

MARGERY S. BRONSTER 4750  
Attorney General of Hawaii

CHARLOTTE CHYR 6028  
Deputy Attorney General  
Department of the Attorney  
General, State of Hawaii  
Keelikolani Building  
830 Punchbowl Street, Room 219  
Honolulu, Hawaii 96813  
Telephone: 586-1473

Attorneys for the DIRECTOR OF  
TAXATION, STATE OF HAWAII

GOODSILL ANDERSON QUINN & STIFEL

MICHAEL A. SHEA 1482-0  
MIKI OKUMURA 3739-0  
1800 Alii Place  
1099 Alakea Street  
Honolulu, Hawaii 96813

Attorneys for Taxpayer  
OSMOSE WOOD PRESERVING, INC.

IN THE TAX APPEAL COURT OF THE  
STATE OF HAWAII

In the Matter of the Tax )  
Appeal ) CASE NO. 3630  
)  
of )  
)  
OSMOSE WOOD PRESERVING, INC., )  
)  
Taxpayer. )

\_\_\_\_\_  
In the Matter of the Tax )  
Appeal ) CASE NO. 4235  
)  
of )  
)  
OSMOSE WOOD PRESERVING, INC., )  
)  
Appellant. )  
)  
)  
\_\_\_\_\_

STATE OF HAWAII  
CLERK

96 JUN 7 PM 8 01

TAX APPEAL COURT  
STATE OF HAWAII

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

JANNIS SHIROMA

Clerk

|                               |   |                        |
|-------------------------------|---|------------------------|
| In the Matter of the Tax      | ) | CASE NO. 4683          |
| Appeal                        | ) |                        |
|                               | ) | STIPULATED JUDGMENT    |
| of                            | ) |                        |
|                               | ) |                        |
| OSMOSE WOOD PRESERVING, INC., | ) | TRIAL: May 31, 1996    |
|                               | ) | TIME: 8:30 a.m.        |
| Appellant.                    | ) | JUDGE: DANIEL G. HEELY |
|                               | ) |                        |
|                               | ) |                        |
|                               | ) |                        |
|                               | ) |                        |

sp\CC\Osmose.stp

STIPULATED JUDGMENT

Director timely filed a notice of appeal under section 232-17 of the Hawaii Revised Statutes, as amended ("Haw. Rev. Stat.") to appeal a Board of Review decision (Case No. 3630), and Taxpayer timely filed notices of tax appeal under sections 237-42 and 238-8, Haw. Rev. Stat., with this Court to dispute certain Hawaii general excise and use taxes assessed against it for underreported retail sales under Haw. Rev. Stat. § 237-13(2)(A), or § 237-16(A)(1) and (B), and unreported imports for resale under Haw. Rev. Stat. § 238-2(2)(A) (Case No. 4235 and 4683).

Taxpayer produces and sells its chemical product to wood treatment plants in the State of Hawaii. The wood treatment plants impregnate lumber with the chemical under high pressure for the purpose of preserving the lumber against decay and insect damage. The wood treatment plants treat lumber that is owed by the wood treatment plants, as well as lumber owned by others.

The issue in these tax appeals is the proper characterization of Taxpayer's sales. If wood treatment plants are engaged in a service activity, Taxpayer's sales are at the

retail rate of 4% and use tax rate of .5% If, on the other hand, wood treatment plants are engaged in a manufacturing activity, Taxpayer's sales are at the wholesale rate of .5% and exempt from use tax. In 1972, the Tax Appeal Court for the State of Hawaii ruled that wood treatment plants are not engaged in a manufacturing activity. Griffin Forest Industries, T.A. No. 131 (1972).

The Taxpayer and Director wish to settle this case on the terms set forth in that certain Settlement Agreement, dated \_\_\_\_\_, 1996, by and between Taxpayer and the Director.

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. This court has jurisdiction of the within matter.
2. Griffin Forest Industries, T.A. No. 131 (1972)

held that wood treatment plants are not engaged in a manufacturing activity.

3. For sales of chemicals to wood treatment plants where the lumber is not owned by the wood treatment plants, Taxpayer will be taxed at the retail rate of 4% and use tax rate of .5% for the sale to a service provider, consistent with Griffin Forest Industries, T.A. No. 131 (1972).

4. For sales of chemicals to wood treatment plants where the lumber is owned by the wood treatment plants, Taxpayer will be taxed at the resale rate of .5% under Haw. Rev. Stat. § 237-4(1).

5. For sales of chemicals to contractors that end-spray wood, Taxpayer will be taxed at .5% tax under Haw. Rev. Stat. § 237-4(4).

6. Taxpayer shall prospectively report the sales of its chemicals to wood treatment plants in accordance with the terms of Paragraphs 3, 4, and 5.

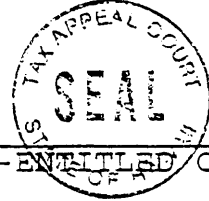
7. The taxpayer shall be refunded the sum of ONE HUNDRED SIXTY FOUR THOUSAND, ONE HUNDRED THIRTY-NINE AND 11/100 DOLLARS (\$164,139.11), together with accrued interest thereon, within thirty (30) days of the entry of this Stipulated Judgment due to a recomputation of the Department's reasonable basis assessment, and in accordance with the tax law as applied to actual, rather than estimated sales.

8. The remaining ONE HUNDRED SIXTY FOUR THOUSAND, ONE HUNDRED THIRTY-NINE AND 11/100 DOLLARS (\$164,139.11) paid by the Taxpayer at issue in this case, together with accrued interest thereon, shall become realizations of the State of Hawaii and shall be immediately released to the general fund.

9. The Taxpayer and the Director shall bear their respective attorneys' fees and costs in this matter.

DATED: Honolulu, Hawaii, JUN 07 1996.

*Daniel G. Heely*



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED:

*M.A.S.L.*

MICHAEL A. SHEA  
MIKI OKUMURA  
Attorneys for OSMOSE WOOD  
PRESERVING, INC.

*Charlotte Chyr*  
MARGERY S. BRONSTER  
CHARLOTTE CHYR  
Attorneys for the DIRECTOR OF  
TAXATION, STATE OF HAWAII

In the Matter of the Tax Appeal of Osmose Wood Preserving, Inc. ;  
STIPULATED JUDGMENT (Case Nos. 3630, 4235, and 4683)