

Palau Marine Industries Corp. v. ROP, 5 ROP Intrm. 333 (Tr. Div. 1995)
PALAU MARINE INDUSTRIES CORPORATION,
Plaintiff,

v.

REPUBLIC OF PALAU and SWENNY ONGIDOBEL,
individually and as Director of the Bureau of Revenue,
Customs & Taxation
Defendants.

CIVIL ACTION NO. 181-95

Supreme Court, Trial Division
Republic of Palau

Decision

Decided: September 18, 1995

LARRY W. MILLER, Justice:

Before the Court are cross motions for summary judgment concerning Palau Marine Industries Corporation's ("PMIC") obligations to pay Palau's gross revenue tax for the years 1991-1994. PMIC seeks a refund of taxes paid on commissions it received for fish sold in Japan during the relevant time period. The Republic of Palau opposes any refund and contends that PMIC is additionally liable to pay taxes on the full sales price achieved for those fish.

The pertinent facts are mainly undisputed. Through an agreement with the Palau Maritime Authority, PMIC acquires multiple licenses to fish within Palau's Exclusive Economic Zone. PMIC then enters into separate agreements with foreign fishing fleets to whom it sells supplies (ice, fuel, etc.), and from whom it collects the fish caught for shipment to and sale in Japan. There is no dispute that PMIC owed and paid taxes on the gross revenues generated from its sale of supplies to the fishing boats in Palau. PMIC also paid taxes on the 1% commission it received from the proceeds of the fish sold in Japan. PMIC says it is entitled to a refund of those taxes. As noted above, the government opposes any refund and has argued further that PMIC should actually have paid taxes not on 1% but on the entirety of the proceeds from the sales in Japan.

40 PNC § 1204 provides in pertinent part that "[e]very person engaging in any business, trade, activity, or calling not **1334** specifically included in this chapter shall be assessed and levied and shall pay a tax of four percent of the gross revenue of the business, activity or calling." 40 PNC § 1002(o) in turn defines "gross revenue", in pertinent part, as "the total sums of all receipts from sources within the Republic."

The first issue to be decided, PMIC's liability for taxes on the commissions it receives from the sale of fish in Japan, turns on the meaning of the phrase "sources within the Republic".

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Both parties have cited cases interpreting identical language in the United States tax code which state that the use of the word “source” requires

an investigation into the nature and location of the activities and property which produce the income. If the income is from *labor* (services) the place where the labor is done should be decisive. . . .

Futura Corp. v. State Tax Comm’n, 442 P.2d 174, 177 (Idaho 1968) (cited by PMIC); accord, *Le Beau Tours Inter-America v. United States*, 415 F. Supp. 48, 51 (S.D.N.Y. 1976) (cited by the Republic; quoting U.S. law as providing that “compensation for labor or personal services performed within the United States” is income from sources within the United States).

Applying this test to the commissions received by PMIC, the Court finds that they are properly deemed to be derived from “sources within the Republic”. Although the money comes from proceeds for the sale of fish in Japan, PMIC’s own description of its business makes clear that it plays no role in the actual sales process (which is carried out for much more substantial commissions by Japanese agents), and that, from its own point of view, it does nothing in Japan. As PMIC’s counsel explained at oral argument, PMIC views its commissions as compensation for its overall role in promoting the scheme. Since that role -- from facilitating the fishing boats’ entry into Palau to bringing their catch to market -- was carried out principally, and perhaps entirely, in Palau, the Court finds that the compensation resulting therefrom was from “sources within the Republic”, was properly taxed, and that no refund is called for.

The second issue to be decided is PMIC’s liability to pay taxes on what the government calls the “other 99%”, the full proceeds (in addition to the 1% already discussed) from the Japanese fish sales. Although this issue also raises a question of statutory interpretation -- the meaning of “sources” in the context of revenues derived from sales -- the Court finds that it can be resolved more simply on the facts presented. Relying upon the **1335** affidavits of its President and one of its Japanese agents and upon the terms of its agreements with the fishing fleets that catch the fish, PMIC puts forward the proposition that those proceeds simply do not belong to it -- it does not purchase the fish from the fleets with which it is associated, and the money received from the sale of that fish (minus PMIC’s commission and a 14% commission withheld by the Japanese agents) is deposited directly into accounts maintained by the fleets themselves. In statutory terms, PMIC is not required to pay taxes on that money because it is not a part of PMIC’s “receipts” from any source.

The government conceded at oral argument that it has no factual basis to contest the assertions made by PMIC and its affiants. It explains that its contrary view of the facts was based on its auditor’s review of PMIC’s books and records, which included records reflecting the sums generated by the fish sales. While that may show that the government acted in good faith in issuing the tax assessment that precipitated this action, it is not enough to defeat PMIC’s properly supported motion for summary judgment.¹

¹ 40 PNC § 1606(a) allows the government to establish a *prima facie* case for collection of delinquent taxes with a statement by the Director of the Bureau of National Treasury “of the amount due and the fact that it remains unpaid”. That statement is not sufficient, however, where

The government does argue that the fishing fleets that receive that bulk of the proceeds from the sales in Japan are permitted in Palau's waters only through the authority obtained by PMIC and are in many or all circumstances unknown to the government. Thus, it is far more efficient for it to look to PMIC for any taxes they may owe. This argument suggests, at best, that the Republic in **L336** renewing PMIC's authority to acquire and distribute fishing licenses should reach some understanding that PMIC should be required to withhold any taxes owed by its associated fleets.² It cannot, however, justify now collecting back taxes, in the absence of any such understanding, from what appears from the record to be the wrong taxpayer.

“the defendant taxpayer expressly shows the contrary.” The Court believes that PMIC has made a sufficient showing to require the government to make a fuller factual demonstration of its liability.

The Court is mindful of the fact that this case proceeded to summary judgment on a fast track without discovery. Although the government agreed to this procedure, the Court would consider a motion to re-open the proceedings if the government believed in good faith that discovery could lead to facts sufficient to contest PMIC's assertions. *See* ROP Civ. Pro. R. 56(f); *Wolff v. Sugiyama*, 5 ROP Intrm. 105, 108-109 (1995). If the government chooses to make such a motion, it should do so within the ten-day period provided by Rule 59.

² The Court does not address whether those fleets would, in fact, owe gross revenue taxes, a question which still may turn on the statutory issue left open above, nor does the Court consider whether any attempt to collect taxes from those fleets would treat them disparately and unfairly as compared with fishing boats who do not unload their fish in Palau and who, according to PMIC, pay no gross revenue taxes.