REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTERGRITY PAWNSHOP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6721

BUREAU OF INTERNAL REVENUE, KARUHATAN ROAD, VALENZUELA CITY,
Respondent.

Promulgated:
SEP 0 6 2004

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DECISION

The instant Petition for Review is an appeal to reverse and set aside the decision of the respondent finding petitioner liable for deficiency value-added tax in the amount of P471,274.58 for taxable year 1999.

Petitioner is a private corporation duly organized and existing under and by virtue of the Philippine Laws and engaged in the pawnshop business.

On November 3, 2000, respondent issued Letter of Authority No. 00005466 authorizing Revenue Officer Divina M. Dispo and Group Supervisor Lolita A. Loreto to examine petitioner's books of accounts and other accounting records relative to the latter's all internal revenue taxes for taxable year 1999 (*page 1, BIR Records*).

As a result of the investigation, respondent, on September 6, 2002, issued three Preliminary Assessment Notices all numbered 3601 and dated September 5, 2002, informing petitioner of the proposed deficiency tax assessments for taxable year 1999 (*pages 396 – 399, BIR Records*), to wit:

Deficiency Value-Added Tax (VAT)	
Basic Tax	P 248,052.31
Surcharge	62,013.08
Interest	103,355.15
Compromise Penalty	16,000.00
	P 429,420.54
Deficiency Withholding Tax on Compensation	
Basic Tax	P 11,826.77
Surcharge	6,701.84
Interest	P 18,528.61
Deficiency Documentary Stamp Tax	
Basic Tax	P 269,920.00
Surcharge	67,480.00
Interest	134,960.00
Compromise Penalty	16,000.00
	P 488,360.00

As stated in the attached Details of Discrepancy, the proposed deficiency tax assessments were based on the following *(page 395, BIR Records)*:

1. *Assessment made by the examiner on Doc. Stamp Tax on pledge loans is in pursuance of Section 195 of the Tax Code;*

2. *Assessment on Deficiency VAT was made pursuant to RMC 45-2001 dated October 12, 2001 & Section 105 & 108 of the Tax Code; and*

3. *Verification made per audit showed that Bureau of Internal Revenue Form 1601 for the period of December 1998 reflects no amount of over remittance on compensation, thus, the amount declared per January 1601 for 1999 was disallowed. RR 2-98.*

On September 16, 2002, petitioner requested for a reconsideration of the said tax assessments. In a letter dated April 9, 2003, respondent only reiterated its demand for the payment of the deficiency VAT and Documentary Stamp Tax assessments (*pages 434 & 446, BIR Records*).

On April 28, 2003, respondent issued two Formal Assessment Notices both numbered 000189 with accompanying Formal Letters of Demand assessing petitioner for deficiency VAT in the amount of P471,274.58, deficiency Documentary Stamp Tax in the sum of P499,352.00 and a suggested compromise penalty of P32,000.00 for failure to file/pay VAT and DST *(pages 441 – 445, BIR Records*), the details of which are shown below:

Deficiency VAT	
Basic Tax	P 248,052.31
Surcharge	62,013.08
Interest	161,209.19
	P 471,274.58
Deficiency Documentary Stamp Tax	
Basic Tax	P 269,920.00
Surcharge	67,480.00
Interest	161,952.00
	P 499,352.00
Compromise Penalties	
Failure to file/pay VAT	P 16,000.00
Failure to file/pay DST	16,000.00
	P 32,000.00

On May 2, 2003, petitioner again requested for a reconsideration of the above assessments but such request was denied by the respondent in a letter dated May 23, 2003 (*pages 450 & 453, BIR Records*).

On July 10, 2003, petitioner appealed before this court praying that the decision of the respondent be reversed and set aside but only with respect to the deficiency VAT assessment of P471,274.58.

Respondent, in its Answer filed on August 25, 2003, interposed the following Special and Affirmative Defenses:

6. That deficiency tax assessments in question were prepared and issued in accordance with existing law, rules and regulations;

7. The subject deficiency tax assessments were issued in accordance with the requirement provided for under Sec. 228 of the Tax Code, as amended, the

details of discrepancies containing the facts and the law upon which the assessments were based were duly stated;

8. Under Section 108(A) of the Tax Code, the sale or exchange of services is subject to 10% VAT. Since pawnshops are engaged in the business of lending money for a fee they are, therefore, subject to VAT;

9. Decisions in CTA Case Nos. 5774 (Agencia Exquisite of Bohol, Incorporated and 6304 Prime Asia Pawn and Jewelry Shop, Inc.) declaring that pawnshop business is not subject to VAT have been reversed and set aside by the Court of Appeals in CA-GR SP No. 59282 (CIR vs. Agencia Exquisite of Bohol, Inc., March 23, 2001) and CA-GR SP No. 68180 (CIR vs. Agencia Exquisite of Bohol, Inc., February 10, 2003);

10. Assessments are prima facie presumed correct and made in good faith. It is an elementary rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed (CIR vs. CA, Atlas Consolidated Mining and Dev. Corp. and CTA, GR No. 104151 and Atlas Cons. Mining & Dev. Corp. vs. CA, CIR & CTA, G.R. No. 105563, 10 March 1995);

11. All presumptions are in favor of the correctness of the tax assessment (Interprovincial Autobus, Inc. vs. Coll. of Internal Revenue, 98 Phil. 290).

The parties agreed that the only issue to be resolved in the case at bar is whether or not petitioner, as a pawnshop operator, is subject to VAT (*page 51, CTA Records*).

Petitioner asserts that the services of pawnshops are not among those enumerated as subject to VAT under both Sections 108(A) of the NIRC of 1997 and 102 (a) of the old Code. Relying on the case of ***Trustworthy vs. Collector of Internal Revenue, CTA Case No. 5691, March 7, 2000***, petitioner likewise argues that the services of pawnshops are not similar to those rendered by lending investors.

We disagree.

The issue presented is not novel one and this court had already ruled in several cases, the more recent of which is ***Regional Pawnshop, Inc. vs. Bureau of Internal***

Revenue, South Solano, Nueva Viscaya, CTA Case No. 6709, August 9, 2004, that pawnshops are subject to VAT.

For easy reference, we quote hereunder the pertinent provisions of Section 108(A) of the NIRC of 1997, thus:

> "**SEC. 108.** ***Value-added Tax on Sale of Services and Use or Lease of Properties***. —
>
> "(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.
>
> "The phrase *'sale or exchange of services'* means the performance of ***all kinds of services*** in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; ***and similar services*** regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties (Emphasis ours).

From the foregoing, the sale or exchange of services is subject to VAT. The phrase "sale or exchange of services" encompasses the performance of all kinds of services for a fee, remuneration or consideration. The enumeration of persons performing services for a fee, remuneration or consideration, such as, construction and service contractors, stock, real estate, commercial, customs and immigration brokers, etc., is merely to give examples of businesses performing services for a fee, remuneration or consideration that are subject to VAT. The enumeration is not exclusive, which means that other persons performing services for a fee, remuneration or consideration, who are not expressly mentioned in the enumeration, are also subject to VAT. As held in the case of ***Gomez vs. Ventura, 54 Phil. 726***:

> "xxx The maxim *expressio unius est exclusio alterius* should be applied only as a means of discovering legislative intent and should not be permitted to defeat the plain indicated purpose of the legislature. **It does not apply when words are mentioned by way of example, or to remove doubts**. (See Cyc., 1122) x x x " (Emphasis ours.)

Section 108(A) [formerly 102(a)] does not limit its application to those enumerated therein because the law speaks of "all kinds of services". To limit its application to the enumeration would contradict the very clear meaning of the phrase "all kinds of services". The phrase "including" should be construed merely as an enlargement and not of limitation.

> "The intention of an act will prevail over the literal sense of its terms. Thus, limited words in one part of an act may be expanded by general words in another part, if the general words more nearly express the legislative intent.
>
> A term whose statutory definition declares what it `includes' is more susceptible to extension of meaning by construction than where the definition declares what a term `means'. Thus, it has been said that **the word `includes' is usually a term of enlargement, and not of limitation . . . It, therefore, conveys the conclusion that there are other items includable, though not specifically enumerated...**" Sutherland, *Statutory Construction*, 4th Ed., Vol. 2A, p. 82, Sec. 47.07 citing United States Argosy Ltd. v. Hennigan, 404 F2d 14 (CA 5th, 1968); See United States v. Gertz, 249 F2d 662 (CA 9th, 1957); Federal Land Bank of St. Paul v. Bismarck Lumber Co., 314 US 95, 86 L Ed 65, 62 S Ct1 (1941). (Emphasis ours.)

Hence, the terms "includes" and "including" do not exclude items otherwise within the scope of the defined term.

> The terms "includes" and "including" when used in the Code are not deemed to exclude items otherwise within the meaning of the term defined. Thus, where Section 1(e) applies to the taxable income of estates "including" and thereafter lists four types of income from trusts or estates that are taxable, other types of estates may also be subject to taxation under Section 1(e). To hold differently would, in effect, substitute the term "limited to" for "including". Mertens, Law of Federal Income Taxation, 1995 Ed., Section 3.37, Chap. 3, pp. 55–56, citing In re Joplin, Jr., 882 F2d 1507 (CA10 1989), applying IRC & 7701(c).

In the cases of ***Genato Commercial Corporation vs. The Court of Tax Appeals, et al., 104 Phil. 615 and Philippine-American Drug Co. vs. Collector of Internal Revenue and Court of Tax Appeals, 106 Phil. 161***, general words were harmonized with specific words found in the statute in question so as not to limit the coverage of the taxing statute. In determining that the bank charge in question formed part of the charges enumerated in Art. 183-(B) of the then National Internal Revenue Code, the Supreme Court held:

> As may be seen, an importer is required to pay in advance the necessary percentage tax on the articles imported "based on the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty, and all similar charges." In other words, the law requires that it be included in the assessment not only the import invoice value of the merchandise, which includes freight, postage, insurance, commission, customs duty, but all other similar charges which would necessarily increase the landed cost of the merchandise imported, which, in our opinion, should include the difference of Php 0.15 paid by petitioner to a local bank in the purchase of foreign exchange to carry out the importation. Indeed, the intention of Congress in enacting the above-quoted provision is to include in the assessment all charges, whether specified or otherwise, which an importer has to pay to complete his importation.

> Invoking the rule of ejusdem generis which provides that "where, in a statute, general words follow a designation of a particular subjects or classes of persons, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation, and to include only things or persons of the same kind, class or nature as those specifically enumerated," petitioner contends that the difference of Php 0.15 which it paid to a local bank in the purchase of foreign exchange to cover the importations in question cannot be included in the assessment for the purpose of determining the advance sales tax because they are not similar to the charges specifically enumerated in the law.
>
> With this we disagree, for it cannot be denied that the intention of the law is to include all charges, that may be paid by the importer to bring the importation into the country. In other words, all items of expense that may be incurred by the importer in bringing the importation into the country and which would necessarily increase the landed cost must be deemed included in the phrase "all similar charges" mentioned in the law. The doctrine of ejusdem generis is but a rule of construction adopted as an aid to ascertain and give effect to the legislative intent when that intent is uncertain or ambiguous, but the same should not be given such wide application that would operate 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 (State vs. Prather, 21 L.R.A. 23, 25).

In the present case, the law is not only definite in its intent but also in its wording that "all kinds of services" should be subject to VAT. To emphasize, this court believes that the time-honored rule on statutory construction which states that the maxim "*expressio unius est exclusio alterius*" does not apply when the words are mentioned by way of example or to remove doubts is applicable in the case at bar. Thus, pawnshops, like the other businesses enumerated in the law which are engaged in the sale of services, are subject to VAT.

Furthermore, Section 105 of the NIRC of 1997 provides:

> "Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person

> who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code."

Inasmuch as pawnshops are engaged in the sale of services for a fee, remuneration or consideration, they are subject to VAT under Section 108(A) of the NIRC of 1997.

Moreover, it bears stressing that Section 3 of Presidential Decree No. 114, otherwise known as the "Pawnshop Regulatory Act", defines a pawnshop as follows:

> "Pawnshop shall refer to a person or entity engaged in the business of lending money on personal property delivered as security for loans and shall be synonymous, and may be used interchangeably with, pawnbroker or pawnbrokerage."

Judicial notice may be taken of the fact that the principal activity of pawnshops is lending money at interest on the security of personal property. The act of lending money at interest constitutes the performance of a service for a fee, remuneration or consideration for such service. In other words, the liability of pawnshop operators to pay the VAT no longer depends on the classification of their business but on the services they render. As a consequence thereof, any allegation that pawnshops are not lending investors has lost its bearing. For as long as pawnshops are engaged in lending money on the security of personal property, they are still within the ambit of Section 108(A). Petitioner, being engaged in the pawnshop business, is undoubtedly engaged in the sale of services like lending money. Hence, it cannot escape liability to pay the 10% VAT under Section 108(A) of the Tax Code, as amended.

Lastly, Section 109 [formerly 103] of the NIRC of 1997, enumerates the transactions that are exempt from VAT. Pawnshop transactions are not among the exempt transactions. Neither are there any express provisions of law exempting pawnshops from VAT. Since the transactions of pawnshops are not among those enumerated in Section 109 [formerly 103] of the NIRC of 1997 or any other express provision of law as VAT exempt, the same are subject to VAT under Section 108(A). In this regard, tax exemptions are strictly construed against the taxpayer. In the absence of any categorical provision of law exempting pawnshops from VAT, ergo pawnshops are subject to VAT on their gross receipts since they are clearly engaged in the performance of services.

In the case of ***Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation, G.R. No. 125355, promulgated on March 30, 2000***, the Supreme Court ruled that the taxpayer, not falling within the exemptions mentioned under Section 109 [formerly 103] of the NIRC of 1997, is subject to VAT. The High Tribunal held:

> "Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration." x x x
>
> xxx xxx xxx
>
> Hence, it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. **As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.**
>
> At any rate, it is a rule that because taxes are the lifeblood of the nation, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government. Otherwise stated, **any exemption from the payment of a tax must be clearly stated in the language of the law; it cannot be merely implied therefrom. In the case of VAT, Section 109, Republic Act 8424 clearly enumerates the transactions exempted from VAT.** [Emphasis ours]

IN VIEW OF THE FOREGOING, the instant **Petition for Review** is hereby **DENIED** for lack of merit. Accordingly, petitioner is **ORDERED to PAY** the respondent as deficiency value-added tax for taxable year 1999 the amount of **P449,126.24** (inclusive of surcharge and deficiency interest). In addition, petitioner is hereby **ORDERED to PAY** the respondent 20% delinquency interest computed from May 29, 2003 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(On Official Leave)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice