T. BRUCE HONDA 690
Deputy Attorney General
State of Hawaii
425 Queen Street, Room 305
Honolulu, Hawaii 96813
Tel. No. 548-4761

Attorney for Director
of Taxation, Defendant

IN THE TAX APPEAL COURT OF THE STATE OF HAWAII

EUROCARS OF HAWAII, LTD., a Hawaii corporation, Plaintiff, vs. RALPH N. KONDO, Director of Taxation, Defendant.	CASE NO. 1482 FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came on for decision on an agreed statement of facts and the Court, having duly considered the briefs of counsel and otherwise being fully advised in the premises, makes and files the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plantiff Taxpayer is a corporation duly organized and existing under the laws of the State of Hawaii and at all times pertinent hereto has been licensed under the provisions of Chapter 237, Hawaii Revised Statutes.

2. The Taxpayer is engaged in the business of selling and leasing new automobiles. All of the automobiles used in its business have been purchased directly from its out-of-state manufacturer and have been imported for sale or lease in this State.

3. Whenever automobiles are leased, the Taxpayer enters into a lease agreement with the lessee using either of the lease forms attached as Exhibits A and B, Supplemental Stipulation of Facts. The leases are for periods of three years. However, in situations where the leases have been terminated prior to the expiration of their lease terms, the average periods of such leases have been approximately eighteen months.

4. Upon termination of the lease agreements, the Taxpayer disposes of the automobiles either by sale to the lessees or by selling them as used cars to the general public.

5. In its use tax returns, the Taxpayer has treated all of the automobiles, including those used in its leasing activities, as having been imported for purposes of resale and has paid use taxes thereon at the rate of one-half of one per cent. It has not reported any of the automobiles as having been imported for purposes of the Taxpayer's own use or consumption.

6. For the period June 1, 1970 through May 31, 1973, the Taxpayer was assessed additional use taxes in the total amount of $8,002.58, together with interest, after allowance for the one-half of one per cent theretofore paid.

7. Notice of the additional taxes assessed to the Taxpayer was given on June 10, 1974. The Taxpayer paid the taxes under protest on July 5, 1974.

CONCLUSIONS OF LAW

1. The Court concludes that the automobiles used by the Taxpayer in its leasing business have been imported for the Taxpayer's own use or consumption, consequently, they have not been imported for purposes of resale as the Taxpayer contends.

The use tax law has been adopted by our legislature as a tax complementary to the general excise tax. Under the general excise-use tax scheme, unless an intention to the contrary is expressed, the same rules are to apply to both the general excise and use tax laws. See Barrett Investment Company v. State Tax Commission, 387 P.2d 998 (Utah 1964); Morrison-Knudson Co., Inc. v. State Board of Equalization, 135 P.2d 927 (Wyo. 1943). The case of In Re Taxes, Dobbs Houses, Inc., 53 Haw. 195 (1971), has determined that sales of automobiles to an automobile leasing company constitute sales at the retail, not the wholesale, level under the section of the general excise tax law which defines a retail sale to include "(1) . . . the sale of tangible personal property, for consumption or use by the purchaser, and not for purposes of resale." (HRS Section 237-10(a)(1).) An analysis of the lease forms used by the Taxpayer leads this Court to conclude that Dobbs Houses, is dispositive of the question presented in this case. In Dobbs Houses, the Court concluded that a motor vehicle lease is in substance a lease where the agreement (1) contains no expressed option to purchase at the end of the lease term; (2) the purchase price remaining at the end of the term is not nominal; (3) there is no provisions for the present or future passage of title

from the lessor to the lessee; (4) the agreement specifically negates any suggestion that the lessee thereunder has any title to or equity in the leased automobile. In their relevant provisions, the lease forms used by the Taxpayer herein are identical with that discussed by the Court in Dobbs Houses. The leasing of automobiles in this case, therefore, does not constitute a sale of such automobiles. It follows, then, that the automobiles have been used by the Taxpayer for the production of income, consequently, for purposes of HRS Chapter 238, they have been imported for the Taxpayer's own use or consumption.

The Court agrees with the Director's contention, that, if the automobiles had been purchased in this State, the transaction would not be characterized as a wholesale sale within the purview of HRS Section 237-4(8). Under the section, sales to licensed leasing companies which leases capital goods as a service to others are deemed to be wholesale sales and the section defines capital goods to mean goods which have a depreciable life of more than three years. In the case at bar, the automobiles are leased for periods up to, but not exceeding, three years except where the leases have been terminated prior to the expiration of their term. In situations where the leases have been sooner terminated, the automobiles have been held for an average period of eighteen months. The Court, therefore, finds that the automobiles do not have a depreciable life of more than three years and concludes that the automobiles are not capital goods for purposes of HRS Section 237-4 (8). In light thereof, if the automobiles had been purchased in this State, the transactions would be deemed to be retail, not wholesale, sales.

2. The Court also concludes that the use of the term "transfer" in the definition of the word "sale" embodied in HRS Section 238-1 does not include leases within its purview. The taxpayer urges that, by according the term "transfer" its ordinary and proper meaning, the term means that there is a change of possession for a term. A lease, the Taxpayer argues, results in a change of possession for a term and it therefore urges this Court to conclude that a sale results from the leasing of automobiles.

Words in a statute, however, cannot be isolated and be given a meaning foreign to their context. The proper course is to seek out and follow the true intent of the legislature and to adopt that sense of the word which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature. See State v. Prevo, 44 Haw. 665 (1961). The Taxpayer, however, argues that the definitions embodied in the general excise tax law should not be accorded the same treatment as those contained in the use tax law. The Taxpayer's contention, therefore, would disregard the complementary nature of the general excise-use tax scheme. Under the circumstances, it can hardly be said that the Taxpayer's construction will best harmonize and promote in the fullest manner the policy and objects of the legislature. The Court, therefore, must reject the construction urged by the Taxpayer.

3. The Court further concludes that the assessments herein do not discriminate against the Taxpayer; accordingly, the assessments do not violate the commerce clause of the United States Constitution. "Equal treatment

for in-state and out-of-state taxpayers similarly situated is the condition precedent for a valid use tax . . . ." Halliburton Oil Well Co. v. Reilly, 373 U.S. 64 (1963), at page 71. The proper comparison to be made, therefore, is between the Taxpayer herein and a taxpayer similarly circumstanced who makes his purchases from a seller located in this State. In this case, the Taxpayer has purchased its automobiles from out of state and thereafter has imported them into this State for its own use or consumption. Use taxes at the four per cent rate has been assessed to the Taxpayer upon these imports. Similarly, a taxpayer who purchases his automobiles from a seller located within this State is made subject to general excise taxes at the four per cent rate. Such a transaction is characterized as a retail sale under the section which defines retailing to include the sale of tangible personal property for consumption or use by the purchaser and not for purposes of resale. (HRS Section 237-10(a)(1).) When the proper comparison is made, then, the Taxpayer herein is not made to pay any greater burden than the taxpayer who has purchased from within. The assessments, therefore, do not place an unconstitutional burden upon interstate commerce.

4. Judgment will be entered for the Director of Taxation and the sum of $8,002.58 shall be, and is hereby made, a lawful government realization.

Dated: Honolulu, Hawaii, January 8, 1975.

(S) Yasutaka Fukushima

Judge of the above entitled Court

APPROVED AS TO FORM:

for Nicholas C. Dreher

C. MICHAEL HARE 1307-0
CADES SCHUTTE FLEMING
& WRIGHT
165 South King Street
Honolulu, Hawaii 96813

Attorney for Plaintiff