REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

JAI ALAI CORPORATION
OF THE PHILIPPINES,
Petitioner,

- versus -

C.T.A. CASE NO. 108

J. ANTONIO ARANETA, in his capacity as Acting Collector of Internal Revenue,
Respondent.

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July 31, 1956

D E C I S I O N

This is a petition to review the decision of the respondent, Collector of Internal Revenue dated January 29, 1955, assessing and demanding from the petitioner, Jai Alai Corporation of the Philippines an aggregate sum of ₱62,586.56, as deficiency amusement tax, real estate dealer's tax and compromise penalty, after previously deducting the sum of ₱75,000.00 allegedly paid or deposited by petitioner upon the total original demand of ₱137,586.85 (Exh. "E", pp. 197-201 B.I.R. Record).

This case was submitted for determination abd disposition by this Court on the basis of the stipulation of facts (hereinafter cited as STIFACTS) and other documentary exhibits submitted by the parties.

Since 1940, the petitioner has been operating "Pelota Basca" (Jai Alai games with betting in accordance with the provisions of Commonwealth Acts Nos. 485 and 601 (par. 1 and 3, STIFACTS). Petitioner charged its patrons admission fees to the games. Wager funds or the proceeds from the sale of betting tickets are distributed in accordance with the provisions of Executive Order No. 135, series 1948, as amended by Executive Order No. 168, series,1948. In addition, petitioner operates the Sky Room where wine, liquor and food are served and a dance floor provided. A portion of the Jai Alai building is leased at a monthly rental of ₱2,500.00 to Mr. Joaquin Lopez, who maintains and operates the "Keg Room", "Bamboo Bar" and "Popular Bar".

On September 20, 1951, the respondent Collector of Internal Revenue assessed against and demanded of the petitioner the payment of a total sum of ₱127,813.82 representing deficiency amusement tax on its gross receipts and admission fees and surcharges in relation thereto, plus the sum of ₱800.00 as compromise penalty (par. 4, STI FACTS).

On October 23, 1952, the petitioner requested for a reconsideration of the aforesaid demand and the matter was referred to the Conference Staff of the Bureau of Internal Revenue and docketed as C. S. Case No. 2.

Meanwhile, between October 20, 1951 and January 22, 1953, petitioner paid to or deposited with (this is disputed) the respondent in monthly installment sums of ₱5,000.00 the total sum of ₱75,000.00, the same to be credited against the aseessment of September 20, 1951.

After the hearing before the Conference Staff and after further investigation of the case, the respondent issued on January 29, 1956, a revised assessment given hereunder and demanded from the petitioner the payment thereof after deducting the aforementioned ₱75,000.00. The respondent also asked the petitioner to pay a compromise penalty of ₱1,000.00. The following is the revised assessment, together with the compromise penalty.

1. <u>20% deficiency amusement tax from May 4, 1948 to June 17, 1949:</u>

20% deficiency amusement tax		₱86,085.80
Less: 20% tax on ₱57,719.54	₱11,543.91	
20% tax on ₱3,310.00	662.00	
Various payments made	75,000.00	87,205.91
Overpayment		(₱1,120.11)

2. <u>Amusement taxes and surcharges on receipts derived from admissions to the Jai Alai from June 18, 1948 to August, 1954:</u>

2,240 @ ₱3.50 admission @ ₱.81 tax	₱ 1,814.40
8,493 @ ₱3.00 admission @ ₱. 69	5,860.17
3,496 @ ₱2.50 admission @ ₱.58	2,027.68
3,973 @ ₱2.00 admission @ ₱.46	1,827.58
45,151 @ ₱1.50 admission @ ₱.35	15,802.72

86,567 @ ₱1.00 admission @ ₱.16 tax	₱ 13,850.72		
65,403 @ ₱0.50 admission @ ₱.08 tax	5,232.24		
Amusement tax due	₱ 46,415.64		
25% surcharge	11,603.91		
tax and surcharge due		₱58,019.55	

Amusement taxes and surcharges on receipts derived from admissions to the Jai Alai from September 1954 to December, 1954:

820 @ ₱2.00 admission at ₱.46 tax	₱ 377.20		
197 @ ₱1.50 admission @ ₱.35 tax	68.95		
1,788 @ ₱1.00 admission @ ₱.16 tax	286.08		
10,346 @ ₱0.50 admission @ ₱.08 tax	827.68		
Amusement tax due	₱ 1,559.91		
25% surcharge	389.98		
Tax & Surcharge due		₱ 1,949.89	
Total amusement taxes and surcharges due			₱59,969.44

3. 10% deficiency amusement tax and surcharge from March 8 to July 31, 1949:

10% deficiency amusement tax	₱ 1,496.81	
25% surcharge	378.21	
Total deficiency amusement tax		₱ 1,875.02

4. Real estate dealer's fixed tax and surcharge from the second quarter, 1949 to the 4th quarter, 1954:

5. Real estate dealer's fixed tax (C-8) for the period from 2nd quarter, 1949 to the 4th quarter, 1954 - 23 quarters @ ₱37.50 per quarter	862.50
6. Compromise penalty	1,000.00
TOTAL	₱62,586.85

The present petition for review was filed before this Court to review the foregoing decision (revised assessment).

The parties raised here the following issues:

(1) Whether or not the collection of taxes in question constitutes a violation of the contract clause of the Constitution;

(2) Whether or not the petitioner is liable for the payment of 20% deficiency amusement tax on the following receipts: (a) share of wager funds; (b) 2% management fee; (c) "differences" or "breakages"; (d) unclaimed dividends; (e) admission fees;and (f) miscellaneous income;

(3) Whether or not petitioner is liable for the payment of the real estate dealer's fixed tax prescribed in section 193 (q) of the Tax Code;

(4) Whether or not petitioner is liable for the payment of the graduated amusement tax prescribed in the first paragraph of sec. 260 of the Tax Code, as amended by Republic Act No. 418 on admission fees received on June 18, 1949 and thereafter;

(5) Whether or not petitioner is liable for the payment of deficiency amusement tax and surcharge on the receipts of the Sky Room;

(6) Whether or not the petitioner is liable for the payment of ₱1,000.00 as compromise penalty; and

(7) Whether or not this Court has jurisdiction to take cognizance of the petition for review in respect to the action for refund.

Tax Exemption

On the first issue, the petitioner contends that by its franchise, Commonwealth Act No. 485, it is exempted from all other taxes not embraced therein and the taxes sought to be imposed by respondent is in contravention of the constitution more particularly the "impairment clause". This proposition is predicated on the theory that Commonwealth Act No. 485 as implemented By Executive Orders Nos. 135 and 168, both series of 1948, has created a contractual relationship between the petitioner and the government.

It is the view of petitioner that in consideration of being permitted to operate the game of jai-alai for 25 years, the petitioner pays the government 3½%(formerly 4½%) of the gross receipts from the wager or bets in every game, an annual license fee of ₱500.00 and real estate tax on its property (Section 3, Commonwealth Act No. 485), besides being bound to transfer automatically to the government after the twenty-five year period the ownership of its properties consisting of the buildings and the land of which the court and the staduim is established. These properties, when the first game was played, were valued at ₱3,675,846.27 (Exhibit "I", Petitioner) and as of June 1949, were worth over ₱5,000,000.00 (pp. 81-82, Vol. 2, BIR records). Thus, petitioner argues that these conditions have been imposed as an exemption from all other taxes.

We find this contention without merit. At best, Commonwealth Act No. 485 merely permits or authorizes the operation of jai-alai games with gambling, which otherwise would be illegal. There is nothing in the law that will indicate a grant of a franchise under a contractual relation between the petitioner and the government. But even assuming arguendo, that a contractual relationship was established between the petitioner and the government, there is nothing in the entire text of Commonwealth Act No. 485, to indicate a legislative mandate of intention to the effect that the conditions or obligations imposed upon the petitioner by the said Act would be in lieu of all other obligations imposed by general laws as tax statutes. In brief, the transfer of the properties after 25 years, the payment of the license fees, realty tax and the 3½% participation in the gross receipts on the total betting when imposed upon petitioner, were not ordained to be in lieu of the payment of any and all other taxes that might be due to the government.

The case of House v. Posadas (53 Phil. 338) is in point. In this case, appellant House was authorized under Act 2700 to operate an electric light, heat and power system and was required under the law to pay quarterly to the government one-half of one per centum of the gross earnings. On the question of whether taxpayer was still subject to the payment of income taxes and percentage tax on business, the Supreme Court held that since there was no specific mandate that the tax on gross earnings was in lieu of the payment of all other taxes, the grantee of the franchise was not exempt from the payment of the income and percentage taxes generally imposed by law upon corporations.

> "x x x We not infrequently find in corporate charters, in connection with the imposition of particular charges, that payment of such imposition shall be in lieu of other taxes. No words to this effect are found in section 8 of Act No. 2700, where the appellant is required to pay quarterly into the treasury of Tacloban one-half of one per centum of the gross earnings of the enterprise during the first twenty years; and that it was not intended that satisfaction of this imposition should exempt him from other taxes is apparent from the language of section 14 of the same Act which declares that the grantee shall pay on his realestate, buildings, plant, machinery, and other personal property the same taxes as are now or may herafter be required by law from other persons. It is obvious that income, after it has accrued to a capitalist, is personal property, and the income tax collected from the appellant was properly exacted under the language which requires the grantee to pay the same taxes on 'other' personal property as are required from other raxpayers.
>
> "The percentage tax on business is not so clearly a tax on personal property, since this tax is rather a tax

on the privilege of doing business. But even so, it is a tax exacted for the benefit of the general government under the provisions of general laws; and no valid reason appears to us why the appellant chouls not pay this tax.

"The tax of one-half of 1 per centum of the gross earnings which, under section 8, must be paid to the treasury of Tacloban, was undoubtedly imposed upon him in view of a provision contained in section 28 of the Philippine Autonomy Act (Act of Congress of August 29, 1916), which declares that every grant of franchise shall contain provision for the payment of a reasonable percentage of the gross earnings of the corporation into the treasury of the Philippine Islands, or of the province or municipality within which such franchises are granted and exercised. But in connection with that provision it is said that this tax is imposed for the official inspection and regulation of the books and accounts of such corporations and there is nothing in the language to the contention that the tax there contemplated was intended to be in lieu of other taxes." (House v. Posadas, 53 Phil. 338 at 340-341.)

We cannot apply here the doctrine laid down by the Supreme Court in the case of the Philippine Railway Co. vs. Collector of Internal Revenue (G.R. No. L-3859, March 25, 1952) and Visayan Electric Co. v. David (G. R. No. L-5157, April 27, 1953) the charters involved being totally different from the case at bar. In both cases, the Supreme Court ruled that the franchise-holders (taxpayer) were not liable for the payment of the 5% franchise tax imposed by Section 259 of the National Internal Revenue Code, for the reason that their respective charters

(Act 1497 and Act 3499) specifically provided that the amount equal to 1½% and 2% of their respective gross warnings paid to the government, were "in lieu of all taxes".

Exemptions from taxation are highly disfavored in law. The party claiming tax exemption must justify his claim by a clear, positive or express grant of such privilege by law. When doubt arises as to the intention of Congress as regards a tax exemption, the doubt must be resolved in favor of the State, for an exemption from a common burden can not be permitted to exist upon vague implication. (Collector v. Manila Jockey Club, G. R. L-8755, March 23, 1956; Asiatic Petroleum Co. v. Llanes, 49 Phil. 466; see also House vs. Posadas, 53 Phil. 338; Philippine Telephone and Telegraph Co. v. Collector of Internal Revenue, 53 Phil. 639)

Tax on Gross Receipts

having arrived at the conclusion that the petitioner is not exempt from the payment of other taxes, we shall proceed to the next issue -- whether or not the petitioner is liable for payment of the 20% deficiency amusement tax on its "gross receipts". We shall consider each disputed item detailed (Annex E, STIFACTS) as follows:

(a)	Share of commission or wager fund		₱ 27,383.33
			25,245.54
(b)	2% Management fee		735.00
			21,908.34
(c)	"differences" or "breakages" (Jan. to June 17, 1949)		1,916.28
(d)	Unclaimed dividends		2,242.02
			376.66
(e)	Admission fees		2,949.53
			1,538.79
(f)	Miscellaneous income (Jan. to June 17, 1949)		1,844.83
T o t al			₱ 86,140.32
Less:	Overpayment on "differences" (May to December, 1948)		17.94
	Overpayment on receipts from concessionaires		.01
	Overpayment on miscellaneous incone (May to Dec. 1948)		36.57
	20% tax on ₱57,719.54 -	₱11,543.91	
	20% tax on ₱ 3,310.00	662.00	12,205.91
			₱73,879.89

Share of Wager Funds. - In view of our finding that the petitioner is liable for other taxes on its business, particularly the tax on its "gross receipts" there is no longer any doubt that the petitioner is subject to pay the amusement tax on its net share of the wager funds or bets obtained from the jai-alai games. We, therefore, affirm the assessment by the respondent on this point and hold the petitioner liable for the deficiency amusement tax of ₱52,628.87 on the receipt denominated as "share of wager funds".

The succeeding questions relate to the issue of whether or not the other items should be included as part of petitioner's taxable "gross receipts", and we shall therefore proceed to discuss each item separately.

2% Management Fees: The respondent assessed the herein petitioner, the sum of ₱22,643.34, representing 20% deficiency amusement tax on that portion of petitioner's receipts denominated as "management fees" which it had not declared for tax purposes for the period from May 4, 1948 to June 17, 1949. Thes "management fees" consisted of a sum equal to 2% of the total bettings or wager funds paid as compensation for services of Messrs. Jauregui and Assadourian and more particularly described as follows:

> "This 2% management fee represents the compensation paid for the services of Messrs. Jauregui and Assadourian. When the corporation was being organized, it was deemed wise to engage the services of men from abroad who are well versed in the operation of jai-alai games. Consequently, the services of Messrs. Jauregui and Assadourian were paid 'promotion fees' at the rate of 2% of the wager funds."

The petitioner contends that the 2% "promotion fees" of the wager funds do not form part of its "gross receipts" by virtue of a contract of petitioner and Messrs. Jauregui and Assadourian in that such funds had already been earmarked and set aside for such purpose and therefore assumed a status similar in character to the 3% share accruing to the national government. Hence, petitioner argues that the amount did not belong to it, and was, in fact never received by it.

We find this view without merit. In the first place, the contract was made by petitioner and the corresponding management fees were incurred by it on its own account. In fact, the management fees are actually taken outt of petitioner's share (11½%) of the bets and are not determined before the distribution of the shares according to Executive Order No. 135, as amended by Executive Order No. 168, both series of 1948. We believe that one vested with the right to receive thetgross income derived from the jai-alai games as the petitioner, cannot escape the tax on such "gross receipts" by any kind of anticipatory arrangement, by which it procures payment of it to another, since by the exercise of his power to command the said receipts, he enjoys the benefits of the amount on which the tax is laid (Helvering v. Horst, 311 U.S. 112; Harrison v. Schaffner, 312 U.S. 569). And in the second place, the tax imposed by section 260 of the Tax Code, is imposed upon "all the receipts of the proprietor lessee or operator of the amusement place" which must be understood to refer to the "total receipts received by the company before anything was deducted for expenses of management." (State v. Illinois Cert. R. Co., 92 NW 814, 847) or to the "entire income without deductions of any sort, and do not contemplate a tax upon gross profits" (Pacific Gas & Electric Co. v. Roberts, 167 P 845, 846; 176 Cal. 183.) Since, the 2% management fees were incurred by petitioner for compensation of services contracted for by it alone, the sum is in fact expenses to petitioner and may not be deducted from the gross receipts for purposes of determining the tax on "gross receipts".

We are, therefore, of the opinion and so hold that petitioner is liable for the sum of ₱22,643.24 as deficiency amusement tax on the portion of its undeclared gross receipts denominated as "management fees".

Differences or Breakages: Respondent assessed the petitioner the sum of ₱1,898.34 (₱1,916.28 less ₱17.94) as deficiency amusement tax on the so-called "Differences" or "Breakages". This sum consists of the fractions of ten centavos (0.10) which were eliminated in the computation of dividends paid to the winning bettors pursuant to section 18 of Executive Order No. 135, as amended by Executive Order No. 168, series of 1948, to wit:

> "SEC. 18. Wager tickets and dividends. - The face value of the wager tickets for any event shall not exceed ₱5.00 whether for 'win' or 'place', or for any combination or grouping of winning numbers. The face value of said tickets, as the case may be, shall be the basis for the computation of the dividends and such dividends shall be paid after eliminating fractions of ten centavos (₱.10) for example: if the resulting dividend is ₱10.43, the dividends that shall be paid will be only ₱10.43."

While it is true that these "differences" or "breakages" originally formed part of the 85% of the total wager, yet since the petitioner is required to pay the winning bettors only the net dividends, after eliminating the fractions, the portions retqined by petitioner become part of its "gross receipts". If petitioner chooses to pay to the winners all such fractional amounts, it will perhaps be reasonable to say that such fractions never formed part of petitioner's gross receipts. However, where the petitioner actually exercised its privilege to eliminate the fractions as authorized by the above-quoted rule, it did in fact acquire the right of disposition over the "differences", so that the same became part of its gross receipts. Taxation is a practical matter. In the application of the taxes on gross receipts and gross income, revenue laws are not so much concerned with the requirements of title as with the actual command over the income which is taxed and the actual benefit for which the tax is paid (see Helvering v. Clifford, 309 U.S. 331). We are, therefore, of the opinion and so hold that the petitioner should be held liable for the deficiency amusement tax of ₱1,898.34 including surcharges on its gross receipts denominated "differences or breakages".

<u>Unclaimed dividends</u>: This item refers to the sum of ₱2,618.68 (not ₱3,618.68) assessed as deficiency amusement tax of 20% on the amount of ₱13,093.40 denominated as "unclaimed dividends".

These "unclaimed dividends" cover the amounts due to winning tickets but which have remained uncollected for a period of ten (10) days after the winnings are announced. Not having been claimed, they had been declared forfeited under section 5, Chapter X of the Rules and Regulations of the petitioner, quoted below:

> "Winning tickets not collected on the same day may be collected from the General Cashier's office within the next ten (10) days. After the lapse of this period, the dividend shall be declared forfeited in favor of a charitable institution, to be selected by the management."

Petitioner maintains that this amount does not form part of its gross receipts in that it is a mere trustee for the benefit of the charitable institutions who shall be designated as beneficiaries by petitioner.

We find petitioner's view not well taken. Commonwealth Act No. 485, as implemented , ear-marks eighty-five per cent (85%) of the total bets received for distribution as dividends to the winning tickets. At first blush, this will include the portion thereafter to be known as "unclaimed dividends". In the final analysis, however, upon the forfeiture of the "unclaimed dividends" these sums became part of petitioner's gross receipts in that the right to dispose of the same was vested immediately upon petitioner. In fact, petitioner has treated it in this manner by considering the unclaimed dividends as lawfully its own (Annex "B", STIFACTS, Vol. II, BIR Records, pp. 125, 134, 137).. This is corroborated by the fact that at one time petitioner sought to have the "unclaimed dividends" declared as bonus to its employees. On top ofthis, petitioner has never designated any charitable institution as beneficiary of such unclaimed dividends, and we entertain doubts that any such institution may compel petitioner to have the unclaimed dividends paid to it/ Finding that the petitioner did and does in fact exercise the right of enjoyment anddisposition or control over the "unclaimed dividends", we agree with respondent's assessment and hold the petitioner liable for the sum of ₱2,618.68 deficiency amusement tax on its gross receipts designated as "unclaimed dividends".

Understated Admission Fees: The respondent assessed petitioner the sum of ₱4,488.32 as deficiency amusement tax on its admission fees for the period from May, 1948 to June 17, 1949. While petitioner paid and declared for tax purposes its admission fees, it only declared the net admission fees, after excluding the amusement tax on such fee which had been billed separately and allegedly passed on to the patrons. Petitioner contends that its procedure in declaring for tax purposes only the net admission fees is in accord with the procedure as regards sales taxes which it argues as applicable here.

We find petitioner's contention without merit. The tax imposed under section 260 of the Tax Code refers to "admission fees", and "gross receipts". As regards the "admission fees", we see no reason to deduct therefrom the tax which is admittedly a part thereof. In other words, the tax is based upon the amount paid by the customer, without considering the component parts that make up the total admission fee and without deducting therefrom any of the items or incidents taken into account by petitioner in fixing his admission fees.

> "When the legislature based license taxes due by retailers on gross sales, it evidenced an intention to adopt, as the basis for the tax, the total amount paid by the purchasers, without considering the component parts making up the total sale price and without deducting therefrom any of those items." (State vs. Menefee Motor Co., 139 So. 61; cited with approval Macondray & Co., Inc. vs. El Adm. de Rentas Internas, G.R. L-2624, Sept. 29, 1951; the Insular Lumber Co. v. The Collector of Internal Revenue, G.R. L-7190, April 28, 1956.)

Moreover, while there may be an administrative permission to deduct from the gross selling price the sales tax when billed separately, no similar administrative rule exists in connection with the amusement taxes to which petitioner may perhaps claim such privilege. The fact that the provision of law here involved (Sec. 260, N. ILR. C.) expressly permits the deduction of the tax on the admission fees of theatres for tax purposes militates against petitioner, there being no express grant as to jai-alai games.) We therefore affirm respondent's assessment of ₱4,488.32 in this regard.

Miscellaneous Income: This item refers to income derived by petitioner from advertisements, rents, interests earned, fines, etc. for the period from January to June 17, 1949 (Vol. II, BIR Records, pp. 11, 185 and 187). On this item respondent assessed a deficiency amusement tax of ₱1,808.26. Petitioner presented no evidence to controvert this part of assessment and did not in fact advance any refutation thereto in its memorandum. Since the burden of proof is upon the taxpayer to show the illegality or incorrectness of the assessment made by the respondent Collector of Internal Revenue (Interprovincial Autobus Co., Inc. v. Collector [1956] 52 Off. Gaz. No. 2, p. 791) which petitioner has failed to do, we must sustain the assessment and so hold the petitioner liable for the sum of ₱1,808.26 as deficiency amusement tax in its gross receipts denominated "miscellaneous income".

To summarize, we hold the petitioner liable for the total amount of ₱86,085.80 as deficiency amusement tax on its gross receipt. Against this liability, it has already paid ₱87,205.91, so that there results an overpayment of ₱1,120.11 which may be applied to other deficiencies hereinafter adjudged.

Real Estate Dealer's Tax

We now proceed to consider the third issue whether or not petitioner is liable for the payment of the real estate dealer's fixed tax. The respondent assessed the sum of ₱862.50 as tax due from petitioner for the period from the second quarter of 1949 to the fourth quarter of 1954 or twenty-three (23) quarters at ₱37.50 per quarter. This tax is imposed under section 194 (s) of the National Internal Revenue Code, as amended by Section 3 of Republic Act No. 42, and Section 6, of Republic Act No. 588, in relation to section 193 (q) of the same Code.

Petitioner argues that it is not subject to the tax in that it is not engaged in the real estate business as defined in the case of Domingo Imperial vs. Collector of Internal Revenue (G.R. No. L-7924, September 30, 1955).

Petitioner's contention is not well taken. The evidence shows that the petitioner leased the Keg Room, Bamboo Bar, and the Popular Bar to Mr.

Joaquin Lopez during the period above mentioned, at the rate of ₱2,500.00 a month (Annexes "B" and "f", STIFACTS). The leased premises, are the unoccupied portions of the Jai-Alai building, not needed by the petitioner as operator of the jai-alai games. Considering the kind and nature of petitioner's building (Exhibit "1") in regard to its spacing capacity and the extent of the portion thereof used by it, the amount of rental charged, and the period for which the lease existed, the conclusion is inevitable that the petitioner, is a real estate dealer, or engaged in said business within the purview of Section 194 (s) as amended by Republic Acts Nos. 42 and 588.

There is no parity between this case and the cited Imperial case, for in the latter, the tax-payer had not been engaged in business. On the other hand, we believe that the petitioner's situation is more akin to the more recent case of Veronica Sanchez v. Collector of Internal Revenue (G. R. No. L-7521, October 18, 1955) wherein the Court after considering "the kind and nature of the building constructed . . . . . which is a four door 'accessoria'" as to show that it was from the beginning intended for lease as a source of income or profit to the owner", the courtheld that the petitioner was "engaged in business" within the purview of Section 194 (s_ as amended, of the Tax Code. In view of the above, we are of the opinion and so hold that the petitioner is liable for the real estate dealer's tax of ₱862.50.

Graduated Amusement Taxes
on Admission Fees

The next issue refers to the assessment in the sum of ₱59,969.44, as graduated amusement tax on the "admission fees" from June 18, 1949 to December 31, 1954, imposed under the first paragraph of Section 260 of the National Internal Revenue Code as amended by Republic Acts Nos. 39 and 418. Petitioner contends that the deletion of the word "Jai-Alai" from the third paragraph of said section 260 by Republic Act No. 418, effective June 18, 1949 carried with it the exemption of the petitioner not only from the 20% amusement tax on gross receipts but also the amusement tax at graduated rates on its admission fees.

For a better understanding of the question, we quote below section 260 as it originally appeared in Commonwealth Act No. 466 when it took effect on July 1, 1939:

> "SEC. 260. Amusement taxes - There shall be collected from the proprietor, lessee, or operator of both theaters, cinematographs, concert halls, circuses, boxing exhibitions, and other places of amusement the following taxes: (tax rates omitted)
>
> "In the case of theaters or cinematographs, the taxes herein prescribed shall first be deducted and withheld by the proprietors, lessees, or operators of such theaters or cinematographs and

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paid to the Collector of Internal Revenue before the gross receipts are divided between the proprietors, lessees, or operators of the theaters or cinematographs and the distributors of thecinematographic films.

"In the case of cockpits, race tracks, cabarets, there shall be collected from the proprietor, lessee, or operator a tax equivalent to ten per centum of the gross receipts, irrespective of whether or not any amount is charged or paid for admission: Provided, however, That in the case of race tracks, this tax is in addition to the privilege tax prescribed in section 193,or the purpose of the amusement tax, the term 'gross receipts' embraces all the receipts of the proprietor's place, excluding the receipts derived by him from the sale of liquors, beverages, or other articles subject to specific tax or from any business subject to tax under this Code." (underlining supplied)

Republic Act No. 39, which took effect on October 1, 1946 amended this section by increasing the graduated rates of amusement taxes on admission fees given in the first paragraph; provided changes in phraseology of the second and third paragraphs and adding two new paragraphs in the manner following -

"Sec. 260. Amusement taxes - There shall be collected from the proprietor, lessee, or operator of theaters, cinematographs, concert halls, circuses, boxing exhibitions, and other places of amusement the following taxes: (Tax rates omitted)

"In the case of theaters or cinematographs, the taxes herein prescribed shall first be deducted and withheld by the proprietors, lessees, or operators of such theaters or cinematographs and paid to the Collector of Internal

Revenue before the gross receipts are divided between the proprietors, lessees, or operators of the theaters or cinematographs and the distributors of the cinematographic films.

"In the case of cockpits, cabarets, and night clubs, there shall be collected from the proprietor, lessee or operator a tax equivalent to ten per centum, and in the case of race-tracks Jai-alai, twenty per centum of the gross receipts, irrespective of whether or not any amount is charged or paid for admission: Provided, however, That in the case of race-tracks, the tax is in addition to the privilege tax prescribed in section one hundred and ninety three. For the purpose of amusement tax, the term 'gross receipts' embraces all the receipts of the proprietor, lessee, or operator of the amusement place.

"The taxes imposed herein shall be payable at the end of each month and it shall be the duty of the proprietor lessee, or operator concerned, within ten days after the end of each month, to make a true and complete return of the amount of gross receipts derived during the preceding moth and pay the tax due thereon.

"In case of willful neglect to file the return within the period prescribed herein, or in case of false or fraudulent return is willfully made, there shall be added to the tax or to the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud, a surcharge of fifty per centum of its amount. The amount so added to any tax shall be colle cted at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the falsity or fraud, in which case the amount se added shall be collected in the same manner as the tax." (underscoring supplied)

It will be noted that with the foregoing amendment "jai-alai" was specifically introduced ih the third paragrpah of the aforecited provision. However, by another amendatory legislation, Republic Act No. 418 which took effect on June 18, 1949, said section 260 was modified this time by deleting the words "jai-alai" from the third paragraph; so that said paragraph would read:

> "In the case of cockpits, cabarets and nightclubs, there shall be collected from the proprietor, lessee, or operator a tax equivalent to ten per centum, and in the case of race-tracks, twenty per centum of the gross receipts irrespective of whether or not any amount is charged or paid for admission; this tax is in addition to the privilege tax prescribed in section one-hundred ninety-three. For the purpose of amusement tax, the term 'gross receipts' embraces all the receipts of the proprietor, lessee, or operator of the amusement place. (emphasis supplied)

With the deletion of "jai-alai" from the third paragraph of the law here involved, the principal question narrows down to whether "jai-alai" is within the phrase "other places of amusement" as contemplated by said section 260. Briefly, it is the contention of petitioner that the "jai-alai" is not a place of amusement and under the principle of "ejusdem generis" had not or would never have been taxable under said section 260, except during the brief period that Republic Act No. 39, was enforced, i.e. only until the word was deleted by Republic Act No. 418.

We find the contention of the petitioner not well taken. While it is true that "jai-alai" is not now specifically enumerated in the first paragraph of section 260 of the Tax Code, nevertheless, we believe it is within the purview of the phrase "other places of amusement". According to Webster's International Dictionary, "amusement" is synonymous with"pleasurable diversion, entertainment, recreation, relaxation, avocation, pastime, sport, and fun" (see also Pearson v. City of Seattle, 44 P. 884, 14 Wash. 438, cited in 3 Words and Phrases, p. 537). Hence, the term "places of amusement" denotes those places which furnishes the pleasurable occupation of the senses, or provide recreation, relaxation, pastime as to occupy attention with somet ing pleasing and entertaining (see Radcliffe v. Query, 153 S.C. 76, 150 S. E. 352). We believe that the petitioner's jai-alai games, even as it does involve gambling, furnishes people with diversion, relaxation and pastime, and therefore, comes with the phrase "place of amusement" used in section 260 of the Tax Code.

We might add in this regard the peculiar statutory phraseology and arrangement regarding the amusement tax. It is to be noted that section 260 comes under Chapter II, entitled "Amusement Taxes" of Title VIII entitled "Miscellaneous Taxes" of the National Internal Revenue Code.

Under this particular section, the amusement tax is imposed not only upon those specifically enumerated therein as theaters, cinematographs, concert halls, circuses, boxing exhibitions, cockpits, cabarets, night clubs and race-tracks, but also upon "other places of amusements". Our attention is drawn particularly to the fact that the amusement tax is imposed upon "cockpits" and "race-tracks" which are admittedly forms of legalized gambling in the same way as the "jai-alai" is. This is clearly indicative of a legislative intention to consider these establishments as "places of amusement." In fact, horse races have been held to be included in the terms "shows" and "amusement" when used to authorize municipal corporations to license and tax theatricals and other exhibitions, shows and amusement (Webber V. City of Chicago, 148 ILL. 313, 36 NE 70). Petitioner's jai-alai admittedly a gambling establishment is equally a place which provide entertainment, relaxation, pastime and sport and, therefore, comes within the purview of the phrase, "and other places of amusements" subject to the amusement tax on its admission fees. Our position is further buttressed by the fact that section 260-A as inserted by Republic Act No. 586 is found in the same chapter and title of the Tax Code and imposes an amusement tax upon the winnings or "dividends" of a persona derived from "horse races or jai-alai". We believe that the doctrine of ejusdem generis finds no application in this case as the word "amusement" or the phrase "other places of amusement" does not require construction (Stiska v. City of Chicago, 405 Ill. 374; 70 NE 2d 7442). We believe that the entire context of section 260 of the Revenue Code adequately declares that the amusement tax imposed therein is not restricted to theatrical, boxing, musical dancing or other exhibitions but also includes other places of amusement as cockpits, race-tracks and petitioner's jai-alai.

We agree with the respondent that while the elimination of the words "jai-alai" from the third paragraph of section 260 of the National Internal Revenue Code by Republic Act No. 418 exempted petitioner from the tax on gross receipts prescribed therein, the same did not thereby exempt petitioner from the payment of the amusement tax on its admission fees prescribed in the first paragraph thereof, the latter tax being different from the former. Without being repititious, suffice it to say that the claims of exemption of petitioner cannot be permitted to exist by implication (Collector v. Manila Jockey Club, supra; Ilagan v. Alejandrino, C.T.A. Case No. 43, July 25, 1956). Finding the respondent's assessment in this regard as being in accord with law, we hold the petitioner liable for the sum of ₱59,969.44 as amusement taxes on its admission fees.

<u>Deficiency Amusement Tax and Surcharge on the Receipts of the Sky Room</u>

The fifth issue refers to the ten per cent (10%) deficiency amusement tax including surcharge in the amount of ₱1,875.02 assessed by the respondent upon the receipts of the Sky Room, from March 1949 to July 31, 1951 (See Annex "E", STIFACTS; p. 9, BIR records, Vol. 2).

There is no dispute that the Sky Room is a night club. During the period in question, petitioner had, for purposes of the 10% amusement tax declared only its net sales as the taxable base and not its gross receipts. Since petitioner, under the law is required to pay taxes on its "gross receipts" (see section 260, <u>supra</u>), the respondent assessed the deficiency amusement taxes on the difference between the gross receipts and the net sales. Petitioner did not present any evidence to contest this assessment nor made any refutation thereto on legal grounds. Considering that the burden of proof is upon petitioner to assail the assessment which it has failed to do, and in view of our discussion above regarding the meaning of "gross receipts", we are constrained to hold that petitioner is liable for the deficiency amusement tax of ₱1,875.02.

<u>Compromise penalty of ₱1,000.00:</u> In relation to the penultimate issue, respondent seeks to collect from the petitioner the sum of ₱1,000.00, as compromise penalty for violation of the real estate dealer's tax prescribed by section 193 (q) of the Tax Code and other alleged violations, citing the doctrine of the Supreme Court in the case of the City of Mànila v. Pacific Commercial Co., 60 Phil. 813. The ruling cited is not applicable in that the penalty was not in the nature of a compromise. On the other hand, a similar question has already been passed upon by this Court in the case of Soledad R. Briñas v. Collector of Internal Revenue, (C.T.A. Case No. 16, September 14, 1955) where it was ruled that -

> "In addition to the deficiency percentage tax and surcharge, the sum of ₱20.00 is sought to be collected from petitioner by way of "compromise' in extrajudicial settlement of her penal liability under section 209 of the National Internal Revenue Code. Criminal violation of the Revenue Code may be compromised by the Collector of Internal Revenue by virtue of the authority conferred upon him by section 309 of the same code. A compromise by its nature implies mutual agreement by the parties in regard to the thing or subject matter which is to be compromised. An offer of compromise does not, therefore, assume the category of a compromise until it is voluntarily accepted by the other party, and no obligation arises or is created by a simple offer or suggestion coming from one of the parties without acceptance by the other."

We are, therefore, of the opinion and so hold that this Court has no jurisdiction over the matter involving the compromise penalty of ₱1,000.00.

<u>Jurisdiction as to
the Refund of ₱75,000.00.</u>

The last issue refers to the jurisdiction of this Court to order the refund of ₱75,000.00. This amount was paid in installment by petitioner in partial payment of the original assessment made by respondent, which however has been subsequently incorporated in the assessment now under review. Considering that we are sustaining respondent's assessment on the amusement taxes and therefore no refund of any payment is contemplated, we find it unnecessary to pass upon this question.

FOR ALL THE FOREGOING CONSIDERATIONS, except as regards the compromise penalty of ₱1,000.00 over which this court is without jurisdiction, the decision of the Collector of Internal Revenue dated January 29, 1955, is hereby affirmed, and the petitioner is hereby ordered to pay the respondent Collector of Internal Revenue the total sum of ₱61,586.85, representing deficiency amusement taxes, including surcharges and real estate dealer's fixed tax.

With cost against the petitioner.

SO ORDERED.

Manila, Philippines, July 31, 1956.

MARIANO NABLE
Presiding Judge

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[redacted]

cur:

AUGUSTO M. LUCIANO
Associate Judge

Judge Roman M. Umali did not take part.