REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NETWORK PAWNSHOP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6727

BUREAU OF INTERNAL REVENUE, TUGUEGARAO CITY,
Respondent.

Promulgated:

SEP 2 3 2004

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DECISION

This petition seeks to reverse and set aside the June 10, 2003 decision of the respondent, finding the petitioner liable for value-added tax in the amount of Four Hundred Twenty-three Thousand Nine Hundred Seventy-nine Pesos and 56/100 (P423,979.56) for the taxable year 2000.

The following are the facts as found in the records of the case:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal and business office address at No. 77 Gaddang St., Poblacion South, Solano, Nueva Viscaya. It is engaged in pawnshop business.

On March 14, 2003, respondent issued a deficiency value-added tax (VAT) assessment notice against the petitioner for the taxable year 2000 in the amount of P423,979.56.

Subsequently, in a letter dated April 25, 2003, which was received by BIR Regional Office on May 6, 2003, petitioner requested for a reconsideration of the assessment made by the respondent.

On June 10, 2003, respondent issued its final decision reiterating its position with respect to the imposition of VAT against the petitioner.

Hence, the instant petition filed on July 22, 2003.

In its Answer filed on August 20, 2003, respondent forwarded the following Special and Affirmative Defenses:

4. The assessment for deficiency VAT in the amount of 423,979.56 for the year 2000 was issued against the petitioner in accordance with law and regulations;

5. Petitioner, as a pawnshop operator, performs services for others for fee, remuneration or consideration. Its gross receipts derived from the sale of such services are subject to VAT under Section 108 (A) of the Tax Code (Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc., CA G.R. No. Sp No. 68180, February 10, 2003; Commissioner of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc., CA G.R. Sp. No. 70319, May 13, 2003);

6. All presumptions are in favor of the correctness of tax assessments.

During the Pre-Trial of the case on April 2, 2004, the counsels for both parties agreed to submit their respective memorandum within thirty days since the only issue to be resolved is whether or not petitioner is subject to VAT.

Petitioner is of the view that under both Section 108 (A) of the NIRC of 1997 and Section 102(a) of the old Tax Code, it is clear that the services of pawnshops are not mentioned therein, therefore, it is not subject to VAT. Likewise, petitioner, to support its theory that pawnshops are not subject to VAT, quotes the decision of the case of Commissioner of Internal Revenue v. Hon. Andres B. Reyes, Jr., et al., CA-G.R. Sp No. 28824 promulgated on December 23, 1993 wherein it was held that a pawnshop is not lending investor, thus, it is not subject to percentage tax. In conclusion, petitioner invokes the principle that in every case of doubt, tax statutes are construed most strongly against the Government and in favor of the citizen because burdens are not to be imposed beyond what the statutes expressly and clearly import (Collector v. La Tondena, Inc L-10431, July 31, 1962).

On the other hand, respondent maintains that this court as well as the Court of Appeals have ruled in several cases that pawnshops are engaged in the sale of services, consequently, they are subject to VAT under Section 108 (A) of the NIRC of 1997. (Commissioner of Internal Revenue v. Exquisite Pawnshop and Jewelry, Inc., *supra*). Respondent stresses the point that the case of CIR v. Hon. Reyes relied by petitioner is not on all fours with the case at bar. The said case involves the imposition of 5% lending investor's tax under the Section 116 of the Tax Code, it does not involve the imposition of the 10% VAT. Section 116 of the Tax Code had been repealed upon the effectivity of R.A. 7716 otherwise known as the Expanded VAT Law on January 1, 1996. Respondent wraps up its arguments by saying that assuming *arguendo* that for purposes of the VAT, pawnshops are not similar to lending investors, their services fall under the phrase "all kinds of services" used in Section 108 (A) of the Tax Code, even if they are not included in the enumerations subject to VAT.

The legal issue on whether a pawnshop is subject to VAT or not has been passed upon by this court in a long line of pawnshop cases and the recent one is the case of *Regional Pawnshop, Inc. v. Bureau of Internal Revenue, South Solano, Nueva Vizcaya, CTA Case No. 6709 promulgated on August 9, 2004*, all pointing to the inclusion of pawnshops as liable to VAT under Section 108 (A) in relation to Section 105 of the NIRC.

Section 108(A) of the 1997 National Internal Revenue Code provides:

> **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, resthouses, 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. xxx. (Underscoring supplied.)

From the foregoing provision, it is apparent that the sale or exchange of services is subject to value-added tax. The phrase "sale or exchange of services" encompasses the performance of all kinds of services for others for a fee, remuneration or consideration. The listing provided for in Section 108 (A) is intended merely to give examples of persons or businesses performing services for a fee, remuneration or consideration. 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. In the case of ***Gomez vs. Ventura*, *54 Phil. 726,*** it was ruled that:

> "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 xxx.)" (Underscoring ours.)

Section 108(A) [formerly Section 102(a)] of the NIRC of 1997 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".

In addition, 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 supplied.)

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)].

Moreover, Section 105 of the Tax Code 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, as amended. This conclusion finds support in recent decisions laid down by the Court of Appeals (***Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc.***, C.A. G.R. SP No. 59282, March 23, 2001;

Commissioner of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc., C.A. G.R. SP No. 59401, September 30, 2002; and ***Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc.***, C.A. G.R. SP No. 68180, promulgated on February 10, 2003; ***Commissioner of Internal Revenue vs. Exquisite Pawnshop & Jewelry, Inc.***, CA-G.R. SP No. 70319, May 13, 2003), where the Court of Appeals categorically ruled that pawnshops are subject to the 10% VAT imposed under Section 108 (A) of R.A. 8424, thus:

> "A value-added tax is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto.
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> In the case at bar, it has been the contention of respondent Agencia Exquisite of Bohol, Inc. that the business of a pawnshop is not similar to that of a lending investor. A pawnshop, according to respondent is principally engaged in the business of delivering money to another, secured by personal property, upon the condition that the latter shall pay the former, otherwise, the thing pawned shall be sold for the payment of the principal obligation. Hence, a pawnshop operator engages in a pledge transaction.
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> We are not convinced. The business of pawnshops are akin to that of lending investors. Respondent itself admitted that a lending investor is a person who makes a practice of lending money for themselves or others at interest. It seems that respondent forgotten that the business of a pawnshop is also to lend money for others at interest. The difference between lending investors and pawnshops lies only on the security given, that is, a lending investor may require both real and personal property as security for the loan; whereas a pawnshop can require only personal property as security for the loan. But in the end, a

lending investor and a pawnshop both engage in the business of lending money for others at interest. Accordingly, a lending investor and a pawnshop are both subject to VAT, pursuant to the provision of the National Internal Revenue Code of 1997 which provides that "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 x x x lending investors x x x."

Even assuming arguendo that we do not classify pawnshops as lending investors, still pawnshops are subject to the 10% VAT imposed under Section 108(A) of R.A. 8424. Pawnshops refer to persons or entities engaged in the business of lending money on personal property delivered as security for loans. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to value added tax. The personal properties delivered by clients of pawnshops as security for the loans which the former obtained from the latter are in the form of remuneration or consideration, for without such personal properties, pawnshops will not extend any loan to a borrower. Furthermore, the payment of interest imposed on a borrower by a pawnshop is equivalent to a fee in exchange of the service provided by the pawnshop in lending money to such borrower. Thus, the phrase "**all kinds of services**" as stated in the second paragraph of Section 108(A) of R.A. 8424 is broad enough to cover the kind of service, that is, lending money in consideration of personal property delivered as security, which is provided by pawnshops to their borrowers. And the enumeration of sale or exchange of services under Section 108(A) of R.A. 8424 does not limit nor exclude other kinds of services performed for a fee, remuneration or consideration. Rather, such enumeration even expanded the meaning of the phrase "**all kinds of services**".

Besides, pawnshops do not merely engage in the service of

> lending money to pawners. Rather, pawnshops also sells, at public auction, personal properties pawned to them, in the event that the pawner fails to redeem the pawn within ninety days from the date of maturity of the obligation, the pawnbroker may **sell or otherwise dispose** of any article taken or received by him in pawn. Thus, by selling properties, pawnshops shall be subject to VAT.
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> Finally, respondent Agencia Exquisite of Bohol, Inc. reiterates that it is claiming exclusion from the coverage of the value-added tax law and it is not claiming exemption from payment thereof. We are not persuaded. When a taxpayer claims exclusion from payment of the VAT, he is thereby claiming exemption from payment thereof. For what is the effect of exclusion from the VAT other than exemption from payment thereof? They have the same effect. That is, when a taxpayer claims exclusion or exemption from payment of the VAT, he is in effect claiming that he is not liable to pay a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services.
>
> It is settled that tax exemptions should be strictly construed against those claiming to be qualified thereto. Any exemption from the payment of a tax must be clearly stated in the language of the law. Pawnshops are not clearly stated in the National Internal Revenue Code of 1997 to be exempted from payment of the VAT. Hence, pawnshops shall be liable to pay ten percent (10%) of their gross receipts derived from its sale or exchange of services as value-added tax." **(Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc., supra)**

It is significant to note that Section 3 of Presidential Decree No. 114, otherwise known as the "Pawnshop Regulation 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 personal property delivered as security for the loan. 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 102(a) [now 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 VAT.

Well settled is the jurisprudence that tax exemptions are strictly construed against the taxpayer **(Cyanamid Phils., Inc. vs. Court of Appeals, 322 SCRA 639).** In the absence of any clear provision of law exempting pawnshops from VAT, then, pawnshops are subject to VAT on their gross receipts considering that they are clearly engaged in the performance of services for a fee, remuneration or consideration.

In the case of **Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation, G.R. No. 125355, March 30, 2000,** the Supreme Court ruled that the taxpayer, not falling within the exemptions mentioned under Section 109 of the Tax Code, 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." xxx
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> xxx xxx xxx
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> 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.
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> 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." (Underscoring supplied)

IN VIEW OF THE FOREGOING, the instant petition is hereby **DENIED** for lack of merit. Accordingly, petitioner is **ORDERED to PAY** the respondent deficiency value-added tax in the amount of Four Hundred

Twenty-three Thousand Nine Hundred Seventy-nine Pesos and 56/100 (P423,979.56) for the taxable year 2000, plus 25% surcharge and 20% annual interest from April 15, 2003 until fully paid pursuant to Sections 248 & 249 of the 1997 Tax Code.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

ERNESTO D. ACOSTA
Presiding Justice