

APPEAL COURT
STATE OF HAWAII
FILED

CARLSMITH BALL WICHMAN
CASE & ICHIKI

Nov 25 9 46 AM '97

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CLERK

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THE BOEING COMPANY

IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

In the Matter of the Tax Appeal) T.A. NO. 96-5320
)
of) STIPULATED JUDGMENT
)
THE BOEING COMPANY,)
)
Taxpayer.) TRIAL DATE: Not yet set
) JUDGE: Honorable James R. Aiona, Jr.
)
_____)

STIPULATED JUDGMENT

WHEREAS, Haw. Rev. Stat. § 237-26 exempts from the general excise tax gross proceeds derived from the performance of “scientific work,” which is defined as “work involving primarily the research and development for, or the design, manufacture, instrumentation, installation, maintenance, or operation of aerospace, agricultural, astronomical, biomedical, electronic, geophysical, oceanographic, test range, or other scientific facilities”;

WHEREAS, the Legislature has stated that the purpose of Haw. Rev. Stat. § 237-26 is to attract “sophisticated research and development work” to this State. S.J.S. STAND. COM. REP. No. 2471, 14th LEG. 1052 (Haw. 1988);

WHEREAS, research and development is divided into three classes: 1) basic research, 2) applied research, and 3) development based on basic and applied research. Carl Heyel, ed., Handbook of Industrial Research Management 119-20 (2nd ed. 1968);

WHEREAS, the federal funds used to pay Taxpayer were designated as either “Operations and Maintenance” or “Procurement” funds, bearing the numerical designations “3400” and “3080” respectively, and none were designated as “Research and Development” funds bearing the designation “3600”;

WHEREAS, Taxpayer, The Boeing Company (“Taxpayer”), and the Director of Taxation, State of Hawaii (“Director”), dispute whether Taxpayer’s design, production, testing, installation, maintenance and operation of a command, control, communication, and intelligence computer system and software, which was produced and tested at the Software Support Facility at Hickam Air Force Base, Hawaii, to be fielded for operational use in the Republic of Korea, constitute scientific research and development;

WHEREAS, the Taxpayer and the Director wish to settle this case and have agreed to make this Stipulated Judgment.

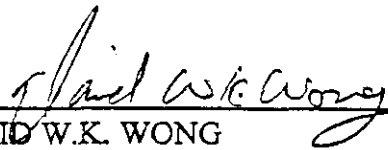
NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the parties hereto, through their respective counsel, that Judgment be and hereby is entered as follows:

1. The Taxpayer shall be refunded the sum of FOUR HUNDRED FIFTY THREE THOUSAND SEVEN HUNDRED TWENTY-TWO AND NO/100 DOLLARS (\$453,722.00) from the litigated claims fund, within thirty (30) days from entry of this Stipulated Judgment.

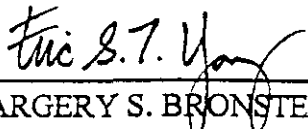
2. After payment of the refund to the Taxpayer in the amount set forth above, all remaining funds being held by the Director subject to Taxpayer's claim for refund, in the approximate amount of FIVE HUNDRED THIRTY-TWO THOUSAND SEVEN HUNDRED SIXTEEN AND NO/100 DOLLARS (\$532,716.00), which sum includes seventy-two percent (72%) of the taxes assessed, shall be released to the general fund of the State of Hawaii.

3. The Taxpayer and the Director shall each bear their own attorneys' fees and costs in this matter.

DATED: Honolulu, Hawaii, NOV 17 1997.



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