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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SERVICES CORPORATION,
Petitioner,

- versus -　　　　C.T.A. CASE NO. 2815

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

5/22/80

D E C I S I O N

Petitioner Special Services Corporation appealed to this Court from the determination by respondent Commissioner of Internal Revenue of deficiency contractor's percentage and fixed taxes for the year 1965 in the sum of ₱61,323.69, inclusive of surcharge of 75%, plus compromise penalties for late payment in the amount of ₱320.00.

The basic issue relates to the liability of petitioner to the percentage and fixed taxes as an independent contractor on fees allegedly derived from management services during the year 1965. While disclaiming liability thereto, petitioner however raises the defense of prescription, contending that respondent's right to issue the assessment in question was already time-barred. The initial and pivotal question therefore to be resolved in this appeal, before going into the merits of the controversy, is whether or not the right of respondent to assess has prescribed.

The records reveal that petitioner is a corporation existing under and by virtue of the laws of the Philippines, with office and postal address at Insular Life Building, Ayala Avenue, Makati, Rizal. During the year 1965 it derived income from management service, leasing office equipment, data processing, agency placement and tuition fees. On May 13, 1971, petitioner received from respondent's then Revenue Region No. 6 (now Revenue Region 4-B), Quezon City, a demand letter dated April 12, 1971 assessing and demanding from it alleged 1965 deficiency contractor's and fixed taxes, inclusive of surcharge, computed as follows:

Total taxable sales/receipts per field audit - - - - - - - - -	₱1,167,689.31
3% tax due thereon - - - - - - - - -	35,030.68
Less: Tax already paid - - - - -	-
Deficiency tax due - - - - - - - - -	35,030.68
75% surcharge thereon - - - - - -	26,273.01
Fixed Tax (PTR) C-4(53) - - - - -	20.00
TOTAL AMOUNT DUE - - - - - - - - - -	61,303.69*

In addition, petitioner was requested to pay the amounts of ₱20.00 and ₱300.00 as compromise penalties for alleged late payment of fixed tax (PTR) and percentage tax, respectively.

It appears that the basis of the assessment was the recommendation of senior revenue examiner Rafael

* - Total should read ₱61,323.69.

Verendia, after examining and investigating petitioner's income and business tax liabilities for 1965, that the taxpayer be subjected to deficiency income tax, as well as to percentage and fixed taxes as an independent contractor, on its gross income of ₱1,859,519.69 less equipment rental income of ₱691,830.38, or on the amount of ₱1,167,689.31, which is considered as the taxable "gross receipts." While the then head of the income tax unit of the Quezon City Revenue Region Benjamin M. Bactad recommended, after reviewing the findings of examiner Verendia, the assessment in question with the modification that the surcharge was increased from 25% to 75%, the proposed income tax assessment, upon his advice, was dropped.

The records show that on May 24, 1971, after eleven (11) days from petitioner's receipt of the assessment, its auditors disputed the said assessment on the merits and on the ground of prescription, by filing a written protest with respondent. However, on April 10, 1976 respondent, without categorically deciding petitioner's protest, caused to be filed in the Court of First Instance of Manila Civil Case No. 101999 for collection of the amount assessed. After summons with a copy of the verified complaint were served on petitioner on May 10, 1976, it filed a motion to dismiss the case, which motion is still pending before the Court of First Instance of Manila.

With the institution of such action for collection of the taxes assessed against petitioner at the instance of respondent, petitioner appealed to this Court, raising, besides the illegality of the assessment, the defense of prescription of the right of respondent to make the said assessment.

Has the right of respondent to issue the assessment in question barred by prescription?

Respondent does not quarrel with petitioner that the assessment under consideration was issued by him beyond the five-year period prescribed under Section 331 of the National Internal Revenue Code then in force, which reads as follows:

> "SEC. 331. Period of limitation upon assessment and collection. - Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code."

The assessment for alleged 1965 deficiency contractor's tax, 1965 fixed tax, surcharge and compromise penalties bears the date April 12, 1971. It was registered and deposited in the mails in Cubao, Quezon City, on May 7, 1971. Since respondent had up to January 20, 1971 within which to issue his deficiency assessment for the contractor's tax for 1965 under Section 331, and for purposes of the prescriptive period, an assessment is deemed made when the notice is released, mailed or sent by the Commissioner of Internal Revenue to the taxpayer (Republic vs. Alano, L-18865, September 28, 1964, 12 SCRA 24; Nava vs. Collector of Internal Revenue, L-19470, January 30, 1965, 13 SCRA 104; Basilan Estates vs. Commissioner of Internal Revenue, L-22492, September 5, 1967, 21 SCRA 17), it seems clear beyond doubt that the assessment in question was issued beyond the five-year period prescribed under Section 331.

Contending, however, that "petitioner did not file its percentage tax returns as reported by the examiner who investigated this case", respondent "submits that it is Section 332 (now Section 319) of the Tax Code which should apply in this particular case." (p. 92, CTA records.) The pertinent provision of said section reads as follows:

> "SEC. 332. Exceptions as to period of limitation of assessment and collection of taxes. - (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at anytime within ten years after the discovery of the falsity, fraud or omission."

"(b) x x x x x x

"(c) x x x x x x"

Thus, in his answer to the petition for review, respondent alleges by way of special and affirmative defenses to petitioner's averment that "respondent's assessment is barred by prescription and is, therefore, entirely null and void" that: (pars. 13 & 14, Answer, p. 32, CTA records.)

> "13. Petitioner did not file any return for percentage tax purposes pursuant to Section 183 in relation to Section 191 of the Tax Code; and
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> 14. As the omission to file the return was discovered on June 8, 1970, the respondent has up to June, 1980 within which to make an assessment; consequently, the respondent's right to assess in this case has not prescribed as the assessment was issued on April 12, 1971, clearly within the period of limitation; and by way of"

The question as presented by respondent is, therefore, whether petitioner filed its 1965 percentage tax returns as a contractor pursuant to Section 183 in relation to Section 191 of the National Internal Revenue Code then in force.

Contrary to the contention and allegations of respondent, the evidence on record, both oral and documentary, definitely and clearly show that petitioner had filed its monthly percentage tax returns for 1965 pursuant to Section 183 in relation to Section 191 of the former Revenue Code (Exhibits "GG",

"DD", "BB", "Y", "W", "T", "Q", "N", "K-2" and "G", Petitioner's Folder of Exhibits); and had paid the annual privilege tax receipt of contractor, one as "printer" under Schedule C-4-20 and another as "business agent" under Schedule C-4-52 (Exhs. "C" & "D", Petitioner's Folder of Exhibits). As a matter of fact, for these two activities which petitioner considered itself as subject to the 3% contractor's tax, it paid the corresponding monthly percentage tax based on its actual gross receipts as "printer" and as "business agent". (t.s.n., pp. 49-51, hearing of November 10, 1978; Exh. "F", Petitioner's Folder of Exhibits.) All of these payments of taxes, which were made within the time prescribed by law, were duly documented with the corresponding revenue official receipts, xerox copies of which were admitted as evidence without objection of respondent after comparison with the originals during the hearing of the case. ("E", "H", "1", "J", "K", "L", "M", "O", "P", "R", "S", "U", "V", "X", "Z", "AA", "CC", "EE" & "FF", Petitioner's Folder of Exhibits.)

Absent proof, or even allegation, that the 1965 returns filed by petitioner for contractor's percentage tax purposes pursuant to Section 183 in relation to Section 191 of the Revenue Code then in force were false or fraudulent, it is thus abundantly clear, in the face of the indubitable fact that petitioner had actually filed returns and paid both the percentage and fixed taxes due from it in the year 1965, that respondent's right to issue the assessment in question is barred by prescription, in accordance with Section 331 of the Code.

Nevertheless, respondent alleges under paragraph 12 of his answer that "petitioner in 1965 was engaged in the business of, among others, rendering management services, taxable under Section 191 of the Tax Code; hence, petitioner is an independent contractor liable for 3% contractor's tax." Was the omission or failure of petitioner to include in the returns its receipts from rendering management services make such returns false, so that the Government was prevented from assessing the proper tax liabilities of petitioner and, therefore, respondent has ten (10) years from discovery of such omission or falsity to assess, pursuant to Section 322 of the Code then in force?

As earlier stated, petitioner during the year 1965 derived income from management service, leasing office equipment, data processing, agency placement and tuition fees. Petitioner, as has already been demonstrated above, actually filed returns and paid both the fixed and percentage taxes on the businesses of "printer" and "business agent", in accordance with the first paragraph of Section 191 of the former Revenue Code.

Equipment leasing in 1965 was not yet subject to the contractor's tax. On its data processing, petitioner paid the contractor's tax as "printer" for the reason that part of the work involved was submission to clients of "printed reports" processed by the computer. (t.s.n., p. 15, hearing on November 10, 1978.) And as to the "agency commission income" and "placement and tuition fees" (excluding tuition fees), petitioner paid the contractor's tax as employment agency. (t.s.n., pp. 15-16, hearing on November 10, 1978; see also Section 194(v) of the National Internal Revenue Code then in force.)

With respect to the management service fees, the service furnished by petitioner under this activity are as follows: (pp. 65 & 98, CTA records.)

> "1. To furnish technical guidance on labor and union relations, collective bargainings;
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> "2. To standardize personnel procedures, job and personnel evaluation methods;
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> "3. To undertake studies in work organization, work flow, and work simplification;
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> "4. To maintain a system of form improvement program;
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> "5. To plan and implement promotional undertakings and public relations, etc."

While respondent admits that "petitioner's income from management service fees does not fall under any of the activities mentioned from Nos. (1) to (17)" of Section 191 of the Tax Code then in force (p. 98, CTA records), he contends that the above undertakings or services rendered by petitioner fall within the classification of "other independent contractors" under paragraph (18) of Section 191 and, therefore, subject to 3% contractor's tax provided therein (p. 99, CTA records). For its income or gross receipts derived from management services as specified above, is petitioner liable to pay 3% contractor's tax as "independent contractor" within the purview of Section 191 of the then National Internal Revenue Code?

Indeed, the question is not one of first impression. In Stock Transfer Service, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2003, July 29, 1971, certiorari denied in L-34582, January 25, 1972, wherein the issue involved is whether a transfer agent whose business consists of registering transfers and issuance of certificates of stocks is an "independent contractor" within the purview of Section 191 of the National Internal Revenue Code then in force and, hence, liable to pay fixed and percentage taxes, this Court unequivocally ruled that the term "other independent contractors" at the end of the enumeration of persons who are subject to the contractor's tax should include only those who are engaged in businesses similar to those enumerated. Because of its controlling effects on the question under consideration, we will quote at length from the decision:

> 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 in businesses similar to those enumerated.
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> x x x x
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> 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 11 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.
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> x x x x
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> (See also Philippine Psychological Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 2329, Oct. 29, 1975).

Inasmuch as the activity of petitioner designated as "management service" is not one of those specifically enumerated in Section 191 of the Revenue Code then in force, nor one "similar to those enumerated," petitioner did not fall within the classification of "other independent contractors" subject to 3% contractor's tax provided therein. Accordingly, petitioner was not required to include in its percentage tax returns the income or gross receipts derived from management services rendered in 1965 and pay fixed and percentage taxes as "independent contractor." It can never be said, therefore, that because of petitioner's omission to include in its returns in 1965 its receipts from rendering management services, the Government was placed at a disadvantage so as its lawful agents were prevented from proper assessment of petitioner's tax liabilities due to false returns. Nothing had been omitted, with intent to escape tax, from the 1965 monthly percentage tax returns of petitioner whereby the Government had been defrauded of its lawful revenue from the management service fees as provided under Section 191 of the Tax Code. It necessarily follows that the ordinary period of prescription of five (5) years within which respondent can assess under Section 331, supra, should be applicable.

Having reached the result that the right of respondent Commissioner of Internal Revenue to assess petitioner Special Services Corporation deficiency contractor's percentage and fixed taxes for the year 1965 in the sum of ₱61,323.69, inclusive of surcharge, plus compromise penalties in the amount of ₱320.00, has prescribed, there is consequently no deficiency of said taxes. If the assessment or collection of any tax is barred by any statute of limitations, the decision of the Court to that effect shall be considered as its decision that there is no deficiency in respect of such tax. (Sec. 14, Republic Act No. 1125.)

WHEREFORE, respondent's assessment subject of this proceeding is hereby declared invalid and of no effect. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, May 22, 1980.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge