REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIREMAN'S FUND INSURANCE COMPANY,
Petitioner,

- versus -

C. T. A.
CASE NO. 1629

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

May 24/69

D E C I S I O N

This is an appeal from the decision of respondent, dated March 17, 1965, holding petitioner liable for the payment of the amount of ₱81,406.87 as documentary stamp tax and "compromise penalties" in respect of insurance policies issued from January, 1952 to December, 1958.

Petitioner is a resident foreign insurance corporation organized under the laws of the United States, authorized and duly licensed to do business in the Philippines, with business address at Ayala Avenue, Makati, Rizal. It is a member of the American Foreign Insurance Association (AFIA), through which its business is cleared.

From January, 1952 to December, 1958, petitioner entered into various insurance contracts involving casualty, fire and marine risks, for which the corresponding insurance policies were issued. From 1952 to 1956, documentary stamps were bought and affixed to the monthly statements of policies issued; and from 1957 to 1958, documentary stamps were also bought and affixed to the corresponding pages of the policy register. On July 3, 1959, petitioner discovered that its monthly statements of business and policy register were lost. The loss was reported to the Building Administration of Ayala Building and the National Bureau of Investigation on July 6, 1959. Respondent was also informed of such loss by petitioner, through its auditors, Sycip, Gorres & Velayo, in a letter dated July 14, 1959. After conducting an investigation of said loss, respondent's examiner ascertained that petitioner failed to affix the required documentary stamps to the insurance policies issued by it during the period in question. Also, petitioner allegedly failed to preserve its accounting records within the time prescribed by Section 337 of the Revenue Code and it used loose-leaf forms as registers of documentary stamps without written authority from the Commissioner of Internal Revenue as required by Section 4 of Revenue Regulations No. V-1. As a consequence of these findings, respondent in a letter dated December 7, 1962, assessed and demanded from petitioner the payment of documentary stamp taxes for the years 1952 to 1958, plus compromise penalties, in the total amount of ₱81,406.87, to wit:

YEAR		AMOUNT
1952		₱ 6,500.00
1953		9,977.72
1954		10,908.89
1955		14,204.52
1956		12,108.26
1957		7,880.68
1958		16,257.60
Total stamp taxes due on policies issued from 1952 to 1958 - - - -		₱77,837.67
Add: Stamp taxes on monthly statements during:		
1957 - - - - - - - - - - -		1,218.35
1958 - - - - - - - - - - -		3,264.39
Total - - - - - - - - - - -		₱82,320.41
Less: Stamp taxes paid per voucher shown:		
1957 - - - - -	₱ 416.82	
1958 - - - - -	2,096.72	2,513.54
AMOUNT DUE & COLLECTIBLE - - - - -		₱79,806.87

On January 14, 1963, petitioner wrote respondent a letter contesting the assessment and requested that the case be elevated to the Appellate Division for review. In a letter dated March 17, 1965, respondent, without giving petitioner the benefit of a hearing which it requested, reiterated his previous demand for the payment of documentary stamp taxes and penalties in the total amount of ₱81,406.87. Hence, the instant appeal.

The sole issue raised is whether or not petitioner is liable for the documentary stamp tax and "compromise penalties" for its failure to affix documentary stamps to the insurance policies issued from January, 1952 to December, 1958.

The relevant provisions of the Revenue Code provide:

> SEC. 210. 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 person making, signing, issuing, accepting, or transferring the same, and at the time such act is done or transaction had.

> 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.

> SEC. 237. Payment of documentary stamp tax. - 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 of the same, such 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 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.
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> SEC. 239. Failure to affix or cancel documentary stamps. - Any person who fails to affix the correct amount of documentary stamps to any taxable document, instrument, or paper, or to cancel in the manner prescribed by section 237 any documentary stamp affixed to any document instrument, or paper, shall be subject to a fine of not less than twenty pesos or more than three hundred pesos. (Underscoring supplied.)

(Under the aforequoted provisions of law, documentary stamp tax is deemed paid by: (a) the purchase of documentary stamps; (b) affixture of documentary stamps to the document or instrument taxed or to such other paper as may be indicated by law or regulations; and (c) cancellation of the stamps as required by law.)

Respondent's examiner, Amando B. Melgar, Jr., does not dispute petitioner's purchase and affixture of documentary stamps to the monthly statements and policy register mentioned above in his memorandum dated July 29, 1960, the pertinent portion of which states:

> Investigation disclosed that the subject insurance company is a duly organized corporation doing business in the Philippines. It keeps the necessary books

of accounts and other accounting records needed by the business. Further verification revealed that it has, since July 1959, been using a "HASLER" franking machine, Model F-88, which stamps the documentary stamps on the duplicates of the policies issued. Prior to the acquisition of the said machine, the company buys its stamps by allowing the Manager to issue a Manager's check drawn against the National City Bank of New York and payable to the City Treasurer of Manila. It was also found out that during this period (1952 to 1958), the total purchases of documentary stamps amounted to ₱77,837.67, while the value of the used stamps lost amounted to ₱65,901.11. Verification with the files revealed that most of the monthly statements of business and registers of documentary stamps corresponding to insurance policies issued were missing while some where the punched documentary stamps affixed were small in amount are still intact.

The taxpayer was found to be negligent in the preservation and keeping of its records. Although the loss ws found by the company's private investigator (see attached true copies of his reports) was not an "Inside Job", still the company should be held liable for its negligence, it appearing that the said records were placed in a bodega where almost all patrons of the coffee shop nearby could see them. The company also violated the provision of Section 221 of the National Internal Revenue Code which provides that the documentary stamps should be affixed and cancelled on the duplicates of bonds and policies issued. In this case, the said stamps were affixed on the register of documentary stamps. (pp. 35-36, BIR rec.; Underscoring supplied.)

Payment of the documentary stamp tax by petitioner is also admitted by counsel for the Government.

If the stamp tax were imposed on the property described by the policies issued by petitioner, i.e., premiums and policy value of the insured risk, then there might be room for considering the

> efficacy of stamp tax payments actually made without the actual affixture of stamps to the policies themselves. But even then, the affixture of the allegedly purchased stamps to the aforementioned "monthly statements" used by petitioner has to be seriously questioned in the light of existing laws and regulations permitting the affixture of documentary stamps to authorized papers and documents only. (Sec. 237, Tax Code, and Sec. 1, Regulations No. 77, _supra._) _Here, the record and evidence show that the documents to which the stamps were affixed have not been authorized either by applicable law or regulations. The petitioner's practice of affixing the documentary stamps on the business statements and policy registers without_ specific permission from the Commissioner of Internal Revenue but only on the strength of an alleged authority granted to another company to adopt a similar practice, should not be countenanced.
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> (Memorandum for Respondent, March 11, 1969, pp. 199-200, CTA rec.; underscoring supplied.)

While respondent does not dispute the purchase of documentary stamps and their affixture to the business statements and policy register, he contends that the stamp tax on the insurance policies is not deemed paid in contemplation of the law. Petitioner, on the other hand, counters that the required documentary stamps on the insurance policies had been purchased and their affixture to the business statements and policy registers, instead of to the insurance policies, is sufficient compliance with the law. In other words, it is petitioner's theory that _failure to affix_ the documentary stamps to the document or instrument specified by law, i.e., insurance policies in this case, does not amount to <u>failure to pay</u> the stamp tax.

The law and the implementing regulations (Sec. 1, Regs. No. 77, 58 O.G. 467, 1086) require that the documentary stamps should be affixed to the documents or instruments taxed, which in this case are the various policies of insurance, or to such other paper as may be indicated by law or regulations.

(The affixture of documentary stamps to papers other than those authorized by law is not tantamount to failure to pay the same. It is true that the mode of affixing the stamps as prescribed by law was not followed, but the fact remains that the documentary stamps corresponding to the various insurance policies were purchased and paid by petitioner. There is no legal justification for respondent to require petitioner to pay again the documentary stamp tax which it had already paid. To sustain respondent's stand would require petitioner to pay the same tax twice. If at all, petitioner should be proceeded against for failure to comply with the requirement of affixing the documentary stamps to the taxable insurance policies and not for failure to pay the tax. (See Secs. 239 and 352, Rev. Code.))

(It should be observed that the law allows the affixture of documentary stamps "to such other paper as may be indicated by law or regulations as the proper recipient of the stamp." It appears from this provision that respondent has authority to allow documentary stamps to be affixed to papers other than the documents or instruments taxed. Although the practice adopted by petitioner in affixing the documentary stamps to the business statements and policy register was without specific permission from respondent but only on the strength of his ruling given to Wise & Company (see Petitioner's Memorandum, p. 176, CTA rec.; p. 24, t.s.n.), one of the general agents of petitioner, however, considering that petitioner actually purchased the documentary stamps, affixed them to the business statements and policy register and cancelled the stamps by perforating them, we hold that petitioner can not be held liable to pay again the same tax.)

With respect to the "compromise penalties" in the total sum of P1,600.00, suffice it to say that penalties cannot be imposed in the absence of a showing that petitioner consented thereto. A compromise implies agreement. If the offer is rejected by the taxpayer, as in this case, respondent cannot enforce it except through a criminal action. (See Comm. of Int. Rev. vs. Abad, L-19627, June 27, 1968.)

WHEREFORE, the decision appealed from is hereby reversed. Without pronouncement as to costs.

SO ORDERED.

Quezon City, May 24, 1969.

R M Umali
ROMAN M. UMALI
Presiding Judge

I CONCUR:

Ramon L Avanceña
RAMON L. AVANCEÑA
Associate Judge