

**PHILIPPINE HOME ASSURANCE CORPORATION, PHILIPPINE
AMERICAN ACCIDENT INSURANCE COMPANY, PHILIPPINE
AMERICAN GENERAL INSURANCE COMPANY and AMERICAN
INTERNATIONAL UNDERWRITERS (Phi...**

G.R. No. 119446. January 21, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals, dated April 27, 1994, which affirmed the decision of the Court of Tax Appeals denying the claims filed by the petitioners for refund of documentary stamp taxes.

Petitioners are the Philippine Home Assurance Corporation (PHAC), the Philippine American Accident Insurance Company (PAAIC), the Philippine American General Insurance Company (PAGIC), and the American International Underwriters (Phils.), Inc. (AIUPI), which are domestic corporations engaged in the insurance business.

From January to June 1986, they paid under protest the total amount of P10,456,067.83 as documentary stamp taxes on various life and non-life insurance policies issued by them, broken down as follows:

PHAC

1,714,459.00

PAAIC 68,046.00

PAGIC 3,816,973.00

AIUPI 4,856,589.83

TOTAL P10,456,067.83[1]

On August 4, 1987, petitioners filed separate claims for refund from the Bureau of Internal Revenue.[2] They alleged that the premiums on the insurance policies issued by them had not been paid thus, in accordance with §77 of the Insurance Code,[3] no documentary stamp taxes were due on the policies.[4]

As the Bureau of Internal Revenue failed to act on their claims,[5] the petitioners appealed on December 29, 1987 to the Court of Tax Appeals. In its decision, dated April 26, 1993,[6] the Tax Court denied petitioners' claims. It held:[7]

. . . the documentary stamp must be affixed to the insurance policy, which is a contract in itself, between the insurer and the insured, whereby for an agreed premium, the former undertakes to compensate the latter for the loss of a specific subject by reason of specific perils, on the date it is issued even if no premium has been paid. The payment or non-payment of the premium by the insured is immaterial since a documentary stamp tax is in

the nature of an excise tax upon a facility used in the transaction of a business which is separate and distinct from the business itself. Such being the case, . . . the subsequent cancellation of an insurance policy will not exempt the issuer from the corresponding documentary stamp tax. And thus, no refund can be allowed of the documentary stamp tax paid on an insurance policy which for some reason or another has been cancelled or for that matter, the premium was unpaid.

Petitioners filed a joint appeal in the Court of Appeals which, however, in a judgment,[8] dated April 27, 1994, affirmed the decision of the Court of Tax Appeals. In part the appellate court said:

The respondent court correctly characterized a documentary stamp tax as in the nature of an excise tax. As such, it is imposed on the privilege of conducting a particular business or transaction and not on the business or transaction itself. Thus, the documentary stamp tax on insurance policies is, in effect, imposed on the privilege to conduct insurance business and not on the insurance business itself or on the premiums paid under the said insurance policies. This means then that the documentary stamp tax accrues when the said privilege is exercised. As the respondent court stated, while it is true that a documentary stamp tax is levied on the document and not on the property involved, the documentary stamp tax is not intended to be a tax on the document alone. The law taxes the document because of the transaction so that the tax becomes due and payable at the time the transaction is had or accomplished, in this case, at the time of the issuance of the document.

This is the reason that the documentary stamp tax will not be refunded upon the subsequent cancellation of the insurance policy. Likewise, when a policy already issued becomes ineffective because of the non-payment of the first premium, the documentary stamp tax cannot be refunded whether or not the policy has, in fact, become effective, since the privilege subject of the tax has already been realized.

Hence, this appeal. Petitioners maintain that since the premiums on the subject life and non-life insurance policies were not paid, the same are considered as never to have taken effect pursuant to §77 of the Insurance Code and, therefore, no documentary stamp taxes were due thereon.

The petition is without merit.

The pertinent provisions of the National Internal Revenue Code state:

Sec. 183. Stamp Tax on Life Insurance Policies. — On all policies of insurance or other instruments by whatever name the same may be called, whereby any insurance shall be made or renewed upon any life or lives, there shall be collected a documentary stamp tax of fifty centavos on each two hundred pesos or fractional part thereof, of the amount issued by any such policy.

Sec. 184. Stamp Tax on Policies of Insurance Upon Property. — On all policies of insurance or other instruments by whatever name the same may be called, by which insurance shall be made or renewed upon property of any description, including rents or profits, against peril by sea or on inland waters, or by fire or lightning, there shall be collected a documentary stamp tax of thirty centavos on each four pesos, or fractional part thereof, of the amount of the premium charged: Provided, however, that no documentary stamp tax shall be collected on reinsurance contracts or on any instrument by which cession or acceptance of insurance risks under any reinsurance agreement is effected or recorded.

In general, documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of lands,[9] mortgages, pledges, and trusts,[10] and conveyances of real property.[11]

Documentary stamp taxes are thus levied on the exercise of these privileges through the execution of specific

instruments, independently of the legal status of the transactions giving rise thereto. The documentary stamp taxes must be paid upon the issuance of the said instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable. As the Supreme Court of the United States held in *Du Pont v. United States*:^[12]

The tax is not upon the business transacted but is an excise upon the privilege, opportunity, or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. In this view it is immaterial whether the transfer of the account constituted a sale.

This case has been cited in several of this Court's decisions, first in *Commissioner of Internal Revenue v. Heald Lumber Co.*,^[13] then in *Philippine Consolidated Coconut Industries, Inc. v. Collector of Internal Revenue*,^[14] then in *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*,^[15] and most recently in *Lincoln Philippine Life Insurance Company, Inc. v. Court of Appeals*.^[16] It is thus settled that the life and non-life insurance policies in question are subject to documentary stamp taxes pursuant to §183 and §184 of the National Internal Revenue Code by their mere issuance, and the fact that the policies have not become effective for non-payment of the corresponding premiums as required by §77 of the Insurance Code cannot affect petitioners' liability for payment of documentary stamp taxes. Their claim for refund was correctly denied.

WHEREFORE, the decision of the Court of Appeals, dated April 27, 1994, is **AFFIRMED**.

SO ORDERED.

Bellosillo, (Chairman), Puno, Quisumbing, and Buena JJ., concur.

[1] Rollo, pp. 66-68.

[2] *Id.*, p. 37.

[3] This provision states that "an insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against. Notwithstanding any agreement to the contrary, no policy or contract of insurance issued by an insurance company is valid and binding unless and until the premium thereof has been paid, except in the case of a life or an industrial life policy whenever the grace period provision applies."

[4] Rollo, pp. 20-22.

[5] *Id.*, p. 37.

[6] Per Judge Ramon O. De Vega and concurred in by Presiding Judge Ernesto D. Acosta and Judge Manuel K. Gruba.

[7] Rollo, pp. 210-212.

[8] Per Associate Justice Antonio M. Martinez and concurred in by Associate Justices Quirino D. Abad Santos, Jr. and Godando Jacinto.

[9] National Internal Revenue Code, §194.

[10] *Id.*, §195.

[11] *Id.*, §196.

[12] 300 U.S. 150, 153 (1936).

[13] 10 SCRA 372 (1964).

[14] 70 SCRA 22 (1976).

[15] 145 SCRA 671 (1986).

[16] G.R. No. 118043, July 23, 1998.

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