Lednicky, are husband and wife, both American citizens residing in the Philippines, and have derived all their income from Philippine sources for the taxable years under question. **[GR L-18286]** In compliance with local law, the spouses, on 27 March 1957, filed their income tax return for 1956, reporting therein a gross income of P1,017,287.65 and a net income of P733,809.44 on which the amount of P317,395.41 was assessed after deducting P4,805.59 as withholding tax. Pursuant to the Commissioner of Internal Revenue's assessment notice, the spouses paid the total amount of P326,247.41, inclusive of the withheld taxes, on 15 April 1957. On 17 March 1959, the spouses filed an amended income tax return for 1956. The amendment consists in a claimed deduction of P205,939.24 paid in 1956 to the US government as federal income tax for 1956. Simultaneously with the filing of the amended return, the spouses requested the refund of P112,437.90. When the Commissioner of Internal Revenue failed to answer the claim for refund, the spouses filed their petition with the tax court on 11 April 1959 as CTA Case 646. **[GR L-18165]** On 28 February 1956, the spouses filed their domestic income tax return for 1955, reporting a gross income of P1,771,124.63 and a net income of P1,052,550.67. On 19 April 1956, they filed an amended income tax return, the amendment upon the original being a lesser net income of P1,012,554.51, and, on the basis of this amended return, they paid P570,252.00, inclusive of withholding taxes. After audit, the Commissioner determined a deficiency of P16,116.00, which amount the spouses paid on 5 December 1956. Back in 1955, however, the spouses filed with the US Internal Revenue Agent in Manila their Federal income tax return for the years 1947, 1951, 1952, 1953 and 1954 on income from Philippine sources on a cash basis. Payment of these federal income taxes, including penalties and delinquency interest in the amount of $264,588.82, were made in 1955 to the US Director of Internal Revenue, Baltimore, Maryland, through the National City Bank of New York, Manila Branch. Exchange and bank charges in remitting payment totaled P4,143.91. On 11 August 1958 the said respondents amended their Philippines income tax return for 1955 to including US Federal income taxes, interest accruing up to 15 May 1955, and exchange and bank charges, totaling P516,345.15 and therewith filed a claim for refund of the sum of P166,384.00, which was later reduced to P150,269.00. The spouses brought suit in the Tax Court, which was docketed therein as CTA Case 570. **[GR 21434]** The facts are similar to above cases but refer to the spouses' income tax returns for 1957, filed on 28 February 1958, and for which the spouses paid a total sum of P196,799.65. In 1959, they filed an amended return for 1957, claiming deduction of P190,755.80, representing taxes paid to the US Government on income derived wholly from Philippine sources. On the strength thereof, spouses seek refund of P90,520.75 as overpayment (CTA Case 783).

The Tax Court decide for the spouses. The Commissioner thus elevated under separate petitions for review of the corresponding decisions of the Court of Tax Appeals to the Supreme Court. Since these cases involve the same parties and issues akin to each case presented, the Court decided them jointly.

The Supreme Court reversed the decisions of the Court of Tax Appeals, and affirmed the disallowance of the refunds claimed by the spouses, with costs against said spouses.

1. Section 30 (c-1) of the Philippine Internal Revenue Code

Section 30 (c) (1) (Deduction from gross income) provides that "in computing net income there shall be allowed as deductions: (c) Taxes: (1) In general. — Taxes paid or accrued within the taxable year, except (A) The income tax provided for under this Title; (B) Income, war-profits, and excess profits taxes imposed by the authority of any foreign country; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of paragraph (3) of this subsection (relating to credit for taxes of foreign countries); (C) Estate, inheritance and gift taxes; and (D) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed."

2. Paragraph (c) (3) (b) of the Tax Code; Credits against tax for taxes of foreign countries

Paragraph 3 (B) of the subsection (Credits against tax for taxes of foreign countries), reads: "If the taxpayer signifies in his return his desire to have the benefits of this paragraph, the tax imposed by this Title shall be credited with (B) Alien resident of the Philippines. — In the case of an alien resident of the Philippines, the amount of any such taxes paid or accrued during the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the Philippines residing in such country;"

3. Paragraph (c) (4) of the Tax Code; Limitation on credit

The tax credit so authorized is limited under paragraph 4 (A and B) of the same subsection, in the following terms: "Par. (c) (4) Limitation on credit. — The amount of the credit taken under this section shall be subject to each of the following limitations: (A) The amount of the credit in respect to the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources within such country taxable under this Title bears to his entire net income for the same taxable year; and (B) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources without the Philippines taxable under this Title bears to his entire net income for the same taxable year."

4. Law's intent that right to deduct income taxes paid to foreign government taken as an alternative or substitute to claim of tax credit for such foreign income tax

Construction and wording of Section 30 (c) (1) (B) of the Internal Revenue Act shows the law's intent that the right to deduct income taxes paid to foreign government from the taxpayer's gross income is given only as an alternative or substitute to his right to claim a tax credit for such foreign income taxes under section 30 (c) (3) and (4); so that unless the alien resident has a right to claim such tax credit if he so chooses, he is precluded from deducting the foreign income taxes from his gross income. For it is obvious that in prescribing that such deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of paragraph (3) (relating to credits for taxes paid to foreign countries), the statute assumes that the taxpayer in question also may signify his desire, to claim a tax credit and waive the deduction; otherwise, the foreign taxes would always be deductible, and their mention in the list of non-deductible items in Section 30 (c) might as well have been omitted, or at least expressly limited to taxes on income from sources outside the Philippine Islands. Had the law intended that foreign income taxes could be deducted from gross income in any event, regardless of the taxpayer's right to claim a tax credit, it is the latter right that should be conditioned upon the taxpayer's waiving the deduction; in which case the right to reduction under subsection (c-1-B) would have been made absolute or unconditional (by omitting foreign taxes from the enumeration of non- deductions), while the right to a tax credit under subsection (c-3) would have been expressly conditioned upon the taxpayer's not claiming any deduction under subsection (c-1).

5. Danger of double credit does not exist if taxpayer cannot claim benefit from either headings at his option

The purpose of the law is to prevent the taxpayer from claiming twice the benefits of his payment of foreign taxes, by deduction from gross income (subs. c-1) and by tax credit (subs. c-3). This danger of double credit certainly can not exist if the taxpayer can not claim benefit under either of these headings at his option, so that he must be entitled to a tax credit (the spouses admittedly are not so entitled because all their income is derived from Philippine sources), or the option to deduct from gross income disappears altogether.

6. When double taxation; Tax income should accrue to benefit of the Philippines

Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity (cf. Manila vs. Interisland Gas Service, 52 Off. Gaz. 6579, Manuf. Life Ins. Co. vs. Meer, 89 Phil. 357). In the present case, while the taxpayers would have to pay two taxes on the same income, the Philippine government only receives the proceeds of one tax. As between the Philippines, where the income was earned and where the taxpayer is domiciled, and the United States, where that income was not earned and where the taxpayer did not reside, it is indisputable that justice and equity demand that the tax on the income should accrue to the benefit of the Philippines. Any relief from the alleged double taxation should come from the United States, and not from the Philippines, since the former's right to burden the taxpayer is solely predicated on his citizenship, without contributing to the production of the wealth that is being taxed.

7. Fundamental doctrine of income taxation

The fundamental doctrine of income taxation provides that the right of a government to tax income emanates from its partnership in the production of income, by providing the protection, resources, incentives, and proper climate for such production.

8. Interpretation cannot result to an absurd situation

The interpretation given by the spouses to the revenue law provision in question operates, in its application, to place a resident alien with only domestic sources of income in an equal, if not in a better, position than one who has both domestic and foreign sources of income, a situation which is manifestly unfair and short of logic.

9. Erroneous interpretation would subrogate Philippine taxes to those levied by a foreign government

To allow an alien resident to deduct from his gross income whatever taxes he pays to his own government amounts to conferring on the latter power to reduce the tax income of the Philippine government simply by increasing the tax rates on the alien resident. Everytime the rate of taxation imposed upon an alien resident is increased by his own government, his deduction from Philippine taxes would correspondingly increase, and the proceeds for the Philippines diminished, thereby subordinating our own taxes to those levied by a foreign government. Such a result is incompatible with the status of the Philippines as an independent and sovereign state.

[19]

CIR vs. Lingayen Gulf Electric Power [G.R. No. L-23771. August 4, 1988.]
En Banc, Sarmiento (J): 13 concurring

Facts: Lingayen Gulf Electric Power Co. Inc. operates an electric power plant serving the adjoining municipalities of Lingayen and Binmaley, both in the province of Pangasinan, pursuant to the municipal franchise granted it by their respective municipal councils, under Resolutions 14 and 25 of June 29 and July 2, 1946, respectively. Section 10 of these franchises provide that the "said grantee in consideration of the franchise hereby granted, shall pay quarterly into the Provincial Treasury of Pangasinan, one per centum of the gross earnings obtained thru this privilege during the first twenty years and two per centum during the remaining fifteen years of the life of said franchise." On 24 February 1948, the President of the Philippines approved the franchises granted to the company. On 21 November 1955, the Bureau of Internal Revenue (BIR) assessed against and demanded from the company the total amount of P19,293.41 representing deficiency franchise taxes and surcharges for the years 1946 to 1954 applying the franchise tax rate of 5% on gross receipts from 1 March 1948 to 31 December 1954 as prescribed in Section 259 of the National Internal Revenue Code, instead of the lower rates as provided in the municipal franchises. On 29 September 1956, the company requested for a reinvestigation of the case on the ground that instead of incurring a deficiency liability, it made an overpayment of the franchise tax. On 30 April 1957, the BIR through its regional director, denied the company's request for reinvestigation and reiterated the demand for payment of the same. In its letters dated 2 July and 9 August 1958 to the Commissioner, the company protested the said assessment and requested for a conference with a view to settling the liability amicably. In his letters dated 25 July and 28 August 1958, the Commissioner denied the request of the company. Thus, the appeal to the Court of Tax Appeals on 19 September 1958 (CTA Case 581). In a letter dated 21 August 1962, the Commissioner demanded from the company the payment of P3,616.86 representing deficiency franchise tax and surcharges for the years 1959 to 1961 again applying the franchise tax rate of 5% on gross receipts as prescribed in Section 259 of the National Internal Revenue Code. In a letter dated 5 October 1962, the company protested the assessment and requested reconsideration thereof. The same was denied on 9 November 1962. Thus, the appeal to the Court of Appeals on 29 November 1962 (CTA Case 1302).

Pending the hearing of the said cases, RA 3843 was passed on 22 June 1963, granting to the company a legislative franchise for the operation of the electric light, heat, and power system in the same municipalities of Pangasinan. Section 4 thereof provides that "In consideration of the franchise and rights hereby granted, the grantee shall pay into the Internal Revenue office of each Municipality in which it is supplying electric current to the public under this franchise, a tax equal to two per centum of the gross receipts from electric current sold or supplied under this franchise. Said tax shall be due and payable quarterly and shall be in lieu of any and all taxes and/or licenses of any kind, nature or description levied, established, or collected by any authority whatsoever, municipal, provincial or national, now or in the future, on its poles, wires, insulator . . . and on its franchise, rights, privileges, receipts, revenues and profits, from which taxes and/or licenses, the grantee is hereby expressly exempted and effective further upon the date the original franchise was granted, no other tax and/or licenses other than the franchise tax of two per centum on the gross receipts as provided for in the original franchise shall be collected, any provision of law to the contrary notwithstanding." On 15 September 1964, the court ruled that the provisions of RA 3843 should apply and accordingly dismissed the claim of the Commissioner of Internal Revenue. Hence, the appeal.

The Supreme Court affirmed the appealed decision of the respondent Court of Tax Appeals; without pronouncement as to costs.

1. RA 3843 amended or repealed original municipal franchise; Effect retroactive

RA 3843 granted the company respondent a legislative franchise in June, 1963, amending, altering, or even repealing the original municipal franchises, and providing that the company should pay only a 2% franchise tax on its gross receipts, “in lieu of any and all taxes and/or licenses of any kind, nature or description levied, established, or collected by any authority whatsoever, municipal, provincial, or national, now or in the future . . . and effective further upon the date the original franchise was granted, no other tax and/or licenses other than the franchise tax of two per centum on the gross receipts . . . shall be collected, any provision of law to the contrary notwithstanding.” Thus, by virtue of RA 3843, the company was liable to pay only the 2% franchise tax, effective from the date the original municipal franchise was granted.

2. Uniformity of taxation

A tax is uniform when it operates with the same force and effect in every place where the subject of it is found. Uniformity means that all property belonging to the same class shall be taxed alike. The Legislature has the inherent power not only to select the subjects of taxation but to grant exemptions. Tax exemptions have never been deemed violative of the equal protection clause.

3. Tax reduction applied to company’s power plant; Transfer of taxable property from one class to another

It is true that the company’s municipal franchises were obtained under Act 667 of the Philippine Commission, but these original franchises have been replaced by a new legislative franchise, i.e. RA 3843. The latter was granted subject to the terms and conditions established in Act 3636, as amended by CA 132. These conditions identify the company’s power plant as falling within that class of power plants created by Act 3636, as amended. The benefits of the tax reduction provided by law (Act 3636 as amended by CA 132 and RA 3843) apply to the company’s power plant and others circumscribed within this class RA 3843 merely transferred the petitioner’s power plant from that class provided for in Act 667, as amended, to which it belonged until the approval of RA 3843, and placed it within the class falling under Act 3636, as amended. Thus, it only effected the transfer of a taxable property from one class to another.

4. Court cannot inquire into wisdom of the act; Charters or special laws are in the nature of private contract

The Court does not have the authority to inquire into the wisdom of such act. Furthermore, the 5% franchise tax rate provided in Section 259 of the Tax Code was never intended to have a universal application. Section 259 of the Tax Code expressly allows the payment of taxes at rates lower than 5% when the charter granting the franchise of a grantee precludes the imposition of a higher tax. RA 3843 did not only fix and specify a franchise tax of 2% on its gross receipts, but made it “in lieu of any and all taxes, all laws to the contrary notwithstanding,” thus, leaving no room for doubt regarding the legislative intent. “Charters or special laws granted and enacted by the Legislature are in the nature of private contracts. They do not constitute a part of the machinery of the general government. They are usually adopted after careful consideration of the private rights in relation with resultant benefits to the State. in passing a special charter the attention of the Legislature is directed to the facts and circumstances which the act or charter is intended to meet, The Legislature considers and makes) provision for all the circumstances of a particular case. The Court found no reason to disturb the CTA’s ruling upholding the constitutionality of the law in question.

5. Law specifically provided for retroactive effect

Act 3843 provides that “effective . . . upon the date the original franchise was granted, no other tax and/or licenses other than the franchise tax of two per centum on the gross receipts . . . shall be collected, any provision to the contrary notwithstanding.” RA 3843 therefore specifically provided for the retroactive effect of the law.

6. Company exempted after, not before, 24 February 1948

The municipal franchises were approved by the President only on 24 February 1948. Before the said date, i.e. from 1 January 1946 to 29 February 1948, the company was liable for the payment of percentage and fixed taxes as seller of light, heat, and power (amounting to P3,025.96). The legislative franchise (RA 3843) exempted the grantee from all kinds of taxes other than the 2% tax from the date the original franchise was granted. The exemption, therefore, did not cover the period before the franchise was granted, i.e. before February 24, 1948.

7. Company not liable for deficiency taxes as there were payment

During the period covered by the present case, that is from 1 January 1946 to 31 December 1961, the company paid the amount of P34,184.36, which was very much more than the amount rightfully due from it. Hence, the company should no longer be made to pay for the deficiency tax in the amount of P3,025.98 for the period from 1 January 1946 to 29 February 1948.

[20]

CIR vs. Manila Jockey Club [G.R. No. L-8755. March 23, 1956.]
First Division, Bautista Angelo (J): 9 concurring

Facts: The Manila Jockey Club Inc. is the owner of the San Lazaro Hippodrome which is used principally for holding horse races either by the club itself or by the Philippine Charity Sweepstake Office (PCSO) or other charitable institutions authorized by law to hold horse races. During the fiscal years 1951 and 1952, the PCSO held benefit races for charitable, relief and civic purposes in said hippodrome for the use of which the Club was paid in the form of rentals the sums of P107,185.02 and P122,855.47 respectively, which were included in its total income declared in its return for said years. The Collector of Internal Revenue collected on the first rental the amount of P30,011.80 which was paid in two installments and on the second the amount of P29,681.17 which was also paid in two installments as income taxes, and upon advice of its counsel, the Club filed a claim for refund of said amounts with the Collector claiming that they were illegally paid and, when the refund was denied, it filed an action in the CFI Manila to recover the total sum of P59,692.97 against the Collector alleging that the same has been wrongfully collected. The case was pending trial when RA 1125 creating the Court of Tax Appeals (CTA) was approved on 16 June 1954. Pursuant to section 22 of said Act, the court transmitted the case to the CTA in an order dated 18 August 1954. After hearing, the CTA rendered a decision holding that the rentals received by the Club from the PCSO for the use of its premises were exempt from income tax under section 3 of RA 79 and, as a consequence, it ordered the Collector of Internal Revenue to refund to the Club the amount of P59,692.97. From this decision, the Collector of Internal Revenue brought the case on appeal to the Supreme Court.

The Supreme Court reversed the decision appealed from, and the was dismissed with costs against Manila Jockey Club.

1. Lease arrangement of San Lazaro Hippodrome with PCSO

On the days the San Lazaro Hippodrome was leased and used by the Philippine Charity Sweepstake Office to hold benefit races for charitable and civic purposes, said Office employed its own employees, tellers and other personnel in the race track. It did not employ the personnel of the club but merely used its track, apparatus and other paraphernalia necessary for horse racing. For such use, the Club was paid for each day a flat rental and not on percentage basis. During those days it was the PCSO that held the races and not the Club itself.

2. Republic Act 79: An Act to authorize the holding by the Philippine Charity Sweepstake Office of horse races, with betting, on saturday afternoons, for charitable, relief and civic purposes (21 October 1946)

Section 1 provides that "the provisions of existing laws to the contrary not withstanding, the Board of Directors of the Philippine Charity Sweepstake Office is authorized to hold horse races, with betting, on such Saturday afternoons as it may determine for charitable, relief and civic purposes. Only native horses shall be allowed to run in any of these races." Section 2 provides that "all proceeds derived from these races, after deducting the prizes customarily set aside for horses winning first, second, and third places and their jockeys; the prizes for the owners of the winning horses; and the necessary administration expenses not to exceed ten per centum of the gross receipts, shall be apportioned and distributed by the Board of Directors of the Philippine Charity Sweepstake Office to disabled veterans, war widows and orphans and to charitable, relief and civic organizations in such amounts and under such rules and regulations as may be approved by the President of the Philippines." Section 3 provides that "the racing club holding these races shall be exempt from the payment of any municipal or national tax." Section 4 provides that "the term 'horses' when used in this Act shall be understood to refer to stallions and mares."

3. Republic Act 79 explained

The title of the Act says "An Act to authorize the Holding by the Philippine Charity Sweepstake Office of Horse Races, with Betting, on Saturday Afternoons, for Charitable, Relief and Civic Purposes." Under section 1, the Board of Directors is the one authorized to hold the races for the declaredd purposes and, under section 2, it is provided that the administration expenses for running the races, including the prizes to be paid to the winners, shall not exceed 10% of the gross receipts that may be collected, which shall be deducted from said gross receipts before turning them over to the beneficiaries named in the law. In section 3, there appears the following proviso: "The racing club holding these races shall be exempt from the payment of any municipal or national tax." It is under the proviso that the Club claims exemption from the payment of income tax on the rentals in question.

4. Purpose of the law

What is contemplated by the law is the holding of horse races, not merely under its auspices, but by the PCSO itself, even if for that purpose it has to lease or make use of race tracks belonging to private racing clubs. The purpose of the law undoubtedly is to give to said Office full control of the horse races considering that they involve the handling of funds. This is also the interpretation entertained by PCSO officials, when, instead of employing the personnel of the Manila Jockey Club Inc., employed its own personnel and assumed full control of the races. It is because of this view of the law that the Court believe that the provisions of section 3 should be interpreted as conveying the meaning that the one holding the races is not the racing club but the PCSO and that the exemption therein provided only refers to those taxes, municipal or national, that the law requires to be paid in connection with said races. In other words, said section should be read to mean "the racing club where the races are held" in order that it may be consistent with the purpose of the law.

5. Racing club's exemption when races are held by PCSO

Under section 26 of RA 309 (which regulates the horse racing in the Philippines), any person, race track, racing club, or other entities holding or conducting a horse race shall be required to pay a city or municipal license fee of P600 for each day of racing. Under section 193 of the National Internal Revenue Code, as amended by RA 588, any owner of race tracks is required to pay a fixed tax of P500 for each day on which races are run on said tracks. Said provisions require the payment of said taxes from the owner of any race track for each day of horse racing regardless of whether said horse racing is held by the owner himself or by any other person or entity. It is therefore imperative that such exemption be expressly provided for in order to exempt the owner of the race track of such taxes if the same is to be used by a charitable institution like the PCSO. Thus, the exemption clause provided for in section 3 of RA 79 merely intends to exempt the racing club in whose premises or tracks the races are held by the PCSO from the payment of the taxes because they are the only ones that have any connection with the races held by said Office.

6. Exemption does not refer to income derived from rentals of property

The exemption cannot refer to any income tax that may be imposed on the rentals that may be paid for the use of those tracks and other paraphernalia. That is an income that the racing club has to account for income tax purposes because it is an income that the club earned because of the use of its tracks by the PCSO It is an income that, strictly speaking, did not come from the horse races held by said club but it came to it as rentals paid for the use of its property. And the tax paid for such income cannot therefore be considered as one connected with those races within the purview of the exemption clause.

7. Fear that racing clubs shifts tax burden to PCSO not entertained; Fear does not warrant adoption of contrary interpretation of the law

The Court's attention was called to the fact that, if the racing club were to pay income tax on the rentals that may be paid to it for the use of its tracks by the PCSO or were to be denied the benefit of the exemption clause under consideration, the beneficiaries of the bounty would be the ones prejudiced because the racing club might be obliged to shift the burden to the PCSO in the form of additional rentals or by increasing their amount so as to compensate the club for the tax that it should otherwise pay to the Government. Such fear can hardly be entertained not only because there are several racing clubs in Manila which may be availed of by the PCSO but also because the law itself limits the administration expenses that said Office may incur in connection with the authorized horse races for the purposes intended. Even if this contingency may eventually occur, this would not warrant the adoption of an interpretation which would be contrary to the clear import and intendment of the law.

8. Exemption cannot be created by implication

By its very nature, the law that exempts one from tax must be clearly expressed because the exemption cannot be created by implication. Exemption from taxation are highly disfavored in law; and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implication. (Asiatic Petroleum Co. vs. Llanes, 49 Phil., 466; See also House vs. Posadas, 53 Phil., 338.) In the present case, there is no clear showing that the exemption clause under consideration exempts the racing club from its duty to pay income tax.

[21]

CIR vs. Mega General Merchandising [G.R. No. L-69136. September 30, 1988.]
Second Division, Paras (J): 4 concurring

Facts: Prior to the promulgation of PD 392 on 18 February 1974, all importations of paraffin wax, irrespective of kind and nature, were subject to 7% advance sales tax on landed costs plus 25% mark up pursuant to Section 183(b) now Section 197(II) in relation to Section 186 (now Section 200) of the Tax Code. With the promulgation of PD 392, a new provision for the imposition of specific tax was added to Section 142 of the Tax Code, that is, sub-section(i). Therefore, beginning 18 February 1974, the date of effectivity of PD 392, all importations of paraffin wax were subject to the specific tax imposed under Section 142(i) of the Tax Code, instead of the former 7% sales tax. Hence, Mega General Merchandising Corporation paid the corresponding specific tax thereon in the total amount of P477,750.00 which applies to its total importation of crude paraffin on 18 April 1975, or exactly 1 year and 2 months after the effectivity of PD 392. On 22 April 1975, the corporation wrote the Commissioner of Internal Revenue for clarification as to whether imported crude paraffin wax is subject to specific tax under Section 142 (i) of the Tax Code, as amended by PD 392, or to the 7% advance sales tax. Former Commissioner Misael P. Vera in his reply to said query dated 14 May 1975 ruled that only wax used as high-pressure lubricant and micro-crystallin is subject to specific tax; that paraffin which was used as raw material in the manufacture of candles, wax paper, matches, crayons, drugs, ointments, etc., is subject to the 7% advance sales tax, the tax to be based on the landed cost thereof plus 25% mark-up. Due to Commissioner Vera's ruling, several importers including the corporation filed several claims for tax refund or tax credit of specific tax paid by them on importation of crude paraffin wax. Considering that the corporation had paid the amount of P477,750.00 as specific tax pursuant to Section 142(i) of the Tax Code on its importation of crude paraffin wax on 18 April 1975 (an amount bigger than the 7% advance sales tax prescribed under Section 183(b) (now Section 197 II) in relation to Section 186 (now Sec. 200 of the Tax Code) the corporation in a letter, dated 27 November 1975, requested for a refund or tax credit of the amount of P321,436.79 representing the difference between the amount paid as specific tax and the 7% advance sales tax. Since the law (Section 142(i) of the Tax Code, amended by PD 392) does not make any distinction as to the kind of wax subject to specific tax, then Acting Commissioner of Internal Revenue Efren I. Plana, on 28 January 1977 denied the Corporation's claim for refund or tax credit of the amount of P321,436.79. On this ruling, the corporation filed a request for reconsideration; which was denied by the Commissioner.

During the pendency of the corporation's request for reconsideration, an investigation was conducted by the Bureau of Internal Revenue and it was ascertained that the Corporation owes the government specific tax for importation of 1,214,400 kilograms of paraffin wax on 21 June 1977 and 17 August 1977 which gave rise to the letter of assessment dated 8 May 1978 for P275,652.00 re the subject matter in this case. Prior, however, to the issuance of the said letter of assessment of 8 May 1978, the Commissioner in a letter dated 11 January 1978, granted the corporation's claim for refund or tax credit of the amount of P321,436.79 since the importation which had arrived in Manila on 18 April 1975 was covered by the ruling of 14 May 1975 (before its revocation by the ruling of 28 January 1977). The corporation protested the tax assessment of 8 May 1978 in a letter dated 5 June 1978 alleging that crude paraffin wax is subject to 7% advance sales tax pursuant to the Commissioner's ruling of May 14, 1975. The protest was denied by the Commissioner in a letter dated 15 February 1980. During the pendency of the request of the corporation for reconsideration, it appealed to the Court of Tax Appeals (CTA Case 3078).

On 21 May 1984, the Court of Tax Appeals rendered its decision, reversing the decision of the Commissioner, and holding that the company is not liable for specific tax on its importation of crude paraffin wax in the sum of P275,652.00 imposed against it, but only subject to the 7% advance sales tax which it had already paid. Accordingly, the Commissioner was ordered to refund or credit the company specific tax it paid in the sum of P275,652.00; without pronouncement as to costs. It was later amended by removing the order against the Commissioner to refund the specific tax already paid. Hence, the present petition.

The Supreme Court reversed and set aside the decision of the Court of Tax Appeals, and ordered the company to pay the tax as assessed by the Commissioner of Internal Revenue, together with interest; without costs.

1. Section 142 (i) of the Tax Code

Section 142 (i) [Specific tax on manufactured oils and other fuels] of the Tax Code provides that "On refined and manufactured mineral oils and other motor fuels, there shall be collected the following taxes: xxx (i) Greases, waxes and petroleum, per kilogram, thirty-five centavos; . . ."

2. Letter of Commissioner Plana did not revoke ruling dated 28 January 1977

The letter of Commissioner Plana dated 11 January 1978 did not in any way revoke his ruling dated 28 January 1977 which ruling applied the specific tax to wax (without distinction). The reason he removed in 1978 the company's liability for the specific tax was NOT because he wanted to revoke, expressly or implicitly, his ruling of 28 January 1977 but because the P321,436.79 tax referred to importation before 28 January 1977 and hence still covered by the ruling of Commissioner Vera, and not by the 28 January 1977 ruling of Commissioner Plana.

[22]

CIR vs. Phoenix Assurance [G.R. No. L-19727. May 20, 1965.]
Phoenix Assurance vs. CIR [G.R. No. L-19903. May 20, 1965.]
En Banc, Bengzon JP (J): 10 concurring

Facts: Phoenix Assurance Co. Ltd., a foreign insurance corporation organized under the laws of Great Britain, is licensed to do business in the Philippines with head office in London. Through its head office it entered, in London, into worldwide reinsurance treaties with various foreign insurance companies. It agreed to cede a portion of premiums received on original insurances underwritten by its head office, subsidiaries, and branch offices throughout the world, in consideration for assumption by the foreign insurance companies of an equivalent portion of the liability from such original insurances. Pursuant to such reinsurance treaties, Phoenix Assurance Co., Ltd. ceded portions of the premiums it earned from its underwriting business in the Philippines (1952, P316,526.75; 1953, P246,082.04; 1954, P203,384.69) upon which the Commissioner of Internal Revenue, by letter of 6 May 1958, assessed withholding tax totaling P183,838.42 (1952, P75,966.42; 1953, 59,059.68; 1954, 48,812.32). On 1 April 1951, Phoenix Assurance filed its Philippine income tax return for 1950, claiming therein, among others, a deduction of P37,147.04 as net addition to marine insurance reserve equivalent to 40% of the gross marine insurance premiums received during the year. The Commissioner disallowed P11,772.57 of such claim for deduction and subsequently assessed against Phoenix Assurance the sum of P1,884.00 as deficiency income tax. The disallowance resulted from the fixing by the Commissioner of the net addition to the marine insurance reserve at 100% of the marine insurance premiums received during the last three months of the year. The Commissioner assumed that "ninety and thirty days are approximately the length of time required before shipments reach their destination or before claims are received by the insurance companies." On 1 April 1953 Phoenix Assurance filed its Philippine income tax return for 1952, declaring therein a deduction from gross income of P35,912.25 as part of the head office expenses incurred for its Philippine business, computed at 5% on its gross Philippine income. On 30 August 1955 it amended its income tax return for 1952 by excluding from its gross income the amount of P316,526.75 representing reinsurance premiums ceded to foreign reinsurers and further eliminating deductions corresponding to the ceded premiums. The amended return showed an income tax due in the amount of P2,502.00. The Commissioner disallowed P15,826.35 of the claimed deduction for head office expenses and assessed a deficiency tax of P5,667.00 on 24 July 1958. On 30 April 1954 Phoenix Assurance filed its Philippine income tax return for 1953 and claimed therein a deduction from gross income of P33,070.88 as head office expenses allocable to its Philippine business, equivalent to 5% of its gross Philippine income. On 30 August 1955 it amended its 1953 income tax return to exclude from its gross income the amount of P246,082.04 representing reinsurance premiums ceded to foreign reinsurers. At the same time it requested the refund of P23,409.00 as overpaid income tax for 1953. To avoid the prescriptive period provided for in Section 306 of the Tax Code, it filed a petition for review on 11 August 1956 in the Court of Tax Appeals praying for such refund. After verification of the amended income tax return the Commissioner disallowed P12,304.10 of the deduction representing head office expenses allocable to Philippine business thereby reducing the refundable amount to P20,180.00. On 29 April 1955 Phoenix Assurance filed its Philippine income tax return for 1954 claiming therein, among others, a deduction from gross income of P29,624.75 as head office expenses allocable to its Philippine business, computed at 5% of its gross Philippine income. It also excluded from its gross income the amount of P203,384.69 representing reinsurance premiums ceded to foreign reinsurers not doing business in the Philippines. On 1 August 1958 the Bureau of Internal Revenue released an assessment for deficiency income tax for the years 1952 and 1954 against Phoenix Assurance amounting to P2,847. The assessment resulted from the disallowance of a portion of the deduction claimed by Phoenix Assurance as head office expenses allocable to its business in the Philippines fixed by the Commissioner at 5% of the net Philippine income instead of 5% of the gross Philippine income as claimed in the returns. Phoenix Assurance protested against the assessments for withholding tax and deficiency income tax. However, the Commissioner denied such protest.

Subsequently, Phoenix Assurance appealed to the Court of Tax Appeals (CTA Cases 305 and 543). In a decision dated 14 February 1962, the Court of Tax Appeals allowed in full the deduction claimed by Phoenix Assurance for 1950 as net addition to marine insurance reserve; determined the allowable head office expenses allocable to Philippine business to be 5% of the net income in the Philippines; declared the right of the Commissioner to assess deficiency income tax for 1952 to have prescribed; absolved Phoenix Assurance from payment of the statutory penalties for non-filing of withholding tax return. Thus, the court ordered

Phoenix Assurance to pay the Commissioner the respective amounts of P75,966.42, P59,059.68 and P48,812.32, as withholding tax for the years 1952, 1953 and 1954, and P2,847.00 as income tax for 1954, or the total sum of P186,685.42 within 30 days from the date the decision becomes final. Upon the other hand, the Commissioner was ordered to refund to Phoenix Assurance the sum of P20,180.00 as overpaid income tax for 1953, which sum is to be deducted from the total sum of P186,685.42 due as taxes; and ordered further that if any amount of the tax is not paid within the time prescribed, there shall be collected a surcharge of 5% of the tax unpaid, plus interest at the rate of 1% a month from the date of delinquency to the date of payment, provided that the maximum amount that may be collected as interest shall not exceed the amount corresponding to a period of 3 years; without pronouncement as to costs. Both parties appealed to the Supreme Court.

The Supreme Court modified the decision appealed from, and ordered Phoenix Assurance to pay the Commissioner the amount of P75,966.42, P59,059.68 and P48,812.32 as withholding tax for the years 1952, 1953 and 1954, respectively, and the sums of P5,667.00 and P2,847.00 as income tax for 1952 and 1954 or a total of P192,352.42; and ordered the Commissioner to refund to Phoenix Assurance the amount of P20,180.00 as overpaid income tax for 1953, which should be deducted from the amount of P192,352.42; and ordered further that if the amount of P192,352.42 or a portion thereof is not paid within 30 days from the date the judgment becomes final, there shall be collected a surcharge and interest as provided for in Section 51 (e) (2) of the Tax Code. No costs.

1. British Traders' Insurance vs. CIR; Reinsurance premiums ceded to foreign reinsurers not doing business in the Philippines pursuant to contracts executed abroad are income from sources within the Philippines subject to withholding tax

The question of whether reinsurance premiums ceded to foreign reinsurers not doing business in the Philippines pursuant to contracts executed abroad are income from sources within the Philippines subject to withholding tax under Section 53 and 54 of the Tax Code has already been resolved in the affirmative in British Traders' Insurance Co. Ltd. vs. Commissioner of Internal Revenue, L-20501, 30 April 1965.

2. Section 331 of the Tax Code; Period of limitation upon assessment and collection

Section 331 of the Tax Code, which limits the right of the Commissioner of Internal Revenue to assess income tax within five years from the filing of the income tax return, states: "Except as provided in the succeeding section, internal-revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code."

3. Running of the prescriptive period commence from filing of original return

The Court of Tax Appeals ruled that the original return was a complete return containing "information on various items of income and deduction from which respondent may intelligently compute and determine the tax liability of petitioner", hence, the prescriptive period should be counted from the filing of said original return; the view which the Supreme Court sustains. The object of the Tax Code is to impose taxes for the needs of the Government, not to enhance tax avoidance to its prejudice. To hold otherwise would pave the way for taxpayers to evade the payment of taxes by simply reporting in their original return heavy losses and amending the same more than five years later when the Commissioner of Internal Revenue has lost his authority to assess the proper tax thereunder.

4. Right of Commissioner to assess the deficiency tax has not prescribed

Considering that the deficiency assessment was based on the amended return which, as aforestated, is substantially different from the original return, the period of limitation of the right to issue the same should be counted from the filing of the amended income tax return. From August 30, 1955, when the amended return was filed, to July 24, 1958, when the deficiency assessment was issued, less than five years elapsed. The right of the Commissioner to assess the deficiency tax on such amended return has not prescribed.

5. Section 32, paragraph (a) of the Tax Code Special provisions regarding income and deductions of insurance companies, whether domestic or foreign, Special deductions allowed to insurance companies

Paragraph (a) of Section 32 of the Tax Code states "In the case of insurance companies, except domestic life insurance companies and foreign life insurance companies doing business in the Philippines, the net additions, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts may be deducted from their gross income: Provided, however, That the released reserve be treated as income for the year of release."

6. Section 186 of the Insurance Law

Section 186 of the Insurance Law requires the setting up of reserves for liability on marine insurance, thus ". . . Provided, That for marine risks the insuring company shall be required to charge as the liability for reinsurance fifty per centum of the premiums written in the policies upon yearly risks, and the full premiums written in the policies upon all other marine risks not terminated."

7. Determination of the required reserve for marine insurance

The reserve required for marine insurance is determined on two bases: 50% of premiums under policies on yearly risks and 100% of premiums under policies of marine risks not terminated during the year. Section 32 (a) of the Tax Code allows the full amount of such reserve to be deducted from gross income. In the present case, the formulas for determining the marine reserve employed by Phoenix Assurance and the Commissioner (40% of premiums received during the year and 100% of premiums received during the last three months of the year, respectively) do not comply with Section 186. Said determinations run short of the requirement. For purposes of the Insurance Law, the Court therefore cannot countenance the same. Phoenix Assurance's claim for deduction of P37,147.04 being less than the amount required in Section 186 of the Insurance Law, the same cannot be and is not excessive, and should therefore be fully allowed.

8. Purpose of the reserve; What is prohibited by income tax law

The reserve called for in Section 186 is a safeguard to the general public and should be strictly followed not only because it is an express provision but also as a matter of public policy. However, for income tax purposes a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein. *

9. Items of income not belonging to the company's Philippine business excluded from head office expenses allocable to Philippine Branch; Paragraph 2, subsection (a), Section 30 of the Tax Code

The gross income of Phoenix Assurance consists of income from its Philippine business as well as reinsurance premiums received for its head office in London and reinsurance premiums ceded to foreign reinsurers. Since the items of income not belonging to its Philippine business are not taxable to its Philippine branch, they should be excluded in determining the head office expenses allocable to said Philippine branch. This conclusion finds support in paragraph 2, subsection (a), Section 30 of the Tax Code, which provides that "Expenses allowable to non-resident alien individuals and foreign corporations. — In the case of a non-resident alien individual or a foreign corporation, the expenses deductible are the necessary expenses paid or incurred in carrying on any business or trade conducted within the Philippines exclusively." Consequently, the deficiency assessments for 1952, 1953 and 1954, resulting from partial disallowance of deduction representing head office expenses, are sustained.

10. Interest on tax payment; Absolution based on equitable ground

The imposition of interest on unpaid taxes is one of the statutory penalties for tax delinquency, from the payments of which the Court of Tax Appeals absolved the Phoenix Assurance on the equitable ground that the latter's failure to pay the withholding tax was due to the Commissioner's opinion that no withholding tax was due. Consequently, the taxpayer could be liable for the payment of statutory penalties only upon its failure to comply with the Tax Court's judgment rendered on 14 February 1962, after Republic Act 2343 took effect. This part of the ruling of the court ought not to be disturbed.

[23]

CIR vs. Robertson [G.R. Nos. L-70116-19. August 12, 1986.]
Second Division, Paras (J): 4 concurring

Facts: Frank Robertson is an American citizen born in the Philippines on 8 July 1924. He resided in the Philippines until repatriated to the United States in 1945 and took residence at Long Beach, California. Soon after he was employed by the US Federal Government with a job at the US Navy. His work brought him to the US Navy's various installations overseas with eventual assignment at the US Naval Ship Repair Facility at Subic Bay, Olongapo, Philippines, in 1962. Like his brother Frank, James Robertson was born in the Philippines on 22 December 1918 and had since resided in this country until repatriated to the United States in 1945 and there, established his domicile. He landed a job with the US Navy Shipyard at Long Beach, California as a US Federal Civil Service employee. He returned to the Philippines in 1958 with assignment at the US Naval Base at Subic Bay, Olongapo, and has since remained thru 1972. Robert H. Cathey, on the other hand, is a United States born citizen who first came to the Philippines with the US liberation force in 1944, and upon discharge from the military service in 1946 turned a US Navy's civilian employee with station at Makati, Metro Manila. John Garrison is a Philippine born American citizen also repatriated to the United States in 1945 establishing his domicile at San Francisco, California. Soon after he was employed by the US Federal Government in its military installations. He returned to the Philippines in 1952 assigned at the US Naval Base, Subic Bay, Philippines. Thus, Frank and James Robertson, Robert Cathey, and John Garrison are citizens of the United States, holders of American passports and admitted as Special Temporary Visitors under Section 9 (a) visa of the Philippine Immigration Act of 1940, as amended, civilian employees in the US Military Base in the Philippines in connection with its construction, maintenance, operation, and defense; and incomes are solely derived from salaries from the US government by reason of their employment in the US Bases in the Philippines. The Commissioner of Internal Revenue made assessments against Frank Robertson (CTA Case 2735), James W. Robertson (CTA 2736), Robert H. Cathey (CTA 2738), and John L. Garrison (CTA Case 2739) for deficiency income tax for taxable years 1969-1972, inclusive of interests and penalties for the amounts of P132,750,65; P190,433.17; P92,013.17, and P196,754.32 respectively.

Raised in the Court of Tax Appeals, the cases were consolidated as these involve similar or identical fact situations on a question involving the scope of the tax exemption provision in Article XII, Par. 2, of the RP-US Military Bases Agreement of 1947. The court a quo after due hearing and on 14 December 1984, rendered its judgment in favor of Robertson, et.al. cancelling and setting aside the assessments for deficiency income taxes. Hence, the Commissioner of Internal Revenue filed a petition for review.

The Supreme Court affirmed the appealed decision of the Court of Tax Appeals and dismissed the petition for review; without costs.

1. Article XIII, Paragraph 2, of the RP-US Military Bases Agreement of 1947

Article XII, Par. 2, of the RP-US Military Bases Agreement of 1947, provides that "no national of the United States serving in or employed in the Philippines in connection with the construction, maintenance, operation or defense of the bases and residing in the Philippines by reason only of such employment, or his spouse and minor children and dependent parents of either spouse, shall be liable to pay income tax in the Philippines except in respect of income derived from Philippine sources or sources other than the United States sources."

2. Law and facts of the case clear; Robertson, et.al. are exempted from tax

The law and the facts of the case are so clear that there is no room left for the Court to doubt the validity of Robertson, et.al.'s defense. In order to avail oneself of the tax exemption under the RP-US Military Bases Agreement: he must be a national of the United States employed in connection with the construction, maintenance, operation or defense, of the bases, residing in the Philippines by reason of such employment, and the income derived is from the US Government (Art. XII par. 2 of PI-US Military Bases Agreement of 1947). Said circumstances are all present in the present case.

3. Ubi lex non distinguit nec nos distinguere debemos; One does not distinguish where the law does not distinguish

There is nothing in the treaty provision that justified the lifting of the tax exemption privilege of Robertson, et. al. The Commissioner has grafted a meaning other than that conveyed by the plain and clear tenor of the Agreement. An examination of the words used and the circumstances in which they were used, shows the basic intendment "to exempt all US citizens working in the Military Bases from the burden of paying Philippine Income Tax without distinction as to whether born locally or born in their country of origin." Ubi lex non distinguit nec nos distinguere debemos (one must not distinguish where the law does not distinguish)

4. Obligation to fulfill a treaty engagement in good faith

The Commissioner's ruling has altered a satisfactorily settled application of the exemption clause and has fallen short of measuring up to the familiar principle of International Law that, "The obligation to fulfill in good faith a treaty engagement requires that the stipulations be observed in their spirit as well as according to their letter and that what has been promised be performed without evasion, or subterfuge, honestly and to the best of the ability of the party which made the promise." (Kunz, The Meaning and Range of the Norm (Pacta Sunt Servanda, 29 A.J.I.L. 180 (1945); cited in Freidmann, Lisstzyn, Pugh, International Law (1969) 329). Somehow, the ruling becomes an anacoluthon and a persiflage.

5. Situation of Robertson, et.al. not different from other US civilian employees

Robertson, et. al. returned to the Philippines not so much of honoring a pledge nor of sentimental journey but by reason of taking up assigned duties with the United States military bases in the Philippines where they were gainfully employed by the US Federal Government. The situation of Robertson, et. al. is of no different mold as of the rest of the US civilian employees who continued to enjoy the benefits of tax exemption under the Agreement. It appears too much of a stretch to hold them straight-jacketed to an irreversible situs of birth constraint and by reason thereof deny altogether any opportunity to a serendipitous enjoyment of a tax relief accorded in the Agreement. Such a random quirk of pirouette in the tax treatment falls sharply at odds with the shared expectations of the high contracting parties.

6. Reagan vs. CIR does not apply

The circumstances in the case of Reagan vs. Commissioner of Internal Revenue (30 SCRA 968) are different from the circumstances of the present case and the ruling obtained in the former case cannot be invoked or applied in support of the Commissioner's contention. A cursory reading of said case shows that William Reagan was at one time a civilian employee of an American corporation providing technical assistance to the US Air Force in the Philippines. He questioned the payment of the income tax assessed on him by the Commissioner of Internal Revenue on an amount realized by him on a sale of his automobile to a member of the US Marine Corps., the transaction having taken place at the Clark Field Air Base in Pampanga. It was his contention that in legal contemplation the sale was made outside Philippine territory and therefore beyond our jurisdictional power to tax. Clearly, the facts in said case are different from those obtaining in the present suit.

[24]

Compania General de Tabacos de Filipinas vs. Manila [G.R. No. L-16619. June 29, 1963.]
En Banc, Dizon (J): 8 concurring, 2 took no part

Facts: Compañia General de Tabacos de Filipinas (Tabacalera), as a duly licensed first class wholesale and retail liquor dealer paid the City the fixed license fees prescribed by Ordinance 3358 for the years 1954 to 1957, inclusive. In 1954, City Ordinance 3634, amending City Ordinance 3420, and City Ordinance 3816, amending City Ordinance 3301 were passed. By reason thereof, the City Treasurer issued the regulations, according to which, the term "general merchandise", as used in said ordinances, includes all articles referred to in chapter 1, Sections 123 to 148 of the National Internal Revenue Code. Of these, Section 133-135 included liquor among the taxable articles. Pursuant to said regulations, Tabacalera included its sales of liquor in its sworn quarterly declaration submitted to the City Treasurer beginning from the third quarter of 1954 to the second quarter of 1957, with a total value of P722,501.09 and correspondingly paid a wholesaler's tax amounting to P13,688 and a retailer's tax amounting to P1,520, or a total of P15,208. In 1954, the City, through its treasurer, addressed a letter to Messrs. Sycip, Gorres, Velayo and Co., an accounting firm, expressing the view that liquor dealers paying the annual wholesale and retail fixed tax under City Ordinance 3358 are not subject to the wholesale and retail dealers' taxes prescribed by City Ordinances 3634, 3301, and 3816. Upon learning of said opinion, the Tabacalera stopped including its sales of liquor in its quarterly sworn declarations submitted in accordance with the City Ordinances 3634, 3301, and 3816, and on 3 December 1957, it addressed a letter to the City Treasurer demanding refund of the alleged overpayment. As the claim was disallowed, the Tabacalera filed the action in the CFI Manila to recover from the City of Manila and its Treasurer, Marcelino Sarmiento the sum of P15,280.00 allegedly overpaid by it as taxes on its wholesale and retail sales of liquor for the period from the third quarter of 1954 to the second quarter of 1957, inclusive, under Ordinances 3634, 3301, and 3816. The CFI Manila ordered the City Treasurer of Manila to refund the sum of P15,280 to Compañia General de Tabacos de Filipinas. Hence, the appeal.

The Supreme Court reversed the decision appealed from, with the result that the case should be dismissed, with costs.

1. Meaning of "tax"; Distinction of taxes and license fee

The term "tax" applies — generally speaking — to all kinds of exactions which become public funds. The term is often loosely used to include levies for revenue as well as levies for regulatory purposes. Thus license fees are commonly called taxes. Legally speaking, however, license fee is a legal concept quite distinct from tax; the former is imposed in the exercise of police power for purposes of regulation, while the latter is imposed under the taxing power for the purpose of raising revenues (MacQuillin, Municipal Corporations, Vol. 9, 3rd Edition, p. 26).

2. Ordinance 3358 a valid regulatory enactment for the sale of intoxicating liquors

Ordinance 3358 is clearly one that prescribes municipal license fees for the privilege to engage in the business of selling liquor or alcoholic beverages, having been enacted by the Municipal Board of Manila pursuant to its charter power to fix license fees on, and regulate, the sale of intoxicating liquors, whether imported or locally manufactured. (Section 18 [p], RA as amended). The license fees imposed by it are essentially for purposes of regulation, and are justified, considering that the sale of intoxicating liquor is, potentially at least, harmful to public health and morals, and must be subject to supervision or regulation by the state and by cities and municipalities authorized to act in the premises. (MacQuillin, supra, p. 445).

3. Ordinance 3634, 3301 and 316 are revenue measures

On the other hand, it is clear that Ordinances Nos. 3634, 3301, and 3816 impose taxes on the sales of general merchandise, wholesale or retail, and are revenue measures enacted by the Municipal Board of Manila by virtue of its power to tax dealers for the sale of such merchandise. (Section 10 [o], RA 409, as amended.)

4. Merchandise includes liquor; Merchandise defined

Under Ordinance 3634 the word “merchandise” as employed therein clearly includes liquor. Aside from this, it was held in City of Manila vs. Inter-Island Gas Service Inc. (99 Phil. 847), that the word “merchandise” refers to all subjects of commerce and traffic; whatever is usually bought and sold in trade or market; goods or wares bought and sold for gain; commodities or goods to trade; and commercial commodities in general.

5. Tabacalera not subject to double taxation; License fee and tax may be imposed on same subject matter

That Tabacalera is being subjected to double taxation is more apparent than real. What is collected under Ordinance 3358 is a license fee for the privilege of engaging in the sale of liquor, a calling in which not anyone or anybody may freely engage, considering that the sale of liquor indiscriminately may endanger public health and morals. On the other hand, what the three ordinances impose is a tax for revenue purposes based on the sales made of the same article or merchandise. Both a license fee and a tax may be imposed on the same business or occupation, or for selling the same article, this not being in violation of the rule against double taxation (Bentley Gray Dry Goods Co., vs. City of Tampa 137 Fla. 641, 188 SO. 758; MacQuillin, Municipal Corporations, Vol. 9, 3rd Edition, p. 83).

6. Government not bound by errors of its officers, specially on matters of law

The contention that the City is repudiating its previous view, expressed by its Treasurer in a letter addressed to Messrs. Sycip, Gorres, Velayo & Co. in 1954, that a liquor dealer who pays the annual license fee under Ordinance 3358 is exempted from the wholesalers and retailers taxes under the other three ordinances is of no consequence. The government is not bound by the errors or mistakes committed by its officers, specially on matters of law.

[25]

Davao Light and Power vs. Commissioner of Customs [G.R. Nos. L-28739 & L-28902. March 29, 1972.]
First Division, Reyes JBL (J): 9 concurring

Facts: The Davao Light & Power Co. Inc. (Davao Light) is the grantee of a legislative franchise to install, operate and maintain an electric light, heat and power plant in the city (then Municipality) of Davao, for a period of 50 years. On two different occasions in 1962, it imported electrical supplies, materials and equipment for installation in its power plant. The importations arrived in the port of Cebu City, on which the Collector of Customs imposed, and Davao Light paid under protest, customs duties and taxes in the total amount of P9,928.00. As the Collector of Customs later ruled unfavorably on the protests (267, 268, 269 and 278) and denied its claim for refund of the taxes and duties paid on the imported articles, Davao Light appealed to the Commissioner of Customs. And when said official sustained the action of the Collector, Davao Light went to the Court of Tax Appeals (CTA Cases 1337 and 1551), maintaining its claim to exemption from the taxes and duties imposable on the importations. In its decision of 15 December 1967, the Court of Tax Appeals affirmed the ruling of the Customs Commissioner, the Court holding that the tax exemption privileges granted to the National Power Corporation were intended to benefit only said government corporation and did not extend to other bodies or entities. Davao Light thus brought the present petition for review in the Supreme Court.

The Supreme Court affirmed the decision of the Court of Tax Appeals, with costs against Davao Light.

1. Section 17 of Act 3636 merely provides for principle of fair play; does not find operation in present case

Section 17 of Act 3636 makes mention of franchise or permit issued to "competing" individuals, associations or corporations. In short, by express provision of law favorable terms contained in a subsequent franchise issued to an individual, association, etc. shall automatically be considered incorporated in the franchise or permit earlier issued to another individual, association, etc. engaged in the same business. The idea is to place both competing groups or entities on equal footing and not to give one an advantage over the other. This principle of fair play, which is the basic idea behind the provision, does not find operation in the present case.

2. Clear distinction between Davao Light and Napocor

Davao Light's purpose in securing a franchise to establish and operate an electric plant and power stations was to engage in a business or profit-making venture. The Napocor, on the other hand, was specifically created to undertake the development of hydraulic power throughout the country and the production of power from other sources, for use of the government and the general public. As envisioned by the law creating it, the activity to be pursued by the NPC can hardly be motivated by profit or income.

3. Napocor is not competition by operating and maintain power plant, power stations and transmission lines in Davao City

In operating and maintaining a power plant, power stations and transmission lines in Davao City, as duly authorized in its charter, the Napocor can not be considered as posing competition to Davao Light's business. In fact, there is evidence on record that the Napocor does not sell electric power directly to the general public; instead, it did sell power to Davao Light for resale to the latter's customers. In other words, the Napocor is even the source of Davao Light's merchandise; it is aiding the latter in its business operations, not competing with it.

4. Duty of Napocor to supply power to NDC; Fact does not render Napocor as competition

The fact that the Napocor supplies electric power to the National Development Company (NDC) plant in Davao justify the claim that the Napocor is a competitor to Davao Light's business, because Section 10 of Commonwealth Act 120 (Napocor charter) made it Napocor's duty to supply power to the NDC. Be that as it may, such an isolated case of sale of electric power to one government owned plant would not be enough to classify the Napocor as a "competing" concern to Davao Light's enterprise, which must be assumed to be catering to the general public to which the Napocor has no dealing.

5. Section 10 of Commonwealth Act 120

Section 10 provides that "at any time that the Board certifies that the Corporation is able to furnish electric power for lighting and other purposes to any office, shop, or establishment operated and/or owned or controlled by the National Government or by any city, province, municipality or other political subdivision of the Commonwealth of the Philippines, the National Government and the government of said city, province, municipality or other political subdivision shall be compelled to secure from the Corporation as soon as practicable such electric power as it may need for lighting and the operation of its offices, shops or establishments or for any work undertaken by it. The provisions of this section shall also apply to firms or business owned or controlled by the National Government or by the government of any city, province, municipality or other political subdivisions."

6. Sections 1 and 2 of RA 358

Section 1 of Republic Act 358, approved on 4 June 1949, amended Section 2 (k) of Commonwealth Act 120, which authorized the NPC to "contract indebtedness and issue bonds subject to the approval of the President of the Philippines, upon recommendation of the Secretary of Finance", in an amount not to exceed one hundred seventy million five hundred pesos. Then in its Section 2, the same law provided that "to facilitate payment of its indebtedness, the National Power Corporation shall be exempt from all taxes, duties, fees, imposts, charges, and restrictions of the Republic of the Philippines, its provinces, cities, and municipalities."

7. Tax exemption in Section 2 of RA 358 intended to benefit Napocor only; No basis for awarding equal privileges to Davao Light

On the same day Republic Act 357 was approved, i.e. 4 June 1949, authorizing the President of the Philippines to negotiate and contract loans from time to time from the International Bank for Reconstruction and Development, on behalf of the Napocor, and to guarantee, absolutely and unconditionally, as primary obligor and not merely as surety, the payment of loans therefore contracted. The provisions of Section 2 of RA 358 granting tax exemptions to the Napocor, taken in the light of the existing legislation affecting the Napocor, notably RA 357, must be construed as intended to benefit only the Napocor, the lawmakers expecting that by relieving said corporation of tax obligations, the Napocor would be enabled to pay easily its indebtedness or whatever indebtedness it is certain to incur. In granting such tax exemption the government actually waived its right to collect taxes from the Napocor in order to facilitate the liquidation by said corporation of its liabilities, and the consequential release by the government itself from its obligation (as principal obligor) in the transactions entered into by the President on behalf of the Napocor. Such condition, peculiar only to the Napocor, cannot be said to exist in Davao Light's case; hence, the absolute lack of basis for awarding of equal privileges (granted to the Napocor) to Davao Light.

8. Exemption from taxation not presumed

Exemption from taxation is never presumed; for tax exemption to be recognized, the grant must be clear and expressed; it cannot be made to rest on vague implications. The possession by Davao Light of a permit to operate an electric plant in Davao City does not entitle it to the same exemption privileges enjoyed by another operator without an express provision of the law to that effect. Thus, Davao Light cannot lay claim to the enjoyment of the tax exemption benefits given to the Napocorbecause said corporation happened to be operating a power plant in the same locality where Davao Light has a franchise.

[26]

Domingo vs. Garlitos [GR L-18994, 29 June 1963.]
En Banc, Labrador (J):8 concurring, 1 concurring in result, 1 took no part

Facts: In Melecio R. Domingo vs. Hon. Judge S. C. Moscoso (106 Phil. 1138), the Supreme Court declared as final and executory the order for the payment by the estate of the estate and inheritance taxes, charges and penalties amounting to P40,058.55, issued by the CFI Leyte in special proceedings 14 entitled "In the Matter of the Intestate Estate of the Late Walter Scott Price." In order to enforce the claims against the estate the fiscal presented a petition dated 21 June 1961, to the CFI for the execution of the judgment. The petition was, however, denied by the court which held that the execution is not justifiable as the Government is indebted to the estate under administration in the amount of P262,200. The lower court ordered on 20 August 1960 that the payment of inheritance taxes in the sum of P40,058.55 due the Collector of Internal Revenue as ordered paid by said Court on 5 July 1960 in accordance with the order of the Supreme Court promulgated 30 July 1960 in 106 Phil. 1138, be deducted from the amount of P262,200.00 due and payable to the administratrix Simeona K. Price, in the estate, the balance to be paid by the Government to her without further delay. The lower court ordered on 28 September 1960 that the payment of the claim of the Collector of Internal Revenue be deferred until the Government shall have paid its accounts to the administratrix amounting to P262,200.00. The court ruled that it is only fair for the Government, as a debtor, to pay its accounts to its citizens-creditors before it can insist in the prompt payment of the latter's account to it, specially taking into consideration that the amount due the Government draws interests while the credit due to the present estate does not accrue any interest. Thus, the petition for certiorari and madamus filed by Melecio R. Domingo, as Commissioner of Internal Revenue, against the Judge of the Court of First Instance of Leyte, Hon. Lorenzo C. Garlitos, presiding, seeking to annul the orders of the court and for an order in the Supreme Court directing the lower court to execute the judgment in favor of the Government against the estate of Walter Scott Price for internal revenue taxes.

The Supreme Court dismissed the petition, without costs.

1. Claims against estate of deceased person to be filed before probate court

The ordinary procedure by which to settle claims or indebtedness against the estate of a deceased person, as an inheritance tax, is for the claimant to present a claim before the probate court so that said court may order the administrator to pay the amount thereof. To such effect is the decision of this Court in Aldamiz vs. Judge of the Court of First Instance of Mindoro (GR L-2360, 29 December 1949).

2. Aldamiz vs. Judge of CFI Mindoro; Writ of execution not proper procedure for payment of debts and expenses of administration

A writ of execution is not the proper procedure allowed by the Rules of Court for the payment of debts and expenses of administration. The proper procedure is for the court to order the sale of personal estate or the sale or mortgage of real property of the deceased and all debts or expenses of administration should be paid out of the proceeds of the sale or mortgage. The order for the sale or mortgage should be issued upon motion of the administrator and with the written notice to all the heirs, legatees and devisees residing in the Philippines, according to Rule 89, section 3, and Rule 90, section 2. And when sale or mortgage of real estate is to be made, the regulations contained in Rule 90, section 7, should be complied with.

3. When execution as proper procedure

Execution may issue only where the devisees, legatees or heirs have entered into possession of their respective portions in the estate prior to settlement and payment of the debts and expenses of administration and it is later ascertained that there are such debts and expenses to be paid, in which case ‘the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of their several liabilities, and order how much and in what manner each person shall contribute, and may issue execution if circumstances require’ (Rule 89 section 6; see also Rule 74, section 4).”

4. Legal basis of procedure involving testate or intestate proceedings

The legal basis for the procedure is the fact that in the testate or intestate proceedings to settle the estate of a deceased person, the properties belonging to the estate are under the jurisdiction of the court and such jurisdiction continues until said properties have been distributed among the heirs entitled thereto. During the pendency of the proceedings all the estate is in custodia legis and the proper procedure is not to allow the sheriff, in case of a court judgment, to seize the properties but to ask the court for an order to require the administrator to pay the amount due from the estate and required to be paid.

5. Compensation

The court having jurisdiction of the estate had found that the claim of the estate against the Government has been recognized and an amount of P262,200 has already been appropriated for the purpose by a corresponding law (RA 2700). Under the circumstances, both the claim of the Government for inheritance taxes and the claim of the intestate for services rendered have already become overdue and demandable as well as fully liquidated. Compensation, therefore, takes place by operation of law, in accordance with the provisions of Articles 1279 and 1290 of the Civil Code, and both debts are extinguished to the concurrent amount. Article 1200 provides that “when all the requisites mentioned in article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation.”

6. Appeal, not certiorari and mandamus, is the proper remedy

The Commissioner of Internal Revenue has no clear right to execute the judgment for taxes against the estate of the deceased Walter Scott Price. The petition for certiorari and mandamus is not the proper remedy, appeal is.

[27]

Francia vs. IAC [G.R. No. L-67649. June 28, 1988.]
Third Division, Gutierrez Jr. (J): 4 concurring

Facts: Engracio Francia is the registered owner of a residential lot and a two-story house built upon it situated at Barrio San Isidro, now District of Sta. Clara, Pasay City, Metro Manila. The lot, with an area of about 328 square meters, is described and covered by TCT 4739 (37795) of the Registry of Deeds of Pasay City. On 15 October 1977, a 125 square meter portion of Francia's property was expropriated by the Republic of the Philippines for the sum of P4,116.00 representing the estimated amount equivalent to the assessed value of the aforesaid portion. Since 1963 up to 1977 inclusive, Francia failed to pay his real estate taxes. Thus, on 5 December 1977, his property was sold at public auction by the City Treasurer of Pasay City pursuant to Section 73 of PD 464 known as the Real Property Tax Code in order to satisfy a tax delinquency of P2,400.00. Ho Fernandez was the highest bidder for the property. Francia was not present during the auction sale since he was in Iligan City at that time helping his uncle ship bananas. On 3 March 1979, Francia received a notice of hearing of LRC Case 1593-P "In re: Petition for Entry of New Certificate of Title" filed by Ho Fernandez, seeking the cancellation of TCT 4739 (37795) and the issuance in his name of a new certificate of title. Upon verification through his lawyer, Francia discovered that a Final Bill of Sale had been issued in favor of Ho Fernandez by the City Treasurer on 11 December 1978. The auction sale and the final bill of sale were both annotated at the back of TCT 4739 (37795) by the Register of Deeds.

On 20 March 1979, Francia filed a complaint to annul the auction sale. He later amended his complaint on 24 January 1980. On 23 April 1981, the lower court rendered a decision, dismissing the amended complaint and ordering the Register of Deeds of Pasay City to issue a new TCT in favor of Fernandez over the parcel of land including the improvements thereon, subject to whatever encumbrances appearing at the back of TCT 4739 (37795) and ordering the same TCT 4739 (37795) cancelled; and ordering Francia to pay Fernandez the sum of P1,000.00 as attorney's fees. The Intermediate Appellate Court affirmed the decision of the lower court in toto. Hence, the petition for review.

The Supreme Court dismissed the petition for review and affirmed the decision of the appellate court.

1. Reason why petition was given due course; why it should be dismissed

The Court gave due course to the petition for a more thorough inquiry into Francia's allegations that his property was sold at public auction without notice to him and that the price paid for the property was shockingly inadequate, amounting to fraud and deprivation without due process of law.A careful review of the case, however, discloses that Francia brought the problems raised in his petition upon himself. While the Court commiserate with him at the loss of his property, the law and the facts militate against the grant of his petition. The Court is constrained to dismiss it.

2. Legal Compensation, Articles 1278 and 1279 of the Civil Code; Case fact do not satisfy requirements

By legal compensation, obligations of persons, who in their own right are reciprocally debtors and creditors of each other, are extinguished (Art. 1278, Civil Code). The circumstances of the case do not satisfy the requirements provided by Article 1279, to wit: "(1) that each one of the obligors be bound principally and that he be at the same time a principal creditor of the other; xxx (3) that the two debts be due.

3. Taxes cannot be offset with taxpayer's claim against the government

The Court has consistently ruled that there can be no off-setting of taxes against the claims that the taxpayer may have against the government. A person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of a tax cannot await the results of a lawsuit against the government.

3. Republic vs. Mambulao; Internal revenue taxes not subject of set-off or compensation

In the case of Republic v. Mambulao Lumber Co. (4 SCRA 622), the Court ruled that Internal Revenue Taxes can not be the subject of set-off or compensation. It stated: "A claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off under the statutes of set-off, which are construed uniformly, in the light of public policy, to exclude the remedy in an action or any indebtedness of the state or municipality to one who is liable to the state or municipality for taxes. Neither are they a proper subject of recoupment since they do not arise out of the contract or transaction sued on. . . . . (80 C.J.S., 73-74). "The general rule based on grounds of public policy is well-settled that no set-off admissible against demands for taxes levied for general or local governmental purposes. The reason on which the general rule is based, is that taxes are not in the nature of contracts between the party and party but grow out of duty to, and are the positive acts of the government to the making and enforcing of which, the personal consent of individual taxpayers is not required. . . .'" A taxpayer cannot refuse to pay his tax when called upon by the collector because he has a claim against the governmental body not included in the tax levy.

4. Cordero vs. Gonda; Rule reiterated

The rule was reiterated in the case of Cordero v. Gonda (18 SCRA 331) where the Court stated that: ". . . internal revenue taxes can not be the subject of compensation: Reason: government and taxpayer 'are not mutually creditors and debtors of each other' under Article 1278 of the Civil Code and a "claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off."

5. Tax due to the municipality, while expropriation effected by National Government; Public auction sale avoidable

The tax was due to the city government while the expropriation was effected by the national government. Moreover, the amount of P4,116.00 paid by the national government for the 125 square meter portion of his lot was deposited with the Philippine National Bank long before the sale at public auction of his remaining property. Notice of the deposit dated September 28, 1977 was received by Francia on 30 September 1977. Francia admitted in his testimony that he knew about the P4,116.00 deposited with the bank but he did not withdraw it. It would have been an easy matter to withdraw P2,400.00 from the deposit so that he could pay the tax obligation thus aborting the sale at public auction.

6. Due process in tax proceedings

In the case of Valencia v. Jimenez (11 Phil. 492), the Court laid down the doctrine that "due process of law to be followed in tax proceedings must be established by proof and the general rule is that the purchaser of a tax title is bound to take upon himself the burden of showing the regularity of all proceedings leading up to the sale."

7. No presumption of regularity when administrative action deprives taxpayer of his property through tax sale

There is no presumption of the regularity of any administrative action which results in depriving a taxpayer of his property through a tax sale. (Camo v. Riosa Boyco, 29 Phil. 437); Denoga v. Insular Government, 19 Phil. 261). This is actually an exception to the rule that administrative proceedings are presumed to be regular.

8. Burden of proof to show compliance with legal prerequisite of tax sales lies with one who alleges; Admission by the other party

Ho Fernandez, the purchaser at the auction sale, has the burden of proof to show that there was compliance with all the prescribed requisites for a tax sale. But even if the burden of proof lies with the purchaser to show that all legal prerequisites have been complied with, Francia cannot, however, deny that he did receive the notice for the auction sale as he admitted (surprisingly) in his testimony that he received the letter dated 21 November 1977 as shown by his signature thereof. Francia, therefore, was notified about the auction sale. It was negligence on his part when he ignored such notice; so as not to be present on 5 December 1977 the date of the auction sale because he went to Iligan City. As long as there was substantial compliance with the requirements of the notice, the validity of the auction sale cannot be assailed. Further, by his very own admission that he received the notice, his stance to assail the validity of the auction sale loses its force.

9. Gross inadequacy of price not material if owner has right to redeem

As a general rule, gross inadequacy of price is not material (De Leon v. Salvador, 36 SCRA 567; Ponce de Leon v. Rehabilitation Finance Corporation, 36 SCRA 289; Tolentino v. Agcaoili, 91 Phil. 917 Unrep.). See also Barrozo Vda. de Gordon v. Court of Appeals (109 SCRA 388). The Court held that "alleged gross inadequacy of price is not material when the law gives the owner the right to redeem as when a sale is made at public auction, upon the theory that the lesser the price, the easier it is for the owner to effect redemption."

10. Velasquez vs. Coronel; Inadequacy of price

In Velasquez v. Coronel (5 SCRA 985), the Court held that while in ordinary sales for reasons of equity a transaction may be invalidated on the ground of inadequacy of price, or when such inadequacy shocks one's conscience as to justify the courts to interfere, such does not follow when the law gives to the owner the right to redeem, as when a sale is made at public auction, upon the theory that the lesser the price the easier it is for the owner to effect the redemption. And so it was aptly said: "When there is the right to redeem, inadequacy of price should not be material, because the judgment debtor may reacquire the property or also sell his right to redeem and thus recover the loss he claims to have suffered by reason of the price obtained at the auction sale."

11. Objection of inadequacy of price in tax sales will render collection of taxes impracticable

In the case of Hilton et. ux. v. De Long, et al. (188 Wash. 162, 61 P. 2d, 1290), it was held that "If mere inadequacy of price is held to be a valid objection to a sale for taxes, the collection of taxes in this manner would be greatly embarrassed, if not rendered altogether impracticable. In Black on Tax Titles (2nd Ed.) 238, the correct rule is stated as follows: 'where land is sold for taxes, the inadequacy of the price given is not a valid objection to the sale.' This rule arises from necessity, for, if a fair price for the land were essential to the sale, it would be useless to offer the property. Indeed, it is notorious that the prices habitually paid by purchasers at tax sales are grossly out of proportion to the value of the land." (Rothchild Bros. v. Rollinger, 32 Wash. 307, 73 P. 367, 369).

12. Taxes are lifeblood of the State

In McGuire, et al. v. Bean, et al. (267 P. 555), it was stated that "Like most cases of this character there is here a certain element of hardship from which we would be glad to relieve, but do so would unsettle long-established rules and lead to uncertainty and difficulty in the collection of taxes which are the life blood of the state. We are convinced that the present rules are just, and that they bring hardship only to those who have invited it by their own neglect."

13. Price quoted by Francia on the value of portion of lot greatly exaggerated

Though the value of the lot has greatly appreciated in value precisely because of the widening of Buendia Avenue in Pasay City, which necessitated the expropriation of adjoining areas thus resulting in real estate values going up in the area. The price quoted by Francia for a 203 square meter lot, however, appears quite exaggerated.

14. Francia not entitled to relief based on equity

Even if the Court is inclined to give relief to Francia on equitable grounds, there are no strong considerations of substantial justice in his favor. Mr. Francia failed to pay his taxes for 14 years from 1963 up to the date of the auction sale. He claims to have pocketed the notice of sale without reading it which, if true, is still an act of inexplicable negligence. He did not withdraw from the expropriation payment deposited with the Philippine National Bank an amount sufficient to pay for the back taxes. Francia did not pay attention to another notice sent by the City Treasurer on 3 November 1978, during the period of redemption, regarding his tax delinquency. There is furthermore no showing of bad faith or collusion in the purchase of the property by Fernandez. Francia has no standing to invoke equity in his attempt to regain the property by belatedly asking for the annulment of the sale.

[28]

Hilado vs. CIR [G.R. No. L-9408. October 31, 1956.]
En Banc, Bautista Angelo (J): 8 concurring

Facts: On 31 March 1952, Emilio Y. Hilado filed his income tax return for 1951 with the treasurer of Bacolod City wherein he claimed, among other things, the amount of P12,837.65 as a deductible item from his gross income pursuant to General Circular V-123 issued by the Collector of Internal Revenue. This circular was issued pursuant to certain rules laid down by the Secretary of Finance. On the basis of said return, an assessment notice demanding the payment of P9,419 was sent to Hilado, who paid the tax in monthly installments, the last payment having been made on 2 January 1953. Meanwhile, on 30 August 1952, the Secretary of Finance, through the Collector of Internal Revenue, issued General Circular V-139 which not only revoked and declared void his general Circular V- 123 but laid down the rule that losses of property which occurred during the period of World War II from fires, storms, shipwreck or other casualty, or from robbery, theft, or embezzlement are deductible in the year of actual loss or destruction of said property. As a consequence, the amount of P12,837.65 was disallowed as a deduction from Hilado's gross income for 1951 and the Collector of Internal Revenue demanded from him the payment of the sum of P3,546 as deficiency income tax for said year. When the petition for reconsideration filed by Hilado was denied, he filed a petition for review with the Court of Tax Appeals. In due time, the court rendered decision affirming the assessment made by Collector of Internal Revenue. Hence, the appeal to the Supreme Court.

The Supreme Court affirmed the decision appealed from, without pronouncement as to costs.

1. Amount cannot be deducted as a loss in 1951

Assuming that the amount claimed as a loss represents a portion of the 75% of his war damage claim which was not paid, the same would not be deductible as a loss in 1951 because, according to Hilado, the last installment he received from the War Damage Commission, together with the notice that no further payment would be made on his claim, was in 1950. In the circumstance, said amount would at most be a proper deduction from his 1950 gross income. In the second place, said amount cannot be considered as a "business asset" which can be deducted as a loss in contemplation of law because its collection is not enforceable as a matter of right, but is dependent merely upon the generosity and magnanimity of the US government.

2. No law allowing Hilado compensation for the property destruction in 1945; Payment discretionary under Philippine Rehabilitation Act of 1946

As of the end of 1945, there was absolutely no law under which Hilado could claim compensation for the destruction of his properties during the battle for the liberation of the Philippines. And under the Philippine Rehabilitation Act of 1946, the payments of claims by the War Damage Commission merely depended upon its discretion to be exercised in the manner it may see fit, but the non-payment of which cannot give rise to any enforceable right, for, under said Act, "All findings of the Commission concerning the amount of loss or damage sustained, the cause of such loss or damage, the persons to whom compensation pursuant to this title is payable, and the value of the property lost or damaged, shall be conclusive and shall not be reviewable by any court". (section 113).

3. Opinion of the Secretary of Justice, whom the Secretary of Finance sought advice from

"… it might be argued that war losses were not included as deductions for the year when they were sustained because the taxpayers had prospects that losses would be compensated for by the United States Government; that since only uncompensated losses are deductible, they had to wait until after the determination by the Philippine War Damage Commission as to the compensability in part or in whole of their war losses so that they could exclude from the deductions those compensated for by the said Commission; and that, of necessity, such determination could be complete only much later than in the year when the loss was sustained. This contention falls to the ground when it is considered that the Philippine Rehabilitation Act which authorized the payment by the United States Government of war losses suffered by property owners in the Philippines was passed only on August 30, 1946, long after the losses were sustained. It cannot be said therefore, that the property owners had any conclusive assurance during the years said losses were sustained, that the compensation was to be paid therefor. Whatever assurance they could have had, could have been based only on some information less reliable and less conclusive than the passage of the Act itself. Hence, as diligent property owners, they should adopt the safest alternative by considering such losses deductible during the year when they were sustained."

4. General Circular V-139 revokes V-123, and laid down rules RE losses of property occurred in WWII

In line with the opinion of the Secretary of Justice, the Secretary of Finance, through the Collector of Internal Revenue, issued General Circular V-139 which not only revoked and declared void his previous Circular V-123 but laid down the rule that losses of property which occurred during the period of World War II from fires, storms, shipwreck or other casualty, or from robbery, theft, or embezzlement are deductible for income tax purposes in the year of actual destruction of said property. Thus, as to the present case, it is clear that the loss of the corresponding asset or property could only be deducted in the year it was actually sustained. This is in line with section 30 (d) of the National Internal Revenue Code which prescribes that losses sustained are allowable as deduction only within the corresponding taxable year.

5. Internal revenue laws are not political nature and were in force during enemy occupation

Philippine internal revenue laws are not political in nature and as such were continued in force during the period of enemy occupation and in effect were actually enforced by the occupation government. As a matter of fact, income tax returns were filed during that period and income tax payment were effected and considered valid and legal. Such tax laws are deemed to be the laws of the occupied territory and not of the occupying enemy.

6. Law, except those of political nature, once established continues until changed by competent legislative power

It is a legal maxim, that excepting that of a political nature, "Law once established continues until changed by some competent legislative power. It is not changed merely by change of sovereignty." (Joseph H. Beale, Cases on Conflict of Laws, III, Summary section 9, citing Commonwealth vs. Chapman, 13 Met., 68.) As the same author says, in his Treatise on the Conflict of Laws (Cambridge, 1916, section 131): "There can be no break or interruption in law. From the time the law comes into existence with the first-felt corporateness of a primitive people it must last until the final disappearance of human society. Once created, it persists until a change takes place, and when changed it continues in such changed condition until the next change and so forever. Conquest or colonization is impotent to bring law to an end; inspite of change of constitution, the law continues unchanged until the new sovereign by legislative act creates a change." (Co Kim Chan vs. Valdes Tan Keh and Dizon, 75 Phil., 113, 142-143.)

7. Secretary of Finance vested to revoke, repeal or abrogate acts or previous rulings of predecessor

The Secretary of Finance is vested with authority to revoke, repeal or abrogate the acts or previous rulings of his predecessor in office because the construction of a statute by those administering it is not binding on their successors if thereafter the latter become satisfied that a different construction should be given. [Association of Clerical Employees vs. Brotherhood of Railways & Steamship Clerks, 85 F. (2d) 152, 109 A.L.R., 345.] Thus, in the present case, when the Commissioner determined in 1937 that the petitioner was not exempt and never had been, it was his duty to determine, assess and collect the tax due for all years not barred by the statutes of limitation. The conclusion reached and announced by his predecessor in 1924 was not binding upon him. It did not exempt Hilado from tax (This same point was decided in this way in Stanford University Bookstore, 29 B. T. A., 1280; affd., 83 Fed. (2d) 710.; Southern Maryland Agricultural Fair Association vs. Commissioner of Internal Revenue, 40 B. T. A., 549, 554).

8. Vested right cannot spring from a wrong interpretation

General Circular V-123, having been issued on a wrong construction of the law, cannot give rise to a vested right that can be invoked by a taxpayer. A vested right cannot spring from a wrong interpretation.

9. Erroneous interpretation of a statute is a nullity; Erroneous construction of law does not preclude government from collecting tax

An administrative officer can not change a law enacted by Congress. A regulation that is merely an interpretation of the statute when once determined to have been erroneous becomes nullity. An erroneous construction of the law by the Treasury Department or the collector of internal revenue does not preclude or estop the government from collecting a tax which is legally due. (Ben Stocker, et al., 12 B. T. A., 1351.)

10. Article 2254 of the New Civil Code

Article 2254 provides that "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others." (Article 2254, New Civil Code.)

[29]

Lealda Electric vs. CIR [G.R. No. L-16428. April 30, 1963.]
En Banc, Dizon (J): 8 concurring, 1 took no part

Facts: In 1915, Julian M. Locsin Anson was granted a franchise to operate an electric light and power plant to supply electric current to the residents of the municipalities of Legaspi (now city) and Daraga, both in Albay province (Act 2475, as amended by Act 2620). Subsequently, he sold his franchise, certificate of public convenience and the electric plant operated thereunder, to Saturnino Benito, who in turn sold the same to Alfredo, Mario and Benjamin, all surnamed Benito, on 13 March 1941. On 11 June 1949, the Benitos and other parties formed a partnership to operate the electric plant. After the incorporation of Lealda Electric on 8 February 1951, the franchise, certificate of public convenience and the electric plant operated thereunder, were transferred to it by said partnership. All these transactions were approved by the Public Service Commission. Since 1915, the original grantee and, after him, his various successors in interest, paid a franchise tax of 2% on the gross earnings or receipts from the business operated under the franchise, because that was the same franchise tax paid by "las demas franquicias y privilegios hoy existentes" (Art. 8, Act 2475), until 1 October 1946 when Section 259 of the National Internal Revenue Code was amended by RA 39 which increased the franchise tax to 5%. Upon the approval of this mandatory act, Lealda Electric was required to pay, as it did pay, the increased franchise tax, except those that became payable before its incorporation, these having been paid by its predecessors in interest. Apparently on 27 October 1953, Lealda Electric had filed a claim for refund, action on which, however, was held in abeyance pending receipt by the Collector of Internal Revenue of an audit report expected from the General Auditing Office. On 8 January 1954, Lealda Electric filed with the Commissioner of Internal Revenue a petition for refund contending that, under its charter, it was liable to pay a franchise tax equivalent to only 2% and not 5% of its gross earnings or receipts. On 22 June 1958, Lealda Electric filed its last claim for refund of the total amount of P78,891.34 representing alleged excess payments of franchise tax covering the period from 20 January 1947 to 15 April 1958.

As no definite action thereon was taken by the Commission, on 8 January 1959 petitioner filed with the Court of Tax Appeals a petition for review praying for the refund of the total sum of P84,573.61 representing alleged excess payments of franchise tax for the period from 20 January 1947 to 14 October 1958, and for an order restraining said commission and its agents from collecting from it more than 2% of its gross earnings or receipts, as franchise tax. After proper proceedings in the Court of Tax Appeals, the court held that Lealda Electric was "subject to pay the 5% franchise tax as prescribed in Section 259 of the National Internal Revenue Code, as amended by RA 39" and, as a consequence, dismissing the petition for refund for lack of merit. Hence, the present appeal.

The Supreme Court affirmed the decision appealed from being in accordance with law and the evidence, with costs.

1. Article 8 of Act 2475

Article 8 of Act 2475 which granted the franchise reads as follows, ". . . Entendiendose, Que en consideracion del privilegio concedido por la presente el concesionario, sus sucesores o cesionarios abonaran trimentralmente a la tesoreria de Albay o en la de Daraga y Legaspi en el caso de que estos dos ultimos fuesen segregados por autoridad competente en municipious independiente, con rentas correspondientes de acuerdo con la ley, por sus entradas en bruto tales como se exigen a las demas franquicias y privilegios hoy existentes."

2. Franchise does not specifically state rate of franchise tax to be paid

Leal Electric's franchise does not specifically state that the rate of the franchise tax to be paid thereunder by the original grantee — and his successors in interest— shall be 2% of his gross earnings or receipts. It simply provides that the grantee and his successors in interest shall pay "por sus entradas en bruto tales como se exigen a las demas franquicias y privilegios hoy existentes." It seems clear, therefore, that the intention of the legislature was to impose upon the grantee and his successors in interest, the obligation to pay the same franchise tax imposed upon other grantees or franchise holders at the time Act 2475 was enacted.

3. Existing franchise rates at the time of the enactment of the franchise

During all the time prior to the enactment on 1 October 1946 of RA 39, amending Section 259 of the Tax Code, franchise holders were and had been paying a franchise tax equivalent to 2% of their gross earnings or receipts, pursuant to the provisions of Section 1508 of the Administrative Code of 1917, and of Section 10 of Act 3636, known as the Model Electric Light and Power Act. Like them, the original grantee under Act 2475 and his successors in interest were required to pay and did pay the same franchise tax because Art. 8 of Act 2475 so provided. This rate continued until the rate of this franchise tax was increased to 5% on 1 October 1946 by the provisions of RA 39.

4. Section 259 of Tax Code, basic franchise tax law

Prior to its amendment, Section 259 of the Tax Code merely provided that the grantees of franchises should pay on their gross earnings or receipts "such taxes, charges and percentages as are specified in special charters of corporations upon whom such franchises are conferred" This provision did not cover the case of franchise holders whose charters did not specify the rate of franchise tax to be paid by them. Consequently, prior to the enactment of RA 39, the franchise tax paid by grantees whose charters did not specify the rate of the franchise tax to be paid by them was the one provided for in Section 10 of Act 3636, known as the Model Electric Light and Power Franchise Act. Consequently, Section 259 of the Tax Code, as amended by RA 39, became the basic franchise tax law because it was not only entitled "Tax on Corporate Franchises" but it fixed the rate of the franchise tax to be paid by holders of all existing and future franchises. Such being the case, the provisions of the act amending said section must be deemed to apply likewise to Lealda Electric because its franchise was already existing at the time of the adoption of the amendment.

5. Visayan Electric v. David and Manila Railroad vs. Rafferty do not apply

The ruling in Visayan Electric Company, vs. Saturnino David (49 O.G. No. 4, p. 1385) and Manila Railroad Company vs. Rafferty (40 Phil 224) – mainly to the effect that special laws or charters may not be amended, altered or repealed, except by consent of all concerned, unless the right was expressly reserved – is of no avail to Lealda Electric for two reasons: (1) Lealda's charter (Art. 11, Act 2475) contains an express provision to the effect that the same may be altered or repealed by the Congress of the United States (now Philippines), and the rate of the franchise tax Lealda Electric had been paying under the provisions of Section 10 of Act 3636 was expressly amended by Act 39; and (2) the franchises involved in the cases cited differ substantially from Lealda's franchise in that those of the Visayan Electric Company and of the Manila Railroad Company specifically provided that the franchise tax which the grantees were required to pay was to be "in lieu of all taxes of any kind levied, established, or collected by any authority whatsoever, now or in the future" (Charter of the Visayan Electric, Art. 8, Act 3499), or "in lieu of all taxes of every name and nature — municipal, provincial or central . . . ." (Charter of the Manila Railroad Company, Section 1, Subsection 12 of Act 1510) Lealda Electric's charter contains no such provision.

6. Tax exemptions not presumed; Ruling in Hoa Hin Co. case

Tax exemptions are not to be presumed. Such in effect is the ruling in Hoa Hin Co. Inc., (GR L-9616 and L-11783, 25 May 1959) to the effect that "The rate imposed by Section 259 of the National Internal Revenue Code, as amended, being higher than imposed in petitioner's Charter, Act 1256, the petitioner has to pay the rate imposed by Section 259 of the National Revenue Code. The rule in Manila Railroad Company vs. Rafferty, 40 Phil. 224; Philippine Railway Company vs. Collector of Internal Revenue, GR L-3859, 25 March 1952; Visayan Electric Company vs. David, 49 OG 1385; and Carcar Electric & Ice Plant vs. Collector of Internal Revenue, 53 OG 1068 cannot be invoked by the petitioner, because in the grantees' respective franchises there is a provision that 'such annual payments, when promptly and fully made by the grantee, shall be in lieu of all taxes of every name and nature — municipal, provincial or central — upon its capital stock, franchises, right of way, earnings, and all other property owned or operated by the grantee under this concession or franchise'. The petitioner's franchise, Act 1256, does not embody such exemption."

[30]

Lladoc v. Commissioner of Internal Revenue [GR L-19201, 16 June 1965]
En Banc, Paredes (p): 9 concur, 1 took no part

Facts: Sometime in 1957, the MB Estate Inc., of Bacolod City, donated P10,000.00 in cash to Fr. Crispin Ruiz then parish priest of Victorias, Negros Occidental, and predecessor of petitioner Fr. Casimiro Lladoc, for the construction of a new Catholic Church in the locality. The total amount was actually spent for the purpose intended. On 3 March 1958, MB Estate filed the donor's gift tax return. Under date of 29 April 1960, the Commissioner of Internal Revenue issued as assessment for donee's gift tax against the Catholic Parish of Victorias, Negros Occidental, of which petitioner was the priest. The tax amounted to P1,370.00 including surcharges, interest of 1% monthly from 15 May 1958 to 15 June 1960, and the compromise for the late filing of the return. Petitioner lodged a protest to the assessment and requested the withdrawal thereof. The protest and the motion for reconsideration presented to the Commissioner of Internal Revenue were denied. The petitioner appealed to the CTA on 2 November 1960. After hearing, the CTA affirmed the decision of the Commissioner of Internal Revenue except the imposition of compromise penalty of P20. Fr. Lladoc appealed to the Supreme Court.

The Court on 14 March 1965 issued a resolution ordering parties to show cause why the Head of the Diocese should not be substituted in lieu of Lladoc. It also issued a resolution on 30 April 1965 ordering the Head of the Diocese to present issues and defenses he might wish to raise. The counsel of the Head of the Diocese, who is also the counsel for Fr. Lladoc, adopted by reference the brief of Fr. Lladoc as its own and for all purposes.

The Supreme Court affirmed the appealed decision, insofar as tax liability is concerned, but modified it, in the sense that Fr. Lladoc is not personally liable for the said gift tax, and that the Head of the Diocese, should pay, as he is presently ordered to pay, the said gift tax; without special pronouncement as to costs.

1. Gift tax is an excise tax, not property tax; Excise tax excluded from tax exemption

The phrase "exempt from taxation," as employed in the Constitution supra should not be interpreted to mean exemption from all kinds of taxes. Section 22(3), Art. VI of the Constitution of the Philippines, exempts from taxation cemeteries, churches and personages or convents, appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious purposes. The exemption is only from the payment of taxes assessed on such properties enumerated, as property taxes, as contra-distinguished from excise taxes. A donee's gift tax is not a property tax but an excise tax imposed on the transfer of property by way of gift inter vivos. Its assessment was not on the property themselves. It does not rest upon general ownership, but an excise upon the use made of the properties, upon the exercise of the privilege of receiving the properties. The imposition of such excise tax on property used for religious purposes do not constitute an impairment of the Constitution.

2. Head of Diocese real party in interest

Fr. Lladoc cannot be liable as he was not yet a priest of Victorias at the time of donation. The parish of Victorias pertains to the Head of the Diocese, therefore making the latter the real party in interest and thus validly substitute Fr. Lladoc as party in the case; and thus liable for the payment of the excise tax.

[31]

Lutz vs. Araneta [G.R. No. L-7859. December 22, 1955.]
First Division, Reyes JBL (J): 8 concurring

Facts: Walter Lutz, in his capacity as Judicial Administrator of the Intestate Estate of Antonio Jayme Ledesma, seeks to recover from the Collector of Internal Revenue the sum of P14,666.40 paid by the estate as taxes, under section 3 of Commonwealth Act 567 (the Sugar Adjustment Act), for the crop years 1948-1949 and 1949-1950. He initiated the action in the CFI Negros Occidental, alleging that such tax is unconstitutional and void, being levied for the aid and support of the sugar industry exclusively, which in his opinion is not a public purpose for which a tax may be constitutionally levied. The action having been dismissed by the lower court, Lutz appealed the case directly to the Supreme Court, pursuant to Section 17 of the Judiciary Act.

The Supreme Court affirmed the decision appealed, with costs against Lutz.

1. Reason for the promulgation of Commonwealth Act 567 or the Sugar Adjustment Act

The Sugar Adjustment Act (Commonwealth Act 567) was promulgated in 1940, with a declaration of emergency, due to the threat to Philippine industry by the imminent imposition of export taxes upon sugar as provided in the Tydings-McDuffie Act, and the "eventual loss of its preferential position in the United States market"; wherefore, the national policy was expressed "to obtain a readjustment of the benefits derived from the sugar industry by the component elements thereof" and "to stabilize the sugar industry so as to prepare it for the eventuality of the loss of its preferential position in the United States market and the imposition of the export taxes (Section 1)."

2. Subject matter and persons affected by the law

Section 2 of the law provides for an increase of the existing tax on the manufacture of sugar, on a graduated basis, on each picul of sugar manufactures; while section 3 levies on owners or persons in control of lands devoted to the cultivation of sugar cane and ceded to others for a consideration, on lease or otherwise "a tax equivalent to the difference between the money value of the rental or consideration collected and the amount representing 12 per centum of the assessed value of such land."

3. Sugar Adjustment and Stabilization Fund, disbursement

According to section 6 of the law, "all collections made under this Act shall accrue to a special fund in the Philippine Treasury, to be known as the 'Sugar Adjustment and Stabilization Fund,' and shall be paid out only for any or all of the following purposes or to attain any or all of the following objectives, as may be provided by law: (1) to place the sugar industry in a position to maintain itself despite the gradual loss of the preferential position of the Philippine sugar in the United States market, and ultimately to insure its continued existence notwithstanding the loss of that market and the consequent necessity of meeting competition in the free markets of the world; (2) to readjust the benefits derived from the sugar industry by all of the component elements thereof — the mill, the landowner, the planter of the sugar cane, and the laborers in the factory and in the field — so that all might continue profitably to engage therein; (3) to limit the production of sugar to areas more economically suited to the production thereof; and (4) to afford labor employed in the industry a living wage and to improve their living and working conditions: Provided, That the President of the Philippines may, until the adjournment of the next regular session of the National Assembly, make the necessary disbursements from the fund herein created (1) for the establishment and operation of sugar experiment station or stations and the undertaking of researchers (a)to increase the recoveries of the centrifugal sugar factories with the view of reducing manufacturing costs, (b) to produce and propagate higher yielding varieties of sugar cane more adaptable to different distinct conditions in the Philippines, (c) to lower the costs of raising sugar cane, (d) to improve the buying quality of denatured alcohol from molasses for motor fuel, (e) to determine the possibility of utilizing the other by-products of the industry, (f) to determine what crop or crops are suitable for rotation and for the utilization of excess cane lands, and (g) on other problems the solution of which would help rehabilitated and stabilize the industry, and (2) for the improvement of living and working conditions in sugar mills and sugar plantations, authorizing him to organize the necessary agency or agencies to take charge of the expenditure and allocation of said funds to carry out the purpose hereinbefore enumerated, and, likewise, authorizing the disbursement from the fund herein created of the necessary amount of amounts needed for salaries, wages, travelling expenses, equipment, and other sundry expenses or said agency or agencies."

4. Act is an exercise of police power

Analysis of the Act, and particularly of section 6, will show that the tax is levied with a regulatory purpose, to provide means for the rehabilitation and stabilization of the threatened sugar industry. The act is primarily an exercise of the police power, and is not a pure exercise of the taxing power.

5. Promotion of sugar industry redounds greatly to general welfare

Sugar production in one of the great industries of the Philippines. Sugar occupies a leading position among its export products. It gives employment to thousands of laborers in fields and factories. It is a great source of the state's wealth. It is one of the important sources of foreign exchange needed by our government, and is thus pivotal in the plans of a regime committed to a policy of currency stability. Its promotion, protection and advancement, therefore redounds greatly to the general welfare. Hence it was competent for the legislature to find that the general welfare demanded that the sugar industry should be stabilized in turn; and in the wide field of its police power, the law-making body could provide that the distribution of benefits therefrom be readjusted among its components to enable it to resist the added strain of the increase in taxes that it had to sustain (Sligh vs. Kirkwood, 237 U. S. 52, 59 L. Ed. 835; Johnson vs. State ex rel. Marey, 99 Fla. 1311, 128 So 853; Maxcy Inc. vs. Mayo, 103 Fla. 552, 139 So. 121).

6. Related American jurisprudence; Protection of large industry within police power of sovereign

As stated in Johnson vs. State ex rel. Marey, with reference to the citrus industry in Florida, "the protection of a large industry constituting one of the great sources of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the State is affected to such an extent by public interests as to be within the police power of the sovereign."

7. Tests of valid exercise of police power; Taxation as means to implement police power

Once it is conceded that the protection and promotion of the sugar industry is a matter of public concern, it follows that the Legislature may determine within reasonable bounds what is necessary for its protection and expedient for its promotion. Here, the legislative discretion must be allowed full play, subject only to the test of reasonableness; and it is not contended that the means provided in section 6 of the law bear no relation to the objective pursued or are oppressive in character. If objective and methods are alike constitutionally valid, no reason is seen why the state may not be levy taxes to raise funds for their prosecution and attainment. Taxation may be made the implement of the state's police power (Great Atl. & Pac. Tea Co. vs. Grosjean, 301 U. S. 412, 81 L. Ed. 1193; U. S. vs. Butler, 297 U. S. 1, 80 L. Ed. 477; M'Culloch vs. Maryland, 4 Wheat. 318, 4 L. Ed. 579).

8. State is free to select subjects of taxation; Rational that beneficiaries should be levied upon

It is inherent in the power to tax that a state be free to select the subjects of taxation, and it has been repeatedly held that "inequalities which result from a singling out of one particular class for taxation, or exemption infringe no constitutional limitation" (Carmichael vs. Southern Coal & Coke Co., 301 U. S. 495, 81 L. Ed. 1245, citing numerous authorities, at p. 1251). That the tax to be levied should burden the sugar producers themselves can hardly be a ground of complaint; indeed, it appears rational that the tax be obtained precisely from those who are to be benefited from the expenditure of the funds derived from it.

9. Constitution does not require to adhere to a policy of "all or none"; Legislative authority need not embrace all evils within its reach

It appears of no moment that the funds raised under the Sugar Stabilization Act should be exclusively spent in aid of the sugar industry, since it is that very enterprise that is being protected. It may be that other industries are also in need of similar protection; but the legislature is not required by the Constitution to adhere to a policy of "all or none." As ruled in Minnesota ex rel. Pearson vs. Probate Court, 309 U. S. 270, 84 L. Ed. 744, "if the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied;" and that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach" (N. L. R. B. vs. Jones & Laughlin Steel Corp. 301 U. S. 1, 81 L. Ed. 893).

10. Devotion of tax money to experimental stations does not constitute expenditure for private purposes

Even from the standpoint that the Act is a pure tax measure, it cannot be said that the devotion of tax money to experimental stations to seek increase of efficiency in sugar production, utilization of by- products and solution of allied problems, as well as to the improvement of living and working conditions in sugar mills or plantations, without any part of such money being channeled directly to private persons, constitutes expenditure of tax money for private purposes, (compare Everson vs. Board of Education, 91 L. Ed. 472, 168 ALR 1392, 1400).

[32]

Luzon Stevedoring vs. CTA [G.R. No. L-30232. July 29, 1988.]
Second Division, Paras (J): 4 concurring

Facts: Luzon Stevedoring Corp., in 1961 and 1962, imported various engine parts and other equipment for the repair and maintenance of its tugboats for which it paid the assessed compensating tax under protest. Unable to secure a tax refund from the Commissioner of Internal Revenue, on 2 January 1964, it filed a Petition for Review with the Court of Tax Appeals (CTA Case 1484), praying among others, that it be granted the refund of the amount of P33,442.13. The Court of Tax Appeals, however, in a Decision dated 21 October 1969, denied the various claims for tax refund (finding said claims without sufficient legal justification); with costs against the corporation. On 24 January 1969, the Corporation filed a Motion for Reconsideration, but the same was denied in a Resolution dated 20 February 1969. Hence, the petition for review. The Supreme Court, in a Resolution dated 13 March 1969, gave due course to the petition.

The Supreme Court dismissed the petition, and affirmed the decision of the Court of Tax Appeals.

1. Section 190 (Compensating tax) of the National Internal Revenue Code, as amended by RA 3176

Said law provides: "…and Provided further, That the tax imposed in this section shall not apply to articles to be used by the importer himself in the manufacture or preparation of articles subject to specific tax or those for consignment abroad and are to form part thereof or to articles to be used by the importer himself as passenger and/or cargo vessel, whether coastwise or ocean-going, including engines and spare parts of said vessel. . ."

2. Power of taxation a high prerogative of sovereignty; Relinquishment or reduction not presumed; Tax exemption strictly construed against taxpayer

"As the power of taxation is a high prerogative of sovereignty, the relinquishment is never presumed and any reduction or dimunition thereof with respect to its mode or its rate, must be strictly construed, and the same must be coached in clear and unmistakable terms in order that it may be applied." (84 C.J.S. pp. 659-800), More specifically stated, any claim for exemption from the tax statute should be strictly construed against the taxpayer (Acting Commissioner of Customs v. Manila Electric Co. et al., 69 SCRA 469 [1977] and Commissioner of Internal Revenue v. P.J. Kiener Co. Ltd., et al., 65 SCRA 142 [1975]).

3. Requirements of law to be complied with for importations be declared exempt from tax

In order that the importations in question may be declared exempt from the compensating tax, it is indispensable that the requirements of the amendatory law be complied with, namely: (1) the engines and spare parts must be used by the importer himself as a passenger and/or cargo vessel; and (2) the said passenger and/or cargo vessel must be used in coastwise or oceangoing navigation. The amendatory provisions of Republic Act No. 3176 limit tax exemption from the compensating tax to imported items to be used by the importer himself as operator of passenger and/or cargo vessel.

4. Tugboat defined

"A tugboat is a strongly built, powerful steam or power vessel, used for towing and, now, also used for attendance on vessel. (Webster New International Dictionary, 2nd Ed.) "A tugboat is a diesel or steam power vessel designed primarily for moving large ships to and' from piers for towing barges and lighters in harbors, rivers and canals. (Encyclopedia International Grolier, Vol. 18, p.256). "A tug is a steam vessel built for towing, synonymous with tugboat. (Bouvier's Law Dictionary.)."

5. When law is clear, application and not interpretation of law is required

The corporation's tugboats do not fall under the categories of passenger and/or cargo vessels. It is a cardinal principle of statutory construction that where a provision of law speaks categorically, the need for interpretation is obviated, no plausible pretense being entertained to justify non-compliance. All that has to be done is to apply it in every case that falls within its terms (Allied Brokerage Corp. v. Commissioner of Customs, L-27641, 40 SCRA 555 [1971]; Quijano, etc. v. DBP, L-26419,35 SCRA 270 [1970]).

6. Statutes to be construed in the light of purposes to be achieved and evils sought to be remedied

Even if construction and interpretation of the law is insisted upon, following another fundamental rule that statutes are to be construed in the light of purposes to be achieved and the evils sought to be remedied (People v. Purisima etc., et al., L-42050-66, 86 SCRA 544 [1978], it will be noted that the legislature in amending Section 190 of the Tax Code by RA 3176 intended to provide incentives and inducements to bolster the shipping industry and not the business of stevedoring, as manifested in the sponsorship speech of Senator Gil Puyat.

7. Corporation is in stevedoring and lighterage business and not as a common carrier by water

On analysis of the corporation's transactions, the Court of Tax Appeals found that no evidence that tugboats are passenger and/or cargo vessels used in the shipping industry as an independent business. On the contrary, the corporation's own evidence supports the view that it is engaged as a stevedore, i.e. the work of unloading and loading of a vessel in port; and towing of barges containing cargoes is a part of its undertaking as a stevedore. In fact, even its trade name is indicative that its sole and principal business is stevedoring and lighterage, taxed under Section 191 of the National Internal Revenue Code as a contractor, and not an entity which transports passengers or freight for hire which is taxed under Section 192 of the same Code as a common carrier by water.

8. Court of Tax Appeals has expertise; Court will not set aside decision of agency unless there is abuse or improvident exercise of authority

As a matter of principle, the Supreme Court will not set aside the conclusion reached by an agency such as the Court of Tax Appeals, which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject unless there has been an abuse or improvident exercise of authority (Reyes v. Commissioner of Internal Revenue, 24 SCRA 199 [1981]), which is not present in the present case.

[33]

Misamis Oriental vs. Cagayan Electric [G.R. No. 45355. January 12, 1990.]
First Division, Grino-Aquino (J): 4 concurring

Facts: Cagayan Electric Power and Light Company, Inc. (CEPALCO) was granted a franchise on 17 June 1961 under RA 3247 to install, operate and maintain an electric light, heat and power system in the City of Cagayan de Oro and its suburbs. Said franchise was amended on 21 June 1963 by RA 3570 which added the municipalities of Tagoloan and Opol to CEPALCO's sphere of operation, and was further amended on 4 August 1969 by RA 6020 which extended its field of operation to the municipalities of Villanueva and Jasaan. On 28 June 1973, the Local Tax Code (PD 231) was promulgated. Section 9 of which provides for a Franchise Tax. Pursuant thereto, the Province of Misamis Oriental enacted Provincial Revenue Ordinance 19, whose Section 12 also provides for a Franchise Tax. The Provincial Treasurer of Misamis Oriental demanded payment of the provincial franchise tax from CEPALCO. The company refused to pay, alleging that it is exempt from all taxes except the franchise tax required by RA 6020. Nevertheless, in view of the opinion rendered by the Provincial Fiscal, upon CEPALCO's request, upholding the legality of the Revenue Ordinance, CEPALCO paid under protest on 27 May 1974 the sum of P4,276.28 and appealed the fiscal's ruling to the Secretary of Justice who reversed it and ruled in favor of CEPALCO. On 26 June 1976, the Secretary of Finance issued Local Tax Regulation 3-75 adopting entirely the opinion of the Secretary of Justice.

On 16 February 1976, the Province filed in the CFI Misamis Oriental a complaint for declaratory relief praying, among others, that the Court exercise its power to construe PD 231 in relation to the franchise of CEPALCO (RA 6020), and to declare the franchise as having been amended by PD 231. The Court dismissed the complaint and ordered the Province to return to CEPALCO the sum of P4,276.28 paid under protest. The Province appealed to the Supreme Court.

The Supreme Court denied the petition for review, and affirmed in toto the decision of the Court of First Instance; wtihout costs.

1. Section 3 of RA 3247, 3570, and 6020

Section 3 of RA 3247, 3570 and 6020 uniformly provide that "in consideration of the franchise and rights hereby granted, the grantee shall pay a franchise tax equal to three per centum of the gross earnings for electric current sold under this franchise, of which two per centum goes into the National Treasury and one per centum goes into the treasury of the Municipalities of Tagoloan, Opol, Villanueva and Jasaan and Cagayan de Oro City, as the case may be: Provided, That the said franchise tax of three per centum of the gross earnings shall be in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee from which taxes and assessments the grantee is hereby expressly exempted."

2. Section 9 of PD 231; Franchise Tax

Section 9 of PD 231 provides that "any provision of special laws to the contrary notwithstanding, the province may impose a tax on businesses enjoying franchise, based on the gross receipts realized within its territorial jurisdiction, at the rate of not exceeding one-half of one per cent of the gross annual receipts for the preceding calendar year. In the case of newly started business, the rate shall not exceed three thousand pesos per year. Sixty per cent of the proceeds of the tax shall accrue to the general fund of the province and forty per cent to the general fund of the municipalities serviced by the business on the basis of the gross annual receipts derived therefrom by the franchise holder. In the case of a newly started business, forty per cent of the proceeds of the tax shall be divided equally among the municipalities serviced by the business."

3. Section 12 of Provincial Revenue Ordinance 19; Franchise Tax

Section of the Provincial Revenue Ordinance 19 provides that "there shall be levied, collected and paid on businesses enjoying franchise tax of one-half of one per cent of their gross annual receipts for the preceding calendar year realized within the territorial jurisdiction of the province of Misamis Oriental."

4. Special and local statute is not repealed by later statute which is general in its terms, etc.

There is no provision in PD 231 expressly or impliedly amending or repealing Section 3 of RA 6020. The perceived repugnancy between the two statutes should be very clear before the Court may hold that the prior one has been repealed by the later, since there is no express provision to that effect (Manila Railroad Co. vs. Rafferty, 40 Phil. 224). The rule is that a special and local statute applicable to a particular case is not repealed by a later statute which is general in its terms, provisions and application even if the terms of the general act are broad enough to include the cases in the special law (id.) unless there is manifest intent to repeal or alter the special law.

5. Special statutes are exceptions to the general law

Republic Acts 3247, 3570 and 6020 are special laws applicable only to CEPALCO, while PD 231 is a general tax law. The presumption is that the special statutes are exceptions to the general law (PD 231) because they pertain to a special charter granted to meet a particular set of conditions and circumstances. The CEPALCO's franchise expressly exempts it from payment of "all taxes of whatever authority" except the three per centum (3%) tax on its gross earnings.

6. "Shall be in lieu of all taxes and at any time levied, established by, or collected by any authority" construed; Visayan Electric Co. case

The phrase "shall be in lieu of all taxes and at any time levied, established by, or collected by any authority" found in the franchise of the Visayan Electric Company was held to exempt the company from payment of the 5% tax on corporate franchise provided in Section 259 of the Internal Revenue Code (Visayan Electric Co. vs. David, 49 O.G. [No. 4] 1385).

7. "Shall be in lieu of all taxes of every name and nature" construed; Manila Railroad and Philippine Railway cases

The provision: "shall be in lieu of all taxes of every name and nature" in the franchise of the Manila Railroad (Subsection 12, Section 1, Act 1510) exempts the Manila Railroad from payment of internal revenue tax for its importations of coal and oil under Act 2432 and the Amendatory Acts of the Philippine Legislature (Manila Railroad vs. Rafferty, 40 Phil. 224). The same phrase found in the franchise of the Philippine

Railway Co. (Sec. 13, Act 1497) justified the exemption of the Philippine Railway Company from payment of the tax on its corporate franchise under Section 259 of the Internal Revenue Code, as amended by RA 39 (Philippine Railway Co. vs. Collector of Internal Revenue, 91 Phil. 35).

8. “Shall be in lieu of all taxes” construed; Cotabato Light case

Those magic words: “shall be in lieu of all taxes” also excused the Cotabato Light and Ice Plant Company from the payment of the tax imposed by Ordinance 7 of the City of Cotabato (Cotabato Light and Power Co. vs. City of Cotabato, 32 SCRA 231).

9. Exemption is part of inducement for the acceptance of franchise and rendition of public service by the grantee; Carcar Electric & Ice Plant case

The Court pointed out in the case of Carcar Electric & Ice Plant vs. Collector of Internal Revenue (53 O.G. [No. 4] 1068) that such exemption is part of the inducement for the acceptance of the franchise and the rendition of public service by the grantee. As a charter is in the nature of a private contract, the imposition of another franchise tax on the corporation by the local authority would constitute an impairment of the contract between the government and the corporation. The Court, in that case, upheld in favor of the Carcar Electric and Ice Plant Company when it was required to pay the corporate franchise tax under Section 259 of the Internal Revenue Code, as amended by RA 39.

10. Lingayen Gulf case; Exemption from Franchise Tax

The Court ruled that the franchise (RA 3843) of the Lingayen Gulf Electric Power Company which provided that the company shall pay “tax equal to 2% per annum of the gross receipts . . . and shall be in lieu of any and all taxes . . . now or in the future . . . from which taxes . . . the grantee is hereby expressly exempted and . . . no other tax . . . other than the franchise tax of 2% on the gross receipts as provided for in the original franchise shall be collected” exempts the company from paying the franchise tax under Section 259 of the National Internal Revenue Code (Commissioner of Internal Revenue vs. Lingayen Gulf Electric Power Co., Inc., G.R. No. 23771, August 4, 1988).

11. Effect of the absence of the “in-lieu-of-all-taxes” clause

The Balanga Power Plant Company, Imus Electric Company, Inc., Guagua Electric Company, Inc. were subjected to the 5% tax on corporate franchise under Section 259 of the Internal Revenue Code, as amended, because Act 667 of the Philippine Commission and the ordinance or resolutions granting their respective franchises did not contain the “in-lieu-of-all-taxes” clause *(Balanga Power Plant Co. vs. Commissioner of Internal Revenue, G.R. No. L-20499, June 30, 1965; Imus Electric Co. vs. Court of Tax Appeals, G.R. No. L-22421, March 18, 1967; Guagua Electric Light vs. Collector of Internal Revenue, G.R. No. L-23611, April 24, 1967).*

12. Franchise Tax in PD 231 imposed only on companies with franchise not containing the exempting clause

The Local Tax Regulation 3-75 issued by the Secretary of Finance on 26 June 1976, has made it crystal clear that the franchise tax provided in the Local Tax Code (PD 231, Sec. 9) may only be imposed on companies with franchises that do not contain the exempting clause. It provides that “the franchise tax imposed under local tax ordinance pursuant to Section 9 of the Local Tax Code, as amended, shall be collected from businesses holding franchise but not from business establishments whose franchise contain the ‘in-lieu-of-all-taxes-proviso’.”

13. Meralco vs. Vera does not apply

Manila Electric Company vs. Vera, 67 SCRA 351, is not applicable in the present case because what the Government sought to impose on Meralco in that case was not a franchise tax but a compensating tax on the poles, wires, transformers and insulators which it imported for its use.

[34]

National Development Co. vs. CIR [G.R. No. L-53961. June 30, 1987.]
En Banc, Cruz (J): 14 concurring

Facts: The National Development Company entered into contracts in Tokyo with several Japanese shipbuilding companies for the construction of 12 ocean-going vessels. The purchase price was to come from the proceeds of bonds issued by the Central Bank. Initial payments were made in cash and through irrevocable letters of credit. 14 promissory notes were signed for the balance by the NDC and, as required by the shipbuilders, guaranteed by the Republic of the Philippines. Pursuant thereto, the remaining payments and the interests thereon were remitted in due time by the NDC to Tokyo. The vessels were eventually completed and delivered to the NDC in Tokyo. The NDC remitted to the shipbuilders in Tokyo the total amount of US$4,066,580.70 as interest on the balance of the purchase price. No tax was withheld. The Commissioner then held the NDC liable on such tax in the total sum of P5,115,234.74. Negotiations followed but failed. The BIR thereupon served on the NDC a warrant of distraint and levy to enforce collection of the claimed amount. The NDC went to the Court of Tax Appeals. The BIR was sustained by the CTA except for a slight reduction of the tax deficiency in the sum of P900.00, representing the compromise penalty. The NDC then came to the Supreme Court in a petition for certiorari.

The Supreme Court affirmed the appealed decision, without any pronouncement as to costs.

1. Section 37 of Tax Code; Shipbuilders liable to tax on interest remitted to them

The Japanese shipbuilders were liable to tax on the interest remitted to them under Section 37 of the Tax Code (Income from sources within the Philippines), which provides "(a) Gross income from sources within the Philippines. — The following items of gross income shall be treated as gross income from sources within the Philippines: (1) Interest. — Interest derived from sources within the Philippines, and interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise;.." The interest paid by NDC, which is admittedly a resident of the Philippines, is on the promissory notes issued by it. The interest remitted to the Japanese shipbuilders in Japan in 1960, 1961 and 1962 on the unpaid balance of the purchase price of the vessels acquired by NDC is interest derived from sources within the Philippines subject to income tax under the then Section 24(b)(1) of the National Internal Revenue Code."

2. Government's right to levy and collect income tax on interest based on source and not on activity

The law, however, does not speak of activity (i.e. the signing of the contract, the construction of the vessels, the payment of the stipulated price, and their delivery to the NDC, which were done in Tokyo) but of "source" (which is the NDC). NCDis a domestic and resident corporation with principal offices in Manila. The Government's right to levy and collect income tax on interest received by foreign corporations not engaged in trade or business within the Philippines is not planted upon the condition that 'the activity or labor and the sale from which the (interest) income flowed had its situs" in the Philippines. Nothing in the law speaks of the "act or activity" of non-resident corporations in the Philippines, or place where the contract is signed.

3. Residence of obligor determining factor of the source of interest income

The residence of the obligor who pays the interest rather than the physical location of the securities, bonds or notes or the place of payment, is the determining factor of the source of interest income. (Mertens, Law of Federal Income Taxation, Vol. 8, p. 128, citing A.C. Monk 8: Co. Inc. 10 T.C. 77; Sumitomo Bank, Ltd., 19 BTA 480; Estate of L.E. Mckinnon, 6 BTA 412; Standard Marine Ins. Co., Ltd., 4 BTA 853; Marine Ins. Co., Ltd., 4 BTA 867). Accordingly, if the obligor is a resident of the Philippines the interest payment paid by him can have no other source than within the Philippines. The interest is paid not by the bond, note or other interest-bearing obligations, but by the obligor. (See Mertens, Id., Vol. 8, p. 124.)

4. Section 29(b)[4] of the Tax Code; Gross income, exclusions from gross income, interest on government securities

Section 29(b)[4] of the Tax Code, provides "”SEC. 29. Gross Income. — . . . (b) Exclusions from gross income. — The following items shall not be included in gross income and shall be exempt from taxation under this Title: (4) Interest on Government Securities. — Interest upon the obligations of the Government of the Republic of the Philippines or any political subdivision thereof, but in the case of such obligations issued after approval of this Code, only to the extent provided in the act authorizing the issue thereof. (As amended by Section 6, RA 82).

5. CA 182 as amended by CA 311, not RA 1407, authorizes issuance of securities but does not exempt interests from taxes; Undertaking does not exempt interest from taxation

The law invoked by NDC as authorizing the issuance of securities is RA 1407, which in fact is silent on this matter. CA 182 as amended by CA 311 does carry such authorization but, like RA 1407, does not exempt from taxes the interests on such securities. Further, the undertaking signed by the Secretary of Finance in each of the promissory notes states that “Upon authority of the President of the Republic of the Philippines, the undersigned, for value received, hereby absolutely and unconditionally guarantees, on behalf of the Republic of the Philippines, the due and punctual payment of both principal and interest” of the note. There is nothing in the undertaking exempting the interests from taxes. Nowhere in the said undertaking do we find any inhibition against the collection of the disputed taxes. NDC has not established a clear waiver therein of the right to tax interests.

6. Tax exemptions cannot be implied, Doubt in favor of taxing power

Tax exemptions cannot be merely implied but must be categorically and unmistakably expressed. Any doubt concerning this question must be resolved in favor of the taxing power.

7. Government undertaking in consonance not against the provisions of the Tax Code; Sections 53(b), 54

The undertaking made by the government is in consonance with and certainly not against the following provisions of the Tax Code, to wit: “Sec. 53(b). Nonresident aliens. — All persons, corporations and general co-partnerships (companies colectivas), in whatever capacity acting, including lessees or mortgagors of real or personal capacity, executors, administrators, receivers, conservators, fiduciaries, employers, and all officers and employees of the Government of the Philippines having control, receipt, custody; disposal or payment of interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or categorical gains, profits and income of any nonresident alien individual, not engaged in trade or business within the Philippines and not having any office or place of business therein, shall (except in the cases provided for in subsection (a) of this section deduct and withhold from such annual or periodical gains, profits and income a tax equal to twenty (now 30%) per centum thereof: . . . .” “Sec. 54. Payment of corporation income tax at source. — In the case of foreign corporations subject to taxation under this Title not engaged in trade or business within the Philippines and not having any office or place of business therein, there shall be deducted and withheld at the source in the same manner and upon the same items as is provided in section fifty-three a tax equal to thirty (now 35%) per centum thereof, and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section: . . . .”

8. Undertaking of Republic merely to guarantee NDC’s obligation

The undertaking of the Republic of the Philippines merely guaranteed the obligations of the NDC but without diminution of its taxing power under existing laws.

9. NDC not administrator of funds of Republic; NDC a corporation governed in its proprietary activities

In suggesting that the NDC is merely an administrator of the funds of the Republic of the Philippines, the NDC closes its eyes to the nature of the entity as a corporation. As such, it is governed in its proprietary activities not only by its charter but also by the Corporation Code and other pertinent laws.

10. NDC not being taxed; Deficiency taxes is penalty for failure to withhold the same from the shipbuilders

The NDC is not the one being taxed. The tax was due on the interests earned by the Japanese shipbuilders. It was the income of these companies and not the Republic of the Philippines that was subject to the tax the NDC did not withhold. In effect, therefore, the imposition of the deficiency taxes on the NDC is a penalty for its failure to withhold the same from the Japanese shipbuilders. Such liability is imposed by Section 53(c) of the Tax Code, thus: "Section 53(c). Return and Payment. — Every person required to deduct and withhold any tax under this section shall make return thereof, in duplicate, on or before the fifteenth day of April of each year, and, on of before the time fixed by law for the payment of the tax, shall pay the amount withheld to the officer of the Government of the Philippines authorized to receive it. Every such person is made personally liable for such tax, and is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this section. (As amended by Section 9, RA 2343.)"

11. Responsibilities of withholding agents; NDC remiss in discharge of obligation as withholding agent

In Philippine Guaranty Co. v. The Commissioner of Internal Revenue and the Court of Tax Appeals, the Court quoted with approval the regulation of the BIR on the responsibilities of withholding agents, to wit: "In case of doubt, a withholding agent may always protect himself by withholding the tax due, and promptly causing a query to be addressed to the Commissioner of Internal Revenue for the determination whether or not the income paid to an individual is not subject to withholding. In case the Commissioner of Internal Revenue decides that the income paid to an individual is not subject to withholding, the withholding agent may thereupon remmit the amount of tax withheld." (2nd par., Sec. 200, Income Tax Regulations). Strict observance of said steps is required of a withholding agent before he could be released from liability," so said Justice Jose P. Bengson, who wrote the decision. "Generally, the law frowns upon exemption from taxation; hence, an exempting provision should be construed strictissimi juris." In the present case, NDC was remiss in the discharge of its obligation as the withholding agent of the government and so should be held liable for its omission.

[35]

Nitafan v. Commissioner of Internal Revenue [GR L-78780, 23 July 1987]; Resolution
En Banc, Melencio-Herrera (p): 12 concur, 1 on leave

Facts: The Chief Justice has previously issued a directive to the Fiscal Management and Budget Office to continue the deduction of withholding taxes from salaries of the Justices of the Supreme Court and other members of the judiciary. This was affirmed by the Supreme Court en banc on 4 December 1987. Petitioners are the duly appointed and qualified Judges presiding over Branches 52, 19 and 53, respectively, of the RTC, National Capital Judicial Region, all with stations in Manila. They seek to prohibit and/or perpetually enjoin the Commissioner of Internal Revenue and the Financial Officer of the Supreme Court, from making any deduction of withholding taxes from their salaries. With the filing of the petition, the Court deemed it best to settle the issue through judicial pronouncement, even if it had dealt with the matter administratively.

The Supreme Court dismissed the petition for prohibition.

1. Intent to delete express grant of exemption of income taxes to members of Judiciary

The salaries of members of the Judiciary are subject to the general income tax applied to all taxpayers. This intent was somehow and inadvertently not clearly set forth in the final text of the Constitution as approved and ratified in February, 1987 (infra, pp. 7-8). Although the intent may have been obscured by the failure to include in the General Provisions a proscription against exemption of any public officer or employee, including constitutional officers, from payment of income tax, the Court since then has authorized the continuation of the deduction of the withholding tax from the salaries of the members of the Supreme Court, as well as from the salaries of all other members of the Judiciary. The Court hereby makes of record that it had then discarded the ruling in Perfecto vs. Meer and Endencia vs. David.

The 1973 Constitution has provided that "no salary or any form of emolument of any public officer or employee, including constitutional officers, shall be exempt from payment of income tax (Section 6, Article XV)" which was not present in the 1987 Constitution. The deliberations of the 1986 Constitutional Commission relevant to Section 10, Article VIII (The salary of the Chief Justice and of the Associate Justices of the Supreme Court, and of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be decreased), negate the contention that the intent of the framers is to revert to the original concept of "non-diminution" of salaries of judicial officers.

2. Equality of branches of government effected by modifications in provision

The term "diminished" be changed to "decreased" and that the words "nor subjected to income tax" be deleted so as to give substance to equality among the three branches in the government. A period (.) after "decreased" was made on the understanding that the salary of justices is subject to tax. With the period, the doctrine in Perfecto vs. Meer and Endencia vs. David is understood not to apply anymore. Justices and judges are not only the citizens whose income have been reduced in accepting service in government and yet subjected to income tax. Such is true also of Cabinet members and all other employees.

3. Constitutional construction adopts the intent of the framers and people adopting the law

The ascertainment of the intent is but in keeping with the fundamental principle of constitutional construction that the intent of the framers of the organic law and of the people adopting it should be given effect. The primary task in constitutional construction is to ascertain and thereafter assure the realization of the purpose of the framers and of the people in the adoption of the Constitution. It may also be safely assumed that the people in ratifying the Constitution were guided mainly by the explanation offered by the framers. In the case at bar, Section 10, Article VIII is plain that the Constitution authorizes Congress to pass a law fixing another rate of compensation of Justices and Judges but such rate must be higher than that which they are receiving at the time of enactment, or if lower, it would be applicable only to those appointed after its approval. It would be a strained construction to read into the provision an exemption from taxation in the light of the discussion in the Constitutional Commission.

[36]

Philippine Acetylene vs. CIR [G.R. No. L-19707. August 17, 1967.]
En Banc, Castro (J): 7 concurring, 2 took no part

Facts: Philippine Acetylene Co. Inc. is a corporation engaged in the manufacture and sale of oxygen and acetylene gases. During the period from 2 June 1953 to 30 June 1958, it made various sales of its products to the National Power Corporation, an agency of the Philippine Government, and to the Voice of America, an agency of the United States Government. The sales to the NPC amounted to P145,866.70, while those to the VOA amounted to P1,683, on account of which the Commission of Internal Revenue assessed against, and demanded from, the company the payment of P12,910.60 as deficiency sales tax and surcharge, pursuant to the Sections 183 and 186 of the National Internal Revenue Code. The company denied liability for the payment of the tax on the ground that both the Napocor and the VOA are exempt from taxation. It asked for a reconsideration of the assessment and, failing to secure one, appealed to the Court of Tax Appeals. The CTA ruled that the tax on the sale of articles or goods in section 186 of the Code is a tax on the manufacturer and not on the buyer with the result that the " Philippine Acetylene Company, the manufacturer or producer of oxygen and acetylene gases sold to the Napocor, cannot claim exemption from the payment of sales tax simply because its buyer, Napocor, is exempt from the payment of all taxes." With respect to the sales made to the VOA, the court held that goods purchased by the American Government or its agencies from manufacturers or producers are exempt from the payment of the sales tax under the agreement between the Government of the Philippines and that of the United States, provided the purchases are supported by certificates of exemption, and since purchases amounting to only P558, out of a total of P1,683, were not covered by certificates of exemption, only the sales in the sum of P558 were subject to the payment of tax. Accordingly, the assessment was revised and the company's liability was reduced from P12,910.60, as assessed by the Commission, to P12,812.16. Hence, the appeal by the company.

The Supreme Court modified the decision a quo by ordering the company to pay to the Commission the amount of P12,910.60 as sales tax and surcharge, with costs against the company.

1. Section 186 of the National Internal Revenue Code; Percentage tax on sales of other articles

Section 186 provides that "there shall be levied, assessed and collected once only on every original sale, barter, exchange, and similar transaction either for nominal or valuable considerations, intended to transfer ownership of, or title to, the articles not enumerated in sections one hundred and eighty- four and one hundred and eighty-five a tax equivalent to seven per centum of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer: . . ."

2. Section 183 of the National Internal Revenue Code; Payment of percentage taxes

Section 186 provides that "In general. — It shall be the duty of every person conducting a business on which a percentage tax is imposed under this Title, to make a true and complete return of the amount of his, her or its gross monthly sales, receipts or earnings, or gross value of output actually removed from the factory or mill warehouse and within twenty days after the end of each month, pay the tax due thereon: Provided, That any person retiring from a business subject to the percentage tax shall notify the nearest internal revenue officer thereof, file his return or declaration and pay the tax due thereon within twenty days after closing his business. If the percentage tax on any business is not paid within the time specified above, the amount of the tax shall be increased by twenty-five per centum, the increment to be a part of the tax."

3. Napocor's tax exemption

The Napocor enjoys tax exemption by virtue of an act of Congress, which provides "To facilitate the payment of its indebtedness, the National Power Corporation shall be exempt from all taxes, except real property tax, and from all duties, fees, imposts, charges, and restrictions of the Republic of the Philippines, its provinces, cities and municipalities (Section 2)."

4. Sales tax paid by manufacturer or producer

Statutes of the type under consideration, which impose a tax on sales, have been described as "act[s] with schizophrenic symptoms," as they apparently have two faces — one that of a vendor tax, the other, a vendee tax. Fortunately, the provisions of the Code throw some light on the problem. The Code states that the sales tax "shall be paid by the manufacturer or producer," who must "make a true and complete return of the amount of his, her or its gross monthly sales, receipts or earnings or gross value of output actually removed from the factory or mill warehouse and within twenty days after the end of each month, pay the tax due thereon."

5. Lash Products vs. US; "Passed the tax on" inaccurate according to Justice Holmes

Many years ago, Mr. Justice Oliver Wendell Holmes expressed dissatisfaction with the use of the phrase "pass the tax on." Writing the opinion of the U.S. Supreme Court in Lash's Products vs. United States, he said: "The phrase 'passed the tax on' is inaccurate, as obviously the tax is laid and remains on the manufacturer and on him alone. The purchaser does not really pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all.. The price is the sum total paid for the goods. The amount added because of the tax is paid to get the goods and for nothing else. Therefore it is part of the price . . ."

6. Panhandle Oil v. Mississippi ; Doctrine of intergovernmental tax immunity

In Panhandle Oil Co. vs. Mississippi, the doctrine of intergovernmental tax immunity was held as prohibiting the imposition of a tax on sales of gasoline made to the Federal Government. Said the Supreme Court of the United States: "A charge at the prescribed rate is made on account of every gallon acquired by the United States. It is immaterial that the seller and not the purchaser is required to report and make payment to the state. Sale and purchase constitute a transaction by which the tax is measured and on which the burden rests . . . The necessary operation of these enactments when so construed is directly to retard, impede and burden the exertion by the United States, of its constitutional powers to operate the fleet and hospital . . . To use the number of gallons sold the United States as a measure of the privilege tax is in substance and legal effect to tax the sale.. And that is to tax the United States — to exact tribute on its transactions and apply the same to the support of the state." Justice Holmes did not agree.

7. Pandhandle Oil case; Dissent of Justice Holmes

Justice Holmes did not agree. In a powerful dissent joined by Justice Brandeis and Stone, he said: "If the plaintiff in error had paid the tax and added it to the price the government would have nothing to say. It could take the gasoline or leave it but it could not require the seller to abate his charge even if it had been arbitrarily increased in the hope of getting more from the government than could be got from the public at large . . . It does not appear that the government would have refused to pay a price that included the tax if demanded, but if the government had refused it would not have exonerated the seller . . . I am not aware that the President, the Members of the Congress, the Judiciary or to come nearer to the case at hand, the Coast Guard or the officials of the Veterans' Hospital [to which the sales were made], because they are instrumentalities of government and cannot function naked and unfed, hitherto have been held entitled to have their bills for food and clothing cut down so far as their butchers and tailors have been taxed on their sales; and I had not supposed that the butchers and tailors could omit from their tax returns all receipts from the large class of customers to which I have referred. The question of interference with Government, I repeat, is one of reasonableness and degree and it seems to me that the interference in this case is too remote."

8. James vs. Dravo Construction; Cases distinguished and limited to their particular facts

It became obvious later on that to test the constitutionality of a statute by determining the party on which the legal incidence of the tax fell was an unsatisfactory way of doing things. The fall of the bastion was signalled by Chief Justice Hughes' statement in James vs. Dravo Constructing Co. that "These cases [referring to Panhandle and Indian Motorcycle Co. vs. United States, 283 U.S. 570 (1931)] have been distinguished and must be deemed to be limited to their particular facts."

9. Alabama vs. King and Boozer; Government immunity from state taxation not infringed by imposition of state sales tax chargeable and collected by seller from buyer

In 1941, Alabama vs. King & Boozer held that the constitutional immunity of the United States from state taxation was not infringed by the imposition of a state sales tax with which the seller was chargeable but which he was required to collect from the buyer, in respect of materials purchased by a contractor with the United States on a cost-plus basis for use in carrying out its contract, despite the fact that the economic burden of the tax was borne by the United States. It was therein that "the asserted right of the one to be free of taxation by the other does not spell immunity from paying the added costs, attributable to the taxation of those who furnish supplies to the Government and who have been granted no tax immunity. So far as a different view has prevailed, see Panhandle Oil Co. vs. Mississippi and Graves vs. Texas Co., supra, we think it no longer tenable."

10. Subsequent cases after Panhandle Oil; Immunity from state regulation does not extend to those

contracted

Further inroads into the doctrine of Panhandle were made in 1943 when the U. S. Supreme Court held that immunity from state regulation in the performance of governmental functions by Federal officers and agencies did not extend to those who merely contracted to furnish supplies or render services to the Government even though as a result of an increase in the price of such supplies or services attributable to the state regulation, its ultimate effect may be to impose an additional economic burden on the Government.

11. Esso Standard Oil vs. Evans, Contractor not exempt from payment of state privilege tax

In 1952, in Esso Standard Oil vs. Evans, it was held that a contractor is not exempt from the payment of a state privilege tax on the business of storing gasoline simply because the Federal Government with which it has a contract for the storage of gasoline is immune from state taxation. The Court said therein, "This tax was imposed because Esso stored gasoline. It is not.. based on the worth of the government property. Instead, the amount collected is graduated in accordance with the exercise of Esso's privilege to engage in such operations; so it is not 'on' the federal property . . . Federal ownership of the fuel will not immunize such a private contractor from the tax on storage. It may generally, as it did here, burden the United States financially. But since James vs. Dravo Contracting Co., 302 U.S. 134, 151, 82 L ed 155, 167, 58 S Ct 208, 114 ALR 318, this has been no fatal flaw . . ."

12. Review of the doctrine enunciated in Panhandle Oil case

As Thomas Reed Powell noted in 1945 in reviewing the development of the doctrine: "Since the Dravo case settled that it does not matter that the economic burden of the gross receipt tax may be shifted to the Government, it could hardly matter that the shift comes about by explicit agreement covering taxes rather than by being absorbed in a higher contract price by bidders for a contract. The situation differed from that in the Panhandle and similar cases in that they involved but two parties whereas here the transaction was tripartite. These cases are condemned in so far as they rested on the economic ground of the ultimate incidence of the burden being on the Government, but this condemnation still leaves open the question whether either the state or the United States when acting in governmental matters may be made legally liable to the other for a tax imposed on it as vendee. "The carefully chosen language of the Chief Justice keeps these cases from foreclosing the issue . . . Yet at the time it would have been a rash man who would find in this a dictum that a sales tax clearly on the Government as purchaser is invalid or a dictum that Congress may immunize its contractors."

13. Economic burden of tax eventually falls on the purchaser; Sales tax no longer tax on purchaser

It may indeed be that the economic burden of the tax finally falls on the purchaser; when it does the tax becomes a part of the price which the purchaser must pay. It does not matter that an additional amount is billed as tax to the purchaser. The method of listing the price and the tax separately and defining taxable gross receipts as the amount received less the amount of the tax added, merely avoids payment by the seller of a tax on the amount of the tax. The effect is still the same, namely, that the purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all and the amount added because of the tax is paid to get the goods and for nothing else. But the tax burden may not even be shifted to the purchaser at all. A decision to absorb the burden of the tax is largely a matter of economics. Then it can no longer be contended that a sales tax is a tax on the purchaser.

14. Levy on sales made to tax-exempt entities is permissible

The tax imposed by section 186 of the National Internal Revenue Code is a tax on the manufacturer or producer and not a tax on the purchaser except probably in a very remote and inconsequential sense. Accordingly its levy on the sales made to tax-exempt entities like the NPC is permissible.

15. Article V of the Agreement between the Republic of the Philippines and the United States of America Concerning Military Bases; Exemption from Customs and Other Duties

The Agreement provides that "No import, excise, consumption or other tax, duty or impost shall be charged on material, equipment, supplies or goods, including food stores and clothing, for exclusive use in the construction, maintenance, operation or defense of the bases, consigned to, or destined for, the United States authorities and certified by them to be for such purposes."

16. Article XVIII of the Agreement between the Republic of the Philippines and the United States of America Concerning Military Bases; Sales and Services within the bases

The Agreement provides that "It is mutually agreed that the United States shall have the right to establish on bases, free of all licenses; fees; sales, excise or other taxes, or imposts; Government agencies, including concessions, such as sales from commissaries and post exchanges, messes and social clubs, for the exclusive use of the United States military forces and authorized civilian personnel and their families. The merchandise or services sold or dispensed by such agencies shall be free of all taxes, duties and inspection by the Philippine authorities . . ."

17. Agreement foes not contain general exemption granted by Circular V-41 dated 16 October 1947

General Circular No. V-41, dated 16 October 1947 provides that "Goods purchased locally by U.S. civilian agencies directly from manufacturers, producers, or importers shall be exempt from the sales tax." Said circular was issued purportedly to implement the Agreement between the Republic of the Philippines and the United States of America Concerning Military Bases, but there is nothing in the language of the Agreement to warrant the general exemption granted by that circular. Thus only sales made "for exclusive use in the construction, maintenance, operation or defense of the bases," in a word, only sales to the quartermaster, are exempt under article V from taxation. Sales of goods to any other party even if it be an agency of the United States, such as the VOA, or even to the quartermaster but for a different purpose, are not free from the payment of the tax. On the other hand, article XVIII exempts from the payment of the tax sales made within the bases by (not sales to) commissaries and the like in recognition of the principle that a sales tax is a tax on the seller and not on the purchaser.

18. Tax exemption strictly construed; Expansive construction of tax exemption in agreement void

Tax exemption must be strictly construed and that the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention of the parties. Hence, in so far as the circular of the Bureau of Internal Revenue would give the tax exemptions in the Agreement an expansive construction it is void. The sales to the VOA are subject to the payment of percentage taxes under section 186 of the Code.

19. Proper computation of the company's liability

The company is thus liable for computed as follows:

Sales to NPC	P145,866.70	
Sales to VOA	P1,683.00	
	__________	
Total sales subject to tax		P147,549.70
	=========	
7% sales tax due thereon		P10,328.48
Add: 25% surcharge		P2,582.12
	__________	
Total amount due and collectible		P12,910.60
	=========	

[37]

Philippine Airlines vs. Edu [G.R. No. L-41383. August 15, 1988.]
En Banc, Gutierrez Jr. (J): 13 concurring

Facts: The Philippine Airlines (PAL) is a corporation organized and existing under the laws of the Philippines and engaged in the air transportation business under a legislative franchise, Act 4271, as amended by RA 2360 and 2667. Under its franchise, PAL is exempt from the payment of taxes. On the strength of an opinion of the Secretary of Justice (Op. No. 307, series of 1956) PAL has, since 1956, not been paying motor vehicle registration fees. Sometime in 1971, however, Commissioner Romeo F. Edu, in his capacity as Land Transportation Commissioner, issued a regulation requiring all tax exempt entities, among them PAL to pay motor vehicle registration fees. This is pursuant to Section 8, RA 4136, otherwise known as the Land Transportation and Traffic Code. Despite PAL's protestations, Commissioner Edu refused to register the appellant's motor vehicles unless the amounts imposed under RA 4136 were paid. PAL thus paid, under protest, the amount of P19,529.75 as registration fees of its motor vehicles. After paying under protest, PAL through counsel, wrote a letter dated 19 May 1971, to Commissioner Edu demanding a refund of the amounts paid, invoking the ruling in Calalang v. Lorenzo (97 Phil. 212 [1951]) where it was held that motor vehicle registration fees are in reality taxes from the payment of which PAL is exempt by virtue of its legislative franchise. Commissioner Edu denied the request for refund basing his action on the decision in Republic v. Philippine Rabbit Bus Lines, Inc., (32 SCRA 211, March 30, 1970) to the effect that motor vehicle registration fees are regulatory exactions and not revenue measures and, therefore, do not come within the exemption granted to PAL under its franchise. Hence, PAL filed the complaint against Commissioner Edu and National Treasurer Ubaldo Carbonell with the CFI Rizal, Branch 18 (Civil Case Q-15862.) On 24 April 1973, the trial court rendered a decision dismissing the PAL's complaint "guided by the later ruling laid down by the Supreme Court in the case of Republic v. Philippine Rabbit Bus Lines, Inc. (supra)." From this judgment, PAL appealed to the Court of Appeals which certified the case to the Supreme Court.

The Supreme Court partially granted the petition, and denied the refund of registration fees paid in 1971. The Land Transportation Franchising and Regulatory Board (LTFRB) was enjoined from collecting any tax, fee, or other charge on the registration and licensing of the petitioner's motor vehicles from 9 April 1979 as provided in PD 1590.

1. Section 13 of the PAL franchise (Act 4271, as amended by RA 2360 and 2667)

The franchise provides that " In consideration of the franchise and rights hereby granted, the grantee shall pay to the National (Government during the life of this franchise a tax of two per cent of the gross revenue or gross earning derived by the grantee from its operations under this franchise. Such tax shall be due and payable quarterly and shall be in lieu of all taxes of any kind, nature or description, levied, established or collected by any municipal, provincial or national authority; Provided, that if, after the audit of the accounts of the grantee by the Commissioner of Internal Revenue, a deficiency tax is shown to be due, the deficiency tax shall be payable within the ten days from the receipt of the assessment. The grantee shall pay the tax on its real property in conformity with existing law."

2. Republic vs. Philippine Rabbit Bus Lines; Registration fee an exercise of police power and not tax, backpay certificates cannot be used to meet obligation

The registration fee was imposed by Section 8 of the Revised Motor Vehicle Law (RA 587 [1950]). Its heading speaks of registration fees.' The term is repeated four times in the body thereof. Equally so, mention is made of the 'fee for registration.' (Ibid., Subsection G) A subsection starts with a categorical statement No fees shall be charged.' (Ibid., Subsection H) The conclusion is difficult to resist therefore that the Motor Vehicle Act requires the payment not of a tax but of a registration fee under the police power. Hence the inapplicability of the section relied upon by defendant-appellee under the Back Pay Law. It is not held liable for a tax but for a registration fee. It therefore cannot make use of a backpay certificate to meet such an obligation.

3. Republic vs. Philippine Rabbit Bus Lines; RA 5448 explicit in enacting regulatory measure

Section 3 of RA 5448 [1968] as to the imposition of additional tax on privately-owned passenger automobiles, motorcycles and scooters was amended by RA 5470 which was approved on 30 May 1969.) A special science fund was thereby created and its title expressly sets forth that a tax on privately-owned passenger automobiles, motorcycles and scooters was imposed. The rates thereof were provided for in its Section 3 which clearly specifies that additional tax was to be paid as distinguished from the registration fee under the Motor Vehicle Act. There cannot be any clearer expression therefore of the legislative will, even on the assumption that the earlier legislation could by stretching the point be susceptible of the interpretation that a tax rather than a fee was levied. What is thus most apparent is that where the legislative body relies on its authority to tax it expressly so states, and where it is enacting a regulatory measure, it is equally explicit."

4. Calalang vs. Lorenzo in contrast with Republic vs. PRBL

In Calalang v. Lorenzo (supra), it was held that "the charges prescribed by the Revised Motor Vehicle Law for the registration of motor vehicles are in section 8 of that law called fees.' But the appellation is no impediment to their being considered taxes if taxes they really are. For not the name but the object of the charge determines whether it is a tax or a fee. Generally speaking, taxes are for revenue, whereas fees are exactions for purposes of regulation and inspection and are for that reason limited in amount to what is necessary to cover the cost of the services rendered in that connection. Hence, 'a charge fixed by statute for the service to be performed by an officer, where the charge has no relation to the value of the services performed and where the amount collected eventually finds its way into the treasury of the branch of the government whose officer or officers collected the charge, is not a fee but a tax.' (Cooley on Taxation, Vol. 1, 4th ed., p. 110.)

5. Calalang case: Motor Vehicle Law, Expenditures merely 5% of collected registration fees, points to conclusion that such fees are in the nature of tax

The expenditures of the Motor Vehicle Office are but a small portion — about 5 per centum — of the total collections from motor vehicle registration fees. And as proof that the money collected is not intended for the expenditures of that office, the law itself provides that all such money shall accrue to the funds for the construction and maintenance of public roads, streets and bridges. It is thus obvious that the fees are not collected for regulatory purposes as an incident to the enforcement of regulations governing the operation of motor vehicles on public highways, for their express object is to provide revenue with which the Government is to discharge one of its principal functions — the construction and maintenance of public highways for everybody's use. They are veritable taxes, not merely fees.

6. Calalang case: Revised Motor Vehicle Law, fees are in the category of taxes

The Revised Motor Vehicle Law itself regards those fees as taxes, for it provides that 'no other taxes or fees than those prescribed in this Act shall be imposed,' thus implying that the charges therein imposed — though called fees — are of the category of taxes. The provision is contained in section 70, of subsection (b), of the law, as amended by section 17 of RA 587, provides that "No other taxes or fees than those prescribed in this Act shall be imposed for the registration or operation or on the ownership of any motor vehicle, or for the exercise of the profession of chauffeur, by any municipal corporation, the provisions of any city charter to the contrary notwithstanding: Provided, however, That any provincial board, city or municipal council or board, or other competent authority may exact and collect such reasonable and equitable toll fees for the use of such bridges and ferries, within their respective jurisdiction, as may be authorized and approved by the Secretary of Public Works and Communications, and also for the use of such public roads, as may be authorized by the President of the Philippines upon the recommendation of the Secretary of Public Works and Communications, but in none of these cases, shall any toll fees be charged or collected until and unless the approved schedule of tolls shall have been posted legibly in a conspicuous place at such toll station."

7. Proper laws applicable in the present case

Motor vehicle registration fees were matters originally governed by the Revised Motor Vehicle Law (Act 3992 [1932] as amended by Commonwealth Act 123 and RA 587 and 1603). Today, the matter is governed by RA 4136 [1964] otherwise known as the Land Transportation Code, (as amended by RA 5715 and 6374, PD 382, 843, 896, 1057 and BP 43, 74 and 398).

8. Section 73 of CA 123 unrevised by RA 587 and 1603; Disposal of Moneys collected

Section 73 of Commonwealth Act 123 (which amended Sec. 73 of Act 3992 and remained unrevised by RA 587 and 1603) states that, on Disposal of moneys collected, "twenty per centum of the money collected under the provisions of this Act shall accrue to the road and bridge funds of the different provinces and chartered cities in proportion to the cedula sales during the next previous year and the remaining eighty per centum shall be deposited in the Philippine Treasury to create a special fund for the construction and maintenance of national and provincial roads and bridges, as well as the streets and bridges in the chartered cities to be alloted by the Secretary of Public Works and Communications for projects recommended by the Director of Public Works in the different provinces and chartered cities . . ."

9. Section 61 of the Land Transportation and Traffic Code; Disposal of monies collected

Presently, Section 61 of the Land Transportation and Traffic Code provides, on the disposal of monies collected, that "Monies collected under the provisions of this Act shall be deposited in a special trust account in the National Treasury to constitute the Highway Special Fund, which shall be apportioned and expended in accordance with the provisions of the 'Philippine Highway Act of 1935.' Provided, however, That the amount necessary to maintain and equip the Land Transportation Commission but not to exceed twenty per cent of the total collection during one year, shall be set aside for the purpose. (As amended by RA 6374, approved August 6 1971)."

10. Legislative intent as to the payment of registration fees

The legislative intent and purpose behind the law requiring owners of vehicles to pay for their registration is mainly to raise funds for the construction and maintenance of highways and to a much lesser degree, pay for the operating expenses of the administering agency.

11. Presumption of fees distinct from other taxes

The Philippine Rabbit case mentions a presumption arising from the use of the term "fees" which appears to have been favored by the legislature to distinguish fees from other taxes such as those mentioned in Section 13 of RA 4136, which provides that provides that "No original registration of motor vehicles subject to payment of taxes, customs duties or other charges shall be accepted unless proof of payment of the taxes due thereon has been presented to the Commission" refer to taxes other than those imposed on the registration, operation or ownership of a motor vehicle (Sec. 59, b, RA 4136, as amended).

12. Fees may be properly regarded as taxes even though they also serve as an Instrument of regulation

It is possible for an exaction to be both tax and regulation. License fees are often looked to as a source of revenue as well as a means of regulation. (Sonzinsky v. U.S., 300 U.S. 506) This is true, for example, of automobile license fees. In such case, the fees may properly be regarded as taxes even though they also serve as an instrument of regulation. If the purpose is primarily revenue, or if revenue is at least one of the real and substantial purposes, then the exaction is properly called a tax. (1955 CCH Fed. Tax Course, Par. 3101, citing Cooley on Taxation (2nd Ed.) 592, 593; Calalang v. Lorenzo, 97 Phil. 212; Lutz v. Araneta, 98 Phil. 198.) These exactions are sometimes called regulatory taxes. (See Secs. 4701, 4711, 4741, 4801, 4811, 4851, and 4881, U.S. Internal Revenue Code of 1954, which classify taxes on tobacco and alcohol as regulatory taxes.)" (Umali, Reviewer in Taxation, 1980, pp. 12-13, citing Cooley on Taxation, 2nd Edition, 591-593). Indeed, taxation may be made the implement of the state's police power (Lutz v. Araneta, 98 Phil. 148).

13. Original intention as to vehicle registration fees; Present purpose

Vehicle registration fees were originally simple exactions intended only for regulatory purposes in the exercise of the State's police powers. Over the years, however, as vehicular traffic exploded in number and motor vehicles became absolute necessities without which modern life as we know it would stand still, Congress found the registration of vehicles a very convenient way of raising much needed revenues. Without changing the earlier denomination of registration payments as "fees," their nature has become that of "taxes." Motor vehicle registration fees as at present exacted pursuant to the Land Transportation and Traffic Code are actually taxes intended for additional revenues of government even if one fifth or less of the amount collected is set aside for the operating expenses of the agency administering the program.

14. When exaction is for revenue, it is a tax; Law need not be explicit

If the purpose is primarily revenue, or if revenue is, at least, one of the real and substantial purposes, then the exaction is properly called a tax (Umali, id.) Such is the case of motor vehicle registration fees. The conclusions become inescapable in view of Section 70(b) of RA 587 quoted in the Calalang case. The same provision appears as Section 59(b) in the Land Transportation Code. It is patent therefrom that the legislators had in mind a regulatory tax as the law refers to the imposition on the registration, operation or ownership of a motor vehicle as a "tax or fee." Though nowhere in RA 4136 does the law specifically state that the imposition is a tax, Section 59(b) speaks of "taxes or fees . . . for the registration or operation or on the ownership of any motor vehicle, or for the exercise of the profession of chauffeur . . ." making the intent to impose a tax more apparent. Thus, even RA 5448 speak of an "additional tax," where the law could have referred to an original tax and not one in addition to the tax already imposed on the registration, operation, or ownership of a motor vehicle under RA 4136. Simply put, if the exaction under RA 4136 were merely a regulatory fee, the imposition in RA 5448 need not be an "additional" tax. RA 4136 also speaks of other "fees" such as the special permit fees for certain types of motor vehicles (Sec. 10) and additional fees for change of registration (Sec. 11). These are not to be understood as taxes because such fees are very minimal to be revenue-raising. Thus, they are not mentioned by Sec. 59(b) of the Code as taxes like the motor vehicle registration fee and chauffeurs' license fee. Such fees are to go into the expenditures of the Land Transportation Commission as provided for in the last proviso of sec. 61.

15. Section 24 of RA 5431 repealed all earlier tax exemption of corporate taxpayers found in legislative franchises

Section 24 of RA 5431, dated 27 June 1968, repealed all earlier tax exemptions of corporate taxpayers found in legislative franchises. An examination of Section 24 of the Tax Code as amended shows clearly that the law intended all corporate taxpayers to pay income tax as provided by the statute. There can be no doubt as to the power of Congress to repeal the earlier exemption it granted. Article XIV, Section 8 of the 1935 Constitution and Article XIV, Section 5 of the Constitution as amended in 1973 expressly provide that no franchise shall be granted to any individual, firm, or corporation except under the condition that it shall be subject to amendment, alteration, or repeal by the legislature when the public interest so requires. There is no question as to the public interest involved. The country needs increased revenues. The repealing clause is clear and unambiguous. There is a listing of entities entitled to tax exemption (See Radio Communications of the Philippines Inc. v. Court of Tax Appeals, et al. [GR 60547, 11 July 1985]).

16. Registration fees between 27 June 1968 and 9 April 1979 correctly imposed

Any registration fees collected between 27 June 1968 and 9 April 1979, were correctly imposed because the tax exemption in the franchise of PAL was repealed during the period. However, an amended franchise was given to PAL in 1979. Section 13 of PD 1590 now provides: "In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the lifetime of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax: (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the Internal Revenue Code; or (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantees from all sources, without distinction as to transport or nontransport corporations; provided that with respect to international airtransport service, only the gross passengers, mail, and freight revenues from its outgoing flights shall be subject to this law."

"The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license and other fees and charges of any kind, nature or description imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following: xxx (5) All taxes, fees and other charges on the registration, licensing, acquisition, and transfer of aircraft, equipment, motor vehicles, and all other personal or real property of the grantee." (PD 1590, 75 OG No. 15, 3259, April 9, 1979).

17. PAL's current franchise clear and specific; PAL is tax exempt

PAL's current franchise is clear and specific. It has removed the ambiguity found in the earlier law. PAL is now exempt from the payment of any tax, fee, or other charge on the registration and licensing of motor vehicles. Such payments are already included in the basic tax or franchise tax provided in Subsections (a) and (b) of Section 13, PD 1590 and may no longer be exacted.

[38]

Progressive Development Corp. vs. QC [G.R. No. 36081. April 24, 1989.]
Third Division, Feliciano (J): 4 concurring

Facts: On 24 December 1969, the City Council of Quezon City adopted Ordinance 7997, Series of 1969, otherwise known as the Market Code of Quezon City, Section 3 of which provided "privately owned and operated public markets shall submit monthly to the Treasurer's Office, a certified list of stallholders showing the amount of stall fees or rentals paid daily by each stallholder, and shall pay 10% of the gross receipts from stall rentals to the City, as supervision fee. Failure to submit said list and to pay the corresponding amount within the period herein prescribed shall subject the operator to the penalties provided in this Code including revocation of permit to operate." The Market Code was thereafter amended by Ordinance 9236, Series of 1972, on 23 March 1972, which imposed a 5% tax on gross receipts on rentals or lease of space in privately-owned public markets in Quezon City. For the effective implementation of the Ordinance, it ordered owners of privately owned public markets shall submit . . . a monthly certified list of stallholders of lessees of space in their markets showing the name of stallholder or lessee; the amount of rental; and the period of lease, indicating therein whether the same is on a daily, monthly or yearly basis. The ordinance provides that in case of consistent failure to pay the percentage tax for 3 consecutive months, the City shall revoke the permit of the privately-owned market to operate and/or take any other appropriate action or remedy allowed by law for the collection of the overdue percentage tax and surcharge.

On 15 July 1972, petitioner Progressive Development Corporation, owner and operator of a public market known as the "Farmers Market & Shopping Center" filed a Petition for Prohibition with Preliminary Injunction against the city before the then CFI Rizal on the ground that the supervision fee or license tax imposed by the ordinances is in reality a tax on income which respondent may not impose, the same being expressly prohibited by RA 2264, as amended. On 21 October 1972, the lower court dismissed the petition, ruling that the questioned imposition is not a tax on income, but rather a privilege tax or license fee which local governments are empowered to impose and collect. Having failed to obtain reconsideration of said decision, the company filed the petition for review.

The Supreme Court affirmed the Decision of the then CFI Rizal, Quezon City, Branch 18, and denied the petition for lack of merit.

1. Section 12, Article III of RA 537 grants the city council power to tax, not merely regulate or fix license fees

Section 12, Article III of Republic Act No. 537, otherwise known as the Revised Charter of Quezon City, authorizes the City Council: "To provide for the levy and collection of taxes and other city revenues and apply the same to the payment of city expenses in accordance with appropriations. To tax, fix the license fee, and regulate the business of the following: preparation and sale of meat, poultry, fish, game, butter, cheese, lard, vegetables, bread and other provisions." The scope of legislative authority conferred upon the Quezon City Council in respect of businesses is comprehensive: the grant of authority is not only" [to] regulate" and "fix the license fee," but also "to tax."

2. Section 2 of RA 2264; Authority of cities and municipalities to impose municipal license taxes

Section 2 of Republic Act No. 2264, as amended, otherwise known as the Local Autonomy Act, provides that: "Any provision of law to the contrary notwithstanding, all chartered cities, municipalities and municipal districts shall have authority to impose municipal license taxes or fees upon persons engaged in any occupation or business, or exercising privileges in chartered cities, municipalities or municipal districts by requiring them to secure licenses at rates fixed by the municipal board or city council of the city, the municipal council of the municipality, or the municipal district council of the municipal district; to collect fees and charges for service rendered by the city, municipality or municipal district; to regulate and impose reasonable fees for services rendered in connection with any business, profession or occupation being conducted within the city, municipality or municipal district and otherwise to levy for public purposes just and uniform taxes licenses or fees." TA 2264 confers upon local governments broad taxing authority extending to almost "everything, excepting those which are mentioned therein," provided that the tax levied is "for public purposes, just and uniform," does not transgress any constitutional provision and is not repugnant to a controlling statute.

3. Both city charter and Local Autonomy Act authorize city to fix license fees

Both the Local Autonomy Act and the Charter of the city clearly show that the city is authorized to fix the license fee collectible from and regulate the business of the company as operator of a privately-owned public market.

4. Tax construed

The term "tax" frequently applies to all kinds of exactions of monies which become public funds. It is often loosely used to include levies for revenue as well as levies for regulatory purposes such that license fees are frequently called taxes although license fee is a legal concept distinguishable from tax: the former is imposed in the exercise of police power primarily for purposes of regulation, while the latter is imposed under the taxing power primarily for purposes of raising revenues. Thus, if the generating of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that incidentally revenue is also obtained does not make the imposition a tax.

5. License fee construed

To be considered a license fee, the imposition questioned must relate to an occupation or activity that so engages the public interest in health, morals, safety and development as to require regulation for the protection and promotion of such public interest; the imposition must also bear a reasonable relation to the probable expenses of regulation, taking into account not only the costs of direct regulation but also its incidental consequences as well. When an activity, occupation or profession is of such a character that inspection or supervision by public officials is reasonably necessary for the safeguarding and furtherance of public health, morals and safety, or the general welfare, the legislature may provide that such inspection or supervision or other form of regulation shall be carried out at the expense of the persons engaged in such occupation or performing such activity, and that no one shall engage in the occupation or carry out the activity until a fee or charge sufficient to cover the cost of the inspection or supervision has been paid. Accordingly, a charge of a fixed sum which bears no relation at all to the cost of inspection and regulation may be held to be a tax rather than an exercise of the police power.

6. Resolution creating the Farmers Market and Shopping Center; Obligation of the company

The "Farmers Market & Shopping Center" was built by virtue of Resolution 7350 passed on 30 January 1967 by city's local legislative body authorizing petitioner to establish and operate a market with a permit to sell fresh meat, fish, poultry and other foodstuffs. The same resolution imposed upon the company, as a condition for continuous operation, the obligation to "abide by and comply with the ordinances, rules and regulations prescribed for the establishment, operation and maintenance of markets in Quezon City."

7. Operation of Farmers Market equivalent to those of a government-owned market

The "Farmers' Market and Shopping Center" being a public market in the sense of a market open to and inviting the patronage of the general public, even though privately owned, petitioner's operation thereof required a license issued by the City, the issuance of which, applying the standards set forth above, was done principally in the exercise of the city's police power. The operation of a privately owned market is equivalent to or quite the same as the operation of a government-owned market; both are established for the rendition of service to the general public, which warrants close supervision and control by the city, for the protection of the health of the public by insuring, e.g., the maintenance of sanitary and hygienic conditions in the market, compliance of all food stuffs sold therein with applicable food and drug and related standards, for the prevention of fraud and imposition upon the buying public, and so forth.

8. 5% tax not a tax income, nor a city income tax, but a license tax or fee for the regulation of business

The 5% tax imposed in Ordinance 9236 constitutes, not a tax on income, not a city income tax (as distinguished from the national income tax imposed by the National Internal Revenue Code) within the meaning of Section 2 (g) of the Local Autonomy Act, but rather a license tax or fee for the regulation of the business in which the company is engaged.

9. Rates presumed to be reasonable

While it is true that the amount imposed by the questioned ordinances may be considered in determining whether the exaction is really one for revenue or prohibition, instead of one of regulation under the police power, it nevertheless will be presumed to be reasonable. Local governments are allowed wide discretion in determining the rates of imposable license fees even in cases of purely police power measures, in the absence of proof as to particular municipal conditions and the nature of the business being taxed as well as other detailed factors relevant to the issue of arbitrariness or unreasonableness of the questioned rates.

10. Ordinance carries presumption of validity

An ordinance carries with it the presumption of validity. The question of reasonableness though is open to judicial inquiry. Much should be left thus to the discretion of municipal authorities Courts will go slow in writing off an ordinance as unreasonable unless the amount is so excessive as to be prohibitory, arbitrary, unreasonable, oppressive, or confiscatory. A rule which has gained acceptance is that factors relevant to such an inquiry are the municipal conditions as a whole and the nature of the business made subject to imposition. The company has not shown that the rate of the gross receipts tax is so unreasonably large and excessive and so grossly disproportionate to the costs of the regulatory service being performed by the city as to compel the Court to characterize the imposition as a revenue measure exclusively. Still it must be emphasized that the authority conferred upon the City Council is not merely "to regulate" but also embraces the power "to tax" the company's business.

11. Gross amount of stall rentals as basis for the computation of fees justified

The gross receipts from stall rentals have been used only as a basis for computing the fees or taxes due the city to cover the latter's administrative expenses, i.e., for regulation and supervision of the sale of foodstuffs to the public. The use of the gross amount of stall rentals as basis for determining the collectible amount of license tax, does not by itself convert or render the license tax into a prohibited city tax on income. Neither has it been suggested that such basis has no reasonable relationship to the probable costs of regulation and supervision of the company's kind of business. For, ordinarily, the higher the amount of stall rentals, the higher the aggregate volume of foodstuffs and related items sold in petitioner's privately owned market; and the higher the volume of goods sold in such private market, the greater the extent and frequency of inspection and supervision that may be reasonably required in the interest of the buying public.

12. Statutory grant for local government unit to lawfully impose a gross receipts tax

As a general rule, there must be a statutory grant for a local government unit to impose lawfully a gross receipts tax, that unit not having the inherent power of taxation. The rule, however, finds no application in the present case where what is involved is an exercise of, principally, the regulatory power of the city and where that regulatory power is expressly accompanied by the taxing power.

[39]

Punsalan v. Municipal Board of Manila [GR L-4817, 26 May 1954]
En Banc, Reyes (p): 7 concur

Facts: Ordinance 3398 was approved by the municipal board of the City of Manila on 25 July 1950. It imposes a municipal occupation tax on persons exercising various professions in the city and penalizes non-payment of the tax by a fine of not more than P200 or by imprisonment of not more than 6 months, or by both such fine and imprisonment in the discretion of the court. The ordinance was enacted pursuant to paragraph (1) of section 18 of the Revised Charter of the City of Manila (as amended by RA 409), which empowers the Municipal Board of said city to impose a municipal occupation tax, not to exceed P50 per annum, on persons engaged in the various professions, such as those were the
petitioners belong.

The petitioners (2 lawyers, a medical practitioner, a public accountant, a dental surgeon and a pharmacist) filed a suit in the CFI Manila in their own behalf and in behalf of other professionals practicing in the City of Manila, calling for the annulment of Ordinance 3398 of the City of Manila together with the provision of the Manila charter authorizing it and the refund of taxes collected under the ordinance but paid under protest (as they have paid their occupation tax under Section 201 of the NIRC). The lower court upheld the validity of the provision of law authorizing the enactment of the ordinance but declared the ordinance itself illegal and void on the ground that the penalty therein provided for non-payment of the tax was not legally authorized. Both parties appealed to the Supreme Court.

The Supreme Court reversed the appealed judgment insofar as it declares Ordinance 3398 illegal and void and affirmed insofar as it holds the validity of the provision of the Manila charter authorizing it.; with costs against plaintiffs-appellants.

1. **Enactment of ordinance with authority of law**

The last paragraph (kk) of the very section that authorizes the enactment of this tax ordinance (section 18 of the Manila Charter) in express terms also empowers the Municipal Board "to fix penalties for the violation of ordinances which shall not exceed to (sic) two hundred pesos fine or six months' imprisonment, or both such fine and imprisonment, for a single offense."

2. **Separation of Powers; Imposition of municipal occupation tax discretion of legislature, not tantamount to class legislation**

It is for the courts to judge what particular cities or municipalities should be empowered to impose occupation taxes in addition to those imposed by the National Government. That matter is peculiarly within the domain of the political departments and the courts would do well not to encroach upon it. The Legislature may, in its discretion, select what occupations shall be taxed, and in the exercise of that discretion it may tax all, or it may select for taxation certain classes and leave the others untaxed. Manila, as the seat of the National Government and with a population and volume of trade many times that of any other Philippine city or municipality, offers a more lucrative field for the practice of the professions, so that it is but fair that the professionals in Manila be made to pay a higher occupation tax than their brethren in the provinces.

3. **Ordinance not unjust or oppressive, no distinction involving professionals.**

The ordinance imposes the tax upon every person "exercising" or "pursuing" any one of the occupations named, but does not say that such person must have his office in Manila. There is no distinction found in the ordinance between professionals having offices in manila and outsiders who have no offices in the city but practice their profession therein. What constitutes exercise or pursuit of a profession in the city is a matter of judicial determination.

4. **Tax imposed by state and city not double taxation**

Where one tax is imposed by the state and the other is imposed by the city, the argument against double taxation may not be invoked, as there is nothing inherently obnoxious in the requirement that license fees or taxes be exacted with respect to the same occupation, calling or activity by both the state and the political subdivisions thereof.

[40]

Reagan vs. CIR [G.R. No. L-26379. December 27, 1969.]
En Banc, Fernando (J): 7 concurring, 1 concurring in result, 1 took no part

Facts: William C. Reagan, a citizen of the United States and an employee of Bendix Badio, Division of Bendix Aviation Corporation, which provides technical assistance to the United States Air Force (USAF), was assigned at Clark Air Base, Philippines, on 7 July 1959. 9 months thereafter and before his tour of duty expired, Reagan imported on 22 April 1960 a tax-free 1960 Cadillac car with accessories valued at $6,443.83, including freight, insurance and other charges." On 11 July 1960, Reagan requested the Base Commander, Clark Air Base, for a permit to sell the car, which was granted provided that the sale was made to a member of the USAF or a citizen of the United States employed in the US military bases in the Philippines. On the same date, Reagan sold his car for $6,600.00 to a certain Willie Johnson, Jr. (Private first class), United States Marine Corps, Sangley Point, Cavite, Philippines, as shown by a Bill of Sale executed at Clark Air Base. On the same date, Pfc. Willie (William) Johnson, Jr. sold the car to Fred Meneses for P32,000.00 as evidenced by a deed of sale executed in Manila. As a result of the transaction thus made, the Commissioner of Internal Revenue, after deducting the landed cost of the car as well as the personal exemption to which Reagan was entitled, fixed as his net taxable income arising from such transaction the amount of P17,912.34, rendering him liable for income tax in the sum of P2,979.00. After paying the sum, he sought a refund from the Commissioner claiming that he was exempt, but pending action on his request for refund, he filed the case with the Court of Tax Appeals seeking recovery of the sum of P2,979.00 plus the legal rate of interest.

After discussing the legal issues raised, primarily the contention that the Clark Air Base "in legal contemplation, is a base outside the Philippines" the sale therefore having taken place on "foreign soil," the Court of Tax Appeals found nothing objectionable in the assessment and thereafter the payment of P2,979.00 as income tax and denied the refund on the same. Hence, the appeal.

The Supreme Court affirmed the decision of the Court of Tax Appeals of 12 May 1966 denying the refund of P2,979.00 as the income tax paid by Reagan; with costs against the latter.

1. The Philippines is independent and sovereign, its authority exercise over its entire domain

The Philippines being independent and sovereign, its authority may be exercised over its entire domain. There is no portion there of that is beyond its power. Within its limits, its decrees are supreme, its commands paramount. Its laws govern therein, and everyone to whom it applies must submit to its terms. That is the extent of its jurisdiction, both territorial and personal. Necessarily, likewise, it has to be exclusive. If it were not thus, there is a diminution of its sovereignty.

2. State, by its consent, may submit to a restriction of its sovereign rights; Auto-Limitation

Any state may, by its consent, express or implied, submit to a restriction of its sovereign rights. There may thus be a curtailment of what otherwise is a power plenary in character. That is the concept of sovereignty as auto-limitation, which, in the succinct language of Jellinek, "is the property of a state-force due to which it has the exclusive capacity of legal self-determination and self-restriction." A state then, if it chooses to, may refrain from the exercise of what otherwise is illimitable competence.

3. When another power allowed to exercise of jurisdictional right over certain territory, such areas do not become impressed with alien character; US Bases not foreign territory

By auto-limitation, its laws may as to some persons found within its territory no longer control. It is not precluded from allowing another power to participate in the exercise of jurisdictional right over certain portions of its territory. If it does so, it by no means follows that such areas become impressed with an alien character. They retain their status as native soil. They are still subject to its authority. Its jurisdiction may be diminished, but it does not disappear. So it is with the bases under lease to the American armed forces by virtue of the military bases agreement of 1947. They are not and cannot be foreign territory.

4. US Chief Justice Marshall in Schooner Exchange vs. McFaddon (1812); Limitations upon a State should be traced up to the consent of the nation itself

In Schooner Exchange v. M'Faddon, an 1812 decision, it was announced that "the jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. xxx All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source."

5. US Chief Justice Teney, Justice Brewer; Everyone within territorial domain of state subject to its commands

Chief Justice Taney, in an 1857 decision, affirmed the fundamental principle of everyone within the territorial domain of a state being subject to its commands: "For undoubtedly every person who is found within the limits of a government, whether the temporary purposes or as a resident, is bound by its laws." It is no exaggeration then for Justice Brewer to stress that the United States government "is one having jurisdiction over every foot of soil within its territory, and acting directly upon each [individual found therein]; . . ."

6. US Justice Van Devanter: Scope of territory

Justice Van Devanter announced thus: "It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control the ports, harbors, bays, and other inclosed arms of the sea along its coast, and a marginal belt of the sea extending from the coast line outward a marine league, or 3 geographic miles." He could cite moreover, in addition to many American decisions, such eminent treatise-writers as Kent, Moore, Hyde, Wilson, Westlake, Wheaton and Oppenheim.

7. Hyde's International Law: Embassy premises outside the territorial domain of host state

The eminent commentator Hyde in his three-volume work on International Law, as interpreted and applied by the United States, made clear that not even the embassy premises of a foreign power are to be considered outside the territorial domain of the host state. Thus: "The ground occupied by an embassy is not in fact the territory of the foreign State to which the premises belong through possession or ownership. The lawfulness or unlawfulness of acts there committed is determined by the territorial sovereign. If an attach commits an offense within the precincts of an embassy, his immunity from prosecution is not because he has not violated the local law, but rather for the reason that the individual is exempt from prosecution. If a person not so exempt, or whose immunity is waived, similarly commits a crime therein, the territorial sovereign, if it secures custody of the offender, may subject him to prosecution, even though its criminal code normally does not contemplate the punishment of one who commits an offense outside of the national domain. It is not believed, therefore, that an ambassador himself possesses the right to exercise jurisdiction, contrary to the will of the State of his sojourn, even within his embassy with respect to acts there committed. Nor is there apparent at the present time any tendency on the part of States to acquiesce in his exercise of it."

8. Saura Import and Export vs. Meer

In Saura Import and Export Co. v. Meer, the Court affirmed a decision rendered about seven months previously, holding liable as an importer, within the contemplation of the National Internal Revenue Code provision, the trading firm that purchased army goods from a United States government agency in the Philippines. If it were not thus, tax evasion would have been facilitated. The United States forces that brought in such equipment later disposed of as surplus, when no longer needed for military purposes, was beyond the reach of Philippine tax statutes.

9. General expressions in opinions to be taken in connection in which those expressions are used

"It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case. they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. (Chief Justice Marshall)" Justice Tuason, who spoke for the Court in the case of Saura Import and Export vs. Meer, proceeded to discuss the role of the American military contingent in the Philippines as a belligerent occupant, instead of merely adhering to the . In the course of such a dissertion, drawing on his well-known gift for rhetoric and cognizant that he was making an as if statement, he did say: "While in army bases or installations within the Philippines those goods were in contemplation of law on foreign soil." It was clearly obiter not being necessary for the resolution of the issue before the Court. It was an opinion "uttered by the way."

10. Utterance cited in Co Po vs. CIR mere embellishment, a means to stigmatize taxpayer's attempt to escape obligation to pay tax; US Bases not foreign territories both in political and geographical sense

The fact that such utterance of Justice Tuason was cited in Co Po v. Collector of Internal Revenue (1962) put a different complexion on the matter. Again, it was by way of pure embellishment to reach the conclusion that it was the purchaser of army goods, this time from military bases, that must respond for the advance sales taxes as importer. Again, the purpose that animated the reiteration of such a view was clearly to emphasize that through the employment of such a fiction, tax evasion is precluded. What is more, how far divorced from the truth was such statement was emphasized by Justice Barrera, who penned the Co Po opinion, thus: "It is true that the areas covered by the United States Military Bases are not foreign territories both in the political and geographical sense." The utterance need not have been ignored altogether afterwards. It could be utilized again, as it undoubtedly was, especially so for the purpose intended, namely to stigmatize as without support in law any attempt on the part of a taxpayer to escape an obligation incumbent upon him. So it was quoted with that end in view in the Co Po case. It certainly does not justify any effort to render futile the collection of a tax legally due.

11. Uses of Fictio Juris in the science of law

The statement on its face is a legal fiction. This is not to discount the uses of a fictio juris in the science of the law. It was Cardozo who pointed out the value of fictio juris value as a device "to advance the ends of justice" although at times it could be "clumsy" and even "offensive". Certainly, then, while far from objectionable as thus enunciated, the observation of Justice Tuason could be misused or misconstrued in a clumsy manner to reach an offensive result. Properly used, a legal fiction could be relied upon by the law, as Frankfurter noted, in the pursuit of legitimate ends. To impute then to the statement of Justice Tuason the meaning that Reagan would fasten on it is, to paraphrase Frankfurter, to be guilty of succumbing to the vice of literalness.

12. People vs. Acierto

In People v. Acierto, Justice Tuason set forth categorically that "by the [Military Bases] Agreement, it should be noted, the Philippine Government merely consents that the United States exercise jurisdiction in certain cases. The consent was given purely as a matter of comity, courtesy, or expediency over the bases as part of the Philippine territory or divested itself completely of jurisdiction over offenses committed therein." He did stress further the full extent of our territorial jurisdiction in words that do not admit of doubt. Thus: "This provision is not and can not on principle or authority be construed as a limitation upon the rights of the Philippine Government. If anything, it is an emphatic recognition and reaffirmation of Philippine sovereignty over the bases and of the truth that all jurisdictional rights granted to the United States and not exercised by the latter are reserved by the Philippines for itself."

13. Sale of automobile within Philippine territorial jurisdiction to tax

Reagan was liable for the income tax arising from a sale of his automobile in the Clark Field Air Base, which clearly is and cannot otherwise be other than, within Philippine territorial jurisdiction to tax.

14. Tax exemption need to be proven conclusive by one alleging it

The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. Reagan had not done so, and cannot do so.

[41]

Republic vs. Mambulao Lumber [G.R. No. L-17725. February 28, 1962.]
En Banc, Barrera (J): 10 concurring

Facts: In a case filed by the Republic against the Mambulao Lumber Company before the CFI Manila (Civil Case 34100), the company admitted that they have a liability of P587.37 in favor of the government for forest charges covering the period from 10 September 1952 to 24 May 1953, which liability is covered by a bond executed by General Insurance & Surety Corporation for Mambulao Lumber Company, jointly and severally in character, on 29 July 1953, in favor of the Republic. It also admitted liability in the sum of P286.70 in favor of the Republic, covered by a bond dated 27 November 1953; and another amount of P3,928.30, covered by a bond dated 20 July 1954. These three liabilities aggregate to P4,802.37. As a defense, the company claimed to have paid to the Republic of the Philippines P8,200.52 for "reforestation charges" for the period commencing from 21 July 1948 to 29 December 1956; and another P927.08 as "reforestation charges" for the period commencing from 30 April 1947 to 24 June 1948. These reforestation charges were paid to the Republic in pursuance of Section 1 of RA 115 which provides that there shall be collected, in addition to the regular forest charges provided under Section 264 of Commonwealth Act 466 known as the National Internal Revenue Code, the amount of P0.50 on each cubic meter of timber cut out and removed from any public forest for commercial purposes. The amount collected shall be expended by the director of forestry, with the approval of the secretary of agriculture and commerce, for reforestation and afforestation of water sheds, denuded areas and other public forest lands, which upon investigation, are found needing reforestation or afforestation. The total amount of the reforestation charges paid by Mambulao Lumber Company is P9,127.50, and it is its contention since the Republic has not made use of those reforestation charges collected from it for reforesting the denuded area of the land covered by its license, the Republic should refund said amount, or, if it cannot be refunded, at least it should be compensated with what the company owed the Republic for reforestation charges. In line with this thought, the company wrote the Director of Forestry, on 21 February 1957, a letter where it requested that its account with the bureau be credited with all the reforestation charges that it have imposed on them from 1 July 1947 to 14 June 1956, amounting to around P2,988.62. " This letter was answered by the Director of Forestry on 12 March 1957, in which the Director quoted an opinion of the Secretary of Justice, to the effect that he has no discretion to extend the time for paying the reforestation charges and also explained why not all denuded areas are being reforested. The trial court ordered the company to pay the Republic the sum of P4,802.37 with 6% interest thereon from the date of the filing of the complaint until fully paid, plus costs. The lumber company interposed the appeal.

The Supreme Court affirmed the judgment of the trial court appealed from in all respects, with costs against the lumber company.

1. Section 1 of RA 115

Section 1 provides that "there shall be collected, in addition to the regular forest charges provided for under section 264 of Commonwealth Act 466, known as the National Internal Revenue Code, the amount of 50 centavos on each cubic meter of timber for the first and second groups and 30 centavos for the third and fourth groups cut out and removed from any public forest for commercial purposes. The amount collected shall be expended by the Director of Forestry, with the approval of the Secretary of Agriculture and Natural Resources (Commerce), for reforestation and afforestation of watersheds, denuded areas and cogon and open lands within forest reserves, communal forest, national parks, timber lands, sand dunes, and other public forest lands, which, upon investigation, are found needing reforestation or afforestation, or needing to be under forest cover for the growing of economic trees for timber, tannin, oils, gums, and other minor forest products or medicinal plants, or for watersheds protection, or for prevention of erosion and floods and preparation of necessary plans and estimate of costs and for reconnaissance survey of public forest lands and for such other expenses as may be deemed necessary for the proper carrying out of the purposes of this Act." "All revenues collected by virtue of, and pursuant to, the provisions of the preceding paragraph and from the sale of barks, medicinal plants and other products derived from plantations as herein provided shall constitute a fund to be known as Reforestation Fund, to be expended exclusively in carrying out the purposes provided for under this Act. All provincial or city treasurers and their deputies shall act as agents of the Director of Forestry for the collection of the revenues or incomes derived from the provisions of this Act."

2. Reforestation Fund; Law does not require fund to be used exclusively for reforestation of area covered by the license of the concessionaire, and the law does not provide that if unused, it should be refunded

Under this provision, it seems quite clear that the amount collected as reforestation charges from a timber licensee or concessionaire shall constitute a fund to be known as the Reforestation Fund, and that the same shall be expended by the Director of Forestry, with the approval of the Secretary of Agriculture and Natural Resources for the reforestation or afforestation, among others, of denuded areas which, upon investigation, are found to be needing reforestation or afforestation. Note that there is nothing in the law which requires that the amount collected as reforestation charges should be used exclusively for the reforestation of the area covered by the license of a licensee or concessionaire, and that if not so used, the same should be refunded to him. The licensee's area may or may not be reforested at all, depending on whether the investigation thereof by the Director of Forestry shows that said area needs reforestation.

3. Amount paid is in nature of tax expended for the purpose of reforestation or afforestation

The amount paid by a licensee as reforestation charges is in the nature of a tax which forms a part of the Reforestation Fund, payable by him irrespective of whether the area covered by his license is reforested or not. Said fund, as the law expressly provides, shall be expended in carrying out the purposes provided for thereunder, namely, the reforestation or afforestation, among others, of denuded areas needing reforestation or afforestation.

4. Law on compensation does not apply

Under Article 1278, NCC, compensation should take place when two persons in their own right are creditors and debtors of each other. With respect to the forest charges which the company has paid to the government, they are in the coffers of the government as taxes collected, and the government does not owe anything to the company. The Republic and the company are not creditors and debtors of each other, because compensation refers to mutual debts. In short, the law on compensation is inapplicable and the sum of

P9,127.50 paid by the company as reforestation charges may not be compensated for its indebtedness to the Government in the sum of P4,802.37 as forest charges.

5. Internal Revenue Taxes cannot be the subject of set-off or compensation

Internal revenue taxes, such as forest charges, can not be the subject of set-off or compensation. A claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off under the statutes of set-off, which are construed uniformly, in the light of public policy, to exclude the remedy in an action or any indebtedness of the state or municipality to one who is liable to the state or municipality for taxes. Neither are they a proper subject of recoupment since they do not arise out of the contract or transaction sued on (80 C.J.S. 73-74.)."

6. Rationale for the rule that tax cannot be subject of set-off: Tax not in the nature of contracts

Based on grounds of public policy, no set-off is admissible against demands for taxes levied for general or local governmental purposes. The reason on which the general rule is based, is that taxes are not in the nature of contracts between the party and party but grow out of a duty to, and are the positive acts of the government, to the making and enforcing of which, the personal consent of individual taxpayers is not required. If the taxpayer can properly refuse to pay his tax when called upon by the Collector, because he has a claim against the governmental body which is not included in the tax levy, it is plain that some legitimate and necessary expenditure must be curtailed. If the taxpayer's claim is disputed, the collection of the tax must await and abide the result of a lawsuit, and meanwhile the financial affairs of the government will be thrown into great confusion." (47 Am. Jur. 766-767.)

[42]

Republic vs. Vda. De Fernandez [G.R. No. L-9141. September 25, 1956.]
En Banc, Labrador (J): 7 concurring

Facts: Olimpio Fernandez and his wife Angelina Oasan had a net worth of P8,600 on 8 December 1941. During the Japanese occupation the spouses acquired several real properties, and at the time of his death on 11 February 1945 he had a net worth of P31,489. The Collector of Internal Revenue assessed a war profits tax (pursuant to RA 55, War Profits Tax Law) on the estate of the deceased at P7,614.60, which his administratrix refused to pay. The case was brought to the Court of Tax Appeals which sustained the validity and legality of the assessment. The administratrix has appealed the decision to the Supreme Court.

The Supreme Court affirmed the judgment appealed, with costs against the appellants, Angelina Oasan Vda de Fernandez, Priscilla O. Fernandez, and Estela O. Fernandez..

1. Nature of the tax

The War Profit Tax, insofar as applicable to the estate of the deceased Olimpio Fernandez, is both a property tax and a tax on income. It is a property tax in relation to the properties that Fernandez had in December 1941; and it is an income tax in relation to the properties which he purchased during the Japanese occupation.

2. Prohibition on ex-post facto laws applies only to criminal or penal matters

The prohibition against ex post facto laws applies only to criminal or penal matters, and not to laws which concern civil matters or proceedings generally, or which affect or regulate civil or private rights (Ex parte Garland, 18 Law Ed., 366; 16 C. J. S., 889-891). The term ex post facto, that in their scope and purpose these provisions were confined to laws respecting criminal punishments, and had no relation whatever to retrospective legislation of any other description.

3. Retrospective law does not conflict with Constitution unless provisions are obnoxious

Retrospective laws, when not of a criminal nature, do not come in conflict with the national Constitution, unless obnoxious to its provisions on other grounds than their respective character.

4. Jurisprudence: Constitutionality of retrospective laws

The Court has applied the above principle in the cases of Mekin vs. Wolf, 2 Phil. 74 and Ongsiako vs. Gamboa, 47 Off. Gaz., No. 11, 5613, 5616.

5. Retroactive application of revenue acts is not a denial of due process

Property taxes and benefit assessments on real estate, retroactively applied, are not open to the objection that they infringe upon the due process of law clause of the Constitution (Wagner vs. Baltimore, 239 U. S. 207, 60 L. Ed. 230); that taxes on income are not subject to the constitutional objection because of their retroactivity. The universal practice has been to increase taxes on incomes already earned; yet notwithstanding this retroactive operation, income taxes have not been successfully assailed as invalid. The uniform ruling of the courts in the United States has been to reject the contention that the retroactive application of revenue acts is a denial of the due process guaranteed by the Fifth Amendment (Welch vs. Henry, 305 U. S. 134, 83 L. Ed. 87).

6. Rationale on the enactment of the War Profit Tax

The last Pacific war and the Japanese occupation of the Islands have wrought divergent effects upon the different sectors of the population. The quiet and the timid, who were afraid to go out of their homes or who refused to have any dealings with the enemy, stopped from exercising their callings or professions, losing their incomes; and they supported themselves with properties they already owned, selling these from time to time to raise funds with which to purchase their daily needs. These were reduced to penury and want. But the bold and the daring, as well as those who were callous to the criticism of being collaborators, engaged in trading in all forms or sorts of commodities, from foodstuffs to war materials, earning fabulous incomes and acquiring properties with their earnings. Those who were able to retain their properties found themselves possessed of increased wealth because inflation set in, the currency dropped in value and properties soared in prices. It would have been unrealistic for the legislature to have ignored all these facts and circumstances. After the war it could not, with justice to all concerned, apportion the expenses of government equally on all the people irrespective of the vicissitudes of war, equally on those who had their properties decimated as on those who had become fabulously rich after the war. Those who were fortunate to increase their wealth during the troubulous period of the war were made to contribute a portion of their newly-acquired wealth for the maintenance of the government and defray its expenses. Those who in turn were reduced to penury or whose incomes suffered reductions could not be compelled to share in the expenses to the same extent as those who grew rich. This in effect is what the legislature did when it enacted the War Profits Tax Law.

7. Law not harsh and oppressive; Policy followed same as the Income Tax Law; Law is constitutional

The law may not be considered harsh and oppressive because the force of its impact fell on those who had amassed wealth or increased their wealth during the war, but did not touch the less fortunate. The policy followed is the same as that which underlies the Income Tax Law, imposing the burden upon those who have and relieving those who have not. No one can dare challenge the law as harsh and oppressive. The Court declare it to be just and sound and overrule the objection thereto on the ground of unconstitutionality.

8. Fernandez profited from war, death does not relieve estate from tax

The contention that the deceased Olimpio Fernandez or his estate should not be responsible because he died in 1945 and was no longer living when the law was enacted at a later date, in 1946, is absolutely without merit. Fernandez died immediately before the liberation and the actual cessation of hostilities. He profited by the war; there is no reason why the incident of his death should relieve his estate from the tax.

9. Section 18 of Internal Revenue Code incorporated in RA 55 Section 9

The provisions of section 18 of the Internal Revenue Code have been incorporated in RA 55 by virtue of Section 9 (Administrative remedies) thereof, which provides “All administrative, special and general provisions of law, including the laws in relation to the assessment, remission, collection and refund of national internal revenue taxes, not inconsistent with the provisions of the Act, are hereby extended and made applicable to all the provisions of this law, and to the tax herein imposed.”

10. Person defined; Section 84 of the National Internal Revenue Code

Under section 84 of the National Internal Revenue Code, the term “person” means an individual, a trust, estate, corporation, or a duly registered general co-partnership. If the individual is already dead, property or estate left by him should be subject to the tax in the same manner as if he were alive.

11. Fernandez’ property presumed to be conjugal

The property which Olimpio Fernandez possessed as of December 1941 is presumed to be conjugal property and so are the properties which were acquired by him during the war, because at that time he was married. There is no claim or evidence to support the claim that any of the properties were paraphernal properties of the wife; so the presumption stands that they were conjugal properties of the husband and wife. Under these circumstances they cannot be considered as properties belonging to two individuals, each of which shall be subject to the tax independently of the other.

[43]

Saldana vs. Iloilo [G.R. No. L-10470. June 26, 1958.]
En Banc, Montemayor (J): 8 concurring

Facts: On 25 May 1946, the City of Iloilo promulgated Ordinance 28, series of 1946, due to emergency and possible shortage of food in Iloilo, regulating the exit of food supply and labor animals and imposing permit fee therefore. The law strictly prohibits to send outside Iloilo City, without first obtaining the necessary license permit from the Mayor, Large cattle, pigs, goats, sheep or the like; Domestic fowls, eggs; Fish, whether fresh, salted or dried; Milkfish (semilla), bagoon (guinamos, crabs, prawn or the like); Fruits, such as bananas, melon, papayas or the like. The ordinance also fixes the fee for the issuance of license permit at P10 per head of large cattle (whether alive or slaughtered); P5 each for pigs, goats, and sheep (whether alive or slaughtered), P0.50 each for Chicken and other domestic fowls (whether alive or dressed); P2.00 per hundred or P0.02 each egg; P0.20 per kilo of Fish (whether fresh, dried or salted), P0.10 per kilo of Bagoon (guinamos), P0.20 per kilo of crabs, prawn or the like, P2 per pot of Milkfish (semilla), P2, per hundred bunches or P0.02 per bunch of bananas, and P0.02 per kilo for other fruits. The ordinance declares it unlawful for any carrier whether land, water or air, to load any of said animals or articles without the corresponding permit. The ordinance penalized violation of the ordinance with a fine of not less than P100 Pesos, or more than P200 Pesos, imprisonment of not less than 10 days but not exceeding 6 months and to suffer subsidiary Imprisonment in case of insolvency to pay the fine. Ordinance 30, passed on 4 June 1946, amended Ordinance 28 by reducing the fees for each chicken from P.50 to P.20, eggs from P2 to P1 per hundred, and for fish from P.20 to P.10 per kilo, bananas from P2 to P1 per hundred bunches etc. Under said ordinances, Serafin Saldaña had been paying, though under protest, so-called fees on fish bought in the City of Iloilo and sent by him to Manila by plane, during the period from 16 September 1946 to 6 December 1946, totalling P1,359.80.

On 17 September 1951, Saldana commenced the present proceedings by complaint for the reimbursement to him of the said amount with interest, on the ground that the ordinances in question were illegal, null and void, having been enacted beyond the powers of the Municipal Board of the City. In its answer, the city contended that the imposition and collection of the municipal licenses were within the power and duties of the Municipal Board in the exercise of its police power. The CFI Iloilo (Civil Case 2237) dismissed the complaint and upheld the legality of Ordinance 28, Series of 1946, as amened by Ordinance 30, same series of Iloilo City.

Saldana appealed.

The Supreme Court reversed the appealed decision, and ordered the City of Iloilo to reimburse Saldana the amount of P1,359.80, with legal interest and costs.

1. License and property taxes distinguished

The differences between the license and the property tax are well established. The license represents the permission conceded to do an act, is not supposed to be imposed for revenue, and is in the main for police purposes. A property tax, on the other hand, is a tax in the ordinary sense, assessed according to the value of property. (City of Manila vs. Tanquintic 58 Phil. 297 300).

2. "Derechos" or fees, and "Impuestos" or taxes distinguished

The two terms "derechos" and "impuestos" do not involve the same concept, because "impuestos" or taxes is, according to all well-known authorities, an enforced contribution of money or other property assessed in accordance with some reasonable rule of apportionment by authority of a sovereign state, on persons or property within its jurisdiction, for the purpose of defraying the public expenses' (26 R. C. L. par. 2, page 13); or a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or state; burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes' (61 C. J., 65); while "derechos" o fees, on the other hand, are "a reward or compensation allowed by law to an officer for specific services performed by him in the discharge of his official duties; a sum certain given for a particular service; the sum prescribed by law as charge for services rendered by public officers (25 C. J., 1009)." (Manila Electric Co. vs. Auditor General, et al., 73 Phil. 128, 133).

3. License taxes are of two kinds: one for the purpose of revenue, and the other an exercise of police power

So-called license taxes are of two kinds. The one is a tax for the purpose of revenue. The other, which is, strictly speaking, not a tax at all but merely an exercise of the police power, is a fee imposed for the purpose of regulation. . . . But a charge of a fixed sum which bears no relation to the cost of and which is payable into the general revenue of the state is a tax rather than an Exercise of the police power." (Cooley, Taxation, 4th ed., Vol. I, pp. 97-98).

4. Fees were taxes for city revenue

Judging from the amount of the fees fixed in the ordinances, the so-called fees were in reality taxes for city revenue. For instance, the P10.00 fee for every head of large cattle, whether alive or slaughtered, and the P5.00 fee for ever pig, goat, or sheep, whether alive or slaughtered, cannot possibly be considered as mere expense incurred for, or the cost of the inspection of each animal and the issuance of the corresponding permit. If a pig, goat, or sheep costs, say, P15 or even P20, then the P5.00 fee would constitute quite a considerable slice or portion of said cost; and if the animals and articles listed in the ordinances were sent out from the City of Iloilo in large quantities and numbers, there would be no doubt that the fees collected would amount to a sizable sum and augment greatly the revenues of the municipal corporation, way in excess of the cost of inspections and the issuance of the permits.

5. Ordinance fails to provide regulations or conditions under which permit can be granted or denied

The ordinance fails to provide for any regulations or conditions under which the permit can be granted or denied. The mayor has absolute power to refuse to issue any permit, practically making him absolute dictator over the subject matter. With merely telling the applicant and prospective licensee that said animals and articles are needed in the City of Iloilo, the mayor could refuse to grant the permit. To realize the danger of the grant of said absolute power is not difficult.

6. Animals and articles not produced in city

The animals and articles enumerated in the ordinance are not all produced in the City of Iloilo, but come from other towns of the province, even from other provinces adjacent, and are taken to the City of Iloilo only for the purpose of transportation to other places, like Manila. In other words, they are not brought into the City of Iloilo for the consumption of the residents thereof, but for export to other places. But once inside the city limits, under the ordinance, the mayor takes absolute control and has jurisdiction to allow or disallow their being taken out of the city, and in case he issues the permit for their being taken away, taxes are imposed thereon under the guise of license fees.

7. Power to tax not inherent, not assumed; Grant of power construed strictissimi juris

Nowhere in the charter of the defendant City is it authorized to regulate and collect fees or taxes for, the taking out of the city, of animals and articles listed in the ordinance. A municipal corporation like Iloilo City has no inherent power of taxation. To enact a valid ordinance, the City must find in its charter the power to do so, for said power cannot be assumed. A municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. Its charter must plainly show an intent to confer that power or the corporation cannot assume it. And the power when granted is to be construed strictissimi juris. Any doubt or ambiguity arising out of the term used must be resolved against the corporation." (Santos Lumber Co. vs. City of Cebu, et al., 102 Phil., 870; See also Arong vs. Raffiñan, 98 Phil., 422).

8. Section 2287, and 2629, of the Revised Administrative Code

Aside from the lack of inherent power of taxation by a municipal corporation, Section 2287 of the Revised Administrative Code provides that municipal revenue obtainable by taxation shall be derived from such sources only as are expressly authorized by law; and it further provides that "it shall not be in the power of the municipal council to impose a tax in any form whatever upon goods and merchandise carried into the municipality, or out of the same, and any attempt to impose an import or export tax upon such goods in the guise of an unreasonable charge for wharfage, use of bridges or otherwise, shall be void." This last provision is reproduced in Section 2629, of the same Revised Administrative Code, entitled "General Rules for Municipal Taxation and License."

9. Ordinance is ultra vires; null and void

The ordinance, as amended, is ultra vires, enacted beyond the general powers of a municipal corporation and not authorized by the city's charter, and consequently null and void; that the prohibition against taking animals and articles out of the City of Iloilo without permit of the mayor is in restraint of trade and a curtailment of the rights of the owners of the said animals and articles to freely sell and of prospective purchasers to buy and dispose of them without the city limits in the ordinary course of commerce and trade; that the fees imposed in the said ordinances are in fact taxes not only unauthorized by the law or the charter of City, but also in contravention of the provisions of Sections 2287 and 2629 of the Revised Administrative Code, which prohibit municipal corporations from imposing any tax in any from upon goods and merchandise carried into or out of the town or City.

[44]

Sison v. Ancheta [GR L-59431, 25 July 1984]
En Banc, Fernando (J): 9 concur, 2 concur in result, 1 concur in separate opinion, 1 took no part

Facts: Petitioner as taxpayer alleges that Section 1 of BP 135 (allegedly modifying Section 21 of the 1977 National Internal Revenue Code) unduly discriminated against him by the imposition of higher rates of tax upon his income arising from the exercise of his profession vis-a-vis those which are imposed upon fixed income or salaried individual taxpayers. He characterizes the above section as arbitrary amounting to class legislation, oppressive and capricious in character; that there is a transgression of both the equal protection and due process clauses of the Constitution as well as of the rule requiring uniformity in taxation.

In a resolution of 26 January 1982, the Court required respondents to file an answer within 10 days from notice. Such an answer, after two extensions were granted the Office of the Solicitor General, was filed on 28 May 1982. The facts as alleged were admitted but not the allegations which were mere arguments, opinions or conclusions on the part of the petitioner (the truth [for them] being those stated [in their] Special and Affirmative Defenses), and affirmed that BP 135 is a valid exercise of the State's power to tax.

The Supreme Court dismissed the petition for lack of merit (considering the lack of factual foundation to show the arbitrary character of the assailed provision; the force of controlling doctrines on due process, equal protection, and uniformity in taxation and the reasonableness of the distinction between compensation and taxable net income of professionals and businessmen certainly not a suspect classification), with costs against petitioner.

1. Ministerial activities of Government; Assumption of activities require more revenues; Taxes are lifeblood of Government

The field of state activity has assumed a much wider scope. The areas which used to be left to private enterprise and initiative and which the government was called upon to enter optionally, and only because it was better equipped to administer for the public welfare than is any private individual or group of individuals, continue to lose their well-defined boundaries and to be absorbed within activities that the government must undertake in its sovereign capacity if it is to meet the increasing social challenges of the times. There is need for more revenues. The power to tax, an inherent prerogative, has to be availed of to assure the performance of vital state functions. It is the source of the bulk of public funds. Taxes being the lifeblood of the government, their prompt and certain availability is of the essence.

2. Power to tax not absolute; Due Process and equal protection clauses can be properly invoked; Power to tax is not the power to destroy

The power to tax is an attribute of sovereignty. It is the strongest of all the powers of government. For all its plenitude, the power to tax has restrictions. The Constitution sets forth such limits. Adversely affecting as it does property rights, both the due process and equal protection clauses may properly be invoked to invalidate in appropriate cases a revenue measure. If it were otherwise, there would be truth to the 1803 dictum of Chief Justice Marshall that "the power to tax involves the power to destroy (which was brushed away by Justice Holmes, stating that "the power to tax is not the power to destroy while this Court sits.")

3. Supremacy of the Constitution

The Constitution as the fundamental law overrides any legislative or executive act that runs counter to it. In any case therefore where it can be demonstrated that the challenged statutory provision fails to abide by its command, the Court must so declared and adjudge it null.

4. Burden of proof with one alleging unconstitutionality; Without proof, presumption of validity must prevail

A mere allegation, as here, does not suffice. There must be a factual foundation of such unconstitutional taint. Merely adhering to the authoritative doctrine that where the due process and equal protection clauses are invoked, considering that they are not fixed rules but rather broad standards, there is a need for proof of such persuasive character as would lead to such a conclusion. Absent such a showing, the presumption of validity must prevail.

5. When due process clause may be invoked in tax statutes

Due process clause may be invoked where a taxing statute is so arbitrary that it finds no support in the Constitution. Tax measures, which amount to the confiscation of property, are clear abuse of power, where the Court is duty bound to say that such an arbitrary act amounted to the exercise of an authority not conferred calling for the application of the Holmes dictum. Where the tax measure is beyond the jurisdiction of the state, or is not for a public purpose, or, in case of a retroactive statute is so harsh and unreasonable, it is subject to attack on due process grounds.

6. When equal protection may be invoked in police power or power of eminent domain

The applicable standard to avoid the charge that there is a denial of this constitutional mandate whether the assailed act is in the exercise of the police power or the power of eminent domain is to demonstrate "that the governmental act assailed, far from being inspired by the attainment of the common weal was prompted by the spirit of hostility, or at the very least, discrimination that finds to support in reason. It suffices then that the laws operate equally and uniformly on all persons under similar circumstances or that all persons must be treated in the same manner, the conditions not being different, both in the privileges conferred and the liabilities imposed. Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances, which if not identical are analogous. If law be looks upon in terms of burden or charges, those that fall within a class should be treated in the same fashion, whatever restrictions cast on some in the group equally binding on the rest." The same principle applies to the power of taxation.

7. Purpose of tax measures

The equal protection clause is inspired by the noble concept of approximating the ideal of the laws's benefits being available to all and the affairs of men being governed by that serene and impartial uniformity, which is of the very essence of the idea of law. It is inherent in the power to tax that a state be free to select the subjects of taxation, and it has been repeatedly held that 'inequalities which result from a singling out of one particular class for taxation, or exemption infringe no constitutional limitation.

8. Rule on uniformity

The rule of taxation shall be uniform and equitable. This requirement is met when the tax operates with the same force and effect in every place where the subject may be found. The rule of uniformity does not call for perfect uniformity or perfect equality, because this is hardly attainable.

9. Equality and uniformity in taxation defined

Equality and uniformity in taxation means that all taxable articles or kinds of property of the same class shall be taxed at the same rate. The taxing power has the authority to make reasonable and natural classifications for purposes of taxation. Where the differentiation conforms to the practical dictates of justice and equity, it is not discriminatory within the meaning of this clause and is therefore uniform. There is quite a similarity then to the standard of equal protection for all that is required is that the tax applies equally to all persons, firms and corporations placed in similar situation.

10. Substantial Distinction; Distinction on tax rate and tax base

Taxpayers may be classified into different categories. It is enough that the classification must rest upon substantial distinctions that make real differences. In the case of the gross income taxation embodied in BP 135, the discernible basis of classification is the susceptibility of the income to the application of generalized rules removing all deductible items for all taxpayers within the class and fixing a set of reduced tax rates to be applied to all of them. Taxpayers who are recipients of compensation income are set apart as a class. As there is practically no overhead expense, these taxpayers are not entitled to make deductions for income tax purposes because they are in the same situation more or less. On the other hand, in the case of professionals in the practice of their calling and businessmen, there is no uniformity in the costs or expenses necessary to produce their income. It would not be just then to disregard the disparities by giving all of them zero deduction and indiscriminately impose on all alike the same tax rates on the basis of gross income. There is ample justification to adopt the gross system of income taxation to compensation income, while continuing the system of net income taxation as regards professional and business income.

[45]

SSS vs. Bacolod City [G.R. No. L-35726. July 21, 1982.]
Second Division, Escolin (J): 5 concurring

Facts: Social Security System (SSS) is a government agency created under RA 1161, whose primary function is to "develop, establish gradually and perfect a social security system which shall be suitable to the needs of the people throughout the Philippines, and shall provide protection against the hazards of disability, sickness, old age, and death." In pursuance of its operations, SSS maintains a number of regional offices, one of which is the 5-storey building, known as SSS Building in Bacolod City, occupying 4 parcels of land. In 1970, said lands and building were assessed for taxation at P1,744,840. For its failure to pay the realty taxes for the years 1968, 1969 and 1970 which, including penalties, amounted to P104,956.06, the city sometime in early 1970 levied upon said lands and building; and on 3 April 1970, it declared said properties forfeited in its favor. In protest thereto, SSS addressed a letter dated 27 July 1970 to the City Mayor of Bacolod, through its treasurer, Miguel Reynaldo, seeking reconsideration of the forfeiture proceedings on the ground that SSS, being a government-owned and controlled corporation, is exempt from payment of real estate taxes.

When no action thereon was taken by the city treasurer, SSS filed an action in the CFI Negros Occidental for nullification of the forfeiture proceedings. In the same complaint it sought the issuance of a writ of preliminary injunction to restrain the city from consolidating its ownership over the forfeited properties, and this writ was issued by the court upon SSS' posting of a cash bond in the amount of P105,000.00. After due hearing, the lower court rendered a decision declaring that the SS properties are not except from the payment of real property tax inasmuch as SSS does not fall under the provisions of Section 29 of the Charter of the City of Bacolod, and considering further that there is no law which exempts said entity from taxes; thus dismissing the complaint with costs against SSS. Hence, the petition.

The Supreme Court set aide the decision under review, and cancelled the surety bond filed by the SSS.

1. Section 29 of Commonwealth Act 326 (Charter of City of Bacolod)

Section 29 (Exemption from taxation) of the Commonwealth Act 326, otherwise known as the Charter of the City of Bacolod, provides that "lands and buildings owned by the United States of America, the Commonwealth of the Philippines, the City of Bacolod, the Province of Occidental Negros, and cemeteries, churches and their adjacent parsonages and convents, and lands, buildings and improvements used exclusively for religious, charitable, scientific or educational purposes, and not for profit, shall be exempt from taxation; but such exemptions shall not extend to lands or buildings held for investment, though the income therefrom be devoted to religious, charitable, scientific or educational purposes."

2. GOCCs subject to payment of legal fees; RA 104, Section 1

A government owned or controlled corporation is subject to payment of the legal fees provided for in Rule 130 of the Rules of Court. Such liability is plainly written in Section 1 of RA 104, which reads ". . . All corporations, agencies, or instrumentalities owned or controlled by the government shall pay such duties, taxes, fees and other charges upon their transaction, business, industry, sale, or income as are imposed by law upon individuals, associations or corporations engaged in any taxable business, industry, or activity except on goods or commodities imported or purchased and sold or distributed for relief purposes as may be determined by President of the Philippines."

3. NACOCO v. Bacani and SSS vs. Soriano do not apply; SSS exempt from realty taxes

In "NACOCO v. Bacani, " the Court held to the effect that the National Coconut Corporation, a government agency performing mere ministrant functions, is not included in the term "Government of the Republic of the Philippines" for purposes of exemption from the legal fees provided for in Rule 130 of the Rules of Court. On the other hand, in "SSS v. Soriano" the Court definitively categorized the SSS as a government agency performing proprietary functions. However, the subject of inquiry in the present case is not whether a government corporation exercising ministrant or proprietary function, such as the SSS, is exempt from the payment of legal fees, but whether the properties in question, which are concededly owned by the government, are exempt from realty taxes. The distinction laid down in "NACOCO v. Bacani" between government agencies exercising constituent functions, on the one hand, and those performing ministrant functions, on the other, has therefore no relevance to the present issue for what is decisive is that the properties possessed by the SSS, albeit devoted to private or proprietary purpose, are in fact owned by the government of the Philippines. As such they are exempt from realty taxes.

4. Section 29 does not contain any qualification; Congress intends broad and comprehensive application of mandate

The section does not contain any qualification whatsoever in providing for the exemption from real estate taxes of "lands and buildings owned by the Commonwealth or Republic of Philippines." Hence, when the legislature exempted lands and buildings owned by the government from payment of said taxes, what it intended was a broad and comprehensive application of such mandate, regardless of whether such property is devoted to governmental or proprietary purpose.

5. Board of Assessment Appeals vs. CTA

in "Board of Assessment Appeals versus Court of Tax Appeals," the Court interpreted Section 3 (a) of Commonwealth Act 470, which contains a similarly worded exemption from the payment of realty taxes of "properties owned by . . . the Republic of the Philippines, any province, city, municipality or municipal district . . ." in this wise: ". . . in exempting from taxation 'property owned by the Republic of the Philippines, any province, city, municipality or municipal district . . .' said section 3(a) of RA 470 makes no distinction between property held in a sovereign, governmental or political capacity and those possessed in a private propriety or patrimonial character. And where the law does not distinguish neither may we, unless there are facts and circumstances clearly showing that the lawmaker intended the contrary, but no such facts and circumstances have been brought to our attention. Indeed, the noun 'property' and the verb 'owned' used in said section 3 (a) strongly suggest that the object of exemption is considered more from the view point of dominion, than from that of domain. Moreover, taxes are financial burdens imposed for the purpose of raising revenues with which to defray the cost of the operation of the Government, and a tax on property of the Government, whether national or local, would merely have the effect of taking money from one pocket to put it in another pocket (Cooley on Taxation, Sec. 621, 4th Edition). Hence, it would not serve, in the final analysis, the main purpose of taxation. What is more, it would tend to defeat it, on account of the paper work, time and consequently, expenses it would entail. (The Law on Local Taxation, by Justiniano Y. Castillo, p. 13)."

6. Rules on taxation of public property

It is axiomatic that when public property is involved, exemption is the rule and taxation, the exception.

7. PD 24, amending Social Security Act of 1954, removed all doubts as to exemption of SSS from taxation

PD 24, which amended the Social Security Act of 1954, has already removed all doubts as to the exemption of the SSS from taxation. Thus in Section 16 (Exemption from tax, legal process, and lien), it is provided that "All laws to the contrary notwithstanding, the SSS and all its assets, all contributions collected and all accruals thereto and income therefrom as well as all benefit payments and all papers or documents which may be required in connection with the operation or execution of this Act shall be exempt from any tax, assessment, fee, charge or customs or import duty; and all benefit payments made by the SSS shall likewise be exempt from all kinds of taxes, fees or charges, and shall not be liable to attachment, garnishments, levy or seizure by or under any legal or equitable process whatsoever, either before or after receipt by the person or persons entitled thereto, except to pay any debt of the covered employee to the SSS."

[46]

Surigao Consolidated Mining vs. Collector [G.R. No. L-14878. December 26, 1963.]
En Banc, Regala (J): 10 concurring

Facts: Before the outbreak of World War II, the Surigao Consolidated Mining Company (Surigao Consolidated), a domestic corporation which then had its principal office in the city of Iloilo, was operating its mining concessions in Mainit, Surigao. Pursuant to section 246 of the Internal Revenue Code, which prescribes the time and manner of payment of royalties or ad valorem taxes, it filed a bond and had been regularly filing its returns for minerals removed from its mines during each calendar quarter and paying ad valorem tax thereon within 20 days after the close of every quarter. In each case, computation of the ad valorem tax was based on the market value of the minerals set forth in the returns, subject to adjustment upon the receipt of the smelter returns showing the actual market value of the minerals shipped to the United States. Due to the interruption of communications at the outbreak of the war, the principal office of Surigao Consolidated lost contact with its mines and never received the production reports for the fourth quarter of 1941. In order to avoid incurring any tax penalty, said company, on 19 January 1942 deposited a check in the amount of P27,000.00 payable to and "indorsed in favor of the City Treasurer (of Iloilo) in payment of the ad valorem taxes (approximate adjustment to be made when circumstances allow it) for the fourth quarter of 1941." After the termination of the war, Commonwealth Act 722 was enacted, which provided for the filing of returns for minerals removed during the last quarter of 1941 up to 31 December 1945 and the payment of ad valorem tax on said minerals to 28 February 1946. Availing of the provisions of the Act, the Surigao Consolidated, on 28 December 1945, filed its ad valorem tax returns for the fourth quarter of 1941, declaring as its tax liability the amount of P43,486.54. Applying the amount of P27,000.00 previously deposited with the City Treasurer of Iloilo, the returns indicated an unpaid balance of P16,486.54 as the "tax subject to revision." However, on 26 February 1946, the Surigao Consolidated filed an amended ad valorem tax returns, under which amendment it declared a reduced ad valorem tax in the amount of P37,189.00. Crediting itself with the amount of P27,000.00 previously deposited with the City Treasurer of Iloilo, it paid the remaining balance of P10,189.00. On 24 September 1946, the Surigao Consolidated again filed a statement of adjustment allegedly containing figures and data of the complete smelter returns for minerals shipped to the United States. In the accompanying letter, a request was made, this time not only for the reduction of tax, but for the refund of the amount of P18,107.87. On 19 October 1946, another statement of adjustment was filed reducing the claim for refund to P17,158.01. Finally, on 15 March 1947, a third statement of adjustment was submitted further reducing the claim for refund to the amount of P17,051.14.

As the Collector of Internal Revenue denied the request for the refund of the said P17,051.14 on the ground that the money already paid as ad valorem tax was legally due to the Government, the Surigao Consolidated instituted with the CFI Manila a civil action for its recovery (Civil Case 4770). However, upon the enactment of Republic Act 1125 creating the Court of Tax Appeals, the case was remanded to the latter court for proper disposition. After hearing the Court of Tax Appeals, on 16 July 1958 finding that the amount sought to be refunded had been lawfully collected, rendered its decision denying the claim for refund. The Surigao Consolidated in due time filed a motion for new trial on the ground that the decision was "not justified by the overwhelming weight of evidence" and that it was contrary to law. The tax court, however, denied the motion. Hence, the petition for review.

The Supreme Court affirmed the decision appealed from; with costs against Surigao Consolidated.

1. Section 1 (d) of RA 81

Section 1 (d) of RA 81 provides that "any provision of existing law to the contrary notwithstanding: (d) All unpaid royalties, ad valorem or specific taxes on all minerals mined from mining claims or concessions existing and in force on January first, nineteen hundred and forty-two, and which minerals were lost by reason of the war of circumstances arising therefrom, are hereby condoned: Provided, That if said minerals had been or shall be recovered by the miner or producer, such royalties, ad valorem or specific taxes on the same shall be immediately become due and demandable."

2. Condonation of tax liability in the nature of tax exemption; Section 1(d) applies only to condonation of unpaid taxes

Section 1 (d) clearly refers to the condonation of unpaid taxes only. The condonation of a tax liability is equivalent and is in the nature of a tax exemption. Being so, it should be sustained only when expressed in explicit terms, and it cannot be extended beyond the plain meaning of those terms.

3. He who claims exemption from taxation has the burden of proof to show he is exempt

It is the universal rule that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be mistaken. (Statutory Construction by Francisco, citing Government of P. I. vs. Monte de Piedad, 25 Phil. 42.)

4. Application of statute creating exemption to taxes already assessed depends if it is retrospective in operation

The application of a statute creating an exemption from taxation to taxes already assessed depends upon whether it is retrospective in its operation. Such a statute has no retrospective operation, unless by the terms thereof it clearly appears to be the intention of the legislature that the exemption shall relate back to taxes which have already become fixed, as a statute which releases a person or corporation from a burden common to the whole community should be strictly construed (Louisville Water Co., vs. Hamilton, 81 Ky., 517, . . . cited in 6 American and English Ann. Cases, p. 438).

5. Company failed to prove exemption

The company failed to show any portion of the law that explicitly provides for a refund of those taxpayers who had paid their taxes on the items. Even assuming arguendo that the provisions of RA 81 authorizes the refund of taxes already paid by the company, the latter would not still be entitled to the refund sought for. The company's evidence of the alleged loss in transit merely consisted of testimony of witnesses who did not have personal knowledge of the circumstances which gave rise to the loss. Such evidence cannot, of course, be considered sufficient to establish that the minerals were in fact lost.

6. Smelter returns are best evidence of actual market value of minerals; Non-production of returns generates presumption that they are adverse to claim

The amount of ad valorem tax on the minerals shipped to the United States is subject to adjustment upon the receipt of the smelter returns showing their actual market value. The best evidence of the actual market value of the minerals shipped to the United States are the smelter returns themselves. These returns are admittedly in the company's possession, but for unknown reasons, the company failed to produce them during the trial. As there is no credible and satisfactory explanation for the non-production of said returns, there arises the presumption that if produced they would be adverse to the company.

7. Burden of proof lies with taxpayer claiming illegal or erroneous collection of tax

In a suit for the recovery of the payment of taxes or any portion thereof as having been illegally or erroneously collected, the burden is upon the taxpayer to establish the facts which show the illegality of the tax or that the determination thereof is erroneous. In the present case, the company failed to show that the amount of taxes sought to be refunded have been erroneously collected.

[47]

Tanada v. Tuvera [GR L-63915, 24 April 1985]

En Banc, Escolin (p): 1 concur, 2 concur with reservation, 1 took no part, 1 on leave

Invoking the people's right to be informed on matters of public concern (Section 6, Article IV of the 1973 Philippine Constitution) as well as the principle that laws to be valid and enforceable must be published in the Official Gazette or otherwise effectively promulgated, petitioners seek a writ of mandamus to compel respondent public officials to publish, and or cause the publication in the Official Gazette of various presidential decrees, letters of instructions, general orders, proclamations, executive orders, letter of implementation and administrative orders.

The Supreme Court ordered the respondents to publish in the Official Gazette all unpublished presidential issuances which are of general application, and that unless so published, they shall have no binding force and effect.

1. People proper party in petition for mandamus if question is of public right and object is to enforce a public duty

While the general rule is that a writ of mandamus would be granted to a private individual only in those cases where he has some private or particular interest to be subserved, or some particular right to be protected, independent of that which he holds with the public at large (Severino v. Governor General), and it is for the public officers exclusively to apply for the writ when public rights are to be subserved (Mithchell vs. Boardmen), nevertheless, when the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the people are regarded as the real party in interest and the relator at whose instigation the proceedings are instituted need not show that he has any legal or special interest in the result, it being sufficient to show that he is a citizen and as such interested in the execution of the laws.

2. Private citizen's legal personality recognized

The petitioner/relator is a proper party to proceedings of this character when a public right is sought to be enforced. If the petitioner/relator is not a proper party to these proceedings no other person could be, as it is not the duty of the law officer of the Government to appear and represent the people in cases of this character. In the case at bar, private citizen's legal personality in the Severino v. Governor General apply squarely to the present petition. The Solicitor General, the government officer generally empowered to represent the people, has entered his appearance for respondents in the case.

3. Publication in the Official Gazette necessary to give public adequate notice

Publication in the Official Gazette is necessary in those cases where the legislation itself does not provide for its effectivity date — for then the date of publication is material for determining its date of effectivity, which is the fifteenth day following its publication — but not when the law itself provides for the date when it goes into effect. This is correct insofar as it equates the effectivity of laws with the fact of publication. Article 2 however, considered in the light of other statutes applicable to the issue (see Section 1, CA 638), does not preclude the requirement of publication in the Official Gazette, even if the law itself provides for the date of its effectivity. The clear object of the such provision is to give the general public adequate notice of the various laws which are to regulate their actions and conduct as citizens. Without such notice and publication, there would be no basis for the application of the maxim "ignorantia legis non excusat." It would be the height of injustice to punish or otherwise burden a citizen for the transgression of a law of which he had no notice whatsoever, not even a constructive one. Further, publication is necessary to apprise the public of the contents of regulations and make the said penalties binding on the persons affected thereby (Pesigan v. Angeles)

4. Publication vital as no publicity accompanies law-making process of President

The publication of laws has taken so vital significance when the people have bestowed upon the President a power heretofore enjoyed solely by the legislature. While the people are kept abreast by the mass media of the debates and deliberations in the Batasan Pambansa — and for the diligent ones, ready access to the legislative records — no such publicity accompanies the law-making process of the President. Thus, without publication, the people have no means of knowing what presidential decrees have actually been promulgated, much less a definite way of informing themselves of the specific contents and texts of such decrees.

5. The word “shall” imposes an imperative duty

The very first clause of Section 1 of CA 638 provides that there shall be published in the Official Gazette... The word “shall” used therein imposes upon an imperative duty. That duty must be enforced if the Constitutional right of the people to be informed on matters of public concern is to be given substance and reality. The law itself makes a list of what should be published in the official Gazette. In the case at bar, such listing leaves the officials with no discretion whatsoever as to what must be included or excluded from such publication.

6. Publication of presidential issuance of public nature or general applicability mandated; publication a requirement of due process

The publication of all presidential issuances “of a public nature” or “of general applicability” is mandated by law. Presidential decrees that provide for fines, forfeitures or penalties for their violation or otherwise impose a burden on the people, such as tax and revenue measures, fall within this category. Other presidential issuances which apply only to particular persons or class of persons such as administrative and executive orders need not be published on the assumption that they have been circularized to all concerned. The publication of presidential issuances “of a public nature” or “of general applicability” is a requirement of due process. It is a rule of law that before a person may be bound by law, he must first be officially and specifically informed of its contents (See Peralta v. Comelec).

7. Unpublished presidential issuance of general application have no force and effect; Effect of ruling and the concept of operative fact

Presidential issuances of general application, which have not been published, shall have no force and effect. The implementation/enforcement of presidential decrees prior to their publication in the Official Gazette is an operative fact, which may have consequences which cannot be justly ignored. The past cannot always be erased by a new judicial declaration that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.

8. Consequence of nullity cannot be ignored; Orthodox v. Modern view on unconstitutionality

It is the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree (Norton v. Shelby County; Chicago, I. & L. Ry. Co. v. Hackett). Such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects — with respect to particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified (Chicot County Drainage District vs. Baxter Bank).

[48]

Villegas v. Hiu Chiong Tsai Pao Ho (GR L-29646, 10 Nov 1978)
En Banc, Fernandez (p) : 4 concurring, 3 concurring in result, 1 not taking part.

Facts: On 22 February 1968, Ordinance 6537 was passed by the Municipal Board of Manila and signed by Manila Mayor Antonio J. Villegas on March 27, 1968. Ordinance 6537, entitled "An ordinance making it unlawful for any person not a citizen of the Philippines to be employed in any place of employment or to be engaged in any kind of trade, business or occupation within the City of Manila without first securing an employment permit from the mayor of Manila; and for other purposes." Law prohibits aliens from employment and trade in the City of Manila without the requisite mayor's permit). Exceptions to law are persons employed in the diplomatic or consular missions of foreign countries, or in the technical assistance programs of both the Philippine Government and any foreign government, and those working in their respective households, and members of religious orders or congregations, sect or denomination, who are not paid monetarily or in kind. Permit fee is P50. Penalty is imprisonment of 3 to 6 months or fine of P100-200, or both.

On 4 May 1968, Hiu Chiong Tsai Pao Ho, who was employed in Manila, filed a petition, with the CFI Manila (Civil Case 72797), praying for (1) the issuance of the writ of preliminary injunction and restraining order to stop the implementation of the ordinance, and (2) judgment to declare the ordinance null and void.

On 24 May 1968, Judge Francisco Arca (CFI Manila, Branch I) issued the writ of preliminary injunction and on 17 September 1968, the Judge rendered a decision declaring the ordinance null and void, and the preliminary injunction is made permanent. Mayor Villegas filed a petition for certiorari to review the decision of the CFI.

Supreme Court affirmed the decision of the CFI.

1. Due process and equal protection clauses

The ordinance is arbitrary, oppressive and unreasonable, being applied only to aliens who are thus, deprived of their rights to life, liberty and property and therefore, violates the due process and equal protection clauses of the Constitution. Requiring a person, before he can be employed, to get a permit from the City Mayor of Manila, who may withhold or refuse it at will is tantamount to denying him the basic right of the people in the Philippines to engage in a means of livelihood. Once an alien is admitted by the State within its territory, he cannot be deprived of life without due process of law, including the means of livelihood. The shelter of protection under the due process and equal protection clause is given to all persons, both aliens and citizens.

2. Police Power, illegal delegation of legislative powers

The ordinance does not lay down any criterion or standard to guide the Mayor in the exercise of his discretion, thus conferring upon the mayor arbitrary and unrestricted powers. The ordinance does not provide a standard to guide or limit the mayor's action, expresses no purpose to be attained by requiring a permit, and enumerates no conditions for its grant or refusal. *(See also Chinese Flour Importers Association vs. Price Stabilization Board, and Primicias vs. Fugoso for related principles*

3. Uniformity of Taxation, discriminatory and violative

The ordinance's purpose is clearly to raise money under the guise of regulation by exacting P50 from aliens who have been cleared for employment. The amount is unreasonable and excessive because it fails to consider differences in situation among aliens required to pay it, i.e. being casual, permanent, full-time, part-time, rank-an-file or executive.

[49]

Visayan Cebu Terminal vs. CIR [G.R. Nos. L-19530 & L-19444. February 27, 1965.]
En Banc, Paredes (J): 8 concurring, 2 took no part

Facts: Pursuant to a Management Agreement entered into by and between the Bureau of customs and the Visayan Cebu Terminal Co. Inc., on 24 June 1957, after a public bidding, the latter as Contractor, was appointed the sole manager of the Arrastre Service at the Port of Cebu, covering import cargoes, including transit import cargoes. On 26 November 1958, Restituto Bacareza of the BIR Manila, demanded of the Company the payment of P121,919.45, due the government, covering percentage taxes and penalties, for the period from 24 August 1956 to 31 October 1958. The company, on 18 December 1958, replied that it was not liable for the 3% percentage tax demanded. Thereafter, the books of the company were examined by 2 Internal Revenue Examiners (Pascual and Fuentes) who were introduced to the company by Andres Relampagos, then Provincial Revenue Officer of Cebu, in a formal letter dated 24 March 1959. The two examiners, on 7 April 1959, issued a certificate that they had gone over the books of the company and made a memorandum to the Provincial Revenue Officer, stating that the company was not "subject to the 3% percentage tax contemplated in Section 191 in relation to 182, both of the National Internal Revenue Code, as amended, because they are paying 28% straight based on their gross receipts as per contract entered into and by the Bureau of Customs, hence no assessment could be made." In spite of the Memorandum, the Deputy Commissioner of Internal Revenue, Melecio Domingo, wrote the company, advising that it was liable to the government in the total sum of P73,072.17, as percentage taxes and surcharges. After a series of communications, the liability of the company was computed at P56,202.97, including P4,000.00 as compromise penalty, which was finally reduced to P52,172.97. The compromise penalty was also reduced from P4,000.00 to P500.00. Not satisfied with the assessment, the petitioner appealed the case to the Court of Tax Appeals.

The Court of Tax Appeals found the company to be within the ambit of Section 191 of the Tax Code and thus liable for the payment of the percentage tax provided therefor. However, since 28% of the company's gross receipts goes to the Bureau of Customs as its share, the same should not be included in computing the 3% percentage tax. The court held that to hold the company liable for the payment of percentage tax is unquestionably unjust and not contemplated by Section 191 of the Tax Code, and thus modified the decision appealed from in the sense that the company is ordered to pay the Commissioner of Internal Revenue the sum of P41,416.38, as unpaid percentage tax and 25% surcharge; without special pronouncement as to costs. Both appealed to the Supreme Court.

The Supreme Court affirmed the decision appealed from in all respects; without special pronouncement as to costs.

1. Section 191 of the Tax Code

Section 191 of the National Internal Revenue Code provides that "percentage tax on road, building, irrigation, artesian well, waterworks and other construction work contractors, or proprietors or operators of dockyards, and others. Road, building, irrigation, artesian well, waterworks, and other construction work contractors; arrastre contractors; . . . shall pay a tax equivalent to three per centum of their gross receipts."

2. Company is an arrastre contractor

The Company, as found by the Court of Tax Appeals, is an arrastre contractor, under Section 191 of the Tax Code. The nature of the work undertaken by the company is more than sufficient to show that it is an arrastre contractor, which renders service covering the handling of cargoes at piers and wharves (Sadaya vs. Coll. of Int. Rev., L-7444, May 30, 1956.) The very Management Agreement, the company has been categorically referred to as contracted. Being a contractor, the company is subject to the percentage tax.

3. Payment of 28% of gross receipts does not detract the company's character as contractor

The mere fact that the company pays the Bureau of Customs 28% of its gross receipts, does not detract from its character as Contractor. If the Bureau of Customs is the principal of the Company, there is no sense in giving said Bureau 28% of the gross receipts only, and petitioner, the agent 72%.

4. Tax exemption need to be proven

Section 191 of the Tax Code does not establish any distinction between an arrastre operator who handles only imported cargo in its arrastre operations, pursuant to RA 140, and those handling interisland cargo; so as to exempt the company from the percentage tax. It is a well settled rule that he who claims exemption should prove by convincing proofs that he is exempted. The company utterly failed to present such proofs.

5. Government not estopped from collecting legitimate taxes due to error of its agents

The agents of the Internal Revenue did not have the power to make pronouncements that the company is not liable for the percentage tax, and even if they were so authorized, their recommendations are always subject to the review of their superiors, who may countermand or affirm them. The government is never estopped to collect legitimate taxes because of the error committed by its agents (Genato Commercial Corp. vs. CTA, L-11727, September 29, 1958).

6. Manila Jockey Club vs. Collector case

In exempting the company from the payment of 3% tax on the 28% given to the Bureau of Customs, the CTA cited the case of Manila Jockey Club vs. Collector, supra, wherein the Supreme Court, among others, has said " gross receipts of the proprietor of the amusement place should not include any money which although delivered to the amusement place has been especially earmarked by law or regulation for some person other than the proprietor."

7. Further liability for the payment of percentage tax unjust and not contemplated by Section 191 of the Tax Code

Even if there is no law or regulation which specifically earmarks 28% of the total monthly gross receipts derived from the arrastre service in question, for the Bureau of Customs (i.e. RA 140, amending Act 3002 and Commonwealth Act 285 – under which the management agreement was entered into – does not so provide), it is not disputed that the amount had been given to the Bureau of Customs under the authority of paragraph 23 of the Management Contract which can be lawfully construed as "regulation." Thus, the government could not have intended to consider as gross receipts the 28% that went to one of its institutions, the Bureau of Customs, and there-by collect percentage tax on it from the company. To hold the company liable for the payment of percentage tax is unquestionably unjust and not contemplated by Section 191 of the Tax Code.

[50]

Wonder Mechanical Engineering vs. CTA [G.R. Nos. L-22805 & L-27858. June 30, 1975.]
First Division, Esguerra (J): 4 concurring

Facts: Wonder Mechanical Engineering Corporation is a corporation which was granted tax exemption privilege under RA 35 in respect to the "manufacture of machines for making cigarette paper, pails, lead washers, rivets, nails, candies, chairs, etc.". The tax exemption expired on 30 May 1951. On 14 September 1953, the company applied with the Secretary of Finance for reinstatement of the exemption privilege under the provisions of RA 901 approved 7 July 1954, the reinstatement to commence on 20 June 1953, the date RA 901 took effect. **[GR L-22805]** The Commissioner of Internal Revenue, sometime in 1955, caused the investigation of the company for the purpose of ascertaining whether or not it had any tax liability. The findings of Revenue Examiner Alfonso B. Camillo on 30 September 1955, stated that during the years 1953 and 1954 the company did not provide itself with the proper privilege tax receipts as required by Section 182 of the Tax Code and did not pay the sales tax on its gross sales of articles manufactured by it and the percentage tax due on the gross receipts of its electroplating and repair business pursuant to Sections 183, 185, 186 and 191 of the same Code. Based on the foregoing, the Commissioner of Internal Revenue assessed against company on 29 November 955, the total amount of P69,699.56 as fixed taxes and sales and percentage taxes, inclusive of the 25% surcharge. The Commissioner also suggested the payment of the amount of P3,300.00 as penalties in extrajudicial settlement of the company's violations of Sections 182, 183, 185, 186 and 191 of the Tax Code and of the Bookkeeping Regulations. **[GRL-27858]** The Commissioner of Internal Revenue caused the investigation of the company for the purpose of ascertaining its tax liability on 10 August 1960, as a result of which on 7 December 1960, Revenue Examiner Pedro Cabigao reported that company had manufactured and sold steel chairs without paying the 30% sales tax imposed by Section 185(c) of the Tax Code; accepted job orders without paying the 3% tax in gross receipts imposed by Section 191 of the same Code; manufactured and sold other articles subject to 7% sales tax under Section 186 of the same Code but not covered by the tax exemption privilege; failed to register with the Bureau of Internal Revenue books of accounts and sales invoices as required by the Bookkeeping Regulations; failed to indicate in the sales invoices the Residence Certificate number of customers who purchased articles worth P50.00 or over, in violation of the Bookkeeping Regulation; and failed to produce its books of accounts and business records for inspection and examination when required to do so by the revenue examiner in violation of the Bookkeeping Regulations. Based on the foregoing, the Commissioner of Internal Revenue on 6 October 1961, assessed against the company "the payment of P25,080.91 as deficiency percentage taxes and 25% surcharge for 1957 to 1960 and suggested the payment of P5,020.00 as total compromise penalty in extrajudicial settlement of the various violations of the Tax Code and Bookkeeping Regulation.

The company, represented by its President and Generla Manager Mr. Lucio Quijano, appealed to the Court of Tax Appeals, which dismissed the company's appeal in CTA Case 1036 (L-22805), for lack of jurisdiction, the same having been filed beyond the 30 day period prescribed in Section 11 of RA 1125, and confirmed the decision of Commissioner of Internal Revenue which assessed against the company the total amount of P69,699.56 as fixed taxes and sales and percentage taxes, inclusive of the 25% surcharge for the years 1953-54. The court also ordered the company (in L-27858) to pay the Commissioner of Internal Revenue the amount of P25,080.91 as deficiency sales and percentage taxes from 1957 to June 30, 1960, inclusive of the 25% surcharge, plus costs. The Company filed the two petitions for review, based on the common principal issue of "whether or not the manufacture and sale of steel chairs, jeepney parts and other articles which are not machines for making other products, and job orders done by petitioner come within the purview of the tax exemption granted it under RA 35 and 901."

The Supreme Court affirmed the decisions of the Court of Tax Appeals in the two cases; with costs against the company in both cases.

1. Company has not accepted the imposition of the compromise amounts

It does not appear that the company accepted the imposition of the compromise amounts (P5,020), as suggested by the Commissioner. The Court thus found no compelling reasons to alter the decision of the Court of Tax Appeals in L-27858 that "compromise penalty cannot be imposed or collected without the agreement and conformity of the taxpayer *(Collector of Internal Revenue vs. University of Santo Tomas, et al., GR L-11274 & L-11280, 28 November 1958; the Collector of Internal Revenue v. Bautista, et al., GR L-12250 & 12259, 27 May 1959; the Philippines International Fair, Inc. v. Collector of Internal Revenue, GR L-12928 & L-12932, 31 March 1962)."*

2. Appeal of decision must be made with reglementary period, otherwise Court acquires no jurisdiction

The Court of Tax Appeals dismissed the appeal in CTA 1036 (subject matter of L-22805) for lack of jurisdiction, the same having been filed beyond the 30-day period prescribed in Section 11 of Republic Act 1126. Appellants must perfect their appeal from the decision of the Commissioner of Internal Revenue to the Court of Tax Appeals within the statutory period of 30 days, otherwise said Court acquires no jurisdiction.

3. Certificate of Tax Exemption given to the company by Secretary of Finance

The Company was given a Certificate of Tax Exemption by the Secretary of Finance of 7 July 1954, which reads: “Be it known that upon application filed by Wonder Mechanical Engineering Corporation, 1310 M. Hizon, Sta. Cruz, Manila, in respect to the manufacture of machines for making cigarette paper, pails, lead washers, nails, rivets, candies, etc., the said industry/industries have been determined to be new and necessary under the provisions of Republic Act No. 901 (or of Republic Act No. 35), in view of which this Certificate of Tax Exemption has been issued entitling the abovenamed firm/person to tax exemption from the payment of taxes directly payable by it/him in respect to the said industry/industries until December 31, 1958, and thereafter to a diminishing exemption until June 20, 1959, as provided in section 1 of Republic Act No. 901, except the exemption from the income tax which will wholly terminate on June 20, 1955”.

4. RA 35 granted exemption to persons engaged in new and necessary industry for a period of 4 years

RA 35, approved on 30 September 1946, grants to persons “who or which shall engage in a new and necessary industry”, for a period of 4 years from the date of the organization of such industry, exemption “from the payment of all internal revenue taxes directly payable by such person”.

5. RA 901 extended the period of tax exemption, elaborated the meaning of new and necessary industry

RA 901, approved on 20 June 1953, which amended RA by extending the period of tax exemption, elaborated on the meaning of “new and necessary industry.” Thus, an industry to be entitled to tax exemption must be “new and necessary” and that the tax exemption was granted to new and necessary industries as an incentive to greater and adequate production of products made scarce by the second world war which wrought havoc on our national economy, a production “sufficient to meet local demand or consumption”; that will contribute “to the attainment of a stable and balanced national economy”; an industry that “will make its products available in the general public in quantities and at prices which will justify its operation.”

6. New Industry, according to RA 901, Section 2

Section 2 of RA 901 provides that “for the purposes of this Act, a “new industry is one not existing or operating on a commercial scale prior to January first, nineteen hundred and forty-five. Where several applications for exemption are filed in connection with the same kind of industry, the Secretary of Finance shall approve them in the order in which they have been filed until the total output or production of those already granted exemption for that particular kind of industry is sufficient to meet local demand or consumption; Provided, That the limitation shall not apply to products intended for export.”

7. Necessary Industry, according to RA 901, Section 3

Section 3 of RA 901 provides that “for the purposes of this Act, a “necessary” industry is one complying with the following requirements: (1) Where the establishment of the industry will contribute to the attainment of a stable and balanced national economy; (2) Where the industry will operate on a commercial scale in conformity with up-to-date practices and will make its products available to the general public in quantities and at prices which will justify its operation with a reasonable degree of permanency; (3) Where the imported raw materials represent a value not exceeding sixty percentum of the manufacturing cost plus reasonable selling and administrative expenses: Provided, That a grantee of tax exemption shall use materials of domestic origin, growth, or manufacture wherever the same are available or could be made available in reasonable quantity and quality and at reasonable prices. . . .”.

8. Exemption on manufacture and sale of machines and not of articles produced by those machines

The company was granted tax exemption in the manufacture and sale “of machines for making cigarette paper, pails, lead washers, nails, rivets, candies, etc.”, as explicitly stated in the Certificate of Exemption, but certainly not for the manufacture and sale of the articles produced by those machines. The intent of the State to such effect may be discerned from the memorandum of the then Secretary of Finance (Pio Pedrosa), dated 3 March 1949, submitted to the Cabinet; and from the letter of the Executive Secretary

(Teodoro Evangelista) to the company dated 30 May 1949. Thus, the manufacture of steel chairs, jeep parts, and other articles not constituting machines for making certain products would not fall under the classification of "new and necessary" industries envisioned in Republic Acts 35 and 901 as to entitle the company to tax exemption. Therefore, the tax assessment of P25,080.91 as deficiency sales and percentage taxes from 1957 to June 30, 1960 must be paid by the company as the sale of other manufactured items did not come within the purview of the tax exemption granted the company.

9. Exemption highly disfavored in law; Burden of proof lies upon taxpayer claiming exemption

The cardinal rule in taxation is that exemptions therefrom are highly disfavored in law and he who claims tax exemption must be able to justify his claim or right thereto by the clearest grant of organic or statute law.

10. Exemption not presumed

Tax exemption must be clearly expressed and cannot be established by implication. Exemption from a common burden cannot be permitted to exist upon vague implication. (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466; House vs. Posadas, 53 Phil. 338; Collector of Internal Revenue vs. Manila Jockey Club, Inc., G.R. No. L-8755, March 23, 1956, 98 Phil. 676).