

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

A. SORIANO y CIA.,
Petitioner,

- versus -

C.T.A. CASE NO. 1

COLLECTOR OF INTERNAL REVENUE,
Respondent.

x- - - - -x

D E C I S I O N

This is an appeal originally filed with this Court, brought by the petitioner, A. Soriano y Cia., from a decision of the respondent, Collector of Internal Revenue, denying the request of the former for refund of the sum of ₱50,058.01, allegedly representing 6% broker's percentage taxes for the period from April 1, 1952 to June 30, 1954, inclusive.

It appears that on December 20, 1950, the Philippine Iron Mines, Inc., and the petitioner A. Soriano y Cia., two corporations duly organized and existing under and by virtue of the laws of the Philippines, having their principal offices and places of business in the City of Manila, entered into a contract, Exhibit "A", the pertinent provisions of which are as follows:

1. IRON MINES hereby employs SORIANO as its Technical Consultant in connection with management and operation of its affairs and mining properties and the management and operation of other mining properties of which it has, under contracts, supervision or control, and SORIANO hereby accepts such employment, under the terms, covenants and provisions and conditions hereinafter stated.

2. As Technical Consultant, SORIANO undertakes and agrees to render complete engineering direction on all phases of operation of the properties, opinion and reports necessary to fulfill the generally accepted duty of consultants relative to the prospecting, exploration, development, extraction, metallurgy, geology and handling of mineral properties of IRON MINES and other mineral properties under contract with it, and to lay out plans normally connected with the operation of the said proper-

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ties, except such extraordinary plans as may require full and undivided attention of SORIANO and not in the normal course of the exploitation of the said properties.

3. In addition to the above services, SORIANO further undertakes and agrees to negotiate and consummate the sale of all the products obtained from the said mining properties, and for said purpose its representative or representatives may be required to travel abroad. SORIANO further agrees to check analyses and conditions of the ore from time to time at point of destination. In all such cases, the travel and other expenses of SORIANO'S representatives shall be for the account of IRON MINES.

4. It is expressly and distinctly understood and agreed that all work, acts and things to be done and performed by SORIANO under this agreement, in so far as they may conflict with the terms and provisions of the AG & P (Atlantic, Gulf & Pacific Company of Manila) Management Agreement of December __, 1950, shall be done and performed by SORIANO in conjunction or cooperation with AG & P.

5. For its services hereunder, SORIANO will receive two and one-half per cent (2-1/2%) of the gross receipts of all minerals or ore of commercial value shipped, payable monthly as soon as such gross receipts shall have been determined. In addition thereto, SORIANO shall also be entitled to a monthly compensation of ONE THOUSAND TWO HUNDRED PESOS (P1,200.00) for consulting services in Manila, to be payable at the end of each month.

For services rendered, the petitioner received from the Philippine Iron Mines, Inc., for the period from April 1, 1952 to June 30, 1954, inclusive, the total sum of P834,305.27, representing the two and one-half per cent (2-1/2%) of the gross receipts of all minerals or ore of commercial value shipped and sold abroad by both of them, as provided for in the first part of paragraph 5 of their agreement as quoted above. Based on the said amount of P834,305.27, the petitioner voluntarily paid the respondent the sum of P50,058.01 as 6% broker's percentage tax in accordance with the provisions of Section 195 of the National Internal Revenue Code, as amended by Republic Act No. 588, in relation to Section 194 (t)

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of the same Code. After paying the aforesaid amount voluntarily, the petitioner sought the refund of the same on the ground that the amount received by it from the Philippine Iron Mines, Inc., partakes of the nature of compensation for services rendered as technical consultants, and therefore not subject to the broker's percentage tax as prescribed in said Section 195. The claim for refund of the said sum of ₱50,058.01 was denied by the respondent.

The first question to decide, therefore, is whether or not the services rendered by the petitioner pursuant to paragraphs 2 and 3 of the contract reproduced above could be considered as a trade or occupation of a broker and the amount paid to it by the Philippine Iron Mines, Inc., a brokerage, and hence liable to the percentage tax equivalent to 6% of the gross compensation received by it.

It will be observed from the contract, by virtue of which the Philippine Iron Mines, Inc., has agreed to employ A. Soriano y Cia. as its Technical Consultant in connection with the management and operation of its affairs and mining properties, that the latter undertook:

"1. To render complete engineering direction on all phases of operation of the properties, opinion and reports necessary to fulfill the generally accepted duty of consultants relative to the prospecting, exploration, development, extraction, metallurgy, geology and handling of mineral properties of the PIM and other mineral properties under contract with it, and to lay out plans normally connected with the operation of the said properties, except such extraordinary plans as may require full and undivided attention of the petitioner and not in the normal course of exploitation of the said properties;

"2. To negotiate and consummate the sale of all the products obtained from the said mining properties, and for said purpose its representative or representatives may be required to travel abroad; and to check analyses and conditions of the ore from time to time at point of destination;

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"3. To render consulting services in Manila."

Under the first two above-quoted duties and obligations, the petitioner received from the Philippine Iron Mines, Inc., the sums of ₱250,656.75 for the last three quarters of 1952; ₱356,821.83 for the four quarters of 1953, and ₱226,826.69 for the first two quarters of 1954, or a total of ₱834,305.27, representing the 2-1/2% of the gross receipts. While the petitioner admits that under its second duty and obligation of negotiating and consummating the sale of all the products obtained from the mining properties of the Philippine Iron Mines, Inc., such services are in the nature of a brokerage occupation, it contends that under its first above-quoted duties and obligations, such employment can in no wise be considered as a trade or occupation of a broker. Anent the third duty of rendering consulting services in Manila, there seems to be no controversy regarding the nature of the compensation of the petitioner in the amount of ₱1,200.00 per month.

At the outset, we observe from the pleadings that the Philippine Iron Mines, Inc., is the owner of and has the exclusive right to the occupancy, possession and beneficial use of certain mining claims located within the jurisdictional limits of Paracale (Jose Panganiban), Camarines Norte. By virtue of a contract with the Agusan Gold Mines, Inc., said corporation has also the right to explore, develop and operate certain mining claims belonging to the said Agusan Gold Mines, Inc., also located in Paracale, Camarines Norte, and to market such ore as may be found therein. In accordance with an agreement made and entered into on December 20, 1950, by and between the Philippine Iron Mines, Inc., and the Atlantic, Gulf and Pacific Company of Manila, a West Virginia corporation duly registered and licensed to transact business in

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the Philippines, with principal office and place of business in Manila, the former employed the latter as General Operating Manager of its business and mining properties, as well as the mining properties of the Agusan Gold Mines, Inc., and such other mining companies with whom the Philippine Iron Mines, Inc., had entered into or might enter into agreements for the exploration, development and operation thereof, and of the marketing of the products obtained therefrom. In addition to the employment of the Atlantic, Gulf & Pacific Company of Manila, the Philippine Iron Mines, Inc., also employed A. Soriano y Cia., as its Technical Consultant, with the powers, authority, duties and obligations specified in the contract quoted above.

It appears that in the regular meeting of the Board of Directors of the Philippine Iron Mines, Inc., on May 18, 1954, at the Soriano Building, Manila, Mr. Severo Tuason, one of the directors, invited the Directors' attention to the principal question always brought by the stockholders of the said corporation, namely, that if the company has a General Manager and a Technical Consultant, what was the need of having a representative in Japan? To this, Col. Soriano, who is the head of the petitioner and also the Vice-President of the Philippine Iron Mines, Inc., replied "that a representative is absolutely necessary to protect the interests of the company at that end. This he went on to say, was a job entirely different from the work performed by the General Managers and the Consulting Engineers." (Exhibit "E"). To quote some more:

"In this connection, Mr. Belden, desiring to clarify the position and the work performed by the General Managers and the Consulting Engineers, explained to Mr. Tuason that after liberation, prior to the Company's resuming operations in 1948, it was feared that it would not be able to sell a single ton of ore until Col. Soriano

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contacted SCAP Headquarters in Tokyo, and the Company was able to sell 200,000 tons. At that time, A. Soriano y Cia., as Consulting Engineers, arranged for the contract and for the acquisition of the ore and thereafter secured more and more contracts for additional deliveries to Japan which, in effect, put the company back on its feet. Col. Soriano then added that it was the function of the SCAP to help rehabilitate the economy of Japan and one of the ways of doing this was by assuring a supply of ore for its mills, which ore was available from the Philippines. Col. Soriano pointed out that the economy of Japan and of the Philippines are complimentary to each other, and that the sale of ore to Japan had succeeded in the resumption of operations at Larap. That is the reason, he said, why the company needs General Managers and Consulting Engineers.

"Continuing the discussion on this point, Mr. Belden said that in order to maintain a favorable volume of sales to the Japanese Steel Mills and to assure them of a supply of ore, the company has established this particular set-up and has been able to show at all times that it can fulfill all its commitments. Up to the present he said, the Company had been able to sell over 4,500,000 tons of iron ore, which has never been done before, thanks to the efforts of the Consulting Engineers." (Exhibit "E").

(It will thus be seen that although the Philippine Iron Mines, Inc., has already a general manager in the person of the Atlantic, Gulf & Pacific Company of Manila, which as engineers for more than half a century has established an enviable record of service, it had to employ the petitioner as consulting engineers. The rationale is obvious: as explained above, prior to the company's resumption of operations in 1948, it was feared that it would not be able to sell a single ton of ore until Col. Soriano (head of the petitioner A. Soriano y Cia.) contacted SCAP Headquarters in Tokyo. As a matter of fact, it was through the petitioner's efforts in arranging contracts for the acquisition of ores and for additional deliveries to Japan which put the Philippine Iron Mines back on its feet. In order to maintain a favorable volume of sales to the Japanese Steel Mills and to assure them of a steady supply of ore, said company had to employ the petitioner to negotiate and consummate the sales of all

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its products obtained from its mining properties to show at all times that it can fulfill all its commitments. And because of the efforts of the petitioner as a broker, the Philippine Iron Mines was able to sell over 4,500,000 tons of iron ore, which has never been done before. Unquestionably, the main and principal purpose for which the petitioner was employed by the Philippine Iron Mines was, as stated in paragraph 3 of the contract, to negotiate and consummate the sale of all the products obtained from its mining properties, which as counsel for the petitioner admits, is precisely the occupation of a commercial broker.)

It is true that under the contract, the petitioner was employed as a Technical Consultant, and as such, it undertook and agreed to render complete engineering direction on all phases of operation of the properties, opinion and reports necessary to fulfill the generally accepted duty of consultants relative to the prospecting, exploration, development, extraction, metallurgy, geology and handling of mineral properties of the Philippine Iron Mines, but as stated by the company's President, it was necessary to establish this set-up in order to maintain a favorable volume of sales to the Japanese and to assure them of a supply of ore and to be able to show at all times that said company can fulfill all its commitments. We do not believe that it would be necessary to state that a person who is employed to negotiate and consummate the sales of all the products obtained from a prospective seller and, as an incident thereto, acts as a consultant in order to assure himself that the seller can at all times fulfill all its commitments, is primarily a broker; the employment as consultant being only a means to his principal occupation as broker.

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This conclusion is rendered clearer when we take into consideration the fact that under paragraph 5 of the contract, for services rendered, the petitioner receives two and one-half per cent of the gross receipts of all minerals or ore of commercial value shipped, thus indubitably implying that its services as a consultant is merely an incident to its commitment to negotiate and consummate the sales of all the products of the Philippine Iron Mines. For if the petitioner were employed really as technical consultant, its fees as such should have been agreed upon just as its consulting services in Manila were set forth in the contract on a fixed monthly basis. Moreover, considering that a broker is never entitled to commission for unsuccessful efforts, it is hard to believe that compensation paid to the petitioner partakes more of the nature of salaries as consulting engineers.

Furthermore, the payment in question of ₱834,305.27 is entered in full as commission by the petitioner itself in its books of accounts and we see no justifiable reason to disturb the book entries. The records kept by brokers may be used as evidence to determine the amount of the percentage tax due from them, and the Collector of Internal Revenue may assess and collect the tax due on the compensation or gross receipts earned in accordance with said records. (par. 2, Section 195, National Internal Revenue Code). While the petitioner claims that the best evidence is the contract itself, it has already been shown that in accordance with the said contract, the petitioner is employed as a broker.

Counsel for the petitioner, however, contends that the exaction of the tax under consideration would deprive his client of property without due process of law because the tax is imposed upon things beyond the jurisdiction of the Philippines. According to him,

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inasmuch as the brokerage transactions were done outside the country, the brokerage commissions received by the petitioner are not subject to the broker's percentage tax prescribed under Section 195 of the National Internal Revenue Code because the Philippine Government consistent with due process cannot impose a tax on property, persons or business beyond its jurisdiction. The question thus reduces itself to the inquiry whether the Philippine Government will transgress its taxing power because it imposes a broker's percentage tax on commission received by a domestic corporation for negotiating and consummating the sales, in Japan, of all the products obtained from the mining properties of another domestic corporation which mining properties are located in the Philippines.

It is true that generally a state may not tax real or tangible personal property lying outside her borders, nor may she lay an excise or privilege tax upon the exercise or enjoyment of a right or privilege in another state derived from the laws of that state and therein exercised or enjoyed. But a perusal of the provisions of Section 195 of the Tax Code will readily show that the tax prescribed therein is a tax on the privilege of receiving compensation from the exercise of an occupation recognized by our laws rather than a tax on brokerage transactions. Although it is directly connected with the business carried on by brokers, nevertheless its essence rest upon the principle that the brokerage is the source from which the taxing power of the Philippine Government derives its being, and it is the privilege of receiving such brokerage that the tax is more immediately founded. For a broker, being only an intermediary between the purchaser and vendor, neither acts in his own name nor negotiates commercial transactions, but merely represents the party who may employ his services. It follows that any

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commercial transactions entered and agreed into by the vendor and purchaser are not the business or brokerage transactions of the broker but strictly those of the parties. Under these circumstances, we cannot see our way clear how the collection of the tax in question would deprive the petitioner of its property without due process of law since what is being taxed is only his right of receiving the compensation derived from the enjoyment of a privilege granted by the laws of the Philippines and herein exercised.

And even if it be assumed that the success of the petitioner in consummating the sales between the Philippine Iron Mines, Inc., and the Japanese buyers depended upon its negotiations in Japan, we believe that this will not ultimately make the tax under consideration an exaction on business transactions done outside of the country because the nexus between such a tax and the compensation is still in the Philippines. After all, the contract of services dated December 20, 1950, entered into by and between the Philippine Iron Mines, Inc., and A. Soriano y Cia., wherein the latter was employed by the former to negotiate and consummate the sales of its products, was executed within the Philippines and in accordance with our laws. It can never be said, therefore, that the substantial elements of the agreement are not situated in this country since the parties by executing the same within the Philippines have subjected themselves to the taxing jurisdiction of our country. Because of the protection afforded by the Philippine Government, the Philippine Iron Mines, Inc., was able to mine its ores and the petitioner was free to pursue its occupation of negotiating the sales thereof, and if by the reasonable operation of the tax the Philippines has exerted its power in relation to the opportunities it has given and the benefits it has conferred, we

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are at a loss to see how property is taken without due process of law. In principle, our Government is only asking a little in return for what it has given. Furthermore, it would certainly be a discrimination against a local broker to hold him liable for this tax in case he negotiates sales in the Philippines and to exempt another local broker simply because he was able to find buyers in a foreign country when both of them enjoy the same protection from our Government.

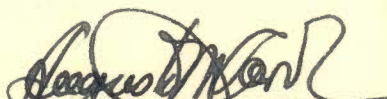
WHEREFORE, the appealed decision is hereby affirmed, without special pronouncement as to costs.

SO ORDERED.

Manila, Philippines, February 5, 1955.


MARIANQ NABLE
Presiding Judge

I concur:


AUGUSTIS L. LUCIANO
Associate Judge

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