

Taxation

[Economics](#), [Tax](#)



TAXATION LAW I. General Principles POWER OF TAXATION TAXATION — power by which the sovereign through its law-making body raises revenue to defray the necessary expenses of government from among those who in some measure are privileged to enjoy its benefits and must bear its burdens.

Two Fold Nature of the Power of Taxation 1. It is an inherent attribute of sovereignty 2. It is legislative in character

Extent of Taxing Power Subject to constitutional and inherent restrictions, the power of taxation is regarded as comprehensive, unlimited, plenary and supreme.

Scope of Legislative Taxing Power 1. Amount or rate of tax 2. Apportionment of the tax 3. Kind of tax 4. Method of collection 5. Purpose/s of its levy, provided it is for public purpose 6. Subject to be taxed, provided it is within its jurisdiction 7. Situs of taxation

TAXES — enforced proportional contributions from the persons and property levied by the law-making body of the State by virtue of its sovereignty in support of government and for public needs.

Characteristics of Taxes 1. forced charge; 2. pecuniary burden payable in money; 3. levied by the legislature; 4. assessed with some reasonable rule of apportionment; (see theoretical justice) 5. imposed by the State within its jurisdiction; 6. levied for a public purpose.

Requisites of A Valid Tax 1. should be for a public purpose 2. the rule of taxation shall be uniform 3. that either the person or property taxed be within the jurisdiction of the taxing authority 4. that the assessment and collection of certain kinds of taxes guarantees against injustice to individuals, especially by way of notice and opportunity for hearing be provided 5. the tax must not impinge on the inherent and Constitutional limitations on the power of taxation

Theories and Bases of Taxation 1. Lifeblood Theory Taxes are what we pay for civilized society.

Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. (CIR v. Algue, Inc.)

2. Necessity Theory The power to tax is an attribute of sovereignty emanating from necessity. It is a necessary burden to preserve the State's sovereignty and a means to give the citizenry an army to resist an aggression, a navy to defend its shores from invasion, a corps of civil servants to serve, public improvements designed for the enjoyment of the citizenry and those which come within the State's territory, and facilities and protection which a government is supposed to provide. (Phil. Guaranty Co., Inc. v. CIR)

3. Benefits-Protection / Reciprocity Theory Taxation is described as a symbiotic relationship whereby in exchange of the benefits and protection that the citizens get from the Government, taxes are paid. (CIR v. Algue, Inc.) Note: While taxes are intended for general benefits, special benefits to taxpayers are not required. The Government renders no special or commensurate benefit to any particular person or property. Is the Power to Tax the Power to Destroy? 1. " Power to tax is the power to destroy" (Marshall Dictum) — refers to the unlimitedness and the degree or vigor with which the taxing power may be employed to raise revenue. - the financial needs of the State may outrun any human calculation, so the power to meet those needs by taxation must not be limited even though taxes become burdensome or confiscatory. 2. " Power to tax is not the power to destroy while the Supreme Court sits" (Holmes Dictum) — the power to tax knows no limit except those expressly stated in the Constitution. Marshall

and Holmes Dictum Reconciled Although the power to tax is almost unlimited, it must not be exercised in an arbitrary manner. If the abuse is so great so as to destroy the natural and fundamental rights of people, it is the duty of the judiciary to hold such an act unconstitutional. Purposes and Objectives of Taxation Revenue — basically, the purpose of taxation is to provide funds or property with which the State promotes the general welfare and protection of its citizens. 2. Non-Revenue (Key: PR2EP) a. Promotion of general welfare b. Regulation c. Reduction of social inequality d. Encourage economic growth e. Protectionism Power of Judicial Review in Taxation As long as the legislature, in imposing a tax, does not violate applicable constitutional limitations or restrictions, it is not within the province of the courts to inquire into the wisdom or policy of the exaction, the motives behind it, the amount to be raised or the persons, property or other privileges to be taxed. The court's power in taxation is limited only to the application and interpretation of the law. Note: The principle of judicial non-interference extends to the administrative realm. Aspects of Taxation 1. Levy or imposition of the tax (tax legislation) 2. Enforcement or tax administration (tax administration) Basic Principles of a Sound Tax System (Key: FAT) 1. Fiscal Adequacy — sufficiency to meet government expenditures and other public needs. 2. Administrative Feasibility/ Convenience — capability of being effectively enforced. 3. Theoretical Justice — based on the taxpayer's ability to pay; must be progressive. (Ability to Pay Theory) | TAXATION | POLICE POWER | EMINENT DOMAIN | | 1. Purpose | | To raise revenue | To promote public | To facilitate the | | | purpose through | State's need of | | | regulations | property for public| | | use | | Amount of Exaction | | No limit | Limited to

the | No exaction; but | | | cost of | private property is| | | regulation, | taken
 by the State | | | issuance of the | for public purpose | | | license or | | | |
 surveillance | | | | | Benefits Received | | No special or | No direct benefit |
 A direct benefit | | direct benefit is| is received; a | results in the form| |
 received by the | healthy economic | of just | | taxpayer; merely | standard of
 | compensation to the| | general benefit | society is | property owner | | of
 protection | attained | | | | | 4. Non-impairment of Contracts | | Contracts
 may not| Contracts may be | Contracts may be | | be impaired | impaired |
 impaired | | 5. Transfer of Property Rights | | Taxes paid become| No transfer
 but | Transfer is | | part of public | only restraint in | effected in favor | | funds
 | its exercise | of the State | | 6. Scope | | All persons, | All persons, | Only
 upon a | | property and | property, rights | particular property| | excises | and
 privileges | | Systems of Taxation | Global System | Schedular System | | A
 system employed where | A system employed where the | | the tax system
 views | income tax treatment varies | | indifferently the tax base| and is
 made to depend on the | | and generally treats in | kind or category of
 taxable | | common all categories of | income of the taxpayer. | | taxable
 income of the | | | individual. | | | A system which taxes all | A system which
 itemizes the | | categories of income | different incomes and | | except
 certain passive | provides for varied | | incomes and capital gains.|
 percentages of taxes, to be | | It prescribes a unitary | applied thereto. | | but
 progressive rate for | | | the taxable aggregate | | | incomes and flat rates for|
 | | certain passive incomes | | | derived by individuals. | | Examples Of Taxes
 Levied With A Regulatory Purpose, Or Combined Exercise Of Police Power
 And The Power Of Taxation. A. MOTOR VEHICLE REGISTRATION FEES ARE

NOW CONSIDERED REVENUE OR TAX MEASURES.(PAL V. EDU, G. R NO. L-41383, AUGUST 15, 1988) This case reversed the doctrine previously held in Republic v. Philippine Rabbit Bus Lines, Inc., 32 SCRA 211, to the effect that motor vehicle registration fees are regulatory exactions and not revenue measures.

b. The tax imposed on videogram establishments is not only regulatory but a revenue measure because the earnings of such establishments have not been subject to tax depriving the government of an additional source of income. (Tio v. Videogram Regulatory Board, 151 SCRA 208)

c. The “ coconut levy funds” were all raised under the state’s taxing and police powers. The state’s concern to make it a strong and secure source not only in the livelihood of the significant segment of the population, but also of export earnings, the sustained growth of which is one of the imperatives of the economic growth. " Philippine Coconut Producers Federation, Inc. Cocofed v. Presidential Commission on Good Government (178 SCRA 236, 252)

Construction of Tax Laws

1. Public purpose is always presumed.
2. If the law is clear, apply the law in accordance to its plain and simple tenor.
3. A statute will not be construed as imposing a tax unless it does so clearly, expressly and unambiguously.
4. In case of doubt, it is construed most strongly against the Government, and liberally in favor of the taxpayer.
5. Provisions of a taxing act are not to be extended by implication.
6. Tax laws operate prospectively unless the purpose of the legislature to give retrospective effect is expressly declared or may be implied from the language used.
7. Tax laws are special laws and prevail over a general law.

nature of Tax Laws

1. Not political in character
2. Civil in nature, not subject to ex post facto law prohibitions
3. Not penal in character

Taxes are personal

to the taxpayer 1. A corporation's tax delinquency cannot be enforced against its stockholders. (Corporate Entity Doctrine) Exception: Stockholders may be held liable for unpaid taxes of a dissolved corporation: a. if it appears that the corporate assets have passed into their hands or b. when the stockholders have unpaid subscriptions to the capital of the corporation 2.

Estate taxes are obligations that must be paid by the executor or administrator out of the net assets and cannot be assessed against the heirs. Exception: If prior to the payment of the estate tax due, the properties of the deceased are distributed to the heirs, then the latter is subsidiary liable for the payment of such portion of the estate tax as his distributive share bears to the total value of the net estate. (Sec. 9, Rev. Regs. No. 2-2003; see CIR vs. Pineda G. R. No. L-22734. September 15, 1967)) Classification of Taxes 1.

As to subject matter: a. Personal Tax — taxes are of fixed amount upon all persons of a certain class within the jurisdiction without regard to property, occupation or business in which they may be engaged. b. Property Tax — assessed on property of a certain class c. Excise Tax — imposed on the exercise of a privilege d. Customs Duties — duties charged upon the commodities on their being imported into or exported from a country. 2. As to burden: a. Direct Tax — both the incidence of or liability for the payment of the tax as well as the impact or burden of the tax falls on the same person. b. Indirect Tax - The incidence of or liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another. 3. As to purpose: a. General Tax — levied for the general or ordinary purposes of the Government b. Special Tax — levied for special purposes 4. As to manner of computation: a. Specific Tax — the computation of the tax

or the rates of the tax is already provided for by law. b. Ad Valorem Tax — tax upon the value of the article or thing subject to taxation; the intervention of another party is needed for the computation of the tax. 5. As to taxing authority: a. National Tax — levied by the National Government b. Local Tax — levied by the local government 6. As to rate: a. Progressive Tax — rate or amount of tax increases as the amount of the income or earning to be taxed increases. b. Regressive Tax — tax rate decreases as the amount of income to be taxed increases. c. Proportionate Tax — based on a fixed proportion of the value of the property assessed. Impositions Not Strictly Considered as Taxes 1. TOLL — AMOUNT CHARGED FOR THE COST AND MAINTENANCE OF THE PROPERTY USED. 2. Penalty — punishment for the commission of a crime. 3. Compromise Penalty — amount collected in lieu of criminal prosecution in cases of tax violations. 4. Special Assessment — levied only on land based wholly on benefit accruing thereon as a result of improvements or public works undertaken by government within the vicinity. 5. License or Fee — regulatory imposition in the exercise of the police power. 6. Margin Fee — exaction designed to stabilize the currency. 7. Debt — a sum of money due upon contract or one which is evidenced by judgment. 8. Subsidy — a legislative grant of money in aid of a private enterprise deemed to promote the public welfare. 9. Customs duties and fees — duties charged upon commodities on their being transported into or exported from a country. 10. Revenue — a broad term that includes taxes and income from other sources as well. 11. Impost — in its general sense, it signifies any tax, tribute or duty. In its limited sense, it means a duty on imported goods and merchandise. | Tax | Special Assessment | | | | Imposed on persons, | Levied

only on land | | property and excises | | | | | Personal liability attaches |
 Cannot be made a personal | | on the person assessed in | liability of the
 person | | case of non-payment | assessed | | | | | Not based on any special
 or | Based wholly on benefit | | direct benefit | | | | | Levied and paid annually
 | Exceptional both as to | | | time and locality | | | | | Exemption granted is |
 Exemption does not apply. | | applicable (Art. VI, Sec. | N. B. If property is
 exempt | | 28(3) 1987 Constitution) | from Real Property Tax, it | | | is also
 exempt from | | | Special Assessment. | | Tax | License Fee | | | | | Based on
 the power of | Emanates from police power | | taxation | | | | | To generate
 revenue | Regulatory | | | | | Amount is unlimited | Amount is limited to the | |
 | cost of (1) issuing the | | | license, and (2) | | | inspection and | | |
 surveillance | | | | | Normally paid after the | Normally paid before | | start of a
 business | commencement of business | | | | | Taxes, being the lifeblood |
 License fee may be with or | | of the State, cannot be | without consideration |
 | surrendered except for | | | lawful consideration | | | | | Non-payment does
 not make | Non-payment makes the | | the business illegal but | business
 illegal | | maybe a ground for criminal | | | prosecution | | Test in determining
 if the imposition is a tax or a license fee IF THE PURPOSE IS PRIMARILY
 REVENUE OR IF REVENUE IS, AT LEAST, ONE OF THE REAL AND SUBSTANTIAL
 PURPOSES, THEN THE EXACTION IS A TAX. IF THE PURPOSE IS REGULATORY
 IN NATURE, IT IS A LICENSE. (PAL V. EDU) | Tax | Debt | | | | | An obligation
 imposed by | Created by contract | | law | | | | | Due to the government in |
 May be due to the | | its sovereign capacity | government but in its | | |
 corporate capacity | | | | | Payable in money | Payable in money, property | | |
 or services | | | | | Does not draw interest | Draws interest if | | except in case

of | stipulated or delayed | | delinquency | | | | | Not assignable | Assignable
| | | | | Not subject to compensation| Subject to compensation or | | or set-off |
set-off | | | | Non-payment is punished by | No imprisonment in case of | |
imprisonment except in poll| non-payment (Art. III, Sec. | | tax | 20 1987
Constitution) | | | | Imposed only by public | Can be imposed by private | |
authority | individual | Test in determining if the imposition is a tax or a
license fee IF THE PURPOSE IS PRIMARILY REVENUE OR IF REVENUE IS, AT
LEAST, ONE OF THE REAL AND SUBSTANTIAL PURPOSES, THEN THE
EXACTION IS A TAX. IF THE PURPOSE IS REGULATORY IN NATURE, IT IS A
LICENSE. (PAL V. EDU) | Tax | Debt | | | | An obligation imposed by | Created
by contract | | law | | | | | Due to the government in | May be due to the | |
its sovereign capacity | government but in its | | | corporate capacity | | | |
Payable in money | Payable in money, property| | | or services | | | | Does
not draw interest | Draws interest if | | except in case of | stipulated or
delayed | | delinquency | | | | | Not assignable | Assignable | | | | Not
subject to compensation| Subject to compensation or| | or set-off | set-off | | |
| | Non-payment is punished by | No imprisonment in case of| | imprisonment
except in poll| non-payment (Art. III, | | tax | Sec. 20 1987 Constitution)| | | |
Imposed only by public | Can be imposed by private | | authority | individual |
Compensation or Set-off General Rule: Taxes cannot be the subject of
compensation or set-off. Reasons: 1. lifeblood theory 2. taxes are not
contractual obligation but arise out of duty to the government 3. the
government and the taxpayer are not mutually creditors and debtors of each
other. (Francia v. IAC) Exception: When both obligations are due and
demandable as well as fully liquidated and all the requisites for a valid

compensation are present, compensation takes place by operation of law.

(Domingo v. Garlitos) Doctrine of Equitable Recoupment Not Followed in the Philippines A TAX PRESENTLY BEING ASSESSED AGAINST A TAXPAYER WHICH HAS PRESCRIBED MAY NOT BE RECOUPED OR SET-OFF AGAINST AN OVERPAID TAX THE REFUND OF WHICH IS ALSO BARRED BY PRESCRIPTION.

IT IS AGAINST PUBLIC POLICY SINCE BOTH PARTIES ARE GUILTY OF NEGLIGENCE. | TAX | TOLL | | | | Enforced proportional | A sum of money for the use | | contributions from persons | of something, a | | and property | consideration which is | | paid for the use of a | | | property which is of a | | | public nature; e. g. road, | | | bridge | | | | A demand of sovereignty | A demand of proprietorship | | | | No limit as to the amount | Amount of toll depends | | of tax | upon the cost of | | | construction or | | | maintenance of the public | | | improvement used | | | | Imposed only by the State | May be imposed by: | | | Government | | | Private individuals or | | | entities | | Tax | Penalty | | | | Enforced proportional | Sanction imposed as a | | contributions from persons | punishment for violation of | | and property | a law or acts deemed | | | injurious; violation of tax | | | laws may give rise to | | | imposition of penalty | | | | Intended to raise revenue | Designed to regulate | | | conduct | | | | May be imposed only by the | May be imposed by: | | government |(1) Government | | |(2) Private individuals or | | | entities | | Tax | | Tariff | | | | All embracing term to | A kind of tax imposed on | | include various kinds of | articles which are traded | | enforced contributions upon | internationally | | persons for the attainment | | | of public purposes | |

Taxpayers' Suit A CASE WHERE THE ACT COMPLAINED OF DIRECTLY INVOLVES THE ILLEGAL DISBURSEMENT OF PUBLIC FUNDS DERIVE FROM

TAXATION (JUSTICE MELO, DISSENTING IN KILOS BAYAN, INC VS GUINGONA, JR.) TAXPAYERS AND PUBLIC OFFICIALS HAVE LOCUS STANDI REQUISITES FOR TAXPAYERS' SUIT

- a. THE TAX MONEY IS BEING EXTRACTED AND SPENT IN VIOLATION OF SPECIFIC CONSTITUTIONAL PROTECTIONS AGAINST ABUSES OF LEGISLATIVE POWER.
- b. That public money is being deflected to any improper purpose (Pascual vs Secretary of Public Works)
- c. That the petitioner seeks to restrain respondents from wasting public funds through the enforcement of an invalid or unconstitutional law

LIMITATIONS ON THE TAXING POWER

A. INHERENT LIMITATIONS (KEY: SPINE)

1. TERRITORIALITY OR SITUS OF TAXATION
2. PUBLIC PURPOSE OF TAXES
3. INTERNATIONAL COMITY
4. NON-DELEGABILITY OF THE TAXING POWER
5. TAX EXEMPTION OF THE GOVERNMENT

1) TESTS IN DETERMINING PUBLIC PURPOSE

- a. DUTY TEST — WHETHER THE THING TO BE FURTHERED BY THE APPROPRIATION OF PUBLIC REVENUE IS SOMETHING, WHICH IS THE DUTY OF THE STATE, AS A GOVERNMENT, TO PROVIDE.
- b. PROMOTION OF GENERAL WELFARE TEST — WHETHER THE PROCEEDS OF THE TAX WILL DIRECTLY PROMOTE THE WELFARE OF THE COMMUNITY IN EQUAL MEASURE.

2) NON-DELEGABILITY OF THE TAXING POWER

GENERAL RULE: THE POWER OF TAXATION IS PECULIARLY AND EXCLUSIVELY EXERCISED BY THE LEGISLATURE. (SEE SCOPE OF LEGISLATIVE TAXING POWER, SUPRA) - REFERS TO TAX LEGISLATION

EXCEPTIONS TO NON-DELEGABILITY:

1. FLEXIBLE TARIFF CLAUSE: AUTHORITY OF THE PRESIDENT TO FIX TARIFF RATES, IMPORT AND EXPORT QUOTAS, TONNAGE AND WHARFAGE DUES, AND OTHER DUTIES OR IMPOSTS. (ART. VI, SEC. 28(2), 1987 CONSTITUTION)
2. POWER OF LOCAL GOVERNMENT UNITS TO LEVY TAXES, FEES, AND CHARGES. (ART. X, SEC. 5,

1987 CONSTITUTION) 3. DELEGATION TO ADMINISTRATIVE AGENCIES FOR IMPLEMENTATION AND COLLECTION. - MERELY REFERS TO TAX ADMINISTRATION OR IMPLEMENTATION 3) SITUS OR TERRITORIALITY OF TAXATION THE POWER TO TAX IS LIMITED ONLY TO PERSONS, PROPERTY OR BUSINESSES WITHIN THE JURISDICTION OR TERRITORY OF THE TAXING POWER. FACTORS THAT DETERMINE THE SITUS: a. Kind or classification of the tax being levied b. SITUS OF THE THING OR PROPERTY TAXED c. CITIZENSHIP OF THE TAXPAYER d. RESIDENCE OF THE TAXPAYER e. SOURCE OF THE INCOME TAXED f. SITUS OF THE EXCISE, PRIVILEGE, BUSINESS OR OCCUPATION BEING TAXED APPLICATION OF SITUS OF TAXATION | KIND OF TAX | SITUS | | | | Personal or Community tax | RESIDENCE OR DOMICILE OF | | | THE TAXPAYER | | | | Real property tax | LOCATION OF PROPERTY (LEX | | | REI SITAE) | | | | Personal property tax |-TANGIBLE: WHERE IT IS | | | PHYSICALLY LOCATED OR | | | PERMANENTLY KEPT (LEX REI | | | SITAE) | | | -INTANGIBLE: SUBJECT TO | | | SEC. 104 OF THE NIRC AND | | | THE PRINCIPLE OF MOBILIA | | | SEQUUNTUR PERSONAM | | | | Business tax | PLACE OF BUSINESS | | | | Excise or Privilege tax | WHERE THE ACT IS PERFORMED | | | OR WHERE OCCUPATION IS | | | PURSUED | | | | Sales tax | WHERE THE SALE IS | | | CONSUMMATED | | | | Income Tax | CONSIDER | | |(1) CITIZENSHIP, | | |(2) RESIDENCE, AND | | |(3) SOURCE OF INCOME (SEC. | | | 42, 1997 NIRC) | | | | Transfer tax | RESIDENCE OR CITIZENSHIP OF | | | THE TAXPAYER OR LOCATION OF | | | PROPERTY | | | | Franchise Tax | STATE WHICH GRANTED THE | | | FRANCHISE | Situs of Taxation of Intangible Personal Property GENERAL RULE: DOMICILE OF THE OWNER PURSUANT TO THE PRINCIPLE OF THE MOBILIA SEQUUNTUR PERSONAM OR MOVABLES FOLLOW THE PERSON.

EXCEPTIONS: 1. WHEN THE PROPERTY HAS ACQUIRED A BUSINESS SITUS IN ANOTHER JURISDICTION; 2. WHEN AN EXPRESS PROVISION OF THE STATUTE PROVIDE FOR ANOTHER RULE. ILLUSTRATION: FOR PURPOSES OF ESTATE AND DONOR'S TAXES, THE FOLLOWING INTANGIBLE PROPERTIES ARE DEEMED WITH A SITUS IN THE PHILIPPINES: 1) FRANCHISE WHICH MUST BE EXERCISED IN THE PHILIPPINES; 2) SHARES, OBLIGATIONS OR BONDS ISSUED BY ANY CORPORATION ORGANIZED OR CONSTITUTED IN THE PHILIPPINES IN ACCORDANCE WITH ITS LAWS; 3) SHARES, OBLIGATIONS OR BONDS BY ANY FOREIGN CORPORATION EIGHTY-FIVE PERCENT (85%) OF THE BUSINESS OF WHICH IS LOCATED IN THE PHILIPPINES; 4) SHARES, OBLIGATIONS OR BONDS ISSUED BY ANY FOREIGN CORPORATION IF SUCH SHARES, OBLIGATIONS OR BONDS HAVE ACQUIRED A BUSINESS SITUS IN THE PHILIPPINES; AND 5) SHARES OR RIGHTS IN ANY PARTNERSHIP, BUSINESS OR INDUSTRY ESTABLISHED IN THE PHILIPPINES. (SEC. 104, 1997 NIRC).

4) EXEMPTION OF THE GOVERNMENT AS A MATTER OF PUBLIC POLICY, PROPERTY OF THE STATE AND OF ITS MUNICIPAL SUBDIVISIONS DEVOTED TO GOVERNMENT USES AND PURPOSES IS DEEMED TO BE EXEMPT FROM TAXATION ALTHOUGH NO EXPRESS PROVISION IN THE LAW IS MADE THEREFOR. GENERAL RULE: THE GOVERNMENT IS TAX EXEMPT. - HOWEVER, IT CAN ALSO TAX ITSELF. RULES: 1. ADMINISTRATIVE AGENCIES a. GOVERNMENTAL FUNCTION - TAX EXEMPT UNLESS WHEN THE LAW EXPRESSLY PROVIDES FOR TAX. (SEC. 32 B7) b. PROPRIETARY FUNCTION — TAXABLE UNLESS EXEMPTED BY LAW. (SEC. 27C) 2. GOCCS GENERAL RULE: INCOME IS TAXABLE AT THE RATE IMPOSED UPON CORPORATIONS OR ASSOCIATIONS ENGAGED IN A SIMILAR BUSINESS, INDUSTRY, OR ACTIVITY.

EXCEPTION: GSIS, SSS, PHIC, PCSO AND PAGCOR. (SEC. 27(C), NIRC) 3.

GOVERNMENT EDUCATIONAL INSTITUTIONS a. PROPERTY OR REAL ESTATE TAX — PROPERTY ACTUALLY, DIRECTLY AND EXCLUSIVELY USED FOR EDUCATIONAL PURPOSES — EXEMPT BUT INCOME OF WHATEVER KIND AND CHARACTER FROM ANY OF THEIR PROPERTIES, REAL OR PERSONAL, REGARDLESS OF THE DISPOSITION, IS TAXABLE. (SEC. 30, LAST PAR., NIRC)

b. INCOME RECEIVED BY THEM AS SUCH ARE EXEMPT FROM TAXES.

HOWEVER, THEIR INCOME FROM ANY OF THEIR ACTIVITIES CONDUCTED FOR PROFIT REGARDLESS OF THE DISPOSITION, IS TAXABLE. (SEC. 30, LAST PAR.,

NIRC) 4. INCOME DERIVED FROM ANY PUBLIC UTILITY OR FROM THE EXERCISE OF ANY ESSENTIAL GOVERNMENTAL FUNCTION ACCRUING TO THE GOVERNMENT OF THE PHILIPPINES OR TO ANY POLITICAL SUBDIVISION THEREOF IS NOT INCLUDED IN GROSS INCOME AND EXEMPT FROM

TAXATION. (SEC. 32(B)(7)(B), NIRC) 5. DONATIONS IN FAVOR OF GOVERNMENTAL INSTITUTIONS ARE CONSIDERED AS INCOME ON THE PART OF THE DONEE. HOWEVER, IT IS NOT CONSIDERED AS TAXABLE INCOME BECAUSE IT IS AN EXCLUSION FROM THE COMPUTATION OF GROSS INCOME.

(SEC. 32 (B)(3), NIRC) 6. THE AMOUNT OF ALL BEQUESTS, LEGACIES, DEVICES OR TRANSFERS TO OR FOR THE USE OF THE GOVERNMENT OR ANY POLITICAL SUBDIVISION FOR EXCLUSIVELY PUBLIC PURPOSES IS DEDUCTIBLE FROM THE GROSS ESTATE. (SEC. 86 (A)(3), NIRC) 7. GIFTS MADE TO OR FOR

THE USE OF THE NATIONAL GOVERNMENT OR ANY ENTITY CREATED BY ANY OF ITS AGENCIES WHICH IS NOT CONDUCTED FOR PROFIT, OR TO ANY POLITICAL SUBDIVISION OF THE SAID GOVERNMENT ARE EXEMPT FROM DONOR'S TAX. (SEC. 101(A)(2), NIRC) 8. LOCAL GOVERNMENT UNITS ARE

EXPRESSLY PROHIBITED BY THE LGC FROM LEVYING TAX UPON NATIONAL GOVERNMENT, ITS AGENCIES, AND INSTRUMENTALITIES, AND LOCAL GOVERNMENT UNITS. [SEC. 133 (O), LGC] 9. UNLESS OTHERWISE PROVIDED IN THE LOCAL GOVERNMENT CODE (LGC), TAX EXEMPTIONS GRANTED TO ALL PERSONS, WHETHER NATURAL OR JURIDICAL, INCLUDING GOCC, EXCEPT LOCAL WATER DISTRICTS, COOPERATIVES DULY REGISTERED UNDER RA NO. 6938, NON-STOCK AND NON-PROFIT INSTITUTIONS, ARE WITHDRAWN UPON EFFECTIVITY OF THE LGC. (SEC. 193, LGC) 10. REAL PROPERTY OWNED BY THE REPUBLIC OF THE PHILIPPINES OR ANY OF ITS POLITICAL SUBDIVISIONS EXCEPT WHEN THE BENEFICIAL USE THEREOF HAS BEEN GRANTED, FOR CONSIDERATION OR OTHERWISE, TO A TAXABLE PERSON SHALL BE EXEMPT FROM PAYMENT OF REAL PROPERTY TAX. (SEC. 234, LGC) 5) INTERNATIONAL COMITY THESE PRINCIPLES LIMIT THE AUTHORITY OF THE GOVERNMENT TO EFFECTIVELY IMPOSE TAXES ON A SOVEREIGN STATE AND ITS INSTRUMENTALITIES, AS WELL AS ON ITS PROPERTY HELD AND ACTIVITIES UNDERTAKEN IN THAT CAPACITY. EVEN WHERE ONE ENTERS THE TERRITORY OF ANOTHER, THERE IS AN IMPLIED UNDERSTANDING THAT THE FORMER DOES NOT THEREBY SUBMIT ITSELF TO THE AUTHORITY AND JURISDICTION OF THE OTHER. B. CONSTITUTIONAL LIMITATIONS A. GENERAL OR INDIRECT CONSTITUTIONAL LIMITATIONS 1. DUE PROCESS CLAUSE (ART. III, SEC. 1, 1987 CONSTITUTION) REQUISITES: a. THE INTERESTS OF THE PUBLIC AS DISTINGUISHED FROM THOSE OF A PARTICULAR CLASS REQUIRE THE INTERVENTION OF THE STATE. (SUBSTANTIVE LIMITATION) b. THE MEANS EMPLOYED MUST BE REASONABLY NECESSARY TO THE ACCOMPLISHMENT OF THE PURPOSE AND NOT UNDULY OPPRESSIVE. (PROCEDURAL

LIMITATION) THE CONSTITUTIONALITY OF A LEGISLATIVE TAXING ACT QUESTIONED ON THE GROUND OF DENIAL OF DUE PROCESS REQUIRES THE EXISTENCE OF AN ACTUAL CASE OR CONTROVERSY. 2. EQUAL PROTECTION CLAUSE (ART. III, SEC. 1, 1987 CONSTITUTION) REQUISITES OF A VALID CLASSIFICATION: a. BASED UPON SUBSTANTIAL DISTINCTIONS b. GERMANE TO THE PURPOSES OF THE LAW c. NOT LIMITED TO EXISTING CONDITIONS ONLY d. APPLY EQUALLY TO ALL MEMBERS OF THE CLASS 3. FREEDOM OF SPEECH AND OF THE PRESS (ART. III, SEC. 4, 1987 CONSTITUTION) THERE IS CURTAILMENT OF PRESS FREEDOM AND FREEDOM OF THOUGHT AND EXPRESSION IF A TAX IS LEVIED IN ORDER TO SUPPRESS THIS BASIC RIGHT AND IMPOSE A PRIOR RESTRAINT. (TOLENTINO VS. SECRETARY OF FINANCE, GR NO. 115455, AUGUST 25, 1994) 4. NON-INFRINGEMENT OF RELIGIOUS FREEDOM AND WORSHIP (ART. III, SEC. 5, 1987 CONSTITUTION) A LICENSE TAX OR FEE CONSTITUTES A CURTAILMENT OF RELIGIOUS FREEDOM IF IMPOSED AS A CONDITION FOR ITS EXERCISE. (AMERICAN BIBLE SOCIETY VS. CITY OF MANILA, GR NO. L-9637, APRIL 30, 1957) 5. NON-IMPAIRMENT OF CONTRACTS (ART. III, SEC. 10, 1987 CONSTITUTION) NO LAW IMPAIRING THE OBLIGATION OF CONTRACT SHALL BE PASSED. (SEC. 10, ART. III, 1987 CONSTITUTION) The rule, however, does not apply to public utility franchises or rights since they are subject to amendment, alteration or repeal by the Congress when the public interest so requires. (Cagayan Electric & Light Co., Inc. v. Commissioner, GR No. 60216, September 25, 1985) RULES: a. When the exemption is bilaterally agreed upon between the government and the taxpayer — it cannot be withdrawn without violating the non-impairment clause. b. WHEN IT IS UNILATERALLY GRANTED BY LAW, AND THE SAME IS

WITHDRAWN BY VIRTUE OF ANOTHER LAW — NO VIOLATION. c. WHEN THE EXEMPTION IS GRANTED UNDER A FRANCHISE — IT MAY BE WITHDRAWN AT ANY TIME THUS, NOT A VIOLATION OF THE NON-IMPAIRMENT OF CONTRACTS

6. PRESIDENTIAL POWER TO GRANT REPRIEVES, COMMUTATIONS AND PARDONS AND REMIT FINES AND FORFEITURES AFTER CONVICTION (ART. VII, SEC. 19, 1987 CONSTITUTION) | DUE PROCESS | EQUAL PROTECTION | UNIFORMITY | | TAXPAYER MAY | TAXPAYERS SHALL BE | TAXABLE ARTICLES, | | NOT BE DEPRIVED| TREATED ALIKE UNDER | OR KINDS OF | | OF LIFE, | LIKE CIRCUMSTANCES | PROPERTY OF THE | | LIBERTY OR | AND CONDITIONS BOTH | SAME CLASS, SHALL| | PROPERTY | IN THE PRIVILEGES | BE TAXED AT THE | | WITHOUT DUE | CONFERRED AND | SAME RATE. THERE | | PROCESS OF LAW.| LIABILITIES IMPOSED.| SHOULD THEREFORE,| | NOTICE MUST, | | BE NO DIRECT | | THEREFORE, BE | | DOUBLE TAXATION | | GIVEN IN CASE | | | OF FAILURE TO | | | PAY TAXES | | | B. SPECIFIC OR DIRECT CONSTITUTIONAL LIMITATIONS

1. NON-IMPRISONMENT FOR DEBT OR NON-PAYMENT OF POLL TAX (ART. III, SEC. 20, 1987 CONSTITUTION) 2. RULE REQUIRING THAT APPROPRIATIONS, REVENUE AND TARIFF BILLS SHALL ORIGINATE EXCLUSIVELY FROM THE HOUSE OF REPRESENTATIVES (ART. VI, SEC. 24, 1987 CONSTITUTION) 3. UNIFORMITY, EQUITABILITY AND PROGRESSIVITY OF TAXATION (ART. VI, SEC. 28(1), 1987 CONSTITUTION) UNIFORMITY — ALL TAXABLE ARTICLES OR KINDS OF PROPERTY OF THE SAME CLASS ARE TAXED AT THE SAME RATE. EQUITABILITY — THE BURDEN FALLS TO THOSE WHO ARE MORE CAPABLE TO PAY. PROGRESSIVITY — RATE INCREASES AS THE TAX BASE INCREASES. Q: IS A TAX LAW ADOPTING A REGRESSIVE SYSTEM OF TAXATION VALID? A: YES. THE CONSTITUTION DOES NOT REALLY PROHIBIT

THE IMPOSITION OF INDIRECT TAXES WHICH, LIKE THE VAT, ARE REGRESSIVE. THE CONSTITUTIONAL PROVISION MEANS SIMPLY THAT INDIRECT TAXES SHALL BE MINIMIZED. THE MANDATE TO CONGRESS IS NOT TO PRESCRIBE, BUT TO EVOLVE, A PROGRESSIVE TAX SYSTEM. (EVAT EN BANC RESOLUTION, TOLENTINO, ET AL VS SECRETARY OF FINANCE, OCTOBER 30, 1995) 4. LIMITATIONS ON THE CONGRESSIONAL POWER TO DELEGATE TO THE PRESIDENT THE AUTHORITY TO FIX TARIFF RATES, IMPORT AND EXPORT QUOTAS, ETC. (ART. VI, SEC. 28(2), 1987 CONSTITUTION) 5. TAX EXEMPTION OF PROPERTIES ACTUALLY, DIRECTLY AND EXCLUSIVELY USED FOR RELIGIOUS, CHARITABLE AND EDUCATIONAL PURPOSES. (ART. VI, SEC. 28(3) 7, 1987 CONSTITUTION) THE CONSTITUTIONAL PROVISION (ABOVE CITED) WHICH GRANTS TAX EXEMPTION APPLIES ONLY TO PROPERTY OR REALTY TAXES ASSESSED ON SUCH PROPERTIES USED ACTUALLY, DIRECTLY EXCLUSIVELY FOR RELIGIOUS, CHARITABLE AND EDUCATIONAL PURPOSES. (LLADOC VS. COMMISSIONER, GR NO. L-19201, JUNE 16, 1965) THE PRESENT CONSTITUTION REQUIRED THAT FOR THE EXEMPTION OF " LANDS, BUILDINGS AND IMPROVEMENTS", THEY SHOULD NOT ONLY BE " EXCLUSIVELY" BUT ALSO " ACTUALLY" AND " DIRECTLY" USED FOR RELIGIOUS AND CHARITABLE PURPOSES. (PROVINCE OF ABRA VS. HERNANDO, GR NO. L-49336, AUGUST 31, 1981) THE TEST OF EXEMPTION FROM TAXATION IS THE USE OF THE PROPERTY FOR THE PURPOSES MENTIONED IN THE CONSTITUTION. (ABRA VALLEY COLLEGE INC. VS. AQUINO, GR NO. L-39086, JUNE 15, 1988) EXCLUSIVE BUT NOT ABSOLUTE USE The term " exclusively used" does not necessarily mean total or absolute use for religious, charitable and educational purposes. If the

property is incidentally used for said purposes, the tax exemption may still subsist. (Abra Valley College Inc. vs. Aquino, Gr No. L-39086, June 15, 1988)

COROLLARILY, IF A PROPERTY, ALTHOUGH ACTUALLY OWNED BY A RELIGIOUS, CHARITABLE AND EDUCATIONAL INSTITUTION IS USED FOR A NON- EXEMPT PURPOSE, THE EXEMPTION FROM TAX SHALL NOT ATTACH | | ART. XIV, SEC 4(3) | ART. VI, SEC | | | 28(3) | | Grantee | Non- stock, non | Religious, | | | profit educational | educational, | | | institution | charitable | | | | institutions | | Taxes covered | Income tax | Property tax | | | Custom Duties | | | | Property tax (DECS | | | | Order No. 137-187) | | 6. Voting Requirement In Connection With The Legislative Grant Of Tax Exemption (Art. VI, Sec. 28(4), 1987 Constitution) 7. NON-IMPAIRMENT OF THE JURISDICTION OF THE SUPREME COURT IN TAX CASES (ART. VIII, SEC. 2 AND 5(2)(B), 1987 CONSTITUTION) 8. EXEMPTION FROM TAXES OF THE REVENUES AND ASSETS OF EDUCATIONAL INSTITUTIONS, INCLUDING GRANTS, ENDOWMENTS, DONATIONS AND CONTRIBUTIONS. (ART. XIV, SEC. 4(3) AND (4), 1987 CONSTITUTION) OTHER SPECIFIC TAX PROVISIONS IN THE CONSTITUTION 1. Power of the President to veto any particular item or items in an appropriation, revenue, or tariff bill. (Art VI, Sec. 27(2), 1987 Constitution) 2. NECESSITY OF AN APPROPRIATION BEFORE MONEY MAY BE PAID OUT OF THE PUBLIC TREASURY. (ART. VI, SEC. 29 (1), 1987 CONSTITUTION) 3. NON- APPROPRIATION OF PUBLIC MONEY OR PROPERTY FOR THE USE, BENEFIT, OR SUPPORT OF ANY SECT, CHURCH, OR SYSTEM OF RELIGION. (ART. VI, SEC. 29 (2), 1987 CONSTITUTION) 4. TREATMENT OF TAXES LEVIED FOR A SPECIAL PURPOSE. (ART. VI, SEC. 29 (3), 1987 CONSTITUTION) 5. INTERNAL REVENUE ALLOTMENTS TO LOCAL GOVERNMENT UNITS. (ART. X, SEC. 6, 1987

CONSTITUTION) DOUBLE TAXATION DOUBLE TAXATION — TAXING THE SAME PROPERTY TWICE WHEN IT SHOULD BE TAXED BUT ONCE. IS DOUBLE TAXATION PROHIBITED IN THE PHILIPPINES? NO. THERE IS NO CONSTITUTIONAL PROHIBITION AGAINST DOUBLE TAXATION. IT IS NOT FAVORED BUT PERMISSIBLE. (PEPSI COLA BOTTLING CO. V. CITY OF BUTUAN, 1968). KINDS OF DOUBLE TAXATION 1) DIRECT DUPLICATE TAXATION / OBNOXIOUS — DOUBLE TAXATION IN THE OBJECTIONABLE OR PROHIBITED SENSE. THIS CONSTITUTES A VIOLATION OF SUBSTANTIVE DUE PROCESS. ELEMENTS: a. THE SAME PROPERTY OR SUBJECT MATTER IS TAXED TWICE WHEN IT SHOULD BE TAXED ONLY ONCE. b. BOTH TAXES ARE LEVIED FOR THE SAME PURPOSE c. IMPOSED BY THE SAME TAXING AUTHORITY d. WITHIN THE SAME JURISDICTION e. DURING THE SAME TAXING PERIOD f. COVERING THE SAME KIND OR CHARACTER OF TAX. (VILLANUEVA VS. CITY OF ILOILO) 2) INDIRECT DUPLICATE TAXATION — NOT LEGALLY OBJECTIONABLE. THE ABSENCE OF ONE OR MORE OF THE ABOVE-MENTIONED ELEMENTS MAKES THE DOUBLE TAXATION INDIRECT. 3) DOMESTIC- THIS ARISES WHEN THE TAXES ARE IMPOSED BY THE LOCAL OR NATIONAL GOVERNMENT (WITHIN THE SAME STATE) 4) International- refers to the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. Remedies of Double Taxation 1. TAX SPARING RULE — SAME DIVIDEND EARNED BY A NRFC WITHIN THE PHIL. IS REDUCED BY IMPOSING A LOWER RATE OF 15% (IN LIEU OF THE 35%), ON THE CONDITION THAT THE COUNTRY TO WHICH THE NRFC IS DOMILICED SHALL ALLOW A CREDIT AGAINST THE TAX DUE FROM THE NRFC, TAXES DEEMED TO HAVE BEEN PAID IN THE PHIL. (SEC. 28 B 5B) (CIR VS PROCTER

& GAMBLE) (GR NO. 66838, DEC. 2, 1991) 2. TAX DEDUCTIONS EXAMPLE: VANISHING DEDUCTION UNDER SECTION 86(A)(2), NIRC 3. TAX CREDITS INSTANCES UNDER THE NIRC: - FOR VAT PURPOSES, THE TAX ON INPUTS OR ITEMS THAT GO INTO THE MANUFACTURE OF FINISHED PRODUCTS (WHICH ARE EVENTUALLY SOLD) MAY BE CREDITED AGAINST OR DEDUCTED FROM THE OUTPUT TAX OR TAX ON THE FINISHED PRODUCT. - Foreign income taxes may be credited against the Phil. Income tax, subject to certain limitations, by citizens, including members of general professional partnerships or beneficiaries of estates or trusts (pro rata), as well as domestic corporations. - A tax credit is granted for estate taxes paid to a foreign country on the estate of citizens and resident aliens subject to certain limitations. - The donor's tax imposed upon a citizen or a resident shall be credited with the amount of any donor's tax imposed by the authority of a foreign country, subject to certain limitations. 4. Tax Exemptions 5. PRINCIPLE OF RECIPROCITY 6. TREATIES WITH OTHER STATES METHODS RESORTED TO BY A TAX TREATY IN ORDER TO ELIMINATE DOUBLE TAXATION FIRST METHOD: THE TAX TREATY SETS OUT THE RESPECTIVE RIGHTS TO TAX BY THE STATE OF SOURCE OR SITUS AND BY THE STATE OF RESIDENCE WITH REGARD TO CERTAIN CLASSES OF INCOME OR CAPITAL. IN SOME CASES, AN EXCLUSIVE RIGHT TO TAX IS CONFERRED IN ONE OF THE CONTRACTING STATES; HOWEVER, FOR OTHER ITEMS OF INCOME OR CAPITAL, BOTH STATES ARE GIVEN THE RIGHT TO TAX ALTHOUGH THE AMOUNT OF TAX THAT MAY BE IMPOSED BY THE STATE OF SOURCE IS LIMITED. SECOND METHOD: THE STATE OF SOURCE IS GIVEN A FULL OR LIMITED RIGHT TO TAX TOGETHER WITH THE STATE OF RESIDENCE. IN THIS

CASE, THE TREATY MAKES IT INCUMBENT UPON THE STATE OF RESIDENCE TO ALLOW RELIEF IN ORDER TO AVOID DOUBLE TAXATION. TWO METHODS OF RELIEF ARE USED UNDER THE SECOND METHOD: 1. THE EXEMPTION METHOD- THE INCOME OR CAPITAL WHICH IS TAXABLE IN THE STATE OF SOURCE OR SITUS IS EXEMPTED IN THE STATE OF RESIDENCE, ALTHOUGH IN SOME INSTANCES IT MAY BE TAKEN INTO ACCOUNT IN DETERMINING THE RATE OF TAX APPLICABLE TO THE TAX PAYER'S REMAINING INCOME OR CAPITAL.(THIS MAY BE DONE USING THE TAX DEDUCTION METHOD WHICH ALLOWS FOREIGN INCOME TAXES TO BE DEDUCTED FROM GROSS INCOME, IN EFFECT EXEMPTING THE PAYMENT FROM BEING FURTHER TAXED.) 2. THE CREDIT METHOD- ALTHOUGH THE INCOME OR CAPITAL WHICH IS TAXED IN THE STATE OF SOURCE IS STILL TAXABLE IN THE STATE OF RESIDENCE. THE TAX PAID IN THE FORMER IS CREDITED AGAINST THE TAX, LEVIED IN THE LATTER.(COMMISSIONER OF INTERNAL REVENUE V. S. C JOHNSON AND SON, INC. ET AL., G. R NO. 127105, JUNE 25, 1999) | EXEMPTION METHOD | CREDIT METHOD | | FOCUS IS ON THE INCOME OR | FOCUS IS ON THE TAX | | CAPITAL ITSELF | | NOTE: Computational illustration between a tax deduction and a tax credit: TAX DEDUCTION METHOD GROSS INCOME LESS: ALLOWABLE DEDUCTIONS INCLUDING FOREIGN TAXES PAID INCOME SUBJECT TO TAX MULTIPLIED BY RATE INCOME TAX DUE TAX CREDIT METHOD GROSS INCOME LESS: ALLOWABLE DEDUCTIONS EXCLUDING FOREIGN TAXES PAID INCOME SUBJECT TO TAX MULTIPLIED BY RATE INCOME TAX DUE LESS: FOREIGN TAXES PAID NET INCOME TAX DUE FORMS OF ESCAPE FROM TAXATION 1) SHIFTING — THE PROCESS BY WHICH THE TAX BURDEN IS TRANSFERRED FROM THE STATUTORY TAXPAYER (IMPACT OF

TAXATION) TO ANOTHER (INCIDENT OF TAXATION) WITHOUT VIOLATING THE LAW. IMPACT OF TAXATION — POINT ON WHICH TAX IS ORIGINALLY IMPOSED. INCIDENCE OF TAXATION — POINT ON WHICH THE TAX BURDEN FINALLY RESTS OR SETTLES DOWN. ILLUSTRATION: VALUE ADDED TAX. THE SELLER IS REQUIRED BY LAW TO PAY TAX, BUT THE BURDEN IS ACTUALLY SHIFTED OR PASSED ON TO THE BUYER. KINDS OF SHIFTING a. FORWARD SHIFTING- WHEN BURDEN OF TAX IS TRANSFERRED FROM A FACTOR OF PRODUCTION THROUGH THE FACTORS OF DISTRIBUTION UNTIL IT FINALLY SETTLES ON THE ULTIMATE PURCHASER OR CONSUMER b. BACKWARD SHIFTING- WHEN BURDEN IS TRANSFERRED FROM CONSUMER THROUGH FACTORS OF DISTRIBUTION TO THE FACTORS OF PRODUCTION c. ONWARD SHIFTING- WHEN THE TAX IS SHIFTED 2 OR MORE TIMES EITHER FORWARD OR BACKWARD 2) CAPITALIZATION — A MERE INCREASE IN THE VALUE OF THE PROPERTY IS NOT INCOME BUT MERELY AN UNREALIZED INCREASE IN CAPITAL. NO INCOME UNTIL AFTER THE ACTUAL SALE OR OTHER DISPOSITION OF THE PROPERTY IN EXCESS OF ITS ORIGINAL COST. EXCEPT: IF BY REASON OF APPRAISAL, THE COST BASIS OF PROPERTY INCREASED AND THE RESULTANT BASIS IS USED AS THE NEW TAX BASE FOR PURPOSES OF COMPUTING THE ALLOWABLE DEPRECIATION EXPENSE, THE NET DIFFERENCE BETWEEN THE ORIGINAL COST BASIS AND NEW BASIS IS TAXABLE UNDER THE ECONOMIC BENEFIT PRINCIPLE. (BIR RULING NO. 029, MARCH 19, 1998) 3) TRANSFORMATION — THE MANUFACTURER OR PRODUCER UPON WHOM THE TAX HAS BEEN IMPOSED, FEARING THE LOSS OF HIS MARKET IF HE SHOULD ADD THE TAX TO THE PRICE, PAYS THE TAX AND ENDEAVORS TO RECOUP HIMSELF BY IMPROVING HIS PROCESS OF

PRODUCTION, THEREBY TURNING OUT HIS UNITS AT A LOWER COST. 4) TAX AVOIDANCE — THE EXPLOITATION BY THE TAXPAYER OF LEGALLY PERMISSIBLE ALTERNATIVE TAX RATES OR METHODS OF ASSESSING TAXABLE PROPERTY OR INCOME, IN ORDER TO AVOID OR REDUCE TAX LIABILITY. EXAMPLE: “ ESTATE PLANNING” (CONVEYANCE OF PROPERTY TO A FAMILY CORPORATION FOR SHARES) (DELPHER TRADES CORP. VS. IAC, 157 SCRA 349) 5) TAX EVASION — USE BY THE TAXPAYER OF ILLEGAL OR FRAUDULENT MEANS TO DEFEAT OR LESSEN THE PAYMENT OF THE TAX. FACTORS IN TAX EVASION 1. THE END TO BE ACHIEVED, I. E. PAYMENT OF LESS THAN THAT KNOWN BY THE TAXPAYER TO BE LEGALLY DUE, OR PAYING NO TAX WHEN IT IS SHOWN THAT THE TAX IS DUE; 2. AN ACCOMPANYING STATE OF MIND WHICH IS DESCRIBED AS BEING EVIL, IN BAD FAITH, WILLFUL, OR DELIBERATE AND NOT COINCIDENTAL; AND 3. A COURSE OF ACTION WHICH IS UNLAWFUL. INDICIA OF FRAUD IN TAX EVASION 1. FAILURE TO DECLARE FOR TAXATION PURPOSES TRUE AND ACTUAL INCOME DERIVED FROM BUSINESS FOR 2 CONSECUTIVE YEARS (REPUBLIC VS GONZALES, L-17962) 2. SUBSTANTIAL UNDER-DECLARATION OF INCOME TAX RETURNS OF THE TAXPAYER FOR 4 CONSECUTIVE YEARS COUPLED WITH INTENTIONAL OVERSTATEMENT OF DEDUCTIONS (CIR VS REYES, 104 PHIL 1061) | | TAX AVOIDANCE | TAX EVASION | | | | | Validity | Legal and not subject | Illegal and subject| | | to criminal penalty | to criminal penalty| | | | | Effect | Minimization of taxes | Almost always | | | | results in absence | | | | of tax payments | 6) Tax Exemption — a grant of immunity to particular persons or corporations from the obligation to pay taxes. LEGAL BASIS: NO LAW GRANTING ANY TAX EXEMPTION SHALL BE PASSED WITHOUT THE

CONCURRENCE OF A MAJORITY OF ALL THE MEMBERS OF CONGRESS (ART VI. SEC 28(4) OF THE 1987 CONSTITUTION) KINDS OF TAX EXEMPTION 1. AS TO SOURCE a. CONSTITUTIONAL — IMMUNITIES FROM TAXATION THAT ORIGINATE FROM THE CONSTITUTION. b. STATUTORY — THOSE WHICH EMANATE FROM LEGISLATION EXAMPLES OF STATUTORY EXEMPTIONS SEC. 27, NIRC SEC. 105 TARIFF AND CUSTOMS CODE SEC. 234 LOCAL GOVERNMENT CODE SPECIAL LAWS, SUCH AS THE OMNIBUS INVESTMENT CODE OF 1987 (EO 226), PHILIPPINE OVERSEAS SHIPPING ACT (RA 1407 AS AMENDED), FERTILIZER INDUSTRY ACT (RA 3050, AS AMENDED), MINERAL RESOURCES DEVELOPMENT DECREE OF 1974 (PD 463 AS AMENDED), COTTAGE INDUSTRY ACT (RA 318, AS AMENDED) AND EXEMPTIONS IN “ HOUSING FOR LOW INCOME GROUP” (PD 1205, AS AMENDED) c. CONTRACTUAL- AGREED TO BY THE TAXING AUTHORITY IN CONTRACTS LAWFULLY ENTERED INTO BY THEM UNDER ENABLING LAWS d. TREATY e. LICENSING ORDINANCE 2. AS TO FORM 1) EXPRESS — EXPRESSLY GRANTED BY ORGANIC OR STATUTE LAW 2) IMPLIED — WHEN PARTICULAR PERSONS, PROPERTY OR EXCISES ARE DEEMED EXEMPT AS THEY FALL OUTSIDE THE SCOPE OF THE TAXING PROVISION ITSELF. 3. AS TO EXTENT 1) TOTAL — ABSOLUTE IMMUNITY 2) PARTIAL — ONE WHERE A COLLECTION OF A PART OF THE TAX IS DISPENSED WITH 4. AS TO OBJECT 1) PERSONAL — GRANTED DIRECTLY IN FAVOR OF CERTAIN PERSONS 2) IMPERSONAL — GRANTED DIRECTLY IN FAVOR OF A CERTAIN CLASS OF PROPERTY PRINCIPLES GOVERNING TAX EXEMPTION a. EXEMPTIONS FROM TAXATION ARE HIGHLY DISFAVORED IN LAW AND ARE NOT PRESUMED. b. HE WHO CLAIMS AS EXEMPTION MUST BE ABLE TO JUSTIFY HIS CLAIM BY THE CLEAREST GRANT

OF ORGANIC OR STATUTE LAW BY WORDS TOO PLAIN TO BE MISTAKEN. IF AMBIGUOUS, THERE IS NO EXEMPTION. c. HE WHO CLAIMS EXEMPTION SHOULD PROVE BY CONVINCING PROOF THAT HE IS EXEMPTED. d. TAXATION IS THE RULE; TAX EXEMPTION IS THE EXCEPTION. e. TAX EXEMPTION MUST BE STRICTLY CONSTRUED AGAINST THE TAXPAYER AND LIBERALLY IN FAVOR OF THE TAXING AUTHORITY. f. TAX EXEMPTIONS ARE NOT PRESUMED. g. CONSTITUTIONAL GRANTS OF TAX EXEMPTION ARE SELF-EXECUTING. h. TAX EXEMPTIONS ARE PERSONAL. THE FOLLOWING PARTAKE THE NATURE OF TAX EXEMPTION 1. DEDUCTIONS FOR INCOME TAX PURPOSES 2. CLAIMS FOR REFUND 3. TAX AMNESTY 4. CONDONATION OF UNPAID TAX LIABILITIES NOTE: MUST BE STRICTLY CONSTRUED AGAINST THE TAXPAYER WHEN EXEMPTIONS ARE CONSTRUED LIBERALLY IN FAVOR OF GRANTEE 1. WHEN THE LAW SO PROVIDES FOR SUCH LIBERAL CONSTRUCTION. 2. EXEMPTIONS FROM CERTAIN TAXES, GRANTED UNDER SPECIAL CIRCUMSTANCES TO SPECIAL CLASSES OF PERSONS. 3. EXEMPTIONS IN FAVOR OF THE GOVERNMENT, ITS POLITICAL SUBDIVISIONS OR INSTRUMENTALITIES. 4. EXEMPTIONS TO TRADITIONAL EXEMPTEDS, SUCH AS THOSE IN FAVOR OF RELIGIOUS AND CHARITABLE INSTITUTIONS. 5. IF EXEMPTIONS REFER TO THE PUBLIC PROPERTY Q: MAY A TAX EXEMPTION BE REVOKED? A: YES. IT IS AN ACT OF LIBERALITY WHICH COULD BE TAKEN BACK BY THE GOVERNMENT UNLESS THERE ARE RESTRICTIONS. SINCE TAXATION IS THE RULE AND EXEMPTION THEREFROM IS THE EXCEPTION, THE EXEMPTION MAY BE WITHDRAWN BY THE TAXING AUTHORITY. (MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY VS. MARCOS, 261 SCRA 667) RESTRICTIONS ON REVOCATION OF TAX EXEMPTIONS a. NON IMPAIRMENT CLAUSE. WHERE THE

EXEMPTION WAS GRANTED TO PRIVATE PARTIES BASED ON MATERIAL CONSIDERATION OF A MUTUAL NATURE, WHICH THEN BECOMES CONTRACTUAL AND IS COVERED BY THE NON-IMPAIRMENT CLAUSE OF THE CONSTITUTION. b. ADHERENCE TO FORM- IF THE TAX EXEMPTION IS GRANTED BY THE CONSTITUTION, ITS REVOCATION MAY BE EFFECTED THROUGH CONSTITUTIONAL AMENDMENT ONLY c. WHERE THE TAX EXEMPTION GRANT IS IN THE FORM OF A SPECIAL LAW AND NOT BY A GENERAL LAW EVEN IF THE TERMS OF THE GENERAL ACT ARE BROAD ENOUGH TO INCLUDE THE CODES IN THE GENERAL LAW UNLESS THERE IS MANIFEST INTENT TO REPEAL OR ALTER THE SPECIAL LAW (PROVINCE OF MISAMIS ORIENTAL VS CAGAYAN ELECTRIC POWER AND LIGHT CO. INC) NATURE OF TAX AMNESTY 1. GENERAL OR INTENTIONAL OVERLOOKING BY THE STATE OF ITS AUTHORITY TO IMPOSE PENALTIES ON PERSONS OTHERWISE GUILTY OF EVASION OR VIOLATION OF A REVENUE OR TAX LAW. 2. Partakes of an absolute forgiveness or waiver of the government of its right to collect. 3. To give tax evaders, who wish to relent and are willing to reform a chance to do so. RULES ON TAX AMNESTY 1. Tax amnesty a) like tax exemption, it is never favored nor presumed b) construed strictly against the taxpayer (must show complete compliance with the law) 2. Government not estopped from questioning the tax liability even if amnesty tax payments were already received. Reason: Erroneous application and enforcement of the law by public officers do not block subsequent correct application of the statute. The government is never estopped by mistakes or errors of its agents. Basis: Lifeblood Theory 3. Defense of tax amnesty, like insanity, is a personal defense. Reason: Relates to the circumstances of a particular

accused and not the character of the acts charged in the information. | Tax amnesty | Tax exemption | | | | Immunity from all criminal, | Immunity from civil | | civil and administrative | liability only | | liabilities arising from | | | non payment of taxes | | | | | Applies only to past tax | Prospective application | | periods, hence retroactive | | | application | | Doctrine Of Imprescriptibility As a rule, taxes are imprescriptible as they are the lifeblood of the government. However, tax statutes may provide for statute of limitations. The rules that have been adopted are as follows: a. National Internal Revenue Code The statute of limitation for assessment of tax if a return is filed is within three (3) years from the last day prescribed by law for the filling of the return or if filed after the last day, within three years from date of actual filling. If no return is filed or the return filed is false or fraudulent, the period to assess is within ten years from discovery of the omission, fraud or falsity. The period to collect tax is within three years from date of assessment. In the case, however, of omission to file or if the return filed is false or fraudulent, the period to collect is within ten years from discovery without need of an assessment. b. Tariff and customs code It does not express any general statute of limitation; it provided, however, that " when articles have entered and passed free of duty or final adjustment of duties made, with subsequent delivery, such entry and passage free of duty or settlement of duties will, after the expiration of one (1) year, from the date of the final payment of duties, in the absence of fraud or protest, be final and conclusive upon all parties, unless the liquidation of import entry was merely tentative. " (Sec 1603, TCC) c.) Local Government Code Local Taxes, fees, or charges shall be assessed within five (5) years from the date they became due. In case of

fraud or intent to evade the payment of taxes, fees or charges the same may be assessed within ten (10) years from discovery of the fraud or intent to evade payment. They shall also be collected either by administrative or judicial action within five (5) years from date of assessment (Sec. 194. LGC)

Tax enforcement and Administration SOURCES OF TAX LAWS (KEY:

SPEC2TRA BLT) 1. STATUTES 2. PRESIDENTIAL DECREES 3. EXECUTIVE ORDERS 4. CONSTITUTION 5. COURT DECISIONS 6. TAX CODES 7. REVENUE REGULATIONS 8. ADMINISTRATIVE ISSUANCES 9. BIR RULINGS 10. LOCAL TAX ORDINANCE 11. TAX TREATIES AND CONVENTIONS REQUISITES OF TAX REGULATIONS 1. REASONABLE 2. WITHIN THE AUTHORITY CONFERRED 3.

NOT CONTRARY TO LAW 4. MUST BE PUBLISHED NOTE: ADMINISTRATIVE REGULATIONS MUST ALWAYS BE IN HARMONY WITH THE PROVISIONS OF THE LAW. IN CASE OF DISCREPANCY BETWEEN THE BASIC LAW AND THE IMPLEMENTING RULE OR REGULATION, THE FORMER PREVAILS. NON-

RETROACTIVITY OF BIR RULINGS GENERAL RULE: RULINGS ARE NOT RETROACTIVE IF THEY ARE PREJUDICIAL TO THE TAXPAYER. (SEC. 246, NIRC)

EXCEPTIONS: 1. WHERE THE TAXPAYER DELIBERATELY MISSTATES OR OMITTS MATERIAL FACTS FROM HIS RETURN OR ANY DOCUMENT REQUIRED OF HIM BY THE BIR. 2. WHERE THE FACTS SUBSEQUENTLY GATHERED BY THE BIR IS MATERIALLY DIFFERENT FROM THE FACTS ON WHICH THE RULING IS BASED. 3. WHERE THE TAXPAYER ACTED IN BAD FAITH. PRINCIPLE OF LEGISLATIVE APPROVAL OF AN ADMINISTRATIVE INTERPRETATION THROUGH REENACTMENT WHERE A STATUTE IS SUSCEPTIBLE OF THE MEANING PLACED UPON IT BY A RULING OF THE GOVERNMENT AGENCY CHARGED WITH ITS ENFORCEMENT AND THE LEGISLATURE THEREAFTER REENACTS

3. WHERE THE TAXPAYER ACTED IN BAD FAITH. PRINCIPLE OF LEGISLATIVE APPROVAL OF AN ADMINISTRATIVE INTERPRETATION THROUGH REENACTMENT WHERE A STATUTE IS SUSCEPTIBLE OF THE MEANING PLACED UPON IT BY A RULING OF THE GOVERNMENT AGENCY CHARGED WITH ITS ENFORCEMENT AND THE LEGISLATURE THEREAFTER REENACTS

3. WHERE THE TAXPAYER ACTED IN BAD FAITH. PRINCIPLE OF LEGISLATIVE APPROVAL OF AN ADMINISTRATIVE INTERPRETATION THROUGH REENACTMENT WHERE A STATUTE IS SUSCEPTIBLE OF THE MEANING PLACED UPON IT BY A RULING OF THE GOVERNMENT AGENCY CHARGED WITH ITS ENFORCEMENT AND THE LEGISLATURE THEREAFTER REENACTS

THE PROVISION WITHOUT SUBSTANTIAL CHANGE, SUCH ACTION IS TO SOME EXTENT CONFIRMATORY THAT THE RULING CARRIES OUT THE LEGISLATIVE PURPOSE. RULE OF NO ESTOPPEL AGAINST THE GOVERNMENT GENERAL RULE: THE GOVERNMENT IS NOT ESTOPPED BY THE MISTAKES OR ERRORS OF ITS AGENTS; ERRONEOUS APPLICATION AND ENFORCEMENT OF LAW BY PUBLIC OFFICERS DO NOT BAR THE SUBSEQUENT CORRECT APPLICATION OF STATUTES. (E. RODRIGUEZ, INC. VS. COLLECTOR, L-23041, JULY 31, 1969) EXCEPTION: IN THE INTEREST OF JUSTICE AND FAIR PLAY, AS WHERE INJUSTICE WILL RESULT TO THE TAXPAYER. (SEE CIR VS. CA, GR NO. 117982, FEB. 6, 1997; CIR VS. CA, GR NO. 107135, FEB. 3, 1999) AGENCIES INVOLVED IN TAX ADMINISTRATION 1. BUREAU OF INTERNAL REVENUE — INTERNAL REVENUE TAXES AGENTS OF THE CIR a. Commissioner of Customs with respect to taxes on imported goods B. HEAD OF THE APPROPRIATE GOVERNMENT OFFICE WITH RESPECT TO ENERGY TAX C. BANKS DULY ACCREDITED BY THE CIR (SEC. 12, 1997 NIRC) 2. BUREAU OF CUSTOMS — CUSTOMS LAW ENFORCEMENT 3. PROVINCIAL, CITY AND MUNICIPAL ASSESSORS AND TREASURERS — LOCAL AND REAL PROPERTY TAXES ORGANIZATION AND FUNCTION OF THE BUREAU OF INTERNAL REVENUE (BIR) BIR SHALL BE UNDER THE SUPERVISION AND CONTROL OF THE DEPT. OF FINANCE (SEC. 2, NIRC) POWERS AND DUTIES OF THE BIR Assessment and collection of all national internal revenue taxes, fees, and charges 1. Enforcement of all forfeitures, penalties, and fines connected therewith 2. Execution of judgments in all cases decided in its favor by the Court of Tax Appeals (CTA) and the ordinary courts 3. Give effect to and administer the supervisory and police powers conferred to it by the Code or other laws

Assessment — a finding by the taxing authority that the taxpayer has not paid the correct taxes. It is also a written notice to a taxpayer to the effect that the amount stated therein is due as a tax and containing a demand for the payment thereof. General rule: Taxes are self-assessing and thus, do not require the issuance of an assessment notice in order to establish the tax liability of a taxpayer. Exceptions: 1. Tax period of a taxpayer is terminated [Sec. 6(D), NIRC] 2. Deficiency tax liability arising from a tax audit conducted by the BIR [Sec. 56(B), NIRC] 3. Tax lien [Sec. 219, NIRC] 4. Dissolving corporation [Sec. 52(c), NIRC] Significance of Assessment a. In the proper pursuit of judicial and extrajudicial remedies to enforce taxpayer liabilities and certain matters that relate to it, such as the imposition of surcharges and interests, b. In the application of statute of limitations, c. In the establishment of tax liens, and d. In estimating the revenues that may be collected by government in the coming year. (Mamalateo, Victorino.

Reviewer on Taxation, 2004) Kinds 1. self- assessment- one in which the tax is assessed by the taxpayer himself 2. deficiency assessment- made by the tax assessor himself whereby the correct amount of the tax is determined after an examination or investigation is conducted. The liability is determined and assessed for the following reason: a. amount ascertained exceeds that which is shown as the tax by the taxpayer in his return b. no amount of tax is shown in the return c. taxpayer did not file any return at all 3. ILLEGAL AND VOID ASSESSMENT- assessment wherein tax assessor has no power to assess at all 4. ERRONEOUS ASSESSMENT- assessor has power to assess but errs in the exercise thereof Burden of Proof in Pre-assessment Proceedings There is a presumption of correctness and good faith on the part

of the CIR; thus, the burden lies on the taxpayer. Otherwise, the finding of the CIR will be conclusive and he will assess the taxpayer. The same is true even if the CIR is wrong, if the taxpayer does not controvert. (Cagayan Robina Sugar Milling Co. vs. Court of Appeals, GR. No. 122451, October 12, 2000) Reasons: a. lifeblood theory b. presumption of regularity in performance of public functions NOTE: Assessments by the BIR must have on its face the law and facts upon which the presumption is made. Principles Governing Tax Assessments 1. Assessments are prima facie presumed correct and made in good faith. 2. It should be based on actual facts. 3. It is discretionary on the part of the Commissioner. 4. The authority of the Commissioner to assess taxes may be delegated, except the power to make final assessments. 5. It must be directed to the right party. Authority of a Revenue Officer - pursuant to a Letter of Authority issued by the Regional Director a. To examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax; b. To recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director. General Rule: income tax returns are confidential. Exception: inquiry into income tax returns may be authorized- 1. inspection is authorized upon written order of the President of the Philippines; 2. inspection is authorized under Finance Regulations No. 33 of the Secretary of Finance; 3. production of the tax return is material evidence in a criminal case wherein the government is interested in the result; or 4. production or inspection thereof is authorized by the taxpayer himself. Networth Method- inventory method of income tax verification. - Applies the accounting principle: assets — liabilities = networth Condition for

its use: 1. taxpayer's books do not clearly reflect his income or the taxpayer has no books, or if he has books, he refuses to produce them; 2. there is evidence of possible source or sources of income to account for increases in networth; 3. there is a fixed starting point or opening networth; and 4. there must be proper adjustments to conform with the income tax laws. Powers and Duties of the Commissioner I. SECTION 4 (POWER TO INTERPRET TAX LAW AND DECIDE TAX CASES) 1. Interpret provisions of this Code and other tax laws subject to review of the Secretary of Finance (Quasi-legislative) 2. Decide: (Quasi-judicial) a) disputed assessment b) refunds of internal revenue taxes, fees and charges c) penalties imposed in relation thereto d) other matters arising from this Code or other laws or portions thereof administered by the BIR subject to the exclusive appellate jurisdiction of the CTA (Sec. 4) II. Section 5 (power to obtain information, summon, examine and take testimony of persons) 3. For the Commissioner to ascertain: (a) correctness of any return or in making a return where none has been made (b) liability of any person for any internal