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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AMERICAN HOME ASSURANCE COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 4222

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
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3/22/93

D E C I S I O N

This is a claim for tax credit involving alleged overpaid documentary stamp tax on three (3) property insurance policies issued by American Home Assurance Company to Caltex Philippines, Inc. covering the period January 1985 to December 1986.

Petitioner issued to Caltex Phils. Inc. the following insurance policies, to wit:

(1) Open Marine Insurance Policy (Renewal) No. 34-5093-6
Date Issued - November 14, 1984
Period Covered - January to December 1985
Face Value - P11,069,410,856.06
Deposit premium charged - P9,685,734.50
Documentary stamp tax paid - P726,430.09
Date actual value of shipments ascertained - February 27, 1986
Actual value P9,720,942,278.41
Premium charged - P8,505,824.49
Documentary stamp tax thereon - P637,937.10
Alleged excess documentary stamp tax paid - P88,492.99

2) Open Marine Insurance Policy (Renewal) No. 34-5093
Date Issued - November 14, 1985
Period Covered - January to December 1986
Face Value - P10,506,795,360.00
Deposit premium charged - P9,193,445.94
Documentary stamp tax paid - P689,508.60
Date actual value of shipments ascertained - February 24, 1987
Actual value - P7,390,226,835.00
Premium charged - P6,466,448.48
Documentary stamp tax thereon - P484,983.90
Alleged excess documentary stamp tax paid P204,524.55

3) Fire Insurance Policy No. F - 13379 (F-1996064)
Date Issued - November 12, 1985
Period covered - January 1, 1986 to December 31, 1986
Face value - P14,039,131,308.00
Deposit premium charged - P63,176,090.85
Documentary stamp tax paid - P4,738,206.90
Date actual value ascertained - October 8, 1987
Actual value - P13,817,902,965.65
Premium charged - P62,180,563.35
Documentary stamp tax thereon - P4,663,542.25
Alleged excess documentary stamp tax paid - P74,664.65

Note that the premium payments by Caltex Phil. Inc. to petitioner for the three (3) insurance policies were claimed by the latter to be deposits. When the actual value of the property insured is subsequently ascertained, the premium charged is also adjusted. Inasmuch as the documentary stamp tax is based on the premium charged, the adjustment resulted in the alleged excess payment of documentary stamp tax on the aforementioned policies in the total amount of P367,682.19, subject matter of the instant claim for tax credit and Petition for Review. Respondent does not dispute the material facts of the case.

Therefore, the only issues for this Court to resolve are:

(1) Whether or not the documentary stamp tax should be based on the premium charged on the face value of the insurance policies at the time of issuance, or should it be based on the adjusted actual value as finally determined at the end of the year.

(2) Whether or not petitioner's claim for tax credit of the alleged overpaid documentary stamp tax in the total amount of P367,682.19 has already prescribed.

Petitioner on his part alleges that pursuant to Section 184 of the Tax Code, as amended, the documentary stamp tax shall be collected based on the "amount of premium charged" and he takes this to mean the actual premium collected at the end of the year and not the deposit premium charged made at the time of the issuance of the policy. Respondent on the other hand maintains that the documentary stamp tax attaches upon the issuance of the policies. The fact that the value and the corresponding premium are reduced subsequently does not in any way affect the documentary stamp tax due on the policies, citing BIR ruling on the matter.

The specific provision of law involved is Section 184 of the National Internal Revenue Code, as amended quoted below:

> Section 197 (now 184) - 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 fifty (now thirty) centavos on each four pesos, or fractional part thereof, of the amount of premium charged. Provided, however, that no documentary stamp tax shall be collected on reinsurance contracts or on any instrument by which cession or acceptance of insurance risks under any reinsurance agreement is affected or recorded. (Underscoring supplied.)

For a clearer and easier way of interpreting the above provision of law, we have to read it together with the following related provisions of law:

> Section 186 (now 173). - Stamp taxes upon documents, instruments and papers. - Upon documents, instruments and papers, and upon acceptance, 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 same time such act is done or transaction had: Provided, that whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax. (Underscoring supplied.)
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> Section 213 (now Section 200) - Payment of documentary stamp tax. Cancellation of stamp. - 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 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 by 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 machines, 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. (Underscoring supplied.)

The general basis and guideline for the imposition of documentary stamp tax is provided by Section 186 (now 173). It states that there shall be levied, collected and paid for upon documents, instruments and papers evidencing the act done or transaction had, documentary stamp taxes prescribed in the following sections. The different rates of documentary stamp tax imposed on the different kinds of document are enumerated in the sections that followed. On all policies of insurance upon property, Section 197 (now 184) provides that there shall be collected a documentary stamp tax of fifty (now thirty) centavos on each four pesos of the amount of premium charged. Take note that both provisions of law specify that the documentary stamp tax shall be collected on the document or instrument as in the case of insurance policy. Take for instance property insurance, the rate of tax is based on the premium charged. This is in turn based on the amount of insurance secured. While petitioner may argue that the documentary stamp tax should be based on the actual premium charged, the same may not be true if we will consider the nature of documentary stamp tax. It is a tax on the document or instrument evidencing the transaction agreed upon. In the case of insurance, it is a tax on the policy itself which sets forth the insurance coverage agreed upon by and between the insurance company and the insured. Normally, they agree on the amount of insurance coverage as in the case at hand. Both the open marine policy and fire insurance policy in the instant case are with specified values (Exhibits "A-1" and "E"). Pursuant to Section 61 of the Insurance Code, "a valued policy is one which express on its face an agreement that the thing insured shall be valued at a specified sum" while an open policy under Section 60, "is one in which the value of the thing insured is not agreed upon but is left to be ascertained in case of loss." The fact that the insurance companies and the insured have agreed to adjust the insurance premium based on the actual value of the shipments or property insured at the end of the year is of no moment. Liability of an instrument to a documentary stamp tax and the amount of the tax are determined by the form and face thereof and cannot be affected by proof of facts outside of the instrument itself (U.S. v. Isham, 17 Wall, D 96, 84 U.S. 496, cited on p. 773, Jose Aranas, Updated National Internal Revenue Code, 1988 ed).

Furthermore, pursuant to Section 213 (now 200) aforequoted, documentary stamp taxes are collected by the purchase and affixture of the documentary stamps to the document or instrument taxed. This bolsters our stand that the said tax is a tax on the document itself and therefore the rate of tax must be determined on the basis of what is written or indicated on the instrument itself independent of any adjustment which the parties may agree on in the future. At this point, this Court agrees with the opinion rendered by the previous Commissioner of Internal Revenue that the documentary stamp must be affixed to the insurance policy on the date it is issued even if no premiums have been paid, as the documentary stamp tax accrues the moment such policy is issued. This being the case, the subsequent cancellation of insurance policies issued will not exempt the insurer from the corresponding documentary stamp tax. (BIR Ruling No. 433 cited on page 805 of Aranas, Loc cit). An interpretation given by the agency entrusted by law to implement the same carries a great weight.

This Court finds this legal interpretation logical and a sound tax policy. When insurance policies are issued by an insurance company and the same are accepted by the assured, rights and obligations are established. The insurance company has the right to collect the premiums due but is under obligation to indemnify the insured in case of loss arising from the insurance risk. The assured in turn has the right to claim indemnity for any loss covered by the insurance but is under obligation to pay the premium charged. Since rights and obligations between the parties are established and become enforceable at the time of the issuance and acceptance of the policy, so is the right of the State to tax the documents evidencing the transaction especially if on the face of the instrument the same can also be determined. To interpret otherwise that the tax due would depend on the final outcome of events on some future time by reason of the agreement of the parties, would make the state at the mercy of its constituents. If tax is considered the lifeblood of the government, by interpreting it the way petitioner wishes it to be interpreted, will provide instability to the government's existence. Taxation should not be made subject to private agreements but should be based on a stable, firm and exact determination by the taxing authorities.

Nevertheless assuming that petitioner is entitled to tax credit on the alleged overpaid documentary stamp tax, petitioner's claim has already been barred by prescription. A two year limitation within which to file a written claim for refund or tax credit and to institute a suit or proceeding in this Court of erroneously or illegally assessed or collected national internal revenue tax is provided by Section 230 of the Tax Code, as amended. In the case at bar, the three (3) insurance policies were issued on November 14, 1984, November 14, 1985 and November 12, 1985 respectively. As discussed earlier, the documentary stamp tax becomes due at the time the insurance policy is issued and payment is made by the purchase and affixture thereof to the insurance policy upon issuance. In the instant case, the petition for review was filed on January 14, 1988 which is way beyond the reglementary period of two years from the aforementioned dates the documentary stamp tax on the insurance policies involved were deemed paid.

WHEREFORE, the instant Petition for Review and claim for tax credit is denied for lack of merit.

SO ORDERED.

Quezon City, Metro Manila, March 22, 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 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