REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

MANILA JOCKEY CLUB, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 292

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - x

April 21, 1958

D E C I S I O N

This is an appeal from a decision of respondent Collector of Internal Revenue assessing against and demanding from petitioner herein, Manila Jockey Club, Inc., payment of the sum of ₱2,906.27 as deficiency amusement tax, surcharge and penalty for the period from November 1950 to September 1954, inclusive.

The following material facts are not disputed. Petitioner herein is a corporation organized under our laws, duly authorized and licensed to conduct horse racing in the Philippines, in accordance with the provisions of the various laws, regulations and rules on horse racing in the country.

In order to give each horse that participates in the races conducted by petitioner an even chance to win, they are classified into groups, depending on their age, experience, height or size, and past record, as follows: (a) "Novatos" - horses running for the first time in an official race; (b) "Perdigones" - horses which run in a "novato" race but failed to win first place; (c) "Vencedores"- horses which won first place in a "novato" race or won a certain number of times in "perdigones" races; (d) "No Clasificados" - horses which have won first or second or a certain number of times in "vencedores" races.

On horse racing days, the public place their bets on the results of a horse race, and pursuant to Section 19 of Republic Act No. 309, out of the wager funds 12-1/2% thereof is "set aside as the commission of the person, race track, racing club, or any other entity conducting the races, which shall include the amounts for the payment of authorized stakes or prizes for win, place and show horses, and authorized bonuses for jockeys." This particular provision of Republic Act No. 309 was amended by Republic Act No. 1933, approved on June 22, 1957. The pertinent portion of the amendment found in Section 19 of Republic Act No. 1933 reads as follows:

> "x x x six and one half per centum shall be set aside as the commission of the person, race track, racing club, or any other entity conducting the races, five and one half per centum shall be set aside for the payment of stakes or prizes for win, place or show horses and authorized bonuses for jockeys; and one half per centum shall be paid to a special fund to be used by the Games and Amusements Board to cover its expenses and such other purposes authorized under this Act."

Once a year, since its institution in November, 1950 up to the present, petitioner holds a "special novato race". This race is so-called, because the owners of the novato horses registered for said race, unlike in the ordinary novato race, have to pay, aside from the inscription and declaration fees, another sum of ₱10.00 designated as "registration fee". It is not disputed that the total amount collected as "registration fees", together with a counterpart fund taken from the private coffers of petitioner, is added to the five and one half per centum set aside from the total wager funds bet on said "special novato race" to constitute the prize money which will be divided among the winning horse owners in that "special novato race".

On December 23, 1954, respondent Collector of Internal Revenue demanded from petitioner payment of a deficiency amusement tax in the total sum of ₱2,906.27, exclusive of surcharge. This deficiency results from the alleged failure of petitioner to return for amusement tax purposes the amount received by it in the form of "registration fees" from the owners of "novato" horses participating in the "Special novato races" for the period from November, 1950 to September, 1954. In spite of petitioner's objections, the aforesaid demand was finally reiterated by the respondent Collector of Internal Revenue on June 4, 1956, on the theory that these registration fees formed part of the former's gross receipt subject to the amusement tax under Section 260 of the Tax Code. On June 28, 1956, petitioner filed its petition for review with this Court.

The parties raise no issue of fact. Neither is the mathematical correctness of respondent's assessment impugned by petitioner. The only question to be resolved therefore, is whether or not, the aforesaid registration fees collected for the "special novato races" form part of the gross receipts of petitioner subject to the 20% amusement tax prescribed by Section 260 of the National Internal Revenue Code.

Petitioner contends that since the aforementioned ₱10.00 "registration fee" is destined to form part of the prizes awarded to the winning horses, it should be given a status similar in character to the 5-1/2% share of the total bets accruing to the winning horse owners prescribed by Section 18, Executive Order No. 320, now found in Section 19 of Republic Act 309, as amended. And since, according to petitioner, the said 5-1/2% share of the total bets accruing to winning horse owners does not form part of its gross receipts, then the ₱10.00 "registration fee" should likewise be treated as not forming part of its gross receipts.

"Gross receipts" for the purpose of the amusement tax imposed under Section 260 of the National Internal Revenue Code, was interpreted by the Secretary of Justice as early as October 30, 1941, thus:

"x x x x x

"With respect to race track the term 'gross receipts' used in Section 260 of the National Internal Revenue Code should be

> construed as the total amount of cash received by the race track operator as its earning without including any amount of money that does not go to its funds as its property. The term above mentioned has been held as synonymous to 'gross earnings' (City of New York v. Thirty Fourth St. Crosstown Ry Co., 122 N.Y. Supp. 344, 346). It also means the entire earnings, receipts or the like, without any deduction for expenses incurred (Webster's New International Dictionary, p. 954; Fund & Wagnalls, New Dictionary of the English Language, p. 1080; see also Pacific Gas & Electric Co. v. Roberts, 167 Pac. 645, 846, 176 Cal. 183). Opinion No. 345, s. 1941."

The above-quoted opinion was rendered in answer to the query of the Manila Jockey Club (now herein petitioner, Manila Jockey Club, Inc.), addressed to the Secretary of Finance who endorsed it to the Secretary of Justice for ruling thereon. The query arose from the question of whether or not the amusement tax imposed in Section 260 of the Tax Code should be levied on the 5% (distributed among the owners of winning horses) of the 12-1/2% total wager funds provided in Section 18 of Executive Order No. 320.

Opinion No. 345, s. 1941, of the Secretary of Justice finds affirmation in Opinion No. 249, s. 1952, which, in answer to the request whether Opinion No. 135, s. 1950, took into consideration Opinion No. 245, s. 1941, in the interpretation of the term "gross receipts" as used in Section 260 of the Tax Code, reads:

"x x x x

"In resume, while one opinion (No. 135, s. 1950) holds that all receipts of the proprietor, owner or lessee of an amusement place, without exception, constitutes its gross receipts, the other (Opinion No. 341, s. 1941) declares that the share of the owners of winning horses (to which may be added, the share of the Commission on Races under Section 19, Republic Act No. 309) in the total bets registered by the totalizer is not to be regarded as a receipt of the proprietor or operator. It may not, therefore, be included in his gross receipts. There can consequently be no conflict between the two opinions."

Opinion No. 345, s. 1941, is further re-affirmed in Opinion No. 340, s. 1955, which reiterated the view that there was no conflict between the two previous opinions.

It thus appears that the term "gross receipts", for purposes of the amusement tax imposable under Section 260 of the Tax Code, has been contemporaneously and consistently interpreted by the Secretary of Justice to circumscribe only "the total amount of cash received by the race track operator as its earning without including any amount of money that does not go to its funds as its property." This interpretative ruling is entitled to considerable weight. This is particularly so in view of the fact that it is a ruling or opinion of the chief law officer and legal adviser of the government. As has been well said, "interpretations by the Attorney-General and the legal department of state have important bearing upon statutory meaning, since the Attorney-General and his office are required by law to issue opinions for the assistance of the various departments of the government administering the law." (Lo Cham v. Ocampo, 77 Phil. 637, quoting Sutherlands Statutory Construction, 3 Ed. 517.) And courts will respect such interpretations unless they are clearly erroneous. (See In re Allen, 2 Phil. 630; Molina v. Rafferty, 37 Phil. 545; Guanio v. Fernandez, 55 Phil. 814.)

We find the above interpretation of the Secretary of Justice as respect the term "gross receipts" to be in accord with the intendment of the Tax Code. As correctly opined therein, the total amount of cash received by the race track operator (petitioner herein) as its earning without including any amount of money that does not go to its funds as its property should be deemed its gross receipts, liable to payment of the amusement tax imposed by Section 260 of the Tax Code. It cannot be gainsaid that petitioner, in the course of its operation, may receive, by authority of law or otherwise, money which does not become its property, but is merely held by it for the economic use or benefit of another. To subject petitioner to the payment of amusement tax on account of this latter receipt is unquestionably unjust and not contemplated by said Section 260 of the Tax Code.)

In the case at bar, the ₱10.00 collected as registration fee from an owner of a novato horse that participates in the special novato races, together with the corresponding contribution of petitioner, goes to the owners of the winning horse as prize money. This "registration fee" is a misnomer. But, it is to be noted that it does not ultimately go to petitioner to become its property. Petitioner is merely a conduit through which this so-called registration fee passes to the winning horses. This observation is borne out by the fact that petitioner has listed it in the liability side of its balance sheets. The fact that it appears under the item "Employees Deposits" is of no moment because it could not be listed under any other like items. To our mind, the listing of the so-called registration fee of ₱10.00 as a liability is an eloquent demonstration of the nature and essence of this amount - of its going to the funds as property of the owners of the winning horses, not of petitioner. To all purposes and practices, this so-called fee is but a trust fund, with petitioner as trustee. For should petitioner appropriate it for its own economic use and gain or otherwise divert it to other than that to which it is contractually destined, petitioner will incur liability to the owners of the winning horses.

As afore-stated, Opinion No. 345, s. 1941, of the Secretary of Justice, which was affirmed and reaffirmed in subsequent opinions, was rendered in answer to a query involving the 5% (distributed among the owners of winning horses) of the 12-1/2% total wager funds provided in Section 18 of Executive Order No.

320. The pertinent provision of Section 18 of Executive Order No. 320 was incorporated as part of Section 19 of Republic Act No. 309, which latter statutory provision was substantially enacted in Section 19 of Republic Act No. 1933. When Congress substantially re-enacted Section 18 of Executive Order No. 320 into Section 19 of Republic Acts Nos. 309 and 1933, it was acquainted with the executive interpretation (Opinion No. 345, s. 1941, of the Secretary of Justice) of the term "gross receipts" found in Section 260 of the Tax Code. Congress, therefore, impliedly adopted the interpretation upon such re-enactment (see Sutherland Statutory Construction, Vol. 2, pp. 523-524).

In view of the foregoing, we believe and so hold that the registration fees collected for the special novato races do not form part of the gross receipts subject to the 20% amusement tax prescribed by Section 260 of the National Internal Revenue Code.

WHEREFORE, the decision appealed from is hereby reversed, without pronouncement as to costs.

SO ORDERED.

Manila, April 2, 1958.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge.

ROMAN M. UMALI
Associate Judge

Aff'd in G.R. Nos. L-13887 & 13890
June 30, 1960