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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AVECILLA BUILDING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 1827

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
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11/10/75

D E C I S I O N

Petitioner is seeking the refund of ₱9,572.69 which it paid as contractor's percentage tax for the period from September, 1964 to September, 1966. Payments were made as follows:

October 20, 1964	....	₱279.00
November 18, "	....	354.00
December 19, "	....	354.00
January 19, 1965	....	384.00
February 17, "	....	354.00
March 17, "	....	354.00
April 20, "	....	354.00
May 19, "	....	354.00
June 18, "	....	399.00
July 19, "	....	399.00
August 17, "	....	399.00
September 20,"	....	399.00
October 18, "	....	399.00
November 18, "	....	399.00
December 15, "	....	210.00

January 19, 1966	....	210.00
February 15, "	....	623.43
March 15, "	....	416.71
April 18, "	....	416.71
September 19,"	....	1,456.40
October 18, "	....	1,058.44
TOTAL	....	P9,572.69

The written claim for refund dated December 5, 1966 was actually filed with the office of respondent on December 6, 1966. Without waiting for the decision of respondent, petitioner filed the instant appeal on February 2, 1967.

The pertinent facts are stated in the memorandum of counsel for respondent, to wit:

> Petitioner is a domestic corporation engaged in the business of "general engineering and contracting of all kinds of constructions and structures; employing and contracting with architects, engineers, surveyors, chemists, and other technical men, to perform engineering and architectural work, including the preparation of surveys, plans, specifications, estimates, etc. and to act as consulting and/or supervising engineers and architects, x x x in connection with the said contracting and building business." (Exh. "1-A", Respondent, p. 134, B.I.R. Recs.).
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> For the period from September, 1964 to September, 1966, inclusive, petitioner was retained for a fixed monthly fee as "work engineers" by the Philippine National Bank, Development Bank of the Philippines and the Social Security System to render, among others, the following services in general:

1. Technical experts in the construction of office buildings to carefully check and fully supervise the work of the contractors engaged by the owner (Philippine National Bank) in the construction of the building. (See p. 72, B.I.R. recs.);

2. Provide the necessary resident superintendence and inspection on behalf of the owner (Development Bank of the Philippines) over the construction undertaken by the appointed contractors (See p. 76, B.I.R. recs.);

3. Provide the services of technical experts in the construction of the building and to fully supervise the work of the contractors engaged by the owner (Social Security System) in the construction of the latter's office building (See p. 81, B.I.R. recs.)

It is undisputed that petitioner did not perform any construction work for the Philippine National Bank, Development Bank of the Philippines and the Social Security System. It was hired merely to supervise the construction of buildings by the building contractors which were contracted by said government corporations to construct buildings for them.

Section 191 of the National Internal Revenue Code imposes a tax of 3% on the gross receipts of "Road, building, irrigation, artesian well, waterworks, and other construction work contractors; filling contractors; demolition and salvage work contractors; x x x and other independent contractors x x x." The work performed by petitioner for the said government corporations does not come under any of the businesses specifically enumerated in Section 191 of the Revenue Code. However, respondent contends that petitioner should be taxed as an "independent contractor."

We have had occasion to pass upon the same issue in a case involving a transfer agent whose work consists mainly in acting as agents of corporations in the issuance and cancellation of shares of stock which are bought and sold in stock exchanges. In that case it was held that an "independent contractor" was taxable under Section 191 of the Revenue Code[1] if the business engaged in by it was similar to any of the businesses enumerated in said section. To quote from our decision in Stock Transfer Service, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 2003, July 29, 1971:[2]

> Section 191 of the Revenue Code enumerates the kinds of contractors who are subject to tax and adds to the list "other independent contractors." xxx x 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

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[1] Before its amendment by P.D. No. 69.

[2] Cert. denied in G.R. No. L-34582, January 25, 1972.

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 persons who are subject to the contractors' tax, the same should be construed to include only those who are engaged in businesses similar to those enumerated.

x x x x

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 12 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 contrivances; 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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> We may also add that if, as alleged, any person performing service for another as an independent contractor is taxable, then a surgeon who performs a surgical operation on a patient would be taxable. The same rule would apply to a dentist who extracts decayed teeth from a patient; or to a lawyer who prepares a deed of sale or any similar instrument for his client; or to a priest or minister who celebrates mass for the dead. There can be no question that these persons may be regarded as independent contractors in the broad sense, and should be subject to the contractor's tax, if respondent is to be believed. That such a result is not in keeping with the legislative purpose is too apparent to require further elucidation.

Our opinion in the case of Stock Transfer Service, Inc., supra, was reiterated in Philippine Psychological Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 2329, October 29, 1975.

Following the ruling laid down in the two cases cited above, we are of the opinion that petitioner, during the period in question, was not an independent contractor within the meaning of Section 191 of the Revenue Code, with respect to its business in furnishing technical services in the construction of buildings, and is not subject to the tax provided therein. It appears, however, that the payments made by petitioner in the months of October, November, and December, 1964, and January, 1965, in the aggregate amount of ₱1,371.00, were made more than two years before this appeal was filed on February 2, 1967. Accordingly, the right to the refund of said amount has prescribed, so that petitioner is entitled to the refund of the sum of ₱8,201.69, instead of the sum of ₱9,572.69. (Sec. 306, Rev. Code; Gibbs v. Collector, 107 Phil. 232.)

IN VIEW OF THE FOREGOING, respondent is hereby ordered to refund to petitioner the aforesaid sum of ₱8,201.69. Without pronouncement as to costs.

SO ORDERED.

Quezon City, November 10, 1975.

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