MANILA LODGE NO. 761 OF
THE BENEVOLENT & PROTECTIVE
ORDER OF ELKS,
Petitioner,

July 31, 1956

C.T.A.
CASE NO. 140

- versus -

SILVERIO BLAQUERA, as Acting
Collector of Internal Revenue,
Respondent.

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D E C I S I O N

This is an appeal from two decisions of the respondent Collector of Internal Revenue assessing and demanding from the petitioner herein the sums of ₱1,203.50 and ₱332.80, respectively representing fixed taxes as retail dealer in liquor, fermented liquor, and tobacco, allegedly due from petitioner for the period from the 4th quarter of 1946 to 1953 and the period from 1954-1955, pursuant to subsections (i), (k) and (n) of section 193 of the Tax Code, in relation to 178 of the same Code.

The petitioner, Manila Lodge No. 761 is admittedly a fraternal, civic, non-stock, non-profit organization duly incorporated under Philippine Laws. It owns and operates a clubhouse located at Dewey Boulevard, Manila, wherein it sells at retail, liquor, fermented liquor, cigar and cigarettes only to its members and their guests. B.I.R. agents discovered that the Manila Elks Club had not paid for the period in question the privilege tax for retail liquor dealer (B-4), retail dealer in fermented liquor (B-7), and retail tobacco dealer (B-9-a) prescribed in section 193 of the Tax Code.

On November 19, 1953, the Collector of Internal Revenue assessed against and demanded from the petitioner the payment of the sum of ₱1,203.50 representing fixed taxes, as retail dealer, for the period from the 4th quarter of 1946 to 1953, exclusive of the suggested compromise penalty of ₱80.00. The petitioner, claiming that it was exempted from the payment of the privilege taxes in question, requested that the said assessment be reviewed by the Conference Staff of the Bureau of Internal Revenue. The Conference Staff, after due hearing, upheld and reiterated the assessment made by the respondent Collector of Internal Revenue. Forthwith, the petitioner appealed to this Court on June 1, 1955.

During the pendency of the original petition for review in the above-entitled case, respondent issued another assessment covering fixed taxes for the years 1954 to 1955 in the amount of ₱332.00, exclusive of the suggested compromise penalty of ₱50.00. Consequently, petitioner with leave of Court filed a supplemental petition for review which included the latter assessment.

Petitioner bases its claim for exemption from the payment of the privilege taxes in question on the grounds that it is not engaged in the business of selling at retail liquor, fermented liquor, and tobacco because the sale of these aforementioned specific goods is made only to members of the club and their guests "on a very limited scale in pursuance only of its general purpose as a fraternal social club, to provide comfort, recreation, and convenience to such members, and merely to provide enough margin to cover operational expenses." (Petitioner's Memo p. 3).

Respondent, on the other hand, maintains that persons selling articles subject to specific tax, such as cigars, tobacco, liquor and the like, are subject to the fixed taxes imposed by section 193 of the Tax Code, irrespective of whether or not they make profit, and whether or not they are civic or fraternal clubs selling only to their members and their guests. This contention is based on a ruling promulgated by the Bureau of Internal Revenue made in 1921.

The bone of contention between the two parties herein therefore, lies in the proper interpretation and application of the pertinent provisions of the Tax Code, namely subsections (i), (k) and (n) of section 193 in relation to section 178 of the Tax Code, which we quote hereunder:

> "Sec. 178. Payment of privilege taxes.- A privilege tax must be paid before any business or occupation hereinafter specified can be lawfully begun or pursued. The tax on business is payable for every separate or distinct establishment of place where the business subject to the tax is conducted; and one occupation or line of business does not exempt by being conducted with some other occupation or business for which such tax has been paid.
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> "The occupation tax must be paid by each individual engaged in a calling sub-

ject thereto; the tax on a business by the person, firm, or company conducting the same." (Underscoring supplied.)

"Sec. 193. Amount of tax on business. 9 Fixed taxes on business shall be collected as follows, the amount stated being for the whole year, when not otherwise specified:

x x x x

(i) Retail liquor dealers, one hundred pesos.

(k) Retail dealers in fermented liquors, fifty pesos.

x x x x

(n) Wholesale tobacco dealers, sixty pesos; retail tobacco dealers, sixteen pesos."

The aforequoted provisions of the Tax Code are clear and precise. The privilege taxes prescribed in section 193 of the Tax Code in relation to section 178 of the same, are to be imposed only on persons or entities who engage in the activities mentioned or classified therein for "business" purposes. This evident intention of the law becomes more palpable when we take into consideration the fact that the drafters of our Tax Code had grouped the aforequoted provisions of law under one general division of the Tax Code headed as "Title V, Privilege Taxes on Business and Occupation."

It is not therefore entirely correct to maintain as respondent does, that all persons selling articles subject to specific taxes, like liquor and tobacco, should likewise be subject to the fixed taxes imposed by section 193 of the Tax Code. We believe, that in order that these persons should be subjected to the privilege taxes imposed by the aforementioned section of the Tax Code, it is necessary that they be engaged in the "business" of selling liquor and tobacco, otherwise the privilege taxes as a dealer of liquor and tobacco can not attach.

At this juncture a definition of the word "business" is in order and we have the following:

> "The word 'business' in its ordinary and common use is employed to designate human efforts which have for their end living or reward; it is <u>not commonly used</u> as descriptive of charitable, religious, educational or social agencies." (Ballantine's Law Dictionary, 1948 Ed. p. 179)

> "Business- 'that which busies or engages time, attention or labor as a principal serious concern or interest; any particular occupation or employment habitually engaged in, especially for livelihood or gain.'" (Vol. 1, 1949 Merriam-Webster's New International Dictionary, 2nd Ed. p. 362).

Other definitions of the term "business" as given by judicial pronouncement are found in Volume V, Words and Phrases, page 999 as follows:

> "<u>Business</u> is a word of large signification, and denotes the employment or occupation in which a person is engaged to procure a living". (Citing: Goddard v. Chaffee, 84 Mass (Allen) 395; 79 Am. Dec. 796)

> "<u>Business</u> in common speech means habitual or regular occupation that a party is engaged in with a view to winning a livelihood or some gain." (Citing: In re Lamont, 41 P 2d. 497, 502)

> "An enterprise not conducted as a means of livelihood or for profit, does not come within the ordinary meaning of the terms, '<u>business</u>, trade or industry'". (Citing: City of Rochester v. Rochester Girl's Home, 194 N.Y.S. 236, 237)
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> "The term '<u>business</u>' as used in law imposing a license tax on business, trades, etc. ordinarily means business in the trade or commercial sense only, carried on with a view to profit or livelihood." (Citing: Cuzner v. California Club 100 P. 868, 867, 155, Cal. 303, 20 L.R.A. N.S. 1095).

From the foregoing definitions, it is evident that the plain, ordinary meaning of "business" is restricted to activities or affairs where profit is the purpose, or livelihood is the motive. The term "business" being used without any qualification in section 193 of the Tax Code in relation to section 178 of the same, should therefore be construed in its plain and ordinary meaning, restricted to activities for profit or livelihood.

With these considerations in mind, we now come to the question of whether or not the Manila Elks Club is engaged in the "business" of selling liquor and tobacco.

Respondent, in paragraph 1 of his answer, admits that the petitioner herein, Manila Elks Club is a fraternal, civic, non-stock, non-profit organization. It has been established without contradiction that the Manila Elks Club, in pursuance of its purpose as a fraternal social club, sells on retail at its clubhouse on Dewey Boulevard, liquor, cigars and cigarettes, on a very limited scale, only to its members and their guests, providing just enough margin to cover operational expenses without intention to obtain profit. Such being the case then, the Manila Elks Club can not be considered as engaged in the "business" of selling liquor and tobacco.

> "Where the corporation handled no money except such as was necessary to cover operational expenses, conducted no business for itself, and engaged in no transactions that contemplated a profit for itself - such a corporation is considered not organized for profit under the General Corporation Law." (Read v. Tidewater Coal Exch., 116 A 898 904, cited in Vol. 34, Words & Phrases, p. 220, defining "profits"; underscoring provided)

The petitioner herein, Manila Elks Club, not being engaged in the business of selling at retail liquor and tobacco, cannot therefore be held liable for the privilege taxes required by section 193, subsections (i), (k) and (n). The weight of American authorities enhances the strength of our findings that a fraternal, civic, non-stock, non-profit organization, like the Elks Club, selling at retail liquor and tobacco only to its members and their guests in pursuance with its general purpose as a fraternal social club with just enough margin to cover operational expenses, should not be held liable for the fixed taxes incident to the business of selling at retail, liquor and tobacco.

> "A bonafide social club, which disposes of liquors at its clubhouse to members and their guest at a fixed charge as incident to the general purposes of the organization is not required to take out

a license by Rev. Laws No. 3777-3785, approved March 15, 1905, which provides for a license upon the business of disposing intoxicating liquors: the term business in such statute meaning business in the trade or commercial sense."(State v. University Club, 130 P. 468, 470; 35 Nev. 475; 44 L.R.A., N.S. 1026).

"A social club, not organized for the purpose of evading the liquor laws, but which furnishes its members with liquors and refreshments without profit to itself, is not a retail liquor dealer, within the statute imposing a license tax on all persons dealing in, selling or disposing of intoxicating liquors by retail." (Barden v. Montan Club, 25 P. 1042, 10 Mont. 330, 11 L.R.A. 593).

"Acts 1881, C. 149, authorizing taxation of liquor dealers, does not include a social club maintaining a library, giving musical entertainments, and furnishing meals for its members, which keeps a small stock of liquor; the members paying for its drink as it is taken, but no profit being made on such sales." (Tennessee Club of Memphis v. Dwyer, 79 Tebn. (11 Lea) 452, 461, 47 Am. Rep. 298.)

"A social club composed of members who have no proprietary interest in the assets which provides a reading room, restaurant, bar room, library, billiard rooms and sitting rooms for its members, the expenses of which are defrayed by annual dues from each member, and by payments made by the members for food and drinks, is not engaged in the business of a retail liquor dealer, within section 11 of the Louisiana License Tax Laws." (La Ann. 585, 20 L.R.A. 185).

Respondent, however, insists that the petitioner should pay the privilege tax on the sale at retail of liquor and tobacco because this has been allegedly the practice consistently followed by the Bureau of Internal Revenue since 1921, and because section 1464 of the Revised Administrative Code under which said ruling was then based had been reenacted by the legislature as section 193 of the National Internal Revenue Code. Thus, respondent contends, that the policy of the Bureau of Internal Revenue has therefore gained "approval by legislative reenactments."

The alleged administrative practice is founded upon the following ruling rendered in 1921.

> "Clubs selling exclusively to member thereof liquors and other products on which the specific tax is imposed should pay the privilege tax corresponding to the business engaged in. The fact that such products are sold at cost to the members of the club does not affect the club's liability to tax." (Ruling, Oct. 13, 1921, B.I.R. 105.02; Exh. 3, pp. 66-69, BIR records.)

We do not agree with the contention of the respondent. While there is admittedly a ruling on this point in 1921, there is no showing that such has been a long-continued practice. Be that as it may, any such administrative construction must be within the ambit of, and must be consistent with, the Revised Administrative Code and the Tax Code. It is likewise the rule that where the statute is unambiguous, an administrative construction is unwarranted (U.S. vs. Missouri P. R. Co. 278 U.S. 269, 73 L. Ed. 322) and no construction may be made to restrict or enlarge the meaning of an Act. (Blatt v. U. S., 305 U.S. 267, 83 L. Ed. 167).

An examination of section 1464 of the Revised Administrative Code taken in connection with section 1453 of the same, discloses the fact that aside from the change in rates of taxes to be paid and the arrangement of the classification of businesses enume-

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rated therein, section 193 of the present Tax Code is a verbatim copy of the aforementioned provisions of the Revised Administrative Code. The policy or principle followed by the said code regarding privilege taxes, i.e. that the privileges taxes are payable only by those persons or entities engaged in the business enumrated in section 1464 of the said Code, has not suffered any change, and the same still obtains under our present Tax Code. In the absence of a showing that the legislative body had been apprised of the aforesaid ruling, what has gained legislative approval thru reenactment is, we believe, the policy behind the above-mentioned provision of the Revised Administrative Code of taxing persons engaged in business and not the alleged practice following the administrative ruling of 1921. We believe that no amount of trenchant adherence to an established practice may justify its continued application where it is clear and manifest that the same is not in consonance with the policy of the legislature as defined by law.

> "In all cases where those persons whose duty it is to execute a law have uniformly given it a particular construction, and that construction has been acquiesced in and acted upon for a long time, it is a contemporary exposition of the statute, which always commands the attention of the Courts, and will be followed unless it clearly and manifestly appears to be wrong." (Phil. Sugar Centrals Agendy, v. Collector of Customs, 51 Phil. 144, citing Kelly v. Multhnomah, County, 18 Ore 356, 359.)

> "Courts will give weight to the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it and, unless such interpretation is clearly erroneous, will ordinarily be controlled thereby." (Phil. Sugar Centrals Agency, supra, citing in re Allen case, 2 Phil. 630). (Underscoring supplied)

IN VIEW OF THE FOREGOING, we are of the opinion and so hold that the Manila Elks Club is not liable for privilege taxes on its sale by retail of liquor and tobacco exclusively to its members and their guests.

The decision of the respondent dated November 19, 1953, holding petitioner liable for fixed taxes, is hereby reversed and set aside, with no pronouncement as to costs.

SO ORDERED.

Manila, Philippines, July 31, 1956.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge