Library

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

Oct. 31, 1960

HENRY R. CANOY,
Petitioner,

- versus - C.T.A. CASE NO. 393

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - x

DECISION

The petitioner is the owner and operator of Radio Station DXCC, Radio Mindanao, Cagayan de Oro City. The said broadcasting station is operated by petitioner by virtue of a temporary permit granted by Congress under Republic Act No. 765 entitled "AN ACT GRANTING HENRY R. CANOY A TEMPORARY PERMIT TO CONSTRUCT, MAINTAIN AND OPERATE A RADIO BROADCASTING STATION IN THE CITY OF CAGAYAN DE ORO."

From January, 1955 to August 31, 1957, petitioner derived from the operation of said radio station gross receipts in the sum of ₱193,613.95 on which it paid the percentage tax at the rate of 3% prescribed in Section 191 of the National Internal Revenue Code. However, respondent ruled that petitioner, as a holder of a franchise, is subject to the tax of 5% of his gross receipts as provided in Section 259 of the Revenue Code. Accordingly, a deficiency franchise tax in the sum of ₱4,826.59 was assessed against petitioner. (See Stipulation of Facts, pp. 60-62, C.T.A. records.)

Petitioner contested the assessment on the grounds that the temporary permit granted him under Republic Act No. 765 is not a franchise, and that, assuming that it is a franchise, he is taxable under Section 259 of the Revenue Code. Respondent refused to reconsider his decision; hence this appeal.

A "franchise" is the privilege of doing that which does not belong to the citizens of the country generally, by common right. (Irvine Toll Bridge Co. v. Estill County, 275 S. W. 634, 636, 210 Ky. 170.) "Franchises" are rights and privileges acquired by special grants from the public through the legislature which impose on the grantee, as the consideration therefor, a duty to the public to see that they are properly used. (St. Louis, A. & T. H. R. Co. v. Balsley, 18 Ill. App. 79; see 17 Words & Phrases, 496.)

The operation of a radio broadcasting station is not a matter of common right. No person may operate a radio broadcasting station in the Philippines without first having obtained a franchise therefor. (Act No. 3846, as amended by Rep. Acts Nos. 365 and 571.) The temporary permit granted to petitioner under Republic Act No. 765 is specifically made subject to the provisions of Act No. 3846. (See Sec. 1, Rep. Act No. 765.) Therefore, the permit granted to petitioner to operate his radio station is a franchise. The fact that the permit granted by Congress is denominated a "Temporary Permit" does not affect the nature of the grant as a franchise.

Having arrived at the conclusion that petitioner is a holder of a franchise under Republic Act No. 765, the next question to be decided is whether or not he is subject to the tax of 3% of his gross receipts from the operation of his radio broadcasting station, pursuant to Section 191 of the Revenue Code, or to the tax of 5% prescribed in Section 259 of the same Code.

The pertinent provisions of Sections 191 and 259 are 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 contractors; x x x persons selling water, light, heat, or power, except those paying a franchise tax; x x x photographic studies, telephone or telegraph lines or exchanges, broadcasting or wireless stations; x x x shall pay a tax equivalent to three per centum of their gross receipts. (Emphasis supplied.)

> SEC. 259. Tax on corporate franchises.- There shall be collected in respect to all existing and future franchises, upon the gross earnings or receipts from the business covered by the law granting the franchise a tax of five per centum or such taxes, charges, and percentages as are specified in the special charters of the grantees upon whom such franchises are conferred, whichever is higher, unless the provisions thereof preclude the imposition of a higher tax. x x x.

Section 259 imposes a tax of 5% of the gross earnings or receipts of persons engaged in businesses covered by franchises. On the other hand, Section 191 imposes a tax of 3% of the gross receipts of persons engaged in businesses specifically enumerated in said section, among which are broadcasting or wireless stations. Section 259 is a general law governing the taxability of holders of franchises; Section 191 is a special law. Therefore, Section 191, in regard to holders of franchises enumerated therein, other than those specifically excepted from the operation of said section, must prevail over Section 259. It is a settled rule that in case of conflict between a special law and a general law, the former prevails over the latter.

It is to be observed that among the persons subject to tax under Section 191 are persons selling water, light, heat, or power, but the law specifically excludes "those paying a franchise tax." (See Sec. 191 as quoted on page 3 of this decision.) No similar exception is made with respect to persons operating broadcasting or wireless stations. This is a clear indication of the intention of Congress to tax broadcasting or wireless stations under Section 191, notwithstanding that these businesses may operate only under franchises granted by law.

We are, therefore, of the opinion that petitioner, as operator of a radio broadcasting station, is subject to tax at the rate of 3% of his gross receipts derived from the operation of said radio station under Section 191 of the Revenue Code, not 5%

under Section 259. Accordingly, the decision appealed from is reversed, without pronouncement as to costs.

SO ORDERED.

Manila, October 31, 1960.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Prediding Judge

AUGUSTO M. LUCIANO
Associate Judge