MANILA GOLF & COUNTRY CLUB, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2630

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

3/30/77

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DECISION

This is a case that draws us to the provisions of Section 191-A of the National Internal Revenue Code which petitioner Manila Golf & Country Club, Inc., contends have been vetoed entirely by the President of the Philippines while respondent Commissioner of Internal Revenue submits that except for the deletion of certain words ("hotel, motel, resthouse"), the rest of the section has not been vetoed.

The facts are not in dispute. Petitioner (formerly known as Country Club Development Inc.) is a membership and non-stock corporation organized "to foster, promote and conduct legitimate pleasure, recreational, social, cultural and educational non-profit activities of all kinds". (Exhs. P, P-1 & P-2) It maintains a golf course and operates a clubhouse in Makati, Rizal, with a lounge, bar, dining room, locker and showers rooms, massage and sauna services. These facilities are open ohly to members and their accompanied guests.

Petitioner is supported and maintained by membership dues and charges for services rendered or facilities of the club that are utilized. The prices of food and drinks are approved by the board of directors and consist of the actual cost and overhead without any margin for profit. It appears that such prices are much lower than those charged by outside bars, hotels and restaurants.

Profit, if any, or excess of income is not distributed to the members but retained by petitioner and utilized for capital improvements, replacements of worn-out equipment and employees' emergency and retirement funds. Petitioner has not been filing income tax returns for the year ending 1968 and succeeding years but information returns for tax exempt organizations under Section 27 of the Tax Code.

Sometime in October 1971 respondent authorized his agents to examine petitioner's books of accounts and other accounting records for all internal revenue tax purposes for 1970 and prior years. The projected examination was objected to by petitioner on the ground that it is a tax exempt entity under Section 27(h) of the Tax Code and requested respondent to withdraw and cancel Letter Authority No. 70302 NA. The request was, however, denied by respondent.

As a result of the investigation, respondent's examiners reported that for the period covering September 1969 to December 31, 1970, petitioner failed to pay the corresponding taxes due as operator of a golf course and restaurant in violation of Sections 182 and 191-A of the Tax Code as amended by Republic Act No. 6110. Accordingly, respondent issued Assessment Notices BT-73-0027 and BT-73-0028. And in a letter dated March 2, 1973, he assessed and demanded from petitioner the payment of the amount of ₱32,504.96 as fixed and percentage taxes, inclusive of surcharges and ₱300.00 as compromise penalty, or a total of ₱32,804.96, for the period covering September 1969 to December 1970, computed as follows:

1969:

Fixed tax on golf links (2nd sem./69)	₱50.00	
Fixed tax as keeper of restaurant	25.00	
Total Fixed Taxes	₱75.00	
Add: 25% surcharge for late payment	18.75	₱ 93.75
Gross receipts per investigation (food)	₱51,711.81	
3% tax due thereon	1,551.35	
Add: 50% surcharge for wilful neglect	775.67	
25% surcharge for late payment	387.83	₱2,714.85
Amount subject to sales tax (beer)	₱ 32,107.89	
7% tax due thereon . .	2,247.55	
Add: 50% surcharge for wilful neglect . .	1,123.77	
25% surcharge for late payment . . .	561.88	₱3,933.20

1970:

Fixed tax on golf links	₱ 100.00	
Fixed tax as keeper of restaurant	50.00	
Total Fixed Taxes . . .	₱ 150.00	
Add: 25% surcharge for late payment . . .	37.50	₱ 187.50
Gross receipts per investigation (food) . . .	₱124,351.45	
3% tax due thereon . .	3,730.54	
Add: 50% surcharge for wilful neglect . .	1,865.27	
25% surcharge for late payment . . .	932.63	₱6,528.44
Amount subject to sales tax (beer)	₱155,487.68	
7% tax due thereon . .	10,884.13	
Add: 50% surcharge for wilful neglect . .	5,442.06	
25% surcharge for		

late payment	₱2,721.03	₱19,047.22
TOTAL AMOUNT DUE AND COLLECTIBLE		₱32,504.96

Petitioner protested said assessment in a letter dated April 18, 1973, claiming that the same has no basis in fact and in law. This request was likewise denied by respondent in his letter dated August 6, 1974. Not satisfied with respondent's denial, petitioner appealed to this Court on October 5, 1974.

The arguments raised by petitioner against respondent's decision are as follows:

1. That the taxes assessed are business taxes;

2. That petitioner is not engaged in business;

3. That Section 191-A was vetoed by the President; and

4. That petitioner is not liable for wilful neglect to pay and for compromise penalty.

At the outset, it should be mentioned that prior to the enactment and approval of Republic Act No. 6110, otherwise known as the "Omnibus Tax Law" on August 4, 1969, Section 191 of the National Internal Revenue Code consisted of two paragraphs. The first paragraph subjected (and still subjects under the entire section) various kind of independent contractors to a percentage tax of 3% while the second paragraph imposed percentage taxes on keepers of restaurants, refreshment parlors and other eating places, as well as keepers of bars and cafes where wines or liquors are served. The said second paragraph provided as follows:

> "Keepers of restaurants, refreshment parlors and other eating places, except those inside public market places, and caterers, shall pay a tax of three _per centum_ of their gross receipts. Keepers of bars and cafes where wines or liquors are served shall pay a tax of seven _per centum_ of the gross receipts; x x x Where such establishments are maintained within the premises or compound of a race track or jai-alai or are accessible to patrons of such race track or jai-alai by means of a connecting door or passage, the keepers of such establishments shall pay a tax of twenty _per centum_ of their gross receipts. Where the establishment is maintained within the premises of a cabaret or night club, or is accessible to patrons thereof by means of a connecting door or passage, the keeper of the establishment shall pay a tax of ten _per centum_ of the gross receipts."

At this juncture, it may be stated that a membership and non-profit corporation, which operates a bar and restaurant primarily for its members and their guests on a cost-plus-expense basis and whatever profit realized is devoted to the improvements of the club premises, has been held by the Supreme Court as not subject to fixed and percentage taxes on business as a keeper of a bar and restaurant since the element of gain or profit is absent. (Collector of Internal Revenue vs. Club Filipino Inc. de Cebu, G.R. No. L-12719, May 31, 1962, 5 SCRA 321; Manila Polo Club vs. Meer, 106 Phil. 885; Collector of Internal Revenue vs. Sweeney, 106 Phil. 59; Collector of Internal Revenue vs. Manila Lodge No. 761, 105 Phil. 983.) In the case of Collector of Internal Revenue vs. Club Filipino Inc. de Cebu, supra, the club involved therein owns and operates a club house, a bowling alley, a golf course (on a lot leased from the government), a bar-restaurant where it sells wines and liquors, soft drinks, meals and short orders to its members and their guests. The bar-restaurant was a necessary incident to the operation of the club and its golf-course. The club is operated mainly with funds derived from membership fees and dues. Whatever profits it had, were used to defray its overhead expenses and to improve the golf course.

In not subjecting the club to fixed and percentage taxes on business as a keeper of a bar and restaurant, the Supreme Court, made observations, among others, as follows:

> . . . It has been held that the liability for fixed and percentage taxes, as provided by these sections, does not ipso facto attach by mere reason of the operation of a bar and restaurant. For the liability to attach, the operator thereof must be engaged in the business as a barkeeper and restaurateur. The plain and ordinary meaning of business is restricted to activities or affairs where profit is the purpose or livelihood is the motive, and the term business when used without qualification, should be construed in its plain and ordinary meaning, restricted to activities for profit or livelihood. (5 SCRA 323-324)

The Supreme Court applied this ruling in its decisions in the Manila Lodge No. 761 and Sweeney cases, supra.

For his stand, respondent however puts forward this rationale:

> The last paragraph of Section 191-A states that:
>
> "WHERE THE ESTABLISHMENTS ENUMERATED ABOVE ARE OPERATED OR MAINTAINED BY CLUBS OF ANY KIND OR NATURE (IRRESPECTIVE OF THE DISPOSITION OF THEIR NET INCOME AND WHETHER OR NOT THEY CATER EXCLUSIVELY TO MEMBERS OR THEIR GUESTS) THE KEEPERS OF THE ESTABLISHMENTS SHALL PAY THE CORRESPONDING TAX AT THE RATES FIXED ABOVE. (Added by Sec. 37, Rep. Act No. 6110) Underlying supplied.
>
> There is no doubt that the purpose of the above quoted provision is to impose a caterer's tax on proprietors or operators of restaurants, refreshment parlors, bars, cafes, and other eating places, regardless of whether they are operated or maintained by clubs of any kind or nature, irrespective of whether they make a profit or not, or whether or not they cater exclusively to members and their guests. This last paragraph of Section

> 191-A states so in plain language. It clearly and indubitably discloses the legislative will, leaving to the officers charged with implementation and execution thereof no more than the administrative function of assessing the corresponding tax.
>
> In support of its argument that it is not liable for the assessed taxes, petitioner cited cases that were decided long before Section 191-A was introduced in the Tax Code. Section 191-A, has rendered obsolete all cases cited by petitioner, because Section 27 of the Tax Code which exempted the taxpayer in the above cited cases from the payment of taxes had been repealed by Section 67 of Republic Act No. 6110 which states that:
>
> > "Sec. 67. Repealing clause.- All acts, special laws, executive orders, proclamations, rules and regulations, or parts thereof, inconsistent with any of the provisions of this Act are repealed or modified accordingly."
>
> Republic Act 6110 took effect only on September 1, 1969. It can be said therefore that this case is precedent-setting, affecting countless taxpayers. A resolution in favor of petitioner would mean the loss of millions of pesos to the government and there would be deluge of claims for refund, for nowhere in the Tax Code can you find a provision taxing eating places except in this section. If it is scrapped, said establishments will be tax free.

Respondent concedes at least that were it not for the provisions of the last paragraph of Section 191-A, quoted above, petitioner as a social club can not be considered as engaged in business as keeper of restaurant and bar, and is not, therefore, subject, in the light of the ruling laid down by the Supreme Court in the cases mentioned above, to the fixed and percentage taxes imposed by Sections 182 and 191 of the National Internal Revenue Code. As stated by respondent, "petitioner cited cases that were decided long before Section 191-A was introduced in the Tax Code", but since "Section 191-A, has rendered obsolete all cases cited by petitioner", it follows that the latter is now subject to the fixed and percentage taxes on business.

Now to the root of the present controversy.

The sixth Congress of the Republic of the Philippines, in its fourth session in 1969, sought to amend certain provisions of the National Internal Revenue Code by H. No. 17839 (Exh. "C") and Section 48 thereof reads as follows:

> Sec. 48. A new section is hereby inserted between sections one hundred and ninety-one and one hundred ninety-two, to be known as Section one hundred and ninety-one A which shall read as follows:
>
> SEC. 191-A CATERERS.- A CATERER'S TAX IS HEREBY IMPOSED AS FOLLOWS:
>
> (1) ON PROPRIETORS OR OPERATORS OF RESTAURANTS, REFRESHMENT PARLORS AND OTHER EATING PLACES, INCLUDING CLUBS, AND CATERERS, THREE PER CENT OF THEIR GROSS RECEIPTS;
>
> (2) ON PROPRIETORS OR OPERATORS OF RESTAURANTS, BARS, CAFES AND OTHER EATING PLACES, INCLUDING CLUBS, WHERE DISTILLED SPIRITS, FERMENTED LIQUORS, OR WINES ARE SERVED, THREE PER CENT OF THEIR GROSS RECEIPTS FROM SALE OF FOOD OR REFRESHMENTS AND SEVEN PER CENT OF THEIR GROSS RECEIPTS FROM SALE OF DISTILLED SPIRITS, FERMENTED LIQUORS OR WINES. TWO SETS

OF COMMERCIAL INVOICES OR RECEIPTS SERIALLY NUMBERED IN DUPLICATE SHALL BE SEPARATELY PREPARED AND ISSUED, ONE FOR SALE OR REFRESHMENT SERVED AND ANOTHER FOR EACH SALE OF DISTILLED SPIRITS, FERMENTED LIQUORS OR WINES SERVED, THE ORIGINALS OF THE INVOICES OR RECEIPTS TO BE ISSUED TO THE PURCHASER OR CUSTOMER.

(3) ON PROPRIETORS OR OPERATORS OF RESTAURANTS, REFRESHMENT PARLORS, BARS, CAFES AND OTHER EATING PLACES WHICH ARE MAINTAINED WITHIN THE PREMISES OR COMPOUND OF A HOTEL, MOTEL, RESTHOUSE, COCKPIT, RACE TRACK, JAI-ALAI, CABARET, NIGHT OR DAY CLUB OR WHICH ARE ACCESSIBLE TO PATRONS OF SUCH HOTEL, MOTEL, RESTHOUSE, COCKPIT, RACE TRACK, JAI-ALAI, CABARET, NIGHT OR DAY CLUB BY MEANS OF A CONNECTING DOOR OR PASSAGE, TWENTY PER CENT OF THEIR GROSS RECEIPTS.

WHERE THE ESTABLISHMENTS ARE OPERATED OR MAINTAINED BY CLUBS OF ANY KIND OR NATURE (IRRESPECTIVE OF THE DISPOSITION OF THEIR NET INCOME AND WHETHER OR NOT THEY CATER EXCLUSIVELY TO MEMBERS OR THEIR GUESTS,) THE KEEPERS OF THE ESTABLISHMENTS SHALL PAY THE CORRESPONDING TAX AT THE RATE FIXED ABOVE. (See Exhs. "C-1", and "C-2").

After going through the usual legislative mill, H. No. 17839 was superseded by the Consolidated Tax Bill (Exh. "D") bearing the same number. Section 48, quoted above, was retained except for the following amendments:

(a) The section has been numbered Sec. 42;

(b) The words "food or refreshments and seven per cent of their gross receipts from sale of "in the first sentence of Par. (2) was deleted;

(c) The second sentence of Par. (2) was changed as follows:

. . . . . Two sets of commercial invoices or receipts serially numbered in duplicate shall be separately prepared and issued, one for each sale of food or refreshment served and another for each sale of distilled spirits, fermented liquors or wines served, the originals of the invoices or receipts to be issued to the purchaser or customer.

(d) The words "enumerated above" were inserted after the word "establishments" in Par. (3).

The Omnibus Tax Bill was presented to the President for final approval. On August 4, 1969, the President sent the following message, insofar as Section 42 is concerned, to the House of Representatives where the bill originated:

MALACAÑANG
Manila

August 4, 1969

Gentlemen of the House of Representatives:

I have the honor to inform you that I have this day signed H.B. No. 17839, entitled:

"AN ACT AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED".

Pursuant to the provisions of Section 20(3), Article VI, of the Constitution, however, I have vetoed the following items in this bill:

x x x x x

p. 44, SEC. 42. Inserting a new Section 191-A which imposes a caterer's tax of three percent of the gross receipts of proprietors or operators of restaurants, refreshment parlors and other eating places; three percent of gross receipts from sale of food or refreshment and seven percent on gross receipts from the sale of distilled spirits, fermented liquors or wines, on proprietors or operators of restaurants, bar, cafes and other eating places, including clubs, where distilled spirits, fermented liquors, or wines are served; and twenty percent of gross receipts on proprietors or operators of restaurants, refreshment parlors, bars, cafes and other eating places maintained within the premises or compound of a hotel, motel, resthouse, cockpit, race track, jai-alai, cabaret, night or day club, or which are accessible to patrons of said establishments by means of connecting door or passage.

The burden of taxation will be shifted to the consuming public.

The development of hotels, essential to our tourist industry, may be restrained considering that a big portion of hotel earnings comes from food sale.

x x x x x

This bill, H. No. 17839, has become Republic Act No. 6110.

Respectfully,

(SGD.) FERDINAND E. MARCOS

(Exhs. "E" and "F").

For one thing, the above veto message of the President was admitted by respondent. (t.s.n., pp. 86-88). And yet, something is amiss. The President's veto message has now generated certain doubts as to the extent and effect, length and breadth of the veto of Section 42, inserting a new Section 191-A, on the provisions thereof.

Petitioner takes the position that Section 191-A has been entirely vetoed by the President and, therefore, the assessment herein is without legal basis. Respondent, on the other hand, submits that said section was not vetoed in its entirety but only the proposal to impose a tax of 20% on the gross receipts of operators or proprietors of restaurants, refreshment parlors, bars, cafes and other eating places which are maintained within the premises or compound of a hotel, motel, or resthouse was vetoed, on the ground that it might restrain the development of hotels which are essential to the tourist industry. In support thereof, respondent avers that, on the basis of the explanation of the then Technical Staff of the Committee on Ways and Means of the former House of Representatives and concurred with by no less than its chairman, said section was not entirely vetoed but only the words "hotel, motel and resthouse" should be deleted from the text of the section of the bill. Hence, its publication in the Official Gazette and the incorporation of Section 191-A in the National Internal Revenue Code.

We find no merit in respondent's cause.

1. Of importance is the clarity and explicitness of the veto message. The veto message clearly and specifically states that - "I have vetoed the following items in this Bill."

"Sec. 42. Inserting a new Section 191-A x x."

The veto message of Section 42 was complete and total, plain and unconditional. It was neither qualified nor equivocal. While one of the reasons for the veto of Section 191-A is geared towards the promotion of the tourist industry for hotels are specifically referred to therein, such special reference to hotels does not necessarily mean that restaurants, refreshment parlors, bars, cafes and other eating places should be excluded therefrom. They are just as essential and important to the tourist industry as hotels.

Anent this, the said veto of Section 42 of the Consolidated Tax Bill was confirmed by the Office of the President on July 28, 1972 in the following manner (Exh. "N"):

Mr. Antero M. Sison, Jr.
San Martin Building, 1564,
A. Mabini, P.O. Box 2288
Manila, Philippines

Dear Sir:

With reference to your letter dated July 14, 1972, we wish to inform you that Section 42 of House bill No. 18739, now R.A. 6110 was one of the Sections vetoed by the President in his veto message dated August 4, 1969, vetoing certain sections of the said revenue bill.

Very Truly Yours,

(SGD.) IRINEO T. AGUIRRE, JR.
Presidential Staff Assistant

Manila, July 28, 1972

This certification proceeds from an official of the Office of the President called upon to make such certification. As between the official certification of the Office of the President that Section 42 of House bill No. 18739 was vetoed by the President and the mere <u>suggestion</u> of the technical staff of the Committee on Ways and Means of the defunct House of Representatives, concurred with by its chairman, for final printing purposes, that only the words "Hotel, motel, resthouse" should be deleted (Exhs. 12, 13 & 14, pp. 85-87, BIR record), it is believed that the former commands more respect and weight. Under Section 20(3), Article VI, of the 1935 Constitution, only the President was empowered to veto bills or any separate item or items in revenue and tariff bills. The certification of his Office that Section 42 of House Bill No. 18739 was vetoed should therefore prevail over the suggestion of a mere staff of a committee of the former House of Representatives that only the words "hotel, motel, resthouse" should be deleted, although the latter became the basis of the printing of Republic Act No. 6110.

2. Respondent's submission that only the words "hotel, motel, resthouse" in the new Section 191-A, inserted by Section 42 of H.B. No. 17839, were vetoed is positively without factual and constitutional basis.

First, we do not see in the President's veto message that only the words "hotel, motel, resthouse" in Section 191-A, inserted by Section 42, were vetoed by the President. What respondent would want us to do, inspite of the unqualified and unequivocal veto of Section 42, is to infer and imply that only the words "hotel, motel, resthouse" were deleted and the rest of the section is not vetoed. If it had been the presidential intent to delete only the words "hotel, motel, resthouse" from Section 191-A, the President could have easily done so by simply stating in his veto message that the words "hotel, motel, resthouse" in Section 191-A are vetoed or deleted.

Second, and this is the controlling reason for finding this claim of respondent without basis, this Court cannot overlook Article VI, Section 20, Subsection (3) of the 1935 Constitution which provides that:

> "The President shall have the power to veto any separate item or items in a revenue or tariff bill, and the item or items vetoed shall not take effect except in the manner provided as to bills vetoed by the President."

While the Constitution empowers the President to veto any separate item or items in a revenue bill, it seems clear that it does not authorize him to veto words or phrases thereof, or delete certain words therefrom.

As correctly pointed out by petitioner, the President could veto only an entire bill or "any separate item or items" in an appropriation, revenue or tariff bill, but the President could not, under this constitutional provision, amend or modify a bill, or veto part of an ordinary bill or part of an item or items of an appropriation, revenue or tariff bill. The veto power originally referred and now ordinarily applies only to entire bills, but because of omnibus bills and riders usually inserted in appropriation, revenue and tariff bills, exception was made to these money and revenue bills by allowing the veto on any item or items thereof. Courts have defined or construed the term "item" as used in the veto clause in the constitution "as an item which in itself is a specific appropriation of money" (Bengzon vs. Secretary of Justice, 299 U.S. 410, 81 L. ed. 312, 315), and "the particulars, the details, the distinct and several parts" of the bill (Commonwealth vs. Barnett, 199 Pa. 161, 48 A. 976). It is used synonymously with "subject", "distinct or separate parts" so that it refers to "any separate section" of the bill (Callaghan vs. Boyce, 17 Ariz. 433, 153 p. 773.)

3. Of interest here is also Subsection (1), Section 20, Article VI of the 1935 Constitution which provided that "every bill passed by Congress shall, before it becomes a law, be presented to the President" and "if he approves the same, he shall sign it; but if not, he shall return it with his objections to the House where it originated, which shall enter the objections at-large on its Journal and proceed to reconsider it." From this, it may again be said that the President could either approve or disapprove the entire bill if it was an ordinary bill; or any item or items of an appropriation, revenue or tariff

bill. But contrariwise, the President could not veto or delete certain words or phrases of a bill or item in an appropriation, revenue or tariff bill. That could amount to an amendment which is not contemplated under the constitutional provision of either "he approves the same, he shall sign it; but if not, he shall return it with his objections to the House where it originated".

4. Since, as stated above, the Office of the President has confirmed that Section 42 of House Bill No. 17739, now Republic Act No. 6110, inserting Section 191-A, was one of the Sections vetoed by the President in his veto message dated August 4, 1969, vetoing certain sections of the said bill (Exh. "N"), it has not been shown that the President's veto was overridden by the required number of votes for vetoed bills as provided in Section 20(1), Article VI, of the 1935 Constitution. The records of the case do not show that two-thirds of each House of Congress voting separately agreed to overcome the President's veto of Section 191-A. Respondent has not alleged or even intimated that the President's veto of Section 42 of the Consolidated Tax Bill was overridden by the required number of votes of vetoed bills. Inasmuch

as Congress did not override the presidential veto of Section 191-A, the proviso in question necessarily did not become a law. Consequently, Section 191-A should not form part of the National Internal Revenue Code.

5. Not escaping notice is the argument of respondent that "a resolution in favor of petitioner would mean the loss of millions of pesos to the government, and there would be deluge of claims for refund, for nowhere in the Tax Code can you find a provision taxing eating places except in this section." While it is of utmost importance that the Government thru its tax collecting agencies should strive to assess and collect every centavo of tax to which it is entitled under the law, it is also basic that the Government should not resort to a proposed provision of a revenue bill which did not become a law to enhance the collection of taxes. The financial exigencies of the Government afford no justification for sustaining the assessment of a tax levied under a strained construction of a law, much less under a provision of a revenue bill which has been vetoed by the President.

Having reached the conclusion that:

a. Section 42 of House Bill No. 18739, now Republic Act No. 6110, inserting Section 191-A between Sections 191 and 192 of the National Internal

Revenue Code, was vetoed by the President in his veto message dated August 4, 1969;

b. Congress did not override the presidential veto; and

c. Section 191-A did not become a law and should not therefore form part of the National Internal Revenue Code:

The decision of respondent Commissioner of Internal Revenue dated March 2, 1973 assessing petitioner Manila Golf and Country Club, Inc., fixed taxes as operator of golf links and restaurant's and caterer's tax imposed in Sections 182 and 191-A of the Revenue Code in the total amount of ₱32,804.96, inclusive of surcharge and compromise penalty, cannot be sustained. With this conclusion, it follows that petitioner is not liable for the surcharges for willful neglect to pay and for the compromise penalty.

ACCORDINGLY, the decision appealed from should be as it is hereby reversed.

SO ORDERED.

Quezon City, March 30, 1977.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge