

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. THE COURT OF TAX APPEALS AND AVECILLA BUILDING CORPORATION, RESPONDENTS.

G.R. No. L-42394. January 17, 1985

Ponente: GUTIERREZ, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/0fb0057e2a2c/>

GUTIERREZ, JR., J.:

This is a petition to review on certiorari the decision of the Court of Tax Appeals which ruled that respondent AVECILLA Building Corporation was not, during the period in question, an independent contractor within the meaning of Section 191 of the National Internal Revenue Code as amended, with respect to its business of furnishing technical services in the construction of buildings. The respondent court ruled that AVECILLA is not subject to the contractor's tax and ordered herein petitioner to refund to the respondent corporation the P8,201.69 it had paid as taxes.

Private respondent is a domestic corporation engaged in the business of "general engineering and contracting or all kinds of constructions and structures; employing and contracting with architects, engineers, surveyors, chemists and other technical men, to perform engineering and architectural work, including the preparation of surveys, plans, specifications, estimates, etc. and to act as consulting and/or supervising engineers and architects, x x x in connection with the said contracting and building business."

For the period from September, 1964 to September, 1966, inclusive, the respondent corporation was retained for a fixed monthly fee by the Philippine National Bank, the Development Bank of the Philippines and the Social Security System to render the following services as "work engineers" -

1. Technical experts in the construction of office buildings to carefully check and fully supervise the work of the contractors engaged by the owner (Philippine National Bank) in the construction of the building.
2. Provide the necessary resident superintendence and inspection on behalf of the owner (Development Bank of the Philippines) over the construction undertaken by the appointed contractor.
3. Provide the service of technical experts in the construction of the building and to fully supervise the work of the contractors engaged by the owner (Social Security System) in the construction of the latter's office building.

On February 2, 1967, the respondent corporation filed with the Court of Tax Appeals a petition for review claiming refund in the amount of P9,572.69 plus interests thereon, for allegedly overpaid contractor's tax for the period from September 1964 to September 1966. It claimed that it is not an "independent contractor" subject to the 3% contractor's tax under Section 191 of the National Internal Revenue Code, as amended.

In his answer, the Commissioner of Internal Revenue set up the defense of prescription and maintained that the contractor's taxes paid by the respondent corporation were collected in accordance with laws and regulations.

As earlier stated, the respondent court rendered a decision holding that the respondent corporation is not an independent contractor within the meaning of Section 191 of the Tax Code and ordered the petitioner to refund to the corporation the amount of P8,201.69.

The sole issue before us is whether or not the respondent corporation is subject to the contractor's tax under Section 191 of the National Internal Revenue Code as amended because of the technical services it rendered for the Philippine National Bank, Development Bank of the Philippines and the Social Security System.

The petitioner states that the Court of Tax Appeals erred:

"a) In ruling that respondent taxpayer, insofar as its business of providing its clients with 'work engineers' constituting of duly licensed architects, electrical and mechanical engineers, all employees of the corporation, rendering 'technical services' in the construction of buildings, is not an independent contractor within the purview of Section 191 of the Tax Code; and

"b) In ordering petitioner, Commissioner of Internal Revenue, to refund to respondent taxpayer the amount of P8,201.69 as overpaid contractor's tax for the period from February 17, 1965 to October 18, 1966."

The respondent corporation contends it did not engage in actual construction work but was hired to merely supervise construction. It uses the argument that a surgeon who performs a surgical operation, a dentist who extracts teeth and a lawyer who prepares a deed of sale are in similar categories as its engineers who performed professional services. They are not independent contractors.

Section 191 of the National Internal Revenue Code reads as follows:

"SEC. 191. PERCENTAGE TAX ON ROAD, BUILDING, IRRIGATION, ARTESIAN WELL, WATER WORKS, AND OTHER CONSTRUCTION WORK CONTRACTORS, PROPRIETORS OF OPERATORS OF DOCKYARDS, AND OTHERS. - Road, building, irrigation, artesian well, water works, and other construction work contractors; filling contractors; demolition and salvage contractors; arrastre contractors; persons engaged in the installation of gas or electric light, or power, except those paying a franchise tax, proprietors or operators of dockyards, mine drilling apparatus, smelting plants, engraving plants, plating establishments, plastic establishments, plastic lamination establishments, vulcanizing and recapping establishments; establishments for washing and/or greasing of motor vehicles, battery charging planning or surfacing and recutting of lumber; sawmills under contract to saw and/or cut logs belonging to others; drycleaning or dyeing establishments; steam laundries, laundries using washing machines; photographic studios, telephone or telegraph lines or exchanges, broadcasting or wireless stations; funeral parlors, shops for the construction or repair of bicycles or vehicles of any kind, mechanical devices, instruments, apparatus, or furniture of any kind, shoe repairing by machine or any mechanical contrivance, and tailor shops; beauty parlors, dressmakers, milliners, hatters, keepers of hotels, lodging houses, stevedores, warehousemen; plumbers, smiths, house or sign painters; lithographers, publishers, except those engaged in the publication or printing and publication of any newspaper, magazine, review or bulletin which appears at regular intervals, with fixed prices for subscription and sale, and which is not devoted principally to the publication of advertisements; printers and bookbinders, business agents and other independent contractors, except persons, associations and corporations under contract for embroidery and apparel for export as well as their agents and contractors, shall pay a tax equivalent to three per centum of their gross receipts.

"x x x. (As amended by Sec. 1, Republic Act No. 39; Sec. 4, Republic Act No. 1612; Sec. 1 Republic Act No. 2072; Sec. 1, Republic Act No. 2889 and Sec. 3, Republic Act No. 2376."

In deciding whether or not a person, natural or juridical is subject to a percentage tax provided for in Section 191 of the National Internal Revenue Code, as amended, the Court of Tax Appeals ruled that (1) to be considered as a "contractor" the work performed should be any of the businesses specifically enumerated therein and (2) to be

considered as "independent contractor" the work performed should be similar to any of the businesses enumerated therein. Following this interpretation, the respondent court opined that the respondent corporation was neither a "contractor" nor an "independent contractor" within the purview of said Section 191 because the work performed by the latter in furnishing technical services in the construction projects does not fit in either classification. The lower court stated that Avecilla Corporation did not perform any construction work for PNB, DBP, or SSS. It was hired to supervise the construction of buildings but actual construction was done by other contractors.

It can be gleaned from its articles of incorporation that the respondent corporation is principally engaged in the construction of buildings and other structures. It offers actual as well as technical services to the public. In the instant case, the respondent corporation rendered technical services through its "work engineers" to the Philippine National Bank, Development Bank of the Philippines and the Social Security System in the construction of their buildings. The respondent corporation's "work engineers" acted as overseers of the building contractors engaged by the three government agencies. The "work engineers" rendered their professional services as employees of the respondent corporation. They did not render services in their individual capacities but as extensions of the firm which was hired to oversee the construction. Thus, licensed engineers did not go there as hired professionals of the PNB, DBP, or SSS but as employees of Avecilla Building Corporation. The private respondent had a distinct personality from the work engineers tax wise and in other respects.

Premised on these circumstances, we find the respondent corporation a building contractor subject to the 3% per-centage tax under Section 191 of the National Internal Revenue Code, as amended.

A "contractor" within the context of Section 191, National Internal Revenue Code, as amended has been defined as follows:

"The word 'contractor' has come to be used with special reference to a person who, in the pursuit of the independent business, undertakes to do a specific job or piece of work for other persons, using his own means and methods without submitting himself to control as to the petty details. (Arañas Annotations and Jurisprudence on the National Internal Revenue Code, p. 318, par. 191 (2), 1970 Ed.) The true test of a contractor as was held in the cases of Luzon Stevedoring Co., v. Trinidad, 43 Phil. 803, 807-808, and La Carlota Sugar Central v. Trinidad, 43 Phil. 816, 819, would seem to be that he renders service in the course of an independent occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished." (Commissioner of Internal Revenue v. Engineering Equipment and Supply Company, 64 SCRA 597-598)

The contractor's tax as contemplated by the Revenue Code is in the nature of an excise tax on the exercise of a privilege. The tax is imposed on the sale of services or labor. It is an indirect tax and whether or not the contractor is exempt from internal revenue taxes is immaterial. The tax imposed on Avecilla Building Corporation is, therefore, a tax on its business and privilege of selling the services and labor of its employees and not on the professional services of those employees themselves.

The respondent corporation, which has a distinct and separate personality from its "work engineers", rendered technical services to the Philippine National Bank, the Development Bank of the Philippines and the Social Security System in connection with the construction of their buildings. The law imposes a 3% percentage tax on among others, "building x x x and other construction work contractors." (underscoring supplied). The law does not distinguish actual from technical services performed by the contractor. Where the law does not distinguish the court should not distinguish. (Robles v. Zambales Chromite Mining Co., 104 Phil. 688) Hence, a building or any other construction work contractor like the Avecilla Building Corporation whether engaged in actual or technical services in relation to its construction business is liable to the 3% contractor's tax under Section 191 of the National Internal Revenue Code, as amended.

WHEREFORE, the instant petition is hereby GRANTED. The questioned decision of the Court of Tax Appeals is SET ASIDE. The respondent corporation's claim for refund of overpaid contractor's tax is DENIED.

SO ORDERED.

Teehankee, (Chairman), Plana, Relova, and De La Fuente, JJ., concur.

Melencio-Herrera, J., no part.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.