REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA BANKERS LIFE INSURANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6558

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

DEC 12 2003

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DECISION

This is a petition for review seeking the cancellation of Assessment Notice No. PT98-000001 dated January 24, 2002 on the grounds of prescription and payment.

The following facts have been jointly stipulated by the parties:

Petitioner is a corporation organized and existing under Philippine laws, engaged in business primarily as a life insurance company, and with principal place of business at the TMBC Building, 6772 Ayala Avenue, Makati City. Petitioner was classified by respondent as a large taxpayer under Revenue Regulations No. 01-98, and for taxable year 1998 was registered with the Large Taxpayers Service, BIR Building, BIR Road, Diliman, Quezon City.

The National Home Mortgage Finance Corporation (NHMFC) was created through Presidential Decree No. 1267. It is a government owned and controlled corporation organized for the purpose of granting housing loans to the Home

Development Mutual Fund *(commonly referred to as "Pag-ibig Fund")* members. For the purpose of ensuring the full settlement of the loan from NHMFC in case of death of the borrower, all NHMFC borrowers were required by NHMFC to secure a mortgage redemption insurance (MRI).

The Pag-ibig MRI Pool, Inc (MRI Pool) was organized and incorporated on February 6, 1987. It was organized for the purpose of managing the contracts of insurance entered into with financial institutions, such as the NHMFC. For a fee or assessment, it ensures that the insurance needs of the NHMFC borrowers are met, and that the business opportunity presented by the said insurance need is distributed fairly among all qualified insurance companies.

The borrowers of the NHMFC were enrolled with the MRI Pool and they pay their insurance premiums as part of their monthly amortization to NHMFC. These premiums are in turn remitted by the NHMFC to the MRI Pool. The MRI Pool receives the premiums from NHMFC as administrator and in-trust for its member-insurers. Thereafter, the MRI Pool distributes the premium income equally among all its member-insurers. Petitioner is a member of the MRI Pool and receives premium income from the said Pool.

On September 15, 1999, respondent issued Letter of Authority No. 00019253 authorizing Revenue Officers A.B. Tanguilig, et. al., to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the taxable year 1998. The said Letter of Authority was received by petitioner on October 5, 1999.

After audit was conducted by the said Revenue Officers, a preliminary assessment notice was served on petitioner on January 8, 2002, informing the latter of its alleged deficiency percentage tax liability on life insurance premiums ("premium tax") for taxable year 1998 in the total amount of P708,237.58, inclusive of interest.

Prior to the issuance of the preliminary assessment notice, petitioner was already informed of the said assessment. Thus, petitioner, through its President, Mr. Uriel Balboa, wrote a letter to respondent on December 19, 2001 explaining that the alleged deficiency premium tax has in fact already been paid. The letter was received by respondent on December 21, 2001.

On January 24, 2002, respondent issued a formal letter of demand and Assessment Notice No. PT98-000001 against petitioner for alleged deficiency percentage tax on life insurance premiums in the total amount of P723,337.12, inclusive of interest. The said letter and notice were served on petitioner on the same date.

Details of the Assessment as per Audit Result/Assessment Notice No. PT98-000001 are shown below:

Basic	P453,031.40
Interest	270,305.72
Total	P723,337.12

Particulars: "Premium income from the Pag-ibig MRI Pool not subjected to premium tax with the allegation that the tax due have been withheld but no proof of remittance could be presented."

(*Annex "B", Petition for Review*)

FORMAL LETTER OF DEMAND

Assessment Notice No. PT-98-000001

I. Premium Tax – P723,337.12

Premium Income – Premium Tax is being imposed on the premium income received from the Pag-ibig MRI Pool pursuant to Section 123 of the NIRC, as amended.

(*Annex "A", Petition for Review*)

The premium tax assessment was imposed on the premium income received by petitioner from the MRI Pool under Section 123 of the Tax Code, as amended, which states in part:

TITLE V- OTHER PERCENTAGE TAXES

> SEC. 123. *Tax on Life Insurance Premiums.*- **There shall be collected from every person, company or corporation** (except purely cooperative companies or associations) **doing life insurance business of any sort in the Philippines a tax of five percent (5%) of the total premiums collected, whether such premiums are paid in money, notes, credits or any substitute for money,** but premiums refunded within six (6) 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; xxx (*emphasis supplied*)

These premium income, in turn, were part of the life insurance premiums received by the MRI Pool from the NHMFC in trust for its member insurers.

Petitioner received a total of PhP9,060,627.97 as life insurance premiums from the MRI Pool in 1998, and the said amount is the basis of respondent's basic percentage tax assessment as follows:

Exh.	Date of remittance from MRI Pool	Gross Premium	5% Premium Tax
A	March 12, 1998	P1,434,551.59	P72,365.33
C	June 16, 1998	2,444,546.54	121,749.63
E	August 20, 1998	2,376,258.57	118,812.94
G	December 14, 1998	2,805,271.27	140,263.56
	Total % tax on life Insurance premiums	P9,060,627.97	P453,191.46

On February 20, 2002, petitioner, through counsel, filed its protest against Assessment Notice No. PT98-000001 with respondent's Large Taxpayers' Service. The protest was filed by petitioner within twenty-seven (27) days from its receipt of the formal letter of demand and assessment notice.

On April 12, 2002, petitioner submitted additional documents in support of its protest. Petitioner manifested that unless respondent will require any other document from petitioner, the latter submits the said protest for resolution. No other document was required by respondent from petitioner. The last document in support of the protest was submitted by petitioner to respondent fifty one (51) days from the filing of the protest

For failure on the part of respondent to act on the protest, the instant petition for review was filed on October 30, 2002.

In his Answer filed on December 3, 2002, respondent raised the following Special and Affirmative Defenses:

> "5. He reiterates and repleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.
>
> 6. The premium tax in the amount of P723,337.12 is being imposed on the premium income received by petitioner from the Pag-ibig MRI Pool pursuant to Section 123 of the National Internal Revenue Code, as amended. Petitioner failed to prove payment thereof.
>
> 7. The assessment for deficiency percentage tax on life insurance premium was issued within the prescriptive period.
>
> 8. All presumptions are in favor of the correctness of tax assessments."

The parties have jointly stipulated on the following issues, to wit:

> "a. Whether or not the right of respondent to assess petitioner for alleged deficiency percentage tax on life insurance premiums for the first three quarters of taxable year 1998 has prescribed.
>
> b. Whether or not the percentage tax on life insurance premiums being claimed by respondent under Assessment Notice No. PT98-000001 has already been paid by petitioner. As sub-issues as regards payment of the percentage tax.
>
> > i. Whether or not the percentage taxes due on the life insurance premiums received by petitioner have been withheld by the NHMFC.

> ii. Whether or not the NHMFC remitted to respondent the taxes withheld, if any, from the premium income received by petitioner; and
>
> iii. If the NHMFC withheld the percentage taxes from the premium income of petitioner but failed to remit the same to respondent, whether or not petitioner should still be held liable for the said tax."

Before we discuss the stipulated issues, we shall determine first whether or not petitioner has timely filed the instant petition for review.

Section 228 of the Tax Code of 1997 provides in pertinent part:

> SEC. 228. ***Protesting of Assessment***.- When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> xxx
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> **If the protest** is denied in whole or in part, or **is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the** decision or **inaction may appeal to the Court of Tax Appeals within thirty (30) days** from receipt of the said decision, or **from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.** *(Emphasis ours)*

As admitted by the parties, the subject assessment notice was issued by respondent on January 24, 2002 and was received by petitioner on the same day. Petitioner filed its protest on February 20, 2002, or within twenty-seven (27) days from receipt of the subject assessment. Thereafter, supporting documents were submitted on April 12, 2002, or within fifty one (51) days from filing of the protest. Respondent did not act on the protest. Hence, on October 30, 2003, or within thirty (30) days from the lapse of the 180-day period provided for under the aforequoted section, the instant petition for review was filed. Evidently, petitioner has complied with the reglementary periods prescribed under Section 228 of the 1997 Tax Code.

We now resolve whether or not the right of respondent to assess petitioner for alleged deficiency percentage tax on life insurance premiums for the first three quarters of taxable year 1998 has prescribed.

Petitioner claims that the right of respondent to assess it for alleged deficiency premium tax for the first three quarters of taxable year 1998 has prescribed and is now barred by the Statute of Limitations. According to petitioner, a quarterly percentage tax return is a final declaration of the taxpayer's percentage tax liability for the quarter to which it pertains. Such being the case, the three-year prescriptive period for assessment of taxes as provided in Section 203 of the Tax Code starts to run from the date of filing of the quarterly consolidated percentage tax returns, or on the due date for filing thereof, in case the returns were filed earlier than the deadline for filing.

We agree. The following are the pertinent provisions of the 1997 Tax Code relative to the period of filing percentage tax returns and period of limitation upon assessment.

Sec. 128. *Returns and Payment of Percentage Taxes.-*

(A) Returns of Gross Sales, Receipts or Earnings and Payment of Tax.. –

(1) Persons Liable to Pay Percentage Taxes. - Every person subject to the percentage taxes imposed under this Title shall **file a quarterly return of the amount of his gross sales, receipts or earnings and pay the tax due thereon within twenty-five (25) days after the end of each taxable quarter**: *Provided*, That in the case of a person whose VAT registration is cancelled and who becomes liable to the tax imposed in Section 116 of this Code, the tax shall accrue from the date of cancellation and shall be paid in accordance with the provisions of this Section." *(emphasis supplied)*

SEC. 203. *Period of Limitation Upon Assessment and Collection.-* Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, **a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.** *(emphasis supplied)*

Similarly, as a large taxpayer, petitioner is required under Section 4(3.4) of Revenue Regulations No. 1-98, to file a consolidated return, and pay the aggregate taxes due, *within twenty-five (25) days after the end of each taxable quarter* subject to the pertinent provisions of Section 128(A) of the 1997 Tax Code.

Pursuant to the above-quoted provisions, petitioner filed its quarterly percentage tax returns and paid the corresponding taxes thereon for the year 1998 on the following dates:

Exh.	**Date Filed**	**Qtr. Covered**
FF	April 20 '98	1st Qtr.
EE	July 20 '98	2nd Qtr.
DD	October 19 '98	3rd Qtr.
CC	January 20 '99	4th Qtr.

Considering the dates in which petitioner filed its quarterly returns, the right of respondent to assess deficiency premium taxes would prescribe as follows:

Qtr. Covered	**Date Filed**	**Date Prescribed**
1st Qtr.	April 20 '98	April 24, '01
2nd Qtr.	July 20 '98	July 24, '01
3rd Qtr.	October 19 '98	Oct 24, '01
4th Qtr.	January 20 '99	Jan. 24, '02

Since the subject assessment, together with the formal letter of demand, was issued by respondent only on January 24, 2002, the right of respondent to assess petitioner for the first three quarters of 1998 had prescribed. Only the assessment for the premium tax pertaining to the fourth quarter of 1998 was timely made.

We shall now pass upon the factual issues raised by the parties.

Petitioner claimed that it has already paid the premium tax being assessed by respondent corresponding to the gross premium received by the former for the year 1998. It asserted further that the premium taxes were withheld by the NHMFC before the amounts of premium income were remitted to the Pag-ibig MRI Pool, which the latter held in trust for its members, including petitioner, and that it was NHMFC which remitted the 5% premium tax on premium income it earned for the year 1998.

We agree with the petitioner.

Pursuant to Section 5.116 of Revenue Regulations No. 2-98, "bureaus, offices and instrumentalities of the government, including government-owned or controlled corporations as well as their subsidiaries, provinces, cities and municipalities making any money payment to private individuals, corporations, partnerships and/or associations are required to deduct and withhold the taxes due from the payees on account of such money payments." As stated earlier, NHMFC is a government-owned and controlled corporation created under Presidential Decree No. 1267 and organized for the purpose of granting housing loans to the Home Development Mutual Fund (commonly referred to as "Pag-ibig Fund"). The borrowers of the NHMFC were enrolled with the MRI Pool and they pay their insurance premiums as part of their monthly amortization to NHMFC. Clearly, NHMFC had the duty to withhold the taxes due on premium income paid to the members of the Pag-ibig MRI Pool pursuant to Section 5.116 of Revenue Regulations No. 2-98.

A careful perusal of the Summaries of Pag-ibig MRI Pool Premium Receivable Distribution *(Exhs. A, C, E, G, inclusive of submarkings)* disclose that NHMFC remitted the insurance premiums, net of the premium tax, to the Pag-ibig MRI Pool which held the same in trust for its members. For the year 1998, petitioner earned a total of P9,060,627.97 as gross life insurance premiums from the Pag-ibig MRI Pool. However, it received only the amount of P2,313,382.86, arrived at as follows:

Exhibits	Date of Remittance from MRI Pool to Petitioner	Gross Premium	5% Premium Tax	Service Fee	Allowance for Admi. Expense	Premiums Payment	Doc. Stamps	Cash
A, A-1 to A-3	March 12, 1998	1,434,551.59	72,365.33	254,466.42	186,491.71	491,367.36	-	429.860.77
C, C-1 to C-3	June 16, 1998	2,444,546.54	121,749.63	427,299.04	315,577.76	1,260,439.40	67,633.40	387,114.11
E, E-1 to E-3	August 20, 1998	2,376,258.57	118,812.94	413.901.00	307,957.36	776,192.59	55,862.47	815,257.15
G, G-1 to G-3	December 14, 1998	2,805,271.27	140,263.56	507,759.00	364,685.27	1,148,017.21	36,604.60	681,150.83
		9,060,627.97	**453,191.46**	**1,603,425.46**	**1,174,712.10**	**3,676,016.56**	**160,100.47**	**2,313,382.86**

The various Official Receipts *(Exhs. B, D, F, & H, inclusive of submarkings)* were presented by petitioner to show that it received the amounts of P429,860.77, P387,114.11, P815,257.15, P681,150.83, representing the net premium income for the first, second, third and fourth quarters of 1998, respectively. Moreover, the fact of withholding by NHMFC was explained by petitioner's Accounting Assistant, Ms. Vicky dela Cruz, in her testimony during the hearing held on March 18, 2003, pertinent portions of which are quoted hereunder:

> Direct Examination by Atty. Viray, petitioner's counsel:
>
> Q: And how do you know that the percentage tax due of the life insurance premiums received by the petitioner from MRI Pool has been withheld by the National Home Mortgage Finance Corporation, Ms. Witness?
>
> A: *Bali po* every time *po na nagrere*-remit *ang* MRI Pool *sa* Manila Bankers Life *nagbibigay po sila ng* summary, Ma'am.
>
> Q: Can you show us that summary, Ms. witness?
>
> A: This one, Ma'am.
>
> Atty. Viray: I would like to manifest, your Honors, that the witness is showing us the documents previously marked as Exhibits "A", "C", "E" and "G", respectively, for the petitioner, your Honors.
>
> Judge Acosta: All right.
>
> Q: Ms. witness, you are showing us four (4) documents here are these the only summaries you received from the MRI Pool?
>
> A: Yes, Ma'am.
>
> Q: And can you tell us why, Ms. Witness?
>
> A: Apat lang po na beses nag-remit ang MRI Pool kaya apat lang po yung summary na-received namin, Ma'am.
>
> Q: During the marking of exhibits these documents were only provisionally marked since the summaries are not signed by the MRI Pool, Ms. witness, do you have any proof that these summaries are authentic and that it came from MRI Pool?
>
> A: Yes Ma'am. *Binigyan po kami ng* PAG-IBIG MRI Pool *ng* Certification *na pagpapatunay na eto po ay tutuo.*
>
> *(pp. 13-16, TSN, March 18, 2003)*

xxx xxx xxx

> Q: You stated earlier, Ms. Witness, that the National Home Mortgage Finance Corporation has withheld the premium taxes due on the premium income even before it remitted the premiums to the MRI Pool, are you sure that the taxes were actually withheld by the National Home Mortgage?
>
> A: Yes, Ma'am.
>
> Q: And what makes you sure, Ms. Witness?
>
> A: Meron po kaming certification na galing sa National Home Mortgage. Binigyan rin po kami nila ng Creditable Wtihholding Tax at Source na quarterly at meron din po silang return na monthly na returns, Ma'am.
>
> Atty. Viray:
> Your Honors, the witness is showing us documents, the first is the certification by the National Home Mortgage as to the fact of withholding previously marked as Exhibit "J" for the petitioner. The Certificates of Creditable Withholding Tax at Source issued by the National Home Mortgage to the MRI Pool for the period January to March, April to June, July to September and October to December 1998, respectively, marked as Exhibits "K", "L", "M" and "N" for the petitioner.
> *(pp. 40-42, TSN, March 18, 2003)*

The 5% premium tax withheld from petitioner's gross premium income of P9,060,627.98 was P453,191.46, which is even higher by P160.06 than the amount assessed by respondent. The difference was explained by petitioner's witness, Ms. Vicky dela Cruz, during the hearing held on March 18, 2003, to wit:

> Q: The total gross premium, Ms. Witness, under these summaries is P9,060,627.97 how much is the five percent (5%) premium tax due on this amount?
>
> A: P453,031.40, Ma'am.
>
> Q: And again, Ms. Witness, just to clarify, this is the amount being assessed by the respondent?
>
> A: Yes, Ma'am.
>
> Q: As for the summary given by the MRI Pool how much is the total percentage tax deducted from the gross premium received by the petitioner, Ms. Witness?
>
> A: P453,191.46, Ma'am.
>
> Q: And can you show us a computation of how you arrived at this amount, Ms. Witness?

A: Here, Ma'am.

Atty. Viray: Your Honors, the witness is showing us, your Honors, a schedule previously marked as Exhibit "I" for the petitioner.

Judge Acosta: All right.

Q: Who prepared this schedule, Ms. Witness?

A: Kami po, Ma'am.

Q: Can you tell us, Ms. Witness, what the totals in this schedule of or summary represent?

A: Sa Column B po P9,060,627.97 eto yung premium na binigay ng MRI Pool sa Manila Bankers. Ang Column C ang P453,031.40 eto po yung para sa tax due. Yung P453,191.46 eto yung binawas nila sa summary, Ma'am.

Q: Can you tell us, Ms. Witness, as for your computation does the premium tax actually due equal the amount actually withheld by the MRI Pool from the petitioner?

A: No, Ma'am.

Q: And what is the difference, if any, Ms. Witness?

A: P160.06, Ma'am.

Q: And that P160.06 difference, Ms. Witness, does that represent the over or under withholding?

A: Over, Ma'am.

(pp. 37-40, TSN, March 18, 2003)

Moreover, the court took notice of the memorandum issued by Revenue Officer Virginia C. Repito and reviewed by Group Supervisor Norma P. Ceroma, addressed to the Commissioner, recommending that the docket of the case be forwarded to LT Collection and Enforcement Division for the issuance of an Authority to Cancel Assessment (ATCA) in order that Assessment No. PT 98-000001 dated January 24, 2002 in the amount of P723,337.12 be cancelled. This memorandum was further recommended for approval by the Chief of the LT Audit & Investigation Division I, Ms. Aida N.

Florencio, which was finally approved by Assistant Commissioner, Large Taxpayers Service Edwin R. Abella. The recommendation was based on the following facts, to wit:

> "1. The premium tax due on the premium income received by MBLIC from the MRI Pool were in fact withheld and remitted to the BIR by the National Home Mortgage Finance Corp. (NHMFC). The premium income from the MRI Pool for the year 1998 were remitted by the NHMFC to the MRI Pool net of the Premium Tax, and in turn, the MRI Pool distributed the said premium income to its participating member-insurers net of the said tax.
>
> 2. In compliance with the provisions of Revenue Regulations 2-98, NHMFC withheld the premium taxes due on the premiums it received from borrowers before it paid the premiums to the MRI Pool, and that the NHMFC thereafter remitted the said taxes to the BIR.
>
> 3. The copy of the Articles of Incorporation of the Pag-ibig MRI Pool, Inc. together with the By-laws duly approved by the Securities and Exchange Commission submitted to confirm its mode of operation clearly defines the administration of the contracts entered into with financial institutions such as the NHMFC;
>
> 4. The itemized list of the remittances of the NHMFC for the taxable year 1998 submitted with photocopies of the returns duly validated by the bank likewise confirm that the taxes due on the premium have been deducted and remitted on due dates."
> *(p. 994, BIR Records)*

Subsequently, in a memorandum dated October 3, 2002, Assistant Commissioner Edwin R. Abella requested the Chief of the LT Audit & Investigation Division I to submit the certificate of withholding tax from Pag-ibig MRI Pool, Inc. representing the premium tax withheld on subject taxpayer (*herein petitioner*).

As to the issue on whether or not the NHMFC remitted to respondent the taxes withheld, we rule in the affirmative.

The Monthly Returns of Internal Revenue Taxes Withheld on Government Money Payments for the year 1998 show that NHMFC has indeed remitted to the Bureau of Internal Revenue, through its authorized agent bank Land bank Pasong Tamo, a total of P9,700,812.65, representing premium taxes withheld on premium income paid to the Pag-ibig MRI Pool (*Exhibit AA*), to wit:

Exhibit	Month/1998	Gross Payment to MRI Pool	Tax Withheld by NHMFC
O	January	P 15,175,239.69	P 758,762.00
P	February	17,475,746.02	873,787.32
Q	March	20,181,894.45	1,009,094.73
R	April	608,537.20	30,426.86
S	May	30,534,764.20	1,526,738.21
T	June	10,578,305.79	528,915.29
U	July	12,019,058.00	600,952.90
V	August	26,194,374.13	1,309,718.71
W	September	21,636,917.00	1,081,845.85
X	October	19,903,841.94	995,192.10
Y	November	413,292.60	20,664.63
Z	December	19,294,285.01	964,714.25
TOTAL		194,016,256.03	9,700,812.85

Finally, as to whether or not petitioner should be held liable for the percentage tax if NHMFC withheld the same but failed to remit to respondent, the court rules in the negative.

As aptly explained by the Supreme Court in the case of ***Commissioner Internal Revenue vs. Court of Appeals, G.R. No. 108576, January 20, 1999***, and we quote, thus:

> "In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer-he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. Under the withholding system, however, the agent-payor becomes a payee by fiction of law. His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him-he earned no income. The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since:
>
>> "the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer.
>
> xxx xxx xxx

> Codal provisions on withholding tax are mandatory and must be complied with by the withholding agent. The taxpayer should not answer for the non-performance by the withholding agent of its legal duty to withhold unless there is collusion or bad faith. The former could not be deemed to have evaded the tax had the withholding agent performed its duty. xxx"

NHMFC, as the withholding agent, is directly and independently liable for the correct amount of the premium tax that should be withheld from the premium income earned by petitioner. At any rate, since it was shown that NHMFC has remitted to the respondent the percentage taxes from the premium income of petitioner, the issue is rendered moot and academic.

In fine, petitioner has proven by clear and convincing evidence that the premium taxes for the year 1998 has been withheld and remitted by the NHMFC, as withholding agent, to the BIR, while respondent failed to present controverting evidence to prove its claim.

WHEREFORE, the instant petition for review is **GRANTED**. Assessment Notice No. PT-98-000001 is hereby **CANCELLED** and **WITHDRAWN** on the grounds of prescription and payment.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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