REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA BANKERS' LIFE INSURANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6189

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 04 2002

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DECISION

This Petition for Review seeks the cancellation of Assessment No. ST-DST2-97-0054-2000 dated January 4, 2000 involving the assessment for documentary stamp tax on Policy Premiums for the year 1997, amounting to P2,351,680.90.

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal place of business at the Manila Banking Corporation Building, 6772 Ayala Avenue, Makati City. It is primarily engaged in the life insurance business.

On May 28, 1999, respondent Commissioner issued Letter of Authority No. 00002075 authorizing the audit and investigation of Petitioner for the taxable year 1997. Thereafter, a preliminary assessment notice dated December 14, 1999 was sent to petitioner showing the results of the investigation (p. 578, BIR Records).

The findings of the Revenue Officers who conducted the investigation were summarized in the Memorandum Report addressed to the Commissioner of Internal Revenue dated December 28, 1999. In said report, tax deficiencies in the total amount of

P2,701,752.89 were allegedly established during the investigation. During the informal conference, petitioner's representative, Mr. Rudy Sibal, interposed no objection on the deficiency assessment except for the one pertaining to deficiency documentary stamp tax on policy premiums amounting to P2,351,680.90 (p. 497, BIR Records).

An Agreement Form was executed on December 27, 1999 by petitioner's President, Mr. Uriel Balboa, who agreed to pay the tax deficiency assessments amounting to P350,071.99 but took exception to the deficiency documentary stamp tax assessment on insurance premiums (p. 497, BIR Records).

On January 4, 2000, respondent issued a Formal Letter of Demand and the following Assessment Notices to wit:

Income Tax:

Assessment No. **ST-INC-97-0057-2000**

Tax Due		P132,256.00
Add:	20% Int./a	46,362.06
	Recommended Compromise Penalty	16,000.00
Total Amount Due		P194,618.06

Withholding Tax-Wages:

Assessment No. **ST-WTI-97-0058-2000**

Tax Due		P 46,982.90
Add:	20% Int./a	18,782.43
	Recommended Compromise Penalty	6,000.00
Total Amount Due		P 71,765.33

Expanded Withholding Tax:

Assessment No. **ST-WT2-97-00-56-2000**

Tax Due		P 21,221.00
Add:	20% Int./a	8,483.55
	Recommended Compromise Penalty	7,000.00
Total Amount Due		P 36,704.55

DST on Policy Loan:

Assessment No. **ST-DST-97-0055-2000**

Tax Due		P 27,085.25
Add:	20% Int./a	13,898.80
	Recommended Compromise Penalty	6,000.00
Total Amount Due		P 46,984.05

DST on Policy Premiums:

Assessment No. **ST-DST2-97-0054-2000**

Tax Due		P3,954,955.00
Less:	Tax Paid	2,308,505.74
Tax Deficiency		1,646,449.26
Add:	20% Int./a	680,231.64
	Recommended Compromise Penalty-Late Payment	25,000.00
Total Amount Due		P2,351,680,.90

On February 3, 2000, petitioner filed a letter protest with the Bureau of Internal Revenue (BIR) contesting the deficiency documentary stamp tax assessment on Increases in Sum Assured (Annex "M", p. 31, CTA Records). It anchored its protest on the ruling of this Court in the case of Lincoln Philippine Life Insurance Company, Inc., (now Jardine CMG Life Insurance, Inc.) CTA Case No. 5025, which exempted the increase in insurance coverage resulting from policies which have been subjected to documentary stamp tax at the time of issuance of such policies.

On the other hand, Rogelio A. Lorenzana, Revenue Officer II, in his addendum report dated February 17, 2000, argued that the documentary stamp tax deficiency on Policy Premiums arose due to the "inclusion" of the amount of P818,919,000.00, representing increases in the sum assured per Exhibit 15 – Life Insurance Policies of the taxpayer's Annual Report to the Insurance Commission as part of the taxable base for documentary stamp tax purposes (p. 582, BIR Records).

He further explained that the increases in the amount assured for ordinary insurance amounted to a total of P74,755,000.00. These increases pertain to the premium payments made by policy holders of the company's Money Plus Plan. Under the said program, policy holders paid the premiums in five separate periods. Succeeding payments after the first period premiums are made upon reaching a certain age. Documentary stamp tax is affixed to the insurance policy based on the first premium payments only. Succeeding premium payments were no longer subjected to the said tax. It further argued that in the case of a group insurance, the total increase amounted to P744,164,000.00. Under this program, a group of employees are insured under one mother policy. The documentary stamp tax is affixed based on the amount assured on the face of the mother policy. Any subsequent member added to the group insurance is no longer subjected to the documentary stamp tax (pp. 580 and 582, BIR Records).

On March 28, 2000, petitioner was required to submit copies of the Money Plus Plan (installment basis), group insurance policy plan, and the certificate issued to members of the group insurance (Annex "N", p. 32, CTA Records).

Petitioner submitted the aforementioned documents on April 3, 2000. Since respondent did not act on the protest, petitioner filed the instant Petition for Review with this Court on October 26, 2000.

In his Answer, respondent averred that Section 183 of the 1997 National Internal Revenue Code provides for the imposition of documentary stamp tax on all life insurance policies at the rate of P0.50 for every P200.00 or fractional part thereof. He further contended that documentary stamp tax on life insurance policies is imposed or computed on the basis of the amount of the policy which includes the increase in the sum initially assured even though no new policy is issued since the increase is already made an integral part of the policy.

Furthermore, respondent argues that petitioner's life insurance policy partakes of the nature of an obligation with a suspensive condition under Article 1181 of the New Civil Code. The efficacy of the obligation and the acquisition of rights are made to depend upon the fulfillment of a condition, that is, an automatic increase in the sum assured upon attainment of a certain age by the insured without issuing a new policy thereon. Hence, the documentary stamp tax on the sum corresponding to the increase became due and payable only in the year 1997 when the condition was complied with, making the policy operative on the increased sum assured.

Petitioner, on the other hand, maintains that documentary stamp tax is in the nature of an excise tax. As such, it is imposed on the privilege of conducting a particular business or transaction and not on the business or transaction itself. The documentary stamp tax on insurance policies is, in effect, imposed on the privilege to conduct insurance business and not on the insurance business itself or on the premiums paid under the said insurance policies. The documentary stamp tax, thus, accrued when the said privilege was exercised.

Moreover, documentary stamp tax attaches upon the issuance of the policy. The fact that the value and the corresponding premium are reduced or increased subsequently do not in any way affect the documentary stamp tax on the policy.

To further bolster its stance, petitioner invoked the cases of **Lincoln Philippine Life Insurance Company, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4583, promulgated on March 30, 1993, affirmed in CA-G.R. SP No. 31224, promulgated on 18 November, 1994; Lincoln Philippine Life Insurance Company vs. Commissioner of Internal Revenue, CTA Case No. 5025, promulgated on October 16, 1995)**. In the first Lincoln case which was affirmed by the Court of Appeals, this Court held that:

> "x x x the documentary stamp tax must be imposed based solely on the original sum insured since the increase in the sum insured has not as of yet accrued to the assured at the time the policy was issued. This is the reckoning point as to when the tax was to be assessed and consequently become due."

On the second Lincoln case, this Court ruled that:

> "x x x it is clear that documentary stamp tax is levied and paid only once at the time the taxable document is issued. Documentary stamp tax shall be computed using as tax base the value at the time of issuance of the instrument. While in life insurance, the documentary stamp tax shall be collected based on the amount issued by such policy originally."

On February 21, 2001, petitioner filed a "Motion for Judgment on the Pleadings" on the ground that respondent has admitted the factual allegations of petitioner and that no new facts were alleged in the Answer but merely conclusions of law. The Court granted said motion in its Resolution dated April 23, 2001.

The sole issue for the consideration of this Court is: Whether or not increases in the coverage or the sum assured by an existing insurance policy is subject to the documentary stamp tax.

We rule in favor of petitioner.

Considering that the Assessment Notice was issued on January 4, 2000, the time when the 1997 Tax Code was already effective, procedurally, the provisions of the said Code will apply in determining whether or not the petition was filed on time.

A perusal of the records disclose that respondent issued a formal letter of demand and the corresponding assessment notices on January 4, 2000. Twenty-nine (29) days thereafter or on February 3, 2000, petitioner filed a protest letter contesting the deficiency documentary stamp tax assessment on the increase in existing life insurance policies, particularly ST-DST2-0054-2000. On April 3, 2000 or fifty nine (59) days from the time petitioner filed its letter protest, the documents pertinent to the protest were submitted to the BIR Appellate Division.

Pursuant to Section 228 of the 1997 Tax Code, the BIR is given one hundred eighty (180) days from submission of the documents within which to rule on the protest, Thereafter, petitioner has thirty (30) days to appeal to this Court, reckoned from the date of receipt of the BIR's decision or the lapse of the 180 day period.

The instant petition for review was filed on October 26, 2000 or five (5) days after the lapse of the 180-day period. Hence, the appeal was filed on time.

With regard to the assessment in question, substantially, the provisions of the old Tax Code are made to apply in this case since the assessment for deficiency documentary stamp tax covers increases in life insurance policies for the taxable year 1997.

> **SECTION 173.** *Stamp Taxes Upon Documents, Instruments, Loan Agreements and Papers.* — Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted, or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax. (as amended by R.A. 7660)
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> **SECTION 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 such policy. (as amended by P.D. 1457 and P.D. 1959)
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> **SECTION 200.** *Payment of Documentary Stamp Tax. — Cancellation of stamp.* — <u>Documentary stamp taxes shall be paid by the purchase and affixture of documentary stamps to the document or instrument taxed or to such other paper</u> as may be indicated by law or regulations as the proper recipient of the stamp, <u>and by the subsequent cancellation to be accomplished by writing, stamping or perforating</u> the date of the cancellation across the face of each stamp in such manner that part of the writing, impression, or perforation shall be on the stamp itself and part on the paper to which it is attached: Provided, that if the cancellation is accomplished by writing or by stamping the date of cancellation, a hole sufficiently large to be visible to the naked eye shall be punched, cut or perforated on both the stamp and the document either by the use of a hand punch, knife, perforating machines, scissors, or any other cutting instrument; but if the cancellation is accomplished by

> perforating the date of cancellation, no other hole need be made on the stamp. x x x

Under the foregoing provisions of law, the documentary stamp tax on life insurance policies is imposed only once based on the amount insured at the time of actual issuance of such policies. The documentary stamp tax which is in the nature of an excise tax is imposed on the document as originally issued. Therefore, any subsequent increase in the insurance coverage resulting from policies which have been subjected to the documentary stamp tax at the time of their issuance, is no longer subject to the documentary stamp tax.

There being no clear provision of law imposing documentary stamp taxes on increases in sum assured, no documentary stamp tax may be imposed as the imposition of taxes can never be presumed.

In the case of **Commissioner of Internal Revenue vs. Heald Lumber Co., G.R. No. L-16340, February 29, 1964, 10 SCRA 372.**

> "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. (*Du Pont v. U.S. 300 U.S. 150; Thomas v. U.S., 192 U.S., 363; Nicol v. Ames, 173 U.S. 509*). With respect to stock certificates, it is levied upon the privilege of issuing them; not on the money or property received by the issuing company for such certificates. Neither is it imposed upon the share of stock. As Justice Learned Hand pointed out in one case, documentary stamp tax is levied on the document and not on the property which it described. (*Empire Trust Co. v. Hoey, 103 F 2d. 430*). If therefore, as is apparent from the foregoing discussion, that the tax in question is imposed on the privilege of issuing certificates, then the tax may be collected only once: when the certificates are first or originally issued. The reason is because a certificate is issued only once. Whatever documentary tax is due, is due at that time. (*Empire Trust Co. v. Hoey, supra*).

It is thus, clear that the documentary stamp tax is levied and paid only once at the time the taxable document is issued. Documentary stamp tax shall be computed using as tax base the value at the time of issuance of the instrument. In the case of life insurance policies, the documentary stamp tax shall be collected based on the original amount reflected in such policy.

Moreover, it is noted that the documentary stamp tax is to be paid by the purchase of stamps and the affixture and subsequent cancellation thereon on the insurance policies. The tax must be based on the amount insured at the time of the issuance of such insurance policies. It can be deduced from the foregoing that the amount insured at the time of such issuance does not include any subsequent increases in sum assured since collection on the policy at the time would certainly not include such increase, which are effective only at some future date, that is, 1997 in this case. **(Lincoln Philippine Life Insurance Co., Inc., (now Jardine CMG Life Insurance Company, Inc., CTA Case No. 5025, promulgated on October 16,1995)**

It is respondent's contention that petitioner's life insurance policy, the Money Plus Plan, partakes of the nature of an obligation with a suspensive condition under Article 1181 of the Civil Code of the Philippines. The suspensive condition being the automatic increase in the sum assured upon attainment of a certain age. Therefore, the documentary stamp tax on the sum corresponding to the increase became due and payable only in 1997 when the condition was complied with, making the policy operative on the increased sum assured.

We do not agree.

Records reveal, that there is no automatic increase in the Money Plus Plan. Based on the clause, "Guaranteed Continuity" the policy wi!l continue until the expiry date stated in the Schedule which has a twenty year policy term. At the end of each twenty year period and provided the insured has not reached the age of fifty five (55), the insured may renew his policy for a further twenty year period (p. 35, CTA Records). (Underscoring ours) The renewal is, in effect treated as an increase in the sum assured since no new insurance policy is issued. Hence, the same is not subject to the documentary stamp tax.

Prescinding from all the foregoing, the documentary stamp tax imposed on the increases in insurance coverage of the Money Plus Plan for the year 1997, has no basis and the assessment for the alleged deficiency documentary stamp tax has no force and effect.

WHEREFORE, in the light of all the foregoing, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **CANCEL** and **WITHDRAW Assessment Notice No. ST-DST2-97-0054-2000** dated January 4, 2000 in the amount of P2,351,680.90 representing deficiency documentary stamp taxes for the taxable year 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

I hereby certify that the above 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