THE PHILIPPINE AMERICAN ASSURANCE COMPANY, INC.,
Petitioner,

- versus - CTA CASE NO. 2318

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - - - x

THE PHILIPPINE AMERICAN ACCIDENT INSURANCE COMPANY, INC.,
Petitioner,

- versus - CTA CASE NO. 2319

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - - - x

THE PHILIPPINE AMERICAN GENERAL INSURANCE COMPANY, INC.,
Petitioner,

- versus - CTA CASE NO. 2320

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - - - x

5/6/74

D E C I S I O N

These are separate petitions for review filed by three insurance companies, the Philippine American Assurance Company, Inc., the Philippine American Accident Insurance Company, Inc. and the Philippine American General Insurance Company, Inc., seeking the refund of the sums of ₱10,159.60, ₱10,163.78 and ₱21,838.27, respectively, representing the lending investors' fixed and percentage taxes paid during the period from September, 1969 to June, 1971, pursuant to Sections 182(A)(3)(dd) and 195-A of the National Internal Revenue Code, as amended.

Petitioners herein are domestic corporations engaged in insurance business. In connection with their insurance business, they invest a portion of the premiums collected by them on loans from which they derive substantial interest income. Petitioners claim that they are not taxable as lending investors under Sections 182(A)(3)(dd) and 195-A of the Revenue Code, since they are already taxed as insurance companies under Sections 182(A)(3)(gg) and 255 of the same Code. Hence, their claims for refund of the amounts paid by them as lending investors.

The issue common to these cases is whether or not petitioners should be held liable for the fixed and percentage taxes imposed on lending investors pursuant to Sections 182(A)(3)(dd) and 195-A of the Tax Code, as amended, the pertinent provisions of which respectively provide as follows:

> SEC. 182. <u>Fixed taxes</u>. - (A) <u>On business</u> x x x x
>
> x x x x x x
>
> (3) <u>Other fixed taxes</u>. - x x x x
>
> x x x x x x
>
> (dd) Lending investors -
> 1. In chartered cities and

hundred pesos.

> SEC. 195-A. Percentage tax on dealers in securities; Lending investors. - Dealers in securities and lending investors shall pay a tax equivalent to three *per centum* on their gross income.

Petitioners do not deny that they are extending loans with interest to various persons. In fact, it has been shown that they have been engaged in lending activities since the time of their incorporation, and that the mortgage loans outstanding and the interests derived therefrom for the years 1969, 1970 and 1971 alone were substantial. However, petitioners contend that their lending activities are part of, or incidental to, their business of insurance, and since they have already paid the fixed and percentage taxes on said business, they are no longer subject to the tax imposed upon lending investors. In support of this view, petitioners cited the cases of Asturias Sugar Central Inc. vs. Com. of Int. Rev., CTA Case No. 983, Feb. 14, 1963; Standard Vacuum Oil Co. vs. Antigua, et. al., G. R. No. L-6931, April 30, 1953; 51 O. G. 2405; City of Manila vs. Fortune Enterprises, G. R. No. L-14096, July 26, 1960; Smith Bell & Co. vs. Municipality of Zamboanga, 55 Phil. 466, wherein it was held that "When a person or company is already taxed on its main business, it may not be further taxed for doing something or engaging in an activity which is merely a part of, incidental to, and is necessary to its main business."

Furthermore, petitioners claim that the whole context of the Tax Code shows that insurance companies should not be further taxed as lending investors, and that the Bureau of Internal Revenue had never before required them to pay the lending investors tax.

Respondent, on the other hand, insists that petitioners are "lending investors", which means "persons who make a practice of lending money for themselves or others at interest" (Sec. 194(u), Revenue Code), because their lending activities are habitual and continuous, and are separate and independent from their insurance business. Respondent invokes Section 178 of the Revenue Code which provides, among others, that -

> . . . . The tax on business is payable for every separate or distinct establishment or place where business subject to the tax is conducted; and one line of business or occupation does not become exempt by being conducted with some other business or occupation for which such tax has been paid. (Underlining supplied.)

as well as the decision in the case of Ilagan, et. al., vs. The Collector of Internal Revenue, CTA Case No. 43, July 25, 1956 (affirmed in G. R. Nos. L-11113 & [illegible], Sept. [illegible], [illegible]) wherein this Court, in interpreting said Section 178 of the Revenue Code, held that the taxpayer is "liable to the payment of as many fixed taxes as there are occupations or lines of business in which it is engaged."

Respondent further intimated that the law cannot be construed in a manner that would exempt petitioners on their separate activity, as exemption from taxation is not favored and should be interpreted strictly against the taxpayer.

The flaw in respondent's contention rests on the erroneous assumption that the lending activity of petitioners is separate and independent from their main business of insurance. It overlooked the fact that the business of insurance actually comprises two principal activities, namely; (1) underwriting and (2) investment, and that the lending of money, being a form of investment, is a necessary and essential part of insurance and can hardly be distinguished generally from the business. Thus, as explained by Mertens, an eminent authority on income taxation:

> "Nor can the business of lending money be distinguished from the business of insurance. It is a part of that business. Every insurance business consists of two major activities: underwriting and investment. Speaking of "investment business" of a life insurance company, the Supreme Court has said:

'That phrase may be taken to include activities relating to interest, dividends, and rents constituting the income taxed as distinguished from its underwriting business which embraces its other activities.'

"As a general rule no one would buy insurance from a company that does not have a substantial net worth in assets over and above its current premium income. Obviously these assets must be invested and must produce an investment income. Except for small mutual associations operating on a co-operative basis, the business of insurance is therefore necessarily a combination of the business of underwriting and the business of investment.

"Because of this dual nature of the business of insurance, it would seem that an insurance company's investment income whether derived from real estate, or stock or money loaned, is essentially income from the business of insurance if the invested assets are held either as reserve funds to provide for its policy obligations, or as capital and surplus to provide an extra margin of safety which will be attractive to insurance buyers.

"This dual nature of the business of insurance is recognized by the express provisions of the Code which tax both 'underwriting income' and 'investment income.' A substantial and essential part of the business of every life insurance company and of many insurance companies is 'the business of lending money,' i.e., mortgage loans." (Sec. 44.04, Mertens, Law of Federal Income Taxation, Vol. 8, 1957 Ed., pp. 8-9.)

Other authorities have expressed the same view.

"Premiums are characteristic of the business of insurance, and the creation of investment income is generally, if not necessarily, essential to it." (Bowers vs. Lawyers to Mortgage Co., 285 U. S. 182.)

> "Life insurance companies must invest their funds so as to enable them to meet their obligations to their policy holders." (Appleman, Insurance Law & Practice, Vol. 19, p. 180.)

We expressed the same view in Insular Life Assurance Co., Ltd. v. Commissioner of Internal Revenue, CTA Case No. 2336 and Filipinas Life Assurance Co. v. Commissioner of Internal Revenue, CTA Case No. 2337, November 12, 1973 (cert. denied in G. R. Nos. L-37984-85, Feb. 27, 1974), from which we quote:

> That the investment of the premiums collected by insurance companies from policyholders appears to be not merely incidental or necessary but in fact essential to the conduct of the life insurance business cannot be gainsaid. Nor can it be denied that "insurance is affected with a public interest", and that perhaps "no other business affects the public so intimately as does the insurance business." (Vance on Insurance, p. 36.) It is for these reasons that the investment aspect of the insurance business, including investments in mortgage loans, is subject to stringent regulation by the state. (See Secs. 178-A, 183, 197, 200-A of the Insurance Act.) It is noteworthy that according to Sec. 200(1) of the Insurance Act, an insurance corporation may purchase and hold property "as may have been mortgaged, pledged, or conveyed to it . . . by reason of money loaned by it in pursuance of the regular business of the corporation . . . . ." (Underscoring supplied.) This provision, to our mind, confirms the fact that lending money is part and parcel of the insurance business.
>
> In this connection, it should be noted that Republic Act No. 6110 amended Section 182(A)(3) of the Revenue Code by inserting therein, among others, subparagraph (gg) in which, for the first time, banks, insurance companies, finance and investment companies doing business in

the Philippines were grouped together and made subject to a fixed tax on their businesses. Petitioners allege, and respondent has not denied, that prior to Republic Act No. 6110, which was approved on August 4, 1969, insurance companies were already engaged in lending activities but had never been required by respondent to pay the fixed tax imposed on lending investors under the former section (182(A)(3)(u) of the Revenue Code. (See BIR ruling dated Feb. 28, 1920, supra.) It appears to us that there is less reason now than before to hold them liable for the fixed tax imposed on lending investors since they are presently subject to the fixed tax under Section 183(A)(3)(gg) by virtue of Republic Act No. 6110. In fact, it would be difficult to accept the view that the legislators, in making them liable for the fixed tax on their businesses, also intended to make them additionally liable for the fixed tax on lending investors under subparagraph (dd) of Sec. 182(A)(3) /formerly, subparagraph (u) of Sec. 182(A)(3)/. It is inconceivable that banks and finance companies, whose lending activities obviously constitute an inherent and integral part of their businesses, are to be required to pay the fixed tax on their businesses as banks or finance companies and again as lending investors. Since lending money is an integral and essential activity not only of banks and finance companies but also of insurance companies, they were all grouped together under subparagraph (gg), and since Congress must have been aware of the nature of their businesses, it is to be presumed, in the absence of any express provision to the contrary, that Congress intended them to pay only the fixed tax under subparagraph (gg).

The Bureau of Internal Revenue itself has for a very long period of time (since 1920) adhered to the view that banks and insurance companies are not considered lending investors under the law imposing the lending investor's tax. (See Ruling, Feb. 28, 1920; Ruling No. 43 [Oct. 8, 1926] 25 O.G. 1326, cited in the Internal Revenue Law, Annotated, 2nd ed., 1929, by B.L. Meer, p. 143, cited in the Insular Life Assurance Co., Ltd. v. Commissioner of Int. Rev., supra.) This construction of the law is deemed to have received congressional approval when the law on lending investor's tax contained in the old Internal Revenue Law was re-enacted without substantial change in the new National Internal Revenue Code.

It is argued that to hold that petitioners are not subject to the lending investor's tax would in effect be giving them an exemption from taxation which is not favored, and since a tax exemption law must be strictly construed against the person claiming exemption, any doubt should be resolved against him. This argument proceeds from a false premise. The law providing for a tax on lending investors is not a tax exemption law. It is a classification statute which should be construed as an ordinary taxing law which is to be construed fairly and justly, and in case of doubt, the doubt should be resolved in favor of the taxpayer. (See Commissioner of Internal Rev. v. Ledesma, G.R. No. L-17509, Jan. 30, 1970, 31 SCRA 95.) At any rate, we entertain no doubt as to the non-applicability of the law imposing the lending investor's tax to insurance companies like the petitioners herein.

In view of our opinion that petitioners are not engaged in business as lending investors independently of their insurance business, they are entitled to the refund of the amounts paid by them as lending investors' fixed and percentage taxes for the years 1969, 1970 and 1971. Accordingly, respondent is hereby ordered to refund to The Philippine American Assurance Co., Inc. the sum of ₱10, 159.60; to The Philippine American Accident Insurance Co., Inc. the sum of ₱10,163.78; and to The Philippine American General Insurance Co., Inc. the sum of ₱21,838.27. No pronouncement as to costs.

SO ORDERED.

Quezon City, May 6, 1974.

ROMAN M. UMALI
Presiding Judge

I CONCUR:

RAMON L. AVANCEÑA
Associate Judge

Associate Judge ESTANISLAO R. ALVAREZ who DISSENTED in previous cases of the same issue took no part as he was then holding court sessions in Cebu.