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A SURVEY OF AMUSEMENT TAXES[†]

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AS previously stated, amusements may also be taxed by the municipal or city councils, in addition to those imposed by the National Internal Revenue Code.

The local political subdivisions in the Philippines consist of provinces, cities, municipalities and municipal districts, over which the Chief Executive exercises supervision and control in financial matters through the Department of Finance (corresponding to US Dept. of the Treasury).

Provincial Boards have no taxing power except to make levy on real properties, and to impose fees for services rendered by the province. They, therefore, have no power to impose amusement taxes.

Municipal Councils on the other hand have greater taxing powers. They have general authority to impose municipal license taxes upon persons engaged in any occupation or business, or exercising privileges in municipalities or municipal districts, except in certain cases provided by law.⁵⁷ The Philippine political structure is a unitary type of presidential government where the local governments exist by creation of the national government, obtaining their powers directly from the national government. Needless to say, its taxing powers exist by grant of the national government and may be taken away any time.

The following is a typical grant of licensing and taxing power to cities and municipalities:

"A municipal council or municipal district council shall have authority to impose municipal license taxes upon persons engaged in any occupation or business or exercising privileges in the municipality or municipal district by re-

[†] This is the last of two parts. The first part appeared in the March 1957 issue.

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⁵⁷ Shere Report, Addendum.

quiring them to secure licenses at rates fixed by the municipal council or municipal district council, and to collect fees and charges for services rendered by the municipality or municipal district and shall otherwise have power to levy for public local purposes and for school purposes including teacher's salaries, just and uniform taxes other than percentage taxes and taxes on specific articles."⁵⁸

Then follows certain restrictions and limitations, enumerating also certain objects or businesses which they may not tax. In addition to those outright prohibitions, municipal taxation is subject to certain limitations and broad supervision and control by the Secretary of Finance and the President. In general, the Secretary's approval is required: (1) whenever the municipal rates exceed the privilege taxes regularly imposed by the National Government upon the same business or occupation; (2) whenever the municipal rates or fixed tax on business corresponding to the National Government's tax imposed by Section 182 of the Tax Code is in excess of 50 pesos per annum; (3) whenever the municipal license tax on any business or occupation is increased by more than fifty percentum (50%).

Since January 1, 1941, the power to approve municipal rates in excess of specified limits was transferred from the Secretary of Finance to the President with respect to cabarets, dancing schools, dance halls, cockpits, night clubs, race tracks, gaming counters, and other similar places of amusement.⁵⁹

In the City of Manila, the following is the municipal tax "on the price of every admission ticket sold by cinematographs, theaters, vaudeville companies, theatrical shows:

- a. For every ticket sold the price of which is from P0.25 to P0.99 ... P0.05
- b. For every ticket sold the price of which is from P1.00 to P1.99 ... P0.10
- c. For every ticket sold the price of which is from P2.00 to P2.99 ... P0.15
- d. For every ticket sold the price of which is from P3.00 to P4.99 ... P0.20
- e. For every ticket sold the price of which is from P5.00 to P9.99 ... P0.25
- f. For every ticket sold the price of which is from P10.00 to P14.99 .. P0.35
- g. For every ticket sold the price of which is from P15.00 or more .. P0.50⁶⁰

This admission tax imposed by the City of Manila is in addition to license fees imposed upon cinematographs, theaters, vaudeville companies and theatrical shows. Tickets to these places must be presented to the City Treasurer for registration, and once issued and presented at the gate for entrance shall be cut by the gatekeeper into halves, the first half to be

⁵⁸ Sec. 1, C.A. No. 472, June 16, 1939.

⁵⁹ Shere Report, Addendum.

⁶⁰ Ordinance No. 2958 of the City of Manila, Section 1, April 27, 1946.

returned to the customer and the other half to be retained by the gatekeeper.⁶¹

C. Exemptions:

All countries taxing any kind of amusement or entertainment concurrently grant a certain number of exemptions. To this practice, the Philippines is no exception. Two recent acts of Congress of the Philippines have provided for total or absolute exemptions from *admissions* taxes:

Republic Act No. 722, approved June 6, 1952, provides as follows:

"Section 1. The holding of operas, concerts, recitals, dramas, painting and art exhibitions, flower shows, and literary, oratorical or musical programs, except film exhibitions and radio or phonographic records thereof, shall be exempt from the payment of any national or municipal amusement tax on the receipts derived therefrom."

The exemption provided by this act is based on the nature of the amusement or activity presented. Under Republic Act No. 722, the receipts derived from admissions to the above enumerated places of amusement or kinds of entertainment are totally exempt from the payment of any national or municipal amusement tax. However, receipts derived from admissions to film exhibitions of operas, concerts, recitals, dramas, painting and art exhibitions, flower shows, and literary, oratorical or musical programs and exhibitions of radio or phonographic records of the same are subject to the amusement tax prescribed under the first paragraph of Section 260 of the Tax Code. Construing this exemption, the Court of Tax Appeals said:⁶²

"The main purposes of the tax exemption are 'to bring about a flowering of our own culture, to stimulate genius of our people, to make the talented among us contribute to the honor and glory of the country and to promote respect and admiration for Philippine culture.' The exemption applies when the musical program, opera, concert, recital, drama or art exhibition has for its primary purpose the propagation and development of art and culture and the element of profit merely incidental."

As ballet was not expressly included in the enumeration, for some time there was uncertainty about its tax status, the BIR ruling that ballet performances "cannot be considered as falling within the purview of the term 'recital' or 'musical program' as contemplated in Republic Act No. 722 and

⁶¹ *Id.*, Sec. 2.

⁶² Wong and Lee v. Collector, CTA No. 55, October 31, 1955 — citing the explanatory note to House Bill No. 2775, now Republic Act No. 722 as well as the sponsorship speeches on the floor of both Houses of Congress, when said bill was submitted for the consideration of, and approval by, both Houses.

declared it taxable.⁶³ Recently, the ballet schools and companies in Manila won their fight for exemption, the Court of Tax Appeals declaring:

"Undoubtedly, art has always been strong in the hearts of the Filipinos, and as a matter of fact, it has been so manifested and recognized in our fundamental law which provides that arts and letters shall be under the patronage of the State (Sec. 4, Art. XIV, Constitution). For generations, the country, although scarcely populated, has produced men and women whose artistic talents have been recognized beyond the confines of our territorial boundaries but unfortunately, very few have reached international stature. Congress, in approving Republic Act No. 722 had in mind the implementation of the constitutional objective by affording our young generations the opportunities to develop their artistic talents Ballet performances sponsored by petitioner come within the exemptions contemplated by the provisions of Republic Act No. 722 and, therefore, exempt from the payment of amusement tax pursuant to Section 260, in relation with Section 352 of the Tax Code."⁶⁴

In order that the admission fees to the above enumerated activities may be exempted from the payment of the amusement tax prescribed by Section 260, it is required to be shown that they are not only the predominating features of the show itself, and that no other form of amusement is shown or exhibited in connection therewith, or in consideration of the admission fees collected. So that if, for example, any of the above enumerated activities are held along with film exhibitions, the proceeds from admissions thereto are subject to the aforesaid tax.⁶⁵

The other total exemption was provided for by Republic Act No. 1284 (approved June 14, 1955), now incorporated as Section 260-B of the Tax Code:

"SEC. 260-B — All athletic meets, school programs and exhibitions, and other educational activities conducted by any public school to which admission fees are charged shall be exempt from amusement tax: *Provided:* That the net proceeds therefrom shall accrue to the athletic fund or library fund of the school in the discretion of the school authorities."

These activities had been untaxed until early 1953, when the BIR pursuant to Opinion No. 242, of the Secretary of Justice, (series of 1953) promulgated a ruling holding them subject to the admissions taxes provided

⁶³ BIR Ruling of September 16, 1954, File No. 155.1352, BIR Bulletin Vol. III, No. 3, September 30, 1954; see also, The Provincial Revenue Agent, Cebu City, Ruling of February 7, 1955, File No. 155.062, BIR Bulletin Vol. IV, No. 1, March 31, 1955.

⁶⁴ *Totoy Oteyza v. J. Antonio Araneta*, CTA. No. 89, January 3, 1956.

⁶⁵ BIR Ruling of February 2, 1956, File No. 155.062, BIR Bulletin Vol. 1, No. 2, February 1956.

by Section 260 of the Tax Code.⁶⁶ The above Republic Act No. 1284 was, therefore, just a re-affirmation of previous practice. The above exemption is based on the character of the organization sponsoring the exempted activity.

Partial exemptions have also been provided by other republic acts, now incorporated under Chapter IV of Title VIII of the Tax Code. One exemption previously mentioned (*supra*, page 30) is that given by Republic Act No. 991, now paragraph 2 of Section 260, reducing the amusement taxes prescribed therein to fifty per centum (50%) in the case of receipts from admission to boxing exhibitions. A study of exemptions usually given by amusement tax laws show that this is a rather uncommon one, prize fighting in fact often highly taxed in most countries. This exemption was due to a strong and well-founded appeal made by boxing promoters and other sports enthusiasts to the effect that boxing in the Philippines would die if amusement taxes are not reduced. Many promoters refused to put on anymore fights in view of financial losses consistently suffered. This was aggravated by the fact that most featured boxers have to be foreign fighters imported from abroad. The main complaint was not only against the thirty per centum (30%) maximum level placed on admissions of ₱1.00 or more under Section 260 but the high local amusements levies concurrently imposed, amounting to as much as an additional thirty per centum (30%). Spurred on by a group of sports-minded Congressmen, Congress passed the bill, specially being reminded of the fact that in the pre-war days when the taxes were low, the Philippines had produced several world champions but that in the post-war days, although many young boxers gained "leading contender" ratings, nobody has as yet won a world crown. As enacted, note must be especially made of the five per centum (5%) limit imposed on local amusement taxes.

Another exemption is that provided by Section 261 of the Tax Code:

"SEC. 261 — *Amusement Tax payable by charitable institutions* — Where the admission fees or charges are collected by or for and in behalf of a duly registered charitable institution or association, the tax on such admission fees shall be fifty per centum (50%) of the rates provided in section two hundred and sixty of this code."

Before the amendment of this section by Republic Act 586, admission fees to theaters and other places of amusement were totally exempt from amusement tax whenever they were held for and by religious, charitable, educational or scientific associations or institutions.

⁶⁶ BIR Ruling of March 19, 1953, BIR Bulletin Vol. II, No. 4, December 31, 1953; see also: BIR Ruling of December 20, 1954, File No. 155.06; also, The Provincial Revenue Agent, Zamboanga del Norte, Ruling of February 16, 1955, File No. 155.06.

"But motivated perhaps by the government's desire for more increased revenues and aware that so many benefit shows or performances were being held for pseudo-religious, scientific, charitable or educational groups, our legislators deemed it wise to limit this grant for exemptions. After the amendment introduced by Republic Act No. 568, this exemption was limited to only fifty per centum (50%) of the taxable receipts, and only when there is a showing that the exhibition is being held by or for and in behalf of a duly registered charitable association or institution. One of the requisites to be fulfilled in order that this provision of law may be availed of is that the admission fees or charges must be collected by or for and in behalf of a duly registered charitable association or institution. It is not enough that the organization or association was formed for charitable purposes; it is also essential that such associations or institution be duly registered."⁶⁷

This partial exemption in favor of duly registered charitable institutions or associations does not however apply in the case of amusement tax on the gross receipts realized by them in the operation of a cockpit, cabaret, night club or race track, and neither does it apply in the payment of the tax on winnings provided for in Section 260-A of the Tax Code.

In order that the fifty per centum (50%) exemption may be granted, the amount to be donated to or the benefit to be derived by the registered charitable institution or association must be substantial. The donation is deemed to be substantial if the amount donated is at least equal to the tax due and collectible if the fifty per centum (50%) exemption is granted, that is, the amount donated must be at least equal to one-half of the full amount of the tax as if no exemption is granted.⁶⁸

While the exemptions from the national amusement tax are restricted to the above stated cases, local governments may in their amusement tax ordinances provide for such exemptions as they see fit to grant, subject only to general constitutional limitations of equal protection and reasonable classification.

The City of Manila has a wider grant of exemption as it does not limit its exemption to a duly registered charitable institution but grants exemption (from the city amusement tax) to admission fees or charges "collected for and in behalf of any charitable, educational, or religious institution or association." It also exempts from the tax "all places of amusement which are operated by the U.S. Army and Navy with funds belonging to the US Government..."⁶⁹

⁶⁷ Aldaba v. Collector, CTA No. 198, February 27, 1956.

⁶⁸ BIR Ruling of November 12, 1954, File No. 155.063, BIR Bulletin Vol. III, No. 4, December 31, 1954.

⁶⁹ Ordinance No. 2958 of the City of Manila, Section 3, April 27, 1946.

To round up this survey of exemptions, it is to be noted that in the Philippines, complimentary tickets or passes are not taxed, unlike other countries where the tax would be equal to what a paying person would have paid for similar accommodations.

TOTAL INTERNAL REVENUE COLLECTIONS
FROM NATIONAL AMUSEMENT TAXES

Source of Income	1956	1955	Increase (Decrease)
AMUSEMENT TAX —			
Tax on Admission fees:			
(a) Cinematographs	P5,883,281.44	P5,808,086.96	P 75,194.48
(b) Others	170,675.36	171,010.08	(334.72)
Tax on gross receipts:			
(a) Cockpits	121,917.74	136,960.31	(15,042.57)
(b) Cabarets	65,397.74	87,107.30	(21,709.56)
(c) Night clubs	186,378.65	228,088.77	(41,710.12)
(d) Race tracks	587,981.50	533,081.42	54,900.08
(d-1) Race tracks, 2.5% tax on win- ning tickets	337,217.22	257,834.61	79,382.61
(e) Jai Alai	57,326.83	76,298.40	(18,971.57)
(e-1) Jai Alai, 2.5% tax on winning tickets	279,565.88	306,399.91	26,834.03
(f) Sweepstakes	36,355.23	—	36,355.23
TOTALS	P7,726,097.59	P7,604,867.76	P121,229.83

Source: Bureau of Internal Revenue, Manila, Philippines

Recommendations:

I — ADMISSIONS TAX:

1) *Taxing jurisdiction*: this tax should be retained at both levels, National and Local. The writer agrees *in principle* that the admissions tax is a "natural" for local governments — particularly as a good means towards more financial independence and autonomy. Certain political and factual situations now existing in the Philippines, however, do not warrant the present repeal of the national taxes. The tax should be retained at both levels — essentially as a national government levy. Leaving this field to municipalities would not be a wise one because the intervention of local

politicians and big shots will tend either to abolition of the tax, or to the imposition of very low tax rates. In addition, such influence will result in very poor administration of whatever admissions tax is enacted. Local politicians usually own the movie houses and places of amusement, or if not, the owners of such places contribute substantially to election campaign funds.

To take an actual case: a municipal councilor was charged and convicted in the lower court of violating a municipal ordinance. He appealed to the Supreme Court and pending appeal, the municipal council repealed the ordinance violated absolutely, thereby making the act no longer a punishable act — in order to free the accused councilor.⁷⁰ These observations have been borne out recently by the experience of Japan when they experimented with leaving the admissions tax to the local governments.⁷¹ Japan is a place where the political and other relevant conditions are similar to those of the Philippines. Their localization of the tax resulted in very low collection, in spite of the very high rates.

Under our present political set-up, local governments are excessively dependent on the national government for finances — amounting to about forty percentum (40%) to fifty percentum (50%) of their total revenue — in the form of allocation of certain tax collections, grants and aids, loans, etc. Because of this, the President, as head of the national government, carries a lot of power and influence even in local government, for local politicians are forced to get into his good graces in order to obtain more financial grants. Even Congressmen have to yield to the President in many cases in order to get allocations for their districts. This has of course resulted in less independent political thinking for a majority of local politicians — something which is undeniably not conducive to a healthy democracy. As a first step towards more local political independence and principled thinking for politicians, local governments should be given more financial stability. As stated, it would not be expedient at present to leave certain fields of taxation to local governments. However, the first step towards a policy of more financial stability for local governments would be to earmark the amounts collected (or the major portion of it) to the municipalities where they are collected. This is nothing novel as the collections from fees for sealing weights and measures, percentage taxes on agricultural products, (Section 187 and 188), taxes on motor fuel, and several others are allotted to provinces and municipalities.⁷² The national tax should be retained to assure the imposition of the tax but the amounts collected should go right back to the municipalities. If a municipality of five thousand people should have a per capita admissions tax return of three pesos a year, the fifteen thousand would be a very big help for its

⁷⁰ *People v. Tamayo*, 61 Phil. 225.

⁷¹ *Supra*.

⁷² Sections 357 to 368, Philippine NIRC.

financial needs, and if earmarked by law for them, they get it without the necessity of catering to the wishes of national politicians. As to the formula of earmarking, there is, of course, an observation that the smaller municipalities will get insignificant amounts from it while the bigger cities would get large amounts from it. Well, the bigger the city and population, the more is the service rendered and the more the financial expenditures. There may be some ground for objection as regards towns that are adjacent to these big cities or municipalities on the grounds that customers flock to the bigger city amusements. This objection can be minimized for unlike the United States, the municipalities are rather set off far from each other and cost of transportation is expensive. However, there may be isolated instances where this inequity resulting from patronage of fringe dwellers may be present. This and all propositions for a more proportioned distribution could be solved by a formula of giving seventy five percentum (75%) to the city or municipality where collected, twenty percentum (20%) to the general funds of the province, and the remaining five percentum (5%) to the national government to cover costs of collections.

2) *Rates*: the admission tax rates now prevailing in the Philippines has evoked little complaint from the entertainment and amusement industry, unlike the United States where, particularly movie houses, which accounted for about eighty five percentum (85%) of the total federal admissions tax collections, have complained about business losses.

I suggest the following admissions tax rates:

Admissions of not more than P0.50 — no national tax; local tax may be imposed but not to exceed five percentum (5%)

Admissions of P0.51 to P0.99 — national tax of twenty five percentum (25%); local tax may be imposed but not to exceed five percentum (5%)

Admissions of P1.00 or more — national tax of fifty percentum (50%); local tax may be imposed but not to exceed ten percentum (10%)

Provided, however, that in municipalities whose population does not exceed 1,000, no tax shall be imposed on admissions of less than P1.00

Everybody realizes the value of entertainment, and its encouragement in the rural areas should be considered as a public service, which should be stimulated. Movies are for the most part the only form of amusement available to the poorer sections of the population. For this reason, no tax is proposed for admissions of fifty centavos and less. In municipalities where the population is less than 1,000, it is a public service of the highest order to put up a movie house, as the chances of profit are not too bright. This is the reason for the P1.00 exemption in such towns. The five percentum (5%) and ten percentum (10%) limits allowed to local governments are recommended as a matter of the first step towards localization of the tax. These limits are too negligible to be objected to by local businessmen. The increase in the upper brackets is justifiable considering

that they are imposed on the higher priced seats and theaters. In comparison to admissions taxes the world over (see Compilation, March 1957 issue) fifty percentum (50%) is not exceptionally high.

3) "User" taxes: one common but seemingly neglected problem in the admissions tax field is the "loophole" in the restricted definition of what constitutes an "admission" to a place of entertainment or amusement. This is attributable mainly to poor phrasing of the tax law, maybe because this type of tax which is substantially the same the world over is just copied from similar laws of other countries.

Even in the United States, the definition of what constitutes "admission to any place" has caused the Internal Revenue Service some difficulty. The law specifically includes charges for seats and tables and similar accommodations but doesn't specify whether the rental of certain facilities should be included or not. Several court decisions have clarified the applicability of the tax to such charges if they include the right to admission.⁷³ If admission is allowed at a lower price to those who do not rent the equipment, this charge constitutes the tax base.⁷⁴ Due to this restricted definition of admissions, charges for the use of golf courses and tennis courts now escape taxation. Charges paid by a guest for the use of facilities of a private club are also non-taxable. Many places of amusement and recreation avoid the admission tax by charging only for the use of facilities.⁷⁵ There appears to be no justification for this exclusion except the designation of these charges as fees for the use of the court or course.

Should there be a distinction between charges for admission to places of amusement and charges for use of facilities for amusement? Is there any rational basis? The writer cannot figure out any. As pointed out, even in the Philippines this has proven to be a means of tax avoidance, by not charging admission charges but instead charging high user fees. This is all due to the wording of the statute and a simple re-phrasing and addition of words can cover all these "user" fees. It may be contained in one all embracing section or in two separate sections (one for admissions proper and one for user fees). The following provision may be suggested:

"Admission charge" means any amount paid or any consideration given for entrance, seats, tables, reserved or otherwise, and other similar accommodations in an amusement place, including charges for the use or rental of property or facilities therein, irrespective of whether or not admission tickets are issued in exchange for such admission fee or consideration.

In the case of swimming pools, golf courses, skating rinks, archery and shoot-

⁷³ Exmoor Country Club v. United States, 119 Fed. (2d) 961 (C.C.A. 7th 1941); United States v. Koller, et al. 287 Fed. 418 (D.C.W.D. Washington, 1921) appeal dismissed, 260 U.S. 757; Twin Falls Natatorium v. United States, 22 ed. (2d 308). D.C. Idaho S.D. 1927) for situations which may give rise to litigation as to what is an "admission charge". The last case shows what practices will be indulged in to avoid the tax.

⁷⁴ BIR Regulations 48 (US) p. 6.

⁷⁵ Hearings, Revenue Act of 1941, Committee on Ways and Means, p. 889.

ing ranges, golf ranges, tennis courts and all other places of diversion, recreation, sport or passtime where charges are made for the use of equipment or facilities, such charges shall be in themselves subject to the admissions tax rates herein provided.

II — TAXES ON GAMBLING ESTABLISHMENTS:

These taxes should be simplified with an accompanying slight increase in rates:

Race tracks: increase the tax rate on gross receipts to twenty two and one half percentum (22 1/2%). Abolish however the two and one half percentum (2 1/2%) tax on winnings so that the net effect is merely to increase by two and one half percentum (2 1/2%) the tax on that part of the gross receipts other than the amount set aside for winnings.

The P500 per racing day fixed tax should be retained. Non-applicability of admission taxes also should be continued inasmuch as these are subject to the twenty two and one half percentum (22 1/2%) gross receipts tax.

Jai-Alai: should now be made subject to a tax on gross receipts also at twenty two and one half percentum (22 1/2%).

To simplify — two and one half percentum (2 1/2%) tax on winnings should be abolished and admission tax rates should be inapplicable for receipts from admissions are included in gross receipts.

Cockpits: increase the tax rate from ten percentum (10%) to twenty two and one half percentum (22 1/2%).

At present, there is no two and one half percentum (2 1/2%) tax rate on winnings, for there is no practical way of getting them considering that bets are not placed through tellers or tickets but mainly by verbal agreement. As regards the "official" bets made by the owners of the fighting cocks, this will be taxed to a certain extent through the commission that the management retains. Since this commission will be subject to the twenty two and one half percentum (22 1/2%) tax, then the management can see fit to increase its commission.

These rate increases are very slight and therefore in the writer's opinion will prevent any shock effect that may otherwise accompany a substantial increase.

Legally, all other forms of gambling are outlawed in the Philippines.⁷⁶ However, many other forms of gambling exist due to protection extended by politicians and policemen. In fact, in some provinces, "benefits" in the form of holding gambling games are staged to raise a province's or town's share in certain fund campaigns like Red Cross Drive, Peace and Amelioration fund campaign, etc. But the most notorious case of malfeasance is in the case of mechanical devices and slot machines. One good example is Pasay City which is a suburb of Manila and which is noted for its gambling, night life and prostitution, where legally, stiff penalties have

⁷⁶ See REVISED PENAL CODE of the Philippines, Arts. 195-196.

been provided for maintaining or even patronizing such machines.⁷⁷ Time after time these have been outlawed and so confiscated by the authorities. After a time however, they re-appear again and they can be seen all over in big cities, obviously due to local "protection" afforded by local authorities. Rather than tolerate the bribery going on, the writer suggests that these slot machines be legalized with a view to licensing for regulation and taxation, through a very high license tax. The legalizing and high taxation of these machines would subject them to check and control not only by police officers but by revenue officials also. And if the tax rate is high enough, then they may be removed "voluntarily" by their operators. The most practical way of checking and control would be to issue licenses to be stamped or exhibited on the machine. To double-check, the writer suggests that licenses by both the police department and the Bureau of Internal Revenue be required.

At present, winnings and prizes in the National Sweepstakes and lotteries, radio and newspaper quiz shows and contests, and bingo games are not taxed at all. Winnings in the National Sweepstakes and lotteries are legally also not included in taxable income, while winnings from the other enumerated contests and quizzes in practice never get reported for income tax purposes. The writer recommends the imposition of two and one half percentum (2 1/2%) tax on these winnings, to apply to all cash prizes, and to the value of merchandise given as prizes which are not donated (the burden of proof being on the management to show that they have been donated). This two and one half percentum (2 1/2%) tax should also be extended to beauty-contest or popularity-contest ballots of any kind, which are widely used as a means of raising money by private clubs and organizations. Exemption, of course, should be given to those contests organized by duly registered charitable organizations. This will be a good tax as there are literally hundreds of contests for "Miss Philippines" and Miss SO-and-so going on every day where these ballots, or ballots and tickets are sold for. The use of this tax will not run against constitutional objections which are present if contributions or admissions to private dances are taxed as such.

III — NIGHT CLUB AND CABARET TAXES:

The Philippines has a comparatively low tax on night spots. Among the tax rates in this field are: The United States: twenty percentum (20%); Mexico: eighteen percentum (18%); Finland: twenty five percentum (25%); British Columbia: seventeen and one half percentum (17 1/2%); and Japan: fifteen percentum (15%).

The writer suggests that the gross receipts tax on cabarets and night clubs be increased from ten percentum (10%) to twenty percentum (20%),

⁷⁷ Ordinances of the City of Pasay.

while the tax on bars, cafes and restaurants dispensing liquor be raised from seven percentum (7%) to fifteen percentum (15%). This is a business which carries an inelastic and steady amount of consumer expenditure, and permanent and semi-permanent "clientele". The increase in these tax rates will not affect the business greatly. Their being taxed at a double rate shouldn't have any significant shock effect. It is to avoid this shock effect that a not too high increase is recommended. It will be noted that this is one of the very few taxes which covers tourists and visitors.

It is also recommended that in addition to the three percentum (3%) gross receipts tax on restaurants and eating places, a five percentum (5%) levy on meals costing one peso or more be imposed, the one peso limit being a very reasonable exemption for the poorer sections of the population. In this connection, it should be noted again that Massachusetts has five percentum (5%) tax on meals of \$1 and over; Nevada applies its sales tax of two percentum (2%) to meals of 25 cents and above, while Ontario has a five percentum (5%) tax on meals of 60 cents and over. This is one tax which, due to its novelty, may be better received by the public if it were earmarked for charitable organizations, like Massachusetts, where it is earmarked for the "Old Age Assistance Fund" and Ontario where it is used for the support of hospitals. Personally, the writer would earmark it for rural clinics, dispensaries and medical centers.

Some countries have tried using a tax on hotel rooms. In the writer's opinion, the hotel rates in the Philippines are comparatively high. This is due to low occupancy and high investment and operating costs. Since the total business is substantially dependent on tourists, the writer would not recommend the imposition of this tax at present as it would seriously affect tourism in the Philippines. Hotel rates are among the first things prospective tourists ask about and hear about. To impose taxes on such rates would force the hotel owners to increase their rates. Comments of "outrageous" rates coming from tourists who have been in the Philippines would have an adverse effect on Philippine tourism.

Lately, there have been a lot of dancing schools so-called established, particularly in Manila. Many of them are just fronts for dance halls, prostitution and call-girl establishments but yet escape the tax that normally attaches to night clubs and cabarets. They are only subject to a seventy five peso annual license imposed by the city of Manila, and similar license fees in other cities. It is recommended that these "dancing schools" should be investigated by the BIR and if they are found to be operating as night spots or serving any food or liquor then the corresponding tax rates should apply. Should they prove to be clever in their operations, then the writer suggests a fixed annual license of about P250.00 imposed by the national government. These places usually keep in the good graces of local or city

politicians so that it is not practical to leave their taxing and regulation to local governments alone.

IV — CLUB DUES AND INITIATION FEES:

The United States tax⁷⁸ on these dues and fees are also very much suited for the Philippines. As stated, these charges for use or rental of amusement and entertainment facilities are not subject to the admissions tax rates. The suggested rates are:

"A tax equivalent to twenty percentum (20%) of any amount paid as dues or membership fees to any social, athletic, or sporting club or organization, if the dues or fees are in excess of ten pesos (P10.00) a year.

"A tax equivalent to twenty percentum (20%) of any amount paid as initiation fees to such a club or organization, if such fees amount to more than ten pesos, or if the dues or membership fees, not including initiation fees, of an active resident annual member are in excess of ten pesos (P10.00) a year.

As in the US tax, provision would be made for payment of a like amount by life members, and the definition of dues (covering one week or more) and initiation fees would be perfectly applicable to the Philippines. Exemption is suggested for fraternal societies, order or association, operating under the lodge system, or to any local fraternal organization among the students of a college or university.

It will be noted that France has a tax on membership fees to clubs and associations (see Compilation, March 1957 issue) with a maximum rate of twenty percentum (20%).

V — TAX ON PASSAGE TICKETS:

This tax was recently repealed. The writer recommends its re-imposition. It is a good tax on the moneyed class; it could serve as a partial deterrent to travel, in line with the government's policy of conserving dollars. There is no difficulty of administration as the transportation companies or travel bureaus collect the tax from the passenger or else will be liable for it. The repeal of the tax was due to influential lobbying of the transportation industry and was not due to any defect in the nature of the tax or difficulty of administration.

If a tourism board is established by the government, as they should, the writer thinks that it would be a good idea to earmark at least fifty percentum (50%) of the proceeds of the tax for the Board with the policy of promoting tourism. The old tax had graduated rates; the writer suggests a simple rate of ten pesos for every hundred pesos or fraction thereof, but not to exceed one hundred pesos (P100.00) in any case. The only exemption the writer would give would be for official government business or missions. Business and industrial trips are usually deducted as business

expenses and therefore they get their corresponding tax benefits. The writer would tend to favor exemptions for "medical" or "educational" tours but the writer believes such exemptions would be subject to abuse so does not recommend it. In lieu thereof, the writer would recommend that the power be given to the Collector of Internal Revenue to waive the tax in case of medical or educational trips *and* where the financial circumstances of the applicant warrants the granting of the exemption.

Many countries tax all kinds of transportation charges, ranging from five percentum (5%) in Ecuador to twenty five percentum (25%) in Turkey, the tax base being the price of the ticket. Other countries imposing transportation or travel taxes are Germany, Greece, Japan, Luxembourg, and the United States. The recommended tax for the Philippines is only on travel from Philippine ports to foreign ports. Therefore it does not materially affect tourists who come to the Philippines and who usually have their return tickets with them. It does not affect domestic transportation rates, which anyway are approved by the Public Service Commission.

VI — TAX ON RADIOS, PHONOGRAPHS, AND TELEVISION SETS:

There was formerly a tax on radio receiving sets but which was recently repealed. In spite of expensive radio and newspaper publicity about the tax, the public was not responsive to it, and the collections were very minimal. The expenses for administration took quite a bit of the amount collected and so, Congress repealed it. This is a very good tax in itself and should be re-imposed. What is needed only is a more effective and improved type of administration.

For improved collection, the writer suggests that the collection of the tax be entrusted to the electric companies operating all over the Philippines, such as the Manila Electric Company, all of which exist by virtue of legislative franchise. Electric companies in the Philippines collect their bills from house to house by bill collectors, in addition to which they maintain a staff for inspection and service. By virtue of this, it wouldn't be any additional burden to them at all if they were given the job of inspecting radio sets, phonos and TVs and collecting the tax due. As a matter of incentive and equity, the electric companies could be given a five percentum (5%) commission out of all collections. Besides, the government uses very much electricity which they are usually behind in paying for. If need be, the amounts collected from this tax can be made to apply to existing debts and bills to said collecting companies.

As regards the nature of the tax, it should be extended to cover all kinds of radios, and also phonographs, hi-fidelity sets, record changers and television sets, and tape recorders.

As regards the rates, the graduation of rates according to tubes used in

⁷⁸ Sections 4241 to 4243 of INTERNAL REVENUE CODE.

the former law is insufficient. In addition to such rates, an additional tax of five pesos per additional speaker is suggested. This is to say, that the graduated rates according to tubes are on the basis of one speaker, so that if it is a hi-fi set or has more than one speaker, then there should be an additional tax of ₱5 per extra speaker. It is also suggested that an additional tax of five pesos be collected for each combination instrument, that is to say — in addition to the above rates, five pesos more for a radio-phonograph, or radio-TV, or phono-TV or phono-tape recorder, etc., and ten pesos for a radio-TV-phono, and fifteen pesos more for a radio-TV-phono-tape recorder.

The classification based on tubes alone would be inequitable and regressive in the sense that a ₱100 peso radio may pay the same tax as a ₱1,000 peso hi-fi simply because they have the same number of tubes.

There has been agitation for more taxation on radio and especially TV, particularly in the United States, because they are in close competition with movies and other types of amusement.

The list of exemptions provided for in the former law are extensive and reasonable enough. However, additional provision should be made for the exemption of radios and phonographs in barrios (the smallest political unit in the Philippines), and in towns or municipalities where population does not exceed 1,000. In such small places, the radio is probably the principal source of news, information and entertainment. This exemption is in accordance with an admitted good policy of not taxing the entertainment of the poorer class and therefore is one way of preventing regressivity in amusements taxes. In this particular case, what is exempted is also a principal source of news and information. It is also recommended that in towns whose population does not exceed three thousand, a nominal fee of one peso should be imposed on *table* radios of five tubes or less.

VII — ON ADMINISTRATION:

Amusement taxes the world over have given very little administrative difficulties due to the fact that they are usually collected by the operators, lessees, or managements concerned, who are simply required to make periodic reports and payments.

This is also true in the Philippines where, in comparison to the other taxes, amusement taxes, both national and local, have been administered quite satisfactorily. National amusement tax collections accounted for ₱7,604,867.76 of the total ₱294,792,680.76 total tax collections in 1955, and for ₱7,726,097.59 of the total tax collection of ₱336,196,503.08 in 1956.

The system adopted in checking the number of admission tickets is through requiring the proprietor, lessee or operator of an amusement or business place where fees or cover charges are required to be paid for admission to provide himself with admission tickets which before being used

must be presented to the corresponding revenue office for approval and registration. Persons subject to the gross receipts tax are required to keep a true and correct record of their gross receipts. In addition a performance bond in an amount equal, as nearly as can be estimated, to twice the amount of amusement taxes payable by them during an average month in the case of those regularly operating an amusement place, or twice the amount of the amusement taxes computed on the amusement tickets registered, in the case of those promoting or sponsoring amusement activities.

Inevitably there is a certain amount of tax evasion going on in the form of not tearing up admissions tickets, as required by regulations, and returning them to the box office, of issuing children's tickets for adult entrance and subsequent non-payment of the corresponding tax, non-issuance of receipts and subsequent non-reporting of certain amounts for purposes of the gross receipts tax. It will be noticed that these forms of tax evasion cannot be remedied by additional legislation or regulation except to a certain extent. What is needed is frequent checks of the theatres and amusement places by tax officials to ascertain whether registered tickets only are being used, or are being torn or if receipts are duly issued. The only recommendation the writer can make as far as law or regulation is concerned is to impose penal sanctions, in addition to the now existing civil sanctions or surcharges. And as far as these penal sanctions are concerned, the employee (ticket-taker or cashier or waiter), and the manager, and the owner of the amusement place should all be concurrently liable for any violation perpetrated in the amusement place concerned.

In the case of the issuance of two and one half percentum (2 1/2%) children's tickets in lieu of an admission fee of ₱0.50 and similar methods, the BIR ruling only makes this act fraudulent if the corresponding tax is not paid. This is not effective because even if a ticket taker is caught on the spot of doing this act, still it is not against the Tax Code provision, for then it can be maintained that the management planned to pay the tax anyway. It is therefore recommended in these cases that tickets of different rates should be differentiated and that one cannot be issued in lieu of the others. The mere issuance of several smaller-priced tickets in lieu of one high-priced admission should be penalized.

As regards complimentary passes and tickets, there is no indication that this concession has been abused. By virtue of the insignificant amount involved, and the administrative difficulties involved in taxing them, it is recommended that the present practice of not taxing them be retained.

As regards all other amusement provisions not otherwise dealt with in this section on recommendations, it is the writer's feeling that they should be retained as is either because their rates have just recently been increased or that they have presented no difficulties, from the standpoint of the nature of the tax, or its administration.