REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RIZAL SURETY & INSURANCE CO., INC.,
Petitioner,

-versus-

C.T.A. CASE No. 1953

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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May 28, 1970

D E C I S I O N

Petitioner appealed from the decision of respondent dated July 12, 1968 holding it liable for deficiency documentary stamp tax of ₱4,930.34, from 1958 to 1961, on unnotarized indemnity agreements.

Petitioner is a domestic non-life insurance corporation organized and existing under the laws of the Philippines. From 1958 to 1961, petitioner issued surety bonds to various clients involving varied undertakings, and to guarantee indemnification for damages or losses it would incur on the said bonds in case the said clients defaulted, petitioner required them to execute the corresponding indemnity agreements.

After the investigation conducted by respondent's examiners, they reported to him that petitioner failed to affix documentary stamps on the reinsurance premiums accepted and unnotarized bonds (indemnity agreements) issued for the years in question. Consequently, in a letter dated July 27, 1964, respondent assessed against and demanded from petitioner payment of ₱67,419.90 as deficiency documentary stamp tax on reinsurance premiums and on unnotarized indemnity agreements, inclusive of compromise penalty. On August 25, 1964, petitioner disputed and protested the said assessment and requested the recall or cancellation thereof. After several exchanges of communication, respondent reiterated on December 21, 1967 his demand for deficiency documentary stamp tax of ₱17,640.39 on the unnotarized indemnity agreements, inclusive of compromise penalty, but withdrew the deficiency assessment for documentary stamp tax on reinsurance premiums.

In a letter dated January 11, 1968, petitioner conceded its liability for deficiency documentary stamp tax on certain indemnity agreements amounting to ₱1,758.14 from 1958 to 1961 and paid the same on January 12, 1968 (Exh. B, p. 23, CTA rec.), but contested the balance of the amount demanded by respondent. (Pp. 241-244, BIR rec.) Respondent, however, entertained petitioner's protest and after a re-examination of the case, he issued on July 12, 1968 a revised deficiency documentary stamp tax assessment on the said indemnity agreements amounting to ₱4,930.34, allegedly representing unpaid ₱0.30 documentary stamp tax on each unnotarized indemnity agreement, numbering 5,779 and

4,975 in 1958 and 1959, respectively. (Exh. 1, pp. 260-261, BIR rec.) Still dissatisfied with the revised assessment, petitioner appealed the case to this Court and disputed its liability for ₱3,172.20 after deducting the amount of ₱1,758.14 already paid by it.

At the outset, it may be stated that the documentary stamp tax of seventy-five centavos (₱0.75) on each indemnity bond agreement which was imposed under Section 224 of the Revenue Code, was paid by petitioner. Consequently, the only issue submitted for our resolution is whether or not that portion of the indemnity agreements containing the acknowledgments which were not notarized are subject to the documentary stamp tax imposed by Section 225 of the National Internal Revenue Code which provides as follows:

> SEC. 225. Stamp tax on certificates.- On each certificate of damage, or otherwise, and on every other certificate or document issued by any customs officer, marine surveyor, or other person acting as such, and on each certificate issued by a notary public, and on each certificate of any description required by law, or by rules or regulations of a public office, or which is issued for the purpose of giving information, or establishing proof of a fact, and not otherwise specified herein, there shall be collected a documentary stamp tax of thirty centavos. x x x. (Underscoring supplied.)

Petitioner contends that since the indemnity agreement is not notarized, it is not a "certificate" subject to the documentary stamp tax imposed by Section 225 of the Revenue Code. It is also contended that, even assuming that the said agreement is a certificate, the same is not the kind of certificate subject to the documentary stamp tax. Respondent, however, claims that the said indemnity agreement, although not notarized, is a certificate issued for the purpose of giving information, or establishing proof of a fact and, therefore, every certificate is subject to the documentary stamp tax of thirty centavos.

We believe that the acknowledgment in the indemnity agreement in question is not a "certificate" within the purview of Section 225 of the Revenue Code, supra. A certificate has been defined under Section 75 of Regulations No. 26 of the Department of Finance as follows:

> A certificate is a statement in writing by a person having a public or official status concerning some matter within his knowledge or authority; a writing by which testimony is given that a fact has or has not taken place.

Under Section 76 of the said regulations, only those certificates issued by a public official or person acting in a public capacity are subject to the documentary stamp tax.

(A close scrutiny of the entire indemnity agreement reveals that it is essentially a contract or undertaking between petitioner and its clients whereby the former acts as surety for the accommodation of the latter, and in consideration thereof, the clients guarantee to indemnify the said petitioner for any damage or loss which it may sustain for executing, renewing or substituting the bond. (Exhs. C, D & E, pp. 24-28, CTA rec.) Under no circumstance could the said indemnity agreement be considered a certificate attesting to the truth of any fact; neither is it a written declaration legally authenticated. To our mind, the indemnity agreement is simply a recitation of obligations to be undertaken, conditions imposed, and waivers agreed upon.)

(On the other hand, we are of the persuasion that the "certificate" referred to in Section 225 of the Tax Code with respect to the indemnity agreement in question is the certificate of acknowledgment made by a notary public to the effect that the persons who executed the agreement and their instrumental witnesses signed the same in his presence and acknowledged that it is their own voluntary act and deed. In fact, respondent bases his assessment for deficiency documentary stamp tax on the blank acknowledgment form in the indemnity agreement, which he thinks should be accomplished and not on the body of the agreement itself. (See pp. 103, 113-114, BIR rec.) Inasmuch as the blank form for acknowledgment has not been accomplished by the notary public, it appears that no "certificate" exists which could be the basis for the imposition of the documentary stamp tax under Section 225 of the Revenue Code.)

An analysis of Section 225 of the Revenue Code, supra, will show that documentary stamps are required to be affixed only on any of the "certificates" enumerated therein, to wit:

1. Certificate of damage.

2. Certificate or document issued by:

   a. Customs officer
   b. Marine surveyor
   c. Person acting as customs officer or marine surveyor.

3. Certificate issued by a notary public.

4. Certificate required by law, or by rules and regulations of a public office.

5. Certificate issued for the purpose of giving information, or establishing proof of a fact.

It is evident from the foregoing analysis that an indemnity agreement which is subject to the documentary stamp tax of seventy-five centavos under Section 224 of the Tax Code cannot be classified as a certificate for the purpose of imposing an additional thirty-centavo documentary stamp tax prescribed by Section 225 of the Tax Code. To do so would be in conflict and in derogation of Section 224 of the same Code imposing the seventy-five centavo documentary stamp tax. In fact, respondent wanted to classify the indemnity agreement as a certificate by citing and quoting the following proviso in the agreement:

> INDEMNITY:- To indemnify the COMPANY for any damages, prejudices, losses, costs payments, advances and expenses of whatever kind and nature, including counsel or attorney's fee, which the COMPANY may, at any time, sustain or incur, as a consequence of having executed the abovementioned Bond, its renewals, extension or substitution and said attorney's fee shall not be less than twenty per cent (20%) of the amount claimed by the COMPANY in each action, the same to be due and payable, irrespective of whether the case is settled judicially or extra-judicially.

We cannot subscribe to respondent's view that the afore-quoted stipulations in the indemnity agreement is a certificate within the purview of Section 225 of the Revenue Code because the same is subject to the stamp tax on indemnity bond of seventy-five centavos imposed by Section 224 of the same Code. In short, the indemnity agreement is distinct and different from a certificate for stamp tax purposes.

Respondent manifested in his memorandum that it was the intention of petitioner to have the indemnity agreement notarized because it has blank spaces provided for the certification of a notary public. To hold otherwise, respondent concludes, would render the blank space for the notary public meaningless and purposeless.

We agree with petitioner's contention that the acknowledgment and the blank spaces for notarization are included in the indemnity agreement to be filled and accomplished. There is, however, no law or regulation which requires that an indemnity agreement should be notarized or that it be executed in a public instrument. Following petitioner's practice, it only requires the indemnity agreements to be notarized in those cases where the same are signed by their clients outside its offices. Where the said agreements are signed inside its offices, the same are not notarized because petitioner is satisfied with the identity and authenticity of the signatures of its clients. It should be observed that not all blank spaces in a form are to be filled and accomplished. Blank spaces for anticipated information suitable for varying or even conflicting situations are provided in forms. Only those relevant and necessary are filled up and those not filled up do not form part of the document. Consequently, the blank space for notarization, if not filled up as in the present case, does not become part of the indemnity agreement; and, therefore, there is no certificate by a notary public subject to the documentary stamp tax of thirty centavos.

Respondent also cited Section 96 of the Documentary Stamp Tax Regulations to buttress his stand. Unfortunately, the said regulations are applicable only to certificates and have no application to indemnity agreements which are distinct and different from each other.

WHEREFORE, the decision of respondent Commissioner of Internal Revenue appealed from is hereby reversed. Accordingly, respondent's assessment for deficiency documentary stamp tax from 1958 to 1961 against petitioner is hereby cancelled and declared of no force and effect. Without pronouncement as to costs.

SO ORDERED.

Quezon City, May 28, 1970.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R M Umali
ROMAN M. UMALI
Presiding Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge