REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE PHILIPPINE AMERICAN LIFE INSURANCE COMPANY INC.,
Petitioner,

- versus -

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO.3700

Promulgated:
FEB 21 1995

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DECISION

This is a petition challenging the assessment issued by respondent against herein petitioner for alleged non-payment of premium tax, documentary and science stamp tax and percentage tax corresponding to the taxable year 1975.

Petitioner is a domestic insurance corporation duly registered and authorized to transact business in the Philippines with principal office at Philamlife Building, United Nations Avenue, Ermita, Manila.

On January 21, 1981, petitioner received from respondent an assessment notice dated December 26, 1980 for unpaid taxes corresponding to the year 1975 in the total amount of P1,367,076.38 detailed as follows:

I. **Premium Tax**

Deficiency tax per investigation	P241,594.38
25% surcharge	60,398.59
Total Amount Due	P301,992.97

II. **Documentary & Science Stamp Tax**

a) **Life Insurance Policies**

$\frac{\text{Insurance Policies Issued}}{200} \times .16$

$\frac{1,794,397,903}{200} \times .16$	=	P1,435,518.40
$\frac{1,794,397,903}{200} \times .16$	=	1,435,518.40
		P2,871,036.64
Less: Affixtures		2,276,819.19
B a l a n c e		P 594,217.63

b) **Policy Loans Issued**

$\frac{\text{Policy Loan Issued}}{3000} \times 1.50$

$\frac{P124,868,939.35}{3000} \times 1.50$	=	P 62,434.50
$\frac{P124,868,939.35}{3000} \times 1.50$	=	62,434.50
		P 124,869.00
Less: Affixtures		25,151.00
B a l a n ce		P 99,718.00

c) Medical Certificates Issued

Certificates Issued x .30 =

P66,415.00 x .30	=	P 19,924.50

Total Documentary & Science Stamp Tax Due	P 713,860.13

III. Percentage Tax

Gross Rental Income	₱5,124,333.25
Tax due thereon (3%)	₱ 153,730.03
25% surcharge	38,432.51
T o t a l	₱ 192,162.54
14% int. comp. qtrly up to 7/31/80	135,588.83
20% int. fr. 8/1/80-3/2/81	23,471.91
TOTAL AMOUNT DUE	₱ 351,223.28

In a letter dated February 9, 1981 and received by respondent on February 10, 1981, petitioner through its counsel, requested for a reconsideration/reinvestigation of the assessment with the end in view that they be given an opportunity to present its side with respect to the particulars of the assessment as it is their belief that the same was issued without factual or legal basis. This request for reinvestigation was reiterated in a second letter sent by petitioner to respondent dated September 28, 1982 which was finally denied by the then acting Commissioner of Internal Revenue, Ruben Ancheta in a letter received by petitioner on October 6, 1983, who firmly stood behind the veracity of the findings of its examiners which served as the basis of the questioned assessment.

From this denial, petitioner elevated his cause to this Court on November 3, 1983 assailing the assessment and firmly denying that it had unpaid taxes for the year 1975.

Petitioner questions the very basis of respondent in concluding that it had deficiency documentary/science stamp tax, premium tax and percentage tax for the year 1975 and claims that all of the taxes imposed by law have been paid by them. Furthermore, it alleges that the right to issue the assessment had already prescribed.

Respondent in his answer, advances the following special and affirmative defenses:

SPECIAL AND AFFIRMATIVE DEFENSES

> 3. Petitioner failed to affix the correct amounts of documentary and science stamps on life insurance policies, policy loans and medical certificates it issued; hence, the deficiency tax assessment, pursuant to Section 210, in relation to Sections 220, 225 and 237 all of the Tax Code (now Sections 222, 232, 237 and 249, respectively, of the Tax Code of 1977, as amended);
>
> 4. Record of petitioner's total affixtures and purchases of stamps was taken from petitioner's Record Department, prepared and duly signed by its employee;
>
> 5. Petitioner failed to pay the correct amount of premium tax pursuant to Sections 255 and 256, penalized under Section 352, all of the Tax Code (now Sections 263, 264 and 337, respectively, of the Tax Code of 1977, as amended);
>
> 6. Petitioner failed to pay the percentage tax due from it as contractor under Sections 183 (a) and 191, penalized under Section 209, all of the Tax Code (now Sections 193(a), 205 and 221, respectively, of the Tax Code of 1977, as amended);

7. All assesssments are presumed to have been issued in accordance with law and revenue regulations;

8. All the deficiency assessments in question were clearly explained to the petitioner, through its accountant.

Both parties made their formal offer of evidence but it was only the petitioner who submitted its memorandum.

As the questioned assessment involves different kinds of taxes pertaining to various documents and transactions, it is best to tackle them individually to arrive at a lucid conclusion.

I. Premium Tax

Respondent alleges that petitioner has unpaid premium taxes for 1975 in the amount of P241,594.38 plus a 25% surcharge resulting in the total amount of P301,992.97 pursuant to Sections 263, 264 and 337 of the Tax Code of 1975, all herein quoted, thus:

> SEC. 263. **Taxes on insurance premiums.**- There shall be collected from every person, company, or corporation (except purely cooperative companies or associations) doing insurance business of any sort in the Philippines a tax of three *per centum* of the total premiums collected, whether such premiums are paid in money, notes, credits, or any substitute for money; but premiums refunded within six months after payment on account of rejection of risk or returned for other reason to a person insured shall not be included in the taxable receipts nor shall any tax be paid upon re-insurance by a company that has already paid the tax; nor upon premiums collected or received by any branch of a domestic corporation, firm or association doing business outside the Philippines on account of any life

insurance of the insured who is a non-resident, if any percentage tax on such premiums is imposed by the foreign country where the branch is established nor upon premiums collected or received on account of any re-insurance, if the risk insued against covers property located outside the Philippines, or the insured, in case of personal insurance, resides outside the Philippines, if any percentage tax on such premiums is imposed by the foreign country where the original insurance has been issued or perfected; nor upon that portion of the premiums collected or received by insurance companies on variable contracts (as defined in Section 232 [2] of Presidential Decree No.612) in excess of the amounts necessary to insure the lives of variable contract owners.

Cooperative companies or associations are such as are conducted by the members thereof with the money collected from among themselves and solely for their own protection and not for profit.

SEC. 264. **Time for payment of tax.**- *Increase tax in case of delinquency.*-The tax on insurance companies shall be due within twenty days after the end of each calendar quarter. It shall be the duty of every insurance company to make a true and complete return of the amount of gross premiums derived during the preceding calendar quarter and pay the tax due thereon and if the tax is not paid within the time prescribed herein the amount of the tax shall be increased by twenty-five *per centum*, the increment to be part of the tax.

In case of willful neglect to file the return within the period prescribed herein, or in case a false or fraudulent return is willfully made, there shall be added to the tax or to the deficiency tax in case any payment has been made on the basis of such return before the discovery of the falsity or fraud a surcharge of fifty *per centum* of the amount. The amount so added to the tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the falsity or fraud, in which case the amount so added shall be collected in the same manner as the tax.

SEC. 337. **Violation of other provisions of this Code or regulations in general.**-A person who violates any provision of this Code or any regulation of the Department of Finance made in conformity with the same, for which delinquency no specific penalty is provided by law, shall be punished by a fine of not more than three hundred pesos or by imprisonment for not more than six months, or both.

This aforecited amount was a result of the examination conducted by the Revenue Enforcement Officer of the BIR who based the total amount of deficiency premium tax on the data found on the general ledgers, journals, vouchers and annual reports submitted by the petitioner to the Insurance Commission (see TSN, page 138-I, CTA records). In addition, respondent offered as evidence the working papers/worksheet which show that petitioner had undeclared premiums received based on the statement submitted by the petitioner to the Insurance Commission (Exhibit 2, page 74, BIR records).

We agree with the findings of the respondent with regard to the premium tax liability of the petitioner.

Well-settled is the rule that all presumptions are in favor of the correctness of the assessment (**The Philippine American Life Insurance Company vs. CIR**, CTA Case No.4072, July 7, 1989). In the presence of an assessment, there is, however, a presumption as to the correctness and validity of an assessment so that it is the duty of the taxpayer to rebut the presumption (**Collector of Internal Revenue vs. Bohol Land Transportation Co. vs. Collector of Internal Revenue**, 107 Phil. 965). In the instant case, petitioner failed to controvert the validity of the assessment with respect to its premium tax liability. In the presentation of its evidence, petitioner attempted to offer the premium tax returns it filed during 1975 together with the receipts evidencing payment but no such exhibits were brought to the attention of this Court.

There is legal basis in the contention of the Revenue Enforcement officer of the BIR that there were two rates for the year 1975 with respect to insurance premiums. In the first part of 1975, a tax imposition of 3% of total premiums collected was applied (see Section 255 of the 1975 Tax Code) but this was later increased to 4% during the latter part of 1975 by virtue of Presidential Decree No.739 which took effect on July 1, 1975, providing in part as follows:

Section 1. That Section 255 of the NIRC is hereby amended to read as follows:

> Section 255. **Taxes on insurance premium.** - There shall be collected from every person, company, or corporation (except purely cooperative companies or association) doing insurance business of any sort in the

> Philippines a tax of four *per centum* of the total premiums collected, whether such premiums are paid in money, notes, credits or any substitute for money xxx (underscoring supplied).

These two varying tax rates for the same taxable year logically resulted in an increase in the premium tax to be paid for the latter part of the year in question which gave rise to the deficiency. Petitioner was not able to dispute these findings so this Court upholds the validity of the assessment as to the petitioner's premium tax liability.

II. **Documentary and Science Stamp Tax**

Respondent maintains that petitioner has a deficiency documentary and science stamp tax liability in the amount of P713,860.13 pursuant to Section 222, 232, 237 and 249 of the 1977 Tax Code. The said taxes were imposed on three types of documents namely; insurance policies, policy loans and medical certificates allegedly issued by the petitioner in 1975.

Petitioner staunchly maintains that it has paid all the documentary and science stamp taxes for 1975 and presented as evidence the check vouchers, official receipts and requests for loading the stamp machines (Exhibits I to I-79). Moreover, petitioner denies its liability for documentary stamp taxes on medical certificates it allegedly issued as it asserts that it is an insurance company and it is not within its nature to issue those types of documents.

Exhibits I to I-79 presented by the petitioner shows that petitioner made the following payments of documentary stamp taxes in the year 1975, thus:

Date	O.R. No.	Exh.	Documentary	Science
01-07-75	3537475	I-1		40,000.00
01-07-75	3537476	I-4	40,000.00	
01-16-75	3537655	I-7		40,000.00
01-16-75	3537656	I-10	40,000.00	
02-05-75	3538057	I-13		40,000.00
02-05-75	3538056	I-16	40,000.00	
02-20-75	3538301	I-19	40,000.00	
02-20-75	3538057	I-22		40,000.00
03-07-75	3538499	I-25	40,000.00	
03-07-75	3538500	I-28		40,000.00
03-13-75	3538633	I-31	40,000.00	
03-13-75	3538634	I-34		40,000.00
04-01-75	3538870	I-37	40,000.00	
04-01-75	3538871	I-40		40,000.00
04-04-75	3538981	I-43		40,000.00
04-04-75	3538980	I-46	40,000.00	
04-21-75	3539284	I-49		40,000.00
04-21-75	3539285	I-52	40,000.00	
05-05-75	3539448	I-55	40,000.00	
05-06-75	3539447	I-58		40,000.00
05-12-75	3539511	I-61	40,000.00	
05-12-75	3539510	I-64		40,000.00
05-16-75	3539780	I-67		40,000.00
05-16-75	3539779	I-70	40,000.00	
05-22-75	3539720	I-73		40,000.00
05-22-75	3539721	I-76	40,000.00	
05-23-75	3539739	I-79		80,000.00
05-23-75	3539740	I-82	90,000.00	
05-23-75	3539748	I-85	90,000.00	
06-03-75	3539950	I-88	90,000.00	
06-03-75	3539747	I-91		90,000.00
06-03-75	3539749	I-94		90,000.00
06-21-75	4790935	I-97	35,000.00	
06-21-75	4790936	I-100		40,000.00
07-14-75	4791093	I-103		40,000.00
07-14-75	4791092	I-106	40,000.00	
07-18-75	4791261	I-109	40,000.00	
07-18-75	4791262	I-112		40,000.00

07-31-75	4791489	I-115	40,000.00	
07-31-75	4791490	I-118		40,000.00
08-08-75	4791683	I-121	40,000.00	
08-08-75	4791682	I-124		40,000.00
08-21-75	4791913	I-127	40,000.00	
08-21-75	4791914	I-130		40,000.00
09-03-75	4792190	I-133	40,000.00	
09-03-75	4792191	I-136		40,000.00
09-08-75	4792241	I-139	40,000.00	
09-08-75	4792240	I-142		40,000.00
09-18-75	4792435	I-145		40,000.00
09-18-75	4792436	I-148	40,000.00	
10-08-75	4792856	I-151	40,000.00	
10-08-75	4792857	I-154		40,000.00
10-29-75	4793306	I-159	40,000.00	
10-29-75	4793305	I-162		40,000.00
12-04-75	5152439	I-169		40,000.00
12-04-75	5152440	I-172	40,000.00	
T O T A L			1,265,000.00	1,260,000.00
GRAND TOTAL				2,525,000.00

During the hearing conducted on January 28, 1993, counsel for petitioner undermined the factual strength of the assessment by questioning the method of investigation conducted by the BIR examiners which resulted in the disputed tax liability of the petitioner. The revenue enforcement officer of the BIR however testified that the figures contained in the assessment were a result of the examination she and several others conducted on the general ledgers and annual statements submitted by the petitioner to the Insurance Commission. The annual statement contained a summary of the number of insurance policies, policy loans and medical certificates issued by the petitioner for the year 1975. The computation on the documentary and science stamp tax liability of the petitioner is found on the worksheet submitted by these examiners as part of the BIR records presented to this Court (see page 43 of the BIR records).

A careful analysis of the evidence presented by both parties reveals that as per the BIR examiners' computation, petitioner has a total documentary and science stamp tax liability in the amount of P3,015,830.30, detailed as follows:

For: Life insurance policies	P2,871,036.84
Policy loans	124,869.00
Medical certificates	19,924.50
Total	P3,015,830.30
Less: Affixtures	
Life Insurance policies	P2,276.819.19
Policy Loans	25,151.00
Total	P2,301,970.19
Deficiency DST assessment	P 713,860.11

However, evidence presented by the petitioner (Exhibits I to I-79) reveal that it has paid a total amount of P2,525,000.00 for documentary and science stamp tax in 1975. Thus, what remains was a deficiency of only P490,830.30, computed as follows:

Deficiency DST liability	P3,015,830.30
Less: Payments made by petitioner (Exhibits "I to I-79")	2,525,000.00
Total Documentary and Science stamp tax liability	P 490,830.30

It is true that petitioner put into issue the method of computing the DST for policy loans issued (p. 38X to 138Z, tsn) but unfortunately it did not present any evidence to rebut the same. All it presented were the check vouchers and official receipts evidencing payment of the DST but these are not sufficient to destroy the presumption of correctness of the assessment. Moreover, this Court disagrees with the argument of petitioner that as an insurance company, it does not issue medical certificates. There are instances where applicants for life insurance policies are made to undergo medical examinations to determine the status of their health. These examinations are conducted by doctors employed by the insurance company and as a consequence medical certificates are issued. It is clear from the testimony of the Revenue Examiner that the annual statement submitted by the petitioner contains a summary of the number of medical certificates issued by the insurance company in 1975. It is well to reiterate at this point that all presumptions are in favor of the correctness of the assessment and petitioner in this case failed to overcome this, thus the assessment for documentary/ science stamp tax in the remaining amount of P490,830.30 subsists.

III. <u>Percentage Tax</u>

Respondent also assessed the petitioner for percentage tax as a contractor in the total amount of P351,223.28 (Exhibit A) based on the recommendation made by its Revenue Examiners that petitioner in 1975 was a lessor of personal property and as such was subject to the provisions of paragraph 17 of Section 205 of the 1977 Tax Code (p. 78 of the BIR records).

Petitioner denies this allegation and during the hearings held on September 12, 1988, the chief accountant of the petitioner, Mr. Antonio Merecen testified that the gross rental income it received during 1975 came from the lease rental of real estate property and not personal property therefore it falls outside the aforementioned provision.

As earlier stated, respondent invokes Section 205, paragraph 17 of the 1977 Tax Code as basis of petitioner's liability, quoted hereunder, thus:

> Section 205. Contractors, proprietors or operators of dockyards, and others.-A contractor's tax of three *per centum* of the gross receipts is hereby imposed on the following:
>
> (17) Lessors of personal property, except non-resident owners of property subject to the final tax under Section 24 (b) (vii) of this code.

It is the theory of the revenue examiners that the building (Home Office) owned by the petitioner and leased to other persons, is a personal property subject to the 3% contractor's tax under the aforecited provision.

For purposes of clarity, it is best to give a brief background on the history of the building and the land in question.

The land which was originally owned by the petitioner was sold to Kapatiran Realty Corporation in 1974 by virtue of the provision found in the 1973 Constitution prohibiting foreigners from owning public lands in the Philippines. Petitioner, being substantially American-owned sold the land to Kapatiran but retained ownership of the building. The land was leased back to petitioner with Kapatiran Realty Corporation as lessor. It is from this set-up that the revenue examiners concluded that the building has been transformed into a personal property subject to the provision of Section 205, paragraph 17 of the 1977 Tax Code.

We find legal flaws in the argument of respondent that the building is a personal property by virtue of the fact that the buiding and the land have different owners.

Article 415 of the Civil Code of the Philippines provides in part as follows:

> The following are immovable property:
>
> 1.) Land, <u>buildings</u>, roads and constructions of all kinds <u>adhered to the soil</u>; (underscoring supplied)

The nature of the building as an immovable property does not change regardless of ownership of the land and the building as the Supreme Court pointed out in the case entitled **Lopez vs. Orosa Jr. and Plaza Threatre, Inc.**, 103 Phil. 98 where it ruled, thus:

> A building is an immovable property irrespective of whether or not said structure and the land on which it is adhered to belong to the same owner.

In the same case, the Supreme Court ruled that:

> While it is true that generally, real estate, connotes the land and the building constructed thereon, it is obvious that the inclusion of the building, separate and distinct from the land, in the enumeration of what may constitute real properties could mean only one thing - that a building is by itself an immovable property. (Lopez vs. Orosa 103 Phil. 98, **supra**).

It is obvious from the above discussion that the assessment of respondent pertaining to percentage tax has no legal basis to stand on and it is for this reason that it must be cancelled.

WHEREFORE, in view of the foregoing, petitioner Philippine American Life Insurance Company is hereby ordered to pay to the respondent Commissioner of Internal Revenue the amount of P301,992.97 as deficiency premium tax on premium payments received in 1975 and the amount of P490,830.30 as deficiency documentary and stamp taxes also in 1975. However, the decision of respondent

Commissioner of Internal Revenue assessing petitioner the sum of P351,223.28 as percentage tax for the year 1975 is hereby reversed.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13 Article VII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals