REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILACOR CREDIT CORPORATION, *Petitioner,*	**C.T.A. E.B. NO. 19** **(C.T.A. CASE NO. 5674)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** SEP 2 3 2005

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DECISION

PALANCA-ENRIQUEZ, J.:

Underlying Legal Principle

A documentary stamp tax (hereafter "DST") is an excise tax upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales, and transfer of the obligation, right or property incident thereto. It is a tax on the privilege to enter into a transaction. As such, it is imposed on the privilege of conducting a particular business or transaction and not on the business or transaction itself. This means that the documentary stamp tax accrues when the said privilege is exercised.

Flowing from said principle, is the transfer and assignment of the subject promissory notes to petitioner subject to documentary stamp tax under *Sections 173 and 180 of the National Internal Revenue Code (hereafter "NIRC) of 1997, as amended*?

<u>THE CASE</u>

This issue is before Us in this Petition For Review filed by Philacor Credit Corporation (hereafter "petitioner") under *Section 11 of Republic Act No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks the reversal of the Resolution dated April 6, 2004 issued by the Division of this Court in C.T.A Case No. 5674 but only in so far as the pronouncement of the Division with regard to the liability of petitioner for DST was reiterated, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in view of the foregoing, petitioner's 'Motion for Reconsideration' is **PARTIALLY GRANTED**. The

> decision of this Court, dated August 14, 2003, holding petitioner liable for deficiency income tax and deficiency percentage tax is hereby **SET ASIDE** but the pronouncement of this court with regards to the liability of petitioner for documentary stamp tax is hereby **REITERATED.**
>
> **SO ORDERED.**"

THE FACTS

The facts are not in dispute:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines and is engaged in the business of retail financing, particularly to buyers of its parent company Philippine Appliance Corporation's household products (*Stipulated Facts, par. 1, CTA Records, p. 231*).

For the fiscal year ended July 31, 1993, petitioner filed its Corporation Annual Income Tax Return (*Exhibit A)* and Quarterly Percentage Tax Returns (*Exhibits B, C, D & E*). Pursuant to Letter of Authority No. 17107 dated July 6, 1974 (*Exhibit 1, BIR Records, p. 6*) issued to petitioner, Revenue Officer Celestino Mejia examined petitioner's books of accounts and other accounting records for all internal revenue taxes for the fiscal year August 1, 1992 to July 31, 1993. After the examination of petitioner's books of accounts, petitioner received

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tentative computations of deficiency taxes for its fiscal year ended July 31, 1993 (*Stipulated Facts, pars. 4 and 5, CTA Records, p. 232*). Through a letter dated April 17, 1995 (*Exhibit 4, BIR Records, p. 253*), petitioner's Finance Manager, Ms. Leticia Pangan, contested the tentative computations of the alleged deficiency taxes totaling P20,037,013.83 and requested for a conference to discuss the details of her opposition as contained in her letter.

On May 16, 1995, Mr. Mejia sent a letter (*Exhibit 5, BIR Records, pp. 254-256*) to petitioner, revising the preliminary assessments as follows:

Deficiency Income Tax	P 9,832,098.22
Deficiency Percentage Tax	866,287.60
Deficiency Documentary Stamp Tax	3,368,169.45
Total	P14,066,555.27

In his letter, the said revenue examiner urged petitioner to submit its comment thereto within five days from receipt thereof.

Petitioner then received Pre-Assessment Notices (PANs), all dated July 18, 1996 (*Exhibits 6, 7 & 8, BIR Records, pp. 278 & 279*) covering the alleged deficiency income, percentage and documentary stamp taxes, including increments (*Stipulated Facts, par. 8, CTA Records, p. 232*).

Petitioner, through Mr. C.P. Noel of SGV & Co., filed its comments to the PANs in a letter dated August 28, 1996 (*Exhibit 9, BIR Records, pp. 280-281*) relative to the proposed assessments indicated in the PANs as aforementioned.

On September 4, 1996, petitioner executed a Waiver of the Statute of Limitations under the *National Internal Revenue Code* extending respondent's right to assess and collect not later than January 1, 1997. On December 11, 1996, another waiver was executed by petitioner, extending respondent's right to assess and collect not later than July 31, 1997. Finally, on July 11, 1997, a third waiver was executed by petitioner, extending respondent's right to assess and collect until January 31, 1998.

Thus, on February 3, 1998, petitioner received letters of demand (*Exhibits N & O*) and the corresponding assessments notices, all dated January 28, 1998 (*Exhibits L, L-1 and M*). The assessments, inclusive of increments, cover the following:

Deficiency Income Tax	-	P12,888,085.09
Deficiency Percentage Tax	-	1,185,977.07
Deficiency DST	-	3,368,169.45
Total	-	P17,442,231.61

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On March 4, 1998, petitioner through SGV & Co., protested the aforesaid deficiency assessments (*BIR Records, pp. 294-295*) with a request for reconsideration and/or reinvestigation, on the following grounds:

> "**Income Tax** – The bulk of understated revenues were picked up by Respondent's examiner by totaling Interest, Discount and Finance Fees, as well as the Service charges and Fees amounting to P77,443,293.00 and P5,573,050.00, respectively, without considering the reversing entries in contra accounts and other income adjustments such as repossession, write-off and legal accounts, entries which would have reduced the gross revenues under said items to P63,475,734.00 and P4,786,007.00, respectively, as correctly stated in the petitioner's Financial Statements. Said disallowances alone account for a reduction of P14,944,601.00 in the gross revenues per examination.
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> **Percentage Tax** – The total revenue reported per income statement varies with the total reported percentage tax return for the reason that the amount that appears in the income statement was purely based from monthly set-up or amortization of income while the total reported gross receipts per return was based on actual receipts of payment from the customers. In arriving at actual receipts, the reversing entries of Repossessions, Legal accounts, and Write-offs are taken into consideration in the recognition of gross revenues.
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> **Documentary Stamp Tax** – The liability for Documentary Stamp Taxes on the purchase of notes under Sections 174 and 198 appears to be based on Respondent's examiner's observation that the petitioner's records do not show the DST payments as part of its expenses. The absence of records showing payment of the DST on the promissory notes is due to the fact that the accredited dealers of our client are required to affix the documentary stamps on all notes purchased. This is evidenced by the fact of affixture itself of the DST on all the notes purchased during the year in question until this was stopped upon the effectivity of Republic Act No. 7660, otherwise known as 'An Act Rationalizing Further the Structure and Administration of the Documentary Stamp Tax' which took effect on January 15, 1994."

A day after, petitioner through its present counsel, Tan & Venturanza Law Offices, filed a supplemental protest (*BIR Records, pp. 296-298*) which considered the assessments as null and void for failure to state the law and the facts on which they were based.

On September 30, 1998, petitioner filed a "Petition For Review" before this Court, docketed as C.T.A. Case No. 5674.

After trial on the merits, the Division of this Court rendered judgment, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the petition for review is **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED to PAY** the respondent the reduced amount of P3,044,884.21 representing deficiency income, percentage and documentary stamp tax for the fiscal year ended July 31, 1993, computed as follows:

DEFICIENCY INCOME TAX

Basic Deficiency Income Tax Due	P763,197.60	
Add: 25% Surcharge	190,799.40	
20% interest (11-15-93 to 1-31-98)	803,265.47	
Total Deficiency Income Tax Due		P1,757,262.47

DEFICIENCY PERCENTAGE TAX

Basic Deficiency Gross Receipts Tax	P266,661.39	
Add: 25% surcharge	66,665.35	
20% interest	280,661.12	
Total Deficiency Gross Receipts Tax Due		P 613,987.86

DEFICIENCY DOCUMENTARY STAMP TAX

Basic Documentary Stamp Tax Due	P538,907.10	
Add: 25% Surcharge	134,726.78	
Total Documentary Stamp Tax Due		P 673,633.88

GRAND TOTAL P3,044,884.21

plus 20% delinquency interest computed from March 2, 1998 until the amount is fully paid pursuant to Section 249 (c) of the Tax Code.

SO ORDERED."

Not satisfied, petitioner moved for a reconsideration of the same, which the Division voting 2 against 1, with Justice Lovell R. Bautista dissenting, partially granted in the terms earlier set forth.

THE ASSIGNED ERRORS

Hence, this Petition For Review raising the following errors committed by the Division of this Court:

I

THE HONORABLE DIVISION OF THE CTA ERRED IN RELYING ON SECTION 173 WHICH IS AN INTRODUCTORY PROVISION OF TITLE VII OF THE TAX CODE.

II

THE HONORABLE DIVISION OF THE CTA ERRED IN HOLDING PETITIONER LIABLE FOR DST FOR THE PROMISSORY NOTES PURCHASED BY THE PETITIONER.

III

THE HONORABLE DIVISION OF THE CTA ERRED IN HOLDING PETITIONER LIABLE FOR DST FOR THE

ASSIGNMENT OF PROMISSORY NOTES TO PETITIONER.

On November 9, 2004, without giving due course to the petition, We required the Commissioner of Internal Revenue (hereafter "respondent") to file comment on the petition, within ten (10) days from notice.

For failure of respondent to file his comment, despite the expiration of the prescribed period, the case was deemed submitted for resolution on February 16, 2005.

On April 20, 2005, We gave due course to the petition, and required the parties to file their respective memoranda, within fifteen (15) days from notice.

Only the petitioner has complied, and the case was deemed submitted for decision on May 30, 2005.

<u>THIS COURT EN BANC'S RULING</u>

The petition is without merit.

Being interrelated, the three (3) assigned errors will be discussed jointly. The documentary stamp taxes that were assessed against petitioner, involving the same promissory notes, arose from two distinct transactions. The first transaction involves the issuance of the promissory note, while the second refers to the subsequent transfer of said promissory note. Undeniably, both transactions are subject to the Documentary Stamp Tax, as provided in *Section 173 of the 1993 National Internal Revenue Code (hereafter "NIRC"),* in relation to *Section 180* of the same Code, to quote:

> "Sec. 173. Stamp taxes upon documents, instruments, and paper.- 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."
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> "SEC. 180. Stamp tax on promissory notes, bills of exchange, drafts, certificates of deposit bearing interest and others not payable on sight or on demand. - On all bills of exchange (between points within the Philippines), drafts or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of twenty centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange, draft, certificate of deposit, or note."

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Imposing the DST, twice, on said promissory notes was justified since what was being taxed was the transaction. It is a well accepted principle that documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision or termination of specific legal relationships through the issuance of particular documents (*Philippine Assurance Corporation vs. Court of Appeals, 301 SCRA 447*).

Documentary stamp taxes are thus levied on the exercise of these privileges through the execution of specific instruments. It is imposed on the privilege to enter into a transaction, rather than on the document. What is being taxed therefore is the privilege of the petitioner to enter into such a transaction. Hence, for every exercise of the privilege to enter into a transaction, a DST is imposed.

A DST is not a tax on the document itself, but rather on the exercise of the privilege by the parties, which in this case there were two transactions involved, the issuance of the promissory note and the subsequent transfer thereof. The core issue lies on the fact that petitioner was made liable for the DST on both transactions.

Taken from petitioner's memorandum, a backdrop of the case is presented hereunder for Us to grasp the whole scenario. Petitioner is in the business of retail financing which entails extending credit to customers who are interested in buying home appliances and after choosing the home appliance he wants to purchase, he accomplishes a credit application form. The credit application form is forwarded to several financing companies, one of which is petitioner, for approval. If petitioner approves the application, the appliance dealer will require the customer to execute two (2) documents: (1) a Promissory Note and, (2) a Sale with Reservation of Title. Note that the promissory note is issued by the customer in favor of the appliance dealer and the Sale with Reservation of Title is executed by the appliance dealer, as seller, and the customer, as buyer. Thereafter the appliance dealer delivers the appliance to the customer. On the other hand, the appliance dealer assigns the Promissory Notes and the Sales with Reservation of Titles to petitioner in consideration of the cash price of the appliance paid or payable by petitioner to the appliance dealer.

Petitioner argues that *Section 173* being the first section of Title VII on DST gives only a comprehensive perspective on the objects of taxation which may either be the execution of tangible objects (such as documents, instruments and papers) or specific acts (such as acceptances, assignments, sales and transfers). And reading further *Section 173* gives a preview of the persons liable which includes the persons making, signing, issuing, accepting or transferring the aforementioned objects of taxation. However, the said section cannot be a source of liability and obligation according to the petitioner.

Petitioner, further, claims that it could not be liable for the DST on the issuance of the notes. It is elementary in taxation that as to taxable transactions, only parties to the transactions are liable. Petitioner, not being the person issuing the promissory notes (as the payor) or the person to whom the promise to pay is made (as the payee), but a third party as far as the issuance of the notes is concerned. The petitioner was merely a transferee. When the taxable document reached the hands of the petitioner, the taxable incident was completed.

Petitioner further maintains that *Section 173 of the Tax Code* expressly enumerates the parties liable therefore; the person making, signing, issuing, accepting or transferring the taxable document, and submits that petitioner was none of the above. Petitioner insists that the word "accepting" as used in *Section 173* clearly has a legal meaning wholly different from the literal connotation in the Negotiable Instruments Law, the word "accept" (and all its variants) is used exclusively in reference to bills of exchange. Acceptance under the same law has a distinct legal meaning, namely, "the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee."

We disagree and sustain the findings of the Division.

Pursuant to *Section 173*, it is clear that the one bound to pay the documentary stamp tax is the person "making, signing, issuing, accepting or transferring the same." This is complemented by *Section 42 of Revenue Regulations No. 26* which provides that the person who signs or issues a promissory note and any person transferring or using a promissory note can be held responsible for the payment of the DST.

For the first transaction, the records of the case do not show that the subject promissory notes bear the documentary stamp tax. Neither has petitioner presented proof to show that the promissory notes in question were previously subjected to DST. Petitioner, being the subsequent transferee who accepted the subject promissory notes from the appliance dealer, and in the absence of any evidence that the promissory notes in question were previously subjected to DST, petitioner is deemed liable to pay the unpaid DST.

The second transaction, which was subjected to DST, refers to the subsequent assignment of the promissory note. This involves the assignment of the promissory note by the appliance dealer to petitioner pursuant to their financing agreement. Accordingly, the exercise of this privilege is covered by the DST.

The moment the subject promissory notes were assigned and transferred by the appliance dealer to petitioner, the responsibility to pay DST attaches. To reiterate, quoted hereafter is the pertinent portion of *Section 173 of the NIRC*: "the levy, collection and payment 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". In correlation thereto, is *Section 42 of R.R. No. 26* stating that "the person who signs or issues a promissory note and any person transferring or using a promissory note can be held responsible for the payment of the documentary stamp tax".

Collectively, these two sections confirm that the subsequent assignment, transfer or the using of the promissory note is covered under the DST law. Such as in the case at bar, there was an assignment of the promissory note to the petitioner which gave rise, once again, to the application of DST. Though, the law identifies the appliance dealer, being the one who used, assigned or transferred the promissory note, to be liable for the payment of the DST, this Court, nevertheless, is convinced that the same does not preclude respondent CIR from collecting DST from petitioner being the party to the said transaction.

Corollarily thereto, *Revenue Regulations No. 9-00 (*hereafter "R.R. No. 9-00"*), Section 3(c)* provides for the person liable to remit the DST, to wit: "In general, the full amount of the tax imposed under *Title VII of the Code* may be remitted by any of the party or parties to the taxable transaction".

The underlying principle laid down therein is that the law leaves the tax to be paid indifferently by either party to the transaction. Thus, it is undeniable that petitioner can likewise be held accountable for the non-remittance of the DST. It is clear from the aforecited provision that the subsequent assignment, transfer or the using of the promissory note is covered under the DST law. Being a party to the subsequent assignment of the promissory note, the petitioner is liable for the payment of the DST due on said promissory note.

It cannot be said, as argued by petitioner, that the promissory note was taxed twice for the same transaction. Imposition of the DST on each and every taxable transaction is warranted by express provision of law.

As aptly ruled by the Division:

> "The subject documents involved here are promissory notes issued by the buyers of appliances in favor of the dealers as payee and then assigned to petitioner. The question would be: Is the assignment of said notes to petitioner subject to DST?

As can be inferred from afore-quoted provisions, a promissory note, whether accepted, assigned or transferred shall be subject to a corresponding DST, which is paid for by anyone who signed, issued, accepted or transferred the said instrument. In other words, the subsequent transfer of said promissory note is subject to DST at the same rate prescribed in the aforementioned Section 180 of the Tax Code. Thus, the party liable for the payment thereof may be the party transferring the note or the one using it. Section 42 of Regulations No. 26, otherwise known as the Revised Documentary Stamp Tax Regulations, provides:

> 'Section 42. **Responsibility for payment of tax on promissory notes.** - The person who signs or issues a promissory note and any person transferring or using a promissory note can be held responsible for the payment of the documentary stamp tax.' (emphasis ours)

Readily, the legal conclusion is that petitioner, having accepted the promissory notes (being the user/transferee thereof), is liable to pay for the deficiency DST absent any proof of previous payment of the corresponding DST on the subject notes. Thus, the deficiency documentary stamp tax is computed as follows:

Total Notes purchased during the taxable year	P	269,453,556.94
Divided by rate under Section 180		200.00
Basis of DST	P	1,347,267.78
Multiply by DST rate (Sec. 180, 1993 Tax Code)		.20
DST on notes purchased	P	269,453.55
Add: Total DST on Notes assigned (Section 180)		269,453.55
Deficiency Documentary Stamp Tax	P	538,907.10
Add: 25% surcharge		134,726.78
Total Deficiency Documentary Stamp Tax	P	673,633.88

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> It must be pointed out that since DST is intended to be a tax on the privilege to enter into a transaction, then it must attach on the first issue as well as its subsequent negotiation. Thus, under normal circumstances, the party who originally issued the note and the party who transferred the note must pay the DST attached to negotiated promissory notes. Since it was not shown that the subject notes were previously subjected to DST, then petitioner, as the subsequent transferee who accepted the note, could be held liable to pay the unpaid DST on the document pursuant to Section 173 of the Tax Code."

In view of the foregoing, We see no reason to reverse the assailed Resolution dated April 6, 2004 of the Division of this Court.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice