REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ORIENTAL ASSURANCE CORPORATION	**CTA CASE NO. 9169**
Petitioner,	Members: **CASTAÑEDA, JR.**, *Chairperson*, **CASANOVA,** and
- versus -	**MANAHAN,** *J.J.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 12 2018 1:00 p.m.

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DECISION

CASANOVA, *J.*:

The Petition for Review filed by petitioner Oriental Assurance Corporation against respondent Commissioner of Internal Revenue, prays that the Final Decision on Disputed Assessment (FDDA) dated September 10, 2015, assessing petitioner for deficiency documentary stamp tax (DST) due for taxable year (TY) 2013, be declared null and void.[1]

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with corporate office address located at 2/F OAC Building, San Miguel Avenue, Ortigas Center, Pasig City, Metro Manila, and with corporate tax identification number (TIN) 000-798-742.[2]

Respondent is the duly appointed Commissioner of Internal Revenue, who has the authority, among others, to assess and collect all

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[1] Par. I, Summary of the Case, Pre-Trial Order dated June 6, 2016, Docket (Vol. I), p. 379.

[2] Par. 1, I, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), p. 361.

internal revenue taxes, fees and charges, grant refunds, and abate tax liability.[3]

On September 9, 2014, respondent issued a Letter of Authority LOA-125-2014-00000120, which was received by petitioner on September 26, 2014. The same authorized revenue officers to conduct an examination on petitioner's books of accounts and other accounting records for all internal revenue taxes, including documentary stamp tax and other taxes, covering the period of January 1, 2013 to December 31, 2013.[4] As a result, respondent found discrepancy from the reconciliation of the DST due on the latter's direct premiums as reported in the annual statement filed with the Insurance Commission (IC) against the DST utilization, as captured in the Bureau of Internal Revenue (BIR) eDST system; thus, the former issued a Letter of Notice (LN) No. 125-DS-2014-000016 to inform petitioner of such discrepancy.[5] Subsequently, a Memorandum[6] dated November 11, 2014 was made recommending the issuance and approval of a Preliminary Assessment Notice (PAN).

On November 19, 2014, petitioner received a PAN dated November 18, 2014 with Details of Discrepancies, assessing it for the alleged deficiency DST due on accumulated direct premiums per IC Report for TY 2013 in the amount of ₱276,335,075.10, computed as follows:[7]

Details		Amount
Direct Premium per IC report	₱	751,086,843.00
DST Due (Section 184 of the Tax Code)		93,885,855.50[8]
Add: DST Payable, beginning balance per IC report		138,221,812.00
Less: eDST System		1,195,803.00
Deficiency DST Due		230,911,864.50
Add: Interest 20%		45,423,210.60
Total Amount Due	₱	276,335,075.10

Consequently, petitioner requested for reconsideration and reinvestigation on the aforesaid PAN on December 3, 2014.[9]

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[3] Par. 3, I, Joint Stipulation of Facts, JSFI, Docket (Vol. I), pp. 361-362.
[4] Exhibit "P-1".
[5] Exhibit "R-1".
[6] Exhibit "R-2"
[7] Par. 4, I, Joint Stipulation of Facts, JSFI, Docket (Vol. I), p. 362; Exhibits "P-2" and "P-2-1"; Exhibit "R-3".
[8] ₱751,086,843.00 ÷ 4.00 x .50 = ₱93,885,855.3750.
[9] Par. 5, I, Joint Stipulation of Facts, JSFI, Docket (Vol. I), p. 362; Exhibit "P-11".

As recommended by the investigating revenue officers,[10] a Formal Letter of Demand (FLD) was issued on April 22, 2015 which petitioner received on even date, assessing the latter for deficiency DST, to wit:[11]

Details		Amount
Direct Premium per IC report	₱	751,086,843.00
DST Due (Section 184 of the Tax Code)		93,885,855.50
Add: DST Payable, beginning balance per IC report		138,221,812.00
Less: Payment (DST utilization per BIR eDST System)		1,195,803.00
Deficiency DST Due		230,911,864.50
Add: Interest 20%		64,528,795.01
Total Amount Due	₱	295,440,659.51

As such, petitioner moved for reconsideration and investigation on May 21, 2015. Then, petitioner filed a supplemental to the motion for reconsideration on May 29, 2015.[12]

Upon recommendation,[13] respondent issued a Final Decision on Disputed Assessment (FDDA) with Details of Discrepancies on September 10, 2015, which was received by petitioner on September 16, 2015, reducing the assessment for deficiency DST in the amount of ₱125,601,369.77 for TY 2013, computed as follows:[14]

Details		Amount
Direct Premium per IC report	₱	751,086,843.00
DST Due (Section 184 of the Tax Code)		93,885,855.50
Less: Payment (DST utilization per BIR eDST System)		1,195,803.00
Deficiency DST Due		92,690,052.50
Add: Interest 20%		32,911,317.27
Total Amount Due	₱	125,601,369.77

Thus, petitioner filed this Petition for Review[15] on October 15, 2015, and incorporated therein a Motion for Suspension of Tax.

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[10] Exhibit "R-4".

[11] Par. 7, I, Joint Stipulation of Facts, JSFI, Docket (Vol. I), pp. 363-367; Exhibits "P-3" and "P-3-1"; Exhibits "R-5" and "R-5-a".

[12] Pars. 8 & 9, I, Joint Stipulation of Facts, JSFI, Docket (Vol. I), p. 363; Exhibits "P-13" and "P-14".

[13] Exhibit "R-6".

[14] Par. 10, I, Joint Stipulation of Facts, JSFI, Docket (Vol. I), p. 363; Exhibits "P-9", "P-9-1", and "P-9-2"; Exhibits "R-7" and "R-7-a".

[15] Docket (Vol. I), pp. 12-25; Exhibit "P-5".

In the Answer[16] filed, through registered mail, on December 11, 2015 and received by the Court on December 18, 2015, respondent interposed the following defenses:

"**Petitioner Was Not Denied Due Process**

13. Petitioner should not and cannot cry for violation of due process where in fact, time has been afforded to petitioner by respondent to support its claim. **The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.**

14. In tax assessment, the opportunity to be heard comes in the form of a written protest. Hence, the following factual backdrop, may well be considered, and to relate:

14.a. On 19 November 2014, a Preliminary Assessment Notice (PAN) dated 18 November 2014 was served to petitioner.

14.b. A Request for Reconsideration and Reinvestigation dated 1 December 2014 relative to the PAN was filed by petitioner with the respondent on 4 December 2015.

14.c. A Request for Additional Time was filed by petitioner, to submit pertinent documents, with respondent.

14.d. Taking action on the correspondence sent/filed by petitioner, a Memorandum dated 13 April was prepared by the revenue examiner, recommending the issuance of a Formal Letter of Demand, because of the failure of petitioner to submit additional evidence to support its claim.

[16] Docket (Vol. I), pp. 218-226.

14.e. Thus, a Formal Letter of Demand was issued to petitioner on 22 April 2015.

14.f. A Motion for Reconsideration and Investigation dated 20 May 2015 was filed by petitioner in response to the FLD issued by respondent.

14.g. In addressing petitioner's Motion for Reconsideration, a Memorandum dated 7 September 2015 was prepared, recommending the issuance of a Final Decision on Disputed Assessment in the amount of ₱125,601,369.77 for taxable year 2013.

15. It can easily be discerned from the foregoing that petitioner was never denied due process. It was able to file its protest and had in fact even requested for additional time to submit additional documents.

16. But it is the bounden duty of petitioner to present supporting evidence to establish its claim and prove otherwise. However, here, petitioner never presented any evidence to prove that indeed it is not liable to pay deficiency taxes.

17. Further, records reveal that petitioner was informed of the results and findings of the investigations made by the respondent. Attached to the Notices issued against petitioner were Details of Discrepancies, containing detailed explanation of the particular provision of law and revenue regulation violated.

18. The information provided to petitioner through the Details of Discrepancies enabled it to protest the Notices by questioning respondent's interpretation of the laws cited as legal basis for the computation of the deficiency taxes.

19. Now, considering the exchange of correspondence between Oriental Assurance Corporation (OAC) and respondent, the former cannot and should not bellow (sic) that there was violation of due process in this

case. Respondent had fully informed OAC in writing of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file its respective protest.

20. Petitioner's right to due process was thus not violated.

Petitioner Is Liable To Pay The Amount Of ₱125,601,369.77 Representing Deficiency Documentary Stamp Tax For The Year 2013

21. Documentary Stamp Tax is an excise tax which under Section 173 of the NIRC, is levied on documents, instruments, loan agreements and papers evidencing the acceptance, assignment, sale or transfer of an obligation, rights, or property incident thereto.

22. In **Antam Pawnshop vs CIR, G.R. No. 167962, September 9, 2008**, the High Court has the occasion to explain the very nature of DST as an excise tax, thus:

> A documentary stamp tax is in the nature of an excise tax. It is not imposed 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.
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> 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. xxx
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> **Accordingly, the documentary stamp tax on insurance policies, though imposed on the document itself, is actually levied on the privilege to conduct insurance business.**

> Under Section 173, the documentary stamp tax becomes due and payable at the time the insurance policy is issued, with the tax based on the amount insured by the policy as provided for in Section 183. (emphases supplied)

23. From the foregoing, DST is therefore imposed on the privilege of conducting a transaction and not on the transaction itself. Hence, as an excise tax petitioner cannot argue on the validity of the insurance contract.

24. The fact that the policies have not become effective for failure of the parties to come to an agreement or for nonpayment of premiums cannot affect the insurance companies' liability for payment of the DST.

25. Hence, the Final Decision on Disputed Assessment issued against petitioner by respondent, computed as follows, must stand:

Direct Premium per IC Report	₱ 751,086,843.00
DST Rate	₱ .050/₱4.00
DST Due	₱ 93,885,855.50
Less: DST Utilization per eDST system	1,195,803.00
DST still due	₱ 92,690,052.50
Interest 01/05/2014 to 10/15/2015	32,911,317.27
Total Amount Due	**₱ 125,601,369.77**

26. And as provided in the Details of Discrepancies attached to the FDDA dated 10 September 2015, petitioner is liable to pay its deficiency taxes, based on the following:

> **Documentary Stamp Tax**
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> **Total DST due (₱93,885,855.50)** – was computed based on direct premiums charged of ₱751,886,843.00 (excluding premiums from Health and Accident Insurance). DST computed pursuant to Section 184 of the Tax Code amounted to ₱93,885,855.50.

> **Total DST utilization (₱1,195,803.00)** - was extracted from the Bureau's eDST as implemented under Revenue Regulations No. 7-2009 and Revenue Memorandum Circular No. 51-2010.

27. Another, collection of taxes cannot be suspended by the mere pendency of the instant case before this Honorable Court. Settled is the rule that, collection of taxes cannot be restrained. The importance of taxes is explained in Commissioner of Internal Revenue vs. Algue, thus:

> 'It is said that taxes are what we pay for civilization society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.'

The Assessments Issued Against Petitioner Are Valid And Lawful

28. Respondent posits that, assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. **(Marcos II vs. Court of Appeals G.R. No. 120880 June 5, 1997)**

29. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands **(Commissioner of Internal Revenue vs. Hantex Trading Co. Inc, G.R. No. 136975, March 31, 2005)**. The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment issued against petitioner is imbued with factual and legal bases.

30. All presumptions are in favor of the correctness of tax assessments **(Sy Po vs. Court of Tax Appeals, 164 SCRA 524)**. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice."

On February 2, 2016, the Court granted petitioner's Motion for Suspension of Tax.[17] However, the Resolution granting the aforesaid motion was lifted and set aside due to petitioner's failure to post the required surety bond.[18]

Pre-Trial Brief for the Respondent[19] was filed on March 10, 2016, and Pre-Trial Brief (For the Petitioner)[20] was filed on March 11, 2016.

Upon motion of petitioner,[21] the Court appointed Mr. Danilo G. Belarmino as Court commissioned Independent Certified Public Accountant (ICPA) per Resolution dated April 25, 2016.[22] In the same Resolution, the Court, likewise, granted the motion to admit petitioner's posting of the required surety bond for the suspension of the collection of tax and admitted such surety bond.[23]

On May 5, 2016, the parties submitted their Joint Stipulation of Facts and Issues[24]. Consequently, the Court issued a Pre-Trial Order[25] on June 6, 2016.

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[17] Docket (Vol. I), pp. 256-259.
[18] Resolution dated April 22, 2016, Docket (Vol. I), p. 299.
[19] Docket (Vol. I), pp. 261-267.
[20] Docket (Vol. I), pp. 279-286.
[21] Motion to Appoint Accredited Independent Certified Public Accountant, Docket (Vol. I), pp. 289-291.
[22] Docket (Vol. I), pp. 355-356, and Oath of Commission, Docket (Vol. I), p. 352.
[23] *Ibid.*
[24] Docket (Vol. I), pp. 361-365.
[25] Docket (Vol. I), pp. 379-383.

As trial ensued, petitioner presented its witnesses, namely: Mr. Kent S. Cotoco, Mr. Rodolfo C. Mallillin, and Mr. Danilo G. Belarmino to prove its material allegations. Petitioner, then, formally offered its testimonial evidence as well as documentary evidence which the Court admitted, except Exhibits "P-4-4", "P-6-86", and "P-6-512".[26]

On the other hand, respondent's sole witness, Ms. Hannah Thea T. Binangon, took the witness stand to disprove petitioner's allegations. Thereafter, respondent formally offered in open court his documentary evidence which the Court admitted.[27]

On January 12, 2017, this case was deemed submitted for decision after the Court considered the filing of respondent's Memorandum[28] on December 7, 2016 and the Report[29] of the Records Division dated January 5, 2017, stating that no memorandum has been filed by the petitioner.[30]

The parties set forth the following issues[31] for the Court's consideration:

1. Whether the subject FDDA was issued arbitrarily and without the benefit of a complete or partial audit, which would warrant the declaration of its nullity;

2. Whether petitioner's insurance policies are subject to DST; and

3. Whether petitioner is liable to pay the total amount of ₱125,601,369.77.

In the Petition for Review, petitioner contends that the subject FDDA was devoid of factual and legal basis, and was issued arbitrarily which completely disregarded its right to substantive due process. Accordingly, since respondent failed to act on its letters request for reconsideration and reinvestigation, petitioner was deprived of its right to due process. Petitioner further explains that respondent opted to issue the subject FDDA without a formal audit and/or thorough consideration of the former's documentary evidence.

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[26] Resolution dated September 9, 2016, Docket, (Vol. II), pp. 610-611.
[27] Order dated November 7, 2016, Docket (Vol. II), p. 637.
[28] Docket (Vol. II), pp. 638-645.
[29] Docket (Vol. II), p. 673.
[30] Resolution, Docket, (Vol. II), p. 674.
[31] Par. II, Joint Definition of Issues, JSFI, Docket (Vol. I), pp. 363-364.

On the other hand, respondent posits that both substantial and procedural due process were observed in issuing the assessment. Respondent claims that petitioner was informed of the factual and legal bases of the assessment on the ground that the PAN, FLD, Final Assessment Notice (FAN), and FDDA did not only indicate the deficiency tax involved and interest due thereon but also sufficiently stated the facts, the law, rules and regulations on which the assessment was based. Respondent points out that he considered petitioner's request for reconsideration, and as a result, the deficiency DST assessment was reduced from ₱347,801,740.91 to ₱125,601,369.77.

Section 3.1.5 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, provides:

> "**3.1.5 *Final Decision on a Disputed Assessment (FDDA).*** - The decision of the Commissioner or his duly authorized representative shall state the (1) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void.*"

A careful perusal of the FDDA shows that it conformed to the provision of Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013. Apparently, the FDDA contained factual and legal basis on which the said decision was based. Also, the Court observes that respondent, indeed, considered petitioner's request for reconsideration since the amount of the deficiency DST was reduced from ₱295,440,659.51[32] to ₱125,601,369.77.

It is a well-settled rule that the party who alleges a fact has the burden of proving it. Section 1, Rule 131 of the Rules of Court defines "burden of proof" as "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence. Once the plaintiff establishes his case, the burden of evidence shifts to the defendant, who, in turn, bears the burden to establish his defense.[33]

Apparently, aside from mere allegations of petitioner, the Court finds no evidence to show that the former's substantive due process was e

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[32] Total amount of DST due as stated in the Formal Letter of Demand.
[33] *Oliver vs. Philippine Savings Bank*, G.R. No. 214567, April 4, 2016.

violated. Thus, petitioner failed to discharge the burden of proof that its right to due process was violated.

The Court shall now discuss simultaneously the issues of whether petitioner's insurance policies are subject to DST, and whether petitioner is liable to pay the total amount of ₱125,601,369.77.

Upon reconciliation of the documentary stamp tax due on petitioner's direct premiums, as reported in the annual statement filed with the Insurance Commission against its DST utilization, as captured in the BIR eDST system, covering TY 2013, respondent allegedly found deficiency DST for TY 2013 against petitioner.[34] Thus, respondent assessed petitioner for deficiency DST in the amount of ₱125,601,369.77, pursuant to Section 184 of the National Internal Revenue Code (NIRC) of 1997, as amended, which was computed as follows:[35]

Direct Premium per IC report	₱	751,086,843.00
DST Rate		₱.050[36]/₱4.00
DST Due (Section 184 of the Tax Code)	₱	93,885,855.50
Less: DST utilization per BIR eDST System		1,195,803.00
Deficiency DST Due	₱	92,690,052.50
Interest 01/05/2014 to 10/15/2015		32,911,317.27
Total Amount Due	**₱**	**125,601,369.77**

Petitioner alleges in the Petition for Review that respondent failed to appreciate the former's reinstated and cancelled policies. According to petitioner, reinstated policy refers to the insurance policy whereby the applicant applied and signed the insurance application form and paid the required premium for which the corresponding policy was issued. Allegedly, the corresponding DSTs on the reinstated policies were collected and remitted for year 2012; however, due to incomplete submission of pertinent requirements, the said policies were finalized in the first quarter of 2013. On the other hand, cancelled policy allegedly refers to the policy which was not issued because petitioner and its prospective client failed to reach an agreement.

However, respondent claims that it was petitioner who declared the premiums earned and written in the IC Report. Respondent avers that mere perusal of the IC report, which was submitted by the petitioner itself and also formed part of the BIR records, would readily reveal that the said report for premiums written and earned were net of

34 Exhibit "P-2"; Exhibit "R-3".
35 Exhibit "P-9"; Exhibit "R-7".
36 It should be ₱.50 instead of ₱.050.

those reinstated and cancelled policies. In short, respondent states that the reinstated and cancelled policies did not form part of the premiums declared in the IC report.

Findings of the ICPA show that out of ₱751,086,843.00 assessed direct premium written, the amount of ₱305,363,145.71 and ₱130,487,975.78 representing premiums for reinstated and cancelled policies, respectively, should be deducted based on the ground that the DST due on reinstated policies was already collected, paid and remitted to the BIR and that no DST accrued on cancelled policies. Likewise, the amount of ₱144,000,000.00 should be further deducted therefrom, as petitioner had allegedly paid the corresponding DST, broken down as follows:

Details	*Amount*	*DST due*
Direct Premium Written	₱ 751,086,843.00	₱ 93,885,855.38
Less: Premium for Reinstated Policies	305,363,145.71	38,170,608.50
Premium for Cancelled Policies	130,487,975.78	16,311,046.00
DST Monthly Compliance (BIR Forms 2000 1/31/2013 to 12/31/2013	144,000,000.00	18,000,000.00
Total DST Deficiency	**₱ 171,235,721.51**	**₱ 21,404,200.88**

As such, ICPA claims that only ₱21,404,200.88 should be the deficiency DST due against the petitioner.

Section 184 of the NIRC of 1997, as amended, provides:

> "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 lighting, there shall be collected a documentary stamp tax of Fifty centavos (₱0.50) on each Four pesos (₱4.00), or fractional part thereof, of the amount of 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."

Likewise, Revenue Memorandum Order (RMO) No. 48-99 has amended RMO No. 66-98 in this wise:

"June 15, 1999
REVENUE MEMORANDUM ORDER NO. 48-99
SUBJECT: Amending Paragraph III (C)(5)(B)(iii)(a) of RMO No. 66-98 Entitled 'Prescribing the Policies and Procedures for Processing and Monitoring of Tax Payments from Insurance Companies'
TO : All Revenue Officers and Other Concerned

Scope:

Revenue Memorandum Order No. 66-98 was promulgated to simplify and strengthen the monitoring of tax payments due from insurance companies in coordination with the Insurance Commission. For purpose of monitoring the documentary stamp tax payments by insurance companies on non-life insurance policies, paragraph III (C)(5)(B)(iii)(a) of RMO 66-98 provides as follows:

> 'iii. Documentary stamp tax — monthly
>
> a) Gross premiums (net of returns and cancellations) received for the month by non-life insurance companies in all line of business'

The documentary stamp tax on non-life insurance policies is governed by Section 184 of the National Internal Revenue Code of 1997 which provides that the documentary stamp tax on non-life insurance policies shall be computed based on the amount of premium charged (i.e., without any deduction), as follows:

> 'SECTION 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 Fifty centavos (P0.50) on each Four pesos (P4.00), or fractional par thereof, of the amount of premium charged: Provided, however, That no documentary stamp tax shall be collected on reinsurance contracts or on any instruments by which cession or acceptance of insurance risks under any reinsurance agreement is effected or recorded.

The above proviso of RMO 66-98 can possibly result to erroneous monitoring of DST payments by insurance companies on non-life insurance contracts considering that, while under Section 184 of the Code, the DST is computed based on the total amount of premium charged, hence, without any deduction for returns and cancellation, the above proviso of the RMO, however, may possibly be interpreted as allowing deduction of such returns and cancellation for purposes of computing the DST on non-life insurance contracts.

Amendments:

In view of the foregoing, paragraph III (C)(5)(B)(iii)(a) of RMO No. 66-98 is hereby amended to read as follows:

'iii. Documentary stamp tax — monthly:

a) Gross premiums charged for the monthly by non-life insurance companies in all line of business'" (*Emphasis supplied*)

Based on the foregoing, the required report on the gross premium for purposes of documentary stamp tax includes all those received by non-life insurance companies in line of business without any deduction for returns and cancellations. Thus, the gross premium that petitioner reported in the IC Report includes returns and cancellation.

At this juncture, it is now imperative for the Court to determine whether petitioner's reinstated and cancelled policies should be deducted from the amount of gross premium as reported in the IC Report for purposes of tax collection.

In the case of *Philippine Home Assurance Corporation vs. Court of Appeals, et al.,*[37], the Supreme Court held that the 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, independently of the legal status of the transactions giving rise thereto, and 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, to wit:

"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 land, mortgages, pledges, and trusts, and conveyances of real property.

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

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[37] G.R. No. 119446, January 21, 1999.

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*:

> 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. Herald Lumber Co.*, then in *Philippine Consolidated Coconut Industries. Inc. v. Collector of Internal Revenue,* then in *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*, and most recently in *Lincoln Philippine Life Insurance Company, Inc. v. Court of Appeals*. **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 <u>by their mere issuance</u>, 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.**" (*Emphasis supplied*)

The Supreme Court reiterated the aforesaid ruling and further pronounced that documentary stamp tax is levied on every document which establishes that insurance was made or renewed upon a life, in the case of *Commissioner of Internal Revenue vs. Manila Bankers' Life Insurance Corporation*[38], *viz*:

> "Documentary stamp tax is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. It is in the nature of an excise tax because it is imposed upon

[38] G.R. No. 169103, March 16, 2011.

> 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 distinct and separate from the business itself.
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> To elucidate, documentary stamp tax is levied on the exercise of certain privileges granted by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Examples of these privileges, the exercise of which are subject to documentary stamp tax, are leases of lands, mortgages, pledges, trusts and conveyances of real property. Documentary stamp tax is thus imposed 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 tax must be paid upon the issuance of these instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable.
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> Accordingly, the documentary stamp tax on insurance policies, though imposed on the document itself, is actually levied on the privilege to conduct insurance business. Under Section 173, the documentary stamp tax becomes due and payable at the time the insurance policy is issued, with the tax based on the amount insured by the policy as provided for in Section 183.
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> xxx xxx xxx

This Court would like to make it clear that the assessment for deficiency documentary stamp tax is being upheld not because the additional premium payments or an agreement to change the sum assured during the effectivity of an insurance plan are subject to documentary stamp tax, but because documentary stamp tax is levied on every document which establishes that insurance was made or renewed upon a life."

Petitioner's witnesses, Mr. Kent S. Cotoco and Mr. Rodolfo C. Mallillin, testified that cancelled policies are those policies wherein there is no meeting of the minds between petitioner and the applicant.[39] Allegedly, there is no meeting of the minds because the applicant neither agreed to the terms and condition of the policy by affixing his/her signature in the insurance application form nor paid the corresponding premium. On the other hand, they referred to reinstated policies as those policies where the applicant signed the insurance application form, paid the premium, received the policy, but the insurance policy holder did not utilize the policy for the year it was issued.[40]

Mr. Mallillin further stated that void policies are those policies where the applicant signed the insurance application form but did not pay the corresponding premium. Allegedly, due to non-payment by the applicant of the premium, the respondent cannot assess petitioner for DST on those void policies that were taken in 2013.

Based on the foregoing, petitioner would like to impress to this Court that their void policies and cancelled policies, as referred in the above by the former, are different from each other.

As per ICPA Report, the policies with direct written premium in the amount of ₱130,487,975.78 did not materialize and were not approved by petitioner; thus, the corresponding proposal and insurance policies were cancelled and were not issued in favor of the applicant. The ICPA[41] likewise noted the case of *Perez vs. Court of Appeals, et al.*[42], which the Supreme Court ruled as follows:

> "xxx, a contract of insurance, like other contracts, must be assented to by both parties either in person or by their agents. So long as an application for insurance has not been either accepted or rejected, it is merely an offer or proposal to make a contract. The contract, to be binding from the date of application, must have been a completed contract, one that leaves nothing to be done, nothing to be completed, nothing to be passed upon, or determined, before it shall take effect. There can be no contract of insurance unless the minds of the parties have met in agreement."

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[39] Q and A Number 15, Exhibit "P-15"; Q and A Number 9, Exhibit "P-16".
[40] Q and A Number 15, Exhibit "P-15"; Q and A Number 11, Exhibit "P-16".
[41] Exhibit "P-10".
[42] G.R. No. 112329, January 28, 2000.

The Supreme Court also held in the *Perez case* that the said contract was null and void, to wit:

> "Anent the appearance of the word 'rescinded' in the dispositive portion of the decision, to which defendant-appellee attaches undue significance and makes capital of, it is clear that the use of the words 'and rescinded' is, as it is hereby declared, a superfluity. It is apparent from the context of the decision that the insurance policy in question was found null and void, and did not have to be 'rescinded'.
>
> True, rescission presupposes the existence of a valid contract. A contract which is null and void is no contract at all and hence could not be the subject of rescission."

When the consent is totally absent and not merely vitiated, the contract is void.[43]

Applying the ruling in the *Perez case* to the instant case, the cancelled policy is a void contract since the applicant did not assent to the terms and condition of the said policy. Likewise, the void policy is also a void contract since the applicant did not pay the premium, thus, the contract of insurance has not been completed.

Since the Supreme Court has already ruled in the abovementioned cases of *Philippine Home Assurance Corporation* and *Manila Bankers' Life Insurance Corporation* that the documentary stamp tax must be paid upon the mere issuance of insurance policy, without regard to non-payment of the corresponding premium, or whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable, petitioner's cancelled policies are subject to DST.

As regards petitioner's reinstated policies with direct written premium of ₱305,363,145.71, the ICPA has stated in his Report that the corresponding DST was collected, paid, and remitted to the Bureau of Internal Revenue (BIR) within the same taxable year but the insurance policies were finalized and filed within the first quarter of TY 2013.

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[43] *Uy vs. Court of Appeals, Mindanao Station, Cagayan De Oro City,* G.R. No. 173186, September 16, 2015.

Reinstatement is defined in insurance as a restoration of the insured's rights under a policy which has lapsed or been cancelled. To reinstate, a policy holder or one who has allowed his policy to lapse does not mean new insurance or taking out a new policy, but does mean that the insured has been restored to all the benefits accruing to him under the policy contract, the original policy.[44]

Apparently, the reinstated policy does not renew the non-life insurance or take out a new policy. As such, reinstated policy is not subject anew to DST. However, the ICPA merely stated that the corresponding DST was collected and paid to the BIR without presenting any proof of such payment.

Notwithstanding, petitioner's tax liability on the same accrued in 2012. Thus, since the subject assessment notice covers only TY 2013, the abovementioned amount of ₱305,363,145.71 representing the premium for the reinstated policies should be deducted from ₱751,086,843.00.

Further, the ICPA mentioned in his Report that, after verification and audit, he found that petitioner remitted its monthly DST due and filed the corresponding returns amounting to ₱18,000,000.00 based on a total premium of ₱144,000,000.00, summarized as follows:

BIR form no.[45]	*Date of transaction*	*Date filed/received*	*Tax Base*	*DST due*
2000	01/31/2013	01/24/2013	₱ 12,000,000.00	₱ 1,500,000.00
2000	2/28/2013	2/25/2013	12,000,000.00	1,500,000.00
2000	3/31/2013	3/21/2013	12,000,000.00	1,500,000.00
2000	4/30/2013	4/24/2013	12,000,000.00	1,500,000.00
2000	5/31/2013	5/23/2013	12,000,000.00	1,500,000.00
2000	6/30/2013	6/25/2013	12,000,000.00	1,500,000.00
2000	7/31/2013	7/25/2013	12,000,000.00	1,500,000.00
2000	8/31/2013	8/28/2013	12,000,000.00	1,500,000.00
2000	9/30/2013	9/25/2013	12,000,000.00	1,500,000.00
2000	10/31/2013	10/25/2013	12,000,000.00	1,500,000.00
2000	11/30/2013	11/22/2013	12,000,000.00	1,500,000.00
2000	12/31/2013	12/26/2013	12,000,000.00	1,500,000.00
Total			**₱ 144,000,000.00**	**₱18,000,000.00**

Notwithstanding, respondent explains that in BIR eDST system, the beginning balance coming from the previous year 2012 will be

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[44] Missouri State Life Ins. Co. v. Jensen, 281 P. 561,562, 139 Okl. 130, Words and Phrases, Volume 36 by West Publishing Co., p. 728.

[45] Exhibits "P-7", "P-7-1", "P-7-2", "P-7-3", "P-7-4", "P-7-5", "P-7-6", "P-7-7", "P-7-8", "P-7-9", "P-7-10", and "P-7-11".

added to ₱18,000,000.00 (debits); then, the DST utilized in the amount of ₱1,195,803.00 (credits) for taxable year 2013 will be deducted against beginning balance plus the debits, which the resulting amount/balance of which will then again be carried over as the beginning balance for TY 2014. The said resulting amount/balance will be allegedly utilized for the succeeding taxable year.

Tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.[46]

With the submission of the Documentary Stamp Tax Declaration Returns[47] (BIR Form No. 2000), petitioner has proved that it paid the aggregate amount of ₱18,000,000.00 for its DST due for TY 2013.

In sum, the amount of ₱18,000,000.00 should be deducted from the deficiency DST assessment, computed as follows:

Direct Premium per IC Report	₱	751,086,843.00
Less: Premium for Reinstated Policies		305,363,145.71
Adjusted Direct Premium per IC Report	₱	445,723,697.29
DST Rate		₱.50/₱4.00
DST Due	₱	55,715,462.16
Less: DST Payment		18,000,000.00
DST Still Due	₱	**37,715,462.16**

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The FDDA issued by respondent against petitioner for TY 2013 covering deficiency DST is **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **FORTY-SEVEN MILLION ONE HUNDRED FORTY-FOUR THOUSAND THREE HUNDRED TWENTY-SEVEN PESOS AND SEVENTY CENTAVOS (₱47,144,327.70)** representing the sum of the basic deficiency DST for TY 2013 in the amount of ₱37,715,462.16 and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, in the amount of ₱9,428,865.54, as shown below:

[46] *Commissioner of Internal Revenue vs. Gonzales*, G.R. No. 177279, October 13, 2010.
[47] Exhibits "P-7", "P-7-1", "P-7-2", "P-7-3", "P-7-4", "P-7-5", "P-7-6", "P-7-7", "P-7-8", "P-7-9", "P-7-10", and "P-7-11".

Basic Deficiency DST	₱ 37,715,462.16
Add: 25% Surcharge	9,428,865.54
Total	**₱47,144,327.70**

In addition, petitioner is hereby **ORDERED TO PAY**:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency DST of ₱37,715,462.16 computed from January 5, 2014 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱47,144,327.70 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from September 16, 2015 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Catherine T. Manahan
CATHERINE T. MANAHAN
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, Second Division

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.

ROMAN G. DEL ROSARIO
Presiding Justice