REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LINCOLN PHILIPPINE LIFE
INSURANCE COMPANY, INC.
*(now Jardine CMG Life
Insurance Company, Inc.)*,
Petitioner,

- versus -

C.T.A. Case No. 5025

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
OCT 16 1995

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DECISION

This case involves an assessment for documentary stamp tax for the years 1987, 1988 and 1989 in the total amount of P11,495,784.38.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office at Sen. Gil J. Puyat Avenue, Makati, Metro Manila.

On August 27, 1991, respondent sent a letter of demand and an Assessment Notice No. FAS5-87-91-002412 both dated August 8, 1991. Respondent assessed petitioner for alleged deficiency documentary stamp taxes for the year 1987 in the total amount of P3,770,206.25.

Again another demand letter with respective Assessment Notice Nos. FAS1-88-89-002941 and FAS1-89-92-002942 both dated June 29, 1992 was received by the petitioner on July 28, 1992. Respondent assessed petitioner for alleged deficiency documentary stamp taxes for the year 1988 and 1989 in the amount of P4,554,068.75 and P3,171,509.38, respectively.

The abovementioned 1987 deficiency documentary stamp tax assessment arose due to the inclusion of the amount of P953,951,000.00, representing the increases in sum assured per "Exhibit 15-Life Insurance Policies" of petitioner's 1987 Annual Report to the Office of the Insurance Commissioner, as part of the taxable base for documentary stamp tax purposes, although no insurance policies covering such increases were actually issued during the taxable years in question.

On September 3, 1991, petitioner filed a letter with the respondent, protesting the assessment for documentary stamp tax for the year 1987.

Thereafter on August 5, 1992, petitioner filed a letter with the respondent, protesting the assessments for documentary stamp tax for the years 1988 and 1989.

On August 26, 1993, respondent, served on petitioner a Warrant of Distraint and/or levy issued on August 13, 1993 which seeks to enforce collection in the total amount of P11,495,784.38 for documentary stamp taxes inclusive of increments for the years 1987, 1988 and 1989.

Respondent contends that under Section 183 of the Tax Code, documentary stamp tax is imposed on all policies of insurance not only at the time of the issuance thereof but also upon the renewal of the same. It averred that petitioner's increases in the sum assured discovered by the respondent's examiners are considered renewal upon the policies issued and, therefore subject to documentary stamp tax.

Moreover, respondent argued that petitioner's policy contains an obligation with a suspensive condition, under Section 173 in reference to Article 1181 of the New Civil Code.

Petitioner's reliance on the case of Commissioner of Internal Revenue vs. Heald Lumber Company, 10 SCRA 372, is erroneous. Respondent held that the issue in the above cited case is the transfer of surplus to capital and an increase in the stated value of the outstanding no par value shares of the taxpayer. The case at bar is very different from the issue of protest. Additionally, tax assessments by the examiners are presumed correct and made in good faith.

Petitioner on the other hand maintain that Section 183 in relation to Section 173 and Section 200 of the Tax Code provides that the documentary stamp tax on life insurance policies is imposed only once on policies issued based on the amount insured at the time of the actual issuance of such policies.

Moreover, 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.

Petitioner averred that 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.

Furthermore, petitioner asserts that 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.

Lastly, petitioner invoked the ruling of this Court in Lincoln Philippine Life Insurance Co. Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4583, March 30, 1993, wherein this Court held that in the case of life insurance policies, the documentary stamp tax shall be collected based on the original amount issued under said policy, and that subsequent increases in sum assured are not subject to documentary stamp tax.

The sole issue to be resolved in this case is whether or not petitioner is liable for documentary stamp tax on the subsequent increase in sum assured although no new life insurance policies covering such increase are issued during the stamp tax on the policies issued.

In the light of the antecedent facts of the case the Court arrived at the following findings:

Under Section 183 in relation to Section 173 and Section 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 cannot be denied that documentary stamp tax, being an excise tax is imposed on the document as originally issued. In view of this, 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. Therefore, 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.

Insofar as pertinent, the following provisions of law are herein reproduced for reference

Section 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 persons 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.

Section 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 fifty centavos on each two hundred pesos or fractional part thereof, of the amount issued by any such policy.

Section 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 machine, 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. xxx (Underscoring supplied)

In view of the foregoing 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.

In fact the High Court discussed the nature of the documentary stamp tax in the case of *Commissioner of Internal Revenue v. Heald Lumber Co., G.R. No. L-16340, February 296, 1964, 10 SCRA 372.*

> "A documentary stamp 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. It is an excise upon the facilities used in the transaction of the business separate and part from the business itself. (On 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 the time. (Empire Trust Co. v. Hoey, supra). (Underscoring supplied.)

From the above quoted discussions, it is clear that documentary stamp tax is levied and paid only once at the time the taxable document is issued. Documentary Stamp tax shall be computed using as tax base the value at the time of issuance of the instrument. While in life insurance, the documentary stamp tax shall be collected based on the amount issued by such policy originally.

It is also to be noted that documentary stamp tax is to be paid by the purchase of stamps and the affixture and subsequent cancellation thereon on the insurance policies. In simpler terms, tax must be paid based on the amount insured at the time of the issuance of such insurance policies. It can be deduced from the foregoing that the amount insured at the time of such issuance does not include any subsequent increases in sum assured since collection on the policy at the time would certainly not include such increases, which are effective only at some future date, the taxable years in question in this case. (*Lincoln Philippine Life Insurance Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4583, March 30, 1993*).

WHEREFORE, the deficiency documentary stamp tax assessments in the total amount of P11,495,784.38 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. Respondent is likewise ordered to lift the warrapnt of distraint and levy issued against the petitioner.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

This is to certify that the above decision was reached after due consultation among the members 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