REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STOCK TRANSFER SERVICE, INC.,
Petitioner,

versus CTA CASE NO. 2003

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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DECISION

This is an appeal from the decision of respondent holding petitioner liable for the payment of the fixed and percentage taxes as an independent contractor under Sections 182 and 191 of the National Internal Revenue Code.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal offices at the A. Soriano Building, Ayala Avenue, Makati, Rizal. Its principal activity is to act as transfer agent of corporations managed by A. Soriano y Cia.

On October 4, 1962, petitioner received an assessment dated August 15, 1962, signed by the Regional Director, North Manila, requiring it to pay the sum of ₱2,185.63 representing percentage tax as independent contractor for 1957, inclusive of ₱20.00 as fixed tax (C-4L537) and 25% surcharge, plus ₱900.00 as compromise penalty, or a total of ₱3,085.63.

On May 27, 1966, petitioner received two assessments, both signed by the Regional Director, North Manila, requiring it to pay: (1) percentage tax as independent contractor for 1960 in the amount of ₱2,129.48, inclusive of 25% surcharge and ₱300.00 as compromise penalty, and (2) fixed tax of ₱20.00, plus the compromise penalty of ₱10.00.

Petitioner contested these assessments and without waiting for respondent's subordinates to act on it, elevated them to respondent Commissioner of Internal Revenue for decision in a letter dated November 6, 1967.

In a letter dated October 25, 1968, respondent rendered a decision rejecting petitioner's claim that it is not an independent contractor and reiterated the demands for payment of the various amounts contained in the questioned assessments. On February 20, 1969, petitioner wrote respondent a letter requesting reconsideration of his decision and alleged two additional grounds to prove that it is not an independent contractor. On March 11, 1969, respondent denied petitioner's request for reconsideration and reiterated his demand contained in his letter dated October 25, 1968. Not satisfied with the denial of its request for reconsideration, petitioner, on April 23, 1969, interposed the present appeal.

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The principal issues presented for the Court's resolution are as follows:

> 1. Whether or not petitioner is an "independent contractor" within the purview of Section 191 of the Revenue Code, and therefore liable to pay fixed and percentage taxes and surcharges for 1957 and 1960; and
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> 2. Whether or not the right of the Government to assess contractor's tax against petitioner for the year 1960 has already prescribed.

We will first consider the issue whether or not the right of the Government to make the assessment for the year 1960 has already prescribed.

The assessment in question refers to the percentage tax allegedly due from petitioner as an "independent contractor" for the year 1960 under Section 191 of the Revenue Code. Taxpayers liable for said tax are required to file returns and to pay the tax within 20 days after the end of each month[1], pursuant to Section 183(a). No return was filed by petitioner obviously because it believes that it is not liable for said tax. However, its income as a transfer agent was reported for purposes of the income tax in its income tax return for said year.

Section 331 of the Revenue Code provides that internal revenue taxes may be assessed only

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[1]Formerly, quarterly returns were required.

within five years from the date the return was filed, or if the return was filed before the last day for filing, within five years from the date the return was due. If no return was filed, the assessment may be made within ten years from the date of the omission to file the return, pursuant to Section 332. In this case, no return was filed for purposes of the percentage tax in accordance with Section 183(a). The return for purposes of the statute of limitation upon assessment and collection of an internal revenue tax refers to the return required to be filed for the tax sought to be assessed or collected. An income tax return is no substitute for a percentage tax return. (See Butuan Sawmill v. C.T.A., G.R. No. L-20601, Feb. 28, 1966.) Petitioner not having filed any return for the percentage tax under Section 191, in relation to Section 183(a), of the Revenue Code, the right of the Government to assess the tax in question is governed by Section 332 which authorizes the Commissioner of Internal Revenue to make the assessment within ten years from the date of discovery of the omission to file the returns. Therefore, petitioner's contention that the right to assess the percentage tax for 1960 has already prescribed because the assessment was made beyond five years from the date its income tax return for that year was filed must be rejected as untenable.

We will now proceed to discuss the merits of this case, that is, whether or not petitioner is an "independent contractor" taxable under Section 191 of the Revenue Code.

For a clearer appreciation of the law involved, we are reproducing below the pertinent portion of Section 191 of the Revenue Code, the basis of respondent's assessment:

> SEC. 191. Percentage tax on road, building, irrigation, artesian well, waterworks, and other construction work contractors, proprietors or operators of dockyards, and others. —Road, building, irrigation, artesian well, waterworks, and other construction work contractors; filling contractors; demolition and salvage work contractors; arrastre contractors; persons engaged in the installation of gas or electric light, heat, or power; persons selling water, light, heat, or power, except those paying a franchise tax; proprietors or operators of dockyards, mine drilling apparatus, smelting plants, engraving plants, plating establishments, plastic lamination establishments, vulcanizing and recapping establishments; establishments for washing and/or greasing of motor vehicles, battery charging, planing or surfacing and recutting of lumber; sawmills under contract to saw and/or cut logs belonging to others; drycleaning or dyeing establishments, steam laundries, laundries using washing machines; photographic studios, telephone or telegraph lines or exchanges, broadcasting or wireless stations; funeral parlors; shops for the construction or repair of bicycles

> or vehicles of any kind, mechanical devices, instruments, apparatus, or furniture of any kind, shoe repairing by machine or any mechanical contrivance, and tailor shops; beauty parlors, dressmakers, milliners, hatters, keepers of hotels, lodging houses, stevedores, warehousemen; plumbers, smiths; house or sign painters; lithographers, publishers, except those engaged in the publication or printing and publication of any newspaper, magazine, review or bulletin which appears at regular intervals, with fixed prices for subscription and sale, and which is not devoted principally to the publication of advertisements; printers and bookbinders, business agents and other independent contractors, except persons, associations and corporations under contract for embroidery and apparel for export as well as their agents and contractors, shall pay a tax equivalent to three _per centum_ of their gross receipts.

The main thrust of respondent's argument, in his bid to sustain the assessments in question, is found in his decision of October 25, 1968 wherein it is stated that the purpose of the law in providing for the taxability of "independent contractors" is "to include all persons whose activity consists essentially of the sale of all kinds of services for a fee . . . regardless as to whether or not the performance of which calls for the exercise or use of the mental or physical or manual faculties of its employee or employees."

Petitioner, on the other hand, assails as unwarranted the unlimited construction laid by respondent on the term "independent contractor." It anchors its defense against the assessments on

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the "control test" theory and the rule of ejusdem generis in the interpretation and construction of the term "independent contractor" as used in Section 191 of the Revenue Code.

Section 191 of the Revenue Code enumerates the kinds of contractors who are subject to tax and adds to the list "other independent contractors." The allegation of respondent that the addition of "other independent contractors" to the list is intended "to include all persons whose activity consists essentially of the sale of all kinds of services for a fee . . . regardless as to whether or not the performance of which calls for the exercise or use of the mental or physical or manual faculties of its employee or employees" is unwarranted. It is a settled rule of statutory construction that where general words follow the designation of particular things or classes of persons or subjects, the general words are to be construed as including only the persons or subjects of the same class or general nature as those specifically enumerated. This is a rule of statutory construction known as ejusdem generis. (Ollada v. C.T.A., 99 Phil. 604, citing Crawford, The Construction of Statutes, pp. 326-327.) When Congress added "other independent contractors" at the end of the enumeration of the persons who are subject to the contractors' tax, the same should be construed to include only those who are engaged in businesses similar to those enumerated.

The main business of petitioner is that of a transfer agent. Its functions as such transfer agent consist of registering transfers and issuance of certificates of stock. The business of petitioner does not come under any of the classes of businesses enumerated in Section 191 of the Revenue Code. In fact, we believe that the business of a transfer agent is totally alien to any of the businesses listed in said section. The business to which a transfer agent comes closest in the list is that of a business agent. But a business agent as defined in Section 194(v) of the Revenue Code "includes all persons who act as agents of others in the transaction of business with any public officer, as well as those who conduct collecting, advertising, employment, or private detective agencies." By no stretch of the imagination may a transfer agent be classed under the same category as a business agent.

The argument that the addition of "other independent contractors" to the list of businesses taxable under Section 191 was intended to tax any and all independent contractors is not justified by the wording of the law. It will be noted that the term "other independent contractors" was added to the list of taxable businesses under Section 191 of the Revenue Code by Section 11

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of Republic Act No. 1612, which became effective on August 24, 1956. Said amendatory Act added the following businesses to those previously taxable under Section 191, along with "other independent contractors": (1) demolition and salvage work contractors; (2) arrastre contractors; (3) persons selling water; (4) plastic lamination establishments; (5) vulcanizing and recapping establishments; (6) establishments for washing and/or greasing of motor vehicles; (7) battery charging; (8) planing or surfacing and recutting of lumber; (9) sawmills under contract to saw and/or cut logs belonging to others; (10) laundries using washing machines; (11) shoe repairing by machine or any mechanical contrivance; and (12) business agents. If, as alleged, Congress intended to tax all independent contractors irrespective of the nature or kind of the business engaged in, there was absolutely no need for the addition of the twelve businesses mentioned above. That Congress saw fit to add particular kinds of businesses to the taxable list along with "other independent contractors" is an eloquent proof that it was intended to limit the application of the general words to businesses of the same kind and category as those enumerated.

The taxability of one engaged in business as a "contractor" under Section 191 of the Revenue had its origin in Section 43, Act No. 2339, which became Section 1617 of Act No. 2657, known as the Administrative Code and later Section 1462 of Act No. 2711, the Revised Administrative Code of 1917 (see Luzon Stevedoring Co. v. Trinidad, 43 Phil. 803; Vols. 16-17, Phil. Anno. Laws). As early as 1922, the Supreme Court in the case of Luzon Stevedoring Co. v. Trinidad, supra, had rejected the theory that all persons or corporations who enter into a contract for sale of all kinds of services for a fee is a "contractor" subject to the percentage tax. Said the Supreme Court:

> The only question presented by the appellant upon the foregoing facts is: Is the plaintiff a contractor? Generally speaking, every person who enters into a contract may be denominated a contractor, but evidently the Legislature did not mean to apply the work "contractor," as used in said section 1462,[1] to every person, partnership or corporation who entered into a contract; or, otherwise, it would not have been necessary to have mentioned in the same section other classes of business, such as warehousemen, proprietors of dockyards and persons selling light, heat, or power, as well as persons engaged in conducting telephone or telegraph line or exchanges, and proprietors of steam laundries and of shops for the construction and repair of bicycles or vehicles of any kind, and keepers of hotels and restaurants, etc. If the word "contractor" in said section 1462 meant every person who entered into a contract, then it would have included warehousemen, and the other classes of business mentioned in said section, for the reason that every transaction by the other persons mentioned in said section is by virtue of

[1] Now Section 191, National Internal Revenue Code.

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an express or implied contracts. The same thing might be said with reference to section 1463,[1] where keepers of garages, transportation contractors, persons who transport passengers or freight for hire, and common carriers, etc., are also subject to an internal revenue tax. If the Legislature had intended the word "contractor," as used in section 1462, to cover all persons who entered into a contract then it would have been unnecessary to have mentioned the other persons referred to in sections 1462 and 1463.

Moreover, if the general and broad meaning is to be given to the word "contractor" as used in said section 1462, it would include bankers, merchants, brokers, lawyers, farmers in the sale of their products, and every person who enter into a contract of whatever nature or character. It would also include school teachers in the public and private schools as well as common laborers who work by the day under a contract. It would also apply to all persons loaning money upon promissory notes, for the reason that their transaction is a contract and the parties thereto, broadly speaking, are contractors.

We may also add that if, as alleged, any person performing service for another as an independent contractor is taxable, then a surgeon who perfoms a surgical operation on a patient would be taxable. The same rule would apply to a dentist who extracts decayed teeth from a patient; or to a lawyer who prepares a deed of sale or any similar instrument for his client; or to a priest or minister who celebrates mass for the dead.

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[1]Now Section 192, National Internal Revenue Code.

There can be no question that these persons may be regarded as independent contractors in the broad sense, and should be subject to the contractors' tax, if respondent is to be believed. That such a result is not in keeping with the legislative purpose is too apparent to require further elucidation.

We are, therefore, of the opinion that a stock transfer agent is not an independent contractor within the meaning of Section 191 of the Revenue Code.

WHEREFORE, the decision of respondent dated March 11, 1969, is hereby reversed. Without pronouncement as to costs.

SO ORDERED.

Quezon City, July 29, 1971.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge