

IN THE TAX APPEAL COURT OF THE STATE OF HAWAII



HAWAII HOCHI, LTD.,  
 Plaintiff,  
 vs.  
 GORDON WONG in his capacity  
 as Director of Taxation,  
 State of Hawaii and PUBLIC  
 ACCOUNTANT, State Of Hawaii,  
 Defendants.

Case No. 1733

DECISION

*Handwritten signature: Daniel K. Grant*

JUN 21 2017

TAX APPEAL COURT  
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DECISION

These proceedings involve the assessment by the Director of Taxation of additional general excise taxes imposed pursuant to the provisions of HRS Chapter 237.

The facts in this case are set forth in the Stipulation of Facts on file with the record of this appeal and are incorporated herein and by reference made a part of this Decision.

The Taxpayer is licensed to do business in the State as a commercial job printer. It also prints and publishes a local language newspaper. As a job printer, the Taxpayer incorporates paper, ink and other assorted materials into a publication known as "This Week in the Aloha State". The publication is printed upon order by Visitor Publications, Inc. The publication is owned by Visitor and is made up mostly of advertisements with the remainder being devoted to providing information and material of interest to tourists. The publication is distributed to the public generally without charge. The advertising revenues are reported by Visitor at

the four per cent rate. No part of the advertising revenues is involved in the herein appeal.

The Taxpayer has reported all of the gross receipts received from its job printing activities at the one-half of one per cent rate, including the receipts derived from the printing of the This Week publication. The Director has classified these activities as retail activities and has accordingly assessed general excise taxes at the higher four per cent rate.

The Director contends the higher rate is applicable because, by virtue of HRS Section 237-13(2)(D), when a manufacturer in addition to exercising his privilege of engaging in business as a manufacturer sells his products at the wholesale or retail level, he is subject to the general excise tax for such selling activities. The applicable tax rate is either one-half per cent for sales at wholesale or four per cent for its retail sales. In this case, the Director contends the sale of the This Week publication to Visitor is a retail activity because the publication was not resold but was consumed by Visitor for its own use and purposes. HRS Section 237-16. See, In Re Taxes, Dobbs Houses, Inc., 53 Haw. 195 (1971).

The Taxpayer asserts the lower tax rate is applicable because, as a commercial job printer, by Act 180 the Legislature intended it be classified as a manufacturer and its activities be taxed at the lower rate. It also asserts that, notwithstanding its activities as a manufacturer it should nevertheless be properly taxed at the lower rate because the work performed hereunder is a service activity and

that in the performance of the service, it acted as an intermediary. It alleges intermediaries are properly to be taxed at the one-half per cent rate by virtue of HRS Section 237-13(6).

The Court agrees with the Director.

Exemptions from taxation are to be strictly construed against the taxpayer. Where the taxpayer seeks a reduction in taxes, the taxpayer seeks an exemption and the statute is to be construed strictly against the taxpayer. The burden, thus, is upon the Taxpayer to show by clear and convincing proof that it is entitled to be taxed at the lower rate.

Honolulu Star-Bulletin, Limited v. Burns, 50 Haw. 603 (1968).

The Court finds the Taxpayer has not sustained this burden.

By Act 180, S.L.H. 1970, commercial job printing has been classified as a manufacturing activity and not as a service activity. The change in classification was made to lower the cost of production of local commercial job printers and thereby to permit them to compete more favorably with mainland job printers. Act 180, therefore, permits the sales of ink, paper and other tangible personal property to commercial job printers to be taxed at the one-half per cent rate rather than the four per cent rate as it was  
<sup>1</sup> previously taxed. See SCR 108-70, House Finance Committee.

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<sup>1</sup> By Act 160 (S. B. 1297), S.L.H. 1977, newspaper printers and publishers have been classified as manufacturers and are to be taxed in the same manner as commercial job printers. Newspapers, therefore, are to be taxed either at the one-half per cent rate where the newspapers are sold at wholesale or at the four per cent rate where they are sold at retail. S.C.R. No. 523, Senate Committee on Ways and Means, states:

As manufacturers, commercial job printers may also engage in the business of selling their products. HRS Section 237-(2)(D) imposes general excise taxes upon the gross proceeds derived from such sales. The tax rate is to be determined by the activity of the seller whether it be at the wholesale level in which case the applicable rate is the lower one-half per cent rate or whether it be at the retail level in which case the tax is to be assessed at the higher four per cent rate. The Section reads:

"(D) When a manufacturer or producer, engaged in such business in the State, also is engaged in selling his products in the State at wholesale, retail, or in any other manner, the tax for the privilege of engaging in the business of selling the products in the State shall apply to him as well as the tax for the privilege of manufacturing or producing in the State, and he shall make the returns of the gross proceeds of the wholesale, retail, or other sales required for the privilege of selling in the State, as well as making the returns of the value or gross

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"The bill's change of statutory language will eliminate any doubt that for the purposes of the general excise tax, newspapers will continue to be taxed at the rate of 1/2 per cent on receipts from newspapers sold at wholesale, 4 per cent on receipts from newspapers sold at retail, and 4 per cent on receipts from printing of advertisements. The change in language will also avoid any misinterpretation that for purposes of the use tax, newsprint and ink are purchased for resale as component parts of the newspaper and therefore not taxable or taxable at 1/2 per cent depending upon whether they are resold in such manner as to result in a further tax on the particular activity of the newspaper.

The enactment of this bill is recommended to eliminate any confusion and any question of an unconstitutional discrimination in taxation of newspapers for performing essentially the same activities as job printers."

proceeds of sales of his products required for the privilege of manufacturing or producing in the State. He shall pay the tax imposed in this chapter at the highest rate applicable for any of the privileges exercised by him in respect of the particular products, and the value or gross proceeds of sales of the products, thus subjected to tax at the highest rate, may be deducted insofar as duplicated as to the same products by the measure of the tax upon him for the other privileges enumerated in this paragraph (2), paragraph (1), and section 237-16."

In this case, the Taxpayer prints and publishes the "This Week" publication upon order and at the request of Visitor Publications, Inc. The publication is not resold by Visitor but is distributed free and without charge to the general public. The publication, therefore, is not published for resale by Visitor. Sales of the publication to Visitor, therefore, must be classified as a retail sale and the gross proceeds derived therefrom are properly taxed at the four per cent rate. HRS Section 237-16.

The Court cannot agree with the Taxpayer's contentions that it performs intermediary services for the reason that Act 180 has explicitly classified commercial job printers as a manufacturing activity and not a service activity. HRS Section 237-7 defines service business as one involving the rendering of a service as distinguished from the sale of tangible property or the production and sale of tangible property. Clearly in this case, the This Week publication is a product of the Taxpayer's manufacturing activity and the activity herein taxed constitutes the sale of tangible personal property. Re Taxes, Pacific Refiners, Ltd., 41 Haw. 615 (1957). The Director therefore properly classified the activity as a retail transaction and the tax thereupon must be assessed at the four per cent rate.

IT IS ACCORDINGLY ADJUDGED, ORDERED AND DECREED  
that the Director of Taxation properly classified the activity  
herein as a retail transaction and the additional general  
excise taxes have been properly assessed at the four per cent  
rate. The additional taxes paid herein are properly deemed  
government realizations.

Dated: Honolulu, Hawaii, JUN 21 1977 .

*Yasutaka Fukushima*  
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Judge of the above-entitled Court

A circular seal of the First Circuit Court of the State of Hawaii. The outer ring contains the text "FIRST CIRCUIT COURT" at the top and "STATE OF HAWAII" at the bottom. In the center of the seal, the word "SEAL" is printed in a bold, sans-serif font.