REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

THE MANUFACTURERS LIFE INSURANCE COMPANY (MANULIFE), Petitioner,	**C.T.A. CASE NO. 7119**
- versus -	Members: **CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 1 1 2009 10:35 a.m.

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DECISION

CASTAÑEDA, JR., J.:

This is an appeal filed by The Manufacturers Life Insurance Company (Manulife), praying for the cancellation of the assessment for deficiency documentary stamp tax (DST) for taxable year 1997 in the amount of Thirteen Million Five Hundred Ninety Three Thousand Nine Hundred Twenty Eight Pesos and 35/100 (P13,593,928.35).

Petitioner is a mutual life insurance company domiciled in Toronto, Canada. It is duly licensed by the Insurance Commission to do business in the Philippines and has been operating in the Philippines through its

Philippine Branch Office since 1907.[1] Its principal office is at LKG Tower, 6801 Ayala Avenue, Makati City.[2] It is registered as a non-value-added tax (VAT) entity with Tax Identification No. (TIN) 500-000-603-665, and it was issued by the Bureau of Internal Revenue (BIR) National Office, BIR Certificate of Registration No. 94-500-000264-NV dated June 15, 1994 as a business engaged in Mutual Life Insurance (BIR Code: 8310).[3] Petitioner insures risks falling within the following classes of insurance: (1) life, (2) accident, and (3) sickness.[4]

Respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to administer and enforce national internal revenue laws, including among others, the power to issue tax assessments. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On November 27, 2001, petitioner received from respondent Assessment Notice No. DST-97-000026, together with the Formal Letter of Demand dated October 5, 2001, for alleged deficiency DST for taxable year 1997 in the amount of Nine Million Four Hundred Eighty Five Thousand Twenty Six Pesos and 18/100 (P9,485,026.18), broken down as follows:[5]

Basic Tax	P 5,733,349.20
Interest	3,726,676.98
Compromise penalty	25,000.00
Total	P 9,485,026.18

In the Formal Letter of Demand, respondent argued that the exemption claimed by petitioner is unacceptable for the following reasons:[6] gr

[1] Exhibit "B".
[2] Exhibit "C-5".
[3] Exhibit "C".
[4] Par. 3, Facts Admitted, Joint Stipulation of Facts and Issues, Docket, p. 93.
[5] Exhibits "EE", "EE-1", and "EE-2".
[6] Exhibit "EE".

1. *Stare Decisis* does not apply inasmuch as the factual and legal circumstances of the jurisprudence being cited are not similar compared to that of petitioner's;

2. It does not operate under a local cooperation plan required under Section 199 of the National Internal Revenue Code (NIRC) and *Insular Life Assurance Co., Ltd. vs. CIR* (CTA Case No. 5336);

3. It is not purely a non-stock company, unlike Insular Life Assurance Company Ltd.; and

4. It is not registered with the Cooperative Development Authority (CDA) as required under Articles 61 and 62 of Republic Act (R.A.) No. 6938 and Revenue Memorandum Circular (RMC) No. 48-91.

On December 7, 2001, petitioner seasonably filed with respondent's Large Taxpayers Service its formal protest to the deficiency DST assessment, together with the supporting documents.[7]

Petitioner claims that respondent recognized petitioner as a mutual insurance company doing business in the Philippines when after it submitted relevant documents to his office, he issued BIR Certificate of Registration No. 94-500-000264-NV dated June 15, 1994 which designates petitioner as a business engaged in Mutual Life Insurance under BIR Code: 8310.[8] Petitioner likewise avers that respondent issued BIR Ruling No. 170-98 addressed to petitioner on December 2, 1998, wherein respondent ruled that the demutualization plan or the conversion of petitioner from a mutual life insurance company to a stock company, is clearly for a *bona fide* business purpose, and falls within the purview of Section 40(C)(2) of the NIRC of 1997.[9] Jr

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[7] Exhibit "FF".
[8] Exhibit "C".
[9] Par. 10, Facts Admitted, Joint Stipulation of Facts and Issues, Docket, p. 95.

On August 16, 2002, petitioner received respondent's Final Decision on Disputed Assessment dated June 10, 2002.[10] Petitioner however requested the reconsideration of the said Final Decision on September 12, 2002 in a letter dated September 10, 2002.[11]

On November 30, 2004, petitioner received from respondent his Final Decision dated September 10, 2004, denying petitioner's protest against the deficiency documentary stamp tax assessment for 1997, and ordering the payment of the alleged deficiency DST in the amount of P13,593,928.35, computed as follows:[12]

Documentary stamp tax	
On Insurance Policies	
Sum Assured	
Individual Policies	
Issued during the year	8,085,009,168.00
Increases during the year	440,051,787.00
Group policies	
Issued during the year	400,788,170.00
Increases during the year	2,262,482,556.00
Total	**11,188,331,681.00**
Tax Rate	0.00
Tax Due	**27,970,829.00**
On Policy Loan	
Amount of Policy loan	44,920,456.00
Tax due @ 20/5T and 10/5T	**89,860.00**
Total DST due	28,060,689.20
Less Prepaid DST applied during the year	22,327,340.00
Basic Tax	**5,733,349.20**
Add	
Interest from January 1, 1998 to October 31, 2004	7,835,579.15
Compromise	25,000.00
Total Amount Due	**13,593,928.35**

In order to protect its interest, petitioner filed the instant Petition for Review on December 28, 2004. gr

[10] Exhibit "GG".
[11] Exhibit "GG-1".
[12] Exhibit "HH".

In his Answer filed on March 15, 2005, respondent interposed the following Special and Affirmative Defenses:

> "5. He repleads the preceding paragraphs as part of the Special and Affirmative Defenses;
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> 6. The assessment for documentary stamp tax (DST) was imposed on the group life insurance policies due to increases of the face value of the group policies as a result of the corresponding increases in the number of members in the group. Although no amendments were physically made on the policies, the yearly endorsements constitute the effective amendment to the face value of the group policy, thus, the basis of the current year's premium payment. The DST due pertains only to the additional amount of the group policy which was not subjected to tax.
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> 7. Section 183 of the National Internal Revenue Code provides, thus:
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> > '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 (P0.50) on each Two hundred pesos (P200), or fractional part thereof, of the amount insured by any such policy.'
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> 8. Petitioner was incorporated in Canada and, as such, is not operated under a local cooperation plan as required under Section 199 of the Tax Code in order that its insurance policies may be exempt from DST.
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> 9. Petitioner, being a Cooperative Company, is required under Articles 61 and 62 of RA No. 6938, otherwise known as the Cooperative Code of the Philippines, and Revenue Memorandum Circular No. 48-91 to be duly registered with the Cooperative Development Authority. Petitioner failed to comply with such requirement.
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> 10. Petitioner is not purely a non-stock company. Its amended By-Laws adopted effective January 1, 1996 after its amalgamation with North American Life Assurance Company provides as follows:
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> 'The authorized capital of The Manufacturers Life Insurance Company (the 'Company') shall consist of an

> unlimited number of Class A Shares without nominal or par value, issuable in series (the 'Class A Shares'), an unlimited number of Class B Shares without nominal or par value, issuable in series (the 'Class B Shares'), an unlimited number of Class C Shares without nominal or par value, issuable in series (the 'Class C Shares') and an unlimited number of Class D Shares without nominal or par value, issuable in series (the 'Class D Shares').'
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> The above provision negates petitioner's claim that it is non-stock company that is not organized for profit.
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> 11. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called (CIR vs. Construction Resources of Asia, Inc., 145 SCRA 671). It is incumbent upon the taxpayer to prove the contrary (Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397) and failure to do so shall vest legality to respondent's actions and assessments."

In order to support its claim, petitioner presented its Formal and Supplemental Offer of Evidence on March 28, 2007 and December 21, 2007, respectively; while respondent filed his Formal Offer of Evidence on December 12, 2007. On June 5, 2008, the case was submitted for decision, considering the filing of the parties' respective Memorandum.

The parties jointly stipulated the following issues for this Court's resolution:

> "1. Whether or not Petitioner is a purely non-stock, mutual life insurance company exempt from the payment of documentary stamp tax (DST) under Section 199(a) of the National Internal Revenue Code of 1997, in relation to Section 123 of the same code;
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> 2. Whether or not the deficiency documentary stamp tax assessment for 1997 in the amount of Thirteen Million Five Hundred Ninety Three Thousand Nine Hundred Twenty Eight Pesos and 35/100 (P13,593,928.35) against Petitioner should be cancelled for lack of factual and legal basis; gr

3. Whether or not Petitioner operated under a local cooperation plan as required under Section 199 of the Tax Code in order that its insurance policies may be exempt from documentary stamp tax; and

4. Whether or not Petitioner, being a cooperative company, is required under Articles 61 and 62 of Republic Act No. 6938, otherwise known as the Cooperative Code of the Philippines, and Revenue Memorandum Circular No. 48-91 to be duly registered with the Cooperative Development Authority."

The first and second issues shall be discussed jointly inasmuch as the second issue is a consequence of the first issue.

Section 199(a) of the NIRC of 1997, as amended provides:

"**SEC. 199. Document and Papers Not Subject to Stamp Tax.** — The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:

(a) **Policies of insurance or annuities made or granted by a** fraternal or beneficiary society, order, association, or **cooperative company**, operated on the lodge system or local cooperation plan and organized and **conducted solely by the members thereof for the exclusive benefit of each member and not for profit.**" (*Emphasis supplied*)

From the foregoing, in order for petitioner to be exempt from documentary stamp tax it must prove that the insurance policies were issued by a cooperative company conducted solely by the members thereof for the exclusive benefit of each member and not for profit.

The NIRC of 1997, as amended defines a "cooperative" as an association "conducted by the members thereof with the money collected from among themselves and solely for their own protection and not for profit."[13] And to determine whether petitioner is a cooperative, this Court will apply the three criteria laid down by the Supreme Court in the case of *Republic of the* Jc

[13] Section 123, NIRC of 1997, as amended.

Philippines, represented by the Commissioner of Internal Revenue vs. Sunlife Assurance Company of Canada[14], to wit:

1. it is managed by its members;
2. it is operated with money collected from its members; and
3. it is licensed for the mutual protection of its members, not for the profit of anyone.

Anent the first requisite, petitioner's General By-Laws dated May 20, 1965,[15] states that the affairs of petitioner shall be managed by a board of thirteen Directors, who shall be elected by the participating policyholders who are each entitled to one vote. Relating this to their corporate meetings, the Corporate Secretary's Certificate dated November 15, 2005 indicates that the annual meetings were held for the policyholders since 1996 until 1999.[16] This shows that the Board of Directors is primarily elected by and among its policyholders. Evidently, petitioner satisfies the first requirement.

Records reveal that member-policyholders of petitioner pay money premium from among themselves for their exclusive benefit and protection from risks assured by the insurance policy. All premiums collected are entirely sourced from member-policyholders only. Such premiums collected are then pooled and earmarked for indemnity and benefit claims of member-policyholders.[17]

Petitioner likewise satisfies the third criterion. It is a company without capital stock, licensed to engage in the insurance business and make contracts of Life, Sickness and Accident Insurance as shown in its "Letter

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[14] G.R. No. 158085, October 14, 2005.
[15] Exhibit "A-2".
[16] Exhibit "AAAA".
[17] Exhibits "CCCC", "DDDD", "EEEE", "FFFF".

Patent" issued on March 19, 1987.[18] In fact, petitioner has long been recognized by respondent as a mutual insurance company doing business in the Philippines when the latter issued BIR Certificate of Registration No. 94-500-000264-NV dated June 15, 1994 which designates petitioner as a business engaged in Mutual Life Insurance under BIR Code: 8310.[19]

Moreover, as a mutual life insurance company, petitioner is conducted for the benefit of its policyholders, who pay into its capital by way of premiums as shown in its policy contracts.[20] To that extent, they are responsible for the payment of all its losses. The cash paid in for premiums and the premium notes constitute their assets. In the event that the company itself fails before the terms of the policies expire, the policyholders do not acquire the status of creditors. Rather, they simply become debtors for whatever premiums that they have originally agreed to pay to petitioner, if they have not yet paid those amounts in full.

In other words, petitioner is a cooperative that promotes the welfare of its own members. It does not operate for profit but for the mutual benefit of its policyholders. In addition to this, the dividends received by its policyholders are not a portion of its profits that is set aside to the stockholders for distribution from their subscription of capital stock of the corporation, but rather the so called "dividends" are based on the premium payments made and the existence of policy contract. These are mere return of excess

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[18] Exhibits "E-2", "E-3", "E-6".
[19] *Supra*, note 8.
[20] Exhibits "CCCC", "DDDD", "EEEE", "FFFF".

premiums as shown in petitioner's Audited Financial Statements for the years ended December 31, 1995 to December 31, 1999.[21]

The Court now proceeds to the third issue.

Respondent alleges that petitioner is not operating under a local cooperation plan and therefore not exempted from documentary stamp tax.

Section 199(a) of the NIRC of 1997, as amended, is once again quoted for ready reference, thus:

> "**SEC, 199. Document and Papers Not Subject to Stamp Tax.** — The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:
>
> (a) **Policies of insurance or annuities made or granted by** a fraternal or beneficiary society, order, association, or **cooperative company, operated on the lodge system or local cooperation plan** and organized and conducted solely by the members thereof for the exclusive benefit of each member and not for profit." (*Emphasis supplied*)

The use of the disjunctive word "or" in between the phrases "operated on the lodge system" and "local cooperation plan" implies an alternative. The word "or" is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated.[22]

In connection with exemption from taxation, fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other Jr

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[21] Exhibits "II" to "LL".
[22] *People vs. Martin, et al.*, G.R. No. L-33487, May 31, 1971.

benefits to the members of such society, order, or association or their dependents is on the list of exempt organizations.[23]

In the Philippines, a mutual life insurance company can be likened to operate under a lodge system inasmuch as it is an association or a cooperative operating for the exclusive benefit of its member-policyholders and which provides for the payment of life, sickness, accident and other benefits to its policyholders. Accordingly, even though petitioner did not show that it is operating under a local cooperation plan, the fact remains that it is operating under a lodge system; which equally entitles petitioner to exemption from documentary stamp taxes.

As regards the fourth issue, respondent alleges that petitioner's non-registration with the Cooperative Development Authority as a cooperative automatically removes it from entitlement to the benefit of exemption from documentary stamp taxes.

The foregoing issue has already been put to rest by the High Tribunal in the case of *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Sunlife Assurance Company of Canada*[24], where it did not require Sunlife Assurance Company to be registered with the CDA to be exempted from the payment of documentary stamp taxes, thus:

> "Under the Tax Code although respondent is a cooperative, registration with the Cooperative Development Authority (CDA) is not necessary in order for it to be exempt from the payment of both percentage taxes on insurance premiums, under Section 121; and documentary stamp taxes on policies of insurance or annuities it grants, under Section 199.

[23] West's Tax Law Dictionary 1993 Edition, Robert Sellers Smith, p. 469.
[24] *Supra.*

First, the Tax Code does not require registration with the CDA. No tax provision requires a mutual life insurance company to register with that agency in order to enjoy exemption from both percentage and documentary stamp taxes.

A provision of Section 8 of Revenue Memorandum Circular (RMC) No. 48-91 requires the submission of the Certificate of Registration with the CDA, before the issuance of a tax exemption certificate. That provision cannot prevail over the clear absence of an equivalent requirement under the Tax Code. *One*, as we will explain below, the Circular does not apply to respondent, but only to cooperatives that need to be registered under the Cooperative Code. *Two*, it is a mere issuance directing all internal revenue officers to publicize a new tax legislation. Although the Circular does not derogate from their authority to implement the law, it cannot add a registration requirement, when there is none under the law to begin with.

Second, the provisions of the Cooperative Code of the Philippines do not apply. Let us trace the Code's development in our history.

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We have already determined that respondent is a cooperative. The distinguishing feature of a cooperative enterprise is the mutuality of cooperation among its member-policyholders united for that purpose. So long as respondent meets this essential feature, it does not even have to use and carry the name of a cooperative to operate its mutual life insurance business. *Gratia argumenti* that registration is mandatory, it cannot deprive respondent of its tax exemption privilege merely because it failed to register. The nature of its operations is clear; its purpose well-defined. Exemption when granted cannot prevail over administrative convenience.

Third, not even the Insurance Code requires registration with the CDA. The provisions of this Code primarily govern insurance contracts; only if a particular matter in question is not specifically provided for shall the provisions of the Civil Code on contracts and special laws govern.

True, the provisions of the Insurance Code relative to the organization and operation of an insurance company also apply to cooperative insurance entities organized under the Cooperative Code. The latter law, however, does not apply to respondent, which already existed as a cooperative company engaged in mutual life insurance prior to the laws passage of

> that law. The statutes prevailing at the time of its organization and mutualization were the Insurance Code and the Corporation Code, which imposed no registration requirement with the CDA."

In summary, since petitioner managed to sufficiently establish that it is a cooperative company that does not need to be registered with the CDA, it follows and this Court so holds that petitioner is exempt from DST on the insurance policies it grants to its member-policyholders.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessment for deficiency documentary stamp tax for taxable year 1997 in the amount of P13,593,928.35 issued against petitioner is hereby **CANCELLED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice