

Legal Alert for August 2010 ? **New Local Government Approved Taxes Levies Law**

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Legal News

Effective 1st September 2010, the Honourable Minister for the Federal Ministry of Commerce and Industry has, in the exercise of his duties as provided for in Section 45(1)(e) of the Trademarks Act, approved an upward review of the fees charged for Trademark, Patent and Design registrations at the Trademark, Patent and Designs Registry.

New Lagos State Local Government Approved Taxes/Levies Law

The controversy over the division of the taxing powers of the three tiers of government with the resulting multiple taxation thereof remains unabated in a Nigerian economy that seeks to improve and encourage existing businesses while attracting new direct foreign investments. Cases of the indiscriminate imposition of taxes and levies particularly by the local government councils, who are left with the least revenue from the federation account, remain abound.

To address the above problem and assist businesses, the Lagos State Government recently passed into law, the Local Government Levies (Approved Collection List) Law to among other things:-
(a) prescribe the levies that can be imposed and collected by Local Government Councils in Lagos State and (b) to regulate the administration of such prescribed levies in Lagos State.

The effort of the Lagos State Government, through the above mentioned law, is to address complaints, especially from the private sector, over the unlawful collection of levies with the resulting multiple taxation, and also to address various superior Courts of record decisions that held that the existing local government laws, on levies that were collected by some Local Governments in the country, were unconstitutional, null and void.

This Alert will provide you with a synopsis of one of such Superior Courts of record decisions on this vexed issue with a further synopsis on the provisions of the new Lagos State Local Government Levies (Approved Collection List) Law which took effect from 12th July 2010.

1st Synopsis ? Eti-Osa Local Government v. Rufus Jegede & Anor - CA/L/453/2002.

The Respondent in this appeal, at the Lower Court, challenged the competence of the Appellant Local Government Council to make a law imposing taxes and levies that are outside the

provisions of the Fourth Schedule to the 1999 Constitution and also outside the provisions of Part 111 of the Taxes and Levies (Approved List for Collection) Act, 1998. The Lower Court held that the Appellant Local Government Council had no legislative powers of its own to impose or determine taxes and levies which are outside the enabling 1998 Taxes and Levies (Approved List for Collection) Law. Where however there exist some residual legislative power to collect certain taxes and levies, such residual legislative power must be exercised in conformity with the provisions of the 1998 Federal law, i.e. the Taxes and Levies (Approved List for Collection) Act, 1998.

The Appellant was dissatisfied with the decision of the Lower State High Court and appealed, as was its right, to the Court of Appeal. The Court of Appeal, in its unanimous decision, upheld the decision of the lower State High Court and held that the inherent power of any tier of government to legislate on and impose any form of tax or levy cannot be left at large, or at the whim and caprice of any tier of government, but according to the existing laws of the Federal Republic of Nigeria. The Court of Appeal also, obiter dictum, reiterated the age long principle that "..... over taxation resulting from *lessez-affaire* tax doctrine could be counter productive."

2nd Synopsis - Lagos State Local Government Approved Levies for Collection Law, 2010

This Law authorises all Local Government Councils with their Local Government Development Authorities or any other administrative unit established by Law at the local government level of the State to collect any of the following levies which are enumerated in the Schedule to this Law:-

- (1) Shops and kiosks rates.
- (2) Approved open market levy.
- (3) Tenement rates.
- (4) Licensing fee for sale of liquor.
- (5) Slaughter slab license fee in abattoirs under local government control.
- (6) Marriage, birth and death registration fees.
- (7) Street naming registration fee.
- (8) Motor Park levy (Including Motor cycles and Tri-cycles).
- (9) Parking fee on local government streets or roads as may be approved by the State Government.
- (10) Domestic animal licence fee (Excluding poultry farmers).
- (11) Licence fees for bicycles, trucks, canoes, wheelbarrows and charts (other than a mechanically propelled trucks).
- (12) Radio and Television licence fee (excluding radio and television in motor vehicles, transmitters and other communication equipment)
- (13) Public convenience, sewage and refuse disposal fees.

(14) Cemetery and burial ground permit fee.

(15) Permit fee for private entertainment and merriment in public places (excluding roads and streets).

(16) Wharf landing fees.

Subject to Section 13 of this law, no levy shall be charged and collected by a Local Government Area or by a Local Government Development Authority save or except for the levies enumerated above.

To ensure that the disparity or differences in the rates of the levies charged by each Local Government Authority in comparison to other Local Government Authorities is minimised, the State Joint Revenue Committee is enjoined to carry out a periodic review of the rates charged and issue directives that will seek to harmonise the rates as closely as possible to each Local Government Authority's area as possible.

To further ensure transparency, which leads to greater tax compliance, each Local Government Revenue Committee is enjoined to publish at a conspicuous place in all revenue offices of the Local Government Authority, a chart of the approved list of levies with the applicable rates, and the expected time of payment of these levies.

To address the controversy over the appointment of private tax consultants, this law requires that private tax consultants can only be engaged by a local authority where such an authority does not have the personnel with appropriate knowledge or skill to optimally administer the levy or where two or more local authorities by mutual agreement, delegate the authority to administer any levy to a common private tax consultant whether or not the position of such a private tax consultant is established by a law of the Lagos State Government. The collection of the scheduled approved levies by any other unauthorised person shall be unlawful and punishable under this Law, as highlighted hereunder.

This Law further seeks to make unlawful the erection of road blocks and road closures by any Local Government official purportedly for the purpose of collecting the approved list of levies.

OFFENCES

Any person who collects or attempts to collect any levy that is not listed in the Schedule to this Law or does so without due authority and identification, or mounts a road block, or causes a road or street to be closed for the purpose of collecting any levy commits an offence and shall be liable on conviction to pay a fine of N500,000.00 (Five Hundred Thousand Naira) only or to imprisonment for a term of three (3) years or to both the fine and the term of imprisonment.

It is equally an offence for any person or agency to demand from any other person an amount in excess of the applicable levy or to fail to remit the revenue collected when due, or who withholds

such revenue for his own use, or renders a false return or defrauds any person or embezzles any money or steals or misuses Local Government Authority documents, or compromises on the assessment or collection of any levy, or commits any of these offences which shall on conviction attract a penalty of five hundred percent (500%) of the sum in question and a term of imprisonment for three (3) years.

Where the offending person is armed with an offensive weapon or causes injury to any officer or authorised agent of the Local Government Authority in the performance of their duties, this offence on conviction attracts a term of imprisonment of three (3) years. Where injury results from this felony, the term of imprisonment on conviction is five (5) years. Aiding and abetting the contravention of the provisions of this Law attracts a fine equivalent to 400% (Four Hundred Percent) of the sum in question and imprisonment for a term of two (2) years. The impersonation of the character of an authorised revenue agent shall in addition to any other punishment enumerated herein attract a fine of Two Hundred and Fifty Thousand Naira (N250,000) or a term of imprisonment of three years or to both the fine and the term of imprisonment.

CONCLUSION

There is a rather curious provision at the end of the Lagos State Local Government Levies (Approved Collection List) Law, 2010 and this is Section 13. Section 13 of this Law provides as follows: "Nothing in this Law shall be construed as prohibiting a Local Government Authority from enforcing penalties stipulated for breach of its bye-laws or charging fees as may be approved by the State Joint Revenue Committee for the use of the Local Government properties, public utilities established and maintained by the Local Government or Services rendered by the Local Government or its officials to particular individual and organisation.

The commendable effort of this law to bring clarity and certainty to what taxes and levies Local Government Authorities are permitted to collect in Lagos State may be compromised by the above Section 13 of this same Law. Section 13 does not follow the decision in the decision of *Eti-Osa Local Government Area v. Rufus Jegede* (supra) where the Court of Appeal held that the taxing power of any tier of government cannot be left at large or at the whim and caprice of any tier of Government but according to the provisions of the 1999 Constitution and the 1998 Taxes and Levies (Approved List For Collection) Act. The amendment or outright expunging of Section 13 of this law is highly therefore recommended.

The second comment must be that save for Section 13 of this Law, it is not immediately discernable what new practical mechanism are in place or will be put in place to re-orientate the correct implementation of this Law in Lagos State to serve as an equitable model for other States in the federation, to emulate.

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