REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANTHONY O. DAVID, doing business under the name and style 'GREAT WALL ADVERTISING',
Petitioner,

- versus - C.T.A. CASE NO. 2051

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

D E C I S I O N

The Commissioner of Internal Revenue, respondent herein, assessed against petitioner the sum of ₱11,259.14, representing deficiency percentage tax as a business agent under Section 191 of the National Internal Revenue Code for the period from 1956 to 1959, plus the surcharge of 25% in the sum of ₱2,814.79 for late payment under Section 183 of the same Code, or a total of ₱14,073.93. This assessment was protested by petitioner but the protest was denied by respondent. A warrant of distraint and levy having been issued to enforce collection of the said sum of ₱14,073.93, petitioner has appealed with a motion for suspension of collection of said amount pending appeal.

No objection having been interposed by respondent to petitioner's motion for suspension of the collection of the tax in question pending appeal, the same was granted upon the filing

(119)

of a bond for ₱15,000.00 (Bond No. 13799 filed by Pioneer Insurance and Surety Corporation).

The only issue is whether or not petitioner is a business agent with respect to its business of "leasing" billboards.

The business of petitioner which gave rise to the disputed assessment is described by counsel for petitioner as follows:

> Petitioner looks for a good location or site, in any part of the country, on which to put up his billboard. When he finds a good location or site, meaning to say, the location has the best possible visibility and exposure, for advertising purposes, to a good number of people in the surrounding area or to the riding public, petitioner leases the same from the owner thereof for a specified period of time, paying a monthly rental for the use thereof to the owner, who may be a land owner or a bus owner. After he has secured the approval of the location owner, petitioner looks for prospective customers who might be willing to rent the billboard or signboard to be set up on the site or bus space. (pp. 36-39, 43 tsn. September 7, 1972). Sometimes, it is the prospective customers who approach petitioner to rent his billboards, and, if these were not yet set up on location, petitioner looks for a good location therefor. (pp. 44-46 tsn. id)
>
> For the use of his billboard and bus spaces, petitioner charges his customers a fixed monthly

rental to run for the entire duration of the term agreed upon. And, petitioner takes care of providing the materials, labor and cost of painting the billboard, and of setting up the billboard on location, without additional cost to his customers. (pp. 46, 53-54 tsn. id) When the billboard is accidentally damaged by typhoon, for example, during the life of the agreement, or when there is a need to repaint the billboard, petitioner repairs the same and/or repaint the same, as the case may be, without charging the customers for the extra costs thereof. (pp. 46, 53 tsn. id)

It is the customer of petitioner who approves and submits to him the color design of the products to be advertised on the billboard. (p. 44 tsn. id) Petitioner then reproduces the design by painting the same on billboard panels which he keeps in readiness. (p. 49 tsn id). Sometimes, these designs submitted by his customers are already prepared and printed, and all that petitioner would do was to place or attach them on his billboards. (pp. 46-47 tsn. id). The finished billboards are then put up in strategic locations which petitioner has earlier acquired by lease from their owners. In the case of billboards already standing on location, as when the contract of the previous advertiser has already expired, the billboards are merely repainted in accordance with the color design specifications of the new advertiser-customer.

For all these, the customers of petitioner are not charged for the extra costs. They are only charged a fixed monthly rental for the use of the billboard and bus spaces of petitioner, for a specified period of time, for the advertisement of their products thereon. And the monthly rental is fixed on the basis of the

(119)

location of the billboard. If the billboard is put up in Cubao, Quezon City, for instance, which is considered a "premium" location, i. e., one with the best qualities by which to advertise a product, through the use of the billboard, because of the dense population in the area, and where the land values are high, the rental rates charged on petitioner's customers are much higher than the rental rates charged for a billboard placed along a provincial highway. (pp. 50-53, 64-65 tsn. id). The costs of materials, labor and painting are not considered in fixing the rental rates chargeable to the customers. These are considered part of his general overhead expenses in running the business. (pp. 80-82 tsn. id). Petitioner has in his employ laborers, workmen or painters who do the job of preparing, painting and installing the billboards and who receive regular pay from petitioner as employees of the latter. (P. 49 tsn. id).

The customers of petitioner do not own the billboards rented by them for the advertisement of their products thereon. Petitioner remains as the owner thereof. When the contract expires for the sub-leasing of the billboard and bus spaces, petitioner retains ownership thereof, and he may again sub-lease them to other customers. Thus, during the life of the agreement, petitioner as the owner thereof, is under obligation to repair and repaint the billboard whenever necessary, without any expense on the part of the customers. (pp. 53, 64 tsn. id; Exh. H) (Memorandum for petitioner, pp. 59-63, CTA rec.)

The contract entered into between petitioner and a customer, which is denominated "Billboard Lease Agreement", contains the following terms and conditions:

That the LESSOR hereby agrees to construct, paint and install for the LESSEE, and the LESSEE hereby accepts to lease from the LESSOR ________________ De Luxe/ Panoramic/Standard size billboards for _____________________ to be located at _____________________ for and under the following considerations, terms and conditions:

1. That said billboard(s) shall be constructed and painted by the LESSOR, at his own expense, in accordance with the full color design submitted to and approved by the LESSEE;

2. That the lease contract shall be for a period of _________ commencing from the time billboard(s) referred is/are installed, viz______ _____________ to ____________________;

3. That the LESSEE agrees to pay the LESSOR a monthly rental of PESOS _______________ (₱____________), Philippine Currency, per billboard an amount equivalent to one month's rental shall be paid upon the installation of the billboard(s); and the succeeding monthly rental shall be due and payable within the first five (5) days of every month accruing;

4. That the LESSOR agrees to repaint, without additional costs on the part of the LESSEE, the billboard(s) so leased every six (6) months with the same design or a new design submitted and/or approved by the LESSEE;

5. That any damage that may be caused to the billboard(s) shall be repaired at the expense of the LESSOR, who is the sole and absolute owner of the billboard(s) so leased;

> 6. That if, any time within the term of this lease contract, the LESSOR should be compelled by any law and/or ordinance or by the owner of the location to remove the billboard(s), the LESSOR shall have the right to transfer the billboard(s) at his own expense to another location approved by the LESSEE, provided, however, that in this event, the monthly rental for said billboard(s) shall be adjusted to an extent as may be effected by any increase or decrease in the rental of the new location site;
>
> 7. That the LESSOR hereby grants the LESSEE the option to renew this contract after the expiration of the terms agreed upon, under the same terms and conditions. (Memorandum for petitioner, pp. 63-64 CTA rec.)

From the foregoing description of the business of petitioner and the sample of the contracts entered into between him and his customers, we are of the opinion that he is a business agent and is, therefore, taxable under Section 191 of the Revenue Code.

The term "business agent" is defined in Section 194(v) of the Revenue Code as including all persons who conduct advertising agencies. The term "advertising agency" is not defined in the Code, but Webster's International Dictionary, Second Edition, defines "advertising" as the act or business of preparing and circulating advertisements, and "agency" as the business of one entrusted with the concerns of another. An "advertising agency" may, therefore, be defined as the business of one who is engaged in preparing and circulating advertisements for others. And this is precisely the business of petitioner. He prepares advertising materials (billboards) and circulates the same by placing them in strategic places where they can be seen by the public.

It is a misnomer to denominate the contract entered into between petitioner and his customer as a "lease agreement". The customer does not pay for the lease of the billboard, the possession and control of which are retained by petitioner, but for the advertisement of his product or products.

It appears, however, that in an earlier ruling of the Bureau of Internal Revenue, dated January 16, 1956, it was held that the said business of petitioner was not subject to tax under Section 191 of the Revenue Code. For this reason, petitioner may not be held liable for the surcharge of 25% for late payment of said tax. (See Connel Bros. Co. v. Collector, G.R. No. L-15470, Dec. 26, 1963, 9 SCRA 735.)

IN VIEW OF THE FOREGOING, the decision appealed from is hereby affirmed, except with respect to the surcharge of 25%. Accordingly, petitioner is ordered to pay the sum of ₱11,259.14 within thirty days from the date this decision becomes final. No pronouncement as to costs.

SO ORDERED.

Quezon City, December 16, 1974.

R. M. Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge

(128)