Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

THE PHILIPPINE AMERICAN ACCIDENT INSURANCE COMPANY, INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 2514**

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x ------------------------- x

THE PHILIPPINE AMERICAN ASSURANCE CO., INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 2515**

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x ------------------------- x

THE PHILIPPINE AMERICAN GENERAL INSURANCE CO., INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 2516**

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PROMULGATED :
JAN 05 1995

x -- x

D E C I S I O N

Petitioner seeks refund from respondent of the following sums of ₱7,985.25 in CTA Case No.2514, ₱7,047.80 in CTA Case No. 2515, and P=14,541.97 in CTA Case No. 2516, representing 3% of of its interest income on mortgage and other losses.

The following facts are not disputed:

Petitioner is a domestic corporation duly registered to transact insurance business in the Philippines. From August 1971 to September 1972, petitioner paid under protest the aforestated amounts to the respondent as 3% tax imposed on lending investors by Section 195-A of the NIRC in the interest income on mortgage and losses.

On January 31, 1973, petitioner sent to respondent a letter-claim for refund of the aforesaid amounts but did not receive any decision from the respondent up to its filing of the instant action before this Court.

The sole issue in this case is whether or not petitioner is entitled to the refund of the above-stated amounts representing its payment to respondent of the 3% percentage tax as a lending investor under Section 195-A of the Tax Code.

Petitioner contends that it is not subject to fixed and percentage taxes imposed on lending investors because its lending and investment activities from which it earns interest form part of and are necessary to its main business of insurance which is already taxed under Section 194(u) and under Section 182 (gg) and 255 of the

Tax Code. Respondent maintains that petitioner is a lending investor as defined in Section 195-A and 182n (A)93)(dd) of the Tax Code.

We find for the petitioner.

This case is similar to CTA Case No. 2336, Insular Life Assurance Co. Ltd. v. Comm. of Internal Revenue, CTA Case No. 2337, Filipinas Life Assurance Co. v. Comm. of Internal Revenue, and CTA Case No. 2300, Philippine American Life Insurance Co. vs. Comm. of Internal Revenue.

We thus deem it sufficient to quote from the decision in said cases, to wit:

> Originally, a person who was engaged in lending money at interest was taxed as a money lender. [Sec. 1464(x), Rev. Adm. Code.] The term money lenders was defined as including "all persons who make a practice of lending money for themselves or others at interest."[Sec. 1465(v), id.] Under this law, an insurance company was not considered a money lender and was not taxable as such. To quote from an old BIR Ruling:
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> > "The lending of money at interest by insurance companies constitutes a necessary incident of their regular business. For this reason, insurance companies are not liable to tax as money lenders or real estate brokers for making or negotiating loans secured by real property. (Ruling, February 28, 1920; BIR 135.2.)" (The Internal Revenue Law,

> Annotated, 2nd ed., 1929, by B.L. Meer, page 143.)

The same rule has been applied to banks.

> "For making investments on salary loans, banks will not be required to pay the money lender's tax imposed by this subsection, for the reason that money lending is considered a mere incident of the banking business. [See Ruling No. 43, (October 8, 1926) 25 Off. Gaz. 1326.)" (The Internal Revenue Law, Annotated, id.)

The term "money lenders" was later changed to "lending investors" but the definition of the term remains the same. [Sec. 1464(x), Rev. Adm. Code, as finally amended by Com. Act No. 215, and Sec. 1465(v) of the same Code, as finally amended by Act No. 3963.] The same law is embodied in the present National Internal Revenue Code (Com. Act No. 466) without change, except in the amount of the tax. [See Secs. 182(A)(3)(dd) and 194(u), National Internal Revenue Code.]

It is a well-settled rule that an administrative interpretation of a law which has been followed and applied for a long time, and thereafter the law is re-enacted without substantial change, such administrative interpretation is deemed to have received legislative approval. In short, the administrative interpretation becomes part of the law as it is presumed to carry out the legislative purpose.

> ". . . Of course, the rule does not operate to freeze a meaning which is in evident conflict with the clearly expressed legislative intent. Helvering vs. Hallock,

> 309 U.S. 106, 119-121, 60 S.Ct.444, 84 L.Ed. 604, A.L.R. 1368. But where a statute is susceptible of the meaning placed upon it by Treasury ruling and Congress thereafter re-enacts the provision without substantial change, such action is to some extent confirmatory that the ruling carries out the congressional purpose." (Mead Corporation vs. Comm. of Internal Revenue, 116 F. [2d] 187, p. 194.)
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> "The law, I believe, is now settled that substantial reenactment of legislation which has been construed by Treasury regulations is at least strong evidence of legislative approval of such construction. It is presumed that Congress knew of the existing administrative interpretations of the statute ... "(Cargill vs. United States, 46 F. Supp. 712, 716.)
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> (Quoted with approval in interprovincial Autobus Co., Inc. vs. Coll. of Int. Rev., 98 Phil. 290; see also Mindanao Bus Co. vs. Coll. of Int. Rev., 1 SCRA 538.)

The rule as regards re-enactment of statutes which have been interpreted and applied for a long time acquires more force in the instant case as the ruling of the Bureau of Internal Revenue cited above has been followed without interruption for more than half a century.

We have had occasion to express the same view. It has been held that "when a person or company is already taxed on its main business, it may not be further taxed for doing something or engaging in an activity or work which is merely a part of, incidental to and is necessary to its main business". (Asturias Sugar Central, Inc. vs. Comm. of Internal Revenue, C.T.A. Case No. 983, February 14, 1963, citing Standard Vacuum Oil Co. vs. Antigua, 96 Phil. 909.) This doctrine was cited and relied upon by this Court in the Asturias case in connection with the issue of whether or not the taxpayer therein was liable for the fixed tax as a lending investor. The doctrine is but the result of the correct application of the rule of interpretation to determine the legislative intent behind revenue laws. Where the law taxes a business, it is presumed to be the legislative intent not to separately tax every activity which is merely incidental or necessary to the conduct of said business.

There can be no question that lending money at interest by life insurance companies is not only incidental to their business but is essential to their very existence. No insurance company can survive without investing its funds in loans.

A well-known authority on insurance, Mr. W.R. Vance, says:

> In considering the causes of this phenomenal growth of life insurance, it is well to observe that the business is not confined to mere insurance against the untimely termination of life, but includes, as perhaps its most important element, the feature of investment of savings for the purpose of creating an "insurance estate".
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> x x x x

> The insured, in effect, pays the insurer annual sums which the latter must hold, invest, and accumulate until the maturity of the policy, by death or the expiration of an endowment term, fixes the duty of the insurer to pay. (Vance on Insurance, 3rd ed., p.32.)

Another recognized authority on insurance says that "life insurance companies must invest their funds so as to enable them to meet their obligations to their policyholders." (Appleman, Insurance Law and Practice, Vol. 19, p.180.)

In the case of Bowers vs. Lawyers Mortg. Co., 285 U.S. 182, 76 L. ed. 690, 695 (1931), the U.S. Supreme Court stated:

> "Premiums" are characteristic of the business of insurance, and the creation of "investment income" is generally, if not necessarily, essential to it.

Evidence for the petitioners sustained the fact that they have to invest the premiums they receive, that they cannot just hold them idle, and that investing those premiums is incidental to the operation of life insurance companies (p. 12, T.S.N., July 10, 1972).

As a matter of fact, Section 183 of the Insurance Act requires every life insurance company doing business in the Philippines to hold its funds "in secure investments" equal to the "aggregate net value" of its policies, and among the investments indicated in Section 197 of said Act is precisely the lending of money on first mortgages.

That the investment of the premiums collected by insurance companies from policyholders appears to be not merely incidental or necessary but in fact essential to the conduct of the life insurance business cannot be gainsaid. Nor can it be denied that "insurance is affected with a public interest", and that perhaps "no other business affects the public so intimately as does the insurance business." (Vance on Insurance, p. 36.) It is for these reasons that the investment aspect of the insurance business, including investments in mortgage loans, is subject to stringent regulation by the state. (See Secs. 178-A, 183, 197, 200-A of the Insurance Act.) It is noteworthy that according to Sec. 200(1) of the Insurance Act, an insurance corporation may purchase and hold property "as may have been mortgaged, pledged, or conveyed to it . . . by reason of money loaned by it in pursuance of the regular business of the corporation . . ." (Underscoring supplied.) This provision, to our mind, confirms the fact that lending money is part and parcel of the insurance business.

In this connection, it should be noted that Republic Act No. 6110 amended Section 293(A)(3) of the Revenue Code by inserting therein, among others, subparagraph (gg) in which, for the first time, banks, insurance companies doing business in the Philippines were grouped together and made subject to a fixed tax on their businesses. Petitioners allege, and respondent has not denied, that prior to Republic Act No. 6110, which was approved on August 4, 1969, insurance companies were already engaged in lending activities but had never been required by respondent to pay the fixed tax imposed on lending investors under the former Section 182(A)(3)(u) of the Revenue Code. (See BIR Ruling dated Feb. 28, 1920, supra.) It appears to us that there is less reason now than before to hold them liable for the fixed tax imposed on lending investors since they are presently subject to the fixed tax under Section 183 (A)93)(gg) by virtue of Republic Act No. 6110. In fact, it would be difficult to accept the view that the legislators, in making them liable for the fixed tax on their businesses, also intended to make them additionally liable for the fixed tax on lending investors under subparagraph (dd) of Sec. 182 (A) (3) [formerly, subparagraph (u) of Sec. 182 (A)(3)]. It is inconceivable that banks[1] and finance companies, whose lending activities obviously constitute an inherent and integral part of their businesses, are to be required to pay the fixed tax on their businesses as banks or finance companies and again as lending investors. Since lending money is an integral and essential activity not only of banks and finance companies but also of insurance companies, they were all grouped together under subparagraph (gg); and since Congress must have been aware of the nature of their businesses, it is to be presumed in the absence of any express provision to the contrary, that Congress intended them to pay only the fixed tax under subparagraph (gg).

Respondent cites Section 178 of the Revenue Code which provides that "one occupation or line of business does not become exempt by being conducted with

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1 An opinion has been expressed to the effect that if the income derived by banks from interest on their lending transactions is not subject to the lending investor's percentage tax under Section 195(B) of the Revenue Code, said interest would not also be subject to the percentage tax on the gross receipts of banks under Section 249 of the same Code. This opinion apparently overlooks the express provision of Section 249 which imposes the percentage tax provided therein on the "gross receipts" of banks. The term "gross receipts" in said section includes all items of income as defined in Section 29 of the Code which includes interest.

some other business or occupation for which such tax has been paid". But the view we have taken in this case does not contravene said provision which, as we had occasion to rule, "contemplates a case where a person is engaged in two or more separate and distinct occupations or businesses" (Ilagan & Alejandrino v. Collector, CTA Case No. 43). In the cited Ilagan case it was held that under Section 178, one who was engaged in business as a road contractor and also as a building contractor was subject to the fixed tax on road contractors and also to the fixed tax on building contractors. It will be noted, however, that unlike the insurance business and lending activity of the petitioners on this case, the business of a road contractor and the business of a building contractor are separate or distinct from each other such that neither is incidental or necessary to, nor an integral part of, the other. In the case of Collector of Internal Revenue v. Eternit Corporation , 105 Phil. 565, the Supreme Court upheld this Court's ruling to the effect that the "installation" of asbestos sheets was an occupation "distinct and separate" from the business of manufacturing and selling those sheets (105 Phil. 568) so that the tax exemption accorded by law to the latter was no bar to the contractor's tax imposed by the Revenue Code on the former.

Since petitioners are not taxable as lending investors under Section 182(a)(3)9dd), it follows that they are not also subject to the percentage tax imposed on lending investors under Section 195-B of the Revenue Code. It should be pointed out in this connection that petitioners as insurance companies are, like banks, finance companies and franchise grantees which are all grouped together under Section 182(A)(3)(gg), are already subject to the miscellaneous tax imposed in Title VIII of the Revenue

> Code. It is noteworthy that the miscellaneous tax of "three per centum of the total premiums collected" under Section 255 of the Revenue Code is essentially a percentage tax and is no different in nature from the percentage tax imposed on lending investors in Section 195-B of the same Code.

WHEREFORE, premises considered, petitioners Philippine American Accident Insurance Co., Philippine American Assurance Co., and Philippine American General Insurance Co. Inc. are not taxable on their lending transactions independently of their insurance business. Accordingly, respondent is hereby ordered to refund to petitioner the sum of ₱7,985.25, ₱7,047.80 and ₱14,541.97 in CTA Cases No. 2514, 2515 and 2516, respectively representing the fixed and percentage taxes when paid by petitioners as lending investor from August 1971 to September 1972.

No pronouncement as to cost.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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