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TAX APPEAL COURT
STATE OF HAWAII
FILED

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BARBARA E. WRIGHT
CLERK

Attorneys for the Director of Taxation

IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

In the Matter of the Tax)	CASE NO. 3045
Appeal)	
)	ORDER GRANTING
of)	DIRECTOR OF TAXATION'S
)	MOTION FOR SUMMARY JUDGMENT;
)	
RONALD G. KEEHN,)	
)	Non-hearing Motion
Appellant.)	
)	Judge Wilfred K. Watanabe
)	

ORDER GRANTING
DIRECTOR OF TAXATION'S MOTION FOR SUMMARY JUDGMENT

RICHARD F. KAHLE, JR., Director of Taxation, State of Hawaii's (hereinafter "Director") Motion for Summary Judgment was filed on October 4, 1993. Pursuant to the Stipulation to Submit Case for Judgment Without Trial, entered into by the parties to this Appeal and filed on November 1, 1993, the Director of Taxation's Motion for Summary Judgment was considered by the Court without oral hearing.

The Court, having read and considered the written memoranda submitted by both the Director and Appellant Ronald G. Keehn (hereinafter "Taxpayer"), and the files and pleadings

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

KATHLEEN WEISBARTH

Clerk



herein, finds that there are no genuine issues of material fact; that in 1988, Taxpayer sold his retail service station business and received, in connection with the sale of the business \$150,000 in consideration for a covenant not to compete, which prohibited Taxpayer from competing for five years within a five mile radius from the station.

The Court concludes as a matter of law that the income received by Taxpayer for the covenant not to compete is gross income subject to the general excise tax imposed by Chapter 237, Hawaii Revised Statutes ("HRS") because the income, being payment for performance of a promise, compensation for lost earnings, income from an independent undertaking, and compensation for personal services is both derived from trade, business, commerce, or sales, and is compensation for personal services under HRS § 237-3.

The Court further concludes that the income is not excluded from the general excise tax as income from a casual sale under HRS § 237-2 because the covenant is not tangible personal property as required under the HRS § 237-1 definition of casual sale.

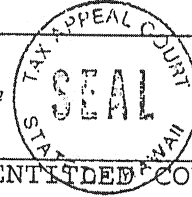
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Director of Taxation's Motion for Summary Judgment is granted and that Judgment is entered in favor of the Director. It is further ordered that the amount of general excise tax imposed on the Taxpayer in the amount of \$7,560 is a proper government realization and shall immediately be released to the general

fund.

There being no remaining parties and/or issues in the case, it is further ordered that all issues, claims, and parties are dismissed with prejudice.

DATED: Honolulu, Hawaii, JAN 10 1994

Wilfred K. Watanabe



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

Ronald G. Keehn

RONALD G. KEEHN
Appellant