REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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LOYOLA PLANS CONSOLIDATED, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6977

Members:

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
MAR 15 2006

x - x

DECISION

BAUTISTA, L., J.:

This case seeks the refund or issuance of a tax credit certificate of the alleged erroneously paid documentary stamp taxes on the:

1. transfer of real properties in the amount of **THREE MILLION THREE HUNDRED SEVENTY TWO THOUSAND FOUR HUNDRED EIGHTY TWO AND 48/100 PESOS (P3,372,482.48)**; and

2. transfer of shares of stocks in the amount of **SIX HUNDRED NINETY NINE THOUSAND TWO HUNDRED SEVENTY FIVE AND 32/100 PESOS (P699,275.32);**

or in the total amount of **FOUR MILLION SEVENTY ONE THOUSAND SEVEN HUNDRED FIFTY SEVEN AND 80/100 PESOS (P4,071,757.80)** upon the consolidation on April 12, 2002 of Loyola Plans, Inc. and Loyola Education Systems, Inc. into a new company known as Loyola Plans Consolidated, Inc.

Petitioner is a corporation duly organized under Philippine laws, for the purpose of issuing pre-need plans, such as, pension, memorial, and educational plans with office at the Loyola Building, 849 A. Arnaiz Ave. (formerly Pasay Road), Makati City. *(par 1, Petition for Review)* Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits erroneously or excessively paid taxes with office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 12, 2002, the Securities and Exchange Commissioner (SEC) approved the consolidation of Loyola Plans, Inc. and Loyola Education Systems, Inc., to form the new corporation known as Loyola Plans Consolidated, Incorporated, herein petitioner. Under the Articles and Plan of Consolidation *(Exhibit "A-3" to "A-9")*, executed on March 23, 2001 and approved by the SEC on April 12, 2002, Loyola Plans, Inc. shall consolidate with Loyola Education Systems, Inc. to form a new corporation, referred to as Loyola Plans Consolidated, Inc. Accordingly, upon the effectivity of the consolidation, the separate existence of the constituent corporations, Loyola Plans, Inc. and Loyola Education Systems, Inc., shall cease and the new corporation, Loyola Plans Consolidated, Inc., shall succeed all the rights, privileges, immunities, and franchises, and all the properties, real and personal and mixed of the constituent corporations.

Pursuant to the consolidation, Loyola Plans, Inc. filed and remitted the corresponding documentary stamp taxes on the transfer of its real properties and shares of stocks to Loyola Plans Consolidated, Inc., in the aggregate amount of P4,071,757.80 *(Exhibits B-O, inclusive)*.

On the belief that there was an erroneous payment of documentary stamp taxes made by Loyola Plans, Inc., petitioner then filed separate administrative claims for refund or issuance of tax credit certificates with the different Revenue District Offices.

Petitioner anchored its claims on the provisions of Sections 176 and 196 of the 1997 National Internal Revenue Code (NIRC), as well as, on the pertinent provisions of the Corporation Code of the Philippines, Revenue Memorandum Circular No. 44-86 and Republic Act (R.A.) No. 9243, or the Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as amended.

Having received no reply from the various offices of the respondent and before it could be barred by prescription, petitioner elevated its case to this Court on May 3, 2004.

On June 3, 2004, respondent filed his Answer raising the following as his Special and Affirmative Defenses:

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The amount of P4,071,757.80 being claimed by petitioner allegedly representing erroneously paid documentary stamp taxes as a result of the transfer of real properties and shares of stock pursuant to the plan of consolidation was not properly substantiated;

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

7. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit; and

8. Claims for refund are construed strictly against the claimant for the same partake the nature of an exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).

After the parties have filed their respective memoranda, this case was submitted for decision on September 21, 2005.

The parties have jointly stipulated the following as the issues to be resolved by this Court:

1. Whether documentary stamp taxes are due for the transfer of the assets and properties of Loyola Plan, Inc., to petitioner Loyola Plans Consolidated, Inc., pursuant to the above consolidation; and

2. Whether petitioner had complied with the requirements of the law in connection with its claim for refund.

Anent the first issue, petitioner submits that no documentary stamp taxes are due on the transfer of assets and properties of Loyola Plans, Inc. to Loyola Plans Consolidated, Inc. in pursuance of the consolidation.

a) On the Transfer of Real Property

Petitioner argues that in accordance with Section 196 of the National Internal Revenue Code of 1997, conveyances of real properties without consideration are not subject to documentary stamp taxes. Accordingly, under Section 3.2 of Revenue Memorandum Circular No. 44-86, it is provided that "the stamp tax referred hereunder applies only if the instrument is a sale or other conveyance of real property for a consideration in money or money's worth." Likewise, Section 185 of Revenue Regulations No. 26 provides that "conveyances of realty, not in connection with a sale, to trustees or other persons without consideration are not taxable." Verily, there should be no documentary stamp taxes imposed on any conveyance of real property without consideration.

Petitioner contends that the transfer of the subject real properties was in pursuance of the consolidation of the two constituent corporations, thus, it was by operation of law and not in connection with a sale. This is confirmed further by Section 80 of the Corporation Code of the Philippines which provides that no consideration is needed for the transfer of assets and other properties from a constituent corporation to the consolidated corporation and such transfer is "without any further act or deed". As a result of the consolidation, Loyola Plans, Inc. and its assets were automatically absorbed by herein petitioner by operation of law, hence:

a. no consideration was paid by petitioner to acquire the assets and properties of Loyola Plans, Inc.;

b. no value was received by Loyola Plans, Inc. when it transferred the properties to the petitioner; and

c. no value was contracted to be paid, since such transfer arose by operation of law.

Finally, under Republic Act No. 9243, entitled "An Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code, As Amended", more particularly Section 9 thereof, which amends Section 199 of the NIRC of 1997, it is provided that:

> **"Sec. 9. Section 199 of the National Internal Revenue Code of 1997, as amended, is further amended to read as follows:**
>
> > **"SEC. 199. Documents and Papers Not Subject to Stamp Tax.** – The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:
> >
> > xxx xxx xxx
> >
> > (m) Transfers of property pursuant to **Section 40 (C)(2)** of the National Internal Revenue Code of 1997, as amended."

Section 40 (C)(2) of the National Internal Revenue Code of 1997, provides that:

> **"SEC. 40. Determination of Amount and Recognition of Gain or Loss** –
>
> xxx xxx xxx
>
> **(C) Exchange of property** . –
>
> (1) xxx
>
> **(2) Exception** – No gain or loss shall be recognized in pursuance of **a plan of merger or consolidation** –
>
> (a) A corporation which is a party to a merger or consolidation, exchanges property solely for stock in a corporation, which is a party to the merger or consolidation; or . . ."

According to the petitioner, R.A. No. 9243 is an example of a legislative enactment designed to remove any doubts that transfers of properties made pursuant to a plan of merger or consolidation, are not subject to documentary stamp tax.

This Court agrees with the petitioner.

Consolidation is the union of two or more existing corporations, known as the constituent corporations, to form a new corporation called the consolidated corporation. It is a combination by agreement between two or more corporations by which their rights, franchises, privileges and properties are united and become those of a single, new corporation, composed generally, although not necessarily, of the stockholders of the original corporation. *(Cesar Lapuz Villanueva, Philippine Corporate Law, 2001, pp. 606-607)* As such, there is no liquidation of the assets of the constituent corporations, and the surviving or consolidated corporation assumes *ipso jure* the liabilities of the dissolved or constituent corporations, regardless of whether the creditors have consented or not to such merger or consolidation. Section 76 of the Corporation Code of the Philippines provides that two or more corporations may merge into a single corporation which shall be one of the constituent corporations or may consolidate into a new single corporation which shall be the consolidated corporation. In relation thereto, Section 80 of the same Code, sets forth the effects of a merger or consolidation as follows:

1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan or merger; and in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;

2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;

3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation under this Code;

4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; **and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed**; and

5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporation may be prosecuted by or against the surviving or consolidated corporation, as the case may be. Neither the rights of creditors nor liens upon the property of any of such constituent corporations shall be impaired by such merger or consolidation. *(Emphasis Ours)*

Based on the foregoing, it is evident that the transfer of real properties from the absorbed or constituent corporations to the consolidated corporation by virtue of the plan of consolidation occurs by operation of law inasmuch as the real property is deemed transferred without any further act or deed. The legal effect of a consolidation is not to disturb the legal continuity of the "business enterprise" of each of the constituent corporations.

It is noteworthy that Section 196 of the National Internal Revenue Code of 1997 imposes documentary stamp tax on all conveyances, deeds, instruments, or writings where realty sold shall be conveyed to the purchaser or purchasers. To quote:

> "**SEC. 196. Stamp Tax on Deeds of Sale and Conveyances of Real Property.** – On all conveyances, deeds, instruments, or writings, other than grants, patents, or original certificates of adjudication issued by the Government, whereby any land, tenement or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax, at the rates herein below prescribed, based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher: x x x"

Clearly then, in cases of consolidated corporations, as in the instant case, there is no "purchaser" or "buyer" of real property considering that the real properties subject of the consolidation were merely absorbed by the petitioner as a legal consequence of the consolidation. The transfer of real properties was not a sale nor was it a conveyance of real property for a consideration in money or money's worth. As correctly pointed out by petitioner, Loyola Plans, Inc.'s real properties were not conveyed to petitioner by means of any deed, instrument or writing. There was a complete absence of any formal instrument or writing upon which documentary stamp tax may be imposed. This is further confirmed by Section 185 of Revenue Regulations No. 26 which provides that "conveyances of realty, not in connection with a sale, to trustees or other persons without consideration are not taxable".

Consequently, upon the enactment of Republic Act No. 9243 or the "Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as amended, and For Other Purposes", it has been made evident that the transfers of real properties in pursuance of a merger or consolidation is not subject to documentary stamp taxes, to wit:

> **"Sec. 9. Section 199 of the National Internal Revenue Code of 1997, as amended, is further amended to read as follows:**
>
> > **"SEC. 199. Documents and papers not subject to stamp tax.** – The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:
> >
> > xxx xxx xxx
> >
> > (m) Transfers of property pursuant to **Section 40 (C)(2)** of the National Internal Revenue Code of 1997, as amended."

Section 40(C)(2) of the National Internal Revenue Code of 1997 reads:

> **"SEC. 40. Determination of Amount and Recognition of Gain or Loss** –
>
> xxx xxx xxx
>
> **(c) Exchange of property**. –
>
> (1) xxx
>
> **(2) Exception** – No gain or loss shall be recognized in pursuance of **a plan of merger or consolidation** –
>
> (a) A corporation, which is a party to a merger or consolidation, exchanges property solely for stock in a corporation, which is a party to the merger or consolidation; or
>
> (b) A shareholder exchanges stock in a corporation, which is a party to the merger or consolidation, solely for the stock of another corporation also a party to the merger or consolidation; or
>
> (c) A security holder of a corporation, which is a party to the merger or consolidation, exchanges his securities in such corporation, solely for stock or securities in another corporation, a party to the merger or consolidation.

> No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4) persons, gains control of said corporation: *Provided,* That stocks issued for services shall not be considered as issued in return for property."

Indeed, R.A. No. 9243 is an example of a legislative enactment designed to remove any doubts as to the taxability of any transfer of properties made pursuant to a plan of merger or consolidation. Thus, transfers of real properties in pursuance of a merger or consolidation, are not subject to documentary stamp taxes.

In addition, this Court had already an occasion to discuss the same subject matter when it ruled that:

> "Indeed, the aforequoted jurisprudence points to the conclusion that the obligation to pay DST is based on the voluntary action of the person performing the act or engaging in the activity which is subject to DST. Therefore, the DST imposed on the transfer of real property should not apply to a statutory merger where real property of the absorbed corporation is automatically vested in the surviving corporation by operation of law, without any further act or deed, rather than by some voluntary act or deed on the part of the taxpayer concerned.
>
> The petitioner correctly pointed out that this conclusion is consistent with BIR Rulings dated October 24, 1954 and May 14, 1973, where the BIR ruled that the transfer of certificates of stock by operation of law is not subject to DST. The BIR Ruling of May 14, 1973 cited the case of U.S. vs. Seattle-First National Bank, 321 U.S. 583 (1944), where the U.S. Supreme Court held that the transfer of title to stocks owned by a bank or held by it as a fiduciary, and of title to real estate, as a result of the consolidation of banks under the U.S. National Banking Act, is one 'by operation of law' and, therefore, not subject to DST. xxx
>
> xxx xxx xxx
>
> As correctly observed by petitioner, the provision on imposition of stamp tax on conveyance of real property cited in Seattle-First National Bank is identical to Section 196 of the 1997 National Internal Revenue Code *(Stamp Tax on Deeds of Sale and Conveyances of Real Property).* Thus, applying the U.S. Supreme Court's ruling in Seattle-First National Bank to petitioner's case, the transfer of real property from SPPC to petitioner was not effected by or dependent on any voluntary act or deed of the parties to the merger. Nor was any voluntary deed, conveyance, assignment or other instrument utilized or necessary. Upon the effective date of the merger, the real properties were automatically transferred to and vested in petitioner

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without further act or deed. The transfer occurred solely and automatically by virtue of Section 80(4) of the Corporation Code. In short, title to real property passed to and vested in petitioner by operation of law pursuant to the merger. There was, in effect, only absorption by the surviving corporation (petitioner), by operation of law, of real property of the absorbed corporation (SPPC) ***(Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6477, April 30, 2003)***."

b) On the Transfer of Shares of Stocks

Petitioner maintains that the transfer of Loyola Plans, Inc.'s shares of stocks in several corporations to petitioner is likewise by operation of law, hence, not subject to documentary stamp taxes.

This Court finds for the petitioner.

Section 176 of the National Internal Revenue Code of 1997 reads:

"**SEC. 176. Stamp Tax on Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Due-bills, Certificates of Obligations, or Shares or Certificates of Stocks**. – On all sales, or agreements to sell, or memoranda of sales, or deliveries, or transfer of due-bills, certificates of obligation, or shares or certificate of stock in any association, company, or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such due-bills, certificates of obligation or stock, or to secure the future payment of money, or for the future transfer of any due-bill, certificate of obligation or stock, there shall be collected a documentary stamp tax of One peso and fifty centavos (P1.50) on each Two hundred pesos (P200), or fractional part thereof, of the par value of such due-bill, certificate of obligation or stock: xxx"

In the present case, in addition to the real properties conveyed to petitioner as a result of the consolidation, the shares of stocks owned by Loyola Plans, Inc. in other corporations were also transferred to petitioner as a result of the consolidation. When the two constituent corporations consolidated to form a new corporation, all rights, privileges and properties were transferred to the consolidated corporation by operation of law without the need of any document or agreement to effect the transfer. Section 176 above-quoted applies only to sales or voluntary transfers of shares of stocks. The transfer of the subject shares of stocks to the petitioner as already stated, was by operation of law and needed no document or agreement to effect said transfer in accordance with Section 80, paragraph 4 of the Corporation Code, to wit:

> "The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; **and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed.**"

In view thereof, no documentary stamp taxes were due for the transfer of the shares of stocks to petitioner pursuant to the consolidation. Therefore, We now proceed to the second issue of whether petitioner had complied with the requirements of the law in connection with its claim for refund.

Section 200(B) of the National Internal Revenue Code of 1997 provides that the documentary stamp tax return shall be filed within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred, and the tax thereon shall be paid at the same time the said return was filed. In relation thereto, Section 229 of the same Code provides that a claim for refund of erroneously paid internal revenue tax shall be made within two (2) years from the date of payment of the tax.

Based on the evidence presented, Loyola Plans, Inc. filed the documentary stamp tax returns and paid the documentary stamp taxes on the transfers of real properties and shares of stocks on the following dates:

Exhibit	Document	Date Filed/Paid	Amount
B-1/B-2	DST Return / OR# 4457310	5/06/2002	P2,156,059.41
B-3/B-4	DST Return / OR# 4457308	5/06/2002	423,063.38
C-1/C-2	DST Return / OR# 9344417	5/08/2002	5,928.00
D-1/D-2	DST Return / OR# 581555	5/07/2002	33,075.00
E-1/E-2	DST Return / OR# 825075	5/06/2002	141,707.20
F-1/F-2	DST Return / OR# 914987	5/07/2002	104,535.00
G-1/G-2	DST Return / OR# 1011120	5/07/2002	187,353.60
H-1/H-2	DST Return / OR# 0009044	5/07/2002	179,789.10

I-1/I-2	DST Return / OR# 0009043	5/07/2002	21,818.40
J-1/J-2	DST Return / OR# 9257371	5/07/2002	31,716.00
K-1/K-2	DST Return / OR# 9787128	5/05/2002	23,742.00
L-1/L-2	DST Return / OR# 016	5/06/2002	27,229.94
M-1/M-2	DST Return / OR# 00835753	5/05/2002	21,996.00
N-1	DST Return	5/07/2002	14,469.45
O-1	DST Return / OR# 4508184	5/06/2002	699,275.32
	Total		**P4,071,757.80**

On the other hand, the administrative claims for refund were filed by petitioner with the different Revenue District Offices on the following dates:

Exhibit	Document / RDO Concerned	Date Filed	Amount Claimed
B	Letter of Refund / Makati City RDO	3/24/2004	P2,579,122.79
C	Letter of Refund / Tagaytay RDO	3/22/2004	5,928.00
D	Letter of Refund / Mandaluyong RDO	3/24/2004	33,075.00
E	Letter of Refund / Cebu City RDO	4/26/2004	141,707.20
F	Letter of Refund / Bacolod RDO	3/23/2004	104,535.00
G	Letter of Refund / Alabang RDO	3/22/2004	187,353.60
H	Letter of Refund / Batangas City RDO	3/29/2004	179,789.10
I	Letter of Refund / Batangas City RDO	3/29/2004	21,818.40
J	Letter of Refund / Legaspi City RDO	3/23/2004	31,716.00
K	Letter of Refund / Santiago City RDO	3/30/2004	23,742.00
L	Letter of Refund / Davao City RDO	3/29/2004	27,229.94
M	Letter of Refund / Dagupan City RDO	3/26/2004	21,996.00
N	Letter of Refund / Tacloban City RDO	3/25/2004	14,469.45
O	Letter of Refund / Makati City RDO	4/28/2004	699,275.32
	Total		**P4,071,757.80**

As can easily be gleaned from the above documents, the filing of the documentary stamp tax returns and payments of the documentary stamp taxes on the subject properties were made on May 5, 2002 to May 8, 2002 and the date of transaction was April 12, 2002 as indicated in all of the above returns. Counting from these dates, the last day for the two (2)-year prescriptive period within which to file a claim for refund or credit would fall on May 5, 2004, at the earliest. In this case, the administrative claims for refund or issuance of a tax credit certificate were filed between the period of March 22, 2004 and April 28, 2004 while the judicial claim for refund was filed on May 3, 2004. Hence, the same were filed well within the prescriptive period of two (2) years.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND**, or in the alternative **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner, the total amount of **FOUR MILLION SEVENTY ONE THOUSAND SEVEN HUNDRED FIFTY SEVEN AND 80/100 PESOS (P4,071,757.80)** representing erroneously paid documentary stamp taxes.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice