

## TAX 2 REVIEWER

### LOCAL TAXATION

Republic Act No. 7160, Local Government Code (LGC) of 1991, as amended

#### I. PRELIMINARY MATTERS

##### a. Power to Tax of Local Government Units

##### i. Sec. 5 Art. X, 1987 Constitution

Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

##### ii. Sec. 129, LGC

SEC. 129. Power to Create Sources of Revenue. - Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units.

#### CASES: Pepsi Cola Bottling vs. Municipality of Tanauan 69 SCRA 460

Pepsi-Cola Bottling Company of the Philippines, Inc., commenced a complaint with preliminary injunction before the Court of First Instance of Leyte for that court to declare Section 2 of Republic Act No. 2264, otherwise known as the Local Autonomy Act, unconstitutional as an undue delegation of taxing authority as well as to declare Ordinances Nos. 23 and 27, series of 1962, of the municipality of Tanauan, Leyte, null and void. Municipal Ordinance No. 23, of Tanauan, Leyte, which was approved on September 25, 1962, levies and collects "from soft drinks producers and manufacturers a tax of one-sixteenth (1/16) of a centavo for every bottle of soft drink corked." 2 For the purpose of computing the taxes due, the person, firm, company or corporation producing soft drinks shall submit to the Municipal Treasurer a monthly report, of the total number of bottles produced and corked during the month. On the other hand, Municipal Ordinance No. 27, which was approved on October 28, 1962, levies and collects "on soft drinks produced or manufactured within the territorial jurisdiction of this municipality a tax of

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ONE CENTAVO (P0.01) on each gallon (128 fluid ounces, U.S.) of volume capacity." For the purpose of computing the taxes due, the person, firm, company, partnership, corporation or plant producing soft drinks shall submit to the Municipal Treasurer a monthly report of the total number of gallons produced or manufactured during the month. The tax imposed in both Ordinances Nos. 23 and 27 is denominated as "municipal production tax."

There is no validity to the assertion that the delegated authority can be declared unconstitutional on the theory of double taxation. It must be observed that the delegating authority specifies the limitations and enumerates the taxes over which local taxation may not be exercised. 13 The reason is that the State has exclusively reserved the same for its own prerogative. Moreover, double taxation, in general, is not forbidden by our fundamental law, since we have not adopted as part thereof the injunction against double taxation found in the Constitution of the United States and some states of the Union. 14 Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity 15 or by the same jurisdiction for the same purpose, 16 but not in a case where one tax is imposed by the State and the other by the city or municipality. 17

Ordinance No. 27 is thus clear: it was intended as a plain substitute for the prior Ordinance No. 23, and operates as a repeal of the latter, even without words to that effect. 18 Plaintiff-appellant in its brief admitted that defendants-appellees are only seeking to enforce Ordinance No. 27, series of 1962. Even the stipulation of facts confirms the fact that the Acting Municipal Treasurer of Tanauan, Leyte sought to compel compliance by the plaintiff-appellant of the provisions of said Ordinance No. 27, series of 1962. The aforementioned admission shows that only Ordinance No. 27, series of 1962 is being enforced by defendants-appellees. Even the Provincial Fiscal, counsel for defendants-appellees admits in his brief "that Section 7 of Ordinance No. 27, series of 1962 clearly repeals Ordinance No. 23 as the provisions of the latter are inconsistent with the provisions of the former."

#### Mactan Cebu International Airport Authority vs. Marcos – GR No. 120082, Sept. 11, 1996

Petitioner Mactan Cebu International Airport Authority (MCIAA) was created by virtue of Republic Act No. 6958, mandated to "principally undertake the economical, efficient and effective control, management and supervision of the Mactan International Airport in the Province of Cebu and the Lahug Airport in Cebu City, . . . and such other Airports as may be established in the Province of Cebu . . ." (Sec. 3, RA 6958). Since the time of its creation,

petitioner MCIAA enjoyed the privilege of exemption from payment of realty taxes in accordance with Section 14 of its Charter. On October 11, 1994, however, Mr. Eustaquio B. Cesa, Officer-in-Charge, Office of the Treasurer of the City of Cebu, demanded payment for realty taxes on several parcels of land belonging to the petitioner. Petitioner objected to such demand for payment as baseless and unjustified, claiming in its favor the aforementioned Section 14 of RA 6958 which exempt it from payment of realty taxes. It was also asserted that it is an instrumentality of the government performing governmental functions, citing section 133 of the Local Government Code of 1991 which puts limitations on the taxing powers of local government units. Respondent City refused to cancel and set aside petitioner's realty tax account, insisting that the MCIAA is a government-controlled corporation whose tax exemption privilege has been withdrawn by virtue of Sections 193 and 234 of the Local Government Code that took effect on January 1, 1992.

As a general rule, the power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency who are to pay it. Nevertheless, effective limitations thereon may be imposed by the people through their Constitutions. 13 Our Constitution, for instance, provides that the rule of taxation shall be uniform and equitable and Congress shall evolve a progressive system of taxation. 14 So potent indeed is the power that it was once opined that "the power to tax involves the power to destroy." 15 Verily, taxation is a destructive power which interferes with the personal and property for the support of the government. Accordingly, tax statutes must be construed strictly against the government and liberally in favor of the taxpayer. 16 But since taxes are what we pay for civilized society, 17 or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed strictissimi juris against the taxpayers and liberally in favor of the taxing authority. 18 A claim of exemption from tax payment must be clearly shown and based on language in the law too plain to be mistaken. 19 Elsewise stated, taxation is the rule, exemption therefrom is the exception. 20 However, if the grantee of the exemption is a political subdivision or instrumentality, the rigid rule of construction does not apply because the practical effect of the exemption is merely to reduce the amount of money that has to be handled by the government in the course of its operations. 21

The power to tax is primarily vested in the Congress; however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely by virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution. 22 Under the latter, the

exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy.

There can be no question that under Section 14 of R.A. No. 6958 the petitioner is exempt from the payment of realty taxes imposed by the National Government or any of its political subdivisions, agencies, and instrumentalities. Nevertheless, since taxation is the rule and exemption therefrom the exception, the exemption may thus be withdrawn at the pleasure of the taxing authority. The only exception to this rule is where the exemption was granted to private parties based on material consideration of a mutual nature which then becomes contractual and is thus covered by the non-impairment clause of the Constitution. 23

The LGC, enacted pursuant to Section 3, Article X of the constitution provides for the exercise by local government units of their power to tax, the scope thereof or its limitations, and the exemption from taxation.

**Manila Electric Company vs. Province of Laguna – GR No. 131359, May 5, 1999**

Meralco was granted a franchise to operate an electric light and power service in Calamba, Laguna sometime in 1983 under P.D. No. 551. Under the franchise Meralco pays 2% franchise tax on of its gross receipts and "any law to the contrary notwithstanding be in lieu of all taxes and assessments of whatever nature imposed by any national or local authority or earnings, receipts, income and privilege of generation, distribution and sale of electric current." Pursuant to the Local Government Code, the province of Laguna enacted an ordinance imposing a franchise of 50% of 1% of the gross annual receipts of business enjoying a franchise realized during the preceding calendar year within the province including cities located therein. Rule on the validity of the tax ordinance.

SUGGESTED ANSWER: The tax ordinance is valid. Under the now prevailing Constitution, where there is neither a grant nor prohibition by statute, the tax power must be deemed to exist although Congress may provide statutory limitations and guidelines. The basic rationale for the current rule is to safeguard the viability and self-sufficiency of local government units by directly granting them general and broad tax powers.

The Local Government Code explicitly authorizes provinces and cities, notwithstanding "any exemption granted by any law or other special law" to impose a tax on businesses enjoying a franchise. Indicative of the legislative intent to carry out the constitutional mandate of vesting broad tax powers to

local government units, the Local Government Code has withdrawn tax exemptions or incentives theretofore enjoyed by certain entities. In addition, the Local Government Code contains a general repealing clause. The phrase in "lieu of all taxes" has to give way to the peremptory language of the Local Government Code which specifically provides for the withdrawal of all exemptions. The Court has viewed its previous rulings as laying stress on the legislative intent of the amendatory law whether the tax exemption privilege is to be withdrawn or not rather than on whether the law can or cannot withdraw the tax exemption, without violating the constitution. (Manila Electric Company v. Province of Laguna, et al., G.R. No. 131359, May 5, 1999)

**NPC vs. City of Cabanatuan GR No. 149110, April 9, 2003**

"Paradigm shift" from exclusive Congressional power to direct grant of taxing power to local legislative bodies. The power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges pursuant to Article X, section 5 of the 1987 Constitution.

NAPOCOR, the petitioner, is a government-owned and controlled corporation created under Commonwealth Act 120. It is tasked to undertake the "development of hydroelectric generations of power and the production of electricity from nuclear, geothermal, and other sources, as well as, the transmission of electric power on a nationwide basis."

For many years now, NAPOCOR sells electric power to the resident Cabanatuan City, posting a gross income of P107,814,187.96 in 1992. Pursuant to Sec. 37 of Ordinance No. 165-92, the respondent assessed the petitioner a franchise tax amounting to P808,606.41, representing 75% of 1% of the former's gross receipts for the preceding year.

Petitioner, whose capital stock was subscribed and wholly paid by the Philippine Government, refused to pay the tax assessment. It argued that the respondent has no authority to impose tax on government entities. Petitioner also contend that as a non-profit organization, it is exempted from the payment of all forms of taxes, charges, duties or fees in accordance with Sec. 13 of RA 6395, as amended.

The respondent filed a collection suit in the RTC of Cabanatuan City, demanding that petitioner pay the assessed tax, plus surcharge equivalent to 25% of the amount of tax and 2% monthly interest. Respondent alleged that petitioner's exemption from local taxes has been repealed by Sec. 193 of RA 7160 (Local Government Code). The trial court issued an order dismissing the case. On appeal, the Court of Appeals reversed the decision of the RTC and ordered the petitioner to pay the city government the tax assessment.

Issues: (1) Is the NAPOCOR excluded from the coverage of the franchise tax simply because its stocks are wholly owned by the National Government and its charter characterized is as a 'non-profit organization'?

(2) Is the NAPOCOR's exemption from all forms of taxes repealed by the provisions of the Local Government Code (LGC)?

Held: (1) NO. To stress, a franchise tax is imposed based not on the ownership but on the exercise by the corporation of a privilege to do business. The taxable entity is the corporation which exercises the franchise, and not the individual stockholders. By virtue of its charter, petitioner was created as a separate and distinct entity from the National Government. It can sue and be sued under its own name, and can exercise all the powers of a corporation under the Corporation Code.

To be sure, the ownership by the National Government of its entire capital stock does not necessarily imply that petitioner is no engage din business.

(2) YES. One of the most significant provisions of the LGC is the removal of the blanket exclusion of instrumentalities and agencies of the National Government from the coverage of local taxation. Although as a general rule, LGUs cannot impose taxes, fees, or charges of any kind on the National Government, its agencies and instrumentalities, this rule now admits an exception, i.e. when specific provisions of the LGC authorize the LGUs to impose taxes, fees, or charges on the aforementioned entities. The legislative purpose to withdraw tax privileges enjoyed under existing laws or charter is clearly manifested by the language used on Sec. 137 and 193 categorically withdrawing such exemption subject only to the exceptions enumerated. Since it would be tedious and impractical to attempt to enumerate all the existing statutes providing for special tax exemptions or privileges, the LGC provided for an express, albeit general, withdrawal of such exemptions or privileges. No more unequivocal language could have been used.

**iii. Local Taxing Authority (Sec. 132)**

SEC. 132. Local Taxing Authority. - The power to impose a tax, fee, or charge or to generate revenue under this Code shall be exercised by the sanggunian of the local government unit concerned through an appropriate ordinance.

**1. Construction of Tax Ordinances (Sec. 5b)**

Rules of Interpretation

(b) In case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally

in favor of the taxpayer. Any tax exemption, incentive or relief granted by any local government unit pursuant to the provisions of this Code shall be construed strictly against the person claiming it.

THE Supreme Court declared local governments are not authorized to impose business taxes on oil companies or other entities engaged in the sale of petroleum products.

**CASE: Petron Corp. Vs. Mayor Tobias Tiangco – GR No. 158881, April 16, 2008**

Court records showed that Petron, which maintains a depot or bulk plant at the Novatas Fishport Complex in Navotas, received a letter from respondent Navotas Mayor Tobias Tiangco, wherein the firm was assessed taxes covering its sale of diesel from 1997 to 2001. The Navotas city government demanded payment of P10.2 million representing Petron's "deficiency taxes." Petron filed with Navotas a letter-protest to the notice of assessment pursuant to Section 195 of the Code. It argued that it was exempt from local business taxes in view of Article 232 of the Implementing Rules of the LGC as well as the ruling of the Bureau of Local Government Finance of the Department of Finance. Owing to the denial of its protest, Petron filed with the RTC in Malabon a complaint for cancellation of assessment for deficiency taxes with prayer for the issuance of a temporary restraining order and preliminary injunction.

On May 5, 2003, the RTC in Malabon rendered its decision dismissing Petron's complaint and ordering the payment of the assessed amount.

After 11 days, Petron received a closure order from Tiangco, directing it to cease and desist from operating the bulk plant, prompting it to elevate the case to the SC.

Issue: whether a local government unit is empowered under the Local Government Code (the LGC) to impose business taxes on persons or entities engaged in the sale of petroleum products.

Held: The power of a municipality to impose business taxes is provided for in Section 143 of the LGC. Under the provision, a municipality is authorized to impose business taxes on a whole host of business activities. Suffice it to say, unless there is another provision of law which states otherwise, Section 143, broad in scope as it is, would undoubtedly cover the business of selling diesel fuels, or any other petroleum product for that matter.

**iv. Procedure for Approval of and Effectivity of Tax Ordinances (Sec. 187)**

SEC. 187. Procedure for Approval and Effectivity of Tax ordinances and Revenue Measures: Mandatory Public Hearings. - The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof: Provided, further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: Provided, however, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: Provided, finally, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

**v. Publication (Sec. 188)**

SEC. 188. Publication of Tax ordinances and Revenue Measures. - Within ten (10) days after their approval, certified true copies of all provincial, city, and municipal tax ordinances or revenue measures shall be published in full for three (3) consecutive days in a newspaper of local circulation: Provided, however, That in provinces, cities and municipalities where there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly accessible places.

**b. Other Preliminary Matters**

**i. Residual Powers of LGUs -Power to Levy Other Taxes, Fees or Charges (Sec. 186)**

SEC. 186. Power To Levy Other Taxes, Fees or Charges. - Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: Provided, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: Provided, further, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose.

## ii. Doctrine of Preemption or Exclusionary Rule

**CASE: Victorias Milling Co., Inc. Vs. Municipality of Victorias – L-21183, September 27, 1968**

The disputed ordinance was approved by the municipal Council of Victorias on September 22, 1956 by way of an amendment to two municipal ordinances separately imposing license taxes on operators of sugar centrals and sugar refineries. The changes were: with respect to sugar centrals, by increasing the rates of license taxes; and as to sugar refineries, by increasing the rates of license taxes as well as the range of graduated schedule of annual output capacity. Plaintiff filed suit below to ask for judgment declaring Ordinance No. 1, series of 1956, null and void; ordering the refund of all license taxes paid and to be paid under protest; directing the officials of Victorias and the Province of Negros Occidental to observe, during the pendency of the action, the provisions of section 357 of the Revised Manual of Instructions to Treasurers of Provinces, Cities and Municipalities, 1954 edition, regarding the treatment of license taxes paid under protest by virtue of a disputed ordinance; and other reliefs.

The reasons put forth by plaintiff are that: (a) the ordinance exceeds the amounts fixed in Provincial Circular 12-A issued by the Finance Department on February 27, 1940; (b) it is discriminatory since it singles out plaintiff which is the only operator of a sugar central and a sugar refinery within the jurisdiction of defendant municipality; (c) it constitutes double taxation; and (d) the national government has preempted the field of taxation with respect to sugar centrals or refineries.

Preemption in the matter of taxation simply refers to an instance where the national government elects to tax a particular area, impliedly withholding from the local government the delegated power to tax the same field. This doctrine primarily rests upon the intention of Congress. Conversely, should Congress

allow municipal corporations to cover fields of taxation it already occupies, then the doctrine of preemption will not apply.

In the case at bar, Section 4(1) of Commonwealth Act 472 clearly and specifically allows municipal councils to tax persons engaged in "the same businesses or occupation" on which "fixed internal revenue privilege taxes" are "regularly imposed by the National Government." With certain exceptions specified in Section 3 of the same statute. Our case does not fall within the exceptions. It would therefore be futile to argue that Congress exclusively reserved to the national government the right to impose the disputed taxes.

We rule that there is no preemption.

## II. GENERAL PROVISIONS

### a. Scope of taxing powers (Sec. 128)

Scope.- The provisions herein shall govern the exercise by provinces, cities, municipalities, and barangays of their taxing and other revenue-raising powers.

### b. Fundamental Principles (Sec. 130)

Fundamental Principles.- The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units:

- (a) Taxation shall be uniform in each local government unit;
- (b) Taxes, fees, charges and other impositions shall: (1) be equitable and based as far as practicable on the taxpayer's ability to pay; (2) be levied and collected only for public purposes; (3) not be unjust, excessive, oppressive, or confiscatory; (4) not be contrary to law, public policy, national economic policy, or in restraint of trade;
- (c) The collection of local taxes, fees, charges and other impositions shall in no case be let to any private person;
- (d) The revenue collected pursuant to the provisions of this Code shall inure solely to the benefit of, and be subject to disposition by, the local government unit levying the tax, fee, charge or other imposition unless otherwise specifically provided herein; and,
- (e) Each local government unit shall, as far as practicable, evolve a progressive system of taxation.

### c. Definitions (Sec. 131)

**SEC. 131. Definition of Terms. - When used in this Title, the term:**

(a) "Agricultural Product" includes the yield of the soil, such as corn, rice, wheat, rye, hay, coconuts, sugarcane, tobacco, root crops, vegetables, fruits, flowers, and their by-products; ordinary salt; all kinds of fish; poultry; and livestock and animal products, whether in their original form or not. The phrase "whether in their original form or not" refers to the transformation of said products by the farmer, fisherman, producer or owner through the application of processes to preserve or otherwise to prepare said products for the market such as freezing, drying, salting, smoking, or stripping for purposes of preserving or otherwise preparing said products for the market.

(b) "Amusement" is a pleasurable diversion and entertainment. It is synonymous to relaxation, avocation, pastime, or fun.

(c) "Amusement Places" include theaters, cinemas, concert halls, circuses and other places of amusement where one seeks admission to entertain oneself by seeing or viewing the show or performances.

(d) "Business" means trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit;

(e) "Banks and other financial institutions" include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder;

(f) "Capital Investment" is the capital which a person employs in any undertaking, or which he contributes to the capital of a partnership, corporation, or any other juridical entity or association in a particular taxing jurisdiction;

(g) "Charges" refer to pecuniary liability, as rents or fees against persons or property; (h) "Contractor" includes persons, natural or juridical, not subject to professional tax under Section 139 of this Code, whose activity consists essentially of the sale of all kinds of services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or his employees.

As used in this Section, the term "contractor" shall include general engineering, general building and specialty contractors as defined under applicable laws; filling, demolition and salvage works contractors; proprietors or operators of mine drilling apparatus; proprietors or operators of dockyards;

persons engaged in the installation of water system, and gas or electric light, heat, or power; proprietors or operators of smelting plants; engraving, plating, and plastic lamination establishments; proprietors or operators of establishments for repairing, repainting, upholstering, washing or greasing of vehicles, heavy equipment, vulcanizing, recapping and battery charging; proprietors or operators of furniture shops and establishments for planing or surfacing and recutting of lumber, and sawmills under contract to saw or cut logs belonging to others; proprietors or operators of dry- cleaning or dyeing establishments, steam laundries, and laundries using washing machines; proprietors or owners of shops for the repair of any kind of mechanical and electrical devices, instruments, apparatus, or furniture and shoe repairing by machine or any mechanical contrivance; proprietors or operators of establishments or lots for parking purposes; proprietors or operators of tailor shops, dress shops, milliners and hatters, beauty parlors, barbershops, massage clinics, sauna, Turkish and Swedish baths, slenderizing and building saloons and similar establishments; photographic studios; funeral parlors; proprietors or operators of hotels, motels, and lodging houses; proprietors or operators of arrastre and stevedoring, warehousing, or forwarding establishments; master plumbers, smiths, and house or sign painters; printers, bookbinders, lithographers; publishers except those engaged in the publication or printing of any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of advertisements; business agents, private detective or watchman agencies, commercial and immigration brokers, and cinematographic film owners, lessors and distributors.

(i) "Corporation" includes partnerships, no matter how created or organized, joint-stock companies, joint accounts (cuentas en participacion), associations or insurance companies but does not include general professional partnerships and a joint venture or consortium formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal, and other energy operations pursuant to an operating or consortium agreement under a service contract with the government. General professional partnerships are partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business. The term "resident foreign" when applied to a corporation means a foreign corporation not otherwise organized under the laws of the Philippines but engaged in trade or business within the Philippines;

(j) "Countryside and Barangay Business Enterprise" refers to any business entity, association, or cooperative registered under the provisions of Republic Act Numbered Sixty-eight hundred ten (R.A. No. 6810), otherwise known as

"Magna Carta For Countryside And Barangay Business Enterprises (Kalakalan 20)";

(k) "Dealer" means one whose business is to buy and sell merchandise, goods, and chattels as a merchant.. He stands immediately between the producer or manufacturer and the consumer and depends for his profit not upon the labor he bestows upon his commodities but upon the skill and foresight with which he watches the market;

(l) "Fee" means a charge fixed by law or ordinance for the regulation or inspection of a business or activity;

(m) "Franchise" is a right or privilege, affected with public interest which is conferred upon private persons or corporations, under such terms and conditions as the government and its political subdivisions may impose in the interest of public welfare, security, and safety;

(n) "Gross Sales or Receipts" include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person excluding discounts if determinable at the time of sales, sales return, excise tax, and value-added tax (VAT);

(o) "Manufacturer" includes 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 special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any such raw material or manufactured or partially manufactured products so as to reduce it to marketable shape or prepare it for any of the use of industry, or who by any such process combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or of different kinds and in such manner that the finished products of such process or manufacture can be put to a special use or uses to which such raw material or manufactured or partially manufactured products in their original condition could not have been put, and who in addition alters such raw material or manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption;

(p) "Marginal Farmer or Fisherman" refers to an individual engaged in subsistence farming or fishing which shall be limited to the sale, barter or exchange of agricultural or marine products produced by himself and his immediate family;

(q) "Motor Vehicle" means any vehicle propelled by any power other than muscular power using the public roads, but excluding road rollers, trolley cars, street-sweepers, sprinklers, lawn mowers, bulldozers, graders, fork-lifts, amphibian trucks, and cranes if not used on public roads, vehicles which run only on rails or tracks, and tractors, trailers, and traction engines of all kinds used exclusively for agricultural purposes;

(r) "Municipal Waters" includes not only streams, lakes, and tidal waters within the municipality, not being the subject of private ownership and not comprised within the national parks, public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two lines drawn perpendicularly to the general coastline from points where the boundary lines of the municipality or city touch the sea at low tide and a third line parallel with the general coastline and fifteen (15) kilometers from it. Where two (2) municipalities are so situated on the opposite shores that there is less than fifteen (15) kilometers of marine waters between them, the third line shall be equally distant from opposite shores of the respective municipalities;

(s) "Operator" includes the owner, manager, administrator, or any other person who operates or is responsible for the operation of a business establishment or undertaking;

(t) "Peddler" means any person who, either for himself or on commission, travels from place to place and sells his goods or offers to sell and deliver the same. Whether a peddler is a wholesale peddler or a retail peddler of a particular commodity shall be determined from the definition of wholesale dealer or retail dealer as provided in this Title;

(u) "Persons" means every natural or juridical being, susceptible of rights and obligations or of being the subject of legal relations;

(v) "Residents" refer to natural persons who have their habitual residence in the province, city, or municipality where they exercise their civil rights and fulfill their civil obligations, and to juridical persons for which the law or any other provision creating or recognizing them fixes their residence in a particular province, city, or municipality. In the absence of such law, juridical persons are residents of the province, city, or municipality where they have

their legal residence or principal place of business or where they conduct their principal business or occupation;

(w) "Retail" means a sale where the purchaser buys the commodity for his own consumption, irrespective of the quantity of the commodity sold; (x) "Vessel" includes every type of boat, craft, or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(y) "Wharfage" means a fee assessed against the cargo of a vessel engaged in foreign or domestic trade based on quantity, weight, or measure received and/or discharged by vessel; and

(z) "Wholesale" means a sale where the purchaser buys or imports the commodities for resale to persons other than the end user regardless of the quantity of the transaction.

#### **d. Common Limitations**

**Certain taxes, such as the following, may not be imposed by local government units:**

##### **i. Income Tax**

1. Correlate with Sec. 143 (f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property insurance premium.

##### **ii. Documentary Stamp Tax**

##### **iii. Transfer Taxes**

1. Correlate with Sec. 135

SEC. 135. Tax on Transfer of Real Property Ownership. - (a) The province may impose a tax on the sale, donation, barter, or on any other mode of transferring ownership or title of real property at the rate of not more than fifty percent (50%) of one percent (1%) of the total consideration involved in the acquisition of the property or of the fair market value in case the monetary consideration involved in the transfer is not substantial, whichever is higher. The sale, transfer or other disposition of real property pursuant to R.A. No. 6657 shall be exempt from this tax.

##### **iv. Customs Duties**

Customs duties, registration fees of vessels (except license fees imposed under Section 149 and Section 151 of the Code), wharfage on wharves, tonnage dues and all other kinds of customs fees, charges and dues except wharfage on wharves constructed and maintained by the local government unit concerned;

##### **v. Taxes, Fees and Charges (TFC) on Goods Passing Through the Territorial Jurisdiction of LGUs**

Taxes, fees, charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local governments in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes in any form whatever upon such goods or merchandise;

##### **1. Correlate with Sec. 155**

SEC. 155. Toll Fees or Charges. - The sanggunian concerned may prescribe the terms and conditions and fix the rates for the imposition of toll fees or charges for the use of any public road, pier or wharf, waterway, bridge, ferry or telecommunication system funded and constructed by the local government unit concerned: Provided, That no such toll fees or charges shall be collected from officers and enlisted men of the Armed Forces of the Philippines and members of the Philippine National Police on mission, post office personnel delivering mail, physically-handicapped, and disabled citizens who are sixty-five (65) years or older. When public safety and welfare so requires, the sanggunian concerned may discontinue the collection of the tolls, and thereafter the said facility shall be free and open for public use.

**CASE: Panaligan vs. City of Tacloban – GR No. L-9319, September 27, 1957**

SC annulled an ordinance of Tacloban City levying inspection fees (in realty taxes) upon animals exported or taken away from the City. The inspection fee sought to be collected - upon every head of specified animals to be transported out of the City of Tacloban (P2.00 per hog, P10.00 per cow and 20.00 per carabao) - was in reality an export tax specifically withheld from municipal taxing power under Section 2287 of the Revised Administrative Code.

**Palma Development Corp vs. Municipality of Malangas – GR No. 152492, October 16, 2003**

In accordance with the Local Government Code of 1991, a municipal ordinance imposing fees on goods that pass through the issuing municipality's territory is null and void.

Petitioner Palma Development Corporation is engaged in milling and selling rice and corn to wholesalers in Zamboanga City. It uses the municipal port of Malangas, Zamboanga del Sur as transshipment point for its goods. The port, as well as the surrounding roads leading to it, belong to and are maintained by the Municipality of Malangas, Zamboanga del Sur.

On January 16, 1994, the municipality passed Municipal Revenue Code No. 09, Series of 1993, which was subsequently approved by the Sangguniang Panlalawigan of Zamboanga del Sur in Resolution No. 1330 dated August 4, 1994. Section 5G.01 of the ordinance reads:

“Section 5G.01. Imposition of fees. There shall be collected service fee for its use of the municipal road[s] or streets leading to the wharf and to any point along the shorelines within the jurisdiction of the municipality and for police surveillance on all goods and all equipment harbored or sheltered in the premises of the wharf and other within the jurisdiction. Accordingly, the service fees imposed by Section 5G.01 of the ordinance was paid by petitioner under protest. It contended that under Republic Act No. 7160, otherwise known as the Local Government Code of 1991, municipal governments did not have the authority to tax goods and vehicles that passed through their jurisdictions. Thereafter, before the Regional Trial Court (RTC) of Pagadian City, petitioner filed against the Municipality of Malangas on November 20, 1995, an action for declaratory relief assailing the validity of Section 5G.01 of the municipal ordinance.

By express language of Sections 153 and 155 of RA No. 7160, local government units, through their Sanggunian, may prescribe the terms and

conditions for the imposition of toll fees or charges for the use of any public road, pier or wharf funded and constructed by them. A service fee imposed on vehicles using municipal roads leading to the wharf is thus valid. However, Section 133(e) of RA No. 7160 prohibits the imposition, in the guise of wharfage, of fees -- as well as all other taxes or charges in any form whatsoever -- on goods or merchandise. It is therefore irrelevant if the fees imposed are actually for police surveillance on the goods, because any other form of imposition on goods passing through the territorial jurisdiction of the municipality is clearly prohibited by Section 133(e).

**vi. TFC on products sold by marginal farmers of fishermen**

**1. Definition of Marginalized Fishermen (Sec. 122)**

"Marginal Farmer or Fisherman" refers to an individual engaged in subsistence farming or fishing which shall be limited to the sale, barter or exchange of agricultural or marine products produced by himself and his immediate family

**CASE: City of Cebu vs. IAC 144 SCRA 710**

The aforementioned provision prohibits a local government from imposing an inspection fee on agricultural products and fish is an agricultural product. Contrary to the claim of petitioners, under Section 102 of City Ordinance No. 11 a fisherman selling his fish within the city has to pay the inspection fee of P0.03 for every kilo of fish sold. Furthermore, the imposition of the tax will definitely restrict the free flow of fresh fish to Cebu City because the price of fish will have to increase.

This power to tax articles subject to specific tax which was expressly granted to cities by the original provisions of section 24, was deleted in the amendment. The said section 24, as it now reads, merely grants the city the power to "levy any tax, fee or other imposition not specifically enumerated or otherwise provided for" in the Local Tax Code. The amendment evinces the intent of the lawmaker to remove such taxing authority (on articles already subject to the national specific tax) from the cities like Cebu City.

**vii. Taxes on BOI-registered enterprises ( Board of Investments)**

Taxes on business enterprises certified by the Board of Investments as pioneer or non-pioneer for a period of six and four years, respectively, from the date of registration;

**viii. Excise taxes under the NIRC/TFC on Petroleum Products**

Excise taxes on articles enumerated under the National Internal Revenue Code and taxes, fees, or charges on petroleum products, but not a tax on the business of importing, manufacturing or producing said products

**CASE: Petron Corp. Vs. Mayor Tobias Tiangco – GR No. 158881, April 16, 2008**

Admittedly, the proffered definition of an excise tax as “a tax upon the performance, carrying on, or exercise of some right, privilege, activity, calling or occupation” derives from the compendium American Jurisprudence, popularly referred to as Am Jur., and has been cited in previous decisions of this Court, including those cited by Petron itself. Such a definition would not have been inconsistent with previous incarnations of our Tax Code, such as the NIRC of 1939, as amended, or the NIRC of 1977 because in those laws the term “excise tax” was not used at all. In contrast, the nomenclature used in those prior laws in referring to taxes imposed on specific articles was “specific tax.” Yet beginning with the National Internal Revenue Code of 1986, as amended, the term “excise taxes” was used and defined as applicable “to goods manufactured or produced in the Philippines... and to things imported.” This definition was carried over into the present NIRC of 1997. Further, these two latest codes categorize two different kinds of excise taxes: “specific tax” which is imposed and based on weight or volume capacity or any other physical unit of measurement; and “ad valorem tax” which is imposed and based on the selling price or other specified value of the goods. In other words, the meaning of “excise tax” has undergone a transformation, morphing from the Am Jur definition to its current signification which is a tax on certain specified goods or articles.

In contrast, after the tax code was amended to classify specific taxes as a subset of excise taxes, Nolleto, in his 1994 commentaries, wrote:

1. Excise taxes, as used in the Tax Code, refers to taxes applicable to certain specified goods or articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported into the Philippines. They are either specific or ad valorem.

2. Nature of excise taxes. – They are imposed directly on certain specified goods. (infra) They are, therefore, taxes on property. (See *Medina v. City of Baguio*, 91 Phil 854.)

A tax is not excise where it does not subject directly the produce or goods to tax but indirectly as an incident to, or in connection with, the business to be taxed.]

We thus can assert with clear comfort that excise taxes, as imposed under the NIRC, do not pertain to “the performance, carrying on, or exercise of an activity,” at least not to the extent of equating excise with business taxes.

**Province of Bulacan vs. CA – GR No. 126232, November 27, 1998**

On June 26, 1992, the Sangguniang Panlalawigan of Bulacan passed Provincial Ordinance No. 3, known as “An ordinance Enacting the Revenue Code of the Bulacan Province,” which was to take effect on July 1, 1992, section 21 of the ordinance provides as follows:

Section 21. Imposition of Tax. There is hereby levied and collected a tax of 10% of the fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth and other quarry resources, such, but not limited to marble, granite, volcanic cinders, basalt, tuff and rock phosphate, extracted from public lands or from beds of seas, lakes, rivers, streams, creeks and other public waters within its territorial jurisdiction.

Pursuant thereto, the Provincial Treasurer of Bulacan, in a letter dated November 11, 1993, assessed private respondent Republic Cement Corporation (hereafter Republic Cement) P2,524,692.13 for extracting limestone, shale and silica from several parcels of private land in the province during the third quarter of 1992 until the second quarter of 1993. Believing that the province, on the basis of above-said ordinance, had no authority to impose taxes on quarry resources extracted from private lands, Republic Cement formally contested the same on December 23, 1993. The same was, however, denied by the Provincial Treasurer on January 17, 1994. Republic Cement, consequently filed a petition for declaratory relief with the Regional Trial Court of Bulacan on February 14, 1994. The province filed a motion to dismiss Republic Cement's petition, which was granted by the trial court on May 13, 1993, which ruled that declaratory relief was improper, allegedly because a breach of the ordinance had been committed by Republic Cement.

It is clearly apparent from the above provision that the National Internal Revenue Code levies a tax on all quarry resources, regardless of origin, whether extracted from public or private land. Thus, a province may not ordinarily impose taxes on stones, sand, gravel, earth and other quarry resources, as the same are already taxed under the National Internal Revenue Code. The province can, however, impose a tax on stones, sand, gravel, earth and other quarry resources extracted from public land because it is expressly empowered to do so under the Local Government Code. As to stones, sand, gravel, earth and other quarry resources extracted from private land, however, it may not do so, because of the limitation provided by Section 133 of the Code in relation to Section 151 of the National Internal Revenue Code. Given the above disquisition, petitioners cannot claim that the appellate court unjustly deprived them of the power to create their sources of revenue, their assessment of taxes against Republic Cement

being ultra vires, traversing as it does the limitations set by the Local Government Code.

#### **ix. Percentage taxes and VAT**

Percentage tax or value-added tax on sales, barter or exchanges of goods or services or similar transactions thereon (but not fixed graduated taxes on gross sales or on volume of production)

#### **x. Taxes on transportation contractors and common carriers**

Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water except as provided by the Code;

#### **CASE : First Philippine Industrial Corporation vs. CA – GR No. 125948, December 29, 1998**

Petitioner is a grantee of a pipeline concession under Republic Act No. 387, as amended, to contract, install and operate oil pipelines. The original pipeline concession was granted in 1967[1] and renewed by the Energy Regulatory Board in 1992

Sometime in January 1995, petitioner applied for a mayor's permit with the Office of the Mayor of Batangas City. However, before the mayor's permit could be issued, the respondent City Treasurer required petitioner to pay a local tax based on its gross receipts for the fiscal year 1993 pursuant to the Local Government Code.[3] The respondent City Treasurer assessed a business tax on the petitioner amounting to P956,076.04 payable in four installments based on the gross receipts for products pumped at GPS-1 for the fiscal year 1993 which amounted to P181,681,151.00. In order not to hamper its operations, petitioner paid the tax under protest in the amount of P239,019.01 for the first quarter of 1993.

Petitioner claims that the respondent Court of Appeals erred in holding that (1) the petitioner is not a common carrier or a transportation contractor, and (2) the exemption sought for by petitioner is not clear under the law.

A "common carrier" may be defined, broadly, as one who holds himself out to the public as engaged in the business of transporting persons or property from place to place, for compensation, offering his services to the public generally.

Article 1732 of the Civil Code defines a "common carrier" as "any person, corporation, firm or association engaged in the business of carrying or

transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public."

The test for determining whether a party is a common carrier of goods is:

1. He must be engaged in the business of carrying goods for others as a public employment, and must hold himself out as ready to engage in the transportation of goods for person generally as a business and not as a casual occupation;
2. He must undertake to carry goods of the kind to which his business is confined;
3. He must undertake to carry by the method by which his business is conducted and over his established roads; and
4. The transportation must be for hire.[15]

Based on the above definitions and requirements, there is no doubt that petitioner is a common carrier. It is engaged in the business of transporting or carrying goods, i.e. petroleum products, for hire as a public employment. It undertakes to carry for all persons indifferently, that is, to all persons who choose to employ its services, and transports the goods by land and for compensation. The fact that petitioner has a limited clientele does not exclude it from the definition of a common carrier.

Furthermore, Section 21 of Provincial Ordinance No. 3 is practically only a reproduction of Section 138 of the Local Government Code. A cursory reading of both would show that both refer to ordinary sand, stone, gravel, earth and other quarry resources extracted from public lands. Even if we disregard the limitation set by Section 133 of the Local Government Code, petitioners may not impose taxes on stones, sand, gravel, earth and other quarry resources extracted from private lands on the basis of Section 21 of Provincial Ordinance No. 3 as the latter clearly applies only to quarry resources extracted from public lands. Petitioners may not invoke the Regalian doctrine to extend the coverage of their ordinance to quarry resources extracted from private lands, for taxes, being burdens, are not to be presumed beyond what the applicable statute expressly and clearly declares, tax statutes being construed strictissimi juris against the government.

#### **xi. Taxes on premiums**

Taxes on premiums paid for reinsurance or retrocession;

#### **xii. TFC for registration of motor vehicles and issuance of licenses for driving**

Taxes, fees or charges for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof, except tricycles

**1. Correlate with Sec. 458 (3)(vi) and Art. 99(a)(3)(vi) of the IRR of the LGC  
Sec. 458 (3)(vi)**

Subject to the guidelines prescribed by the Department of Transportation and Communications, regulate the operation of tricycles and grant franchises for the operation thereof within the territorial jurisdiction of the city

**LTO vs. City of Butuan – GR No. 131512, January 20, 2000**

The Court is asked in this instance to resolve the issue of whether under the present set up the power of the Land Registration Office ("LTO") to register tricycles in particular, as well as to issue licenses for the driving thereof, has likewise devolved to local government units.

The Department of Transportation and Communications ("DOTC"), through the LTO and the LTFRB, has since been tasked with implementing laws pertaining to land transportation. The LTO is a line agency under the DOTC whose powers and functions, pursuant to Article III, Section 4 (d) (1), of R.A. No.4136, otherwise known as Land Transportation and Traffic Code, as amended, deal primarily with the registration of all motor vehicles and the licensing of drivers thereof. The LTFRB, upon the other hand, is the governing body tasked by E.O. No. 202, dated 19 June 1987, to regulate the operation of public utility or "for hire" vehicles and to grant franchises or certificates of public convenience ("CPC"). Finely put, registration and licensing functions are vested in the LTO while franchising and regulatory responsibilities had been vested in the LTFRB.

LGUs indubitably now have the power to regulate the operation of tricycles-for-hire and to grant franchises for the operation thereof. "To regulate" means to fix, establish, or control; to adjust by rule, method, or established mode; to direct by rule or restriction; or to subject to governing principles or laws. A franchise is defined to be a special privilege to do certain things conferred by government on an individual or corporation, and which does not belong to citizens generally of common right. On the other hand, "to register" means to record formally and exactly, to enroll, or to enter precisely in a list or the like, and a "driver's license" is the certificate or license issued by the government which authorizes a person to operate a motor vehicle. The devolution of the functions of the DOTC, performed by the LTFRB, to the LGUs, as so aptly observed by the Solicitor General, is aimed at curbing the alarming increase of accidents in national highways involving tricycles. It has been the perception that local governments are in good position to achieve the end

desired by the law-making body because of their proximity to the situation that can enable them to address that serious concern better than the national government.

It may not be amiss to state, nevertheless, that under Article 458 (a)[3-VI] of the Local Government Code, the power of LGUs to regulate the operation of tricycles and to grant franchises for the operation thereof is still subject to the guidelines prescribed by the DOTC. In compliance therewith, the Department of Transportation and Communications ("DOTC") issued "Guidelines to Implement the Devolution of LTFRBs Franchising Authority over Tricycles-For-Hire to Local Government units pursuant to the Local Government Code."

Such as can be gleaned from the explicit language of the statute, as well as the corresponding guidelines issued by DOTC, the newly delegated powers pertain to the franchising and regulatory powers theretofore exercised by the LTFRB and not to the functions of the LTO relative to the registration of motor vehicles and issuance of licenses for the driving thereof.

**xiii. Taxes, Fees, or Charges on Philippine Products Actually Exported;**

Taxes, fees, or other charges on Philippine products actually exported except as provided by the Code (the prohibition applies to any local export tax, fee, or levy on Philippine export products but not to any local tax, fee, or levy that may be imposed on the business of exporting said products);

**1. Correlate with Sec. 143 (c)**

On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (1/2) of the rates prescribed under subsections (a), (b) and (d) of this Section:

**xiv. TFC on CBBEs under RA No. 6810 and RA 6983**

Taxes, fees or charges on duly organized and registered Countryside and Barangay Business Enterprises (R.A. No. 6810) and on cooperatives

**xv. TFC on the National Government, its agencies and instrumentalities and LGUs**

Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units (Section 133, LGC)

CASES:

**NDC vs. Cebu City 215 SCRA 382**

Is a public land reserved by the President for warehousing purposes in favor of a government-owned or controlled corporation, as well as the warehouse subsequently erected thereon, exempt from real property tax?

CEBU insists on taxability of the subject properties, claiming that no law grants NDC exemption from real estate taxes, and that NDC, as recipient of the land reserved by the President pursuant to Sec. 83 of the Public Land Act, is liable for payment of ordinary (real estate) taxes under Sec. 115 therefore. CEBU contends that the properties have ceased to be tax exempt under the Assessment Law. when the government disposed of them in favor of NDC, and even assuming that title to the land remains with the government (ownership being the basis for real estate taxability under the Assessment Law), the Supreme Court rulings establish increasing rather than "ownership" as basis for real estate tax liability. The effect of reservation under Sec. 83 is to segregate a piece of public land and transform it into non-alienable or non-disposable under the Public Land Act. Section 115, on the other hand, applies to disposable public lands. Clearly, therefore, Sec. 115 does not apply to lands reserved under Sec. 83. Consequently, the subject reserved public land remains tax exempt. However, as regards the warehouse constructed on a public reservation, a different rule should apply because "[t]he exemption of public property from taxation does not extend to improvements on the public lands made by pre-emptioners, homesteaders and other claimants, or occupants, at their own expense, and these are taxable by the state . . ." Consequently, the warehouse constructed on the reserved land by NWC (now under administration by NDC), indeed, should properly be assessed real estate tax as such improvement does not appear to belong to the Republic. Since the reservation is exempt from realty tax, the erroneous tax payments collected by CEBU should be refunded to NDC. This is in consonance with Sec. 40, par. (a) of the former Real Property Tax Code which exempted from taxation real property owned by the Republic of the Philippines or any of its political subdivisions, as well as any GOCC so exempt by its charter. 30

**Philippine Fisheries Dev't Authority vs.. CA GR No. 169836, GR No. July 31, 2007**

REVIEWER TAX2- YUMI

Assailed in this petition for review is the June 21, 2005 Decision of the Court of Appeals in CA-G.R. SP No. 81228, which held that petitioner Philippine Fisheries Development Authority (hereafter referred to as Authority) is liable to pay real property taxes on the land and buildings of the Iloilo Fishing Port Complex (IFPC) which are owned by the Republic of the Philippines but operated and governed by the Authority. Sometime in May 1988, the City of Iloilo assessed the entire IFPC for real property taxes. The assessment remained unpaid until the alleged total tax delinquency of the Authority for the fiscal years 1988 and 1989 amounted to P5,057,349.67, inclusive of penalties and interests. To satisfy the tax delinquency, the City of Iloilo scheduled on August 30, 1990, the sale at public auction of the IFPC.

HELD: The Court held that the PFDA, as an instrumentality of the national government, is generally tax-exempt. Thus, it ruled that the PFDA is liable to pay real property taxes assessed by the City of Iloilo on the IFPC only with respect to those portions which are leased to private entities. Moreover, the Court held that the IFPC, being a reclaimed property and thus part of public domain, cannot be the subject of a sale and be sold at a public auction. As such, the tax delinquency has to be settled through means other than the sale of the complex. The Court also declared the real property tax assessments issued by the City of Iloilo on the land and buildings of the IFPC as void except on those portions leased to the private parties. It also directed the City of Iloilo to refrain from levying on the IFPC to satisfy the payment of the real property tax delinquency.

**Mactan Cebu International Airport Authority vs. Marcos – GR No. 120082, Sept. 11, 1996**

Petitioner Mactan Cebu International Airport Authority (MCIAA) was created by virtue of Republic Act No. 6958, mandated to "principally undertake the economical, efficient and effective control, management and supervision of the Mactan International Airport in the Province of Cebu and the Lahug Airport in Cebu City, . . . and such other Airports as may be established in the Province of Cebu. Since the time of its creation, petitioner MCIAA enjoyed the privilege of exemption from payment of realty taxes in accordance with Section 14 of its Charter. On October 11, 1994, however, Mr. Eustaquio B. Cesa, Officer-in-Charge, Office of the Treasurer of the City of Cebu, demanded payment for realty taxes on several parcels of land belonging to the petitioner. Petitioner objected to such demand for payment as baseless and unjustified, claiming in its favor the aforesaid Section 14 of RA 6958 which exempt it from payment of realty taxes.

HELD: The petitioner can no longer invoke the general rule in Section 133 that the taxing powers of the local government units cannot extend to the levy of:

(o) taxes, fees, or charges of any kind on the National Government, its agencies, or instrumentalities, and local government units. It must show that the parcels of land in question, which are real property, are any one of those enumerated in Section 234, either by virtue of ownership, character, or use of the property. Most likely, it could only be the first, but not under any explicit provision of the said section, for one exists.

Accordingly, the position taken by the petitioner is untenable. Reliance on *Basco vs. Philippine Amusement and Gaming Corporation* 39 is unavailing since it was decided before the effectivity of the LGC. Besides, nothing can prevent Congress from decreeing that even instrumentalities or agencies of the government performing governmental functions may be subject to tax. Where it is done precisely to fulfill a constitutional mandate and national policy, no one can doubt its wisdom.

#### **MIAA vs. CA – GR No. 155650, July 20, 2006**

Rendered a favorable ruling for government instrumentalities (as distinguished from government-owned or controlled corporations) by deciding that no taxes, fees or charges of any kind may be imposed by any local government unit against the National Government, its agencies or instrumentalities.

The Manila International Airport Authority (MIAA), Bases Conversion Development Authority (BCDA), Philippine Ports Authority (PPA), Mactan International Airport Authority (MCIAA), University of the Philippines (UP), Bangko Sentral Ng Pilipinas (BSP) and all other so called GOCCs which are not organized as stock or non-stock corporations, are not considered as GOCCs but as government instrumentalities or "government corporate entities". According to the said Supreme Court Decision, they are not subject to the payment of any taxes, fees or charges of any kind imposed by provinces, cities, municipalities, and barangays pursuant to Section 133(o) of the Local Government Code. The Government Service and Insurance System (GSIS), the Social Security Services System (SSS), The National Kidney Foundation of the Philippines, the Lung Center of the Philippines (LCP), the Philippine Heart Center (PHC), the Philippine Economic Zone Authority (PEZA), to name a few, are likewise to be considered as government instrumentalities or "government corporate entities."

SC ruled We DECLARE the Airport Lands and Buildings of the Manila International Airport Authority EXEMPT from the real estate tax imposed by the City of Paranaque. We declare VOID all the real estate tax assessments,

including the final notices of real estate tax delinquencies, committed to uphold justice under the rule of law issued by the City of Paranaque on the Airport Lands and Buildings of the Manila International Airport Authority, except for the portions that the Manila International Airport has leased to private parties. We also declare VOID the assailed auction sale, and all its effects, of the Airport Lands and Buildings of the Manila International Airport Authority

#### **MIAA vs. City of Pasay – GR No. 163072, April 2, 2009**

ISSUE: Whether the NAIA Pasay properties of MIAA are exempt from real property tax.

The Manila International Airport Authority (MIAA) is not a government-owned or –controlled corporation, as defined under Section 2(13) of the Introductory Provisions of the Administrative Code, because it is not organized as a stock or non-stock corporation. Neither is MIAA a government-owned or –controlled corporation, under Section 16, Article XII of the 1987 Constitution because MIAA is not required to meet the test of economic viability. MIAA is a government instrumentality vested with corporate powers and performing essential public services pursuant to Section 2(10) of the Introductory Provisions of the Administrative Code. As a government instrumentality, MIAA is not subject to any kind of tax by local governments under Section 133(o) of the Local Government Code. The exception to the exemption in Section 234(a) does not apply to MIAA because MIAA is not a taxable entity under the Local Government Code. The real properties of MIAA are intended for public use, and at the very least intended for public service. Whether intended for public use or public service, said real properties are properties of public dominion. As properties of public dominion, they are owned by the Republic and thus exempt from real estate tax under the provisions of Section 234(a) of the Local Government Code.

#### **City of Davao City vs. RTC – GR No. 127383, August 18, 2005**

GSIS Davao City branch office received a Notice of Public Auction, scheduling public bidding of its properties for non-payment of realty taxes from 1992-1994, amounting to the sum total of Php 295, 721.61. The auction was, however, subsequently reset by virtue of a deadline extension given by Davao City.

On July 28, 1994, GSIS received Warrants of Levy and Notices of Levy on three parcels of land it owned and another Notice of Public Auction. In September of that same year, GSIS filed a petition for Certiorari, Prohibition, Mandamus and/or Declaratory Relief with the Davao City RTC.

During pre-trial, the only issue raised was whether sec. 234 and 534 of the Local Government Code, which have withdrawn real property tax from GOCCs, have also withdrawn from the GSIS its right to be exempted from payment of realty tax. RTC rendered decision in favor of GSIS. Hence this petition.

ISSUE/S: Whether the GSIS tax exemptions can be deemed as withdrawn by the LGC W/N sec. 33 of P.D. 1146 has been repealed by the LGC

HELD: Reading together sec. 133, 232, and 234 of the LGC, as a general rule: the taxing powers of LGUs cannot extend to the levy of "taxes, fees, and charges of any kind on the National Government, its agencies and instrumentalities, and LGUs." However, under sec. 234, exemptions from payment of real property taxes granted to natural or juridical persons, including GOCCs, except as provided in said section, are withdrawn upon effectivity of LGC. GSIS being a GOCC, then it necessarily follows that its exemption has been withdrawn. Regarding P.D. 1146 which laid down requisites for repeal on the laws granting exemption, Supreme Court found a fundamental flaw in Sec. 33, particularly the amendatory second paragraph. Said paragraph effectively imposes restrictions on the competency of the Congress to enact future legislation on the taxability of GSIS. This places an undue restraint on the plenary power of the legislature to amend or repeal laws. Only the Constitution may operate to preclude or place restrictions on the amendment or repeal laws. These conditions imposed under P.D. 1146, if honored, have the precise effect of limiting the powers of Congress.

Supreme Court held that they cannot render effective the amendatory second paragraph of sec. 33, for by doing so, they would be giving sanction to a disingenuous means employed through legislative power to bind subsequent legislators to a subsequent mode of repeal. Thus, the two conditions under sec. 33 cannot bear relevance whether the LGC removed the tax-exempt status of GSIS. Furthermore, sec. 5 on the rules of interpretation of LGC states that "any tax exemption, incentive or relief granted by any LGU pursuant to the provision of this Code shall be construed strictly against the person claiming it." The GSIS tax-exempt status, in sum, was withdrawn in 1992 by the LGC but restored by the GSIS Act of 1997, sec. 39. The subject real property taxes for the years 1992-1994 were assessed against GSIS while the LGC provisions prevailed and thus may be collected by the City of Davao.

### III. TAXING AND OTHER REVENUE RASING POWERS OF LGUS

#### a. Provinces

##### i. Local Transfer Tax (Sec. 135)

SEC. 135. Tax on Transfer of Real Property Ownership. - (a) The province may impose a tax on the sale, donation, barter, or on any other mode of transferring ownership or title of real property at the rate of not more than fifty percent (50%) of one percent (1%) of the total consideration involved in the acquisition of the property or of the fair market value in case the monetary consideration involved in the transfer is not substantial, whichever is higher. The sale, transfer or other disposition of real property pursuant to R.A. No. 6657 shall be exempt from this tax.

(b) For this purpose, the Register of Deeds of the province concerned shall, before registering any deed, require the presentation of the evidence of payment of this tax. The provincial assessor shall likewise make the same requirement before cancelling an old tax declaration and issuing a new one in place thereof. Notaries public shall furnish the provincial treasurer with a copy of any deed transferring ownership or title to any real property within thirty (30) days from the date of notarization. It shall be the duty of the seller, donor, transferor, executor or administrator to pay the tax herein imposed within sixty (60) days from the date of the execution of the deed or from the date of the decedent's death.

##### ii. Business Tax on Printing and Publication (Sec. 136)

SEC. 136. Tax on Business of Printing and Publication. - The province may impose a tax on the business of persons engaged in the printing and/or publication of books, cards, posters, leaflets, handbills, certificates, receipts, pamphlets, and others of similar nature, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year. In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereof, as provided herein. The receipts from the printing and/or publishing of books or other reading materials prescribed by the Department of Education, Culture and Sports, as school texts or references shall be exempt from the tax herein imposed.

##### iii. Franchise Tax (Sec. 137)

SEC. 137. Franchise Tax. - Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one

percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction. In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereof, as provided herein.

CASE:

**Smart Communications vs. City of Davao – GR No. 155491, September 16, 2008 (Also read decision on Motion for Reconsideration dated July 21, 2009)**

Tax exemptions in franchises are always subject to withdrawal. Moreover, Smart's franchise was granted with the express condition that it is subject to amendment, alteration, or repeal. (1987 CONSTITUTION, Art. XII, Sec. 11)

It is enough to say that the parties to a contract cannot, through the exercise of prophetic discernment, fetter the exercise of the taxing power of the State. For not only are existing laws read into contracts in order to fix obligations as between parties, but the reservation of essential attributes of sovereign power is also read into contracts as a basic postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government which retains adequate authority to secure the peace and good order of society.

In truth, the Contract Clause has never been thought as a limitation on the exercise of the State's power of taxation save only where a tax exemption has been granted for a valid consideration. Smart Communications, Inc. v. The City of Davao, etc., et al., G. R. No. 155491, September 16, 2008 citing Tolentino v. Secretary of Finance, G. R. No. 115455, August 25, 1994, 235 SCRA 630, 685. The author opines that since practically all franchises granted to telecommunications companies are similarly worded that the above doctrine finds application to the others.)

#### **iv. Tax on Sand, Gravel and Quarry Resources (Sec. 138)**

EC. 138. Tax on Sand, Gravel and Other Quarry Resources. - The province may levy and collect not more than ten percent (10%) of fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth, and other quarry resources, as defined under the National Internal Revenue Code, as amended, extracted from public lands or from the beds of seas, lakes, rivers, streams, creeks, and other public waters within its territorial jurisdiction. The

permit to extract sand, gravel and other quarry resources shall be issued exclusively by the provincial governor, pursuant to the ordinance of the sangguniang panlalawigan. The proceeds of the tax on sand, gravel and other quarry resources shall be distributed as follows:

(1) Province - Thirty percent (30%); (2) Component city or municipality where the sand, gravel, and other quarry resources are extracted - Thirty percent (30%); and (3) barangay where the sand, gravel, and other quarry resources are extracted - Forty percent (40%).

**CASE: Municipality of San Fernando vs. Sta. Romana L-GR No. 30159, Mar. 31, 1987**

Whether or not the Municipality of Luna has the authority to pass an ordinance and impose the license fees in question..

Held: Section 10 of the Local Tax Code, as amended by PD no. 426, reads:

“Sec. 10. Sand and gravel tax. – The PROVINCE may levy and collect a tax of not exceeding seventy-five centavos per cubic meter of ordinary stones, sand, gravel, earth and other materials extracted from public and private lands of the government or from the beds of seas, lakes, rivers, streams, creeks and other public water within the jurisdiction of the province. The municipality where the materials are extracted shall share in the proceeds of the tax herein authorized at a rate of not less than thirty per cent thereof as may be determined by the Provincial Board.”

Under the above-quoted provisions of the Local Tax Code, there is no question that the authority to impose the license fees in dispute, properly belongs to the province concerned and not the Municipality of Luna which is specifically prohibited under Section 22 of the same Code “from levying taxes, fees and charges that the province or city is authorized to levy in this Code.” On the other hand, the Municipality of San Fernando cannot extract sand and gravel from the Municipality of Luna without paying the corresponding taxes and fees that may be imposed by the province of La Union.

Province of Bulacan vs. CA – GR No. 126232, November 27, 1998

It is clearly apparent from the above provision that the National Internal Revenue Code levies a tax on all quarry resources, regardless of origin, whether extracted from public or private land. Thus, a province may not ordinarily impose taxes on stones, sand, gravel, earth and other quarry resources, as the same are already taxed under the National Internal Revenue Code. The province can, however, impose a tax on stones, sand, gravel, earth and other quarry resources extracted from public land because

it is expressly empowered to do so under the Local Government Code. As to stones, sand, gravel, earth and other quarry resources extracted from private land, however, it may not do so, because of the limitation provided by Section 133 of the Code in relation to Section 151 of the National Internal Revenue Code.

Given the above disquisition, petitioners cannot claim that the appellate court unjustly deprived them of the power to create their sources of revenue, their assessment of taxes against Republic Cement being ultra vires, traversing as it does the limitations set by the Local Government Code.

**v. Professional Tax (Sec. 139)**

SEC. 139. Professional Tax. - (a) The province may levy an annual professional tax on each person engaged in the exercise or practice of his profession requiring government examination at such amount and reasonable classification as the sangguniang panlalawigan may determine but shall in no case exceed Three hundred pesos (P=300.00).

(b) Every person legally authorized to practice his profession shall pay the professional tax to the province where he practices his profession or where he maintains his principal office in case he practices his profession in several places: Provided, however, That such person who has paid the corresponding professional tax shall be entitled to practice his profession in any part of the Philippines without being subjected to any other national or local tax, license, or fee for the practice of such profession.

(c) Any individual or corporation employing a person subject to professional tax shall require payment by that person of the tax on his profession before employment and annually thereafter.

(d) The professional tax shall be payable annually, on or before the thirty-first (31st) day of January. Any person first beginning to practice a profession after the month of January must, however, pay the full tax before engaging therein. A line of profession does not become exempt even if conducted with some other profession for which the tax has been paid. Professionals exclusively employed in the government shall be exempt from the payment of this tax.

(e) Any person subject to the professional tax shall write in deeds, receipts, prescriptions, reports, books of account, plans and designs, surveys and maps, as the case may be, the number of the official receipt issued to him.

**1. Definition of Professionals (Sec. 238 (f) IRR of the LGC)**

Professional tax may be imposed by a province or city but not by a municipality or barangay.

a. Transaction taxed: Exercise or practice of profession requiring government licensure examination.

b. Tax rate: Not be exceed P300.00.

c. Tax base: Reasonable classification by the sanggunian.

d. Exception: Payment to one province or city no longer subject to any other national or local tax, license or fee for the practice of such profession in any part of the Philippine professionals exclusively employed in the government.

e. Date of payment: Or on before January 31 or engaging in the profession.

f. Place of payment: Province or city where the professional practices his profession or where he maintains his principal office in case he practices his profession in several places.

Requirements: Any individual or corporation employing a person subject to professional tax shall require payment by that person of the tax on his profession before employment and annually thereafter.

Any person subject to the professional tax shall write in deeds, receipts, prescriptions, reports, books of account, plans and designs, surveys and maps, as the case may be, the number of the official receipt issued to him.

Exemption: Professionals exclusively employed in the government shall be exempt from payment. (Sec. 139, LGC)

**2. Professional practices his profession in several places (Sec. 228 (b) IRR of LGC)**

Professionals who are subject to professional tax, defined. The professionals subject to the professional tax are only those who have passed the bar examinations, or any board or other examinations conducted by the Professional Regulation Commission (PRC). for example, a lawyer who is also a Certified Public Accountant (CPA) must pay the professional tax imposed on lawyers and that fixed for CPAs, if he is to practice both professions. [Sec. 238 (f), Rule XXX, Rules and Regulations Implementing the Local Government Code of 1991]

**vi.. Amusement Tax (Sec. 140) as amended by RA No. 9640 dated May 21, 2009**

SEC. 140. Amusement Tax. - (a) The province may levy an amusement tax to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees.

(b) In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the provincial treasurer before the gross receipts are divided between said proprietors, lessees, or operators and the distributors of the cinematographic films.

(c) The holding of operas, concerts, dramas, recitals, painting and art exhibitions, flower shows, musical programs, literary and oratorical presentations, except pop, rock, or similar concerts shall be exempt from the payment of the tax herein imposed.

(d) The sangguniang panlalawigan may prescribe the time, manner, terms and conditions for the payment of tax. In case of fraud or failure to pay the tax, the sangguniang panlalawigan may impose such surcharges, interests and penalties as it may deem appropriate.

(e) The proceeds from the amusement tax shall be shared equally by the province and the municipality where such amusement places are located.

**CASE: PBA vs. CA GR No. 119122, August 8, 2000**

Is the amusement tax on admission tickets to PBA games a national or local tax? Otherwise put, who between the national government and local government should petitioner pay amusement taxes?

Held: Petitioner's contention is bereft of merit. Section 13 of the Local Tax Code provides that the province shall impose a tax on admission to be collected from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusement xxx." The foregoing provision of law in point indicates that the province can only impose a tax on admission from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusement. The authority to tax professional basketball games is not therein included. From the foregoing it is clear that the "proprietor, lessee or operator of xxx professional basketball games" is required to pay an amusement tax equivalent to fifteen per centum (15%) of their gross receipts to the Bureau of Internal Revenue, which payment is a national tax. The said payment of amusement tax is in lieu of all other percentage taxes of whatever nature and description.

While Section 13 of the Local Tax Code mentions "other places of amusement", professional basketball games are definitely not within its scope. Under the principle of ejusdem generis, where general words follow an enumeration of persons or things, by words of a particular and specific

meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned. Professional basketball games do not fall under the same category as theaters, cinematographs, concert halls and circuses as the latter basically belong to artistic forms of entertainment while the former caters to sports and gaming.

**vii. Annual Fixed Tax on Delivery Trucks / Vans (Sec. 141)**

SEC. 141. Annual Fixed Tax For Every Delivery Truck or Van of Manufacturers or Producers, Wholesalers of, Dealers, or Retailers in, Certain Products. - (a) The province may levy an annual fixed tax for every truck, van or any vehicle used by manufacturers, producers, wholesalers, dealers or retailers in the delivery or distribution of distilled spirits, fermented liquors, soft drinks, cigars and cigarettes, and other products as may be determined by the sangguniang panlalawigan, to sales outlets, or consumers, whether directly or indirectly, within the province in an amount not exceeding Five hundred pesos (P500.00)

(b) The manufacturers, producers, wholesalers, dealers, and retailers referred to in the immediately foregoing paragraph shall be exempt from the tax on peddlers prescribed elsewhere in this Code.

- b. Municipalities
- i. Business Taxes (Sec. 143)

CASES:

**Ericsson Telecommunication vs. City of Pasig GR No. 176667, November 22, 2007**

Whether the local business tax on contractors should be based on gross receipts or gross revenues

The imposition of local business tax based on petitioner's gross revenue will inevitably result in the constitutionally proscribed double taxation – taxing of the same person twice by the same jurisdiction for the same thing– inasmuch as petitioner's revenue or income for a taxable year will definitely include its gross receipts already reported during the previous year and for which local business tax has already been paid.

Thus, respondent committed a palpable error when it assessed petitioner's local business tax based on its gross revenue as reported in its audited financial statements, as Section 143 of the Local Government Code and Section 22(e) of the Pasig Revenue Code clearly provide that the tax should be computed based on gross receipts.

**Yamane vs. BA Lepanto – GR No 154992, October 25, 2005**

Whether a local government unit can, under the Local Government Code, impel a condominium corporation to pay business taxes?

Ruling: Local tax on businesses is authorized under Section 143 of the LGC. The word “business” itself is defined under Section 131(d) of the Code as “trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit.” This definition of “business” takes on importance, since Section 143 allows local government units to impose local taxes on businesses other than those specified under the provision. It is thus imperative that in order that the Corporation may be subjected to business taxes, its activities must fall within the definition of business as provided in the LGC. And to hold that they do is to ignore the very statutory nature of a condominium corporation. The creation of the condominium corporation is sanctioned by Republic Act No. 4726 (Condominium Act). Under the law, a condominium is an interest in real property consisting of a separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building. To enable the orderly administration over these common areas which are jointly owned by the various unit owners, the Condominium Act permits the creation of a condominium corporation, which is specially formed for the purpose of holding title to the common area, in which the holders of separate interests shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units. In line with the authority of the condominium corporation to manage the condominium project, it may be authorized, in the deed of restrictions, “to make reasonable assessments to meet authorized expenditures, each condominium unit to be assessed separately for its share of such expenses in proportion to its owner’s fractional interest in any common areas.” It is the collection of these assessments from unit owners that form the basis of the City Treasurer’s claim that the Corporation is doing business. As elicited from the Condominium Act, a condominium corporation is precluded by statute from engaging in corporate activities other than the holding of the common areas, the administration of the condominium project, and other acts necessary, incidental or convenient to the accomplishment of such purposes. Even though the Corporation is empowered to levy assessments or dues from the unit owners, these amounts collected are not intended for the incurrence of profit by the Corporation or its members, but to shoulder the multitude of necessary expenses that arise from the maintenance of the Condominium Project. Just as much is confirmed by Section 1, Article V of the Amended By-Laws, which enumerate the particular expenses to be defrayed by the

regular assessments collected from the unit owners. Hence, if any profit is obtained by the sale of the units, it accrues not to the corporation but to the unit owner. Second, if the unit owner does obtain profit from the sale of the corporation, the owner is already required to pay capital gains tax on the appreciated value of the condominium unit. Moreover, the Makati Revenue Code already forewarns that a clear demonstration is essential on the part of the City Treasurer on why the Corporation should be taxed anyway. “Full appreciative living values” is nothing but blather in search of meaning, and to impose a tax hinged on that standard is both arbitrary and oppressive. Accordingly, condominium corporations are generally exempt from local business taxation under the Local Government Code, irrespective of any local ordinance that seeks to declare otherwise.

**1. Catch all provision – Sec. 143 (h)**

(h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: Provided, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year. The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein.

**2. Rates of Tax within Metropolitan Manila (Sec. 144)**

SEC. 144. Rates of Tax within the Metropolitan Manila Area. - The municipalities within the Metropolitan Manila Area may levy taxes at rates which shall not exceed by fifty percent (50%) the maximum rates prescribed in the preceding Section.

**3. Retirement of Business (Sec. 145)**

SEC. 145. Retirement of Business. - A business subject to tax pursuant to the preceding sections shall, upon termination thereof, submit a sworn statement of its gross sales or receipts for the current year. If the tax paid during the year be less than the tax due on said gross sales or receipts of the current year, the difference shall be paid before the business is considered officially retired.

**CASE: Mobil Phils. vs. City Treasurer of Makati GR No. 154092, July 14, 2005**

Petitioner is a domestic corporation engaged in the manufacturing, importing, exporting and wholesaling of petroleum products, while respondents are the local government officials of the City of Makati charged with the implementation of the Revenue Code of the City of Makati, as well as the

collection and assessment of business taxes, license fees and permit fees within said city. On August 1998, Mobil Philippines filed an application with the City Treasurer of Makati for the retirement of its business within the City of Makati as it moved its principal place of business to Pasig City. Upon evaluation of petitioner's application, then OIC of the License Division issued to petitioner, a billing slip assessing petitioner the amount of P1,898,106.96. Petitioner paid the assessed amount under protest claiming a refund of P1,331,638.84. This was however denied by the respondent on the basis that petitioner was merely transferring and not retiring its business, and that the gross sales realized while petitioner still maintained office in Makati should be taxed in the City of Makati.

issue: Are the business taxes paid by petitioner in 1998, business taxes for 1997 or 1998?

HELD:

The trial court erred when it considered that the payments made by the petitioner in 1998 are payments for business tax incurred in 1997 which only accrued in January 1998. Likewise, it erred when it ruled that petitioner was still liable for business taxes based on its gross income for January and August 1998. Under the Makati Revenue Code, it appears that the business tax, like income tax, is computed based on the previous year's figures. This is the reason for the confusion. A newly-started business is already liable for business taxes (i.e. license fees) at the start of the quarter when it commences operations. In computing the amount of tax due for the first quarter of operations, the business' capital investment is used as the basis. For the subsequent quarters of the first year, the tax is based on the gross sales/receipts for the previous quarter. In the following year(s), the business is then taxed based on the gross sales or receipts of the previous year. The business taxes paid in the year 1998 is for the privilege of engaging in business for the same year, and not for having engaged in business for 1997.

On the year an establishment retires or terminates its business within the municipality, it would be required to pay the difference in the amount if the tax collected, based on the previous year's gross sales or receipts, is less than the actual tax due based on the current year's gross sales or receipts.

For the year 1998, petitioner paid a total of P2,262,122.48 to the City Treasurer of Makati as business taxes for the year 1998. The amount of tax as computed based on petitioner's gross sales for 1998 is only P1,331,638.84. Since the amount paid is more than the amount computed based on petitioner's actual gross sales for 1998, petitioner upon its

retirement is not liable for additional taxes to the City of Makati. Thus, we find that the respondent erroneously treated the assessment and collection of business tax as if it were income tax, by rendering an additional assessment of P1,331,638.84 for the revenue generated for the year 1998.

#### **4. Payment of Business Taxes (Sec. 146)**

SEC. 146. Payment of Business Taxes. - (a) The taxes imposed under Section 143 shall be payable for every separate or distinct establishment or place where business subject to the tax is conducted and one line of business does not become exempt by being conducted with some other business for which such tax has been paid. The tax on a business must be paid by the person conducting the same.

(b) In cases where a person conducts or operates two (2) or more of the businesses mentioned in Section 143 of this Code which are subject to the same rate of tax, the tax shall be computed on the combined total gross sales or receipts of the said two (2) or more related businesses.

(c) In cases where a person conducts or operates two (2) or more businesses mentioned in Section 143 of this Code which are subject to different rates of tax, the gross sales or receipts of each business shall be separately reported for the purpose of computing the tax due from each business.

#### **5. Situs of Tax (Sec. 150) – Where to pay business tax?**

SEC. 150. Situs of the Tax. - (a) For purposes of collection of the taxes under Section 143 of this Code, manufacturers, assemblers, repackers, brewers, distillers, rectifiers and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers, contractors, banks and other financial institutions, and other businesses, maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality.

(b) The following sales allocation shall apply to manufacturers, assemblers, contractors, producers, and exporters with factories, project offices, plants, and plantations in the pursuit of their business:

(1) Thirty percent (30%) of all sales recorded in the principal office shall be taxable by the city or municipality where the principal office is located; and

(2) Seventy percent (70%) of all sales recorded in the principal office shall be taxable by the city or city or municipality where the factory is located; and

(2) Forty percent (40%) to the city or municipality where the plantation is located.

(d) In cases where a manufacturer, assembler, producer, exporter or contractor has two (2) or more factories, project offices, plants, or plantations located in different localities, the seventy percent (70%) sales allocation mentioned in subparagraph (b) of subsection (2) above shall be prorated among the localities where the factories, project offices, plants, and plantations are located in proportion to their respective volumes of production during the period for which the tax is due.

(e) The foregoing sales allocation shall be applied irrespective of whether or not sales are made in the locality where the factory, project office, plant, or plan is located.

CASES:

**Shell Co vs. Mun. Of Sipocot – 105 Phil. 1263**

Sales Tax – it is the place of the consummation of the sale, associated with the delivery of the things which are the subject matter of the contract that determines the situs of the contract for purposes of taxation, and not merely the place of the perfection of the contract.

**Phil. Match vs. City of Cebu – L-30745 –**

Facts: Cebu City imposed a quarterly tax (sales tax of 1%) on gross sales or receipts of merchants, dealers, importers and manufacturers or any commodity doing business in Cebu City, through Ordinance 279. Section 9 of the Ordinance provided that, for the purpose of the tax, "all deliveries of goods or commodities stored in Cebu City, or if not stored are sold in that city shall be considered as sales in the city and shall be taxable." Philippine Match Co. Ltd., with principal office in Manila, questioned the legality of the tax collected by the City of Cebu on sales of matches stored by the company in Cebu City but delivered to customers outside the city.

Issue: Whether the City of Cebu can tax sales of matches which were perfected and paid for in Cebu City but where the matches were delivered to customers outside the city.

Held: The city can validly tax the sales of matches to customers outside of the city as long as the orders were booked and paid for in the company's

branch office in the city. Those matches can be regarded as sold in the city, as contemplated in the ordinance, because the matches were delivered to the carrier in Cebu City. Generally, delivery to the carrier is delivery to the buyer (Article 1523, Civil Code). A different interpretation would defeat the tax ordinance in question or encourage tax evasion through the simple expedient of arranging for the delivery of the matches at the outskirts of the city though the purchases were effected and paid for in the company's branch office in the city. The municipal board of the city is empowered to provide for the levy and collection of taxes for general and special purposes in accordance with law.

**Iloilo bottlers vs. City of Iloilo GR No. 52019 – Aug. 18, 1988**

Issue: Whether the Plaintiff, which had its bottling plant in Pavia Iloilo, but which sold softdrinks in Iloilo City, is liable under the tax ordinance enacted by Iloilo City.

Held: Plaintiff is obliged to pay the tax liability. The tax ordinance enacted by the city imposes tax on every person, firm or corporation engaged in the business of: 1. distribution of softdrinks; 2. manufacture of softdrinks; or 3. bottling of softdrinks within the jurisdiction of Iloilo City. In order to determine whether an entity engaged in the principal business of manufacturing, is likewise engaged in the separate business of selling, its marketing system or sales operations must be looked into. There are two (2) marketing systems that the Supreme Court laid down. Under the first system, the manufacturer enters into transactions and invoices the same at its principal office before delivery orders are sent to the company's warehouses, which delivers the products. Under the second system, transactions are entered into and perfected at stores or warehouses maintained by the company.

In the case at bar, the company distributed its soft drinks by means of its trucks which went directly to customers in the different places in Iloilo province. The delivery trucks were not used solely for the purpose of delivering softdrinks previously sold at Pavia. They served as selling units. They were what were called, until recently, "rolling stores". The delivery trucks were therefore much the same as the stores and warehouses under the second marketing system

a. With Branch or Sales Outlet - operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or

transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located

b. No Branch Sales or Outlet - .

c. With Factories, Project Offices, Plants and Plantations

d. Plantation Located at a place other than the place where factory is located

e. Two (2) or more factories, project offices, plants or plantations in different localities

#### **6. Fees and Charges (Sec. 147)**

SEC. 147. Fees and Charges. - The municipality may impose and collect such reasonable fees and charges on business and occupation and, except as reserved to the province in Section 139 of this Code, on the practice of any profession or calling, commensurate with the cost of regulation, inspection and licensing before any person may engage in such business or occupation, or practice such profession or calling.

#### **7. Others (Sec. 148 and Sec. 149)**

SEC. 148. Fees for Sealing and Licensing of Weights and Measures. - (a) The municipality may levy fees for the sealing and licensing of weights and measures at such reasonable rates as shall be prescribed by the sangguniang bayan.

(b) The sangguniang bayan shall prescribe the necessary regulations for the use of such weights and measures, subject to such guidelines as shall be prescribed by the Department of Science and Technology. The sanggunian concerned shall, by appropriate ordinance, penalize fraudulent practices and unlawful possession or use of instruments of weights and measures and prescribe the criminal penalty therefor in accordance with the provisions of this Code. Provided, however, That the sanggunian concerned may authorize the municipal treasurer to settle an offense not involving the commission of fraud before a case therefor is filed in court, upon payment of a compromise penalty of not less than Two hundred pesos (P=200.00).

SEC. 149. Fishery Rentals, Fees and Charges . - (a) Municipalities shall have the exclusive authority to grant fishery privileges in the municipal waters

and impose rentals, fees or charges therefor in accordance with the provisions of this Section. (b) The sangguniang bayan may:

(1) Grant fishery privileges to erect fish corrals, oyster, mussels or other aquatic beds or bangus fry areas, within a definite zone of the municipal waters, as determined by it: Provided, however, That duly registered organizations and cooperatives of marginal fishermen shall have the preferential right to such fishery privileges: Provided, further, That the sangguniang bayan may require a public bidding in conformity with and pursuant to an ordinance for the grant of such privileges: Provided, finally, That in the absence of such organizations and cooperatives or their failure to exercise their preferential right, other parties may participate in the public bidding in conformity with the above cited procedure.

(2) Grant the privilege to gather, take or catch bangus fry, prawn fry or kawag-kawag or fry of other species and fish from the municipal waters by nets, traps or other fishing gears to marginal fishermen free of any rental, fee, charge or any other imposition whatsoever.

(3) Issue licenses for the operation of fishing vessels of three (3) tons or less for which purpose the sangguniang bayan shall promulgate rules and regulations regarding the issuances of such licenses to qualified applicants under existing laws.

Provided, however, That the sanggunian concerned shall, by appropriate ordinance, penalize the use of explosives, noxious or poisonous substances, electricity, muro-ami, and other deleterious methods of fishing and prescribe a criminal penalty therefor in accordance with the provisions of this Code: Provided, finally, That the sanggunian concerned shall have the authority to prosecute any violation of the provisions of applicable fishery laws.

#### **c. Cities (Sec. 151)**

SEC. 151. Scope of Taxing Powers. - Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code. The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

#### **d. Barangay**

##### **i. Tax on retailers (Sec. 152 a)**

(a) Taxes - On stores or retailers with fixed business establishments with gross sales or receipts of the preceding calendar year of Fifty thousand pesos (P=50,000.00) or less, in the case of cities and Thirty thousand pesos (P=30,000.00) or less, in the case of municipalities, at a rate not exceeding one percent (1%) on such gross sales or receipts.

**ii. Service Fees or Charges (Sec. 152 b)**

(b) Service Fees or Charges - barangays may collect reasonable fees or charges for services rendered in connection with the regulation or the use of barangay-owned properties or service facilities such as palay, copra or tobacco dryers.

**iii. Barangay Clearance (Sec. 152 c)**

Barangay Clearance - No city or municipality may issue any license or permit for any business or activity unless a clearance is first obtained from the barangay where such business or activity is located or conducted. For such clearance, the sangguniang barangay may impose a reasonable fee. The application for clearance shall be acted upon within seven (7) working days from the filing thereof. In the event that the clearance is not issued within the said period, the city or municipality may issue the said license or permit

**iv. Other Fees (Sec. 152 b)**

**e. Common Revenue Raising Powers**

**i. Service Fees and Charges (Sec. 154)**

SEC. 154. Public Utility Charges. - Local government units may fix the rates for the operation of public utilities owned, operated and maintained by them within their jurisdiction.

**ii. Public Utility Charges (Sec. 155)**

SEC. 155. Toll Fees or Charges. - The sanggunian concerned may prescribe the terms and conditions and fix the rates for the imposition of toll fees or charges for the use of any public road, pier or wharf, waterway, bridge, ferry or telecommunication system funded and constructed by the local government unit concerned: Provided, That no such toll fees or charges shall be collected from officers and enlisted men of the Armed Forces of the Philippines and members of the Philippine National Police on mission, post office personnel delivering mail, physically-handicapped, and disabled citizens who are sixty-five (65) years or older. When public safety and welfare so requires, the sanggunian concerned may discontinue the

collection of the tolls, and thereafter the said facility shall be free and open for public use.

**iii. Toll Fees or Charges (Sec. 156)**

SEC. 156. Community Tax. - Cities or municipalities may levy a community tax in accordance with the provisions of this Article.

**f. Other Matters**

**i. Authority to Adjust Tax Rates (Sec. 191)**

SEC. 191. Authority of Local Government Units to Adjust Rates of Tax ordinances. - Local government units shall have the authority to adjust the tax rates as prescribed herein not oftener than once every five (5) years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under this Code

**ii. Authority to Grant Tax Exemptions (Sec. 192)**

SEC. 192. Authority to Grant Tax Exemption Privileges. - Local government units may, through ordinances duly approved, grant tax exemptions, incentives or reliefs under such terms and conditions as they may deem necessary.

**iii. Withdrawal of Tax Exemption Privileges (Sec. 193)**

SEC. 193. Withdrawal of Tax Exemption Privileges. - Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or -controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

**NPC vs. City of Cabanatuan GR No. 149110, April 9, 2003**

Facts: NAPOCOR, the petitioner, is a government-owned and controlled corporation created under Commonwealth Act 120. It is tasked to undertake the "development of hydroelectric generations of power and the production of electricity from nuclear, geothermal, and other sources, as well as, the transmission of electric power on a nationwide basis."

For many years now, NAPOCOR sells electric power to the resident Cabanatuan City, posting a gross income of P107,814,187.96 in 1992. Pursuant to Sec. 37 of Ordinance No. 165-92, the respondent assessed the petitioner a franchise tax amounting to P808,606.41, representing 75% of 1% of the former's gross receipts for the preceding year.

Petitioner, whose capital stock was subscribed and wholly paid by the Philippine Government, refused to pay the tax assessment. It argued that the respondent has no authority to impose tax on government entities. Petitioner also contend that as a non-profit organization, it is exempted from the payment of all forms of taxes, charges, duties or fees in accordance with Sec. 13 of RA 6395, as amended.

The respondent filed a collection suit in the RTC of Cabanatuan City, demanding that petitioner pay the assessed tax, plus surcharge equivalent to 25% of the amount of tax and 2% monthly interest. Respondent alleged that petitioner's exemption from local taxes has been repealed by Sec. 193 of RA 7160 (Local Government Code). The trial court issued an order dismissing the case. On appeal, the Court of Appeals reversed the decision of the RTC and ordered the petitioner to pay the city government the tax assessment.

issue: Is the NAPOCOR's exemption from all forms of taxes repealed by the provisions of the Local Government Code (LGC)?

Held: YES. One of the most significant provisions of the LGC is the removal of the blanket exclusion of instrumentalities and agencies of the National Government from the coverage of local taxation. Although as a general rule, LGUs cannot impose taxes, fees, or charges of any kind on the National Government, its agencies and instrumentalities, this rule now admits an exception, i.e. when specific provisions of the LGC authorize the LGUs to impose taxes, fees, or charges on the aforementioned entities. The legislative purpose to withdraw tax privileges enjoyed under existing laws or charter is clearly manifested by the language used on Sec. 137 and 193 categorically withdrawing such exemption subject only to the exceptions enumerated. Since it would be tedious and impractical to attempt to enumerate all the existing statutes providing for special tax exemptions or privileges, the LGC provided for an express, albeit general, withdrawal of such exemptions or privileges. No more unequivocal language could have been used.

#### **iv. Community Tax**

##### **1. Who may impose (Sec. 156)**

Community Tax. - Cities or municipalities may levy a community tax in accordance with the provisions of this Article.

##### **2. Individuals Liable to pay (Sec. 157)**

SEC. 157. Individuals Liable to Community Tax. - Every inhabitant of the Philippines eighteen (18) years of age or over who has been regularly employed on a wage or salary basis for at least thirty (30) consecutive working days during any calendar year, or who is engaged in business or occupation, or who owns real property with an aggregate assessed value of One thousand pesos (P=1,000.00) or more, or who is required by law to file an income tax return shall pay an annual community tax of Five pesos (P=5.00) and an annual additional tax of One peso (P=1.00) for every One thousand pesos (P=1,000.00) of income regardless of whether from business, exercise of profession or from property which in no case shall exceed Five thousand pesos (P=5,000.00). In the case of husband and wife, the additional tax herein imposed shall be based upon the total property owned by them and the total gross receipts or earnings derived by them.

##### **3. Juridical Persons Liable to Community Tax (Sec. 158)**

SEC. 158. Juridical Persons Liable to Community Tax. - Every corporation no matter how created or organized, whether domestic or resident foreign, engaged in or doing business in the Philippines shall pay an annual community tax of Five hundred pesos (P=500.00) and an annual additional tax, which, in no case, shall exceed Ten thousand pesos (P=10,000.00) in accordance with the following schedule:

(1) For every Five thousand pesos (P=5,000.00) worth of real property in the Philippines owned by it during the preceding year based on the valuation used for the payment of the real property tax under existing laws, found in the assessment rolls of the city or municipality where the real property is situated - Two pesos (P=2.00); and (2) For every Five thousand pesos (P=5,000.00) of gross receipts or earnings derived by it from its business in the Philippines during the preceding year - Two pesos (P=2.00). The dividends received by a corporation from another corporation however shall, for the purpose of the additional tax, be considered as part of the gross receipts or earnings of said corporation.

##### **4. Exemptions (Sec. 159)**

SEC. 159. Exemptions. - The following are exempt from the community tax:

(1) Diplomatic and consular representatives; and (2) Transient visitors when their stay in the Philippines does not exceed three (3) months.

##### **5. Place of Payment (Sec. 160)**

SEC. 160. Place of Payment. - The community tax shall be paid in the place of residence of the individual, or in the place where the principal office of the juridical entity is located.

#### **6. Time of Payment (Sec. 161)**

SEC. 161. Time for Payment; Penalties for Delinquency. - (a) The community tax shall accrue on the first (1st) day of January of each year which shall be paid not later than the last day of February of each year. If a person reaches the age of eighteen (18) years or otherwise loses the benefit of exemption on or before the last day of June, he shall be liable for the community tax on the day he reaches such age or upon the day the exemption ends. However, if a person reaches the age of eighteen (18) years or loses the benefit of exemption on or before the last day of March, he shall have twenty (20) days to pay the community tax without becoming delinquent. Persons who come to reside in the Philippines or reach the age of eighteen (18) years on or after the first (1st) day of July of any year, or who cease to belong to an exempt class on or after the same date, shall not be subject to the community tax for that year.

(b) Corporations established and organized on or before the last day of June shall be liable for the community tax for that year. But corporations established and organized on or before the last day of March shall have twenty (20) days within which to pay the community tax without becoming delinquent. Corporations established and organized on or after the first day of July shall not be subject to the community tax for that year. If the tax is not paid within the time prescribed above, there shall be added to the unpaid amount an interest of twenty-four percent (24%) per annum from the due date until it is paid.

#### **7. Community Tax Certificate (Sec. 162)**

SEC. 162. Community Tax Certificate. - A community tax certificate shall be issued to every person or corporation upon payment of the community tax. A community tax certificate may also be issued to any person or corporation not subject to the community tax upon payment of One peso (P=1.00).

#### **8. Presentation of CTC on certain occasions (Sec. 163)**

SEC. 163. Presentation of Community Tax Certificate On Certain Occasions. - (a) When an individual subject to the community tax acknowledges any document before a notary public, takes the oath of office upon election or appointment to any position in the government service; receives any license,

certificate, or permit from any public authority; pays any tax or fee; receives any money from any public fund; transacts other official business; or receives any salary or wage from any person or corporation, it shall be the duty of any person, officer, or corporation with whom such transaction is made or business done or from whom any salary or wage is received to require such individual to exhibit the community tax certificate. The presentation of community tax certificate shall not be required in connection with the registration of a voter.

(b) When, through its authorized officers, any corporation subject to the community tax receives any license, certificate, or permit from any public authority, pays any tax or fee, receives money from public funds, or transacts other official business, it shall be the duty of the public official with whom such transaction is made or business done, to require such corporation to exhibit the community tax certificate.

(c) The community tax certificate required in the two preceding paragraphs shall be the one issued for the current year, except for the period from January until the fifteenth (15th) of April each year, in which case, the certificate issued for the preceding year shall suffice.

### **IV. COLLECTION OF TAXES AND REMEDIES**

#### **a. Collection of Taxes**

##### **i. Tax Period and Manner of Payment (Sec. 165)**

SEC. 165. Tax Period and Manner of Payment. - Unless otherwise provided in this Code, the tax period of all local taxes, fees and charges shall be the calendar year. Such taxes, fees and charges may be paid in quarterly installments.

##### **ii. Accrual of Tax (Sec. 166)**

SEC. 166. Accrual of Tax. - Unless otherwise provided in this Code, all local taxes, fees, and charges shall accrue on the first (1st) day of January of each year. However, new taxes, fees or charges, or changes in the rates thereof,

shall accrue on the first (1st) day of the quarter next following the effectivity of the ordinance imposing such new levies or rates.

**iii. Time of Payment (Sec. 167).**

SEC. 167. Time of Payment. - Unless otherwise provided in this Code, all local taxes, fees, and charges shall be paid within the first twenty (20) days of January or of each subsequent quarter, as the case may be. The sanggunian concerned may, for a justifiable reason or cause, extend the time for payment of such taxes, fees, or charges without surcharges or penalties, but only for a period not exceeding six (6) months .

**iv. Surcharges and Penalties (Sec. 168)**

SEC. 168. Surcharges and Penalties on Unpaid Taxes, Fees, or Charges. - The sanggunian may impose a surcharge not exceeding twenty-five percent (25%) of the amount of taxes, fees or charges not paid on time and an interest at the rate not exceeding two percent (2%) per month of the unpaid taxes, fees or charges including surcharges, until such amount is fully paid but in no case shall the total interest on the unpaid amount or portion thereof exceed thirty-six (36) months.

**v. Interests on Other Unpaid Revenues (Sec. 169)**

SEC. 169. Interests on Other Unpaid Revenues. - Where the amount of any other revenue due a local government unit, except voluntary contributions or donations, is not paid on the date fixed in the ordinance, or in the contract, expressed or implied, or upon the occurrence of the event which has given rise to its collection, there shall be collected as part of that amount an interest thereon at the rate not exceeding two percent (2%) per month from the date it is due until it is paid, but in no case shall the total interest on the unpaid amount or a portion thereof exceed thirty-six (36) months.

**vi. Collection of Local Revenues by Treasurer (Sec. 170)**

SEC. 170. Collection of Local Revenues by Treasurer. - All local taxes, fees, and charges shall be collected by the provincial, city, municipal, or barangay treasurer, or their duly authorized deputies. The provincial, city or municipal treasurer may designate the barangay treasurer as his deputy to collect local taxes, fees, or charges. In case a bond is required for the purpose, the provincial, city or municipal government shall pay the premiums thereon in addition to the premiums of bond that may be required under this Code.

**vii. Examination of Books of Accounts and Pertinent Records (Sec. 171)**

SEC. 171. Examination of Books of Accounts and Pertinent Records of Businessmen by Local Treasurer. - The provincial, city, municipal or barangay treasurer may, by himself or through any of his deputies duly authorized in writing, examine the books, accounts, and other pertinent records of any person, partnership, corporation, or association subject to local taxes, fees and charges in order to ascertain, assess, and collect the correct amount of the tax, fee, or charge. Such examination shall be made during regular business hours, only once for every tax period, and shall be certified to by the examining official. Such certificate shall be made of record in the books of accounts of the taxpayer examined. In case the examination herein authorized is made by a duly authorized deputy of the local treasurer, the written authority of the deputy concerned shall specifically state the name, address, and business of the taxpayer whose books, accounts, and pertinent records are to be examined, the date and place of such examination, and the procedure to be followed in conducting the same. For this purpose, the records of the revenue district office of the Bureau of Internal Revenue shall be made available to the local treasurer, his deputy or duly authorized representative.

**b. Remedies of the Government**

**i. Local Government's Lien (Sec. 173)**

SEC. 173. Local Government's Lien. - Local taxes, fees, charges and other revenues constitute a lien, superior to all liens, charges or encumbrances in favor of any person, enforceable by appropriate administrative or judicial action, not only upon any property or rights therein which may be subject to the lien but also upon property used in business, occupation, practice of profession or calling, or exercise of privilege with respect to which the lien is imposed. The lien may only be extinguished upon full payment of the delinquent local taxes, fees and charges including related surcharges and interest.

**ii. Civil Remedies (Sec. 174)**

SEC. 174. Civil Remedies. - The civil remedies for the collection of local taxes, fees, or charges, and related surcharges and interest resulting from delinquency shall be:

(a) By administrative action thru distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to

personal property, and by levy upon real property and interest in or rights to real property; and

(b) By judicial action. Either of these remedies or all may be pursued concurrently or simultaneously at the discretion of the local government unit concerned.

### iii. Distraint (Sec. 175)

#### **SEC. 175. Distraint of Personal Property. - The remedy by distraint shall proceed as follows:**

(a) Seizure - Upon failure of the person owing any local tax, fee, or charge to pay the same at the time required, the local treasurer or his deputy may, upon written notice, seize or confiscate any personal property belonging to that person or any personal property subject to the lien in sufficient quantity to satisfy the tax, fee, or charge in question, together with any increment thereto incident to delinquency and the expenses of seizure. In such case, the local treasurer or his deputy shall issue a duly authenticated certificate based upon the records of his office showing the fact of delinquency and the amounts of the tax, fee, or charge and penalty due. Such certificate shall serve as sufficient warrant for the distraint of personal property aforementioned, subject to the taxpayer's right to claim exemption under the provisions of existing laws. Distrainted personal property shall be sold at public auction in the manner herein provided for.

(b) Accounting of distrainted goods - The officer executing the distraint shall make or cause to be made an account of the goods, chattels or effects distrainted, a copy of which signed by himself shall be left either with the owner or person from whose possession the goods, chattels or effects are taken, or at the dwelling or place of business of that person, and with someone of suitable age and discretion, to which list shall be added a statement of the sum demanded and a note of the time and place of sale.

(c) Publication - The officer shall forthwith cause a notification to be exhibited in not less than three (3) public and conspicuous places in the territory of the local government unit where the distraint is made, specifying the time and place of sale, and the articles distrainted. The time of sale shall not be less than twenty (20) days after notice to the owner or possessor of the property as above specified and the publication or posting of the notice. One place for the posting of the notice shall be at the office of the chief executive of the local government unit in which the property is distrainted.

(d) Release of distrainted property upon payment prior to sale - If at any time prior to the consummation of the sale, all the proper charges are paid to the officer conducting the sale, the goods or effects distrainted shall be restored to the owner.

(e) Procedure of sale - At the time and place fixed in the notice, the officer conducting the sale shall sell the goods or effects so distrainted at public auction to the highest bidder for cash. Within five (5) days after the sale, the local treasurer shall make a report of the proceedings in writing to the local chief executive concerned. Should the property distrainted be not disposed of within one hundred and twenty (120) days from the date of distraint, the same shall be considered as sold to the local government unit concerned for the amount of the assessment made thereon by the Committee on Appraisal and to the extent of the same amount, the tax delinquencies shall be cancelled. Said Committee on Appraisal shall be composed of the city or municipal treasurer as chairman, with a representative of the Commission on Audit and the city or municipal assessor as members.

(f) Disposition of proceeds - The proceeds of the sale shall be applied to satisfy the tax, including the surcharges, interest, and other penalties incident to delinquency, and the expenses of the distraint and sale. The balance over and above what is required to pay the entire claim shall be returned to the owner of the property sold. The expenses chargeable upon the seizure and sale shall embrace only the actual expenses of seizure and preservation of the property pending the sale, and no charge shall be imposed for the services of the local officer or his deputy. Where the proceeds of the sale are insufficient to satisfy the claim, other property may, in like manner, be distrainted until the full amount due, including all

#### iv. Levy of Real Property (Sec. 176)

**SEC. 176. Levy on Real Property . -** After the expiration of the time required to pay the delinquent tax, fee, or charge, real property may be levied on before, simultaneously, or after the distraint of personal property belonging to the delinquent taxpayer. To this end, the provincial, city or municipal treasurer, as the case may be, shall prepare a duly authenticated certificate showing the name of the taxpayer and the amount of the tax, fee, or charge, and penalty due from him. Said certificate shall operate with the force of a legal execution throughout the Philippines. Levy shall be effected by writing upon said certificate the description of the property upon which levy is made. At the same time, written notice of the levy shall be mailed to or served upon the assessor and the Registrar of Deeds of the province or city where the property is located who shall annotate the levy on the tax declaration and certificate of title of the property, respectively, and the delinquent taxpayer or,

if he be absent from the Philippines, to his agent or the manager of the business in respect to which the liability arose, or if there be none, to the occupant of the property in question. In case the levy on real property is not issued before or simultaneously with the warrant of distraint on personal property, and the personal property of the taxpayer is not sufficient to satisfy his delinquency, the provincial, city or municipal treasurer, as the case may be, shall within thirty (30) days after execution of the distraint, proceed with the levy on the taxpayer's real property. A report on any levy shall, within ten (10) days after receipt of the warrant, be submitted by the levying officer to the sanggunian concerned.

#### **v. Advertisement and Sale (Sec. 178)**

SEC. 178. Advertisement and Sale. - Within thirty (30) days after levy, the local treasurer shall proceed to publicly advertise for sale or auction the property or a usable portion thereof as may be necessary to satisfy the claim and cost of sale; and such advertisement shall cover a period of at least thirty (30) days. It shall be effected by posting a notice at the main entrance of the municipal building or city hall, and in a public and conspicuous place in the barangay where the real property is located, and by publication once a week for three (3) weeks in a newspaper of general circulation in the province, city or municipality where the property is located. The advertisement shall contain the amount of taxes, fees or charges, and penalties due thereon, and the time and place of sale, the name of the taxpayer against whom the taxes, fees, or charges are levied, and a short description of the property to be sold. At any time before the date fixed for the sale, the taxpayer may stay the proceedings by paying the taxes, fees, charges, penalties and interests. If he fails to do so, the sale shall proceed and shall be held either at the main entrance of the provincial, city or municipal building, or on the property to be sold, or at any other place as determined by the local treasurer conducting the sale and specified in the notice of sale. Within thirty (30) days after the sale, the local treasurer or his deputy shall make a report of the sale to the sanggunian concerned, and which shall form part of his records. After consultation with the sanggunian, the local treasurer shall make and deliver to the purchaser a certificate of sale, showing the proceedings of the sale, describing the property sold, stating the name of the purchaser and setting out the exact amount of all taxes, fees, charges, and related surcharges, interests, or penalties: Provided, however, That any excess in the proceeds of the sale over the claim and cost of sales shall be turned over to the owner of the property. The local treasurer may, by ordinance duly approved, advance an amount sufficient to defray the costs of collection by means of the remedies provided for in this Title, including the preservation or transportation in case of personal property, and the advertisement and

subsequent sale, in cases of personal and real property including improvements thereon.

#### **vi. Redemption of Property Sold (Sec. 179)**

SEC. 179. Redemption of Property Sold. - Within one (1) year from the date of sale, the delinquent taxpayer or his representative shall have the right to redeem the property upon payment to the local treasurer of the total amount of taxes, fees, or charges, and related surcharges, interests or penalties from the date of delinquency to the date of sale, plus interest of not more than two percent (2%) per month on the purchase price from the date of purchase to the date of redemption. Such payment shall invalidate the certificate of sale issued to the purchaser and the owner shall be entitled to a certificate of redemption from the provincial, city or municipal treasurer or his deputy. The provincial, city or municipal treasurer or his deputy, upon surrender by the purchaser of the certificate of sale previously issued to him, shall forthwith return to the latter the entire purchase price paid by him plus the interest of not more than two percent (2%) per month herein provided for, the portion of the cost of sale and other legitimate expenses incurred by him, and said property thereafter shall be free from the lien of such taxes, fees, or charges, related surcharges, interests, and penalties. The owner shall not, however, be deprived of the possession of said property and shall be entitled to the rentals and other income thereof until the expiration of the time allowed for its redemption.

#### **vii. Purchase of Property by LGU for want of bidder (Sec. 181)**

SEC. 181. Purchase of Property By the Local Government Units for Want of Bidder. - In case there is no bidder for the real property advertised for sale as provided herein, or if the highest bid is for an amount insufficient to pay the taxes, fees, or charges, related surcharges, interests, penalties and costs, the local treasurer conducting the sale shall purchase the property in behalf of the local government unit concerned to satisfy the claim and within two (2) days thereafter shall make a report of his proceedings which shall be reflected upon the records of his office. It shall be the duty of the Registrar of Deeds concerned upon registration with his office of any such declaration of forfeiture to transfer the title of the forfeited property to the local government unit concerned without the necessity of an order from a competent court. Within one (1) year from the date of such forfeiture, the taxpayer or any of his representative, may redeem the property by paying to the local treasurer the full amount of the taxes, fees, charges, and related surcharges, interests, or penalties, and the costs of sale. If the property is not redeemed as provided

herein, the ownership thereof shall be fully vested on the local government unit concerned.

#### viii. Resale of Real Estate Tax for TFC

#### ix. Judicial Action (Sec. 183)

SEC. 183. Collection of Delinquent Taxes, Fees, Charges or other Revenues through Judicial Action. - The local government unit concerned may enforce the collection of delinquent taxes, fees, charges or other revenues by civil action in any court of competent jurisdiction. The civil action shall be filed by the local treasurer within the period prescribed in Section 194 of this Code.

#### x. Further Distraint and Levy (Sec. 184)

SEC. 184. Further Distraint or Levy. - The remedies by distraint and levy may be repeated if necessary until the full amount due, including all expenses, is collected.

#### xi. Personal Property Exempt from Distraint or Levy (Sec. 185)

SEC. 185. Personal Property Exempt from Distraint or Levy. - The following property shall be exempt from distraint and the levy, attachment or execution thereof for delinquency in the payment of any local tax, fee or charge, including the related surcharge and interest:

- (a) Tools and the implements necessarily used by the delinquent taxpayer in his trade or employment;
- (b) One (1) horse, cow, carabao, or other beast of burden, such as the delinquent taxpayer may select, and necessarily used by him in his ordinary occupation;
- (c) His necessary clothing, and that of all his family;
- (d) Household furniture and utensils necessary for housekeeping and used for that purpose by the delinquent taxpayer, such as he may select, of a value not exceeding Ten thousand pesos (P=10,000.00);
- (e) Provisions, including crops, actually provided for individual or family use sufficient for four (4) months;
- (f) The professional libraries of doctors, engineers, lawyers and judges;
- (g) One fishing boat and net, not exceeding the total value of Ten thousand pesos (P=10,000.00), by the lawful use of which a fisherman earns his livelihood; and (h) Any material or article forming part of a house or improvement of any real property.

### c. Taxpayer's Remedies

#### i. Question Constitutionality of Ordinance (Sec. 187)

SEC. 187. Procedure for Approval and Effectivity of Tax ordinances and Revenue Measures; Mandatory Public Hearings. - The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof: Provided, further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: Provided, however, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: Provided, finally, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

#### Drilon vs. Lim GR No. 111249, August 4, 1994

The principal issue in this case is the constitutionality of Section 187 of the Local Government Code.

Pursuant thereto, the Secretary of Justice had, on appeal to him of four oil companies and a taxpayer, declared Ordinance No. 7794, otherwise known as the Manila Revenue Code, null and void for non-compliance with the prescribed procedure in the enactment of tax ordinances and for containing certain provisions contrary to law and public policy.

In a petition for certiorari filed by the City of Manila, the Regional Trial Court of Manila revoked the Secretary's resolution and sustained the ordinance, holding inter alia that the procedural requirements had been observed. More importantly, it declared Section 187 of the Local Government Code as unconstitutional because of its vesture in the Secretary of Justice of the power of control over local governments in violation of the policy of local autonomy mandated in the Constitution and of the specific provision therein conferring on the President of the Philippines only the power of supervision over local governments.

HELD: Section 187 authorizes the Secretary of Justice to review only the constitutionality or legality of the tax ordinance and, if warranted, to revoke it on either or both of these grounds. When he alters or modifies or sets aside

a tax ordinance, he is not also permitted to substitute his own judgment for the judgment of the local government that enacted the measure. Secretary Drilon did set aside the Manila Revenue Code, but he did not replace it with his own version of what the Code should be. He did not pronounce the ordinance unwise or unreasonable as a basis for its annulment. He did not say that in his judgment it was a bad law. What he found only was that it was illegal. All he did in reviewing the said measure was determine if the petitioners were performing their functions in accordance with law, that is, with the prescribed procedure for the enactment of tax ordinances and the grant of powers to the city government under the Local Government Code. As we see it, that was an act not of control but of mere supervision.

An officer in control lays down the rules in the doing of an act. If they are not followed, he may, in his discretion, order the act undone or re-done by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. The supervisor or superintendent merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done but only to conform to the prescribed rules. He may not prescribe his own manner for the doing of the act. He has no judgment on this matter except to see to it that the rules are followed. In the opinion of the Court, Secretary Drilon did precisely this, and no more nor less than this, and so performed an act not of control but of mere supervision.

#### **ii. Publication (Sec. 188)**

SEC. 188. Publication of Tax ordinances and Revenue Measures. - Within ten (10) days after their approval, certified true copies of all provincial, city, and municipal tax ordinances or revenue measures shall be published in full for three (3) consecutive days in a newspaper of local circulation. Provided, however, That in provinces, cities and municipalities where there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly accessible places.

#### **Coca-Cola Bottlers vs. City of Manila - GR No. 156252, June 27, 2006**

Petitioner Coca-Cola Bottlers Philippines, Inc. is a corporation engaged in the business of manufacturing and selling beverages and maintains a sales office located in the City of Manila. On 25 February 2000, the City Mayor of Manila approved Tax Ordinance No. 7988, otherwise known as "Revised Revenue Code of the City of Manila" repealing Tax Ordinance No. 7794 entitled, "Revenue Code of the City of Manila." Tax Ordinance No. 7988 amended certain sections of Tax Ordinance No. 7794 by increasing the tax

rates applicable to certain establishments operating within the territorial jurisdiction of the City of Manila, including herein petitioner. Aggrieved by said tax ordinance, petitioner filed a Petition before the Department of Justice (DOJ), against the City of Manila and its Sangguniang Panlungsod, invoking Section 187 of the Local Government Code of 1991 (Republic Act No. 7160). Said Petition questions the constitutionality or legality of Section 21 of Tax Ordinance No. 7988.

On 17 August 2000, then DOJ Secretary Artemio G. Tuquero issued a Resolution declaring Tax Ordinance No. 7988 null and void and without legal effect.

HELD: It is undisputed from the facts of the case that Tax Ordinance No. 7988 has already been declared by the DOJ Secretary, in its Order, dated 17 August 2000, as null and void and without legal effect due to respondents' failure to satisfy the requirement that said ordinance be published for three consecutive days as required by law. Neither is there quibbling on the fact that the said Order of the DOJ was never appealed by the City of Manila, thus, it had attained finality after the lapse of the period to appeal. Furthermore, the RTC of Manila, Branch 21, in its Decision dated 28 November 2001, reiterated the findings of the DOJ Secretary that respondents failed to follow the procedure in the enactment of tax measures as mandated by Section 188 of the Local Government Code of 1991, in that they failed to publish Tax Ordinance No. 7988 for three consecutive days in a newspaper of local circulation. From the foregoing, it is evident that Tax Ordinance No. 7988 is null and void as said ordinance was published only for one day in the 22 May 2000 issue of the Philippine Post in contravention of the unmistakable directive of the Local Government Code of 1991.

As held by this Court in the case of *People v. Lim*, if an order or law sought to be amended is invalid, then it does not legally exist, there should be no occasion or need to amend it.

#### **iii. Periods of Assessment and Collection (Sec. 194)**

##### **SEC. 194. Periods of Assessment and Collection. -**

(a) Local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period: Provided, That, taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due.

(b) In case of fraud or intent to evade the payment of taxes, fees, or charges, the same may be assessed within ten (10) years from discovery of the fraud or intent to evade payment.

(c) Local taxes, fees, or charges may be collected within five (5) years from the date of assessment by administrative or judicial action. No such action shall be instituted after the expiration of said period: Provided, however, That, taxes, fees or charges assessed before the effectivity of this Code may be collected within a period of three (3) years from the date of assessment.

(d) The running of the periods of prescription provided in the preceding paragraphs shall be suspended for the time during which:

(1) The treasurer is legally prevented from making the assessment of collection;

(2) The taxpayer requests for a reinvestigation and executes a waiver in writing before expiration of the period within which to assess or collect; and

(3) The taxpayer is out of the country or otherwise cannot be located.

#### **iv. Protest of Assessment (Sec. 195)**

SEC. 195. Protest of Assessment. - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

#### **San Juan vs. Castro – GR No. 174617, December 27, 2007**

Petitioner San Juan conveyed real properties to a corporation in exchange for its shares of stock. Using as basis Section 135 of the LGC, San Juan wanted to pay the transfer tax based on the consideration stated in the Deed of Assignment. Respondent Castro, as the Treasurer, informed him that the tax due is based on the fair market value of the property. Petitioner Castro protested the Treasurer's computation in writing, which the Treasurer also denied in writing. Petitioner Castro then filed a Petition for mandamus and damages against the Treasurer praying that he be compelled to accept

payment of the transfer tax based on the actual consideration of the transfer/assignment.

HELD: That petitioner protested in writing against the assessment of tax due and the basis thereof is on record as in fact it was on that account that respondent sent him the above-quoted July 15, 2005 letter which operated as a denial of petitioner's written protest. Petitioner should thus have, following the earlier above-quoted Section 195 of the Local Government Code, either appealed the assessment before the court of competent jurisdiction or paid the tax and then sought a refund.

Petitioner did not observe any of these remedies available to him, however. He instead opted to file a petition for mandamus to compel respondent to accept payment of transfer tax as computed by him.

Mandamus lies only to compel an officer to perform a ministerial duty (one which is so clear and specific as to leave no room for the exercise of discretion in its performance) but not a discretionary function (one which by its nature requires the exercise of judgment). Respondent's argument that "[m]andamus cannot lie to compel the City Treasurer to accept as full compliance a tax payment which in his reasoning and assessment is deficient and incorrect" is thus persuasive.

#### **v. Appeal to the CTA**

#### **vi. Claim for Refund (Sec. 196)**

SEC. 196. Claim for Refund of Tax Credit. - No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.