lit.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

THE PHILIPPINES INTERNATIONAL FAIR, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 275

1957

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

August 29,

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

D E C I S I O N

This is an appeal from a decision of the respondent Collector of Internal Revenue, assessing against, and demanding payment from, the petitioner, The Philippines International Fair, Inc., the amount of ₱178,475.59 as amusement taxes, surcharges and compromises on the gross receipts of the latter derived from admission tickets to the exposition and amusement grounds, Aquacade Show and benefit dances during the period from February, 1953, to May 9, 1954.

The basis of the appeal is one of law, more particularly the application of Sections 260 and 309 of the National Internal Revenue Code and Republic Act No. 722.

The mathematical computation of the alleged tax liability over which there is no dispute between the parties, is itemized as follows:

	Basic Tax	25% surcharge for late payment	Compromise	Total
1. Receipts from Admission tickets				

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to Exposition Ground and Auditorium during the months of March, April and May, 1953	₱ 97,972.65	₱24,493.16	₱10,000.00	₱132,465.81
2. Receipts from Admission tickets to Aquacade Show for the month of February, 1953	32,877.66	8,219.42	3,000.00	44,097.08
3. Receipts from Admission tickets to Benefit Dances held at the National Fair Auditorium from April 23 to May 9, 1954	1,370.16	342.54	200.00	1,912.70
TOTAL	₱132,220.47	₱33,055.12	₱13,200.00	₱178,475.59

(See par. 2 Respondent's Answer, p. 8 C.T.A. rec; Exhibit L for Petitioner and Exhibit 6 for Respondent p. 22 C.T.A. rec.)

The petitioner herein, The Philippines International Fair, Inc. is a private stock corporation organized under the laws of the Philippines with legal domicile in the City of Manila and duly registered with the Securities & Exchange Commission sometime in the middle part of 1952. According to paragraph 2 of its Articles of Incorporation, Exhibit 5 (pp. 23-27 C.T.A. rec.) the corporation was formed for the following purposes.

"To establish, operate, maintain, and manage international fairs and expositions which will depict and feature the social, political, cultural, and economic life, history, progress and development of all countries, particularly, the Philippines, and their trade, political, and other relations with one another;

To take charge of Philippine participation, or to participate in similar fairs and expositions in foreign countries to which the Philippines or the corporation may be invited; and

To establish, promote, or take part in national, provincial, municipal, or other local, commercial and/or industrial fairs and expositions or exhibitions of arts and crafts and any other products or articles in the Philippines.

As incidental to and in connection with the foregoing:

To purchase, hold, convey, sell, lease, rent, mortgage, encumber or otherwise deal in such real and personal property in any part of the Philippines, or elsewhere, as the purposes for which the corporation is formed may permit, and as may be convenient or necessary for the transaction of the lawful business of the corporation;

To purchase, acquire, manage and take over all or any part of the business and property of any person, corporation, syndicate, or partnership, carrying on any business which the corporation is authorized to carry on, or possessed of property suitable for the purpose of this corporation, and to pay for the same in property, cash, checks, bonds, debentures, assume and guarantee the liabilities of any such person, corporation, syndicate, or partnership whose property or business may be taken over, or shares of whose capital stock may be acquired and owned, by the corporation, but only to the extent permitted by law;

To borrow or raise money for the purpose of the corporation, and in pursuance thereof to exercise any mortgage, deed of trust, or issue debentures, bonds, letters of hypothecation, or liens or obligations of the corporation, either at par, premium, or discount, secured by all or any part of the undertaking, revenues, rights, and properties of the corporation and to exchange or vary from time to time any such security."

Article V, paragraph 2, of the By-Laws of the corporation, Exhibit 1 (p. 26 BIR rec.) provides as follows:

"2. Dividends shall be declared only from the surplus profits and shall be payable at such times and in such amounts as the Board of Directors shall determine,

> and shall be payable in cash or in shares of the unissued stock of the company, or both, as said Board of Directors shall determine. Provided, however, that no stock or bond dividend shall be issued without the approval of stockholders representing not less than two-thirds of all stock then outstanding and entitled to vote at a general meeting of the corporation or at a special meeting duly called for the purpose. No dividend shall be declared that will impair the capital of the company."

The corporation has an authorized capital stock of ₱2,000,000.00 divided into 20,000 shares of the par value of ₱100.00 per share. At the time of its incorporation, the amount of capital stock subscribed was ₱430,700.00 and of this amount, ₱117,250.00 in cash was paid-up by the twelve (12) incorporators, seven (7) of whom are Filipinos of good business standing in the community and the other five, citizens of different countries equally known in local business circles. The Philippine Government was the subscriber of around 45% to 55% of the capital stock of the corporation and was duly represented in the articles of incorporation by the then Secretary of Commerce and Industry, the Honorable Cornelio Balmaceda who was also elected Chairman of the Board of Directors with Arsenio N. Luz as Director General.

During the year 1953, the petitioner corporation as part of its corporate activities sponsored an international fair and exposition at Wallace Field, now known as the United Nations Plaza, in the City of Manila. For this purpose, the Philippine Government granted the free use by the petitioner of the United Nations Plaza as well as the adjoining golf links belonging to the City of Manila for the site of the fair. Booths were erected within the fair grounds for the industrial and agricultural exhibits of the different provinces as well as foreign countries for which a rental of ₱60.00 per sq. meter was charged. In addition, there were also side shows and various attractions within the fair grounds among which were the much-publicized "Aquacade Show" and the world famous "Xavier Cugat Show" which were brought all the way from the United States by local promoters and impresarios. Within the fair site was an amusement zone covering an area of 20 hectares divided into four big compounds and several small ones, each with special attractions of its own. One of the main compounds was occupied by Pedro Taguba & Company, where several thrill rides from the United States such as roller coaster, merry-go-round, loop the loop, Ferris wheel were installed for the entertainment of children. In addition to the rides, there were a number of stateside shows for the entertainment not only of children but also the grown-ups. A certain J. Ponce de Leon occupied another compound where a big auditorium and a small one were constructed. In these auditoriums were featured the world-famous Xavier Cugat troupe as well as renowned musicians, actors and actresses of the locality. Within this compound was set up a Beer Garden where all kinds of beverages and drinks were served. Close to the Fernandez compound where the "Aquacade Show" was shown, was another small compound where a modern miniature railroad was operated by one Jack Garner for the entertainment of children. Another compound was operated by concessionaire Maria Palanca who offered for the entertainment of the public, thrill rides, side-shows and performances of all sorts by local talents. Within this compound was a model fruit market with Filipino young ladies clad in colorful Balintawak dresses serving as salesgirls and attendants. (see pp. 39-41 Exhibit J; p. 606 BIR rec.)

In addition, the petitioner also operated a large auditorium where balls and dances were held and where entrance fees were charged (see pp. 309-311 BIR rec.). The concessionaires within the amusement grounds likewise paid the petitioner rentals ranging from ₱20.00 per sq. meter to ₱100.00 per sq. meter.

After the international fair of 1953, the petitioner also conducted within the same premises, though on a much smaller scale, the 1954 National Fair where its customers were likewise charged gate and auditorium entrance fees.

As will be noted in the above itemized list of the amusement taxes, surcharges and compromises being demanded by the respondent from the petitioner, the receipts from these gate and auditorium entrance fees earned from April 23 to May 9, 1954 during the National Fair are also being taxed in the amount of ₱1,912.70, inclusive of 25% surcharge and compromise penalty.

The respondent bases the main assessment subject of the present appeal on the provision of Section 260 of the National Internal Revenue Code which imposes an amusement tax on a graduated scale on admission tickets sold by proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses, and other places of amusement. However, the law expressly provides for exceptions and exemptions. On June 6,1952, Congress approved Republic Act No. 722, expressly exempting certain performances, programs and exhibitions from payment of national and municipal amusement tax as a means of encouraging and promoting the artistic and cultural progress and development of our country.

Section 1 of Republic Act No. 722 reads as follows:

> "SECTION 1. The holding of operas, concerts, recitals, dramas, painting and art exhibitions, flower shows, and literary, oratorical or musical programs, except film exhibitions and radio or phonographic records thereof, shall be

exempt from the payment of any national or municipal amusement tax on the receipts derived therefrom."

Mindful of the laudatory purpose of Congress when it enacted Republic Act No. 722, we have in at least two previous cases reversed the appealed decision of the Collector by extending the benefit of exemption to appellant taxpayers who proved to our satisfaction that their particular performance or program could well fall under the exempting provisions of the aforesaid Act. Thus, in C.T.A. Case No. 89, entitled Totoy Oteyza vs. Collector of Internal Revenue, decided on January 3, 1956 (now pending appeal before the Supreme Court, G.R. No. L-10290), we exempted the petitioner from payment of amusement taxes and surcharges in connection with two ballet performances held at the Far Eastern University Auditorium on March 19 and 26, 1954, respectively, wherein petitioner's students of ballet participated as a part of the curriculum of the Classic Ballet Academy of which the petitioner was directress and instructress.

In C.T.A. Case No. 67, entitled Philippines International Fair, Inc. vs. Collector of Internal Revenue decided on December 29, 1956 (now pending appeal before the Supreme Court, G.R. No. L-12024) we exempted the same petitioner herein from payment of amusement tax and surcharge on the receipts derived from admission tickets to the Aquacade Show held at the International Fair during the period from February to March, 1953, after the petitioner had shown to our satisfaction through the expert testimonies of well-known exponents and professors of art and ballet as well as the works of famous authors on the subject, that the performance in question could well be classified as "water ballet" and therefore within the term "art exhibition" as used in the exempting statute. The assessment of ₱44,097.08 in the present appeal representing amusement tax, surcharge and compromise penalty on the receipts from admission tickets to the Aquacade Show for the month of February, 1953, is no different insofar as the factual and legal issues are concerned from the previous case (C.T.A. Case No. 67) of the same petitioner herein. We see no valid and compelling reason for deviating in the present instance from our decision in that previous case.

With respect to the present assessment of ₱44,097.08 representing amusement tax, surcharge and compromise penalty on the receipts of petitioner from admission tickets to the Aquacade Show for the month of February, 1953, which forms part of the entire assessment of ₱178,475.59, we therefore declare petitioner exempt from payment of the same pursuant to the provision of Section 1, Republic Act No. 722.

Commendable as the purpose of Congress might have been when it enacted Republic Act No. 722, we have not been, however, overly charitable nor unreasonably indiscriminate in favor of taxpayers in the interpretation and application of the exempting provision of the aforesaid Republic Act. In deciding the several cases brought before us involving the same law, we have not overlooked much less closed our eyes to that cardinal rule in taxation that "Exemptions from taxation are highly disfavored in law; and he who claims exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implication". (Asiatic Petroleum Co. vs. Llanes 49 Phil. 466; House vs. Posadas 53 Phil. 338; Collector of Internal Revenue vs. Manila Jockey Club, Inc., G.R. No. L-8755 promulgated on March 23, 1956.) We have consistently followed the more prudent course of looking into the circumstances of each case and applying the law accordingly. Thus, in C.T.A. Case No. 246, entitled "Jose Mossesgeld Santiago vs. Collector of Internal Revenue, decided on March 25, 1954 (our decision in this case was not appealed and is now final), we sustained a decision of the Collector of Internal Revenue denying petitioner's claim for refund of amusement tax and surcharge paid in connection with a public showing of the opera "Tosca" at the Far

Eastern University Auditorium on December 11, 1951 on the ground that the performance was held before the approval of Republic Act No. 722, although the assessment of the tax in question was made by the Collector after the approval of said Act. In C.T.A. Case No. 198 entitled Estefania Vda. de Aldaba vs. Collector of Internal Revenue decided on February 27, 1956, (now pending appeal before the Supreme Court, G.R. No. L-10534) we dismissed an appeal filed by the petitioner seeking exemption from amusement tax in connection with a public showing of the opera "Madame Butterfly" at the Far Eastern University Auditorium on January 18, 1952, on the ground that the real party in interest was the National Opera Company which sponsored, managed and presented the opera performance in question and not the petitioner. In C.T.A. Case No. 55, entitled Wong & Lee vs. Collector of Internal Revenue, decided on October 31, 1955 (now pending appeal before the Supreme Court, G.R. No. L-10155), we sustained a decision of the Collector refusing to grant the benefit of exemption from amusement tax on the gross receipts of petitioners under Republic Act No. 722, in connection with the nightly attendance of Xavier Cugat's orchestra at the Riviera Night Club from February 13 to March 8, 1953, on the ground that the performance in question was neither an "opera, concert, recital, drama, painting and art exhibition, flower show, literary or oratorical or musical program" as contemplated under Republic Act No. 722. We held that the performance of said orchestra at the Riviera Night Club was not for cultural purposes but simply to bolster the sale of drinks and food in the establishment operated by petitioners and also to satisfy the ego of the customers in dancing to the tune of a world-renowned orchestra.

Coming now to the assessment of ₱132,465.81 inclusive of surcharge and compromise penalty on the gross receipts of petitioner from admission tickets to the exposition ground and auditorium for the months of March, April and May, 1953.

The petitioner herein is placed in the unique situation that while under Section 260 of our Tax Code it could be considered during the years in question as a proprietor and operator of a place of amusement and therefore subject to amusement tax on all its gate receipts from the International and National Fair if we were to apply the aforesaid provision of law in its strictest sense, yet some of its varied activities, performances or exhibitions during the fair for which it charged separate admission fees such as the Aquacade Show are covered by the exemption clause of Republic Act No. 722.

The respondent Collector would want us to adopt one extreme by holding the petitioner liable for amusement tax on all these gate receipts irrespective of its source on the ground that not all of the numerous entertainments offered by it to the public are covered by the exempting provision of Republic

Act No. 722. The petitioner, on the other hand, would want us to adopt the other extreme by contending that since some of the entertainments, performances or exhibitions offered by it to the public such as the Aquacade Show for which it charged separate admission fees are covered by the exemption, all of its gate receipts irrespective of the sources including the receipts on admission fees to the exposition ground and auditorium should therefore be exempted from all amusement taxes. We believe that either extreme would do violence to the context of Section 260 of the Tax Code and Section 1 of Republic Act No. 722. As heretofore stated, the most reasonable and logical course of action to take under the circumstances would be to consider separately each particular entertainment, performance or exhibition for which a corresponding admission fee was charged for the purpose of determining whether the receipts derived therefrom are exempt or not from amusement tax.

It appears that the vast exposition and amusement grounds operated and managed by the petitioner during the International Fair in 1953, had several gates and entrances a few of which led directly to special attractions particularly the big ones. In most instances, however, the minor attractions and side shows were within the exposition ground itself without any direct connection to the outside area for which the customers were required to pay a gate fee to gain entrance to the main exposition and amusement grounds and another admission fee to the particular attraction or side show.

We take it that not all of the millions of persons who flocked to the International Fair in 1953 and the National Fair in 1954, went there and paid the corresponding admission fee to gain entrance to the main grounds of the fair, solely for cultural purposes or for the sake of art. The thousands of children who patronized the fair must have gone there principally to frolic in the compound of Pedro Taguba and Company where thrill rides of all sorts were offered for their entertainment. The pickpockets must have gone there principally to ply their trade within the premises. The disciples of Bacchus, to patronize and make merry in the Beer Garden of concessionaire J. Ponce de Leon where all kinds of drinks and breverages were served. And the devotees of the muse Terpsichore, to tread the light fantastic at the Fair Auditorium with their partners.

Let us say for example that a particular customer paid a gate fee to gain entrance to the fair grounds just to walk around and see the free shows within the premises, cultural or otherwise, as is the case with a great majority of those who attended the fair, and while there, the customer who is an admirer of art or out of sheer curiosity entered a booth or compound under the management of petitioner where paintings, art exhibitions or flower show were being exhibited for which the customer paid an additional entrance fee. We believe that under the circumstances, following the literal interpretation as well as the spirit behind the enactment of Republic Act No. 722, the gate fee paid by the customer solely to gain entrance to the exposition and amusement grounds should be subjected to amusement tax whereas the entrance fee to the booth or compound where paintings, art exhibitions or flower show were being exhibited should be exempted from the same. Inferentially, that is what we held in our decision in C.T.A. Case No. 67 entitled Philippines International Fair, Inc. vs. The Collector of Internal Revenue, decided on December 29, 1956, without, however, deciding in that case the issue as to whether or not the petitioner is liable for the payment of amusement tax on the admission fees it charged its customers to gain entrance to the exposition and amusement grounds because said issue was not raised in that case.

Following the literal interpretation as well as the spirit behind the enactment of Republic Act No. 722, we hold,therefore, that the petitioner is not exempt from payment of amusement taxes and surcharges in the amounts of ₱97,972.65 and ₱24,493.16, respectively, on its receipts from admission tickets sold to the exposition ground and auditorium during the months of March, April and May, 1953.

Likewise, the petitioner is not exempt from payment of amusement tax and surcharge in the amounts of ₱1,370.16 and ₱342.54, respectively, on its receipts from admission tickets to the benefit dances held at the National Fair Auditorium from April 23 to May 9, 1954. Benefit dances are not included among those performances, exhibitions or programs entitled to exemption from amusement tax under Section 1 of Republic Act No. 722. Neither can we apply in favor of petitioner Section 261 of the National Internal Revenue Code, as amended by Section 2 of Republic Act No. 586, which provides that "Where the admission fees or charges are collected by or for and in behalf of a duly registered charitable institution or association, the tax on such admission fees or charges shall be fifty per centum of the rates provided in section two hundred and sixty of this Code." There is no evidence whatsoever on record to show whether or not the admission fees or charges in question were collected for the exclusive benefit of petitioner or for and in behalf of the sponsors of the benefit dances. (Collector of Internal Revenue vs. Junior Women's Club of the Philippines, G.R. No. L-6992, February 28, 1956.) Neither is there any proof to show whether or not the sponsor or sponsors of the benefit dances held at the National Fair Auditorium from April 23 to

May 9, 1954, were duly registered charitable institutions or associations as required under Section 261 of the National Internal Revenue Code, as amended by Republic Act No. 586.

While we are inclined to exempt the petitioner from payment of the 25% surcharge for late payment being demanded by respondent in the total sum of ₱24,835.70, on the two assessments just mentioned, considering that its failure to pay the same on time was due to no fault of its own but because it relied on the verbal commitments of the then Secretary of Finance and the then Collector of Internal Revenue that it would be exempt from payment of all taxes, we find it beyond our prerogative to do so because Section 260 of the National Internal Revenue Code makes it mandatory and automatic on our part to impose this surcharge as an increment of the basic tax once we find, as we have found in the present case with respect to ~~to~~ the two assessments just mentioned, that is in accordance with law (Lim Co Chui vs. Posadas 47 Phil. 460-464; Koppel (Philippines) Inc. vs. Collector of Internal Revenue, 48 O.G. No. 1, p. 98). The Government is not estopped by error or mistake on the part of its agents (Pineda vs. Court of First Instance of Tayabas and Collector of Internal Revenue, 52 Phil. 803-807; Emilio Y. Hilado vs. Collector of Internal Revenue, G.R. No. L-9408 October 31, 1956; Article 2254 New Civil Code).

However, with respect to the compromise penalty in the total sum of ₱13,200.00, we have repeatedly held that this Court has no jurisdiction to compel a taxpayer to pay the same because by its very nature it implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised. (Briñas vs. Collector of Internal Revenue, C.T.A. Case No. 16, September 14, 1955; Central Azucarera de Tarlac vs. Collector of Internal Revenue, C.T.A. Case No. 90, July 9, 1956) and the choice of paying or not paying it distinctly belongs to the taxpayer. (Cosmos Kapok Factory vs. Araneta, C.T.A. Case No. 125, March 29, 1957.)

Petitioner's counsel himself admits on page 8 of his memorandum "that the policy followed by the Government allowing exemption either during the time of the Philippine Carnival Association or during the 1953 International Fair and the 1954 National Fair does not appear in writing nor there is a law stating clearly and categorically in black and white that the petitioner corporation is tax-exempt." In invoking exemption from the amusement taxes now in question, petitioner's counsel would want us just to apply in a general way and without distinction, notwithstanding its varied entertainments during the fair, cultural or otherwise, the provision of Republic Act No. 722 which exempts only "operas, concerts, recitals,dramas, painting and art exhibitions, flower shows, and literary, oratorical or musical programs" from the payment of all national or municipal amusement taxes. The main line of counsel's arguments revolve on the question of sympathy. He maintains that after all the Government owns 45% to 55% of the shares of stock of petitioner corporation so it is a case of taking from one pocket and putting it in the other pocket; that the petitioner sustained an enormous financial loss in those two ventures; that after the fair, the petitinner corporation was civic minded enough to donate to the national government the permanent improvements constructed by it within the exposition grounds valued at ₱287,260.81; that the fair managed by it has bolstered the prestige of the Republic of the Philippines in foreign lands; that those who subscribed to the capital stock of the corporation did so in the spirit of cooperation with the national government without expecting any profit from their investment; and, that the Municipal Board of the City of Manila even enacted Ordinance No. 3632, Exhibit G, exempting the petitioner corporation from the payment of permit fees and/or all municipal taxes on all its buildings and structures erected within the exposition and amusement grounds.

Indeed, we are not amiss to the invaluable services which the petitioner corporation has rendered to the country in those two ventures and the financial sacrifices it had to make towards that end. However, much as we are in sympathy with petitioner corporation for its present plight, as the matter of exemption from national internal revenue taxes is one of law, our feeling of sympathy is of no consequence. The petitioner still has the recourse of making the proper representations to Congress for the enactment of a special law exempting it from these taxes.

WHEREFORE, the decision of the respondent Collector of Internal Revenue assessing against, and demanding from, the petitioner, The Philippines International Fair, Inc., the amount of ₱178,475.59 representing amusement taxes, surcharges and compromises for the years 1953 and 1954 is hereby modified.

The petitioner is ordered to pay to the respondent the amounts of ₱97,972.65 and ₱24,493.16 as amusement tax and surcharge, respectively, on its gross receipts from admission tickets to the exposition ground and auditorium during the months of March, April and May, 1953; and, ₱1,370.16 and ₱342.54, as amusement tax and surcharge, respectively, on its gross receipts from admission tickets to the benefit dances held at the National Fair Auditorium from April 23 to May 9, 1954, or a sum total of ₱124,178.51.

The petitioner is hereby held exempt from the payment of the amounts of ₱32,877.66 and ₱8,219.42 or a total of ₱41,097.08 representing amusement tax and surcharge, respectively, on its receipts from admission tickets to the Aquacade Show for the month of February, 1953 (C.T.A. Case No. 67, The Philippines International Fair, Inc. vs. Collector of Internal Revenue, decided on December 29, 1956).

Likewise, the petitioner is not liable for the payment of the compromise penalty in the total sum of ₱13,200.00 on the three basic assessments. (Briñas vs. Collector of Internal Revenue, C.T.A. Case No. 16; Central Azucarera de Tarlac vs. Collector of Internal Revenue, C.T.A. Case No. 9; and, Cosmos Kapok Factory vs. Araneta, C.T.A. Case No. 125.)

Without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, August 29, 1957.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge