LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SUN LIFE ASSURANCE COMPANY
OF CANADA (PHILIPPINE BRANCH),
Petitioner,

- versus -

C.T.A. CASE NO. 5216

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
JUN 30 1997

x - x

DECISION

This case involves a judicial action for the recovery of the sum of P775,000.00 representing alleged overpaid documentary stamps tax on Insurance Policy Nos. 9134706 and 9138766 during the year 1993.

The facts as borne by the records and pleadings of the case are as follows:

Petitioner, Sun Life Assurance Company of Canada (Phil. Branch), is a resident foreign corporation duly organized and existing under and by virtue of the laws of Canada. It is duly licensed to do business in the Philippines through its Philippine branch. It is primarily engaged in the life insurance business and as such, it is subject to documentary stamp tax on the issuance of life insurance policies pursuant to Section

183 of the National Internal Revenue Code (NIRC), as amended.

Prior to February 1992, petitioner has been using the metering machine for the affixture of documentary stamps on its policy issuances. However, due to increasing volume of insurance policy applications whose face values run from hundred thousand of pesos to millions, petitioner found this metering machine tedious and time-consuming. Thus, on February 10, 1992, petitioner formally requested the Bureau of Internal Revenue (BIR) - West Makati Branch to allow the use of POCR or ATAP (Authority to Accept Payment) system in lieu of the metering machine (Exh. A). Under the POCR or ATAP system, petitioner will purchase in advance the desired amount of documentary stamps in which the BIR will issue an ATAP bearing a serial number. The bank validation on the ATAP and the ATAP itself will serve as petitioner's official receipt.

Through Ms. Leonila Bulaon, Chief, Collection Branch, BIR - West Makati, the request was granted (Exh. A-3). And in consequence for the use of the ATAP system, petitioner was required by the BIR to maintain a ledger wherein it shall record the type of documents for which the documentary stamps are affixed and utilized, the amount of tax paid, and the ATAP/POCR serial number being consumed. Petitioner is required to submit a true copy of this ledger to prove that the documentary stamps purchased were fully consumed before it can buy the next documentary stamps.

To facilitate the processing of this ledger, petitioner designed a macro computer program to automatically compute the amount of documentary stamp tax based on the face value of life insurance policy encoded. However, petitioner alleged that on two separate occasions the face value of the life insurance policies issued to Mr. Nick G. Encarnacion and Ms. Soledad B. Legaspi with Policy Nos. 9134706 and 9138766, respectively, were erroneously encoded. The Policy No. 9134706 was erroneously encoded as P150,150,000.00, instead of P150,000.00, which the computer automatically generates a wrong documentary stamps tax of P375,375.00, instead of P375.00. While Policy No. 9138766 was encoded as P160,160,000.00, instead of P160,000.00, thus the computer generated another error in the computation of documentary stamps tax amounting to P400,400.00, instead of P400.00 only.

This erroneous encoding of face values of the aforesaid life insurance policies resulted to overpayment of documentary stamps tax due in the amount of P775,000.00, computed as follows:

Policy No. 9134706	
Documentary stamp tax due on erroneous face value (P150,150,000 ÷ 200 x 0.50)	P375,375.00
Less documentary stamp tax due on correct face value (P150,000.00 ÷ 200 x 0.50)	375.00
Overpayment	P375,000.00
Policy No. 9138766	
Documentary stamp tax due on erroneous face value (P160,160,000 ÷ 200 x 0.50)	P400,400.00
Less documentary stamp tax due on correct face value (P160,000.00 ÷ 200 x 0.50)	400.00
Overpayment	P400,000.00
Total overpayment	P775,000.00

The amount of P375,375.00 (Exh. D-1) was charged by the petitioner under ATAP No. 406241 (Exh. E) purchased on April 16, 1993. While the amount of P400,400.00 (Exh. F-1) was deducted by the petitioner under ATAP No. 406286 (Exh. G), purchased on April 22, 1993.

Petitioner becoming aware of the overpayment, filed on April 15, 1994 its claim for tax credit or in the alternative to adjust its documentary stamps inventory in the amount of P775,000.00 (Exh. H), representing the alleged overpaid documentary stamps tax. However, the inaction of respondent on its letter-request compelled the petitioner to file the instant Petition for Review on March 24, 1995 in order to toll the running of the two-year prescriptive period allowed under Section 230 of the

NIRC, as amended, in relation with Section 204(3) of the same code.

Upon these facts, respondent raised the following special and affirmative defenses:

> 5. Petitioner failed to show that the total amount of P775,000.00 was actually expended and paid out of BIR POCR Nos. 406241 and 406286;
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> 6. Petitioner has not shown that Policy Nos. 9134706 and 9138766 were indeed the insurance policies covered by the alleged erroneous payment of documentary stamp taxes in the amounts of P375,375.00 and P400,400.00, respectively;
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> 7. Petitioner's claim for tax credit for alleged erroneous payment of documentary stamp taxes is still under investigation/examination by the BIR;
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> 8. Claims for refunds are construed strictly against the claimant for the same partake the nature of exemption from taxation. Therefore, it is incumbent upon petitioner to show that it is entitled thereto, otherwise, it shall be fatal to its claim for tax credit;
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> 9. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
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> 10. All told, the petition does not state a cause of action. (pp. 21-21, CTA rec.)

In order to prove that it is entitled to the amount sought for refund or tax credit, petitioner submitted both oral and documentary evidence. On the other hand, respondent's presentation of evidence was deemed waived, upon motion of petitioner, for failure of respondent's counsel to appear and present her evidence on the date given by the Court (Resolution, April 23, 1996, p. 105, CTA records).

All the evidence presented by the petitioner were admitted by the Court in its Resolution, dated January 25, 1996 (pp. 96-100, CTA records). Both parties submitted their respective memoranda.

Is petitioner entitled to the amount of P775,000.00 representing alleged overpaid documentary stamps tax?

We answer in the affirmative.

Petitioner was able to prove that the correct face value of Insurance Policy Nos. 9134706 and 9138766 issued to Mr. Nick G. Encarnacion and Ms. Soledad B. Legaspi, respectively, were in the amount of P150,000.00 (Exhs. E, E-1, I and I-1) and P160,000.00 (Exhs. G, G-1, J and J-1) and not P150,150,000.00 (Exh. D-1) nor P160,160,000.00 (Exh. F-1) as encoded in the computer. Since, the computer program automatically generates the documentary stamps tax due whenever the face value of insurance policy was encoded, it will of course compute the sum of P375,375.00 and P400,400.00 for the subject insurance policies based on the wrong amount encoded instead of the correct amount of P375.00 and P400.00 only. In addition, petitioner was able to establish that the claim for refund or tax credit was filed within the two-year period from the date of payment of the tax. It filed its claim for refund with the BIR on April 15, 1994 and with this Court on March 24, 1995, the reckoning date of the payment of the tax starts on April 16, 1993 with regard to documentary stamps tax paid on Insurance Policy No. 9134706 under ATAP No. 406241 (Exh. B); and on April 22, 1993 as regards Insurance Policy No. 9138766 charged under ATAP No. 406286 (Exh. C).

We cannot accede to respondent's ratiocination that the documentary stamps tax of Insurance Policy Nos. 9134706 and 9138766 were not paid out of ATAP Nos. 406241 and 406286, respectively, due to the fact that said policies were issued months before the purchase of the ATAPs. The issue here is not the timeliness of the payment of documentary stamps tax but the overpayment of tax that arose due to human error and the recovery of an excessive payment of a national internal revenue tax pursuant to Section 230 of the NIRC.

For easy reference Section 230 of the NIRC provides as follows:

> "Sec. 230. Recovery of tax erroneously or illegally collected. - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any

> penalty claimed to have been without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun after the expiration of *two years from the date of payment of the tax* or penalty regardless of any supervening cause that may arise after payment: Provided, however, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Underscoring supplied)

Furthermore, we find no logic on respondent's reasoning that the computer-generated ledgers should not be given probative value. The cases cited by the respondent's counsel refer to the usual ledger of books of accounts and not to the one required by the BIR to be maintained. It should be noted that the ledger was foremost required by the BIR to keep track on the documentary stamps purchased in advance and how they are utilized by the petitioner. This Court is of the impression that respondent is checking on the ledger since a true copy thereof it is to be submitted to the BIR before petitioner can buy for the next set of ATAP. It is to be stressed that under the ATAP system, it is only the ledger that can account on whether the documentary stamps purchased were fully utilized or consumed.

Since petitioner proved that it had overpaid its documentary stamps tax on the direct policies and was able to prove that it filed within the two year period its claim for refund both in the administrative and judicial level we see no other interpretation but to grant petitioner's prayer.

WHEREFORE, in view of the foregoing, respondent is hereby ordered to issue a tax credit certificate or in the alternative to authorize petitioner to adjust its documentary stamps inventory in the amount of P[illegible],000.00 representing erroneously paid documentary stamps tax during the year 19[illegible].

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with 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