REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AMERICAN INTERNATIONAL UNDER-
WRITERS (PHILS.), INC.,
Petitioner,

-versus - C.T.A. CASE NO. 4208

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - - - x

PHILIPPINE AMERICAN GENERAL
INSURANCE COMPANY,
Petitioner,

-versus- C.T.A. CASE NO. 4209

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - - - x

PHILIPPINE AMERICAN ACCIDENT
INSURANCE COMPANY,
Petitioner,

4/24/93

-versus- C.T.A. CASE NO. 4210

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - - - x

PHILIPPINE HOME ASSURANCE
CORPORATION,
Petitioner,

-versus- C.T.A. CASE NO. 4211

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - - - x

D E C I S I O N

This is a consolidated claim for refund by the above-mentioned petitioners involving similar facts and same legal issue.

The petitioners are domestic corporations, organized and existing under and by virtue of the Philippine laws, engaged in the business of insurance.

During the period of January to June 1986, the petitioners paid the total amount of P10,456,067.83, broken down as follows: (see Annex A)

1.	AIUP (CTA 4208)	P4,856,589.83
2.	PhilAmGen (CTA 4209)	3,816,973.00
3.	PhilAmAccident (CTA 4210)	68,046.00
4.	PhilHome (CTA 4211)	1,714,459.00
	T o t a l	P10,456,067.83

representing their respective allegedly erroneous payments of documentary stamp taxes on certain insurance policies issued by them and their brokers or agents which, according to them, never became insurance policies, legally speaking, because the required premiums were never paid by the insurants.

Hence, their claims for refund.

On August 4, 1987, petitioners, through their common counsel, filed their respective claim with the respondent's Bureau (see Exhibit A). Without the respondent's action thereon, petitioners filed their respective petitions for review on December 29, 1987 in order to toll the running of the prescriptive period.

Whether or not documentary stamp taxes affixed on unpaid insurance policies are refundable is the principal issue in these cases.

The applicable provisions under the National Internal Revenue Code relative to documentary stamp taxes on insurance policies, provide:

> "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 policy."

and

> "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."

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" (Aranas, Updated National Internal Revenue Code, 1988 Edition, p. 772; Underscoring supplied). While it is true that a documentary stamp tax is levied on the document and not on the property which it described, (Comm. v. Heald Lumber Co., 10 SCRA 372) the documentary stamp tax is not intended to be a tax on the document alone, rather, the law taxes the document because of the transaction. It is due and payable (Sec. 173, NIRC) at the time the transaction is had or accomplished, (i.e., at the time of the issuance of the document).

In the case of insurance, as in this case, the documentary stamp tax 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 loss on a specific subject by specific perils (Ohio Farmers Insurance Co., v. Cochran, 135 NE, 537, 539 Words and Phrases Permanent Edition, Vol. 21-A), on the date it is issued even if no premium has been paid. This is so because the stamp tax accrues the moment such policy is issued (Ruling, BIR ~No. 433). The payment or non-payment of the premiums by the insurants is immaterial since documentary stamp taxes are in the nature of an "excise upon the facilities used in the transaction of the business separate and distinct from the business itself" (Underscoring supplied; Aranas, ibid.) Such being the case, there is wisdom in the BIR Ruling No. 433 by which this Court agree fully that "the "subsequent cancellation of insurance policies issued 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 insurance policies which for some reason or another have been cancelled" (ibid) or for that matter, the premiums were unpaid.

WHEREFORE, predicated on the above reasons, **We** hereby **DENY** the claims for refund by the petitioners and their corresponding petitions for review are **DISMISSED** for lack of merit.

SO ORDERED.

Quezon City, Metro Manila, April 26, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals