(P20,000.00) and granting them jurisdiction over admiralty and probate cases. Finally, the Judiciary Act of 1980 has simplified the labyrinthine rules on jurisdiction by abolishing the concurrent jurisdiction of the Court of First Instance with the Sandiganbayan, the Juvenile and Domestic Relations Court, the Circuit Criminal Court, the City Court and the Municipal Court.

Should the Judiciary Act of 1980 be implemented, subsequent experience may show the need for further amendment of the law. As Frankfurter and Laudis have very aptly put it:

"Framers of judiciary acts are not required to be seers; and great judiciary acts, unlike great poems, are not written for all times. It is enough if the designers of new judicial machinery meet the chief needs of their generations."[75]

[75] Frankfurter and Laudis, The Business of the Supreme Court of the United States, p. 107.

BATAS PAMBANSA Blg. 135: NEW DOG AND OLD TRICKS

Reynaldo G. Geronimo *

When the President signed Cabinet Bill No. 34 into law, known as Batas Pambansa Blg. 135, the tax system underwent two profound changes: *first*, the country shifted from the global or unitary method to the schedular system of taxing income; and *second*, it imposed, like a number of other countries[1] a tax on the gross, instead of net income of a number of its inhabitants. Affected were a substantial number of individual taxpayers whose earnings consisted solely in salaries and wages. Beginning January 1, 1982,[2] their income will be taxed on gross[3] instead of on net. Likewise affected are individuals earning income from the pursuit of business or exercise of their professions. Their income tax liability, while still based on net, will be taxed on the basis of a new schedule of rates[4] and under new constraints on the privilege to claim deductions.[5]

This article will consist of two parts: *first*, it will analyze the amendments and identify their impact on the individual's income tax base; and second, it will attempt to indicate how workers and salaried individuals may, on the basis of the principles justifying the tax avoidance techniques of their corporate supervisors and superiors, minimize their income tax liabilities. Along the way and only incidentally, it shall also point out some perceived imperfections of the new law.

PART I – THE NEW BASE OF THE PERSONAL INCOME TAX

A. Gross Compensation Income and Gross Income

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[1] See National Tax Research Center, *Net Income or Modified Gross Income Tax System Universally Adopted*, Tax Mon. Oct., 1978 p. 1.

[2] Batas Pambansa Blg. 135, Sec. 17.

[3] Tax Code, Sec. 21 (a).

[4] Id., Sec. 21 (b).

[5] Id., Sec. 30.

The evil sought to be corrected by Batas Pambansa Blg. 135 is well described in the third paragraph of the Explanatory Note of Cabinet Bill No. 34. It was written when the original bill was presented to the Batasang Pambansa and remained in the note explaining the bill as modified by the Committee on Finance and reported back to Batasang Pambansa on August 25, 1981.[6] The explanation read as follows:

> Experience has shown . . . that the global approach results in unwarranted erosion of the income tax base, disseminating its revenue productivity and to some extent destroying its progressivity. The tax base erosion is caused by several factors, but the most prominent among these is the wide latitude of discretion available to both the taxpayer and the tax authority in the determination and allowance of deductions. When all is told, the present income tax becomes a fertile source of corruption and an instrument of unfairness to honest and law-abiding taxpayers.[7]

Having identified the enemy, the revised Explanatory Note clearly stated its laudable objectives and outlined the ways of attaining them. It said:

> The attached bill therefore seeks to 1) simplify income tax administration for individuals; and (2) minimize the discretion available to both the individual taxpayer and tax authority in the determination and allowance of deductions.
>
> To attain these objectives, the schedular approach is proposed whereby income is grouped into three categories, namely: 1) compensation income of individuals; and 2) business income of individuals and the like; and 3) passive income.

Actually, the schedular approach of taxing income, which is characterized by the recognition of qualitative differences among different classes of income, has been partially adopted by our jurisdiction long before Cabinet Bill No. 34. Income of non-resident citizens from sources outside the Philippines was, as early as 1973, treated as a special category and taxed on gross, after adjustments for personal exemptions and foreign national income tax payments.[8] Capital gains have always been given special treatment by the Tax Code[9] and a number of incentive laws.[10] Income of subcontractors and

[6] See Committee Report No. 254, Batasang Pambansa's Committee on Finance.

[7] Explanatory Note, Cabinet Bill No. 34 (As Modified by the Committee).

[8] P.D. No. 323.

[9] Tax Code, Sec. 34 (b).

[10] For example: R.A. 5186, R.A. 6141, P.D. 57, P.D. 535, P.D. 779, P.D. 1159; P.D. 1738.

alien employees of service contractors engaged in petroleum operations in the Presidential Decree No. 85 is subject to a final tax on gross.[11]

Moreover, taxing passive income as a separate category was not an entirely new idea. The Cabinet Bill merely stated the present law on money market yields,[12] interests on savings and time deposits[13], and corporate dividends.[14]

The major modification introduced by Batas Pambansa Blg. 135 was really the attempt to treat differently two types of income of the individual, i.e., income from employment on the one hand and business and similar income on the other. How this was done in the text of the law deserves some comment, since it affects the substance and content of the taxable base.

As a first step, Batas Pambansa Blg. 135 removed from the concept of "gross income" as defined in Sec. 29 (prior to the amendment) "all income payments received as a result of an employer-employee relationship such as salaries, wages, honoraria, bonuses, pensions, allowances for transportation, representation, entertainment, fees (including director's fees) and other income of similar nature including compensation paid in kind."[15] This chunk carved out of the old concept of gross income,"[16] became the starting point for the computation of the income tax liability of employees.

The remainder of the old "gross income" concept, after the exclusion of "gross compensation income" and certain items of income subject to final income tax (i.e., passive income) continued to be called "gross income". Significantly, this slimmed down concept of income nevertheless included the catch-all phrase "gains, profits, and income of whatever kind and in whatever form derived from any source." Thus, it seems clear that, as a general rule, whatever income is not "income subject to the final income tax" nor "gross compensation income" is still included in the term "gross income."

[11] P.D. No. 1354.

[12] P.D. No. 1154.

[13] P.D. No. 1739.

[14] P.D. No. 1800.

[15] Batas Pambansa Blg. 134, Sec. 5.

[16] Ibid.

If the dividing lines drawn above are correct, then a problem arises on the taxability or non-taxability of certain exclusions from "gross compensation income". Sec. 28 of The Tax Code, as amended by Batas Pambansa No. 135, now contains paragraph (c) which reads as follows:

> xxx The following are excluded from the computation of gross compensation income:
>
> (1) Actual, moral, exemplary and nominal damages received by the employee or his heirs pursuant to a final judgment or compromise agreement arising out of or related to an employer-employee relationship.
>
> (2) All items excluded under paragraphs (c)(1) to (c)(8) inclusive of Section 29.

There is no problem concerning 28 (c)(2) because it merely refers to the list in Paragraph C of Sec. 29. The items thus listed are clearly not taxable because although they are obviously not passive income subject to final tax nor part of gross compensation income, they are nevertheless explicitly excluded from gross income under Se. 29 (c). The difficulty is with Sec. 28 (c)(1) which excludes from gross compensation income all "actual, moral, exemplary, and nominal damages received by the employee or his heirs pursuant to a final judgment or compromise agreement arising out of or related to an employer-employee relationship." There is no counterpart provision in Sec. 29 excluding the said damages from gross income. Thus, if the said damages are not part of gross compensation income, and therefore not subject to gross income taxation, are they subject nevertheless to income tax because, as a form of gain, profit, or income "of whatever kind and in whatever form derived from any source," they are part of "gross income? "

If one were to follow the tripartite categorization of income made in the Explanatory Note (i.e., into (1) compensation income of individuals, (2) business income of individuals and the like, and (3) passive income), then the answer seems to be in the negative. However, if the text of the law is consulted, then the conclusion seems to be inescapable that said damages are part of gross income. On sheer gut feel, one is inclined to believe that members of Batasang Pambansa, concerned, as they avow themselves to be, with the welfare of labor really intended to exempt from any income tax damages arising out of or related to an employer-employee relationship. On the other hand, the view that "gross income" under Sec. 29 (b) means for individuals, only "business income and the like," ignores the obvious import of the catch-all phrase pointed out above and in so doing opens the door to the exemption of items of income, which are neither passive, nor compensation,

nor business, such as windfalls, and similar receipts.[17]

In addition to this imprecise categorization of income, the regulations implementing Batas Pambansa Blg. 135 contribute its share to the difficulty of understanding the new tax base. Section 5 of Batas Pambansa Blg. 135 amending Section 28 of the Tax Code, mentions "fees (including director's fees)" as part of "gross compensation income". The implementing regulations interpret this to mean "fees, including director's fees paid to a director who is at the same time an employee of the payor"[18]. This position is seriously questioned.

It is uncontroverted that directors, as such, are not employees because they are not subject to the control of the corporation.[19] Their fees, per se, do not arise out of an employer-employee relationship. Consequently, were it not for the specific statutory provision above-quoted, director's fees do not form part of gross compensation income.

As the statute stands, however, director's fees are included in gross compensation income. The law does not distinguish between fees paid to directors who are also employees and fees paid to directors who are not. The regulations, nevertheless, do make a distinction and they remove by implication a director's fees from gross compensation income if the director is not an employee of the paying company. Thus, the fees of a director who is also an employee is subject to the graduated gross income tax of 1% to 35% while the same fees if paid to a director who is not an employee is subject only to the 10% witholding and creditable tax.[20] Since the schedular approach is predicated on some perceived qualitative difference on the nature of the income, (and fee, as fee, is the same whether received by one who is an employee or by one who is not) this two-tiered treatment of director's fees is obviously a violation of the rule on uniformity.[21]

B. Elimination of Certain Deductions and Changed Tax Rates

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[17] See Helvering vs. Bruun, 309 vs. 461; Commissioner vs. Glenshaw Glass Co., 348 U.S. 426.

[18] Rev. Reg. No. 20-81, Sec. A-1.

[19] Iloilo Chinese School vs. Fabrigas, 3 SCRA 712.

[20] Rev. Reg. No. 6-79 Sec. 8 supplementing Sec. 1 of Rev. Reg. No. 13-78.

[21] Const. Sec. 17 (1).

After categorizing income in the three ways mentioned above, Batas Pambansa Blg. 135 proceeds to achieve its second major objective, i.e., minimize the discretion available to both the individual taxpayer and tax authority in the determination and allowance of deductions.

1. No Deductions For Employees

For an individual whose income consists solely in gross compensation income, such discretion is completely wiped out. He is permitted to deduct from his gross compensation income only his permissible personal and additional exemptions under Sec. 23 of the Tax Code. The rest which has been called "taxable compensation income" is then subjected to a tax rate schedule, ranging from 1% to 35%.[22]

The amounts of personal and additional exemptions that may be claimed are the same as those permissible under the law[23] as it stood prior to amendment by Batas Pambansa Blg. 135.

Thus, it is not true, as claimed in some local dailies, that the amounts were increased by the Batasang Pambansa. The rates of personal and additional exemptions were increased, after a long period of opposition on the part of some officials in government, by the President on January 16, 1981, when he signed Presidential Decree No. 1773.

2. Tax Rates on Taxable Compensation Income

The rates of tax to be applied to gross compensation income, after deducting personal and additional exemptions, as finally imposed by Batas Pambansa No. 135 were different from those submitted by the Cabinet. The first schedule had ten brackets with rates that ranged from 3% for the first ₱5,000.00 to 35% on the excess of ₱250,000.00. As modified by the Committee on Finance, the amended bill had only nine brackets. It lowered the rate on the first ₱5,000.00 to 1% and imposed the 35% only on amounts in excess of ₱500,000.00. The schedule passed into law retained the nine brackets but, unlike the schedule in the two bills, exempted the first ₱2,500.00 from tax. Effectively, the tax rates, as finally approved, register 0.5% for ₱5,000.00, rise rather steeply at ₱20,000 where the rate is about 4.4% and start to taper off at the maximum bracket of ₱60,000.00 where the effective rate is 10%. At the top bracket of ₱500,000.00, the effective tax rate

[22] B.P. Blg. 135, Sec. 5.

[23] P.D. No. 1773, Sec. 3, amending Sec. 23, par. a,b, of Tax Code.

is 24.4%.

3. Restricted Deductions for Business and Professionals

For business income and the like, the individual taxpayer's discretion was not as severely restricted as in the case of compensation income. The business taxpayer, like the employee-taxpayer, lost his privilege to deduct items not related to the production of income. Thus he can no longer, under Batas Pambansa Blg. 135, deduct expenses for medical care and tuition allowed to citizens and resident aliens as far back as 1968.[24] He also lost his privilege to claim deductions for interest, taxes, losses, and bad debts, whenever any of these items are not paid or incurred in connection with the taxpayer's profession, trade, or business.[25] The standard deduction of ₱500.00 or 10% of the wife's gross income, whichever is lower, which was introduced in 1974[26] was also eliminated. Traditionally business related deductions may still be claimed, such as all ordinary and necessary expenses paid or incurred during the taxable year in carrying on trade or business, interest on business loans, business taxes, business losses, bad debts connected with business, depreciation and depletion.[27] In short, only deductions related to business may be deducted from gross income.

To this rationalization of permissible deductions, Batas Pambansa Blg. 135, makes a dubious exception. Even if they are not business related, charitable and other similar contributions, formerly allowed to every individual taxpayer, under certain conditions, may still be claimed by a business taxpayer, but not by an employee. The justification, if any, for this departure from the general rule limiting deductions to business related expenses, is not readily apparent. Neither is the discrimination between employee and businessman with respect to the deduction, understandable. The law certainly makes being charitable now more expensive for the employee than for the business taxpayer. Tested against the previously cited rule on uniformity, that portion of the law is of questionable validity. Certainly, it cannot be rationalized by the sinister comment, made by some, that only businessmen at this time are permitted to be charitable.

[24] R.A. 5325, Sec. 4 & 5.

[25] B.P. Blg. 135, Sec. 7.

[26] Tax Code, Sec. 30 (1) as amended by P.D. No. 69.

[27] B.P. Blg. 135, Sec. 7.

4. New Tax Rates on Net Income

The rates of tax on the net income of a business taxpayer also went through some form of metamorphosis. The original bill submitted had only three brackets taxed at 15% for the first ₱30,000.00; 30% for the next ₱120.000.00; and 40% for any amount in excess of ₱150,000.00. As justified by the sponsor of the bill, the intention was to apply the corporate tax rates to the business income of individuals. The sponsor explained that "the lowest rate of 15% is provided in order not to unduly burden small businesses, while the higher rates of 30% and 40% include the present 5% corporate development tax as a permanent feature."[28] After the bill went through the Committee on Finance, the rate schedule proposed and approved into law consisted of five brackets that taxed the first ₱10,000.00 at 5%; the next ₱20,000.00 at 15%; the next ₱120,000.00 at 30%; the next ₱350,000.00 at 45% and any excess over ₱500,000.00 at 60%. Effectively, the tax rates start 5% at ₱10,000.00, rise to 35% at ₱30,000.00, reach 26% at ₱150,000.00 and go over 39% at ₱500,000.00. Obviously, the original intention to treat the individual's business income at par with corporate income was abandoned at the Committee on Finance.

5. New Apportionment of the Tax Burden

With the taxable bases and the tax rates for the individual income tax thus modified by Batas Pambansa Blg. 135, the question as to how the tax burden has become reapportioned becomes important. Useful official data pertinent to the question are difficult to come by, and this makes precise conclusions impossible. However, some sort of indications can be gleaned from figures gathered for the years 1969 to 1973.

It was observed, in a study submitted to the National Defense College in 1976[29] that while the taxpayers in the lower brackets accounted for the greater portion of the amounts subject to tax, they nevertheless contributed only a minimal amount to total tax revenues.[30] This was due to the fact that the level of personal exemptions and deductions heavily influenced the tax liability of those in the lower brackets.

[28] Cabinet Bill No. 34 (Original), Explanatory Note.

[29] Mendoza, R. "An Analysis of the Philippine Income Tax Structure," a Thesis submitted in partial fulfillment of the requirement of the Degree of Master in National Security Administration, National Defense College of the Philippines

[30] Mendoza, *op. cit*, The Tax Monthly, Vol. XVII, No. 7, July, 1976, p. 18.

It was further observed that personal exemptions excluded from taxation a substantial portion of the gross income of the lower bracket taxpayers by as much as 60% in the case of those reporting net taxable income below ₱2,000.00. On the other hand, itemized deductions constitute the biggest reductions in gross income from individuals in the middle taxable brackets.

Presidential Decree 1773 increased the level of personal exemptions but it is not clear whether, because of the effects of inflation adjustments in wages and salaries, the taxpayers in the first brackets in the years 1968 to 1973 were really removed from the scope of the income tax. It seems reasonable, to believe though, that those who were then in the middle brackets are probably still subject to income taxation, inspite of the increase in personal and additional exemptions. In any case, the study showed that deductions constitute the biggest reductions in gross income. Itemized deductions as pointed out earlier were completely eliminated for employees and severely restricted for professionals and businessmen by Batas Pambansa Blg. 135. Thus it is clear as to who are going to feel, in varying degrees of severity, the cutting edge of the new law's adjusted rates.

PART II -- STRATEGIES AND TECHNIQUES OF TAX AVOIDANCE

On the assumption that Batas Pambansa Blg. 135 is here to stay, [31] employees understandably seek ways of avoiding the full measure of its incidence. The implementing rules on withholding had barely been released when the tax authorities, alerted by the devious ways of some taxpayers, started issuing warnings against deliberate frauds, particularly when abetted by the employers,[32] as well as hortatory explanations about the positive apects of the new law. This article will now discuss the theoretical foundations of legal strategies of tax avoidance, and then will explain some specific techniques which may be adopted by the taxpayers. Because the higher salaried executives and corporate officers can very well afford to attend the many seminars being organized to explain the law [33] and since they can

[31] There is at present a case before the Supreme Court questioning the validity of BP 135 on the grounds of uniformity to the extent that it imposes on a professional a higher tax liability for the same amount of income than that imposed on salaried individuals. The tax authorities, however, presumably confident that the law would be upheld, have not relented in their campaign for compliance with the law. See, for instance, Bulletin Today, Feb. 22, 1982, p. 5. col. 1.

[32] Bulletin Today, Feb. 15, 1982, p. 5, col. 1.

[33] Bulletin Today, Feb. 21, 1982, p. 8, col. 3.

easily seek advice from their lawyers and accountants, the techniques to the discussed here are primarily for those in the lower salary brackets.

A. Basic Strategies

The first obvious strategy of legally avoiding the gross income tax is to remove the payment from the scope of the concept of "gross compensation income." This is achieved when the relationship between the payor and the payee is converted to either that of a contractor (in lieu of employee) and contractee (in lieu of employer) or that of a professional and client. Since "gross compensation income" embraces only those payments which arise out of an employer-employee relationship, payments to contractors and professionals are obviously out of its scope. Instead they fall under business or professional income, which is taxed on net.

Jurisprudence has long established that the characteristic element of an employer-employee relationship is the right to control the employee's conduct. Thus, the Supreme Court has consistently held that the test of the existence of employer-employee relationship is whether there is an understanding between the parties that one is to render personal services to or for the benefit of the other and a recognition by them of the right of one to order and control the manner and method of performance of the other.[34] Without such control, the relationship is one of contractor-contractee.[35] This distinction is the basis of the first strategy.

If the employer-employee relationship cannot be avoided, then part of the payments could be characterized as not income at all, on the ground that they are either advances or reimbursements for expenses incurred by the employee on behalf of his employer. Advances to employees, for business reasons, are not income to the employees because they remain liabilities of the employees, until satisfactorily liquidated. A reimbursement is, on the other hand, merely "repayments of an indemnification. It does not connote income."[36] Being mere return of the employee's capital, it is not subject to income tax, gross or even net.[37]

A third strategy is to claim that certain payments to the employee were

[34] LVN Pictures vs. Phil. Musicians Guild, L-12582, January 28, 1961.

[35] Luzon Stevedoring Co. vs. Trinidad, 43 Phil. 803.

[36] BIR Ruling No. 46-78; Also, BIR Ruling No. 13-78.

[37] Rev. Regs. No. 2, Sec. 36.

motivated not by the need to compensate him for services rendered but rather by the advisability of the employer's incurring the expense for his own convenience. The beginnings of this "convenience of the employer" doctrine were ennunciated when it became necessary when the withholding system was first adopted in the Philippines, to define what constituted "wages" for purposes of withholding the income tax thereon.[38] The regulations, which were carried into the present guidelines implementing Batas Pambansa Blg. 135,[39] then provided that the value of living quarters or meals "furnished to an employee for the convenience of the employer ... need not be included as wages subject to withholding." From there, it was only one step away from the Supreme Court ruling in *Collector of Internal Revenue vs. Henderson*[40] that not all of the amounts paid for by employer for the rental of the apartment and cost of the utilities thereon furnished to the employee is income taxable to him. Where his duties compelled him, for the convenience of the employer, to live in a more luxurious place than what his personal needs required, only the ratable amount that he himself would have spent for such needs is taxable to him. The excess, which in the cited case amounted to less than ₱5,000.00, is not income to him. Accordingly, when the Bureau of Internal Revenue was asked for a ruling on similar facts, it found no obstacle to the holding that reimbursements paid to an executive for the rent and the utilities of his residence was not income to him where such reimbursement represented the actual cost of the rent and utilities in excess of his personal needs. It did not matter that in this case, such an excess, as determined by an independent consultant, amounted to ₱96,304.00 annually.[41]

The fourth strategy is to avoid income taxation on the ground that, while admittedly the amount or benefit received by an employee is clearly income to him, it is very insignificant and not worth the effort of the government to tax. Thus, it is conceded by the regulations that "facilities or privileges (such as entertainment, medical services, or so-called courtesy discount on purchases) furnished or offered by an employer to his employees generally are not subject to withholding if such facilities or privileges are of relatively small value and are offered or funished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his

[38] R.A. No. 590, Sec. 12 (see text).

[39] Rev. Reg. No. 20-81, Sec. 2.

[40] GR L-13049, Feb. 28, 1961.

[41] BIR Ruling, Dec. 4, 1975.

employees."[42]

Finally, the gross income tax can be avoided if shelter could be sought under the many tax exemption provisions under the Tax Code. Compensation could be either deferred until separation from the service, at which time the employee receives his "forced savings" under a tax-exempt plan, or converted into some form of benefit to his family contingent upon some fact related to his employment. The attractiveness of this strategy is obviously limited to those whose reasonable cash needs are sufficiently provided for either by their present salaries, subject of the gross income tax, or other sources.

B. Some Tax-Saving Techniques

The specific techniques of tax avoidance based on the foregoing strategies are many and diverse. They are enumerated and explained hereunder, not by way of legal advice, but only for the purpose of indicating the variety of ways of reducing one's tax liabilities, even in the face of the government's determined effort to eliminate the taxpayer's discretion in such matters. Whether or not a specific technique is advantageous to any particular person or group of persons is for their lawyers to decide. At the risk of being repetitious, let it be stated that there is no intention here to dispense legal advice.

Converting one's working relationship from that of employer-employee to contractor-contractee requires the separation from employment of marketing staffs, sales representatives, promotional personnel, agents and underwriters whose present compensation package consists of a small salary (to answer for their basic needs) and substantial commissions and bonuses, related in amount to the volume of their solicited sales. They may then be engaged under new and separate contracts which are carefully drafted to indicate that they are bound to their principals only as to result but not as to the means of their work. Lawyers and accountants of legal and accounting departments of business firms are also in a position to convert their employment into one of professional retainership. As a matter of fact, it is not inconceivable for everyone who is now an employee to be in a contractual relationship with his employer. An American author, exasperated with the government regulations on his business, reacted thus:

> "... I fired all the employees (including myself) and made contracts with each person for his services. Since I no longer had any employees, I no longer paid or withheld payroll takes."[43]

[42] Rev. Reg. No. 20-81, Sec. 2.

[43] Brown, *How I Found Freedom in an Unfree World,* (Avon Books, New York, 1974) p. 179.

Not having to withhold taxes was not the only benefit of such a measure. Further on, he writes:

> "After eliminating all employees (including myself) and contracting for services needed, the business was in the black. Those who continued to work for me made more money per hour worked, and I was able to cut my working time about half. Nothing else changed but the system of compensation and that one change provided many benefits.[44]

Such a drastic step, though, is not completely free of some complications. As indicated earlier, it merely converts employment income into business or professional income, thereby subjecting it to net, instead of to gross income tax. Moreover, it subjects the employees-turned-contractors to the many rules and regulations regarding the conduct of one's business. These should be weighed together with other non-tax considerations.

The advances or reimbursements route is the traditional method of removing some travelling, transportation and representation expenses from the scope of taxation. Job descriptions of officers and supervisors including those below top executive level, (for whom these types of shilded compensation have been in the past restricted) could be revised to include some form of marketing, or company-image building, or product promotion functions so as to relate some of their socializing activities to the company's business. Basis is then laid for the argument that the allowances given to them, are not really in the form of fixed compensation, but are more of reimbursements for expenses they incur in the promotion of the company's business. Some form of reporting, accounting, and liquidation is evidently necessary. For small amounts, per employee, claimed by way of reimbursements, it is probably reasonable to require only some sort of certification of expenses incurred.

Convenience of the employer can be invoked to justify a number of benefits to laborers. Workers in the out-lying areas may be given free housing facilities in the site of their work or places reasonably near thereto. It is definitely for the convenience of the employer to have all its employees living near their place of work as it is bound to reduce absenteeism and tardiness; it reduces the rate of turn-over of employees; and, because the housing is free and proximate to place of work, it enhances company loyalty and employee camaraderie. Corporate housing is also well-within the recognized concerns of the government and is granted official support.[45]

[44] *Ibid.*, p. 259.

[45] P.D. No. 745 as amended by P.D. No. 1217.

Workers may be provided bus service from designated points of the city to their place of work and back. It is to the benefit of the employer to provide reasonable transportation to their employees so as to insure their punctuality and insulate their attendance from the hazards of metropolitan traffic.

At work, laborers may also be given free meals in company cafeterias. Just as the institution of an executive dining room, usually open only to top level managers, is justified on the ground that the company's leaders need to get together in order to work more cohesively, so also may employee meals in the company canteen be considered essential to employee morale, corporate solidarity and the development of a strong sense of labor unity which is an avowed aim of government.

Just as the "convenience of the employer" and the "advances and reimbursement" routes are the traditional avenues for sheltering the highly paid executive's compensation, the "relatively small value" rule is the constant justification for considering a number of benefits to low-salaried employees as tax-free. Thus, the cost of uniforms, firm outings and excursions, office parties, are generally considered tax-free income to the employees because the benefit to each one is relatively small.

With the rising cost of medical care these days, particularly in view of the withdrawal of the privilege to claim deductions for medical care expenses, workers may be provided with accident and health insurance coverage not only for themselves but also for the members of their immediate families. The employer's payments, while deductible as ordinary and necessary business expenses, are not considered income to the employees, because on a per employee basis, the contributions are of small value. When the workers or their families claim against the insurance plan, such payments are not considered income because they are simply given by way of indemnity.[46]

Also in the form of a social security benefit, group term life insurance coverage for employees, who appoint their own beneficiaries with rights contingent upon the continued employment of the insured workers, can be made an integral part of the worker's compensation package. Premium payments are also considered as ordinary and necessary business expenses but are not taxable to the employees because they themselves do not receive the insurance proceeds in the event of their death. Moreover the benefits received by their designated beneficiaries are contingent upon the insured's continued employment. Also, on a per employee basis,

[46] Tax Code, Sec. 28 (c) (2) in relation to Sec. 29 (c) (5).

the amount spent by the company is of small value since a group term policy is one of the least expensive types of life insurance coverage. If the worker dies while employed, the insurance proceeds are not considered income to his heirs;[47] neither are they part of his taxable gross estate, because the life insurance policy was not taken by the decedent on his own life[48] but rather by his employer.

Also justifiable under the "small value" rule is the use which the employer may provide of its sports facilities and of its corporate memberships in athletic and social clubs.

After the worker's current compensation has provided for the worker's reasonable day-to-day cash requirements, tax-free status may also be conferred on his additional income through the use of a well-thought out qualified retirement plan. The law provides that, under certain conditions, the retirement benefits received by officials and employees of private firms, whether individual or corporate in accordance with a reasonable private benefit plan are not included in gross income.[49] If the plan is a funded pension trust, i.e., the employer sets up a separate trust to fund the plan, the employer's contributions thereto are deductible.[50] In addition, the income of the trust while it is holding the money for future distribution to the employee, is also free of tax.[51]

So that workers may enjoy now some of the future benefits of such a qualified pension trust plan, a portion of the trust fund could be segregated for the purpose of granting interest-free loans to the members of the plan. These loans, if made to mature at the expected dates of retirement of the workers may then on due dates be simply set-off against the benefits due to the employee under the plan. A carefully drawn plan that maintains the purpose of the retirement fund and at the same time funds the loan portfolio with contributions on top of what is necessary to enable the plan to meet its liabilities to the workers grants to the employee present enjoyment of the tax-free features of his future retirement benefit.

[47] Tax Code, Sec. 29 (c) (1).

[48] Tax Code, Sec. 100 (e).

[49] Tax Code, Sec. 28 (c) (2) in relation to Sec. 29 (c) (7) (A).

[50] Tax Code, Sec. 30 (j).

[51] Tax Code, Sec. 56 (b).