CHAPTER 1
GENERAL PRINCIPLES AND CONCEPTS OF TAXATION
INHERENT POWERS OF THE STATE

- ESSENTIAL POWER NECESSARY FOR THE SOVEREIGN STATE’S SURVIVAL.

- EXIST AS THE CENTRAL FORCE IN ORDER THAT A GOVERNMENT CAN:
  - COMMAND
  - MAINTAIN PEACE AND ORDER,
  - SURVIVE IRRESPECTIVE OF ANY CONSTITUTIONAL PROVISION.
THREE INHERENT POWERS OF THE SOVEREIGN STATE

• POLICE POWER

THE POWER TO PROTECT CITIZENS AND PROVIDE SAFETY AND WELFARE OF SOCIETY.

• EMINENT DOMAIN POWER

THE POWER TO TAKE PRIVATE PROPERTY (WITH JUST COMPENSATION) FOR PUBLIC USE.

• TAXATION POWER

THE POWER TO ENFORCE CONTRIBUTIONS TO SUPPORT THE GOVERNMENT, AND OTHER INHERENT POWERS OF THE STATE.
1. A **POWER** BY WHICH AN INDEPENDENT STATE, THROUGH ITS **LAW MAKING BODY**, RAISES AND ACCUMULATES REVENUE FROM ITS INHABITANTS TO PAY THE **NECESSARY EXPENSES OF THE GOVERNMENT**.

2. A **PROCESS OR ACT** OF IMPOSING A CHARGE BY GOVERNMENTAL AUTHORITY ON PROPERTY, INDIVIDUALS OR TRANSACTIONS TO RAISE MONEY FOR **PUBLIC PURPOSES**.
3. A **MEANS** BY WHICH THE SOVEREIGN STATE THROUGH ITS LAW-MAKING BODY **DEMANDS FOR REVENUE** IN ORDER TO SUPPORT ITS EXISTENCE AND CARRY OUT ITS LEGITIMATE OBJECTIVES.
NATURE OF TAXATION POWER

• INHERENT POWER OF SOVEREIGNTY;
• ESSENTIALLY A LEGISLATIVE FUNCTION;
• FOR PUBLIC PURPOSES;
• TERRITORIAL IN OPERATION;
• TAX EXEMPTION OF GOVERNMENT;
• THE STRONGEST AMONG THE INHERENT POWERS OF THE GOVERNMENT; AND
• SUBJECT TO CONSTITUTIONAL AND INHERENT LIMITATIONS.
SCOPE OF TAXATION POWER

- IT REACHES EVERY TRADE OR OCCUPATION
- EVERY OBJECT OF INDUSTRY, AND
- EVERY SPECIES OF POSSESSION.

- IT IMPOSES A BURDEN WHICH, IN CASE OF FAILURE TO DISCHARGE, MAY BE FOLLOWED BY SEIZURE OR CONFISCATION OF PROPERTY.
SUBJECT TO INHERENT AND CONSTITUTIONAL LIMITATIONS

- INHERENT POWER
  
  ✓ ITS VERY PURPOSE AND NATURE RESTRICT TAXATION.

  ✓ TAX POWER SHOULD BE EXERCISED FOR ITS VERY NATURE, PURPOSE AND JURISDICTION.

  ➢ A VIOLATION OF THESE INHERENT LIMITATIONS IS TANTAMOUNT TO TAKING A PROPERTY WITHOUT DUE PROCESS OF LAW.
SUBJECT TO INHERENT AND CONSTITUTIONAL LIMITATIONS (CONT’D)

- CONSTITUTION
  - TO PROTECT THE OBJECT OF TAXATION AGAINST ITS ABUSIVE IMPLEMENTATION.
  - IF A TAX LAW VIOLATES THE CONSTITUTION, SUCH LAW SHALL BE DECLARED NULL AND VOID.
SIMILARITIES AMONG TAXATION, EMINENT DOMAIN AND POLICE POWERS

1. THEY ARE **INHERENT POWERS** OF THE STATE;

2. THEY CONSTITUTE THE THREE WAYS BY WHICH THE STATE INTERFERES WITH THE PRIVATE RIGHTS AND PROPERTY;

3. THEY ARE **LEGISLATIVE** IN NATURE AND CHARACTER;

4. THEY PRESUPPOSE AN **EQUIVALENT COMPENSATION**;

5. THEY ALL UNDERLIE AND **EXIST INDEPENDENTLY** OF THE CONSTITUTION;

6. THEY ARE ALL NECESSARY **ATTRIBUTES OF SOVEREIGNTY**; AND

7. THE **PROVISIONS IN THE CONSTITUTION** ARE JUST **LIMITATIONS ON THE EXERCISE** OF THESE POWERS.
## Distinction of Taxation, Police Power, and Eminent Domain

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<th>Police Power</th>
<th>Eminent Domain</th>
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<tbody>
<tr>
<td><strong>1. AS TO CONCEPT</strong></td>
<td>Power to enforce contribution to raise government funds.</td>
<td>Power to make and implement laws for the general welfare.</td>
<td>Power to take private property for public use with just compensation.</td>
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<tr>
<td><strong>2. AS TO SCOPE</strong></td>
<td>Plenary, comprehensive and supreme</td>
<td>Broader in application, general power to make and implement laws.</td>
<td>Merely a power to take private property for public use.</td>
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<td><strong>AUTHORITY</strong></td>
<td>EXERCISED ONLY BY GOVERNMENT OR ITS POLITICAL SUBDIVISIONS.</td>
<td>EXERCISED ONLY BY GOVERNMENT OR ITS POLITICAL SUBDIVISIONS.</td>
<td>MAY BE GRANTED TO PUBLIC SERVICE OR PUBLIC UTILITY COMPANIES.</td>
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<td><strong>PURPOSE</strong></td>
<td>MONEY IS TAKEN TO SUPPORT THE GOVERNMENT.</td>
<td>PROPERTY IS TAKEN OR DESTROYED TO PROMOTE GENERAL WELFARE.</td>
<td>PRIVATE PROPERTY IS TAKEN FOR PUBLIC USE.</td>
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CHAPTER 1  General Principles and Concepts of Taxation
### DISTINCTION OF TAXATION, POLICE POWER, AND EMINENT DOMAIN (CONT’D)

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<td>The power to make tax laws cannot be delegated.</td>
<td>Can be expressly delegated to the local government units by the law making body.</td>
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| 6. AS TO PERSON AFFECTED | OPERATES ON A COMMUNITY OR A CLASS OF INDIVIDUAL. | OPERATES ON A COMMUNITY OR A CLASS OF INDIVIDUAL. | OPERATES ON PARTICULAR PRIVATE PROPERTY OF AN INDIVIDUAL. |
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<td><strong>7. As to Benefits</strong></td>
<td>Continuous protection and organized society.</td>
<td>Healthy economic standard of society.</td>
<td>Market value of the property expropriated.</td>
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<tr>
<td><strong>8. As to Amount of Imposition</strong></td>
<td>Generally, no limit.</td>
<td>Cost of regulation, license and other necessary expenses.</td>
<td>No imposition.</td>
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### Distinction of Taxation, Police Power, and Eminent Domain (Cont’d)

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<td>COMMON NECESSITIES AND INTERESTS OF THE COMMUNITY TRANSCEND INDIVIDUAL RIGHTS IN PROPERTY.</td>
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<td>SUBJECT TO CONSTITUTIONAL AND INHERENT LIMITATIONS.</td>
<td>RELATIVELY FREE FROM CONSTITUTIONAL LIMITATIONS.</td>
<td>SUPERIOR TO AND MAY OVER RIDE CONSTITUTIONAL IMPAIRMENT PROVISION BECAUSE THE WELFARE OF THE STATE IS SUPERIOR TO ANY PRIVATE CONTRACT.</td>
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<tr>
<td>INFERIOR TO NON IMPAIRMENT CLAUSE.</td>
<td>SUPERIOR TO NON IMPAIRMENT CLAUSE.</td>
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<td>CONSTRAINTS BY CONSTITUTIONAL AND INHERENT LIMITATIONS.</td>
<td>LIMITED BY THE DEMAND FOR PUBLIC INTEREST AND DUE PROCESS.</td>
<td>BOUNDED BY PUBLIC PURPOSE AND JUST COMPENSATION.</td>
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INHERENT LIMITATIONS

THE NATURAL RESTRICTIONS TO SAFEGUARD AND ENSURE THAT THE POWER OF TAXATION SHALL BE EXERCISED BY THE GOVERNMENT ONLY FOR THE BETTERMENT OF THE PEOPLE WHOSE INTEREST SHOULD BE SERVED, ENHANCED AND PROTECTED.

1. TAXES MAY BE LEVIED ONLY FOR PUBLIC PURPOSES;
2. BEING INHERENTLY LEGISLATIVE, TAXATION MAY NOT BE DELEGATED;
3. TAX POWER IS LIMITED TO TERRITORIAL JURISDICTION OF THE STATE;
4. TAXATION IS SUBJECT TO INTERNATIONAL COMITY; AND
5. GOVERNMENT ENTITIES ARE GENERALLY TAX-EXEMPT.
CONSTITUTIONAL LIMITATIONS

**PROVISIONS** OF THE FUNDAMENTAL LAW OF THE LAND THAT RESTRICT THE SUPREME, PLENARY, UNLIMITED AND COMPREHENSIVE EXERCISE BY THE STATE OF ITS INHERENT POWER TO TAX.

THE CONSTITUTIONAL PROVISIONS THAT LIMIT THE EXERCISE OF THE POWER TO TAX ARE AS FOLLOWS:

1. **DUE PROCESS OF LAW**;
2. **EQUAL PROTECTION OF LAW**;
3. **RULE OF UNIFORMITY AND EQUITY**;
4. **PRESIDENT’S POWER TO VETO SEPARATE ITEMS IN REVENUE OR TARIFF BILLS**.
5. EXEMPTION FROM PROPERTY TAXATION OF RELIGIOUS, CHARITABLE OR EDUCATIONAL ENTITIES, NONPROFIT CEMETERIES, CHURCHES, AND CONVENTS APPURTENANT THERETO;

6. NO PUBLIC MONEY SHALL BE APPROPRIATED FOR RELIGIOUS PURPOSES.

7. MAJORITY OF ALL THE MEMBERS OF THE CONGRESS GRANTING TAX EXEMPTIONS;

8. THE CONGRESS MAY NOT DEPRIVE THE SUPREME COURT OF ITS JURISDICTION IN ALL CASES INVOLVING THE LEGALITY OF ANY TAX, IMPOST OR ASSESSMENT OR TOLL OR ANY PENALTY IMPOSED IN RELATION TO TAX;
9. **NO IMPRISONMENT FOR NONPAYMENT OF POLL TAX; AND**

10. **TAX COLLECTION** SHALL GENERALLY BE TREATED AS **GENERAL FUNDS** OF THE GOVERNMENT.
DUE PROCESS OF LAW

- It mandates a fundamental right of protection that life, liberty or property shall only be taken away from any person (natural or juridical) if its exercise is not contrary to the fundamental law of the land and it is done after compliance with the established procedure prescribed by law.

- Requires that the law should be reasonable and not oppressive (substantive), and it requires opportunity to be heard in proper court of litigation before judgement is rendered affecting one’s person or property (procedural).
PURPOSE OF DUE PROCESS

✓ TO SECURE THE INDIVIDUAL FROM THE ABUSIVE EXERCISE OF THE TAXING POWER OF THE GOVERNMENT.

“EQUAL PROTECTION OF THE LAWS”

✓ ALL PERSONS SUBJECT TO LEGISLATION SHALL BE TREATED ALIKE UNDER SIMILAR CIRCUMSTANCES AND CONDITIONS BOTH IN THE PRIVILEGES CONFERRED AND LIABILITIES IMPOSED.
PURPOSE THE CONSTITUTIONAL MANDATE

✓ ON EQUAL PROTECTION IS TO PROTECT PERSONS BELONGING TO THE SAME CLASS AGAINST INTENTIONAL AND ARBITRARY DISCRIMINATION.
“EQUALITY IN TAXATION”

- Similar to Progressive System of Taxation.
- Tax laws and their implementation must be fair, just, reasonable and proportionate to one’s ability to pay.

Primary requisite of equity principle:

- A progressive tax rate shall be applied equally to all persons, firms, and corporation, and transactions placed in similar classification and situation.
THE ABILITY-TO-PAY PRINCIPLE OF TAXATION.
PRESIDENT’S VETO POWER

“VETO POWER”

✓ REFERS TO THE EXECUTIVE’S POWER TO REFUSE TO SIGN INTO LAW A BILL THAT HAS BEEN PASSED BY A LEGISLATURE.

IT CAN BE DEFINED INTO:

A. ITEM VETO

✓ THE POWER TO VETO ITEMS IN APPROPRIATION BILLS WITHOUT AFFECTING ANY OTHER PROVISIONS OF SUCH BILLS, AND

B. POCKET VETO

✓ THE POWER TO DISAPPROVE LEGISLATIVE ACT BY THE PRESIDENT WITH THE RESULT THAT BILLS SHALL FAIL TO BECOME LAWS.

CHAPTER 1  General Principles and Concepts of Taxation
EXEMPTION FROM PROPERTY TAXATION

- THE EXEMPTION IS GRANTED IN RETURN FOR THE BENEFITS THEY HAVE AFFORDED FOR THE PUBLIC WELFARE.

- TO BE EXEMPTED FROM TAXATION, THE REAL PROPERTY MUST BE EXCLUSIVELY USED FOR RELIGIOUS, EDUCATIONAL AND CHARITABLE PURPOSES.
ART. VI, SECTION 29 OF THE CONSTITUTION

PROVIDES THAT “NO PUBLIC MONEY OR PROPERTY SHALL EVER BE APPROPRIATED, APPLIED, PAID OR USED DIRECTLY OR INDIRECTLY FOR THE USE, BENEFIT, OR SUPPORT OF ANY SECT, CHURCH, DENOMINATION, SECTARIAN, INSTITUTION, OR SYSTEM OF RELIGION, OR FOR THE USE, BENEFIT OR SUPPORT OF ANY PRIEST, PREACHER, MINISTER, OR RELIGIOUS TEACHER OR DIGNITARY AS SUCH, EXCEPT WHEN SUCH PRIEST, PREACHER, MINISTER, OR DIGNITARY IS ASSIGNED TO ARMED FORCES, OR TO ANY PENAL INSTITUTION, OR GOVERNMENT ORPHANAGE OR LEPROSARIUM.”

LIKEWISE, THE CHURCH SHOULD NOT INTERFERE IN PURELY POLITICAL MATTERS OR AFFAIRS EXCLUSIVELY FOR THE STATE. CONSEQUENTLY, THE CONSTITUTION PROHIBITS AGAINST INFRINGEMENT OF RELIGIOUS FREEDOM.
ART. VI, SECTION 28, PAR. 4 OF THE CONSTITUTION PROVIDES THAT "NO LAW GRANTING ANY TAX EXEMPTION SHALL BE PASSED WITHOUT THE CONCURRENCE OF A MAJORITY OF ALL THE MEMBERS OF THE CONGRESS."

PROVISION REQUIRES THE CONCURRENCE OF THE MAJORITY NOT OF THE ATTENDEES CONSTITUTING A QUORUM BUT OF ALL THE MEMBERS OF THE CONGRESS.
THE POWER OF JUDICIAL REVIEW IN TAXATION IS *LIMITED ONLY TO THE INTERPRETATION AND APPLICATION OF TAX LAWS*. THE JUDICIAL TRIBUNALS HAVE NO CONCERN ON THE WISDOM OF TAXING ACT. ITS POWER DOES NOT INCLUDE INQUIRY IN THE POLICY OF LEGISLATION. NEITHER CAN IT LEGITIMATELY QUESTION OR REFUSE TO SANCTION THE PROVISIONS OF ANY LAW CONSISTENT WITH THE CONSTITUTION.
NO IMPRISONMENT FOR NON-PAYMENT OF POLL TAX

“POLL TAX”

✓ A **TAX IMPOSED ON A PERSON AS A RESIDENT WITHIN A TERRITORY OF THE TAXING AUTHORITY WITHOUT REGARD TO HIS PROPERTY, BUSINESS OR OCCUPATION.**

➢ IT IS TO BE NOTED THAT THE **PROHIBITION OF IMPRISONMENT APPLIES ONLY TO THE NON-PAYMENT OF POLL TAX.**
TAXES AS GENERAL FUNDS OF THE GOVERNMENT

- ART. VI, SECTION 29, PAR. 3 OF THE PHILIPPINE CONSTITUTION

States that “ALL MONEY COLLECTED ON ANY TAX LEVIED FOR A SPECIAL PURPOSE SHALL BE TREATED AS A SPECIAL FUND AND PAID OUT FOR SUCH PURPOSE ONLY. IF THE PURPOSE FOR WHICH A SPECIAL FUND WAS CREATED HAS BEEN FULFILLED OR ABANDONED, THE BALANCE IF ANY, SHALL BE TRANSFERRED TO THE GENERAL FUNDS OF THE GOVERNMENT.”

- Thus, collection of fee with the nature of taxes intended for the promotion of sugar industry shall be treated as a special fund.
IMPORTANCE OF TAXATION

- IT IS THE PRIMARY SOURCE OF GOVERNMENT REVENUE THAT IS USED TO EFFECTIVELY AND PERMANENTLY PERFORM GOVERNMENT FUNCTIONS.

- WITHOUT TAXATION, THE OTHER INHERENT POWERS (POLICE AND EMINENT DOMAIN POWERS) WOULD BE PARALYZED.
BASIS OF TAXATION

ESTABLISHED BASED ON THE PRINCIPLES OF:

A. NECESSITY

✓ THE GOVERNMENT HAS A RIGHT TO COMPEL ALL ITS CITIZENS, RESIDENTS AND PROPERTY WITHIN ITS TERRITORY TO CONTRIBUTE MONEY.

✓ TAXATION IS THE “LIFE BLOOD” OR THE “BREAD AND BUTTER” OF THE GOVERNMENT AND EVERY CITIZEN MUST PAY HIS TAXES.

B. RECIPROCAL DUTIES OF PROTECTION AND SUPPORT BETWEEN THE STATE AND INHABITANTS.

✓ THE GOVERNMENT COLLECTS TAXES FROM THE SUBJECT OF TAXATION IN ORDER THAT IT MAY BE ABLE TO PERFORM ITS FUNCTIONS.
PURPOSES OF TAXATION

OBJECTIVES IN THE EXERCISE OF TAXING POWER

1. REVENUE PURPOSES

   THE PRIMARY PURPOSE OF TAXATION IS TO RAISE REVENUE BY COLLECTING FUNDS OR PROPERTY FOR THE SUPPORT OF THE GOVERNMENT IN PROMOTING THE GENERAL WELFARE AND PROTECTING ITS INHABITANTS.

2. REGULATORY PURPOSE

   THIS OBJECTIVE IS ACCOMPLISHED TO

   A. REGULATE INFLATION,

   B. ACHIEVE ECONOMIC AND SOCIAL STABILITY, AND

   C. SERVE AS KEY INSTRUMENT FOR SOCIAL CONTROL
PURPOSES OF TAXATION (CONT’D)

REGULATORY PURPOSES (CONT’D)

➢ TAXES MAYBE USED AS A TOOL AND WEAPON IN INTERNATIONAL RELATIONS

AS A TOOL TO PROTECT TRADE RELATION, SPECIAL DUTIES MAYBE CREATED TO PROTECT NEW CONDITIONS, SUCH AS:

(1) **DISCRIMINATORY DUTY**

   THIS SPECIAL DUTY IS DESIGNED TO OFFSET ANY FOREIGN DISCRIMINATION AGAINST OUR LOCAL COMMERCE.

(2) **COUNTERVAILING DUTY**

   IT MAYBE IMPOSED TO OFFSET ANY FOREIGN SUBSIDY GRANTED TO IMPORTED GOODS TO THE PREJUDICE OF OUR LOCAL INDUSTRIES.
3. COMPENSATORY PURPOSE

TAXATION IS A WAY OF GIVING BACK THE EXPECTED ECONOMIC AND SOCIAL BENEFIT DUE TO THE INHABITANTS.
OBJECTS OF TAXATION

• OBJECTS OF TAXATION MAY REFER TO THE SUBJECT TO WHICH TAXES ARE IMPOSED.

GENERALLY TAXES ARE IMPOSED ON THE FOLLOWING:

1. PERSONS, WHETHER NATURAL OR JURIDICAL PERSONS;

2. PROPERTIES, WHETHER REAL, PERSONAL, TANGIBLE OR INTANGIBLE PROPERTIES;

3. EXCISE OBJECT, SUCH AS TRANSACTIONS, PRIVILEGE, RIGHT AND INTEREST.
### CERTAIN DOCTRINES IN TAXATION

1. **Prospectivity of Tax Laws**
2. **Imprescriptibility of Taxes**
3. **Double Taxation**
4. **Escape from Taxation**
5. **Exemption from Taxation**
6. **Equitable Recoupment**
7. **Set-Off Taxes**
8. **Taxpayer Suit**
9. **Compromises**
10. **Power to Destroy**
1. **PROSPECTIVITY OF TAX LAWS**

   The principle of prospectivity of tax laws states that a tax bill must only be applicable and **operative after becoming a law**.

2. **IMPRESSCRIPTIBILITY OF TAXES**

   This principle states that unless otherwise provided by the tax law itself, **taxes in general are non cancellable**.
3. DOUBLE TAXATION

MEANS AN ACT OF THE SOVEREIGN BY TAXING TWICE FOR THE SAME PURPOSE IN THE SAME YEAR UPON THE SAME PROPERTY OR ACTIVITY OF THE SAME PERSON, WHEN IT SHOULD BE TAXED ONCE, FOR THE SAME PURPOSE AND WITH THE SAME KIND OF CHARACTER OF TAX.

➢ TO AVOID INJUSTICE AND UNFAIRNESS, DOUBTS AS TO WHETHER DOUBLE TAXATION HAS BEEN IMPOSED SHOULD BE RESOLVED IN FAVOR OF THE TAXPAYER.
CERTAIN DOCTRINES IN TAXATION

(CONT’D)

INDIRECT DUPLICATE TAXATION.

 THIS IS DOUBLE TAXATION IN ITS BROAD SENSE.
 IT EXTENDS TO ALL CASES IN WHICH THERE IS A BURDEN OF TWO OR MORE PECUNIARY IMPOSITIONS.

DIRECT DUPLICATE TAXATION.

 THIS IS DOUBLE TAXATION IN ITS STRICT SENSE.
 IT IS PROHIBITED BECAUSE IT COMPRISERS IMPOSITION OF THE SAME TAX ON THE SAME PROPERTY FOR THE SAME PURPOSE BY THE SAME STATE DURING THE SAME TAXING PERIOD.
CERTAIN DOCTRINES IN TAXATION

(CONT’D)

HOW TO COUNTER ACT INDIRECT DOUBLE TAXATION?

1. TAX EXEMPTIONS;
2. RECIPROCITY CLAUSE/ TAX TREATY;
3. TAX CREDIT;
4. TAX EXEMPTIONS; AND
5. ALLOWANCE FOR DEDUCTIONS SUCH AS VANISHING DEDUCTION IN ESTATE TAX.

THERE IS NO DOUBLE TAXATION IN THE FOLLOWING CASES:

1. BY TAXING CORPORATE INCOME AND STOCKHOLDER’S DIVIDENDS FROM THE SAME CORPORATION.
2. A TAX IMPOSED BY THE STATE AND THE LOCAL GOVERNMENT UPON THE SAME OCCUPATION, CALLING OR ACTIVITY.
3. REAL ESTATE TAX AND INCOME TAX COLLECTED ON THE SAME REAL ESTATE PROPERTY LEASED FOR EARNING PURPOSES.
4. TAXES ARE IMPOSED ON THE TAXPAYER’S FINAL PRODUCT AND THE STORAGE OF RAW MATERIALS USED IN THE PRODUCTION OF THE FINAL PRODUCT.
4. ESCAPE FROM TAXATION

THE WAYS BY WHICH A TAX PAYER COULD ESCAPE TAX BURDENS MAY BE THROUGH TAX EVASION AND TAX AVOIDANCE.

“TAX EVASION”

- UNDER THIS METHOD, THE TAX PAYER USES UNLAWFUL MEANS TO EVADE OR LESSEN THE PAYMENT OF TAX.

- THIS FORM OF TAX DODGING IS PROHIBITED AND THEREFORE SUBJECT TO CIVIL AND/ OR CRIMINAL PENALTIES.

“TAX AVOIDANCE”

- THIS IS THE REDUCING OR TOTALLY ESCAPING PAYMENT OF TAXES THROUGH LEGALLY PERMISSIBLE MEANS.
CERTAIN DOCTRINES IN TAXATION
(CONT’D)

FORMS OF TAX AVOIDANCE

(1.) TAX OPTION

- TAXPAYERS MAY CHOOSE TO PAY LOWER TAX RATE IN SOME TRANSACTIONS AS PERMITTED BY TAX LAWS.

(2.) SHIFTING

- IS THE TRANSFER OF TAX BURDEN TO ANOTHER; THE IMPOSITION OF TAX IS TRANSFERRED FROM THE STATUTORY TAXPAYER TO ANOTHER WITHOUT VIOLATING THE LAW.
FORMS OF TAX AVOIDANCE [CONT’D]

(3.) TRANSFORMATION

- THE PRODUCER ABSORBS THE PAYMENT OF TAX TO REDUCE PRICES AND TO MAINTAIN MARKET SHARE, THEN HE RECOVERS HIS ADDITIONAL TAX EXPENSES BY IMPROVING THE PROCESS OF PRODUCTION.

(4.) EXEMPTION FROM TAXATION

- DENOTES A GRANT OF IMMUNITY, EXPRESSED OR IMPLIED, TO A PARTICULAR PERSON, CORPORATION, OR TO PERSONS OR CORPORATIONS OF A PARTICULAR CLASS, FROM A TAX UPON PROPERTY OR AN EXCISE WHICH PERSONS AND CORPORATION GENERALLY WITHIN THE SAME TAXING DISTRICT ARE OBLIGED TO PAY.

- TAX EXEMPTIONS ARE GENERALLY GRANTED IN THE BASIS OF (a) RECIPROCITY, (b) PUBLIC POLICY, AND (C) CONTRACTS.
CERTAIN DOCTRINES IN TAXATION

(CONT’D)

CLASSIFICATIONS OF TAX EXEMPTION

TAX EXEMPTION MAYBE CLASSIFIED AS:

(1.) EXPRESSED EXEMPTION

- THESE TAX EXEMPTIONS ARE STATUTORY LAWS IN NATURE AS PROVIDED BY CONSTITUTION, STATUTE, TREATIES, ORDINANCES, FRANCHISES OR SIMILAR LEGISLATIVE ACTS.

(2.) IMPLIED EXEMPTION OR BY OMISSION

- THESE EXEMPTIONS ARE EITHER INTENTIONAL OR ACCIDENTAL.

- THESE OCCUR WHEN TAX IS IMPOSED ON A CERTAIN CLASS OF PERSONS, PROPERTIES OR TRANSACTIONS WITHOUT MENTIONING OTHER CLASSES; THOSE NOT MENTIONED ARE DEEMED EXEMPTED BY OMISSION. (PRINCIPLE OF LAW).
(3.) **EXPRESSED EXEMPTION**

- ARE EXEMPTIONS THAT ARE LAWFULLY ENTERED INTO BY THE GOVERNMENT IN CONTRACT **UNDER EXISTING LAWS**.

- THESE EXEMPTIONS MUST NOT BE CONFUSED WITH THE TAX EXEMPTIONS GRANTED **UNDER FRANCHISES**, WHICH ARE NOT CONTRACTS WITHIN THE CONTEXT OF **NON-IMPAIRMENT CLAUSE** OF THE CONSTITUTION.
6. **EQUITABLE RECOUPMENT**

   This doctrine of law states that a tax claim for refund, which is prevented by prescription, may be allowed to be used as payment for unsettled tax liabilities if both taxes arise from the same transaction in which overpayment is made and underpayment is due.

7. **SET-OFF TAXES**

   This doctrine states that taxes are not subject to set-off or legal compensation because the government and the taxpayer are not mutual creditor and debtor of each other.
8.) SET-OFF TAXES [CONT’D]

** A PERSON CANNOT REFUSE TO PAY TAX ON THE BASIS THAT THE GOVERNMENT OWES HIM AN AMOUNT EQUAL TO OR GREATER THAN THE TAX BEING COLLECTED.

EXEMPTION TO THIS RULE:

1.) WHERE BOTH THE CLAIMS OF THE GOVERNMENT AND THE TAXPAYER AGAINST EACH OTHER HAVE ALREADY BECOME DUE, DEMANDABLE AND FULLY LIQUIDATED;

2.) WHERE THERE IS AN ACTUAL COMPROMISE BETWEEN THE TAXPAYER AND THE TAX OFFICER.
9.) TAXPAYER SUIT

IS EFFECTED THROUGH COURT PROCEEDINGS AND COULD ONLY BE ALLOWED IF THE ACT INVOLVES A DIRECT AND ILLEGAL DISBURSEMENT OF PUBLIC FUNDS DERIVED FROM TAXATION.

10.) COMPROMISES

THIS DOCTRINE PROVIDES THAT COMPROMISES ARE GENERALLY ALLOWED AND ENFORCEABLE WHEN THE SUBJECT MATTER THEREOF IS NOT PROHIBITED FROM NOT BEING COMPROMISED AND THE PERSON ENTERING SUCH COMPROMISE IS DULY AUTHORIZED TO DO SO.
11.) **POWER TO DESTROY**

This principle implies that an imposition of lawful regulatory taxes would be **DESTRUCTIVE TO THE TAXPAYERS** and business establishments because the government can compel payment of tax and **FORFEITURE OF PROPERTY** through the exercise of **POLICE POWER**.
CERTAIN DOCTRINES IN TAXATION
(CONT’D)

POWER TO BUILD

TAX POWER IS PRIMARILY A TOOL THAT Creates, BUILDS AND SUSTAINS THE UPLIFTMENT OF SOCIAL CONDITION OF THE PEOPLE IN GENERAL AS IT CONTINUOUSLY SUPPORTS THE OTHER INHERENT POWERS OF THE STATE THAT PRESERVE THE FUNDAMENTAL RIGHTS OF THE PEOPLE.

SITUS OF TAXATION

THIS REFERS TO THE PLACE OF TAXATION, OR THE STATE OR POLITICAL UNIT WHICH HAS JURISDICTION TO IMPOSE TAX OVER ITS INHIBITANTS.
GENERAL RULE: THE STATE HAS THE POWER TO IMPOSE TAX ONLY WITHIN ITS TERRITORIAL JURISDICTION.

THE FOLLOWING FACTORS ARE DETERMINANTS TO THE SITUS OF TAXATION:

1. **Nature**, kind of **classification** of the tax being imposed;
2. **Subject matter** of the tax (person, property, rights or activity);
3. **Source** of the income being taxed;
4. **Place** of the excise, privilege, business or occupation being taxed;
5. **Citizenship** of the taxpayer;
6. **Residence** of the taxpayer.
“TAXES” are forced burdens, charges, exactions, impositions or contributions assessed in accordance with some reasonable rule of appointment, by authority of a sovereign state, upon the person, property, or rights exercised, within its jurisdiction, to provide public revenues for the support of the government, the administration of the law, or the payment of public expenses.

- Taxes are obligations created by law.
- Taxes are generally personal to the taxpayer.
ESSENTIAL CHARACTERISTICS OF TAXES

1. **Enforced** contribution.
2. Imposed by **legislative body**.
3. **Proportionate** in character.
4. Payable in **form of money**.
5. Imposed for the purpose of **raising revenue**.
6. Used for a **public purpose**.
7. Enforced on some **persons, properties or rights**.
8. Commonly required to be **paid at regular intervals**.
9. Imposed by the sovereign state **within its jurisdiction**.
NATURE OF TAXES (CONT’D)

CLASSIFICATION OF TAXES

1. AS TO PURPOSE

a. *Revenue or Fiscal*

These taxes are imposed solely for the purpose of raising revenue for the government.

b. *Regulatory, Special or Sumptuary*

These taxes are imposed for the purpose of achieving some social or economic goals having no relation to the raising of revenue.
2. AS TO **OBJECT OR SUBJECT MATTER**

a. *Personal, Poll or Capitation*

These taxes are **fixed in amount** and imposed on **persons residing within a specified territory** regardless of the amount of their property or their occupation or business.

b. *Property*

These taxes are imposed on **personal or real property** bases on its proportionate value or in accordance with other reasonable method of apportionment.

c. *Excise*

These taxes are imposed upon **the performance of a right or act**, the enjoyment of a **privilege** or the engagement in an **occupation**
3. AS TO DETERMINATION OF AMOUNT

a. Ad Valorem

- These taxes are fixed amounts in proportion to the value of the property with respect to which the tax is assessed.

- It requires the intervention of Assessors to estimate the value of such property before the amount due to the taxpayer be determined.

b. Specific

- These taxes are fixed amounts imposed and based on some standard of weight or measurement, head or number, length or volume.

- It requires independent assessment other than a listing or classification of the subject to be taxed.
4. AS TO WHO BEARS THE BURDEN

a. **Direct**
   - These taxes are *non-transferable*.
   - The liability for the payment of tax as well as the tax falls on the same person.

b. **Indirect**
   - These taxes are *transferable*.
   - The liability for the payment of tax falls on one person but the burden thereof can be shifted or passed to another.
5. **AS TO SCOPE OR AUTHORITY COLLECTING THE TAX**

a. **National**

- Taxes collected by the *national government* (E.g. Estate and donor’s taxes).

b. **Local or Municipal**

- Taxes collected by the *Municipal government* (E.g. Community tax).
6. AS TO RATE OR GRADUATION

a. *Proportional or Flat Rate*
   - The rate of the tax is based on a **fixed percentage of the amount of the property, receipt or other basis** to be taxed.

b. *Progressive or Graduated Rate*
   - The **rate of the tax** increases as the **tax base or bracket increases** (e.g. Income Tax and Estate Tax)

c. *Mixed Tax*
   - A system that uses all or a **combination of the different taxes based on rates**.
OTHER CHARGES/ FEES

1. **PENALTY** – Is any sanction imposed, as a punishment for violations of law or acts deemed injurious.

2. **REVENUE** – Refers to all funds or income derived whether from tax or from other sources.

3. **DEBT** – Is an obligation to pay or render service from a definite future period based on contract.

4. **TOLL** – Is a compensation for the use of somebody else’s property determined by the cost of the improvement.

5. **LICENSE FEE** – Is a contribution enforced by the government primarily to restrain and regulate business or occupation.
OTHER CHARGES/ FEES (CONT’D)

6. **CUSTOMS DUTIES** - are imposition or imported goods brought into the country to protect local industry.

7. **SUBSIDY** – is a monetary aid directly given or granted by the government to an individual or private commercial enterprises deemed beneficial to the public.

8. **TARIFF** – is a schedule or lists of rates, duties of taxes imposed on imported goods.

9. **MARGIN FEE** – is a tax on foreign exchange designed to curb excessive demands upon our international reserves.

10. **SPECIAL ASSESSMENT** – is an amount collected by the government for the purpose of reimbursing itself for certain extended benefits regarding construction of public works.
TAX LAW DEFINED

“TAX LAW”

is that body of laws including income, estate, gift, excise, stamp and other taxes.

** The TAX CODE is an example of a special law which prevails over a general law such as the Civil Code or the Rules of Court.

INTERNAL REVENUE LAW

- It includes all laws legislated pertaining to the national government taxes which is embodied in the NIRC.
- The main purpose of promulgating internal revenue laws is to rise money to meet the pecuniary needs by the government.

INTERNAL REVENUE TAXES

- taxes imposed by the legislative body other than custom duties on imports.
THE PHILIPPINES INTERNAL REVENUE LAWS ARE **GENERALLY CIVIL IN NATURE**; THEY ARE **NEITHER POLITICAL NOR PENAL IN NATURE**.
THE FOLLOWING RULES ARE GENERALLY FOLLOWED FOR THE INTERPRETATION AND APPLICATION OF TAX LAWS:

1. TAX STATUTE MUST BE ENFORCED AS WRITTEN.
2. IMPOSITION OF TAX BURDENS IS NOT PRESUMED.
3. DOUBTS SHOULD BE RESOLVED LIBERALLY IN FAVOR OF THE TAXPAYER.
4. TAX EXEMPTIONS ARE STRICTLY CONSTRUED AGAINST THE TAXPAYER.
5. TAX LAWS ARE APPLIED PROSPECTIVELY.
6. TAX LAWS PREVAIL OVER CIVIL LAWS.
THE PHILIPPINES REPUBLIC MAKES LAWS WHICH MAYBE COMPRISED OF THE FOLLOWING:

1. **CONSTITUTION OF THE PHILIPPINES;**
   - THIS REFERS TO THAT BODY OF RULES AND MAXIMS IN ACCORDANCE WITH WHICH THE POWER OF SOVEREIGNITY ARE HABITUALLY EXERCISED.

2. **STATUTES;**
   - THESE ARE LAWS ENACTED AND ESTABLISHED BY THE CIVIL WILL OF THE LEGISLATIVE DEPARTMENT OF THE GOVERNMENT.
3. **EXECUTIVE ORDERS:**

   - THESE ARE REGULATIONS ISSUED BY THE PRESIDENT OR SOME ADMINISTRATIVE UNDER HIS DIRECTION FOR THE PURPOSE OF INTERPRETING, IMPLEMENTING, OR GIVING ADMINISTRATIVE EFFECT TO A PROVISION OF THE CONSTITUTION OR SOME LAW OR TREATY.

4. **TAX TREATIES AND CONVENTION WITH FOREIGN COUNTRIES:**

   - THESE REFER TO THE TREATIES OR INTERNATIONAL AGREEMENTS WITH FOREIGN COUNTRIES REGARDING TAX ENFORCEMENT AND EXEMPTIONS.
5. **REVENUE REGULATIONS BY THE DEPARTMENT OF FINANCE;**

- THESE ARE RULES OR ORDERS HAVING FORCE OF LAW ISSUED BY EXECUTIVE AUTHORITY OF THE GOVERNMENT TO ENSURE UNIFORM APPLICATION OF TAX LAWS.

**IN ORDER THAT ADMINISTRATIVE REGULATIONS MAY BE CONSIDERED VALID, ALL OF THE FOLLOWING REQUISITES MUST BE COMPLIED WITH:**

1. THE REGULATIONS MUST BE **USEFUL IN PRACTICAL AND NECESSARY** FOR THE **ENFORCEMENT OF THE LAW**;
2. THEY MUST BE **REASONABLE** IN THEIR PROVISIONS;
3. THEY MUST **NOT BE CONTRARY TO LAW; AND**
4. THEY MUST BE **DULY PUBLISHED** IN THE **OFFICIAL GAZETTE.**
6. **BIR REVENUE MEMORANDUM CIRCULARS & BUREAU OF CUSTOMS MEMORANDUM ORDERS;**

   - THESE ARE **ADMINISTRATIVE RULINGS OR OPINIONS** WHICH ARE **LESS GENERAL INTERPRETATION OF TAX LAWS** BEING ISSUED BY TIME TO TIME BY THE COMMISSIONER OF THE INTERNAL REVENUE AND BUREAU OF CUSTOMS, AS THE CASE MAYBE.

7. **BIR RULINGS;**

   - THESE ARE EXPRESSED **OFFICIAL INTERPRETATION** OF THE **TAX LAWS** AS APPLIED TO **SPECIFIC TRANSACTIONS**.

8. **JUDICIAL DECISIONS;**

   - THESE REFER TO **THE DECISIONS** FOR APPLICATION MADE CONCERNING TAX ISSUES BY THE **PROPER COURT** EXERCISING JUDICIAL AUTHORITY OF COMPETENT JURISDICTION.
9. **LOCAL TAX ORDINANCES**

- THESE ARE TAX ORDINANCES ISSUED BY THE PROVINCE, CITY, MUNICIPALITY AND BARANGAYS/BARRIOS SUBJECT TO SUCH LIMITATIONS AS PROVIDED BY THE **LOCAL GOVERNMENT CODE** AND THE REAL PROPERTY TAX CODE.