

TAXING POWERS OF THE THREE TIERS OF GOVERNMENT IN NIGERIA: AN EXTRAPOLATIVE APPRAISAL*

Abstract

The Chief duty of any responsive and responsible government world over is the protection of lives and properties, as well as provision of basic and socio-economic amenities for the well-being of the citizenry. For government to effectively discharge this duty, it must collect taxes from the citizens. Tax, itself, is a levy compulsorily imposed on a subject or upon his property by the government. In Nigeria, there are three tiers of government viz-a-viz the Federal, the State and the Local Government Councils. These tiers of government impose and collect one form of tax or another in order to raise revenues to discharge their functions and/or responsibilities. Often times, these tiers of government fall into serious conflict with one another in effort to impose and collect taxes from the citizens. At other times, the citizens are basically left with the option of paying multiple taxes, which leave their businesses crumbling and in disarray, thereby causing a lot to fall into unmitigated hardship. This paper appraised the taxing powers of the three tiers of government in Nigeria. Aside bringing out the laws that authorized each tiers of government to impose and collect taxes in Nigeria, the paper also showcased the categories of taxes that are collectable and the legal limits of each of the three tiers of government. The paper, more so, identified some of the challenges associated with the taxing powers of the three tiers of government in Nigeria and concluded with some recommendations.

Keywords: Tax, Taxing Powers, Three Tiers of Government, Nigeria

1. Introduction

Basically, it is the primary duty of governments all over the world to provide basic social amenities for its citizens as well as the securement of life and property. Oftentimes, governments in most cases fail to carry out this responsibility not because they do not want to discharge their duties, but because they don't have the financial muscle to so do. This failure on the part of governments to carry out their responsibilities has most times sparked off many protests and revolutions across the globe by the citizenry as a way of expressing their disenchantment and grievances. To avoid this kind of unfortunate happenings, governments usually impose and collect all manner of taxes from the citizens so as to raise revenue to provide the much needed basic amenities. The principal factor in determining the taxing powers in a country is the type of government such country is operating. In a single tier government, there is little or no problem with the devolution of taxing power. However, in a federal system of government as practiced in Nigeria, conflict usually arise between the different tiers of government and as such, it becomes germane and imperative that taxing powers are clearly defined in the fundamental laws of the land viz-a-viz the constitution. Aside minimizing or total elimination of the conflict between the tiers of government, allocation of taxing powers is also underscored by the interest of taxpayers. This is so because it is not usually in the nature and character of man to voluntarily part with his property or money especially when it is to an 'unknown entity' such as governments. Therefore, there is need for certainty in the area of who has what power to impose tax in any particular circumstance. This paper, therefore, will make serious effort to examine the knotty issue of taxing powers in Nigeria and the challenges thereto.

2. Brief History of Taxing Powers in Nigeria

The issue of sharing taxing powers between the regions (now divided into States) and the federal government historically arose immediately when Nigeria became a federation in 1954. The issue was discussed at the Constitutional Conference of 1957 in London¹. In that Conference, it was resolved that the matter should be referred to a Commission². Consequently, the Raisman Commission was inaugurated and charged with the responsibility of looking critically into the issue of how to allocate taxing powers between the Regional and Federal Governments and make recommendation which would ensure an equitable tax distribution in Nigeria. The Report of Raisman Commission was submitted in June, 1958 pertaining to the division of taxing powers between the tiers of government in Nigeria. The

*By **Theophilus Williams NWOKE, LLB (Hons), BL, LLM (Ibadan)**, Lecturer, Department of Public and Private Law, Nnamdi Azikiwe University, Awka, Anambra State. Email: Theophilusnwoke@gmail.com. Phone: 07037370522.

¹ Agua I.A. (1996) *The Nigeria Tax Law*, Lagos Spectrum Law Publishing.

² Raisman Commission of 1958.

report as it were, had strong influence on the relevant provisions of the Nigerian constitution order-in-Council, 1960 otherwise known as the 1960 Independence Constitution. Section 70 of the 1960 Independent Constitution is very important and it provides as follows:

- 1) Parliament may make laws for Nigeria or any part thereof with respect to taxes on the income and profits of companies.
- 2) Parliament may make laws for Nigeria or any part thereof with respect to taxes on income and profits other than the income and profits of companies for the purpose of:
 - (a) Implementing any treaty, convention or agreement between the federation and any other country or any arrangement with or decision of an international organization of which the federation is a member with respect to taxes on income and profits;
 - (b) Securing uniform principles for the taxation of income and profits accruing to persons in Nigeria from countries other than Nigeria and of income and profits derived from Nigeria by persons outside Nigeria.
 - (c) Securing uniform principles for the computation of income and profits of all persons (including members of partnerships) for the purposes of assessment of tax and for the treatment of losses, depreciation of assets, and contributions to pensions or provident funds or schemes;
 - (d) Regulating the liability to tax of persons within Nigeria by reference to their places of residence or otherwise for the purpose of ensuring that any income or profit does not bear tax under the laws of more than one territory;
 - (e) Providing, in pursuance of any arrangement in that behalf subsisting between the Government of the Federation and the Government of a State, for the exemption from liability to tax in respect of all or part of the income or profits of any person or class of persons;
 - (f) Obtaining information with respect to income or profits from any source and providing for the exchange of information between different tax authorities; and
 - (g) Providing, in pursuance of any arrangement in that behalf subsisting between the Government of the federation and the Government of a Region, for the establishment and regulation of authorities empowered to promote uniformity of taxation and to discharge such other functions relating to the taxation of income and profits as may be conferred upon them in pursuance of any such agreement.
- 3) Parliament may make laws for Nigeria or any part thereof with respect to taxes on the estates of deceased persons and the succession to their property for the purpose of ensuring that any estate or part thereof does not bear tax under the laws of more than one territory.
- 4) The powers conferred upon Parliament by sub-sections (2) and (3) of this section shall not extend to the imposition of any tax or penalty or the prescribing of rates of tax or personal allowances and reliefs.
- 5) Nothing in subsections (2) and (3) of this section shall preclude the legislature of a region from making laws with respect to the matters referred to in these subsections.
- 6) In this section references to the Income and profits of companies are references to the income and profits of any company or other corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere but do not include references-
 - a) To the income and profits of anybody corporate established by or under the Native Authority Law, 1954, of Northern Nigeria, the Eastern Nigeria Local Government Law, 1960, of Eastern Nigeria, or the Western Region Local Government Law, 1952, or the Local Government Law of Western Nigeria, as amended, or any law replacing any of those laws;
 - b) To the income and profits of any purchasing authority established by the legislature of a Region and empowered to acquire any commodity in that Region for export from Nigeria derived from the purchase and sale (whether for purposes of export or otherwise) of that commodity; or
 - c) To the income or profits of any corporation established by the legislature of a Region for the purpose of fostering the economic development of that Region, not being income or profits derived from a trade or business carried on by that corporation or from any share or other interests possessed by that corporation in a trade or business in Nigeria carried on by some other person or authority.

The provisions of section 70 above can be found in the Legislative List in the Schedule to the said 1960 Independence Constitution of Nigeria. Matters reserved to the exclusive taxing authority of the Federal Government in Part 1 of the Schedule to the 1960 Constitution were:

- Item 10: Customs and excise duties, including export duties
- item: Mines and minerals, including oil fields, oil mining, geological surveys and natural gas.
- item 38: Taxes on amounts paid or payable on the sale or purchase of commodities except – (a) produce; (b) hides and skins; (c) motor spirit; (d) diesel oil sold or purchased for use in road vehicles; (e) diesel oil sold or purchased for other than industrial purposes.
- item 41: Wireless, broadcasting and television other than broadcasting and television provided by the Government of a Region; allocation of wavelengths for wireless, broadcasting and television transmission.

Since the Raisman Commission's report, legislative authority has always been shared between the central (Federal) Government and the Regional (later, state) Governments. Every Region or State is in turn sub-divided into local government Areas. The Local Governments as it were, seems to have no clear cut constitutional law-making power or authority. However, they are allowed to enact bye-laws by virtue of powers conferred on them by State laws. The 1999 Constitution of the Federal Republic of Nigeria (as amended) recognizes only two tiers of legislative authorities: ie the National Assembly which consists of the Senate and House of Representatives³ and the State which consists of the State Houses of Assemblies⁴.

3. Nature of Taxing Power in Nigeria

Taxing power has to do with the authority of a sovereign government to raise revenue by imposing compulsory levies on persons or their property within its jurisdiction/territory. The tax system in Nigeria is basically statutory, and any tax imposed or levied on the people or their property must be backed by law or it is no tax. By this, it is meant that it is from the statutes or laws that the government derives its powers to impose and collect taxes from the citizens so as to raise revenue to meet cost of government.

4. Federal Taxing Powers

The taxing powers of the Federal Government of Nigeria are derived from the provision of section 4(2) of the 1999 constitution of Federal Republic of Nigeria (as amended). The section provides that: 'The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative list set out in part 1 of the second schedule to this constitution'. The Exclusive Legislative List mentioned in section 4(2) is set out in Part 1 of the Second Schedule to the Constitution and it contains, *inter alia*, Customs and Excise Duties⁵, Stamp Duties⁶, as well as incomes, profits and Capital Gains⁷. Going by the provision of the Exclusive Legislative List, it means that the major tax Acts such as the Stamp Duties Act, Capital Gains Tax Act, Personal Income Tax Act, Petroleum Profit Tax Act, Companies Income Tax Act, Customs and Excise Management Act as well as Education Tax Act, are all Federal Statutes of which the Federal Government has taxing powers over. It is however important to state here that the Federal Government not only have powers over taxation as stated in the Exclusive List but also in the concurrent legislative List. The main reason for giving this so much tax power to the Federal Government may be to avoid competing and conflicting tax jurisdiction, or to aid the Federal Government's higher generation of revenue in order to be able to meet the socio-economic responsibility of the central government.

Delegation of Collection Power to the State by Federal Government

The Federal Government is further empowered by the Constitution to make laws through the National Assembly with respect to any matter in the Concurrent List⁸, only to the extent prescribed in the Second

³ Section, 4 (1) of the 1999 Constitution (as amended).

⁴ Section 4(6) of the 1999 Constitution (as amended)

⁵ Item 16

⁶ Item 58

⁷ Item 59

⁸ The Concurrent List is set out in the first column of Part II of the Second Schedule to the 1999 Constitution (as amended).

Column of the same list. The Item 7 of the Concurrent List has to do with the collection of taxes and it provides that:

- In the exercise of its powers to impose any tax or duty on –
- (a) Capital gains, incomes or profits of persons other than companies; and
 - (b) Documents and transactions by ways of stamp duties, The National Assembly may, subject to such conditions as it may prescribe, provide that the collection of any such tax or duty or the administration of the law imposing it shall be carried out by the Government of a State or other authority of state.

By this provision, therefore, it is crystal clear that the Federal Government can delegate to the State Governments the power to collect and administer stated taxes. It is by virtue of this provision also that the State Governments are allowed to collect Personal Income Tax, Capital Gains Tax and Stamp Duties from individuals and unincorporated organizations resident within their respective territories. Residents of the Federal Capital Territory, Abuja, are under Federal Jurisdiction and, therefore, pay to federal tax authorities. What this clearly mean is that the Federal Legislature imposes Stamp Duty and taxes on personal Income and Capital Gains and delegate power to States to collect from individual in her territories. It is worthy to note that the power to impose a tax in Nigeria does not necessarily translate to power to collect the same tax. The apparent reason for the separation of imposition or charging power and collecting power is to ensure uniformity of the charging provisions throughout the federation and thereby prevent double taxation and inconsistency of rates.

Taxes Collected by the Federal Government on Behalf of the States

The Federal Government always collects from members of the Armed Forces as well as the Police Income and Capital Gains taxes on behalf of the States. The position of the law in this regard is that where the law allows the Federal Government (for convenience sake) to collect Income and Capital Gains taxes from the individuals in the Armed Forces and Police as well as Stamp Duties from companies, such taxes should be returned to the State from which they were derived (ie the States in which the taxpayer individual was resident or in which the underlying transaction of the document stamped took place) and not to be remitted to the Federation Account⁹. Provisions are made that the net proceeds of such taxes should be returned to the States on the basis of derivation. Matters specified in Item D, Part II of the Second Schedule to the Constitution are: ‘any tax or duty on capital gains, incomes or profits of persons other than companies; and documents or transactions by way of stamp duties’. The requirement that such taxes should be returned to the States as provided under section 163 of the Constitution, is not always implemented. In fact, in reality, the Federal Government through the Federal Inland Revenue Service (FIRS) still collects capital gains and income taxes from the: (i) Persons employed in the Nigerian Army, the Nigerian Navy, the Nigerian Air Force and the Nigerian Police other than in civil capacity (ii) Officers of the Nigerian foreign service (iii) every resident of the Federal Capital Territory, Abuja; and (iii) A person resident outside Nigeria who derives income or profit from Nigeria¹⁰. This non-compliance to the provision of section 163 of the Constitution was part of the issues determined at the Supreme Court in the case of Attorney-General of the Federation v. Attorney-General of Abia State and 35 ors¹¹ where the 10th Defendant, Attorney-General of Delta State, counter claimed, *inter alia*, for a declaration that the non-payment of the shares of the 10th Defendant, in respect of proceeds from Capital Gains taxation and Stamp Duties was unconstitutional being in conflict with section 163 of the 1999 constitution. The Supreme Court (per Ogundare J.S.C) held as follows:

Item D part II of the Second Schedule makes provision for the imposition by the National Assembly, of such tax or duty as the Capital gains tax, incomes or profits of persons other than companies and stamp duties. By section 163, the net revenue collected from these taxes and duties is distributed among the states on the basis of derivation. It follows that what revenue is collected from any State by the Government of the Federation is paid back to that State. There can be no justification for refusing to pay to the 10th Defendant his share of such revenue¹².

⁹ Section 163 of the 1999 Constitution of Nigeria (as amended).

¹⁰ Section 2(1) (b) of the Personal Income Tax Act

¹¹ (2002) 6 MJ5CI

¹² Page 64, para 1

Furthermore, the Supreme Court in that judgement declared that the non-payment of the shares of the 10th Defendant his share of the proceed from Capital Gains taxation and Stamp Duties was unconstitutional¹³. It is very much hoped that section 163 can be activated by an Act of the National Assembly which ultimately would state the time in which the payment of the amount due to east State would be paid. Part 1 of the schedule to the Taxes and Levies (Approved List for collection) Amendment) Order of 2015¹⁴ listed taxes collectable by the Federal Government as follows: Company Income Tax; Withholding tax on companies, residents of the Federal Capital Territory, Abuja and non-resident individuals; Petroleum profits tax; Education Tax; Value Added Tax; Capital Gains Tax on residents of the Federal Capital Territory, Abuja, corporate and non-resident individuals; Stamp duties on bodies corporate and residents of the Federal Capital Territory, Abuja; Personal Income Tax in respect of (a) Members of the Armed Forces (b) Members of the Nigeria Police Force (c) Residents of the Federal Capital Territory, Abuja and (d) Staff of the Ministry of Foreign Affairs and non-resident individuals; National Information Technology Development Levy.

5. State Taxing Powers

Under the 1999 Constitution of Nigeria (as amended), no tax is specifically reserved for the State Government. The only thing that can be gleaned from the constitution as a reference to the powers of State Government in relation to collection of tax is contained in item 9 of the Concurrent Legislative List¹⁵. Item 9 of the Concurrent Legislative List states that: 'A House of Assembly may, subject to such condition as may prescribe, make provisions for the collection of any tax, fee or rate or for the administration of the Law providing for such collection by a Local Government Council'. The above provision therefore gives inference that a State Legislature may: (i) by law, prescribe conditions under which its own tax authorities may charge and collect any tax, fee or rate (other than those that had been expressly reserved for the Federal Government under the Exclusive Legislative List; (ii) delegate to Local Government Councils the collection of any such tax, fee or rate upon conditions prescribed by the State Legislature. 'Any tax' as used in the provision, according to Bello JSC (as he then was) in his lead judgement in the case of *Aberuagba v Attorney-General (Ogun State)*¹⁶, empowers the States to impose tax on all matters in the concurrent list and residual matters. Residual matters in this regard are matters that are neither on the Exclusive Legislative List nor in the Concurrent Legislative Live. It is worthy of note that the above view is not expressly stated in the constitution. However, it is my humble submission that such is the inference that can be drawn from section 4(7) of the 1999 constitution which empowers the State Houses of Assembly to make laws for the peace, order and good government of the State. It could be deduced that, save items listed in the Exclusive Legislative List in the Second Schedule of the Constitution, the State can legislate including the levying of tax on matters in the Concurrent Legislative Lists and others not clearly mentioned therein. Succinctly put, by virtue of section 4(7) of the Constitution, the State House of Assembly shall have power to make laws for the peace, order and good government with respect to the following matters:

- a. Any matter not included in the Exclusive Legislative List in the Second Schedule to this Constitution;
- b. Any matter included in the Concurrent Legislative List set out in the first column of part II of the Second Schedule to this constitution to the extent prescribed in the Second Column opposite thereto; and
- c. Any other matter with respect to which it is empowered to make laws in accordance with the provisions of this constitution.

From the above therefore, it is abundantly clear that as the State Governments have powers to make laws on matters in the Concurrent Legislative List, just as they also have plenary powers to make Laws on any subject matter that is not on either the Exclusive or the Concurrent Legislative List.

¹³ Page 66.

¹⁴ Taxes and Levies (Approved List for collection) Act, Cap. T2 Laws of the Federation of Nigeria, 2004.

¹⁵Abiola S. (2002) 'Division of Taxing Powers' in Abdulrazaq M.T. (eds) *CTN Nigerian Tax Guide and States*, Lagos, the Chartered Institute of Taxation of Nigeria.

¹⁶ (1985) 1 NWLR (part 3) 395 at 405.

Challenges of Concurrent Jurisdiction between the Federal and States

A federal law on concurrent matter ordinarily does not necessarily preclude States laws on the same matter. However, despite the ample accommodation given to the States under the Concurrent Legislative List, and inherent residual powers, the Constitution provides that if any law enacted by a State is inconsistent with any law validly made by the National Assembly, the latter shall prevail. In other words, the States' power to make law with respect to those items on the Concurrent List is subject to the 'doctrines of inconsistency and covering the field'¹⁷. The purport of this is that the State laws must not run riot or be in conflict with the Federal law on the same item. The offending State law shall be void to the extent of the inconsistency¹⁸. Bello JSC (as he then was) in the course of his judgement in *Aberuagba case (supra)*, amplified this inconsistency rule when he stated that the power of States to impose any tax over concurrent matters could only be exercised: '...subject to the rule of inconsistency under section 4(5) and the doctrine of covering the field'¹⁹. While the inconsistency rule however is expressly established by the constitution, the doctrine of covering the field is more of a common law concept, the application of which is not entirely free from controversy in Nigeria. Be that as it may, the questions that arise from section 4(5) of the 1999 Constitution are:

- i. When does inconsistency arise?
- ii. Can this mean that a State Cannot collect tax from a person or source of income on which the Federal Government already imposed a tax on?
- iii. When could the Federal Legislature be said to have covered the field?

In the case of *Attorney-General of Abia State v. Attorney-General of the Federation and 35 ors*, Ogundare JSC stated in his lead judgement that:

The inconsistency does not lie in mere co-existence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount legislature to expressively by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular condition or matter to which its attention is directed. When the federal statute discloses such an intention, it is inconsistent with it for the law of a state to govern the same conduct or matter.

While Ogundare JSC (as he then was) in his analysis suggests that the identical State law would be void where a Federal law has covered the field, Kayode Eso JSC was of a different opinion. For him,

Where a matter legislated upon is in the concurrent list and the Federal Government has enacted a legislation in respect thereof, where the legislation enacted by the state is inconsistent with the legislation of the Federal Government, it is indeed void and of no effect for inconsistency. Where, however, the legislation enacted by the state is the same as the one enacted by the Federal Government, where the two legislations are *in pari materia*, I respectfully take the view that the State legislation is in abeyance and becomes operative for the period the federal legislation is in force. I will not say void. If for any reason the federal legislation is repealed, it is my humble view that the state legislation which is in abeyance is reviewed and becomes operative until there is another federal legislation that covers the field²⁰.

The above approach by Kayode Eso JSC was adopted in the case of *Manufacturers Association of Nigeria v Attorney-General of Lagos State & Anor*²¹ where Falase J of the Lagos State High Court held that the enactment of Value Added Tax²² did not invalidate the Sales Tax Law of Lagos State²³ even though the latter provides for the imposition of sales tax on items already covered by the former. According to Nwabueze:

For an inconsistency to arise, obedience to the state law must precipitate disobedience of the Federal Law, or Vice Versa. Inconsistency connotes contrariety or

¹⁷Abiola S. (2002) 'Division of Taxing Powers' in Abdulrazaq M.T. (eds) *CTN Nigeria Tax Guide and Statutes*, Lagos, the Chartered Institute of Taxation of Nigeria.

¹⁸ See *Aberuagba v. Attorney-General (Ogun State) Supra*.

¹⁹ (2002) 6 NWLR (Part 763) 264.

²⁰ *Ogun State v. The Federation* (1982) 3 NCLR 166 at 176.

²¹ (2004) 13 WRN 116.

²² Cap. VI. Laws of the Federation of Nigeria, 2004.

²³ See Cap. 175, 1994 Laws of Lagos State

incompatibility. It is not enough that two laws make different provisions on the same matter; the different provisions must be at variance, they must run counter to one another²⁴.

The position taken by Professor Ben Nwabueze in this regard, to me, seems to be more appealing given the context of our constitutional provisions. It appears therefore that the doctrine of covering the field has limited utility under the 1999 constitution. The taxes collectable by the State Governments are listed in Taxes and Levies Approved List for Collection (Amendment) Order of 2015²⁵ and they include: Personal income tax in respect of (a) Pay-As-You-Earn (PAYE) (b) Direct taxation (self-assessment); Withholding tax for individuals; Capital gains tax for individuals; Stamp duties on instruments executed by individuals; Pools betting, lotteries, gaming and casino taxes; Road tax; Business premises registration; Development levy for individuals; Naming of street registration fees in state capitals; Right of occupancy fees on lands owned by the state Government; Market taxes and levies where state finance is involved; Hotel, restaurant or Event Centre Consumption tax, where applicable; Entertainment tax, where applicable; Environment (ecological) for or levy; Mining, milling and Quarry fees, where applicable; Animal Trade Tax, where applicable; Produce Sales Tax, where applicable; Slaughter or Abattoir fees, where State Finance is involved; Infrastructure Maintenance charge or levy, where applicable; Fine service charge; Economic development levy, where applicable; Social services contribution levy, where applicable; Signage and Mobile Advertisement, jointly Collected by States and Local Governments; Property tax; Land use charge, where applicable

6. Local Government Council's Taxing Powers

Basically, it was actually through the Local Government Reforms of 1974 that Local Governments in Nigeria transformed from being mere administrative units status to a constitutional establishments. Local Government Councils on their own cannot generally make laws except by way of subsidiary legislation. Even at that, such subsidiary legislation must be strictly as permitted by the relevant State law. The 1999 Constitution (as amended), provides for the establishment of Local Governments in Nigeria by virtue of section 7(1). The Constitution stipulates that every state shall ensure the existence of Local Government Councils under a law that provides for the establishment, structure, finance and functions of such councils. Therein, every State Government is mandated to ensure the existence of Local Government Councils under applicable law that regulates their establishment, structure, composition, finance and functions²⁶ In relation to taxation, the status of Local Government Councils nowadays however, has been enhanced and this has raised a question whether or not they have independent power to raise own taxes²⁷. The functions that have been conferred on Local Government Councils includes collection of rates, radio and television licences, and the assessment of private owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State²⁸. Local Government Councils are not given any direct legislative powers under the Constitution but are made to look up to the Federal and State Government for their sustenance, via statutory allocations as stated in section 7(6) (a) & (b) and section 162 (5) & (8) of the 1999 constitution²⁹. In getting these statutory allocations furthermore, a State Government must first enact appropriate enabling law which will determine the taxable persons, assessment procedure and method of collection, recovery and penalties for tax delinquency. And where such a law has been enacted, a Local Government Council must exercise its power within the limits prescribed by the law. Any exercise of power beyond the units allowed by the Constitution or the enabling law, according to the court in *Shell Petroleum Development Company of Nigeria Limited v. Burutu Local Government Council*³⁰, will be ultra vires, null and void. However, notwithstanding the lack of clear taxing power for the Local Government in the Nigerian Constitution, since section 7(1) of the Nigerian Constitution

²⁴ Nwabueze B.O. *Federalism in Nigeria under the Presidential Constitution*, (Sweet & Maxwell: London, 1983), P. 63 et seq.

²⁵ Taxes and Levies (Approved List for collection) Act, Cap. T2, Laws of the Federation of Nigeria, 2004.

²⁶ Orifowomo O.A. (2010) 'Fiscal Federation and Taxing Powers under the 1999 Nigerian Constitution' in Olugbenga F. (eds.) (2010) *Law, Politics and Development*, 'The Challenges of an Emerging Mega-City, N.B. A Ikeja Branch.

²⁷ Abiola S. (2020) 'Division of Taxing Powers' in Abdulrazaq M.T. (eds.) *CITN Nigerian Tax Guide and Statutes*, Lagos, the Chartered Institute of Taxation of Nigeria.

²⁸ Fourth Schedule to the 1999 Constitution (as amended)

²⁹ Orifowomo O.A. (2010): Fiscal Federation and Taxing Powers under the 1999 Nigeria Constitution' in Olugbenga F. (eds.) (2010) *Law, Politics and Development*, 'The Challenges of an Emerging Mega-City, N.B.A. Ikeja Branch.

³⁰ (1989) 9 NWLR (pt. 165) 318 CA.

guarantees the system of Local Government, for their sustainability and running of the Local Governments, the Local Government Council is allowed to generate revenue through the levying of certain categories of rates to *wit*, the collection of radio and television licences, and carts, establishment, maintenance and regulation of births and deaths etc. All these functions are specified in the fourth schedule of the Nigerian Constitution. Moreso, the Taxes and Levies Approved List for Collection (Amendment) Order of 2015 has provided in details taxes collectable by Local Government Councils in Nigeria. They include the following: Shops and kiosks rates; Tenement rates; On and off liquor license fee; Slaughter slab fees; Marriage, birth and death registration fees; Naming of street registration fee, excluding any street in the state Capital; Right of occupancy fee on lands in rural areas, excluding those collectable; Federal and State Governments; Market where State Finance is involved; Motor park levies; Domestic animal license fees; Bicycle, truck, canoe, wheelbarrow and cart fees, other than mechanically propelled truck; Cattle payable by cattle famers only; Merriment and road closure levy; Radio and television license fee (other than radio and television transmitter); Vehicle radio license fee (to be imposed by the Local Government of the state in which the car is registered; Wrong parking charges; Public convenience, sewage and refuse disposal fees; Customary burial ground permit fees; Religious places establishment permit fees; Signboard and advertisement permit fees; and Wharf landing charge, where applicable.

From the foregoing, therefore, there appears to be lopsidedness in the distribution of taxing powers as well as revenue formula of the nation as can be gleaned from the previous of the constitution. However, it is instructive to point out that all tax revenues collected by the Federal Government are not wholly retained by it. Rather, the taxes collected by the Federal Government are paid into the Federation Account and distributed among the Federal, States, and Local Governments pursuant to section 162(2) of the 1999 Constitution.

7. Conclusion

This paper has extensively discussed the taxing powers of the three tiers of government in Nigeria. The federal taxing powers are more explicitly stated in section 4(2) of the Constitution of Nigeria (as amended) and the items outlined therein are called the Exclusive Legislative List. The State taxing powers, on the other hand, are found on the items in the Concurrent Legislative List, and others not clearly stated therein are either in the Exclusive Legislative List or residual lists. The paper found that the State taxing powers are open-ended, while that of the Federal Government are specifically enumerated in the Constitution. The paper also found that, though constitutionally, the Local Government Council can generate funds by themselves, the third tier of government in Nigeria does not have any clear or concrete Constitutional taxing power. This is so because according to section 2 of the 1999 Constitution of Nigeria (as amended), Nigeria shall be a Federation of States and Federal Capital Territory, which means that only the State and Federal authorities can levy tax so to speak. The enactment of Taxes and Levies Approval List for Collection) Act may have helped in resolving some of the conflicts that always arise with the distribution of taxing powers among the three tiers of government in Nigeria, but listing the taxes collectable by the respective tiers is not enough. The problem lies with implementation. It is recommended that there should be very strict application of this law in order to have a hitch free system of collection of taxes and levies in Nigeria. It is further recommended that the Constitution be amended to not only accommodate the taxing powers of the Local Government Councils but also to enumerate them and clearly define that of the state as well.