AN EXAMINATION OF THE TAXING POWERS OF STATES UNDER THE NIGERIAN LAWS: A CASE STUDY OF KADUNA STATE.

BY

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A DISSERTATION SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF MASTER OF LAWS LLM

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ZARIA

JANUARY, 2017

DECLARATION

I hereby declare that the work in this dissertation entitle "An Examination of the Taxing Powers of States under the Nigerian Laws: A Case Study of Kaduna State" has been carried out by me in the Department of Commercial Law. This dissertation has never been presented in any previous research work for the awards of Master of Laws, LL.M all quotations and references are indicated with specific acknowledgement.

_____ _____

Peter Kehinde AGBAYINTA **Date**

CERTIFICATION

This dissertation entitled: "AN EXAMINATION OF THE TAXING POWERS OF STATES UNDER THE NIGERIAN LAWS: A CASE STUDY OF KADUNA STATE" by Peter Kehinde AGBAYINTA meets the regulations governing the award of the degree of Master of Laws LL.M of the Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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Pro. A. R. Agom **Head, Dept. of Commercial Law**	**Signature**	**Date**
Prof. K. Bala **Dean, School of Postgraduate Studies**	**Signature**	**Date**

DEDICATION

This work is dedicated to the Lord God Almighty and Jesus Christ our Saviour, for granting me the grace to undertake this research work.

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I am indeed grateful to God Almighty for His faithfulness, love and mercy towards me. Keeping me alive, granting me strength to accomplish this noble task, to Him be the glory: I am equally indebted to my Supervisors Dr. D. C. John and Dr. I. F. Akande for their sacrifice and their commitment to my career development without which this work would not have been completed.

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LIST OF ABBREVIATIONS

A C	Appeal Case
CITA	Company Income Tax Act
CGT	Capital Gain Tax
FIRS	Federal Inland Revenue Service
KDSL	Kaduna State Laws
LFN	Laws of Federation of Nigeria
LGC	Local Government Council
NWLR	Nigeria Weekly Law Report
NILS	Nigeria Institute of Legal Studies
PITA	Personal Income Tax Act
PIT	Personal Income Tax
SBIR	State Board of Internal Revenue
SDA	Stamp Duties Act
SC	Supreme Court
SD	Stamp Duty
VAT	Value Added Tax
PPT	Petroleum Profit Act

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ABSTRACT

Tax or taxation whether from Personal Income or Company Tax forms part of the items in the National Income required for the servicing of the economic activities and development of any country, Nigeria inclusive. Tax is a compulsory exaction of money by a public authority for public purposes. Tax is used for redistribution of wealth in countries; it is used to direct the course of the economic. It is often employed to encourage or discourage certain economic activities through the provision of tax incentives. Because of its importance and to avoid abuse of it, law of taxation is wholly the creature of statute. Tax must be expressly imposed upon the subject by clear word of the statute. It is not surprising that the different Constitution of Nigeria have persistently enshrined tax and tax items in their provisions and schedule. Nigeria became a federation in 1954 and the question of sharing taxing powers between the Regions/States and the Federal Government immediately arose. In the sharing of this taxing power though both the Federal and State Government were vested with taxing powers under the 1999 Constitution but the most significant taxes in terms of revenue potentials were all allocated to the Federal Government while the State was left with tax items that were of less economic important/ potentials. The attendant effect has been the inability of States Governments to generate sufficient revenue through taxes. Secondly, there was also the re-occurring of the imposition and collection of multiple taxes by Kaduna State Board of Internal Revenue from citizen. Multiple or double taxation offends inter-state commerce clause as impliedly provided for under item 61 of the Exclusive Legislative List of 1999 as Amended. The research objectives examined the scope of federalism as being practiced in Nigeria. Despite the recognition that, there could be inequality in power and resources between the Federal and State; it is not to reduce the state to impotent or to totally depend on the Federal Government financially. The work also examined the viability of taxes as demarcated by the Constitution and Taxes and Levies Act, whether it solved the problems of multiplicity of taxes in Kaduna State? The question raised in the course of the research was whether the taxing power of States under the 1999 Constitution as Amended can enhance sufficient revenue generation in Kaduna State? Doctrinal method of research was used by researcher which afforded the researcher the opportunity of going through several related statutes, books, journals and the likes. The extent of the State taxing power can be found in the taxing laws as enacted by each State House of Assembly. The finding of the research revealed that there was in balance in the sharing of taxing power between the State and the Federal Government as enumerated by the Constitution. The economically significant taxes in terms of revenue potentials like import and export duties, petroleum profit tax, companies income tax were allocated to the Federal Government while the State were left with less important tax items in terms of revenue potential like community tax pool and betting taxes. Secondly, several agencies in Kaduna State engaged in collecting taxes outside the tax items as demarcated by the Taxes and Levies Act 2004, resulting into double or multiple taxation in the State. Though recently the state Government passed Revenue Harmonization Law 2014 and The Kaduna State(Codification and Consolidation)Law 2016 to put an end to such practices. The

research recommended that section 4 (2-4) of the 1999 Constitution should amended; there should be redistribution and diversification of most significant taxes in terms of revenue generation between the Federal and Kaduna State. Kaduna State should adhere to the demarcation of taxing items as provided for by the taxes and levies Act 2004.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Taxation whether from personal income or company tax are part of the items in the national income required for the servicing of the economy activities and development of any country Nigeria inclusive. The advent of oil boom in Nigeria led to a shift from the production of agricultural produce and taxes to over reliance on oil. Presently there has been a global fall in the price of crude oil causing anxiety to the international community especially to countries like Nigeria that are dependent on oil revenues. This has increased the need for Nigeria to diversify its economy from its current dependence on oil.

Taxation or taxes have played important role in Nigeria in mitigating the effect of inflation and economic challenges in Nigeria. Government have used taxes to raise sufficient revenue to satisfy its needs like current expenditure, defense, law and order, health services and education, economic and social policy.

Nigeria became a federation in 1954 and one of the major concerns that arose among Nigerians immediately then was the issue of sharing taxing powers between the federal and state governments. The Constitution allowed each state to have its own regulatory and taxing authority with revenue needs, and most of these states used their various forms of taxation not only to raise revenue but to also perform other functions like protecting producers or sellers from resident competitors.

The feature of federalism is the formal distribution or allocation of jurisdictional powers between the Federal and State Government. It is that the financial powers of the federation can be so neatly distributed between the federal and state government that the taxing powers of the respective government should be independent of each other, to raise financial resources necessary to meet the needs of each government. In Nigeria, there are three (3) levels of government as fashioned out by various successive constitutions; the Federal Government, the State Governments and the Local Governments.

Both the 1979 and 1999 Constitution of the Federal Republic of Nigeria (as amended) provided for the taxing powers of the states. Only that the states' taxing powers are glean from the sections of the constitution while that of the Federal Government are glaringly and dominantly positioned. A close looks at Part I to the Second Schedule of the 1999 Constitution of the Federal Republic of Nigeria (as amended) containing the Exclusive Legislative List support the above assertion.

The 1999 Constitution of Nigeria as amended enhanced the Federal Government taxing power more than the states by placing on the Federal Government exclusive competence the more important forms of taxation such as custom and excise duties, mining rent and royalties, export duties and the likes while leaving the residuary matters at the disposal of the state, such as taxes on land, taxes on goods and passengers carried by road, betting and gambling and the likes. Thus the financial resources available to the Federal Government far exceeded those available to the state government, making the state to depend on the federally collected revenue .

The above position /situation caused tension and controversy between the Federal and State Government, this became inevitable considering the increasing expenditure commitment of the state, the constantly increasing demand upon the state for schools, roads, medicine and other social services has made it necessary for them to explore avenues which can increase their resources. The states have therefore been forced to seek every available source of revenue,

Kaduna state like many other state started imposing sales tax (now Value Added Tax) VAT and other taxes on commercial transaction and properties for economic survival of the state .

The ensuing problems was double taxation or multiple taxation as we have overlaps of various levels of government taxing rights on business entities, individual and corporate bodies complain about the ripple effect associated with duplication of taxes. Taking telecoms industry for example it complained of the spurious taxes and levies by both state, local government and their agent in 2012. The complaint was to the effect that Kaduna state Urban planning and development authority demand notice of N7,680,000.00 (seven Million, six hundred and eighty thousand naira) served on Airtel for development/planning permit approval, Bauchi State Signage and Advertising Management Agency served their demand notice on Airtel for the payment of N755,000.00 (seven hundred and fifty five million naira) as signage branding and advert levy .

The same Airtel industry received from Abia State Infrastructural Development Fund Board demanding notice of N19,000,000.00 (Nineteen Million Naira) as Infrastructural Development levy. Abia state environmental protection agency/yagazie Nigeria limited, N300,000.00 (Three Hundred Thousand Naira) per new site for environmental support fee and ETA Registration, and Abia state Town Planning Authority served on the same Airtel N650,000.00 (Six Hundred and Fifty Thousand Naira) per sites as permit/processing fees .

With the taxes and levies on Airtel Industry by several states and their agencies, the question to be asked is, can they give cheap services to Nigerian customers? The answer will be in the negative. In the first instance, the above taxes and levies by the states are devoid of any legal backing. The said industry is expected to have paid the statutory Corporate Income Tax, Value Added Tax, Import Duties on Telecom equipment and the rest. Worthy of note is that matters relating to post, telegraph and telephone are on item 46 of the Exclusive Legislative List of the 1999 Constitution.

This is the position of many states of Nigeria including Kaduna state. In Kaduna state the effect of multiple taxation was also felt by many business operators, when it was becoming unbearable, the businessmen and shops owners had to complain of the ripple effect of multiple taxation by tax agents or authorities who took the initiative of levying certain taxes, fee and levies like collecting permission to operate business fee, trade cattle license fee, produce inspection fees, consumption tax, trade permit fees, commercial undertaking fee, company permit fee, printing permit fee, petroleum and allied matter permit fee to mention but a few of them . This have often led to arbitrary harassment and even closure of businesses of the taxpayers by the tax authorities.

The taxation of products or goods brought in from other states to Ogun State by the Ogun State Government was held in the case of The Attorney General, Ogun State vs. Alh. Ayinke Aberuagba & 6 Others to have contravened the inter-State trade and commerce which was an Exclusive Legislative Power of the Federal Government as provided for in the 1979 Constitution of the Federal Republic of Nigeria. The Court went further to states that, "no State has power to make any law or regulation which will affect the free and unrestricted intercourse and trade between the States, or which will impose any discriminating burden of tax upon the citizens or product of other States coming or brought within its jurisdiction" .

Preliminary research by the researcher revealed that in the exercise of its taxing powers, Kaduna State tax officials often violate the principle of inter- state commerce and avoidance of double taxation. To legalize her action, there is presently a bill title "Kaduna state revenue harmonization bill" which has passed though the first reading in the State House of Assembly on 2nd October 2014.

Furthermore the Joint Tax Board has also made pronouncement delineating the revenue boundaries of the three tiers of government through the Taxes and Levis (Approved list for collection) Act 2004 specifying the classes of tax and levies collectible by each level of government in Nigeria. Thus the need to ascertain the taxing powers of states under the Constitution and Statutes necessitated the study. An Examination of the Taxing Powers of States under the Nigerian Laws: A case study of Kaduna State.

1.2 Statement of Problem

a. The Federal and State Governments have been vested with taxing powers under the 1999 Constitution of the Federal Republic of Nigeria as amended .But the most significant taxes in term of revenue potential like the import and export duties, excise duties, mining rent and royalties, petroleum profit tax, Companies Income Tax are all allocated to the federal government while the states are left with stamp duties, Personal Income Tax, Capital Gains Tax in respect of individuals, community tax, entertainment tax, pool betting casino tax which are of less economic potentials compared to the federal government. This has resulted into the inability of Kaduna State and most states in Nigeria to generate sufficient revenue to finance their capital project and other needs thereby relying or depending on the Federal Government monthly allocation for their survival.

Recently, there has been cry for financial assistance by states to the Federal Government to mitigate their debt particularly workers' salary arrears, which has won the sympathy of the Incumbent government. On the 29th June, 2015 the Federal Government announced a bailout fund or package for states to take care of the backlog of workers' salary and access funds for development through the rescheduling of their debt by banks with the Central Bank of Nigeria Guarantee .

Research Questions

Whether the taxing power of the states under the 1999 Constitution (as Amended) is equitable in view of the provision of the Taxes and Levies (Approved List for Collection) Act 2004 with the Schedule to Act (Amendment) Order 2015?

Whether the taxing power of the states under the 1999 Constitution (as Amended) is in consonant with the spirit of federalism, can it justify economic independent of the states?

1.3 Aim and Objectives

The research is aimed at addressing the imbalance in distribution of taxing powers between the Federal and State Government in Nigeria. While the objectives of the research are as follows:

i. The research examines the taxing powers of the state as provided for by the 1999 Constitution (as Amended) to saw how imbalance is the distribution of the taxing items left to the states by the Federal Government.

ii. The research examines the scope of federalism as being practice in Nigeria in relation to taxing powers between the federal and the state government. Although federalism accommodates certain degree of inequality in powers and resources between the federal and state government, it is not to reduce the states to virtual impotent or total dependence on the federal government as evidence or seen in Nigeria constitution. The lacks of economic independent of States do affect their capital growth and development. Thus we would look at the extent to which the division of taxing power has either agreed or departed from the well established principle of federalism.

1.4 Scope and Limitations of the Research

The scope of the research includes the legal framework of the taxing powers of the States in Nigerian with Kaduna State as the case study. Thus the research is on the taxing powers of Kaduna State and would in addition consider the provisions of the Taxes and Levies (Approved List for Collection) Act as applicable to other States of Nigeria. Constitutionally the research is focused on the concurrent legislative list or residual list of the 1999 Constitution of Nigeria (as amended). Hence the work does not extend to items on the Exclusive List of the Constitution like Customs and Excise Act, Petroleum Profits Tax Act, Companies Income Tax Act and the rest. The work is also limited in scope to Nigeria in particular and the legislative powers of Kaduna State to impose tax and not the amount of revenue generated through collection of taxes and levies.

There was also the constraint of inadequate literature or books on taxing power of states. Although Kaduna State has enacted the Kaduna State (Codification and Consolidation) Law, 2016 it is in bill form and not yet simplified into literature or books for easy understanding.

1.5 Research Methodology

The research adopts the doctrinal method of research that is library – oriented research. In employing this methodology, primary research materials were sourced from Statutes, such as the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Personal Income Tax Act , law reports and other relevant domestic legislation for the presentation of this work. Secondary research materials including but not limited to textbooks, law journals, and internet works, unpublished but relevant article delivered at seminars, conferences, workshops and lectures were used for the purpose of analysis to arrive at conclusions and opinion information. The doctrinal method is best for this research because most of the materials needed for the work are books base information.

1.6 Justification of the Research

This work will benefit a cross section of people who have anything to do with tax law taxation in Nigeria as a whole. For example, the State and Local Government will know their powers to make or impose taxing power on tax payer within their domain on items in the approved list for collection. The research will in addition educate the society or tax payers to rise to the challenge and defend themselves when illegality is about to be or is being carried out on them.

The Federal Inland Revenue Service (FIRS) will find this work most useful and helpful because of its objects and functions as stated in sections 2 and 8 of Service Act (Amendment Act 2007). Even the National Assembly (Senate and the House of Representative) and the State Houses of Assembly will find this work particularly important to them. This is because even though some of them are lawyers they might not be vast in tax laws

The research work will enrich and enhance the judiciary (Bench and Bar) in knowing recent laws on taxation particularly in Kaduna State. Kaduna State Government recently pass into law Kaduna State (Codification and Consolidation) Law, 2016 on harmonization of taxes in the state. It will also educate or enlighten both lecturers and students to know the applicable legislation for taxes and levies to both Kaduna State and its Local Government. The research work will serve as reference materials to legal practitioners, tax professionals, taxing authorities, boards and legislators.

1.7 Literature Review

Taxation is an important aspect of intergovernmental transfer of revenue from Federal Government to State and Local Government; it is a tool for any society or country's development and advancement especially for capital and industrial growth in any society.

One of the notable experts in tax law of our time Abdulrazaq M.T. in his book dealt with Personal Income Tax, the administrative provision, local government Revenue Committee, the Capital Gains Tax, and Stamp Duties. However, he failed to discuss the Taxes and Levies (Approved list) Act , he also did not address the lack of equality of arms between the Federal and State taxing powers which this work seeks to address. Thus his work, with due respect, is not comprehensive enough particularly on the subject matter of this work, thus warranting this instant work set to discuss extensively on these mentioned areas or topics.

Ayua I. A. in Nigeria Tax Law discussed Personal Income Tax, Company Taxation, Capital Taxation, Tax Clearance Certificate, Freedom of State Tax and Interstate Trade and Commerce and restraints on taxing power of the Federation and State Government. The learned author's work on these topics, with due respect, only treated these topics in a nutshell and not in detail. In dealing with the restraint on taxing powers of federation and state, he was more concerned with how these levels of government use their authority and powers to free inter-state trade and commerce from state and local tax measures. The learned author did not treat, or distinguish the taxing powers of each level of government as brought out by the Taxes and Levies (Approved list) Act, 2004 (a legislation passed subsequent to the publication of the book) thus his work is distinct from this research work hence the need for this research.

Asyei A.K. wrote on imposition of income tax, adjustment profits, types of allowances and charges in "Principle of Personal Income Taxation in Nigeria" . He also discussed computation of tax liability but failed to discuss the approved taxes and levies of the States or more particularly Kaduna State. This research work is out to discuss these issues.

Baiyewu F.A in his book, Nigeria Taxation: A Practical Approach Laid emphasis on the various type of income, differentiated between income and investment, and itemized the various approved list of items as spelt out by the Act (the approved list of taxes and levies collectible by the State and Local Government) but failed to discuss each item on the Approved List. He also did not discuss how revenue is generated for States which the researcher intends to deal with in accord with the 2004 statutes (the Approved List of Taxes and Levies) the researcher also intends to discuss the taxing powers of Kaduna State in the contest of protection of inter-state commerce and avoidance of double taxation.

Umenweke M.N. discussed the demarcating line between the Exclusive Legislative List and the Concurrent Legislative List particularly in the area of Stamp Duties, Development Levy, Business Premises registration levy, power to impose Value Added Tax (VAT) in "Tax Law and its Implication for Foreign Investment in Nigeria" Using case law as precedent to explain the scope of limitation by each level of government. He however omitted to write in detail on all the listed items. The researcher is out to lay emphasis in this research work on how individual States particularly Kaduna State can legitimately raise revenue to fund its Capital Expenditure, Projects, Wages and Bills from the listed items in the Taxes and Levies (Approved List) like Lagos state is doing. Thus this research work covers Kaduna State's taxing powers in a more detailed form than the above author.

Mc-Connell Brue wrote extensively on mixed Economy, Companies Intergovernmental transfer of revenue by the three ties of government but did not touch on taxation as it affects different states. The researcher is out to bring to limelight the taxing powers of Kaduna State, to the

extent that the state can survive without reliance on grant from the federation account by enacting appropriate legislation on taxes.

Obadan, M.I. A book authored by different tax and economic revenue experts dealt with different and several topics on taxes like tax structure development in Nigeria, tax elasticity and buoyancy in Nigeria, Nigeria tax policy reforms, challenges of tax administration in Nigeria, revenue structure and performance and the likes. The book did not discuss taxing powers of different level of government in Nigeria. The researcher is out to discuss this all important topic to enhance the knowledge of others.

Omoigui, O.I. This latest book of the Federal Inland Revenue Service on taxation dealt extensively on several issues and topic like tax compliance and enforcement, tax reforms tax policy and legislation, unveiling the negative variance and shortfalls between the potentials tax collection levels and the actual tax revenue generation in the Nigeria tax system, in discussing tax legislation, the book merely emphasized on the different types of taxes, the impose rate, the prescribed penalties for default but did not discussed the level of government that has the power to impose the said taxes, this is what the researcher is out to unveil to the public.

Thus we can at this junction state that, as desirous as the research topic is for the various level of government to adhere to the legislative Constitutional provision on Taxing Power for a peaceful tax administration in a developing Country like ours, none of the previous writers has done any analysis of the subject or research topic under consideration. This work is undertaken by the researcher to bring to light the benefits Kaduna State and its Local Governments stand to derive from proper utilization of its powers to levy tax and collect revenue on all the items listed in the Approved List in addition to revenue derived from the Federation account as grant and also to advance knowledge in this field to the general public.

Omoigui, O.I. Wrote on constitutional context for Taxation, fiscal federalism in Nigeria, went ahead to discuss the three eras of Taxation in Nigeria, instrument of Tax policy and cases for tax reform. The book also discussed the structure and jurisdiction of Nigeria Tax authorities, under this topic the book examined the tax authorities for both Federal and State Government with their composition, it mentioned the taxes that are collectable by the three levels of government as itemized by the Taxes and levies (Approved list for collection) Act 2004. The book neither discuss these items nor did it also discuss the itemized item in the new Taxes and levies (Approved list for collection) Amendment Order 2015 since the amended Act came after the publication of the book, thus warranting the researcher's work which discussed these various items.

1.8 Organisation Layout.

The research work is divided into five chapters as follows:

Chapter one deals with the General Introduction of the subject matter of this research work, Statement of Problem, Aim and Objectives of the Research, Research Methodology, Justification of Research, Literature Review, Justification and Organizational Layout.

Chapter two deals with conceptual clarification of terms. Chapter three considered the historical perspective of taxation in Nigerian from pre-colonial Era to 1999 Constitutions as amended.

Chapter four discussed the Examination of taxing powers of federal and state under the Nigerian laws, the tax item allocated to the two levels government by the Constitution,

Chapter five deals with summary and conclusion accompanied with findings and recommendation.

CHAPTER TWO

CONCEPTUAL CLARIFICATIONS OF TERMS

2.1 Introduction

Nigeria tax legislation is entirely statutory. Hence the rules of interpretation of statutes apply. Before going into the fundamental and the nitty-gritty of the research work proper, the researcher considers it important to make preliminary observation on certain fundamental concepts and the meaning, scope and definition attached to these words in the context of this work.

This chapter of the work is thus subdivided into sections one deal with introduction, in section two the meaning and definition of certain concept were considered, section three examined the bases of taxes in Nigeria.

The meaning of taxing powers, the concept of taxing powers. With the aim that proper understanding of these terms will serve as a guide to tax agents in the execution of their duties.

It will also enrich the taxpayers' knowledge of the taxing powers of the states, and enable them to challenge wrongful or unconstitutional acts of the state tax authority. Particularly with the envisaged amendment to the 1999 Constitution increasing the taxing powers of the State.

The chapter is subdivided into five sections. Section one is on introduction, section two deals with the meaning of terms, section three considered the meaning of taxation, section four gave meaning of words from Personal Income Tax and section five deals with the meaning/concept of taxing powers.

2.2 Meaning of Terms

Tax: A burden which every citizen must bear to sustain his or her government

Tax Rate: This is the amount of tax which is levied per unit of base

Tax Policy: Polices that aims at amending the tax rate so as to suit economic fiscal policy or measures.

Tax Incidence: This is where the burden of tax falls or who bears the burden of tax

Tax Base: It is the object that and it could be the value of the income

Taxable Capacity: It is the connection with the amount of tax which could be jointly or fairly imposed on the individual

Tax Compliance: the obedience of a tax payer totally under the law, this obedience can be induce, voluntary or compelled.

Double Taxation: where a particular good produced of one state bear tax like sales tax, and the same goods when sent to other state is still subjected to sales tax in that state, its double, duplicative or multiple taxation .

2.3 The Meaning of Taxation

An examination of most Nigerian laws on taxation reveals that the word tax has not been specifically defined. That is, there is no single definition of the word from the statutes. However, the word has been defined in cases and text books. To understand the meaning of taxation, it is necessary to first of all define the word 'Tax'.

It is common to hear laymen using words like levy, charges, fines, penalties, fee interchangeably and to refer to it as tax. However, to the legal mind the above words are not tax but what an

individuals or groups pays or gives to the government either for the purpose of providing certain services or for the execution of a public project or levied as punishment for the commission of a particular crime, and this is sometimes arbitrarily fixed. They are not tax.

The Chambers Twenty First Century Dictionary defines tax as a "compulsory contribution towards country's expenses raised by the government from people's salaries, property and from the sale of goods and services." The problem with this definition is that it fails to underscore the compulsory nature of tax. It also gives the wrong impression that tax is voluntary with the use of the word contribution.

The Black's Law Dictionary defines tax as "a charge, usually monetary, imposed by the government on persons, entities, transactions, a property to yield public revenue. Most broadly, the term embraces all governmental imposition on the person, property, privileges, occupation, and enjoyment of the people and includes duties, imports and excises. This definition evidently fails to underscore the element of tax as an imposition for public purposes.

Ayua in trying to define tax, referred to the definition given by " the Oxford English Dictionary" as "a compulsory contribution to the support of government levied on persons, property, incomes, commodities, transaction and so on, now at a fixed rate most proportionate to the amount on which the contribution is levied."The deficiency with this definition is in its limited view of tax purposes.

Akanle defines taxation as "a compulsory levy imposed on a subject or upon his property by the government having authority over him or the property". Again this definition evidently fails to underscore the element of tax as an imposition for public purposes.

A further knowledge of what tax is can be deduces from the definition given by case law. In the celebrated case of Mathews vs. Chicory Marketing Board the Australian Supreme Court defined tax as "a compulsory exaction of money or taxation is raising money for the purpose of government by means of contributions from individual persons". The deficiency with this definition is that it gives the wrong impression that tax is voluntary with the use of the word contribution and fails to underscore compulsory nature of tax.

In the American case of United States vs. Butler , Justice Roberts defined tax as used in the Constitution to signify "an exaction for the support of the government." While in Re-mytinger D.C. tax is define "as pecuniary burden laid upon individuals or person or property to support the government and is a payment exacted by legislative authority". The problem with these definitions is that they fail to underscore the compulsory nature of tax and improper descriptions of tax base.

John defined taxation as a compulsory levy by the government on the incomes of individuals, properties and corporate bodies for the upkeep of the government. The definition lacks proper view of tax purposes

A general view of the above definitions of tax and by extension the researcher's view is that, taxation denotes a compulsory levy, a burden, not voluntary. It is an exaction on an individual's income, properties, business, and commodities and so on, for the execution of government projects or the development of the society. It touches on everything one lays his or her hand to do. Taxation is an imposition or exercise of power by the government or a sovereign power levy through its legislative arms on the incomes or profit of its citizens to raise money is order to finance and sustain the government and its machinery so that it can discharge its responsibilities.

It should be noted that this power of imposition is not dependent on the conferment of benefits on taxpayer but is seen essentially as an exercise of sovereign power. The government sees it as

part of the many rights and attributes of sovereignty, in addition to power to spend for the welfare of the community and power to maintain law and order by the government, thus tax legislation is always commanding, imposing and mandatory . "There is hereby imposed a tax on the income of individual, communities and families". This is a command imposed on the individuals without any element of negotiation.

Another aspect of the various definitions is that, taxes are imposed to raise revenue to support the government. These are expected help the government in the socio-economic development of the country and reduce inequalities of wealth in the society and attainment of social justice.

Thus taxation is the 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. Tax is also used to generate revenue to run the criminal justice system thereby reducing criminal tendencies and minimizing moral decadence in the society. In the words of Justice Oliver Wendell Holmes "Taxes are what we pay for a civilized society".

It is clear from the above that taxation is crucial to the proper functioning of the society. It is lasting and quite certain for a Nation's economy. This is in accord with Benjamin Franklin's statement while commenting on the new Constitution of the United States. He said; "Our Constitution is in actual operation, everything appears to promise that it will last. But in this world, nothing is certain but death and taxes."

In strengthening the above notion of taxation as a stimulant and guide to the economic and social development of a nation, the United States Supreme Court in Nichols vs Ames described it as:

"The one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy; it is also the power to keep alive".

Still on the importance of tax to a country, a learned author in tax law, Ola,C.S. said:

Taxation is a compulsory levy imposed on a subject matter or upon his property by the government to provide security, social amenities and create conditions for the economic well being of the society. The main purpose of taxation is to raise funds to meet government expenditure and to redistribute wealth and management of the economy.

As stated earlier in chapter one of this work, taxation is not only a modern day means of raising revenue for the government. Taxes have been in used right from the days of kings, Emirs and Obas of empires. The emperors levied tax on their subject both to generate revenues to provide for the defense of the kingdom and also for the general welfare of the empire. Today in addition to generating revenue for the government, tax is used to ensure resource redistribution, streamline consumption of certain goods, reduce inflation, generate employment and stimulate growth in the economy. Thus taxation has become a veritable tool of fiscal and economic policy

According to Babatunde Fashola, "the philosophy under primary or strengthening taxation is that the expenses of government being for the general good ought to be borne by the public generally. The foregoing view finds support in Akanle's treatise; The meaning and Nature of Taxation Power. He opined that:

The justification of these powers rests on the assumption of the common law that every citizen is entitled to the protection of his life, liberty and property by the state. But for the state (i.e. government) to preserve such life, liberty and property it must be enabled so to do, and this is done through the concept of implied powers of taxation, police and eminent domain.

The above philosophy and meaning of tax is in consonant with the United States of America tax system . That "the theory that underlies taxation is that charges are imposed to support the government in exchange for the general advantages and protection afforded by the government to the taxpayer and his or her property. The existence of government is a necessity that cannot continue without financial means to pay its expenses. Therefore, the government has the right to compel all citizens and property within its limits to share its cost. The state and federal governments both have the power to impose taxes upon their citizens."

The researcher regards taxation as a compulsory deduction by the government from a person's income. It is that payment one is expected to pay by law on gains from property, commodities, transaction and so on for the support of the government in keeping or sustaining the country.

Double Taxation: where a particular good produced of one state bear tax like sales tax, and the same goods when sent to other state is still subjected to sales tax in that state, its double, duplicative or multiple taxation .

Residence is defined as: a house or dwelling, especially a large, impressive and imposing one; (b) the act or an instance of living in a particular place; (c) the period of time someone lives there. Residence means living in a particular place, especially officially. Residency on the other hand means "a residence". It is living in a particular locality, though it is possible that a person may have two places of residence. Residence therefore connotes the idea of remaining and settling in a place for a fairly long period. It is for this reason that residence of an individual is used to determine liability for Personal Income Tax.

The "place of residence" in relation to an individual, means a place available for his domestic use in Nigeria on a relevant day and does not include any hotel, rest house or other place at which he is temporarily lodging unless no more permanent place is available for his use on that day. Other persons chargeable to tax by the Personal Income Tax Act 2004 and the amended Act 2011 include among others the following:

2.4. Meaning of Words in Personal Income Tax

2.4.1 Itinerant Worker

Section 1A of the amendment Act 2011 provides that, notwithstanding anything in the principal Act; the relevant tax authority in a state shall have powers to collect tax under this Act from itinerant workers". While Section 2(3) PITA states that, tax is collected on an itinerant worker for any year by the state in which he is found during the year. Section 108 of the amended Act 2011 interprets or defines an itinerant worker as an individual irrespective of his status who works at any time in any state during a year of assessment (other than as a member of the armed forces) for wages or salaries or livelihood by working in more than one state and work for a minimum of twenty (20) days in at least three (3) months of every assessment year whose total income does not exceed N600.00.

2.4.2 Partnership

Where a trade, business, profession or vocation is carried on in partnership, the partners are each treated separately for tax purposes so that profit and losses are appointed amongst the partners and no assessment is made on the partnership as a whole . This is because the expression body of person does not apply to partnership taxation.

It could be deduced from section 8(1) that the income of a partner shall be the sum of any remuneration, interest on capital, or the cost of passages to or from Nigeria wholly or mainly undertaken for the purpose of leave or recreation, which is charged in the partnership accounts in respect of that partner according to his agreed share of the profit. A partner's share in the

partnership income will be included in his income after deductions of the charges mentioned above has been made from the income of the partnership as a whole.
Where the partnership accounts shows a loss, a partner's share in the loss is deducted from his gains or profit, remuneration, interest on capital or cost of passage for leave or recreation. Where his share in a loss exceeds his income from these sources, he will be deemed to have incurred a loss under section 8(2) PITA.
Some of the salient points to note about taxation of a partnership firm are;
(a) The income of a partnership concern is not taxed. It is the individual partners that are taxed based on the amount that finally comes into their pockets.
(b) It is the tax authority of the place of residence of the individual partners that taxes the individual partners and not the tax authority at the place where the business is carried on.
2.4.3 Trustees, Executors and Settlements
Section 2(6) PITA or the Principal Act 2004 is to the effect that income arising to a trustee of any settlement or trust, or to an executor of any estate of a deceased person, it is the tax authority where the administration of the trust is located or where the deceased was last resident, as the case may be, that may impose tax on such income. The trustees and executors are taxable persons under the PITA. The only problem that may arise will be in relation to settlements, settlers and beneficiaries. The expression "settlement" is defined under the second schedule to the PITA to include any disposition, trust, covenant, agreement, arrangement or transfer of asset.
Thus, individual taxpayers who transfer property to their infant children under a family arrangement will come under this definition. The PITA deems the income arising from such an arrangement to be income of the settler or transferred or for income tax purposes.

2. 5 Meaning/ Concept of Taxing Powers
Under this heading, the researcher considered the meaning of taxing power which is the crux of the research topic. It is the fulcrum upon which taxes are collected by the Federal and state governments or their agencies.
The Black's Law Dictionary defines power as the ability to act or not act, especially a person's capacity for acting in such a manner as to control someone else's responses. It further states that power denotes dominance control or influence over another, control over one's subordinate. Power is the legal right or authorization to act or not to act; a person's or organization's ability to alter. The Black's law Dictionary also defines taxing power as the power granted to a governmental body to levy a tax.
Rowland L; defines taxing power as "the power of a level of government to impose a tax by its own law and prescribe conditions for the administration of the tax, either by its own agency or by the agency of another level of government."
Taking a look at the position in the United States' Constitution , it defines taxing power by saying:
Congress has power to lay and collect taxes, duties, imports and excises, to pay the debts and provide for the common defense and general welfare. Under the 16th Amendment, Congress can collect taxes on incomes that are derived from any source. As long as Congress has power to regulate a particular activity that it wishes to tax, it can use the tax as a regulating device rather than to raise revenue. Even if Congress lacks the power to regulate a particular activity, the tax will be upheld if it has the "dominant intent" of raising revenue. In other words, even if a tax might have a substantial regulatory effect, if it raises revenue, it will be considered valid.

The cumulative effect of the two words "tax" and "power" is that the "power to tax" is the ability or power of any government to levy tax or raise revenue through taxation.

Nigeria is a federation and consists of three levels or tiers of government which are independent or autonomous of each other to some extent. The Constitution of Nigeria which is the unifying force and the grund norm of the country has given the respective levels or tiers of government powers. These powers are derived from the Nation and the resources of the community which ordinarily ought to have no bounds except as may be limited by the constitution itself.

Thus taxing power is the power and authority of levels of government to impose and collect taxes from the people and citizen in that community, state or nation. This power is tied to each government, it is inseparable and not dependent on the consent of the individual tax payer or the benefit he or she will derive from the government. However, such powers must be constitutionally derived.

It is important to note that what we have as the present day Nigeria came to be in 1914 when then Northern and Southern protectorate were brought together as a nation through Amalgation. Thereafter, the two protectorate (North and South) came under the influence and control of the colonial master (British Government) who ruled the country till 1954 when Nigeria became a federation consisting of central and Regional now (Federal and state) Government .By 1960 Nigeria gain her independent. Immediately Nigeria became a federation in 1954 the question of sharing taxing powers between the regions and the Federal Government arose

Taxing powers are generally backed by legislative power. A critical element of tax is the determination of the rate of tax to be fixed by each sovereign level of government independent of other level. That is the ability of a government to determine the extent of its own revenue.

A close look at the 1960 Constitution of the Federal Republic of Nigeria reveals that the regions were given unfettered right to prescribe rate of tax and personal allowance. They were also to decide their own method of assessment and administration under their own laws .

The idea of states being free to determine the rate of taxes within their jurisdiction is coterminous with the conventional public choice approach. Akanle gave the nature and scope of taxing power a more extensive treatment. He stressed that taxing power had its origin in the implied common law power of government. He submitted that the power to tax is inherent in sovereignty just as the power to maintain law and order.

Thus, a sovereign state has an inherent power to determine the person and things to be subjected to taxation and those to be exempted.By virtue of section 4 (7) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) the 36 State Houses of Assembly are vested with legislative powers in respect of matters contained in the Concurrent Legislative List as well as other Residual Legislative powers. That is anything that is not listed in the Exclusive Legislative list, matters which are not covered by the National Assembly in the concurrent legislative list, then, the States Governments are empowered to legislate. This finds support in the case of The Attorney General, Ogun State vs. Alh. Ayinka Aberugba And 6 Others Where the Court held that "a House of Assembly may, subject to such condition as it may prescribe, make provision for the collection of any tax, fee or rate…" a State has the power to impose tax on all matter in the Concurrent List and Residuary Matters.

Thus, state has unfettered power to determine the rate of taxes, the people concerned and those exempted. Such rates must be as enshrine by the law of each state. In the above case the tax was

on products or goods that were locally produced within the state. Thus the court set aside same as being ultra vires. The full facts and reasons for the Court's decision will be discussed later.

CHAPTER THREE

HISTORICAL PERSPECTIVE OF TAXATION IN NIGERIA

Introduction

Before the advent of Constitution or federation in Nigeria taxes or taxation has been ongoing in different region of the country (Nigeria). In 1954 Nigeria adopted a federal constitution and since then the country had went through a series of constitutional changes under different social-political milieu before the extant Constitution of the Federal Republic of Nigeria 1999 (As Amended) .

The division of taxing powers usually varies from one constitution to the other depending on the system of government and the prevailing philosophy of the drafters on the balance of power between the federal and the state. This chapter chronicles the prevailing social-political and historical factors that have impacted on the development of division of taxing powers in Nigeria with a view to gaining insights into the extent to which the experiences of the past could guide the reform of the present.

It is in recognition of the above that the researcher, in this chapter discusses the historical perspective of taxation in Nigeria from pre- colonial era to 1999 Constitution. Thus this section is sub divided into seven sections. Section one deals with introduction, section two discusses pre-colonial era to 1946, section three deals with the period between 1946 to 1963, section four considered the period between 1963 to 1979, section five examined the period between 1979 to 1984, section six deals with the period between 1984 to 1999 while the last section in this chapter looked at the period from 1999 till date .

3.2 Tax From Pre-Colonial Period To 1946.

Tax is creation of statutes. A state must have the legislative backing to impose tax. It becomes imperative and important to trace the origin of tax in Nigeria. For an examination of the taxing power of the states would be improperly made if done in isolation of the legal history of the processes that culminated in the recognition and adoption of the rationale for the demarcation of taxing powers between the federal and the state government within the federation of Nigeria. A brief discourse of the past will not only explain the origins of the present system, but will also give a clearer insight on the concept and reasoning that underlined our structure of demarcation of the tax jurisdiction .

Nigeria comprises of several ethnic nationalities occupying wide geographical area which prior to the advent of British colonialist were regarded as Northern, Western and Eastern Nigeria. Each of these communities had a system of mobilizing human (mainly) and material resources towards community development in terms of providing public goods under the customary institutions and community leaders. Then each community depended wholly on the resources available within the geographical boundary without any form of transfer or mutual assistance from the other. The tax system was designed to suit the peculiarity of each environment.

The system in the North was more developed because of the existence of strong Emirate institution. Agricultural tax (kurdin kasa) and cattle tax (jangali) were the earlier forms of taxes in the North while in the West, the Chiefdom were headed by Obas collecting capitation tax (poll and head tax). In the East there was no evidence of the existence of any form of organized

taxation due largely to absence of a recognized political figure that could exercise the sovereign power. The East has been described as a "stateless" community .

The British Government in 1914 succeeded in amalgamating the Northern and Southern protectorates to become one nation, which is today known as Nigeria. Immediately after the amalgamation, the initial problem that confronted this British colonial Government was how to organize the different communities that consist thereof into a modern form of government for purpose of administration.

With the establishment of a modern government in Nigeria, there emanated the financial implication which surpasses the Grant-in-aid from Britain. Thus there was the need to source for sustainable means of financing the administration of the territories locally. The option left with the British colonial government then was how to coordinate or synchronize the pre-existing traditional taxes with the view to appropriating them for the use of the colonial government without divesting the local Chieftains of their economics power.

What followed the above move by the colonial government in their bid to establish a modern tax was the enactment of Land Revenue Proclamation in Northern Nigeria. The taxes were administered through the emirate under the indirect system. The above proclamation was followed by the Native Revenue Proclamation of 1906 which empowered the residents to assess each community for its taxable wealth and appoint heads of the community as tax collectors.

The Native Revenue proclamation of 1906 was in 1917 repealed with the enactment of the Native Revenue Ordinance of 1917 which vested the Lieutenant Governor with power to extend the provision of the said Ordinance to the whole or any part of the Southern province. And when it eventually got to the Southern protectorate it resulted into some revolt or riots in Abeokuta in 1918, Sapele in 1927 and Aba in 1929 .

The earliest concentration of public servants, professionals, wealthy business men in Nigeria were found in the Colony of Lagos. The Income Tax (colony) Ordinance was enacted in 1927. This (Income Tax) can be described as the first Personal Income Tax Law in Nigeria in the sense of imposing personal responsibility on an individual to pay tax (as distinct from a community tax under the Native Revenue Ordinance) applicable only in the colony of Lagos .

The above said tax was imposed on "the gains or profits" of any male person resident in the colony "from any trade, business, profession, vocation or employment or an dividends, interest or discounts, any pension, charge or annuity and rent, royalties, premiums and any other profits arising from prosperity . The tax was administered directly by the central Government while the revenue from the tax was paid into the treasury of the central Government .

Shortly after the Personal Income Taxation was established in the colony, the Non-native Income Tax (Protectorate) Ordinance of 1931 was enacted which imposed tax on the income of the non native in the protectorate including the Cameroons under British mandate who were hitherto left untaxed. Thus as at 1937, three different tax statutes were in existence in Nigeria these are, the Native Revenue ordinance of 1917, affecting native in various communities except the colony, the Income Tax (Colony) Ordinance of 1927 meant for resident within the Colony amended by the Colony Taxation Ordinance and the Non-Native Income Tax (Protectorate) Ordinance of 1937 .

The Companies Income Tax Ordinance was enacted in 1939 for taxation of gains and profit of incorporated companies, shortly after the companies' enactment; two significant consolidating statutes were enacted in 1940-to streamline the legal frame work of tax system. First, taxation of the natives throughout Nigeria except the colony was consolidated under the direct taxation . Second, the Income Tax Ordinance consolidates the Colony Taxation Ordinance of 1937, the

Non-Native Income Tax (Protectorate) Ordinance of 1937 and the companies Income Tax Ordinance of 1939.

The Direct Taxation Ordinance applied to the native except those who were resident in the township of Lagos. The tax payer in the native community in each province was expected to pay tax on annual profit derived from the land, the annual profit or gains from any trade, manufacture, office or employment, pension dividends or interest and value of all livestock owned by individual or community within the province. Section 2 defined "community" as "any group of individuals residing, carrying on business or being within any town, village or settlement or any locality therein and includes a band of nomad herdsmen. This tax is administered by Resident in cooperation with the chiefs or elders or other persons of influence in each district .

The Income Tax Ordinance of 1940 on the other hand, imposed tax on the income of any person, including a body of persons (company) accruing in, derived from or received in Nigeria from gains or profits from trade, business, employments, dividends, interest and the likes .The main distinction between the two statutes (Income Tax Ordinance and Direct Taxation Ordinance) is that the Income Tax ordinance of 1940 focus on the income of individuals and companies from all services while Direct Taxation Ordinance of 1940 is a mixture of Community tax, Cattle tax and Individual tax applicable to the native community and individuals throughout Nigeria except Lagos. The Income Tax Ordinance exempted from tax the native resident outside the township of Lagos who is already subject to tax under the Direct Taxation Ordinance of 1940. In 1943, the Income Tax Ordinance was enacted to consolidate all the laws relating to the taxation of income of individual and companies in the colony and protectorate of Nigeria.

One of the importances of Direct Taxation Ordinance in the history of income tax law in Nigeria lies in the fact that, it was the first taxing statute that applied throughout the country, it also provided for the appointment and control of tax collectors by the Residents. The short coming of the ordinance was its failure to provide for uniform tax rates throughout the country . On the other hand, the Income Tax Ordinance of 1940 applied to expatriate and to Nigerian living in Lagos as well as companies, thereby, lumping together under the same law, provision for the taxation of personal and company incomes.

A more comprehensive Income Tax Ordinance was passed in 1943 same repealed the 1940 Ordinance. It also imposed higher rates of tax on certain types of income and in general, it taxed income which accrued in, derived from, received in or brought into Nigeria, and these included profits from trade, business, profession or vocation for whatever period of time such trade, business, profession or vocation may have been carried on or exercised in Nigeria. It should be noted that at this time the constitutional question of allocation of taxing power or questioning such was not there and there was no principle of federation in Nigeria then.

During these periods of tax evolution, the Clifford constitution of 1922 was already in operation in Nigeria. The Constitution created a separate legislative council from the executive council. Section 4 Nigeria Protectorate Order in Council 1922 was in pari-materia with section. Section 4 only that the legislative powers vested in the commander in chief to from time to time, by ordinance provide for the administration of justice, the raising of revenue and generally for the peace order and good government of the protectorate under section 8 of 1913 order were limited under section 10 of the 1922 order to apply only to the Northern province of the protectorate. Thus the composition of the Nigeria (legislative council) was normally as directed by the majesty the British Government .

3.3 The Period Between 1946-1963

The first step towards federal system of government was made by Richardson Constitution in 1946, the Constitution introduced regionalism as framework for the new national government. Though it was in 1954 that Nigeria became a full fledged federation, and it was after Nigerian became a federation that the issue of the demarcation of taxing power between the Federal Government and State Government arose. The issue of tax jurisdiction like allocation of revenue remained centralized, making the regions to solely depend on the central for revenue.

Nigerian federalism is an offspring of the unitary system of government established by the colonial rulers. After the amalgamation of the Northern and Southern Protectorate by Lord Frederick Lugard, as a colony of the British Empire, Nigeria was administered as a unitary government, subdivided into provinces. Under the unitary system of government taxation was essentially central/federal government legislative affair. Although under the relevant revenue Ordinance promulgated by the central government, the residents in charge of the provinces were empowered to determine and collect taxes from taxable persons within their administrative jurisdiction .

The Richardson Constitution divided Nigeria into three regions, North, East and West. There was no attempt to divide the power over taxation between the central and regional government. Tax jurisdiction still remained centralized. Nigerian main source of revenue at this period were indirect taxes from import duties and export duties on sales of raw materials like cocoa, groundnuts, oil palm, hide and skin aside from the direct taxes and taxable persons.

The regional government had no power of raising revenue from the above direct taxes. Rather, the administration sought to work out a formula for the allocation of revenue raised by the central government to the region.

One of the key features of federalism is the formal distribution or allocation of jurisdictional powers between the Federal and State Government. That is the financial power of the federation must be distributed between the Federal and the State Government under any Federal Constitution. Thus, the taxing power of the respective government should be independent of each other, enabling them to raise financial resources necessary to meet the needs of each government .

What was witnessed during the Richardson Constitution of 1946 was that the financial resources available to the central (Federal) government exceeded considerably those available to the other levels of government, premised on the ground that the central government need to be stronger to enable it bring about even development of the entire country. This eventually resulted in making the regions (States) over or total dependent on the federal financially. The financial support then enable (States) pay their worker's salaries; fund their education, health care, water supply and valuable services to meet the growth in population.

The Richards Constitution of 1946 introduced regionalism as framework for national government under this constitution the country was subdivided into three regions viz, the North, East and West. There was no attempt to divide the powers over taxation between the central and regional government. The tax jurisdiction shall remain centralized. Thus the regions depend on revenue allocation from the central government base primarily on the principle of derivation.

In a bid of making the region in the newly established federalism more financially self-reliant, the Hicks-Phillipson and Sir Louis Chick commission of 1951 and 1953 respectively were set up, with terms of reference viz, to examine the principle of derivation and fiscal autonomy underlining the fiscal arrangements within the federal system. The main recommendations of the two commissions among others were:

- *The principle of independent revenue*
- *The full amount of personal income tax levied and collected by the federal government is returned to the regions in which the tax payers (Africans) are resident.*

The above situation was the mode of governance uptill the Hicks-Phillipson Commission of 1951 set up by the Central Government. In its composite recommendation, the commission laid down amongst others the "principle of independent revenue", with a view to making the regions within the newly established federation more financially self-reliant. This recommendation was not accomplished on ground of administrative difficulties, that the time was not yet ripped to grant regions direct legislative control over their internal generated revenue. Thus the principles of derivation, needs and national interest remained strong considerations in the adopted formula for revenue allocation.

The agitation and clamoring for self reliance by the regions continued. In 1953 Sir Louis Chick was appointed sole members of the Commission with terms of reference to examine the principles of derivation and fiscal autonomy underlining the fiscal arrangement within the federal system. The Sir Louis recommendations which mostly related to section 155-163 of the 1954 Constitution Ordinance in Council amongst others that:

a. The full amount of personal income tax levied and collected by the Federal Government is returned to the regions in which the tax payers (African) are resident

b. The full amount of the mining royalties and rents as well as fees for small craft license collected by the federal government are to be returned to the region from which the taxed craft or minerals are found .

While approving the need of independent sources of revenue for the region the chicks recommendation did not accord noticeable taxing powers to the region. But in line with his recommendation that the regions be given reasonable degree of fiscal autonomy, the powers of the regional legislatures to impose and collect internal revenue within the regions were recognized.

Although independent sources of revenue was approved for the various regions by the 1954 Constitution the recommendation did not accorded the regional government taxing powers. However in line with the recommendation that the regions be given a reasonable degree of fiscal autonomy, the powers of the regional legislatures to impose and collect internal revenue within the regions were recognized. The resultant effect that followed the recommendation was various tax laws by different regions, until 1958 when Raisman commission was set up. The proposals of the commission in relation to the division of taxing powers between the tiers of government were among the provision of the Nigerian constitution order in council, 1960.

The resultant effect of the above recognition was that the region started enacting revenue laws. The first of its kind was the Finance Law enacted by the Eastern Region legislature, followed by the Western Region Income Tax Law enacted in 1957. Hence the question of taxing powers that arose since Nigeria became a federation in 1954 was now discussed at the Nigeria constitutional conference in London 1957. It was decided that the matter be referred to a Commission to determine the issue of allocation of taxing powers between the region; and federal government .

Thus the Raisman Commission of 1958 was set up with assigned terms of reference among which were:

1. To examine the present division of powers to levy taxation in the federation of Nigeria and the present system of allocation of the revenue thereby derived in the light of:

a. Experience of the system to date;

b. The allocation of functions between the Governments in the federation as agreed to at the 1957 Constitutional Conference,

c. The desirability of securing that the maximum possible proportion of the income from regional governments should be within the exclusive powers of these governments to levy and collect, taking into account considerations of national and inter regional policy; and so on .

In June 1958 the Raisman Commission submitted its report which contained the following principal recommendation.

i. That the Federal Government should have exclusive jurisdiction on corporations and companies taxes as well as on taxation of non-resident persons, and also to enter into double taxation agreement with other countries;

ii. That the Regions (now states) have exclusive power to impose personal income tax on individuals, sole traders, partnerships, clubs, trusts and other incorporated associations,

iii. The Parliament should regulate the liability to tax of persons within Nigeria by reference to their places or 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.

iv. 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 profit of any person or class of persons and so on

These recommendations were accepted and embodied in section 70 of the Nigeria (Constitution) Order in Council, 1960. From the Raisman's recommendation, the regions were given exclusive power to impose personal income tax on individuals. The inherent resulting problem the commission identified were one, the danger that the regional personal income tax law might conflict with double taxation agreements which the federal government has entered into, or might later enter into in the future with foreign government. Two, there was the danger of internal double taxation.

The above noticed problems by the commission, was already belated as at the time of its report. This was because as at that time the regions had started enacting different tax laws. The Eastern Region taxed the individual incomes of its residents, while the Western Region not only taxed those of resident in the west, but also taxed any income which was derived from Western Region irrespective of the residence of the recipient. The implication of the said problems was that a resident of Eastern Nigeria working in Western Nigeria would be taxed twice on the same income by both governments .

Thirdly the Commission felt that it will be desirable to define carefully what income would be subject to the federal government's company's tax and which would be subject to regional income tax. It was in the light of the above problems that the Raisman's Commission though states that each regional government should have the exclusive right to fix rates or tax and personal allowances and to decide upon its own method of assessment and administration, went on to say that some specific issues among others required some arrangement to ensure uniformity in tax treatment

The Commission also recommended the introduction of general principle for taxing individual's income to be applicable to the whole country. It is in line with this recommendation that S.70 (ii) and (iii) of the 1960 Constitution conferred concurrent powers upon parliament to make laws for Nigeria or any part thereof with respect to certain enumerated uniform principles in relation to personal income tax and consequent on the Raisman Committee's recommendation, the Income Tax Management Act (I.T.M.A) Act of 1961 was enacted. The Act provides for:

1 The definition of Taxable Income
2 The basis of charge
3 The period of assessment,
4 The list of allowable deductions
5 The treatment of dividends and so on.

The object of this Act was to assist in the administration of tax law in Nigeria so as to avoid internal double taxation of incomes. The (I.T.M.A) governed only the taxation of individuals.

In addition to the above notice result of the Raisman commission, it would also be mentioned that the commission enlarged the fiscal autonomy of the Regions (states) by giving them exclusive power to tax individual incomes. It also brought into existence the Income Tax Management Act, 1961.

It is also worthy to mention that, the then western Region Income Tax Law which was later amended by the Income Tax (Amended) Law 1961 otherwise known as Income Tax Development Contribution Law (I.T.D.C.L) was enacted to bring it into conformity with the Income Tax Management Act (I.T.M.A) 1961.The Eastern and the Northern Region also enacted their own separate income tax law known as the Eastern Region Finance Law,1962 and the Northern Nigeria Tax Law 1962 respectively. In 1963 Nigeria became republic so all the provision of section 70 of 1960 Constitution were re-enacted under section 76 of the 1963 Republican Constitution.

3.4 The Period 1963-1979

The 1963 Constitution (as Amended) is to the effect that:

1 The federal Government enjoyed exclusive Jurisdiction over the taxation of the income and profits of companies, petroleum profit tax, import, export and excise duties, purchase and sales taxes on some commodities and mining royalties.

2 The Regional (now state) government had jurisdiction over Personal Income Taxes, Community Tax, Purchase and Sales Taxes on Produce, Hides, Skins, and Motor Fuel, License Fees, Wealth and Property Taxes, Estate Duties, Casino and Pool Betting Taxes and Motor Registration and Driver's License Fees.

Thus the division of taxing powers under the 1963 Constitution favoured the Federal Government more, as they had more important sources of revenue than the Regions whose tax base was quite narrow. When the military took over power especially from 1966 to 1979, rather than narrow the existing gap, they widened it, by increasing the federal government's share of national revenue especially between 1970 and 1979. The State Governments became financially dependent on the federal Government. The federal Government can unilaterally passed any tax laws it wanted, like the capital gain tax in 1967 and capital transfer tax in 1979

In 1969 the Federal Military Government divided the country into 12 states. The number of states within the three regions are as follows:

The Northern Region was divided into six (6) states,
The Eastern Region divided into three (3) states while
The Western and Mid-Western Region were constituted into states. Lagos state was also created.

Tax implication to these states was that, the states created out of the Northern Region applied the Personal Income Tax Law, those of the East, the Eastern Region Finance law, Lagos state applied the Federal Personal Income Tax Law and the Western and Mid-western states applied

the Income Tax Development Contribution Law. The resultant effect of the above was diversity of tax rates, relief and personal allowances on mobility of labour.
Phillips commenting on the eventual diversity of tax rates and relief said:
Personal Income Tax has all the time been the problem item of Nigeria's revenue structure particularly since its regionalization. In late 1950s. Nigeria is the only federation in the world in which a significant tax such as this is vested in other than the central authorities. Thus Nigerian has as many tax systems as there are governments in Nigeria, resulting in differential Income Tax burdens throughout the country, and hampering its use as a significant source of revenue and as an instrument of economic control. The administration is generally thought to be inefficient…The opinion has gained ground that unless and until a uniform Personal Income Tax system is established in Nigeria the tax cannot play the significant role it should play in Nigeria's revenue structure and economic development.

In consonance with the above notion, the Income Tax Management (Uniform Taxation Provision,) Act of 1975 was enacted. This Act amended the Income Tax Management Act of 1961 (as amended) and the Income Tax (Armed Forces and Other Persons) (Special Provisions) Act. The 1975 Act provides for uniform rates of tax, reliefs and allowances throughout the country, thus putting an end to varying rates of Tax, reliefs and allowances.
Since the passage of the above Act, Tax payers regardless of their state of residence now pay the same allowances and reliefs and were also liable to pay income tax at the same rates. Thus when in 1976 other states were created from 12 to 19 and 21 all applied the same rates of tax relief and allowances.
Between 1975 and 1979 there were various amendment to the old tax law and enactment of new tax law in the country during the period due to need for more revenue through taxation. This is in consonant with the objective of equity in taxation and stimulation of economic development in the country, same led to the amendment and enactment of some tax law as emerged. The Petroleum Profit Tax (PTT) Act 1977, Companies Income Tax (Amendment) Act 1977, PPT (amendment) Act 1979, Capital Transfer Tax Act 1979.
An in-depth view of the historical development of tax in Nigeria particularly from pre-colonial period to 1979 revealed that some of the controlling factors responsible for the legislative demarcation of taxing power under federal structure in another sense, the factors that determine which matter should be committed for the federal Government and which to the state Government can be viewed in this perspective.
(a) demarcating taxing power is done in line with economic significance and matter of national importance in respect of which a uniform authority throughout the country is desirable, these are committed to the central/federal Government, while tax matter of local significance are generally assigned to the member regions .
In agreement with the above stand Nwabueze, B.O. a renowned Constitutional law author observed that:
The question of how much fiscal power was to be developed to the regional government was not entirely open. It had to be determined in the light of national policies and economic factors that had become firmly rooted while the country was a unitary state. There was for example the, long-standing policy vesting the ownership and control of all mineral oils in the state now represented by the federal Government. The incorporation of companies and the control of their operations was also considered a matter of national concern to be regulated centrally. It was also considered expedient that one or two ports in the country should continue to be owned and

operated by the central government to whom the regulation of imports and exports had to be entrusted in the overall national interest. These factors of national policy and economics dictated that, with the exception of personal income taxes, capital gains and stamp duty, the main sources of revenue import duties, excise taxes, mining rents and royalties, petroleum profit tax and companies income tax should be centrally controlled as regards both the taxing power and collection of revenue resulting there from

Another controlling factor is that of the mind set attitude of our national policy makers under the unitary system of government. The patronizing attitude of big government, that is, the central government in relation to the regional governments persisted. The federal government retained a firm grip over the most important subject matter of taxation while leaving the barest significant tax matters to the regional governments. This actually did not speak well of a genuine federalism. What is deduced is inequality of taxing powers between the federal and states government.

A perusal of the listed items for Federal and State Governments legislative taxing powers from the attainment of independence (1960) and the coming of the second republic (1979) Constitution (as amended) revealed save in few deviation during the military administration (1966-sept 1979) the same items. The tax jurisdiction as demarcated under the 1960 Independence Constitution and the 1963 Republican Constitution revealed the same thing

3.5 The period Between 1979-1984

The 1979 Constitution of the Federal Republic of Nigeria came into effect on the 1st day of October 1979. As per weightier matters in term of taxing power there was no much difference between the two previous Constitutions (1960 and 1963) and the 1979 Constitution as vital matters as far as taxes were concerned was still kept within the exclusive control of the Federal Government while the State Government were left with the relatively less important or common place matters. Thus the new Constitution in demarcating the taxing powers between the States and the Federal Government was strongly pro-Federal Government.

Section 4(2) of the 1979 Constitution 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 Part1 of the Second Schedule to this Constitution.

The demarcation of taxing powers between the governmental tiers of the nation federal system was strongly pro-federal government. As all the vital materials subject to tax were kept within the exclusive control of the federal government, while the state were left with relatively unimportant or common place matters.

Section 4 (2) of the 1979 Constitution 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". To determine which taxes the federal government is entitled to impose and collect by virtue of this vested broad constitutional legislative authority, one will have to refer to the legislative list scheduled to the Constitution.

Under the 1979 constitution, taxation of personnel incomes is under the control of the federal government vide item 58 of the Exclusive Legislative List, this is to the exclusion of the state government. Thus the Federal Government alone can enact law for the imposition, assessment collection of and indeed, penalty for default in response of personal income tax throughout the entire country, section 4 (2) 1979 Constitution.

Secondly, stamp duties previously left under the residual legislative powers of the state government, now falls within the exclusive legislative powers of the federal government. State governments can no longer legislate on stamp duties.

Thirdly, item D of the Concurrent Legislative List of the Constitution introduced an innovation that, in the exercise of the powers to impose any tax or duly on capital gains, incomes or profits of persons other than companies, (b) documents or transactions by way of stamp duties, the federal military government may… the collection or administration of the law imposing it, shall be carried out by the government of a state or other authority of a state. That is delegation of executive function to collect tax to the state government.

The forth innovation of the 1979 constitution was the observation of the non-inclusion of sales or purchase tax expressly within the Exclusive Legislative List of the 1979 Constitution. Thus it is argue that the non-inclusion ipso facto relegated same so the residual unremunerated matter which the state government may legislate on.

Fiftly under the 1979 Constitution by the provision of section 7 (3) and the forth schedule to the Constitution as amended, the local government council were brought within the federal structure of the distribution of taxing powers and functions. It is also Cristal clear that the legislative lists scheduled to the Constitution provide relevant guidance for determining the legal scope of the areas within which the tiers of government within our federal system may or may not operate.

The above section of the 1979 Constitution and in fact majority of the sections to the 1979 Constitution was short lived as the military government seized political power in a coup- detat on 31st December 1983. The change of government profoundly altered the existing legal order by suspending some portion of the 1979 Constitution and subjected the validity of the unsuspended part to the provision of the decrees.

Thus section 4(2) of the 1979 Constitution was suspended by the Constitution (Suspension and Modification) Decree, No.1, 1984 Although s.4(2)(1) of the 1979 Constitution was suspended section 2 (1) of Decree No.1 1984 re- established the Constitutional intent to grant exclusive legislative powers to the Central /Federal Government. In fact section 2(1) has not detracted from the previously specified federal legislative scope, but rather broadens it. Section 2(1) of the Decree Provides. The Federal military government shall have power to make Laws for the peace order and good government of Nigeria or any part thereof with respect to any matter whatsoever.

A perusal of the legislative list schedule to the Constitution revealed that the exclusive legislative list set out in part 1 of the second schedule to the Constitution consist among other the following items. Customs and Excise Duties, Export Duties, Incorporation, Regulation and Winding up of Bodies Corporate…, Mines and minerals including Oil Field, Oil Mining Geological Surveys and Natural Gas, Stamp Duties, Wireless, Broadcasting and Television …, The Federal Military Government has exclusive legislative taxing authority on the above matters.

Aside from the enormous power apportioned to the Federal Government by the Constitution the 1979 Constitution further introduced some significant changes as compared with the previous arrangement of legislative taxing powers under the 1960 and 1963 Constitutions. First among others is the Federal Government taking over taxation of personal income through item 58 of the Exclusive Legislature List.

Secondly, stamp duties which were previously under the residual legislative powers of the State Government now falls within the Exclusive Legislative Powers of the Federal Government .

Thirdly, the 1979 constitution under item D of the concurrent legislative list introduced matters relating to collection of taxes in paragraphs 7 and 8, it provides:

7.In the exercise of its powers to impose any tax or duty on.

(a) Capital gains, incomes or profit of person other than companies and

(b) documents or transactions by way or stamp duties, the federal military government may, subject to such conditions as it may prescribed, 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 a state.

8. Where an Act.(or decree) of the Federal Military Government provides for the collection of tax or duty on Capital Gains Income or profit or the administration of any law by an authority of a state in accordance with paragraph 7 here of, it shall regulate the liability of persons to such tax or duty in such manner as to ensure that such tax or duty is not levied on the same person by more than one state (part 9 and 10) empowers the state government to delegate the function of the collection of certain taxes, fees or rates to Local Government Council)

The fourth change introduced by the Constitution is the controversial issues on sales or purchase tax. Does it fall within the federal government or states tax jurisdiction. The 1979 Constitution was silent on it as it was neither listed in the Exclusive or Concurrent Legislature List of the Constitution.

For example under the 1979 Constitution, the cases in which the Federal Government has exclusive taxing powers were listed that is customs and excise item 15, export duties item 22, stamp duties item 57, the only matter of taxation of incomes, profits and capital gains, "except as otherwise prescribed by this constitution". Item 58 outside of this list, the states are constitutionally competent to legislate on tax subject as residual matters.

Sales tax was not mention as an item in either the Exclusive or Concurrent Legislative List for the federal government under the 1979 Constitution as seen in the 1960 or 1963 Constitution, making it a residual subject on which only the state can legislate. See the case of The Attorney General, Ogun State vs. Alh. Ayinke Aberuagba & 6 Others Where the court among other issue held that, sales of product within the state (intra-state) or into the state (inter-state) is a trade and commerce within the meaning of item 61 of the Exclusive Legislative List and therefore the imposition of tax on such trade is within the exclusive competence of the federal government as permitted by the 1979 Constitution. State can impose general taxes under its taxing power, that is a state is constitutionally compelled to levy a general tax which is payable by persons including these engage in inter-state as well as intra-state trade and commerce provided such a tax does not constitute a burden on inter-state commerce. Other issue still from the case indicates that there is no concurrent power of taxation in Nigeria, both the federal and state government have exclusive powers under the constitution to impose taxes in their respective sphere. State can legislate on sales tax on commercial transaction or sales and purchase of commodities and services.

The first notable difference with the 1979 Constitution is the provision for and recognition of Local Government Council. Although the said council was abrogated by Decree No. 1, 1984 but by virtue of the provisions of section 7(3) and the fourth Schedule to the Constitution the Local Government Councils were brought within the federal structure of the distribution of taxing powers and functions. The function of the Local Government Council include among others, the collection of rates, radio and television licenses, licensing of bicycles, truck, canoes, wheel barrows carts and the like. The levying of such rates is as prescribed by the House of Assembly of a state.

The above powers of the Local Government Councils is seen in paragraphs 9 and 10 of item D of the Concurrent Legislative List of 1979 Constitution which though suspended by the Decree No. 1 of 1984 was nevertheless still kept or allowed. The Legislative List empowers the military governor of a state to delegate by law or Edict the function of collecting or administering any tax, fee or rate to a Local Government Council. One tends to wonder the extent to which the 1979 Constitution as amended imposes restriction on the taxing powers of the federal and state government, what is seen and observed was that the Legislative List Scheduled to the Constitution show the relevant guidance to determining the legal areas within which the different levels of government within our federal system may or not operate.

3.6 The Period Between 1984-1999

The other side or angle to the Constitution (Suspension and Modification) Decree, 1984 Decree No. 1 that came into effect on 31st December 1983, on the general scheme of legislative power cannot be said to be exhaustive. This because by section 2 of Decree No. 1 1984, the Federal Military Government and Military Government of States by ways of division of legislative powers under the then federal militocracy system was intrinsically different from the structure of demarcation of powers under the previous federal democracy .

The above assertion is from the fact that under the militocratic federal Constitution the Federal Military Government may by virtue of section 2 subsection (i) of Decree No 1, 1984, legislate in any matter whatsoever, that is, on any matter (a) on the Exclusive Legislative List (b) on the Concurrent Legislative List whether relating to Federal Legislative powers or State Legislative Powers and (c) not included in any of these legislative lists. The State Governments on the other hand, by virtue of the combined effect of subsections (2) and (3)1 of section 2 of Decree No. 1984, may legislate on any matter (a) on the Concurrent Legislative List to the extent specified therein; and (b) on the Concurrent Legislative List relating to Federal Legislative Powers with the prior consent of the Federal Military Government.

Thus following the military intervention in the government of Nigeria in 1983, the existing Constitution of Nigeria 1979 now derives its legitimacy from Constitution (suspension and modification) decree 1984. Decree No.1 suspended and modifies some provision of the 1979 Constitution. It gives a leads new dimension to this basic consideration, to the effect that one cannot easily ascertain the general scheme of legislature powers under the legislative list (and the residual list) can be taken as exhaustive indication of the legislative taxing powers of the federal military government or the state government.

Section 2 of Decree No. 1 of 1984 which relate to powers of the Federal Military Government and Military Governors of states to make laws shows that the techniques of division of legislative powers under the existing federal militocracy was intrinsically different from the structure of demarcation of powers under the previous federal democracy. In that the federal military government may by virtue of section 2 subsection (1) of decree No 1, 1984 legislate on any matter whatsoever that is on any matter, be it exclusive legislative list, the concurrent legislative list whether relating to federal legislative powers or state legislative powers or not even included in any of these legislative list.

The state government by virtue of the combined effect of subsection (2) and (3) of section 2 Decree No 1, 1984 may legislate on any matter on the Concurrent Legislative List to the extent specified therein and on the concurrent legislative list relating to the federal legislative power with the prior consent of the federal military government. These changes in the techniques of

division of legislative powers also affected the distribution of taxing powers between the federal and the state government under the regime.

The federal military government taxing power became unlimited by virtue of the provision of section 2 subsection (1) of Decree no 1, 1984. Consequently if there be federal government's decree imposing merriment tax or motor vehicle licensing fee, it would be valid and constitutional.

In 1975 during the operation of a similar decree, the federal military government promulgated the income tax management (uniform taxation provision) Decree, decree no 7 of 1975, introducing uniform tax rates and the like throughout the country. This provision under the then 1963 constitution fell within the residual legislative control of the state government, Decree No. 7 of 1975 was valid and constitutional haven been promulgated pursuant to the fair reaching powers of the federal military government to make laws for the peace, order and good government of Nigeria or any part thereof with respect to any matter whatsoever.

Prior to the 1984 Decree, the federal arrangement under the Constitution of the Federal Republic of Nigeria, 1979 by virtue of section 4 assigned legislative powers over specific matters to the federal government under two list viz – the Exclusive Legislative List and Concurrent Legislative List in the Second Schedule to the Constitution, leaving the State Government with the general residual matters along with some matters on the Concurrent Legislature List in the same schedule. Decree No. 1, 1984 came and made some amendments in the two legislative lists under Second schedule of the 1979 Constitution (As Amended).

Part of section 2 to the decree reads:

(1) The federal military government shall have power to make laws for the peace, order and good government of Nigeria or any part thereof with respect to any mother whatsoever

(2) The military governor of a state

(a) Shall not have power to make laws with respect to any matter included in the Exclusive Legislative List; and

(b) Except with the prior consent of the Federal Military Government, shall not make any law with respect to any matter in the Concurrent Legislative List relating to federal legislative powers set out in the second column of part II of the Second Schedule to the Constitution.

(3) Subject to subsection (2) above and to the constitution of the Federal Republic of Nigeria 1979, the military governor of a state shall have power of make laws for the peace, order and good government of that state.

(4) If any law

(a) Enacted before 31st December 1983 by the House of Assembly of a state or having effect as if so enacted: or

(b) Made after that date by the military governor of a state is inconsistent with any laws.

i. Validly made by the National Assembly before that date, or having effect as if so made, or

ii. Made by the Federal Military Government on or after that date the law made as mentioned in sub-paragraph (i) or (ii) above shall prevail and the state law shall, to the extent of the inconsistency be void.

Thus we can safely say the federal military government's taxing power is unlimited by virtue of the provision of section 2 subsection (1) of Decree No. 1, 1984. Typical of this is the promulgation of the Income Tax Management (Uniform Taxation Provision and the like) Decree, Decree No. 7 of 1975, introducing uniform tax rates throughout the country, even though it was a matter within the legislative control of the State Government under the 1963 Constitution. Decree No. 7 of 1975 was held valid and constitutional, haven been promulgated pursuant to the

far reaching powers of the Federal Military Government to make laws for the peace, order and good government of Nigeria or any part thereof with respect to any matter whatsoever.
By implication the taxing powers of the State Government from the express provisions of section 2 subsections 2(b) of Decree No. 1, 1984 is that the State Government with prior consent of the Federal Military Government may legislate on the collection of taxes on incomes, capital games, profile and stamp duties. The limitation existing here was the express ouster of jurisdiction under subsection 6 of section 2 that provides. "The question whether a law made by the military governor of a state with respect to a matter included in the Concurrent Legislative Power relating or the Federal Legislative Powers was made with the consent required by subsection (2) (b) shall not be enquired into in any court of law. This was the import of the taxing powers of states under the 1979 Constitution. The states under the residual legislative powers can legislate or impose tax on several items like the then sales tax before the coming to being the 1999 Constitution as amended.
The unsuspended portion of the 1979 Constitution was seemingly and impliedly in force under the militocracy system of the military regime then in 1983 to 1999 when the country witnesses a returned to a democratic system of government. The 1999 Constitution (as amended) re-introduced the federal system of government in Nigeria, under this system the three levels of government (Federal, State and the Local Government) though to some extent/sphere are inter-dependent on each other but to a large extent in term of sovereignty and powers are independent and autonomous.

3.7 The Period Between 1999 Till Date
Under the 1999 Constitution of the Federal Republic of Nigeria (as amended) the relevant provisions to taxation are section 4, 24(f), 163, 173(4) and part I and II to the second schedule. Section 4 (I) vests the legislative powers of the federal republic in the National Assembly which shall consist of a senate and a house of representatives. Subsection (2) and (3) of the said Constitution provide as follows:
(i) 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 2 of the second schedule to this section
(ii) The power of the National Assembly to make laws for the peace, order and good government of the federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the House of Assembly of States.
Similarly, subsection (7) of section 4 of the Constitution, the 36 states Houses of Assembly shall have power to make laws for the peace, order and good government of the state or any part thereof with respect to the following matters, that is to say.
(a) Any matter not included in the Exclusive Legislation List set out in part 1 of the second schedule to this Constitution
(b) Any matter included in the Concurrent Legislative List self out in the first column of part II of the second schedule to this Constitution to the extend 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 provision of this Constitution.
Section 4 (5) of the Constitution (CFRN 1999) makes provision that, if any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National

Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void. The provision of section 4(1)-(7) form part of the second schedule to the Constitution (that is, the Exclusive Legislative List) sets out the items in respect of which only the government of the federation may exercise legislative jurisdiction.

Section 24 (f) of the Constitution provides for making prompt payment of taxes a duty of every citizen of the federal republic. The section provides as follows:

It shall be the duty of every citizen to:

(f) declare his income honestly to appropriate and lawful agencies and pay his tax promptly,

Other relevant sections to taxation under the 1999 Constitution are sections 4, 7(5) and item 1(j) of the Fourth Schedule, section 120(1), 162(1), 163 and 165 are hereby briefly highlighted below:

(i) Section 4 vest legislative power on the National Assembly and the State House of Assembly to make laws for the peace, order and good government of the Federation and State respectively including tax laws to the extent provided in the Exclusive Legislative List (ELL) and Concurrent Legislative List (CLL)

(ii) Section 7(5) provides that each House of Assembly shall confer on its Local Government Council certain minimum function including "assessment of privately owned houses or tenements for the purpose of levying such rates

(iii) Section 120(1) provides that all revenues or other moneys raised or received by state except otherwise prescribed by the Constitution shall be paid into the consolidated revenue fund of the state;

(iv) Section 162(1) mandates that all revenues collected by the government of the federation shall be paid into the Federation Account except the proceeds from personal income tax of the personnel of the Armed forces of the Federation, the Nigerian Police Force, the ministry or Department of Government charged with the responsibilities for Foreign Affairs and the residents of the federal capital territory.

(v) Section 163 mandates the Federal Government to distribute to the states the net proceeds of the Personal Income Tax, Capital Gains Tax and Stamp Duties collected by the Federal Government on the basis of derivations; and

(vi) Section 165 mandates each state to pay the Federal Government the expenditure incurred by it for the purpose of collecting taxes or duties which are wholly or partly payable to the state in each financial year.

A close look at the tax contents of the Exclusive legislative List and the existing federal tax statutes revealed the existence of a few federal taxes as mentioned above. The question to be asked is whether the taxing power of the Federal Government under the 1999 Constitution is limited to the taxes specifically mentioned either by name or by reference to the tax base. For example does the Federal Government have power to impose Sales/Value Added Tax, Road tax, gift tax and the like not expressly mentioned in the Exclusive Legislation List? The Supreme Court answered the question in the case of Attorney General, Ogun State vs Alhaji Ayinke Aberugbe and 6 others which were considered in the previous section of this work.

Again, in view of the specific allocation of certain taxes by name to the Federal Government, it might be argued that other taxes are residual to the states based on the principle of expressio unius est exclusio alterius that is "the expression of one thing is the exclusion of another. This is also supported by the established notion that the Federal Government is a Government of numerated powers. On the contrary learned authors on tax Akanle and Nwabueze, are of the view that Federal Government is not limited to matters specifically enumerated in the Exclusive

Legislative List based on the fact that taxing power are inherent powers of government which can only be curtail by express Constitutional limitation. Nwabueze is of the view that the Federal Government can impose sales tax though omitted in the 1979 and 1999 Constitution pursuant to its power to regulate trade and commerce under item 61 of the Exclusive Legislative List as held in the case of Attorney General, Ogun State vs Alhaji Ayinke Aberugbe and 6 others .

A consideration of section 4(2) and the Exclusive Legislative List of the 1999 Constitution will reveal that there is a distinction between the general Legislative power and taxing power of the Federal Government. Legislative power is the power of a government to make laws within its competence and can also alter same. The Federal Government can make laws on aviation, police, and currency in the Exclusive Legislation List including the few items that are directly tax related. This taxing power is a subset of the general legislature power of the Federal Government since taxing power is exercised through legislative power. It should be noted that it is not all items in the Exclusive Legislature List that are subject to taxation by Federal Government. The constitutionality of the federal tax is whether the tax or the tax base is included in the Exclusive Legislative List set out in Part 1 or the Second Schedule of the Constitution or not.

It is important to note that, unlike the Federal Government, no tax is, specifically, reserved for State Governments under the 1999 Constitution. Therefore, in order to determine the scope of the taxing powers of the states, like Kaduna State, we must turn to the extent of their legislative powers under section 4(7) of the 1999 Constitution. The said section 4(7) reads as follows:

The House of Assembly of a state shall have power to make laws for the peace, order and good government of the state or any part thereof with respect to the following matters, that is to say:

(a) any matter not included in the Exclusive Legislative List set out in part 1 of 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 there to; and

(c) any other matter with respect to which it is empowered to make law in accordance with the provision of this Constitution.

The implication of the above provision of section 4(7) of the 1999 Constitution is that the states may impose any taxes and levies that are not specifically reserved for the Federal Government. The taxing power of the states therefore appears to be open-ended. A perusal of the statute books of each state will reveal the exact extent which the taxing power has been excised by the state. Kaduna state has imposed tax on Hotel/Restaurant as tourism levy; miners as mining and quarrying fee; on slaughter as abattoir fees; people affected by fire incidences pays fire service charge while owner of petrol filling station pays for the certificate to operate such business.

CHAPTER FOUR

AN EXAMINATION OF TAXES POWERS OF THE FEDERAL AND STATES UNDER THE NIGERIAN LAWS

4.1 Introduction

The concept and idea of taxing powers differ from one constitution to another premised on the socio political and economic realities calling for each constitution . The research work in the previous chapter considered the historical perception of taxation powers right from pre-colonial era up to the commencement of the constitution of Federal Republic of Nigeria 1999 (1999 constitution) .

Tax or taxation is an act of the statutes. Therefore for any tax to be enforceable its must derive it power from the statutes. The Constitution is the main source of taxing power from where other sources of laws ought to take their roots or powers from. The Constitution is the grand norm of Nigerian law. Any law or statute that is at variance with it is null and void to the extent of its inconsistency. There are different tax agencies and tax authorities for both the Federal and State Governments saddled with the responsibility of collecting taxes and each of them has its laws or enactment.

The thrust of this chapter is to delve into the examination of taxing powers of the federal and state government under the Nigerian laws, analyzing the major taxing items of the federal and state government as provided by the 1999 Constitution (As Amended) and the Taxes and Levies (Approved List for Collection) Act 2004 as amended by Schedule to the Act (Amendment) Order 2015. The chapter analyse the extent to which the system either cohere or depart with the well established principle of federalism. The research also considered the effect of these imbalances in tax allocation.

The chapter is divided into eight sections. Section one introduces the chapter, section two discusses the Federal Taxing Powers, section three deals with the scope of Federal Taxing Powers, section four discusses states' taxing powers section examined the types of items on which the states collect taxes, section six considered the effect of imbalance in taxing powers on Kaduna state section looked at the short coming of applicable laws and their effect in Kaduna state while the last section deals with the effect of imbalance in taxing powers on Kaduna state. It was noted that division of taxing powers in Nigeria is heavily skewed in favour of Federal Government and in dire need of decentralization.

4.2 Federal Taxing Powers

Discussion on the taxing power of government under the 1999 Constitution will not be in-depth without discussing briefly the division of legislative powers under it. The technique adopted by the drafter of the Constitution is to subsume taxing power under legislative powers by itemizing some taxes or tax base in the Exclusive Legislative List for the Federal Government. Thus in determining the taxing power of a level of government under the constitution begin with the examination of the scope of division of the legislative power of the level under section 4 of the 1999 constitution (as amended). Indeed Okorodudu was right when she posited that a discussion of federal/state taxing power cannot be effectively discussed without first discussing briefly the division of legislative powers under it.

The National Assembly has plenary powers to make law 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 . These powers are to the exclusion of the House of Assembly of the states section 4(3) .

The second legislative powers of the National Assembly is to the effect that it can make law with respect to any matter contained in the concurrent legislative list as prescribed under that list section 4(4)(a). The Constitution also gives the National Assembly powers to make laws with respect to certain matters in the corpus of the Constitution .

On the other hand the House of Assembly of the State has plenary powers subject to inconsistency, to make law for the peace, order and good government of the state or any part thereof with respect to any matter not included in the Exclusive Legislative List and any other matter with respect to which it is empowered to make laws in the corpus of the constitution section 4(7) (a,b,c). The division of legislative power as seen in the above sections is different from division of taxing powers. Nigeria is seen as practicing a federal system of government. The 1999 constitution is the fundamental law of the country but unfortunately has no substantive provision on taxing power.

The division of legislative power under 1999 constitution in respect of taxes are section 4, 7(5) & item 1(5) of the fourth schedule, section 120 (1), 162 (1) 163, 165 in addition to the prefaced items with taxes or duties or taxation in item 16, 25. 58 and 59 of the Exclusive Legislative List. Some of these sections are here under produced.

(vii) Section 4 vest legislative power on the National Assembly and the State House of Assembly to make laws for the peace, order and good government of the Federation and State respectively including tax laws to the extent provided in the Exclusive Legislative List (ELL) and Concurrent Legislative List (CLL)

(viii) Section 7(5) provides that each House of Assembly shall confer on its Local Government Council certain minimum function including "assessment of privately owned houses or tenements for the purpose of levying such rates

(ix) Section 120(1) provides that all revenues or other moneys raised or received by state except otherwise prescribed by the Constitution shall be paid into the consolidated revenue fund of the state;

(x) Section 162(1) mandates that all revenues collected by the government of the federation shall be paid into the Federation Account except the proceeds from personal income tax of the personnel of the Armed forces of the Federation, the Nigerian Police Force, the Ministry or Department of Government charged with the responsibilities for Foreign Affairs and the residents of the Federal Capital Territory.

(xi) Section 163 mandates the Federal Government to distribute to the states the net proceeds of the Personal Income Tax, Capital Gains Tax and Stamp Duties collected by the Federal Government on the basis of derivations; and

(xii) Section 165 mandates each state to pay the Federal Government the expenditure incurred by it for the purpose of collecting taxes or duties which are wholly or partly payable to the state in each financial year.

A close look at the tax contents of the Exclusive legislative list and the existing federal tax statutes revealed the existence of a few federal taxes as motioned above. The Supreme Court in answered to the question as whether the Federal Government powers to impose tax was limited to those few tax items specifically mentioned held in the case of Attorney General, Ogun State vs

Alhaji Ayinke Aberugba and 6 others that both the Federal and State Government has powers to impose Sales tax/Value Added Tax on saleable products, Road tax and the likes within their respective legislative competence.

Again in view of the specific allocation of certain taxes by name to the Federal Government, it might be argued that other taxes are residual to the states based on the principle of expressio unius est exclusio alterius that is "the expression of one thing is the exclusion of another. This is also supported by the established notion that the Federal Government is a Governmental of numerated powers. Contrary to the above maxim, learned authors on tax Akanle and Nwabueze, are of the view that Federal Governmental is not limited to taxes specifically enumerated in the Exclusive Legislative list based on the fact that taxing power are inherent powers of government which can only be curtail by express Constitutional limitation. The enumerated items have not exhausted all the taxing power of the federation. What the Exclusive Legislative list has done is to specify those taxes that are exclusive to the federation or those which the states are precluded from imposing . Nwabueze is of the view that the Federal Government can impose sales tax/Value Added tax though omitted in the 1999 Constitution pursuance to power to regulate trade and commerce under item 61 of the Exclusive Legislative list .

A consideration of section 4(2) and the Exclusive Legislative List of the 1999 Constitution will reveal that there is a distinction between the general Legislative power and taxing power of the Federal Government. Legislative power is the power to make laws by the government within its competence and to alter them that is the Federal Government can make laws on aviation, police, and currency in the Exclusive Legislation List including the few items that are directly tax related. This taxing power is a subset of the general legislative power of the Federal Government since taxation power is exercised through legislative power. Although it should be noted that it is not all items in the Exclusive Legislative list that is subject to taxation by Federal Government. The Constitutionality of the federal tax is whether the tax or the tax base is included in the Exclusive Legislative List set out in part 1 of the second schedule of the Constitution or not.

\ A consideration of the scheme of division of legislative power of the Federal Government before the taxing power will be of help in this paper. A brief look at section 4(1) – (5) of the 1999 constitutions says:

4 (1) The legislative powers of the Federal Republic of Nigeria shall be vested in the National Assembly of the Federation, which shall consist of a Senate and a House of Representatives.

(2) 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.

(3) The power of the National Assembly to make laws for the peace, order and good government of the federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this constitution, be to the exclusion of the Houses of Assembly of states.

(4) In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say:

(a) any matter 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

(b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this constitution.

(5) If any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall, to the extent of the inconsistency, be void"

what the researcher can deduced from the division of legislative power of the two levels of government (federal and states) is that where as the subject matters in relation to which the National Assembly can legislate are enumerated, those of the states are residual. Thus where a taxing power is not expressly conferred upon the National Assembly under the Constitution or referable, ancillary, incidental or supplemental to any of the matter, then it is residual to the states.

Furthermore, Item 59 of the Exclusive Legislative List of the 1999 constitution reads: Taxation of incomes, profits and capital gains, except as otherwise prescribed by the Constitution. While Item D-7 of the Concurrent Legislative List prescribes the extent and the modes of exercise of the above power are in the following terms:

7- In the exercise of its powers to impose any tax or duties.

(a) Capital gains incomes or profits of persons other than companies, and

(b) Documents or transaction by way 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 a state.

The above revealed that the power to impose tax on incomes, profit and capital gains is exclusive to the National Assembly. Item D-7 of the Concurrent Legislative List relates only to the collection of these taxes. A state or an authority of a state can only collect or administer the law imposing these taxes or any of them only if it pleases the National Assembly so to prescribe or direct . Custom, excise duties and stamp duties are taxes contain in the Exclusive Legislative List Exclusive to the National Assembly .

The taxes imposable by the state are expressly referred to in the Constitution are taxes, fee or rates as contained in item D-9 and 10 of the concurrent Legislative List of the constitution, as said before taxes which are not exclusive to the National Assembly are imposable by the states. Though this is also subject to section 1(b) (d) and (j) of the fourth schedule to the Constitution.

The content of section 4(1) – (5) of 1999 Constitution cited before if read along side with part 1 of the second schedule of the Constitution will reveal that the National Assembly has power to impose all the taxes on the Exclusive Legislative List. A perusal of the 68 items on the list, revealed that four taxes were specifically mentioned by name that is, item 16 , 25 and 58 while item 59 refers to the tax bases of Income, Profit and Capital Gains . In pursuance of its powers, the Federal Government had imposed Custom duty, Excise Duties Personal Income Tax Companies Income Tax Petroleum Profit Tax Education Tax Technology Tax Capital Gain Tax and Stamp Duties . The problem with this list is that it fails to mention all the items on which the Federal Government can legislate on like Value Added Tax, Petroleum Profit Tax and the likes.

The 1999 Constitution consist of two Legislative Lists for division of power between the Federal and the States Government. The enumerated matters as referred to in the various items above are grouped in the two lists, one exclusive to the Federal Government and the other concurrent for both the Federal Government and the State Government. Where there is a list of matters concurrent to both the federal and State Governments, the Federal Government almost

invariably prevails in the event of conflict or inconsistency between the laws in event of conflict or inconsistency between the laws of the two governments .Thus the 1999 Constitution did not in any way limit the items on which the Federal Government can legislate or impose taxes on.
It should be noted the Taxes and Levies (Approved List for Collection) Act that demarcated the taxes to be collected by the three levels of government, and which would have reduced the wide gap between the federal and the states government in terms of potential tax items as per revenue generation to be collected did not addressed the situation or differences. The act merely succeeded in grouping or arranging tax items on which the different levels of government can legislate or impose tax on.

4.3 Scope of Federal Taxing Items

The research discussed in brief some of the taxing items allocated to the federal government by the 1999 Constitution. This is aimed at seeing the taxing component allocated to the Federal Government

4.3.1 Companies Income Tax

A company is seen as corporate status and they convey certain privileges, hence they should pay for these privileges. Companies have limited liability status, thus protecting their shareholder in event of bankruptcy. One of the reason and benefits of incorporation is the proportional profit therein. Furthermore a company has legal personality status of its own quite distinct from members warranting taxation of such profit .
The company's income tax act (CITA) 2004 (as amended) divided companies into two categories, Nigerian companies and non-Nigerian companies. A Nigerian company is one the control and management of whose activities are exercised in Nigeria under section 13 .
All other companies fall into the remaining category. By the exclusive list to the 1999 Constitution, legislative power on companies falls on the federal government. The federal government is thus responsible for the collection of taxes and the profit there from through FIRS.

4.3.2 Petroleum Profit Tax

The petroleum profit tax act (PPTA) is the formal law governing oil taxation in Nigeria and it applies to the upstream activities such as oil exploration, prospecting as well as mining. The effect of the Act is that its dictated by a memorandum of understanding (MOU) between the oil producing multinationals and the Federal Government of Nigeria.
The Petroleum Profit Tax (PPT) is complemented with other contractual arrangements which are not explicitly detail in the above tax legislation. These are the joint operating agreement (JOA) and the production sharing contracts (PSC). The former includes joint ventures between the national oil company, the Nigeria National petroleum Company (NNPC) and the multinational oil companies on the basis of an MOU .
Nigeria is abundantly endowed with natural gas which also has a tax regime that branches into upstream and downstream activities taxation. The upstream gas refers to the exploration and production of gas associated with crude oil while project relating to marketing, distribution as well as power generation are classified under downstream gas . The law governing the oil sector in Nigeria now is the Petroleum Profit Tax Act . The administrators ascertain, adjust, assess and declare the chargeable profit due to federal government on oil dealings.

4.3.3 Value Added Tax

Following the report of the study group on the Nigerian Tax System and administration in 1991, the federal military government introduced Value Added Tax (VAT) in 1994. The VAT represents the most significant tax reform of the period and the major economic rationale was to bring many economic activities into the tax net and increase revenue.

The VAT is generally of consumption type (C-VAT), price-VAT and income VAT. The C-VAT implemented in Nigeria is a general tax on consumption and widely embrace by several other countries. Initially some product and services are VAT exempts, tax was not imposed on item like books newspapers and magazines, commercial vehicle and spare parts, medical and pharmaceutical product, house rent and food among others .

The imposition of VAT on imported goods and services are all gear to raise revenue for the country due to the unsatisfactory system of the existing sales taxes, the quest by regions or nations that board taxes be eliminated in Nigeria hence VAT was introduced to replace the sales Tax. The current legislation on VAT in Nigeria is the VAT Act of 2004 under section 7(2) , the Federal Inland Revenue Service (FIRS) is given the power to carry out the duty of care and management of the VAT.

4.3.4 Custom Duties

- *The economic crisis of the first-half of the 1980s warranted the introduction of several measures by the Federal Government to curb the economic challenges. Import tariffs were rationalized and Schedule II of Custom Tariff (Consolidation) Act of 1973 which permitted the importation of several commodities duly free was abrogated, with the result that only 20 items could now be imported duty free .*
- *Today, custom duty as a duty or tax levied or impose on goods imported into Nigeria is regulated by the provision contained in the custom and excise management Act . The Act regulates the management and collection of duties of custom and excise and for purpose auxiliary thereto.*

Section 3 of the service regulation dealing with import procedure, it declares that, all goods exported from or imported into Nigeria, must be declared to custom. What a huge amount of revenue generation the federal government can derive from this source alone .

In addition to the above named taxes, the federal government also legislates on stamp duties, capital gains Tax, excess duties and the like. References is made to the above named taxes to point out the issue under consideration that the most important and significant tax item as far as revenue generation in Nigeria is concern are all allocated to the federal government by the 1999 constitution (as amended). Schedule to the Exclusive List to the Constitution buttress this assertion

4.4 State's Taxing Powers

The lingering question in mind is whether the state has power to tax from the Constitutional point of view? In looking at the taxing powers of the state from the Constitution to see whether the states have any Constitutional powers to impose taxes or not, we would look at it under the Express and Implied provisions of the Constitution.

On express provision of the taxing powers of the state, the 1999 Nigerian Constitution does not expressly vest the states with power to impose any particular tax. A quick glance at the provisions of the Constitution gives the impression that the states have no taxing powers of their own except to the extent provided in the Federal Statutes. This is because item D7 and 8 do not

expressly grant taxing power or a particular taxing item to the states but merely provide basis for the National Assembly to delegate the Administration of the taxes.

How true is the above provision or observation? On the one part, one may not totally agree with the above statement as being the true position of the law. Yet it would have been clearer if certain taxes have been expressly allocated to the states by or in the Constitution as done to both the Federal and the Local Government. On the other hand, it is not sufficient to conclude that the state is bereft of any taxing powers. Looking at the Constitution from the other view, the correct approach to identify the scope of the taxing power of the state is seeing it through the eyes of their legislative powers, as provided for in section 4(7) of the 1999 Constitution (as amended).

Having considered the express taxing power of the state, there is need to look at it implied taxing power also. The implied taxing powers of the states under the 1999 Constitution can be seen from the combined provision of section 4(7), item D9 and 10 of the Concurrent Legislative List and section 7(5) paragraph 1(j) of the Fourth Schedule to the Constitution. Section 4(7) provides:

"The House of Assembly of a state shall have power to make laws for the peace, order and good government of the state or any part thereof with respect to the following matters, that is to say:

(a) if any matter not included in the Exclusive Legislative List set out in Part 1 of 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 in this Constitution to the extent prescribed in the second column opposite thereto;

(c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

The above provision sets out the general legislative powers of the states in which the taxing powers of the state are also embedded. As said before, taxation is statutory; it means therefore that for a state to impose tax on any subject matter whatsoever, the three (3) condition set out in section 4(7) must be satisfied, that is;

(i) The subject matter must not be on the Exclusive List

(ii) The subject matter must be on the Concurrent List and,

(iii) Ensure that it is empowered by any other specific provision in the Constitution to make law on the subject matter.

From one above, the state is totally precluded from imposing a tax on any subject matter in the Exclusive legislative list. The State House of Assembly lacks legislative competence to make law on any of the 67 items on the Exclusive Legislative List, items like arms, ammunitions and explosives, aviation, bankruptcy and insolvency, banks, commercial and industrial monopolies, to mention but a few. The State House of Assembly is bereft of any legislative powers on these subject matters, hence cannot so impose tax on them.

On the second issue as above, that is matters in the Concurrent Legislative List, the legislative power of the State House of Assembly extends to the subject matter on the Concurrent Legislative List, subject to the principle of inconsistency with the federal law on the same subject matter. Thus the State House of Assembly has legislative power to make laws on all the 30 subject matters covering allocation of revenue, antiquities and monuments, achieve collection of taxes, electoral laws, electric powers to mention but a few.

What then can we derive or conclude from this Concurrent Legislative List concerning states taxing powers? Item D7 and D8 of the said Concurrent Legislative List provide:

D-7 in the exercise of its power to impose any tax or duty on:
(a) Capital gains, incomes or profits of person other than companies and
(b) Documents or transactions by way 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 a state.
D-8 where an Act of the national Assembly provides for the collection of tax, or duty on capital gains, income or profit or the administration of any law by an authority of a state in accordance with paragraph 7 hereof, it shall regulate the liability of persons to such tax or duty in such manner as to ensure that such tax, fee or rate is not levied on the same person in respect of the same liability by more than one state.

From the above provision, it is important to note that item D-7 and D-8 of the Concurrent Legislative List do not vest any concurrent power on the federal and state government to impose Personal Income Tax (PIT) Capital Gains Tax (CGT) and Stamp Duty (SD). From the opening word of item 7, "In the exercise of its power to impose". The power to impose tax on the three items and establish the framework for their administration is vested in the National Assembly. Hence item D7 and D8 do not grant taxing power to the state, but merely provide a basis for the National Assembly to delegate the administration of PIT, CGT and SD to the state on such condition as the National Assembly may prescribe.
Therefore one can safely say without such delegation it will be ultra vires of the states to impose or administer taxes on PIT, CGT and SD. The item D-7 and D8 merely vest power on the National Assembly to delegate the collection of taxes to the state and it is subject to the conditions prescribed. But the drafters of the PITA and SDA were not mindful of this inference when drafting these Acts and as such used the word impose in section 2(2) of PITA 2004 and section 4(2) of SDA 2004 giving false impression that the state can impose PITA and SDA. The PIT Amendment Act 2011 has cured such impression by amending the word 'impose' replacing same with the word 'collect.' Section 2(a) of the new PIT amended Act 2011 amended the above section to the effect that the word "impose" as above by the State is substituted with the word "collect" complying with the Constitutional provision that the State's has power to collect and does not have power to impose Personal Income Tax like the FIRS has no right to impose tax, they are only a taxing authorities saddled with the responsible to collect and administer taxes.
So far there has not been anywhere the states are conferred with taxing powers over a particular item from the Constitution. A further search for the taxing power of the states became fruitful when finally we discovered for the first time in respect of tenement rate in section 7(5) and paragraph 1(J) of the Fourth Schedule to the 1999 Constitution, which mandates state to confer by law upon Local Government Councils certain powers including "the assessment of privately owned houses or tenements, for the purpose of levying such rates as may be prescribed by the House of Assembly of a state .
What we are left with when considering division of legislative power under section 4(7) of the 1999 Constitution is that the state government has power to impose residual taxes. Residual taxes are those that are neither on the Exclusive Legislative List or the Concurrent Legislative List. The issue of residual legislative power of the state was highlighted in the case of Attorney General of Ogun State vs. Alh. Ayinke Aberugba and 6 others where Bello JSC said;
A careful perusal and proper construction of section 4 would reveal that the residual legislative powers of government were vested in the states. By "residual legislative power" within the

context of section 4, is meant, what was left after matters in the Exclusive and Concurrent Legislative List and those matters which the Constitution expressly empowered the federation and the states to legislate upon has been subtracted from the totality of inherent and unlimited power of a sovereign legislature. The federation had no powers to make laws on residual matters.

Furthermore Tobi J.S.C (as he then was) in the case of Attorney General Abia State vs. Attorney General Federation said:
The Constitution of the Federal Republic of Nigeria, 1999, like most Constitutions, does not provide for a residual list. And that is what makes the list residual. The expression emanates largely from the judiciary, that is, it is coinages of the judiciary to enable it exercise its interpretative jurisdiction, as it relate to the Constitution. Etymologically, residual merely means that which remain. In legislative and parliamentary language, residual matters are those that are neither in the Exclusive or Concurrent legislative list that is what remains or is not covered by the Exclusive and Concurrent Legislative Lists.

What we can deduce from the above submission is that the states taxing power cannot be pinpointed out from the Constitution. The State Government is basically a government of residual and un-enumerated taxing powers. To determine the extent to which a particular state has exercise its (residual) taxing powers, one will have to turn to the relevant state laws imposing taxes and this depend on how individual state has exercised its taxing power base on the tax law that exist in the state laws.
Nigeria became a federation in 1954 and adopted a federal system of government. Federalism is a deliberate choice to establish a multi-layer government which ultimately gives rise to division of taxing powers among the different level of government. Division of taxing power if follows in the spirit of Federalism ought to guaranty financial autonomy of each level of government, it ought to promote equity in the distribution of tax burden of the taxpayers and also avoid double taxation.
Federalism as defined by where K.C is the method of dividing powers so that the Central and Regional Government are each, within a sphere coordinate and independent. A judicial pronouncement on the concept of federalism in Nigeria is that which is given in the case of A.G. Abia State & Ore vs. A. G. Federation& 32 ors The Supreme Court said:
Federalism as a legal and political concept, generally connotes an association of states, formed for certain common purposes, but the states retain a large measure of their original independence or autonomy. It is the coordinate relationship and distribution of power between the individual states and the national government, which is at the centre. Federalism, as a viable concept of organizing a pluralistic society such as Nigeria, for governance, does not encourage so much concentration of power in the centre, which is the federal government. In federalism, the component states do not play the role of errand boys. The other extreme is also true and it is that they do not exercise sovereignty, which only belongs to the nation as a sovereign entity. States in federation rather exercise the middle role, if I may say so, for lack of better expression of exercising legislative and fiscal autonomy as provided for in the Constitution.

Evidentially there could be different component in federal system; there is usually a solid arrangement on how revenue and power are shared among the component. In the same case of Attorney General. Abia State & Ors vs. Attorney General Federation. The Supreme Court also

observed as follows: The peculiar federal problem is this. The federal principle requires that the central and regional governments of a country shall be independent of each other. Now if this principle is to operate not merely as a matter of strict law but also in practice, it follows that both Central and Regional Government must each have under its own independent control, financial resources sufficient to perform its exclusive functions. Each must be financially coordinated with the other.

In the case of Attorney General of Ogun State vs. Alh. Ayinke Aberugba and others previously considered, the learned justice Bello, JSC making reference to the case of Ogun State v. The Federation said, that 'the bedrock of federalism lies in each ties of government being a master in its own domain…'

In the same vein Babalola aptly summarized the researcher's opinion in the following words:"If the truth must be told, ours is a glorified unitarism masquerading as federalism. A situation where the component unit-the states, go cap-in-hand to the central government (called federal government) for assistance cannot, by any stretch of imagination qualify as a federation".

If the above observation of the learned scholar and justices of the Supreme Court are the true essence of federalism, then, the application and working of federalism in Nigeria as it is today is far from the real instinct and nature of federalism. This is because federalism as practiced in Nigeria tilts generously in favour of the federal government as the states are totally depending on the federal for their existence in Nigeria. A reasonable excuse or justification of Nigeria situation or experience could or may be hinged on the fact that both the Federal and the State Governments are inter-dependent on each other.

An overview of the taxing power of the federal and states government under the 1999 Constitution (as amended) argued above, shows that the distribution of taxing power by the Constitution under consideration is greatly in favour of the Federal Government. As the most significant taxes in terms of revenue potential are allocated to the Federal Government while the states are left with taxes that are relatively difficult to administer with little revenue potential taxes. This perpetually makes the states to majorly depend on the federation account for their revenue to solve their needs .

One of the major reasons for such wide gap was the long intervention of the military in the affair of government in this country. The military had more years of rule in the administration of the government of Nigeria vis-à-vis from 1966-1999, during these period there was wide erosion of power of state by the Federal Government. Hence, the changes reflected the military's centralized unitarism, whilst proclaiming that Nigeria is a federation. In course of time the exclusive legislative list grew longer to reach the intimidating 68 items in the 1999 Constitution while the Concurrent Legislative List consist of 30 items .

In addition to the above, the inequality in the sharing of the most viable tax items in terms of revenue potential between the two levels of government (Federal and States) has great impact on the internally generated revenue (IGR) of most states in Nigeria. The IGR of most states in Nigeria except Lagos and few other states cannot adequately cater for the socio-economic needs and development of these states even when the IGR of most states increased of recent, This is premised on the fact that their source of revenue generation are less viable compared to that of the Federal Government.

The high degree of centralization is glaring in the Nigerian Federation and can be seen in the structure of government finance over the years. The Federal Government alone did collect about 97% (percent) of the overall government revenue in Nigeria in the 80's and 90's while the states

and local government do combined to collect 3% (percent). This makes the state and local government to totally depend on the federation account of the federal government for survival. Practically speaking such situation is inconsistent with federalism .

4.5 Types of Items on which the States can Collect Tax by the Taxes and Levies (Approved List For Collection) (Amendment) Order 2015

Kaduna State Government and the Local Council in the exercise of its power as given by section 4(7), item D-8, 9 and 10 of the concurrent list, section 7(5) paragraph 1(j) of the fourth schedule of the 1999 Constitution as amended and the Taxes and Levies (Approved List for Collection) Act collect the under mentioned taxes and levies. Kaduna state collects Personal Income Tax in respect of Pay As You Earn (PAYE) and Direct Taxation (Self Assessment) Withholding Tax (individual only), Capital gains tax (individual only) and Stamp Duties on instruments executed by individuals.

The state also collects Pools Betting and Lotteries, Gaming and Casino Taxes, Road Taxes, Business Premises Registration Fees in respect of Urban areas (as defined by the state) and rural area, Development levy (individuals only), Naming of street registration fees in the state capital. The state also collects Right of Occupancy Fees on land owned by the state government in urban area of the state, Market Taxes and Levies where the state finance is involved. Land use charge, where applicable, Hotel, Restaurant or Event Centre Consumption Tax, where applicable, Entertainment Tax, where applicable, Environmental (Ecological) Fee or Levy, Mining, Milling and Quarrying Fee, 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, Fire Service Charge, Property Tex, where applicable, Economic Development Levy, where applicable, Social Services Contribution Levy, where applicable, and Signages and Mobile Advertisement, Jointly collected by States and Local Government.

4.5.1 Personal Income Tax in Respect of:

(a) Pay- As -You Earn (PAYE)

Kaduna State Personal Income Tax adopted the Federal Personal Income Tax Act (PITA) 2011 .Personal Income Tax is a tax levy on the Income of all taxable employees of Kaduna State. As said before the word income has not received common and acceptable definition anywhere in the Nigeria legislation. Lord McNaughton's famous aphorism in the case of London Country Council vs. Attorney General that "Income Tax, if I may be pardoned for saying so, is a tax on income…" has often brought illumination into the general understanding of income tax.

Section 3 of PITA provides:

(1) Subject to the provisions of this Act, tax shall be payable for each year of assessment on the aggregate amounts each of which is the income of every taxable person, for the year, from a source inside or outside Nigeria, including without restricting the generality of the foregoing

(a) Gain or profit from any trade, business, profession or vocation for whatever period of time such trade, business, profession or vacation may have been carried on or exercised.

(b) A new paragraph (b) created by the PITA Amendment Act reads:

any salary, wages, fee, allowance or other gain or profit from employment including compensations, bonuses, premiums, benefits or other prerequisites allowed, given or granted by any person to any temporary or permanent employee other than so much of any sums as or expenses incurred by him in the performance of his duties and from which it is not intended that the employee should make any profit or gain.

There are two basic method of collection of taxes by the Board of Internal Revenue of Kaduna State. These are (i) by direct assessment and (ii) through deduction of the resource known as the Pay-As-You-Earn (PAYE). We intend to discuss the PAYE system before the direct assessment.

The foundation on which the Pay-As-You-Earn (PAYE) system of tax administration is premised is traceable to the provision of section 81 of PIT Amendment Act 2011. Under the provision, income tax chargeable on an employee by an assessment, whether or not the assessment has been made shall if the relevant tax authority so directs be recoverable from any emolument paid, or from any payment made on account of the emolument, by the employer to the employee .

The new sub-section 2 and 4 of section 81 reads:

(2) Every employer shall be required to file a return with the relevant tax authority of all emoluments paid to its employee not later than 31st January of every year in respect of all employees in its employment in the preceding year.

(4) Income Tax recovered under the provisions of this section by deduction from payment made to a person shall be set off for the purposes of collection against tax charged on that person by an assessment except that any excess payment arising from compliance with sections 69, 70, 71, 72 of this Act shall be refunded by the relevant tax authority within 90 days after the assessment has been duly filed, with the opinion of setting off against future tax by the tax payer.

The problem being envisaged by the researcher with the above provision (subsection 4) is whether the taxpayer will not be subjected to several bureaucratic bottlenecks in the bid to demand for a refund or a set off of the excess payment. In such situation, it is practically known in the Nigeria system that such individual will be subjected to writing and filing of several documents to buttress his/her claim with the tax authority. On the other hand the taxpayer in most cases may be desirous of recovering the excess amount paid back at that point in time to enable him/her settle some other economic challenge (s) or other family needs rather than treating it as set off against future year:

In accordance with subsection 2 of section 81 PIT (Amendment) Act 2011, every employer is expected to collect Personal Income Tax due on employments income including pensions, employees resident in Nigerian and employees of Nigerian government oversees. Every employee is expected to pay tax on remuneration of his/her employment except if such remuneration is reimbursement of expenses on which the employee is not expected to make profit . The term remuneration of employment include among other salaries, wages, pensions, bonuses, commissions, directors' remuneration and the like. All these come under the PAYE system or scheme. Here the employer of a tax payer serves as an unpaid agent for the taxing authority. The employer deducts income tax from the pay of the employee and pays the net amount to the employees.

Section 26 of PITA provides:

(i) With respect to income from an employment or pension which is derived or deemed to be derived from Nigeria, the assessable income of an individual shall be the amount of the income of the year of assessment,

(ii) For the purpose of subsection (i) of the section, income from an employment shall be deemed to arise from day to day except to the extent that it is derived from any bonus, commission or allowance payable on one occasion only or at intervals exceeding one month, and to that extents it shall be deemed to be income

(a) of the day on which it is paid or

(b) if it is paid after the cessation of the employment of the last day of the employment including any terminal leave arising there from. The totality of this section is to trap every taxpayer to pay tax to the state.

Procedurally, the taxpayer filed returns of income and claim for allowances and reliefs with relevant tax authority at the beginning of each tax year. The tax authority examined this and filed same in the respective employees' personal files with the tax authorities office. All allowances due to the tax payer/employee are computed by the authority base on the information contain in the returns .

The information is entered into the Tax Deduction Card (TDC) with the authority. The figures on the card is arrived at by dividing the total allowance due to employee into approximately twelve equal amounts such that the benefit of 1/12th of the total allowance is enjoyed in each month of the year. This card with notices of total free pay allowance granted to each employee are forwarded to the employers to be used in working out the amount of tax to be deducted from each employee's emoluments for each month. The total allowances (tax free pay) up to that month as shown on the tax deduction card will be deducted from the gross earning to date to arrive at the amount on which tax is payable.

A newly engaged employee applies to the tax authority within his/her jurisdiction for tax deduction card on the basis of which the amount of tax due from him will be computed. While in the case of an employee leaving service of his employer/employment before the end of a tax year, the employer is expected to complete his tax deduction card up to and including the month of leaving and the terminal remuneration paid. The card is marked "Left" with the date of leaving also noted thereon .

The above card is retained by the employer until the end of the tax year. A leaving certificate on form E is prepared one for the tax authority while the second is given to the employee to be presented to his new employer if any. An employer who fails to operate the pay as you earn deduction scheme as prescribed by the law of the state or statute will be liable to restitute or pay penalties of N500,000.00 in the case of a body corporate and N50,000.00 in the case of an individual see section 81(3) of PIT (Amendment) Act 2011 .

The PAYE system in Kaduna state has helped to reduce tax evasion, as the employer is not likely to evade his employee's tax than the employee themselves would be, if they are allowed to account for themselves. Secondly much of the administrative function, work and expenses shifted on to the shoulders of employers who are required to act as collectors for the tax authority in the state.

(b) Direct Taxation (Self Assessment)

The Self Assessment Scheme is a procedure or system whereby a taxpayer self assesses his/her self. He computes the taxable income and the tax liability and makes the assessment. Thereafter he submits the assessment to the tax authority as part of his filing requirement.

At the initial stage of its introduction in 1991, it was implemented on administrative basis, before the coming of the law enforcing it which is section 52 (1) and (2) and section 53 Companies Income Tax Act (CITA) 2004. Section 41of Personal Income Tax Act 2004 (as amended) also makes provisions for self assessment. The provisions of the two laws are similar. During the initial stage of its operation, there was no spelt out procedure for the self assessment until the enactment of CITA provisions .

Presently self assessment scheme is governed by the PITA 2004 (as Amended). Under this system tax payers are required by section 41 to pay tax through the tax authority of the state he resides at the beginning of every fiscal year without notice or demand by delivering a true and correct

statement in a specified form of his total income from all sources together with a particular applicable to him for the granting of relief allowances. The said statement is the tax return, which is signed by the taxpayers to the effect that a true and correct statement of his affair has been rendered.

By the provision of section 41 (3) of the PITA 2004 (as amended), every taxable person shall file the returns within 90 days from the commencement of every year of assessment. While section 43 provides for exemption from filing returns for every person whose only source of income in any year of assessment from his employment he earn N30,000.00 or below.

Thus aside from section 43 PITA 2004 (as amended) tax payers are required to make a return of their income plus a self-assessment of what their tax liability should be and forward these with their cheque for the tax due to their respective tax offices or authorities. The Self Assessment Scheme allows each taxpayer to assess himself or herself. The tax office or tax authority's role in this scheme is the verification of the assessment together with the supporting documents so as to sustain the credibility of the scheme.

Section 44 of the Act provides, a taxable person required by the Act to file a return of income shall in the return calculate the amount of tax payable. While section 45 of the said Act provides that a person who files a return under section 41 and 44 of this Act within the time specified for filing of the return shall if there is no default in the payment arrangement, be granted a bonus of one percent of tax payable. This is intended to serve as an incentive to self assessment filers under the Company Income Tax Act (CITA) 2004. This incentive is available to both government and self-assessment filer under the PITA as long as they make the tax payment on the due date .

The main essence of self assessment scheme is to encourage voluntary compliance, reduction of tax evasion and giving the taxpayers the challenge to be more responsible. Other benefits and importance of self or direct assessment include among others.

(i) Elimination of the long time- lag between the submission of returns and the service of the notice of assessment

(ii) The burden of tax computation and sending notices of assessment will be removed from the tax authorities to the taxpayers

(iii) Self assessment accelerates the pace of tax collection with the attendant cash flow benefit to the government

(iv) Tax collection costs would be drastically reduced

(v) The scheme bestows high degree of trust on the taxpayers. The voluntary compliance strategy is to promote good citizenship which would eventually boost tax revenue to government .

Where the relevant tax authority discovers or is of the opinion that income has not been assessed or has been under-assessed or that excessive relief has been given, an assessment or an additional assessment can be made of the tax year in accordance with section 55 of PITA 2004 (as amended). The relevant tax authorities can also give notice to tax payer to deliver within reasonable time a fuller or further returns respecting any matter regarding return or fuller information in respect of income or gain of a person .

Section 59 of the 2004 Act (as amended) is to the effect that where a tax payer proves that an assessment made on him was excessive by reason of some error or mistake in any return or statement made by him, he may at any time not later than six years after the end of the year in which the assessment was made, make an application in writing for relief. This could be in form of repayment of tax by the tax authority and the authority will thereafter consider the just of the application as to whether to grant the relief or not. Such determination shall be final and

conclusive, no right of appeal. This amounts to a breach of fundamental right of a taxpayer to appeal.
Where a taxpayer disagrees with the assessment he is to give notice of objection and notice of appeal to the relevant tax authority or Appeal tribunal established by FIRS (Establishment) Act 2007 within 20 days from the date of service of the assessment on the taxpayer as provided for in section 60 of the 2011 Act. The time limit must be complied with as notices filed outside this 30 days period are not valid. Where any tax payer is not satisfied with the decision of the tribunal he/she can now appeal to the Court of Appeal. The PIT (as amended) Act 2011 has by section 15 deleted sections 61-67 of the principal Act 2004.

4.5.2 Withholding Tax (Individual Only)
The withholding tax scheme is a system where a debtor is empowered by law to withhold a certain percentage of the money due to his creditor and pay it over to the government in lieu of the tax to be paid later on that sum by the creditor. It is a source deduction that is applicable to payment such as salaries, wages, other emoluments, dividends interest and the like . In other words, withholding tax is an advance payment of income tax. It is deductible at the point of payment or when credit is taken, whichever comes earlier, for the specific activities. Whoever is a recipient of payment or credit for specific activities or services is therefore liable to pay the tax. It is a collection machinery to curb tax evasion. It is also a payment on account of income tax and it is available as set-off against tax assessment for the relevant period. It is a tax credit to settle income tax liability of the year to which the income relates .
Withholding tax deduction and remittance to Board of Internal Revenue of the state in Nigeria is covered by part Ix of the PITA 2004 (as amended) and more specifically section 69-74 of the Act: withholding tax in Kaduna state spreads across taxes applicable to rent, dividends, interest or royalties, directors fees, contract supplies, commission and management fees.
The government has neatly made arrangement for the collection of withholding tax through its various ministries, parastatals, though they themselves do not pay the tax but merely act as agents of collection of the tax. Withholding taxes on individuals who are nonresident in Nigeria, resident of Federal Capital Territory of Abuja, members of police and armed forces and foreign affairs officers are payable to the FIRS while withholding tax on other individuals of the state are payable to the tax authority of the state (State Internal Revenue Service [SIRS]) where the individual resides .
It should be noted that the currency in which the tax is to be paid is the currency the contract was awarded and in which the tax was deducted. Again, payment of withholding taxes is to be by Central Bank of Nigeria (CBN) charges or Bank Draft. The cheque is usually made payable to the Federal Government of Nigeria FIRS withholding Tax Account .
The question is who deducts withholding tax? All enterprises that operate a PAYE system are agents of deduction. The duty to deduct tax from payment for specified activities and services is a statutory obligation for those who make such payment. Like government ministry, department or Agency, Local Government, Statutory Body and the like. The duty is ensuring that all liable payment suffers such deduction, and that the correct rates are applied.
It is also that, the deduction agent deducts and remits within the statutory time limit of 30 days. The tax authority will also be furnished with the following data: name and address of the person who suffered the deduction; the type of payment whether building or construction commission consultancy service and the like; gross amount of payment; amount of tax withheld; period covered by the payment; the SBIR file reference or number (now Tax Identification Number

(TIN) number. The value of the contract/transaction service; the amount of tax withheld, withhold rate of tax applied; the balance paid to payer; the date of payment and the cheque number and date .

As stated before, withholding tax in Kaduna state is in respect of tax on income withheld in respect of individuals and unincorporated bodies. The revenue from this tax is remitted to the State Board of Internal Revenue or Service. The tax covers individuals who are resident in Kaduna state or who carry on business in the state.

Certain activities are subjected to withholding tax. This means that during transaction in any of the specified activities or services, a payment is due from one person to another. The person making the payment is expected to deduct tax at the applicable rate and remit it to the relevant tax authority of the state.

Thus where an organization is paying rent to an individual, or paying interest to an individual, or paying royalties to an individual or where a company is paying dividends to individuals or a payer of director's fees or under the PITA, deduction at source, withholding tax is deducted at the rate specified in the sections of the law applicable. These taxes or deduction are provided for under sections 69-73 of PITA 2004 as amended.

Some of the advantages of withholding tax in Kaduna state are as follows:

(a) Withholding tax system is used to make payment of tax less burdensome to the recipient of the income subjected to such deduction. The tax payer need not bother themselves going to the office to pay their tax.

(b) It help to broaden the tax base by bringing otherwise unknown taxpayers as well as obscure transactions into the tax net, thereby increasing tax yield.

(c) Withholding tax helps to strengthen the tax machinery by engaging ex-gatia that is (free of charge) numerous officials of collection agent in tax collection despite the fact that they are not paid government workers

(d) It ensures a regular flow of tax revenue to the coffers of the various governments. Infact, earlier flow of funds to government's coffers is ensured as there is no waiting till the actual tax liability is determined before the tax is withheld and paid to governments coffers.

(e) The withholding tax system helps to reduce the incidence of tax evasion. This is because if there is a failure to disclose in tax return sources of income on which the tax is withheld, 10% there from would have been received by government.

(f) Withholding tax system helps to educate taxpayer and the collection agents on tax matters .

(g) Despite the good aspect of withholding tax, there exist certain problems associated with withholding tax, some of these problems are;

(i) Non-Deduction – some organisation default by not deducting withholding tax before taking payment to their contractors. Some do it knowingly with a view of helping such contractors or at times out of ignorance or as a result of order from the above.

(ii) Non remittance- some collection agents deduct but fail to remit to the relevant tax authority but rather retain the money and utilize it for their business operation. Such act would discourage tax payer from taking credit.

(iii) Incomplete or incorrect information in the payment schedule will normally not contain adequate information to enable issuance of an effective credit note. Such may lead to having problem of granting tax credit for the tax withheld.

(iv) Cases of lumping – there are times deduction from both individual and corporate bodies are lumped together in one cheque and addressed to either FIRS or SIRS.

In such situation it is expected that such cheque should return to be replaced with two cheques carrying the appropriate amount to each tax authority.

(v) Payment to wrong tax authorities – there are instances where taxes withheld from companies which are supposed to be paid to FIRS are paid to SIRS and those collected from individual meant for payment to SIRS are paid to FIRS. In such situation the tax payer cannot take credit for taxes not collected by it. There is need on the part of the tax authority involved to display honesty by redirecting such payment. And if such payments are genuinely made in error, refund of such taxes should be pursued with minimum delays.

(vi) Lack of cooperation – some collection agents do not cooperate with tax officials in implementing this aspect of the law. In some instances when tax officials go on monitoring withholding tax exercise, they meet with hostile reception especially with top government officials. There is the need to carry certain books of account along when going on such exercise like file, certificate of payment and copies of payment schedule .

4.5.3 Capital Gains Tax (Individual only)

In the prolonged co-existence of men among themselves, there has developed the constant change of property in human society. So also, an indication of growth and development, among others in developing society, is the transfer of property from one person be it natural or artificial to another. In other words, properties do change hands among entities .

Property is defined as something owned, a possession, the piece of real estate, something tangible or intangible to which its owner has legal title. Properties are such thing as copyrights and trademarks, the right of ownership, title. 'Property' is also seen as the right to possess, use and enjoy a determinate thing the right of ownership. It also means any external thing, over which are exercised, the rights of possession, use and enjoyment.

Property can be corporeal or incorporeal – corporeal property is the right of ownership in material things. Incorporeal property is a legal right in property, having no physical existence; for example patents, copyright, and trademarks. In another word, property can be personal property or real property. Personal property is any moveable or intangible things, which is subject to ownership, for example, vehicles, books, furniture, shares, patent and the like. Real property is land and anything growing on, attached to, or erected on it, including anything that may be severed, without injury to the land. Real property can either be corporeal like building or incorporeal like easement .

Often times, there arises the need to effect transfer of property from one person to another. There are various forms of transfer among which are transfer between two living individuals in form of contractual transaction, or a gift. Here the transferor and the transferee bargained at arm's length, both of them supplying consideration, to support the contract. On the other hand transfer could operate as a gift from the transferor to the transferee. Other form of transfer is that which takes effect after the death of the transferor and is either by means of a 'will' if the transferor left a will or by grant of letters of administration, to the personal representatives of the deceased .

In the course of time the law or the government set its eyes on profit or gains that accrued to the disposer of property or assets, with the notion that taxation of such gains could earn the government revenue. Thus in 1967 there was the introduction of Capital Gains Tax as a tax on capital gain , realized on the disposal of an asset by a person. The 1967 Decree was consolidated and re-enacted into what is known as the Capital Gains Tax Act of 1990 . The current law on this subject after series of amendment is the Capital Gain Tax Act .

The Kaduna State Board of Internal Revenue, in most cases relies on the general applicable law in taxing the individual on disposition of property within the state. this is because by item 58 and 59 of the Exclusive, Legislative List of the 1999 constitution as amended, Capital Gains and Stamp Duties are items Exclusively for the Federal Government to Legislate on, the state has no scope of authority on the subject matter. Presently Kaduna State adopts the general law on the subject. The gains must arise from the disposal of Capital assets to persons who do not frequently offer them for sale and in whose hand they are not stock in trade despite increase in market value of the assets. This is because profit from the normal business transaction is subject to taxes under the Personal Income Tax Act in cases relating to individual .

Thus Capital Gains Tax is the profit realized by someone of the sale of an asset which he had purchased previously at a lower price. The most common capital gains are realized from the sale of stocks bonds and property. The current rate of capital gains tax in Nigeria is now 10% on the chargeable gains . See section 2(1) of the Act 2004.

Under the Act, every gain or profit seen as or referred to as 'chargeable gain' shall be amenable to Capital Gains Tax. Chargeable gains are determined by deducting from the proceeds of the disposal, certain specific sums. For example, the amount for which the disposer acquired the asset in question, the incidental cost of the acquisition, cost of improvement to the asset, the amount incurred in establishing, preserving or defending the disposer's title to or right over the asset and incidental cost of the disposal . These are allowable deductions.

In consonance with the above, there are three conditions which must be present or satisfied before capital gains can be chargeable to income tax. These are:

(i) There must be a chargeable person to tax

(ii) There must be chargeable asset giving rise to a chargeable gains or disposal

(iii) There must be a disposal of the asset by the person chargeable to tax.

Capital Gain will not arise where the above conditions are absent. This is because it is the excess of the proceeds derived from the disposal of the asset over and above the cost of acquiring and enhancing the asset by the owner of the asset that is subject to Capital Gains Tax .

Sources of properties subject to Capital Gain Tax are tangible and moveable properties, property created by person disposing them off or coming to be owned without being acquired stocks and shares of every description, options, debts and incorporeal property and non Nigerian currency. Where assets are situated outside Nigeria and disposed by a non-resident individual or trustee of any trust or settlement, Capital Gain Tax is also chargeable on any gains received or brought into Nigeria. On the other hand capital loss on the disposal of any asset is not deductible from capital gain on disposal of any other asset even if both are of the same type .

Disposal of property or asset takes place where ownership is transferred to another person or the owner divests himself of his right over the asset either by sale, gift or pecuniary exchange . It will also be disposal where there is lease, transfer, an assignment, a compulsory acquisition or any other disposition of asset, notwithstanding that the person who paid the capital sum did not acquire any asset. Furthermore disposal occurs where a person received any capital sum in return for forfeiture or surrender of rights or for refraining from exercising rights and where he received any capital sum as consideration for use or exploitation of any assets or trade, business, profession or vocation see section 6 and 38 of the Act.

Example of the above is capital sum from compensation for loss of employment or office to another person that acquired it, capital sum in respect of risk of any kind under insurance policy or for forfeiture or surrender or any right. The Act exempts or does not tax gains which accrued to ecclesiastical, charitable or public, educational institutions, statutory or registered friendly

society, registered cooperative society and registered trade union. Furthermore the gains should not have arisen from trade or business carried on by such a body or institution, and the gain realized is applied solely for the body or institution .

Other areas of exemption include gains from disposal of asset gotten or held by person as part of any superannuation fund, or contribution to a national provident fund or other retirement benefit scheme cognizable under a relevant law in Nigeria, in connection with a person's retirement benefit . Disposal of securities, stocks and shares, voluntary or in a merger or acquisition transaction or for the purpose of replacement of business asset .

It should be noted that where an individual acquired asset by way of gift (that is not being an acquisition on devolution on death) and he also disposes such asset by way of gift, the disposer does not thereby makes any chargeable gain. The disposer is not required in such instances to pay capital gains tax . The position of the law now is that the law deems the acquirer of asset to have acquired same for an amount equal to the sum for which the asset was last disposed off, by way of bargain, at arm's length. Thus the amount of previous disposal is ascertainable; otherwise the law takes the market value of the asset at last disposal as reference point. So that in the event of subsequent disposal of the asset for valuable consideration, it would be subject to Capital Gain Tax if there be profit .

The next issue to be considered is how effective is the Capital Gain Tax so far in Nigeria? The tax is administered by the state through the State Board of Internal Revenue. The uncertainty as to the subject matter of the tax has made the implementation of this tax highly difficult. Thus the study group set up by the Federal Government 2002-2003 even advocated or recommended that Capital Gain Tax be removed from Nigerian tax system . Premised on its unwieldy, complex and cumbersome nature of it, it is very difficult to identify the subject matter of the tax, thus it is said to have violated the principle of certainty of a good tax system.

Another area of weakness of the tax is that, there are no reliable records or data of asset in Nigeria. How do you know the original cost of asset in question by the disposer except to compare with amount now realized from the disposal of the asset, to determine whether there is profit amenable to Capital Gain Tax. It is only when people want to register an assignment or land or need to obtain Governor's consent to the transaction that tax was actually paid do they actually pay the tax.

Thirdly, it is the purchasers that bear the burden of the tax instead of the disposer of asset. Though the Act specifies the disposer should pay tax or chargeable gain but in practice, it is the acquirer that bears the burden to pay the tax.

Fourthly, in most cases, it is the tax authorities that end up assessing the asset since they may dispute the amount stated as consideration for the transaction. And some time the assessed Capital Gains Tax end up being higher than even the consideration paid for the asset. These often encourage corruption within the system.

Despite the above challenges with the system it is the considered view of the researcher that considering the very important source of revenue for the government by this tax, effort should be geared towards enhancing its difficult provision by reorganizing and amending the cumbersome area from time to time so as to achieve the desired results.

4.5.4 Stamp Duties on Instruments Executed by Individuals

Stamp Duties is one of the invaluable revenue sources in Nigeria today especially in the commercially viable states, considering the numerous instruments that now come before Stamp Duties office in the state for purposes of perfection. Stamp duties are taxes paid to the Federal or

State Government on documents for the purpose of conferment of legally approved authority. It is charged on documents or instrument and not on transaction or person . In other word stamp duties is a form of tax levied on legal document in order to have legal recognition or in pursuance to the perfection of such document.

In ascertaining the nature of a particular transaction, which has been carried out by a tax payer in the form of stamp duties, the court normally looks at the substance of the instrument and not the form see Limmer Asphatte Paving Co. vs. IRC

The Court observed thus:

In order to determine whether any and if any what, Stamp Duty is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be ascertained, that the description of it given in the instrument itself by the parties is immaterial even though they may have believed that its effect and operation was to create a security mentioned in the Stamp Duties Act and they so declare.

Stamp duties are governed solely by statutes and no document can be charged with Stamp Duty unless it comes within the clear word of an act of legislature or parliament. The Stamp Duties Tax can be traced back to the Stamp Duties Proclamation , the Stamp Ordinance and the Stamp Duty Act of 1939 in Nigeria. The administration of stamp duties has gone through several modifications or amendments from 1939-1990 Stamp Duties Act .

Kaduna state does not have any stamp duties law of its own. The operative Stamp Duties law is the Stamp Duties Act of 1990 adopted by the state. Section 4 of the Act provides: the state government shall collect duties in respect of instruments executed between persons or individuals at such rates to be imposed or charged as may be agreed with the Federal Government.

The question we may ask ourselves at this junction is, in view of the exclusive allocation of stamp duties to the Federal Government pursuant to item 58 of the Exclusive Legislative List, there is no scope for the states to legislative on the subject matter. Thus section 4(2) of the Act contrives and is inconsistent with the provision of the 1999 Constitution (as amended) since it has not be challenged the state has been collecting the duties using the Federal provisions.

The Stamp Duties is managed in the state by the Commissioner of stamp duties. He or she determines the current duty to be paid. The instrument is sent to the Commissioner for adjudication. Aside from assessing and fixing the appropriate duties and rate on documents, the commissioner is responsible for stamping or embossment, for affixing adhesive stamp, affixing postage stamps in lieu of adhesive stamps. He/she is also the custodian of dies and adhesive stamp use in stamping instrument in other to guide against its loss. The commissioner is sometime also called upon to express an option on the amount of duty to be paid on any executed instrument.

The categories of item subject to stamp duties include among others contract note, lease agreement, mortgages, covenants conveyances, declaration, deed, power of attorney, policies of insurance, receipts, settlement, share warrant and the likes. While item exempted from stamp duties are penal rent, treaties or agreement made between Government/and foreign or international organization, liquidation sales or transaction under compulsory winding up of companies and the likes .

The principle guiding the operation of Stamp Duties in the state are provided for in section 23 of the SDA which states expressly that they are essentially duties on instrument and encompasses written documents. The Stamp Duties imposed by the Act are mainly two types. The fixed or

specific duties and the Advaloren duties. The fixed duties are those whose amount of duty does not depend on the consideration or other amount stated in the instrument. That is it does not vary with the consideration of the document.

The Advaloren duties are duties which depend on the amount or value of the consideration on the transfer of share. That is, they vary with the amount of the consideration and in accordance with the scale stated in the schedule to the Act . The collection of stamp duties in the state is normally done in two Banks designated. Outside those Banks, payment can only be honoured upon confirmation. The rate of stamp duties to be paid is normally approved by the Joint Tax Board of the state. This help to check and monitor the activities of the state commissioner of stamp duties that assess the instrument.

Where transactions are effected orally, it does not attract duty. As stamp duty is a duty on instrument and not on transaction. So also property which is not transferable by delivery, if converted into a delivery states duty is avoided. Example, where fixtures are sever before transfer, even where a transaction is effected orally and subsequently a written record of which is made, the written record is not liable to duty. As the transaction is deemed not to have been effected by the written instrument but merely recorded by the written instrument. The exception to this rule is as contained in the case of Cohen and Moore vs. IRC . Where the court held that under certain situations the court will regard oral transaction and a written record as one whole transaction by a single instrument.

There are certain transactions that cannot be structured for the purpose of escaping Stamp Duties. For example, the law requires certain transactions to be in writing if they are to be regarded as being valid, such as the creation or deposition of a legal estate in land, the disposition of an existing equitable interest by a beneficial owner, a declaration of trust concerning land, which though can be oral must be evidenced in writing. And the essence of writing in assignment related transaction is to eliminate the risk of proving title on oral evidence. Even though oral assignment is same as equitable assignment, documentary assignment stands on a higher pedestal in the form of a legal assignment .

Section 8 of SDA stands to curtail anti-duty avoidance device, regulating situations where one document deals with several distinct matters. The section provides that they shall be separately and distinctly charged as if they were separate instrument with duty in respect of each matter. So also situations where an instrument is made for any consideration chargeable with advaloren duty and other valuable consideration, they shall be separately and distinctly charged with duty in respect of each consideration, same with instrument dealing with more than one transaction shall be charged distinctly.

Furthermore, where an instrument is found to be ineffective for the purpose it is intended, it will not attract stamp duty. This is because as stated earlier in construction of instrument, the court gives effect to the substance over its form. See Eastern National Omnibu Co. Ltd. vs. IRC that where agreement embedded in an instrument of public motor service company and third parties provides for termination or cessation of business in a designated place, that parties give necessary assistance to their successor to acquire necessary licenses required to update their business and not to compete with the business of the company, was held by the court to be agreement embedded in the instrument which is tantamount to the sale of the goodwill of the motor company. This was in accord with the doctrine of form and substance applicable in tax matter including Stamp Duties.

It is of general knowledge that a document is said to be complete when it has been executed by all the necessary parties to it. Such document assumes legal efficacy upon delivery. An

incomplete document is not liable to stamp duties though it can be produced in evidence unstamped. A Deed which has been signed and sealed but not yet delivered is an incomplete document in law and is not liable to incur stamp duties. It is not mandatory to stamp an incomplete document, the rate of duties payable on such document when eventually complete is that prevailing rate at the time of completion.

A document only becomes liable to stamp duties when it is executed and document is said to be executed when all the parties to it had signed it. But where a documents is signed, sealed and is not delivered is still not liable to stamp duties as such is regarded as incomplete document. Again where a document that ought to be stamped is not stamped, it does not invalidate it and does not make such an offence. It is that under the Stamp Duties Act such document cannot be used in evidence, and it become liable to penalties outside the time limit once it is presented for stamping .

Where the amount of stamp duties payable on an instrument becomes subject to adjudication and the decision of the commissioner of stamp duties is disputed, an appeal lies to the High Court of the state by way of case stated. Despite this the objector must first pay the amount of duties assessed and the appeal must be made within 21 days of assessment . The commissioner state the case, deliver same to the appellant who may then within seven days file it at the High Court.

Where an individual or a taxpayer refused to stamp a document he/she has not committed any offence unlike failure to pay income tax. And the state cannot sue for duty on an unstamped instrument. In fact such unstamped instrument is effective only that section 22 of the SDA prohibits the tendering of such in evidence in court except in criminal matters and in rent tribunal.

The Act also provide penalties for late stamping, Section 23(1) of the Act is to the effect that the person presenting the instrument for stamping after the date of execution must pay the unpaid duty, penalties of N20 and a further penalty if the unpaid duty exceed N20 of interest on such duty at 10% per annum from the day upon which the instrument was first executed to the time when such interest is equal in amount to the unpaid duty .

4.5.5 Pools Betting And Lotteries, Gaming And Casino Taxes

In 1961 the then federal legislature passed the Pool Betting Control Act . Section 3 of the Act allows whoever is licensed or that has license to operate a pool betting business or the distribution, printing or publishing of any paper incidental to pool betting business. And operating such business without license was an offence that attracts fine or on conviction earns a two years imprisonment or both. A year later (1962), the Pool Betting Tax Act was passed; it imposed taxes on pool betting business. Pool betting business was defined as any business involving the receiving and negotiating of bets made by way of pool betting and it was immaterial that the person on whose behalf the bet was being negotiated lived elsewhere.

The Pool Betting Tax Act is similar to the Betting duty Law of other states like Lagos; the only difference being that while the Betting Duty Law imposes duty on stakes or bets and lottery ticket sold in a recognized race club at an approved race meeting, the pool betting tax focuses on stakes or bets by way of pool betting business. Again under the Betting Duty Law a duty is imposed on every bet made on any totalisator run by a recognized race club at an approved race meeting at the rate of ten percent of the amount of the stake .

The rate of pool betting business tax was chargeable on the amount staked with the proprietor of a rate not exceeding 20 percent. Section 3(2) of the then Act made it an offence for the proprietor of a pool business to supply incorrect accounts by omitting or under stating the amount placed as stakes or by otherwise giving incorrect information concerning his account.

In Kaduna State, the operative law was the pool betting (control and taxation) law at the footnote of the law reads, "Note, the application of this law in Kaduna state is subject to a caveat Federal Act 1991 No. 19"denoting an adoption of the Federal Law by the state. Section 3 of the law provides that, the commissioner of Revenue may upon application issue a license to any person for the carrying on of pools betting business in the state. The commissioner can also renew or exempt person from any special condition imposed under section 2 of the law.

Section 3(7) of the same law provides that a licensed proprietor who fails to comply with nay condition subject to which his license has been issued shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred naira or imprisonment for a term not exceeding six months or to both such time and imprisonment.

Section 4 prohibits pool betting business without license and penalty for false representation as to possession of license, Section 7 of the law is to the effect that licensed proprietor shall cause to be included in very advertisement within the state of his business and in every coupon and other document addressed to stakers or intended stakers within the state a statement that license has been issued to him, while Section 7(12) prohibits advertisement of a pool betting business within the state except with license, anyone caught doing so is guilty of an offence.

Section 11 of this law deals with tax imposed or stake, the tax is known as pools betting tax at the rate specified in the schedule. This rate is denoted on every coupon distributed to stakers or intender stakers. While section 13 provides that tax chargeable in respect of any stake place with a licensed proprietor shall be deducted by him from such stake and shall be collected, accounted for and remitted to the commissioner of revenue by such proprietor as prescribed. The proprietor also keeps records and accounts.

By 1979 the Pool Betting and Casino Gaming Prohibition Promulgated by the then Military Government Outlawed all forms of pool betting and Casino gaming and further repealed all pool betting and Casino gaming legislation in force as at that date. And any person found operating pool betting in whatever form was guilty of an offence .

The only surviving Casino Legislation then was the Casino Taxation Act . This Act is still part of Nigerian Law and is presently cited . The Casino Taxation Act 1965, it is a tax imposed on the net gaming revenue of casinos. A casino is a place where people try to win money by playing card games. Every casino licensed under the Act is liable to Casino revenue tax at 12% percent of its net gaming revenue. A casino's net gaming revenue means daily taking of the casino, whether continuous or intermittent of up to 15 out of 24 hours from the time of play when the casino is first opened, less of the winnings paid by the casino to patrons in the course of play. The casino revenue tax ranks in priority over all costs, charges and other taxes .

The administration of casino revenue tax is vested in the Federal Inland Revenue Service (FIRS). Section 2 of the Casino Act empowers the now FIRS chairman to authorize by warrant any person to enter the premises of a casino during play time or at reasonable hours outside play time to do such things as may be required to give effect to the provision of the Act, including inspection of statement and returns and where necessary certification of same.

By section 1(3)(d) of the Casino Act, the licensee is required to deliver in the afternoon of the day when play closes in the casino or as soon as practicable, a return to the service showing the net gaming revenue received during the course of play. In addition the licensee is further

required to submit weekly and monthly returns as the service may prescribe consisting of consolidated net gaming revenue for the period covered.
Section 3(5) of the Act indemnifies and empowers a person answerable to casino revenue tax to retain monies coming into his hands on behalf of the licensee as may be sufficient to pay tax to which the licenses is liable. Person answerable to tax under the Act include, the managing director or director of the licensee, receiver, liquidator, attorney agent or representative of the licensee .
A licensee may appeal against the direction of the service to the tax appeal tribunal. And where there is a pending objection or appeal by a licensee, collection of tax shall be suspended in respect of the tax or part of it that is disputed, but the undisputed portion may be enforced by the service and after the determination of the objection or appeal, the service shall serve a notice of the tax as determined on the licensee. Where the licensee failed to pay tax served on him or her by the service after the said appeal, the licensee becomes guilty of an offence and in addition to penalty that may be imposed the right of distrain shall become exercisable.
On the other hand, a licensee who discovers that it was excessively assessed and taxed in respect of any year of assessment as a result of error or mistake in the return, statement or account made by or its behalf may make an application for refund. If the application is investigated and meritorious will grant relief to the licensee by way of relief in such sum as it considers reasonable. Section 11 of the Act makes it an offence for a licensee to refuse or fail to pay tax or make false returns or representation for the purpose of obtaining an advantage and aiding the making of false returns or accounts. Returns and all other documents relating to the operation of casino revenue tax are classified documents and all persons engaged in the administration of the Act are obliged to deal with the said document as official secret, section 21(1) of the Act .
Thus it is an offence for any person to disclose information contained in the document without the authority of the service. The written authority of the Minister must be obtained before such information can be divulged even in the prosecution of the person who violated the provision of official secrecy . The pool betting tax before its abolition and the casino revenue tax are not general tax that applied to wide spectrum of taxpayers. They focus on stakes or bets by way or pool betting business or cards player. They are not significant source of revenue to the state.

4.5.6 Road Taxes

Kaduna state does not have Road Taxes law simplicita, what has been in existence in the state is the Kaduna Road Traffic law . This law did not provide for road taxes. But merely deals with various rules, law or regulation guiding road traffic and vehicles.
The Kaduna State Board of Internal Revenue, the statutory body vested with raising revenue/tax for the state subsequently devised means of charging or collecting taxes from road users and their vehicles now known as road taxes. The Board has stipulated rate of taxes to be paid for vehicle registration. This covers cost of plate number, vehicle license and cost of registration of book. It also depends on whether the vehicle is private vehicle or commercial vehicle or motor cycles.
The Board also taxes vehicle owner for sticker license, learner's permit and reflective jacket. Aside from the above are tax for fancy number plates, government fancy number plates, government/official number plates, motor dealers number plates, out of series number plates, replacement of missing number plates and revalidation of number plate for private vehicles, commercial vehicle and motor cycles. The rates and fees charged are approved by the Joint Tax

Board. Change of ownership drivers' licenses, certificate or road worthiness and vehicle valuation certificate each has their own fees for specific years.

4.5.7 Business Premises Registration Fees In Respect Of
(a) Urban Areas as defined by the State
(b) Rural Areas
(a) The Business Premises Registration fee is one of the tax items enumerated or listed for the states to collect taxes or levies on by the Taxes and Levies (Approved List for collection) Act 2004. The Kaduna State Laws of 1991 did not provide for Business Premises Registration. Despite the non existence of the law in Kaduna state, the Kaduna State Ministry of Commerce and Industries has printed out an assessment fees for business premises registration like Lagos state after the enactment of the Taxes and Levies Act. The registration fee is actually an additional avenue for state to internally generate revenue to meet her needs.
By the assessment, business premises in Urban areas as defined by Kaduna State Designation of Land in Urban Area Order are to pay a maximum fee of N10,000.00 per annum for registration of business premises in the first year of registration. Subsequently the operator is to pay the sum of N5,000.00 per annum as renewal fees.
(b) Business premises registration fee in Rural Area in the first year attracts N2,000.00 per annum. The individual will be required to pay the sum of N1,000.00 per annum as fee for renewal in subsequent years. The researcher is calling for further development of the law in this area by state government to guarantee enforcement of such assessment.

4.5.8 Development Levy (Individual Only)
Kaduna State Development Levy provides in section 3(2) that a levy shall be paid by all taxable adult resident in the state. The law went further in subsection 3 to state that the Governor of the state shall determine the amount of levy to be paid by individual.
The power to collect levy was then vested on the Permanent Secretary Department of Finance, (Ministry for Finance and Economic Planning who collects from employees of the State Government and Local Government, while the Permanent Secretary, Revenue Development, collect levy from employees of Federal Government and all other persons liable to pay the levy. See section 4(11) of the Kaduna State Development Levy for more details. All sums collected as development levy are paid into State Treasury as part of the state revenue.
Section 8 of the above law makes it an offence for all taxable persons that fail or refuse to pay or a person charged with the responsibility of collecting who collects but withheld same for his own use or otherwise any portion of the amount collected; or one who not being authorized to collect by the law called or attempt to collect the levy, commits an offence and shall be liable on conviction to a term of imprisonment not exceeding six month or to a fine of N500.00 or both.
The concern of the researcher on the above provision is that such offender might have swindled or extorted thousands or millions of naira from people before being caught, and on conviction he/she would just pay N500.00 from what he/she might have collected from people and he/she is let go to enjoy people's monies. The levy or tax from development levy ought to have been another sure way of generating fund for the development and financing of capital project in the state but the tax has not been well spoken of or enforced in the state for some time now, because there was not much yield from it. Presently, the assessment of development levy or fees in Kaduna state is the sole responsibility or duty of the finance department in the Ministry of land,

survey and country planning of the state. The authorized fee is N100 per annum by all taxable persons in the state.

4.5.9 Naming Of Street Registration Fee In The State Capital

The Kaduna State Law of 1991 did not provide for naming of street registration in the state, unlike what is obtainable in Lagos and other state capital in the country. Despite the non emphasis on the fee in the state, where an individual desire to have a particular street named by his/her name, not a honour to him/her by the government, he/she will be required to pay the necessary fees, especially where the land is in an urban area.

The fee to be paid is assessed by the Kaduna State Urban Planning and Development Agency (KASUPDA). Naming of Street Registration has not been a lucrative mean of revenue for the state. it is hoped that the harmonization Bill of the state which is expected to come into effect very soon will cater for or legislate on the naming of Street Registration in Kaduna State.

4.5.10 Right of Occupancy Fee on Lands Owned by the State Government in Urban Areas of the State

Matters relating to Right of occupancy in Urban areas of Kaduna state is solely handled by the Ministry of Land, Survey and Country Planning of the State. Application for grant of right of occupancy in Urban Area of the State is normally by either multinationals, other companies and private individuals. The applicants are normally required to comply with procedure and requirement, particularly when the spans of the Land are over 500 hectares and above .

Where the land is needed for industrial or commercial and trading purpose, the application is directed to the state ministry of commerce and industry for assessment. If it is for Agricultural purposes, it is referred to the Agriculture department of the ministry for assessment and consideration of the suitability of the land for the purpose intended, this is done prior to the consideration by the ministry of land survey and country planning of the state.

Kaduna State Ministry of Land Survey and Country Planning render different services in respect of land to citizen. Among the various services being rendered by the ministry include among others the followings, application for direct grant mainly by the government on approved layout, re-grant of expired title of Certificate of Occupancy (C of O), Conversion of Customary title to Statutory Right of Occupancy (Local Government C of O to State Government C of O) excluding petrol station and industries, claims in respect of land held under deem grant, devolution of title, application for consent to mortgage, merger, mining lease and the likes.

The tax, fees or levies paid by the applicant differs, depending on where the land is situated and the purpose for which the land is needed or required. There are fees for application of forms, fees for processing the form which is usually non refundable, ground rent is normally paid in respect of land within designated urban area within the state tagged zones, within the zone are different designated area. There are fees for lands that are needed for farm and those for grazing. Presently fee for certificate of occupancy in Kaduna state in respect of residential area is N50,000.00; for commercial purposes it is N200,000.00; for industrial purpose it is N300,000.00 while fees for land needed for temporary purpose the C of O fee is N20,000.00. These fees are assessable by the Ministry of Land Survey and Country Planning.

All payment of fee in respect of the regulation shall be made within one month of the receipt of demand and all arrears of rates is to be paid before the 30th of December of each year, where an applicant default in paying either C of O fee or grand rent, he or she is liable to pay penalty as stipulated in the schedule. Kaduna State Revenue Tribunal is saddle with jurisdiction to

adjudicate in respect of offences under these regulations. Where an allottee(s) defaulted and he/she is convicted, he/she will pay fine in addition to all the det due to the state government .

4.5.11 Market Taxes and Levies where State Finance is Involved

Kaduna State Market law provides in section 3 of the law that a local government council may establish market. That the Local Government Service Commission of the State may appoint inspector of market who are to control and manage such market that are within their jurisdiction. The Local Government Council can make bye-law for regulating the use of such market and market building, preventing obstruction and maintaining cleanliness therein and the like, they can prescribe the goods which may be sold in any market.

Likewise the State Government establish or build stall or shop in certain market or may be solely responsible for building an entire market at a particular place of the city or state capital. These stalls or shops are leased out to marketers, individuals or can be left into the hand of the Local Government Council, and in all aspect or respect the state government either levy or assessed or delegate such responsibility to the Local Government Council or to company or Agents.

Presently market taxes and levies in Kaduna state are assessable by the Kaduna State Market Development and Management Company. This company is established by the Kaduna State Government in major markets of the state where state finance is involved for collection of market fee for renting the stall or shop to applicants or business men/women. The rent or fee being collected depend on the type of stall/shop, the size and the location in the market. The market development and management company is answerable to the Kaduna State Urban Planning and Development Authority (KASUPDA) in certain respect or (KASUPDA) as may provide. There is need for development of law in this area by the state government as there is little or no enactment on Kaduna State Market Taxes and Levies except as in the provision of Taxes and Levies Act 2004.

4.6 Effect of Imbalance in Taxing Powers on Kaduna State

We have so far under this chapter considered the taxing powers of both the Federal and the state government as allocated by the various Nigerian status particularly the 1999 Constitution as amended and the taxes and levies (Approved list for collection) Act 2004. The principal Act as amended by schedule to the Act (Amendment) order, 2015. We have also looked at or considered some of the taxing items for the levels of government as shared by the statutes above mentioned.

What we are left with in this section is to look at the impact or effects if these imbalances in the allocation of taxing powers by the statutes on Kaduna state which our area of study is. This is intended to make our point clearer and to justify our research problem as identified earlier on.

1. The first and most glaring effect of imbalance in taxing power between the federal government and the states particularly Kaduna state is the inability of the state to pay workers salaries. Several states in Nigeria, Kaduna state inclusive were owing workers arrears of salaries due to inadequate fund in the coffers of the state to meet up the required wages of workers in the state . Tax items allocated to the state by the taxes and levies act are less impotent in revenue drives compare to what are allocated to the federal government.

2. Consequent on lack of fund in the state to pay backlog of salaries, the state and some private sector have sack or lay off some of their staff. This has increase or worsens the unemployment rate in Nigeria, Kaduna state inclusive. The state had for long not been able to

call for or do any recruitment of its youth to the work force of the state. Thus thousands of our youth graduate are left roaming the street seeking for job.

The lack of unemployment gives birth to decrease in the purchasing power of some workers consequent on reduction or cutting down of salaries of the few workers by half in view of shortfall in revenue allocation to the state. This also decrease their consumption, resulting into poor health life, leading to sicknesses and death and this again result into the state or nation having low manpower or personnel in its workforce consequently low production activities in Kaduna state or the country .

3. The imbalance in taxing item and taxing power as allocated by the various statutes in Nigeria has affected revenue generation in Kaduna state. Taxing items allocated to the state by the taxes and levies act are those which are less revenue or income generation, these hamper the execution of major capital project of the state. A particular capital project can stay uncompleted for years, or from one government to another. Most of the capital projects being executed by the present incumbent government are unfinished project of past government. The internally generated revenue (IGR) is grossly inadequate for such project.

4. the inability of the state to meet up with the challenges of governance, provision of social amenities, the maintenance peace and order in the state due to insufficient fund available to them made several state, Kaduna state inclusive to explore avenues to increase their resources hence in the 80s states started enacting different tax laws forcing tax payers ,businessmen and women to be paying taxes for different items like, fee for oil and gas company commercial undertaking, printing permit fee, nursing home and maternity and the like, these amount to double or multiple taxation and eventually hinder inter-state commerce as enshrined in the 1999 constitution .

5. Due to the imbalance in the taxing powers and allocation of taxing items, the state (Kaduna State) has become so weak and generally impoverished that it has no capacity to negotiate meaningfully with the federal government or outside world. The state cannot generate enough internal revenue to prosecute any appreciable social and economic development. With the mineral deposit in the state, Kaduna state ought to be a pillar to the federal government, the contrary is the case, the state is still among others that burden the federal government or that equally depend on the federation account for its survival .

6. The taxing powers and taxing item allocated to the Federal Government by the various taxing statutes makes the federal government believes and operates on the basis that the federal government owned the country, its resources and all that dwell in the land. Through the statutes the federal government took the fund that rightly belongs to the state into the coffers of the federal government. Thus denying the state power to carry out its functions for the progress and welfare of the citizens. The state lost its autonomy, and in addition the absence of financial independent to the state in favor of the federal government, it has resulted in the country's poor political, social and economic development.

7. The lack of sustainable development in Kaduna state is traceable to the imbalance in revenue allocation formula in Nigeria which gives little to the goose that lays the golden eggs. Thus for any meaningful development in Kaduna state the federal government or the statutes should encourage the derivation principle in her revenue allocation formula. And this will promote peace and development in the state.

4.7 Short Coming of the Applicable Law and its Enforcement in Kaduna State

In the course of the research work, several short coming with our tax laws were noticed. Among which are the following.

The administrative machinery to ensure effectiveness of taxes in Kaduna State is weak, resulting in tax avoidance and evasion. Income tax for example, the problem of identification of both the person to be assessed and his/her income for tax purpose are issues bedeviling enforcement of income tax in Kaduna State. The law subjected individual incomes, gains, profit and the like to taxes by all taxable persons. The problem is the degree of compliance with these laws. The tax payers have devised several ways to avoid or evade paying tax, thus the law is very difficult to enforce. On the part of the law, income tax law does not compel a sole businessman to submit an annual account to the State Board of Internal Revenue Office, the provision to keep books of account in the law is merely advisory .

2 Before 2015 there are no laws or enactment backing many of the taxes being collected by Kaduna State Tax Authorities. The State collects taxes on Trade Cattle License Fee, Produce Inspection Fee, Toll Gate Fee paid by Agriculture and Vegetable seller, Cattle Dealer Fee, Petroleum and Allied Matter Permit Fees and the likes . Thus neither the taxpayer nor the tax authorities can boast of knowing his/her full right for enforcement when there is breach of right. But Kudos should be given to the Kaduna State incumbent Governor, Mallam Nasir El Rufai for recently passing into law the Kaduna State Tax(Codification and Consolidation) Law, 2016 to tackle all forms illegality in the state.

3 The parameter for rating property by the tax authorities is not certain or specific. Tax authority has wide discretionary power to impose special levy on property without knowing the parameter or the basis of such computation. Sometime the terminology used as bases for assessment of property in accordance with the law is beyond comprehension of an average taxpayer in Kaduna State. This affects wiliness and voluntariness in paying tax.

4 Majority of the taxes we have in Nigeria are federal taxes even though some are demarcated as state taxes like personal income tax, stamp duties, Capital Gain Tax, pool, betting are governed majorly by federal laws. The language used denote that the drafters envisage urban or cities taxpayers, because thousand of Deeds are prepared for both literate and illiterate, several sales of properties are concluded by people and quite a number of business transaction are perfected which are not registered either in the Corporate Affairs Commission or Land Registry. For that reason, the revenue that would have accrued to the government is forfeited. This is mainly due to the fact that the laws governing these items are or can only be practically enforce in the State Capital or Cities.

5 The Nigerian 1999 Constitution (as amended) did not expressly spelt out or enumerate items for which the state can impose tax, but left it open for the state to legislate on anything legal that is not in the exclusive list. It also did not restrain the Federal Government from legislating on item the state has legislated on. Some provision of both the FIRS 2007 and the Taxes and Levies (Approved List for collection) Act 2004 as amended by the schedule to Act (Amendment) Order 2015 are too wide and ultra vires the Constitution. The sections or provisions of these laws will be difficult to enforce in the presence of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

6 Taxpayers in Kaduna State are in most cases unable to differentiate tax consultants from real tax authorities. Hence taxpayers are made to pay taxes or levies on the same item to different people while the money or revenue from such collection ends up in private pockets.

Consequent on the non allocation of viable or significant taxes in terms of economic potentials of tax items to the state by the Constitution, Kaduna State like most State of Nigeria has been

unable to generate sufficient revenue to the state. Despite the bailout fund by the present Federal Government to some State Government, most of these State Governments are still indebted to their workers. Revenue from ground rent and other tax items of the State are inadequate to meet the financial obligation and capital project of the State.

4.8 Measures for Improvement

In response to the above short coming of some of the taxing laws in Kaduna State, the following measures are suggested for improvement. These are:

i There is need to develop a highly advanced technology that can capture personal information of the individual in Kaduna State. Such should be able to trap all businesses or transactions including the incomes that come to the individual (personal or capital gains) through which taxes can be assessed for the individuals taxable persons. This can be done through the use of biometric machine like the one used during the 2015 national election by the Independent National Electoral Commission (INEC). The micro-chip, inverter clip, used in advanced countries can be introduced by the Kaduna State Government to help reveal the income and profit that comes to the individual for tax purpose. These technologies will help to eliminate tax avoidance and evasion.

ii Kaduna state should abide and confine itself to the provision of the Taxes and Levies (Approved List for Collection) Act 2004 as amended by the schedule to Act (Amendment) Order 2015. It should stop collecting taxes that are not enumerated in the approved list. The 1999 Constitution of Nigeria (as Amended) has given an open cheque to the state to legislate on matters which are not within the Exclusive Legislative list of the Federal Government. Kaduna State House of Assembly should come out with legislation on tax matters empowering it to impose and collect taxes on items not found in the Taxes and Levies Approved List which the state have been collecting taxes on to make their continued taxation of those items legal.

(iii) The drafter of tax laws should endeavour to use simple terms and phrases understandable to tax payers in Kaduna State so that an average taxpayer can easily comprehend the meaning of the word used, the parameter for charging or rating a particular property different from the other should be highlighted. This will go a long way to build confidence and acceptance to or in the taxpayers. The tax authority will be seen as transparent and respected.

iv Tax authorities should be extended or established in villages to oversee and capture business transaction or capital transfer between the individuals. The village or district heads should be made to refer the land transaction and other capital transfer including Deeds, documents taken to them for signing to the Tax Board or authorities for tax purposes. These tax authorities should also compose of men and women of integrity so that the revenue / gains will not end up in private pockets.

(v) The Constitutional provision relating to taxes in the 1999 Constitution should be amended so that the states like the federal government should have item to which the state alone can legislate or impose tax. Particularly the Constitution should also banish some significant taxing item like the PIT, Stamp Duties to the state to legislate and impose tax on. Section 2, 25 and 68 of the FIRS Act should be amended forthwith. Likewise section 1 of the Taxes and Levies Act should be amended as they offend the provision of the 1999 Constitution of the Federal Republic of Nigeria as amended.

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary

Nigeria became a federation in 1954 and adopted a federal system of government. Federalism is a deliberate choice to establish a multi-layer government which ultimately gives rise to division of taxing powers among the different level of government. Division of taxing power if follows in the spirit of Federalism ought to guaranty financial autonomy of each level of government, it ought to promote equity in the distribution of tax burden of the taxpayers and also avoid double taxation.

In this research work we said that taxing power is the power of a level of government to impose a tax by its own law and prescribe condition for the collection and due administration of the tax either by its own agency or that of another level of government. It is not having the power to merely collect or administer taxes imposed by another level of government. Powers to impose tax consist of power to assess, collect and provide penalty for defaulters. T he power to merely collect is executive or administrative in character.

The scope of this research work is majorly on the legislative division of taxing powers of the State. That is, as enumerated in the Constitutions. The technique for the division of taxing power is that of enumerated powers and residual powers. The 1999 Constitution as amended has the enumerated matters listed in the list called the Exclusive Legislative List on which only the Federal Government can legislate on. While the other lists, the Concurred Legislative list, both the Federal and the State Government can legislate on. The state power to legislate on any matter on the concurrent list depends on the extent to which the Federal Government permits or allows. That which is not contained in either the Exclusive or Concurrent Legislative List referred to as residual list remains within the domain of the state to legislate on.

Although the 1999 Constitution as amended divided the legislative powers between the Federal and the State Government, the Constitution went further to enumerate the most significant taxes in term of revenue generation in the Exclusive Legislative List vesting jurisdiction or power on the Federal Government alone to impose. The Constitution does or did not expressly vest the states with power to impose any particular tax, except to the extent provided for in the federal statutes. What item 7, Second Schedule part II under the Concurrent Legislative List did was to give power to impose capital gain, income or profit and taxes from document or other transaction by way of stamp duties on the National Assembly and provide that the collection of any such tax or duty or the administration of the law imposing it be carried out by its own agency or that of the government of a state or another agency of a state or as it may deem fit.

Where then is the taxing power of the state to which the research is out to examine The taxing power of the state are shielded within the provision of section 4 (7) of the 1999 Constitution (as

amended). The section provides that, the House or Assembly of a State shall have power to make laws for the peace, order and good government with respect to the following matters:
(a) any matters not included in the Exclusive legislative list
(b) any matter included in the concurrent legislative list
(c) any matter with respect to which it is empowered to make law in accordance with the provision of the Constitution.

It is clear from the above provision, that the state government have plenary powers to make laws on any subject matter that is not on either the Exclusive Legislative List or to which the Federal Government had already cover the field. Consequently the State Government are not legally competent to impose customs duties, exercise duties, income taxes, capital gains tax or any other tax whose base falls within any of the Federal Government domain. Thus as said before, while the taxing power of the Federal Government are specifically enumerated those of the state are left opened.
The administration and collection of these taxes as stated above are vested in the Federal Inland Revenue Service (FIRS), the Personal Income Tax Act, Taxes and levies (Approved list for collection) Act, the Kaduna States Board of internet Revenue Service. Recently, a review of the provisions of some of these bodies or Board in order to infuse dynamism into the tax system has led to inclusion in their provisions, certain sections, the content of which offend or ultra vires the Constitution. For example section 2 and 25 of FIRS and section 1 of the Taxes and levies Act, 2015. They tend to equate their provisions with the Constitution or even claim superiority to the Constitution
Prior to the enactment of the Taxes and Levies (Approved List for Collection) Act 2004 the states (Kaduna state) in particular by the provision of section 4 (7)(c) were imposing and collecting different and all sort of taxes from taxpayers. For instance Personal Income Tax, tenement rates, permission to operate business fees, trade permit fees, operation of business permit fees, printing permit fees and the likes, resulting into taxpayer and business operators folding or closing up their businesses due to multiplication of taxes by the different level of government on individual operator. To delimit the taxing power of the state, the federal government passed the Taxes and levies (Approved List for Collection) Act of 2004 and Schedule to the Act(Amendment) Order, 2015 which apportion taxes to be collected by each level of government in Nigeria.

5.2 Findings
The research work has come up with the following major findings, among other things:
1. There is inequality in the sharing of taxing powers between the State and the Federal Government as enumerated in the Constitution. The economically significance or most significant taxes in term of revenue potential like the import and export duties, excise duties, mining rent and royalties, petroleum profit tax, Companies Income Tax and the likes are all allocated to the federal government while the state are left with stamp duties Capital Gains Tax in respect of individuals, community tax, entertainment tax, pool betting casino tax and the likes to legislate on.
2. Kaduna state through the Board of Internal Revenue Service collect taxes outside the legally enumerated and demarcated list by the Taxes and Levies (Approved List for Collection) Act 2004 and the (Amendment) Order 2015. The state collect taxes/fees on nursing home and maternity, printing permit fees, private hospital, medicine herbal permit fees, petroleum and allied matter permit fee, trade permit fees, trade cattle license fee and the likes. This contravenes

the provision of Taxes and Levies Act, thus resulting into double taxation or multiplicity of taxes. Some have warranted several shops owners and other business operator to park up their businesses. We hope that the recent signing into law of the Kaduna State harmonization Bill will address the above problem.

3 The Federal Government has enacted laws on all the items on which it is constitutionally empowered to legislate on while Kaduna State is yet to do same. The operative laws on Personal Income Tax, Capital Gains Tax and Stamp Duties in the State are borrowed federal laws. Aside from Lagos State, most states of the federation Kaduna State inclusive has no laws on some of the items it collect taxes on as allotted to it by the Taxes and Levies (approved List for Collection) Act 2004 and those outside the approved list. Like Trade cattle license fee, produce inspection fees, consumption tax, trade permit fee and the likes. Furthermore, most of its 1991 Laws has become obsolete and need to be amended or change to conform to recent trend.

5.3 Recommendations

From the research findings the researcher hereby makes the following recommendations.

1. Considering the social and economic responsibilities of the Kaduna state as contain in section 4 (7) of the 1999 Constitution vis-a-vis to make law for the peace, order and good government of the state, there is need for immediate amendment to section 4 (2-4) of the Constitution particularly in respect of taxing powers as enumerated in the Exclusive Legislative list of the Constitution. There is no taxing power or specific taxing item specifically reversed for the Kaduna States in the Constitution. There is need for redistribution and diversification of those national and most significant taxes in terms of revenue generation between the Federal and the Kaduna State Government, particularly that most of these minerals resources are being taped from the state.

Both the Constitution and the Taxes and Levies (Approved List for Collection) Act 2004 and Schedule to the Act(Amendment) Order, 2015 should be amended, removing the Companies Income Tax from the exclusive powers or domain of the Federal Government to the states. If the States are empowered to impose tax on companies within their respective state, in addition to the already listed items in the Taxes and Levies approved list of the states, it will certainly boost their internally generated revenue (IGR) and enhance their development.

2. To curb the effect of double taxation or multiplicities of taxes on taxpayers and also to promote interstate commerce among state or Nations of the world, the Constitution of most countries contain commerce clause. In addition to the commerce clause in Nigeria, the taxes and levies (approved list for collection) Act 2004 and Schedule to the Act(Amendment) Order, 2015 was enacted by the Federal National Assembly to delimit the scope of taxing power of the states, Kaduna state inclusive. Kaduna state is hereby call upon to adhere to the demarcation provided by the Taxes and Levies Act and stop collecting taxes which are not listed therein. Kudos should be given to the Kaduna State incumbent Governor, Mallam Nasir El Rufai for recently passing into law the Kaduna State Tax(Codification and Consolidation) Law, 2016.

Following the example of Lagos state, Kaduna state should invigorate the enforcement and collection of all manner of taxes in the nooks and craning of the state as enable by the law. There are so many means of generating taxes from the items listed for the State by the Taxes and Levies (Approved List for Collection) Act 2004 and Schedule to the Act(Amendment) Order, 2015.

3. Kaduna States should follow the example of the Federal Government in enacting its own laws on all the items allocated to states by the Taxes and Levies (Approved List for Collection) Act 2004 and Schedule to the Act (Amendment) Order, 2015. The States should legislate and

enact its own laws on all these items allocated to it by the said Taxes and Levies Act. In other words the states should domesticate those federal laws as states law or enact their own laws on all their tax items.

The recent passage into law of the Kaduna State Tax (Codification and Consolidation) Law, 2016 by incumbent Governor Mallam El Rufai is a welcome development and an improvement in the state. This is needful to keep the state abreast with modern tax measure and technology as it is being done in Lagos state.

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