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TAX LAW FOR BUSINESS

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Common carriers exempt from local business taxes

ONE cannot stress too strongly the importance of ensuring the safe and efficient movement of people and goods in a modern economy. Greater mobility translates to increased trade and higher productivity. This is precisely why transportation is considered a key enabler of economic growth. And much recently, the Supreme Court (SC) gave our beleaguered transportation sector a boost when it ruled, in *City of Manila v. Hon. Colet and Malaysian Air System, G.R. 120051*, December 10, 2014, that local government units (LGUs) cannot impose local business taxes on transportation contractors and common carriers. In this article, I shall discuss this SC ruling and the available remedies in the aftermath of this decision.

The issue of whether or not transportation contractors and common carriers are subject to local business tax began as far back as 1993, when the City Council of Manila enacted the Manila Revenue Code. Section 21(B) of the said code imposed a local business tax “on the gross receipts of keepers of garages, cars for rent or hire driven by the lessee, transportation contractors, persons who transport passenger or freight for hire, and common carriers by land, air, or water...” Several common carriers assailed the validity of Section 21(B) of the Manila Revenue Code.

On one hand, the common carriers argued that they are exempt from local business tax. They invoked Section 133(j) of the Local Government Code (LGC), which states that the taxing powers of LGUs shall not extend to “taxes on gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land, or water...”

On the other hand, the city of Manila contended that Section 143 of the LGC has empowered it to impose local business tax “on any business subject to excise, value-added, or percentage tax under the National Internal Revenue Code (NIRC), as amended.” As “transportation contractors, persons who transport passenger or freight for hire, and common carriers” are engaged in business subject to excise, value-added or percentage tax, the imposition of local business tax is valid.

The SC resolved the issue in favor of the common carriers. The SC explained that although the power to tax is inherent in the state, the same is not true for the LGUs to whom power must be delegated by Congress and must be exercised within the guidelines and limitation that Congress may provide. And among the common limitations on the taxing power of LGUs is Section 133(j) of the LGC, which clearly and unambiguously proscribes LGUs from imposing a tax on the gross receipts of transportation contractors and common carriers.

The SC held that Section 133(j) of the LGC prevails over Section 143(h) of the LGC, as the former is a specific provision that explicitly limits the LGUs’ power to tax while Section 143(h)

defines a general power. Specific provisions prevail over general ones. The SC, likewise, stressed that the exemption of transportation contractors and common carriers from local business tax is consistent with the intent of our laws, which is to prevent the duplication of the so-called common carriers tax. Based on this reasoning, Section 21(B) of the Manila Revenue Code was declared null and void, removing all doubts as to the local business tax-exemption status of transportation contractors and common carriers.

With this definitive ruling, what then happens to local business taxes already paid by transportation contractors and common carriers? The ruling has the effect of making the said local business tax payments “erroneously or illegally collected.” And the remedy of the transportation contractor or common carrier is to file a claim for refund pursuant to Section 196 of the LGC. In order to be entitled to a refund/credit of local taxes, the following procedural requirements must concur: (1) the taxpayer must file a written claim for refund/credit with the local treasurer; and (2) the claim must be filed within two years from the date of payment of the tax. This means that transportation contractors and common carriers can only recover said erroneously or illegally collected taxes as far back as two years if they do decide to file a claim for refund.

As a last note, it must be said that although the ruling involves only the Manila Revenue Code, the doctrine laid down by the Supreme Court exempting transportation contractors and common carriers from local business tax applies to all LGUs. However, to nullify similar provisions in the Revenue Codes of other LGUs, actions must be filed assailing their validity and constitutionality.

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