

Legislation, Executive Orders, and Court Decisions

By E. E. SELPH
Ross, Selph, Carrascoso & Janda

THE Supreme Court has granted a reconsideration of its decision referred to in the November issue of this *Journal*, relating to the Baguio tax on sales of gasoline. The point was raised that the tax was passed on to the consumer and therefore was not refundable to the dealers. The Supreme Court remanded the case to the Court of First Instance for presentation of evidence, stating that whether or not the dealers collected the taxes from the public was a question of fact to be decided by the Court of First Instance.

AN interesting phase of the income tax law is covered by the recent decision in the Arnault tax-evasion case. (People vs. Arnault, G.R. No. L-4288, November 20, 1952.) It is impossible to get all the facts from the record, as so many people refused to talk. However, Mr. Arnault pleaded guilty, so we have to assume that the allegations in the complaint have been proved. On this basis Mr. Arnault was a vice-president of and acting for two Philippine corporations which were attorneys-in-fact for General Burt who sold some real estate to the Philippine Government at a profit of ₱1,480,000 which was received by Arnault and on which there was an income tax claimed by the Philippine Government in the sum of ₱1,089,270, no part of which was paid. The Court of First Instance rendered judgment imposing a fine of ₱1,000 and ordered Arnault to indemnify the Philippine Government in the sum of ₱1,089,270, with subsidiary imprisonment in case of insolvency. The section of the income tax law involved is section 55 which provides that the owner of the gains or the person having the receipt, custody, control, or disposal of the same shall pay the tax due. The decision of the Court overruled Arnault's plea that he was acting only for the Philippine corporations and not for Burt and was not personally liable. The Court said that by his plea of guilty he admitted having received the money for Burt and not for the Philippine corporations of which he was vice-president. On the point raised that giving the Collector of Internal Revenue the choice of prosecuting either the owner or the agent was an unlawful delegation of power, the Court said:

"xxx It is the Legislature that declares who is or who are responsible for the payment of the income tax under a given set of facts or circumstances. The Collector of Internal Revenue merely executes the law and under the circumstances, determines which of the two,—the owner or the agent—should and could have paid the income tax because he had the receipt, custody, control or disposal of the income or profit. In the present case, Burt was not in the Philippines. He did not have the receipt, custody, control or disposal of the profit of ₱1,480,000.00. It is not known if he ever received any part of this amount; but the appellant had that amount in his hands and under the law he was charged with the duty of making a return of said income and pay the corresponding income tax for the owner of the income or profit in whose behalf according to the information he received the same. In selecting appellant Arnault as the person criminally responsible, and to be prosecuted, the Collector of Internal Revenue was merely enforcing and carrying out and executing the law on income tax promulgated by the Legislature. xxx"

As to including the indemnity in the judgment in the criminal case with subsidiary imprisonment should the ₱1,089,270 not be paid, the Supreme Court agreed with Arnault and eliminated the indemnity and subsidiary imprisonment in the following language:

"We therefore hold that unless expressly provided by law, conviction for failure or neglect to pay a tax does not include payment of indemnity to the State in the amount of the tax not paid. So, it was error on the part of the trial court to sentence appellant to pay this indemnity; so was that part of the decision imposing subsidiary imprisonment in case of insolvency in the payment of the indemnity. In this connection, and to avoid any doubt, we may say that the Government is free to avail itself of the Civil Remedies provided by the Internal Revenue Code to collect the tax herein involved."

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However, the Supreme Court exercised its prerogative to increase the penalty by adding imprisonment to the fine and used the following language:

"x x x After more or less extensive deliberations the great majority believe that because of the relatively large amount of the tax delinquency, the penalty should be increased as recommended by the Solicitor General. In addition to the fine of ₱1,000.00 with subsidiary imprisonment in case of insolvency, we hereby sentence appellant to three (3) months imprisonment, with the accessories of the law."

Philippine Safety Council

By FRANK S. TENNY
Founder and Executive Director

DECEMBER will be an important month in the national safety movement. Far from taking a holiday at this time, the P.S.C. technical staff will work overtime, as December is the worst month of the year for many kinds of fires and accidents. People being human, they let their guard down during the Holidays, resulting in unusual difficulties arising in traffic, security, production, and fire-prevention factors.

The joint air-ground payroll-delivery and cash-collection service is being incorporated and will be in operation before the first of the year. An armored car and a specially built airplane will be used. Inquiries are invited.

Special efforts are being devoted to the tourism movement and the coming International Fair. The Council is officially advising the Fair management in safety matters, and is working closely with the Travel and Tourist Association. The Manila Taxicabs & Garages Association, assisted by the Taxicab Inspection Service, is vigorously raising standards to meet the influx of expected visitors.

The new National Traffic Commission and the Fire-Prevention Board are both meeting regularly. However, two important government safety units, the Advisory Safety Council to the Secretary of Labor and the Provincial Bus Terminals Board, have not met for months. It would appear that there is much for all of these groups to do.

The "free car-safety check", conducted by the Manila Trading & Supply Company in conjunction with the Council, has proved to be a success and the service will soon be broadened to other firms. It is noteworthy that only about 25% of the vehicles tested are approved from the standpoint of mechanical safety.

Other items receiving special attention now include arson prevention, lectures to professional drivers, showing of safety films, organization of provincial chapters or co-operating committees, and inspection of security units. All members of the American Chamber of Commerce of the Philippines are invited to join the Philippine Safety Council beginning in 1953. Nearly 50 members already belong.

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