



Draft Paper Presented at 49th Annual Nigerian Association of Law Teachers (NALT) Conference
**GOVERNANCE OF STATE INTERNALLY GENERATED REVENUE IN NIGERIA: KWARA
AND LAGOS STATES AS EXAMPLES**

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ABSTRACT

The study investigates the legal challenges in the administration of Internally Generated Revenue in two selected states in Nigeria. The methodology adopted is doctrinal. The study found that though there were many sources of revenue but the most reliable and enduring source is taxation. It further found that taxes and other revenue sources are besotted with varied legal as well as other challenges which militate against compliance; and also the desperation of the states made them to promulgate laws which are ultra vires their respective powers. The study recommends that the state should make laws within their powers and also assess the taxpayers' economic conditions prior to fixing taxes and levies.

INTRODUCTION

The dwindling oil revenue, increasing cost of governance, waste, corruption and neglect of other resources gave rise to the inability of government to meet the basic needs and particularly infrastructural needs of the country. What follows is therefore desperation by the different tiers of governments to raise funds. This desperation reached a high crescendo when most of the state governments became insolvent, thereby had to access bailout fund from the federal government which in any case was unable to clear the financial woes of the states.¹ This among others led to aggressive revenue drive by the state governments. The state governments generate revenue from various sources such as, government owned corporations, rent from lease of assets, sales of assets (non-tax revenue) and taxation. Taxation has a lot of advantages over other forms of revenue sources. Thus, the importance of tax in the life of a state cannot be over emphasized, as the state requires fund to meet its multifarious expenditure needs. Taxation is a major means of generating the required fund to maintain, develop and nurture social economic development programmes. This made

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¹see <http://sunnewsonline.com/cbn-approves-n20b-bailout-for-kogi/> accessed 1 May 2016.



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Dongban-Mensem JCA to say that government, especially of a nation and taxation are essential bed fellows.²

Oil revenue has been the mainstay of the Nigerian economy since the 70s. The revenue derived from agricultural produce which was the driving force of economy in the first republic noose dived as the emphasis shifted to oil. In the first republic, the regional economies (North, East, West and Mid-West) were export oriented based on agricultural products.

The global economic recession, the adoption of alternative energy sources and the consequential reduction in oil receipts has continued to put enormous financial pressure on both the federal and state governments. The drastic reduction in the monthly allocation to most of the states, led to the renewed drive for alternative sources of revenue.

BRIEF LITERATURE REVIEW

Ipaye³ stated that tax, 'embraces all governmental impositions on the person, property, privileges, occupations, and enjoyment of the people, and includes duties, levies and imposts. However, it normally excludes penalties, administrative fees and direct user charges.'

While Etuk-Udo⁴ defined revenue as an income from both the fixed asset and current asset. Accordingly, fixed asset is an asset which is expected to last more than one year and it is for future benefit; while current assets are those assets that last for less than a year and can be converted to cash immediately. Revenue are conceived in this case as the fund required by the government to finance its activities. These funds are generated from different sources such as taxes, borrowing, fine, fees etc. States revenue comprises of receipts from taxation as well as those which are not the proceeds of taxation, (realization from the sale of government properties or other interests and returns from loans and investment earning). Public revenue is concerned with various ways in which the government raises revenue.⁵ Hepworth⁶ described revenue as an income or funds raised to meet expenditure. Fayemi⁷ conceived public revenue as all the means by which government acquire income such as taxes, rates, fees, fines, duties, penalties, rents, dues, proceeds and other receipt of government to which the legislature has the power of appropriation. He classified government revenue into recurrent and capital revenue. Sources of state governments' fund in Nigeria are internally generally generated and allocations from the Federation Account.

Internally generated revenue are those revenues that are derived within the state from various sources such as taxes (pay as you earn, direct assessment, capital gain taxes, etc.), and motor vehicle

²*Eti-Osa Local Government v Jegede* (2007) 10 NWLR (Pt. 1043) @537

³Ipaye A. 'Multiple Taxation: Lagos State Government Assessment and Response' available online on <http://www.nigeriadevelopmentandfinanceforum.org/PolicyDialogue/Dialogue.aspx?Edition=2> accessed 3 February 2015

⁴Etuk-UdoU, 'Principle of Account for West Africa'(Oxford University Press, Ibadan 1973)

⁵Adenugba A.A &Chike Faith Ogechi 'The Effect of Internal Revenue Generation on Infrastructural Development: A Study of Lagos State Internal Revenue Service' Journal of Educational and Social Research Vol. 3 (2) May 2013 p 420-421.

⁶Hepworth N.P, 'The Finance of Local Government' (Gorge Allen, London 1976).

⁷Fayemi, O. A, 'Principle of Local Government Accounting' (Chapter Ten Publication Ltd, Yaba – Lagos 1991).



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license, among others. The statutory allocation from Federation Account, proceeds of Value Added Tax (VAT) and sovereign funds constitute the external source. Most states of the federation get the bulk of their revenue in form of statutory allocation from the federation account to finance their expenditure programme. It is important to state that of all the different means of generating revenue taxation is the most reliable and self-sustaining. Thus, it is imperative to define tax and distinguish it from other sources of internally generated funds.

THE CONCEPT OF TAXATION

Section 69 of the Federal Inland Revenue Service (Establishment) Act, 2007 defined tax to 'include any duty, levy or revenue accruable to the government in full or in part under this Act, the laws listed in the First Schedule to this Act or any other enactment or law'.⁸ Other definitions by policy makers appointed by the Federal Government of Nigeria include: tax is a 'pecuniary burden laid upon individuals or property to support government expenditure; a tax is not a voluntary payment or donation, but an enforced compulsory contribution, exacted pursuant to legislative authority and is any contribution imposed by government, whether under the name of duty, custom, excise, levy or other name'.⁹ Tax has been defined as a monetary charge on a person's or entity's income, property or transaction and it is normally collected by a defined authority at the state or federal level.¹⁰ These definitions suffer some deficiencies; it is a rehash of other definitions. It fails in some cases to specify the purpose for which the collection is intended, its compulsory nature and that it need not to be monetary.¹¹ Also, it falls short of distinguishing between tax and other related terms.

In *Mathews v Chicory Marketing Board*,¹² Latham CJ define tax as 'a compulsory exaction of money by a public authority for public purposes, enforceable by law and is not a payment for service rendered'. This was criticised in *Air Caledonie v International Commonwealth*¹³ by Mason CJ and others, that Latham's definition is not exhaustive in that tax could be an exaction other than money; it could be imposed under statutory powers by non-public authority and for purposes which is not properly public.¹⁴ The position of Mason *et al*, in this case seem to overextend the meaning of tax.

Morabito and Barkoczy¹⁵ posited using cases¹⁶ that any compulsory exaction of money under statutory powers including transfer constitutes a tax, but does not include a levy imposed for the purpose of conserving a finite and public natural resource.

In *United States v Butler*,¹⁷ taxation is defined as an exaction for the support of the government. This definition failed to signify the compulsory nature of tax and its exacting authority.

⁸ See generally Federal Inland Revenue Service (Establishment) Act No. 13 of 2007

⁹ National Tax Policy Federal Ministry of Finance (FGN Publications, Abuja April 2012) 1

¹⁰ Final Draft of the National Tax Policy for Nigerian submitted by CITN to the Federal Executive Council p 6.

¹¹ 'What is Tax? Erosion of the Latham Definition' p 47; *Air Caledonie International v Commonwealth* (1988) 165 CLR 462

¹² 1938 60 CLR 263 @ 276 This definition was based on the Privy Council in *Lower Mainland Dairy Products Sales Adjustment Committee v Crystal Dairy Ltd* (1933) AC 168 @ 175.

¹³ 1998 165 CLR 462 @ 467 Per Mason CJ, Wilson Brennan, Deane, Toohey and Gaudron

¹⁴ 'What is Tax? Erosion of the Latham Definition' p 47

¹⁵ Ibid 52

¹⁶ *Australian Tape Manufacturers Association v Commonwealth* (1993) 176 CLR 480 @ 523 per Dapson and Toohey J. McHugh J.



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The overwhelming and awesome nature attributed to tax made Judge Marshall to pronounce that the power to tax involves the power to destroy.¹⁸ Another judge in his famous dictum perhaps in response to Judge Marshall stated that 'the power to tax is not the power to destroy while this court sits'.¹⁹ Oyebanji²⁰ defines tax as a compulsory levy by the government of any country, through an appropriate agency on all income, goods, services and properties of an individual, partnership, executors, trustees and corporate bodies. Tax was also defined as a charge on a person's income or property.²¹ Taxation is a compulsory levy on the subjects for the support of the government²² essentially tax is not a donation or voluntary payment but an enforced contribution payable pursuant to a legislative authority.²³

Ipaye,²⁴ draws attention to salient points which is, that it is better to look at the essential characteristics of tax rather than defining it. It remains a tax even if called by other names such as toll, duty, customs, excise, aid or any other such names.²⁵ Taxes are principal ways of financing government expenditure. It is a compulsory payment which does not necessarily bear any direct relationship to the benefits of government goods and services received.²⁶ Taxation may be defined as 'any exaction of money or revenue, by the authority of a State, from its subjects or citizens and others within its jurisdiction, for the purpose of defraying the cost of government [and] promoting the common welfare ... Taxation may assume various shapes, and be known by different names ... The term taxation covers every conceivable exaction which is possible for a government to make, whether under the name of a tax, or under such names as rates, assessments, duties, imposts ...'.²⁷

A tax in technical term has four main characteristics as portrayed in the above definitions. First, taxation can only be imposed by government pursuant to express statutory authorization. Taxation is statutory, neither the executive nor judiciary could impose tax on the subject hence the power to tax cannot be inferred.²⁸ Secondly, it is for public purposes. A public purpose is defined as an action by or at the direction of a government for the benefit of a community as a whole.²⁹ Taxes collected are appropriated by the legislature based on the budget submitted by the executive. All the revenue raised by the federation (tax inclusive) is paid into the consolidated revenue fund which is

¹⁷ 297 US 1 (1936)

¹⁸ *McCulloch v. Maryland* 17 US 4 Wheat 316, 431 (1819) per John Marshall (J)

¹⁹ *Panhandle Co Ltd v Mississippi ex rel Knox* 277 U.S 218, 223, (1928)

²⁰ Oyebanji J.O, *Principles and Practices of Taxation* (Frontline Publisher, Lagos 2002) 2.

²¹ The New Webster Dictionary International Edition (2000) p 1014

²² AkanleO, 'Financing the States -The Constitutionality of the Sales Tax Laws' (Paper Presented at the Nigerian Institute of Advanced Legal Studies Staff Seminar Series, Lagos 1983)

²³ *Michigan Employment Securities Commission* 4 Michigan Appeal 244 144 NW 2nd arc 663, 665

²⁴ Ipaye A. 'Nigerian Tax Environment' p 4.

²⁵ Ibid p 4

²⁶ Hyman D. N, *Public Finance: A Contemporary Application of Theory to Policy* (3rd Edition OUP, London 1990)

²⁷ John Quick and Robert Randolph Garra, *The Annotated Constitution of the Australian Commonwealth* (Melville & Mullen, 1901) 550.

²⁸ Sanni A.O Taxation 'In the Guise of Administrative Charges – Imperative of Curbing Abuses of Regulatory Power for Revenue Purposes in Nigeria', *Current Law Series* 1(1) 1 @ 4.

²⁹ Garner Bryan A. *Black Dictionary* 7th Ed (1999) West Group St. Paul Min p 124 cited in 'Tax v Fee Controversy Revisited: NCC Annual Operating Levy as a case study' 290; see McCllain E, 'Constitution Law in the U.S. -What is Public Purpose' available online at http://chestofbooks.com/society/law/Constitutional-Law-United-States_/71-What-Is-A-Public-Purpose.html#.UQu1YPKH_Bdg#ixzz2JeNxdxO accessed 10 August 2014



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appropriated for public purposes.³⁰ Thirdly, it is compulsory. Taxation is not a voluntary payment or a donation. Lastly, it must be contestable and amenable to judicial review when the circumstances dictate. Taxes may be classified into two categories. The first with regards to graduation of rates for instance -proportional,³¹ progressive³² or regressive.³³ The second is based on the person that bears the burden of the tax for instance, direct³⁴ and indirect taxes.³⁵

IGR SOURCES OTHER THAN TAXATION

The taxing power of a state in Nigeria can manifest in different forms such as special assessments, fees, taxes,³⁶ duties, fines and so on. The fact that all these arrays of levies just like tax deplete tax payers funds tend to give the impression that they are all taxes. A tax remains one, once it fulfills all the attributes of a tax, mentioned earlier. It may be described as duties, toll, tributes, customs, excise, subsidy, aid, supply or other names.³⁷ Tax must be distinguished from other similar terms which may be confused with it.

FEE

The term fee and charge are used interchangeably.³⁸ There is no statutory definition of fee.³⁹ It may however be described as a charge imposed by the government agencies for providing certain goods and services.⁴⁰ Duff⁴¹ defines a fee as a mandatory or voluntary levy imposed on a person deriving particular benefits from specific categories of publicly provided goods and services. Fees defined as a fixed sum charged, by an institution or by law, for a privilege such as a license or tuition.⁴²

Abere opined that the followings distinguished a fee from tax.⁴³ First, a fee is an imposition by way of subsidiary legislation, regulation or guidelines. Its enactment is by way of delegated legislation. A government agency is created by an enabling Act which specifies the name, composition, powers and functions of the agency. The Act may not authorise the agency to charge fees, however, the court has

³⁰ Section 80 CFRN 1999.

³¹ Taxpayer is assessed on a fixed percentage or a flat rate

³² This is aimed at re-distribution of wealth. Tax paid increases as income increases.

³³ This is seldom used, tax Decreases as income increases

³⁴ Tax imposed on taxpayers' income, profit, property e.g. personal income tax, company income tax, petroleum profit tax etc.

³⁵ Tax burden is shifted from the initial payee to the end consumer e.g. Value Added Tax, Sales Tax, Excise and Custom duties, stamp duties etc. taxes may also be classified as to the determination of the amount (specific and ad valorem) as to the purpose (general, fiscal, revenue or regulatory) as to the scope or authority imposing the tax (Federal, state, regional or local authority) and as to the subject matter or object (Personal, poll or capitation property and excise) see 'Tax v Fee Controversy Revisited: NCC Annual Operating Levy as a Case Study' p 291

³⁶ 'Tax v Fee Controversy Revisited: NCC Annual Operating Levy as a Case Study' p 287.

³⁷ 'Overview of Tax Environment: Issues and Challenges' 4; See also Bryan A.G. (ed.)Blacks' Law Dictionary 5th ed. West Publishing Company 1979, 1304; 'A Legal Analysis of Taxation of Banking Business in Nigeria 1990 -2010' p 50.

³⁸ *Teju Tax Reference Book* p 256, 748; 'Division of Taxing Powers in Nigeria- A Paradigm Shift' p 75.

³⁹ 'Tax v Fee Controversy Revisited: NCC Annual Operating Levy as a Case Study' p 291

⁴⁰ *Ibid. Teju Tax Reference Book* p 748

⁴¹ Duff, D.G. 'Benefit Taxes and User's Fees in Theory and Practice'. Paper submitted to Ontario Role of Government Panel, 2003 in 'Tax v Fee Controversy Revisited: NCC Annual Operating Levy as a Case Study' 291

⁴² Webster's New World College Dictionary available online at <http://www.yourdictionary.com/fee> accessed 12 July 2015.

⁴³ 'Tax v Fee Controversy Revisited: NCC Annual Operating Levy as a Case Study' p 292 – 296.



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implied that such agencies have power to charge fee irrespective of whether the Establishment Act specifically authorises the charging of fee or not⁴⁴ but, this must be by way of subsidiary legislation. Second, the fee must be deposited in a special funds account and not the consolidated fund like in taxation. The introduction of Treasury Single Account (TSA) is not a derogation of this principle in the view of this thesis. TSA is a bank account or a set of linked bank accounts through which the government transacts all its receipts and payments and gets a consolidated view of its cash position at any given time.⁴⁵ Thus, fees would be kept in a set of linked accounts, not be lumped with funds that shall be shared between the tiers of government for instance. The fees usually are for specific functions and to defray administrative and operational expenses. For instance, section 70 of Pension Reform Act⁴⁶ allowed Pension Fund Administrators, Pension Fund Custodians and National Pension Commission to charge administrative fee for its services to be fixed by National Pension Fund Commission, which is currently fixed at 2%, 0.6% and 0.4% of the total pension assets in the custody of each organization respectively.⁴⁷ Thirdly, fee must be reasonable. The government agency may charge to fully or partly recoup its administrative and operational expenses. Fee assessed must be fair, based on value to the users- public, the cost of service to the community and other relevant factors.⁴⁸

Case law has established that: a service must be provided directly to the individual for any charge to arise.⁴⁹ Fee or charge must be related to the services rendered and not varied according to the users' ability to pay or the value of his property.⁵⁰ It was thus held that probate fee that vary with the value of the deceased estate are taxes, not fees.⁵¹ These are identified as the essential attributes of a fee; first, that it is paid in exchange for a service rendered or benefit derived, for instance, paying a road toll, paying for an international passport. Second, that there is reasonable relationship between the amount of fee and the value of the service rendered or the benefit derived. Third, that unlike taxes, fees are not compulsory. People who elect not to patronize the agencies providing a particular service are exempted from paying. For instance persons who elect to take the alternative routes instead of the routes where tolls are charged are exempted from paying. Administrative fees, users' fee, license fees, regulating fees, fines and special assessment are merely different classes of fees.⁵²

Fee in Nigeria is tied to 'indigeneship' as section 14 of the 1999 Constitution recognises federal character by advocating the allocation and access to public office and facilities be open and shared by all Nigerian citizens, even at the expense of competence and without meeting the minimum qualification. Federal character is a legal weapon put in place to regulate appointments, promotions,

⁴⁴*Independent National Electoral Act (INEC) v Musa* (2003) 10 NWLR 1

⁴⁵Eme, O. I, Chukwurah D. C & Iheanacho E. N, 'An Analysis of Pros and Cons Treasury Single Account Policy in Nigeria' (2015) 5(4) Arabian Journal of Business and Management Review 20.

⁴⁶ Cap P7 LFN 2004

⁴⁷ See generally Animashaun O.O, 'Annotation of Pension Fund Act' in Atilola B (ed) *Annotated Nigerian Labour Law* (Hybrid Consult, Lagos 2008) 262-266; *Maple View Estate Inc. v City of Brown City* 587 NW 2d 264 (1998) ;see also *Bolt v City of Lansing* 459 Mich. 152, 587

⁴⁸*Maple View Estate Inc. v City of Brown City* (supra) ; *Bolt v City of Lansing* (supra)

⁴⁹*Re: Tax on Foreign Legations and High Comrs' Residence* (1943) SCR 208

⁵⁰*Societe Centrale D' Hypotheques. v Cite D'Quebec* (1961) QLR 661; *Daymound v South Wales Water Authority* (1976) AC 609

⁵¹*Re: Eurig's Estate* (1998) 165 DLR (4th) 1,11

⁵² 'Tax v Fee Controversy Revisited: NCC Annual Operating Levy as a Case Study' p 296-297



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security of tenure and severance in every government department.⁵³ This though not justiciable was given legal teeth by the Federal Character Act.⁵⁴ Section 318 of the 1999 Constitution defines federal character. Most states in Nigeria have discriminatory fee for their indigenes *vis a vis* other national irrespective of whether the indigene is a resident or taxpayer in that state. Kwara State University for instance charge indigene N 99, 000 while it charges non-indigenes N 200, 000. This is irrespective of the fact that the parents of the non-indigene could be Kwara state residents and taxpayers while that of the indigene may reside and pay their personal income tax in another state or even outside Nigeria. In order to avoid this manacle many citizens resort to fraudulent claims of 'indigeneship' provided they could pass off as an indigene of that particular state.

LEVY

Levy is the imposition of (a tax or fine), to collect monies due, or to confiscate property to levy a tax; to raise or collect by assessment; to exact by authority.⁵⁵ Levy 'includes any fee and charges'.⁵⁶ A major distinction between a tax, for instance income tax and a levy is that while the former is based on the income of an individual or the taxable profit of a company, the latter is payable regardless of the income level or the taxable profit. Some notable levies in Nigeria include:

- i) Local Content Levy: this is based on the National Oil and Gas Industry Content Development Act.⁵⁷ This is calculated as a percentage of the contract sum.
- ii) Niger Delta Development Commission (NDDC) Levy: This is based on Niger Delta Development Commission (Establishment etc.) Act.⁵⁸ The levy is calculated as a percentage of the annual expenditure budget.
- iii) Industrial Training Fund Levy: This is calculated as a percentage of the projected tax saving as per Industrial Training Fund Act.⁵⁹

DUTY, FINES AND PENALTIES

This is a special form of tax usually associated with the custom and excise department. A payment levied by the state, particularly on certain goods and transactions.⁶⁰ It include import, export, death or succession and stamp duties. Duties are usually collected by a separate government agency. It is sometimes referred to as 'tariff'.⁶¹

These are monetary charges imposed by the judicial branch of Government or the state as a result of violation of the law or as a punishment for breaking a law. This is predicated on illegal behavior, the

⁵³Gberevbie D.E and andIbietan J, Federal Character Principle And Administrative Effectiveness In The Nigerian Public Service: Challenges And Prospects For Sustainable Development, 1999-2012 Journal of Sustainable Development in Africa (2013)15 (6) 47

⁵⁴ Decree No. 34 of 1996 now Cap F7 LFN 2004.

⁵⁵Webster's New World College Dictionary [available online at http://www.merriam-webster.com/dictionary/levy](http://www.merriam-webster.com/dictionary/levy) accessed May 10 2014.

⁵⁶ Section 4 Taxes and Levies (Approved for Collection) Act, 1998 Cap T2 LFN 2004

⁵⁷ National Oil and Gas Industry Content Development Act, 2010

⁵⁸ Cap N 86 LFN 2004.

⁵⁹ Industrial Training Fund Act Cap I 9 LFN 2004 as amended by Industrial Training Fund Amendment Act No. 108 of 2011.

⁶⁰ Martin E.A, Oxford Law Dictionary (5th ed. Oxford University Press, Oxford 2002)165

⁶¹Teju Tax Reference Book p 609



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need to regulate activities and ensure compliance such as parking violation, driving offences, unauthorized use of government property, late filing of tax returns, understatement of estimated tax and other such simple offences.⁶² In Australia it is usually referred to as infringement notice, which, is a penalty for breaking the law.⁶³ Tiley et al⁶⁴ opined that the difference between a tax and a fine may be obliterated in such matters as prevention of cigarette smoking. The difference is that the court could vary a fixed fine and enjoin against continued breach while tax cannot be varied.

LICENCE

A license is charged by a public authority to grant permission to a person to perform a service. The aim of license is to exercise state control over certain categories of activities or services. It is described as a charge imposed by governmental body for granting a privilege.⁶⁵ The court has held that TV licence is not a tax.⁶⁶ Motor vehicle license fee, broadcasting fee and GSM fee are common examples.⁶⁷

THE IMPORTANCE OF TAXATION TO THE STATE

The economic theorists propose a perfectly competitive economy where all allocation, production, distributive and exchange problems would be solved by the competitive process and in this self-regulatory circumstance, market would find its own balance, all goods and services would be supplied efficiently.⁶⁸ However, in reality this proposition is not true because markets are never in a state of perfect competition. Also this proposition of a perfectly competitive market ignores other factors that have serious socio-economic consequences such as social justice.⁶⁹

Although the correction of market imperfection is one of the rationale for taxation, the following also provides the *raison d'être* for taxation- the need for governments to: i) raise revenue; ii) redistribution of wealth; iii) management of the economy and iv) affecting behaviour.⁷⁰

2.0.2.1 RAISING REVENUE: The classical function of tax is the raising of revenue to meet government expenditure.⁷¹ Allan⁷² argues that the free market operates upon the twin principles of exclusion and revealed preference. Exclusion refers to a situation where, only those who could afford the market price of the goods are provided such goods, others are excluded from consuming those goods. Revealed preference, means that the market relies upon information disclosed by consumers about their preferences. They reveal this preference by their patronage of certain brands and the market arranges itself continually to attune itself to supply those revealed

⁶² Okonwo C.O, *Okonkwo and Naish- Criminal Law in Nigeria* (2nd ed. Spectrum, Ibadan 1990) 64-65

⁶³ Victoria State Government Justice and Regulation Report 'Fines and Penalties' available online at <http://www.justice.vic.gov.au/home/justice+system/fines+and+penalties/> accessed on 20 January 2016.

⁶⁴ Tiley J and Loutzenhiser G, *Revenue Law: Introduction to UK Tax Law; Income Tax; Inheritance Tax* p 7

⁶⁵ Garner B.A, *Black's Law Dictionary* 7th edition (West Group Paul, 1999)

⁶⁶ *Congreve v Home Office* (1976) QB 629

⁶⁷ Soyode L.P and Kajola S.O, *Taxation Principles and Practice in Nigeria* (Silicon Publishing Co., Lagos 2008) 3-4.

⁶⁸ Allan C.M, *The Theory of Taxation* (Penguin Books, London 1971)

⁶⁹ Waincymer J, *Australian Income Tax Principles and Policy* (2nd ed, Butterworths, Canberra 1993)

⁷⁰ Abdulrazaq M.T, *Revenue Law and Practice in Nigeria* (3rd ed. Malthouse Law Books, Lagos 2015) 1-2.

⁷¹ Ibid.

⁷² *The Theory of Taxation*



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preferences. These twin principles would be effective in organising the production, distribution and exchange of private goods, which are goods whose supply is finite and consumption by one person excludes others from consuming the same goods. However, market forces will be less able to provide efficiently for goods which do not adopt these twin principles, and which do not provide the necessary market information. Goods in this category are public goods.⁷³ There are four categories of public or social goods,⁷⁴ namely private public goods, impure public goods, merit goods and pure public goods. Private public goods are goods and services capable of being quantified and made contingent to payment in order to access it. Such goods include provision of water and electricity. Impure public goods are goods and services though of collective consumption, but are still capable of being quantified and users may be made to pay in order to access it. Toll payment for using a road is an example. Merit goods are, goods and services which are deemed to be 'beneficial' to their user- such as education, health foods, and so on. The problems in ensuring adequate supply through free market forces arise mainly because of the factors of ignorance and externalities.⁷⁵ People may make rational choices on goods which benefits and costs are easily comprehensible. It is easy, for instance, to do a cost-benefit analysis of the purchase of clothing or housing facilities for warmth and protection provisions, and thus quantify the extent of their needs for such products. However, the cost-benefit analysis of education to the individual and the society, for instance, is difficult to estimate.⁷⁶

Social goods⁷⁷ or pure public goods⁷⁸ are characterised by 'joint' (or 'non-rival') consumption and 'non-excludability',⁷⁹ benefit are not easily quantifiable and amenable to allocation to the beneficiaries. Examples of such include street lighting, defence, policing, international relations, provision of unpolluted air and rain water. Due to the nature of these goods, it must be provided by the state rather than by the market. This thesis adds another category which it termed 'forcibly provided public goods'. These are goods and services that could be assigned, easily distributable and paid for but which the individuals in a particular community are unwilling to pay for. The facility is however provided to the community because it is difficult, not practicable or inexpedient politically to enforce compliance or the detrimental effect which non-provision would have on the tax compliant neighbourhoods. Further, tax compliant individuals may need to pass through the particular community before getting to their destination. An example is the provision of free waste disposal facility or free pipe borne water to non-compliant neighbourhoods like *Mushin*⁸⁰ or *Idi-Ape* in Lagos and Kwara states respectively while other neighbourhoods are paying for the service. If this facility is not provided, the waste would be dropped in the drainage system. This could lead to blocking of the drainage, flooding of or the spread of epidemic which could affect others, including the tax compliant neighbourhoods.

⁷³ Ibid

⁷⁴ Taiwo I.O, 'Fiscal Federalism: A Theoretical Framework' in Fiscal Federalism and Nigeria's Economic Development (Selected Papers at the Annual Conference of the Nigerian Economic Society, Ibadan 1999) 5.

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ Ibid

⁷⁹ *The Theory of Taxation*

⁸⁰ A Lagos ghetto in between several business districts and posh residential areas



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2.0.1.2 REDISTRIBUTION OF WEALTH: Taxation is also required to enable governments to support those who cannot afford to pay what free market would supply. Even when the free market forces offer essential goods such as food, clothing, and education, there may be persons in the community who cannot afford to pay the market price for these goods. Yet to prevent restiveness and social upheavals in the society, it may be desirable to ensure that all citizens have access to and enjoy basic needs such as food, clothing and education. Taxation is used to achieve this aim. For example, by using tax revenues to fund the provision of health and Universal Primary Education (UPE) or by making cash grants to those in need or provision of waste disposal facilities for the homeless. Other methods of wealth redistribution include increase (decrease) of tax rates, abolishing allowances, tax transfer system and so on. This is seen as redistribution of income and wealth in order to correct social imbalance. This is essentially based on two principles.⁸¹ The first is the ability to pay, that is, the rich should bear the greatest tax burden. The second principle believes that the existing capitalist system is unjust and the redress is to tax the rich in order to reduce economic imbalance. This redistribution of wealth aspect of taxation has been severally criticised from varied quarters. Some authors⁸² and political philosophies⁸³ view taxation as theft, extortion, tyranny or as a violation of property rights of the citizens. The proponents accused the government of levying taxes through force and coercion. Williams,⁸⁴ stated 'Government income redistribution programs produce the same result as theft. In fact, that's what a thief does; he redistributes income. The difference between government and thievery is mostly a matter of legality.' Likewise, Rothbard⁸⁵ argued that taxation is theft and that tax resistance is therefore legitimate: 'Just as no one is morally required to answer a robber truthfully when he asks if there are any valuables in one's house, so no one can be morally required to answer truthfully similar questions asked by the State, e.g., when filling out income tax returns.'⁸⁶

2.0.1.3 MANAGEMENT OF THE ECONOMY: Free market forces may create within the wider social spectrum other market imperfections requiring correction. Examples include monopolies or oligopolies, which may set prices and supply levels arbitrarily at sub-optimal levels, and wasteful competition, as where competing airlines use the same routes at the same time, with each company operating at less than optimal capacity. Although there are other methods that are equally effective in correcting free market imbalances.⁸⁷ Similarly, taxation may be used to accelerate the rate of economic growth by using tax subsidies to correct investors' ignorance of long-term external benefits of

⁸¹ Abdulrazaq M.T, *Revenue Law and Practice in Nigeria* (3rd ed. Malthouse Law Books, Lagos 2015) 3

⁸² Chodorov F, *The Autobiography of an Individualist* (The Devin-Adair Company, New York 1962) 216-239; Napolitano, A. B, *It Is Dangerous to Be Right When the Government Is Wrong: The Case for Personal Freedom* (Thomas Nelson Inc., New York 2011) 221–225; Samuels, L.K, *In Defense of Chaos: The Chaology of Politics, Economics and Human Action Review* (Coden Press, Apple Valley 2013) 308–309

⁸³ The schools of thought are known as Voluntaryists, Individualist Anarchists, Objectivists, Anarcho-Capitalists, Libertarians, [Autarchists](#) and [minarchists](#).

⁸⁴ Williams Walter E, 'Government Theft, American-style' WorldNet Daily (06 August 2008) - Professor of Economics at George Mason University, USA.

⁸⁵ Rothbard M.N, *The Ethics of Liberty* (New York University Press, NY 1998)

⁸⁶ Ibid

⁸⁷ This include: correcting consumer ignorance through advertising and labelling laws; controlling demerit goods through quotas, or food and other health restrictions; controlling location of dangerous industries through zoning laws; and controlling or prohibiting monopolies, price fixing and other "undesirable" market dealings through trade practices and similar legislation.



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investments. Economic stability may be maintained by using tax to smoothen out trade cycle, manage the detrimental effect of huge booms and deep recession or reduce inflation or unemployment. Taxes may be increased and/ or subsidies lowered when excess private expenditure threatens to cause inflation. Also, a tax system may be manipulated to provide effective and flexible instruments to achieve specific economic objectives of government. Tax incentives are an important consideration in the planning of savings and investments for businesses as well as a powerful weapon to plan and direct the economy.⁸⁸

2.0.1.4 AFFECTING BEHAVIOUR: The tax system may be used to impact on an individual's form of pleasure by discouraging or encouraging a particular behaviour.⁸⁹ Free market is ineffective in accessing the effect of one person's actions upon others and to correct the perceived inadequacy of consumers' behaviour, a government might attempt to discourage consumption of certain ('demerit') goods,⁹⁰ for instance, by imposing heavy discriminatory taxes upon such goods or their component materials, or might attempt to encourage consumption of other ('merit') goods through subsidies or tax benefits.⁹¹ Tax could be used in dealing with climate change and global warming.⁹²

Tax is a compulsory exaction, pursuant to a legislative authority imposed on the persons within a jurisdiction for the support of the government and its programmes. It requires some sanctions to ensure compliance and obedience to its letters.⁹³ A classical economist, Smith⁹⁴ posited that an efficient tax system must comply with certain criteria, namely, equity, neutrality, convenience, administrative efficiency and certainty.

DRAFT

IGR, LAGOS STATE LAWS AND LEGAL CHALLENGES

Lagos State is one of the states with aggressive revenue drive, it is reputed to have 97 different taxes!⁹⁵

Lagos State Government levies taxes and charges on lands and properties vested in the Federal Government contrary to the provisions of section 51 of the Land Use Act.⁹⁶ Many federal estates such

⁸⁸Nlerum F.E, Reflection on the Attitude of the Courts to Tax Incentive Mechanism in Nigeria *NIALS Journal of Business Law* 138 - 140 available online at www.nials-nigeria.org/journals/Dr.Francisca%20E.%20Nlerumbus.pdf accessed March 2015.

⁸⁹*Revenue Law: Introduction to UK Tax Law; Income Tax; Inheritance Tax* p 9- 10.

⁹⁰ Goods perceived to have detrimental effect on the society e.g. liquor, cigarette.

⁹¹ Allan C.M, *The Theory of Taxation* (Penguin Books, London 1971)

⁹²*Revenue Law: Introduction to UK Tax Law; Income Tax; Inheritance Tax* p 9- 10

⁹³Adedokun K.A, 'Resolving Tax Disputes and Alternative Dispute Resolution (ADR) Processes: A Useful Tool for Nigeria' in Ibrahim Ahmed (ed.), *Alternative Dispute Resolution and some Contemporary Issues: Legal Essays in Honour of Hon. Justice Ibrahim Tanko Mohammed* (ABU, Zaria 2010) 10.

⁹⁴ Smith A, 'Wealth of Nations' in Cannan (ed) *An Inquiry into the Nature and Causes of Wealth of Nation 1776* (University of Chicago Press, Chicago 1976) 349-352.

⁹⁵Ajayi K, op cit

⁹⁶Cap L 5 LFN 2004



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as Festac Town and FHA Diamond Estate have openly defied the state authorities and refuse to pay to the state. The Festac Town Resident Association went a step forward by taking the Lagos State Government to court on the legality of this tax.⁹⁷ The state also imposes different consumption taxes on certain consumers. First, the Entertainment Tax Law of Lagos State⁹⁸ is paid at any place of entertainment opened to the public but which is prescribed to be charge upon admittance, such places include casino, night clubs, bar setting selling intoxicant, cinema, horse racing club etc. The tax is also chargeable where admission to an entertainment avenue is by a payment of a lump sum such as donation, contribution or subscription to a club, association or a society or for a season ticket, or for a service of entertainments or entertainment during a certain period.⁹⁹ Second, pursuant to the Hotel Licencing Law,¹⁰⁰ the Hotel Occupancy and Restaurant Consumption Law¹⁰¹ and the Hotel Licensing (Amendment) Law,¹⁰² the consumer pays another consumption tax at the rate of 5 percent as well. Third, the consumer pays the VAT on the same transaction. The Supreme Court has declared the Hotel Licencing Law,¹⁰³ the Hotel Occupancy and Restaurant Consumption Law¹⁰⁴ and the Hotel Licensing (Amendment) Law of Lagos State and the VAT Act as legal, valid and constitutional. The taxpayers are avoiding and evading these taxes, as only registered outfits collect these taxes. The remittance of these taxes to the appropriate authorities is another issue.

After the Supreme Court decision in *AG Abia v AG Federation (No2)*¹⁰⁵ which rejected the idea that location of seaport in a state qualifies it special allocation, as seaport does not qualify as natural resource for the revenue allocation purposes. Thereafter, the Lagos State House of Assembly introduced the Wharf Landing Fee Law,¹⁰⁶ in order to harvest some revenue through the Lagos Ports. The Law seeks to impose tax on any item or consignment transported from any sea port into any Local Council or Local Council Development Area in Lagos State. The fee is payable by any person in possession of goods on which the Wharf Landing fee is chargeable, whether owner, shipper, transporter or agent.¹⁰⁷ The fee shall be collected outside the sea ports and an official receipt shall be issued, which is valid throughout the state.¹⁰⁸ The law vests the officials of the collecting authority with the power to stop any vehicle conveying the goods for the purpose of inspection to determine whether Wharf Landing Fee is chargeable. This fee creates some constitutional snags, which are presented as follows: first, maintaining check points on federal roads as provided for under section 4 of the Law violates section 2(2) of Taxes and Levies (Approved List for Collection) Act, which stated that 'No person including tax authority shall mount a roadblock in any part of the federation for the purpose of collecting any tax or levy'. Section 3 of the Act also made the creation of road blocks an

⁹⁷ *Festac Town Resident Association &ors v AG Lagos State &ors*, available online at http://www.lgtnigeria.com/viewGeneralListing_page.php?date=2011-11-27%2009:21:05 accessed on 25 May 2015

⁹⁸ Cap E4 LLS 2003

⁹⁹ Ibid section 2

¹⁰⁰ Cap H 6 LLS 2003.

¹⁰¹ No 30 Vol. 42 LLSN Official Gazette

¹⁰² No 23 Vol. 43 LLS Official Gazette

¹⁰³ Cap H 6 LLS 2003.

¹⁰⁴ No 30 Vol. 42 LLSN Official Gazette

¹⁰⁵ (2006) 16 NWLR (pt. 1005) 380.

¹⁰⁶ Signed into Law on 16th March 2009.

¹⁰⁷ Section 1(1) & (2) of the Law

¹⁰⁸ Section 2 of the Law



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offence punishable on conviction by a fine of N50, 000 or imprisonment for 3 years or both. Further, the Constitution provides that if any law enacted by the House of Assembly of a State conflicts with any law validly made by the National Assembly, the latter law prevails, by virtue of section 4 (5) of the 1999 Constitution. Secondly, that it is bound to conflict with the trade and commerce clause in Item 62 (a) of Part I to the Second Schedule to the Nigerian 1999 Constitution and that the vehicle is likely to passing through many local government areas.¹⁰⁹ Third, the constitutionality of the fee is in doubt by the combined reading of sections 4(2) (3) and (4) of the Constitution, Items 36 and 68 of the Second Schedule to the 1999 Constitution, that it is only the National Assembly that could impose taxes and fees on items or consignment transported by the sea into any state.¹¹⁰

The Special Development Levy Law¹¹¹ imposes a yearly levy of on 'all taxable persons in Lagos State' to stimulate economic growth and development in the state.¹¹² The levy is to be deducted at source for all employees operating the Pay-As-You-Earn (PAYE) system¹¹³ and it is incumbent on the Governor to review the levy at any time.¹¹⁴ Every ministry, department or parastatal organization or a local government institution or establishment within the federal or state public service in the state with whom any person has any dealing in respect of certain transactions listed in section 8(2) shall provide evidence of payment of the levy from such a person. The section above seems superfluous as it relates to federal authority and its agencies. The law is a hybrid in that it is not charged to a particular project (an attribute of a tax), but its imposition and review is by the Governor though pursuant to this law (a non-tax attribute). The levy is another double taxation levied by the same government on the income of individuals who had paid personal income tax. Federal Officials and persons in the informal sector have been persistently refuse to pay this tax and the state seem impotent to enforce compliance.

Lagos State also levies real property tax, it should not be confused with the income earned on the property; the latter is taxable under the Personal Income Tax Act. The amount payable as property tax is a function of the ratable or gross value of the property and not the net income from the property.¹¹⁵ Property tax is paid irrespective of whether the property is empty, occupied, attracts rent or not.¹¹⁶ Tenement Rates Law¹¹⁷ levies rates on occupied buildings or any wharf or pier but not on undeveloped land. There is a contention on the powers of the state to impose tenement rates and others on federal government estates in Lagos, as such estates have refused to pay the levy imposed and the Festac Town Resident Association have taken the Lagos State Government to court but the case is yet to be decided.¹¹⁸ Other estates owned by Federal Housing Authority (FHA) like FHA

¹⁰⁹ 'Division of Taxing Powers in Nigeria- A Paradigm Shift' p 234.

¹¹⁰ Item 36 deals with maritime shipping and navigational matters. See also Section 68 of the 1999 Constitution of the Federal Republic of Nigeria; Salau S, & Atilola B, ' Wharf Landing Fees of Lagos State 2009: An Appraisal' (2009) 14 (10) NTN 1-4

¹¹¹ Cap S8 LLS 2003

¹¹² Ibid section 1

¹¹³ Ibid section 3 and 4

¹¹⁴ Ibid; section 6

¹¹⁵ Ipaye A, 'Property Taxation in Nigeria' NTN 16(2) 2011 5

¹¹⁶ Ibid

¹¹⁷ Cap T2 of Lagos State 2003; see also Tenement Rating Law, Cap 130 Laws of Akwalbom State of Nigeria; Local Government Cap 66 Laws of Oyo State

¹¹⁸ *Festac Town Resident Association & ors v AG Lagos State & ors.*(supra)



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Diamond Estate in Isheri, Alimosho Local Government Area in Lagos state refused to pay the tenement rate or the land use charge claiming that ground rent is paid by the lessee to the FHA, why should they be paying another levy to the state and local governments.

The Lagos State Governments under the pretext of legislating for tax have consolidated local and state taxes for central collection by the latter's agencies. The Land Use Charge Law of Lagos State¹¹⁹ which harmonised Land Rates Law.¹²⁰

IGR, KWARA STATE LAWS AND LEGAL CHALLENGES

The Kwara State Government, in its efforts to increase and diversify its revenue base for financial freedom and bolstered efficacy in governance, recently passed the Kwara State Revenue Administration Law, 2015 (Law No.6 of 2015). This law led to the creation of the Kwara State Internal Revenue Service (KW-IRS). The KW-IRS as established by this law is the sole entity responsible for the effective and efficient administration of tax and related matters on behalf of the Kwara State Government. The KW-IRS mandate is:

1. *To maintain the integrity of the tax laws and processes by eliminating all instances of multiple taxation;*
2. *To assist the State Government to attain specific economic and social policies, systems and targets; and*
3. *To stimulate voluntary compliance so as to advance maximum representation of the populace in executive decision making.*

Kwara State however did not promulgate new tax law nor did it increase tax rate¹²¹ like its Lagos counterpart but the KW-IRS is more aggressive than its predecessor. KW-IRS has extended the tax net to include those who were not captured before such as professionals (Legal Practitioners, Accountants and the likes).¹²² The quest has also reached the markets and tax officials are asked to survey households and ask for information, including taking pictures of the main and adjoining buildings. This the populace found unpleasant and there were resistance in certain areas.¹²³

ADMINISTRATIVE CHALLENGES COMMON TO KWARA AND LAGOS STATES

The study discovered that there were certain challenges that are common to both jurisdictions, though with some variations and differences in severity. The taxpayers including the educated ones are prone to avoidance and evasion due to the poor utilisation of the tax proceeds and allocated revenue by the state governments. The taxpayers are not oblivious of the conspicuous display of

¹¹⁹ Cap L 61 LLS (2003)

¹²⁰ Cap L 56 LLS 2003

¹²¹ KW-IRS <http://irs.kw.gov.ng/notices/notice-of-no-increment-on-tax-by-kw-irs/> accessed 1 May 2016

¹²² Interviews with some Professionals; some have removed their sign post because of this.

¹²³ Interview with Tax Officials of KW-IRS.



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wealth and vanity by the elected and appointed officials. The high cost of living occasioned by the non-provision of the basic infrastructure by the governments such as accessible roads, potable water, education and health services, made taxpayers to improvise and make private provision.¹²⁴ There was also the prevalence of poverty, illiteracy and ignorance of tax procedures. On the part of the officials, the poor remuneration of the revenue officials,¹²⁵ this is a pre-condition and an open invitation to corruption, which is pervasive in revenue offices. There were instances whereby revenue officials fake official receipts as a replacement for the original. There are also improper record keeping, non-availability of data and the use of consultants as a substitute for revenue official as was observed in Lagos State.

CONCLUSION

The desperation of the State made them to be aggressive in their drive to get more internally generated revenue without taking into consideration the ability of the taxpayers. There is a need for the state governments' officials to reduce their own running cost, corruption and consumption pattern. Taxpayers need to be enlightened and the government more transparent. Revenue official must be well trained and remunerated in order to reduce corrupt practice.

DRAFT

¹²⁴ Such as borehole for water provision, generation for power, private school for education etc.

¹²⁵ In KW-IRS, graduates are paid as low as N 40 000 in year 2016