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TAX APPEAL COURT  
STATE OF HAWAII  
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BARBARA E. WRIGHT  
CLERK

Attorneys for Director of Taxation

IN THE TAX APPEAL COURT OF THE  
STATE OF HAWAII

In the Matter of the Tax	)	Case Nos. 2748 and 2759
Appeal	)	(Consolidated)
	)	
of	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
BISHOP SQUARE ASSOCIATES.	)	
	)	
_____	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case was argued before the Honorable Robert G. Klein on October 25, 1991. Nathan J. Sult represented the Taxpayer and Carlton W. M. Seu represented the Director of Taxation (hereinafter "Director"). The court, having considered all the evidence presented in this action by stipulation, and the oral and written arguments of counsel, enters the following findings of fact and conclusions of law.

Findings of Fact

1. The issue in this case is whether a partnership qualifies for the tax exemptions of its individual partners under the general excise tax law, Hawaii Revised Statutes

("HRS") Chapter 237.

A TRUE COPY, ATTEST WITH  
THE SEAL OF SAID COURT.

LYNETTE AJIMINE

Deputy Registrar

2. Bishop Square Associates ("Taxpayer") is a Hawaii general partnership comprised of Northwestern Mutual Life Insurance Company ("NML"), an insurance company, and the California State Public Employees Retirement System ("CALPERS"), an employee retirement system.

3. Each partner owns a 50 percent undivided interest in the partnership.

4. Taxpayer is engaged in the business of ownership and management of real property, including acquiring, owning, managing and operating its property, and acquiring any other land or real property or interest therein, leasing, financing, refinancing, selling or otherwise transferring or disposing of its property, or any part thereof or interest therein, and carrying out all other activities necessary or incidental to the purposes described above.

5. At all times pertinent to the instant action, Taxpayer has held title to the property known as "Bishop Square", being the land described in the Special Warranty Deed, dated October 2, 1989, filed in the Bureau of Conveyances at Liber 23732, page 511, including all buildings situated on the property which includes one 28-story office building called "Pauahi Tower," and one 30-story office building called "Pacific Tower," a 10-story parking structure, and space for a number of retail businesses.

6. At all times pertinent to the instant action, Taxpayer has leased the office, retail, and parking spaces situated on the property for profit.

7. Taxpayer, as landlord has executed all of its leases in the name of Bishop Square Associates.

8. Taxpayer, by its governing instrument, the "Joint Venture Agreement," dated October 5, 1989 is "the sole entity entitled to operate, deal with and make agreements concerning Joint Venture assets."

9. Taxpayer has its own name, utilizes the recording offices of the State, is registered as a general partnership with the State, holds a general excise tax license, files Partnership Returns of Income with the State, and defends itself as an entity in the courts of the State.

10. Taxpayer conducts its own business separate and apart from the businesses of its individual partners.

11. At all times pertinent to these actions, NML was exempt from payment of general excise tax pursuant to § 237-23(a)(4), Hawaii Revised Statutes (1989) as an insurance company which pays taxes under Chapter 431, Hawaii Revised Statutes. Income received by CALPERS was exempt from the imposition of the general excise tax pursuant to § 237-24(21), Hawaii Revised Statutes (1989), because of CALPERS's status as an employee benefit plan.

12. Taxpayer is neither an insurance company nor an employee benefit plan within the meaning of HRS § 237-23(a)(4) or HRS § 237-24(21), respectively.

13. The Director assessed Taxpayer with \$213,725.58 in unpaid general excise taxes for the period beginning October 1, 1989 and ending December 31, 1989.

14. The Director assessed Taxpayer the amount of \$479,692.23 in unpaid general excise tax for the period beginning January 1, 1990 and ending June 30, 1990.

15. The amounts assessed as described in paragraphs 13 and 14, above, were paid under protest by Taxpayer and are the subject of these consolidated cases.

#### Conclusions of Law

1. Section 237-13, Hawaii Revised Statutes ("HRS"), imposes annual privilege taxes on "persons on account of their business and other activities in the State measured by the application of rates against the values of products, gross proceeds of sales, or gross income."

2. Under HRS § 237-1, "person" includes every partnership.

3. Taxpayer is a general partnership.

4. Taxpayer is a "person" subject to general excise tax and is therefore taxed as a single entity.

5. The general excise tax law treats partnerships as taxable entities which are required to pay the general excise tax with respect to the business in which they engage. In re Island Holidays, 59 Haw. 307, 309, 582 P.2d 703 (1978).

6. The general excise tax is imposed upon the partnership as a single entity, not upon the partners in the aggregate.

7. General excise tax exemptions of individuals or entities do not extend to taxable persons of which such individuals or entities are members.

8. Under the general excise tax law, exemptions of individual partners do not extend and do not apply to the partnership of which the individual partners are members.

9. Neither NML's tax exemption under HRS § 237-23(a)(4), nor CALPERS'S tax exemption under HRS § 237-24(21) applies to Taxpayer.

10. Taxpayer itself is neither an insurance company within the meaning of HRS § 237-23(a)(4) nor an employee benefit plan within the meaning of HRS § 237-24(21) and therefore does not qualify for an exemption under either of said sections.

11. Taxpayer has not claimed any other general excise tax exemption under HRS Chapter 237 in these proceedings.

12. The amounts of general excise tax imposed on Taxpayer, \$213,725.58 for the period beginning October 1, 1989 and ending December 31, 1989, and \$479,692.23 for the period beginning January 1, 1990 and ending June 30, 1990 are proper and legally due the State of Hawaii and judgment should be entered in favor of the Director for the total amount in dispute.

DATED: Honolulu, Hawaii, DEC 27 1991

*Robert G. Kline*

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

*Nathan G. Sult*

NATHAN G. SULT  
Attorney for Bishop Square  
Associates