

**PHILIPPINE TRANSIT ASSOCIATION, PLAINTIFF AND APPELLANT,
VS. THE TREASURER OF THE CITY OF MANILA AND THE MUNICIPAL
BOARD OF THE CITY OF MANILA, DEFENDANTS AND APPELLANTS.**

G.R. No. L-1274. May 27, 1949

Ponente: REYES, J.

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REYES, J.:

This is a petition for declaratory judgment to test the validity of an ordinance (No. 2939) enacted by the municipal board of the City of Manila on November 10, 1945, imposing a tax on motor vehicles.

Plaintiff, an organization of public utility trucks operators, challenges the legality of the ordinance on the ground that it is beyond the power of the municipal board of the City of Manila to enact and offends against the rule on uniformity of taxation. The defendants reply that the ordinance imposes a property tax on motor vehicles which is expressly authorized by the city charter.

Deciding the controversy, the Court of First Instance of Manila declared the ordinance illegal on the ground that the municipal board of that City of Manila is not authorized to impose a property tax on motor vehicles not regularly kept in said city. Not satisfied with this decision, both parties appealed to this Court. Plaintiff's appeal merely takes exception to the finding that the tax imposed in the ordinance is a property tax.

Taking notice of the fact that the City of Manila is expressly authorized by section 2444 (n) of the Revised Administrative Code, as amended, to levy a property tax on motor vehicles while on the other hand, it may not exact a license fee or tax for the operation or use of motor vehicles on public highways, since that is forbidden by section 70 (b) of the Motor Vehicle Law, the vital question for determination is whether the tax imposed by the ordinance under consideration is a property tax or a license tax. Defendants maintain that it is a property tax authorized by the city charter. Plaintiff, on its part, contends that it is a license tax forbidden by section 70 (b) of the Motor Vehicle Law. But plaintiff also adds that, even granting that the tax is a property tax, the ordinance imposing it would still be illegal, since it is repugnant to the principle of uniformity in taxation.

The challenged ordinance calls the tax in question a property tax. But the name given to the tax by the law is, of course, not controlling where we have to determine what kind of a tax it really is. The rule is thus expressed in *Corpus Juris*:

"The character of a tax as a property tax or a license or occupation tax must be determined by its incidents, and from the natural and legal effect of the language employed in the act or ordinance, and not by the name by which it is described, or by the mode adopted in fixing its amount. If it is clearly a property tax, it will be so regarded, even though nominally and in form it is a license or occupation tax; and, on the other hand, if the tax is levied upon persons on account of their business, it will be construed as a license or occupation tax, even though it is graduated according to the property used in such business, or on the gross receipts of the business."
(37 C. J., 172.)

There are various tests for determining the character of a tax. A tax not based on value is not a property tax,

property taxes at present being invariably ad valorem (26 R. C. L., 38). A tax for the use of the streets is a privilege tax and not a property tax. (24 A. L. R. Anno., 937; Note a, 37 C. J., 172; Whaley vs. Northern Road Impr. Dist, 240 S. W., 1, 24 A. L. R., 934; Terre Haute vs. Kersey [1902] 159 Ind., 300; 64 N. E., 469; 95 Am. St. Rep., 296; 103 A. L. R. Anno., 98.). A property tax is a direct burden on the rem. So an arbitrary tax on vehicles, where the burden is not laid upon the rem, but the license is exacted for the privilege of using the vehicle upon the public high-ways, and thereby requiring the owner of the vehicle to contribute his just share of the expenses of upkeep, repair, and maintenance necessarily attendant upon the use of the highways, is held to be a license and not a property tax. (Windham vs. State [1918], 16 Ala. App., 383; 77 So., 963; Writ of certiorari denied in [1918] 202 Ala., 697; 79 So., 877; 103 A. L. R., 99.)

In the case of *City of Manila vs. Tanquintic*, 58 Phil., 297, this Court had occasion to distinguish between property tax and license tax. The Court there said:

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

With the above tests in mind, let us examine the provisions of the ordinance under consideration.

Section 1 of the ordinance reads:

"SECTION 1. No person shall regularly keep a motor vehicle in the City of Manila without first paying a property tax therefore. Such tax shall be paid to the City Treasurer who is authorized to collect the amounts indicated below:

Annual Property Tax

"Automobiles for private use:

"Class A-From 1 to 5 passengers P10.00

"Class B-From 6 to 8 passengers 15.00

"Automobiles for hire:

"Class A-from 1 to 5 passengers 15.00

"Class B-from 6 to 8 passengers 20.00

"Trucks for private use:

"Class A-from 1 to 2 tons 20.00

"Class B-from 2% to 8% tons 25.00

"Class C-from 4 to 5 tons 30.00

"Trucks for hire:

"Class A-from 1 to 2 tons 30.00

"Class B-from 2% to 3^ tons 35.00

"Class C-from 4 to 5 tons 40.00

"Passengers buses:

"Class A-from 1 to 20 passengers 40.00

"Class B-from 21 to 30 passengers 45.00

"Class C-from 31 or more 50.00

"Auto Calesa 15.00

"Trailers 5.00

"Motorcycles 2.00

"Provided, however, That all motor vehicles registered in the City of Manila shall be deemed motor vehicles regularly kept in said city; Provided,, further, That motor vehicles regularly used by persons residing in the City of Manila, or by persons who have their permanent business or employment in said City, and those belonging to transportation cargoes and/or passengers from the province to this City and vice-versa with or without offices in Manila, shall be deemed regularly kept therein, even if such motor vehicles are not registered in said city: Provided, finally, That motor vehicles belonging to the Commonwealth of the Philippines, or to any of its political subdivisions, U. S. High Commissioner and members of his staff, U. S. Army and Navy, diplomatic and consular representatives and officers of foreign powers and tourists during the first 90 days stay in Manila, shall be exempt from the tax herein provided."

It is to be noted from the above provisions that the tax imposed on motor vehicles is not fixed according to their value. The tax rate is based exclusively on the nature of their use (private or for hire) and on their passenger capacity. When it is recollected that the value of a motor vehicle does not depend upon those factors alone but also upon its make, age, and condition or state of preservation, the claim that this tax is an ad valorem tax, or a tax on property assessed according to its value, would be hard to accept. On the other hand, the factors taken into account in fixing the rate of the tax are those that would naturally be material in fixing a license fee for the use of the highways, for the tax rate appears to be based on the size or passenger capacity of the vehicle and the nature of the use to which it is devoted. It is, therefore, our opinion that the tax in question is not a property tax but a license tax imposed upon the privilege of operating motor vehicles on the streets of the City of Manila. We are strengthened in this conclusion by the fact that motor vehicles registered and kept out of the city are made subject to the tax if they are regularly used inside the city, and by the further fact that, under section 3 of the ordinance, the proceeds of the tax are set aside "exclusively for the repair, maintenance, and construction of streets and bridges of the City of Manila."

The tax in question being a license tax and not a property tax, the same is beyond the power of the municipal board of Manila to impose, so that the ordinance creating it must be declared illegal on that ground.

But even supposing that the said tax is a property tax, the same would still be illegal, being in violation of section 2444 (n) of the Revised Administrative Code, as amended, which expressly provides that automobiles and trucks not regularly kept in the City of Manila shall be exempt from the tax which the municipal board of said city may impose on motor vehicles. This prohibition may not be circumvented by merely declaring that motor vehicles used or apt to be used regularly in the City of Manila are to be considered as regularly kept therein even though in reality they are kept elsewhere. This the ordinance has sought to do by making the tax applicable to (1) motor vehicles not registered in the City of Manila but regularly used by persons residing therein, (2) motor vehicles not registered in Manila but regularly used by persons having their permanent business or employment in said city, and (3) motor vehicles belonging to public service operators engaged in transporting passengers and cargo between Manila and the provinces whether such public utilities have offices in Manila or not. It is not hard to conceive that in any of those cases, the motor vehicle taxed does not have to be kept regularly in Manila. The measure is a clear evasion of the prohibition imposed by the legislature and should, therefore, not be sanctioned.

In view of the foregoing, the decision appealed from in so far as it declares ordinance No. 2939 of the municipal board of Manila illegal is affirmed, without special pronouncement as to costs.

Moran, C. J., Paras, Feria, Pablo, Perfecto, Bengzon, Tuason, and Montemayor, JJ., concur.

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