NATIONAL INTERNAL REVENUE CODE

REVIEW MANUAL FOR UV TAX CLASS

Sec. 2 - Powers and Duties of the Bureau of Internal Revenue

The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.

Letters of referral/complaints filed by BIR Commissioner constituted approval of the filing of the cases in court.

It is not quite correct to claim that the BIR Commissioner referred the matter to the Department of Justice for preliminary investigation only. The three letters of referral/complaints she wrote and filed with the Department of Justice and the Office of the City Prosecutor all stated "I hereby recommend the prosecution of the following for violations of the provisions of the National Internal Revenue Code, as amended". Hence, the same clearly constituted approval of the filing of the cases in court. The fact, moreover, is that the cases had been filed in court and were already under the court's control. By merely echoing the findings of the BIR, the MeTC abdicated its duty as a court of law, and subjugated itself to the administrative agency. **In failing to make an independent finding of the merits of the case and merely anchoring the dismissal on the position of the BIR, the trial court relinquished the discretion it was obliged to exercise, in violation of the ruling in Crespo v. Mogul.**

People of the Phils. vs. Lucio C. Tan, et al., G.R. No. 144707, July 13, 2004

Sec. 4 - Power of Commissioner to Interpret Tax Laws

The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

The Commissioner of Internal Revenue is not bound by the ruling of his predecessors.

That previous Commissioners considered copra as an "agricultural food product", is not reason for holding that the present interpretation is wrong. The Commissioner of Internal Revenue is not bound by the ruling of his predecessors. To the contrary, the overruling of decisions is inherent in the interpretation of laws.

Misamis Oriental Association of Coco Traders, Inc. vs. Dept. of Finance Secretary, et al., G.R. No. 108524, November 10, 1994

Conclusions and opinions of the Court of Tax Appeals are extended due consideration.

It has been a long standing policy and practice of the Supreme Court to respect the conclusions of quasi-judicial agencies such as the Court of Tax Appeals, a highly specialized body specifically created for the purpose of reviewing tax cases. The CTA, by the nature of its functions, is dedicated exclusively to the study and consideration of tax problems. It has necessarily developed an expertise on the subject. Due consideration is extended to its opinion unless there is an abuse or improvident exercise of authority.

Commissioner of Internal Revenue vs. General Foods (Phils.), Inc., G.R. No. 143672, April 24, 2003

Sec. 6 - Power of Commissioner to Make Assessments

(A) Examination of Returns and Determination of Tax Due. - After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however;* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided, That* within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further,* That no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer.

(C) *Authority to Conduct Inventory-taking, surveillance and to Prescribe Presumptive Gross Sales and Receipts.* - The Commissioner may, at any time during the taxable year, order inventory-taking of goods of any taxpayer as a basis for determining his internal revenue tax liabilities, or may place the business operations of any person, natural or juridical, under observation or surveillance if there is reason to believe that such person is not declaring his correct income, sales or receipts for internal revenue tax purposes. The findings may be used as the basis for assessing the taxes for the other months or quarters of the same or different taxable years and such assessment shall be deemed *prima facie* correct.

When it is found that a person has failed to issue receipts and invoices in violation of the requirements of Sections 113 and 237 of this Code, or when there is reason to believe that the books of accounts or other records do not correctly reflect the declarations made or to be made in a return required to be filed under the provisions of this Code, the Commissioner, after taking into account the sales, receipts, income or other taxable base of other persons engaged in similar businesses under similar situations or circumstances or after considering other relevant information may prescribe a minimum amount of such gross receipts, sales and taxable base, and such amount so prescribed shall be prima facie correct for purposes of determining the internal revenue tax liabilities of such person.

(D) *Authority to Terminate Taxable Period.* - When it shall come to the knowledge of the Commissioner that a **taxpayer is retiring from business subject to tax**, or is **intending to leave the Philippines or to remove his property therefrom** or to **hide or conceal his property**, or is **performing any act tending to obstruct the proceedings for the collection of the tax** for the past or current quarter or year or to render the same totally or partly ineffective unless such proceedings are begun immediately, the Commissioner shall declare the tax period of such taxpayer terminated at any time and shall send the taxpayer a notice of such decision, together with a request for the immediate payment of the tax for the period so declared terminated and the tax for the preceding year or quarter, or such portion thereof as may be unpaid, and said taxes shall be due and payable immediately and shall be subject to all the penalties hereafter prescribed, unless paid within the time fixed in the demand made by the Commissioner.

(E) *Authority of the Commissioner to Prescribe Real Property Values.* - The Commissioner is hereby authorized to divide the Philippines into different zones or areas and shall, upon consultation with competent appraisers both from the private and public sectors, determine the fair market value of real properties located in each zone or area. For purposes of computing any internal revenue tax, the value of the property shall be, whichever is the higher of:

(1) the fair market value as determined by the Commissioner, or
(2) the fair market value as shown in the schedule of values of the Provincial and City Assessors.

(F) *Authority of the Commissioner to inquire into Bank Deposit Accounts.* - Notwithstanding any contrary provision of Republic Act No. 1405 and other general or special laws, the Commissioner is hereby authorized to inquire into the bank deposits of:

(1) a decedent to determine his gross estate; and
(2) any taxpayer who has filed an application for compromise of his tax liability under Sec. 204 (A) (2) of this Code by reason of financial incapacity to pay his tax liability.

In case a taxpayer files an application to compromise the payment of his tax liabilities on his claim that his financial position demonstrates a clear inability to pay the tax assessed, his application shall not be considered unless and until he **waives in writing his privilege under Republic Act No. 1405** or under other general or special laws, and such waiver shall constitute the **authority of the Commissioner to inquire into the bank deposits of the taxpayer**.

(G) *Authority to Accredit and Register Tax Agents.* - The Commissioner shall accredit and register, based on their professional competence, integrity and moral fitness, individuals and general professional partnerships and their representatives who prepare and file tax returns, statements, reports, protests, and other papers with or who appear before, the Bureau for taxpayers. Within one hundred twenty (120) days from January 1, 1998, the Commissioner shall create national and regional accreditation boards, the members of which shall serve for three (3) years, and shall designate from among the senior officials of the Bureau, one (1) chairman and two (2) members for each board, subject to such rules and regulations as the Secretary of Finance shall promulgate upon the recommendation of the Commissioner.

Individuals and general professional partnerships and their representatives who are denied accreditation by the Commissioner and/or the national and regional accreditation boards may appeal such denial to the Secretary of Finance, who shall rule on the appeal within sixty (60) days from receipt of such appeal. Failure of the Secretary of Finance to rule on the Appeal within the prescribed period shall be deemed as approval of the application for accreditation of the appellant.

(H) *Authority of the Commissioner to Prescribe Additional Procedural or Documentary Requirements.* - The Commissioner may prescribe the manner of compliance with any documentary or procedural requirement in connection with the submission or preparation of financial statements accompanying the tax returns.

Mandamus may not lie against the Commissioner to compel him to impose a tax assessment.

Since the office of the Commissioner of Internal Revenue is charged with the administration of revenue laws, which is the primary responsibility of the executive branch of the government, **mandamus may not lie against the Commissioner to compel him to impose a tax assessment not found by him to be due or proper for that would be tantamount to a usurpation of executive functions**. Such discretionary power vested in the proper executive official, in the absence of arbitrariness or grave abuse so as to go beyond the statutory authority, is not subject to the contrary judgment or control of others.

Meralco Securities Corp. vs. Victorino Savellano, et al., G.R. No. L-36181, October 23, 1982

The power to collect forest charges rests with BIR, not with Bureau of Forestry.
Forest charges are internal revenue taxes and the sole power and duty to collect the same is lodged with the Bureau of Internal Revenue and not with the Bureau of Forestry. The computation and/or assessment of forest charges made by the Bureau of Forestry may or may not be adopted by the Commissioner of Internal Revenue and such computation made by the Bureau of Forestry is not appealable to the Court of Tax Appeals.

Mambulao Lumber Company vs. Republic of the Phil., G.R. No. L-37061, September 5, 1984

Sec. 6 (B) - Failure to Submit Required Returns
(B) *Failure to Submit Required Returns, Statements, Reports and other Documents.* - When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.

In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes.

When the rule on "best evidence obtainable" applies.
The law is specific and clear. The rule on the "best evidence obtainable" applies **when a tax report required by law for the purpose of assessment is not available or when the tax report is incomplete or fraudulent**. Thus, the persistent failure of the decedent and the taxpayer to present their books of accounts for examination for the taxable years involved left the Commissioner of Internal Revenue no other legal option except to report to the power conferred upon him under Section 16 of the Tax Code.

Bonifacia Sy Po vs. Court of Tax Appeals, et al., G.R. No. L-81446, August 18, 1988

Sec. 22 - Definitions (B) - “corporation”

The term ***"corporation"*** shall include **partnerships**, no matter how created or organized, joint-stock companies, joint accounts (cuentas en participacion), **association**, or **insurance** companies, but does not include general professional partnerships and a joint venture or consortium formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal and other energy operations pursuant to an operating consortium agreement under a service contract with the Government.

"General professional partnerships" are partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business.

To be taxed, a joint venture need not be constituted in accordance with usual legal requirements.

What constitutes a "partnership" under American law.

Under American law, the term 'partnership' includes a syndicate, group, pool, joint venture or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on. For purposes of the tax on corporations, our National Internal Revenue Code, includes these partnerships — with the exception only of duly registered general copartnerships — within the purview of the term "corporation."

Eufemia Evangelista vs. Collector of Internal Revenue, et al., G.R. No. L-9996, October 15, 1957

Tax on income of insurance pool is different from tax on dividends received by individual corporate entities.

An insurance pool is a taxable entity distinct from the individual corporate entities of the ceding companies. The tax on its income is obviously different from the tax on the dividends received by the said companies. Clearly, there is no double taxation here.

Afisco Insurance Corp., et al. vs. Court of Appeals, et al., G.R. No. 112675, January 25, 1999

Unregistered partnerships and associations are included in the concept of "corporations".

The Philippine legislature included in the concept of corporations those entities that resembled them such as unregistered partnerships and associations. Parenthetically, the NLRC's inclusion of such entities in the tax on corporations was made even clearer by the Tax Reform Act of 1997.

Afisco Insurance Corp., et al. vs. Court of Appeals, et al., G.R. No. 112675, January 25, 1999

Personality is not a condition precedent to the existence of partnerships.

The term 'corporation' includes among others, joint accounts (cuentas en participacion) and associations, none of which has a legal personality of its own, independent of that of its members. The lawmakers could not have regarded personality as a condition precedent to the existence of partnerships referred to therein.

Florencio Reyes, et al. vs. Commissioner of Internal Revenue, et al., G.R. No. L-24020-21, July 29, 1968

Sec. 22 (T) - "Securities"
*The term **"securities"** means shares of stock in a corporation and rights to subscribe for or to receive such shares. The term includes bonds, debentures, notes or certificates, or other evidence or indebtedness, issued by any corporation, including those issued by a government or political subdivision thereof, with interest coupons or in registered form.*

Shares of stock are ordinary assets only to a dealer in securities.
Shares of stock, like the other securities defined in the NIRC, would be ordinary assets only to a dealer in securities or a person engaged in the purchase and sale of, or an active trader (for his own account) in, securities. In the hands, however, of another who holds the shares of stock by way of an investment, the shares to him would be capital assets. When the shares held by such investor become worthless, the loss is deemed to be a loss from the sale or exchange of capital assets.

China Banking Corp. vs. Court of Appeals, et al., G.R. No. 125508, July 19, 2000

Sec. 22 (U) - "Dealer in securities"
*The term **"dealer in securities"** means a merchant of stocks or securities, whether an individual, partnership or corporation, with an established place of business, regularly engaged in the purchase of securities and the resale thereof to customers; that is, one who, as a merchant, buys securities and re-sells them to customers with a view to the gains and profits that may be derived therefrom.*

Equity investment is capital, not ordinary, asset.
An equity investment is a capital, not ordinary, asset of the investor the sale or exchange of which results in either a capital gain or a capital loss. The gain or the loss is ordinary when the property sold or exchanged is not a capital asset. Thus, shares of stock, like the other securities defined in Section 20(t) 4 of the NIRC, would be ordinary assets only to a dealer in securities or a person engaged in the purchase and sale of, or an active trader (for his own account) in, securities.

China Banking Corp. vs. Court of Appeals, et al., G.R. No. 125508, July 19, 2000

Sec. 22 (Z) - "Ordinary loss"
The term "ordinary income" includes any gain from the sale or exchange of property which is not a capital asset or property described in Section 39(A)(1). Any gain from the sale or exchange of property which is treated or considered, under other provisions of this Title, as 'ordinary income' shall be treated as gain from the sale or exchange of property which is not a capital asset as defined in Section 39(A)(1). The term 'ordinary loss' includes any loss from the sale or exchange of property which is not a capital asset. Any loss from the sale or exchange of property which is treated or considered, under other provisions of this Title, as 'ordinary loss' shall be treated as loss from the sale or exchange of property which is not a capital asset.

An equity investment is a capital, not ordinary, asset of the investor the sale or exchange of which results in either a capital gain or a capital loss. The gain or the loss is ordinary when the property sold or exchanged is not a capital asset.

China Banking Corp. vs. Court of Appeals, et al., G.R. No. 125508, July 19, 2000

Sec. 23 - General Principles of Income Taxation
Except when otherwise provided in this Code:

(A) A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines;

(B) A nonresident citizen is taxable only on income derived from sources within the Philippines;

(C) An individual citizen of the Philippines who is working and deriving income from abroad as an overseas contract worker is taxable only on income derived from sources within the Philippines: Provided, That a seaman who is a citizen of the Philippines and who receives compensation for services rendered abroad as a member of the complement of a vessel engaged exclusively in international trade shall be treated as an overseas contract worker;

(D) An alien individual, whether a resident or not of the Philippines, is taxable only on income derived from sources within the Philippines;

(E) A domestic corporation is taxable on all income derived from sources within and without the Philippines; and

(F) A foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines.

Principle of estoppel does not operate against the government for neglect or omission of its officials tasked to collect taxes.

Taxes are the lifeblood of the government.
Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

Commissioner of Internal Revenue, et al. vs. Court of Appeals, et al., G.R. No. 119322, June 4, 1996

Symbiotic relationship between government and people is the rationale of taxation.
It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

Commissioner of Internal Revenue vs. Algue, et al., G.R. No. L-28896, February 17, 1988

Obligation to pay taxes rests upon the necessity of money for the support of the state.
The obligation to pay taxes rests not upon the privileges enjoyed by, or the protection afforded to, a citizen by the government, but upon the necessity of money for the support of the state. For this reason, no one is allowed to object to or resist the payment of taxes solely because no personal benefit to him can be pointed out. While courts will not enlarge, by construction, the government's power of taxation, they also will not place upon tax laws so loose a construction as to permit evasions on merely fanciful and insubstantial distinctions. When proper, a tax statute should be construed to avoid the possibilities of tax evasion. Construed this way, the statute, without resulting in injustice to the taxpayer, becomes fair to the government.

Pablo Lorenzo vs. Juan Posadas, Jr., G.R. No. 43082, June 18, 1937

The power to tax is an attribute of sovereignty.
The power to tax is an attribute of sovereignty. It is a power emanating from necessity. It is a necessary burden to preserve the State's sovereignty and a means to give the citizenry an army to resist an aggression, a navy to defend its shores from invasion, a corps of civil servants to serve, public improvements designed for the enjoyment of the citizenry and those which come within the State's territory, and facilities and protection which a government is supposed to provide.

Philippine Guaranty Co., Inc. vs. Commissioner of Internal Revenue, et al., G.R. No. L-22074, April 30, 1965

Every person who is able to must contribute his share in the running of the government.

It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

Commissioner of Internal Revenue vs. Algue, et al., G.R. No. L-28896, February 17, 1988

Power of taxation must be exercised reasonably and in accordance with prescribed procedure.

a) But even as the inevitability and indispensability of taxation is conceded, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate . . . that the law has not been observed. Thus while "taxes are the lifeblood of the government," the power to tax has its limits, inspite of all its plenitude.

Commissioner of Internal Revenue, et al. vs. Court of Appeals, et al., G.R. No. 119322, June 4, 1996

b) Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

Commissioner of Internal Revenue vs. Algue, et al., G.R. No. L-28896, February 17, 1988

The power to tax is not the power to destroy.

Taxation is said to be equitable when its burden falls on those better able to pay. Taxation is progressive when its rate goes up depending on the resources of the person affected. The power to tax "is an attribute of sovereignty". In fact, it is the strongest of all the powers of government. But for all its plenitude, the power to tax is not unconfined as there are restrictions. Adversely effecting as it does property rights, both the due process and equal protection clauses of the Constitution may properly be invoked to invalidate in appropriate cases a revenue measure. If it were otherwise, there would be truth to the 1903 dictum of Chief Justice Marshall that "the power to tax involves the power to destroy." The web or unreality spun from Marshall's famous dictum was brushed away by one stroke of Mr. Justice Holmes' pen, thus: "The power to tax is not the power to destroy while this Court sits." "So it is in the Philippines."

Antero M. Sison, Jr. vs. Ruben B. Ancheta, et al., G.R. No. L-59431, July 25, 1984

Tax laws must operate equally and uniformly on all persons under similar circumstances.

The taxing power has the authority to make a reasonable and natural classification for purposes of taxation but the government's act must not be prompted by a spirit of hostility, or at the very least discrimination that finds no support in reason. It suffices then that the laws operate equally and uniformly on all persons under similar circumstances or that all persons must be treated in the same manner, the conditions not being different both in the privileges conferred and the liabilities imposed.

Jose B.L. Reyes vs. Pedro Almanzor, et al., G.R. Nos. 49839-46, April 26, 1991

Laws granting tax exemption are construed strictissimi juris

a) The settled rule in this jurisdiction is that laws granting exemption from tax are construed strictissimi juris against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The effect of an exemption is equivalent to an appropriation. Hence, a claim for exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken.

Lung Center of the Phil. vs. Quezon City, et al., G.R. No. 144104, June 29, 2004

b) This Court has laid down the rule that "as the power of taxation is a high prerogative of sovereignty, the relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or its rate, must be strictly construed, and the same must be couched in clear and unmistakable terms in order that it may be applied." More specifically stated, the general rule is that any claim for exemption from the tax statute should be strictly construed against the taxpayer

Luzon Stevedoring Corp. vs. Court of Tax Appeals, et al., G.R. No. L-30232, July 29, 1988

Tax amnesty is construed strictly against the taxpayer.
A tax amnesty, much like a tax exemption, is never favored nor presumed in law and if granted by statute, the terms of the amnesty like that of a tax exemption must be construed strictly against the taxpayer and liberally in favor of the taxing authority.

Bibiano V. Bañas, Jr. vs. Court of Appeals, et al., G.R. No. 102967, February 10, 2000

Tax exemptions are not violative of the equal protection clause.
A tax is uniform when it operates with the same force and effect in every place where the subject of it is found. Uniformity means that all property belonging to the same class shall be taxed alike. The Legislature has the inherent power not only to select the subjects of taxation but to grant exemptions. Tax exemptions have never been deemed violative of the equal protection clause.

Commissioner of Internal Revenue vs. Lingayen Gulf Electric Power Co., Inc., G.R. No. L-23771, August 4, 1988

Grant of tax exemption to National Power Corp. is not a case of tax evasion.
This tax exemption is intended not only to insure that the NPC shall continue to generate electricity for the country but more importantly, to assure cheaper rates to be paid by the consumers. The allegation that this is in effect allowing tax evasion by oil companies is not quite correct. There are various arrangements in the payment of crude oil purchased by NPC from oil companies. Generally, the customs duties paid by the oil companies are added to the selling price paid by NPC. As to the specific and ad valorem taxes, they are added as part of the seller's price, but NPC pays the price net of tax, on condition that NPC would seek a tax refund to the oil companies. No tax component on fuel had been charged or recovered by NPC from the consumers through its power rates. Thus, this is not a case of tax evasion of the oil companies but of tax relief for the NPC.

Ernesto M. Maceda vs. Catalino Macaraig, Jr., et al., G.R. No. 88291, May 31, 1991

Tax exemption provision in a treaty should be construed in favor of the party for whose benefit the stipulation was inserted.
Where two meanings of a stipulation are admissible, that which is least to the advantage of the party for whose benefit the stipulation was inserted in the treaty should be preferred. Thus, an ambiguity in the tax exemption provision in the Military Bases Agreement and in the "Aide Memoire" in accordance with which a contract was entered into, cannot be interpreted in favor of the American Government or for that matter a party claiming under it, like a taxpayer, especially when it is considered that for the Philippine Government "the exception contained in tax statutes must be strictly construed against the one claiming exemption and that he who would seek to be

thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."

Commissioner of Internal Revenue vs. P. J. Kiener Co., Ltd., et al., G.R. No. L-24754, July 18, 1975

Requisites for availment of tax exemption under RP-US Military Bases Agreement.
In order to avail oneself of the tax exemption under the RP-US Military Bases Agreement: he must be a national of the United States employed in connection with the construction, maintenance, operation or defense of the bases, residing in the Philippines by reason of such employment, and the income derived is from the U.S. Government

Commissioner of Internal Revenue vs. Frank Robertson, et al., G.R. Nos. L-70116-19, August 12, 1986

Employees' claims prevail over government's claims only in case of bankruptcy or judicial liquidation of the employer.
There is no merit in the contention of the NLRC that taxes are absolutely preferred claims only with respect to movable or immovable properties on which they are due and that since the taxes sought to be collected in the case are not due on the barges in question, the government's claim cannot prevail over the claims of employees of the Maritime Company of the Philippines which, pursuant to Art. 110 of the Labor Code, "enjoy first preference." Art. 110 of the Labor Code on worker preference in case of bankruptcy applies only in case of bankruptcy or judicial liquidation of the employer. This is clear from the text of the law. This case does not involve the liquidation of the employer's business.

Commissioner of Internal Revenue vs. NLRC, et al., G.R. No. 74965, November 9, 1994

State's undertaking to guarantee promissory notes does not diminish its taxing power.
An undertaking of the Republic of the Philippines signed by the Secretary of Finance in each of the promissory notes merely guaranteed the obligations of the NDC but without diminution of its taxing power under existing laws.

National Development Company vs. Commissioner of Internal Revenue, G.R. No. L-53961, June 30, 1987

Mere filing of tax amnesty does not ipso facto shield taxpayer from immunity against prosecution.
The mere filing of tax amnesty return under P.D. 1740 and 1840 does not ipso facto shield taxpayer from immunity against prosecution. Tax amnesty is a general pardon to taxpayers who want to start a clean tax slate. It also gives the government a chance to collect uncollected tax from tax evaders without having to go through the tedious process of a tax case. To avail of a tax amnesty granted by the government, and to be immune from suit on its delinquencies, the taxpayer must have voluntarily disclosed his previously untaxed income and must have paid the corresponding tax on such previously untaxed income.

Bibiano V. Bañas, Jr. vs. Court of Appeals, et al., G.R. No. 102967, February 10, 2000

Principle of estoppel does not operate against the government for neglect or omission of its officials tasked to collect taxes.
Taxes are the lifeblood of the Government and their prompt and certain availability are imperious need. Upon taxation depends the Government's ability to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people, in the same manner as private persons may be made to suffer individually on account of his own negligence, the presumption being that they take good care of their personal affair. This should not hold true to government officials with respect to matters not of their own personal

concern. This is the philosophy behind the government's exception, as a general rule, from the operation of the principle of estoppel.

Misael P. Vera, et al. vs. Jose F. Fernandez, et al., G.R. No. L-31364, March 30, 1979
Atlas Consolidated Mining & Development Corp. vs. Commissioner of Internal Revenue, G.R. No. L-26911, January 27, 1981

Sec. 24 (B) (2) - Cash and/or Property Dividends

> **<u>Cash and/or Property Dividends</u>** - A final tax at the following rates shall be imposed upon the cash and/or property dividends actually or constructively received by an individual from a domestic corporation or from a joint stock company, insurance or mutual fund companies and regional operating headquarters of multinational companies, or on the share of an individual in the distributable net income after tax of a partnership (except a general professional partnership) of which he is a partner, or on the share of an individual in the net income after tax of an association, a joint account, or a joint venture or consortium taxable as a corporation of which he is a member or co-venturer:
>
> Six percent (6%) beginning January 1, 1998;
> Eight percent (8%) beginning January 1, 1999; and
> Ten percent (10% beginning January 1, 2000.
>
> Provided, however, that the tax on dividends shall apply only on income earned on or after January 1, 1998. Income forming part of retained earnings as of December 31, 1997 shall not, even if declared or distributed on or after January 1, 1998, be subject to this tax.

Ordinary dividends distinguished from liquidated dividends.
The determining element therefore is whether the distribution was in the ordinary course of business and with <u>intent to maintain the corporation as a going concern</u>, or after deciding to quit with intent to liquidate the business. The distinction between a distribution in liquidation and an ordinary dividend is factual; the result in each case depending on the particular circumstances of the case and the intent of the parties. If the distribution is in the nature of a recurring return on stock it is an ordinary dividend. However, if the corporation is really winding up its business or recapitalizing and narrowing its activities, the distribution may properly be treated as in complete or partial liquidation and as payment by the corporation to the stockholder for his stock. The corporation is, in the latter instances, wiping out all or part of the stockholders' interest in the company.

Wise & Co., Inc. vs. Bibiano L. Meer, G.R. No. 48231, June 30, 1947

Sec. 26 - Tax Liability of Members of General Professional Partnerships

A general professional partnership as such shall not be subject to the income tax imposed under this Chapter. Persons engaging in business as partners in a general professional partnership shall be liable for income tax only in their separate and individual capacities.

For purposes of computing the distributive share of the partners, the net income of the partnership shall be computed in the same manner as a corporation.

Each partner shall report as gross income his distributive share, actually or constructively received, in the net income of the partnership.

Income tax is imposed on the partners, not on the professional partnership.
A general professional partnership, unlike an ordinary business partnership (which is treated as a corporation for income tax purposes and so subject to the corporate income tax), is not itself an income taxpayer. The income tax is imposed not on the professional partnership, which is tax exempt, but on the partners themselves in their individual capacity computed on their distributive shares of partnership profits. The general professional partnership is deemed to be no more than a mere mechanism or a flow-through entity in the generation of income by, and the ultimate distribution of such income to, respectively, each of the individual partners.

Rufino R. Tan vs. Ramon R. del Rosario, Jr., et al., G.R. No. 109289, October 3, 1994

Sec. 27(C) - Government-owned or -controlled corporations

The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in similar business, industry, or activity.

Tax exemptions should be strictly construed against those claiming to be qualified thereto.

The Philippine Casino Operators Corporation (PCOC) is not exempt from the payment of duties, taxes and other imposts on importations despite its concessionaire's contract with the Philippine Amusement and Gaming Corporation (PAGCOR). Under B.P. Blg. 1067-B, as amended, full exemption from the payment of importation-related taxes is granted to PAGCOR — and no other — irrespective of the type of article imported. While it grants exemption not only to PAGCOR but also to "any corporation having existing contractual arrangements with it," the exemption covers only the importation of vessels and/or accessory ferry boats. It is settled that tax exemptions should be strictly construed against those claiming to be qualified thereto.

Commissioner of Customs vs. Court of Tax Appeal, et al., G.R. No. 132929, March 27, 2000

PAGCOR is exempt from local taxes.

PAGCOR has a dual role, to operate and to regulate gambling casinos. The latter role is governmental, which places it in the category of an agency or instrumentality of the Government. Being an instrumentality of the Government, PAGCOR should be and actually is exempt from local taxes. Otherwise, its operation might be burdened, impeded or subjected to control by a mere local government.

Humberto Basco, et al. vs. PAGCOR, G.R. No. 91649, May 14, 1991

Sec. 28 (A) (1) - Tax on Resident Foreign Corporation

Tax on Resident Foreign Corporations. -

> *(1) In General. - Except as otherwise provided in this Code, a corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to an income tax equivalent to thirty-five percent (35%) of the taxable income derived in the preceding taxable year from all sources within the Philippines: Provided, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%), and effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).*
>
> *In the case of corporations adopting the fiscal-year accounting period, the taxable income shall be computed without regard to the specific date when sales, purchases and other transactions occur. Their income and expenses for the fiscal year shall be deemed to have been earned and spent equally for each month of the period.*
>
> *The reduced corporate income tax rates shall be applied on the amount computed by multiplying the number of months covered by the new rates within the fiscal year by the taxable income of the corporation for the period, divided by twelve.*
>
> *Provided, however, That a resident foreign corporation shall be granted the option to be taxed at fifteen percent (15%) on gross income under the same conditions, as provided in Section 27 (A).*

What constitutes "doing" or "engaging in" or "transacting" business.

There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. "In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character.'

Commissioner of Internal Revenue vs. British Overseas Airways Corp., et al., G.R. Nos. L-65773-74, April 30, 1987

Business transactions of a foreign corporation must be continuous.
In order that a foreign corporation may be considered engaged in trade or business, its business transactions must be continuous. A casual business activity in the Philippines by a foreign corporation, as in the present case, does not amount to engaging in trade or business in the Philippines for income tax purposes.

N.V. Reederij "Amsterdam", et al. vs. Commissioner of Internal Revenue, G.R. No. L-46029, June 23, 1988

A single corporation cannot be both a resident and a non-resident corporation.
A single corporate entity cannot be both a resident and a non-resident corporation depending on the nature of the particular transaction involved. Accordingly, whether the dividends are paid directly to the head office or coursed through its local branch is of no moment for after all, the head office and the office branch constitute but one corporate entity, the Marubeni Corporation, which, under both Philippine tax and corporate laws, is a resident foreign corporation because it is transacting business in the Philippines.

Marubeni Corp. vs. Commissioner of Internal Revenue, et al., G.R. No. 76573, September 14, 1989

Foreign airline company selling ticket in the Philippines through local agent is considered a resident foreign corporation doing business in the Philippines.
There being no dispute that JAL constituted PAL as local agent to sell its airline tickets, there can be no conclusion other than that JAL is a resident foreign corporation, doing business in the Philippines. Indeed, the sale of tickets is the very lifeblood of the airline business, the generation of sales being the paramount objective.

Commissioner of Internal Revenue vs. Japan Air Lines, et al., G.R. No. 60714, October 4, 1991

Grant of license to foreign corporation merely gives legitimacy to its doing business here.
It is not really the grant of a license to a foreign corporation to do business in this country that makes it a resident; the license merely gives legitimacy to its doing business here. What effectively makes such a foreign corporation a resident corporation in the Philippines is its actually being in the Philippines and licitly doing business here.

State Investment House, Inc., et al. vs. Citibank, et al., G.R. Nos. 79926-27, October 17, 1991

What constitutes "residence" of a corporation.
The same principle is recognized in American law: that the "residence of a corporation, if it can be said to have a residence, is necessarily where it exercises corporate functions . . ;" that it is considered as dwelling "in the place where its business is done . . ," as being "located where its franchises are exercised . . ," and as being "present where it is engaged in the prosecution of the corporate enterprise;" that a "foreign corporation licensed to do business in a state is a resident of any country where it maintains an office or agent for transaction of its usual and customary business for venue purposes;" and that the "necessary element in its signification is locality of existence." Courts have held that "a domestic corporation is regarded as having a residence within the state at any place where it is engaged in the particulars of the corporate enterprise, and not only at its chief place or home office;" that "a corporation may be domiciled in one state and resident in another; its legal domicile in the state of its creation presents no impediment to its residence in a real and practical sense in the state of its business activities." The foregoing propositions are in accord with the dictionary concept of residence as applied to juridical persons, a term which appears to comprehend permanent as well as temporary residence.

State Investment House, Inc., et al. vs. Citibank, et al., G.R. Nos. 79926-27, October 17, 1991

Place of activity prevails over place of business of the foreign corporation.
Business implies continuity and progression of transactions while activity may consist of only a single transaction. An activity may occur outside the place of business. Section 24 of the Tax Code does not require a foreign corporation to engage in business in the Philippines in subjecting its income to tax. It suffices that the activity creating the income is performed or done in the Philippines. What is controlling, therefore, is not the place of business but the place of activity that created an income.

The Philippine Guaranty Co., Inc. vs. Commissioner of Internal Revenue, et al., G.R. No. L-22074, April 30, 1965

Sec. 28 (A) (3) (a) - International Air Carrier

> *International Carrier. - An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2 1/2%) on its "Gross Philippine Billings" as defined hereunder:*
>
> > *(a) International Air Carrier. - "Gross Philippine Billings" refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document: Provided, That tickets revalidated, exchanged and/or indorsed to another international airline form part of the Gross Philippine Billings if the passenger boards a plane in a port or point in the Philippines: Provided, further, That for a flight which originates from the Philippines, but transshipment of passenger takes place at any port outside the Philippines on another airline, only the aliquot portion of the cost of the ticket corresponding to the leg flown from the Philippines to the point of transshipment shall form part of Gross Philippine Billings.*

Source of an income is the property, activity or service that produced the income (PAS)
The source of an income is the property, activity or service that produced the income. For the source of income to be considered as coming from the Philippines, it is sufficient that the income is derived from activity within the Philippines. The sale of tickets in the Philippines is the activity that produces the income. The tickets exchanged hands here and payments for fares were also made here in Philippine currency. The situs of the source of payments is the Philippines. The flow of wealth proceeded from, and occurred within, Philippine territory, enjoying the protection accorded by the Philippine government. In consideration of such protection, the flow of wealth should share the burden of supporting the government.

Commissioner of Internal Revenue vs. British Overseas Airways Corp., et al., G.R. Nos. L-65773-74, April 30, 1987

Commissioner of Internal Revenue vs. Air India, et al., G.R. No. L-72443, January 29, 1988

Commissioner of Internal Revenue vs. American Airlines, Inc., et al., G.R. No. 67938, December 19, 1989

The test of taxability is the "source" or that activity which produced the income.
The absence of flight operations to and from the Philippines is not determinative of the source of income or the situs of income taxation. The test of taxability is the "source"; and the source of an income is that activity which produced the income. Unquestionably, the passage documentations were sold in the Philippines and the revenue therefrom was derived from a business activity regularly pursued within the Philippines. And even if the tickets sold covered the "transport of passengers and cargo to and from foreign cities," it cannot alter the fact that income from the sale of tickets was derived from the Philippines. The word "source" conveys one essential idea, that of origin, and the origin of the income herein is the Philippines.

Commissioner of Internal Revenue vs. British Overseas Airways Corp., et al., G.R. Nos. L-65773-74, April 30, 1987

Commissioner of Internal Revenue vs. Air India, et al., G.R. No. L-72443, January 29, 1988

Commissioner of Internal Revenue vs. American Airlines, Inc., et al., G.R. No. 67938, December 19, 1989

Sec. 28 (A) (3) (b) - International shipping
"Gross Philippine Billings" means gross revenue whether for passenger, cargo or mail originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents.

Income of foreign corporation engaged in transport of cargo must be sourced from the Philippines.
A resident foreign corporation engaged in the transport of cargo is liable for taxes depending on the amount of income it derives from sources within the Philippines. Thus, before such a tax liability can be enforced the taxpayer must be shown to have earned income sourced from the Philippines.

Commissioner of Internal Revenue vs. Tokyo Shipping Co. Ltd., et al., G.R. No. 68252, May 26, 1995

Sec. 28 (A) (5) - Tax on Branch Profits Remittances
Any profit remitted by a branch to its head office shall be subject to a tax of fifteen (15%) which shall be based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof (except those activities which are registered with the Philippine Economic Zone Authority). The tax shall be collected and paid in the same manner as provided in Sections 57 and 58 of this Code: provided, that interests, dividends, rents, royalties, including remuneration for technical services, salaries, wages premiums, annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits, income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines shall not be treated as branch profits unless the same are effectively connected with the conduct of its trade or business in the Philippines.

Rationale for imposition of tax on branch profits remittances.
The remittance tax was conceived in an attempt to equalize the income tax burden on foreign corporations maintaining, on the one hand, local branch offices and organizing, on the other hand, subsidiary domestic corporations where at least a majority of all the latter's shares of stock are owned by such foreign corporations.

Bank of America NT & SA vs. Court of Appeals, et al., G.R. No. 103092, July 21, 1994

Sec. 29 (A) - Imposition of Improperly Accumulated Earnings Tax
(A) In General. - In addition to other taxes imposed by this Title, there is hereby imposed for each taxable year on the improperly accumulated taxable income of each corporation described in Subsection B hereof, an improperly accumulated earnings tax equal to ten percent (10%) of the improperly accumulated taxable income.

Tax on improper accumulation of surplus is essentially a penalty tax.
The provision discouraged tax avoidance through corporate surplus accumulation. When corporations do not declare dividends, income taxes are not paid on the undeclared dividends received by the shareholders. The tax on improper accumulation of surplus is essentially a penalty tax designed to compel corporations to distribute earnings so that the said earnings by shareholders could, in turn, be taxed.

Cyanamid Philippines, Inc. vs. Court of Appeals, et al., G.R. No. 108067, January 20, 2000

“Immediacy Test” may be used to determine the “reasonable needs” of the business.
To determine the “reasonable needs” of the business in order to justify an accumulation of earnings, the Courts of the United States have invented the so-called “Immediacy Test” which construed the words “reasonable needs of the business” to mean the immediate needs of the business, and it was generally held that if the corporation did not prove an immediate need for the accumulation of the earnings and profits, the accumulation was not for the reasonable needs of the business, and the penalty tax would apply.

Manila Wine Merchants, Inc. vs. Commissioner of Internal Revenue, G.R. No. L-26145, February 20, 1984

Touchstone of liability is the purpose behind the accumulation of the income and not the consequences of the accumulation.

A prerequisite to the imposition of the tax has been that the corporation be formed or availed of for the purpose of avoiding the income tax (or surtax) on its shareholders, or on the shareholders of any other corporation by permitting the earnings and profits of the corporation to accumulate instead of dividing them among or distributing them to the shareholders. If the earnings and profits were distributed, the shareholders would be required to pay an income tax thereon whereas, if the distribution were not made to them, they would incur no tax in respect to the undistributed earnings and profits of the corporation. The touchstone of liability is the purpose behind the accumulation of the income and not the consequences of the accumulation. Thus, if the failure to pay dividends is due to some other cause, such as the use of undistributed earnings and profits for the reasonable needs of the business, such purpose does not fall within the interdiction of the statute.

Manila Wine Merchants, Inc. vs. Commissioner of Internal Revenue, G.R. No. L-26145, February 20, 1984

Taxpayer's intention at the time of accumulation is controlling.

In order to determine whether profits are accumulated for the reasonable needs of the business as to avoid the surtax upon shareholders, the controlling intention of the taxpayer is that which is manifested at the time of accumulation not subsequently declared intentions, which are merely the product of afterthought. A speculative and indefinite purpose will not suffice. The mere recognition of a future problem and the discussion of possible and alternative solutions is not sufficient. Definiteness of plan coupled with action taken towards its consummation are essential.

Manila Wine Merchants, Inc. vs. Commissioner of Internal Revenue, G.R. No. L-26145, February 20, 1984

Undistributed earnings or profits of prior years are taken into consideration in determining unreasonable accumulation for purposes of surtax.

Previous accumulations should be considered in determining unreasonable accumulation for the year concerned. In determining whether accumulations of earnings or profits in a particular year are within the reasonable needs of a corporation, it is necessary to take into account prior accumulations, since accumulations prior to the year involved may have been sufficient to cover the business needs and additional accumulations during the year involved would not reasonably be necessary

Basilan Estates, Inc. vs. Commissioner of Internal Revenue, et al., G.R. No. L-22492, September 5, 1967

Sec. 29 (C) (1) - Prima Facie Evidence of Purpose to Avoid Income Tax

(C) Evidence of Purpose to Avoid Income Tax. -

> *(1) Prima Facie Evidence. - the fact that any corporation is a mere holding company or investment company shall be prima facie evidence of a purpose to avoid the tax upon its shareholders or members.*

Rationale for imposition of improperly accumulated earnings tax.

The underlying purpose of the additional tax on a corporation's improperly accumulated profits or surplus is to avoid the situation where a corporation unduly retains its surplus earnings instead of declaring and paying dividends to its shareholders or members who would then have to pay the income tax due on such dividends received by them.

Commissioner of Internal Revenue vs. Ayala Securities Corp., et al., G.R. No. L-29485, November 21, 1980

Presumption of tax avoidance applies where corporation is a mere holding company.

The prima facie evidence and presumption set up by law is applicable where the record shows that respondent corporation is a mere holding company of its shareholders through its mother company, a registered co-partnership then set up by the individual shareholders belonging to the same family

Commissioner of Internal Revenue vs. Ayala Securities Corp., et al., G.R. No. L-29485, November 21, 1980

Sec. 30 - Exemptions from Tax on Corporations

The following organizations shall not be taxed under this Title in respect to income received by them as such:
(A) Labor, agricultural or horticultural organization not organized principally for profit;

(B) Mutual savings bank not having a capital stock represented by shares, and cooperative bank without capital stock organized and operated for mutual purposes and without profit;

(C) A beneficiary society, order or association, operating for the exclusive benefit of the members such as a fraternal organization operating under the lodge system, or mutual aid association or a nonstock corporation organized by employees providing for the payment of life, sickness, accident, or other benefits exclusively to the members of such society, order, or association, or nonstock corporation or their dependents;

(D) Cemetery company owned and operated exclusively for the benefit of its members;

(E) Nonstock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset shall belong to or inures to the benefit of any member, organizer, officer or any specific person;

(F) Business league chamber of commerce, or board of trade, not organized for profit and no part of the net income of which inures to the benefit of any private stock-holder, or individual;

(G) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(H) A nonstock and nonprofit educational institution;

(I) Government educational institution;

(J) Farmers' or other mutual typhoon or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses; and

(K) Farmers', fruit growers', or like association organized and operated as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses on the basis of the quantity of produce finished by them;

Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code.

Construction of last paragraph of Sec. 30.

Income derived from its property by a tax exempt organization is not absolutely taxable. Taken in solitude, a word or phrase such as, in this case, "the income of whatever kind and character . . . from any of their properties" might easily convey a meaning quite different from the one actually intended and evident when a word or phrase is considered with those with which it is associated. It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, that every part of the statute must be considered together with the other parts and kept subservient to the general intent of the whole enactment. A close reading of the last paragraph of Sec. 27 of the National Internal Revenue Code, in relation to the whole section on tax exemption of the organizations enumerated therein, shows that the phrase "conducted for profit" in the last paragraph of Sec. 27 qualifies, limits and describes "the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities" in order to make such income taxable. It is the exception to Sec. 27 pars.

(g) and (h) providing for the tax exemptions of the income of said organizations. Hence, if such income from property or any other property is not conducted for profit, then it is not taxable.

Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 124043, October 14, 1998

Income from any property of exempt organizations is taxable.
A reading of the last paragraph ineludibly shows that the income from any property of exempt organizations, as well as that arising from any activity it conducts for profit, is taxable. The phrase "any of their activities conducted for profit" does not qualify the word "properties." This makes income from the property of a non-profit organization taxable, regardless of how that income is used — whether for profit or for lofty non-profit purposes. The law does not make a distinction. The rental income is taxable regardless of whence such income is derived and how it is used or disposed of.

Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 124043, October 14, 1998

Definition of "income".
The word "income" which is derived from property, real or personal, provided in the last paragraph of Sec. 27 means the amount of money coming to a person or corporation within a specified time as profit from investment; the return in money from one's business or capital invested. Income from property also means gains and profits derived from the sale or other disposition of capital assets; the money which any person or corporation periodically receives either as profits from business, or as returns from investments. The word "income" as used in tax statutes is to be taken in its ordinary sense as gain or profit.

Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 124043, October 14, 1998

YMCA is exempt from payment of property tax but not income tax on its property rentals.
What is exempted is not the institution itself . . .; those exempted from real estate taxes are lands, buildings and improvements actually, directly and exclusively used for religious, charitable or educational purposes YMCA is exempt from the payment of property tax, but not income tax on the rentals from its property.

Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 124043, October 14, 1998

Conditions for grant of tax exemption.
Laws allowing tax exemption are construed strictissimi juris. Hence, for the YMCA to be granted the exemption it claims under the aforecited provision, it must prove with substantial evidence that (1) it falls under the classification non-stock, non-profit educational institution; and (2) the income it seeks to be exempted from taxation is used actually, directly, and exclusively for educational purposes.

Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 124043, October 14, 1998

Definition of "educational institution".
The term "educational institution " or "institution of learning" refers to schools. The school system is synonymous with formal education, which "refers to the hierarchically structured and chronologically graded learnings organized and provided by the formal school system and for which certification is required in order for the learner to progress through the grades or move to the higher levels." Even non-formal education is understood to be school-based and "private auspices such as foundations and civic-spirited organizations" are ruled out. It is settled that the

term "educational institution," when used in laws granting tax exemptions, refers to a ". . . school seminary, college or educational establishment . . ."

Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 124043, October 14, 1998

Sec. 32 (A)(3) - Gross Income: Gains derived from dealings in property

***(A) General Definition**. - Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:*

(1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
(2) Gross income derived from the conduct of trade or business or the exercise of a profession;
(3) Gains derived from dealings in property;
(4) Interests;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Annuities;
(9) Prizes and winnings;
(10) Pensions; and
(11) Partner's distributive share from the net income of the general professional partnership.

(PBC PRPWPD PARI)

The tax consequences arising from gains from a sale of property are not to be determined solely by the means employed to transfer legal title.

Generally, a sale or exchange of assets will have an income tax incidence only when it is consummated. The incidence of taxation depends upon the substance of a transaction. The tax consequences arising from gains from a sale of property are not finally to be determined solely by the means employed to transfer legal title. Rather, the transaction must be viewed as a whole, and each step from the commencement of negotiations to the consummation of the sale is relevant. A sale by one person cannot be transformed for tax purposes into a sale by another by using the latter as a conduit through which to pass title. To permit the true nature of the transaction to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of the tax policies of Congress.

Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr., et al., G.R. No. 147188, September 14, 2004

Sec. 34 - Deductions from Gross Income

Fines and penalties paid for late payment of taxes are not deductible

Deductions from gross income are matters of legislative grace; what is not expressly granted by Congress is withheld. Moreover, when acts are condemned by law and their commission is made punishable by fines or forfeitures, to allow them to be deducted from the wrongdoer's gross income, reduces, and so in part defeats, the prescribed punishment.

Lino Gutierrez, et al. vs. Collector of Internal Revenue, G.R. No. L-19537, May 20, 1965

Sec. 34 (A) (1) - Ordinary and Necessary Trade, Business or Professional Expenses

***SEC. 34. Deductions from Gross Income.** - Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under subsection (M) hereof, in computing taxable income subject to income tax under Sections 24 (A); 25 (A); 26; 27 (A), (B) and (C); and 28 (A) (1), there shall be allowed the following deductions from gross income;*

***(A) Expenses**. -*

***(1) Ordinary and Necessary Trade, Business or Professional Expenses**.-*

(a) In General. - There shall be allowed as deduction from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession, including:

(i) A reasonable allowance for salaries, wages, and other forms of compensation for personal services actually rendered, including the grossed-up monetary value of fringe benefit furnished or granted by the employer to the employee: Provided, That the final tax imposed under Section 33 hereof has been paid;

(ii) A reasonable allowance for travel expenses, here and abroad, while away from home in the pursuit of trade, business or profession;

(iii) A reasonable allowance for rentals and/or other payments which are required as a condition for the continued use or possession, for purposes of the trade, business or profession, of property to which the taxpayer has not taken or is not taking title or in which he has no equity other than that of a lessee, user or possessor;

(iv) A reasonable allowance for entertainment, amusement and recreation expenses during the taxable year, that are directly connected to the development, management and operation of the trade, business or profession of the taxpayer, or that are directly related to or in furtherance of the conduct of his or its trade, business or exercise of a profession not to exceed such ceilings as the Secretary of Finance may, by rules and regulations prescribe, upon recommendation of the Commissioner, taking into account the needs as well as the special circumstances, nature and character of the industry, trade, business, or profession of the taxpayer: Provided, That any expense incurred for entertainment, amusement or recreation that is contrary to law, morals public policy or public order shall in no case be allowed as a deduction.

(b) Substantiation Requirements. - No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer.

(c) Bribes, Kickbacks and Other Similar Payments. - No deduction from gross income shall be allowed under Subsection (A) hereof for any payment made, directly or indirectly, to an official or employee of the national government, or to an official or employee of any local government unit, or to an official or employee of a government-owned or -controlled corporation, or to an official or employee or representative of a foreign government, or to a private corporation, general professional partnership, or a similar entity, if the payment constitutes a bribe or kickback.

***(2) Expenses Allowable to Private Educational Institutions**. - In addition to the expenses allowable as deductions under this Chapter, a private educational institution, referred to under Section 27 (B) of this Code, may at its option elect either: (a) to deduct expenditures otherwise considered as capital outlays of depreciable assets incurred during the taxable year for the expansion of school facilities or (b) to deduct allowance for depreciation thereof under Subsection (F) hereof.*

(B) Interest.-

***(1) In General**. - The amount of interest paid or incurred within a taxable year on indebtedness in connection with the taxpayer's profession, trade or business shall be allowed as deduction from gross income: Provided, however, That the taxpayer's otherwise allowable deduction for interest expense shall be reduced by an amount equal to the following percentages of the interest income subjected to final tax:*

Forty-one percent (41%) beginning January 1, 1998;
Thirty-nine percent (39%) beginning January 1, 1999; and
Thirty-eight percent (38%) beginning January 1, 2000;

***(2) Exceptions**. - No deduction shall be allowed in respect of interest under the succeeding subparagraphs:*

(a) If within the taxable year an individual taxpayer reporting income on the cash basis incurs an indebtedness on which an interest is paid in advance through discount or otherwise: Provided, That such interest shall be allowed a a deduction in the year the indebtedness is paid: Provided, further, That if the indebtedness is payable in periodic amortizations, the amount of interest which corresponds to the amount of the principal amortized or paid during the year shall be allowed as deduction in such taxable year;

(b) If both the taxpayer and the person to whom the payment has been made or is to be made are persons specified under Section 36 (B); or

(c)If the indebtedness is incurred to finance petroleum exploration.

***(3) Optional Treatment of Interest Expense**. - At the option of the taxpayer, interest incurred to acquire property used in trade business or exercise of a profession may be allowed as a deduction or treated as a capital expenditure.*

(C) Taxes.-

***(1) In General**. - Taxes paid or incurred within the taxable year in connection with the taxpayer's profession, trade or business, shall be allowed as deduction, except*

(a) The income tax provided for under this Title;
(b) Income taxes imposed by authority of any foreign country; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of paragraph (3) of this subsection (relating to credits for taxes of foreign countries);
(c) Estate and donor's taxes; and
(d) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.
Provided, That taxes allowed under this Subsection, when refunded or credited, shall be included as part of gross income in the year of receipt to the extent of the income tax benefit of said deduction.

***(2) Limitations on Deductions**. - In the case of a nonresident alien individual engaged in trade or business in the Philippines and a resident foreign corporation, the deductions for taxes provided in paragraph (1) of this Subsection (C) shall be allowed only if and to the extent that they are connected with income from sources within the Philippines.*

***(3) Credit Against Tax for Taxes of Foreign Countries**. - If the taxpayer signifies in his return his desire to have the benefits of this paragraph, the tax imposed by this Title shall be credited with:*

(a) Citizen and Domestic Corporation. - In the case of a citizen of the Philippines and of a domestic corporation, the amount of income taxes paid or incurred during the taxable year to any foreign country; and
(b) Partnerships and Estates. - In the case of any such individual who is a member of a general professional partnership or a beneficiary of an estate or trust, his proportionate share of such taxes of the general professional partnership or the estate or trust paid or incurred during the taxable year to a foreign country, if his distributive share of the income of such partnership or trust is reported for taxation under this Title.
An alien individual and a foreign corporation shall not be allowed the credits against the tax for the taxes of foreign countries allowed under this paragraph.

***(4) Limitations on Credit**. - The amount of the credit taken under this Section shall be subject to each of the following limitations:*

(a) The amount of the credit in respect to the tax paid or incurred to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's taxable income from sources within such country under this Title bears to his entire taxable income for the same taxable year; and
(b) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's taxable income from sources without the Philippines taxable under this Title bears to his entire taxable income for the same taxable year.

***(5) Adjustments on Payment of Incurred Taxes**. - If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Commissioner; who shall redetermine the amount of the tax for the year or years affected, and the amount of tax due upon such redetermination, if any, shall be paid by the taxpayer upon notice and demand by the Commissioner, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer. In the case of such a tax incurred but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the taxpayer to give a bond with sureties satisfactory to and to be approved by the Commissioner in such sum as he may require, conditioned upon the payment by the taxpayer of any amount of tax found due upon any such redetermination. The bond herein prescribed shall contain such further conditions as the Commissioner may require.*

***(6) Year in Which Credit Taken**. - The credits provided for in Subsection (C)(3) of this Section may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year which the taxes of the foreign country were incurred,* *subject, however, to the conditions prescribed in Subsection (C)(5) of this Section. If the taxpayer elects to take such credits in the year in which the taxes of the foreign country accrued, the credits for all subsequent years shall be taken upon the same basis and no portion of any such taxes shall be allowed as a deduction in the same or any succeeding year.*

***(7) Proof of Credits**. - The credits provided in Subsection (C)(3) hereof shall be allowed only if the taxpayer establishes to the satisfaction of the Commissioner the following:*

(a) The total amount of income derived from sources without the Philippines;

(b) The amount of income derived from each country, the tax paid or incurred to which is claimed as a credit under said paragraph, such amount to be determined under rules and regulations prescribed by the Secretary of Finance; and

(c) All other information necessary for the verification and computation of such credits.

(D) Losses. -

***(1) In General**.- Losses actually sustained during the taxable year and not compensated for by insurance or other forms of indemnity shall be allowed as deductions:*

(a) If incurred in trade, profession or business;

(b) Of property connected with the trade, business or profession, if the loss arises from fires, storms, shipwreck, or other casualties, or from robbery, theft or embezzlement. The Secretary of Finance, upon recommendation of the Commissioner, is hereby authorized to promulgate rules and regulations prescribing, among other things, the time and manner by which the taxpayer shall submit a declaration of loss sustained from casualty or from robbery, theft or embezzlement during the taxable year: Provided, however, That the time limit to be so prescribed in the rules and regulations shall not be less than thirty (30) days nor more than ninety (90) days from the date of discovery of the casualty or robbery, theft or embezzlement giving rise to the loss.

(c) No loss shall be allowed as a deduction under this Subsection if at the time of the filing of the return, such loss has been claimed as a deduction for estate tax purposes in the estate tax return.

***(2) Proof of Loss**. - In the case of a nonresident alien individual or foreign corporation, the losses deductible shall be those actually sustained during the year incurred in business, trade or exercise of a profession conducted within the Philippines, when such losses are not compensated for by insurance or other forms of indemnity. The Secretary of Finance, upon recommendation of the Commissioner, is hereby authorized to promulgate rules and regulations prescribing, among other things, the time and manner by which the taxpayer shall submit a declaration of loss sustained from casualty or from robbery, theft or embezzlement during the taxable year: Provided, That the time to be so prescribed in the rules and regulations shall not be less than thirty (30) days nor more than ninety (90) days from the date of discovery of the casualty or robbery, theft or embezzlement giving rise to the loss; and*

***(3) Net Operating Loss Carry-Over**. - The net operating loss of the business or enterprise for any taxable year immediately preceding the current taxable year, which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next three (3) consecutive taxable years immediately following the year of such loss: Provided, however, That any net loss incurred in a taxable year during which the taxpayer was exempt from income tax shall not be allowed as a deduction under this Subsection: Provided, further, That a net operating loss carry-over shall be allowed only if there has been no substantial change in the ownership of the business or enterprise in that -*

(i) Not less than seventy-five percent (75%) in nominal value of outstanding issued shares., if the business is in the name of a corporation, is held by or on behalf of the same persons; or

(ii) Not less than seventy-five percent (75%) of the paid up capital of the corporation, if the business is in the name of a corporation, is held by or on behalf of the same persons.

For purposes of this subsection, the term "not operating loss" shall mean the excess of allowable deduction over gross income of the business in a taxable year.

Provided, That for mines other than oil and gas wells, a net operating loss without the benefit of incentives provided for under Executive Order No. 226, as amended, otherwise known as the Omnibus Investments Code of 1987, incurred in any of the first ten (10) years of operation may be carried over as a deduction from taxable income for the next five (5) years immediately following the year of such loss. The entire amount of the loss shall be carried over to the first of the five (5) taxable years following the loss, and any portion of such loss which exceeds, the taxable income of such first year shall be deducted in like manner form the taxable income of the next remaining four (4) years.

(4) Capital Losses. -

(a) Limitation. - Loss from sales or Exchanges of capital assets shall be allowed only to the extent provided in Section 39.

(b) Securities Becoming Worthless. - If securities as defined in Section 22 (T) become worthless during the taxable year and are capital assets, the loss resulting therefrom shall, for purposes of this Title, be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets.

***(5) Losses From Wash Sales of Stock or Securities**. - Losses from "wash sales" of stock or securities as provided in Section 38.*

***(6) Wagering Losses**. - Losses from wagering transactions shall b allowed only to the extent of the gains from such transactions.*

***(7) Abandonment Losses**. -*

(a) In the event a contract area where petroleum operations are undertaken is partially or wholly abandoned, all accumulated exploration and development expenditures pertaining thereto shall be allowed as a deduction: Provided, That accumulated expenditures incurred in that area prior to January 1, 1979 shall be allowed as a deduction only from any income derived from the same contract area. In all cases, notices of abandonment shall be filed with the Commissioner.

(b) In case a producing well is subsequently abandoned, the unamortized costs thereof, as well as the undepreciated costs of equipment directly used therein, shall be allowed as a deduction in the year such well, equipment or facility is abandoned by the contractor: Provided, That if such abandoned well is reentered and production is resumed, or if such equipment or facility is restored into service, the said costs shall be included as part of gross income in the year of resumption or restoration and shall be amortized or depreciated, as the case may be.

(E) Bad Debts. -

***(1) In General**. - Debts due to the taxpayer actually ascertained to be worthless and charged off within the taxable year except those not connected with profession, trade or business and those sustained in a transaction entered into between parties mentioned under Section 36 (B) of this Code: Provided, That recovery of bad debts previously allowed as deduction in the preceding years shall be included as part of the gross income in the year of recovery to the extent of the income tax benefit of said deduction.*

***(2) Securities Becoming Worthless**. - If securities, as defined in Section 22 (T), are ascertained to be worthless and charged off within the taxable year and are capital assets, the loss resulting therefrom shall, in the case of a taxpayer other than a bank or trust company incorporated under the laws of the Philippines a substantial part of whose business is the receipt of deposits, for the purpose of this Title, be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets.*

(F) Depreciation. -

***(1) General Rule**. - There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including reasonable allowance for obsolescence) of property used in the trade or business. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust, the allowable deduction shall be apportioned between the income beneficiaries and the trustees in accordance with the pertinent provisions of the instrument creating the trust, or in the absence of such provisions, on the basis of the trust income allowable to each.*

***(2) Use of Certain Methods and Rates**. - The term "reasonable allowance" as used in the preceding paragraph shall include, but not limited to, an allowance computed in accordance with rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, under any of the following methods:*

(a) The straight-line method;
(b) Declining-balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in Subsection (F) (1);
(c) The sum-of-the-years-digit method; and
(d) any other method which may be prescribed by the Secretary of Finance upon recommendation of the Commissioner.

***(3) Agreement as to Useful Life on Which Depreciation Rate is Based**. - Where under rules and regulations prescribed by the Secretary of Finance upon recommendation of the Commissioner, the taxpayer and the Commissioner have entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the national Government in the absence of facts and circumstances not taken into consideration during the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the* *party initiating the modification. Any change in the agreed rate and useful life of the depreciable property as specified in the agreement shall not be effective for taxable years prior to the taxable year in which notice in writing by certified mail or registered mail is served by the party initiating such change to the other party to the agreement:*

Provided, however, that where the taxpayer has adopted such useful life and depreciation rate for any depreciable and claimed the depreciation expenses as deduction from his gross income, without any written objection on the part of the Commissioner or his duly authorized representatives, the aforesaid useful life and depreciation rate so adopted by the taxpayer for the aforesaid depreciable asset shall be considered binding for purposes of this Subsection.

***(4) Depreciation of Properties Used in Petroleum Operations**. - An allowance for depreciation in respect of all properties directly related to production of petroleum initially placed in service in a taxable year shall be allowed under the straight-line or declining-balance method of depreciation at the option of the service contractor.*

However, if the service contractor initially elects the declining-balance method, it may at any subsequent date, shift to the straight-line method.

The useful life of properties used in or related to production of petroleum shall be ten (10) years of such shorter life as may be permitted by the Commissioner.

Properties not used directly in the production of petroleum shall be depreciated under the straight-line method on the basis of an estimated useful life of five (5) years.

***(5) Depreciation of Properties Used in Mining Operations.** - an allowance for depreciation in respect of all properties used in mining operations other than petroleum operations, shall be computed as follows:*

(a) At the normal rate of depreciation if the expected life is ten (10) years or less; or

(b) Depreciated over any number of years between five (5) years and the expected life if the latter is more than ten (10) years, and the depreciation thereon allowed as deduction from taxable income: Provided, That the contractor notifies the Commissioner at the beginning of the depreciation period which depreciation rate allowed by this Section will be used.

***(6) Depreciation Deductible by Nonresident Aliens Engaged in Trade or Business or Resident Foreign Corporations**. - In the case of a nonresident alien individual engaged in trade or business or resident foreign corporation, a reasonable allowance for the deterioration of Property arising out of its use or employment or its non-use in the business trade or profession shall be permitted only when such property is located in the Philippines.*

(G) Depletion of Oil and Gas Wells and Mines. -

***(1) In General**. - In the case of oil and gas wells or mines, a reasonable allowance for depletion or amortization computed in accordance with the cost-depletion method shall be granted under rules and regulations to be prescribed by the Secretary of finance, upon recommendation of the Commissioner. Provided, That when the allowance for depletion shall equal the capital invested no further allowance shall be granted: Provided, further, That after production in commercial quantities has commenced, certain intangible exploration and development drilling costs: (a) shall be deductible in the year incurred if such expenditures are incurred for non-producing wells and/or mines, or (b) shall be deductible in full in the year paid or incurred or at the election of the taxpayer, may be capitalized and amortized if such expenditures incurred are for producing wells and/or mines in the same contract area.*

"Intangible costs in petroleum operations" refers to any cost incurred in petroleum operations which in itself has no salvage value and which is incidental to and necessary for the drilling of wells and preparation of wells for the production of petroleum: Provided, That said costs shall not pertain to the acquisition or improvement of property of a character subject to the allowance for depreciation except that the allowances for depreciation on such property shall be deductible under this Subsection.

Any intangible exploration, drilling and development expenses allowed as a deduction in computing taxable income during the year shall not be taken into consideration in computing the adjusted cost basis for the purpose of computing allowable cost depletion.

***(2) Election to Deduct Exploration and Development Expenditures**. - In computing taxable income from mining operations, the taxpayer may at his option, deduct exploration and development expenditures accumulated as cost or adjusted basis for cost depletion as of date of prospecting, as well as exploration and development expenditures paid or incurred during the taxable year: Provided, That the amount deductible for exploration and development expenditures shall not exceed twenty-five percent (25%) of the net income from mining operations computed without the benefit of any tax incentives under existing laws. The actual exploration and development expenditures minus twenty-five percent (25%) of the net income from mining shall be carried forward to the succeeding years until fully deducted.*

The election by the taxpayer to deduct the exploration and development expenditures is irrevocable and shall be binding in succeeding taxable years.

"Net income from mining operations", as used in this Subsection, shall mean gross income from operations less "allowable deductions" which are necessary or related to mining operations. "Allowable deductions" shall include mining, milling and marketing expenses, and depreciation of properties directly used in the mining operations. This paragraph shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation.

In no case shall this paragraph apply with respect to amounts paid or incurred for the exploration and development of oil and gas.

The term "exploration expenditures" means expenditures paid or incurred for the purpose of ascertaining the existence, location, extent or quality of any deposit of ore or other mineral, and paid or incurred before the beginning of the development stage of the mine or deposit.

The term "development expenditures" means expenditures paid or incurred during the development stage of the mine or other natural deposits. The development stage of a mine or other natural deposit shall begin at the time when deposits of ore or other minerals are shown to exist in sufficient commercial quantity and quality and shall end upon commencement of actual commercial extraction.

***(3) Depletion of Oil and Gas Wells and Mines Deductible by a Nonresident Alien individual or Foreign Corporation**. - In the case of a nonresident alien individual engaged in trade or business in the Philippines or a resident foreign corporation, allowance for depletion of oil and gas wells or mines under paragraph (1) of this Subsection shall be authorized only in respect to oil and gas wells or mines located within the Philippines.*

(H) Charitable and Other Contributions.

***(1) In General**. - Contributions or gifts actually paid or made within the taxable year to, or for the use of the Government of the Philippines or any of its agencies or any political subdivision thereof exclusively for public purposes, or to accredited domestic corporation or associations organized and operated exclusively for religious, charitable, scientific, youth and sports development, cultural or educational purposes or for the rehabilitation of veterans, or to social welfare institutions, or to non-government organizations, in accordance with rules and regulations promulgated by the Secretary of finance, upon recommendation of the Commissioner, no part of the net income of which inures to the benefit of any private stockholder or individual in an amount not in excess of ten percent (10%) in the case of an individual, and five percent (%) in the case of a corporation, of the taxpayer's taxable income derived from trade, business or profession as computed without the benefit of this and the following subparagraphs.*

***(2) Contributions Deductible in Full.** - Notwithstanding the provisions of the preceding subparagraph, donations to the following institutions or entities shall be deductible in full;*

*(a) **Donations to the Government.** - Donations to the Government of the Philippines or to any of its agencies or political subdivisions, including fully-owned government corporations, exclusively to finance, to provide for, or to be used in undertaking priority activities in education, health, youth and sports development, human settlements, science and culture, and in economic development according to a National Priority Plan determined by the National Economic and Development Authority (NEDA), In consultation with appropriate government agencies, including its regional development councils and private philantrophic persons and institutions: Provided, That any donation which is made to the Government or to any of its agencies or political subdivisions not in accordance with the said annual priority plan shall be subject to the limitations prescribed in paragraph (1) of this Subsection;*

*(b) **Donations to Certain Foreign Institutions or International Organizations.** - Donations to foreign institutions or international organizations which are fully deductible in pursuance of or in compliance with agreements, treaties, or commitments entered into by the Government of the Philippines and the foreign institutions or international organizations or in pursuance of special laws;*

*(c) **Donations to Accredited Nongovernment Organizations.** - The term "nongovernment organization" means a non profit domestic corporation:*

(1) Organized and operated exclusively for scientific, research, educational, character-building and youth and sports development, health, social welfare, cultural or charitable purposes, or a combination thereof, no part of the net income of which inures to the benefit of any private individual;

(2) Which, not later than the 15th day of the third month after the close of the accredited nongovernment organizations taxable year in which contributions are received, makes utilization directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated,

unless an extended period is granted by the Secretary of Finance in accordance with the rules and regulations to be promulgated, upon recommendation of the Commissioner;

(3) The level of administrative expense of which shall, on an annual basis, conform with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, but in no case to exceed thirty percent (30%) of the total expenses; and

(4) The assets of which, in the even of dissolution, would be distributed to another nonprofit domestic corporation organized for similar purpose or purposes, or to the state for public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of said court shall best accomplish the general purpose for which the dissolved organization was organized.

Subject to such terms and conditions as may be prescribed by the Secretary of Finance, the term "utilization" means:

(i) Any amount in cash or in kind (including administrative expenses) paid or utilized to accomplish one or more purposes for which the accredited nongovernment organization was created or organized.

(ii) Any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes for which the accredited nongovernment organization was created or organized.

An amount set aside for a specific project which comes within one or more purposes of the accredited nongovernment organization may be treated as a utilization, but only if at the time such amount is set aside, the accredited nongovernment organization has established to the satisfaction of the Commissioner that the amount will be paid for the specific project within a period to be prescribed in rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, but not to exceed five (5) years, and the project is one which can be better accomplished by setting aside such amount than by immediate payment of funds.

***(3) Valuation.** - The amount of any charitable contribution of property other than money shall be based on the acquisition cost of said property.*

***(4) Proof of Deductions.** - Contributions or gifts shall be allowable as deductions only if verified under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner.*

(I) Research and Development.-

***(1) In General.** - a taxpayer may treat research or development expenditures which are paid or incurred by him during the taxable year in connection with his trade, business or profession as ordinary and necessary expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as deduction during the taxable year when paid or incurred.*

***(2) Amortization of Certain Research and Development Expenditures**. - At the election of the taxpayer and in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, the following research and development expenditures may be treated as deferred expenses:*

(a) Paid or incurred by the taxpayer in connection with his trade, business or profession;
(b) Not treated as expenses under paragraph 91) hereof; and
(c) Chargeable to capital account but not chargeable to property of a character which is subject to depreciation or depletion.

In computing taxable income, such deferred expenses shall be allowed as deduction ratably distributed over a period of not less than sixty (60) months as may be elected by the taxpayer (beginning with the month in which the taxpayer first realizes benefits from such expenditures).

The election provided by paragraph (2) hereof may be made for any taxable year beginning after the effectivity of this Code, but only if made not later than the time prescribed by law for filing the return for such taxable year. The method so elected, and the period selected by the taxpayer, shall be adhered to in computing taxable income for the taxable year for which the election is made and for all subsequent taxable years unless with the approval of the Commissioner, a change to a different method is authorized with respect to a part or all of such expenditures. The election shall not apply to any expenditure paid or incurred during any taxable year for which the taxpayer makes the election.

***(3) Limitations on Deduction.** - This Subsection shall not apply to:*

(a) Any expenditure for the acquisition or improvement of land, or for the improvement of property to be used in connection with research and development of a character which is subject to depreciation and depletion; and

(b) Any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral, including oil or gas.

(J) Pension Trusts. *- An employer establishing or maintaining a pension trust to provide for the payment of reasonable pensions to his employees shall be allowed as a deduction (in addition to the contributions to such trust during the taxable year to cover the pension liability accruing during the year, allowed as a deduction under Subsection (A) (1) of this Section) a reasonable amount transferred or paid into such trust during the taxable year in excess of such contributions, but only if such amount (1) has not theretofore been allowed as a deduction, and (2) is apportioned in equal parts over a period of ten (10) consecutive years beginning with the year in which the transfer or payment is made.*

(K) Additional Requirements for Deductibility of Certain Payments*. - Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section 58 and 81 of this Code.*

(L) Optional Standard Deduction. *- In lieu of the deductions allowed under the preceding Subsections, an individual subject to tax under Section 24, other than a nonresident alien, may elect a standard deduction in an amount not exceeding ten percent (10%) of his gross income. Unless the taxpayer signifies in his return his intention to elect the optional standard deduction, he shall be considered as having availed himself of the deductions allowed in the preceding Subsections. Such election when made in the return shall be irrevocable for the taxable year for which the return is made: Provided, That an individual who is entitled to and claimed for the optional standard deduction shall not be required to submit with his tax return such financial statements otherwise required under this Code: Provided, further, That except when the Commissioner otherwise permits, the said individual shall keep such records pertaining to his gross income during the taxable year, as may be required by the rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner.*

(M) Premium Payments on Health and/or Hospitalization Insurance of an Individual Taxpayer*. - The amount of premiums not to exceed Two thousand four hundred pesos (P2,400) per family or Two hundred pesos (P200) a month paid during the taxable year for health and/or hospitalization insurance taken by the taxpayer for himself, including his family, shall be allowed as a deduction from his gross income: Provided, That said family has a gross income of not more than Two hundred fifty thousand pesos (P250,000) for the taxable year: Provided, finally, That in the case of <u>married taxpayers, only the spouse claiming the additional exemption for dependents shall be entitled to this deduction</u>.*

Notwithstanding the provision of the preceding Subsections, The Secretary of Finance, upon recommendation of the Commissioner, after a public hearing shall have been held for this purpose, may prescribe by rules and regulations, limitations or ceilings for any of the itemized deductions under Subsections (A) to (J) of this Section: Provided, That for purposes of determining such ceilings or limitations, the Secretary of Finance shall consider the following factors: (1) adequacy of the prescribed limits on the actual expenditure requirements of each particular industry; and (2) effects of inflation on expenditure levels: Provided, further, That no ceilings shall further be imposed on items of expense already subject to ceilings under present law.

Guiding principles in determining "ordinary and necessary" expenses.

This Court has never attempted to define with precision the terms "ordinary and necessary." There are however, certain guiding principles worthy of serious consideration in the proper adjudication of conflicting claims. Ordinarily, an expense will be considered "necessary" where the expenditure is appropriate and helpful in the development of the taxpayers business. It is "ordinary" when it connotes a payment which is normal in relation to the business of the taxpayer and the surrounding circumstances. The term "ordinary" does not require that the payments be habitual or normal in the sense that the same taxpayer will have to make them often; the payment may be unique or non-recurring to the particular taxpayer affected.

Atlas Consolidated Mining & Devt. Corp. vs. Commissioner of Internal Revenue, G.R. No. L-26911, January 27, 1981

Intention of taxpayer may be the controlling factor in determining deductibility of ordinary and necessary expenditures.

There is no hard and fast rule on the right to a deduction which depends in each case on the particular facts and the relation of the payment to the type of business in which the taxpayer is engaged. The intention of the taxpayer often may be the controlling fact in making the determination. Assuming that the expenditure is ordinary and necessary in the operation of the taxpayer's business, the answer to the question as to whether the expenditure is an allowable deduction as a business expense must be determined from the nature of the expenditure itself, which in turn depends on the extent and permanency of the work accomplished by the expenditure.

Atlas Consolidated Mining & Devt. Corp. vs. Commissioner of Internal Revenue, G.R. No. L-26911, January 27, 1981

What constitutes capital expenditures.
Expenses relating to recapitalization and reorganization of the corporation, the cost of obtaining stock subscription, promotions expenses and commission of fees paid for the sale of stock reorganization are capital expenditures.

Atlas Consolidated Mining & Devt. Corp. vs. Commissioner of Internal Revenue, G.R. No. L-26911, January 27, 1981

Questions in determining deductibility of compensation of corporate officers.
Whenever a controversy arises on the deductibility, for purposes of income tax, of certain items for alleged compensation of officers of the taxpayer, two (2) questions become material, namely: (a) Have 'personal services' been 'actually rendered' by said officers? (b) In the affirmative case, what is the 'reasonable allowance' thereof?

Alhambra Cigar & Cigarette Manufacturing Company vs. Commissioner of Internal Revenue, G.R. No. L-23226, November 28, 1967

Compensation to directors without relation to actual services cannot be regarded as ordinary and necessary expenses.
The extraordinary and unusual amounts paid by the taxpayer to its directors in the guise and form of compensation for their supposed services as such, without any relation to the measure of their actual services, cannot be regarded as ordinary and necessary expenses within the meaning of the law. This posture is in line with the doctrine in the law of taxation that the taxpayer must show that its claimed deductions clearly come within the language of the law since allowances, like exemptions, are matters of legislative grace.

Atlas Consolidated Mining & Devt. Corp. vs. Commissioner of Internal Revenue, G.R. No. L-26911, January 27, 1981

Improper payments of royalty are not deductible as legitimate business expenses.
Although the Tax Code allows payments of royalty to be deducted from gross income as business expenses, it is CB Circular No. 393 that defines what royalty payments are proper. Improper payments of royalty are not deductible as legitimate business expenses.

3M Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 82833, September 26, 1988

Conditions for deductibility of business expense.
The statutory test of deductibility requires that to be deductible as a business expense, three conditions are imposed, namely: (1) the expense must be ordinary and necessary, (2) it must be paid or incurred within the taxable year, and (3) it must be paid or incurred in carrying on a trade or business. In addition, not only must the taxpayer meet the business test, he must substantially prove by evidence or records the deductions claimed under the law, otherwise, the same will be disallowed. The mere allegation of the taxpayer that an item of expense is ordinary and necessary does not justify its deduction.

Esso Standard Eastern, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 28508-9, July 7, 1989

Requisites for deductibility of advertising expense.

To be deductible from gross income, advertising expense must comply with the following requisites: (a) the expense must be ordinary and necessary; (b) it must have been paid or incurred during the taxable year; (c) it must have been paid or incurred in carrying on the trade or business of the taxpayer; and (d) it must be supported by receipts, records or other pertinent papers.

Commissioner of Internal Revenue vs. General Foods (Phils.), Inc., G.R. No. 143672, April 24, 2003

Factors to consider in determining the reasonableness of an advertising expense.
There is yet to be a clear-cut criteria or fixed test for determining the reasonableness of an advertising expense. There being no hard and fast rule on the matter, the right to a deduction depends on a number of factors such as but not limited to: the type and size of business in which the taxpayer is engaged; the volume and amount of its net earnings; the nature of the expenditure itself; the intention of the taxpayer and the general economic conditions. It is the interplay of these, among other factors and properly weighed, that will yield a proper evaluation.

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Two kinds of advertising.
Advertising is generally of two kinds: (1) advertising to stimulate the current sale of merchandise or use of services and (2) advertising designed to stimulate the future sale of merchandise or use of services. The second type involves expenditures incurred, in whole or in part, to create or maintain some form of goodwill for the taxpayer's trade or business or for the industry or profession of which the taxpayer is a member. If the expenditures are for the advertising of the first kind, then, except as to the question of the reasonableness of amount, there is no doubt such expenditures are deductible as business expenses. If, however, the expenditures are for advertising of the second kind, then normally they should be spread out over a reasonable period of time.

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Protection of brand franchise is akin to acquisition of capital assets and therefore not business expense.
The protection of brand franchise is analogous to the maintenance of goodwill or title to one's property. This is a capital expenditure which should be spread out over a reasonable period of time. Respondent corporation's venture to protect its brand franchise was tantamount to efforts to establish a reputation. This was akin to the acquisition of capital assets and therefore expenses related thereto were not to be considered as business expenses but as capital expenditures.

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To be considered ordinary, an expense must be reasonable in amount.
True, it is the taxpayer's prerogative to determine the amount of advertising expenses it will incur and where to apply them. Said prerogative, however, is subject to certain considerations. The first relates to the extent to which the expenditures are actually capital outlays; this necessitates an inquiry into the nature or purpose of such expenditures. The second, which must be applied in harmony with the first, relates to whether the expenditures are ordinary and necessary. Concomitantly, for an expense to be considered ordinary, it must be reasonable in amount.

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Conditions for deductibility of employee bonuses.

It is a general rule that bonuses to employees made in good faith and as additional compensation for the services actually rendered by the employees are deductible, provided such payments, when added to the stipulated salaries, do not exceed a reasonable compensation for the services rendered. The conditions precedent to the deduction of bonuses to employees are: (1) the payment of the bonuses is in fact compensation; (2) it must be for personal services actually rendered; and (3) the bonuses, when added to the salaries, are 'reasonable . . . when measured by the amount and quality of the services performed with relation to the business of the particular taxpayer'

C. M. Hoskins & Co., Inc. vs. Commissioner of Internal Revenue, G.R. No. L-24059, November 28, 1969

Factors in determining reasonableness of bonus as compensation.
There is no fixed test for determining the reasonableness of a given bonus as compensation. This depends upon many factors, one of them being 'the amount and quality of the services performed with relation to the business.' Other tests suggested are: payment must be 'made in good faith'; 'the character of the taxpayer's business, the volume and amount of its net earnings, its locality, the type and extent of the services rendered, the salary policy of the corporation'; 'the size of the particular business'; 'the employees' qualifications and contributions to the business venture'; and 'general economic conditions'. However, 'in determining whether the particular salary or compensation payment is reasonable, the situation must be considered as a whole. Ordinarily, no single factor is decisive. . . . it is important to keep in mind that it seldom happens that the application of one test can give satisfactory answer, and that ordinarily it is the interplay of several factors, properly weighted for the particular case, which must furnish the final answer."

C. M. Hoskins & Co., Inc. vs. Commissioner of Internal Revenue, G.R. No. L-24059, November 28, 1969

Tax deductions must also be strictly construed.
It is a governing principle in taxation that tax exemptions must be construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority; and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implications. Deductions for income tax purposes partake of the nature of tax exemptions; hence, if tax exemptions are strictly construed, then deductions must also be strictly construed.

Commissioner of Internal Revenue vs. General Foods (Phils.), Inc., G.R. No. 143672, April 24, 2003

Expenses to establish reputation are capital expenditures.
An expense incurred to create a favorable image of the corporation in order to gain or maintain the public's and its stockholder's patronage, does not make it deductible as business expense. Efforts to establish reputation are akin to acquisition of capital assets and, therefore, expenses related thereto are not business expense but capital expenditures.

Atlas Consolidated Mining & Devt. Corp. vs. Commissioner of Internal Revenue, G.R. No. L-26911, January 27, 1981

Listing fee is an ordinary and necessary business expense.
A listing fee is an ordinary and necessary business expense for the privilege of having its stock listed.

Atlas Consolidated Mining & Devt. Corp. vs. Commissioner of Internal Revenue, G.R. No. L-26911, January 27, 1981

Litigation expenses incurred in defense or protection of title are capital in nature and not deductible.

It is well settled that <u>litigation expenses incurred in defense or protection of title are capital in nature and not deductible</u>, likewise, it was ruled by the U.S. Tax Court that expenditures in defense of title property constitute a part of the cost of the property, are not deductible as expense.

Atlas Consolidated Mining & Devt. Corp. vs. Commissioner of Internal Revenue, G.R. No. L-26911, January 27, 1981

Expenses incurred by charitable institution for handling its dividends and interests are not deductible as business expenses.
As the principle of allocating expenses is grounded on the premise that the taxable income was derived from carrying on a trade or business, as distinguished from mere receipt of interests and dividends from one's investments, said income should not share in the allocation of administrative expenses. Thus, expenses incurred by a charitable institution for handling its funds or income consisting solely of dividends and interests, are not expenses incurred in "carrying on any trade or business," hence, not deductible as business or administrative expenses.

Hospital de San Juan de Dios, Inc. vs. Commissioner of Internal Revenue, G.R. No. 31305, May 10, 1990

Sec. 34 (B) - Interest

Interest paid for late payment of tax is deductible from gross income.
The term "indebtedness" as used in the Tax Code of the United States has been defined as an unconditional and legally enforceable obligation for the payment of money. Within the meaning of that definition, it is apparent that a tax may be considered an indebtedness. It follows that the interest paid for the late payment of donor's tax is deductible from taxpayer's gross income.

Commissioner of Internal Revenue vs. Consuelo L. vda. de Prieto, G.R. No. L-13912, September 30, 1960

When distinction between "taxes" and "debts" are inconsequential.
While "taxes" and "debt" are distinguishable legal concepts, in certain cases, on account of their nature, the distinction becomes inconsequential. This qualification is recognized even in the United States. Thus, the term "debt" is properly used in a comprehensive sense as embracing not merely money due by contract, but whatever one is bound to render to another, either for contract or the requirements of the law. Although what is involved in the Prieto case was donor's tax while the present suit pertains to interest paid on the estate and inheritance tax, interpretation placed upon the law was predicated on the congressional intent, not on the nature of the tax for which the interest was paid.

Commissioner of Internal Revenue vs. Carlos Palanca, Jr., G.R. No. L-16626, October 29, 1966

Definition of "theoretical interest".
"Theoretical interest" refers to interest "calculated" or computed (and not incurred or paid) for the purpose of determining the "opportunity cost" of investing funds in a given business. Such "theoretical" or imputed interest does not arise from a legally demandable interest-bearing obligation incurred by the taxpayer who however wishes to find out, e.g., whether he would have been better off by lending out his funds and earning interest rather than investing such funds in his business.

Paper Industries Corp. of the Phil. (PICOP) vs. Court of Appeals, et al., G.R. Nos. 106949-50, December 1, 1995

"Carrying charges" may be capitalized or deducted from gross income at the option of taxpayer.

The "carrying charges" which may be capitalized under the U.S. Internal Revenue Code include, interest on a loan "(but not theoretical funds)." Such "carrying charges" may, at the election of the taxpayer, either be (a) capitalized in which case the cost basis of the capital assets, e.g., machinery and equipment, will be adjusted by adding the amount of such interest payments or, alternatively, be (b) deducted from gross income of the taxpayer. Should the taxpayer elect to deduct the interest payments against its gross income, the taxpayer cannot at the same time capitalize the interest payments. In other words, the taxpayer is not entitled to both the deduction from gross income and the adjusted (increased) basis for determining gain or loss and the allowable depreciation charge. The U.S. Internal Revenue Code does not prohibit the deduction of interest on a loan obtained for purchasing machinery and equipment against gross income, unless the taxpayer has also or previously capitalized the same interest payments and thereby adjusted the cost basis of such assets.

Paper Industries Corp. of the Phil. (PICOP) vs. Court of Appeals, et al., G.R. Nos. 106949-50, December 1, 1995

Sec. 34(D) (4) (a) - Capital Losses

> ***(4) Capital Losses. -***
> *(a) Limitation. - Loss from sales or Exchanges of capital assets shall be allowed only to the extent provided in Section 39.*

Capital losses are deductible only to the extent of capital gains.
Capital losses are allowed to be deducted only to the extent of capital gains, i.e., gains derived from the sale or exchange of capital assets, and not from any other income of the taxpayer.

China Banking Corp. vs. Court of Appeals, et al., G.R. No. 125508, July 19, 2000

Sec. 34(D) (4) (b) - Securities becoming worthless

Requisites for capital gain or capital loss.
The loss sustained by the holder of the securities, which are capital assets (to him), is to be treated as a capital loss as if incurred from a sale or exchange transaction. A capital gain or a capital loss normally requires the concurrence of two conditions for it to result: (1) There is a sale or exchange; and (2) the thing sold or exchanged is a capital asset.

China Banking Corp. vs. Court of Appeals, et al., G.R. No. 125508, July 19, 2000

When securities become worthless, the law deems the loss as "a loss from the sale or exchange of capital assets".
When securities become worthless, there is strictly no sale or exchange but the law deems the loss anyway to be "a loss from the sale or exchange of capital assets." A similar kind of treatment is given by the NIRC on the retirement of certificates of indebtedness with interest coupons or in registered form, short sales and options to buy or sell property where no sale or exchange strictly exists. In these cases, the NIRC dispenses, in effect, with the standard requirement of a sale or exchange for the application of the capital gain and loss provisions of the code.

China Banking Corp. vs. Court of Appeals, et al., G.R. No. 125508, July 19, 2000

Sec. 34 (E) - Bad Debts

Requisites for deductibility of "bad debts".
For debts to be considered as "worthless," and thereby qualify as "bad debts" making them deductible, the taxpayer should show that (1) there is a valid and subsisting debt; (2) the debt must be actually ascertained to be worthless and uncollectible during the taxable year; (3) the debt must be charged off during the taxable year; and (4) the debt must arise from the business

or trade of the taxpayer. Additionally, before a debt can be considered worthless, the taxpayer must also show that it is indeed uncollectible even in the future.

Philippine Refining Company vs. Court of Appeals, et al., G.R. No. 118794, May 8, 1996

Criteria for ascertaining worthlessness of debts.
The requirement of ascertainment of worthlessness requires proof of two facts: (1) that the taxpayer did in fact ascertain the debt to be worthless, in the year for which the deduction is sought; and (2) that, in so doing, he acted in good faith.

Collector of Internal Revenue vs. Goodrich International Rubber Co., G.R. No. L-22265, December 22, 1967

Sec. 34 (F) - Depreciation

Definition of "depreciation".
Depreciation is the gradual diminution in the useful value of tangible property resulting from wear and tear and normal obsolescence. The term is also applied to amortization of the value of intangible assets, the use of which in the trade or business is definitely limited in duration.

Basilan Estates, Inc. vs. Commissioner of Internal Revenue, et al., G.R. No. L-22492, September 5, 1967

Depreciation commences with the acquisition of the property.
Depreciation commences with the acquisition of the property and its owner is not bound to see his property gradually waste, without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years, the original investment remains as it was in the beginning. It is not only the right of a company to make such a provision, but it is its duty to its bond and stockholders, and, in the case of a public service corporation, at least, its plain duty to the public. Accordingly, the law permits the taxpayer to recover gradually his capital investment in wasting assets free from income tax.

Basilan Estates, Inc. vs. Commissioner of Internal Revenue, et al., G.R. No. L-22492, September 5, 1967

The law does not authorize depreciation of an asset beyond its acquisition cost.
The income tax law does not authorize the depreciation of an asset beyond its acquisition cost. Hence, a deduction over and above such cost cannot be claimed and allowed. The reason is that deductions from gross income are privileges, not matters of right. They are not created by implication but upon clear expression in the law. Moreover, the recovery, free of income tax, of an amount more than the invested capital in an asset will transgress the underlying purpose of a depreciation allowance. For then what the taxpayer would recover will be, not only the acquisition cost, but also some profit. Recovery in due time thru depreciation of investment made is the philosophy behind depreciation allowance; the idea of profit on the investment made has never been the underlying reason for the allowance of a deduction for depreciation.

Basilan Estates, Inc. vs. Commissioner of Internal Revenue, et al., G.R. No. L-22492, September 5, 1967

Depreciation of building is based on construction cost, not on its assessed value.
Where a building acquired by a corporation from the vendors in exchange for shares of its stocks is revalued on the basis of its construction cost, which revaluation imports an obligation of the corporation to pay the vendors the difference between the assessed value and the revalued construction cost, it is held that the depreciation logically has to be on the basis of the construction cost and not on the assessed value of the building, since the corporate investment would ultimately be the construction cost.

Commissioner of Internal Revenue vs. Priscila Estate, Inc., et al, G.R. No. L-18282, May 29, 1964

Findings of tax court on depreciation of assets should not be disturbed.
Depreciation is a question of fact, and where the appellant does not claim that the tax court, in applying certain rates and basis to arrive at the allowed amounts of depreciation, was arbitrary or had abused its discretion, the findings of the tax court on the depreciation of assets should not be disturbed.

Commissioner of Internal Revenue vs. Priscila Estate, Inc., et al., G.R. No. L-18282, May 29, 1964

Depreciation of residence not used in trade or business is not deductible.
The claim for depreciation of taxpayer's residence is not deductible where such residence was not used in his trade or business. A taxpayer may deduct from gross income reasonable allowance for deterioration of property arising out of its use or employment in business or trade.

Lino Gutierrez, et al. vs. Collector of Internal Revenue, G.R. No. L-19537, May 20, 1965

Sec. 34 (G) - Depletion of Oil and Gas Wells and Mines

Burden of justifying the allowance of deduction based on depletion rests on taxpayer.
As an income tax concept, depletion is wholly a creation of the statute — "solely a matter of legislative grace." Hence, the taxpayer has the burden of justifying the allowance of any deduction claimed. As in connection with all other tax controversies, the burden of proof to show that a disallowance of depletion by the Commissioner is incorrect or that an allowance made is inadequate is upon the taxpayer, and this is true with respect to the value of the property constituting the basis of the deduction. This burden-of-proof rule has been frequently applied and a value claimed has been disallowed for lack of evidence.

Consolidated Mines, Inc. vs. Court of Tax Appeals, et al., G.R. Nos. L-18843 & 18844, August 29, 1974

Differences between "depletion" and "depreciation".
Both depletion and depreciation are predicated on the same basic premise of avoiding a tax on capital. The allowance for depletion is based on the theory that the extraction of minerals gradually exhausts the capital investment in the mineral deposit. The purpose of the depletion deduction is to permit the owner of a capital interest in mineral in place to make a tax-free recovery of that depleting capital asset. A depletion is based upon the concept of the exhaustion of a natural resource whereas depreciation is based upon the concept of the exhaustion of the property, not otherwise a natural resource, used in a trade or business or held for the production of income. Thus, depletion and depreciation are made applicable to different types of assets. And a taxpayer may not deduct that which the Code allows as a deduction of another. (cited in Footnote 36)

Consolidated Mines, Inc. vs. Court of Tax Appeals, et al., G.R. Nos. L-18843 & 18844, August 29, 1974

Sec. 34 (H) - Charitable and Other Contributions

Charitable institution remains tax-exempt although it derives income from paying patients.
As a general principle, a charitable institution does not lose its character as such and its exemption from taxes simply because it derives income from paying patients, whether out-patient, or confined in the hospital, or receives subsidies from the government, so long as the money

received is devoted or used altogether to the charitable object which it is intended to achieve; and no money inures to the private benefit of the persons managing or operating the institution.

Lung Center of the Phil. vs. Quezon City, et al., G.R. No. 144104, June 29, 2004

Rationale for tax exemption of charitable institutions.
An institution does not lose its charitable character, and consequent exemption from taxation, by reason of the fact that those recipients of its benefits who are able to pay are required to do so, where no profit is made by the institution and the amounts so received are applied in furthering its charitable purposes, and those benefits are refused to none on account of inability to pay therefor. The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them, and a consequent relief, to some extent, of the burden upon the state to care for and advance the interests of its citizens.

Lung Center of the Phil. vs. Quezon City, et al, G.R. No. 144104, June 29, 2004

Sec. 34 (J) - Pension Trusts

Income of pension trust is likewise tax-exempt.
It is evident that tax exemption is likewise to be enjoyed by the income of the pension trust. Otherwise, taxation of those earnings would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. This would run afoul of the very intendment of the law. The tax advantage in Rep. Act No. 1983, Section 56(b), was conceived in order to encourage the formation and establishment of such private Plans for the benefit of laborers and employees outside of the Social Security Act.

Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 95022, March 23, 1992

Sec. 36 - Losses from Sales or Exchanges of Property

When loss is deemed to be a loss from the sale or exchange of capital assets.
In the hands of another who holds the shares of stock by way of an investment, the shares to him would be capital assets. When the shares held by such investor become worthless, the loss is deemed to be a loss from the sale or exchange of capital assets.

China Banking Corp. vs. Court of Appeals, et al., G.R. No. 125508, July 19, 2000

Sec. 39 - Capital Gains and Losses

(A) Definitions. *- As used in this Title -*

> ***(1) Capital Assets****. - The term "capital assets" means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34; or real property used in trade or business of the taxpayer.*
>
> ***(2) Net Capital Gain****. - The term "net capital gain" means the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges.*
>
> ***(3) Net Capital Loss****. - The term "net capital loss" means the excess of the losses from sales or exchanges of capital assets over the gains from such sales or exchanges.*

Two conditions for a capital gain or a capital loss to result.

Section 29(d)(4)(B) of the NIRC conveys that the loss sustained by the holder of the securities, which are capital assets (to him), is to be treated as a capital loss as if incurred from a sale or exchange transaction. A capital gain or a capital loss normally requires the concurrence of two conditions for it to result: (1) There is a sale or exchange; and (2) the thing sold or exchanged is a capital asset. When securities become worthless, there is strictly no sale or exchange but the law deems the loss anyway to be "a loss from the sale or exchange of capital assets". A similar kind of treatment is given by the NIRC on the retirement of certificates of indebtedness with interest coupons or in registered form, short sales and options to buy or sell property where no sale or exchange strictly exists. In these cases, the NIRC dispenses, in effect, with the standard requirement of a sale or exchange for the application of the capital gain and loss provisions of the code.

China Banking Corp. vs. Court of Appeals, et al., G.R. No. 125508, July 19, 2000

Sec. 39(A) (1) - Capital Assets

Liquidation test is not acceptable in determining whether or not a taxpayer is carrying on a trade or business.
The fact that property is sold for purposes of liquidation does not foreclose a determination that a "trade or business" is being conducted by the seller. The sole question is — were the taxpayers in the business of subdividing real estate? If they were, then it seems indisputable that the property sold falls within the exception in the definition of capital assets; that is, that it constituted `property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.'"

Tomas Calasanz, et al. vs. Commissioner of Internal Revenue, et al., G.R. No. L-26284, October 9, 1986

Gains from sale of subdivided lots are ordinary income.
One may, of course, liquidate a capital asset. To do so, it is necessary to sell. The sale may be conducted in the most advantageous manner to the seller and he will not lose the benefits of the capital gain provision of the statute unless he enters the real estate business and carries on the sale in the manner in which such a business is ordinarily conducted. In that event, the liquidation constitutes a business and a sale in the ordinary course of such a business and the preferred tax status is lost.

Tomas Calasanz, et al. vs. Commissioner of Internal Revenue, et al., G.R. No. L-26284, October 9, 1986

If the asset is not among the exceptions provided by the NIRC, it is a capital asset.
The statutory definition of capital assets is negative in nature. If the asset is not among the exceptions, it is a capital asset; conversely, assets falling within the exceptions are ordinary assets. And necessarily, any gain resulting from the sale or exchange of an asset is a capital gain or an ordinary gain depending on the kind of asset involved in the transaction.

Tomas Calasanz, et al. vs. Commissioner of Internal Revenue, et al., G.R. No. L-26284, October 9, 1986

There is no rigid rule in determining with finality whether property sold by a taxpayer is held primarily for sale to customers in the ordinary course of his trade or business or as capital asset.
There is no rigid rule or fixed formula by which it can be determined with finality whether property sold by a taxpayer was held primarily for sale to customers in the ordinary course of his trade or business or whether it was sold as a capital asset. Although several factors or indices have been recognized as helpful guides in making a determination, none of these is decisive; neither is the

presence nor the absence of these factors conclusive. Each case must in the last analysis rest upon its own peculiar facts and circumstances.

Tomas Calasanz, et al. vs. Commissioner of Internal Revenue, et al., G.R. No. L-26284, October 9, 1986

Inherited property is deemed primarily for sale in the ordinary course of business if it is substantially improved or/and very actively sold.
Also a property initially classified as a capital asset may thereafter be treated as an ordinary asset if a combination of the factors indubitably tend to show that the activity was in furtherance of or in the course of the taxpayer's trade or business. Thus, a sale of inherited real property usually gives capital gain or loss even though the property has to be subdivided or improved or both to make it salable. However, if the inherited property is substantially improved or very actively sold or both it may be treated as held primarily for sale to customers in the ordinary course of the heir's business.

Tomas Calasanz, et al. vs. Commissioner of Internal Revenue, et al., G.R. No. L-26284, October 9, 1986

Property ceases to be a capital asset if the amount expended to improve it is double its original cost.
A property ceases to be a capital asset if the amount expended to improve it is double its original cost, for the extensive improvement indicates that the seller held the property primarily for sale to customers in the ordinary course of his business.

Tomas Calasanz, et al. vs. Commissioner of Internal Revenue, et al., G.R. No. L-26284, October 9, 1986

Sec. 39 (C) - "Limitation on Capital Losses"

Losses on equity investments are not deductible as bad debts.
The exclusionary clause found in the law does not include all forms of securities but specifically covers only bonds, debentures, notes, certificates or other evidence of indebtedness, with interest coupons or in registered form, which are the instruments of credit normally dealt with in the usual lending operations of a financial institution. Equity holdings cannot come close to being within the purview of "evidence of indebtedness".Verily, it is for a like thesis that the loss of petitioner bank in its equity investment in the Hongkong subsidiary cannot also be deductible as a bad debt. The shares of stock in question do not constitute a loan extended by it to its subsidiary (First CBC Capital) or a debt subject to obligatory repayment by the latter, essential elements to constitute a bad debt, but a long term investment made by CBC.

China Banking Corp. vs. Court of Appeals, et al., G.R. No. 125508, July 19, 2000

Sec. 40 - Determination of Amount and Recognition of Gain or Loss

Instances when no recognition of gain or loss is made in sale or exchange of property.
The law should be taken within the context on the general subject of the determination and recognition of gain or loss. It is not preclusive of, let alone renders completely inconsequential, the more specific provisions of the code. Thus, no such recognition shall be made if the sale or exchange is made in pursuance of a plan of corporate merger or consolidation or, if as a result of an exchange of property for stocks, the exchanger, alone or together with others not exceeding four, gains control of the corporation.

China Banking Corp. vs. Court of Appeals, et al., G.R. No. 125508, July 19, 2000

Sec. 42 (A) - Gross Income From Sources Within the Philippines

Residence of obligor who pays the interest determines the source of interest income.
The law does not speak of activity but of "source". Even if all the related activities — the signing of the contract, the construction of the vessels, the payment of the stipulated price, and their delivery to the NDC — were done in Tokyo, it is the residence of the obligor who pays the interest which is the determining factor of the source of interest income.

National Development Company vs. Commissioner of Internal Revenue, G.R. No. L-53961, June 30, 1987

Sec. 43 - Accounting Periods and Methods of Accounting

Accounting methods for tax purposes differentiated from methods for accounting purposes.
While taxable income is based on the method of accounting used by the taxpayer, it will almost always differ from accounting income. This is so because of a fundamental difference in the ends the two concepts serve. Accounting attempts to match cost against revenue. Tax law is aimed at collecting revenue. It is quick to treat an item as income, slow to recognize deductions or losses. Thus, the tax law will not recognize deductions for contingent future losses except in very limited situations. Good accounting, on the other hand, requires their recognition. Once this fundamental difference in approach is accepted, income tax accounting methods can be understood more easily. (cited in Footnote No. 1)

Consolidated Mines, Inc. vs. Court of Tax Appeals, et al., G.R. Nos. L-18843 & 18844, August 29, 1974

Income realized within taxpayer's annual accounting period becomes the basis for computation of the gross income and the tax liability.
Under the withholding tax system, income is viewed as a flow and is measured over a period of time known as an "accounting period." An accounting period covers twelve months, subdivided into four equal segments known as "quarters." Income realized within the taxpayer's annual accounting period (fiscal or calendar year) becomes the basis for the computation of the gross income and the tax liability.

Citibank, N.A. vs. Court of Appeals, et al., G.R. No. 107434, October 10, 1997

Sec. 57 - Withholding of Tax at Source

Reasons for devising the withholding tax system.
The withholding tax system was devised for two main reasons: first, to provide the taxpayer a convenient manner to meet his probable income tax liability; and second, to ensure the collection of the income tax which could otherwise be lost or substantially reduced through failure to file the corresponding returns. To these, a third reason may be added: to improve the government's cash flow.

Citibank, N.A. vs. Court of Appeals, et al., G.R. No. 107434, October 10, 1997

Taxes withheld are in the nature of payment by a taxpayer in order to extinguish his possible tax obligation.
A taxpayer, resident or non-resident who contributes to the withholding tax system, does not really deposit an amount to the Commissioner of Internal Revenue, but, in truth, to perform and extinguish his tax obligation for the year concerned. In other words, he is paying his tax liabilities

for that year. Consequently, a taxpayer whose income is withheld at the source will be deemed to have paid his tax liability when the same falls due at the end of the tax year.

Finley J. Gibbs, et al. vs. Commissioner of Internal Revenue, et al., G.R. No. L-17406, November 29, 1965

The withholding agent is the agent of both the Government and the taxpayer.
The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53(c) he is held personally liable for the tax he is duty bound to withhold; whereas, the Commissioner of Internal Revenue and his deputies are not made liable by law.

Philippine Guaranty Co., Inc. vs. Commissioner of Internal Revenue, et al., G.R. No. L-22074, September 6, 1965
Withholding agent has implied authority to file claim for refund.
If the withholding agent is also an agent of the beneficial owner of the dividends with respect to the filing of the necessary income tax return and with respect to actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such claim. This implied authority is especially warranted where the withholding agent is the wholly owned subsidiary of the parent-stockholder and therefore, at all times, under the effective control of such parent-stockholder.

Commissioner of Internal Revenue vs. Procter & Gamble Philippine Mfg. Corp., G.R. No. 66838, December 2, 1991

Sec. 58 - Returns and Payment of Taxes Withheld at Source

Commissioner may require withholding agents to regularly pay or deposit the taxes withheld.
It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it . . . It is the lifeblood of the government and so should be collected without unnecessary hindrance . . . In line with this principle, the Tax Code, provides that "the Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require the withholding agents to pay or deposit the taxes deducted and withheld at more frequent intervals when necessary to protect the interest of the government. The return shall be filed and the payment made within 25 days from the close of each calendar quarter".

Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories, Inc., et al., G.R. No. 76281, September 30, 1991

Sec. 60(B) - Exception from Income Tax - Estates and Trusts

A Gratuity Plan will lose its tax-exempt status if the retirement benefits are released prior to the retirement of the employees.
Under the law, the trust funds of employees other than those of private employers are qualified for certain tax exemptions pursuant to Section 60(B) of the National Internal Revenue Code. The Gratuity Plan provides that the gratuity benefits of a qualified DBP employee shall be released only "upon retirement under the Plan." If the earnings and principal of the Fund are distributed to DBP employees prior to their retirement, the Gratuity Plan will no longer qualify for exemption

under Section 60(B). If DBP insists that its employees may receive the dividends, the necessary consequence will be the non-qualification of the Gratuity Plan as a tax-exempt plan.

Dev't. Bank of the Phil. vs. Commission on Audit, G.R. No. 144516, February 11, 2004

Sec. 76 - Final Adjustment Return

Without the tax return, it is error to grant a refund.
The grant of a refund is founded on the assumption that the tax return is valid, i.e., that the facts stated therein are true and correct. Without the tax return, it is error to grant a refund since it would be virtually impossible to determine whether the proper taxes have been assessed and paid. In this case, petitioner's failure to present sufficient evidence to prove its claim for refund is fatal to its cause. After all, it is axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.

Paseo Realty & Development Corp. vs. Court of Appeals, et al., G.R. No. 119286, October 13, 2004

The carrying forward of any excess or overpaid income tax for a given taxable year is limited to the succeeding taxable year only.
In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding year. The carrying forward of any excess or overpaid income tax for a given taxable year is limited to the succeeding taxable year only.

Paseo Realty & Development Corp. vs. Court of Appeals, et al., G.R. No. 119286, October 13, 2004

Sec. 85 - Gross Estate

Expenditures incurred for the individual benefit of the heirs, devisees or legatees are not deductible
Judicial expenses are expenses of administration. Administration expenses, as an allowable deduction from the gross estate of the decedent for purposes of arriving at the value of the net estate, have been construed by the federal and state courts of the United States to include all expenses "essential to the collection of the assets, payment of debts or the distribution of the property to the persons entitled to it." In other words, the expenses must be essential to the proper settlement of the estate. Expenditures incurred for the individual benefit of the heirs, devisees or legatees are not deductible.

Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 123206, March 22, 2000

Tax should be measured by the value of the estate at the time of decedent's death.
If death is the generating source from which the power of the state to impose inheritance taxes takes its being and if, upon the death of the decedent, succession takes place and the right of the state to tax vests instantly, the tax should be measured by the value of the estate as it stood at the time of the decedent's death, regardless of any subsequent contingency affecting value of any subsequent increase or decrease in value.

Pablo Lorenzo vs. Juan Posadas, Jr., G.R. No. 43082, June 18, 1937

Right of the state to inheritance tax accrues at the moment of death.

The right of the state to inheritance tax accrues at the moment of death, and hence is ordinarily measured as to any beneficiary by the value at that time of such property as passes to him. Subsequent appreciation or depreciation is immaterial.

Pablo Lorenzo vs. Juan Posadas, Jr., G.R. No. 43082, June 18, 1937

Payment of inheritance tax cannot be postponed or delayed by the creation of a trust.
The payment of inheritance tax cannot be postponed or delayed by the creation of a trust. Testators may provide that their estates be not delivered to their beneficiaries until after the lapse of a certain period of time. The collection of the tax would then be left to the will of a private individual. Taxes are essential to the very existence of government.

Pablo Lorenzo vs. Juan Posadas, Jr., G.R. No. 43082, June 18, 1937

Tax is based on the value of property transmitted at the time of predecessor’s death.
A transmission by inheritance is taxable at the time of the predecessor's death, notwithstanding the postponement of the actual possession or enjoyment of the estate by the beneficiary, and the tax measured by the value of the property transmitted at that time regardless of its appreciation or depreciation.

Pablo Lorenzo vs. Juan Posadas, Jr., G.R. No. 43082, June 18, 1937

Compensation of trustee is not deductible expense.
The compensation of a trustee, earned, not in the administration of the estate, but in the management thereof for the benefit of the legatees or devisees, does not come properly within the class or reason for exempting administration expenses. Services rendered in that behalf have no reference to closing the estate for the purpose of a distribution thereof to those entitled to it and are not required or essential to the perfection of the rights of the heirs or legatees.

Pablo Lorenzo vs. Juan Posadas, Jr., G.R. No. 43082, June 18, 1937

Accrual of inheritance tax is distinct from the obligation to pay the same.
The accrual of the inheritance tax is distinct from the obligation to pay the same. It is in reality an excise or privilege tax imposed on the right to succeed to, receive, or take property by or under a will or the intestacy law, or deed, grant, or gift, to become operative at or after death.

Pablo Lorenzo vs. Juan Posadas, Jr., G.R. No. 43082, June 18, 1937

Premiums paid on the bond filed by administrator is not deductible as administration expense.
The premiums paid on the bond filed by the administrator is not deductible as an expense of administration since the giving of a bond is in the nature of a qualification for the office, and not necessary in the settlement of the estate. A person may accept the position of executor or administrator with all the incidents appertaining thereto having in mind the compensation which the law allows for the purpose, but he may waive this compensation in the same manner as he may refuse to serve without it.

Carlos Moran Sison vs. Narcisa F. Teodoro, G.R. No. L-9271, March 29, 1957

Notarial fee paid for extrajudicial settlement is a deductible expense.
The notarial fee paid for the extrajudicial settlement is clearly a deductible expense since such settlement effected a distribution of the decedent’s estate to his lawful heirs. Similarly, the attorney's fees paid to PNB for acting as the guardian of the decedent’s property during his lifetime should also be considered as a deductible administration expense. PNB provided a detailed accounting of decedent's property and gave advice as to the proper settlement of the latter's estate, acts which contributed towards the collection of decedent's assets and the subsequent settlement of the estate.

Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 123206, March 22, 2000

Sec. 89 - Filing of Notice of Death

Obligation to inform Commissioner of Internal Revenue of taxpayer's death does not apply to cases involving deficiency income tax.
Section 104 of the National Internal Revenue Code of 1977 (now Sec. 89 of NIRC of 1997) pertains to "all cases of transfers subject to tax" or where the "gross value of the estate exceeds three thousand pesos". It has absolutely no applicability to a case for deficiency income tax. It further lacks applicability since Philtrust (which managed the business affairs of the deceased) was never the executor, administrator of the decedent's estate, and, as such, never had the legal obligation, based on the above provision, to inform the Commissioner of Internal Revenue of her death.

Estate of the Late Juliana Diez vda. de Gabriel vs. Commissioner of Internal Revenue, G.R. No. 155541, January 27, 2004

Sec. 90 - Estate Tax Returns

Omission to file estate tax return and to contest tax assessment is fatal.
The omission to file an estate tax return, and the subsequent failure to contest or appeal the assessment made by the BIR is fatal, as under the NIRC, in case of failure to file a return, the tax may be assessed at any time within ten years after the omission, and any tax so assessed may be collected by levy upon real property within three years following the assessment of the tax. Since the estate tax assessment had become final and unappealable by the petitioner's default as regards protesting the validity of the said assessment, there is now no reason why the BIR cannot continue with the collection of the said tax. Any objection against the assessment should have been pursued following the avenue paved in Section 229 of the NIRC on protests or assessments of internal revenue taxes.

Ferdinand R. Marcos II vs. Court of Appeals, et al., G.R. No. 120880, June 5, 1997

Sec. 94 - Payment Before Delivery by Executor or Administrator

Approval of probate court is not a mandatory requirement in collection of estate taxes.
The approval of the court, sitting in probate, or as a settlement tribunal over the deceased is not a mandatory requirement in the collection of estate taxes. There is nothing in the Tax Code, and in the pertinent remedial laws that implies the necessity of the probate or estate settlement court's approval of the state's claim for estate taxes, before the same can be enforced and collected. Under the NIRC, it is the probate or settlement court which is bidden not to authorize the executor or judicial administrator of the decedent's estate to deliver any distributive share to any party interested in the estate, unless it is shown a Certification by the Commissioner of Internal Revenue that the estate taxes have been paid. This provision disproves the contention that it is the probate court which approves the assessment and collection of the estate tax.

Ferdinand R. Marcos II vs. Court of Appeals, et al., G.R. No. 120880, June 5, 1997

The delinquent taxpayer is the Estate of decedent and not the heirs of the deceased.
In the case of notices of levy issued to satisfy the delinquent estate tax, the delinquent taxpayer is the Estate of the decedent, and not necessarily and exclusively, the petitioner as heir of the deceased. In the same vein, in the matter of income tax delinquency of the late president and his spouse, petitioner is not the taxpayer liable. Thus, it follows that service of notices of levy in satisfaction of these tax delinquencies upon the petitioner is not required by law, as under Section 213 of the NIRC,

Ferdinand R. Marcos II vs. Court of Appeals, et al., G.R. No. 120880, June 5, 1997

Sec. 101(A)(3) - Exemption of Certain Gifts: Charitable Corporations

Elements of a charitable institution/entity.
In the legal sense, a charity may be fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds and hearts under the influence of education or religion, by assisting them to establish themselves in life or otherwise lessening the burden of government. It may be applied to almost anything that tend to promote the well-doing and well-being of social man. It embraces the improvement and promotion of the happiness of man. To determine whether an enterprise is a charitable institution/entity or not, the elements which should be considered include the statute creating the enterprise, its corporate purposes, its constitution and by-laws, the methods of administration, the nature of the actual work performed, the character of the services rendered, the indefiniteness of the beneficiaries, and the use and occupation of the properties. The word "charitable" is not restricted to relief of the poor or sick. The test of a charity and a charitable organization are in law the same. The test whether an enterprise is charitable or not is whether it exists to carry out a purpose reorganized in law as charitable or whether it is maintained for gain, profit, or private advantage.

Lung Center of the Phil. vs. Quezon City, et al., G.R. No. 144104, June 29, 2004

A charitable institution does not lose its character as such and its exemption from taxes simply because it derives income from paying patients.
As a general principle, a charitable institution does not lose its character as such and its exemption from taxes simply because it derives income from paying patients, whether out-patient, or confined in the hospital, or receives subsidies from the government, so long as the money received is devoted or used altogether to the charitable object which it is intended to achieve; and no money inures to the private benefit of the persons managing or operating the institution.

Lung Center of the Phil. vs. Quezon City, et al., G.R. No. 144104, June 29, 2004

Sec. 103 (B) - Time and Place of Filing and Payment of Donor's Tax

The filing of the return and payment of donor's taxes are mandatory.
Under the National Internal Revenue Code of 1977, the tax code in force at the time of the execution of the deed, an individual who makes any transfer by gift shall make a return and file the same within 30 days after the date the gift is made with the Revenue District Officer, Collection Agent or duly authorized Treasurer of the municipality in which the donor was domiciled at the time of the transfer. The filing of the return and payment of donor's taxes are mandatory. In fact, the registrar of deeds is mandated not to register in the registry of property any document transferring real property by way of gifts inter vivos unless a certification that the taxes fixed and actually due on the transfer had been paid or that the transaction is tax exempt from the Commissioner of Internal Revenue, in either case, is presented.

Lydia Sumipat, et al. vs. Brigido Banga, et al., G.R. No. 155810, August 13, 2004

Sec. 105 - Value-added Tax

Value-added tax is an indirect tax.
The VAT is an indirect tax. As such, the amount of tax paid on the goods, properties or services bought, transferred, or leased may be shifted or passed on by the seller, transferor, or lessor to the buyer, transferee or lessee. Unlike a direct tax, such as the income tax, which primarily taxes an individual's ability to pay based on his income or net wealth, an indirect tax, such as the VAT,

is a tax on consumption of goods, services, or certain transactions involving the same. The VAT, thus, forms a substantial portion of consumer expenditures.

Contex Corp. vs. Commissioner of Internal Revenue, G.R. No. 151135, July 2, 2004

Non-stock, non-profit organizations or government entities are liable to pay VAT on the sale of goods or services.
Sec. 105 of R.A. No. 8424, the National Internal Revenue Code of 1997, clarifies that even a non-stock, non-profit organization or government entity, is liable to pay VAT on the sale of goods or services. VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto. The term "in the course of trade or business" requires the regular conduct or pursuit of a commercial or an economic activity, regardless of whether or not the entity is profit-oriented.

Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 125355, March 30, 2000

Different tax treatment of talents and broadcasters.
The National Internal Revenue Code in relation to R.A. No. 7716, as amended by R.A. No. 8241, treats talents, television and radio broadcasters differently. Under the NIRC, these professionals are subject to the 10% value-added tax (VAT) on services they render. Exempted from the VAT are those under an employer-employee relationship. This different tax treatment accorded to talents and broadcasters bolsters the conclusion that they are independent contractors, provided all the basic elements of a contractual relationship are present.

Jose Y. Sonza vs. ABS-CBN Broadcasting Corp., G.R. No. 138051, June 10, 2004

The performance of all kinds of services for others for a fee, remuneration or consideration is considered as sale of services subject to VAT.
Even if a corporation was organized without any intention of realizing profit, any income or profit generated by the entity in the conduct of its activities is subject to income tax. Hence, it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.

Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 125355, March 30, 2000

Distinctions between "liability for the tax" and "burden of the tax" in indirect taxation.
In indirect taxation, there is a need to distinguish between the liability for the tax and the burden of the tax. The amount of tax paid may be shifted or passed on by the seller to the buyer. What is transferred in such instances is not the liability for the tax, but the tax burden. In adding or including the VAT due to the selling price, the seller remains the person primarily and legally liable for the payment of the tax. What is shifted only to the intermediate buyer and ultimately to the final purchaser is the burden of the tax. Stated differently, a seller who is directly and legally liable for payment of an indirect tax, such as the VAT on goods or services is not necessarily the person who ultimately bears the burden of the same tax. It is the final purchaser or consumer of such goods or services who, although not directly and legally liable for the payment thereof, ultimately bears the burden of the tax.

Contex Corp. vs. Commissioner of Internal Revenue, G.R. No. 151135, July 2, 2004

Zero-rating distinguished from exemption.
Under Zero-rating, all VAT is removed from the zero-rated goods, activity or firm. In contrast, exemption only removes the VAT at the exempt stage, and it will actually increase, rather than reduce the total taxes paid by the exempt firm's business or non-retail customers. It is for this

reason that a sharp distinction must be made between zero-rating and exemption in designating a value-added tax.

Contex Corp. vs. Commissioner of Internal Revenue, G.R. No. 151135, July 2, 2004

Non-VAT taxpayer is not allowed any tax credit on VAT (input tax) previously paid.
Petitioner is registered as a Non-VAT taxpayer and thus, is exempt from VAT. As an exempt VAT taxpayer, it is not allowed any tax credit on VAT (input tax) previously paid. In fine, even if it is assumed that exemption from the burden of VAT on petitioner's purchases did exist, petitioner is still not entitled to any tax credit or refund on the input tax previously paid as petitioner is an exempt VAT taxpayer. Rather, it is the petitioner's suppliers who are the proper parties to claim the tax credit and accordingly refund the petitioner of the VAT erroneously passed on to the latter.

Contex Corp. vs. Commissioner of Internal Revenue, G.R. No. 151135, July 2, 2004

Sec. 106 - VAT on Sale of Goods or Services

Tax Code excludes VAT from the "gross selling price" to avoid a "tax on the tax".
For purposes of the value-added tax, Section 106 of the Tax Code expressly excludes the value-added tax from the "gross selling price" to avoid a "tax on the tax." To clarify that only the value-added tax does not form part of the gross selling price, Section 106 expressly states that the gross selling price shall include any excise tax, effectively resulting in a "tax on a tax." Of course, the "tax on a tax" is in reality a tax on the portion of the income or receipt that is equivalent to the tax, usually withheld and remitted to the government.

China Banking Corp. vs. Court of Appeals, G.R. No. 146749, June 10, 2003

Sec. 108 - VAT on Sale of Services and Use or Lease of Properties

Gross receipts tax distinguished from final withholding tax.
There is no double taxation when Section 121 of the Tax Code imposes a gross receipts tax on interest income that is already subjected to the 20% final withholding tax under Section 27 of the Tax Code. The gross receipts tax is a business tax under Title V of the Tax Code, while the final withholding tax is an income tax under Title II of the Code. There is no double taxation if the law imposes two different taxes on the same income, business or property.

China Banking Corp. vs. Court of Appeals, G.R. No. 146749, June 10, 2003

Sec. 110 - Tax Credits

VAT invoice can be used only for sale of goods and services subject to VAT.
A VAT invoice can be used only for the sale of goods and services that are subject to VAT. The corresponding taxes thereon shall be allowed as input tax credits for those subject to VAT.

Atlas Consolidated Mining & Development Corp. vs. Commissioner of Internal Revenue, G.R. No. 134467, November 17, 1999

Sec. 117 - Percentage Tax on Domestic Carriers

The common carriers' tax is based on "gross receipts".
The Tax Code does not also define the term "gross receipts" for purposes of the common carriers' tax, the international carriers' tax, the tax on radio and television franchises, and the tax on finance companies. All these business taxes under Title V of the Tax Code are based on gross receipts. Despite the absence of a statutory definition, these taxes have been collected in this country for over half a century on the general and common understanding that they are based on all receipts without any deduction.

China Banking Corp. vs. Court of Appeals, G.R. Nos. 146749 & 147938, June 10, 2003

Sec. 118 - Percentage Tax on International Carriers

The international carriers' tax is based on "gross receipts".
The Tax Code does not also define the term "gross receipts" for purposes of the common carriers' tax, the international carriers' tax, the tax on radio and television franchises, and the tax on finance companies. All these business taxes under Title V of the Tax Code are based on gross receipts. Despite the absence of a statutory definition, these taxes have been collected in this country for over half a century on the general and common understanding that they are based on all receipts without any deduction.

China Banking Corp. vs. Court of Appeals, G.R. Nos. 146749 & 147938, June 10, 2003

Sec. 119 - Franchise Tax

The tax on radio and television franchises is based on "gross receipts".
The Tax Code does not also define the term "gross receipts" for purposes of the common carriers' tax, the international carriers' tax, the tax on radio and television franchises, and the tax on finance companies. All these business taxes under Title V of the Tax Code are based on gross receipts. Despite the absence of a statutory definition, these taxes have been collected in this country for over half a century on the general and common understanding that they are based on all receipts without any deduction.

China Banking Corp. vs. Court of Appeals, G.R. Nos. 146749 & 147938, June 10, 2003

Sec. 121 - Tax on Banks and Non-bank Financial Intermediaries

Interest income is taxable for gross receipts tax purposes only upon actual receipt.
Income may be taxable either at the time of its actual receipt or its accrual, depending on the accounting method of the taxpayer. Section 4(e) of Revenue Regulations No. 12-80 merely provides for an exception to the rule, making interest income taxable for gross receipts tax purposes only upon actual receipt. Interest is accrued, and not actually received, when the interest is due and demandable but the borrower has not actually paid and remitted the interest, whether physically or constructively. Section 4(e) does not exclude accrued interest income from gross receipts but merely postpones its inclusion until actual payment of the interest to the lending bank

China Banking Corp. vs. Court of Appeals, G.R. Nos. 146749 & 147938, June 10, 2003

The Tax Code does not define the term "gross receipts" for purposes of the gross receipts tax on banks.
Section 121 of the Tax Code expressly subjects interest income to the gross receipts tax on banks. Such express inclusion of interest income in taxable gross receipts creates a presumption that the entire amount of the interest income, without any deduction, is subject to the gross receipts tax. The Tax Code does not define the term "gross receipts" for purposes of the gross receipts tax on banks. Since 1 October 1946 when RA No. 39 first imposed the gross receipts tax on banks until the present, there has been no statutory definition of the term "gross receipts." Absent a statutory definition, the BIR has applied the term in its plain and ordinary meaning. As commonly understood, the term "gross receipts" means the entire receipts without any deduction. Deducting any amount from the gross receipts changes the result, and the meaning, to net receipts. Any deduction from gross receipts is inconsistent with a law that mandates a tax on gross receipts, unless the law itself makes an exception. Absent a statutory definition, the term "gross receipts" is understood in its plain and ordinary meaning. Words in a statute are taken in their usual and familiar signification, with due regard to their general and popular use.

China Banking Corp. vs. Court of Appeals, G.R. Nos. 146749 & 147938, June 10, 2003

The term "gross receipts" does not admit of any deduction.
Under Revenue Regulations Nos. 12-80 and 17-84, as well as in several numbered rulings, the BIR has consistently ruled that the term "gross receipts" does not admit of any deduction. This interpretation has remained unchanged throughout the various re-enactments of the present Section 121 of the Tax Code. The only conclusion that can be drawn is that the legislature has adopted the BIR's interpretation, following the principle of legislative approval by re-enactment.

China Banking Corp. vs. Court of Appeals, G.R. Nos. 146749 & 147938, June 10, 2003

Meaning of "interest".
When Section 121 of the Tax Code includes "interest" as part of gross receipts, it refers to the entire interest earned and owned by the bank without any deduction. "Interest" means the gross amount paid by the borrower to the lender as consideration for the use of the lender's money. Section 2(h) of Revenue Regulations No. 12-80, now Section 2(i) of Revenue Regulations No. 17-84, defines the term "interest" as "the amount which a depository bank (borrower) may pay on savings and time deposit in accordance with rates authorized by the Central Bank of the Philippines." This definition does not allow any deduction. The entire interest paid by the depository bank, without any deduction, is what forms part of the lending bank's gross receipts.

China Banking Corp. vs. Court of Appeals, G.R. Nos. 146749 & 147938, June 10, 2003

Banks are covered by percentage tax and income tax.
Banks are covered by two types of taxes: (1) the Gross Receipts Tax (GRT), which is a percentage tax; and (2) the Final Withholding Tax (FWT), which is an income tax. A percentage tax is a national tax measured by a certain percentage of the gross selling price or gross value in money of goods sold, bartered or imported; or of the gross receipts or earnings derived by any person engaged in the sale of services. It is not subject to withholding. An income tax, on the other hand, is a national tax imposed on the net or the gross income realized in a taxable year. It is subject to withholding.

Commissioner of Internal Revenue vs. Solidbank Corp., G.R. No. 148191, November 25, 2003

Income constructively received is included as part of the tax base upon which the GRT is imposed.
In our withholding tax system, possession is acquired by the payor as the withholding agent of the government, because the taxpayer ratifies the very act of possession for the government. There is thus constructive receipt. The processes of bookkeeping and accounting for interest on deposits and yield on deposit substitutes that are subjected to FWT are indeed - for legal purposes - tantamount to delivery, receipt or remittance. Besides, respondent itself admits that its income is subjected to a tax burden immediately upon "receipt," although it claims that it derives no pecuniary benefit or advantage through the withholding process. There being constructive receipt of such income - part of which is withheld - RR 17-84 applies, and that income is included as part of the tax base upon which the GRT is imposed.

Commissioner of Internal Revenue vs. Solidbank Corp., G.R. No. 148191, November 25, 2003

Amounts earmarked do not form part of gross receipts.
Earmarking is not the same as withholding. Amounts earmarked do not form part of gross receipts, because, although delivered or received, these are by law or regulation reserved for some person other than the taxpayer. On the contrary, amounts withheld form part of gross receipts, because these are in constructive possession and not subject to any reservation, the withholding agent being merely a conduit in the collection process.

Commissioner of Internal Revenue vs. Solidbank Corp., G.R. No. 148191, November 25, 2003

RR 12-80 is superseded by RR 17-84.
RR 12-80 imposes the GRT only on all items of income actually received, as opposed to their mere accrual, while RR 17-84 includes all interest income in computing the GRT. RR 12-80 is superseded by the later rule, because Section 4(e) thereof is not restated in RR 17-84. Clearly therefore, this particular provision was impliedly repealed when the later regulations took effect.

Commissioner of Internal Revenue vs. Solidbank Corp., G.R. No. 148191, November 25, 2003

Gross receipts do not include monies or receipts entrusted to the taxpayer.
Gross receipts subject to tax under the Tax Code do not include monies or receipts entrusted to the taxpayer which do not belong to them and do not redound to the taxpayer's benefit; and it is not necessary that there must be a law or regulation which would exempt such monies and receipts within the meaning of gross receipts under the Tax Code.

Commissioner of Internal Revenue vs. Tours Specialists, Inc., et al., G.R. No. 66416, March 21, 1990

The 20% portion of banks' passive income constitutes part of their actual earnings.
The fact is that if there were no withholding tax system in place in this country, this 20 percent portion of the "passive" income of banks would actually be paid to the banks and then remitted by them to the government in payment of their income tax. The institution of the withholding tax system does not alter the fact that the 20 percent portion of their "passive" income constitutes part of their actual earnings, except that it is paid directly to the government on their behalf in satisfaction of the 20 percent final income tax due on their "passive" incomes.

Commissioner of Internal Revenue vs. Solidbank Corp., G.R. No. 148191, November 25, 2003

Sec. 122 - Tax on Finance Companies

The tax on finance companies is based on "gross receipts".
The Tax Code does not also define the term "gross receipts" for purposes of the common carriers' tax, the international carriers' tax, the tax on radio and television franchises, and the tax on finance companies. All these business taxes under Title V of the Tax Code are based on gross receipts. Despite the absence of a statutory definition, these taxes have been collected in this country for over half a century on the general and common understanding that they are based on all receipts without any deduction.

China Banking Corp. vs. Court of Appeals, G.R. Nos. 146749 & 147938, June 10, 2003

Sec. 125 - Amusement Taxes

The Tax Code makes a special definition of the term "gross receipts".
For the amusement tax, which is also a business tax under the same Title V, the Tax Code makes a special definition of the term "gross receipts." The term "gross receipts" for amusement tax purposes "embraces all receipts of the proprietor, lessee or operator of the amusement place." The Tax Code further adds that "[s]aid gross receipts also include income from television, radio and motion picture rights, if any." This definition merely confirms that the term "gross receipts" embraces the entire receipts without any deduction or exclusion, as the term is generally and commonly understood.

China Banking Corp. vs. Court of Appeals, G.R. Nos. 146749 & 147938, June 10, 2003

Sec. 140 - Removal of Tobacco Products Without Prepayment of Tax

Conditions for transfer without prepayment of specific tax on stemmed leaf tobacco.

The following conditions must be met for stemmed leaf tobacco to be transferred without prepayment of specific tax, to wit:

(a) The transfer shall be made pursuant to an official L-7 invoice on which shall be entered the exact weight of the tobacco at the time of its removal;

(b) Entry shall be made in the L-7 register in the place provided on the page removals; and

(c) Corresponding debit entry shall be made in the L-7 register book of the factory receiving the tobacco under the heading "Refuse, etc., received from the other factory," showing the date of receipt, assessment and invoice numbers, name and address of the consignor, form in which received, and the weight of the tobacco.

Commissioner of Internal Revenue vs. La Campana Fabrica de Tabacos, Inc., G.R. No. 145275, November 15, 2001

Tax Code provisions on sale of stemmed leaf tobacco must be read and interpreted in accordance with pertinent Revenue Regulations.
Both Sections 137 and 141 of the former Tax Code (now Sections 140 and 144 of R.A. No. 8424) allowed the sale of stemmed leaf tobacco without any pre-payment of tax. However, a careful reading of the provisions show that such sale is qualified by and is subject to "such conditions as may be prescribed in the regulations of the Department of Finance." Said conditions were provided for in Revenue Regulations Nos. V-39 and 17-67, which were issued to clarify and implement the foregoing provisions of the Tax Code. Hence, said provisions of the Tax Code must be read and interpreted in accordance with said regulations.

Compania General de Tabacos de Filipinas vs. Court of Appeals, et al., G.R. No. 147361, March 23, 2004

To claim exemption from specific tax, both the entity and the transferee must be categorized as L-7 manufacturers.
It is clear that an entity claiming exemption from specific tax under Section 137, must prove that both the entity and the transferee are categorized as L-7 manufacturers since only an L-7 tobacco manufacturer has an L-7 invoice and an L-7 registry book. The taxpayer is engaged in the export, domestic sale and re-drying of tobacco leaves, activities which are designated as falling either under L-3R or L-6 under Revenue Regulations No. 17-67. Thus, not being designated as an L-7 tobacco manufacturer, it cannot claim any exemption from payment of the specific tax on its stemmed leaf tobacco. Therefore, it is liable to pay the specific tax thereon and is not liable to any refund of the specific taxes paid.

Compania General de Tabacos de Filipinas vs. Court of Appeals, et al., G.R. No. 147361, March 23, 2004

Sec. 146 - Inspection Fee

BIR Commissioner is empowered to collect tobacco inspection fees even without inspection.
Tobacco Inspection fees are undoubtedly National Internal Revenue taxes, they being one of the miscellaneous taxes provided for under the Tax Code. Section 228 (formerly Section 302) of Chapter VII of the Code specifically provides for the collection and manner of payment of the said inspection fees. It is within the power and duty of the Commissioner to collect the same, even without inspection, should tobacco products be removed clandestinely or surreptitiously from the establishment of the wholesaler, manufacturer or redrying plant and from the customs custody in case of imported leaf tobacco. Errors, omissions or flaws committed by BIR inspectors and representatives while in the performance of their duties cannot be set up as estoppel nor estop the Government from collecting a tax legally due. Tobacco inspection fees are levied and

collected for purposes of regulation and control and also as a source of revenue since fifty percentum (50%) of said fees shall accrue to the Tobacco Inspection Fee Fund created by Sec. 12 of Act No. 2613, as amended and the other fifty percentum, to the Cultural Center of the Philippines.

La Suerte Cigar and Cigarette Factory, et al. vs. Court of Tax Appeals, et al., G.R. No. L-36130, January 17, 1985

Sec. 173 - Stamp Taxes Upon Documents, Loan Agreements, Instruments, and Papers

Tax base for computation of documentary stamp taxes on life insurance policies is the amount fixed in the policy.

The amount fixed in the policy is the figure written on its face and whatever increases will take effect in the future by reason of the "automatic increase clause" embodied in the policy without the need of another contract. Here, although the automatic increase in the amount of life insurance coverage was to take effect later on, the date of its effectivity, as well as the amount of the increase, was already definite at the time of the issuance of the policy. Thus, the amount insured by the policy at the time of its issuance necessarily included the additional sum covered by the automatic increase clause because it was already determinable at the time the transaction was entered into and formed part of the policy.

Commissioner of Internal Revenue vs. Lincoln Philippine Life Insurance Company, Inc., et al., G.R. No. 119176, March 19, 2002

Increase in insurance due to "automatic increase clause" in policy is subject to documentary stamp tax.
The "automatic increase clause" in the policy is in the nature of a conditional obligation under Article 1181, by which the increase of the insurance coverage shall depend upon the happening of the event which constitutes the obligation. Thus, the additional insurance that had taken effect was an obligation subject to a suspensive obligation, but still a part of the insurance sold to which the life insurance company was liable for the payment of the documentary stamp tax.

Commissioner of Internal Revenue vs. Lincoln Philippine Life Insurance Company, Inc., et al., G.R. No. 119176, March 19, 2002

Deficiency of documentary stamp tax is imposed on the increase of amount insured upon the effectivity of the "Junior Estate Builder Policy."
The deficiency of documentary stamp tax imposed on life insurance company is definitely not on the amount of the original insurance coverage, but on the increase of the amount insured upon the effectivity of the "Junior Estate Builder Policy."

Commissioner of Internal Revenue vs. Lincoln Philippine Life Insurance Company, Inc., et al., G.R. No. 119176, March 19, 2002

Sec. 203 - Period of Limitation Upon Assessment and Collection

Limitation of actions for collection of income tax benefits both the Government and its citizens.
The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such

a legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents.

Republic of the Phils. vs. Luis G. Ablaza, G.R. No. L-14519, July 26, 1960

Tax assessments by tax examiners are presumed correct and made in good faith
Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.

Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories, Inc., et al., G.R. No. 76281, September 30, 1991

Waiver of statute of limitations does not mean that taxpayer relinquishes its right to invoke prescription.
A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed.

Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004

Waiver of statute of limitations is a bilateral agreement between taxpayer and BIR.
The waiver is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties to extend the period to a date certain. The conformity of the BIR must be made by either the Commissioner or the Revenue District Officer.

Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004

Requirement to furnish taxpayer with copy of the waiver is to give notice of acceptance by the BIR and perfection of the agreement.
Under RMO No. 20-90, the waiver must be executed in three copies with the second copy for the taxpayer. The taxpayer must be furnished with a copy of the waiver because even if knowingly executed, it is not considered a unilateral act of the taxpayer but is in fact and in law an agreement between the taxpayer and the BIR. When the taxpayer's comptroller signed the waiver, it was not yet complete and final because the BIR had not assented. There is compliance with the provision of RMO No. 20-90 only after the taxpayer received a copy of the waiver accepted by the BIR. The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement.

Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004

To be binding, waivers require the concurrence of the Commissioner of Internal Revenue.
The waivers in question reveal that they are in no wise unequivocal, and therefore necessitates for its binding effect the concurrence of the Commissioner of Internal Revenue. On this basis neither implied consent can be presumed nor can it be contended that the waiver required under Sec. 319 of the Tax Code is one which is unilateral nor can it be said that concurrence to such an agreement is a mere formality because it is the very signatures of both the Commissioner of Internal Revenue and the taxpayer which give birth to such a valid agreement.

Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 115712, February 25, 1999

Exceptions to the law on prescription should be strictly construed.

a) For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed.

   Commissioner of Internal Revenue vs. B.F. Goodrich Phils., Inc., et al., G.R. No. 104171, February 24, 1999

b) The law of prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommend the approval of the law.

   Republic of the Phils. vs. Luis G. Ablaza, G.R. No. L-14519, July 26, 1960

Notice of assessment should be sent to the taxpayer and not merely to a disinterested party.
The law requires that the notice be sent to the taxpayer, and not merely to a disinterested party. Although there is no specific requirement that the taxpayer should receive the notice within the said period, due process requires at the very least that such notice actually be received. Philtrust had absolutely no legal relationship to the deceased, or to her Estate. There was therefore no assessment served on the Estate as to the alleged underpayment of tax. Absent this assessment, no proceedings could be initiated in court for the collection of said tax.

Estate of the Late Juliana Diez vda. de Gabriel vs. Commissioner of Internal Revenue, G.R. No. 155541, January 27, 2004

Assessments based on illegally-seized documents cannot be enforced against taxpayer.
Tax assessments based on documents seized by virtue of an illegal search, and the deprivation of the right to due process tainted the entire proceedings with illegality.

Bache & Co. (Phil.), Inc., et al. vs. Vivencio M. Ruiz, et al., G.R. No. L-32409, February 27, 1971

An assessment letter may be presumed to have been received by the taxpayer.
When sent by registered mail, an assessment letter is presumably received in the regular course of the mail if it is proved (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mails.

Protector's Services, Inc. vs. Court of Appeals, et al., G.R. No. 118176, April 12, 2000

Assessment based on estimates is prima facie valid and lawful.

It is not the Department of Justice which is the government agency tasked to determine the amount of taxes due upon the subject estate, but the Bureau of Internal Revenue, whose determinations and assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is prima facie valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.

Ferdinand R. Marcos II vs. Court of Appeals, et al., G.R. No. 120880, June 5, 1997

Suit for collection of internal revenue taxes is akin to an action to enforce judgment.
In a suit for collection of internal revenue taxes, where the assessment has already become final and executory, the action to collect is akin to an action to enforce a judgment. No inquiry can be made therein as to the merits of the original case or the justness of the judgment relied upon. The defense of prescription can no longer be raised.

Mambulao Lumber Co. vs. Republic of the Phils., G.R. No. L-37061, September 5, 1984

All presumptions are in favor of tax assessments
Assessments are prima facie presumed correct and made in good faith. Contrary to the theory of ACMDC, it is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. It is an elementary rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Verily, failure to present proof of error in the assessment will justify judicial affirmance of said assessment.

Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 104151, March 10, 1995

Contents of a valid tax assessment.
An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.

Commissioner of Internal Revenue vs. Pascor Realty and Devt. Corp., et al., G.R. No. 128315, June 29, 1999

When tax assessment is deemed made.
The assessment is deemed made when the notice to this effect is released, mailed or sent to the taxpayer for the purpose of giving effect to said assessment. It appearing that the person liable for the payment of the tax did not receive the assessment, the assessment could not become final and executory.

Republic of the Phils. vs. Leonor de la Rama, et al., G.R. No. L-21108, November 29, 1966

Notice of assessment sent to taxpayer's old office is not a valid assessment.
Assuming arguendo that there was a deficiency tax for which the taxpayer was liable, the commissioner failed to make a valid assessment on it since the notice of assessment was sent to the PAC's old (and therefore improper) office address. PAC already indicated its new address in its 1986 tax return filed with the BIR's Makati office. This notwithstanding, the commissioner sent the notice of assessment to the taxpayer's old business address instead of its new address, which was also BPI's (PAC's liquidator) office address. Since there was a failure to effect a timely valid assessment, the period for filing a criminal case for PAC's tax liabilities had prescribed by the time petitioner instituted the criminal cases against its former officers.

Commissioner of Internal Revenue vs. BPI, as liquidator of Paramount Acceptance Corp., G.R. No. 135446, September 23, 2003

Not all BIR documents containing a computation of tax liability can be deemed assessments.

Neither the NIRC nor the revenue regulations governing the protest of assessments provide a specific definition or form of an assessment. However, the NIRC defines the specific functions and effects of an assessment. To consider the affidavit attached to the Complaint as a proper assessment is to subvert the nature of an assessment and to set a bad precedent that will prejudice innocent taxpayers. An assessment informs the taxpayer that he or she has tax liabilities. But not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments.

Commissioner of Internal Revenue vs. Pascor Realty and Devt. Corp., et al., G.R. No. 128315, June 29, 1999

Assessment must be sent to and received by a taxpayer and must demand payment of taxes.

An assessment must be sent to and received by a taxpayer, and must demand payment of the taxes described therein within a specific period. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.

Commissioner of Internal Revenue vs. Pascor Realty and Devt. Corp., et al., G.R. No. 128315, June 29, 1999

Issuance of an assessment is vital in determining period of limitation.

The issuance of an assessment is vital in determining the period of limitation regarding its proper issuance and the period within which to protest it. Section 203 of the NIRC provides that internal revenue taxes must be assessed within three years from the last day within which to file the return. Section 222, on the other hand, specifies a period of ten years in case a fraudulent return with intent to evade was submitted or in case of failure to file a return. Also, Section 228 of the same law states that said assessment may be protested only within thirty days from receipt thereof. Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the period within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon. It should also be stressed that the said document is a notice duly sent to the taxpayer. Indeed, an assessment is deemed made only when the collector of internal revenue releases, mails or sends such notice to the taxpayer.

Commissioner of Internal Revenue vs. Pascor Realty and Devt. Corp., et al., G.R. No. 128315, June 29, 1999

Affidavit containing a computation of tax liability is not a valid assessment.

The purpose of the Joint Affidavit containing a computation of tax liability was merely to support and substantiate the criminal complaint for tax evasion. Clearly, it was not meant to be a notice of the tax due and a demand for payment thereof.

Commissioner of Internal Revenue vs. Pascor Realty and Devt. Corp., et al., G.R. No. 128315, June 29, 1999

Unreasonable investigation refers to cases where period for assessment extends indefinitely.

The NIRC, under Sections 203 and 222, provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. Unreasonable investigation contemplates cases where the period for assessment extends indefinitely because this deprives the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.

Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004

Rationale for prescribing a limitation of actions for income tax collection.
The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommend the approval of the law.

Republic of the Phils. vs. Luis G. Ablaza, G.R. No. L-14519, July 26, 1960

Sec. 204 - Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes

Requisites for the exercise of commissioner's power to abate or cancel tax liability.
The power of the commissioner to abate or cancel a tax liability can be exercised only when (1) the tax appears to be unjustly or excessively assessed, or (2) the administration and collection costs involved do not justify the collection of the tax due. In this instance, the cancellation of tax liability is done even before the determination of the amount due. In any event, criminal violations of the Tax Code, for which legal actions have been filed in court or in which fraud is involved, cannot be compromised.

Francisco I. Chavez vs. PCGG, et al., G.R. No. 130716, December 9, 1998

Ombudsman can investigate where there is a suspicion of impropriety in the grant of tax refund by BIR.
The determination of whether to grant a tax refund falls within the exclusive expertise of the BIR. Nonetheless, when there is a suspicion of even just a tinge of impropriety in the grant of the same, the Ombudsman could rightfully ascertain whether the determination was done in accordance with law and identify the persons who may be held responsible thereto. In that sense, the Ombudsman could not be accused of unlawfully intruding into and intervening with the BIR's exercise of discretion.

Commissioner of Internal Revenue vs. Office of the Ombudsman, G.R. No. 115103, April 11, 2002

Sec. 205 - Remedies for the Collection of Delinquent Taxes

Assessment of a deficiency is not necessary to a criminal prosecution for tax evasion.
While there can be no civil action to enforce collection before the assessment procedures provided in the Code have been followed, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code. An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat

and evade the income tax. A crime is complete when the violator has knowingly and willfully filed a fraudulent return with intent to evade and defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.

Quirico P. Ungab vs. Vicente N. Cusi, Jr., et al., G.R. Nos. L-41919-24, May 30, 1980

Sec. 206 - Constructive Distraint of Taxpayer's Property

BIR cannot appoint a depositary as a public officer.
The constructive distraint of personal property shall be effected by requiring the taxpayer or any person having possession or control of such property to sign a receipt covering the property distrained and obligate himself to preserve the same intact and unaltered and not to dispose of the same in any manner whatever without the express authority of the Commissioner. However, there is no provision in the NIRC constituting such person a public officer by reason of such requirement. The BIR's power authorizing a private individual to act as a DEPOSITARY cannot be stretched to include the power to appoint him as a public officer.

Alfredo L. Azarcon vs. Sandiganbayan, G.R. No. 116033, February 26, 1997

Sec. 207(A)(B) - Distraint and Levy

Inability to pay taxes which may result in suspension of business is not a defense in enforcement of tax laws.
Quoting from the case of Youngblood vs. Sexton (32 Mich., 406), Judge Cooley, speaking for the court, said: "But if this consideration is sufficient to justify the transfer of a controversy from a court of law to a court of equity, then every controversy where money is demanded may be made the subject of equitable cognizance. To enforce against a dealer a promissory note may in some cases as effectually break up his business as to collect from him a tax of equal amount. This is not what is known to the law as irreparable injury. The courts have never recognized the consequences of the mere enforcement of a money demand as falling within that category."

Francis A. Churchill, et al., vs. James J. Rafferty, G.R. No. 10572, December 21, 1915
Saturnino David vs. Simeon Ramos, et al., G.R. No. L-4300, October 31, 1951

Sec. 209 - Sale of Property Distrained and Disposition of Proceeds

BIR's power to appoint a depositary cannot include the power to appoint him as public officer.
It is true that Sec. 206 of the NIRC authorizes the BIR to effect a constructive distraint by requiring "any person" to preserve a distrained property, thus: ". . . The constructive distraint of personal property shall be effected by requiring the taxpayer or any person having possession or control of such property to sign a receipt covering the property distrained and obligate himself to preserve the same intact and unaltered and not to dispose of the same in any manner whatever without the express authority of the Commissioner. . . However, there is no provision in the NIRC constituting such person a public officer by reason of such requirement. The BIR's power authorizing a private individual to act as a DEPOSITARY cannot be stretched to include the power to appoint him as a public officer.

Alfredo L. Azarcon vs. Sandiganbayan, et al., G.R. No. 116033, February 26, 1997

Sec. 218 - Injunction not available to restrain collection of tax.

Imposition of safeguard measures should not be enjoined despite availability of judicial review.
Section 218 of the Tax Reform Act of 1997 prohibits any court from granting an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by the internal revenue code. A similar philosophy is expressed by Section 29 of the Safeguard Measures Act (R.A. No. 8800), which states that the filing of a petition for review before the CTA does not stop, suspend, or otherwise toll the imposition or collection of the appropriate tariff duties or the adoption of other appropriate safeguard measures. This evinces a clear legislative intent that the imposition of safeguard measures, despite the availability of judicial review, should not be enjoined notwithstanding any timely appeal of the imposition.

Southern Cross Cement Corp. vs. Phil. Cement Manufacturers Corp., et al., G.R. No. 158540, July 8, 2004

By taking away injunction, the State leaves the taxpayer to the same ordinary remedial actions prevailing between citizen and citizen.
Preventive remedies of the courts are extraordinary and are not the usual remedies. The origin and history of the writ of injunction show that it has always been regarded as an extraordinary, preventive remedy, as distinguished from the common course of the law to redress evils after they have been consummated. No injunction issues as of course, but is granted only upon the oath of a party and when there is no adequate remedy at law. The Government does take away the preventive remedy of injunction, if it ever existed, and leaves the taxpayer, in a contest with it, to the same ordinary remedial actions which prevail between citizen and citizen.

Francis A. Churchill, et al. vs. James J. Rafferty, G.R. No. 10572, December 21, 1915

Illegality or unconstitutionality of a tax does not authorize courts to restrain its collection by injunction.
The mere fact that a tax is illegal, or that the law, by virtue of which it is imposed, is unconstitutional, does not authorize a court of equity to restrain its collection by injunction. There must be a further showing that there are special circumstances which bring the case under some well recognized head of equity jurisprudence, such as that irreparable injury, multiplicity of suits, or a cloud upon title to real estate will result, and also that there is no adequate remedy at law.

Francis A. Churchill, et al. vs. James J. Rafferty, G.R. No. 10572, December 21, 1915

Tax collectors are authorized to seize and sell property of delinquent taxpayers without court assistance.
A citizen's property, both real and personal, may be taken, and usually is taken, by the government in payment of its taxes without any judicial proceedings whatever. In this country, the officer charged with the collection of taxes is authorized to seize and sell the property of delinquent taxpayers without applying to the courts for assistance, and the constitutionality of the law authorizing this procedure never has been seriously questioned.

Francis A. Churchill, et al. vs. James J. Rafferty, G.R. No. 10572, December 21, 1915

No government could exist if every litigious man were permitted to delay the collection of its taxes.
This must necessarily be the course, because it is upon taxation that the Government chiefly relies to obtain the means to carry on its operations, and it is of the utmost importance that the modes adopted to enforce the collection of the taxes levied should be summary and interfered with as little as possible. No government could exist if every litigious man were permitted to delay the collection of its taxes. This principle of public policy must be constantly borne in mind in determining cases such as the one under consideration. And though this was intended to apply alone to taxes levied by the United States, it shows the sense of Congress of the evils to be feared if courts of justice could, in any case, interfere with the process of collecting taxes on which the government depends for its continued existence. It is a wise policy. It is founded in the

simple philosophy derived from the experience of ages, that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment; and to do this successfully, other instrumentalities and other modes of procedure are necessary, than those which belong to courts of justice.

Francis A. Churchill, et al. vs. James J. Rafferty, G.R. No. 10572, December 21, 1915

Injunction is not available to restrain the collection of taxes even if disputed.
It is clear that the word "tax," as used in the provision prohibiting injunctions, means a tax even if it is disputed by the taxpayer, for otherwise it would be sufficient to dispute a tax in order to take it out from the provisions of said section, rendering them practically nugatory.

Saturnino David vs. Simeon Ramos, et al., G.R. No. L-4300, October 31, 1951

Rationale for prohibiting injunctions from restraining tax collection.
The argument that the assessment cannot as yet be enforced because it is still being contested loses sight of the urgency of the need to collect taxes as “the lifeblood of the government”. If the payment of taxes could be postponed by simply questioning their validity, the machinery of the state would grind to a halt and all government functions would be paralyzed. That is the reason why, save for the exception already noted, the Tax Code prohibits an injunction from restraining collection of tax..

Commissioner of Internal Revenue vs. Cebu Portland Cement Co., et al., G.R. No. L-29059, December 15, 1987

Sec. 219 - Nature and Extent of Tax Lien

Tax lien is more superior than a private litigant’s claim predicated on a judgment.
It is settled that the claim of the government predicated on a tax lien is superior to the claim of a private litigant predicated on a judgment. The tax lien attaches not only from the service of the warrant of distraint of personal property but from the time the tax became due and payable.

Republic of the Phil. vs. Ramon G. Enriquez, G.R. No. L-78391, October 21, 1988

Sec. 220 - Form and Mode of Proceeding in Actions Arising Under NIRC

The Solicitor General, not BIR legal officers, has primary responsibility to appear for the government in appellate proceedings.
The Solicitor General, being the principal law officer and legal defender of the state, its agencies and instrumentalities, is aptly the office that can bring a case on appeal to the Court of Appeals or the Supreme Court. The institution or commencement before a proper court of civil and criminal actions and proceedings arising under the Tax Reform Act which "shall be conducted by legal officers of the Bureau of Internal Revenue" is not in dispute. An appeal from such court, however, is not a matter of right. Section 220 of the Tax Reform Act must not be understood as overturning the long established procedure before this Court in requiring the Solicitor General to represent the interest of the Republic. This pronouncement finds justification in the various laws defining the Office of the Solicitor General, beginning with Act No. 135, which took effect on 16 June 1901, up to the present Administrative Code of 1987.

Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory, G.R. No. 144942, June 28, 2001

Sec. 222 - Exceptions as to Period of Limitation of Assessment and Collection of Taxes

Period within which to assess tax in cases of fraudulent and false returns and failure to file a return.
In cases of (1) fraudulent returns; (2) false returns with intent to evade tax; and (3) failure to file a return, the period within which to assess tax is ten years from discovery of the fraud, falsification or omission, as the case may be.

Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr., et al., G.R. No. 147188, September 14, 2004

Prescriptive period is interrupted once taxpayer requests for reinvestigation or reconsideration of assessment.
Settled is the rule that the prescriptive period provided by law to make a collection by distraint or levy or by a proceeding in court is interrupted once a taxpayer requests for reinvestigation or reconsideration of the assessment.

Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories, Inc., et al., G.R. No. 76281, September 30, 1991

Taxpayer's request for review or reconsideration of assessment interrupts period of prescription.
The period of prescription of action to collect a taxpayer's deficiency income tax assessment is interrupted when the taxpayer requests for a review or reconsideration of said assessment, and starts to run again when said request is denied. Deducting all the periods of suspension from the five-year prescriptive period, the action for collection was timely presented.

Commissioner of Internal Revenue vs. Capitol Subdivision, Inc., G.R. No. L-18993, April 30, 1964

Mere request for reexamination or reinvestigation of assessment may not suspend the running of the period of limitation.
A mere request for reexamination or reinvestigation of assessment may not suspend the running of the period of limitation for in such a case there is need of a written agreement to extend the period between the Collector and the taxpayer. There are cases, however, where a taxpayer may be prevented from setting up the defense of prescription even if he has not previously waived it in writing as when by his repeated requests or positive acts the Government has been, for good reasons, persuaded to postpone collection to make himself feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government. And when such situation comes to pass there are authorities that hold, based on weighty reasons, that such an attitude or behavior should not be countenanced if only to protect the interest of the Government.

Commissioner of Internal Revenue vs. Suyoc Consolidated Mining Co., et al., G.R. No. L-11527, November 25, 1958

Criminal complaint is instituted not to demand payment but to penalize the taxpayer for violation of the Tax Code.
The issuance of an assessment must be distinguished from the filing of a complaint. Before an assessment is issued, there is, by practice, a pre-assessment notice sent to the taxpayer. The taxpayer is then given a chance to submit position papers and documents to prove that the assessment is unwarranted. If the commissioner is unsatisfied, an assessment signed by him or her is then sent to the taxpayer informing the latter specifically and clearly that an assessment has been made against him or her. In contrast, the criminal charge need not go through all these. The criminal charge is filed directly with the DOJ. Thereafter, the taxpayer is notified that a criminal case had been filed against him, not that the commissioner has issued an assessment. It must be stressed that a criminal complaint is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code.

Commissioner of Internal Revenue vs. Pascor Realty and Devt. Corp., et al., G.R. No. 128315, June 29, 1999

Sec. 223 - Suspension of Running of Statute of Limitations

The pendency of taxpayer's appeal temporarily stayed the hands of the Commissioner.
Under the Tax Code the running of the prescriptive period to collect deficiency taxes shall be suspended for the period during which the Commissioner of Internal Revenue is prohibited from beginning a distraint and levy or instituting a proceeding in court, and for sixty days thereafter. The pendency of the taxpayer's appeal in the Court of Tax Appeals and in the Supreme Court had the effect of temporarily staying the hands of the said Commissioner. If the taxpayer's stand that the pendency of the appeal did not stop the running of the period because the Court of Tax Appeals did not have jurisdiction over the case of taxes is upheld, taxpayers would be encouraged to delay the payment of taxes in the hope of ultimately avoiding the same. Under the circumstances, the running of the prescriptive period was suspended."

Republic of the Phils. vs. Ker & Co., Ltd., G.R. No. L-21609, September 29, 1966

Sec. 228 - Protesting of Assessment

Final Notice Before Seizure is deemed as commissioner's final decision.
The Final Notice Before Seizure should be considered as a denial of request for reconsideration of the disputed assessment. The Notice should be deemed as the taxpayer's last act, since failure to comply with it would lead to the distraint and levy of the taxpayer's properties. Not only was the Notice the only response received; its content and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration. The very title expressly indicated that it was a final notice prior to seizure of property. The letter itself clearly stated that respondent was being given "this LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy.

Commissioner of Internal Revenue vs. Isabela Cultural Corp., G.R. No. 135210, July 11, 2001

A final demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment.
A letter reiterating the demand of the BIR for the settlement of the assessment already made and for the immediate payment of a certain sum in spite of the vehement protest of the taxpayer is tantamount to a denial of the reconsideration or protest of the assessment. This certainly is a clear indication of the firm stand of the commissioner against the reconsideration of the disputed assessment, in view of the continued refusal of the taxpayer to execute the waiver of the period of limitation upon the assessment in question. This being so, the said letter amounted to a decision on a disputed or protested assessment.

Commissioner of Internal Revenue vs. Ayala Securities Corp., et al., G.R. No. L-29485, March 31, 1976

Tenor of commissioner's letter indicates final nature of determination on taxpayer's tax liability.
A letter of demand from the commissioner demanding not only the payment of a certain amount but also giving a warning that in the event the taxpayer fails to pay he would be constrained to enforce the collection thereof by means of legal remedies, unquestionable constitutes the final action taken by the commissioner on the taxpayer's several requests for reconsideration and recomputation. The tenor of the letter, specifically the statement regarding the resort to legal remedies, unmistakably indicated the final nature of the determination made by the commissioner of the taxpayer's deficiency franchise tax liability."

Surigao Electric Co., Inc. vs. Court of Tax Appeals, et al., G.R. No. L-25289, June 28, 1974

BIR should clearly indicate to taxpayer its final action on a disputed assessment.

The BIR should always indicate to the taxpayer in clear and unequivocal language what constitutes final action on a disputed assessment. The object of this policy is to avoid repeated requests for reconsideration by the taxpayer, thereby delaying the finality of the assessment and, consequently, the collection of the taxes due. Furthermore, the taxpayer would not be groping in the dark, speculating as to which communication or action of the BIR may be the decision appealable to the tax court.

Commissioner of Internal Revenue vs. Union Shipping Corp., et al., G.R. No. 66160, May 21, 1990

Warrant is deemed premature where no categorical ruling on taxpayer's request for reconsideration was issued.
The Warrant of Distraint and Levy issued to the taxpayer is premature. The absence of a categorical ruling on taxpayer's request for reconsideration is not deemed equivalent to a denial of the request. Such request could not in fact be found in its records, since the BIR cannot be presumed to have taken it into consideration. The request was considered only when the taxpayer gave a copy of it, duly stamp-received by the BIR. Hence, the warrant is deemed premature.

Commissioner of Internal Revenue vs. Algue, Inc., et al., G.R. No. L-28896, February 17, 1988

Timely service of warrant of distraint or levy suspends the running of the period to collect the tax deficiency.
The timely service of a warrant of distraint or levy suspends the running of the period to collect the tax deficiency in the sense that the disposition of the attached properties might well take time to accomplish, extending even after the lapse of the statutory period for collection. The Commissioner did not institute any judicial proceeding to collect the tax. He relied on the warrants of distraint to interrupt the running of the statute of limitations. He gave the taxpayer ample opportunity to contest the assessments but at the same time safeguarded the Government's interest by means of the warrants of distraint.

Advertising Associates, Inc. vs. Court of Appeals, et al., G.R. No. 59758, December 26, 1984

Sec. 229 - Recovery of Tax Erroneously or Illegally Collected

***Tax refunds are strictly construed against the person claiming the exemption*.**
Tax refunds are in the nature of tax exemptions. As such, these are regarded as in derogation of sovereign authority and are to be strictly construed against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption and he must be able to justify his claim by the clearest grant under Constitutional or statutory law, and he cannot be permitted to rely upon vague implications.

BPI Leasing Corp. vs. Court of Appeals, et al., G.R. No. 127624, November 18, 2003

The State must observe fairness and honesty in refunding excess tax payments.
Technicalities and legalisms, however exalted, should not be misused by the State to keep money not belonging to it. If it expects its taxpayers to observe fairness and honesty in paying their taxes, it must apply the same standard against itself in refunding excess payments of such taxes. It should not enrich oneself at the expense of another.

AB Leasing and Finance Corp. vs. Commissioner of Internal Revenue, G.R. No. 138342, July 8, 2003

The government must follow the same rules of procedure which bind private parties
The BIR should not be allowed to defeat an otherwise valid claim for refund by raising the question of alleged incapacity of the taxpayer to file an action for refund or tax credit, for the first

time on appeal before the Supreme Court. This is clearly a matter of procedure. Petitioner does not pretend that P&G-Phil., should it succeed in the claim for refund, is likely to run away, as it were, with the refund instead of transmitting such refund or tax credit to its parent and sole stockholder. It is commonplace that in the absence of explicit statutory provisions to the contrary, the government must follow the same rules of procedure which bind private parties.

Commissioner of Internal Revenue vs. Procter & Gamble Phil., G.R. No. 66838, December 2, 1991

Requirements for the recovery of any national internal revenue tax assessed or collected.
Section 230 of the National Internal Revenue Code precludes any suit or proceeding from being maintained in any court for the recovery of any national internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum said to have been excessive or in any manner wrongfully collected unless (a) a written claim for the refund or credit thereof has been duly filed with the Commissioner and (b) the suit or proceeding shall have been instituted within two years from the date of payment of the tax or penalty regardless of any supervening cause that might arise after such payment (revoking the rule announced in Commissioner vs. National Power Corporation, and Commissioner vs. Victorias Milling Company).

Commissioner of Internal Revenue vs. Philippine American Life Insurance Co., et al., G.R. No. 105208, May 29, 1995

The two-year period is not jurisdictional and may be suspended under exceptional circumstances.
The two-year period is a limitation of action not only in submitting the written claim for the refund of the tax to the Commissioner but likewise in filing the case (appeal) with the Court of Tax Appeals (which has jurisdiction thereover exclusive of the regular courts). This two-year period, unlike the thirty-day period of appeal from the decision of the Commissioner, is not jurisdictional and it may thereby be suspended under exceptional circumstances. This two-year prescriptive period is intended to apply to suits or proceedings for the recovery of taxes, penalties or sums erroneously, excessively, illegally or wrongfully collected; accordingly, an availment of a tax credit granted by law may have a different prescriptive period. Absent any specific provision in the Tax Code or special laws that period would be ten years under Article 1144 of the Civil Code.

Commissioner of Internal Revenue vs. Philippine American Life Insurance Co., et al., G.R. No. 105208, May 29, 1995

The Ombudsman has power to investigate when there is a tinge of impropriety in the grant of tax refunds.
The power to investigate and to prosecute which was granted by law to the Ombudsman is plenary and unqualified. The Ombudsman Act makes it perfectly clear that the jurisdiction of the Ombudsman encompasses "all kinds of malfeasance, misfeasance and nonfeasance that have been committed by any officer or employee . . . during his tenure of office. Concededly, the determination of whether to grant a tax refund falls within the exclusive expertise of the BIR. Nonetheless, when there is a suspicion of even just a tinge of impropriety in the grant of the same, the Ombudsman could rightfully ascertain whether the determination was done in accordance with law and identify the persons who may be held responsible thereto. In that sense, the Ombudsman could not be accused of unlawfully intruding into and intervening with the BIR's exercise of discretion. Indeed, the clause "any [illegal] act or omission of any public official" is broad enough to embrace any crime committed by a public official. The law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate. It does not require that the act or omission be related to or be connected with or arise from the performance of official duty.

Bureau of Internal Revenue vs. Office of the Ombudsman, G.R. No. 115103, April 11, 2002

Rationale for requiring taxpayer to submit a claim for refund before resorting to courts.
The law clearly stipulates that after paying the tax, the citizen must submit a claim for refund before resorting to the courts. The idea probably is, first, to afford the collector an opportunity to correct the action of subordinate officers; and second, to notify the Government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure. Previous objections to the tax may not take the place of that claim for refund, because there may be some reason to believe that, in paying, the taxpayer has finally come to realize the validity of the assessment. Anyway, strict compliance with the conditions imposed for the return of revenue corrected is a doctrine consistently applied here and in the United States.

Santiago M. Bermejo vs. Collector of Internal Revenue, G.R. No. L-3029, July 25, 1950

Failure to institute action within 2 years after payment of tax bars taxpayer from recovery of the same.
The taxpayer's failure to comply with the requirement regarding the institution of the action or proceeding in court within 2 years after the payment of the taxes bars him from the recovery of the same, irrespective of whether a claim for the refund of such taxes filed with the Collector of Internal Revenue is still pending action of the latter.

College of Oral & Dental Surgery vs. Court of Tax Appeals, et al., G.R. No. L-10446, January 28, 1958

When period of prescription starts.
When the tax sought to be refunded is illegally or erroneously collected, the period of prescription starts from the date the tax was paid; but when the tax is legally collected, the prescriptive period commences to run from the date of occurrence of the supervening cause which gave rise to the right of refund.

Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., et al., G.R. No. L-24108, January 3, 1968

When two-year prescriptive period commences to run.
The two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return.

ACCRA Investments Corp. vs. Court of Appeals, G.R. No. 96322, December 20, 1991

Rationale in computing the two-year prescriptive period.
It bears emphasis that the rationale in computing the two-year prescriptive period with respect to the taxpayer's claim for refund from the time it filed its final adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations. The "date of payment", therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 1982.

ACCRA Investments Corp. vs. Court of Appeals, G.R. No. 96322, December 20, 1991

Sec. 244 - Authority of the Secretary of Finance to Promulgate Rules and Regulations

An administrative rule should be published if it substantially adds to or increases the burden of those governed.
When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance for it gives no real consequence more than what the law itself has already prescribed. When, upon the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially adds to or increases the burden of those governed, it behooves the agency

to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.

Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 119761, August 29, 1996

Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003

Rules and regulations promulgated by the Secretary of Finance deserve weight and respect.
The authority of the Secretary of Finance, in conjunction with the Commissioner of Internal Revenue, to promulgate needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Such rules and regulations, as well as administrative opinions and rulings, ordinarily deserve to be given weight and respect by the courts.

Compania General de Tabacos de Filipinas vs. Court of Appeals, et al., G.R. No. 147361, March 23, 2004

Administrative issuances must remain consistent with the law they intend to carry out.
The power of the CIR to make rulings and opinions in connection with the implementation of internal revenue laws cannot be controverted. However, the CIR cannot, in the exercise of such power, issue administrative rulings or circulars not consistent with the law sought to be applied. Indeed, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. Only Congress can repeal or amend the law. While the rule-making authority of the CIR is not doubted, like any other government agency, the CIR may not disregard legal requirements or applicable principles in the exercise of quasi-legislative powers.

Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003

Legislative rule distinguished from interpretative rule.
There are two kinds of administrative issuances: the legislative rule and the interpretative rule. A legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof. An interpretative rule, on the other hand, is designed to provide guidelines to the law which the administrative agency is in charge of enforcing.

Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003

Sec. 248 (B) - Willful Neglect to File Returns or Filing of False or Fraudulent Returns

Fraud cannot be presumed.
Fraudulent intent could not be deduced from mistakes however frequent they may be, especially if such mistakes emanate from erroneous entries or erroneous classification of items in accounting methods utilized for determination of tax liabilities. The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. It must amount to intentional wrongdoing with the sole object of avoiding the tax.

Jose B. Aznar vs. Court of Tax Appeals, et al., G.R. No. L-20569, August 23, 1974

Commissioner of Internal Revenue vs. Air India, et al., G.R. No. L-72443, January 29, 1988

Sec. 249 – Interest

Interest and surcharges on deficiency taxes are imposable upon failure of the taxpayer to pay the tax on the date fixed by law.
The rule as to when interest and surcharges on delinquency tax payments becomes chargeable is well settled. The interest and surcharges on deficiency taxes are imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for the payment thereof. The rule has to be so because a deficiency tax indicates non-payment of the correct tax, and such deficiency exists not only from the assessment thereof but from the time the taxpayer failed to pay the correct amount of tax when it should have been paid; and the imposition thereof is mandatory even in the absence of fraud or willful failure to pay the tax in full.

Aguinaldo Industries Corp. (Fishing Nets Division) vs. Commissioner of Internal Revenue, et al., G.R. No. L-29790, February 25, 1982

Imposition of interest is not penal but compensatory in nature.
The imposition of interest is but a just compensation to the State for the delay in paying the tax and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands. The fact that the interest charged is made, proportionate to the period of delay constitutes the best evidence that such interest is not penal but compensatory.

Aguinaldo Industries Corp. (Fishing Nets Division) vs. Commissioner of Internal Revenue, et al., G.R. No. L-29790, February 25, 1982

***Collection of penalty and interest in case of delinquency is mandatory*.**
It is mandatory to collect penalty and interest at the stated rate in case of delinquency. The intention of the law is to discourage delay in the payment of taxes due the Government and, in this sense, the penalty and interest are not penal but compensatory for the concomitant use of the funds by the taxpayer beyond the date when he is supposed to have paid them to the Government.

Philippine Refining Company, et al. vs. Court of Appeals, et al., G.R. No. 118794, May 8, 1996

Surcharges are not penalties but civil administrative sanctions.

a) Additions like the 50% surcharge to the main tax are not penalties but civil administrative sanctions, provided primarily as a safeguard for the protection of the state revenue and to reimburse the government for the heavy expense of investigation and the loss resulting from the taxpayer's fraud.

   Maria B. Castro vs. Collector of Internal Revenue, G.R. No. L-12174, April 26, 1962

b) Strong reasons of policy support a strict observance of the rule on imposition of surcharge. Tax laws imposing penalties for delinquencies are clearly intended to hasten tax payments or to punish evasion or neglect of duty in respect thereof. If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the government and its multifarious activities would be as precarious as taxpayers are willing or unwilling to pay their obligations to the state in time. Imperatives of public welfare will not approve of this result

   Celso B. Jamora, et al. vs. Bibiano L. Meer, G.R. No. 48129, November 11, 1942
   Aguinaldo Industries Corp. (Fishing Nets Division) vs. Commissioner of Internal Revenue, et al., G.R. No. L-29790, February 25, 1982

Sec. 251 - Failure of a Withholding Agent to Collect and Remit Tax

Deficiency taxes are imposed for failure of a withholding agent to collect tax.
It is not the NDC that is being taxed. The tax was due on the interests earned by the Japanese shipbuilders. It was the income of these companies and not the Republic of the Philippines that was subject to the tax the NDC did not withhold. In effect, therefore, the imposition of the deficiency taxes on the NDC is a penalty for its failure to withhold the same from the Japanese shipbuilders.

National Development Company vs. Commissioner of Internal Revenue, G.R. No. L-53961, June 30, 1987

Sec. 253 - Crimes, Other Offenses and Forfeitures: General Provisions

Precise computation and assessment of tax is not required before criminal prosecution.
While there can be no civil action to enforce collection before the assessment procedures provided in the Code have been followed, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code. What is involved here is not the collection of taxes where the assessment of the Commissioner of Internal Revenue may be reviewed by the Court of Tax Appeals, but a criminal prosecution for violations of the National Internal Revenue Code which is within the cognizance of courts of first instance.

Quirico P. Ungab vs. Vicente N. Cusi, Jr., et al., G.R. Nos. L-41919-24, May 30, 1980

Assessment of deficiency tax is not necessary before taxpayer can be prosecuted.
An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfully filed a fraudulent return with intent to evade and defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.

Quirico P. Ungab vs. Vicente N. Cusi, Jr., et al., G.R. Nos. L-41919-24, May 30, 1980

Sec. 254 - Tax Evasion

Elements of tax evasion.
Tax evasion connotes the integration of three factors: (1) the end to be achieved, i.e., the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being "evil," in "bad faith," "willfull," or "deliberate and not accidental"; and (3) a course of action or failure of action which is unlawful.

Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr., et al., G.R. No. 147188, September 14, 2004

Before one is prosecuted for willful attempt to evade or defeat any tax under the Tax Code, the fact that a tax is due must first be proved.
Before a taxpayer could be prosecuted for tax evasion under the Tax Code, the fact that the deficiency income, ad valorem and value-added taxes were due should first be established.

Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 119322, June 4, 1996

For criminal prosecution to proceed before assessment, there must be a prima facie showing of a willful attempt to evade taxes.

For criminal prosecution to proceed before assessment, there must be a prima facie showing of a willful attempt to evade taxes. Since the registered wholesale price of the goods, approved by the BIR, is presumed to be the actual wholesale price, therefore, not fraudulent and unless and until the BIR had made a final determination of what is supposed to be the correct taxes, the taxpayer should not be placed in the crucible of criminal prosecution.

Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 119322, June 4, 1996

Sec. 272 - Violation of Withholding Tax Provision

Revenue Regulation 4-93 requires payment of withholding taxes through banks to avoid employees' direct receipt of tax payments.
By accommodating and accepting withholding tax returns and check payments from a taxpayer, a revenue collection officer disregarded an established BIR rule. Revenue Regulation No. 4-93 requires payment through the banks precisely to avoid, whenever possible, BIR employees' direct receipt of tax payments. In the face of her silence, the fact that the checks ended up in an unauthorized BIR account eloquently speaks, at the very least, of her gross negligence in taking care of collections that should not have passed through her hands in the first place. Because of her complicity in the transgression of the cited BIR regulation as well as her gross negligence, respondent is administratively liable for misconduct.

Bureau of Internal Revenue, et al., vs. Lilia B. Organo, G.R. No. 149549, February 26, 2004

Sec. 282 - Informer's Reward

Grant of informer's reward is not dependent on classification of delinquent taxpayer.
That the informer's reward was sought and given in relation to tax delinquencies of government agencies provides no reason for disallowance. The law on the matter makes no distinction whatsoever between delinquent taxpayers in his regard, whether private person or corporations, or public or quasi-public agencies, it being sufficient for its operation that the person or entity concerned is subject to, and violated, revenue laws, and the informer's report thereof resulted in the recovery of revenues. It is elementary that where the law does not distinguish, none must be made. *Ubi lex non distinguit nec nos distinguere debemos*.

Commissioner of Internal Revenue vs. Commission on Audit, G.R. No. 101976, January 29, 1993

Informer's reward is contingent upon the payment and collection of unpaid or deficiency taxes.
Since no taxes are to be collected, no informer's reward is due .to the informer's heirs. Informer's reward is contingent upon the payment and collection of unpaid or deficiency taxes. An informer is entitled by way of reward only to a percentage of the taxes actually assessed and collected.

Meralco Securities Corp. vs. Victorino Savellano, et al., G.R. No. L-36181, October 23, 1982