

APPEAL COURT
STATE OF HAWAII

NO. 1122

IN THE TAX APPEAL COURT OF THE STATE OF HAWAII

In the Matter of the Appeal)
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 of)
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 HOSOI GARDEN MORTUARY, INC.)
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FINDINGS OF FACT AND CONCLUSIONS OF LAW

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on to be tried before this Court on the 19th day of November, 1968; SHUICHI MIYASAKI of the law firm of Okumura and Takushi appeared as attorney for the Appellant, HOSOI GARDEN MORTUARY, INC., and ROY M. KODANI, Deputy Attorney General of the State of Hawaii appeared for the Director of Taxation of the State of Hawaii, and the Court having heard the testimony of witnesses and the oral arguments of respective counsel and having examined the proofs offered by the respective parties and the Court having been fully advised finds as follows:

1. That Appellant, HOSOI GARDEN MORTUARY, INC. (hereinafter referred to as "Hosoi") is a Hawaii corporation duly organized and existing under the laws of the State of Hawaii and at all times mentioned herein was doing business under said name in the State of Hawaii.

2. That the disputes involved are as follows:

a. Whether the general excise tax assessment dated July 21, 1966 for the taxable period, June 1, 1960 through December 31, 1965 under Section 117-17.1 of the Revised Laws of Hawaii 1955, as amended, in the amount of \$20,827.44 was a proper assessment.

b. Whether the compensating tax assessment dated July 21, 1966 for the taxable period June 1, 1960 through December 31, 1965 under Chapter 118 of the Revised Laws of Hawaii 1955, as amended, in the amount of \$212.00 was a valid assessment inasmuch as said chapter was repealed by Act 155, Session Laws of Hawaii 1965, effective January 1, 1966.

3. That Section 117-17.1 of the Revised Laws of Hawaii 1955, as amended as of the date of assessment reads as follows:

"§117-17.1 Principles applicable in certain situations. A person or company having shareholders or members (a corporation, association, group, trust, partnership, joint adventure or other person) is taxable upon its business with them, and they are taxable upon their business with it. A person or company, whether or not called a co-operative, through which shareholders or members are pursuing a common objective (for example, the obtaining of property or services for their individual businesses or use, or the marketing of their individual products) is a taxable person, and such facts do not give rise to any tax exemption or tax benefit except as specifically provided. Even though a business has some of the aspects of agency it shall not be so regarded unless it is a true agency. Without prejudice to the generality of the foregoing, the reimbursement by one person of the amount of costs incurred by another constitutes gross income of the latter, unless the person making the reimbursement was himself, as principal, liable in that amount to the third party who furnished the property, services and the like for which the costs were incurred."

4. That the activity giving rise to the assessment for the general excise tax was as follows:

a. The agreement between Hosoi and the decedent's family or personal representative clearly segregated Hosoi's mortuary and funeral home

services from those items and services obtained from third-party vendors at the direction and authorization of a decedent's family or personal representative;

b. The decedent's family or personal representative authorized Hosoi to obtain those segregated items and services which involved advances from Hosoi to third-party vendors upon terms and conditions authorized by the decedent's family or personal representative;

c. That the items and services obtained from third-party vendors for the decedent's family or personal representative differed from time to time to meet the differing direction and authorization as to items, services and price limitations set by a given decedent's family or personal representative;

d. The decedent's family or personal representative sometimes paid for such items and services obtained for them from third-party vendors directly to the third-party vendors and at other times authorized Hosoi to make advances for the purchase price of such items and services on an agreement to reimburse Hosoi for such advancements;

e. That Hosoi upon being authorized to obtain the items or services from third-party vendors, did obtain them for the decedent's family or personal representative within Hosoi's authorized scope of authority and accounted for the advances, when involved, to the decedent's family or personal representative.

f. That Hosoi was an agent for obtaining items or services from third-party vendors for decedent's family or personal representative.

5. That the assessment for compensating tax under Chapter 118 of the Revised Laws of Hawaii 1955, as amended, for the period June 1, 1960 through December 31, 1965 in the amount

of \$212.00 was made on July 21, 1966 after the repeal of said Chapter 118 by Act 155 of the Session Laws of Hawaii 1965 which became effective on January 1, 1966.

CONCLUSIONS OF LAW

1. This Court concludes that a "true agency" as recited in the third sentence of Section 117-17.1 of the Revised Laws of Hawaii 1955, as amended, does exist in the instant situation, wherein Hosoi acted as agent for and on behalf of the principals, namely the decedent's family or personal representative.

2. It is an old and familiar principle that where there is a specific provision and a general provision in the same statute, the specific provision must control, and the general provision must be taken to affect only such cases within its general language as are not within the provisions of the particular provision. 50 Am. Jur. § 367. Our Supreme Court in Erwin v. Ahia, 29 Haw. 1 at page 5 stated that:

"As to the general rule applicable in the construction of statutes there can be no doubt. The object is always to ascertain and give effect to the intention of the legislature. 'This intention, however, must be the intention as expressed in the statute, and where the meaning of the language is plain, it must be given effect by the courts, or they would be assuming legislative authority'. 36 Cyc. 1106, 1107. 'Whatever is necessarily or plainly implied in a statute is as much a part of it as that which is expressed. But a statute should not be extended beyond the fair and reasonable meaning of its terms because of some supposed policy of the law, or because the legislature did not use proper words to express its meaning.' Ib. 1112, 1113."

See also, Re Taxes, Pacific Refiners, Ltd., 41 Haw. 615; Kauai County v. Shiraishi, 41 Haw. 156; Yoshizawa v. Hewitt, 31 Haw. 625.

3. An agency relationship may be entered into for any lawful purpose and the intention of the parties to a contract is paramount to the manner chosen to effect such a relationship, so that the intention of the parties governs the meaning of legal instruments and acts pursuant thereto in the construction of the contracts. See In Re Taxes, Aiea Dairy, Ltd., 46 Haw. 293.

4. It is accordingly a consequence of the relationship of principal and agent that whatever an agent does in the lawful prosecution of the transaction entrusted to him is the act of the principal. Barnes v. De Fries et al., 24 Haw. 401.

5. Consequently, the principal, in this instance the decedent's family or the personal representative, is liable to the third-party vendors for such items and services obtained in behalf of the principal by Hosoi, the agent, and the reimbursement for advances made by the decedent's family or personal representative to Hosoi is not taxable as gross income to Hosoi under Section 117-17.1 of the Revised Laws of Hawaii 1955, as amended, hereinabove quoted in full.

6. The repeal of Chapter 118 of the Revised Laws of Hawaii 1955, as amended, by Act 155, Session Laws of Hawaii 1965 did not invalidate the assessment for compensating taxes for the period June 1, 1960 through December 31, 1965 because the savings clause found in Section 3 of Act 155, Session Laws

of Hawaii 1965 preserves the right of the Director of Taxation to make the assessment involved herein.

Judgement in accordance with the foregoing shall be signed upon presentation.

Dated at Honolulu, Hawaii this 19th day of December, 1968.

David W. King

JUDGE OF THE ABOVE ENTITLED COURT

Approved as to form:

rs. Roy M. Kodani

ROY M. KODANI
Deputy Attorney General
State of Hawaii

Attorney for Appellee

[Faint, illegible stamp or signature]