REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

STATELAND, INC., Petitioner,	**C.T.A. CASE NO. 7128**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 0 6 2009 8:05 a.m.

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DECISION

UY, J.:

This is a Petition for Review filed on January 19, 2005 by petitioner, Stateland, Incorporated, under *Section 7 of Republic Act No. 1125,* as amended by *Republic Act 9282,* arising from the inaction of respondent Commissioner of Internal Revenue over petitioner's administrative claim for tax refund or issuance of tax credit certificate in the amount of TWO MILLION THREE HUNDRED FIVE THOUSAND EIGHT HUNDRED SIXTY PESOS (₱ 2,305,860.00) representing documentary stamp tax (DST) paid on the transfer of real properties on account of a corporate merger which became effective on January 1, 2003.

THE FACTS

Petitioner Stateland, Incorporated is a domestic corporation engaged in real estate business[1] with principal address located at 3rd Floor State Centre Building, 333 Juan Luna Street, Binondo, Manila.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of said office, including among others, the power to decide, approve and grant refunds or tax credits erroneously or excessively paid taxes. He holds office at the BIR National Office Building, Diliman, Quezon City.

On November 28, 2002, three (3) domestic entities namely: State Land Investment Corporation (SLIC), Central Land, Inc. (CLI), and Central Equity Ventures, Inc. (CEVI) executed a Plan of Merger[2] whereby said corporations shall enter into a merger, with SLIC as the surviving entity to be called Stateland, Inc. (SLI), the petitioner in this case. On the same date, its Articles of Merger[3] was executed. Before the merger, all the absorbed companies, CLI and CEVI have been engaged in the real estate business[4].

On December 26, 2002, the Securities and Exchange Commission (SEC) approved the merger[5] effective on January 1, 2003[6]. Thus, the corporate existence of SLIC, CLI, and CEVI ceased to exist and the new corporation SLI succeeded to all the rights, privileges, immunities and franchises, and all the properties, real and personal, of the absorbed corporations.

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[1] Exhibit "E", Article III of Plan of Merger.
[2] Ibid.
[3] Exhibit "F", Annex H of the Petition.
[4] Exhibits "C" (Articles of Incorporation of CLI) and "D" (Articles of Incorporation of CEVI).
[5] Exhibit "G".
[6] Exhibit "I".

By reason of the merger, petitioner paid the amount of FIFTY-FIVE THOUSAND ONE HUNDRED SEVENTY SIX PESOS (₱ 55,176.00) on January 3, 2003, representing documentary stamp tax on original issue of shares of stocks of petitioner said to be in favor of the minority stockholders.[7]

On January 8, 2003, CEVI executed a Deed of Transfer[8] dated December 27, 2002, relative to its transfer of rights, businesses, assets and other properties in favor of the petitioner. On the other hand, CLI also executed on the same date a Deed of Transfer dated 27, 2002[9] of similar import in favor of petitioner. On February 4, 2003, petitioner paid to respondent the amount of TWO MILLION THREE HUNDRED FIVE THOUSAND EIGHT HUNDRED SIXTY PESOS (₱ 2,305,860.00)[10], representing documentary stamp tax on the said transfer of real properties from CLI to petitioner, with the following breakdown:

Exhibit	Nature of Document	Date Filed and Paid	Amount
L, M	BIR Form 2000, LBP Deposit Slip	February 4, 2003	249,960.00
N, O	BIR Form 2000, LBP Deposit Slip	February 4, 2003	192,525.00
P, Q	BIR Form 2000, LBP Deposit Slip	February 4, 2003	209,505.00
R, S	BIR Form 2000, LBP Deposit Slip	February 4, 2003	337,020.00
T, U	BIR Form 2000, LBP Deposit Slip	February 4, 2003	901,395.00
V, W	BIR Form 2000, LBP Deposit Slip	February 4, 2003	415,455.00
		TOTAL	2,305,860.00

[7] Exhibits "J" and "K".
[8] Exhibit "AA".
[9] Exhibit "BB".
[10] Par. 2, Joint Stipulation of Facts and Issues; Docket, pp. 121-122.

On March 11, 2003, petitioner wrote respondent a letter requesting for a ruling to determine if the said merger is a "Tax-Free Merger" under Sections 40(C)(2) and (6) (B) of the National Internal Revenue Code (NIRC)[11] of 1997. In a Ruling dated July 17, 2003[12], respondent confirmed that the said merger is within the contemplation of *Sec. 40(C)(6) (b) of the NIRC of 1997* for being undertaken under a *bona fide* business purpose, and not for the purpose of escaping the burden of taxation[13]. It likewise states that the merger is qualified for non-recognition of gain or loss for income tax purposes in accordance with Section 40(C)(2) of the NIRC of 1997; that no gain or loss was recognized by CEVI and CLI when they transferred all their assets and liabilities to petitioner,[14] nor was there any gain or loss that shall be recognized by petitioner as transferee on its receipt of the asset and liabilities of both CEVI and CLI pursuant to and as consequence of said merger[15].

Contrary thereto however, respondent finds that the transfers of the real properties of CEVI and CLI to petitioner are subject to DST imposed under Section 196 of the NIRC of 1997 based on the consideration contracted to be paid for such realty or on its Fair Market Value, in accordance with Section 6(E) of the NIRC of 1997, whichever is higher[16].

On the belief that there was an erroneous payment representing the DST on the transfer of real property, petitioner filed with respondent an administrative claim for refund or issuance of tax credit certificate in the amount of TWO MILLION THREE HUNDRED FIVE THOUSAND EIGHT

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[11] Exhibit "X".
[12] Exhibit "Y".
[13] Exhibit "Y", Paragraph 1, Pages 3-4.
[14] Paragraph 1(a), Page 4, same.
[15] Paragraph 1(b), Page 4, same.
[16] Last paragraph, Page 7, same.

HUNDRED SIXTY PESOS (₱ 2,305,860.00) on July 5, 2004. Due to respondent's inaction thereon, petitioner filed with this Court a Petition for Review on January 19, 2005[17], in order to suspend the running of the two-year prescriptive period within which to file a judicial claim for refund/issuance of a tax credit certificate.

Respondent filed an Answer on February 24, 2005[18] alleging the following special and affirmative defenses:

> "4. Petitioner's alleged claim for refund was erroneously filed with the Office of the Commissioner, Bureau of Internal Revenue, National Office, Agham Road, Diliman, Quezon City instead of the Revenue District Office No. 30-Binondo, with address at Port Area, Manila, as required under the Revenue Delegation Authority Order No. 03-02 dated February 15, 2002 as cited in the BIR Ruling (DA-083-03) dated March 17, 2003;
>
> 5. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;
>
> 6. The amount of ₱ 2,305,860.00 being claimed by Petitioner as alleged erroneously paid DST for taxable year 2003 was not properly documented;
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> 7. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;
>
> 8. In an action for tax refund/credit the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 9. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204 (C) and 229 of the Tax Code on the prescriptive period claiming tax refund/credit;
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> 10. BIR Ruling No. S-40-022-2003 dated July 17, 2003 (Attached to Annex 'B', Petition) requires that in order that the re-organization can be considered as merger

[17] Docket, pp. 1-17.
[18] Docket, pp. 94-98.

under Section 40 (C) (2) of the Tax Code, the petitioner together with the other parties to the merger should comply with the requirements enumerated in pages 8 and 9 thereof, which up to now petitioner failed to comply with;

11. Assuming the above requirements are duly complied with, BIR Ruling No. S-40-022-2003 dated July 17, 2003 itself states further that the transfer of real properties by CEVI and CLI to SLI, petitioner is subject to documentary stamp tax imposed under Section 196 of the 1997 Tax Code on account of the merger (see also BIR Ruling No. 002-01 dated 2-2-2001, BIR Ruling DA-017-02, 2-7-2002 and BIR Ruling DA-023-02, 2-19-2002);

12. The term: 'Conveyances', referred to in Section 196, 1997 Tax Code is not limited to the transfer of real property by sale, but contemplates of all kinds of conveyances with or without consideration.

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 documentary stamp taxes are leases of lands, 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 transaction 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 vs United States (300 US 150, 153, 1936):

> '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**. (Philippine Home Assurance Corporation et al., vs CA and CIR, GR No. 119446, January 21, 1999)

'Apropos, the documentary stamp tax may be imposed on all deeds, instruments, writings, or conveyances of real property. The only exception is when such conveyance or transfer is effected by way of a grant, patent, or original certificate of adjudication issued by the Government (Fort Bonifacio Development Corporation vs. CIR, CA-GR SP No. 76017, June 11, 2004).

13. In the recent case of Philippine Home Assurance Corporation et. al vs. Court of Appeals, G.R. No. 119446, January 21, 1999, the Court made a categorical pronouncement that the documentary stamp tax is not intended to be a tax on the document alone. The law taxes the document because of the transaction so that the tax becomes due and payable at the time the transaction is had or accomplished, in this case, at the time of the issuance of the document.

14. The act of entering into a plan of merger involves the voluntary act of the parties. This could be validated in the case of Koppers Coal & Transportation Co., vs. United States 107 F.2 706, where the Court has held that:

> 'The transfer of the stock from Koppers Coal & Transportation Company to C.C.B. Smokeless Coal Company was not "wholly by operation of law" since the voluntary act and participation of the constituent company was required in order to effect the merger or consolidation.'

15. The BIR has consistently ruled that in tax-deferred exchanges, DST is imposed.

This has been affirmed in BIR Ruling No.- 2-2001 dated February 2, 2001, to wit:

> 'In view of all the foregoing, it is the opinion of this Office, as we hereby hold, that the tax-deferred exchange of properties of a corporation, which is a party to merger or consolidation, solely for shares of stock in a corporation which is also a party to the merger or consolidation, is subject to the

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documentary stamp tax under Section 176 if the properties to be transferred are shares of stock or even certificates of obligation and also to the documentary stamp tax under Section 196, if the properties to be transferred are real properties. Finally, it may be worth mentioning that the original issuance of shares for stock of the surviving corporation in favor of the stockholders of the absorbed corporation as a result of the merger, is subject to the documentary stamp tax under Section 175 of the Tax Code of 1997 (BIR Ruling No. S-40-220-2000, December 21, 2000).'

16. Prior to the effectivity of Republic Act No. 9243 signed on February 17, 2004 which now exempts transfer of real property from documentary stamp tax under Section 196 on account of the merger, the 1997 Tax Code still imposes DST on any conveyance with or without consideration under said Section.

17. Well settled is the rule that claims for refund/credit are construed strictly in strictissimi juris against the taxpayers as they partake the nature of exemption from tax, and it is incumbent upon the petitioner to show that it is entitled thereto under the law."

During trial, petitioner presented its lone witness, Bienvenido S. Uy, its Senior Vice President,[19] while respondent submitted the case for decision without presenting any witness[20]. After the parties have filed their respective memoranda, this case was submitted for decision on November 20, 2008.[21]

THE ISSUES

The jointly stipulated issues are as follows[22]:

"1. Whether petitioner is entitled to a tax refund or tax credit in the amount of **PESOS: TWO MILLION THREE HUNDRED FIVE THOUSAND EIGHT HUNDRED SIXTY AND 00/100 (₱ 2,305,860.00)** for DST alleged to be erroneously paid.

[19] Affidavit, Exhibit "JJJ", Docket, pp. 311-322; Page 8 of TSN of June 2006 Hearing.
[20] Page 3 of TSN of June 2, 2008 Hearing; Docket, pp. 673.
[21] Resolution dated November 20, 2008, Docket, p. 729.
[22] Docket, pp. 122-123.

1.1 Whether or not the transfer of real properties by CEVI and CLI to SLI is subject to DST imposed under § 296 of the 1997 Tax Code on account of the merger.

2. Whether or not the petitioner together with the other parties to the merger complied with the requirements enumerated in pages 8 and 9 of BIR Ruling No. S-40-022-2003 dated July 17, 2003, in order that the re-organization can be considered as merger under Sec. 40 (C) (2) of the Tax Code.

3. Whether or not the term '**CONVEYANCES**', referred to in Sec 196 of the 1997 Tax Code is not limited to the transfer of real property by sale, but contemplates all kinds of conveyances with or without consideration.

4. Whether or not the act of entering into a plan of merger involves the voluntary act of the parties.

   4.1 Whether or not the consequences of merger transpires by operation of law.

5. Whether or not petitioner erroneously filed the claim for refund with the Office of the Commissioner, Bureau of Internal Revenue, National Office, Agham Road, Diliman, Quezon City and instead of the Revenue District Office No. 30-Binondo, with address at Port Area, Manila as required under Revenue Delegation Authority Order No. 03-02 dated February 15, 2002 as cited in BIR Ruling DA-083-03, dated March 17, 2003.

6. Whether or not prior to the effectivity of Republic Act No. 9243, signed into law on February 17, 2004, which now exempts transfer of real property from documentary stamp tax under Sec 196 on account of merger, there is a specific law or regulation which categorically exempts from documentary stamp tax any conveyance of real property with or without consideration."

We summarize all the foregoing issues into one ultimate issue: whether or not petitioner is entitled to tax refund or tax credit as claimed in the Petition.

THE COURT'S DISCUSSION AND RULING

The petition is impressed with merit.

Merger is a union whereby one or more existing corporations are absorbed by another corporation which services and continues the combined business. The parties to a merger are called constituent corporations. In a merger, all constituent corporations, except the surviving corporation, are dissolved. And there is no liquidation of the assets of the dissolved corporations, the surviving corporation assumes *ipso jure* the liabilities of the dissolved corporation, regardless of whether the creditors have consented or not to such merger.[23]

As stated earlier, petitioner Stateland, Inc (SLI) is the new corporate name of State Land Investment Corporation (SLIC) after its merger with Central Land, Inc. (CLI) and Central Equity Ventures, Inc. (CEVI) effective January 1, 2003.

Section 80 of the Corporation Code of the Philippines sets forth the effects of a merger or consolidation as follows:

> "***Sec. 80. Effects of merger or consolidation***. — The merger or consolidation, as provided in the preceding sections, shall have the following effects:
>
> > 1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;
> >
> > 2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;
> >
> > 3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;

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[23] Villanueva, Philippine Corporate Law, 2001, p. 607.

> 4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; **and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed;** and
>
> 5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation, as the case may be. Neither the rights of creditors nor any lien upon the property of any of each constituent corporations shall be impaired by such merger or consolidation." *(Emphasis Ours)*

Based on the foregoing, specifically paragraph 4 thereof, all property, real or personal, belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in the surviving or merged corporation without further act or deed as one of the legal effects of a merger or consolidation or by "**operation of law"** which is defined as "effected by some positive legal rule or amendment".[24]

Under Article IV of the Plan of Merger of SLIC, CEVI and CLI, it is provided among others, that upon the effectivity of the merger, all the "rights, businesses, assets, and other properties of CLI and CEVI, including but not limited to, all real and personal properties, contractual rights, powers, franchises, licenses, interests, titles, equities, privileges, immunities, bank

[24] Black's Law Dictionary, p. 185, 5th Edition, 1979.

deposits, stocks, account receivables, credit lines, and such other assets" shall be conveyed, assigned and transferred to SLIC in consideration for shares of stock of SLIC[25].

Clearly from the foregoing stipulations in the Plan of Merger, the transfers of real properties from absorbed corporations CLI and CEVI to herein petitioner were pursuant to an approved merger and the Deed of Transfers of the aforesaid real properties were made in exchange for shares of stock of SLIC. Definitely therefore, there were no sales of real properties when CLI and CEVI executed the Deeds of Transfers to petitioner as the same were made pursuant to a corporate merger wherein the constituent corporations or the surviving corporation are not considered as buyer or purchaser in the subject transfers. Consequently, the Court finds no merit in the contention of respondent that petitioner is liable for documentary stamp tax under Section 196 of the NIRC of 1997[26].

In the case of ***COMMISSIONER OF INTERNAL REVENUE vs. LOYOLA PLANS CONSOLIDATED, INC.***[27] *(Loyola Plans case)*, the CTA *en banc* had occasion to rule on the non-taxability of transfers of real properties pursuant to a consolidation or merger.

In the said *Loyola Plans case*, the Securities and Exchange Commission approved the consolidation of Loyola Plans, Inc. and Loyola

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[25] Exhibit "E", Article IV of Plan of Merger.
[26] ***SEC. 196. Stamp Tax on Deeds of Sale and Conveyances of Real Properties.*** – On all ***conveyances, deeds, instruments, or writings***, other than grants, patents or original certificates of adjudication issued by the Government, whereby any land, tenement or other realty sold shall be granted, assigned, transferred or otherwise conveyed *to the purchaser or purchasers*, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax, at the rates herein below prescribed, *based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher*: *Provided*, that when one of the contracting parties is the Government, the tax
therein imposed shall be based on the actual consideration: xxx xxx xxx.
[27] CTA *En Banc Case No.. 202, April 4, 2007 (C.T.A. CASE NO. 6977)* affirmed by the Supreme Court in the case of Commissioner of Internal Revenue vs. Loyola Plans Consolidated, Inc., G.R. No. 178798, February 27, 2008.

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Education Systems, Inc., to form a new corporation known as Loyola Plans Consolidated, Incorporated. Upon the effectivity of the consolidation, the separate existence of the constituent corporations, Loyola Plans, Inc. and Loyola Education Systems, Inc., ceased and the new corporation, Loyola Plans Consolidated, Inc., succeeded all the rights, privileges, immunities and franchises, and all the properties, real and personal and mixed of the constituent corporations. Pursuant to the consolidation, Loyola Plans, Inc. filed and remitted the corresponding documentary stamp taxes on the transfer of its real properties and shares of stocks to Loyola Plans Consolidated, Inc. However, this Court held that the supposed transfers are not subject to documentary stamp tax based on Section 185 of Revenue Regulations No. 26, as amended, which is the Revised Documentary Stamp Tax Regulations, to wit:

> "***Sec 185. Conveyances without consideration.*** — Conveyances of realty, not in connection with a sale, to trustees or other persons without consideration are not taxable."

It was further discussed in the *Loyola Plans case* that the transfers of real properties in pursuance of a merger or consolidation are not subject to documentary stamp taxes as there is no actual "purchaser" or "buyer" of real property; said properties, subject of the consolidation, were merely absorbed by the respondent as a legal consequence of the consolidation without any form of consideration being contracted to be paid. The pertinent portion of the said decision is herein quoted, to wit:

> "Republic Act No. 9243 entitled 'An *Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code*', was subsequently passed and became effective on April 27, 2004, in order to remove any doubts as to the taxability of any transfers of real properties and shares of stocks

made pursuant to a plan of merger or consolidation, more particularly Section 9 thereof, which amends Section 199 of the NIRC of 1997, quoted hereunder as follows:

> '**Sec. 9. Section 199 of the National Internal Revenue Code of 1997, as amended, is further amended to read as follows:**
>
> **SEC. 199. Documents and papers not subject to stamp tax**. — The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:
>
> xxx xxx xxx
>
> (m) Transfer of property pursuant to **Section 40 (C)(2)** of the National Internal Revenue Code of 1997, as amended.
>
> xxx xxx xxx *(Emphasis Ours)*

Section 40 (C) (2) of the NIRC of 1997, states:

> '**SEC. 40. Determination of Amount and Recognition of Gain or Loss. —**
>
> xxx xxx xxx
>
> **(C) Exchange of property. —**
>
> xxx xxx xxx
>
> **(2) Exception** — No gain or loss shall be recognized if in pursuance of **a plan of merger or consolidation —**
>
> (a) A corporation, which is a party to a merger or consolidation, exchanges property solely for stock in a corporation, which is a party to the merger or consolidation; or
>
> xxx xxx xxx
>
> No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not exceeding

four (4) persons, gains control of said corporation: Provided, That stocks issued for services shall not be considered as issued in return for property.'

Clearly therefrom, the transfers of real properties and shares of stocks in pursuance of a merger or consolidation are not subject to documentary stamp taxes as there is no actual 'purchaser' or 'buyer' of real property; said properties, subject of the consolidation, were merely absorbed by the respondent as a legal consequence of the consolidation without any form of consideration being contracted to be paid. Hence, We agree with the respondent that transfers of real properties and shares of stocks, as a result of a merger or consolidation, are not subject to documentary stamp taxes."[28] *(Emphasis Ours)*

Moreover, the Court notes that respondent issued BIR Ruling No. S-40-022-2003 dated July 17, 2003 which explicitly ruled that petitioner's merger with CLI and CEVI is a tax-free merger in contemplation of Section 40(C)(2) of the NIRC of 1997 having been entered into for a *bona fide* business purpose and not merely to avoid the burden of taxation. Respondent further stated in the aforesaid BIR Ruling that "in a merger, the surviving corporation (SLI) succeeds to the rights and liabilities of the absorbed corporations (CEVI and CLI) and merely carries on the identity of the latter corporations. Consequently, no gain was realized by the surviving corporation (BIR Ruling No. 112-96 dated October 25, 1996)"[29]. There is no intention on the part of CEVI and CLI to donate to SLI their assets since the transaction is purely for legitimate purpose. Thus, the aforesaid merger will not be subject to gift tax and the transaction is a *bona fide* merger effected solely for business reasons. Clearly on the basis of the aforesaid ruling, respondent impliedly recognized that the transfer of assets and liabilities from the absorbed corporations CLI and CEVI to petitioner SLI, is in exchange solely for its

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[28] Ibid, at pp. 7-11.
[29] Page 5 of BIR Ruling S-40-022-2003; Docket, p. 34.

shares and is without consideration. These are therefore, transfers not in contemplation of conveyance of real properties subject to documentary stamp tax.

As regards respondent's contention that the petitioner together with the other parties to the merger did not comply with the requirements enumerated in pages 8 and 9 of the BIR Ruling No. S-40-022-2003 dated July 17, 2003, respondent failed to specify his legal basis therefore. In fact, his counsel opted not to present controverting evidence in the instant case.

Assuming that the requirements of the respondent are prerequisites for the merger contemplated under Section 40(C)(2) of NIRC of 1997, petitioner substantially complied with the said requirements by way of the following exhibits, to wit:

a) Corporate Secretary's Certificates, Board Resolutions, and Minutes of Board Meetings of the constituent corporations authorizing the merger (Exhibits "XX" to "CCC");

b) Annual Income Tax Return (ITR) for 2003 and Audited Financial Statements (AFS), List of Real Properties, Annual Income Tax Return for 2002 and Audited Financial Statements (Exhibits "DDD" to "GGG");

c) Plan of Merger (Exhibit "E");

d) Certification of the Corporate Secretary and annexes showing properties transferred by CLI and CEVI, including valuation of properties and liabilities assumed by Petitioner and its nature (Exhibit "LL");

e) Zonal Valuation of Properties in Malolos, Bulacan, Trece Martires City, Cavite and San Pedro, Laguna, respectively, as certified by the Asset Valuation Division of the BIR (Exhibits "CC" to "EE");

f) Tax Declarations of Real Properties (Exhibits "RR" to "RR-146-a" and "TT" to "TT-258");

g) Audited Financial Statements (AFS) of the constituent corporations as of August 31, 2002 or time of merger and as of December 31, 2002 which will show compliance with the requirements set forth in Nos. A(2), (3), and (4) (Exhibits "FF" to "JJ"); and

g) Transfer Certificates of Titles with corresponding annotation of facts relative to the merger by the Register of Deeds (Exhibits "MM" to "QQ-149-a", "SS-247" and "UU" to "UU-109").

As to the respondent's contention that petitioner erroneously filed the claim for refund with the Office of the Commissioner, Bureau of Internal Revenue, National Office, Agham Road, Diliman, Quezon City, instead of the Revenue District Office No. 30-Binondo, as required under Revenue Delegation Authority Order No. 03-02 dated February 15, 2002 and as cited in BIR Ruling DA-083-03, dated March 17, 2003, the same is not a ground to deny a valid claim for refund. The said Delegation Authority Order is an internal arrangement among the district offices of the respondent to expedite the processing of the administrative claim of refund by taxpayers. This, however, should not be used to arbitrarily deny a valid claim for refund/issuance of tax credit for an erroneous payment of tax to a taxpayer.

In the instant case, petitioner filed the BIR returns and paid the said documentary stamp tax on the transfer of the subject real properties on

February 4, 2003. On July 5, 2004 an administrative claim for refund or tax credit was filed by the petitioner against the respondent. Due to the inaction by respondent to the aforesaid administrative claim, petitioner filed the instant Petition for Review on January 19, 2005 which is still within the two year prescriptive period to file claim for refund/issuance of tax credit pursuant to Section 229 of NIRC of 1997.

Consequently, the Court finds petitioner entitled to a refund or issuance of a tax credit certificate in the amount of ₱ 2,305,860.00 representing the paid documentary stamp tax on the transfer of real property from CLI to SLI.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund or to issue a tax credit certificate in favor of petitioner the amount of ***TWO MILLION THREE HUNDRED FIVE THOUSAND EIGHT HUNDRED SIXTY PESOS (₱ 2,305,860.00)*** representing the documentary stamp tax erroneously paid as a result of the transfer of real properties on account of a corporate merger.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

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

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice