

**TAX INQUIRIES, SURVEILLANCE,
WARRANTLESS SEARCHES AND SEIZURES:
Their Constitutional Limitations.**

CESAR L. VILLANUEVA, L.I.B. '81

The power of taxation is the means by which a government raises the revenues it needs for carrying out its functions¹; it is the lifeblood without which a government would die.² It is a power emanating from necessity; the necessity of government for an organized society; the necessity that government must have means to support it, otherwise, both it and organized society would collapse.³ Therefore, the power of taxation is inherent in every sovereignty; it exists by the very existence of government, even in the absence of a constitutional provision for its existence.⁴

Since the power of taxation revolves around considerations of policy, necessity and public welfare, it is essentially a legislative function. It is the strongest of all powers of government.⁵ While the taxing power had previously been interpreted to carry with it the power to destroy,⁶ yet it has been held that it should be exercised with caution to minimize the injury to the proprietary and civil rights of the taxpayer; it must be exercised fairly, equally and uniformly, lest the tax collector kills the "hen that lays the golden egg."⁷

Although it is well-settled that the power to impose taxes is one so unlimited in force and reaching in extent, that courts scarcely venture to declare that it is subject to any restrictions whatever,⁸ nevertheless, it is subject to constitutional limitations. It is a truism that although the Constitution does not grant the power of taxation, it serves, however, to impose limits to the extent by which the government may exercise it. One such limitation is the constitutional guarantee against

¹Raphael, D.D. Taxation and Social Justice; Churchill & Tait v. Rafferty, 32 Phil. 580; Phil. Guaranty Co. v. Commissioner of Internal Revenue, 13 SCRA 775; Collector of Internal Revenue v. Yuseco, 3 SCRA 313.

²Commissioner of Internal Revenue v. Pineda, 21 SCRA 105.

³51 Am. Jur. 42-43; Phil. Guaranty Co. v. Commissioner of Internal Revenue, 13 SCRA 775.

⁴51 Am. Jur. 69; Phil. Guaranty Co. v. Commissioner of Internal Revenue, *ibid.*

⁵Hongkong and Shanghai Bank v. Rafferty, 39 Phil. 145; Sarasola v. Trinidad, 40 Phil. 253; De Villata v. Stanley, 32 Phil. 543.

⁶Chief Justice Marshall, in McCulloch v. Maryland, 1 L. ed. 579.

⁷Roxas v. C.T.A., 23 SCRA 276.

⁸De Villata v. Stanley, 32 Phil. 543.

unreasonable searches and seizures.⁹ Another fundamental guarantee is the privacy and inviolability of communication and correspondence.¹⁰

The constitutional prohibition against unreasonable searches and seizure is not just a circumscription of the power of the State over a person's home and possessions. More important, it protects the privacy and sanctity of the person himself.¹¹ It "protects people, not places."¹²

The guarantee of the Constitution against unreasonable searches and seizures applies to searches and seizures under, or in connection with internal revenue laws,¹³ and controls the construction and operation of statutes regulating searches and seizures in connection with alleged violations of such laws.¹⁴

The theme of this paper is to inquire, though admittedly cursory, as to how the several administrative provisions of the National Internal Revenue Code (NIRC) and the Tariff and Customs Code, granting revenue officers power to conduct inquiry, surveillance and warrantless search and seizure, stand against the constitutional guarantees against unreasonable searches and seizures, and the inviolability and privacy of communication and correspondence.

THE NATIONAL INTERNAL REVENUE CODE

SEC. 7. Power of the Commissioner of Internal Revenue to Obtain Information, Examine, Summon and Take Testimony. —

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(b) From other persons. — For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or collecting any such liability, the commissioner or his authorized representative is empowered:

⁹Sec. 3, Art. IV: The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the examination under oath or affirmation of the witnesses he may produce, and particularly describing the place to be searched, and the person or things to be seized.

¹⁰Sec. 4, Art IV: (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when public safety and order require otherwise.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

¹¹Bernas, Constitutional Rights and Duties, A Commentary on the 1973 Philippine Constitution, p. 85 (1974 Ed.).

¹²Katz v. United States, 389 U.S. 347, 351-353 (1967).

¹³47 C.J.S. 932, citing Amos v. U.S., S.C. 41 S. Ct. 266, 255 U.S. 313, 65 L. ed. 654.

¹⁴47 C.J.S. 932, citing Wagner v. U.S., D.C. Mo.: 8 F 2d 581; U.S. v. One Kemper Radio, D.C. Cal., 8 F. Supp. 304.

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon any person having possession, custody, or care of books of accounts containing entries, or of any information relating to the tax liability of any person to appear before the Commissioner or his authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give to such testimony; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

Any person who neglects or refuses to obey such summons, or to produce books, papers, records or other data, or to give testimony, as required shall be liable to the penalties prescribed by Section 337 hereof.

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The power or authority granted by paragraph (b) (1) to revenue officers to examine relevant books, papers, records and other relevant data is reasonable and in consonance with the inherent power of supervision which the Bureau of Internal Revenue has over taxable enterprises. But this is only true to books, records and documents which the Code requires of business to maintain or keep; as to such data, a taxpayer cannot claim privacy because they are required by law.

The nature of the "summons" authorized under paragraph (b)(2) is actually that of a *subpoena duces tecum* which should be governed by the requirements of Rule 27 of the Rules of Court. Is this covered by the search and seizure clause?

The leading case we have on the matter is *Material Distributors (Phi.) Inc. v. Judge Natividad*,¹⁵ which was decided under the 1935 Constitution. In that case, the Supreme Court held that a *subpoena duces tecum* "pertain to a civil procedure that cannot be identified or confused with unreasonable searches prohibited by the Constitution." Such was a perplexing conclusion on the part of the Court to make, as though the search and seizure clause applied only to criminal cases. Thus, in *Camara v. Municipal Court*,¹⁶ which involved administrative routine inspection of buildings, it was said: "It is surely anomalous to say that the individual and his private property are fully protected by the [search and seizure clause] only when the individual is suspected of criminal behavior."

Article IV, Section 3 of the 1973 Constitution, unlike its counterpart in the 1935 Constitution, has introduced the clause made applicable to searches and seizures "of whatever nature and for any purpose." The explicit extension of the clause to search and seizure "of whatever nature and for any purpose" extends the constitutional protection to constructive searches like a *subpoena duces tecum* or an order for the production of books and papers under Rule 27 of the Rules of Court.¹⁷ Thus, the ruling in *Material Distributors (Phil.) Inc., v. Judge Natividad*,

¹⁵84 U.S. 523 (1967)

¹⁷Bernas, The 1973 Philippine Constitution, Notes and Cases, p. 197 (1974 Ed.).

which was made under the 1935 Constitution certainly requires a re-examination under the 1973 Constitution.¹⁸

It should be noted that the last paragraph under (b) of Section 7 subjects any person who neglects or refuses to comply with the summons to penalty under Section 337. What was stated in *Boyd v. United States*¹⁹ becomes relevant: "[A] compulsory production of a man's private papers to establish a criminal charge against him or to forfeit his property is within the scope of the [search and seizure clause]."

It should be noted that today under the Revenue Code, the Bureau of Internal Revenue can effect the collection of taxes not only through distraint and levy and civil action, but likewise by bringing a criminal action.²⁰ In this regard, a summons to produce books of accounts and appear before an officer to testify is not a criminal proceeding but one that is civil, and does not violate the right against self-incrimination.²¹ But such matters cannot and should not be used in a criminal action brought by the government to collect taxes if the taxpayer had objected or preserved his right against self-incrimination.

SEC. 16. Power of the Commissioner of Internal Revenue to Make Assessments.—

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(b) Authority to Conduct Surveillance.— The Commissioner of Internal Revenue may place the business operations of any person, natural or juridical, under observation or surveillance for a period of two months if there are reasons to believe that such person is not declaring his correct income and receipts for internal revenue tax purposes. The findings for this period may be used as a basis for assessing the taxes for the other months or quarters of the same or different taxable years and such assessment shall be deemed *prima facie* correct. (Added by P.D. No. 1356, later amended by P.D. Nos. 1705 and 1773, successively).

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Explaining the features of P.D. No. 1356, amending the above Section 16, Memo Circular No. 41-78, signed by then Commissioner Efren I. Plana, states:

A tax surveillance conducted by the Bureau in certain business enterprise indicated that there are taxpayers who deliberately failed to report their taxable transactions and under-declare their taxable gross receipts. While such findings can be used for tax purposes for the period covered by the surveillance, their finds cannot be utilized for the purpose of assessing the taxpayer's liabilities for other months or periods during which no surveillance was conducted in the absence of any legal basis.

¹⁸ Bernas, Constitutional Rights and Duties, A Commentary on the 1973 Philippine Constitution, p. 98 (1974 Ed.).

¹⁹ 29 L. ed. 746.

²⁰ Section 302, NIRC.

²¹ Aranas, The National Internal Revenue Code of 1977, Annotated, p. 25 (1979), citing *In re Strouse* (1871), *Waway v. U.S.* 605, 3 Fed. Stat. Ann. 2d, 1000.

Under the proposed amendment of Section 16 of the National Internal Revenue Code, the Commissioner of Internal Revenue is authorized to place under observation or surveillance and business operations of any person, natural or juridical, for a period of two months. Such surveillance is to be conducted if there are reasons to believe that such person is not declaring his correct income and receipts for intended revenue tax purposes. The amendment further provides that findings during the period of surveillance may be used for assessing taxes for other months for the same or different taxable year and such assessment shall be considered *prima facie* correct.

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The addition of the power of surveillance to Section 16 by P.D. No. 1356 was not meant to grant a new power to the Commissioner of Internal Revenue for, indeed, the intelligence division of the BIR had always conducted surveillance of taxpayers suspected of committing tax anomalies.

The main purpose of P.D. No. 1356 was to lay a statutory basis for making a tax assessment of a certain period based on presumptions deduced from observing the business establishment at another given period. This is because previous to P.D. No. 1356, a tax assessment in order that it can stand the test of judicial scrutiny should be based on facts and not on mere presumptions, no matter how reasonable or logical said presumptions may be.²² Nevertheless, Section 16 now delineates the extent to which tax surveillance may be conducted.

A tax surveillance can be authorized only by the Commissioner of Internal Revenue. Such authorization can only be granted if there are reasons to believe that a taxpayer is misdeclaring his income and receipts. The wordings of Section 16 are not clear on this, but it seems that such surveillance cannot in any case exceed two months. These requisites must be complied with if the results of the surveillance can be used for making assessments for other periods other than the period during which it is conducted. If the purpose of the surveillance is for the assessment of taxes for the very period under observation, does that mean that the above requisites need not be complied with?

The general guidelines of tax surveillance²³ should not be repugnant to the constitutional guarantees against unreasonable searches and seizure and the privacy of communication.

Depending on the manner in which surveillance is conducted by the revenue officers, it may or may not constitute "search" within the meaning of the search and seizure clause, or at least "intrusion" or "violation" of privacy of communication.

²² *Benipayo v. Collector*, 114 Phil. 135.

²³ "Surveillance" is oversight, supervision; police investigative technique involving visual or electronic observation or listening directed at a person or place (e.g., stakeout, tailing, suspects, wiretapping, and so on). Its objective is to gather evidence of a crime or merely to accumulate intelligence about suspected criminal activity (Black Law Dictionary, Revised Fifth Edition, p. 1296).

In the leading case of *Katz v. United States*,²⁴ it was held by the U.S. Supreme Court that "physical intrusion" is not necessary before it comes under the meaning of "search;" thus, it held that electronic eavesdropping without warrant was unconstitutional and any evidence obtained therefrom was inadmissible. In *Silverman v. United States*,²⁵ it was held that it was unconstitutional "without warrant and without consent to physically entrench into a man's office or home, there secretly observe or listen and relate at the man's subsequent criminal trial what was seen and heard."

Certainly it is not unlawful for revenue officers to visually observe from afar a business establishment in order to gather data to determine if tax frauds are being committed. In such a case there is hardly any physical invasion of property and no owner of establishment has any legal protection from strangers' eyes looking at his store. However, since many business establishments subject to tax are open to the public, like restaurants, beer-houses, cabarets, etc., the question of whether there is "search" becomes a little ticklish.

When revenue officers enter such public establishments, look at the price lists, periodically conduct head counts, in order to estimate the volume of business, do these not constitute search? Revenue officers cannot be stopped from entering for such places are supposed to be opened to the public. But can they use such valid entrance to gether evidence lying in plain view? This is essentially snooping.

The answer may lie in the test given in *Katz*.²⁶ This test, as Mr. Justice Harlan aptly noted in his *Katz* concurrence, normally embraces two questions. The first is whether the individual, by his conduct, has "exhibited" an actual (subjective) expectation of privacy.²⁷ The second is whether the individual's subjective expectation of privacy is "one that society is prepared to recognize as 'reasonable'."²⁸

Applying the *Katz* analysis to the problem, it would seem that the entrance of revenue officers in such public establishments is not unreasonable search that falls within the constitutionally "protected area." The proprietors of such establishments do not actually expect such privacy in their premises; they reasonably anticipate that a few customers do come in with the intention to snoop.

Thus, it seems that the only taxable establishments which are protected from this procedure of "entrance and snoop" are those not open to the public, like warehouses, factories, etc. As to such establishments, revenue officers are not allowed to

²⁴389 U.S. 347 (1967).

²⁵365 U.S. 505, 511-512 (1961).

²⁶This test was applied in the recent case of *Smith v. State of Maryland*, 47 LW 4779 (1979) which held that the use of a pen register in the equipment of the telephone company to determine *only* the numbers dialed from a particular phone is not unconstitutional search.

²⁷*Katz v. U.S.*, supra, p. 351.

²⁸*Ibid.*, p. 361.

enter, *except when supervision is provided for by law* (like in buildings where articles subject to specific tax are kept or produced), in order to investigate. If they have reasonable grounds to believe that revenue laws are being violated, they should apply for a warrant. The building can hardly be expected to run away.

Sec. 15. **Authority of Internal Revenue Officers to Make Arrests and Seizures.** — The Commissioner of Internal Revenue, the Deputy Commissioner of Internal Revenue, the Revenue Regional Directors, the Revenue District Officers and other internal revenue officers shall have authority to make arrests and seizures for the violation of any penal law or regulations administered by the Bureau of Internal Revenue. Any person so arrested shall be forthwith carried before a court, there to be dealt with according to law.

The arrest or seizures under Section 15 of the NIRC do not require any previous warrants, *but they cover only violations within the view of the aforesaid revenue officers.* Such cases fall clearly under the exceptions to the requirement of warrant summarized in Section 6, Rule 113 of the Rules of Court:

A peace officer or private person may, without a warrant, arrest a person:

(a) When the person to be arrested has committed, is actually committing, or is about to commit an offense in his presence;

(b) When an offense has in fact been committed, and he has reasonable ground to believe that the person to be arrested has committed it;

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It must be emphasized that in the cases above-cited, the circumstances upon which probable cause exists, must be personally known to the revenue officer making the arrest or seizure. While our Constitution prohibits arrests and seizures without warrants, the prohibition refers only to unreasonable searches and seizures. It is not unreasonable to effect searches or seizures without warrants if the violation is done in the presence of the revenue officer.²⁹

Seizure of property may be permissible on the ground that such property is subject to forfeiture because of violations of internal revenue laws, including goods or commodities with respect to which a tax is imposed, or a vehicle in which such goods or commodities are transported. In this connection, whether the seizure is authorized may depend on whether the officer who makes the seizure has reasonable or probable cause to believe that a revenue law is being violated.³⁰

Sec. 178. **Authority of Internal Revenue Officer in Searching for Taxable Articles.** — Any internal revenue officer may in the discharge of his official duties enter any house, building, or place where articles subject to tax under this Title are produced or kept, or are believed by him upon reasonable grounds to be produced or kept, so far as may be necessary to examine, discover or seize the same.

²⁹Nolledo, J., *The National Internal Revenue Code of 1977 Annotated*, (1978), p. 10 citing *U.S. v. Viado*, 39 Phil. 10(?).

³⁰47 C.J.S. 935 (footnotes omitted).

He may also stop and search any vehicle or other means of transportation when upon reasonable grounds he believes that the same carries any articles on which specific tax has not been paid.³¹

Obviously, this provision is unconstitutional insofar as it allows warrantless search of a house. As was held by the Supreme Court in *Papa v. Mago*³² (although it involved customs laws), a dwelling house cannot be searched without the aid of a search warrant. In arriving at such a ruling, the Supreme Court cited the case of *Carroll v. United States*,³³ drawing a distinction between moving vehicles and stationery dwellings; whereas, in the former it was impractical to obtain a search warrant, hence, it is dispensed with, provided there is probable cause, while in the latter a search warrant can conveniently be obtained.

The rationale for the need of a warrant in case of a dwelling house, is just as applicable to buildings and other stationery places where taxable articles are allegedly being kept or produced. If under Section 178, the revenue officer has "reasonable grounds" to believe that taxable articles are kept or produced, then there is no difficulty for him in obtaining a search warrant from proper judicial authorities. Such a procedure would be more reasonable and consistent with the Constitution on civil liberties.

The second paragraph of Section 178 is constitutional for it falls under one of the exceptions to the need of search warrant: in the case of a moving vehicle. It should be emphasized that "[t]he Carroll doctrine does not declare a field day for the [revenue officer] in searching automobiles. Automobile or no automobile, there must be probable cause for the search."³⁴

SEC. 179.³⁵ Detention of Package Containing Taxable Articles. Any revenue officer may detain any package containing or supposed to contain articles subject to a specific tax when he has good reason to believe that the lawful tax has not been paid or that the package has been or is being removed in violation of law, and every such package shall be held by such officer in a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture, but such summary detention shall not continue in any case longer than seven days without process of law or intervention of officer to whom such detention it to be reported.

Off-hand, Section 179 would seem to be constitutionally firm. It actually falls within the exception to warrantless seizure: that made incident to a lawful arrest. The lawful arrest falls under Section 6, Rule 113 of the Rules of Court discussed previously. Such would be the reasonable construction of Section 179.

Strictly speaking, however, the application of the section tends to presume

³¹Section 178 applies only to articles subject to specific tax.

³²22 SCRA 857, 873 (1968).

³³267 U.S. 132, 153 (1925).

³⁴*Almeida-Sanchez v. United States*, 37 L. ed. 2nd 596, 600-1 (1973).

³⁵Applies only to articles subject to specific tax.

important antecedent matters. As may be deduced from the preceding paragraph, this section presumes that a lawful warrantless arrest was made; or at least the arrest for violation of revenue laws on specific taxes was made through a valid warrant. Thus, it is necessary that before the revenue officer can exercise the right of seizure under Section 179, the antecedent facts leading to it must have been in accordance with the search and seizure clause. In other words, the right of seizure under Section 179 presupposes that the events leading to it were all within constitutional bounds. Thus, if revenue officers cannot enter a place suspected of keeping or producing such taxable articles without a search warrant, they certainly cannot do so under the guise of exercising their power under Section 179.

Then, again, Section 179 could lend itself to unimaginable abuse in the hands of some unscrupulous revenue officers who may want something more than just the enforcement of revenue laws.

THE TARIFF AND CUSTOMS CODE

SEC. 2202. Special Surveillance for Protection of Customs Revenue and Prevention of Smuggling. — In order to prevent smuggling and to secure the collection of the legal duties, taxes and other charges, the customs service shall exercise surveillance over the coast, beginning when a vessel or aircraft enters Philippine territory and concluding when the article imported therein had been legally passed through the customhouse: x x x.

SEC. 2205. Exercise of Power of Seizure and Arrest. — It shall be within the power of a customs official or person authorized as aforesaid, and it shall be his duty to make seizure of any vessel, aircraft, cargo, article, animal or other movable property, forfeiture or liable for any fine imposed under tariff and customs laws, rules and regulations, such power to be exercised in conformity with the law and the provisions of this Code: x x x.

SEC. 2208. Right of Police Officer to Enter Inclosure. — For the more effective discharge of his of his official duties, any person exercising the powers herein conferred, may at anytime enter, pass through or search any land or inclosure or any warehouse, store, or other building, not being a dwelling house.

A warehouse, store or other building or inclosure used for the keeping or storage of articles does not become a dwelling house within the meaning hereof merely by reason of the fact that a person employed as watchman lives in the place, nor will the fact that his family stays there with him alter the case.

SEC. 2209. Search of Dwelling House. — A dwelling house may be entered and searched only upon warrant issued by a Judge of the court or such other responsible officers as may be authorized by law, upon sworn application showing probable cause and particularly describing the place to be searched and the person or things to be seized.

SEC. 2210. Right to Search Vessels or Aircrafts and Persons or Articles Conveyed Therein. — It shall be lawful for any official or person exercising police authority under the provisions of this Code to go aboard any vessel or aircraft within the limits of any collection district, and to inspect, search and examine said vessel or aircraft and any trunk, package, box or envelope on board, and to search any person on board the said vessel or aircraft if under way, to use all necessary force to compel compliance; and if it shall appear that any breach or vio-

lation of the customs and tariff laws of the Philippines has been committed, whereby or in consequence of which such vessels or aircrafts, or the article, or any part thereof, on board of or imported by such vessel or aircraft, is liable to forfeiture to make seizure of the same or any part thereof.

The power of search herein-above given shall extend to the removal of any false bottom, partition, bulkhead or other obstruction, so far as may be necessary to enable the officer to discover whether any dutiable or forfeitable articles may be concealed therein.

SEC. 2211. **Right to Search Vehicles, Beast and Persons.** — It shall also be lawful for a person exercising authority as aforesaid to open and examine any box, trunk, envelope or other container, whenever found when he has reasonable cause to suspect the presence therein of dutiable or prohibited article or articles introduced into the Philippines contrary to law, and likewise to stop, search and examine any vehicle, beast or person reasonably suspected of holding or conveying such articles as aforesaid.

SEC. 2212. **Search of Persons Arriving From Foreign Countries.** — All persons coming to the Philippines from foreign countries shall be liable to detention and search by the customs authorities under such regulations as may be prescribed relative thereto.

Female inspectors may be employed for the examination and search of persons of their sex.

In the case of *Papa v. Mago*,³⁶ the Supreme Court held that the Tariff and Customs Code does not require any search warrant issued by a competent court before police authorities can effect the seizure, but that the Code requires it in the search of a dwelling house. The Court found nothing repugnant to the unreasonable search and seizure clause that, except in the case of search of a dwelling house, person exercising police authority under the customs laws may effect search and seizure without a search warrant. In support of this conclusion, the Court held, citing the case of *Carroll v. United States*:³⁷

The guaranty of freedom from unreasonable searches and seizures is construed as recognizing a necessary difference between a search of a dwelling house or other structure in respect of which a search warrant may readily be obtained and a search of a ship, motorboat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

The doctrine set in *Papa* was affirmed in the case of *Pacis v. Pamaran*.³⁸ The Court, speaking through now Chief Justice Fernando, citing the case of *Boyd v. United States*,³⁹ held in unequivocal terms: “[T]hat the seizure of goods concealed to avoid the duties on them is not embraced within the prohibition of this constitutional guarantees [against unreasonable searches and seizures].”

³⁶22 SCRA 857, 872 (1968).

³⁷39 A.L.R. 790, 799 (1925).

³⁸56 SCRA 16 (1974).

³⁹116 U.S. 746 (1886).

It would seem from *Papa* and *Pacis*, together with the American decisions they cited, that in the enforcement of customs and tariff laws, the general rule would be that search and seizure may be effected without need of a warrant, with the search of dwelling house being exception. Why the difference in rulings between the enforcement of internal revenue laws and customs and tariff laws? The answer lies in the variance of the factual situations to which they are made to operate.

The enforcement of customs and tariff laws is similar to border control cases which give to customs and immigration officers the broadest powers of search.⁴⁰ The *Carroll* case itself said: “Travelers may be stopped in crossing international boundary, because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may lawfully be brought in.”

No question of whether there is probable cause for a search exists when the search is incidental to the crossing of an international border, for there is reason and probable cause to search every person entering from a foreign country by reason of such entry alone; mere suspicion is enough cause for a search at the border.⁴¹ The necessity of enforcing the customs laws has always restricted the right to privacy of those engaged in crossing an international boundary. Neither a warrant nor an arrest is needed to authorize a search in that situation. The search which customs agents are authorized to conduct upon entry is of the broadest possible character and any evidence found may be used.⁴²

But *Papa* and *Pacis* should be viewed in the right perspective. *Papa* involved the seizure, without warrant, of two trucks coming from the customs zone of the port of Manila and allegedly loaded with misdeclared and undervalued imported goods. *Pacis* involved the seizure, through means of a warrant of seizure and detention not issued by a judge but by the Collector of Customs, of an automobile the customs duty of which had allegedly not been paid. Both cases thus involved moving vehicles.

From both cases, this much can fairly be concluded: that in the enforcement of customs and tariff laws involving moving vehicles or vessels, warrantless searches and seizures can be effected because of the impracticability of securing a warrant, since “the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.” But it should be borne in mind that the two cases merely relaxes the requirements for a warrant on the ground of practicality; it did not dispense with the need for probable cause.⁴³

But insofar as *Papa* and *Pacis* hold that *only* in the search of dwelling house is

⁴⁰Bernas, The 1973 Philippine Constitution, Notes and Cases, Part II, p. 262 (1974 Ed.).

⁴¹21 Am. Jur. 2d 113, footnote no. 16, citing *Bible v. United States* (CA9 Cal.) 314 F2D 106, 11 L. ed. 2d 89.

⁴²*Ibid.*, citing *Landau v. United States Atty.* (CA 2 NY) 82 F 2d 285, 80 L. ed. 1389.

⁴³Bernas, Constitutional Rights and Duties, A Commentary of the 1973 Constitution,

a search warrant required in the enforcement of customs laws, this writer cannot agree. There is no practical reason to differentiate a dwelling house from other stationary structures in the need for a warrant. The very same Carroll doctrine enunciated by those two cases was found on the prime consideration of *practicality*: provided there is probable cause, if it becomes impractical to obtain a search warrant (as in the case of moving vehicle), then the need for a warrant can be dispensed with; if it is practical and convenient to obtain a search warrant then it becomes necessary that one be obtained to effect search and seizure. In both dwelling house and other structures (e.g. warehouse), it is practical and convenient for customs officers to obtain a search warrant. Therefore, the provisions of the Tariff and Customs Code allowing search and seizure in buildings, other than dwelling house, without need of search warrant is flagrantly against the search and seizure clause. In the words of *Camara*⁴⁴: "In assessing whether the public interest demands creation of a general exception to the [search and seizure clause], the question is not whether the public interest justifies the type of search in question, but whether the authority to search should be evidenced by a warrant, which in turn depends in part upon whether the burden of obtaining a warrant is likely to frustrate the government purpose behind the search."

Pacis also held that the Collector of Customs has the requisite authority to issue a warrant of seizure and detention for an automobile the duties of which have not been paid for. Again, taken in the right perspective, such ruling should mean that Collector of Customs can issue a warrant of seizure and detention only in those cases where no search warrant is really needed; in which case the warrant issued by the Collector serves as an authority to police officers to enforce customs laws, as in the case of moving vehicle.

But, in those cases where a search and seizure can only be effected with the aid of a warrant, then the Collector of Customs should have no authority to issue the same. It may be true that the 1973 Constitution authorizes a warrant to be issued not only by a judge but also by "such other responsible officer as may be authorized by law." But it has been accepted by many in this jurisdiction that said "responsible officer" must meet two tests: first, he must be neutral and detached, and, second, he must be capable of determining whether probable cause exists for the requested arrest or search.⁴⁵ Thus, prosecutors, fiscals, police and other government enforcement agents, like the Collector of Customs, are not qualified to issue warrant, since they are not "neutral and detached magistrates."

If one suspected of having committed a crime is entitled to a determination of the probable cause against him, by a judge, why should one suspected of a violation of an administrative nature deserve less guarantee?⁴⁶

⁴⁴Camara v. Municipal Court, 387 U.S. 523 (1967).

⁴⁵Shadwick v. City of Tampa, 40 LW 4758, 4760-1 (1971).

⁴⁶Qua Chee Gan v. Deportation Board, L-10280, September 30, 1963.

SEC. 3503. Authority of Officials to Administer Oaths and Take Testimony.
- The Commissioner, Collectors and their deputies, and other customs employees especially deputized by the Collector shall have authority to administer oaths and take testimony in connection with any matter within the jurisdiction of the Bureau of Customs and in connection therewith may require the production of relevant papers, documents, books and records in accordance with law.

What has been previously said about *subpoena duces tecum* issued under the NIRC is applicable also under Section 3503 of the Tariff and Customs Code. It may be added: "With an understanding of the obligations of the government to protect the citizen, the Constitution and the organic law have done by throwing around him a wall which makes his home and his private papers his castle. It should be our constant purpose to keep a *subpoena duces tecum* from being of such a broad and sweeping character as to clash with the constitutional prohibition against unreasonable searches and seizures."⁴⁷

Leavetaking

Taxes are important for the government to enable it to fulfill its purpose, which primarily is the promotion of public welfare. But like any other entity under the Constitution, it is bound by the latter. A government which, in the pursuit of perpetuating itself, tramples the very right of the citizens it is supposed to protect, defeats the very purpose of its being. Zacchaeus should know better.

⁴⁷Sy Jon Chuy v. Pablo C. Reyes, 59 Phil. 244.