REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

PHILIPPINE TRUST COMPANY,
Petitioner,

January 30, 1961

- versus -   C.T.A. CASE NO. 367

COLLECTOR OF INTERNAL
REVENUE,
Respondent.   (not appealed)

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

D E C I S I O N

In a letter dated April 4, 1952, the respondent assessed against the petitioner the sum of ₱120,179.87 as deficiency income tax for the years 1945, 1946, 1947, 1948 and 1949, itemized and computed as follows:

1945

Net income per investigation --	₱ 16,069.43
Tax due - 8% ----------------	₱ 1,285.55
Compromise for being required to file -------------	20.00
TOTAL AMOUNT DUE & COLLECTIBLE-	₱ 1,305.55

1946

Net loss per return -----------		(₱705,168.52)
Disallowances:		
Losses incurred (Assets less liabilities) Japanese Accounts	₱1,054,659.26	
Amortization of bond Premium (Interest on Bonds not taxable)	4,375.32	
Pre-war deposits transferred to deposit accounts during the Jap occupation now validated	1,564.66	

Japanese occupation Assets		
Petty Cash Checks Books ..	250.00	
Petty Cash Documentary Stamps .	50.00	
Petty Cash Fund expenses ..	100.00	1,060,999.24
Total ----------------------		P 355,830.72
Deduct income corresponding to 1945 ------------------		16,069.43
TOTAL ----------------------		P 339,761.29
AMOUNT CARRIED FORWARD ------		P 339,761.29
Deduct: Non taxable income-interest on tax exempt investments:		
1945	P137,924.04	
1946	20,586.99	158,511.03
Net income after investigation-		P 181,250.26
TAX DUE AND COLLECTIBLE ------		P 21,750.03

<u>1947</u>

Net income shown in the return		P 472,005.35
Add: Deductions disallowed -		
Purchased of rice-Japanese time ..	P 8,367.07	
Sugar-Employees .	1,179.82	
Payments of Pandacan Property .	3,223.22	
Miscellaneous Assets Cash	178,110.96	
Overdraft-Western Equipment .	66,080.79	
E. Capistrano-Savings Deposit.	390.00	
Woo Loo & Co. Bank of California	1,258.72	
Pre-War Deposits re-established .	824.11	
Payments on Collection-Trust Receipts	3,253.76	262,688.45
Net income after investigation-		P 734,693.80
Tax due ----------------------		P 88,163.26
Tax paid ----------------------		56,640.64
TAX STILL DUE AND COLLECTIBLE -		P 31,522.62

<u>1948</u>

Net income shown in the return		P 878,222.57
Add: Deductions disallowed-		
Miscellaneous Assets Written Off-U.S. Currency taken by Hampo Kaihatu Kinko	P 3,133.96	

Furniture looted	20,655.61	
Firearms taken ...	248.00	24,037.57
Overdraft-Benguet Exploration ------------		30,613.90
Overdraft-Jose Yulo --------		6,175.92
Indian Comm. Co. - Paid during the Japanese Occupation		5,961.90
Validated Savings Account ---		74.20
Fidelity-Cash -------------		15,392.00
Interest-Preferred Shares ---		8,109.58
Net income after investigation-		₱968,587.64
Tax due ----------------------		₱116,230.52
Tax paid ---------------------		105,386.71
TAX STILL DUE AND COLLECTIBLE -		₱ 10,843.81

1949

Net income shown in the return-		₱308,521.46
Add: Deductions disallowed:		
Overdrafts under reconstruction .	₱191,346.17	
Loans written off.	186,986.94	
Less: Recoveries - J.J. Lewison ₱1.00 S.J. Willimont 3.52	234.52	
Small Loans-Non-Military	10,128.08	
Overdrafts	31,193.35	
Profit Sharing Fund	35,292.78	
Fidelity-Cash ...	4,602.00	459,314.80
Total -----------		₱767,836.26
Deduct: Income not taxable:		
Dividends from Fidelity and Surety Company reported in the return	3,999.00	
Less: Taxable-25% only ...	999.75	2,999.25
Net income after investigation		₱764,837.01
Tax due --------------------		₱ 91,780.44
Tax paid -------------------		37,022.58
TAX STILL DUE AND COLLECTIBLE-		₱ 54,757.86

(Pages 108-110, BIR records, Vol.1.)

At the same time, petitioner was "requested to show cause, within the same period, why the 50% surcharge prescribed in section 72 of the Tax Code should not be imposed upon you, considering the fact that the discrepancies discovered by this Office amounted to ₱1,060,999.24 in 1946, ₱262,688.45 in 1947, ₱90,365.07 in 1948 and ₱459,314.80 in 1949."

On September 9, 1952, petitioner contested formally the assessment, explaining the various items claimed by it as deductions from its gross incomes in the years under review, and admitting that at most its deficiency tax liability was only ₱25,683.38 for said years.

On March 8, 1957, after a protracted investigation, respondent rendered his decision reiterating the previous assessment, except with respect to the deficiency assessment for the year 1949, which was modified as follows:

Net income per investigation ---	₱764,837.01
Less: Profit sharing fund ------	35,292.78
Net income per reinvestigation -	₱729,544.23
Tax due on ₱729,544.23 --------	₱ 87,545.31
Less amount already assessed and paid ------------	37,022.58
Deficiency tax due ------------	₱ 50,522.73
50% surcharge ----------------	25,261.37
Deficiency income tax and surcharge ------------------	₱ 75,784.10
Compromise in extrajudicial settlement of the case ------	300.00
TOTAL AMOUNT DUE -------------	₱ 76,084.10

In the revised assessment for the year 1949, respondent conceded the correctness of the deduction of ₱35,292.78, which was previously disallowed, thereby reducing the deficiency tax from ₱54,757.86 to ₱50,522.73. However, the assessment was increased from ₱54,757.86 to ₱76,084.10 with the addition of the 50% surcharge in the amount of ₱25,261.37 and ₱300.00 as compromise. Nothing appears in the decision of respondent as to the reason for the imposition of the 50% surcharge.

Not satisfied with the decision of respondent, petitioner has appealed. Three principal issues have been raised in this appeal, viz: (1) whether or not the right of the Government to assess and collect the deficiency income tax in question has prescribed; (2) whether or not the various deductions claimed by petitioner have been properly disallowed; and (3) whether or not, assuming the correctness of the disallowance of the deductions for bad debts, the taxes paid on subsequent recoveries may be credited against the deficiency assessment.

It appears that no separate income tax return was filed for the year 1945. Petitioner's income for that year was included in its return for the year 1946, which was filed on February 25, 1947. The income tax returns of petitioner for the years 1947, 1948 and 1949 were filed on February 17, 1948, February 14, 1959, and February 22, 1950, respectively. The assessment was made in a letter of respondent dated April 4, 1952, which was allegedly received by petitioner on April 21, 1952.

It is contended on behalf of petitioner that -

> "It is obvious from the foregoing facts that the three-year period for making a return by the Collector and/or the assessment of the tax prescribed by Section 51(d) of the Code, and the five-year period from assessment with which the said supposed deficiency income taxes may be collected by any of the means allowed by the National Internal Revenue Code (Sec. 331 and 332, par. (c), supra), e.i., by distraint, levy or by a proceeding in Court, had already expired when the present proceedings was instituted on April 22, 1957, and more so when the respondent

> filed his answer to the basic petition in this case on June 6, 1957 - which answer, it may be said parenthetically, did not even contain any counterclaim against the herein petitioner for the supposed deficiency income taxes in question." (Pp. 12-13, Memorandum for Petitioner, July 4, 1959.)

The contention that the right of the Government to assess deficiency income tax is governed by Section 51(d) of the Revenue Code is without merit. That section applies solely to the right of the Government to assess and collect income tax by distraint and levy. Said section does not, therefore, apply to this case because it does not appear that respondent has sought to enforce collection of the deficiency income tax assessed against petitioner by distraint and levy. The law applicable is Sections 331 and 332 of the Revenue Code.[1]

Section 331 provides that internal revenue taxes, which includes income tax, may be assessed within five years after the returns were filed or were due, and Section 332 provides that such taxes may be collected within five years after assessment. Section 332 provides that where the return filed was false or fraudulent or where no return was filed, the tax may be assessed within ten years from the date of discovery of the fraud or of the omission to file the return.

In this case, no income tax return was filed for the year 1945. Petitioner's gross income for that year was included in its return for the year 1946. The return which it filed on February 25, 1947 is the "RETURN OF NET INCOME FOR THE CALENDAR YEAR

---

[1] See Coll. of Int. Rev. v. Bohol Land Transp. Co., G. R. Nos. L-13099 & L-13462, April 29, 1960.

ENDED DECEMBER 31, 1946." (See Exh. A for petitioner; Exh. 3 for respondent; page 73, Vol. I, B.I.R. records.) It cannot, therefore, be considered also as its return for 1945. The fact that petitioner included in said return its income for the year 1945 will not alter the result. Section 46 of the Revenue Code provides that every corporation shall render, in duplicate, a true and accurate return of its annual net income in the manner and form prescribed by the Collector of Internal Revenue with the approval of the Secretary of Finance, and that such return shall be rendered on or before the first day of March of each year for the preceding calendar year, or if the corporation has designated a fiscal year, then within sixty days after the close of such fiscal year. The law does not authorize income in one year to be included in the return for another year. We are, therefore, of the opinion that no income tax return was validly filed by petitioner for the year 1945. Accordingly, the deficiency income tax of petitioner for 1945 may be assessed within ten years from the date of discovery of the omission to file such return. And the tax so assessed may be collected within five years after assessment. (See Section 332, Revenue Code.)

There is no dispute as to the fact that the 1945 deficiency income tax was assessed within ten years after the discovery sometime in 1951 of the omission to file the return. The tax was assessed on April 21, 1952, but on September 9, 1952, petitioner requested reinvestigation or reconsideration of the assessment, hence, the running of the statute of limitation upon assessment was suspended from the latter date. (Coll. of Int. Rev. v. Suyoc Cons. Mining Co., G. R. No. L-11525, Nov. 25, 1958.) The final assessment was made on March 8, 1957, from which date the five-year period within which collection by judicial action may be instituted started to run. The present proceeding was commenced by petitioner on April 22, 1957, or about one and one-half months from the date of the final assessment. It is clear, therefore, that the right of the Government to assess and collect the deficiency tax for the year 1945 has not prescribed.

With respect to the deficiency income tax for the year 1946, the evidence shows the income tax return for said year was filed on February 25, 1947. The five-year period within which the tax may be assessed commenced to run from March 1, 1947. (See Sec. 331, Revenue Code.) As the assessment was made on April 21, 1952 (according to respondent the assessment was made on May 19 or May 20, 1952), or more than five years from March 1, 1947, the right of the Government to assess said deficiency tax had already prescribed when the assessment was made.

As regards the deficiency income tax for the years 1947, 1948 and 1949, the income tax returns for said years were filed on February 17, 1948, February 14, 1949, and February 22, 1950, respectively. The first assessment was made on April 21, 1952, but on September 9, 1952, petitioner requested reinvestigation or reconsideration of the assessment. After reinvestigation, the final assessment was made on March 8, 1957. Deducting the period during which the request for reinvestigation or reconsideration was pending in the office of respondent (from September 9, 1952 to March 8, 1957), the five-year period within which the tax may be assessed has not prescribed. From March 8, 1957, when the deficiency income tax for said years was finally assessed, to the date the present proceeding was commenced on April 22, 1957, a period of about one and one-half months was consumed so that the five-year period within which judicial action for its collection may be instituted has not prescribed.

We now come to the second issue, that is, whether or not the various items of deductions claimed by petitioner have been properly disallowed by respondent. We will take up separately the deficiency assessment for the year 1945.

For the year 1945, the taxable net income of petitioner as found by respondent is ₱16,069.43. The tax due thereon is ₱1,285.55, to which respondent has added the sum of ₱20.00 as compromise "for being required to file" an income tax return.

In the income tax return of petitioner for the year 1946, the sum of ₱1,054.659.26 was deducted as losses. The nature of these losses is explained by counsel for respondent as follows:

> Under Schedule E of the bank's return for 1946 was a summary of assets and liabilities which were invalidated. These items were in Japanese currency which became

> valueless after liberation. The bank wiped them off in the books and the excess of the invalidated assets over the invalidated liabilities was considered as loss and deducted from its income for the year 1946. Said deduction was disallowed because the loss, if there were any, was incurred in 1945 when the Japanese currency was invalidated. The disallowance is based on Section 34(d) (C) (2) of the Tax Code which provides that losses actually sustained should be charged off within the taxable year. (Pp. 12-13, Memorandum for Respondent, December 18, 1959.)

Since, by the admission of respondent, the sum of ₱1,054,659.26 represents losses deductible in 1945, when the losses were actually sustained, the said amount should have been allowed as deduction in the income tax return of petitioner for said year. As the net taxable income of petitioner without taking into account said losses is only ₱16,069.43, the deduction of said losses from the gross income in said year leaves petitioner without any taxable income for that year. Accordingly, the assessment for the year 1945 must have to be cancelled.

The deductions claimed by petitioner in 1947, 1948 and 1949 and disallowed by respondent may be grouped into three classes, viz: (1) losses; (2) bad debts; and (3) interest. These deductions are described below.

LOSSES

I. 1947 -

1. Payments of Pandacan property -	₱ 3,223.22
2. Miscellaneous assets - cash --	178,110.96
3. E. Capistrano - savings deposit ------	390.00
4. Pre-war deposits reestablished	824.11
5. Woo Leo & Co. - Bank of California ------	1,258.72
6. Payments on collection - trust receipts -------------	3,253.76

II. 1948 -

1. Miscellaneous assets written off:		
(a) U.S. currency taken by Nampo Kaihatu Kinko	₱3,133.96	
(b) Furniture looted	20,655.61	
(c) Firearms taken	248.00	₱ 24,037.57
2. Indian Com. Co. - paid during Japanese occupation		5,961.90
3. Validated Savings account		74.20
4. Fidelity - cash		15,392.00

III. 1949 -

1. Fidelity - cash	₱ 4,602.00

BAD DEBTS

I. 1947 -

1. Purchases of rice - Japanese time	₱ 8,367.07
2. Sugar - employees	1,179.82
3. Overdraft - Western Equipment	66,000.79

II. 1948 -

1. Overdraft - Benguet Exploration	30,613.90
2. Overdraft - Jose Yulo	6,175.92

III. 1949 -

1. Overdrafts under reconstruction	₱191,346.17
2. Loans written off	186,752.42
3. Small loans - non-military	10,128.08
4. Overdrafts	31,193.35

INTEREST

1. 1948 -

1. Interest - preferred shares	₱ 8,109.58

(See letter of Collector of Internal Revenue to Phil. Trust Co., dated April 4, 1952; Exh. E for petitioner; Exh. 17 for respondent; pp. 104-110, Vol. I, B.I.R. records.)

Payments on Pandacan property, ₱ 3,223.22.- This amount represents payments in Japanese currency of the balance of the price of real property located in Pandacan, Manila, which was sold by petitioner before the war. Petitioner considers this a loss on the ground that Japanese war notes became worthless after liberation, pursuant to Executive Order No. 49, and deducted said amount from its income in 1947.

We agree with respondent that this item is not deductible from petitioner's income in 1947. If, as alleged, the Japanese war notes received in payment for said property remained in petitioner's possession after the war, the said war notes having been invalidated in 1945, the deduction may be claimed only in that year and not in 1947. Under Section 30(d) of the Revenue Code, corporations are allowed to deduct all losses actually sustained and charged off within the taxable year and not compensated for by insurance or otherwise. As a rule, losses are deductible only in the year when actually sustained; deductibility cannot be postponed to a later year.

Miscellaneous assets - cash, P178,110.96. - This amount represents genuine Philippine currency which was ordered by the Japanese Army to be transferred to the Philippine National Bank, and was so transferred on May 19, 1942. As the said amount was seized or sequestered by the enemy during the war, it was a loss sustained in the year of seizure or sequestration and is deductible only in that year and not in 1947. (Richard G. Wagner, 9 BTA 925; Albert F. Gallum, et al., 10 BTA 747, cited in Par. 13,480 PH Federal Taxes, 1955.) Even assuming that upon the transfer of said amount to the Philippine National Bank it "became substituted with Japanese war notes" and said war notes remained in petitioner's possession after the war, the loss was sustained in 1945 when such notes were invalidated. In such case, the loss is deductible in 1945 and not in 1947.

E. Capistrano - savings deposit, ₱390.00; pre-war deposits reestablished, ₱824.11.- These amounts represent pre-war deposits of certain persons which were maintained during the Japanese occupation and validated after the war. Petitioner contends that these deposits were converted into Japanese currency during the war and became a loss when the Japanese war notes were invalidated. If so, loss was sustained in 1945 and not in 1947.

Woo Loc & Co.- Bank of California, ₱1,258.72; payments on collection - trust receipts, ₱3,253.76.- These are pre-war accounts due the petitioner which were paid during the Japanese occupation. Petitioner claims to have sustained losses by virtue of these payments which were received by it in Japanese currency. Again, if these war notes remained in its possession after the war, the losses were sustained in 1945 when said notes were invalidated and deductible in that year, not in 1947.

Miscellaneous assets, ₱24,037.57.- This amount represents the value of U. S. currency and firearms taken or seized by the Japanese Army during the early part of the war in 1942 and furniture looted. As in the case of the Philippine currency which petitioner deposited with the Philippine National Bank in 1942 by order of the Japanese Army, this amount is a loss sustained in 1942. Therefore, it is not deductible in 1948.

Indian Com. Co. - paid during the Japanese occupation, ₱5,961.90. - This item is similar to the pre-war accounts mentioned above (Woo Lee & Co., ₱1,258.72; payments on collection - trust receipts, ₱3,253.76). If any loss was sustained by petitioner by reason of the payment of pre-war accounts of its debtors during the Japanese occupation, the loss is deductible in 1945, not in 1948.

Validated savings account, ₱74.20. - This is a pre-war deposit which was maintained during the Japanese occupation and validated after the war. As already adverted to above, if any loss was sustained by petitioner, the loss was actually sustained in 1945. Petitioner may not deduct the loss in 1948.

Fidelity - cash, ₱15,392.00; Fidelity - cash, ₱4,602.00. - The sum of ₱15,392.00 was claimed as a deduction in 1948 and the sum of ₱4,602.00 in 1949. These amounts represent fidelity cash, or pre-war currency held in trust which, petitioner claims, were converted into Japanese war notes upon its deposit in the National Treasury and became worthless by virtue of Executive Order No. 49. If, as alleged, the said amounts became worthless by virtue of Executive Order No. 49, which invalidated Japanese war notes in 1945, the loss was sustained in 1945. Deduction of said amounts can not, therefore, be allowed in 1948 and 1949.

The bad debts deducted by petitioner in its 1947, 1948 and 1949 income tax returns consist of the value of rice and sugar distributed by it to its employees during the Japanese occupation, and loans and overdrafts extended to various persons before the war. Section 30 (e)(1) of the Revenue Code permits the deduction of "debts due to the taxpayer actually ascertained to be worthless and charged off within the taxable year." In order that a bad debt deduction may be validly claimed, it is essential (1) that there be a valid and subsisting debt, and (2) that the debt be actually ascertained to be worthless and charged off within the taxable year.

In connection with the value of rice and sugar (₱8,367.07 and ₱1,179.82) which were distributed by petitioner to its employees during the Japanese occupation by way of loans, the deduction was disallowed on the ground that it has not been proven that said amount was ascertained to be worthless and uncollectible in 1947 but was simply condoned. (See Exh. 17.) Petitioner claims that the loans were not condoned but they were charged off in its books in 1947 as bad debts because of the loss of the pertinent records of the names of the employees concerned and the amount due from each, thereby rendering it impossible for petitioner to effect collection. We are inclined to believe petitioner. However, no evidence has been presented as to the precise date during the Japanese occupation when the rice and sugar were distributed to petitioner's employees. This is necessary to determine the value of the loans in Philippine currency after the war. In the absence of evidence as to the actual value of the bad debts which may be allowed as deduction, we are constrained to sustain the disallowance thereof.

As regards the various loans and overdrafts, it has been shown that they were valid and subsisting debts in the years they were charged off and deducted in the income tax returns of petitioner; that in most instances the documents evidencing the indebtedness were lost or destroyed during the war, thereby making it impossible for petitioner to bring court action against the debtors; and that despite the loss of the evidences of indebtedness, petitioner exerted efforts to collect from the debtors. They succeeded to collect some of the debts, or parts thereof, in subsequent years by making personal appeals to the debtors, and petitioner reported the recoveries as income in the years of recovery.

In one case, it is true that the debt is secured by shares of stock of the San Juan Plantation Co. which are still held by petitioner. It has been shown, however, that these shares of stock are worthless. It would be unreasonable to require petitioner to continue to maintain this account in its books. Petitioner claims the debt to have been definitely ascertained as uncollectible in 1949 and accordingly charged it off in its books in that year. We find no justification to hold otherwise.

Respondent's main argument in disallowing the deduction of the alleged bad debts is that petitioner was able to collect some of the debts, or parts thereof, in subsequent years, which proves that the debts were not uncollectible in the years they were so declared and charged off by petitioner.

That a debt, previously found to be worthless and charged off in a prior year, was subsequently collected, does not render the deduction unallowable or illegal. Section 102 of Revenue Regulations No. 2 (Income Tax Regulations) provides:

> SEC. 102. Bad debts. - Where all the surrounding and attending circumstances indicate that a debt is worthless, and the debt is charged off on the books of the taxpayer within the year, the same may be allowed as a deduction in computing net income. There should accompany the return a statement showing the propriety of any deduction claimed for bad debts. Before a taxpayer may charge off and deduct a debt, he must ascertain and be able to demonstrate, with a reasonable degree of certainty, the uncollectibility of the debt. Any amount subsequently received on account of a bad debt previously charged off; and allowed as a deduction for income tax purposes, must be included in gross income for the taxable year in which received. In determining whether a debt is worthless, the Collector of Internal Revenue will consider all pertinent evidence, including the value of the collateral, if any, securing the debt and the financial condition of the debtor.
>
> Where the surrounding circumstances indicate that a debt is worthless and uncollectible and that legal action to enforce payment would in all probability not result in the satisfaction of execution on a judgment, a showing of those facts will be sufficient evidence of the worthlessness of the debt for the purpose of deduction. Bankruptcy is generally an indication of the worthlessness of at least a part of an unsecured and unpreferred debt. Actual determination of worthlessness in bankruptcy cases is sometimes possible before and at other times only when a settlement in bankruptcy shall have been had. Where a taxpayer ascertained a debt to be worthless and charged it off in one year, the mere fact that bankruptcy proceedings instituted against the debtor are terminated in a later year, confirming the conclusion that the debt is worth-

> less, will not authorize shifting the deduction to such later year. If a taxpayer computes his income upon the basis of valuing his notes or accounts receivable at their fair market value when received, which may be less than their face value, the amount deductible for bad debts in any case is limited to such original valuation.

The regulations provide that where all the surrounding circumstances indicate that a debt is worthless, and it is charged off within the year, the same may be allowed as a deduction in computing net income. If thereafter any amount is received on account of a bad debt previously deducted, the recovery must be included in gross income for the taxable year in which received. It seems clear that subsequent recovery of a bad debt allowed as a deduction in a prior year does not affect the deductibility of the debt in the year it was previously declared to be worthless.

Except for the value of the rice and sugar distributed to petitioner's employees during the war in the sums of ₱8,367.07 and ₱1,179.82, the corresponding value of which in Philippine currency has not been established, we are of the opinion that it was error for respondent to have disallowed the claimed deductions for bad debts.

The last disputed item is the sum of ₱8,109.50, representing alleged interest on preferred shares of stock of petitioner held by the Government, which was deducted in 1948. The deduction was disallowed by respondent on the ground that "the same was more of a distribution of profit rather than interest on the capital."

The records do not show the nature of the alleged "interest on preferred shares." For this reason, this Court in its order dated September 30, 1960, ordered the parties to submit additional memoranda on the subject. Specifically, the following question was presented to the parties: "Are the shares of stock issued by petitioner to the Government similar to or different from the preferred shares of stock acquired by the Government from certain insurance companies pursuant to Executive Order No. 107, dated April 20, 1946?" We posed this question because in the case of insurance companies to which advances were made by the Government under Executive Order No. 107 and for which preferred shares were issued, the so-called dividends paid on said shares have been held interests on indebtedness and are deductible. We quote from the ruling of the Bureau of Internal Revenue dated April 27, 1953, in the case of the Insular Life Assurance Co.:

> Reference is made to your letter dated March 18, 1952, requesting that the sum of ₱47,681.50 covering the "dividends on preferred stocks" paid to the Rehabilitation Finance Corporation, be allowed as deduction from your gross income for the year 1951.
>
> In reply thereto, I have the honor to inform you that as the advances made by the Government to your company under the provisions of Executive Order No. 107 dated April 20, 1946, were substantially in the nature of loans but treated only as capital stock in order to place your company on legal capital basis and also to enable the Government to participate in your management, as confirmed in the 1st indorsement of Honorable Placido L. Mapa dated March 20, 1952

> to the Honorable, the Secretary of Finance, Manila, your request is hereby granted.
>
> Furthermore, although in the provisional certificate issued by your company to the Financial Rehabilitation Board of the Government of the Philippines these advances were referred to as preferred stocks and entitled to dividends payable out of the net profits, evidence, however, shows that the dividends were not necessarily paid out of net profits, because even when losses were sustained in 1947, payments were nevertheless effected, justifying your allegation that said payments were in the nature of interest. It also appears that the preferred shares held by the government may be retired at your option or at the request of the Government whenever the Insurance Commissioner certifies that your financial condition warrants such retirement.
>
> In view of the foregoing, this Office is of the opinion that the so-called dividends on preferred stocks were in reality interest on loans and, therefore, deductible under section 30(b) of the National Internal Revenue Code.

Unfortunately, the question has been left unanswered by the parties and we are left to decide the issue here presented on the basis of the meager evidence of record.

The question presented is whether the alleged interest in the sum of ₱8,109.50 is interest on indebtedness, which is deductible, or dividend, which is not deductible. The distinction between interest and dividend may be briefly stated as follows:

> Payments made by a corporation on its shares of stock are dividends (not deductible), but payments made on its evidence of indebtedness are interest (deductible). Proper classification of the instrument under which the payments are made is sometimes difficult. The intent of the parties as determined from all the facts and circumstances controls. The characteristics of an evidence of indebtedness are: a def-

> inite obligee (either by name or designation); a definite ascertainable obligation; a time of maturity, either definite or that will become definite. It may, of course, possess other features as well. (Par. 1902, PH Fed. Tax Handbook, 1955.)

The records do not show that the preferred shares issued by petitioner are in reality merely evidence of indebtedness. It does not appear that the so-called interest on the preferred shares is payable only out of the profits or earnings of petitioner, or that it is payable regardless of any such profits or earnings. It is not also shown whether or not there is a definite date of maturity of the preferred shares. Under the facts, we are constrained to sustain the disallowance of the deduction on the ground that determinations of the Commissioner of Internal Revenue are presumptively correct.

In the assessment for 1949, respondent has added the 50% surcharge on the ground that "petitioner deliberately claimed deductions in the aggregate amount of ₱419,420.02 as bad debts which are obviously not worthless or uncollectible because the debtors are capable of paying their accounts" as in fact "these accounts had been paid by petitioner's debtors after the same had been written off in its books and such payment was admitted by petitioner." (See page 18, Memorandum for Respondent, Dec. 19, 1959.) In view of our opinion as to the propriety of such deductions, we do not find it necessary to discuss at length the incorrectness of respondent's conclusion, except to state that the imposition of the fraud penalty has no legal or factual basis. We may also add that similar deductions were claimed in prior years by petitioner and yet respondent did not see fit to hold petitioner liable for the fraud penalty. As we stated in previous cases, the liability for the fraud penalty can not be made to rest solely on the amount of the underdeclaration or on the amount of deductions claimed. (See Yulo v. Araneta, CTA No. 84, July 8, 1958: Pirovano v. Comm. of Int. Rev., C.T.A. No. 524, Sept. 29, 1960.)

In resume, we are of the opinion that: (1) the right of the Government to assess and collect the deficiency income tax for the years under review has not prescribed, except with respect to the year 1946; (2) that there is no deficiency tax for the year 1945; (3) that the disallowance of all losses claimed by petitioner for the years 1947, 1948 and 1949 are in order; (4) that the bad debt deductions claimed by petitioner are allowable, except the value of the rice and sugar distributed by petitioner to its employees in the sums of ₱8,367.07 and ₱1,179.82; (5) that the disallowance of the alleged "interest" on preferred shares has to be sustained for lack of evidence to justify its deductibility; and (6) that there is no legal or factual basis for the imposition of the fraud penalty as regards the deficiency income tax for the year 1949. Accordingly, we find petitioner liable for the deficiency income tax in the aggregate sum of ₱30,214.28 for the years 1947, 1948 and 1949, computed as follows:

1947

Net income as determined by respondent -------------	₱ 734,693.80
Less: Deduction allowed - Overdraft-Western Equipment ---------------	66,080.79
Net taxable income ----------	₱ 668,613.01
Tax due ---------------------	₱ 80,233.56
Tax already paid -----------	56,640.64
Tax still due --------------	₱ 23,592.92

1948

Net income as determined by respondent -------------		₱ 968,587.64
Less: Deductions allowed - Overdraft-Benguet Exploration ...	₱30,613.90	
Overdraft-Jose Yulo	6,175.92	36,789.82
Net taxable income ---------		₱931,797.82
Tax due ---------------------		₱111,815.74
Tax already paid -----------		105,386.71
Tax still due --------------		₱ 6,429.03

1949

Net income as determined by respondent ---------------		₱729,544.23
Less: Deductions allowed - Overdrafts under reconstruction.	₱191,346.17	
Loans written off	186,752.42	
Small loans - non-military ..	10,128.08	
Overdrafts	31,193.35	419,420.02
Net Taxable income ----------		₱310,124.21
Tax due ---------------------		₱ 37,214.91
Tax already paid -----------		37,022.58
Tax still due --------------		₱ 192.33

RESUMÉ

1947 deficiency tax ----------	₱ 23,592.92
1948 deficiency tax ----------	6,429.03
1949 deficiency tax ----------	192.33
T o t a l -------------	₱ 30,214.28

WHEREFORE, petitioner is hereby ordered to pay the said sum of ₱30,214.28 within 30 days from the date this decision becomes final. If the said amount is not paid within said period, there shall be added to the unpaid amount the surcharge of 5% plus interest at the rate of 12% per annum from the date of delinquency to the date of payment. Without pronouncement as to costs.

SO ORDERED.

Manila, January 30, 1961.

(Sgd.) ROMAN M. UMALI
Associate Judge

WE CONCUR:

(Sgd.) MARIANO NABLE
Presiding Judge

(Sgd.) AUGUSTO M. LUCIANO
Associate Judge

S U B J E C T   I N D E X

ACCRUAL METHOD.-
Only after the accounts receivable are actually collected, and the expenditures pertinent thereto are deducted, shall x x x have any claim on the share.(CONSOLIDATED MINES INC. vs. COMM. OF INT. REV.? CTA CASE NO. 578, August 7, 1961).

ADVANCE SALES TAX.-
The advance sales tax is based on the import invoice value of the imported article, including expenses at the time itwas received by the importer, plus mark-up. (SOUTHERN INDUSTRIAL PRODUCTS? INC. v. COMM. OF INT. REV., CTA Case No. 941, Nov. 20, 1961).

AD VALOREM TAX.-
Ad valorem tax should be based "on the actual market value of the annual gross output of the minerals or mineral products extracted or produced." (Cebu Portland Cement Co. v. Comm. of Int. Rev., CTA Case No. 706, June 21, 1961).

APPEAL; Municipal Board cannot appeal to CTA.-
The City of Cebu, in representation of the municipal board, is but a government agency. If the govt. itself can not appeal to this Court, it follows that its agency or instrumentality cannot do likewise. (MUNICIPAL BOARD OF CEBU V. BOARD OF ASSESSMENT APPEALS, CTA Case No. 851, July 20, 1961).

APPEAL; Who may appeal.-
The City of Cebu, although duly constituted public corporation, does not fall within the meaning of the word "corporation" under Sec. 11 RA No. 1125. (SUPRA).

ARRASTRE CONTRACTOR (SEC. 191).-

Arrastre service is that which covers the handling of cargoes at piers and wharves. (VISAYAN CEBU TERMINAL CO., INC. v. BU. OF INT. REV.? CTA 719, Dec. 8, 1961).

BURDEN OF PROOF; Fraud Penalty.-
Petitioner denies having committed fraud. Therefore, the burden is upon the respondent to prove its existence. There is no obligation on the part of petitioner to prove a negative fact. (NAVA v. COMM. OF INT. REV., CTA Case No. 568, Sept. 25, 1961).

Buyer in Good Faith; Liability.-
A person who buys timber from another may be held liable for the corresponding forest charges and surcharges, if he cannot show any invoice or other document evidencing payment of forest charges. (MANILA PENCIL CO., INC. v. ACTING COMM. OF INT. REV., CTA Case No. 619, May 31, 1961).

CAPITAL & ORDINARY GAIN.-
As to its distinction see Zobel v. Comm. of Int. Rev., CTA Case No. 622, 623 & 624, April 29, 1961).

DEDUCTIONS; Accrual basis.-
Item of expense is deductible as an expense in the year of payment and is not affected by the fact that the obligations was incurred in a prior year. Deductions in the case of a taxpayer filing his returns on the basis of actual receipts and disbursements, must be claimed in the year of actual payment. (NAVA v. COMM. OF INT. REV., CTA Case No. 568, Sept. 25, 1961).

DEDUCTION; Bad debts.-
Futile attempts to collect extrajudicially the debts in question and the destruction during a conflagration of the original invoices evidencing the indebtedness justify an ascertainment of the debts' worthlessness. (WESTERN PACIFIC CORP. v. COMM. OF INT. REV., CTA Case NO. 720, May 22, 1961).

DEDUCTIONS; Necessary & Ordinary.-
An expense will ordinarily be considered necessary if it is appropriate and helpful in developing and maintaining the taxpayer's business. (SUPRA)

DEDUCTION; Interest on extended payment.-
Interest paid pursuant to Sec. 99(a) of the Tax Code on the extended payments of the estate & inheritance taxes are deductible under Sec. 30(b) of the same code. (MAGAZ, et. al. v. COLL. OF INT. REV., CTA Case Nos. 354 & 355, May 11, 1961).

DEDUCTION; Depreciation & Mine depletion.-
The taxpayer failed to present sufficient evidence to justify its claim for deduction. Allowance of deduction is a matter of legislative grace and the burden of proof is on the taxpayer to sustain the depreciation deduction. (CONSOLIDATED MINES, INC. v. COMM. OF INT. REV., CTA Cases Nos. 565 & 578, May 6, 1961).

DEDUCTION; (Losses, bad debts & interest).-
That a debt, previously found to be worthless and charged off in a prior year, was subsequently collected, does not render the deduction unallowable or illegal. (PHIL. TRUST CO. v. COLL. OF INT. REV., CTA Case No. 367, Jan. 30, 1961).

DEDUCTION.-
The amount of loss during the alleged fire was over ₱10,000 and the same should have been recorded in petitioner's books & records. (CITY LUMBER INC. v. DOMINGO, CTA Case No. 716, Jan. 31, 1961).

DEDUCTION.-
Income tax paid to the US Revenue Service in 1956 is deductible from Phil. gross income earned in the same year by an American resident who has no income other than that derived from Phil. sources. (LEDNICKY ET. AL. v. COMM. OF INT. REV., CTA Case No. 646, March 2, 1961).

DEDUCTION; Bonuses, when reasonable.-
One test for determining the reasonableness of the bonuses and additional compensation is 'the character of the taxpayer's business, the volume and amount of its net earnings'. (KUENZLE & STREIFF, INC. v. COMM. OFINT. REV., CTA Case No. 551, April 28, 1961).

INCOME; Gross income.-
'Gross receipts' of amounts which do not constitute returns of capital, are part of the 'gross income ' of a taxpayer, income means 'cash received or its equipment'. (HOWDEN, et. als. v. COLL. OF INT. REV., Manila CC 22848, Nov. 24, 1961.)

INCOME TAX AT SOURCE.-
The word 'source' can convey only one idea, that of origin, and the origin of the said reinsurance premiums was the Phil. (HOWDEN, et. als. vs. COLL. OF INT. REV., Manila CC Case No. 22848, Nov. 24, 1961).

INCOME; Types of income from sources within the Phil.-
The types of income thus designated (Sec. 37) are not all-inclusive as regards the taxable income of non-resident from sources within the Phil. (SUPRA).

INCOME TAX; When is there failure to file.-
The law does not authorize income in one year to be included in the return for another year. No income tax return was filed for 1945 but was included in his return for 1946. This could not be possible. There is therefore a failure to file a return and the tax may be assessed within 10 years from discovery of the omission. (PHIL. TRUST CO. v. COLL. OF INT. REV., CTA Case No. 367, Jan. 30, 1961).

INSTALLMENT, payment by.-
Under Sec. 51(b) & (c), if the amount of the tax was in excess of ₱10.00, a taxpayer could elect to pay the tax in two equal installments. But the taxpayer must elect to pay by installment to be entitled to the privilege. (ACOJE MINING CORP., INC. v. COMM. OFINT. REV., CTA Case No. 772, Oct. 9, 1961).

INTEREST (SEC. 51(b) & (c).-
The interest required under Sec. 51(b) and (c) is based upon said tax from the time the same become due. (SUPRA).

INTEREST; Maximum allowed.-
The maximum amount of interest that may be collected on deficiency income tax can not exceed the amount corresponding to a period of 3 years, pursuant to Sec. 51 (e) (2) of the TAX CODE, as amended, (KUENZLE & STREIFF, INC. v. COMM. OF INT. REV., CTA Case No. 551, August 21, 1961).

INTEREST; Liability of the govt.-
The government cannot be required to pay interest on national internal revenue taxes which were erroneously or illegally collected by the Comm. of Int. Rev. (LEDNICKY ET. AL. v. COMM. OF INT. REV., CTA Case No. 646, March 2, 1961).

JUDICIAL ACTION.-
Judicial action for collection of an internal revenue tax is deemed commenced with the filing of the taxpayer's appeal with this Court, for the purpose of reckoning the prescriptive period for collection under Sec. 316 and 332 of the Tax Code (SUNGA v. COMM. OF INT. REV., CTA Case No. 676, Oct. 25, 1961).

JURISDICTION; Prescription.-
There is no conflict between Sec. 306 of the Tax Code and Sec. 11 of RA No. 1125. (FEATI INDUSTRIES, INC. v. COMM. OF INT. REV., CTA Case No. 775, April 6, 1961).

JURISDICTION OF CTA.-
We can not order the refund of the amount of x x x, which represents payments for municipal license and service fee, for the same is not in payment of internal revenue taxes. (HILADO v. Domingo, CTA Case No. 712, June 16, 1961).

LIEN; its nature.-
In the Barreto case, it was held that the lien for forest charges is not only a charge on the forest products subject thereto; it is a personal liability of any person in actual possession of the forest products or whoever had prior possession thereof. (GUERRERO v. COLL. OF INT. REV., CTA Case No. 285, August 31, 1961).

MARKET VALUE; its meaning.-
Actual market value of a good is the price for which it is bought and sold in the open market. (CEBU PORTLAND CEMENT CO. v. COMM. OF INT. REV., CTA Case No. 706, June 21, 1961).

MILLER'S TAX ON MOLLASSES.-
Miller's tax is now imposed on the value of molasses produced and later used in the manufacture of alcohol. (CANLUBANG SUGAR ESTATE v. COLL. OF INT. REV., CTA Case No. 604, Sept. 28, 1961).

OILS; Specific tax on manufactured oils.-
If canned pineapple products produced by petitioner in its Bugo plant are agricultural products, it follows that the oils used in the operation of its machinery and equipment in said plant for the production of such agricultural products were used in agriculture within the meaning of Sec. 142 of the Revenue Code, as amended. (PHIL. PACKING CORP. v. COMM. OF INT. REV., CTA 626, Nov. 29, 1961).

ORIGINAL SALE; Its meaning.-
If forest products are sold by the Gov't. to whoever cuts and removes the same from the forest, it follows that the original sale is made by the gov't. and the cutter who sells such forest products can not be held subject to the percentage tax imposed by Sec. 186 on his sale of such forest products because it is not the original sale within the meaning of said section. (GUERRERO v. COLL. OF INT. REV., CTA Case No. 285, Aug. 31, 1961)

PARTNERSHIP; Formation.-
The fact that petitioners failed to comply with certain requirements for the validity of the P'ship agreement does not militate against the taxability of such P'ship as a corp. (SUPRA).

PARTNERSHIP; Elements.-
(a) agreement to contribute money, property or industry to a common fund;
(b) intent to divide the profits among the contracting parties. (YSMAEL & CO., INC. v. COMM. OF INT. REV., CTA CASE No. 677, Dec. 7, 1961).

PAYMENT OF TAX BY AN AGENT.-
Since the business agent misappropriated a portion of the amount entrusted to him and paid less than what was due from his principals, the latter are liable for the deficiency plus surcharge. (DY PEH, et al. v. COLL. OF INT. REV., et al., CTA Case No. 538, April 29, 1961).

PENALTY; Its determination.-
The liability for the fraud penalty can not be made to rest solely on the amount of the underdeclaration or on the amount of deductions claimed. (PHIL. ~~XXX~~ TRUST CO. v. COLL. OF INT. REV., CTA Case No. 367, Jan. 30, 1961).

PRESCRIPTION; Judicial Action.-
Respondent's answer to the instant petition for review is tantamount to a judicial action for collection. (CAPITOL SUBD. INC. v. COMM. OF INT. REV., CTA Case No. 711, Sept. 4, 1961).

PRESCRIPTION.-
Since the deficiency income tax was assessed on or about April 10, 1955, the Govt. is authorized to collect the same by distraint and levy or by judicial action within 5 years from that date or not later than April 10, 1960. (NAVA v. COMM. OF INT. REV., CTA Case No. 568, Sept. 25, 1961).

PRESCRIPTION.-
Respondent's answer to the instant petition for review is considered as a judicial action for collection of the tax. (TAN GUAN v. ARAÑAS, CTA Case No. 535, Feb. 25, 1961).

PRESCRIPTION.-
Sec. 331 provides that internal revenue taxes (including income tax) may be assessed within 5 years after the return was filed or were due. Sec. 332 provides that such taxes may be collected within 5 years after assessment. (PHIL. TRUST CO. v. COLL. OF INT. REV., CTA Case No. 367, Jan. 30, 1961).

REAL ESTATE BROKER (Sec. 195).-
For discussion who is considered a real estate broker see (NASUGBU AGRICULTURAL LAND SUBD., INC. v. COMM. OF INT. REV., CTA Case No. 566, June 15, 1961).

REAL PARTY IN INTEREST.-
Philippine Engineers' Syndicate, Inc. acted merely as an agent of ~~xxxxx~~ petitioner in effecting the importation. There is no reason why the principal, like the petitioner, should not be treated as a real party in interest in a transaction arising from an authorized act of its agent. (NATIONAL POWER CORP. v. COMM. OF INT. REV., CTA Case No. 553, August 9, 1961).

...SMENT; Estoppel-
The rule is well established that the respondent (Comm. of Int. Rev.) has power to make reassessment. This power proceeds from the general authority conferred upon him by law to collect all national internal revenue taxes and to enforce all laws in relation thereto. (SUNGA v. COMM. OF INT. REV., CTA Case No. 676, Oct. 25, 1961).

RECIPROCITY PROVISIONS UNDER SEC. 122.-
Majority opinion: There is a reciprocity provisions between between the California Law and Sec. 122, NIRC.
Dissenting opinion: There is only partial reciprocity between the said laws and the exemption to apply there must be total reciprocity. (FISHER, et al. v. COLL. OF INT. REV., MCC No. 23029, Sept. 26, 1956; The dissenting opinion(supra) was upheld by the SC in G.R. No. L-11622 and L-11658, Jan. 30, 1961).

RECOVERY; Prescription as defense.-
The instant petition for the recovery of taxes was instituted after the expiration of 2 years from the date of payment. But respondent did not set up the defense of prescription against the recovery in his answer or at any stage of the proceedings. The same, therefore, can not be denied motu proprio for the two-year period is prescriptive not jurisdictional. (HILADO v. DOMINGO, CTA Case No. 712, June 16, 1961).

REFORESTATION FEES.-
The collection of reforestation fees under RA No. 115 comes under the jurisdiction of the Bu. of Forestry not with the BIR. (MANILA PENCIL CO., INC. v. ACTING COMM. OF INT. REV.? CTA Case No. 619, May 31, 1961).

REFUND OF INTERNAL REVENUE TAXES.-
In cases involving refunds of internal revenue taxes claimed to have been erroneously or illegally paid, a taxpayer need not waid for the decision of the Comm. of Int. Rev. before instituting in the CTA judicial action for their recovery. (MAYA TRADING CO. v. COMM. OF INT. REV., CTA No. 897, Nov. 6, 1961).

REFUND.-
In cases involving refunds of internal revenue taxes claimed to have been erroneously or illegally paid, a taxpayer need not wait for the decision of the Commissioner of Int. Rev. ~~X~~ before instituting in the CTA judicial action for their recovery. (SUPRA).

SPECIFIC TAX ON CIGARETTES.-
The petitioner, as partenr of the Imperial Tobacco Co., is liable for the payment of x x x as specific tax. (TAN GUAN v. ARANAS, CTA Case No. 535, Feb. 25, 1961).

SURCHARGE; Sec. 183.-
Sec. 183 of the Tax Code is mandatory. It confers no discretion on the Comm. of Int. Rev. who cannot disregard the law and substitute therefore his own personal judgment. (CANLUBANG SUGAR ESTATE v. COLL. OF INT. REV., CTA Case No. 604, Sept. 28, 1961).

SURCHARGE & INTEREST.-
Good faith is no defense against the imposition of surcharge and interest. Under the law, surcharge and interest accrue automatically upon delinquency in the payment of the deficiency income tax. (KUENZLE & STREIFF INC. v. COMM. OF INT. REV., CTA case No. 551, Aug. 21, 1961).

SURCHARGE OF 25% (not fraud penalty).-
The ordinary surcharge of 25% for late payment of percentage taxes prescribed in Sec. 183(a) is imposed automatically upon failure of a taxpayer to pay the same within the time fixed by law. (PURAKAN PLANTATION CO. v. DOMINGO, CTA Case No. 693, May 31, 1961).

~~VALXEAXXEX~~ VALUATION OF REAL PROPERTY.-
Pursuant to the Prov. Cir. of the Dept. of Finance subdivision of lots in chartered cities should be assessed at their true and full value as urban lands. The fact that portion of the subdvision is presently devoted to the planting of rice and corn does not foreclose its assessment for tax prupqses as an urban land. (HODGES v. BOARD OF ASSESSMENT APPEALS OF ILOILO, CTA Case No. 836, Aug. 18, 1961).

WITHHOLDING OF INCOME TAX AT SOURCE.-
Premiums earned from insurance underwritten in the Phil. by a domestice insurance company, but ceded and remitted, thru a non-resident foreign insurance broker, to nonresident foreign reinsurance companies, pursuant to reinsurance agreements executed and signed abroad by the nonresident foreign reinsurance companies and the nonresident foreign insurance broker, but signed in Manila by a domestic insurance co., are subject to the withholding-of-income-tax-at-source provisions of the Tax Code. (HOWDEN, et als. v. COLL. OF INT. REV., Manila CC Case No. 22848, Nov. 24, 1961).

for typing

COMMISSIONER OF CUSTOMS; His power.-
Comm. of Customs can pass upon issue not raised an appeal by an importer. (BLAIR v. COMM. OF CUSTOMS, CTA Case No. 686, March 25, 1961).

COMPROMISE PENALTY.-
Imposition by the Coll. of Int. Rev. of a compromise penalty is unauthorized and illegal. (DY PEH, et al. v. COLL. OF INT. REV., et al., CTA Case No. 538, April 29, 1961).

COMPROMISE PENALTIES.-
This Court has no power to impose "compromise penalties". Criminal violations of the NIRC may be settled extrajudicially by compromise agreement. This court may not intervene in negotiations looking toward settlement of such cases by compromise. (GUERRERO v. COLL. OF INT. REV., CTA Case No. 285, August 31, 1961).

CO-OWNERSHIP; Distinguished fr. P'ship.-
See de Leon, et al. v. Comm. of int. rev., et al., CTA Case No. 738, Sept. 11, 1961).

CORPORATE TAX.-
Ysmael Steel Mfg. Co. is an unregistered partnership, and therefore subject to corporate income tax pursuant to Sec. 24 and 84 (b) of the Tax Code. (JUAN YSMAEL & CO., INC. v. COMM. OF INT. REV., CTA CASE No. 677, Dec. 7, 1961).

CORPORATE INCOME TAX.-
Co-heirs who own properties which produce income should not automatically be considered partners of an unregistered partnership, or a corporation, ~~xxxxx~~ within the income tax law. (DE LEON, et al. v. COMM. OF INT. REV., et al., CTA Case No. 738, Sept. 11, 1961; CTA CASE No. 617, July 31, 1961).

'CUSTOMS DUTY'; Its meaning under Sec. 181(b).-
The phrase 'customs duty' found in Sec. 183 (b) of the Tax Code should be interpreted to mean the amount of customs duty legally due and paid by the importer. (SOUTHERN INDUSTRIAL PRODUCTS, INC. v. COMM. OF INT. REV., CTA Case No. 941, Nov. 20, 1961).

DIVIDENDS OF DOMESTIC CORP. (Rep. Act 901).-
The law provides that dividends received by a domestic corporation from another domestic corp. are taxable only to the extent of 25% of such dividend if the distributing corp. is liable to the income tax or is exempt from such tax because it is new & necessary industry under RA No. 901. (MAYA TRADING CO. v. COMM. OF INT. REV., CTA Case No. 897, Nov. 6, 1961).

DECISION; When appellable to the CTA.-
The decision that is appellable to this court is one that definitely determines the petitioner's tax liability. (TUAZON & LEGARDA LTD. v. COMM. OF INT. REV., CTA Case No. 746, Feb. 17, 1961).

DEDUCTION; entertainment expenses.-
Expenses for the purpose of entertaining government officials are not allowable as deduction for being contrary to public policy. (NAVA v. COMM. OF INT. REV., CTA Case No. 568, Sept. 25, 1961).

DEDUCTION; Audit & legal fees; Christmas bonus, etc.-
See CONSOLIDATED MINES, INC. v. COMM. OF INT. REV., CTA Case Nos. 565 & 578, May 6, 1961).

DEDUCTION.-
In order that an item of expenditure may be deductible, it is required that each year's return, both as to gross income & deductions therefrom, should be complete in itself, and taxpayers are expected to make every reasonable effort to ascertain the facts necessary to make a correct return. (SUNGA v. COMM. OF INT. REV., CTA Case No. 676, Oct. 25, 1961).

DIVIDENDS OF DOMESTIC CORP.-
The law provides that dividends received by a domestic corporation from another domestic corp. are taxable only to the extent of 25% of such dividend if the distributing corpl is liable to the income tax or is exempt from such tax becuase it is new & necessary industry under RA No. 901. (MAYA TRADING CO. v. COMM. OF INT. REV., CTA No. 897, Nov. 6, 1961).

DONATIONS; Exemption under RA No. 1916.-
To be within the ambit of RA No. 1916, it is necessary that the imported articles be (1) donated, (2) consigned to a duly incorporated or established international civic organization, religious or dharitable society or institution for civic, religious or charitable purposes, and (3) for its use or for free distribution and not for barter, sale or hire. (BISHOP OF THE MISSIONARY DISTRICT OF THE PHIL. ISLANDS OF THE PROTESTANT EPISCOPAL CHURCH IN THE USA v. COMM. OF INT. REV., CTA No. 682, Oct. 25, 1961).

DRAWBACK (Sec. 106 b).-
Petitioner paid the duties on the imported jute bags upon failure to export same within one year as provided for in Sec. 22 of the Phil. Tariff Act of 1909. He cannot now avoid the full effect of such failure by being allowed a drawback under Sec. 22 of the same Tariff Act. (ASTURIAS SUGAR CENTRAL ? INC. v. COMM. OF CUSTOMS, CTA 992, Nov. 20, 1961).

ESTOPPEL (DENATURED ALCOHOL).-
Where it appears that the alcohol in question was in fact rectified, the circumstance that the same has been passed upon and cietified to by a denaturing committee as duly denatured will not exempt the petitioner from paying the corresponding specific tax due thereon, it being a cardinal principle of law that the govt. is not estopped by the neglect or admission of its officers or agent. (VICTORIAS MILLING CO., INC. v. DOMINGO, CTA 499, Dec. 16, 1961).

ESTOPPEL.-
The doctrine of estoppel does not apply against tax collec~~tixx~~ tors in the collection of taxes, except in compromise cases validly entered into under sec. 309, Tax Code. (SUNGA v. COMM. OF INT. REV., CTA Case No. 676, Oct. 25, 1961).

EVIDENCE; Failure to appear & present evidence.-
For failure of the petitioner to appear and present evidence against the assessment and consistent with the doctrine of presumption in favor of the correctness of tax assessments we are constrained to sustain the deficiency income tax assessment. (TUMAMBING v. COLL. OF INT. REV., CTA case No. 69, July 12, 1961).

EXEMPTION UNDER SEC. 188 (b).-
It having been established to our satisfaction that petitioner bought cassava tubers from other planter, it can not claim exemption under section 188(b) of the Tax Code. (PURAKAN PLANTATION CO. v. DOMINGO, CTA Case No. 693, May 31, 1961).

EXEMPTION; Educational institution.-
Profit realized was very nominal and barely enough to cover overhead expenses. There was no competition or threat of competition. (IMMACULATE CONCEPCION ACADEMY OF MANILA v. COMM. OF INT. REV., CTA Case No. 582, June 28, 1961).

FOREST CHARGES NOT INTERNAL REVENUE TAXES.-
We do not subscribe to the proposition of the court below that because the collection of the forest charges had been entrusted to the Coll. of Int. Rev., said forest charges are taxes to be governed in the same manner as internal revenue taxes. Forest charges are not taxes but the price of forest products. (GUERRERO v. COLL. OF INT. REV., CTA Case No. 285, August 31, 1961).

FOREST CHARGES, Liability for.-
Whether or not petitioner actually cut the forest products from the public forest or merely purchased the same from other persons is not material for the purpose of determining his liability. (GUERRERO v. COLL., supra.)

FOREST CHARGES NOT TAXES.-
The exemption granted to petitioner under RA No. 901 refers to all taxes directly payable by it in connection with the operation of the new & necessary industry. Since forest charges are not taxes petitioner cannot claim exemption. (MANILA PENCIL CO., INC. v. ACTING COMM. OF INT. REV., CTA Case No. 61(, May 31, 1961).

FORFEITURE; Pinball machines.-
Pinball machines are gambling device. (BLAIR v. COMM. OF CUSTOMS, CTA Case No. 686, March 25, 1961).

FRANCHISE; Exemption.-
The exemption provision refers to those rights and privileges which are not enjoyed by the public in general, but only by the grantee of the franchise, and does not embrace the common right or privilege of every citizen to make purchases any where. (VISAYAN ELECTRIC CO. v. COMM. OF INT. REV., CTA Case Nos. 974, 1008, Oct. 5, 1961).

FRAUD PENALTY.-
~~XXXX~~ Question of fraud is a question of fact. The facts fo not justify the imposition of surcharge. (CONSOLIDATED MINES INC. v. COMM. OF INT. REV., CTA Cases Nos. 565 & 578, May 6, ~~XXXX~~ 1961).

GIFT TAX.-
What the respondent assessed was a donees' gift tax. The assessment was not on the properties themselves. ~~XX~~ It was an excise upon the use made of the properties, upon the exercise of the privilege of receiving the properties. Gift tax is not within the embrace of the exemption provision of Sec. 22(3), Art. VI of the Contitution. (LLADOC v. COLL. OF INT. REV., CTA Case No. 696, Oct. 18, 1961).