PACIFIC ADJUSTMENT CO., INC.
Petitioner,

- versus - C.T.A. CASE NO. 2392

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
X - - - - - - - - - - - - - X

5/22/75

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue assessing against and demanding from petitioner the sum of ₱1,663.75 as privilege or fixed tax, inclusive of 25% surgharge and compromise penalty, and the amountt of ₱83,226.59 as 3% contractors' tax, inclusive of 25% surcharge for late payment and compromise penalty, for the periods from 1966 to 1970.

Petitioner is domestic corporation duly organized under the laws of the Philippines. Under its Articles of Incorporation (Exh. B, p. 49, CTA rec.), it is primarily engaged in the business of handling all claims against, or for insurance companies for a fee, commission or compensation, which includes the survey, inspection, appraisal, investigation, adjustment, and settlement of all claims on all types of insurance, whether fire, marine, casualty, automobile and others, with the exception of life insurance, and to negotiate and adjust said claims of the parties and perform all manner of services which are incidental thereto.

From the evidence, both documentary and testimonial, petitioner was and still is in a distinct activity as an independent adjuster. It acts for and in behalf of the insurers-insurance companies in adjusting claims against and arising from the insurance policy contracts issued by them. Its work is to investigate, at the instance of the insurer, the cause, nature and extent of the loss sustained by the property of the insured. In the course of its investigative work, it confers with the claimants with the view of settling their claims, in behalf of the insurers, and on the basis of its investigation makes and submits reports in connection with such claims. (t.s.n., pp. 5-7, 12-15).

In the reports which petitioner submits on the claims, it may recommend either the payment of the claims, or denial of such claims to the insurer. (t.s.n., pp. 6, 15.) These recommendations are, however, subject to revision or reversal by the insurer. (t.s.n., p. 23.) If the recommendation to pay is accepted, the claim is then paid and satisfied.

For its services, petitioner is paid by the insurer a variable fee and on a case-to-case basis. The amount of its fee per case depends upon the nature of the work done, the time devoted to the work, and the amount of loss suffered by the property of the insured.

In its work of investigating, adjusting and settling the claims in representation of the insured, petitioner acts only in representation of the insured and assumes no personal liability for such acts. In the act of adjusting or settling the claims, it is done on behalf of its principal, the insurance company, and its action is binding, not upon itself, but upon its principal.

As an adjuster, petitioner is a special agent for the insurance company for whom it acts. Its powers are co-extensive with, or is limited to, the ascertainment and adjustment of a loss on the property incurred.

On October 28, 1971, petitioner was assessed by respondent contractor's tax, inclusive of 25% surcharge, in the sum of P73,224.33 from 1966 to 1970. (Exh. G, p. 82, CTA rec.)

Petitioner, on November 5, 1971 (pp.45-50, BIR rec.) requested for reconsideration of the assessment on the grounds that it is not liable because it is not an independent contractor as previously held in BIR Ruling No. 461, Series of 1960 (Exh. J, p. 91, CTA rec.), and that BIR Ruling No. 9 dated July 12, 1971, which subsequently ruled that petitioner is liable for contractor's tax (Annex B, Petition for Review, p. 9, CTA rec.) cannot be given retroactive effect; and that insurance adjusters are only the agents of the insurer-insurance companies citing as authority the case of Salonga vs. Warner, Barnes & Co., Inc., G.R. L-2246, Jan. 31, 1951, 88 Phil. 125, and American cases, and not independent contractors as contemplated in Section 191 of the Tax Code.

In a letter dated February 29, 1972 (Exh. I, pp. 89-90, CTA rec.), respondent wrote petitioner stating therein that petitioner was liable to pay the total sums of ₱1,663.75 and ₱83,226.59 as privilege tax and 3% contractor's tax for the years 1966 to 1970 and requiring petitioner to pay these amounts "on or before March 30, 1972" and "upon payment of the said amounts, this case shall insofar as this Office is concerned, be considered closed." We quote at length said letter of February 29, 1972.

February 29, 1972

Pacific Adjustment Co., Inc.
Manhattan Bldg., Nueva St.
Manila

Gentlemen:

Please be informed that in an investigation conducted by examiners of this Office for business tax purposes, it was definitely ascertained that there is still due and collectible from you the sums of ₱1,663.75 and ₱83,226.59

as privilege tax and 3% contractors tax for the year 1966 to 1970, details of which are as follows:

Privilege Tax

Years Covered	Amount Due	25% Surcharge	Compromise	Total
1966	₱ 20.00	-	₱300.00	₱320.00
1967	20.00	-	300.00	320.00
1968	20.00	-	300.00	320.00
1969	35.00	₱ 6.25	300.00	341.25
1970	50.00	12.50	300.00	362.50
TOTAL	₱145.00	₱18.75	₱1,500.00	₱1,663.75

3% Contractors' Tax

Gross Receipts:

1966	-	₱596,362.00
1967	-	334,299.00
1968	-	334,241.00
1969	-	335,727.00
1970	-	352,080.00

Total Gross Receipts	-	₱1,952,709.00
3% Contractors Tax due thereon	-	58,581.27
25% surcharge for late payment	-	14,644.86
Compromise	-	10,000.00
TOTAL AMOUNT DUE & COLLECTIBLE	....	83,226.59

It is therefore, requested that you pay as provided for by law, the sums of ₱1,663.75 and ₱83,226.59 on or before March 30, 1972 to our Collection Agent in Manila. Upon payment of the said amounts, this case shall, insofar as this Office is concerned, be considered closed.

Very truly yours,

(Sgd) MISAEL P. VERA
Commissioner of Internal Revenue

Hence, petitioner appealed.

The issues presented for disposition by this Court are as follows:

(1) Whether or not this Court has jurisdiction over the appeal;

(2) Whether or not petitioner is an "independent contractor" liable to the contractor's tax in the amount of ₱83,226.59 under the provisions of Section 191 of the National Internal Revenue Code for the period from 1966 to 1970; and

(3) Whether or not petitioner is liable to pay privilege tax in the amount of ₱1,663.75 for the same years 1966 to 1970.

We will now dispose of the first issue of jurisdiction.

We are of the opinion that this Court has jurisdiction over the appeal. For all legal purposes, and for purposes of this appeal, the final decision from which an appeal can be taken is that letter of respondent dated February 29, 1972 (Exh. I, ibid.), which is a reply to, or a denial of, petitioner's motion for reconsideration of the assessment dated October 28, 1971. (St. Stephen's Assn., et. al. vs. Coll. of Int. Rev., 104 Phil. 314.) Also, by its very tenor, respondent in the said letter has therein definitely ascertained that petitioner is finally liable to pay the total sums of ₱1,663.75 and ₱83,226.59 as privilege and contractor's tax, plus increments, respectively, and requesting the latter to pay said amounts on or before March 30, 1972, and that upon payment thereof, the case is closed. The said letter having been dated and issued on February 29, 1972, it is presumed to have been received by petitioner on or after said date, and the petition for review having been filed on March 28, 1972, it was obviously filed within the 30-day period of appeal provided in Sections 7 and 11 of Republic Act No. 1125. This Court has, consequently, jurisdiction over this case.

With respect to the second issue, petitioner claims that it is not an independent contractor because its business does not fall under any of the classes of businesses enumerated in, and subject to contractor's tax under Section 191 of the Tax Code. Section 191 of the said Code, involved in this case, provides as follows:

> 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 contractor ; filling contractors; demolition and salvage work contractors; arrastre contractors; persons engaged in the installation of gas or electric 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 or 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 of 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 <u>other independent contractors</u>, 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 <u>per centum</u> of their gross receipts.

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(As amended by sec. 1, Republic Act No. 39; sec. 4, Republic Act No. 588; sec. 12, Republic Act No. 1612; sec. 1, Republic Act No. 2072; sec. 3, Republic Act No. 2376.) [Underlining supplied.]

In said Section 191 of the Tax Code, it enumerated the contractors that are subject to 3% contractor's tax thereon and adds therein, following the named businesses subject to said tax, the phrase "other independent contractors." Petitioner claims that it does not fall either under any of the named contractors or under the phrase "other independent contractors" as contemplated in the law.

Respondent, however, contends that petitioner is an "independent contractor" and that the phrase "other independent contractors" covers all persons, including petitioner, that enter into a contract for the sale of services for a fee regardless of whether or not the performance of its activities calls for the exercise or use of the mental or physical or manual faculties of its employee or employees.

This issue on the merits of this case boils down to the question of whether or not the phrase "other independent contractors" covers all persons entering into a contract of sale of service for a fee. This issue is not without a precedent and that the contention of respondent is an unwarranted interpretation of the law. This Court has ruled and settled the same question in a definitively pronounced principle in the case of Stock Transfer Service, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2003, promulgated on July 29, 1971, holding that where a business is not one engaged in an enterprise as those enumerated in Section 191 of the Tax Code, it cannot be taxed as "other independent contractor" under the purview of said section subject to a 3% contractor's tax. Said this Court in that case, pertinent portions of which we are quoting hereunder:

> 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."
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> 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 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 enumerats 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 <u>ejusdem generis</u>. (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 to 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 12 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 Code 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 Lazon 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 word "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, head, 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 contruction 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 an express or implied contracts. The same thing might be said with reference to section 1463,[2] where keepers of garages, transportation contractors, persons who transport passengers or freight for hire, and common carriers,

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

[2] " " 192, "

> 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.
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> 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 performs 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. 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 repondent is to be believed. That such a result is not in keeping with the legislative purpose is too apparent to require further elucidation.

A scrutiny of the businesses enumerated in Section 191 shows that nowhere in the listed businesses in said provision can an "insurance adjuster" likely and reasonably fall. We are, therefore, constrained to bear the opinion and hold that petitioner, an insurance adjuster, is not an "independent contractor" liable to 3% percentage tax in the amount of ₱83,226.59, plus increment thereto, for the years 1966 to 1970.

A fortiori, and relative to the third issue, petitioner not having been held to be engaged in a business as an "independent contractor," not therefore subject to 3% contractor's tax, it is also not subject to a privilege tax as a contractor in the sum of ₱1,663.75, it having accordingly paid its fix or privilege annual tax based upon its gross annual sales (or receipts) during the years 1966 to 1970 in question in accordance with Section 182 (A)(e) of the National Internal Revenue Code. (Exhs. K, K-1 to K-5, pp. 92-97, CTA rec.) and which respondent has not disputed.

WHEREFORE, the decision appealed from is hereby reversed. Without pronouncement as to costs.

SO ORDERED.

Quezon City, May 22, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge