REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CENTURY INSURANCE CO., INC.,
Petitioner, Sept. 18/69

versus CTA CASE NO. 1752

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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D E C I S I O N

This is an appeal from the decision of respondent holding petitioner liable for the payment of the sum of ₱6,481.78 as deficiency documentary stamp tax on its contracts of reinsurance for the years 1959 and 1960 inclusive of compromise penalty.

This case was submitted for decision on the basis of a motion for summary judgment filed by petitioner on June 10, 1969 without objection on the part of respondent.

Petitioner is a duly organized domestic insurance corporation. During the years 1959 and 1960 petitioner allegedly received gross premiums in the respective amounts of ₱1,017,116.48 and ₱982,048.07, both for direct underwriting and for reinsurances accepted by it from various ceding companies broken down as follows:

	1959	1960
Direct Underwriting	₱ 746,632.22	₱ 784,567.29
R/I Admitted	270,484.26	197,480.78
T o t a l s	₱1,017,116.48	₱ 982,048.07

The aforesaid reinsurances which were accepted by petitioner were evidenced by bordereaux or quarterly statements of accounts. For the said years, petitioner purchased and affixed documentary stamps on the original policies issued by it on its direct writing but did not do so on the bordereaux.

In a preliminary 5-day letter dated January 10, 1962 the Acting Regional Director of the BIR Regional District No. 3, informed petitioner of a proposed deficiency assessment for documentary stamp tax and compromise penalty in the amount of ₱6,481.78 for 1959 and 1960 inclusive. On February 10, 1962, petitioner protested the proposed deficiency assessment disclaiming liability on the ground that it was without legal and factual basis. In a letter dated September 14, 1962 respondent demanded from petitioner the sum of ₱6,181.78 for failure to attach the correct documentary stamp tax on its reinsurance contracts in violation of Section 221 of the Revenue Code, and a compromise penalty for late payment in the amount of ₱300.00 or a total of ₱6,481.78 computed as follows:

"Documentary stamps due for
1959 . . . . ₱15,271.75
Less: Amount paid 11,679.52
Deficiency Documentary
Stamps Tax . . . . ₱3,592.23

Documentary Stamps tax
for 1960 . . . . . . ₱14,730.72
Less: Amount paid 12,141.17
Deficiency Documentary
Stamps Tax . . . . ₱2,589.55
AMOUNT STILL DUE AND COLLECTIBLE. . . ₱6,181.78

x x x x x x

Should you desire to settle extra-judicially the penal liability arising from your aforesaid violation, you may pay the sum of ₱300.00 as penalty, in addition to the said sum of ₱6,181.78, or a total of ₱6,481.78."

Petitioner, on March 20, 1962, protested the assessment. In subsequent letters dated April 4, 1964 and March 11, 1966, respondent denied said protest and reiterated its demand for the payment of the aforesaid deficiency documentary stamp tax. Hence, the present appeal to this Court.

The sole legal issue to be resolved in this case is whether or not petitioner is liable for the payment of documentary stamp tax on reinsurances accepted and premiums received thereon as evidenced by the bordereaux under Section 221 of the Tax Code.

Petitioner maintains that it is exempt from such documentary stamp tax and that such tax assessment is without legal basis; that such reinsurance documents are not embraced nor included under the term "insurance policies or <u>other instruments</u> . . . made or renewed upon property" that are taxable under Section 221 of the Tax Code. Respondent, on the other hand, contends otherwise, and bases its assessment and demand on the interpretation of the phrase "other instruments" under Section 221 of the Tax Code and its implementing regulations particularly Sections 56 and 58 of the Revised Documentary Stamp Tax Regulations (Revenue Regulation No. 26).

It is noteworthy that after this case was with this Court, the aforestated implementing sections 56 and 58 of the Revised Documentary Stamp Tax Regulations were subsequently revoked by the Secretary of Finance in his letter to the Insurance Association of the Philippines dated July 18, 1967 exempting reinsurance premiums from the documentary stamp tax.

Pertinent excerpts from said letter of the Secretary of Finance is quoted as follows:

> "This Department has undertaken a thorough review of this problem in consultation with the Bureau of Internal Revenue in fairness not only to the members of your group but also to the interests of the Government.
>
> "Section 221 of the National Internal Revenue Code provides as follows:

> 'SEC. 221. - Stamp tax on policies of insurance upon property. - On all policies of insurance or other instruments by whatever name the same may be called, by which insurance shall be made or renewed upon property of any description, including rents or profits, against peril by sea or on inland waters, or by fire or lightning, there shall be collected a documentary stamp tax of six centavos on each four pesos, or fractional part thereof, of the amount of premium charged. (As amended by sec. 10, Republic Act No. 40).'

"This Department, in implementing the provisions of Section 221 in relation to Section 210 of the Tax Code, promulgated Revenue Regulations No. 26, Section 52 of which provides as follows:

> 'SEC. 52. "Other instruments", defined. - The term "other instruments" includes any instrument by whatever name the same is called whereby insurance is made or renewed, i.e., by which the relationship of insurer and insured is created or evidenced, whether it be a letter of acceptance, cablegrams, letters, binders, certificates covering notes, or memoranda.'

"Accordingly, the Bureau of Internal Revenue held that reinsurance policies are subject to the documentary stamp tax, such policies being considered as included in the term 'other instruments' appearing in Section 221 of the Tax Code.

"The same regulation further provided as follows:

> 'SEC. 56. Contract of reinsurance. - A contract of reinsurance is also subject to tax inasmuch as the original insurer insures his risk to the insurer so that the reinsurance contract falls within the provisions of

> 'SEC. 58. <u>Issuance of insurance policy</u>. - In case where the insurance company accepts the insurance on an entire cargo and a policy is duly issued, and a portion of the risk is reinsured in another company and another policy is issued for the reason that the former does not want to assume all responsibility, there are two policies of insurance, the original policy issued by the former company and the reinsurance policy issued by the latter, and for the purpose of the documentary stamp tax, both the original policy and the reinsurance policy are subject to the tax as the law provides that whenever a policy of insurance is issued, the tax accrues.'

"The Bureau of Internal Revenue has therefore ruled as follows:

"1. Reinsurance contracts effected locally are subject to the documentary stamp tax.

"2. Reinsurance contract between a local reinsurer and a foreign reinsured is not subject to the documentary stamp tax.

"3. Reinsurance contract between a local reinsured and a foreign reinsurer is subject to the documentary stamp tax.

"However, a restudy of Section 221 of the Tax Code as well as the jurisprudence on the matter disclosed that the rulings heretofore issued by the Bureau of Internal Revenue and Revenue Regulations No. 26 are not in accordance with law. Thus, on analysis of the provisions of Section 221 of the Tax Code will show that 'reinsurance' or contracts of reinsurance was not contemplated under the same section. The term 'policies of insurance' mentioned in the law applies only to original contracts of insurance but it does not include policies of reinsurance.

"It may be stated in this connection that Section 221 of our Tax Code is similar to section 1804 of the Internal Revenue Code of the United States prior to its amendments by the Revenue Act of 1942. Said law imposes 'a tax upon each policy of insurance, or certificate, binder, covering note, memorandum, cablegram, letter, or other instruments by whatever name called. . . whereby insurance is made or renewed upon property within the United States, including rents and profits; against peril by sea, or on inland waters, or in transit on land (including transshipments and storage at termini or way points), or by fire, lightning, tornado, windstorm, bombardment, invasion, insurrection, or riot.' The U.S. Internal Revenue Code as above quoted did not consider 'reinsurance' as included in the term 'insurance'. This was the consistent interpretation of the law. Hence, policies of reinsurance were not held subject to documentary stamp tax. (See T.D. 5202, C.B. 1942-2, pp. 263-267)."

Conformably thereto, we are adopting this last opinion of the Secretary of Finance exempting reinsurance premiums from the payment of documentary stamp tax as it clearly reflects the true intent of Congress in enacting said Section 221 of the Tax Code. The language of the law can be no clearer when it provides for the payment of documentary stamp tax "on all policies of insurance or other instruments by whatever name the same may be called, by which insurance shall be made or renewed upon property." Indubitably, such provision refers only to original policies of insurance where property is the subject matter. Reinsurance contracts, which also are insurance contracts, have for their subject matter the liability of the insured (insurer in original insurance policies) as distinguished from damage or loss of property in original property insurance contracts.

Sections 88, 90 and 91 of the Insurance Act provide:

> SEC. 88. A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.
>
> SEC. 90. A reinsurance is presumed to be a contract of indemnity against liability, and not merely against damage.
>
> SEC. 91. The original insured has no interest in a contract of reinsurance.
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> It is a contract of indemnity against liability and not merely against damage. It is simply to indemnify the original insurer for a loss he may sustain upon his contract of insurance; it is a guaranty to reimburse him for any sum he may be compelled to pay under his contract of insurance with the owner. (Commentaries and Jurisprudence on the Commercial Laws of the Philippines by Tolentino, p. 967, citing Allison v. Fidelity Mutual Fire Ins. Co., 81 Neg. 494.)

Needless to say, the aforesaid Section 221 evidently does not apply to reinsurance contracts but only to original policies of insurance on property.

WHEREFORE, the appealed decision is hereby reversed. No costs.

DECISION -
CTA CASE NO. 1752

SO ORDERED.

Quezon City, September 18, 1969.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge