REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FILIPINAS LIFE ASSURANCE COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 3874

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

10/15/93

DECISION

This is a claim for refund in the amount of P376,596.22 allegedly representing erroneously paid premium tax.

Petitioner, a corporation duly organized and existing under the laws of the Philippines, was assessed in 1982 by the Bureau of Internal Revenue for premium tax deficiency for 1976 as follows:

Net Premium Earned	P133,360,935.71
Premium Tax Due Thereof:	
4% of P133,360,935.71	P 5,334,437.42
less: amount paid per Return	5,026,881.00
Balance Payable	P 307,556.42
25% Surcharge	76,889.10
Compromise Penalty	300.00
Balance Collectible which was paid per RTR# 1043476 and CR#B0021515 dated Dec. 16 '82	P 384,745.52

and paid said amount on December 16, 1982 (see Exhs. B and B1)

Subsequently, petitioner discovered that the examiners included premium deposits and deferred premiums in the computation of the tax deficiency. Said inclusion was, however, according to the petitioner, without legal basis since premium deposits and deferred premiums are excluded by law and jurisprudence from the coverage of the premium tax. hence, added the petitioner, the true deficiency should be computed as follows:

Premiums Collected During the Year on Direct Business (First Year)	P 42,992,483.79
Premiums Collected During the Year on Direct Business (Renewal)	82,836,527.40
Amount Subject to Premium Tax	P125,829,011.19
Rate of Tax	x 4%
Balance Payable	P 5,033,160.44
Less: Amount paid per return	5,026,881.00
Balance Payable	P 6,279.44
25% Surcharge	1,569.86
Compromise Penalty	300.00
Correct Premium Tax Deficiency in 1976	P 8,149.30

With the alleged erroneous inclusion of premium deposits and deferred premium in the above deficiency assessment, the payment according to the petitioner was erroneous in the amount of P376,596.22. Hence, a claim for tax credit of the said amount was instituted by the petitioner on April 4, 1983 (Exh D). Said claim for tax credit remained unacted until petitioner filed this petition for review on December 17, 1984 in order to toll the running of the prescriptive period.

Aside from the main issue of whether or not petitioner is entitled to the claim of refund sought, respondent corollarily raised the issue of prescription.

We find both issues for the petitioner.

On the issue of prescription, the petition for review which was filed on December 17, 1984 was well within the prescriptive period of two years since December 16, 1982, which was exactly two years after payment, fell on a Sunday. The rule "if the last day is Sunday or legal holiday" is, when the time refers to a period prescribed or allowed by the Rules of Court, by an order of the Court, or by other applicable statute, it is understood that the last day should really be the next day, provided that the said day is not also a Sunday or legal holiday. (please see Sec. 31, RAC, re Pretermission of Holiday) Hence, pursuant to existing law and jurisprudence, the last day of filing the subject petition for review was on December 17, 1984, the day it was precisely filed.

As to the main issue, the applicable provision of law is quoted, thusly:

> Sec. 263. 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 four per centum of the total premiums collected, whether such premiums are paid in money, notes, credits or any substitute for money...
> (underscoring supplied; 1984 Tax Code)

Therefore, "the 4% premium tax payable by an insurance company is computed and assessed on the net premiums received on policies issued, that is, gross premiums received less returned premiums on account of rejection of risk or for other reason and reinsurance premiums ceded, whether such premiums are paid in money, notes, credits or any substitute for money." (Underscoring supplied; ARANAS, Annotations and Jurisprudence on the National Internal Revenue Code of 1977 (As Amended) Vol. II, 1978 ed.) "Premium Deposits" are sum of money deposited by policyholders to guarantee future premium payments (Kelly v. American Mine Owners' Casualty Corporation 170 S.E. 580, 582, 161 Va 206). However, until such time of payment has arrived, they cannot be considered, for tax purposes, as having been "received" or already "collected" by the insurance company. Thus, premium deposits and deferred premiums should not be subjected to premium tax.

It was , in fact, no less than the respondent Commissioner of Internal Revenue himself who made such ruling in a letter to herein petitioner on November 26, 1981, that "premium deposits and deferred premiums a ot subject to the premium tax." (p. 1 BIR Records). ***"Accordingly", he*** concluded, "the assessments pertaining to the payment of said premium tax is hereby withdrawn and cancelled." (ibid.) Pursuant to the above ruling of the respondent, the examiners who re-investigated and assessed petitioner in the amount of P384,745.52 has then "recommended that the request for a tax credit be granted in the reduced amount of P252,697.38 "(Exh. G.2) computed as follows:

First Year Premiums and Considerations, Direct Business	P	45,470,460.29
Renewal Premiums and Considerations, Direct Business		82,836,527.40
Total	P	128,306,987.69
		x 4%
Premium Tax Due	P	5,132,279.51
Less: Premium Tax Paid per Return		5,026,881.00
Balance Payable	P	105,398.51
25% Surcharge		26,349.63
Compromise Penalty		300.00
CORRECT PREMIUM TAX DEFICIENCY	P	132,048.14

The Correct Amount to be issued as tax credit should be:

Amount Erroneously Paid	P	384,745.52
less: Amount that should have been paid		132,048.14
AMOUNT TO BE ISSUED AS TAX CREDIT	P	252,697.38

(Exh. G)

of which "petitioner has already signified its willingness to accept the reduced amount of tax credit as against the original claim of P376,596.22" (see Urgent Motion for Reconsideration p. 86 CTA Records). In fact, the reason why this case was dragged for so long, it was because herein petitioner was already waiting for the issuance of the tax credit memo as early as 1989 yet but until now has not been issued in its favor.

We cannot let the petitioner wait any further for a right it truly deserves.

ACCORDINGLY, in all the foregoing, petitioner's claim for refund is hereby GRANTED ordering the respondent to issue a tax credit or refund in favor of petitioner in the reduced amount of P252,697.38 based on the recommendation of the examiners which is presumed to be correct and which petitioner also willingly accepted.

SO ORDERED.

Quezon City, Metro Manila, October 15, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

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

I hereby certify that the 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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals