

2010 – 2015
TAXATION BAR EXAM QUESTIONS
ON
LOCAL GOVERNMENT TAXATION

Which of the following statements is NOT a test of a valid ordinance? (2012 Bar Question)

- a) It must not contravene the Constitution or any statute;

- b) It must not be unfair or oppressive;
- c) It must not be partial or discriminatory;
- d) It may prohibit or regulate trade.

SUGGESTED ANSWER:

- d)** It may prohibit or regulate trade.

To be valid, an ordinance must not prohibit but may regulate trade. (*Magtajas v. Pryce Properties Corporation, Inc.*, G.R. No. 111097, July 20, 1994).

Prior to the enactment of the Local Government Code, consumer's cooperatives registered under the Cooperative Development Act enjoyed exemption from all taxes imposed by a local government. With the Local Government Code's withdrawal of exemptions, could these cooperatives continue to enjoy such exemption? (2011 Bar Question)

- (A) Yes, because the Local Government Code, a general law, could not amend a special law such as the Cooperative Development Act.
- (B) No, Congress has not by the majority vote of all its members granted exemption to consumers' cooperatives.
- (C) No, the exemption has been withdrawn to level the playing field for all taxpayers and preserve the LGUs' financial position.
- (D) Yes, their exemption is specifically mentioned among those not withdrawn by the Local Government Code.

SUGGESTED ANSWER:

- (D)** Yes, their exemption is specifically mentioned among those not withdrawn by the Local Government Code.

Taxing power of local government units shall NOT extend to the following taxes, except one: (2012 Bar Question)

- a) Income tax on banks and other financial institutions;
- b) Taxes of any kind on the national government, its agencies and instrumentalities, and local government units;
- c) Taxes on agricultural and aquatic products when sold by the marginal farmers or fishermen;
- d) Excise taxes on articles enumerated under the National Internal Revenue Code.

SUGGESTED ANSWER:

- a)** Income tax on banks and other financial institutions

Section 186, RA 7160.

What is the tax base for the imposition by the province of professional taxes? (2011 Bar Question)

- (A) That which Congress determined.
- (B) The pertinent provision of the local Government Code.
- (C) The reasonable classification made by the provincial sanggunian.
- (D) That which the Dept. of Interior and Local Government determined.

SUGGESTED ANSWER:

(C) The reasonable classification made by the provincial sanggunian.

Ferremaro, Inc., a manufacturer of handcrafted shoes, maintains its principal office in Cubao, Quezon City. It has branches/sales offices in Cebu and Davao. Its factory is located in Marikina City where most of its workers live. Its principal office in Quezon City is also a sales office.

Sales of finished products for calendar year 2009 in the amount of P10 million were made at the following locations:

1) Cebu branch	25%
2) Davao branch	15%
3) Quezon City branch	60%
Total	100%

Where should the applicable local taxes on the shoes be paid? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

Under the LGC, the manufacturers maintaining a branch or sales outlet shall record the sale in the branch or sales outlet making the sale and pay the tax in the city or municipality where the branch or sales outlet is located. Since Ferremaro, Inc., maintains one factory, the sales recorded in the principal office shall be allocated and 30% of said sales are taxable in the place where the principal office is located while the 70% is taxable in the place where the factory is located.

Hence, 25% of total sales or Php 2.5M shall be taxed in Cebu and 15% of total sales or Php 1.5M shall be taxed in Davao. For the remaining 60% sales amounting to Php 6.0M which is recorded in the principal office, 30% thereof or Php 1.8M is taxable in Quezon City where the principal office is located and 70% or Php 4.2M is taxable in Marikina City where the factory is located.

XYZ Shipping Corporation is a branch of an international shipping line with voyages between Manila and the West Coast of the U.S. The company's vessels load and unload cargoes at the Port of Manila, albeit it does not have a branch or sales office in Manila. All the bills of lading and invoices are issued by the branch office in Makati which is also the company's principal office.

The City of Manila enacted an ordinance levying a 2% tax on gross receipts of shipping lines using the Port of Manila.

Can the City Government of Manila legally impose said levy on the corporation? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

No, Manila cannot legally levy the 2% Gross Receipts Tax on thi shipping line because taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, and or water is beyond the taxing powers of the local government units.

The City Government of Manila may NOT impose:

- a) Basic real property tax at 2% of the assessed value of real property;
- b) Additional levy on real property for the special education fund at 1% of the assessed value of real property;
- c) Additional ad valorem tax on idle lands at a rate not exceeding 5% of the assessed value;
- d) Special levy on lands within its territory specially benefited by public works projects or improvements funded by it at 80% of the actual cost of the projects or improvements.

SUGGESTED ANSWER:

- d) Special levy on lands within its territory specially benefited by public works projects or improvements funded by it at 80% of the actual cost of the projects or improvements**

Section 240, RA 7160.

ABC Corporation is registered as a holding company and has an office in the City of Makati. It has no actual business operations. It invested in another company and its earnings are limited to dividends from this investment, interests on its bank deposits, and foreign exchange gains from its foreign currency account. The City of Makati assessed ABC Corporation as a contractor or one that sells services for a fee. Is the City of Makati correct? (2013 Bar Question)

SUGGESTED ANSWER:

The City of Makati is wrong in assessing ABC Corp. as a contractor.

First, ABC Corp. is not a contractor as defined in Section 131(h) of Republic Act No. 7160 or the Local Government Code (LGC). This provision defines a contractor as a person, natural or juridical, not subject to professional tax under the LGC, but whose activity consists essentially of the sale of all kinds of services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or his employees.

In the given problem, ABC Corp. is merely a holding company whose earnings are limited to dividends, interests on bank deposits and foreign exchange gains from foreign currency account. Evidently, ABC Corp. is not engaged in the sale of services for a fee.

Second, Section 186 of LGC provides that local government units cannot levy taxes, fees or charges on any base or subject tax under the provisions of the NIRC.

In the given problem, ABC Corp.'s dividends, interest income and foreign exchange gains from foreign currency account are already subject to final income tax under the NIRC, specifically, Sections 27(D)(4), 27(D)(1), 32(A), respectively. Consequently, the City of Makati cannot levy from ABC Corp. taxes on these incomes.

Which statement is correct? (2012 Bar Question)

- a) Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated as resolutions and ordinances;
- b) Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated as resolutions;

- c) Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated as ordinances;
- d) Both ordinances and resolutions are solemn and formal acts.

SUGGESTED ANSWER:

- c) Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated as ordinances

Section 2227, Revised Administrative Code of 1917.

One of the local government units below does NOT have the power to impose real property tax:
(2012 Bar Question)

- a) Bacoor, Cavite;
- b) Davao City;
- c) Tarlac Province;
- d) Malabon, Metro Manila.

SUGGESTED ANSWER:

- a) Bacoor, Cavite

Section 200, RA 7160.

[Note: The answer above is premised on the belief that Bacoor is a municipality and the LGC does not vest municipalities with the power to impose real property taxes, except for municipalities within the Metropolitan Manila area. However, Bacoor is already a city hence, can no longer be a correct choice. Since the question did not provide for the CORRECT answer, it should be treated as a bonus.]

After the province has constructed a barangay road, the SangguniangPanglalawigan may impose a special levy upon the lands specifically benefitted by the road up to an amount not to exceed: (2011 Bar Question)

- (A) 60% of the actual cost of the road without giving any portion to the barangay.
- (B) 100% of the actual project cost without giving any portion to the barangay.
- (C) 100% of the actual project cost, keeping 60% for the province and giving 40% to the barangay.
- (D) 60% of the actual cost, dividing the same between the province and the barangay.

SUGGESTED ANSWER:

- (A) 60% of the actual cost of the road without giving any portion to the barangay.

Pheleco is a power generation and distribution company operating mainly from the City of Taguig. It owns electric poles which it also rents out to other companies that use poles such as telephone and cable companies. Taguig passed an ordinance imposing a fee equivalent to 1% of the annual rental for these poles. Pheleco questioned 'the legality of the ordinance on the ground that it imposes an income tax which local government units (LGUs) are prohibited from imposing.

Rule on the validity of the ordinance. (1%)(2013 Bar Question)

- (A) The ordinance is void; the fee is based on rental income and is therefore a tax on income.
- (B) The ordinance is valid as a legitimate exercise of police power to regulate electric poles.
- (C) The ordinance is void; 1% of annual rental is excessive and oppressive.
- (D) The ordinance is valid; an LGU may impose a tax on income.

SUGGESTED ANSWER:

- (A) The ordinance is void; the fee is based on rental income and is therefore a tax on income.

The Sec. 32(A)(5) of the NIRC includes “rents” in the enumeration of taxable income. Under Section 133¹ of the LGC, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of income tax except when levied on banks and other financial institutions.

In accordance with the Local Government Code (LGC), the Sangguniang Panglungsod (SP) of Baguio City enacted Tax Ordinance No. 19, Series of 2014, imposing a P50.00 tax on all the tourists and travellers going to Baguio City. In imposing the local tax, the SP reasoned that the tax collected will be used to maintain the cleanliness of Baguio City and for the beautification of its tourist attractions. (D) is punishable by administrative penalty only.

Claiming the tax to be unjust, Baguio Travellers Association (BTA), an association of travel agencies in Baguio City, filed a petition for declaratory relief before the Regional Trial Court (RTC) because BTA was apprehensive that tourists might cancel their bookings with BTA’s member agencies. BTA also prayed for the issuance of a Temporary Restraining Order (TRO) to enjoin Baguio City from enforcing the local tax on their customers and on all tourists going to Baguio City.

The RTC issued a TRO enjoining Baguio City from imposing the local tax. Aggrieved, Baguio City filed a petition for certiorari before the Supreme Court (SC) seeking to set aside the TRO issued by the RTC on the ground that collection of taxes cannot be enjoined. Will the petition prosper? (2014 Bar Question)

SUGGESTED ANSWER :

No, the petition for *certiorari* filed by Baguio City will not prosper. As stated in *Valley Trading Co., Inc. v. CFI of Isabela* (G.R. No. L-49529, March 31, 1989) and *Angeles City v. Angeles City Electric Corporation* (G.R. No. 166134, June 29, 2010), the prohibition on the issuance of an order or writ enjoining the collection of taxes applies only to national internal revenue taxes, and not to local taxes. Unlike the NIRC, there is no express provision in the Local Government Code which prohibits courts from enjoining the collection of such taxes. Therefore, the RTC was properly vested with authority to issue the assailed TRO enjoining Baguio City from imposing the local tax.

In 2014, M City approved an ordinance levying customs duties and fees on goods coming into the territorial jurisdiction of the city. Said city ordinance was duly published on February 15, 2014 with effectivity date on March 1, 2014.

¹ Common Limitations on the Taxing Powers of Local Government Units.

a. Is there a ground for opposing said ordinance?

b. What is the proper procedural remedy and applicable time periods for challenging the ordinance? (2015 Bar Question)

SUGGESTED ANSWER:

a. Yes, on the ground that the ordinance is ultra-vires. The taxing powers of local government units, such as M City, cannot extend to the levy of taxes, fees and charges already imposed by the national government, and this include, among others, the levy of customs duties under the Tariff and Customs Code.

b. Any question on the constitutionality or legality of tax ordinances may be raised on appeal within thirty (30) days from the effectivity to the Secretary of Justice. The Secretary of Justice shall render a decision within sixty (60) days from the date of receipt of the appeal. Thereafter, within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file the appropriate proceedings with the Regional Trial Court.

What is the basis for the computation of business tax on contractors under the Local Government Code? (2010 Bar Question)

SUGGESTED ANSWER:

The business tax on contractors is a graduated annual fixed tax based on the gross receipts for the preceding calendar year. If the gross receipts amount to more than Php 2.0 Million the business is subject to a percentage tax at the rate of 50% of 1%.

How are retiring businesses taxed under the Local Government Code? (2010 Bar Question)

SUGGESTED ANSWER:

They are taxed on their sales or gross receipts in the current year and not on the preceding year. If the tax paid in the current year is less than the tax due on gross sales or receipts of the current year, the difference shall be paid before the business is considered officially retired.

On May 15, 2009, La Manga Trading Corporation received a deficiency business tax assessment of P1,500,000.00 from the Pasay City Treasurer. On June 30, 2009, the corporation contested the assessment by filing a written protest with the City Treasurer.

On October 10, 2009, the corporation received a collection letter from the City Treasurer, drawing it to file on October 25, 2009 an appeal against the assessment before the Pasay Regional Trial Court (RTC).

a. Was the protest of the corporation filed on time? Explain.

b. Was the appeal with the Pasay RTC filed on time? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

- a. The protest was filed on time. The taxpayer has the right to protest an assessment of local taxes within 60 days from receipt thereof.
- b. The appeal was not filed on time. When an assessment is protested, the treasurer has 60 days within which to decide. The taxpayer has 30 days from receipt of the denial of the protest or from the lapse of the 60-day period to decide, whichever comes first to appeal, otherwise, the assessment becomes conclusive and unappealable. Since no decision on the protest was made, the taxpayer should have appealed to the RTC within 30 days from the lapse of the period to decide on the protest.

Doña Evelina, a rich widow engaged in the business of currency exchange, was assessed a considerable amount of local business taxes by the City Government of Bagnet by virtue of Tax Ordinance No. 24. Despite her objections thereto, Doña Evelina paid the taxes. Nevertheless, unsatisfied with said Tax Ordinance, Doña Evelina, through her counsel Atty. ELP, filed a written claim for recovery of said local business taxes and contested the assessment. Her claim was denied, and so Atty. ELP elevated her case to the Regional Trial Court (RTC).

The RTC declared Tax Ordinance No. 24 null and void and without legal effect for having been enacted in violation of the public notice requirement of tax ordinances and revenue measures under the Local Government Code (LGC) and on the ground of double taxation. On appeal, the Court of Tax Appeals (CTA) affirmed the decision of the RTC. No motion for reconsideration was filed and the decision became final and executory. (4%)

(A) If you are Atty. ELP, what advice will you give Doña Evelina so that she can recover the subject local business taxes?

(B) If Doña Evelina eventually recovers the local business taxes, must the same be considered as income taxable by the national government? (2014 Bar Question)

SUGGESTED ANSWER :

(A) Move for the execution of the judgment which has already become final.

(B) Yes, subject to the tax benefit rule. The local business tax paid is a business-connected tax hence, deductible from gross income. If at the time of its deduction it resulted to a tax benefit to *Dona Evelina*, then the recovery will form part of gross income to the extent of the tax benefit on the previous deduction (*Section 34(C)(1), NIRC*).

Where the real property tax assessment is erroneous, the remedy of the property owner is: (2012 Bar Question)

- a) To file a claim for refund in the Court of Tax Appeals if he has paid the tax, within thirty (30) days from date of payment;
- b) To file an appeal with the Provincial Board of Assessment Appeals within thirty (30) days from receipt of the assessment;
- c) To file an appeal with the Provincial Board of Assessment Appeals within sixty (60) days from receipt of the assessment;
- d) To file an appeal with the Provincial Board of Assessment Appeals within sixty (60) days from receipt of the assessment and paying the assessed tax under protest.

SUGGESTED ANSWER:

c) To file an appeal with the Provincial Board of Assessment Appeals within sixty (60) days from receipt of the assessment;

Section 226, RA 7160.

Which statement on prescriptive periods is true? (2012 Bar Question)

a) The prescriptive periods to assess taxes in the National Internal Revenue Code and the Local Government Code are the same;

b) Local taxes shall be assessed within five (5) years from the date they became due;

c) Action for the collection of local taxes may be instituted after the expiration of the period to assess and to collect the tax;

d) Local taxes may be assessed within ten (10) years from discovery of the underpayment of tax which does not constitute fraud.

SUGGESTED ANSWER:

b) Local taxes shall be assessed within five (5) years from the date they became due;

Section 194, RA 7160.