

1970

Carlsmith

Case No. 1236

IN THE TAX APPEAL COURT OF THE STATE OF HAWAII *cc*

In the Matter of the Tax Appeal
of
PLANNING RESEARCH CORPORATION,
Appellant.

8/25/70

FINDINGS OF FACT AND CONCLUSIONS OF LAW

and

JUDGMENT

Carlsmith
cc

CARLSMITH, CARLSMITH,
WICHMAN AND CASE

Of Counsel.

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IN THE TAX APPEAL COURT OF THE STATE OF HAWAII

Case No. 1236

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of
PLANNING RESEARCH CORPORATION,
Appellant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came on for trial before the Court without a jury, and the Court having duly considered the facts and being fully advised in the premises makes and files the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The parties stipulated to the facts in this case and filed with this Court an Agreed Statement of Facts, which is incorporated herein by reference, and certain portions of which are hereafter summarized.
2. Appellant is in the business of providing computer technology to organizations which possess electronic computer facilities. More specifically, Appellant's business is (a) to research how a computer facility can be operated to perform tasks and solve problems for the organization, according to its particular needs, and (b) to put the computer facility into actual operation by formulating the specific "systems" and "programs" which enable the computer to fulfill its functions.

3. From 1960 to the present, Appellant performed several contracts for the Office of Naval Research, Department of the Navy, involving the Navy's computer facilities on Oahu.

4. The primary purpose of said contracts was to make the computer facilities operational to assist in the management of intelligence and logistics aspects of tactical warfare and other military operations.

5. Said contracts have generated Appellant's entire gross income in Hawaii since 1960.

6. Appellant filed monthly general excise tax returns with the State of Hawaii for the months of July through December 1965 and January through August 1966 showing general excise tax payable to its gross income in the amount of \$22,746.77 and Appellant paid said general excise tax accordingly.

7. On October 20, 1966, Appellant filed a letter with the Tax Collector, First Taxation Division, stating that it wished to file a refund claim for all taxes previously paid from June 28, 1965 through August 1966, on the grounds that all of the income in said period was exempt from the general excise tax under Hawaii Revised Statutes 237-26 (then Revised Laws of Hawaii 1955, Section 117-21.6).

8. On September 18, 1967, the Director of Taxation of the State of Hawaii issued a ruling (No. 19-67) denying the refund on the grounds that said exemption did not apply to Appellant's contracts.

9. On all its returns from September 1966 through March 1969, Appellant showed all of its gross income as exempt under Hawaii Revised Statutes 237-26.

10. On September 9, 1969, the Tax Assessor issued an assessment against Appellant of which \$72,904.35 constituted the amount of tax on gross income claimed by Appellant to be exempt under Hawaii Revised Statutes 237-26.

11. Appellant paid the amount of said assessment under protest and filed notice of this appeal on September 29, 1969, with respect to both said assessment and said erroneous overpayment.

CONCLUSIONS OF LAW

1. The terms "electronic . . . or other scientific facilities," in Hawaii Revised Statutes § 237-26, in their literal and commonly understood meaning, include an electronic computer facility.

2. All of Appellant's contracts in this case involved "primarily the research and development for . . . or the operation of "those facilities, within the literal and commonly understood meaning of those terms, in Hawaii Revised Statutes § 237-26.

3. All of Appellant's gross income on which the erroneous overpayment of \$22,746.77, and the Director's assessment of \$72,904.35, were based, is exempt from the general excise tax law under Hawaii Revised Statutes § 237-26.

4. Appellant is entitled to recover the sum of \$72,904.35, with two percent interest, the amount of general excise taxes paid under protest.

5. The \$22,746.77 in general excise taxes erroneously paid by Appellant was not paid under protest nor was suit filed within 30 days of payment. This Court can find no

statutory authority giving it jurisdiction to enter judgment for Appellant to recover said amount.

6. Judgment will be entered in favor of Appellant and against Appellee in the amount of \$72,904.35, plus interest at the rate of two percent per annum from September 29, 1969, as provided in Hawaii Revised Statutes § 40-35.

DATED: Honolulu, Hawaii, August 25th, 1970.

Dick Yin Wong

Judge Dick Yin Wong
Judge of the Above-Entitled Court

APPROVED AS TO FORM:

T. Bruce Honda

T. Bruce Honda
Deputy Attorney General
Attorney for Appellee
Director of Taxation

IN THE TAX APPEAL COURT OF THE STATE OF HAWAII

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PLANNING RESEARCH CORPORATION,
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JUDGMENT

This case having been tried without a jury, both parties appearing by their respective counsel; and the Court after due deliberation having made and filed its Findings of Fact and Conclusions of Law on the date hereof,

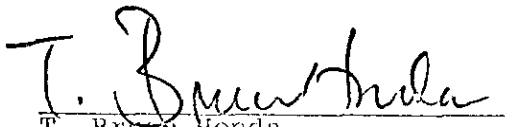
IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That the assessments of general excise taxes against Appellant for the period from September 1966 through March 1969 are contrary to law, and that Appellant shall have judgment against Appellee in the amount of \$72,904.35 plus interest as provided by Hawaii Revised Statutes § 40-35; and that the general excise taxes previously paid by Appellant not under protest are government realizations.

DATED: Honolulu, Hawaii, August 25th, 1970.

Judge Dick Yin Wong
Judge of the Above-Entitled Court

APPROVED AS TO FORM:


T. Bruce Honda
Deputy Attorney General
Attorney for Appellee,
Director of Taxation