THE LAW RELATING TO TENEMENT RATES/PROPERTY TAXES AT LOCAL GOVERNMENT LEVEL: THE NEED FOR REFORM

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ABSTRACT:

Tenement rate or property tax is one of the sources of revenue to local government councils. Most local government authorities pursue with vigour, payment of taxes on premises that are categorized by law as tenements. Despite the concerted effort, actual revenue generated from tenements remains grossly inadequate, compared with the projected revenue. The factors that are responsible for this uncomplimentary situation include reluctance by tenement owners to pay property taxes, because they see it as exploitation by government, rather than civic responsibility, obsolete statutory provisions on tenements, low level of awareness with a correspondingly diametrical level of illiteracy in the society, especially among the rural populace, utilisation of revenue for unprofitable ventures or political activities. The paper apart from attempting an exposition of the foregoing problems, offers suggestions on how appropriate legal framework can be put in place for local government council for the realisation of a meaningful and sustainable revenue generation from tenement/property taxes.

Introduction

The word tax is not defined in statutes relating to tax law in Nigeria. One would therefore need to look at the meanings ascribed to it by jurists, case laws and dictionaries. Firstly, tax is defined as a charge imposed by government authority upon property, individuals or transactions, primarily to raise money for public purposes[1]. *Blacks Law Dictionary*[2] defined Tax as

> *"A monetary charge imposed by the government on persons, entities or property to yield public revenue"*

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[1] New Webster's Dictionary of the English Language, College Edition, Surjeet Publications(1989)

[2] 7th Edition

In *Matthew v .Chicory Marketing Board* [3] Justice Latham, the Chief Justice of the Australian Supreme Court, described Tax as:-

> *"A compulsory exaction of money by a public authority for public purposes or raising money for the purpose of government by means of contribution from individual persons"*

In *United States v. Butler*[4], Mr. Justice Roberts described tax in relation to the American constitution as 'signifying an exaction for the support of government'. A learned author[5], defined tax as;

> *"A compulsory levy imposed on a subject or upon his property by the government having authority over him"*

From the foregoing, one can describe tax as the payment of a levy imposed by Government, on an individual in respect of his person, business or property. Tax is a legitimate way by which government generates revenue, for the maintenance of its infrastructure, provision of social amenities and the running of its day to day administration.

In the Nigerian Society, tax is collected by the Federal, State and Local Government authorities on various aspects of human activities. For example, the Exclusive Legislative list of the Constitution of the Federal Republic of Nigeria, 1999 empowers the Federal Government to collect taxes on matters relating to export, import and excise duties, mining royalties, shipping and navigation, income and profits of all companies and allied matters. State governments have jurisdiction on tax administration relating to personal income, estate duties, hides and skins, documents or transactions by way of stamp duties. These powers are contained in the concurrent legislative list of the constitution[6].

Revenue collection is serious business. An institution such as a local government council would have its success in terms of infrastructural development, provision of social amenities and health care delivery predicated largely, on its ability to internally generate revenue. Obviously, the average percentage revenue accruing to local government councils from tenements is almost next to nothing. This has a direct negative effect on their ability to provide adequate social infrastructures

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[3] (1938)60 C.L.R 263 at 276

[4] 2279 U.S. 1(1936) at 61

[5] Akanle.O, Nigerian Income Tax Laws and Practice, Center for Business and Investment Studies Ltd (1991) P.4

[6] The Federal Republic of Nigeria, 1999.Items 7-10,Part 11 of the second schedule.

for the people. The purpose of this paper is to suggest ways through which an enhanced and sustainable revenue collection from property taxes can be achieved.

2. An Overview of the Law Relating to Tenement/Property Taxes.

The focus of this paper is on how a sustainable legal framework for smooth collection of tenement/property taxes can be actualised. The functions of local government councils are outlined in part 1 of the Fourth Schedule of the Constitution of the Federal Republic of Nigeria, 1999. They include the formulation of economic planning and development schemes for local government area, naming of roads, streets, numbering of houses, registration of all births, deaths, marriages, and provision and maintenance of health services. There is no specific constitutional provision that relates to collection of property taxes or tenement.

Consequently, a fall back must be made to enabling laws which State Houses of Assembly are entitled to make for the smooth running of local government councils within their states, in accordance with section 2(d) of the Constitution of the Federal Republic of Nigeria,1999. Particular reference shall herein be made to the Local Government Law of Edo State, 2000(hereinafter referred to as the law)[7].Section 80(1) (a) of the aforementioned law empowers a local government council to generate revenue through the imposition of taxes, amongst other sources. This subsection is assumed to be the basis of a local government's power to impose charges or rates on tenements located within its geographical boundaries in Edo State. A tenement is defined as including the following[8]:

(a) Land with buildings
(b) Factories
(c) Workshop
(d) Storage tanks
(e) Petroleum oil and gas pipelines
(f) Wharf or pier

The above definition clearly excludes undeveloped land. However, a reading of the relevant sections in this legislation, together with the interpretation section clearly suggest that the buildings therein referred to are those that yield income to the owner, either by way of rent, or other commercial usages. To this extent, a tenement in this context excludes

[7] References to sections of the Local Government Laws are made in relation to the Local Government Law of Edo state, although similar legislations exist in other States of the Federation as enacted by the various states Houses of Assemblies.

[8] See section 95 of the Edo State Local Government Law, 2000.

buildings that are exclusively occupied by the owner for residential purposes. This scenario could create some problem for tax official. For example, where a person owns a block of four flats and puts one or two of the flats to family use, he is likely to be unwilling to disclose to Tax officials the fact that any of the flats is occupied by tenants. How would an official easily verify such information, where he is not familiar with any of the occupants in the premises. Such non-disclosure or disclosure of inaccurate information adversely affects revenue generation from property taxes.

The existing legal framework on tenement/Property taxes is unsatisfactory. It lacks specificity in terms of parameters for rating. A rating authority is given wide discretionary powers to impose special levy on tenements without using any known parameters as a basis of computation.[9] The system of rating as provided by the existing law, is either upon tenements assessed in accordance with the provisions of the Local Government Law, or on a capitation basis, which is accordingly assessed in accordance with the provisions of the law. These terminologies are beyond the comprehension of the average tax payer. It is imperative for the applicable law to express these terms in simple and plain language, devoid of technical content. This is one way tax payers' confidence in the rating system can be achieved. A simplified modality should clearly spell out the parameters for categorization and assessment of property taxes. Such factors could include the presence, or absence of certain facilities such as borehole, generating plant, wall fence, nearness or proximity of property to major or accessible roads, etc.

The powers of appraisers are not defined by law. They are therefore most likely to assume powers that they have not, in a bid to assert their relevance in the execution of their job. This could lead to abuse of office.

Local Government Laws in a number of states empower the governor of the state to exclude any person or class of persons from capitation rates levied by a local government.[10] There is neither any justification for the exercise of this discretion, nor is any alternative source of revenue provided by the state government, to make up for the shortfall in revenue arising from the exercise of this statutory power. The power is liable to abuse, since governors are under the law not direct beneficiaries of local government finances. This has greatly hindered the revenue generation

[9] Section 100 of the Edo State Local Government Law,a bill passed into law by the Edo State House of Assemly ,and which came into force on the 2nd day of May 2000.Note that there is a clear absence of ths legislation from the Laws of Bendel State of Nigeria,1976(applicable in Edo State)

[10] See Section 112(3) of the Edo state Local Government Law,2000

efforts of most local governments in the country. The power to exclude tax payers from payment of capitation tax should be vested in local government chairmen[11]. By this development, the chief executives of councils would be the architects of their own misfortune, should they decide to become Father Christmas in the exercise of such powers.

Section 105 provides for exemption of places used for public worship from payment of tenement/propriety taxes. This is against the understanding that such bodies are non-profit making. While not in the least attempting to go into the controversy of whether or not, some places of worship have these days become profit making organizations, it is of general knowledge that some church organizations establish educational institutions, in the form of nursery, primary, secondary, institutions within the precincts of their places of worship, and under the identity of the church. Obviously, the motive for this is to make profit and generate revenue.

In the absence of any- clear cut statutory provisions on whether or not, these educational institutions should be regarded as integral part of, or distinct entities from the church, the tax officer might be in a quandary in deciding on the issue of categorization of such premises. His difficulty may even be compounded, to the extent of having to compromise his official task, where he or his boss turns out to be a member of that particular church. A statutory enactment on property tax should clearly define the position of establishments that are admixture of profit and non-profit making activities. This will minimize the incidence of confusion, and enhance smooth and easy implementation of the law on tenement/property taxes. This is what Edo State Local Government Law is lacking.

The penal sections provide for payment of fines, as optional penalty to imprisonment terms in the event of conviction, but failed to specify to whom the fines are payable. In the absence of such specification, the monies realized from offenders as fines are most likely to be paid into state government treasury.

3. Penalties for Offences Created by Local Government Law

The efficacy of, and level of compliance with any law depends largely on the ability of its penal provisions to deter prospective offenders. The penal provisions in the Law under reference are too mild, and incapable of deterring tax defaulters. For instance, section 131(1) prescribes a

[11] or administrator as the case may be.

penalty of ₦1, 000.00k (One Thousand Naira Only) for a defaulter who fails to comply with the requirements of a notice served on him by a tax officer, or obstructs an appraiser from carrying out his duty. Under section 131(3), any person who refuses or fails to pay the rate payable under the law will be liable to a fine of ₦500.00k (Five hundred naira only).Any person who incites or assists any person to misrepresent his rateable capacity is liable on conviction to a fine of ₦500.00k (Five hundred naira only). A fine ₦500.00k (Five hundred naira only) is payable for failure to produce documents under one's control. The fines prescribed by the statute are so mild and insignificant that a defaulter would even find it more convenient to pay, than to buy a recharge card.

Courts are more inclined to impose the option of fine on defaulters, in lieu of imprisonment term. The extant penal provisions relating to tenement /property tax offences are not only too mild, but practically defeat the whole essence of the law, and undermine the seriousness that the task of revenue collection entails. Tax evasion is a serious economic crime. The penalty for tax offences should be made to fit the crime, if the law relating to tax default is to bear its relevance in the scheme of revenue generation. This is one way tax payers can be made to prefer the option of compliance with the law, to payment of fines.

4. Prosecution of Tax Defaulter

On this issue, it is necessary here to analyze its merits or demerits, on the basis of the existing law. Litigation is costly in terms of exorbitant legal fees, duration of cases in court, and the attendant uncertainty in the outcome of cases of taxation owing to their peculiar and technical nature. The cost and benefit analysis of prosecuting tax defaulters obviously constrains one to advice against litigation. It is no exaggeration that local government councils would expend more money and time for logistics and procurement of witnesses to prosecute defaulters, than the money that would be paid by such defaulter as fine, should he be convicted. In the circumstances, it is preferable and economically wiser to explore other alternative dispute resolution option to litigation against tax defaulters, until the law is amended.

All in all, it is submitted that the law relating to tenement is obsolete, a toothless dog, superficial, inadequate, and lacks specificity in terms of focus. A review is long overdue, and imperative, especially in the light of the present low value of the Nigerian currency. The penal provisions should be reviewed upward, so that prospective defaulters can be deterred.

5. Tax Official and Tax Payer Relationship

Tax payment and tax collection can only be mutually achieved in an atmosphere of mutual co-operation and understanding, between tax officials and tax payers. Tax collection is often associated by many, with high profile corrupt practices. The overall impression of thė average tax payer is that internally generated revenue is prone to avoidable leakages. It is believed that a larger proportion of the fund is either indiscriminately, or recklessly diverted to undisclosed avenues, or used for unprofitable ventures and political activities. In most cases, accountability for such revenue is riddled with falsification of revenue receipts and other financial documents, and under-declaration of actual revenue generated.

Most tax officials are viewed by the average tax payer with suspicion, and often greeted with hostility by the latter, during revenue drive. This unhealthy situation creates serious problems for tax officials.. Consequentially, they are seen by many as being on a mission designed only for self enrichment, personal gains, or wanting to reap where they had not sown. Local Government Councils and their tax officials are not exempted from this unfortunate and uncomplimentary social stigma. The field workers are in this regard, the ambassadors of the government establishment which they represent.

It is imperative for those at the helm of affairs of local government councils to take the challenge of self-cleansing, and develop a culture of accountability, to enable them have the moral integrity to check their subordinates so as to enthrone sanity, transparency and command public confidence, especially in the utilization of revenue accruable from tenèments.

In the absence of such self cleansing exercise by those who give directives to the tax officials, a situation would be created where, the tax officials would be having their candle sticks burnt from both ends, thereby typifying the Biblical proverb/wise saying that: *'the hand is of Esau, while the voice is of Jacob'*, meaning that; while tax payers would see tax officials as corrupt, it is the superior officers that actually aid and, benefit more from the corrupt practices. Council authorities have a lot to do in this respect, so that tax payers can begin to see tax personnel as their friends, not exploiters or enemies. The authorities must take practical steps to redress the system, by giving accountability the seriousness it deserves.

Effort must also be made to ensure that only men of integrity are allowed to participate in tax collection.
A local government authority that expects result from its officials must first create an enabling environment for them to work. The Council owes the responsibility to make tax payers ready to accept and co-operate with tax officials, before allowing them to proceed to the field. This will enthrone a healthy and inter personal relationship between the tax collector and tax payer.

6. Factors that Inhibit Tenement/Property Tax Collection.

Local governments require finance to perform their statutory functions, which include provision of services and bringing about development in their jurisdictions. Since the 1976 Reform, the principal source of revenue to local governments in the Country has been grants, particularly from the Federal Government. Internal revenue generation, including tenement rates, remains a vital preoccupation of local governments. While some local governments have made encouraging strides in the task of revenue generation, majority have performed much below expectation in this area. The situation is worse for the under-developed localities which parade an array of old, dilapidating, and near uninhabitable buildings, instead of taxable property. This economically poor situation is typical of most local governments. The net effect of a total or near absence of taxable property dominating the housing population of a local government is tantamount to economic stagnancy and fiscal anemia for the councils that are unfortunate to be in such situation.

To have a clear picture of how local governments in the country have performed in the area of revenue generation, it is necessary to make a representation of the pattern of internally generated revenue, as is typical of most local governments in the country. As case study, an analysis of some statistical data relating to the defunct Bendel State for the period 1977/78 to 1983 is presented below:

Performance of Local Governments in the Defunct Bendel State of Nigeria in Terms of Projected and Actual Revenue Generated From 1977/78 to 1983. [12]

Year	Projected Internal Revenue	Actual Internal Revenue	Average % of actual internal Revenue in relation to projected Internal Revenue
1997/78	6,226,495	6,696,518	44.2
1978/79	8,384,048	3,860,886	46.2
1978/80	10,484,115	5,567,733	53.1
1980	9,504,434	3,184,103	33.5
1981	6,732,052	4,184,442	62.2
1992	13,812,548	4,754,103	33.4
19983	6,832,023	3,839,412	56.2

The picture presented above substantially represents what is presently obtained in different parts of the country. The overall effect of low revenue generation ability that is typical of most local governments in Nigeria, translates to inability to provide adequate services and goods for the people, both in quantitative and qualitative terms.

The factors that are responsible for the low level of revenue generated from property taxes in the third tier of government could be summarized as follows;

a. The predominance of illiteracy among tax payers;
b. Incomprehensive and unreliable systems of data collection, and record keeping in our tax offices.
c. Insufficient manpower (tax officials) to cover the field, inadequate training for tax officials;
d. Lack of modern tools, inadequate logistics support and techniques for tax collection,
e. Poor remuneration and lack of incentives, or motivation for tax officials.
f. The assumption or belief that, a larger proportion of taxes paid by tax payers end up in private pockets ,instead of being utilized for the provision of social infrastructures.
g. High level of ignorance, or low level of awareness among tax payers, about the existence of tenement/property tax laws. Some are not even aware that local government councils are entitled to collect taxes. All they know is that council Chairmen and councillors made promises to

[12] .Prepared on the basis of Data compiled in 6 tables pertaining to Local Government Internal Revenue
Contained in Bendel State of Nigeria: Digest on Local Government Statistics, as reproduced by Tonwe
,D.A Local Government and Administration in Nigeria. A Theoretical and Modernizing Federal Perspective 1995,Amfitop Book Company,77

them during their electioneering campaign most of which they are yet to fulfill.

h. The reluctance of the macro levels of government to allow local government councils exercise powers and control over social and economic activities that appear lucrative. For example, approval of building plans.
i. The tendency among property tax payers to indulge in tax evasion, rather than tax avoidance.
j. The reluctance of local government councils in reviewing upwards the payable tenement/property taxes to reflect the socio-economic changes in the society, for fear of incurring the anger of the communities in the local government area, notwithstanding, how obvious the desirability for the review may be.
k. Non-participation of local councils in joint capital investments. For example, private/public sector participation in the provision of housing schemes, and other taxable property projects.
l. Lack of thorough knowledge of tax law on the part of local government staff.
m. The oil boom, which has paralized the effectiveness of revenue collection from other sectors of economy in Nigeria.

7. Strategies for an Enhanced and Sustainable Revenue Collection From Tenements/Property Taxes.

In this paper, an attempt was made to identify some of the problems that impeded easy collection of tenement/property taxes. The next necessary task is to proffer solutions for the realisation of an easy, cost effective, viable and sustainable tenement/property tax regime.

1. *Making and reviewing of Local Government Bye Laws from time to time:*

The legislative arms of local government councils can enact bye-laws on property tax, with due cognizance to the social, economic and political factors prevailing in the locality. Their power to do so is derivable from the relevant sections of the Local Government Law[13].

There should be clear provisions in the local government law to empower local government councils to make recommendations to the State House of Assembly for the periodic review of local government laws relating to tenement.

[13] See Section 147 of the Local Government law, in the case of Edo state.

2. *Increase of jurisdiction to fine by Local Government Councils*
The limitation placed on local government legislatures by Section 147(1), as to the maximum fine of ₦5, 000.00(Five Thousand Naira Only), to be imposed by bye-laws on tenement/property taxes is unnecessary, and should be reviewed.

3. *Tax payer-tax -collector Friendliness Relationship to be involved.*
Taxpayers should be encouraged to develop tax conscience. A paradigm shift should be made by tax administrators from the use of force, or other confrontational means in tax collection, to persuasion in their approach. Disposition in human relations is reciprocal. Friendliness begets friendliness, and vice-versa. Moderation is advised for tax officials, in the exercise and execution of official powers and duties while dealing with taxpayers.

4. *Public Enlightenment Campaigns to Sensitize Taxpayers Conscience.*
If implementation of, and compliance with tax policies are to be given their pride of place at the local government level, tax payers must be sensitised and enlightened to the extent that they should begin to see the payment of property tax as a civic responsibility, or duty. The local council can achieve this through aggressive public enlightenment campaigns and jingles. Tax payers should be told that what the local government can do for them depends largely, on their preparedness to pay their taxes. These campaigns could be translated into local dialects, because of the predominance of illiteracy among the rural populace.

5. *Accountability of How Taxes are managed /spent.*
The World has become a global village. The trend of modern information technology makes imperative the need for relevant and Comprehensive Information and data relating to property taxes to be made available to stakeholders through the internet.. Such information could include actual revenue generated, and how same was spent on projects that are beneficial to the communities. This will enable tax payers to be acquainted with the pattern of revenue generation and utilization by councils, and boost their confidence in the local government administration.

6. *Life Assurance for Tax collectors.*
Motivation is a direct correlation of dedication and hard work. Tax officials should be motivated to perform their duty with zeal and enthusiasm The task of tax collection at grass root level is quite

cumbersome, much as is it hazardous. It is suggested that compensation system be put in place by Councils , such that any worker who suffers loss of limb in the course of work can be compensated, while his dependants should be compensated where loss of life results. This will encourage those who are directly involved in the exercise of revenue generation through tenement/property taxes. Another form of motivation for tax officials could be in the form of payment of hazard allowance.

7. *Continuous Training for Tax Collectors.*

Continuous training and re-training of tax officials through short term courses and seminars would expose them to modern modes and means of efficient and cost effective tax generation.

8. *Tax Collection should be Equitable, Certain, Convenient and Efficient.*

Local government councils should evolve and sustain an improved regime of tax Administration. This must take into cognizance the four qualities of good tax, as enunciated by a popular economist, Adam Smith. These include: (1) Equity, which prescribes that a good tax system should be affordable, equitable, and devoid of double standard in the rating system. (2) Certainty, which requires that an effective tax system should be certain in terms of the parameters for assessment and rating, (3) Convenience: This requires that reasonable notice be given tax payers, to avoid taking them by surprise; (4) Administrative Efficiency. A good tax administration (i.e. assessment, collection and adjudication), must ensure that a substantial portion of the realizable revenue is not depleted as cost of collection. A tax that has its larger proportion of realizable revenue eaten up under the head of remuneration of tax administrators and logistics are obviously inefficient and tantamount to corruption.

Concluding Remarks

If any conclusion has to be drawn in this exposition, one only needs to do so, by reiterating that, the task of ensuring a virile regime of enhanced revenue generation from tenements/property tax remains the primary responsibility of local government councils. The role of the legislative arms of the council is crucial for the enactment of bye-laws that would put in place adequate enforcement machinery and implementation.

Since local governments have direct dealings with the grass-root, the councils must encourage its citizenry to develop tax conscience, and appreciable disposition to voluntary compliance. The government must be close to the local inhabitants in terms of accountability, full disclosure and utilization of revenue accruable from tenements. On the whole, it is obvious that if the aforementioned suggestions are implemented, there will be tremendous improvement in the sphere of revenue generation from tenement/property taxes; consequently, local government councils and the tax payers will be better for it.