PONAPE FEDERATION OF COOPERATIVE ASSOCIATIONS, et al., Appellants

v.

RONALD A. PETERSON, Director of the Department of Finance of the Trust Territory of the Pacific Islands, Appellee and TRUK FISHERIES COOPERATIVE ASSOCIATION, a non-profit cooperative association, Appellant

v.

RONALD A. PETERSON, Director of the Department of Finance of the Trust Territory of the Pacific Islands, Appellee and TRUK COOPERATIVE ASSOCIATION, a non-profit cooperative association, Appellant

v.

RONALD A. PETERSON, Director of the Department of Finance of the Trust Territory of the Pacific Islands, Appellee

Civil Appeal Nos. 139 & 151

Appellate Division of the High Court

April 23, 1976

Appeals from Trial Division judgments that cooperatives were subject to gross revenue tax. The Appellate Division of the High Court, Hefner, Associate Justice, affirmed, holding that a cooperative, by its very nature, is a "business" carried on for pecuniary profit for economic benefit, subject to gross revenue tax.

1. **Taxation—Gross Revenue Tax—Construction**

   Term "for pecuniary profit" in statute defining "business" subject to gross revenue tax means for the profit of stockholders or members, and is a general term, not a word of art, and includes any entity or undertaking which makes money. (77 TTC § 251(8))

2. **Taxation—Gross Revenue Tax—Construction**

A cooperative, by its very nature, is a "business" carried on for pecuniary profit for economic benefit, subject to gross revenue tax. (77 TTC § 251(8))

3. **Taxation—Gross Revenue Tax—Construction**

Gross revenue tax is tax on gross revenue, not on net profit, and when cooperative sells produce, it is sold by the cooperative and money is received by cooperative and at this point gross revenue is attributable and taxable to cooperative, not to its members. (77 TTC § 258)

4. **Taxation—Gross Revenue Tax—Construction**

Statute defining "business" for gross revenue tax purposes expressly intends to tax any entity which is the seller, resulting in gross revenue, so long as it is not a casual sale. (77 TTC § 251(8))

Counsel for Appellant: GERALD SECK, Micronesian Legal Services Corp., Truk

Counsel for Appellee: MINOR POUNDS, *District Attorney,* Ponape District
JACK LAYNE, *District Attorney,* Truk District

Before BURNETT, *Chief Justice,* HEFNER, *Associate Justice,* and PEREZ, *Designated Justice*

HEFNER, *Associate Justice*

These appeals grow out of two Trial Division judgments which held that cooperatives are subject to the gross revenue tax assessed and levied pursuant to 77 TTC § 258.

The appellants assert they are not a "Business" as defined in 77 TTC § 251(8) and therefore are excluded from the tax.

Section 251(8) reads as follows:

(8) "Business" means any profession, trade manufacture or other undertaking carried on for pecuniary profit and includes all activities whether personal, professional or incorporated, carried on within the Trust Territory of the Pacific Islands for economic benefit either direct or indirect, and excludes casual sales, as

determined by the Director, however, one who qualifies as an employee under this section shall not be considered as a business. Copra production by unincorporated copra producers collectively or severally shall not be included as a business under this definition.

It is urged by appellants that the wording of the section excludes non-profit organizations and by reference to the Trust Territory regulations governing cooperatives, 37 TTC § 5, and United States cases and statutes, the conclusion is inescapable that cooperatives are non-profit organizations.

In our view, reference to the United States cases is of limited assistance. Specific exclusions and exemptions are offered cooperatives and the cases cited by both parties basically concern how a particular organization operated and if it, in some way, lost its exempt tax status. The cases are helpful in determining how a cooperative differs from other legal entities and how a cooperative is to function but this does not get to the heart of the question and whether the language of Section 251(8) is broad enough to include cooperatives.

It is also not particularly helpful to refer to 37 TTC § 5 or to government publications which state or infer the cooperatives are non-profit organizations. Nor does it assist very much to look to 2 TTC § 1(3) which implies that cooperatives are subject to local general taxation whether they be non-profit or not.

In short, cooperatives may have been treated, considered and touted as "non-profit" organizations in the past, both here and in the United States, but in the final analysis, we must look to the wording of the statute assessing the tax liability.

The language of 251(8) is very broad and includes any profession, trade, manufacture or other undertaking, and includes all activities carried on within the Trust Territory for economic benefit, either direct or indirect. It is clear

that without any other wording, cooperatives would unquestionably be included. The only wording in the section which is of limiting nature and upon which the appellants must rely is that the undertaking must be carried on for pecuniary profit. The appellants argue that since cooperatives are traditionally and historically "non-profit" they are not carried on for pecuniary profit.

If we are to equate a non-profit organization with the wording of 251(8) then our task may be simple. However, the Congress of Micronesia did not use the wording which specifically excludes non-profit entities and it did not specifically exclude cooperatives, although it did exclude unincorporated copra producers.

The purpose of forming cooperatives has been discussed by both parties. Reference has also been made to their Articles and By-Laws. In short, they are entities whereby groups of people can enhance and improve their purchasing, marketing and selling positions and by which they can improve their competitive status. As noted by the appellants, cooperatives are a conduit to funnel all benefits and profits to its members (Page 4, lines 27 & 28, appellant's brief). Herein lies the confusion which arises when "non-profit" is used synonymously with not "for pecuniary profit."

The term "non-profit corporation" is normally, if not universally significant when discussing a tax statute and whether a certain legal entity is exempt from taxation. A review of the tax statutes, upon which the United States cases cited by appellants were decided, reveal terminology and a legislative approach unlike that found in 77 TTC § 251(8). Generally speaking, the tax statutes will exempt non-profit corporations and cooperatives and it is when the corporation or cooperative function or operate out of the bounds generally conceded to be non-profit that the tax hammer falls.

[1, 2] Such is not the case here. The term "for pecuniary profit" means for the profit of stockholders or members. It is a general term, not a word of art, and includes any entity or undertaking which makes money. By the very purpose of forming a cooperative, it is indeed mandatory that the cooperative make money to pass on to the members in kind, or credit, or else the function of the cooperative is meaningless. It is argued that since a cooperative is only a conduit it shouldn't be taxed on its gross revenue since the member-producers will be taxed again. However, there appears wording in 251(8) which indicates that Congress contemplates such a result. It declared that any undertaking carried on for pecuniary profit for economic benefit, whether it be direct or indirect, be taxed. It thus becomes clear that by the very nature of the purpose of a cooperative, it comes within the broad definition of "business."

[3] It is also significant that the tax is on gross revenue and not net profit. If a cooperative was taxed on its net profit, it may well successfully argue it has no profit and is only a form of a fiduciary holding the money for its members. But there is no doubt that a cooperative has gross revenue. When a shipload of fish or a truckload of produce is sold, it is sold by the cooperative and the money is received by the cooperative. At this point the gross revenue is attributable and taxable to the cooperative, not its members. The fact that later on the cooperative may pass all of the revenue on to its members does not eliminate the fact that the cooperative was the undertaking which generated the gross revenue.

[4] The importance of the cooperative as the selling entity is further buttressed by the fact that casual sales are excluded in § 251(8). Hence the section expressly intends to tax any entity which is the seller, resulting in gross revenue, so long as it is not a casual sale. There is no basis

to find, indeed it is not argued by appellants, that we are concerned with casual sales.

The judgments are hereby AFFIRMED.