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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE PSYCHOLOGICAL CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2329

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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10/29/75

D E C I S I O N

Petitioner has appealed from the decision of respondent dated September 3, 1971, requiring it to pay the total amount of ₱4,510.35, as deficiency percentage tax for the year 1965, inclusive of surcharges and compromise penalty.

Petitioner is a domestic corporation organized for the following principal objectives:

> To adapt, standardize, and publish foreign made tests into language or languages appropriate for educational, social and business institutions in the Philippines; to undertake research in test construction and publication of Philippine made tests; to print and distribute in the Philippines the regular English language edition of foreign made tests; to provide personal testing and psychological services to individuals, business and industrial establishments, government entities and educational institutions; x x x and other entities requiring psychological services; and to provide facilities for the training of technical, professional, or specialized personnel in connection therewith. (See p. 26, BIR rec. & p. 37, CTA rec.)

In 1965, petitioner realized from the sale of reprints of foreign made test materials the sum of

₱31,456.25. For administering mental tests to interested parties, it also realized in the same year the sum of ₱51,598.00. It filed its income tax return and paid the tax due on said amounts. However, no business tax was paid in connection with said business operations of petitioner.

After investigation, a revenue examiner recommended that petitioner be required to pay the percentage tax as a publisher with respect to its sales of test materials and as an independent contractor in regard to the amount realized for administering mental tests, pursuant to Section 191 of the National Internal Revenue Code. Accordingly, on April 8, 1971, respondent issued an assessment against the petitioner holding it liable for the amount of ₱4,360.35, as percentage tax and surcharges, pursuant to Sections 191 and 183 of the Revenue Code, itemized as follows:

Gross receipts as publisher. .	₱31,456.25
Gross receipts as independent contractor	51,598.00
Total taxable sales/receipts .	₱83,054.25
3% tax due thereon	2,491.63
50% surcharge	1,245.81
25% surcharge	622.91
TOTAL AMOUNT DUE	₱4,360.35

On September 28, 1971, after receipt of respondent's letter of September 3, 1971, which denied its request for reconsideration of the assessment, petitioner interposed the present appeal.

The issues to be resolved are the following:

(1) Whether or not petitioner is liable to the percentage tax as a <u>publisher</u>; and

(2) Whether or not it is liable to the same tax as <u>independent contractor</u>.

The law involved in these two issues is the first paragraph of Section 191 of the National Internal Revenue Code, as amended by Republic Act No. 2376, reading as follows:

> SEC. 191. <u>Percentage tax on road, building, irrigation, artesian well, waterworks, and other contruction work contractors, proprietors or operators of dockyards, and others</u>.- Road, building, irrigation, artesian well, waterworks, and other construction work contractors; filling contractors; demolition and salvage work contractors; arrastre contractors; persons engaged in the installation of gas or electric light, heat, or power; persons selling water, light, heat, or power, except those paying a franchise tax; proprietors or operators of dockyards, mine drilling apparatus, smelting plants, engraving plants, plating establishments, plastic lamination establishments, vulcanizing and recapping establishments; establishments for washing and/or greasing of motor vehicles, battery charging, planing or surfacing and recutting of lumber; sawmills under contract to saw and/or cut logs belonging to others; drycleaning or dyeing establishments, steam laundries, laundries using washing machines; photographic studios, telephone or telegraph lines or exchanges, broadcasting or wireless stations, funeral parlors; shops for the construction or repair of bicycles or vehicles or any kind, mechanical devices, instruments, apparatus, or furniture of any kind, shoe repairing by machine or any mechanical contrivance, and tailor shops; beauty parlors, dressmakers, milliners, hatters, keepers of

> hotels, lodging houses, stevedores, warehousemen, plumbers, smiths; house or sign painters; lithographers, publishers, except those engaged in the publication or printing and publication of any newspaper, magazine, review or bulletin which appears at regular intervals, with fixed prices for subscription and sale, and which is not devoted principally to the publication of advertisements; printers, bookbinders, business agents and other independent contractors, except persons, associations and corporations under contract for embroidery and apparel for export as well as their agents and contractors, shall pay a tax equivalent to three *per centum* of their gross receipts. (Underlining supplied.)

Petitioner is engaged in reprinting foreign made test materials for sale to interested parties. It is, therefore, a publisher within the meaning of Section 191 of the Revenue Code which imposes a percentage tax of 3% on the gross receipts of publishers.

The term "publisher" has been defined as -

> "One who publishes; esp., one who causes to be issued, from the press, and offers for sale or circulation, matter printed, engraved, or the like; a person or corporation whose business is the publication of books, periodicals, music, maps, and the like." (Webster's New International Dictionary, Second Ed.)

It is not denied that petitioner reprints or causes to be reprinted foreign made test materials which it sells to interested parties. It is, therefore, difficult to comprehend the insistence of petitioner that it is not a publisher. The assessment against it as a publisher must perforce be sustained.

Coming now to the question whether or not petitioner is an independent contractor in connection with its business of administering or conducting mental tests, we are inclined to sustain petitioner. The business of administering mental or psychological tests is not among the businesses enumerated in Section 191 of the Revenue Code, neither may the said business be considered as falling within any of the classes of businesses enumerated in said section.

The ruling which we find pertinent and relevant to this issue has been expressed by this Court in the case of Stock Transfer Service, Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 2003, July 29, 1971[1]:

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

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[1] Cert. denied in G.R. No. L-34582, Jan. 25, 1972.

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.

x x x x

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.

In line with the foregoing opinion, the decision appealed from is hereby modified in the sense that the assessment against petitioner as a publisher is sustained while the assessment against it as an independent contractor is reversed. Accordingly, petitioner is liable for the sum of ₱1,179.61, as itemized below:

3% tax on ₱31,456.25, representing the gross receipts of petitioner as publisher. .	₱943.69
25% surcharge for late payment	235.92
TOTAL	₱1,179.61

Petitioner can not be held liable for the surcharge of 50% as fraud penalty, it not appearing that its failure to file the necessary returns and to pay the percentage tax was due to a fraudulent intent to evade the tax.

WHEREFORE, petitioner is hereby ordered to pay the said sum of ₱1,179.61 within thirty days from the date this decision becomes final.

SO ORDERED.

Quezon City, October 29, 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

(34)