REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SUN LIFE ASSURANCE COMPANY OF CANADA,
Petitioner,

- versus -

C.T.A. CASE NO. 6001

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 2 2 2002

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DECISION

This is a claim for tax credit in the aggregate amount of P320,590,792.08 consisting of P234,090,792.08 allegedly representing erroneously paid premium taxes for the period beginning the Fourth Quarter of 1997 to the First Quarter of 1999 and P86,500,000.00 allegedly representing erroneously paid documentary stamp taxes on policies of insurance for the period beginning January 20, 1998 to August 10, 1999.

Petitioner is a mutual life insurance company organized and existing under the laws of Canada (Exhibit A). It is duly registered with the Securities and Exchange Commission (Exhibit B) and registered with the Insurance Commission (Exhibit C).

For the period beginning the Fourth Quarter (October to December) of 1997 to the First Quarter (January to March) of 1999, Petitioner filed its Quarterly Insurance

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Premium Tax Returns and allegedly paid the total sum of premium taxes of P234,090,792.08, as follows:

Period	Date of Filing/ Payment of Quarterly Premium Tax Return	Amount	Exhibit
Oct. to Dec. 1997	January 20, 1998	42,585,715.59	D
Jan. to March 1998	April 20, 1998	35,289,032.05	E
April to June 1998	July 20, 1998	31,079,468.64	F
July to Sept. 1998	October 20, 1998	38,294,458.50	G, G-4
Oct. to Dec. 1998	January 20, 1999	46,610,459.14	H, H-4
Jan. to March 1999	April 26, 1999	40,221,658.16	I, I-4
	TOTAL	**P234,090,792.08**	

For the period beginning January 20, 1998 to August 10, 1999, Petitioner filed its Documentary Stamp Tax Declaration Returns and paid the total amount of P86,500,000.00, detailed hereunder:

Date of Filing/ Payment of DST Liability	Amount	Exhibit
1998		
January 20	1,500,000.00	J
February 3	1,500,000.00	K
February 20	1,500,000.00	L
February 26	1,500,000.00	M
March 5	1,500,000.00	N
March 13	1,500,000.00	O
March 19	1,500,000.00	P
April 1	1,500,000.00	Q
April 15	1,500,000.00	R
April 23	1,500,000.00	S
April 28	1,500,000.00	T
May 6	1,500,000.00	U
May 13	1,500,000.00	V
May 19	1,500,000.00	W
May 29	1,500,000.00	X
June 10	1,500,000.00	Y

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June 25	1,500,000.00	Z
July 8	1,500,000.00	AA
July 15	1,500,000.00	AB
July 27	1,500,000.00	AC
August 12	1,500,000.00	AD
August 24	1,500,000.00	AE
September 2	1,500,000.00	AF, AF-5
September 11	1,500,000.00	AG, AG-5
September 18	1,500,000.00	AH, AH-5
September 28	1,500,000.00	AI, AI-5
October 6	1,500,000.00	AJ, AJ-5
October 9	1,500,000.00	AK, AK-5
October 16	1,500,000.00	AL,AL-5
October 26	2,000,000.00	AM, AM-5
November 4	2,000,000.00	AN, AN-5
November 12	3,000,000.00	AO, AO-5
November 26	1,500,000.00	AP, AP-5
December 3	1,500,000.00	AQ, AQ-5
December 8	1,500,000.00	AR, AR-5
December 18	1,500,000.00	AS, AS-5
TOTAL	**P 56,500,000.00**	
1999		
January 7	1,500,000.00	AT, AT-5
January 15	1,500,000.00	AU, AU-5
January 20	1,500,000.00	AV, AV-5
January 28	1,500,000.00	AW, AW-5
February 12	1,500,000.00	AX, AX-5
March 4	1,500,000.00	AY, AY-5
March 11	1,500,000.00	AZ, AZ-5
March 24	1,500,000.00	BA, BA-5
April 6	1,500,000.00	BB, BB-5
April 13	3,000,000.00	BC, BC-5
April 27	1,500,000.00	BD, BD-5
May 5	1,500,000.00	BE, BE-5
May 26	1,500,000.00	BF, BF-5
June 10	1,500,000.00	BG, BG-5
June 30	1,500,000.00	BH, BH-5
July 9	3,000,000.00	BI, BI-5
August 5	1,500,000.00	BJ, BJ-5
August 10	1,500,000.00	BK, BK-5
TOTAL	**P 30,000,000.00**	
GRAND TOTAL	**P 86,500,000.00**	

On August 20, 1999, Petitioner filed with the BIR Revenue District Office No. 47 an administrative claim for the issuance of a tax credit certificate representing erroneously paid premium tax and documentary stamp tax (DST) on policies of insurance amounting to P382,076,626.43 (Exhibit BL). Petitioner's claim is anchored on this Court's Decision in the case of **The Insular Life Assurance Company, Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 5336, promulgated on January 29, 1997,** wherein We ruled that a mutual life insurance company is a purely cooperative company and is exempt from the payment of premium tax and documentary stamp tax on policies of insurance. Said decision was affirmed by the Court of Appeals in **Commissioner of Internal Revenue vs. The Insular Life Assurance Company, Ltd., CA-G.R. Sp No. 46516, September 29, 1998**, and which became final and executory on June 16, 1999.

Aside from the provisions of Sections 123 and 199(a) of the Tax Code, Petitioner also cited as basis for its claim, this court's Decision in CTA Case No. 5601 promulgated on May 27, 1999, entitled **The Insular Life Assurance Company Ltd. vs. Commissioner of Internal Revenue.**

Asserting inaction on the part of the Respondent and to toll the running of the two-year prescriptive period, Petitioner instituted the present claim on January 20, 2000.

Respondent, as Special and Affirmative Defenses, had this to say:

> 1. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by Respondent's Bureau.

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2. Petitioner must prove that it falls under the exception provided for under Section 121 (now 123) of the Tax Code to be exempted from premium tax and be entitled to the refund sought.

3. Claims for tax refund/credit are construed strictly against the claimants thereof as they are in the nature of exemption from payment of tax.

4. In an action for tax credit/refund, the burden is upon the taxpayer to establish its right thereto, and failure to sustain this burden is fatal to said claim *(Surigao Consolidated Mining Co. vs. CIR, 9 SCRA 728-734 [1963]).*

5. It is incumbent upon Petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229, both of the 1997 Tax Code.

To buttress its position, both parties presented testimonial and documentary evidence.

In addition, the parties agreed that the following issues should be submitted for resolution, to wit:

1. Whether Petitioner is a mutual life insurance company exempt from the payment of premium tax and documentary stamp tax (DST) as a cooperative company under Sections 123 (before Section 121) and 1991(a) (before Section 199[1]) of the Tax Code of 1997.

2. Whether Petitioner has erroneously paid taxes in the total amount P320,590,792.08 representing premium tax for the period beginning the Fourth Quarter of 1997 to the First Quarter of 1999 in the amount of P234,090,792.08 and DST for the period beginning January 20, 1998 to August 10, 1999 in the amount of P86,500,000.00.

3. Whether Petitioner is entitled to the claim for tax credit in the total amount of P320,590,792.08 representing premium tax for the period beginning the Fourth Quarter of 1997 to the First Quarter of 1999 in the amount of P234,090,792.08 and DST for the period beginning January 20, 1998 to August 10, 1999 in the amount of P86,500,000.00.

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This is not a case of first impression. Hence, the determination of the legal issue is not such an arduous task.

As earlier stated, this Court had already tackled the same legal issue in the first Insular Life case, *supra*, and upheld *in toto* by the Court of Appeals.

In the recent case of **Sun Life Assurance Company of Canada vs. Commissioner of Internal Revenue, CTA Case No. 5925, November 12, 2001,** this Court again dealt with the same issue involving the present contending parties and We held that a mutual life insurance company is a purely cooperative company, thus, exempt from the payment of premium tax and documentary stamp tax on policies of insurance pursuant to Sections 123 and 199(a) of the Tax Code.

Petitioner is a mutual life insurance company. The Amending Letters Patent submitted by Petitioner, "declares that these letters patent replace the Special Act incorporating Sun Life Assurance Company of Canada as the company's instrument of incorporation" (Exhibit A-1) and it further "declares that the company is a mutual company" (Exhibit A-2). Besides, the Securities and Exchange Commission (SEC) certified that Petitioner is "duly licensed to engage in such business in the Philippines as the said corporation is authorized to do under its charter as a mutual life insurance company" (Exhibit B-1). The Insurance Commission likewise certified that Petitioner is "a foreign mutual company operating in the Philippines" (Exhibit C-1).

As to whether Petitioner, being a mutual life insurance company, falls within the coverage "cooperative company", We need to quote the pertinent provisions of the Tax Code for a better comprehension, viz:

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SEC. 121. ***Tax on insurance premium.*** 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 five per centum (5%) of the total premium collected whether such premiums are paid in money, notes, credits or any substitute for money; x x x

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. (Emphasis supplied)

Sec. 199. ***Documents and papers not subject to stamp tax.*** – The provision of Section 173 to the contrary notwithstanding, the following instrument, documents, and papers shall be **exempt** from the documentary stamp tax:

(1) Policies of insurance or annuities made or granted by a fraternal or beneficiary society, order, association, or cooperative company, operated on the lodge system or local cooperation plan and organized and conducted solely by the members thereof for the exclusive benefit of each member and not for profit.

x x x x x x x x x

For good measure, We reproduce in part the decision of the Court of Appeals in the Insular Life case, *supra*, relative to Our discussion:

"x x x For emphasis, a review of the American jurisprudence serving as precedents is hereby provided:

In relation to the first characteristic which is that the policy holder is a member of the insurance company, who takes part in its management, the following cases are in support thereof:

"Ownership of mutual company is in its policyholders, who are its members." *(Pink v. Town Taxi Co., 21 A. 2d 656, 138 Me. 44) (44 C.J.S. p. 644)*

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> "It is an enterprise the distinguishing feature of which is the mutuality of cooperation of the members who are united for that purpose, and each of whom takes a proportionate part in the management of its affairs, being at once insurer and insured, and participants alike in its profits and losses, and all of whom are policy holders *(Ohio Farmers Indemnity Co. v. Commissioner of Internal Revenue, C.C.A., 10B F. 2d 665) (44 C.J.S. p. 644)*

> "Membership in an mutual insurance company usually carries with it a voice in the management." *(Schmidt v. German Mut. Ins. Co., 30 N.E., 939, 4 Ind. App. 340) (44 C.J.S. p. 657)*

As to the second characteristic, that a mutual life insurance company is operated with money collected from its members:

> "A mutual insurance company may be defined as a cooperative enterprise, wherein the members constitute both insurer and insured, and contribute, by a system of premiums or assessments, to the creation of a fund from which all losses and liabilities are paid, and wherein the profits are divided among the members in proportion to their interests *(Keehn v. Hodge Drive-It-Yourself, App. 53 N.E. 2d 60) (44 C.J.S. p. 644).*

> "A mutual insurance company is one whose fund for the payment of losses and expenses consists of premiums or assessments mutually contributed by the parties insured, and not of capital subscribed or furnished by outside parties." *(Petition of Charlton Bros. Trans. Co., 30 A. 2d 538, 181 Md. 253).*

With regard to the third characteristic that a mutual life insurance company has for its main purpose the mutual protection of members and not for profit.

> "The essential of 'mutuality' is membership. Incident to membership is the right to redundancy and the burden of assessment." *(Driscoll v. Washington Country Fire Ins. Co., Washington, C.C.A. Pa., 110 F. 2d 485, 490) (44 C.J.S. p. 644).*

> "It is an enterprise the distinguishing feature of which is the mutuality of cooperation of the members who are unified for that purpose x x x." *(Ohio Farmers Indemnity Co. v. Commissioner of Internal Revenue, supra)*

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Clearly, from the above law and jurisprudence, cooperative companies are such as are (1) conducted by the members thereof, (2) with the money collected from among themselves and solely for their own protection and (3) not for profit.

Culled from the evidence presented, Petitioner possesses the first feature of a cooperative company. As per its By-Laws (Exhibit BM), the members-policyholders elect the members of the Board and the members of the Board manages or supervises the affairs of the company.

The company collects premiums from the members-policyholders. These premiums are considered as earned money for the payment of indemnity and claims of members-policyholders, for their protection (see TSN, October 4, 2000, p. 21). Accordingly, the second quality of a cooperative company has likewise been satisfied by herein Petitioner. In fact, Respondent categorically admitted that Petitioner possesses the above-mentioned characteristics (Exhibit 2, TSN, June 14, 2001, p. 18).

As for the last characteristic, this Court elucidated in the upheld Insular case, thus:

> "On the contentious aspect of whether it is earning profits or not, We are of the opinion that Petitioner is not organized for "profit" as commonly understood in ordinary or business parlance.
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> x x x x x x x x x
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> "First, an acceptance aspect of the fact that every type of domestic insurance company earns profit by virtue of its taxable investment is directly inconsistent with the provision in Section 121 (now Section 123) of the Tax Code exempting cooperative insurance companies from premium tax. We have to bear in mind that cooperative insurance companies must not be for profit. Yet, under the Insurance Code, they are required to invest and realize income. On account of this apparent conflict, We believe that our legislature

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did not so intend to treat investment income to be equivalent or synonymous to a real business profit."

"Secondly, said investments are mandated by law. Hence, a mutual life insurance company cannot be glaringly accused of engaging in personal business motives. We believe that the determining factor in what constitutes profit as described in Section 121 (now Section 123) of the Tax Code should be the ownership composition and the purpose of the existence of the insurance company."

"If an insurance company is wholly owned by members-policyholders and created for their exclusive protection against insurable risks such as death, injury and accident, we can safely conclude that the protection of life from untoward vicissitudes is the unifying purpose of the members-policyholders. x x x"

"Lastly, it must be observed that as defined under Section 121 (now Section 123) of the Tax Code, the money collected by a cooperative company should come "from among its members and solely for their own protection and not for profit". This provision of law would show that the investments made by the Petitioner from the money collected from its members are, in effect, intended for the supplementary protection of the members-policyholders and not for profit motives. Jurisprudence has established that income or profit ~~realized from investments~~ which are distributed to members-policyholders in the form of "dividends" are deemed as mere return on excess premiums and not profit." (citing the case of *Philippine American Life Insurance Company vs. The Commissioner of Internal Revenue, CTA Case No. 1689* which was upheld by the *Supreme Court in G.R. No. L-38292* through a *Resolution dated March 8, 1974)."*

Respondent's examiner, in her memorandum, denied Petitioner's claim, on the ground, among others, that the latter does not possess the third characteristic of a cooperative company. She based her contention on the fact that mutual life insurance companies under the Tax Code of 1997 are now subject to the normal corporate income tax, instead of the preferential income tax rate of 10% on gross investment income as provided under the old Tax Code.

We find the above argument bereft of merit. The said change pertains to Chapter IV (Tax on Corporations), Title II (Tax on Income) of the Tax Code. However, the tax exemption provisions, namely: Section 123 (formerly Section 121), Title V (Other Percentage Taxes) and Section 199, Title VII (Documentary Stamp Tax) remain unchanged. In other words, notwithstanding the change made by the legislators in the corporate income taxation of cooperative life insurance companies, exemptions from premium tax and documentary stamp tax on policies of insurance can still be enjoyed by said companies.

Respondent examiner also averred that since Petitioner is not registered with the Cooperative Development Authority pursuant to Republic Act No. 6938 and Revenue Memorandum Circular No. 48-91, it is not entitled to tax exemptions being claimed.

We do not agree.

Registration with the Cooperative Development Authority is not essential before exemptions under Sections 123 and 199 may be availed of by insurance companies. As long as all the aforementioned requirements are satisfied, a cooperative life insurance company like the Petitioner, may be exempt from premium tax and documentary stamp tax on policies of insurance.

As regards Respondent's position that Petitioner is not entitled to the subject claim considering that it already claimed as part of its cost of sales in 1998 the alleged refundable premium tax and documentary stamp tax, suffice it to say that this case involves not only the year 1998 but part of 1997 and 1999 as well. Even assuming arguendo, that Petitioner deducted the premium and documentary stamp taxes paid as part of its cost of sales in 1998, still, Petitioner could not have benefited from said deductions because it was in a tax loss position in 1998 (Exhibit BO).

We therefore proceed to resolve the remaining factual issues jointly in order to determine whether or not Petitioner is entitled to the claim sought for.

A thorough examination of the documents submitted by the Petitioner particularly the Quarterly Premium Tax Returns (Exhibits D to I), official receipts (Exhibits G-4 to I-4), Documentary Stamp Tax Declaration Returns (Exhibits J to BK), official receipts (Exhibits AF-5 to BK-5), and BIR Certifications (Exhibits I-6, I-7, BK-6, BK-7, BK-8, BK-9, BK-10) leads us to the conclusion that Petitioner has proven its entitlement to the full amount of its claim.

IN VIEW OF ALL THE FOREGOING, the instant Petition for Review is hereby **GRANTED**. Respondent Commissioner of Internal Revenue is **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in favor of the Petitioner in the total amount of P320,590,792.08, representing erroneously paid premium tax for the period beginning the Fourth Quarter of 1997 to the First Quarter of 1999 in the amount of P234,090,792.08 and erroneously paid documentary stamp tax on policies of insurance for the period beginning January 20, 1998 to August 10, 1999 in the sum of P86,500,000.00.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

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WE CONCUR:

AMANCIO Q. SAGA
Associate 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

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