

CASE NO. 1250

IN THE TAX APPEAL COURT OF THE STATE OF HAWAII

In the Matter of the Tax Appeal  
of  
HONOLULU PAPER COMPANY DIVISION  
OF BOISE CASCADE CORPORATION,  
and BLAKE, MOFFITT & TOWNE,  
DIVISION OF SAXON INDUSTRIES, INC.,  
Appellants.

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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 evidence and being fully advised in the premises makes and files the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Appellants (the taxpayers) are both corporations whose divisions in Honolulu, Hawaii, are engaged in the sale of paper products. Each of the taxpayers is definitely organized to render a general distribution service which buys and maintains at its place of business a stock of paper which it distributes, and which it sells to licensed institutional and commercial users. A substantial part of their sales of paper are to job printers. The taxpayers sell the paper to job printers in wholesale quantities and at wholesale rates.

2. The job printers who buy paper from the

taxpayers use the paper as raw materials for the products they manufacture.

3. The evidence shows that the essential nature of the business of job printing is manufacturing.

4. The paper sold by the taxpayers to job printers is incorporated by the job printers into a finished or saleable product, such as corporate brochures, business forms, books, advertising materials and other printed products, during the course of its manufacture by the job printer, and the paper sold by the taxpayers to the job printers will remain in the finished or saleable product in a form which is perceptible to the senses. The job printer sells the finished or saleable product of its manufacturing to its customers.

#### CONCLUSIONS OF LAW

1. The ordinary meaning of the word "manufacturer" includes job printers. In practically every case in other jurisdictions in which the question arose, the court has held that a job printer is a manufacturer. See, for example Evening Journal Association v. Board of Assessors, 47 N.J.L. 36 (1885); Press Printing Co. v. Board of Assessors, 51 N.J.L. 75, 16 Atl. 173 (1888); Comm'r of Corp. & Taxation v. Assessors, 321 Mass. 90, 71 N.E.2d 874 (1947); American Newspapers, Inc. v. McCardell, 174 Md. 56, 197 Atl. 574, 116 A.L.R. 1108 (1938); 17 A.L.R.3d 7 (1968).

2. In using the word "manufacturer" in H.R.S. §237-4(2), the legislature is presumed to have intended

the ordinary meaning of the word. The statute is clear and unambiguous when the language used is taken in its generally accepted and usual sense. The word "manufacturer" as used in that statute includes job printers.

3. The Director of Taxation urges that the title of the statute and the committee reports, as referred to in Advertiser Publishing Company v. Fase, 43 Hawaii 154 (1959) and Honolulu Star Bulletin v. Burns, 50 Hawaii 603 (1968) indicate that the legislature did not intend the usual meaning for the word "manufacturer". However, where the language of a statute is clear and unambiguous, as in this case, there is no occasion for construction and the statute must be given effect according to its plain and obvious meaning. Wilcox Estate v. Director of Taxation, 46 Hawaii 375, 399-400 (1963). Reference to matters outside of the statute itself may be resorted to only for the purpose of resolving an ambiguity, not for creating one. Advertiser Publishing Company v. Fase, 43 Hawaii 154, 163-4 (1959); 50 Am.Jur., Statutes, §§312, 334; 82 C.J.S., Statutes §§350, 356.

4. The Director of Taxation also urges that the decisions in the Advertiser and Star Bulletin cases are stare decisis on the question of whether job printers are taxed as manufacturers within the purview of H.R.S., Chapter 237. However, those cases concerned only whether the advertising revenues of newspaper publishers were from manufacturing. There was no question in either of the cases of whether a job printer was a manufacturer. Any statement in either opinion which might be interpreted as indicating that a job printer may not be taxed as manufacturing activity is dictum.

5. That newspaper publishers are not manufacturers and job printers are manufacturers is historically and logically correct. In each of the cases cited in paragraph 1 of these conclusions, the court held that job printers, but not newspaper publishers, are manufacturers.

6. The usually accepted classification of job printers as manufacturers has been borne out by the practical interpretation of the Department of Taxation for 34 or more years. Its acquiescence in such interpretation is evidenced by its failure to assess the taxpayers on wholesale sales of paper to job printers until 1969, although the statute was first enacted in 1935. 50 Am.Jur., Statutes, §319; 82 C.J.S., Statutes §358; 2 Sutherland on Statutory Construction (3d Ed.) §§ 5103-5109.

7. The sales of paper by the taxpayers to job printers are sales at wholesale within the meaning of H.R.S., §§237-4(2) and 238-2(1). The assessments made by the Director of Taxation in this case are contrary to law.

8. The taxpayers are entitled to judgment as follows:

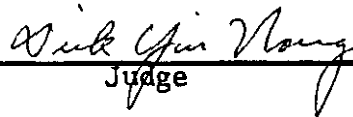
Honolulu Paper Company Division of Boise Cascade Corporation: the amount of \$85,096.38 plus all taxes paid by it under protest pending this appeal after December 12, 1969, plus interest on the total amount at the rate of 8% per year from the date of each payment, plus the costs deposited in this Court, as provided in H.R.S., §§232-23 and 232-24.

Blake, Moffitt and Towne Division of Saxon Industries,

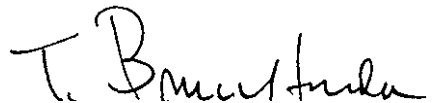
Inc.: the amount of \$741.93 plus all taxes paid by it pending this appeal after February 20, 1970, plus interest on the total amount at the rate of 8% per year from the date of each payment, plus the costs deposited in this Court, as provided in H.R.S., §§232-23 and 232-24.

Judgment shall be entered accordingly.

DATED: Honolulu, Hawaii, **April 15, 1970.**

  
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Judge

APPROVED AS TO FORM:

  
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Deputy Attorney General