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Accordingly, we find no grave abuse of discretion committed by the respondent National Labor Relations Commission in its assailed decision.

WHEREFORE, the petition is *DENIED*. The decision of the public respondent promulgated on February 29, 1988, is *AFFIRMED in toto* except that back wages shall be limited to three years.

No costs.

SO ORDERED.

Melencio-Herrera (Chairperson), Paras, and *Regalado, JJ.*, concur.

Padilla, J., no part; former partner of law firm, counsel for petitioner-school.

FIRST DIVISION

[G.R. No. 83250. September 26, 1989]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **MANILA HOTEL CORPORATION AND THE COURT OF TAX APPEALS,** *respondents.*

SYLLABUS

1. TAXATION; CATERER'S TAX; HISTORY OF ITS IMPOSITION. — The payment of a caterer's tax was first required by law when Rep. Act No. 2376 was approved on June 2, 1959 amending Section 191 of the Tax Code by providing that caterers in addition to keepers of restaurants, refreshment parlors and other eating places, should pay a 3% tax on their gross receipts. In 1969, Congress passed House Bill No. 17839, inserting Section 48. In the consolidated tax bill bearing the same number H.B.

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17839, Section 48 was renumbered as Section 42. On August 4, 1969, the President of the Philippines sent the following veto message, insofar as Sec. 42 is concerned, to the House of Representatives where the bill originated. Apparently, Congress understood the presidential veto to have referred only to the higher caterer's tax (20%) on hotels, motels and resthouses provided in paragraph (3), Section 191-A of the Tax Code, for when H.B. 17839 was enacted into law and published in Volume 66 of the Official Gazette issue of May 4, 1970, pp. 4505, 4531, Section 191-A was there in its entirety, except the words "hotel, motel and resthouse" which were struck off from paragraph (3) of Section 191-A. P.D. 1158, otherwise known as the National Internal Revenue Code of 1977 which was approved on June 3, 1977 also provided for the caterer's tax in Section 206 thereof. On February 8, 1978, the caterer's tax in Section 206 of the Tax Code was amended by P.D. 1299 which imposed a 10% caterer's tax on operators of restaurants inside a cockpit, 12% on those who operate inside a cabaret or club, and 20% on those who operate inside a *jai-alai* or race track.

2. ID.; ID.; ASSESSMENT AND COLLECTION THEREOF, LAWFUL; IMPOSITION BY THE STATE NOT DEBATABLE. — The power of the State to impose the 3% caterer's tax is not debatable. The Court of Tax Appeals erred, however, in holding that the tax was abolished as a result of the presidential veto of August 4, 1969. It failed to examine the law then, and up to now, existing on the subject which has always imposed a 3% caterer's tax on operators of restaurants. Since the Manila Hotel operates restaurants in its premises, it is liable to pay the tax provided in paragraph (1), Section 206 of the Tax Code.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
The Government Corporate Counsel for private respondent.

D E C I S I O N

GRIÑO-AQUINO, *J.*:

The Commissioner of Internal Revenue seeks a review of the decision dated February 2, 1988 of the Court of Tax Appeals

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(CTA) in CTA Case No. 2991 entitled, "*Manila Hotel Corporation vs. Commissioner of Internal Revenue*" ordering the Commissioner "to refund to the Manila Hotel Corporation the caterer's tax paid in the total amount of ₱2,463,576.30 without interest" (p. 39, *Rollo*).

The respondent Manila Hotel Corporation ("Hotel" for brevity) operates the Manila Hotel and the service and banquet outlets therein. During the period from January 20, 1977 to April 29, 1978, it paid to the petitioner the total sum of ₱2,463,576.30 as caterer's tax on the gross receipts from the sale of food in its restaurants.

On December 18, 1978, the Hotel filed a claim for refund of that amount on the ground that Section 191-A of the National Internal Revenue Code which was the basis for the assessment and collection of the caterer's tax against it never became a law because Section 42 of House Bill 17839 (later R.A. 6110), which inserted in the Tax Code a new Section 191-A imposing a caterer's tax of 3% on the gross receipts of restaurant operators, was allegedly vetoed by President Marcos on August 4, 1969.

The Commissioner of Internal Revenue failed to act on the petitioner's claim for refund. On January 20, 1979, before the claim had prescribed, the Manila Hotel Corporation filed CTA Case No. 2991.

On January 22, 1979, the Hotel received a letter dated January 11, 1979 from the Commissioner of Internal Revenue denying its claim for refund.

On February 2, 1988, the Court of Tax Appeals rendered the assailed decision in favor of the Hotel. It found that Congress has not taken any step to override the presidential veto of the proposed Section 191-A of the National Internal Revenue Code, hence, Section 191-A did not become a law; there was no legal basis for collecting the caterer's tax.

The petitioner, on the other hand, alleged that the CTA failed to consider the then current and subsequent legislations on the caterer's tax.

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We have carefully examined the pleadings and are persuaded that the petition is meritorious. The Manila Hotel may not claim a refund of the caterer's tax that it paid on January 20, 1977 to April 20, 1978 because the assessment and collection of the tax were lawful.

The payment of a caterer's tax was first required by law when Rep. Act No. 2376 was approved on June 2, 1959 (55 O.G. 6936) amending Section 191 of the Tax Code by providing that caterers in addition to keepers of restaurants, refreshment parlors and other eating places, should pay a 3% tax on their gross receipts.

"SEC. 191. xxx xxx xxx

"Keepers of restaurants, refreshment parlors and other eating places, except those inside public market places, *and caterers*, shall pay a tax of three *per centum* of their gross receipts. Keepers of bars and cafes where wines or liquors are served shall pay a tax of seven *per centum* of their gross receipts: *Provided, however,* That two sets of sales or commercial invoices or receipts serially numbered in duplicate shall be separately prepared and issued, one for each sale of food or refreshment served and another for each sale of wine or liquor served, the originals of which shall be issued to the purchaser or customer. Where such establishments are maintained within the premises or compound of a race track or *jai-alai* or are accessible to patrons of such race track or *jai-alai* by means of a connecting door or passage, the keepers of such establishments shall pay a tax of twenty *per centum* of their gross receipts. Where the establishment is maintained within the premises of a cabaret or night club, or is accessible to patrons thereof by means of a connecting door or passage, the keeper of the establishment shall pay a tax of ten *per centum* of the gross receipts."

In 1969, Congress passed House Bill No. 17839, Section 48 of which provided as follows:

"Sec. 48. A new section is hereby inserted between Sections one hundred and ninety-one and one hundred ninety-two, to be known as Section one hundred and ninety-one-A which shall read as follows:

'Sec. 191-A. *Caterer.* A caterer's tax is hereby imposed as follows:

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(1) On proprietors or operators of restaurants, refreshment parlors and other eating places, including clubs, and caterers, three per cent of their gross receipts.

(2) On proprietors or operators of restaurants, bars, cafes and other eating places, including clubs, where distilled spirits, fermented liquors, or wines are served, three per cent of their gross receipts from sale of food or refreshments and seven per cent of their gross receipts from sale of distilled spirits, fermented liquors or wines. Two sets of commercial invoices or receipts serially numbered in duplicate shall be separately prepared and issued, one for sale of refreshments served, and another for each sale of distilled spirits, fermented liquors or wines served, the originals of the invoices or receipts to be issued to the purchaser or customer.

(3) On proprietors or operators of restaurants, refreshment parlors, bars, cafes and other eating places which are maintained within the premises or compound of a *hotel, motel, resthouse*, cockpit, race track, *jai-alai*, cabaret, night or day club by means of a connecting door or passage twenty per cent of their gross receipts.'

"Where the establishments are operated or maintained by clubs of any kind or nature (irrespective of the disposition of their net income and whether or not they cater exclusively to members or their guests) the keepers of the establishments shall pay the corresponding tax at the rate fixed above." (pp. 33-34, *Rollo.*)

In the consolidated tax bill bearing the same number H.B. 17839, Section 48 was renumbered as Section 42.

On August 4, 1969, the President of the Philippines sent the following veto message (Exhs. E, E-1), insofar as Sec. 42 is concerned, to the House of Representatives where the bill originated.

MALACAÑANG
Manila

August 4, 1969

"Gentlemen of the House
of Representatives:

"I have the honor to inform you that I have this day signed H.B. No. 17839, entitled:

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'AN ACT AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED'

"Pursuant to the provisions of Section 20-(3), Article VI, of the Constitution, however, *I have vetoed the following items in this bill*:

xxx xxx xxx

p. 44, SEC 42. Inserting a new Section 191-A which imposes a caterer's tax of three percent of the gross receipts of proprietors or operators of restaurants, refreshment parlors and other eating places; three percent of gross receipts from sale of food or refreshment and seven percent on gross receipts from the sale of distilled spirits, fermented liquors or wines, on proprietors or operators of restaurants, bars, cafes and other eating places, including clubs, where distilled spirits, fermented liquors, or wines are served; and twenty percent of gross receipts on proprietors or operators of restaurants, refreshment parlors, bars, cafes and other eating places maintained within the premises or compound of a hotel, motel, resthouse, cockpit, race track, *jai-alai*, cabaret, night or day club, or which are accessible to patrons of said establishments by means of a connecting door or passage.

'The burden of taxation will be shifted to the consuming public.

'The development of hotels, essential to our tourist industry, may be restrained considering that a big portion of hotel earnings comes from food sale. x x x'

"This bill, H.[B.] No. 17839, has become Republic Act No. 6110.

"Respectfully,

"(SGD.) FERDINAND E. MARCOS
(pp. 35-36, *Rollo*.)

Apparently, Congress understood the presidential veto to have referred only to the higher caterer's tax (20%) on hotels, motels and resthouses provided in paragraph (3), Section 191-A of the Tax Code, for when H.B. 17839 was enacted into law (Rep. Act No. 6110) and published in Volume 66 of the Official Gazette issue of May 4, 1970, pp. 4505, 4531, Section 191-A was there in its entirety, except the words "hotel, motel and resthouse" which were struck off from paragraph (3) of Section 191-A. Thus, Section 191-A of Rep. Act No. 6110 provides as follows:

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"SEC. 191-A. *Caterers*. A caterer's tax is hereby imposed as follows:

"(1) On proprietors or operators of restaurants, refreshment parlors and other eating places including clubs, and caterers, three per cent of their gross receipts;

"(2) On proprietors or operators of restaurants, bars, cafes and other eating places, including clubs, where distilled spirits, fermented liquors, or wines are served, three per cent of their gross receipts from sale of food or refreshments and seven per cent of their gross receipts from sale of distilled spirits, fermented liquors or wines. Two sets of commercial invoices or receipts serially numbered in duplicate shall be separately prepared and issued, one for each sale of food or refreshment served and another for each sale of distilled spirits, fermented liquors or wines served, the originals of the invoices or receipts to be issued to the purchaser or customer.

"(3) On proprietors or operators of restaurants, refreshment parlors, bars, cafes and other eating places which are maintained within the premises or compound of a cockpit, race track, *jai-alai*, cabaret, night or day club or which are accessible to patrons of such cockpit, race track, *jai-alai*, cabaret, night or day club by means of a connecting door or passage, twenty per cent of their gross receipts.

"Where the establishments enumerated above are operated or maintained by clubs of any kind or nature (irrespective of the disposition of their net income and whether or not they cater exclusively to members or their guests) the keepers of the establishments shall pay the corresponding tax at the rates fixed above."

P.D. 1158, otherwise known as the National Internal Revenue Code of 1977 which was approved on June 3, 1977 (73 O.G. 9093) also provided for the caterer's tax in Section 206 thereof, as follows:

"SEC. 206. *Caterers*. — A caterer's tax is hereby imposed as follows:

"(1) On proprietors or operators of restaurants, refreshment parlors and other eating places, including clubs and caterers, three per cent of their gross receipts;

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"(2) On proprietors or operators of restaurants, bars, cafes and other eating places, including clubs, where distilled spirits, fermented liquors or wines are served, three per cent of their gross receipts from sale of food or refreshments and seven per cent of their gross receipts from sale of distilled spirits, fermented liquors or wines. Two sets of commercial invoices or receipts serially numbered in duplicate shall be separately prepared and issued, one for each sale of food or refreshment served and another for each sale of distilled spirits, fermented liquors or wines served, the originals of the invoices or receipts to be issued to the purchaser or customer:

"(3) On the proprietors or operators of restaurants, refreshment parlors, bars, cafes and other eating places which are maintained within the premises or compound of a cockpit, race track, *jai-alai*, cabaret, night or day club or which are accessible to patrons of such cockpit, race track, *jai-alai*, cabaret, night or day club by means of a connecting door or passage, twenty per cent of their gross receipts.

"Where the establishments enumerated above are operated or maintained by clubs of any kind or nature (irrespective of the disposition of their net income and whether or not they cater exclusively to members or their guests), the keepers of the establishments shall pay the corresponding tax at the rates fixed above."

On February 8, 1978, the caterer's tax in Section 206 of the Tax Code was amended by P.D. 1299 which imposed a 10% caterers tax on operators of restaurants inside a cockpit, 12% on those who operate inside a cabaret or club, and 20% on those who operate inside a *jai-alai* or race track, as follows:

"SEC. 206. *Caterers.* — A caterer's tax is hereby imposed as follows:

"(1) On proprietors or operators of restaurants, refreshment parlors and other eating places, including clubs and caterers, three per cent of their gross receipt;

"(2) On proprietors or operators of restaurants, bars, cafes and other eating places, including clubs, where distilled spirits, fermented liquors or wines are served, three per cent of their gross receipts from the sale [of] food or refreshments and seven per cent of their gross receipts from sale of distilled spirits, fermented liquors or wines. Two sets of commercial invoices or receipts serially numbered in duplicate shall be separately prepared and issued, one for each sale

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of food or refreshment served and another for each sale of distilled spirits, fermented liquors or wines served, the originals of the invoices or receipts to be issued to the purchaser or customer;

"(3) On proprietors or operators of restaurants, refreshment parlors, bars, cafes and other eating places which are maintained within the premises or compound of a cockpit, cabaret, night or day club, *jai-alai,* race track, or which are accessible to patrons of such cockpit, cabaret, night or day club, *jai-alai*, race track by means of a connecting door or passage, *ten per centum* in the case of cockpit, *twelve per centum* in the case of cabaret, night or day club, and *twenty per centum* in the case of *jai-alai* and race track, of their gross receipts.

"Where the establishments enumerated above are operated or maintained by clubs of any kind or nature (irrespective of the disposition of their net income or whether or not they cater exclusively to members or their guests), the keepers of the establishments shall pay the corresponding tax at the rates fixed above."

The power of the State to impose the 3% caterer's tax is not debatable. The Court of Tax Appeals erred, however, in holding that the tax was abolished as a result of the presidential veto of August 4, 1969. It failed to examine the law then, and up to now, existing on the subject which has always imposed a 3% caterer's tax on operators of restaurants. Since the Manila Hotel operates restaurants in its premises, it is liable to pay the tax provided in paragraph (1), Section 206 of the Tax Code.

WHEREFORE, the petition for review is granted. The decision of the Court of Tax Appeals in CTA Case No. 2991 is annulled and set aside, and the claim of the respondent Manila Hotel Corporation for a refund of its payment of the caterer's tax in 1977 to 1978 is dismissed. Costs against the private respondent.

SO ORDERED.

Narvasa (Chairman), Cruz, Gancayco, and *Medialdea, JJ.*, concur.