"SECTION 2(C) OF REVENUE REGULATIONS NO. 7-81, A CASE OF ADMINISTRATIVE LEGISLATION?

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INTRODUCTION

"The legislative power shall be vested in a Batasang Pambansa. Section 1, Article VIII Constitution. With such grant, the Batasang Pambansa "is not permitted to abdicate or to transfer to others the essential legislative function with which it is thus vested.[1] (Schecter v. U.S., 295 U.S. 494, 529). As aptly formulated by local jurisprudence, "power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority." (*U.S. v. Barrias,* 11 Philippines, 327; citing Cooley's Constitutional Limitations, 6th ed. p. 137).

However, this rule on non-delegability of legislative power has been made to "adapt itself to the complexities of modern governments, giving rise to the adoption, within certain limits, of the principle of 'subordinate legislation." (*Justice Laurel, Calalang v. Williams,* 70 Phil. 729, 732). Thus, "with the growing complexity of modern life, the multiplication of the subject of governmental regulations, and the increased difficulty of administering the laws, the rigidity of the separation of governmental powers has, to a large extent, been relaxed by permitting the delegation of greater power by the legislature and vesting a large amount of dicretion in administrative and executive officials not only in the execution of the laws but also in the promulgation of certain rules and regulations calculated to promote public interest." [id.] But 'subordinate legislation' otherwise known as the rule-making power, being an exception to the principle of non-delegability of legislative power has to be exercised within certain defined limits. It does not confer upon the administrative agency a "roving commission" to interpret or implement the law. (Justice Cardozo, concurring, *Schecter v. U.S.,* supra, at p. 552). It cannot, therefore, extend, expand or amend the statute (*Tecson v. Member of the Board of Administrators,* 33 SCRA 585; *People v. Maceren* 79 SCRA 451) or supply a supoosed omission. (*Fresno Grape Products v.* U.S., 11 F. Supp. 55; *Smith v. Commissioner,* 332 F. 2d 671).

It is therefore within this legal context that the validity of Section 2(c) of Revenue Regulations No. 7-81 must be tested.

BACKGROUND

In substance, Section 2(c) of Revenue Regulations No. 7-81 (dated March 16, 1981) is an attribution rule in determining stockownership for purposes of imposing the corporate development tax on closely-held corporations. However, in order to test its validity, a brief look into the execution of the corporate development tax is necessary.

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Presidential Decree No. 1158-A (effective June 3, 1977) amended Sectio 24 of the National Internal Revenue Code (hereinafter referred to as the Ta Code) by imposing, in addition to the regular corporate income tax, a corporat development tax of 5 percent computed on net income for the taxable year. Th amendment which was added as paragraph (e) to Section 24 of the Tax Cod reads:

> "(e) Corporate development tax. – In addition to the tax imposed in subsection (a) of this section, as additional tax in an amount equivalent to 5 percent of the same taxable net income shall be paid by a domestic or a resident foreign corporation; Provided, That this additional tax shall be imposed only if the net income exceeds 10 percent of the net worth, in case of a domestic corporation, or net assets in the Philippines in case of a resident foreign corporation: Provided, however, That a closely held corporation as defined hereinbelow shall be subject to the said additional income tax regardless of the rate of return or its net worth. The term "closely-held corporation" means any corporation (a) at least 50 percent in value of the outstanding stock or (b) at least 50 percent of the total combined voting power of all classes of stock entitled to vote, at any time during the taxable year in owned directly or indirectly by or for not more than five persons, natural or juridical. For the purpose of determining whether an individual indirectly owns shares of stock in a corporation, the attribution rules prescribed by Section 66 of this Code shall be applied.
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> The additional corporate income tax imposed in this subsection shall be collected and paid at the same time and in the same manner as the tax imposed in subsection (a) of this section."

Under the above provisions, the corporate development tax is imposed und any of the following conditions:

1. the net income exceeds 10% of net worth in case of a domestic corpor tion or 10% of net assets in the Philippines in case of a resident forei corporation, or
2. the corporation is a "closely-held corporation" regardless of the rate return on its net worth.

The application of the corporate development tax under the first situatio was clear enough. The second situation, however, did pose an incipient proble of interpretation as to what is a "closely-held corporation."

In determining whether a corporation is a closely-held corporation, th following rules are to be applied:

1. The corporation must satisfy the stockownership requirement, that is, a least 50 percent in value of its outstanding stock or 50 percent of it outstanding voting stock must be owned by not more than five (5

persons.

2. Juridical persons such as corporations are considered as persons in determining stockownership. Thus, a corporation (corporate stockholder) which owns stock of another corporation is considered a *person* for purposes of determining stock ownership in such corporation.
3. In determining stockownership by *individuals,* the attribution rules of Section 66 of the Tax Code are to be applied.

In applying the attribution rules, Section 66 of the Tax Code reads:

> "Sec. 66. Stock ownership. – For the purpose of determining whether a corporation is a personal holding company, insofar as such determination is based on stock ownership, the following rules shall be observed:
>
> (a) Stock not owned by individual – Stock owned, directly or indirectly, by or for a corporation, estate, or trust shall be considered as being owned proportionately by its shareholders, partners or beneficiaries.
>
> (b) Family and partnership ownership – An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For the purposes of this subsection, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouses, ancestors, and lineal descendants.
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> (c) Options – If any person has an option to acquire stock, such stock shall be considered as owned by such person. For the purposes of this subsection, an option to acquire such an option, and each of a series of such options ahll be considered as an option to acquire stock."

The above provisions prescribe three attribution rules. The first, found in paragraph (a), provides for the attribution of stockownership by a corporation to its individual stockholders. The second, prescribed in paragraph (b), attributes stockownership by his family or partner to the individual. The third, embodied in paragraph (c), considers ownership of an option as equivalent to ownership of a share of stock.

A closer analysis of the above rules will reveal that in determining stockownership by an individual, for purposes of qualifying a corporation as a closely-held corporation, not all of the attribution rules prescribed in Section 66 are applicable, despite the language of Section 24(e) that the "attribution rules of Section 66 x x x shall be applied.

The attribution rule prescribed in paragraph (a), however, is clearly not applicable. It provides for the attribution of stockownership by a corporation to its individual stockholders. Otherwise stated, under paragraph (a), a stock owned by a corporation is deemed constructively owned by its individual stockholders. Corporations, therefore, are not considered *persons* for purposes of determining stockownership, under paragraph (a). This is consistent with the language of Section 64 of the Tax Code which speaks of stockownership by not more than five (5) *individuals* for purposes of determining whether a corporation qualifies as a personal holding company.

For purposes, however, of determining stockownership to qualify a corporation as a closely-held corporation, Section 24(e) of the Tax Code, speaks of not more than five (5) *persons* which includes juridical persons such as corporations. Hence, if corporations are considered as persons under Section 24(e) of the Tax Code, there was no need to apply the attribution rule prescribed in paragraph (a) of Section 66 and attribute stockownership by a corporation to its individual stockholders.

The applicable attribution rules in determining stockownership for the purpose of a corporation as a "closely-held corporation" can, therefore, refer only to those found in paragraphs (b) and (c) of Section 66. These paragraphs, as pointed out earlier, provide for the attribution of stockownership by a family or partner or ownership of stock option, to the individual stockholder. That these are the applicable attribution rules contemplated in Section 24(e) of the Tax Code is clear from Revenue Regulations No. 11-77 which reads:

> "Section 1. The corporate development tax.
>
> x x x
>
> (a) x x x
>
> (b) x x x For the purpose of determining whether an individual indirectly owns a share of stock in a corporation, the attribution rules prescribed in *paragraphs (b) and (c) of Section 66 of the Tax Code shall be applied."*

Thus, it is clear from the language of Section 24(e) of the Tax Code and the regulations hereunder that in determining stockownership for purposes of defining a "closely-held corporation", corporations are considered as *persons.* Hence, stock owned by a corporation may *not* be attributed to its individual stockholder for purposes of determining stockownership in a closely-held corporation.

For a time, no question was raised as to the interpretation of what was closely-held corporation for purposes of imposing the corporate development tax. Local subsidiaries of multinational corporations simply acquiesced and without reluctance paid the 5% corporate development tax. The silence of these local subsidiaries may probably be attributed to two factors, namely:

1. The additonal imposition of the 5% corporate development tax merely increased the effective tax on their net profits from 35 percent to 39 percent which was still considered within the range of tolerable cost of doing business in the Philippines.

2. Most local subsidiaries probably had a rate of return of more than 10% of their net worth or net assets, thus falling under the first condition.

However, with the enactment of Presidential Decree No. 1772 (effective January 2, 1981), local subsidiaries of multinational corporations were prompted to re-examine the imposition of the corporate development tax.

Section 6 of Presidential Decree No. 1773 which amended Section 24(e) of the Tax Code reads in part:

> "(e) Corporate Development Tax. – In addition to the tax imposed in subsection (a) of this section, an additional tax in an amount equivalent to 10% of the same taxable net income shall be paid by a domestic or a resident foreign corporation as defined herein. The term "closely-held corporation" means any corporation, (a) at least 50% in value of the outstanding stock or (b) at least 50% of the total combined voting power of all classes of stock entitled to vote, at any time during the taxable year, is owned directly or indirectly by or for not more than five persons, natural or juridical."

The above section introduced the following amendments:

1. The rate of return test (if net income exceeds 10% of net worth or net assets) was eliminated. Thus, the corporate development tax is imposed only on closely-held corporations.

2. The rate was increased from 5% to 10%, thus increasing the effective corporate tax on net profits of closely-held corporate tax on net profits of closely-held corporations from 39 percent to 44 percent.

3. The application of the attribution rules prescribed of Section 66 of the Tax Code was limited to *paragraphs (b) and (c) thereof,* thus, eliminating paragraph (a) as an attribution rule for purposes of determining stockownership in a closely-held corporation.

Thus, with the elimination of paragraph (a) of Section 66 as an applicable attribution rule, it has become clear that the attribution of stockownership by a corporation to its individual stockholders is not allowed. Corporations therefore,

should be considered as *persons* in determining stockownership for purposes of defining a closely-held corporation.

It is against this legal background that the validity of Section 2(c) of Revenue Regulations No. 7-81 must be measured.

SECTION 2(c) OF REVENUE REGULATIONS NO. 7-81 LACKS STATUTORY BASIS?

The impact of Section 6 of Presidential Decree No. 66 amending Section 24(e) of the Tax Code immediately drew a sharp reaction from the local subsidiaries of multi-national corporations. It was emotionally argued that with the definition of a closely-held corporation, most local subsidiaries (whose shares of stocks are usually owned more than 50 percent by their parent corporations) clearly fall under the definition, thus, increasing their cost of doing business in the Philippines from an effective corporate tax rate of 39 percent to 44 percent. As usual, the unexpected reaction forced the government to re-examine its position. In line with the government policy of attracting foreign equity investments (see (BIR Ruling No. 55-81, March 23, 1981), the Commissioner of Internal Revenue issued Revenue Regulations No. 7-81. Section 2(c) thereof reads in part:

> "Section 2. The corporate development tax. –
>
> x x x
>
> (c) Stock ownership by a person, other than an individual. – In determining whether a person other than an individual, such as a juridical person, owns a share of stock in a corporation, directly or indirectly, the rule of attribution of stock ownership prescribed by paragraph (a) of Section 66 shall be applied. Thus, in cases of stock not owned by individuals, stock owned directly or indirectly by by or for a corporation, estate or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. Under this rule, a subsidiary of a local and foreign corporation shall not be considered as owned by a parent corporation but by the shareholders of the said parent corporation."

From the above provisions, it may be clearly seen that Section 2(c) has adopted the attribution rule prescribed in paragraph (a) of Section 66 of the Tax Code. Thus, for purposes of determining stockownership in a closely-held corporation, stockownership by a corporation should therefore be attributed to its stockholders. In effect, a corporation owning stock in another corporation is not considered as a *person* for purposes of defining a closely-held corporation. That this is the import of the adotion of the attribution rule prescribed in paragraph (a) of Section 66 of the Tax Code is clear from BIR Rulings No. 55-81. The facts setforth in the ruling are as follows:

Coca-Cola Export Corporation is a resident foreign corporation doing business in the Philippines, 100 percent of the issued capital stock of which is owned by Coca-Cola Company, a non-resident foreign corporation. The issued capital stock of Coca-Cola Company is in turn owned by more than twenty (20) stockholders.

The issue posed was whether or not Coca-Cola Export Corporation was a closely-held corporation.

In finding that Coca-Cola Export Corporation was not a closely-held corporation, hence, not subject to the corporate development tax, the ruling held:

> "Although at first glance your client (Coca-Cola Export Corporation) may seem to be a closely-held corporation, being wholly owned by a single mother corporation (Coca-Cola Company), we find that your client is not a closely-held corporation insofar as the 10% corporate development tax is concerned. This is so because the shares of stock of your client, though owned as per its incorporation papers by one corporation, are deemed to be owned indirectly by the shareholders of the mother company. The owners of the shares of the mother company which number to more than twenty (20) persons, being the owners of its shares of stock your client therefore is not a closely-held corporation. This is in consonance with the "grandfather rule" adopted in the Philippines as evident in Section 96 of the Corporation Code (Batas Pambansa Blg. 68) which provides that notwithstanding the fact that all the owned stock of a corporation are held by not more than twenty persons, among others, a corporation is nonetheless not to be deemed a close corporation when at least two-thirds of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation.
>
> The conclusion that your client is not a closely-held corporation finds further support in the provision of Section 66(a) of the Tax Code which although to be employed for purposes of ascertaining whether a corporation is a personal holding company but which could similarly be applied in attributing stockownership, stock owned directly or indirectly by a corporation shall be considered as being owned proportionately by its shareholders. Thus, the stock holdings of Coca Cola Company in your client are deemed to be the stock holdings of the shareholders of the said Coca-Cola Company. (Sec. 2(c), Rev. Reg. No. 7-81, March 16, 1981.)"

The ruling, in applying Section 2(c) has attributed the stockownership of Coca-Cola Company in Coca-Cola Export Corporation to the former's stockholders in determining whether Coca-Cola Export Corporation is a closely-held corporation. It is thus clear that by subsequent interpretation of the tax authorities, Section 2(c) by reason of the adoption of paragraph (a) of Section 66 as an attribution rule disregards a corporate stockholder in defining a close-held corporation. Measured against Section 6 of Presidential Decree No. 1773, Section 2(c) may be assailed as a case of administrative legislation.

As earlier pointed out, Section 6 of Presidential Decree No. 1773 in amending Section 24(e) of the Tax Code clarified what otherwise could have been an ambiguous definition of closely-held corporation. Thus, the amendment had to eliminate paragraph (a) of Section 66 as an attribution rule to be consistent with the definition of a closely-held corporation. In determining stock ownership in a closely-held corporation, corporations are considered as persons unlike paragraph (a) of Section 66 which disregards corporations and attributes stockownership to the individual stockholders. Hence, the amendment to be consistent with the definition of a closely-held corporation had to limit the applicable attribution rules to paragraphs (b) and (c) of Section 66.

The application of Section 2(c) despite its possible lack of statutory basis was reiterated with a modification in BIR Ruling No. 109-81, July 20, 1981. The facts presented for a ruling may be summarized as follows: Pilipinas Shell Petroleum Corporation is a local subsidiary more than 50 percent of the outstanding capital stock of which is owned by Shell Petroleum Co., Ltd. a foreign corporation. The outstanding stock of the latter company is in turn owned 40 percent by Royal Dutch Petroleum Co. a foreign corporation, and 60 percent by Shell Transport Trading Co. likewise a foreign corporation. The shares of stock of both Royal Dutch Petroelum Co. and Shell Transport Trading Co. are traded in New York and London stock exchanges.

In finding that Pilipinas Shell Petroleum Corporation is not a closely-held corporation, the ruling held:

> "In the present case, Shell Petroleum, the foreign parent company of Filipinas Shell and Shell Distribution, is owned by corporate stockholders, Royal Dutch and Shell Transport. Accordingly, the owners of the stocks of Royal Dutch and Shell Transport which stocks are both listed in foreign stock exchanges are considered the owners of the stocks not only of Shell Petroleum, but also of your clients, Filipinas Shell and Shell Distribution. Such being the case, your clients are not closely-held corporations, hence, they are not subject to the 10% corporate development tax."

Thus, under the above ruling, the stockownership in Pilipinas Shell Petroleum Corporation is traced to the stockholders of Royal Dutch Petroleum Co. and Shell Transport and Trading Co. for purposes of determining whether or not Pilipinas Shell Petroleum Corporation is a closely-held corporation. In effect, the ruling disregards for purposes of determining stockownership in Pilipinas Shell Petroleum Co., the intervening corporate stockholders — Shell Petroleum Co., Inc. and its corporate stockholders, Royal Dutch Petroleum Co. and Shell Transport and Trading Co.

This is clearly beyond what is allowed under Section 2(c). It should be noted that Section 2(c), in applying paragraph (a) of Section 66 merely disregards the *immediate* corporate stockholder (parent company) in determining whether the subsidiary is a closely-held corporation. Instead, it is the stockholders (whether corporate or individual) of the parent corporation which are considered. This is clear from the last sentence of Section 2(c) which reads:

> "Under this rule, a subsidiary of a local and foreign corporation shall not be considered as owned by a parent corporation but by the shareholders of the said parent corporation."

This was likewise the approach adopted in the *Coca-Cola Export Corporation* ruling. In that ruling, the stockownership in Coca-Cola Export Corporation was traced to the stockholders of Coca-Cola Company, the parent company of Coca-Cola Export Corporation. The *Pilipinas Shell Petroleum Corporation* ruling recognized this impasse posed by the Section 2(c). Thus, the ruling said:

> "Under the above-quoted underlined portion of the regulations (referring to the last sentence of Section 2(c)), it would seem that for purposes of the 10% corporate development tax, *it is not warranted to go beyond the shareholders of the parent corporation in a case where the said shareholder is, likewise a corporation.*" (Underscoring ours)

The ruling, however, found a way out of the impasse.

> "However, we find that under the attribution rule prescribed in Section 66(a) of the Tax Code, which has been applied in the regulations implementing the 10% corporate development tax, it is legally possible to go beyond the said shareholders of the parent corporation."

As a justification for going beyond the stockholders of the parent company in determining stockownership is a closely-held corporation, the ruling cited in Section 224 of Revenue Regulation No. 2 (otherwise known as the Income Tax Regulations) implementing paragraph (a) of Section 66. Section 224 reads:

> "Section 224. **Stock not owned by individual.** – Determining the ownership of stock for any of the purposes set forth in the preceding section, stock owned directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. *For example, if A and B, two individuals, are the exclusive and equal beneficiaries of a trust or estate, owns the entire capital stock of the M Corporation, and if the M Corporation in turn owns the entire capital stock of the N Corporation, then the stock of both the M Corporation and the N Corporation shall be considered as being owned equally by A and B as the individuals owning the beneficial interest therein.*" (Underscoring ours)

In applying the above section, the ruling held:

> "From the foregoing example, it is clear that although the stockholder of the parent corporation is a trust or estate, the individuals owning the trust or estate are considered the owners of the stock of both the parent (M) and the subsidiary (N). In the same vein, it can be safely said that if the stockholder of the parent corporation is also a corporation, the individuals owning the stocks in said corporation are considered the owners of the stock of both the parent corporation and the subsidiary."

With the above tuling, it has, thus, become clear that stockownership in a corporation for purposes of qualifying it as a closely-held corporation, should ultimately be attributed to the *individual* stockholders. The stockownership by the intervening corporate stockholders are to be disregarded. This is a logical result of the adoption of paragraph (a) of Section 66 as an attribution rule by Section 2(c).

As discussed earlier, the adoption of paragraph (a) of Section 66 lacks statutory basis. Section 6 of Presidential Decree No. 1773 purposely eliminated paragraph (a) of Section 66 as an attribution rule, thus, being paragraphs (b) and (c) as the only applicable attribution rules. What the decree, therefore, eliminated, Section 2(c) has adopted. Measured, therefore, against the rules on subordinate legislation, Section 2(c) has in effect amended the decree which cannot be done (*Schecter v. U.S.* supra) or supplied a supposed omission which is beyond the scope of rule making power. (*Fresno Grape Products*, supra; *Smith v. Comm'r.*, supra).

The only possible basis for the adoption by Section 2(c) of paragraph (a) of Section 66 as an attribution rule lies in the legislative intent for imposing the corporate development tax. The tax was designed to diffuse stockownership in family-owned corporations and force them to open their equity to the public. As stated by the Commissioner of Internal Revenue:

> "On the other hand, the Tax Code of 1977 imposes the 5% development tax on closely-held corporations regardless of rate of return on investment. This is in lieu with the desire of the government to encourage family corporations to open up to the public, a policy which will promote a more equitable distribution of wealth."
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> [Commissioner Efren I. Plana,
> Comments on New Tax Decrees,
> *Bulletin Today*, July 5, 1977]

Thus, if the legislative intent of the corporate development tax is to force these family-owned corporations to go public, it is only logical that paragraph (a) of Section 66 should be applied as an attribution rule to trace stockownership in a corporation to the ultimate *individual* stockholders no matter how they are removed from the corporation which is sought to be qualified as closely-held.

Hence, if the stock of a corporation sought to be qualified as closely-held, albeit owned through a pyramid of intervening corporations, is in the last analysis widely-held by *individual* shareholders, the basis for the imposition of the corporate development tax for the purpose of defining stockownership disappears.

The legislative intent, however, is not supported by the language of Section 24(e), as amended by Section 6 of Presidential Decree No. 1773. Hence, it may not be used as a possible argument for the adoption of paragraph (a) of Section 66 by Section 2(c).

For Section 2(c) to have a statutory basis and to serve the legislative purpose of imposing additional tax on family-owned corporations, Section 24(e) should be amended by changing the concept of a closely-held corporation. The amendment may be achieved by deleting the phrase "persons, natural or juridical", and substituting the word "individuals." The amendment should likewise restore paragraph (a) of Section 66 as an attribution rule. With these amendments, possible constitutional objections to Section 2(c) would have been rendered moot and academic for the taxable year 1981.

EFFECT OF RELIANCE
IN AN ERRONEOUS REGULATIONS

An erroneous administrative interpretation of a statue is void. (*Schafer v. Helvering,* 83 F. 2d 317; *Boykin v. Comm'r.,* 260 F-2d 247; *Werner v. U.S.* 264 F. 2d 489). Accordingly, reliance upon such erroneous interpretation does not give rise to a vested right which may be invoked as a defense by the taxpayer. (*Hilado v. Court of Tax Appeals,* 100 Phil. 288). The case in point is *ABS-CBN Broadcasting Corporation v. Comm'r.,* CTA Case No. 2809, November 19, 1979). The facts of the case may be condensed as follows: On April 12, 1961, the Commissioner of Internal Revenue issued General Circular No. V-334, which requires local distributors of foreign films to withhold a tax equivalent to 30 percent of one-half of the film rentals paid to non-resident foreign film owners or lessors. The taxpayer, engaged in the business of exhibiting foreign as well as local films, paid the tax on film rentals remitted for the years 1965- to 1968. On February 8, 1971, Revneue Circular No. 4-71 was issued revoking General Circular No. V-334 prescribing that the 30 percent tax should be based on gross film rentals remitted to foreign film owners or lessors without any deduction. On April 6, 1971, the Commissioner issued an assessment against the taxpayer for deficiency tax for the years 1965 to 1968. The taxpayer in a petition for review filed with the Court of Tax Appeals invoked the defense that for the years it was being assessed it relied on General Circular No. V-334.

The Court of Tax Appeals, in brushing aside the taxpayer's argument held:

"It seems too clear for serious argument that an administrative officer can not change a law enacted by Congress. A regulation or circular that is merely an interpretation of the statute when once determined to have been erroneous becomes nullity. An erroneous construction of the law by the Commissioner of Internal Revenue does not, therefore, preclude or estop the Government for collecting a tax which is legally due. (Hilado vs. Collector of Internal Revenue, 100 Phil. 288, citing Ben Stocker, et al., 12 B.T.A. 1351.) No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others. (Article 2254, New Civil Code.) It follows that the Commissioner of Internal Revenue is vested with authority to revoke, repeal or abrogate the acts or previous rulings of his predecessor in office because the construction of a statute by those administering it is not binding on their successors if thereafter the latter become satisfied that a different construction should be given. (See Hilado v. Collector of Internal Revenue, supra, citing Association of Clerical Employees vs. Brotherhood of Railway & Stemaship Clerks, 85 F. 2d 152, 109 A.L.R. 345.)"

To the taxpayer's argument that a revocation of General Circular No. 4-71 should only have a prospective operations effective February 9, 1971, the Court ruled:

"Nonetheless, petitioner would attempt to draw support from Section 338-A (now Section 327) of the National Internal Revenue Code, *supra,* by contending that any revocation of circulars promulgated by the Commissioner of Internal Revenue should not be given retroactive application if it would be prejudicial to taxpayers. Since the law during all the taxable years involved in the instant case from 1965 thru 1968 was General Circular No. V-334, petitioner argues that the same was correctly applied by it in withholding 30 percent of one-half of the film rentals remitted to its foreign film distributors. (p. 5, Memorandum for Petitioner, pp. 44-51, CTA records).

Petitioner misses the point. General Circular No. V-334 was not the law that governed its withholding income tax liabilities during the taxable years covered by this case, but as its designation implies, a circular issued by the Commissioner of Internal Revenue for the guidance of internal revenue officers in the enforcement of law. However, since General Circular No. V-334 is in conflict with the law it was supposed to implement, as already discussed above, it was null and void. As such it had no effect whatsoever; absolutely and entirely null; of no legal force and for that reason cannot be enforced. (Go Chioco vs. Martinez, 45 Phil. 285.) General Circular No. V-334 could not therefore give rise to a vested or acquired right that could be invoked by petitioner for it is against the law. (Article 2254, New Civil Code.) It is thus clear beyond doubt that legally there was no circular to revoke which revocation should be prospective in operation under the Section 338-A of the National Internal Revenue Code.

The same principles enunciated in the ABS–CBN case may be invoked against reliance on Section 2(c). If a future Commissioner of Internal Revenue

revokes Section 2(c) for lack of statutory basis, what defense would local subsidiaries of multinational corporations interpose when they receive notices of assessments for the years they relied on Section 2(c)? The possible impact of the revocation of Section 2(c) on such local subsidiaries could hardly be imagined. At present most of these subsidiaries are paying an effective corporate tax of 34 percent because of Section 2(c) and the interpretative rulings thereunder. The revocation of Section 2(c) however, would expose these subsidiaries to an effective corporate tax of 44 percent for the years they relied on Section 2(c) which may prove to be a prohibitive tax cost of doing business in the Philippines. What would happen to the underlying purpose of Section 2(c) – that of attracting foreign equity investments? This is a crucial problem which must be resolved by the tax authorities before the 1981 taxable year ends.

Notes on P.D. 824
THE METROPOLITAN MANILA COMMISSION IN THE LIGHT OF THE INTEGRATED REORGANIZATION PLAN

By ALAN F. PAGUIA,*

OVERVIEW

For purposes of government, the Philippine is geographically divided into 13 administrative regions.[1] Of these, Metropolitan Manila stands as the National Capital Region (NCR).[2] While the rest of the other regions are officially designated as Region I, Region II, up to Region XII, Metropolitan Manila or the NCR is unnumbered.[3]

Metropolitan Manila is a public corporation;[4] and, as distinguished from the Metropolitan Manila Commission (MMC) itself, it is administered by the latter. While the NCR consists of four (4) cities[6] and 13 municipalities[7] – and therefore, of as

*Case and Comments Editor, Ateneo Law Journal.

[1]Presidential Decree No. 1 (1972), as amended by P.D. Nos. 742 (July, 1975), 824 (November, 1975), 1274 (December, 1977), and 1396 (June, 1978).

[2]Pres. Decree No. 1396 (1978): "CREATING THE DEPARTMENT OF HUMAN SETTLEMENTS AND THE HUMAN SETTLEMENTS DEVELOPMENT CORPORATION, APPROPRIATING FUNDS THEREFOR, AND ACCORDINGLY AMENDING CERTAIN PRESIDENTIAL DECREES." It provides:

> "Sec. 3. Establishment of the National Capital Region. – In view of the critical importance of the Metropolitan Manila Region in human settlements development, it is hereby declared and established as the National Capital Region of the Republic of the Philippines, and its administration as such is hereby vested in the Secretary of Human Settlements. The pertinent provisions of Presidential Decree No. 824, creating the Metropolitan Manila Commission, are hereby accordingly amended."

[3]Marcos, A Humanist Reaffirmation, in THE PRESIDENT'S BUDGET MESSAGE FOR 1981. Ilocos Region (Region I), Cagayan Valley (Region II), Central Luzon (Region III), Southern Tagalog (Region IV), Bicol Region (Region V), Western Visayas (Region VI), Central Visayas (Region VII), Eastern Visayas (Region VIII), Western Mindanao (Region IX), Northern Mindanao (Region X), Southern Mindanao (Region XI), and Central Mindanao (Region XII).

[4]Pres. Decree No. 824, Sec. 1 (1975).

[5]*Ibid.*

[6]Manila, Quezon, Pasay, and Caloocan.

[7]Las Piñas, Makati, Mandaluyong, Malabon, Marikina, Muntinlupa, Navotas, Parañaque, Pasig, Pateros, San Juan, Tagig, and Valenzuela.