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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANSCOR INSURANCE BROKERS
INCORPORATED,
Petitioner,

- versus - C.T.A. CASE NO. 3602

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

12/28/87

D E C I S I O N

Petitioner brought suit against the respondent Commissioner of Internal Revenue to recover the percentage tax payments which it claimed to be erroneously paid. The taxes were imposed in conformity with the provision of Section 205(16) of the Tax Code, as amended, quoted as follows:

> Sec. 205. Contractors, proprietors or operators of dockyards and others. - A contractor's tax of three per centum of the gross receipts is hereby imposed on the following:
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> xxx xxx xxx
>
> (16) Business agents and other independent contractors including private detective or

> watchmen agencies, except gross receipts of a pioneer enterprise registered with the Board of Investments under Republic Act No. 5186; and
>
> (17) xxx
>
> The term "independent contractors" includes persons (juridical or natural) not enumerated above (but not including individuals subject to the occupation tax under Section 12 of 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. (As added by Presidential Decree No. 69)
>
> The term "independent contractor" shall not include regional or area headquarters established in the Philippines by multinational corporations, including 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. (As added by PD 218)

The records show that the petitioner domestic corporation duly licensed to act as an insurance broker and to engage in the business of selling insurance paid the respondent an aggregate amount of ₱1,823,936.12 as 3% independent contractor's tax upon the gross receipts consisting of fees and commissions received from insurance companies during the period of April, 1981 through February, 1983. Petitioner considers the collection illegal and beyond the scope and intendment of Section 205 of the Tax Code and seeks a tax credit therefor under a claim filed on March 14, 1983 with the respondent and the instant petition for review with this Court on March 23, 1983.

The sole question involved in this case is whether petitioner insurance broker is an independent contractor within the meaning of Section 205 of the Tax Code, as amended, supra.

Petitioner contends that it is without the coverage of the class of persons/businesses/activities enumerated in the said Section 205, much less considered an "independent contractor" defined therein for the imposition of the 3% contractor's tax; that its sale of insurance is subject to the control and supervision of the insurance companies and far from an independent undertaking; that the phrase "other independent contractors" is limited to those activities not enumerated but belonging to the same "genera" as those listed, and consistent with the doctrine of *ejusdem generis* the same has to be "construed to include only those who are engaged in businesses similar to those enumerated." (Stock Transfer Service, Inc. v. Commissioner, CTA Case No. 2003, July 29, 1971).

Respondent Commissioner of Internal Revenue maintains that petitioner's business activities of soliciting and procuring prospective clients to be insured, for a fee or commission, are those of an "independent contractor" as defined in Section 191 (now Sec. 205) of the Tax Code, as amended by P.D. No. 69; that the addition of the term "other independent contractors" to the enumeration of taxpayers classified as contractors in Section 191 (now Sec. 205) of the Tax Code, is intended to cover all kinds of contractors not falling within the purview of those expressly enumerated and of those not among the exemptions; and, that the only exceptions as provided by law to the coverage of the term "independent contractor" as defined under Section 205 of the Tax Code, are as follows:

> a. Persons, associations and corporations under contract for embroidery and apparel for

> export and gross receipt of or from pioneer industry registered with the Board of Investments under R.A. No. 5186;
>
> b. Individuals subject to occupation tax under Section 182(b) of the Tax Code; or Section 12 of the Local Tax Code; and
>
> c. 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.
>
> Petitioner does not fall under the exemption and is thus subject to the 3% contractor's tax.

Suffice it to state that until 1973 (before the PD 69 amendment) Section 191 (now Section 205) of the Tax Code, the term "independent contractor" was given restrictive denotation posing a niggling barrier to a broader connotation. As then ruled by this Court on July 29, 1971, "other independent contractors" was construed as to include only those who are engaged in businesses similar to those enumerated (Stock Transfer Services case, supra.). Presidential Decree No. 69 amendment (effective January, 1973) has broaden the scope of the term.

Thus the present Section 205 differs from its predecessor (Section 191) primarily in the incorporation of the definition, thus -

> The term "independent contractor" includes persons (juridical or natural) not enumerated above (but not including individuals subject to the occupation tax under Section 12 of 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. (As added by Presidential Decree No. 69, January, 1973)

Construed in its plain and ordinary meaning, it appears clear that the manifest presidential intent is to broaden the scope of the law to include other activities of the nature which is essentially sales of services and are heretofore enjoying exemption from tax in view of the deficiencies of the law. No facade of resounding legal rhetorics can obscure the fact that there is nothing ambiguous in the language of the provision insofar as the same is brought to bear upon the circumstances of the petitioner in the case at bar, which, as a licensed insurance broker "performs services of soliciting, procuring and placing, for a fee or commission life or non-life insurance, acting through insurance agents duly licensed by the Insurance Commission, who are directly under its employ (Exh. "V", for Petitioner). The nature and character of the undertaking/activity are more than sufficient to conclude that petitioner can readily slip into that warm cubby-hole of an "independent contractor" so to speak.

Moreover, this may not be a case where perforce We must attempt to apply the doctrine of ejusdem generis as would circumscribe the meaning of "independent contractor" only those class of business enumerated in Section 205 of the Tax Code. Petitioner would have the coverage of the term limited to those activities or services belonging to the same "genera" as those listed in Section 191 (now Sec. 205) of the Tax Code. But the doctrine of ejusdem generis is a rule of construction adopted as an aid to ascertain and give effect to legislative intent when the intent is uncertain or ambiguous; it should not be applied to defeat the purpose of the law. In other words, the doctrine is not of universal application. Its application must yield to the manifest intent of Congress (Cases cited). (Singh v. Commissioner of Internal Revenue, CTA Case No. 1167, July 30, 1965). The language of the definition is much too clear, making unnecessary any such application of an extrinsic statutory crutch. Likewise, the pellucidity of the intendment requires no further exegesis.

Neither shall We attempt to belabor the authority relied upon by the petitioner more than to say that the animating principles enunciated in the cited Stock Transfer Service case, could no longer portray the true meaning and intendment of the term "independent contractor" as defined in Section 205(16) of the Tax Code, as amended. The prevailing pronouncements in these cases, then controlling, had been eviscerated by the Presidential Decree 69 amendment and are largely nostalgic illusions. We do not think that the amendment was intended to simply serve as a piece of idle sentimentality.

We conclude and this all that We need decide that the petitioner corporation "who acts as a middleman between insured and company, and who solicits insurance from the public under no employment from any special company and places order of insurance with company selected by insured or in absence of any selection, with company selected by such broker (Pacific Fiere Ins. Co. v. Bowers, 163 Va. 349, 175 S.E. 763, Black's Law Dictionary, 4th Ed. 945)," is precisely the kind of activity which the term "independent contractor" was designed to embrace. And, We shall be less than respecting the full and compelling import of the statute should We graft further exception into it. Petitioner cannot have the best of two worlds.

WHEREFORE, petition is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, December 28, 1987.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

(Dissents in separate opinion)
CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

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

AMANTE FILLER
Presiding Judge
Court of Tax Appeals

ANSCOR INSURANCE BROKERS
INCORPORATED,
Petitioner,

- versus - C.T.A. CASE NO. 3602

COMMISSIONER OF INTERNAL
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x - - - - - - - - - - - - - x

1/6/88

DISSENTING OPINION

This is a judicial claim for tax credit in the amount of ₱1,823,926.00 representing payment of petitioner Anscor Insurance Brokers Inc. (ANSCOR INSURANCE, for brevity) of 3% contractor's tax and collected by respondent Commissioner of Internal Revenue corresponding to the years 1981 and 1982 under the provisions of Section 205 (formerly Section 191) of the National Internal Revenue Code.

Petitioner is a domestic corporation licensed by the Insurance Commissioner to act as "insurance broker". As such, it is primarily engaged in selling non-life insurance for its principals (tsn, April 6, 1984, pp. 4-5), the FGU, PHILAM, GEN. INSURANCE, MONARCH INSURANCE CO. and others. Examples of these insurance policies of its principals are those against fire, marine disasters, accidents, engineering causes, casualty, burglary, rent credit, indemnity, natural calamities, automobile, fidelity and other kinds and classes of insurance. It also sells for its principals surety bonds (Exh. S).

In the years 1981 and 1982 aforesaid, petitioner derived commission income from the sale of the insurance policies aforementioned. Consequently, petitioner filed percentage tax returns for said years (Exhs. A to H) and paid to respondent Commissioner of Internal Revenue the total sum of ₱1,823,936.12, representing 3% percentage tax on independent contractors under Section 205 (formerly Section 191) of the Tax Code (see Exhs. I, J, K, L, M, N, O, P, & Q.)

The services and acts performed by petitioner as insurance broker are described in detail (Petitioner's Memorandum, pp. 105-107, CTA rec.) as follows:

> "xxx, witness described in detail the services or acts performed by an insurance broker in selling insurance contract. (tsn, April 6/84, pp. 7-20.) He divided the mechanics of selling into two phases --- the

preparatory phase and the completed-sale phase.

The first refers to the efforts and activities of the broker aimed at convincing a prospect to buy insurance. Even before a prospect is sighted or targeted, the broker performs activities to prepare the ground for making contact. Thus, friends and business acquaintances are tapped for information and recommendation; business meetings and conferences are considered fertile areas for gathering names and data about a prospect, the business and enterprise likely needing insurance coverage.

Then contact is arranged. Conferences and interviews and luncheon or dinner meetings are held. The needs of the prospect peculiar to his line of business are thoroughly studied. Petitioner's representatives give expert advice, considering the risk involved, the volume of the business done by the prospect, the risk to be covered, the particular insurance companies or underwriters best able to insure against the risks. The amount of premium to be paid, when to be paid, are discussed. Petitioner must impress upon the prospect the excellence and honesty of its advice to engender trust and confidence. These are parts of the duties of a duly licensed insurance broker to protect the insuring public in general and the prospect in particular.

During this preliminary stage and parallel to these acts in respect of the prospect, and after determining the latter's needs, petitioner consults continuously with the several underwriters with whom it has agreement and whose insurance policies it is authorized to sell.

Knowing the needs of the prospect on the one hand and the service available from each one of the several underwriters, the petitioner recommends to the prospect the kind of insurance contract to buy and the underwriter which can best respond to the insurance needs of the latter.

The prospect is made to file an application form properly accomplished. This is submitted by the petitioner to the insurance company concerned for review and processing. If the company approves, the approval is transmitted to the petitioner which in turn notifies the applicant. The insurance company issues the insurance policy which is the contract in itself. Upon payment of the premium, the policy becomes binding and enforceable. As of that event, the sale of the insurance is considered made and done and the petitioner is entitled to its fee or commission. (t.s.n., April 6/84, pp. 6-7.) The payment of the premium marks the sale; such payment is at once the completion of the sale and the completion of the second phase.

Even after the sale is made and the policy delivered, the insurance broker continues to keep in touch with the insured --- primarily to clarify and answer questions and to insure smooth relations between the insurer and the insured. If the loss occurs, the broker helps to expedite payment or reparation of the loss. The petitioner is not paid additionally for such service performed after the sale of the policy. Its only interest is the full satisfaction of the insured to maintain the latter's patronage and continue the account. (t.s.n., April 6/84, pp. 12-13.)"

The issue presented by the parties for determination by this Court is whether or not the activity of selling for its principals insurance and bonds by petitioner for a fee or commission makes it an independent contractor under Section 205 (formerly Section 191) of the National Internal Revenue Code and subject to 3% contractor's tax.

Petitioner contends that the services and acts performed to earn fees or commission as the selling of insurance and bonds for its principal is not taxable under Section 205 (formerly Section 191) of the Tax Code, which provides as follows:

> "Sec. 205. Contractors, proprietors or operators of dockyards, and others. -- A contractor's tax of three (now four) percentum of the gross receipts is hereby imposed on the following:
>
> "(1) General engineering, x x x
>
> xxx xxx xxx
>
> "(17) Lessors of personal property, x x x
>
> xxx xxx xxx
>
> "The term 'independent contractors' includes persons (juridical or natural) not enumerated above (but not including individuals subject to the occupation tax under Section 12 of 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.

xxx xxx xxx

Petitioner further asserts that it is, under the aforesaid law, a contractor but is not an independent one. Moreover, petitioner says that it is not one of those kind of contractors enumerated under numbers 1 through 17 of Section 205 aforecited. Finally, petitioner contends that the phrase "other independent contractors" found in No. 16 as defined is limited to those activities or services that are enumerated therein, and that if the service in question may not be one enumerated therein, it must however be a service which is of the same particular kind or class of service enumerated in the law, under the doctrine of ejusdem generis, and petitioner is neither one of those enumerated, or had otherwise come near any of those services or acts enumerated in said Section 205 of the Tax Code. In support of his contention, petitioner cited only the case of Stock Transfer Services, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2003, promulgated by this Court on July 29, 1971.

On the other hand, respondent Commissioner of Internal Revenue contends that petitioner is an "independent contractor" and that the phrase "other independent contractors" covers all persons, including petitioner, that sells, for a fee, services of all kinds, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental facilities; and that persons and entities that fall within the definition and certain exception are subject to 3% contractor's tax under Section 205 (formerly Section 191) of the Tax Code.

I am in full agreement with the contention of petitioner. The issue in this case is not new. I had occasion to decide the issue in favor of a similarly situated taxpayers, _firstly_, in the case of Stock Transfer Services vs. Commissioner of Internal Revenue, CTA Case No. 2003, _ibid_., and, _secondly_, in the case of Pacific Adjustment Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2392, promulgated on May 22, 1977, the latter with a closer factual setting with this case at bar, and the pertinent portions of the decision of which I hereby quote, and from which decision I cannot deviate from, and, therefore, I make this portion part of my dissenting opinion.

> 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 coextensive 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 ₱73,224.33 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." x x x

xxx xxx xxx

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

(1) xxx xxx xxx

(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) xxx xxx xxx

xxx xxx xxx

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. <u>Percentage tax on road, building, irrigation, artesian well, waterworks, and other contraction work contractors, proprietors or operators of dockyards, and others</u>.- 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 limber; 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.

xxx xxx xxx

(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."

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 terms "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 contractor's 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 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 word "contractor," as used in said section 1462, (now Section 191, National Internal Revenue Code) 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 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 an express or implied contracts. The same thing might be said with reference to section 1463 (now Section 192, National Internal Revenue Code)

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 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 contractor's 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.
>
> A scrutiny of the business 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.

Equally, a minute scrutiny of the businesses enumerated in Section 205 (formerly Section 191) of the Tax Code shows that nowhere in the listed business therein can I find an "insurance broker," or any business therein which it can nearly be placed or can reasonably fall. I am of the opinion and so hold that petitioner, an "insurance broker," is not an "independent contractor" liable to 3% contractors' tax for the years 1981 and 1982, and the amount it had paid for those years in the sum of ₱1,823,926.00 is properly subject to the tax credit grant.

I, therefore, strongly assert this dissenting opinion.

Quezon City, January 6, 1988.

CONSTANTE C. ROAQUIN
Associate Judge