REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ORIENTAL ASSURANCE CORPORATION, Petitioner,	**CTA CASE NO. 9169**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 11 2018 10:22 Am

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RESOLUTION

CASANOVA, *J.*:

For resolution are respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 12 January 2018)**, filed on January 29, 2018, and petitioner's **Partial Motion for Reconsideration (Of the Decision, dated 12 January 2018)**, filed through registered mail on January 30, 2018 and received by the Court on February 7, 2018, without any comment filed by the parties pursuant to Records Verification dated March 6, 2018.

Both parties seek reconsideration of the Court's Decision dated January 12, 2018, the dispositive portion of which reads:

> "**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:

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."

Respondent alleges that this Court erred in ruling that petitioner is liable to pay documentary stamp tax only in the reduced amount of ₱47,144,327.70.

According to respondent, it was petitioner who declared the premiums written and premium earned in the Insurance Commission Report. Allegedly, the insurance policies were finalized and filed within the first quarter of taxable year (TY) 2013 and the corresponding documentary stamp tax (DST) due was for TY 2013. Respondent insists that there is no evidence presented by petitioner showing that the reinstated policies were the insurance policies took out in TY 2012 and the corresponding DST due on the said policies were collected and remitted in the same taxable year.

Respondent further posits that the Court erred in ruling that the amount of ₱18,000,000 should be deducted from the deficiency DST assessment since petitioner was able to submit DST Declaration

Returns. He alleged that there is a beginning balance coming from the previous year 2012 which will be added to the ₱18,000,000 (debits); that the DST utilized in the amount of ₱1,195,803.00 (credits) for TY 2013 will be deducted against beginning balance plus the debits; that the resulting amount/balance of which, will then, again, be carried over as the beginning balance for TY 2014 and will be utilized for the succeeding TY. Respondent states that if the entire amount of ₱18,000,000 will be deducted in TY 2013, petitioner will double deduct the said amount in TYs 2013 and 2014 because it will carry over the unutilized eDST for TY 2014 as its beginning balance.

On the other hand, petitioner contends, in its motion, that an insurance policy requires acceptance of the insured of the offered policy in order to be considered as a contract, and that the privilege of making or issuing a document was fully exercised. Otherwise, it will only be considered as a mere offer or proposal to make a contract; and, that the DST shall not be imposed against said policies.

Petitioner points out that in the uncontested Independent Certified Public Accountant's (ICPA) Report, the ICPA stated that petitioner had cancelled policies with total premium collected of ₱130,487,975.78. Petitioner further claims that the undisputed testimony of Mr. Kent Cotoco categorically declared that petitioner's cancelled policies for calendar year 2013 referred to those policies wherein the insurance brokers filed unsigned application forms for prospective customers, which applications were never pursued.

The Court finds that the arguments raised by both parties are mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision.

Contrary to respondent's claim, records show that petitioner presented Summary of Petitioner's Reinstated Policies for calendar year 2013[1], Reinstated Policies for calendar year 2013[2], as well as testimonial evidence of its witnesses to prove that its reinstated policies are not subject to DST.

Based on the above documents, the ICPA found that portion of the Direct Premium per IC report assessed by respondent pertains to

[1] Exhibit "P-4".
[2] Exhibits "P-4-1 to P-4-1517".

petitioner's reinstated policies with direct written premium amounting to ₱305,363,145.71.[3]

According to petitioner's witnesses, reinstated policies are 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. Since a reinstated policy does not renew the non-life insurance or take out a new policy, the same is not subject anew to DST.

In this regard, the failure of petitioner to present the alleged proof of payment of DST on the said policies is of no moment because the DST due for such policies issued on 2012 accrued during the taxable year 2012[4] and not during the taxable year assessed which is 2013. Therefore, the same should not have been covered by the subject assessment.

On the other hand, as to the portion of the Direct Premium per IC report pertaining to cancelled policies, the Court has already ruled in the assailed Decision that the DST 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. Thus, the cancelled policies are subject to DST. Accordingly, petitioner's allegation that the cancelled policies should not be subject to DST is likewise found to be bereft of merit.

At this juncture, the Court reiterates the legal basis of the Court's ruling laid down in the assailed Decision as follows:

> "In the case of *Philippine Home Assurance Corporation vs. Court of Appeals, et al.,* 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:

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[3] Exhibit "P-10".
[4] Exhibit "P-10".

'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 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*) xxx xxx xxx

> Since the Supreme Court had 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.
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> xxx xxx xxx
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> 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.
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> 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. xxx."

Considering the foregoing, the Court finds no cogent reason to disturb the ruling in the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 12 January 2018)** and petitioner's **Partial Motion for Reconsideration (Of the Decision, dated 12 January 2018)** are **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

(On Official Business)
CATHERINE T. MANAHAN
Associate Justice