REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LINCOLN PHILIPPINE LIFE INSURANCE COMPANY, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4583

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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3/30/93

D E C I S I O N

Petitioner appeals to this Court the decision of respondent Commissioner of Internal Revenue, dated January 31, 1991, denying petitioner's protest on the assessments of alleged deficiency documentary stamp taxes, inclusive of penalties, for the year 1984 in the amounts of P464,898.75 and P78,991.25 or a total of P543,890.00 (Annexes "A", "A-1" and "A-2", p. 7-9, CTA records).

Computation of the foregoing deficiency documentary stamp taxes is as follows:

On Policies Issued:

Total policy issued during the year	P1,360,054,000.00
Documentary stamp tax due thereon - (P1,360,054,000.00 divided by P200.00 multiplied by P0.35)	P2,380,094.50
Less: Payment	1,915,495.75
Deficiency	P 464,598.75
Add: Compromise Penalty	300.00
TOTAL AMOUNT DUE & COLLECTIBLE	P 464,898.75

On Stock Dividend Issued:	
Stock dividend issued during the year	P19,307,500.00
Documentary stamp tax due thereon - (P19,307,500.00 divided by P200.00 multiplied by P1.10)	P106,191.25
Less: Payment	27,500.00
Deficiency	P 78,691.25
Add: Compromise Penalty	300.00
TOTAL AMOUNT DUE & COLLECTIBLE	P 78,991.25

The facts of the case are not in dispute. Petitioner is a domestic corporation registered with the Securities and Exchange Commission and authorized by the Insurance Commission to engage in life insurance business. The abovementioned deficiency documentary stamp tax assessment for 1984 of P464,898.75 arose from the issuance in the past years by petitioner of a special kind of life insurance policy known as "Junior Estate Builder Policy", the distinguishing feature of which is that there is an automatic increase in the sum assured upon the attainment of a certain age by the insured without the need of issuing a new policy. The documentary stamp tax is paid only on the initial sum assured and no documentary stamp tax is paid on the increase on the ground that no new policy or document is issued for the said increase. Respondent contends that additional documentary stamp tax should be paid corresponding to the increase.

The other deficiency documentary stamp tax assessment for the same year of P78,991.25 arose from the issuance by petitioner of stock dividends of 50,000 shares with a par value of P100.00 per share or a total par value of P5,000,000.00. Documentary stamp tax was paid based only on the par value of P5,000,000.00. It is respondent's position that the documentary stamp tax should be based on the actual value of said shares represented by its book value of P19,307,500.00.

The issues raised for resolution of this Court are purely legal questions. These are:

> *1. Whether or not petitioner is liable for documentary stamp tax on the automatic increase in sum assured although no new life insurance policies covering such increases are issued during the taxable year, having paid the documentary stamp tax on the policies issued based on the original sum assured; and*
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> *2. Whether or not documentary stamp taxes on stock dividends involving shares with par value should be computed using as tax base the par value or the actual value represented by such shares.*

1. On automatic increase in sum assured with no new policies issued -

Respondent is of the view that documentary stamp tax on life insurance policies is imposed or computed on the basis of the amount of policy which includes the increase in the sum initially assured even though no new policy is issued since the said increase is already made an integral part of the policy. He claims that petitioner's "Junior Estate Builder Policy" partakes of the nature of an obligation with a suspensive condition under Article 1181 of the New Civil Code, since the efficacy of the obligation and the acquisition of rights are made to depend upon the fulfillment of the condition, that is, there will be an automatic increase in the sum assured upon attainment of a certain age by the insured without the need of issuing a new policy. The documentary stamp tax on the sum corresponding to the increase became due and payable only in the year 1984 when the condition was complied with, making the policy operative on the increased sum assured.

For his part, petitioner contends that no documentary stamp tax is due on mere increases in sums assured where such increases are not covered by insurance policies issued during the taxable year. Under Section 232 (now 183) in relation to Section 222 (now 173) and Section 249 (now 200) of the Tax Code, documentary stamp tax on life insurance policies is imposed only once based on the amount insured at the time of actual issuance of such policies. It is well-settled that the documentary stamp tax, being an excise tax, is imposed on the document and may be collected only once, when the document subject to the tax is first or originally issued. Any subsequent increase in insurance coverage resulting from policies already subjected to documentary stamp tax at the time of issuance of such policies is not subject to documentary stamp tax. In the absence of any clear provision of law imposing documentary stamp taxes on increases in sum assured, no documentary stamp tax may be imposed as the imposition of taxes can never be presumed.

The provision of law involved is Section 232 (now 183) of the Tax Code, quoted below:

> "Section 232 (now 183). Stamp tax on life insurance policies. - On all policies of insurance or other instruments by whatever name the same may be called, whereby any insurance shall be made or renewed upon only life or lives, there shall be collected a documentary stamp tax of thirty (now 50) centavos on each two hundred pesos or fractional part thereof, of the amount issued by any such policy." (Underscoring supplied.)

To put in the proper context the meaning of the foregoing, the related provisions of law should likewise be considered. These are as follows:

> "Section 222 (now 173). Stamp taxes upon documents, instruments, and papers.- Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right or

property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person making, signing, issuing, accepting or transferring the same, and at the same time such act is done or transaction had: *Provided*, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax." (Underscoring supplied.)

"Section 249 (now 200). Payment of documentary stamp tax. - Cancellation of stamp. - Documentary stamp taxes shall be paid by the purchase and affixture of documentary stamps to the document or instrument taxed or to such other paper as may be indicated by law or regulations as the proper recipient of the stamp, and by the subsequent cancellation to be accomplished by writing, stamping, or perforating the date of the cancellation across the face of each stamp in such manner that part of the writing, impression, or perforation shall be on the stamp itself and part on the paper to which it is attached: *Provided*: That if the cancellation is accomplished by writing or by stamping the date of cancellation, a hole sufficiently large to be visible to the naked eye shall be punched, cut or perforated on both the stamp and the document either by the use of a hand punch, knife, perforating machines, scissors, or any other cutting instrument; but if the cancellation is accomplished by perforating the date of cancellation, no other hole need be made on the stamp.

"In appropriate cases, and in the discretion of the Commissioner, documentary stamps may be imprinted on certain documents upon payment of the

> face value of such stamp, in which case the imprinted stamps need not be cancelled as indicated in the preceding paragraph." (Underscoring supplied.)
>
> "xxx xxx xxx."

Construed in the light of the above provisions of law, it is clear that the documentary stamp tax upon the taxable document should be paid at the same time such act is done or transaction had. The documentary stamp tax shall be paid by the purchase and affixture of documentary stamps to the document or instrument taxed or to such other paper and by the subsequent cancellation thereof or in appropriate cases by imprinting on certain documents upon payment of the face value of such stamps.

Respondent has in fact recognized the above interpretation in its rulings. In Revenue Memorandum Circular No. 45-88 dated September 7, 1988, respondent stated that "Documentary stamps should therefore be bought and/or affixed on the documents at the time such act is done or transaction had." The documentary stamp shall be affixed at the time the taxable document is executed (BIR Ruling No. 304-88) and at the rates then in force (BIR Ruling No. 227-88).

The Supreme Court had occasion to discuss the nature of documentary stamp tax in the case of *Commissioner of Internal Revenue v. Heald Lumber Co.*, G.R. No. L-16340, February 29, 1964, 10 SCRA 372. The Court held that:

> "A documentary stamp tax is in the nature of an excise tax. It is not imposed 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 part from the business itself. (Du Pont v. US.., 300 U.S. 150; Thomas v. U.S., 192 U.S., 363; Nicol v. Ames, 173 U.S. 509). With respect to stock certificates, it is levied upon the privilege of issuing them; not on the money or property received by the issuing company for such certificates. Neither is it imposed upon the share of stock. As Justice Learned Hand pointed out in one case, documentary stamp tax is levied on the document and not the property it described. (Empire Trust Co. v. Hoey, 103 F 2d 430) If therefore, as is apparent from the foregoing discussion, 'that the tax in question is imposed on the privilege of issuing certificates, then the tax may be collected only once: when the certificates are first or originally issued.' The reason is because a certificate is issued only once. Whatever documentary tax is due, is due at that time. (Empire Trust Co. v. Hoey, *supra*). (Underscoring supplied.)

All of the foregoing discussions can only be interpreted to mean that documentary stamp tax is levied and paid only once at the time the taxable document is issued. Evidently, the documentary stamp tax shall be computed using as tax base the value at the time of issuance of the instrument. In the case of life insurance policies, the documentary stamp tax shall be collected based on the amount issued by such policy originally. Subsequent increases in the sum assured with no new life insurance policies issued are not subject to documentary stamp tax. At the time the insurance policies were issued to the insured, such increases did not form part of the amount issued by such policy. The 1984 increases in the insurance coverage pertain to policies issued a number of years back.

It is interesting to note that in several cases recently decided by this Court, namely:

American Homes Assurance Company vs. Hon. Commissioner of Internal Revenue, CTA Case No. 4222;

American International Underwriters (Phils.), Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4208;

Philippine American General Insurance Company vs. Commissioner of Internal Revenue, CTA Case No. 4209;

Philippine American Accident Insurance Company vs. Commissioner of Internal Revenue, CTA Case No. 4210;

Philippine Home Assurance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4211,

respondent likewise issued an assessment but on completely opposite legal basis. He was arguing in those cases in the same manner petitioner is arguing now in the instant case. In those cited cases, this Court sided with respondent Commissioner of Internal Revenue that the documentary stamp on insurance policies should be determined at the time of issuance thereof and should not be dependent on some future events. This is complete reversal of his stand in the present case. This Court believes that the Commissioner of Internal Revenue although primarily tasked with collection of revenue should likewise provide stability to the interpretation of the various provisions of the Tax Code in order to properly guide the business sector as well as all taxpayers in the proper conduct of their business and other affairs which may involve payment of taxes.

2. On the stock dividends consisting of shares of stock with par value -

The deficiency documentary stamp tax assessment arose from respondent's contention that in the case of stock dividends, the documentary stamp tax is imposed on the actual value represented by each share regardless of whether the shares of stock be with par value or without par value. Respondent pointed out that distinction must be made between the imposition of documentary stamp tax on the original issues of shares of stocks on the one hand, and the imposition of documentary stamp tax on stock dividends on the other, for the rates between the two are entirely distinct and different from one another. A reading of Section 224 (now 175) of the Tax Code, as amended, would show that, a comma is used to separate the section with respect to original issues of stock and stock dividends. Documentary stamp tax on the former is based on "par value" and if there is "no par value", then on the actual consideration received; whereas on the latter, it is based on the actual value represented by each share regardless of whether the stock be with par value or without par value.

Petitioner disputes the deficiency documentary stamp tax assessment on the ground that respondent's interpretation of Section 224 (now 175) of the Tax Code, as amended is erroneous. It is petitioner's view that only stock dividends without par value are subject to documentary stamp tax based on the actual value; stock dividends with par value are subject to tax based on their par value. Applying the doctrine on strict construction of provisos in conjunction with the doctrine of last antecedent, it is evident to petitioner that what is referred to in section 224 (now 175) of the Tax Code are stock dividends without par value. This is emphasized by the fact that the phrase "and in the case of stock dividends on the actual value represented by each share" is part and parcel of the proviso referring to original issuances without par value. The antecedent phrase: "*Provided*, That in the case of the original issue of stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration" is separated not only by a comma from the main clause of Section 224 (now 175) of the Tax Code referring to original issue of certificates of stock with par value, it is also separated by a colon and the qualifying word "*Provided*". Hence, the phrase "and in the case of stock dividends on the actual value represented by each share" can only modify its immediate antecedent phrase referring to original issue of stock without par value. Furthermore, the general rule that the documentary stamp tax liability is determined by the form and face of the document, applies in the case of original issue with par value including stock dividends with par value. This determination cannot be affected by proof of facts outside of the instrument itself, such as the actual net book value of the stock, in view of the existence of par value. In **U.S. v. Isham**, 17 Wall. 496, 84 U.S. 496, the U.S. Supreme Court enunciated the following basic rules governing documentary stamp liability:

> "xxx xxx xxx.
>
> "3rd. The liability of an instrument to a stamp duty, as well as the amount of such duty, is determined by the form and face of the instrument, and cannot be affected by proof of facts outside of the instrument itself.
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> "4th. If there is doubt as to the liability of an instrument to taxation, the construction is in favor of the exemption, because in the language of Pallock, C.B., in Girr v. Scudds, 11 Exchequer, 191 (see also Conroy v. Warren, 3 Johnson's Cases, 259, to the

same effect) "a tax cannot be imposed without clear and express words for that purpose."

"xxx xxx xxx."

Inasmuch as the stock dividends in question are original issuances with par value, it is evident that petitioner correctly paid documentary stamp taxes on such stock dividends on the basis of their par value.

The heart of the controversy is the statutory construction of Section 224 (now 175) quoted below:

> "Section 224 (now 175). Stamp tax on original issue of certificates of stock. - On every original issue, whether on organization or reorganization of for any lawful purpose, of certificates of stock by any association, company, or corporation, there shall be collected a documentary stamp tax of one peso and ten centavos (now one peso and seventy centavos) on each two hundred pesos, or fractional part thereof, of the par value of such certificates: *Provided*, That in the case of the original issue of stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration received by the association, company, or corporation for the issuance of such stock, and in the case of stock dividends on the actual value represented by each share." (Underscoring supplied.)

The cardinal rule of statutory construction requires the court to give effect to the general legislative intent if that can be discovered within the four corners of the law. When the object intended to be accomplished by the statute is once clearly ascertained, general words may be restrained to it, and those of narrower import may be expanded to embrace it, to effectuate the intent. (**Borromeo v. Mariano**, 41 Phil. 322). The Court has no other choice but to apply the law according to its evident intent. (**Regalado v. Yulo**, 61 Phil. 173).

A close reading of Section 224 (now 175), together with the arguments of both the petitioner and respondent, convinced this Court that stock dividends involving shares with par value are subject to documentary stamp tax based on the par value thereof. The section heading "Stamp tax on original issue of certificates of stock" indicates that it covers stock dividends originally issued. For documentary stamp tax purposes, distinction is made between shares with par value and those without par value. The rationale for the difference is that the liability of an instrument to documentary stamp tax as well as the amount of such tax is determined by the form and face of the instrument and cannot be affected by proof of facts outside of the instrument itself. (**U.S. v. Isham**, 17 Wall 486, 84 U.S. 496). Premises considered, every original issue of stock including stock dividends with par value is subject to documentary stamp tax based on the par value. On the other hand, documentary stamp tax shall be collected on shares without par value upon the actual consideration received in the case of original issue and on the actual value represented by each share in the case of stock dividends. In the case of *Commissioner of Internal Revenue v. Heald Lumber Co.* L-16340, February 29, 1964, 10 SCRA 372, the Supreme Court held that "So far as those terms ('actual value' and 'actual consideration') are involved in the case at bar, they are one and synonymous.".

WHEREFORE, the deficiency documentary stamp tax assessments in the amount of P464,898.76 and P78,991.25 or a total of P543,890.01 are hereby cancelled for lack of merit. Respondent Commissioner of Internal Revenue is ordered to desist from collecting said deficiency documentary stamp taxes for the same are considered withdrawn.

SO ORDERED

Quezon City, Metro Manila, March 30, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals