REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

ORIENTAL ASSURANCE CORPORATION,
Petitioner,

- *versus* -

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7862

Members:
BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
JUN 11 2012
ABFernando 4:29p.m.

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DECISION

BAUTISTA, J.:

The Petition for Review, filed pursuant to Section 7(a)(1) of Republic Act ("RA") No. 1125, as amended by RA No. 9282 and RA No. 9503,[1] and Section 3(a)(1) of Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals,[2] seeks for the reversal of the Final Decision on Disputed Assessment dated December 9, 2008,

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[1] SEC. 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

[2] RULE 4
JURISDICTION OF THE COURT
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SEC. 3. *Cases within the jurisdiction of the Court in Division.* - The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

issued by respondent, and for the declaration that petitioner is not liable for deficiency documentary stamp tax for the taxable year 2004.[3]

FACTS OF THE CASE

Petitioner, Oriental Assurance Corporation, is a domestic corporation duly organized and existing under Philippine laws, engaged in insurance business, with principal office at the 2nd Floor, OAC Building, 27 San Miguel Avenue, Ortigas Center, Pasig City.

On the other hand, respondent, Commissioner of Internal Revenue, is the head of the Bureau of Internal Revenue ("BIR"), with office address at BIR National Office Building, Diliman, Quezon City.

Petitioner received Letter Notice No. 116-DS-04-00023 dated August 23, 2005, issued by respondent, informing the former of its underpayment of documentary stamp tax ("DST") on premiums on direct business/sums assured for the taxable year 2004 based on third-party information from the Insurance Commission.

On October 28, 2005, petitioner then received a Preliminary Assessment Notice ("PAN") dated October 14, 2005, issued by respondent, assessing the former for deficiency DST for taxable year 2004.

On November 14, 2005, petitioner filed its Reply to the aforementioned PAN dated October 14, 2005.

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[3] *Records*, pp. 1-32, with Annexes.

On February 22, 2008, petitioner availed of the Tax Amnesty Program under Republic Act No. 9480.[4]

On June 19, 2008, petitioner received a Formal Letter of Demand dated May 8, 2008, issued by respondent, stating that after investigation, it was found that there was still due from the former deficiency DST on premiums on direct business/sums assured based on Section 184 of the 1997 National Internal Revenue Code ("NIRC"), as amended, for the calendar year 2004. The deficiency tax was computed as follows:

DST due on premiums on Direct Business/Sums:

Assured per Insurance Commission Schedule	65,088,227.88
Add: DST Payable beginning per IC Report	2,099,508.00
Total DST due	67,187,735.88
Less: Payments per ITS (BIR database)	22,760,370.00
Discrepancy	44,427,365.88
Surcharge	22,213,682.94
Interest	30,210,608.80
Total DST Due	**96,851,657.62**

On July 17, 2008, petitioner filed a Protest Letter to the aforesaid Formal Letter of Demand dated May 8, 2008.

On December 24, 2008, petitioner received a Final Decision on Disputed Assessment dated December 9, 2008, denying the former's request for reinvestigation/reconsideration, with the following adjustments:

DST due on premiums on Direct Business/Sums:

Assured per Insurance Commission Schedule	65,088,227.88
Add: DST Payable beginning [p]er IC Report	2,099,508.00

[4] An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years, which lapsed into law on May 24, 2007.

Total DST due	67,187,735.88
Less: Payments per ITS	22,760,370.00
Discrepancy	44,427,365.88
Surcharge	22,213,682.94
Interest computed up to 01-15-09	35,746,702.86
Total DST Due	**102,387,751.68**

Thus, on January 22, 2009, petitioner filed the present Petition for Review.

On March 2, 2009, respondent filed her Answer,[5] and interposed the following Special and Affirmative Defenses:

> 9. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of [her] Special and Affirmative Defenses;
>
> 10. Petitioner Oriental Assurance Corporation, is liable to pay its deficiency documentary stamp tax on premiums o[n] direct business/sums assured based on Section 184 of the National Internal Revenue Code of 1997, as amended, for calendar year 2004 in the total amount of One Hundred Two Million Three Hundred Eighty Seven Thousand Seven Hundred Fifty One and 68/100 (₱102,387,751.68), including penalties, surcharges and interest for the following reasons:
>
> 10.1 Section 184 of the National Internal Revenue Code of 1997, as amended, (1997 NIRC) states the following:
>
> 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 (₱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

[5] *Records*, pp. 41-48.

under any reinsurance agreement is effected or recorded.

Considering that petitioner is primarily engaged in the insurance business, it is subject to documentary stamp tax on premiums o[n] direct business/sums assured for taxable year 200[4].

11. Petitioner incurred an underpayment of documentary stamp tax on premiums o[n] direct business/sums assured for taxable year 200[4] based on third-party information provided by the Insurance Commission;

12. Petitioner filed its protest to the Formal Letter of Demand and Assessment Notice before the Office of the Large Taxpayers Service on February 16, 2008, however, it failed to substantiate its allegations. Petitioner has not introduced any evidence to overthrow the validity of the assessment;

13. The assessment for the period January 1, 2004 to December 31, 2004 in the amount of ₱96,851,657.62 was issued in accordance with law and regulations;

14. Well-settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner, and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments (*Sy Po vs. Court of [T]ax 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 notices; and

15. The Petition for Review fails to state a cause of action. Petitioner is not qualified to avail of the Tax Amnesty Program (TAP) under R.A. No. 9480. Pursuant to Revenue Memorandum Circular No. 69-2007 (Q1)(A1), the TAP covers all national internal revenue taxes such as income tax, estate tax, donor's tax, capital gains tax, value-added tax, other percentage taxes, excise taxes and documentary stamp taxes, except withholding taxes and **taxes passed-on and already collected from customers for remittance to the BIR**, these funds are considered funds held in trust for the government. It has been the practice of all non-life

> insurance companies to include in its bill to customers, aside from the yearly premiums, all the necessary expenses like fire, government tax, local tax and documentary stamp tax. Thus, documentary stamp taxes were passed-on taxes, hence, were assessed based on the said provision.[6]

On March 20, 2009, petitioner filed its Reply[7] thereto.

After filing their Joint Stipulation of Facts and Issues,[8] on April 13, 2009, the parties presented their respective evidence.

On September 9, 2011,[9] the Court resolved to submit the case for decision, taking into consideration respondent's Memorandum filed on August 10, 2011,[10] and petitioner's Memorandum filed on September 2, 2011.[11]

Hence, this Decision.

ISSUES

As stipulated upon by the parties, the issues for this Court's consideration are as follows:

> Whether or not [petitioner] is liable to pay the alleged deficiency documentary stamp tax on premiums o[n] direct business/sums assured for taxable year 2004;
>
> Whether or not [petitioner] is exempt from the payment of any and all internal revenue taxes for the taxable year 2004 after having availed of the benefits of the tax amnesty under Republic Act No. 9480; and
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> Whether or not Revenue Memorandum Circular No. 69-2007 is consistent with the provisions of Republic Act No. 9480 insofar as it extends the

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[6] *Id.*, at pp. 43-46.
[7] *Id.*, at pp. 56-59.
[8] *Id.*, at pp. 81-84.
[9] *Id.*, at p. 420.
[10] *Id.*, at pp. 380-391.
[11] *Id.*, at pp. 399-418.

exclusions under the said law to taxes passed on and already collected from the customers for remittance to the BIR.[12]

RULING OF THE COURT

The Court finds the Petition for Review meritorious.

Respondent issued the subject assessment based on Section 184 of the 1997 National Internal Revenue Code, as amended, to quote:

> 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 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.

Respondent avers that considering petitioner is primarily engaged in the insurance business, it is subject to DST on its premiums on direct business/sums assured. Likewise, respondent alleges that petitioner is not qualified to avail of the benefits of the Tax Amnesty Program under RA No. 9480, considering that under Revenue Memorandum Circular ("RMC") No. 69-2007,[13] the subject deficiency assessment falls under the exceptions thereof.

On the other hand, petitioner counters that it has fully complied with the provisions of RA No. 9480. It further claims that the documents pertaining to its

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[12] *Id.*, at p. 83.
[13] Clarification of Issues Concerning the Tax Amnesty Program Under Republic Act No. 9480 as Implemented by Department Order No. 29-07, dated November 5, 2007.

availment of the Tax Amnesty Program were unconditionally received by respondent. Furthermore, it asserts that it is not disqualified by law and the subject deficiency assessment is covered by the provisions of RA No. 9480.

RA No. 9480 expressly provides for the coverage of the Tax Amnesty Law of 2007, *viz.*:

> SEC. 1. *Coverage.* – There is hereby authorized and granted a **tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years**, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005: *Provided, however,* That the amnesty hereby authorized and granted **shall not cover persons or cases enumerated under Section 8** hereof.
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> xxx xxx xxx
>
> SEC. 8. *Exceptions.* – The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:
>
> (a) **Withholding agents with respect to their withholding tax liabilities;**
>
> (b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;
>
> (c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;
>
> (d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;
>
> (e) Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and

(f) Tax cases subject of final and executory judgment by the courts. (*Boldfacing supplied.*)

Corollary thereto, Department Order ("DO") No. 29-07, issued by the Department of Finance, embodying the "*Rules and Regulations to Implement Republic Act No. 9480,*" issued on August 15, 2007, states the following:

RULE II
COVERAGE

SEC. 3. *Taxes Covered.* – The **tax amnesty shall cover all national internal revenue taxes imposed by the National Government for the taxable year 2005 and prior years**, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005.

xxx xxx xxx

SEC. 5. *Exceptions.* – The tax amnesty shall not extend to the following persons or cases existing as of the effectivity of RA 9480:

1. **Withholding agents with respect to their withholding tax liabilities;**

2. Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;

3. Those with pending cases involving unexplained or unlawfully acquired wealth, revenue or income under the Anti-Graft and Corrupt Practices Act;

4. Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;

5. Those with pending criminal cases filed in court or in the Department of Justice for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended;

6. Those with pending criminal cases filed in court for felonies of frauds, illegal exactions and transactions,

> and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and
>
> 7. Tax cases subject of final and executory judgment by the courts. (*Boldfacing supplied.*)

From the foregoing, Section 1 of RA No. 9480, as implemented by Section 3 of DO No. 29-07, expressly states that the Tax Amnesty Law of 2007 covers all national internal revenue taxes for the taxable year 2005 and prior years, with the only exceptions enumerated under Section 8 of RA No. 9480, and Section 5 of DO No. 29-07.

And as cited by respondent, RMC No. 69-2007, provides as follows:

> Q-1: *What type of taxes and what taxable period/s are covered by the Tax Amnesty Program under RA 9480 as implemented by DO 29-07?*
>
> A-1: The **Tax Amnesty Program (TAP) covers all national internal revenue taxes** such as income tax, estate tax, donor's tax and capital gains tax, value added tax, other percentage taxes, excise taxes and **documentary stamp taxes, except withholding taxes and taxes passed-on and already collected from the customers for remittance to the BIR**, these taxes/funds being considered as funds held in trust for the government. xxx.
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> xxx xxx xxx
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> Q-2 *Who can avail of the tax amnesty?*
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> A-2 a. Individuals, whether resident or non-resident citizens, or resident or nonresident aliens;
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> b. Estates and trusts;
>
> c. Corporations;

> d. Cooperatives and tax exempt entities that have become taxable as of December 31, 2005;
>
> e. Other juridical entities, including partnerships
>
> In the case of an individual who is at the same time an executor or administrator of the estate of a deceased taxpayer, he may avail of the amnesty for himself or for the estate or both. In the same manner that a trustee of a taxable trust may opt to avail of the tax amnesty for himself or that for the trust or for both. One Amnesty Tax Return shall be filed for every taxpayer availing of the program. (*Boldfacing supplied.*)

Clearly, the quoted provisions of RMC No. 69-2007 remains consistent with RA No. 9480, *i.e.*, to exclude withholding taxes and taxes passed-on and already collected from the customers for remittance to the BIR, and withholding agents with respect to their withholding tax liabilities, respectively.

And plain reading of the above provisions shows that DST, which is the subject of the present case, is within the coverage, and petitioner, not falling within any of the exceptions thereof, the Court, thus, finds that it is qualified to avail of the Tax Amnesty Program.

To avail of the Tax Amnesty Program, Sections 2 and 7 of the Tax Amnesty Law state:

> SEC. 2. *Availment of the Amnesty.* — Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall **file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005**, in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, **and pay the applicable amnesty tax** within six months from the effectivity of the IRR.
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> xxx xxx xxx

> SEC. 7. *When and Where to File and Pay.* — The filing of the Tax Amnesty Return and the payment of the amnesty tax for those availing themselves of the tax amnesty shall be made within six months starting from the effectivity of the IRR. It shall be filed at the office of the Revenue District Officer which has jurisdiction over the legal residence or principal place of business of the filer. The Revenue District Officer shall issue an **acceptance of payment form** authorizing an authorized agent bank, or in the absence thereof, the collection agent or municipal treasurer concerned, to accept the amnesty tax payment. *(Boldfacing supplied.)*

From the afore-quoted provision, any person intending to avail of the Tax Amnesty Program shall: (a) file a notice and tax amnesty return with its SALN as of December 31, 2005; and (b) pay the applicable tax to the BIR.

Based on the records of the case, petitioner submitted the following:

	Exhibit
Notice of Availment of Tax Amnesty dated February 22, 2008	*"D"*
Statement of Assets, Liabilities and Networth as of December 31, 2005	*"E"*
Tax Amnesty Return (BIR Form No. 2116)	*"F"*
Tax Amnesty Payment Form (BIR Form No. 0617)	*"G"*
Land Bank of the Philippines BIR Tax Payment Deposit Slip dated February 22, 2008	*"G-2"*

In the case of *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue,*[14] the Supreme Court ruled as follows:

> Records show that Metrobank, a qualified tax amnesty applicant, has duly complied with the requirements enumerated in RA 9480, as implemented by DO 29-07 and RMC 19-2008. Considering that the completion of these requirements shall be deemed full compliance with the tax amnesty program, the law mandates that the taxpayer shall thereafter be immune from the payment of taxes, and additions thereto, as well as the appurtenant civil, criminal or administrative penalties under the NIRC of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

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[14] G.R. No. 170574, January 30, 2009, 597 SCRA 366.

Thus, taxpayers found to have fully complied with the documentation requirements of RA No. 9480 are entitled to the immunities under Section 6 of the Tax Amnesty Law, to quote:[15]

> SEC. 6. *Immunities and Privileges.* – Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:
>
> 1. The taxpayer shall be immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

In sum, the Court finds that petitioner has duly complied with the requisites enumerated under RA No. 9480.

WHEREFORE, the Petition for Review is hereby **GRANTED.** The Formal Letter of Demand dated May 8, 2008 and the Final Decision on Disputed Assessment dated December 9, 2008 for deficiency Documentary Stamp Taxes for taxable year 2004 issued against petitioner are hereby **CANCELLED** and **SET ASIDE**, solely in view of petitioner's availment of the Tax Amnesty under RA No. 9480.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[15] Metropolitan Bank and Trust Company *v.* Commissioner of Internal Revenue, CTA EB Case No. 354 (CTA Case No. 7154), August 29, 2008; Commissioner of Internal Revenue *v.* PILMICO Foods Corporation, CTA EB Case No. 430 (CTA Case No. 6868), March 31, 2009.

WE CONCUR:

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, 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's Division.

ERNESTO D. ACOSTA
Presiding Justice