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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

September 16, 1963

CHU HOI HORN,
Petitioner,

- versus - C.T.A. CASE NO. 339

The COLLECTOR OF INTERNAL REVENUE,
Respondent.

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DECISION

This is an appeal from the decision of the respondent holding the petitioner liable for the payment of the sum of ₱21,622.91, representing deficiency percentage tax on petitioner's sales of neon signs from 1951 to the second quarter of 1953, plus surcharge and compromise, itemized as follows:

30% sales tax on ₱47,285.07, net taxable gross selling price of neon signs, less cost of tax-paid raw materials ----------	₱14,185.52
Less: Fixed and percentage taxes paid as contractor -------------	2,001.00
Deficiency sales tax -------	₱12,184.52
75% surcharge[1] ------------	9,138.39
Total deficiency sales tax and surcharge ------	₱21,323.91
Compromise penalty ---------	300.00
GRAND TOTAL ---------------	₱21,622.91

The records show that on June 29, 1953, petitioner filed a written claim for refund of the sum of ₱1,696.95 with the Bureau of Internal Revenue alleging that for engaging in the business of leasing neon signs he was not liable for the fixed and percentage taxes as a contractor under Sections 182 and 191 of the Na-

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1 This represents the 25% surcharge for delinquency and the 50% fraud penalty imposed by Sec. 183 (a) of the Revenue Code.

tional Internal Revenue Code and that he was merely a business agent subject to a fixed annual tax of ₱60.00 under Section 193(t) of said Code (now Section 182[A][3][w]). After investigation of the business operations of petitioner, respondent found that petitioner was not actually leasing neon signs but was selling the same; hence, he assessed the deficiency sales tax mentioned above after deducting the amount of the percentage tax previously paid by petitioner as contractor under Section 191 of the Revenue Code.

The decision of respondent is apparently based upon the findings of the Conference Staff of the Bureau of Internal Revenue which conducted a hearing on the case upon request of petitioner. We quote from the memorandum of the Conference Staff of November 12, 1956:

> The Acme Neon Light is engaged in the construction and installation of neon signs upon orders by specification of its customers. The customer should first make a substantial deposit before a particular job is undertaken. In all transactions involving neon signs, the taxpayer and its customer execute a contract entitled "Neon Sign Rental Agreement" wherein it appears that the taxpayer is the "lessor" and the customer is the "lessee" of the neon sign.
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> The contract entered into by and between the taxpayer and its customers, denominated "Neon Sign Rental Agreement", while containing the terms and conditions of the ordinary contract of lease, does not embody the real intention of the parties with respect to the neon signs. Notwithstanding the rental agreements entered into between the taxpayer and the customers, the real intention of the parties is to sell the sign because after the sign is fully paid the same becomes the property of the customer.

Several customers of the taxpayer when interviewed by an agent of this Office declared that the neon signs were bought by them from the Acme Neon Light and after payment of their last installment the neon signs become their property and not returned to the Acme Neon Light. Agent P. A. Cosare in his 1st Indorsement dated April 3, 1954 reported thus:

> "For purposes of reference, may I submit some names of the customers who had already fully paid their obligations and that the term of the contract had long lapsed, but the neon signs are still in their possession and no showing of renewal of the alleged contract of leased:
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> 1. San Sebastian Church, Azcarraga, Manila.
> 2. Champion Auto Supply Co., Port Area, Manila.
> 3. Juan de la Crus Studio, Taft Avenue, Manila.
> 4. Great Eastern Hotel, Carriedo, Manila.
> 5. Galang Maternity and Hospital, Tayabas, Manila.
> 6. United Shoes Company, Carriedo, Manila.
> 7. Master Public Business Agency and Accounting Office, 860 Ongpin, Manila."

While the taxpayer submitted certificates of various customers wherein they stated that they were mere lessees of the neon signs installed by the taxpayer at their place of business, nonetheless, upon investigation conducted by an agent of this Office these customers stated that the neon signs were sold to them and that upon payment of the last installment the said neon signs become their property. Among these customers are the Oregon Hotel, Far Eastern Surety & Insurance Company, Canada Cafe, and American Studio. (Memo. for the Acting City Revenue Agent dated January 18, 1955 of Agent P. A. Cosare.)

A minute analysis of the rental agreements entered into by and between the taxpayer and its various customers shows that the term of the "lease" corresponds with the number of installments of the "rent" which would be required to total the stated value of the neon signs. Thus, in the contract entered into with the Panciteria National (Contract A-10), executed on June 16, 1951 the construction and installation cost of the neon sign appearing in the contract is ₱1,000.00. Under the terms of the contract, the customer will advance ₱500.00 upon the signing of the agreement; this payment plus the monthly rental of ₱50.00 for 10 months covers exactly the cost of the neon sign. In Contract A-3 dated February 10, 1951 also with the Panciteria National, the cost of construction and installation of the sign is ₱1,500.00 and the rental advanced was ₱1,500.00 with no other payment; in Contract A-15 with the Alemar Book Store the cost of the sign is ₱2,000.00 and the monthly rental of ₱80.00 for 25 months covers exactly the cost of the neon sign; under Contract A-21 with the San Sebastian Colleges the cost of construction and installation is ₱3,650.00, the advance payment of ₱2,000.00 and the balance of ₱1,650.00 to be paid upon installation of the sign totals exactly the cost of the sign; likewise, in Contract A-1 with Juan de la Cruz Studio the cost of construction and installation is ₱600.00, ₱300.00 was advanced rental and the monthly rental of ₱50.00 for six (6) months covers the cost of the sign; in Contract A-4 with the Master Public Business Agency and Booking Office the cost of the sign is ₱800.00 and the monthly rental of ₱50.00 for 16 months covers also the cost of the sign. Under the terms of Contract A-18 with the Streamline Studio, the cost of construction and installation is ₱2,500.00, an advanced rental of ₱400.00 is payable upon the signing of the agreement plus a monthly rental of ₱90.00 for 24 months. It is significant to note that the 24th installment was reduced to ₱30.00 only as per notation at the bottom of the said contract so as to make the total of all the payments equal exactly the cost of construction and installation of the sign. The use of the word "installment" in the said notation shows that the true intent of the parties to the contract was that the contract was to be one of sale and contemplates transfer of ownership of the neon sign to the customer.

The "advance rental" paid upon signing of the agreement represents a substantial portion of the cost of the construction and installation which signifies that it represents advance payment on the cost of the neon sign. Furthermore, the total of all the payments during the term of the lease covers exactly the entire cost of construction and installation of the neon sign. If these "rentals" are not for the account of the cost of the neon sign the contract would be scandalously immoral for being usurious and oppressive. These payments are evidently to cover the cost of the neon sign. It is obvious from these contracts that the intent of the parties was to have the total of the payments equal the construction and installation cost of the neon sign which is a strong indication that the real intent of the parties is to transfer ownership of the neon sign to the "lessee" upon the termination of the term of the alleged "lease". (Pp. 1-4, Memorandum for the Collector of Internal Revenue, pp. 305-308, BIR records.)

We have carefully reviewed the records of the case and we are of the opinion that the foregoing findings and conclusions are fully supported by the evidence. We have no doubt in our minds that the neon signs made or constructed by petitioner for his customers were sold and not merely leased. This is further strengthened by the fact that a neon sign made specially for a customer is useless to any other person.

"It is understood and agreed that the sign is especially constructed for the Lessee and for use at the premises now occupied by the Lessee; that it is of no value unless so used, and that it is material consideration to the Lessor in entering into this agreement that Lessee shall continue to use the sign as contemplated." (Par. (e), Exh. A-129, p. 238, B.I.R. records.)

If a neon sign is useless to any person other than the one for whom it was made, it is incredible that petitioner should merely lease it instead of selling it to the one for whom it was specially made. The conclusion is inevitable that the lease agreement is

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merely a devise to avoid payment of the taxes legally due.]

FOR THE FOREGOING CONSIDERATIONS, and in line with the decision of the Supreme Court in Advertising Associates v. Coll. of Int. Rev., G. R. No. L-6553, Sept. 30, 1955, 52 O. G. 2018, the decision appealed from is hereby affirmed, except with respect to the "compromise penalty" of ₱300.00 which respondent is not authorized to "impose" or "assess".

SO ORDERED.

Manila, September 16, 1963.

(Sgd.) ROMAN M. UMALI
Associate Judge

I CONCUR:

(Sgd.) MARIANO NABLE
Presiding Judge