REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMMONWEALTH MANAGEMENT and SERVICE CORPORATION,
Petitioner,

- versus -

C.T.A. Case No. 4423

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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4/5/94

DECISION

This is a petition seeking for the cancellation of the assessment issued by the respondent Commissioner of Internal Revenue assessing the petitioner for deficiency percentage (contractor's) and fixed taxes for the year 1986.

Petitioner Commonwealth Management and Services Corporation (COMASECO for brevity) is a corporation organized under Philippine laws, the primary purpose of which is stated in its Article of Incorporation (Exh. G) as follows:

> "To perform collection, consultative and similar and related technical services only for the Philippine American Life Insurance Company, the Philippine American General Insurance Company, Inc., American International Underwriters (Philippines), Inc., the Philippine Home Assurance Corporation and their respective Affiliates, <u>and only on reimbursement of cost basis, without any profit.</u>" (Underscoring supplied)

On February 22, 1989, COMASECO received a pre-assesment notice from the respondent assessing it for deficiency percentage taxes (contractor's) in the amount of P141,322.65 and fixed taxes in the amount of P350.00 inclusive of increments.

On February 24, 1989, COMASECO made a protest on the said assessment stating that fixed and contractor's tax should only be made to apply to those persons or entities that are engaged in business and for profit; that inasmuch as it does not earn any profit from its transactions of providing its affiliates with auditing, collection, management and technical services, it is not liable to pay the amount being assessed by the respondent.

On March 22, 1989, the petitioner received a demand letter from the respondent, confirming its liability for the deficiency fixed and contractor's tax but in the amount of P506.08 and P201,627.23 respectively. After filing another protest thereto, the petitioner received on January 23, 1990 a notice for payment of the said amounts under the threat of enforcing collection through warrants of distraint and levy.

Thus, this instant petition.

There is no question that the COMASECO is being subjected to the fixed tax under Sec. 161 of the 1986

National Internal Revenue Code only because of the respondent's finding that it is subject to the contractor's tax under Sec.170 thereof. Therefore the only issue to be resolved in this case is whether or not the petitioner is liable to pay contractor's tax for rendering technical and consultative services to Philippine American General Insurance Co., American International Underwriters (Philippines), Inc., and the Philippine Home Assurance Corporation.

The basis of the respondent in its assessment against the petitioner is basically founded on the following provision of the 1986 National Internal Revenue Code (NIRC):

> "**SEC. 170.** *Contractors, proprietors or operators of dockyards and others.* - A contractor's tax of four percent of the gross receipts is hereby imposed on the proprietors or operators of the following business establishments and/or persons engaged in the business of selling or rendering the following services for a fee or compensation.
>
> xxx xxx xxx
>
> (q) *Other independent contractors.* The term "independent contractors' includes persons (juridical or natural) not enumerated above (but not including individuals subject to the occupation tax under the Local Tax Code) whose activity consists essentially of the sale of all kinds of services for a fee regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractors or their employees. It does not include regional or area headquarters established in the Philippines by multinational corporations, including their alien executives, and which

> headquarters do not earn or derive income from the Philippines and which act as supervisory, communications and coordinating centers for their affiliates, subsidiaries or branches in the Asia-Pacific Region."

It is the firm contention of the respondent that the petitioner is an "independent contractor" within the meaning of Sec. 170 (q) inasmuch as it receives a fee for the technical services it renders for its affiliates; that, as testified to by the respondent's examiner, he has no knowledge of any specific law or provision of law which explicitly exempts the petitioner from the payment of contractor's tax; that it maintains in its employ its own employees and conducts its operations free from any interference or supervision from its affiliates.

On the other hand, COMASECO, asserted its position that only those corporations which are conducting their operations for profit should be subjected to business tax which includes the contractor's tax under Section 170 of the 1986 Tax Code. In support of its contention, it cited the ruling in the case of Collector of Internal Revenue vs. Sweeney (G.R. No. L-12178, August 21, 1959) where it was held:

> "It is true that for a time it made a little profit on such scale, that is to say, the little overprice put on the liquor dispensed, presumably intended to cover expenses, but said profits never went to the members of the Club, but were used in the operation of the Club, which as a matter of fact incurred a loss, so that it may not be said that in the operation of the bar and in dispensing liquor to its members or families

> and their guests, the International Club of Iloilo, Inc. was engaged in business and that it was organized for profit."

It likewise cited the case of Collector of Internal Revenue vs. Club Filipino de Cebu (5 SCRA 321) where a similar ruling was made, to wit:

> "The Club Filipino, Inc. de Cebu was organized to the healthful recreation and entertainment of its stockholders and members; that upon its dissolution, its remaining assets, after paying debts shall be donated to a charitable Philippine Institution in Cebu; that it is operated mainly with funds derived from membership fees and dues; that the Club's bar and restaurant catered only to its members and their guests; that there was in fact no dividend distributed to its stockholders and that whatever was derived on retail from its bar and restaurant was used to defray its overall overhead expenses and to improve its golf course (cost-plus-expenses-basis), it stands to reason that the Club is not engaged in the business as an operator of bar and restaurant."

However, a thorough analysis of the above rulings indicates that they cannot be applied to the case at bar.

It is worthy to stress that the respondent, in the two cases abovementioned, seeks to impose a percentage tax on the operation of the bar-restaurants of non-stock, non-profit establishments principally and solely organized to promote sports, recreation, and entertainment to its respective members. These bar-restaurants cater exclusively to the members of their respective sports club which are not by themselves engaged in business or profit-making ventures. As pointed out in the case of Collector of Internal Revenue vs. Club Filipino de Cebu (ibid.), the "bar-restaurant was a necessary incident to the operation of the club".

The same cannot be said of COMASECO. Its existence is not merely incidental to the operation of tax-exempt entities. It was specially formed and organized primarily to provide technical and consultative services to its affiliate insurance companies, which undeniably, are conducting business with an end view of profit or livelihood. It can even be said that COMASECO is not undertaking a non-profit activity,, but an essential, if not a necessary function of the insurance business. Thus, while it may be admitted that it was organized for "operational orderliness and administrative efficiency, it is not for its own benefit but for the business conduct of its affiliate insurance companies.

It therefore becomes immaterial whether COMASECO is realizing any actual profits from its operations. It must be remembered that the liability for contractor's tax is not based on the amount of profit that inures to the benefit of the taxpayer, but on the gross receipts of its operations. Thus, As far as the law is concerned, it is an independent contractor engaging in the sale of services for a fee taxable under Section 170 (q) of the 1986 Tax Code.

Moreover, by no stretch of imagination can COMASECO or its affiliates be classified as a non-profit charitable, civic, fraternal, or social entity, much less, a sports club. It is not among those corporations over which the State has a distinct and special interest so as to be afforded the privilege of tax exemption similar to those enumerated under Section 26 of the present Tax Code.

WHEREFORE, judgment is hereby rendered ordering the petitioner to pay the amounts of P506.08 and P201,627.23 representing deficiency fixed and percentage taxes, respectively, for the year 1986 plus 20% interest from March 15, 1989 until fully paid.

SO ORDERED.

Quezon City, Metro Manila, 05 April 1994.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13 of Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals