

POWER OF MUNICIPAL COUNCILS TO TAX ADMISSION TICKETS IN CINEMATOGRAPHS OR COCKPITS AND FOR EACH DANCE IN CABARETS

Sir: This is in reply to your letter of February 28, 1946, requesting *opinion on whether or not municipal councils have the power and authority to impose a tax on each admission ticket sold in cinematographs or cockpits and for each dance in the cabarets.*

Section 1 of Commonwealth Act No. 472 provides:

"A municipal council or municipal district council shall have authority to impose municipal license taxes upon persons engaged in any occupation or business, or exercising privileges in the municipality or municipal district, by requiring them to secure licenses at rates fixed by the municipal council, or municipal district council, and to collect fees and charges for services rendered by the municipality or municipal district and shall otherwise have power to levy for public local purposes, and for school purposes, including teachers' salaries, just and uniform taxes other than percentage taxes and taxes on specified articles."

Under this provision, a municipality may, therefore, do three things, namely, (1) impose license taxes upon persons engaged in any occupation or business, or exercising privileges in the municipality, (2) collect fees and charges for services rendered by the municipality, and (3) levy just and uniform taxes other than percentage taxes and taxes on specified articles.

In the basic communication, the only question raised is whether the tax in question falls under the third category. The view is expressed that the said tax savors of either a percentage tax or a tax on income, both of which are expressly removed by Commonwealth Act No. 472 from the taxing power of municipal corporations (Secs. 1 and 3[m]).

I believe that not all taxes which are

fixed at a certain percent of the value of the thing taxed or which may be reduced to percentage are "percentage taxes" within the purview of Commonwealth Act No. 472. The Internal Revenue Code, Commonwealth Act No. 466, used the phrase "percentage tax" in Title V, Chapter 1, Sections 182, 183, 184, 185, 186, 187, 189, 191, 192, and 195. Since the term "percentage taxes" has not been specifically defined by the lawmaker, it must be interpreted to refer to such taxes as are so called in the sections above-mentioned or are identical thereto in the operation thereof. On the theory that taxes are required to be uniform, it is a truism that most taxes, whether specific or not, may be reduced to a regular and uniform rate of percentage. If the term "percentage taxes" in Section 1 of Commonwealth Act No. 472 were intended to cover all kinds of taxes levied at rates reducible to percentage, there would have been necessity for the elaborate enumeration of the taxes, charges and fees which may not be levied by municipal corporations contained in Section 3 of the said Act.

Neither may the tax in question be considered as a tax on income. Cooley says:

"An income tax is to be distinguished from an occupation tax the amount of which depends upon the income. An excise upon those engaged in a particular occupation, although guided in accordance with income, is an occupation tax and not an income tax. So a tax on oyster tong men and the amount of their sales is not an income tax. A franchise tax on corporations is not income tax although the amount is measured by the net annual income of the corporation. A tax on the gross receipts of a railroad is not an income tax" (Cooley on Taxation, 4th Ed., Vol. 4, p. 3477).

"In its ordinary and popular meaning, 'income' is the amount of actual wealth which comes to a person during a given period of time. An income tax is one levied on the income from the property or an occupation. It is a direct tax upon the thing called income. An excise upon those engaged in a particular occupation, although graded in accordance with income, is an occupation tax not an income tax, although based on income, on the theory that the former is a tax on corporate privileges measured by income rather than a tax on the income itself." (Id. Vol. 1, pp. 138-139; See also 27 Am. Jur. pp. 311-312.)

An income tax is a direct tax, while an excise tax, such as an occupation tax, is an indirect tax. The same authority says:

"Direct taxes include those assessed upon the property, person, business, income, etc. of those who are to pay them, while indirect taxes are levied upon commodities before they reach the consumer, and are paid by those upon whom they ultimately fall, not as taxes, but as part of the market price of the commodity," (Id., Vol. 1, p. 244.)

"x x x . Direct taxes include all capitation taxes at least as to most sources of income, while indirect taxes are confined to excise taxes, including customs duties." (Id., Vol. 1, p. 142.)

"Excise taxes come to have a more or less precise meaning. They are an *indirect* tax and have no reference to earnings or income except that the sum of such earnings or income may be made the measure of the tax. The most common form of the tax, in case of a state tax, is an *occupation* or license tax. The tax is usually a specific sum, or a sum whose amount is regulated by the business done or the income or profits earned." (Id., Vol. 1, p. 127.)

"The 1909 federal law known as 'The Corporation Tax Law', so

far as it imposed a 'special excise' tax of 1% of the net income of business corporations, is a tax upon the doing of business in a corporate capacity, so as to be an indirect rather than a direct tax, i.e., the tax is not an income tax." (Id., Vol. 1, p. 247.)

In the case of *Sims v. Weldon*, 263 S.W. 42, the court holding that an excise tax on the sales of merchandise of any kind is not "a tax on net incomes", said:

"A sales tax is the antithesis of an income tax, for the former may be and generally is added to the price and thus passed on to the purchaser, whilst the latter must be paid by the one who earns the income, and it cannot be passed on to another."

And in *U.S. v. Philadelphia, B. & W.R. Co.*, 262 Fed. 188, the Court said:

"We are concerned wholly with an excise tax. Whether it is a scientifically accurate concept of it or not, the concept of it as a charge for the privilege of following an occupation or trade, or carrying on a business, gives us a fairly good working idea of what it is. It is, in consequence, an *indirect* tax, and has no reference to earnings or income, except that the sum of such earnings or income may (as anything else may) be made the measure of the tax. An income tax, on the contrary, is a *direct* tax imposed upon the thing called income and is as directly imposed as is a tax on land."

Furthermore, the fact that our law-making body has chosen to impose taxes similar to those under consideration on admission tickets to a theater, cinematograph, concert hall, etc., under a title (Title VIII, Chapter IV, Internal Revenue Code) separate from the title providing for Income Taxes (Cf. Title II, Internal Rev. Code) clearly shows that taxes on admission tickets to cinematographs or cockpits are not considered as income taxes.

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THE LOCAL GOVERNMENT REVIEW

Power Of . . .

From a comparison of the pertinent provisions of the Revised Administrative Code (Section 2307 and 2308) and Commonwealth Act No. 472, it is apparent that while the former enumerates the taxes that may be imposed and what may be taxed, the latter contains a general power to tax and an enumeration of specific limitations or exceptions thereto (Secs. 1 and 3). The enactment of Commonwealth Act No. 472 shows an intent to enlarge the taxing power of municipalities, and if it has no provisions regarding the manner of collection as the one contained in Section 2310 of the Revised Administrative Code, which was enacted when municipalities were empowered to exact license taxes only, this alone would not affect the general power given by Commonwealth Act No. 472. The procedure and manner for the collection of the tax herein contemplated may be provided for in the ordinance levying the tax. The authority to levy a tax necessarily carries with it the power to enforce collection of the same (51 Am. Jur. pp. 73-74).

In view of all the foregoing, I believe that the query should be answered in the affirmative.—*Letter dated May 31, 1946 of Sec. of Justice (Roman Ozaeta) to the Undersecretary of Finance.*

Rulings Of . . .

tember 1 and 2, 1946, on the ground that the meetings held on the latter dates were not regular but special sessions.

Section 2220 of the Administrative Code, prescribing the manner of holding regular and special meetings of the municipal council, provides as follows:

"The municipal council shall prescribe the time and place of holding its meetings. Regular meeting shall be held once in every two weeks and special meetings, not to exceed twenty-four annually, may be held whenever there is a real necessity for them. Any meeting, regular or special, may, in case the amount of business shall require, be adjourned from day to day until the business is completed."

The above-quoted provisions of law expressly authorize the municipal council to adjourn its meetings, whether regular or special, from day to day, if the amount of business to be disposed by it requires such adjournment.

In view of the aforequoted law, and as it appears herein that the meetings on September 1 and 2, 1946, were in continuation of the regular session held by the said council on August 31, 1946, payment of the per diems to the councilors concerned for their attendance at the meetings held on said dates may be allowed in audit.—*3rd Ind., Oct. 2, 1946, of Aud. Gen. M. Agregado.*

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