

EUSEBIO VILLANUEVA, ET AL., PLAINTIFFS-APPELLEES, VS. CITY OF ILOILO, DEFENDANT-APPELLANT.

G.R. No. L-26521. December 28, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

Appeal by the defendant City of Iloilo from the decision of the Court of First Instance of Iloilo, declaring illegal Ordinance 11, series of 1960, entitled, "An Ordinance Imposing Municipal License Tax On Persons Engaged In The Business Of Operating Tenement Houses," and ordering the City to refund to the plaintiffs-appellees the sums of money collected from them under the said ordinance.

On September 30, 1946 the municipal board of Iloilo City enacted Ordinance 86, imposing license tax fees as follows: (1) tenement house (casa de vecindad), P25.00 annually; (2) tene-ment house, partly or wholly engaged in or dedicated to business in the streets of J.M. Basa, Isnart and Aldeguer, P24.00 per apartment; (3) tenement house, partly or wholly engaged in busi-ness in any other streets, P12.00 per apartment. The validity and constitutionality of this ordinance were challenged by the spouses Eusebio Villanueva and Remedios Sian Villanueva, owners of four tenement houses containing 34 apartments. This Court, in City of Iloilo vs. Remedios Sian Villanueva and Eusebio Villanueva, L-12695, March 23, 1959, declared the ordinance ultra vires, "it not appearing that the power to tax owners of tenement houses is one among those clearly and expressly granted to the City of Iloilo by its Charter."

On January 15, 1960 the municipal board of Iloilo City, believing, obviously, that with the passage of Republic Act 2264, otherwise known as the Local Autonomy Act, it had acquired the authority or power to enact an ordinance similar to that previous-ly declared by this Court as ultra vires, enacted Ordinance 11 (eleven), series of 1960, hereunder quoted in full:

"AN ORDINANCE IMPOSING MUNICIPAL LICENSE TAX ON PERSONS ENGAGED IN THE BUSINESS OF OPERATING TENEMENT HOUSES

"Be it ordained by the Municipal Board of the City of Iloilo, pursuant to the provisions of Republic Act No. 2264, otherwise known as the Autonomy Law of Local Government, that:

"Section 1. - A municipal license tax is hereby imposed on tenement houses in accordance with the schedule of payment herein provided.

"Section 2. - Tenement house as contempla-ted in this ordinance shall mean any building or dwelling for renting space divided into separate apartments or accessorias.

"Section 3. - The municipal license tax provided in Section 1 hereof shall be as follows:

I. Tenement houses:

(a) Apartment house made of

strong materials

P 20.00 per door p.a.

(b) Apartment house made of

mixed materials

P 10.00 per door p.a.

II. Rooming house of strong

materials

P 10.00 per door p.a.

Rooming house of mixed

materials

P 5.00 per door p.a.

III. Tenement house partly or wholly

engaged in or dedicated to business

in the following streets: J.M. Basa,

Iznart, Aldeguer, Guanco and

Ledesma from Plazoleto Gay to

Valeria St

P 30.00 per door p.a.

IV. Tenement house partly or wholly

engaged in or dedicated to business

in any other street

P 12.00 per door p.a.

V. Tenement houses at the streets

surrounding the super market as

soon as said place is

declared commercial

P 24.00 per door p.a.

"Section 4. - All ordinances or parts there of inconsistent herewith are hereby amended.

"Section 5. - Any person found violating this ordinance shall be punished with a fine not exceeding Two Hundred Pesos (P200.00) or an imprisonment of not more than six (6) months or both at the discretion of the Court.

"Section 6. - This ordinance shall take effect upon approval.

"ENACTED, January 15, 1960."

In Iloilo City, the appellees Eusebio Villanueva and Remedios S. Villanueva are owners of five tenement houses, aggregate-ly containing 43 apartments, while the other appellees and the same Remedios S. Villanueva are owners of ten apartments. Each of the appellees' apartments has a door leading to a street and is rented by either a Filipino or Chinese merchant. The first floor is utilized as a store, while the second floor is used as a dwelling of the owner of the store. Eusebio Villanueva owns, likewise, apartment buildings for rent in Bacolod, Dumaguete City, Baguio City and Quezon City, which cities, according to him, do not impose tenement or apartment taxes.

By virtue of the ordinance in question, the appellant City collected from spouses Eusebio Villanueva and Remedios S. Villanueva, for the years 1960-1964, the sum of P5,824.30, and from the appellees Pio Sian Melliza, Teresita S. Topacio, and Reme-dios S. Villanueva, for the years 1960-1964, the sum of P1,317.00. Eusebio Villanueva has likewise been paying real estate taxes on his property.

On July 11, 1962 and April 24, 1964, the plaintiffs-appellees filed a complaint, and an amended complaint, respectively, against the City of Iloilo, in the aforementioned court, praying that Ordinance 11, series of 1960, be declared "invalid for being beyond the powers of the Municipal Council of the City of Iloilo to enact, and unconstitutional for being violative of the rule as to uniformity of taxation and for depriving said plaintiffs of the equal protection clause of the Constitution," and that the City be ordered to refund the amounts collected from them under the said ordinance.

On March 30, 1966,[1] the lower court rendered judgment declaring the ordinance illegal on the grounds that (a) "Republic Act 2264 does not empower cities to impose apartment taxes," (b) the same is "oppressive and unreasonable," for the reason that it penalizes owners of tenement houses who fail to pay the tax, (c) it constitutes "not only double taxation, but treble at that," and (d) it violates the rule of uniformity of taxation.

The issues posed in this appeal are:

1. Is Ordinance 11, series of 1960, of the City of Iloilo, illegal because it imposes double taxation?
2. Is the City of Iloilo empowered by the Local Autonomy Act to impose tenement taxes?
3. Is Ordinance 11, series of 1960, oppressive and unreasonable because it carries a penal clause?
4. Does Ordinance 11, series of 1960, violate the rule of uniformity of taxation?

1. The pertinent provisions of the Local Autonomy Act are hereunder quoted:

"Sec. 2. - Any provision of law to the contrary notwithstanding, all chartered cities, municipalities and municipal districts shall have authority to impose municipal license taxes or fees upon persons engaged in any occupation or business, or exercising privileges in chartered cities, municipalities or municipal districts by requiring them to secure licenses at rates fixed by the municipal board or city council of the city, the municipal council of the municipality, or the municipal district council of the municipal district; to collect fees and charges for services rendered by the city, municipality or municipal district; to regulate and impose reasonable fees for services rendered in connection with any business, profession or occupation being conducted within the city, municipality or municipal district and otherwise to levy for public purposes, just and uniform taxes, licenses or fees; Provided, That municipalities and municipal districts shall, in no case, impose any percentage tax on sales or other taxes in any form based thereon nor impose taxes on articles subject to specific tax, except gasoline, under the provisions of the National Internal Revenue Code: Provided, however, That no city, municipality or municipal district may levy or impose any of the following:

"(a) Residence tax;

"(b) Documentary stamp tax;

"(c) Taxes on the business of persons engaged in the printing and publication of any news-paper, magazine, review or bulletin appearing at regular intervals and having fixed prices for subscription and sale, and which is not published primarily for the purpose of publishing advertisements;

"(d) Taxes on persons operating waterworks, irrigation and other public utilities except electric light, heat and power;

"(e) Taxes on forest products and forest concessions;

"(f) Taxes on estates, inheritance, gifts, legacies, and other acquisitions mortis causa;

"(g) Taxes on income of any kind whatsoever;

"(h) Taxes or fees for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof;

"(i) Customs duties registration, wharfage dues on wharves owned by the national government, tonnage, and all other kinds of customs fees, charges and duties;

"(j) Taxes of any kind on banks, insurance companies, and persons paying franchise tax; and

"(k) Taxes on premiums paid by owners of property who obtain insurance directly with foreign insurance companies.

"A tax ordinance shall go into effect on the fifteenth day after its passage, unless the ordinance shall provide otherwise: Provided, however, That the Secretary of Finance shall have authority to suspend the effectivity of any ordinance within one hundred and twenty days after its passage, if, in his opinion, the tax or fee therein levied or imposed is unjust, excessive, oppressive, or confiscatory, and when the said Secretary exercises this authority the effectivity of such ordinance shall be suspended.

"In such event, the municipal board or city council in the case of cities and the municipal council or municipal district council in the case of municipalities or municipal districts may appeal the decision of the Secretary of Finance to the court during the pendency of which case the tax levied shall be considered as paid under protest."

It is now settled that the aforequoted provisions of Republic Act 2264 confer on local governments broad taxing authority which extends to almost "everything, excepting those which are mentioned therein," provided that the tax so levied is "for public purposes, just and uniform," and does not transgress any constitutional provision or is not repugnant to a controlling statute.[2] Thus, when a tax levied under the authority of a city or municipal ordinance, is not within the exceptions and limitations aforementioned, the same comes within the ambit of the general rule, pursuant to the rules of *expressio unius est exclusio alterius*, and *exceptio firmat regulum in casibus non excepti*.

Does the tax imposed by the ordinance in question fall within any of the exceptions provided for in section 2 of the Local Autonomy Act? For this purpose, it is necessary to determine the true nature of the tax. The appellees strongly maintain that it is a "property tax" or "real estate tax,"[3] and not a "tax on persons engaged in any occupation or business or privileges," or a license tax, or a privilege tax, or an excise tax.[4] Indeed, the title of the ordinance designates it as a "municipal license tax on persons engaged in the business of operating tenement houses," while section 1 thereof states that a "municipal license tax is hereby imposed on tenement houses." It is the phraseology of section 1 on which the appellees base their contention that the tax involved is a real estate tax

which, according to them, makes the ordinance ultra vires as it imposes a levy "in excess of the one percentum real estate tax allowable under Sec. 38 of the Iloilo City Charter, Com. Act 158." [5]

It is our view, contrary to the appellees' contention, that the tax in question is not a real estate tax. Obviously, the appellees confuse the tax with the real estate tax within the meaning of the Assessment Law, [6] which, although not applicable to the City of Iloilo, has counterpart provisions in the Iloilo City Charter. [7] A real estate tax is a direct tax on the ownership of lands and buildings or other improvements thereon, not specially exempted, [8] and is payable regardless of whether the property is used or not, although the value may vary in accordance with such factor. [9] The tax is usually single or indivisible, although the land and building or improvements erected thereon are assessed separately, except when the land and building or improvements belong to separate owners. [10] It is a fixed proportion [11] of the assessed value of the property taxed, and requires, therefore, the intervention of assessors. [12] It is collected or payable at appointed times, [13] and it constitutes a superior lien on and is enforceable against the property [14] subject to such taxation, and not by imprisonment of the owner.

The tax imposed by the ordinance in question does not possess the aforestated attributes. It is not a tax on the land on which the tenement houses are erected, although both land and tenement houses may belong to the same owner. The tax is not a fixed proportion of the assessed value of the tenement houses, and does not require the intervention of assessors or appraisers. It is not payable at a designated time or date, and is not enforceable against the tenement houses either by sale or distraint. Clearly, therefore, the tax in question is not a real estate tax.

"The spirit, rather than the letter, of an ordinance determines the construction thereof, and the court looks less to its words and more to the context, subject-matter, consequence and effect. Accordingly, what is within the spirit is within the ordinance although it is not within the letter thereof, while that which is in the letter, although not within the spirit, is not within the ordinance." [15] It is within neither the letter nor the spirit of the ordinance that an additional real estate tax is being imposed, otherwise the subject-matter would have been not merely tenement houses. On the contrary, it is plain from the context of the ordinance that the intention is to impose a license tax on the operation of tenement houses, which is a form of business or calling. The ordinance, in both its title and body, particularly sections 1 and 3 thereof, designates the tax imposed as a "municipal license tax" which, by itself, means an "imposition or exaction on the right to use or dispose of property, to pursue a business, occupation, or calling, or to exercise a privilege." [16]

"The character of a tax is not to be fixed by any isolated words that may be employed in the statute creating it, but such words must be taken in the connection in which they are used, and the true character is to be deduced from the nature and essence of the subject." [17] The subject-matter of the ordinance is tenement houses whose nature and essence are expressly set forth in section 2 which defines a tenement house as "any building or dwelling for renting space divided into separate apartments or accessorias." The Supreme Court, in *City of Iloilo vs. Remedios Sian Villanueva, et al.*, L-12695, March 23, 1959, adopted the definition of a tenement house [18] as "any house or building, or portion thereof, which is rented, leased, or hired out to be occupied, or is occupied, as the home or residence of three families or more living independently of each other and doing their cooking in the premises, or by more than two families upon any floor, so living and cooking, but having a common right in the halls, stairways, yards, water-closets, or privies, or some of them." Tenement houses, being necessarily offered for rent or lease by their very nature and essence, therefore constitute a distinct form of business or calling, similar to the hotel or motel business, or the operation of lodging houses or boarding houses. This is precisely one of the reasons why this Court, in the said case of *City of Iloilo vs. Remedios Sian Villanueva, et al.*, supra, declared Ordinance 86 ultra vires, because, although the municipal board of Iloilo City is empowered, under sec. 21, par. j, of its Charter, "to tax, fix the license fee for, and regulate hotels, restaurants, refreshment parlors, cafes, lodging

houses, boarding houses, livery garages, public ware-houses, pawnshops, theaters, cinematographs," tenement houses, which constitute a different business enterprise,[19] are not mentioned in the aforesaid section of the City Charter of Iloilo. Thus, in the aforesaid case, this Court explicitly said:

"And it not appearing that the power to tax owner's of tenement houses is one among those clearly and expressly granted to the City of Iloilo by its Charter, the exercise of such power cannot be assumed and hence the ordinance in question is ultra vires insofar as it taxes a tenement house such as those belonging to defendants."

The lower court has interchangeably denominated the tax in question as a tenement tax or an apartment tax. Called by either name, it is not among the exceptions listed in section 2 of the Local Autonomy Act. On the other hand, the imposition by the ordinance of a license tax on persons engaged in the business of operating tenement houses finds authority in section 2 of the Local Autonomy Act which provides that chartered cities have the authority to impose municipal license taxes or fees upon persons engaged in any occupation or business, or exercising privileges within their respective territories, and "otherwise to levy for public purposes, just and uniform taxes, licenses, or fees."

2. The trial court condemned the ordinance as constituting "not only double taxation but treble at that," because "buildings pay real estate taxes and also income taxes as provided for in Sec. 182(A)(3)(s) of the National Internal Revenue Code, besides the tenement tax under the said ordinance." Obviously, what the trial court refers to as "income taxes" are the fixed taxes on business and occupation provided for in section 182, Title V, of the National Internal Revenue Code, by virtue of which persons engaged in "leasing or renting property, whether on their account as principals or as owners of rental property or properties," are considered "real estate dealers" and are taxed according to the amount of their annual income." [20]

While it is true that the plaintiffs-appellees are taxable under the aforesaid provisions of the National Internal Revenue Code as real estate dealers, and still taxable under the ordinance in question, the argument against double taxation may not be invoked. The same tax may be imposed by the national government as well as by the local government. There is nothing inherently obnoxious in the exaction of license fees or taxes with respect to the same occupation, calling or activity by both the State and a political subdivision thereof. [21]

The contention that the plaintiffs-appellees are doubly taxed because they are paying the real estate taxes and the tenement tax imposed by the ordinance in question, is also devoid of merit. It is a well-settled rule that a license tax may be levied upon a business or occupation although the land or property used in connection therewith is subject to property tax. The State may collect an ad valorem tax on property used in a calling, and at the same time impose a license tax on that calling, the imposition of the latter kind of tax being in no sense a double tax. [22]

"In order to constitute double taxation in the objectionable or prohibited sense the same property must be taxed twice when it should be taxed but once; both taxes must be imposed on the same property or subject-matter, for the same purpose, by the same State, Government, or taxing authority, within the same jurisdiction or taxing district, during the same taxing period, and they must be the same kind or character of tax." [23] It has been shown that a real estate tax and the tenement tax imposed by the ordinance, although imposed by the same taxing authority, are not of the same kind or character.

At all events, there is no constitutional prohibition against double taxation in the Philippines. [24] It is something not favored, but is permissible, provided some other constitutional requirement is not thereby violated, such as the requirement that taxes must be uniform. [25]

3. The appellant City takes exception to the conclusion of the lower court that the ordinance is not only oppressive

be-cause it "carries a penal clause of a fine of P200.00 or imprisonment of 6 months or both, if the owner or owners of the tenement buildings divided into apartments do not pay the tenement or apartment tax fixed in said ordinance," but also unconstitutional as it subjects the owners of tenement houses to criminal prosecution for "non-payment of an obligation which is purely sum of money." The lower court apparently had in mind, when it made the above ruling, the provision of the Constitution that "no person shall be imprisoned for a debt or non-payment of a poll tax." [26] It is elementary, however, that "a tax is not a debt in the sense of an obligation incurred by contract, express or implied, and therefore is not within the meaning of constitutional or statutory provisions abolishing or prohibiting imprisonment for debt, and a statute or ordinance which punishes the non-payment thereof by fine or imprisonment is not in conflict with that prohibition." [27] Nor is the tax in question a poll tax, for the latter is a tax of a fixed amount upon all persons, or upon all persons of a certain class, resident within a specified territory, without regard to their property or the occupations in which they may be engaged. [28] Therefore, the tax in question is not oppressive in the manner the lower court puts it. On the other hand, the charter of Iloilo City [29] empowers its municipal board to "fix penalties for violations of ordinances, which shall not exceed a fine of two hundred pesos or six months' imprisonment, or both such fine and imprisonment for each offense." In *Punsalan, et al. vs. Mun. Board of Manila*, supra, this Court overruled the pronouncement of the lower court declaring illegal and void an ordinance imposing an occupation tax on persons exercising various professions in the City of Manila because it imposed a penalty of fine and imprisonment for its violation. [30]

4. The trial court brands the ordinance as violative of the rule of uniformity of taxation.

"... because while the owners of the other buildings only pay real estate tax and income taxes the ordinance imposes aside from these two taxes an apartment or tenement tax. It should be noted that in the assessment of real estate tax all parts of the building or buildings are included so that the corresponding real estate tax could be properly imposed. If aside from the real estate tax the owner or owners of the tenement buildings should pay apartment taxes as required in the ordinance then it will violate the rule of uniformity of taxation."

Complementing the above ruling of the lower court, the appellees argue that there is "lack of uniformity" and "relative inequality,"

because "only the taxpayers of the City of Iloilo are singled out to pay taxes on their tenement houses, while citizens of other cities, where their councils do not enact a similar tax ordinance, are permitted to escape such imposition."

It is our view that both assertions are undeserving of extended attention. This Court has already ruled that tenement houses constitute a distinct class of property. It has likewise ruled that "taxes are uniform and equal when imposed upon all property of the same class or character within the taxing authority." [31] The fact, therefore, that the owners of other classes of buildings in the City of Iloilo do not pay the taxes imposed by the ordinance in question is no argument at all against uniformity and equality of the tax imposition. Neither is the rule of equality and uniformity violated by the fact that tenement taxes are not imposed in other cities, for the same rule does not require that taxes for the same purpose should be imposed in different territorial subdivisions at the same time. [32] So long as the burden of the tax falls equally and impartially on all owners or operators of tenement houses similarly classified or situated, equality and uniformity of taxation is accomplished. [33] The plaintiffs-appellees, as owners of tenement houses in the City of Iloilo, have not shown that the tax burden is not equally or uniformly distributed among them, to overthrow the presumption that tax statutes are intended to operate uniformly and equally. [34]

5. The last important issue posed by the appellees is that since the ordinance in the case at bar is a mere reproduction of Ordinance 86 of the City of Iloilo which was declared by this Court in L-12695, supra, as ultra

vires, the decision in that case should be accorded the effect of *res judicata* in the present case or should constitute estoppel by judgment. To dispose of this contention, it suffices to say that there is no identity of subject-matter in that case and this case because the subject-matter in L-12695 was an ordinance which dealt not only with tenement houses but also warehouses, and the said ordinance was enacted pursuant to the provisions of the City charter, while the ordinance in the case at bar was enacted pursuant to the provisions of the Local Autonomy Act. There is likewise no identity of cause of action in the two cases because the main issue in L-12695 was whether the City of Iloilo had the power under its charter to impose the tax levied by Ordinance 86, while one of the issues in the present case is whether the City is empowered to impose the tax levied by Ordinance 11, series of 1960, under the Local Autonomy Act which took effect on June 19, 1959, and therefore was not available for consideration in the decision in L-12695 which was promulgated on March 23, 1959. Moreover, under the provisions of section 2 of the Local Autonomy Act, local governments may now tax any tax-able subject-matter or object not included in the enumeration of matters removed from the taxing power of local governments. Prior to the enactment of the Local Autonomy Act the taxes that could be legally levied by local governments were only those specifically authorized by law, and their power to tax was construed in strictissimi juris.[35]

ACCORDINGLY, the judgment a quo is reversed, and, the ordinance in question being valid, the complaint is hereby dismissed. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, and Capistrano, JJ., concur.

[1] The record discloses that the delay caused in the lower court was due to the loss of the original record while the same was in the possession of the late Judge Perfecto Querubin. The record was later reconstituted under Judge Ramon Blanco.

[2] *Nin Bay Mining Co. vs. Mun. of Roxas, Prov. of Palawan*, L-20125, July 20, 1965, per Concepcion, J.:

"Neither the plaintiff nor the lower court maintains that the subject matter of the ordinance in question comes under any of the foregoing exceptions. Hence, under the rule – '*expressio unius est exclusio alterius*', the ordinance should be deemed to come within the purview of the general rule. Indeed, the sponsor of the bill, which upon its passage became Republic Act No. 2264, explicitly informed the House of Representatives when he urged the same to approve it, that, under its provisions, local governments would be 'able to do everything, excepting those things which are mentioned therein.' x x x."

C.N. Hodges vs. The Mun. Board of the City of Iloilo, et al., L-18276, Jan. 12, 1967, per Castro, J.:

"x x x, Heretofore, we have announced the doctrine that the grant of the power to tax to chartered cities under section 2 of the Local Autonomy Act is sufficiently plenary to cover 'everything, excepting those which are mentioned therein,' subject only to the limitation that the tax so levied is for 'public purposes, just and uniform' (*Nin Bay Mining Co. vs. Mun. of Roxas, Prov. of Palawan*, G.R. No. L-20125, July 20, 1965). There is no showing, and we do not believe it is possible to show, that the tax levied, called by any name - percentage tax or sales tax - comes under any of the specific exceptions listed in Section 2 of the Local Autonomy Act. Not being excepted, it must be regarded as coming within the purview of the general rule. As the maxim goes, '*Exceptio firmat regulum in casibus non excepti*.' Since its public purpose, justness and uniformity of application are not disputed, the tax so levied must be sustained as valid." [Re: ordinance imposing a tax on sale of real estate property situated in the City of Iloilo, of ½% of 1% of the contract price or consideration.] *Ormoc Sugar Co., inc. vs. Mun. Board of Ormoc City, et al.*, L-24322, July 21, 1967, per Fernando, J.:

"In a number of decisions starting from *City of Bacolod vs. Gruet*, L-18290, Jan. 31, 1963, to *Hodges vs. Mun.*

Board, L-18276, Jan. 12, 1967, such broad taxing authority has been implemented and vitalized by this Court.

"x x x. The question before this Court is one of power. From and after June 19, 1959, when the Local Autonomy Act was enacted, the sphere of autonomy of a chartered ci-ty in the enactment of taxing measures has been consider-ably enlarged.

"x x x. In the absence of a clear and specific show-ing that there was a transgression of a constitutional pro-vision or repugnancy to a controlling statute, an objection of such a generalized character deserves but scant sympathy from this Court. Considering the indubitable policy ex-pressly set forth in the Local Autonomy Act, the invoca-tion of such a talismanic formula as 'restraint of trade' without more no longer suffices, assuming it ever did, to nullify a taxing ordinance, otherwise valid." [Re: Ordinance imposing tax on all productions of centrifugal sugar (B-sugar) locally sold or sold within the Phil., at P.20 per picul, etc.]

[3] "Taxes on property are taxes assessed on all property or on all property of a certain class located within a certain terri-tory on a specified date in proportion to its value, or in accordance with some other reasonable method of apportionment, the obligation to pay which is absolute and una-voidable and it is not based upon any voluntary action of the person assessed. A property tax is ordinarily measured by the amount of property owned by the taxpayer on a given day, and not on the total amount owned by him during the year. It is ordinarily assessed at stated periods determined in advance, and collected at appointed times, and its pay-ment is usually enforced by sale of the property taxed, and, occasionally, by imprisonment of the person assessed." (51 Am. Jur. 57)

"A 'real estate tax' is a tax in rem against realty without personal liability therefore on part of owner thereof, and a judgment recovered in proceedings for enforcement of real estate tax is one in rem against the realty without personal liability against the owner." (36 Words and Phrases, 286, citing Land O'Lakes Dairy Co. vs. Wadena County, 39 N.W. 2d. 164, 171, 229 Minn. 263)

[4] "The term 'license tax' or 'license fee' implies an imposition or exaction on the right to use or dispose of a property, to pursue a business, occupation, or calling, or to exercise a privilege." (33 Am. Jur. 325-326)

"The term 'excise tax' is synonymous with 'privilege tax', and the two are often used interchangeably, and whether a tax is characterized in the statute imposing it as a privilege tax or an excise tax is merely a choice of synonymous words, for an excise tax is a privilege tax." (51 Am. Jur. 62, citing Bank of Commerce & T. Co. vs. Senter, 149 Tenn. 569, 260 SW 144)

"Thus, it is said that an excise tax is a charge imposed upon the performance of an act, the enjoyment of a privilege, or the engaging in an occupation." (51 Am. Jur. 61)

[5] "Sec. 38. Annual tax and penalties. - Extension and remission of the tax. - An annual tax of one per centum on the assessed value of all real estate in the city subject to taxation shall be levied by the city treasurer. x x x"

[6] Commonwealth Act No. 470 - Sec. 1. Title of this Act. This Act shall be known as the Assessment Law.

"Sec. 2. Incidence of real property tax. - Except in chartered cities, there shall be levied, assessed, and collected an annual ad valorem tax on real property, including land, buildings, machinery and other improvements not hereinafter specially exempted."

[7] Com. Act 158, sections 28 to 53.

[8] Com. Act 158, sec. 29.

[9] 51 Am. Jur. 53: "An ad valorem property tax is invariably based upon ownership of property, and is payable

regardless of whether the property is used or not, although of course the value may vary in accordance with such factor."

[10] "Real estate, for purposes of taxation, includes all land with-in the district by which the tax is levied, and all rights and interests in such land, and all buildings and other structures affixed to the land, even though as between the landlord and the tenant they are the property of the tenant and may be removed by him at the termination of the lease." (51 Am. Jur. 438) Sec. 31 of Com. Act 158 provides: "When it shall appear that there are separate owners of the land and the improvements thereon, a separate assessment of the property of each shall be made."

[11] Sec. 38 of Com. Act 158 provides: "An annual tax of one per centum on the assessed value of all real estate in the ci-ty subject to taxation shall be levied by the city treasurer."

[12] Secs. 28 to 34, Com. Act 158.

[13] Sec. 38 of Com. Act 158 provides: "All taxes on real estate for any year shall be due and payable on the first day of January and from this date such taxes together with all penalties accruing thereto shall constitute a lien on the proper-ty subject to such taxation."

[14] Sec. 38 of Com. Act 158 provides: "Such lien shall be superior to all other liens, mortgages or incumbrances of any kind whatsoever, and shall be enforceable against the property whether in the possession of the delinquent or any subsequent owner, and can only be removed by the payment of the tax and penalty."

[15] 62 C.J.S. 845; Manila Race Horse Trainers Assn. vs. De la Puente, L-2947, Jan. 11, 1951, 88 Phil. 60.

[16] 51 Am. Jur. 59-60; 33 Am. Jur. 325-326.

[17] 51 Am. Jur. 56, citing Eyre v. Jacob, 14 Gratt (Va.) 422; 73 Am. Dec. 367.

[18] Webster's New International Dictionary, 2nd Ed., p. 2601.

[19] City of Iloilo vs. Remedios Sian Villanueva, et al., L-12695, March 23, 1959: "As may be seen from the definition of each establishment hereunder quoted, a tenement house is different from hotel, lodging house, or boarding house. These are different business enterprises. They have been established for different purposes."

[20] National Internal Revenue Code:

"Sec. 182. Fixed taxes. - (A) On business x x x (3) Other fixed taxes. - The following fixed taxes shall be collected as follows, the amount stated being for the whole year, when not otherwise specified:

x x x

"(s) Stockbrokers, dealers in securities, real estate brokers, real estate dealers, commercial brokers, customs brokers, and immigration brokers, one hundred and fifty pesos: Provided, however, That in the case of real estate dealers, the annual fixed tax to be collected shall be as follows:

"One hundred and fifty pesos, if the annual income from buying, selling, exchanging, leasing, or renting property (whether on their own account as principals or as owners of rental property or properties) is four thou-sand pesos or more but not exceeding ten thousand pesos;

"Three hundred pesos, if such annual income exceeds ten thousand pesos but does not exceed thirty thousand pesos; and

"Five hundred pesos, if such annual income ex-ceeds thirty thousand pesos."

[21] Punsalan, et al. vs. Mun. Board of the City of Manila, et al., L-4817, May 26, 1954, 95 Phil. 46, per Reyes,

J.: In this case, the Supreme Court upheld the validity of Ordinance 3398 of the City of Manila, approved on July 25, 1950, imposing a municipal occupation tax on persons exercising various professions (lawyers, medical practitioners, public accountants, dental surgeons, pharmacists, etc.), in the city and penalizes non-payment of the tax by a fine of not more than P200.00 or by imprisonment of not more than 6 months, or by both such fine and imprisonment in the discretion of the court, although section 201 [now sec. 182 (B)] of the National Internal Revenue Code requires the payment of taxes on occupation or professional taxes. Said Justice Reyes: "The argument against double taxation may not be invoked where one tax is imposed by the state and the other is imposed by the city (1 Cooley on Taxation, 4th ed., p. 492), it being widely recognized that there is nothing obnoxious in the requirement that license fees or taxes be exacted with respect to the same occupation, calling or activity by both the state and the political subdivision thereof. (51 Am. Jur. 341.)"

A month after the promulgation of the above decision, Congress passed Rep. Act 1166, approved on June 18, 1954, providing as follows: "Any provisions of existing laws, city charters and ordinances, executive orders and regulations, or parts thereof, to the contrary notwithstanding, every professionals legally authorized to practice his profession, who has paid the corresponding annual privilege tax on professions required by Sec. 182 of the NLRC, Com. Act No. 466, shall be entitled to practice the profession for which he has been duly qualified under the law, in all parts of the Philippines without being subject to any other tax, charge, license or fee for the practice of such profession: Provided, however, That they have paid to the office concerned the registration fees required in their respective professions."

[22] *People vs. Santiago Mendaros, et al.*, L-6975, May 27, 1955, 97 Phil. 958-959, per Bautista Angelo, J. Appeal from the decision of the CFI of Zambales. Defendants-appellees were convicted by the JP Court of Palauig, Zambales, and sentenced to pay a fine of P5.00, for failure to pay the occupation tax imposed by a municipal ordinance on owners of fishponds on lands of private ownership. The Supreme Court, in sustaining the validity of the ordinance, held:

"The ground on which the trial court declared the municipal ordinance invalid would seem to be that, since the land on which the fishpond is situated is already subject to land tax, it would be unfair and discriminatory to levy another tax on the owner of the fishpond because that would amount to double taxation. This view is erroneous because it is a well-settled rule that a license tax may be levied upon a business or occupation although the land or property used therein is subject to property tax. It was also held that 'the state may collect an ad valorem tax on property used in a calling, and at the same time impose a license tax on the pursuit of that calling.' The imposition of this kind of tax is in no sense called a double tax."

Veronica Sanchez vs. The Collector of Internal Revenue, L-7521, Oct. 18, 1955, 97 Phil. 687, per Reyes, J.B.L. J.

"Considering that appellant constructed her four-door 'accessoria' purposely for rent or profit; that she has been continuously leasing the same to third persons since its construction in 1947; that she manages her property herself; and that said leased holding appears to be her main source of livelihood, she is engaged in the leasing of real estate, and is a real estate dealer as defined in section 194(s) [now, Sec. 182(A)(3)(s)] of the Internal Revenue Code, as amended by Rep. Act No. 42.

"Appellant argues that she is already paying real estate taxes on her property, as well as income tax on the income derived therefrom, so that to further subject its rentals to the 'real estate dealers' tax' amounts to double taxation. This argument has already been rejected by this Court in the case of *People vs. Mendaros, et al.*, L-6975, promulgated May 27, 1955, wherein we held that it is a well-settled rule that license tax may be levied upon a business or occupation although the land or property used therein is subject to property tax, and that 'the state may collect an ad valorem tax on property used in a calling, and at the same time impose a license tax on the

pursuit of that calling', the imposition of the latter kind of tax being in no sense a double tax."

[23] 84 C.J.S. 131-132.

[24] Manufacturers' Life Insurance Co. vs. Meer, L-2910, June 29, 1951; City of Manila vs. Interisland Gas Service, L-8799, Aug. 31, 1956; Commissioner of Internal Revenue vs. Hawaiian-Philippine Co., L-16315, May 30, 1964; Pepsi-Cola Bottling Co. of the Philippines vs. City of Butuan, et al., L-22814, Aug. 28, 1969.

Pepsi-Cola Bottling Co. vs. City of Butuan, *supra*:

"The second and last objections are manifestly devoid of merit. Indeed - independently of whether or not the tax in question, when considered in relation to the sales tax prescribed by Acts of Congress, amounts to double taxation, on which we need not and do not ex-press any opinion - double taxation, in general, is not forbidden by our fundamental law. 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. Then, again, the general principle against delegation of legislative powers, in consequence of the theory of separation of powers is subject to one well-established exception, namely: legislative powers may be delegated to local governments - to which said theory does not apply - in respect of matters of local concern."

[25] 84 C.J.S. 133-134: "Double taxation, although not favored, is permissible in the absence of express or implied consti-tutional prohibition.

"Double taxation should not be permitted unless the legislature has authority to impose it. However, since the taxing power is exclusively a legislative function, and since, except as it is limited or restrained by constitutional provisions, it is absolute and unlimited, it is gene-rally held that there is nothing, in the absence of any ex-press or implied constitutional prohibition against double taxation, to prevent the imposition of more than one tax on property within the jurisdiction, as the power to tax twice is as ample as the power to tax once. In such case whether or not there should be double taxation is a mat-ter within the discretion of the legislature.

"In some states where double taxation is not ex-pressly prohibited, it is held that double taxation is per-missible, or not invalid or unconstitutional, or necessarily unlawful, provided some other constitutional requirement is not thereby violated, as a requirement that taxes must be equal and uniform."

The Constitution of the Philippines, Art. VI, sec. 22(1) provides: "The rule of taxation shall be uniform."

[26] Art. III, sec. 1, par. 12, Constitution.

[27] 51 Am. Jur. 860-861, citing Cousins v. State, 50 Ala. 113, 20 Am. Rep. 290; Rosenbloom v. State, 64 Neb. 342, 89 NW 1053, 57 LRA 922; Voelkel v. Cincinnati, 112 Ohio St. 374, 147 NE 754, 40 ALR 73 (holding the provisions of an ordinance making the nonpayment of an excise tax levied in pursuance of such ordinance a misdemeanor punishable by fine not in violation of the constitutional prohibition against the imprisoned of any person for "debt in a ci-vil action, or mesne or final process"); Ex parte Mann, 39 Tex. Crim. Rep. 491, 46 SW 828, 73 Am. St. Rep. 961.

26 R.C.L. 25-26: "It is generally considered that a tax is not a debt, and that the municipality to which the tax is payable is not a creditor of the person assessed. A debt is a sum of money due by certain and express agreement. It originates in, and is founded upon, contract express or implied. Taxes, on the other hand, do not rest upon contract, express or implied. They are obligations imposed upon citizens to pay the expenses of government. They are forced contributions, and in no way dependent upon the will or contract, express or implied, of the per-sons taxed."

[28] 51 Am. Jur. 66-67: "Capitation or poll taxes are taxes of a fixed amount upon all persons, or upon all the persons of a certain class, resident within a specified territory, without regard to their property or the occupations in which they may be engaged. Taxes of a specified amount upon each person performing a certain act or engaging in a certain business or profession are not, however, poll taxes."

[29] Com. Act No. 158 (An Act Establishing a Form of Government for the City of Iloilo), section 21: "Except as otherwise provided by law, and subject to the conditions and limitations thereof, the Municipal Board shall have the following legislative powers:

"(aa) x x x and to fix penalties for the violation of ordinances, which shall not exceed a fine of two hundred pesos or six months' imprisonment, or both such fine and imprisonment, for each offense."

[30] "To begin with the defendants' appeal, we find that the lower court was in error in saying that the imposition of the penalty provided for in the ordinance was without the authority of law. The last paragraph (kk) of the very section that authorizes the enactment of the ordinance (section 18 of the Manila Charter) in express terms also empowers the Municipal Board to 'fix penalties for the violation of ordinances which not exceed to [sic] two hundred pesos fine or six months' imprisonment, or both such fine and imprisonment, for a single offense.' Hence, the pronouncement below that the ordinance in question is illegal and void because it imposes a penalty not authorized by law is clearly without legal basis."

[31] 51 Am. Jur. 203, citing *Re Page*, 60 Kan. 842, 58 P 478, 47 LRA 68: "Taxes are uniform and equal when imposed upon all property of the same character within the taxing authority." *Manila Race Horse Trainers Assn., Inc. vs. De la Fuente*, L-2947, Jan. 11, 1951, 88 Phil. 60: "In the case of *Eastern Theatrical Co., Inc. vs. Alfonso*, [L-1104, May 31, 1949], 46 O.G. Supp. to No. 11, p. 303, it was said that there is equality and uniformity in taxation if all articles or kinds of property of the same class are taxed at the same rate. Thus, it was held in that case, that 'the fact that some places of amusement are not taxed while others, such as cinematographs, theaters, vaudeville companies, theatrical shows, and boxing exhibitions and other kinds of amusements or places of amusement are taxed, is no argument at all against equality and uniformity of the tax imposition.' Applying this criterion to the present case, there would be discrimination if some boarding stables of the same class used for the same number of horses were not taxed or were made to pay less or more than others." *Tan Kim Kee vs. Court of Tax Appeals, et al.*, L-18080, April 22, 1963, per Reyes, J.B.L., J.: "The rule of uniform taxation does not deprive Congress of the power to classify subjects of taxation, and only demands uniformity within the particular class."

[32] 51 Am. Jur. 203: "153. Uniformity of Operation Throughout Tax Unit. - One requirement with respect to taxation imposed by provisions relating to equality and uniformity, which has been introduced into some state constitutions in express language, is that taxation must be uniform throughout the political unit by or with respect to which the tax is levied. This means, for example, that a tax for a state purpose must be uniform and equal throughout the state, a tax for a county purpose must be uniform and equal throughout the county, and a tax for a city, village, or township purpose must be uniform and equal throughout the city, village, or township. It does not mean, however, that the taxes levied by or with respect to the various political subdivisions or taxing districts of the state must be at the same rate, or, as one court has graphically put it, that a man in one county shall pay the same rate of taxation for all purposes that is paid by a man in an adjoining county. Nor does the rule require that taxes for the same purposes shall be imposed in different territorial subdivisions at the same time. It has also been said in this connection that the omission to tax any particular individual who may be liable does not render the whole tax illegal or void."

[33] 84 C.J.S. 77: "Equality in taxation is accomplished when the burden of the tax falls equally and impartially on all the persons and property subject to it [*State ex rel. Haggard v. Nichols*, 265 N.W. 859, 66 N.D. 355], so that

no higher rate or greater levy in proportion to value is imposed on one person or species of property than on others similarly or of like character."

84 C.J.S. 79: "The rule of uniformity in taxation applies to property of the life kind and character and similarly situated, and a tax, in order to be uniform, must operate alike on all persons, things, or property, similarly situated. So the requirement is complied with when the tax is levied equally and uniformly on all subjects of the same class and kind and is violated if particular kinds, species, or items of property are selected to bear the whole burden of the tax, while others, which should be equally subjected to it, are left untaxed."

[34] 84 C.J.S. 81: "There is a presumption that tax statutes are intended to operate uniformly and equally [Alaska Consol. Canneries v. Territory of Alaska, C.C.A. Alaska, 16 F. 2d. 256], and a liberal construction will be indulged in order to accomplish fair and equal taxation of all property within the state."

[35] Medina vs. City of Baguio, L-4060, Aug. 29, 1952; Wa Wa Yu vs. City of Lipa, L-9167, Sept. 27, 1956; Saldaña vs. City of Iloilo, 55 O.G. 10267; and the cases cited therein.

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