REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE NATIONAL BANK
Petitioner,

- versus - C.T.A. CASE NO. 5530

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: MAR 15 1999

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DECISION

This is a judicial claim for refund/issuance of tax credit in the amount of P1,182,760.52 allegedly representing 5% premium tax which was erroneously withheld and paid by petitioner to respondent's Bureau.

Petitioner is a private financial institution duly organized and existing under Philippine laws with office address at PNB Financial Center, Roxas Blvd., Pasay City.

The facts are simple.

In 1995, pursuant to an agreement for health care services with Philamcare Health Systems, Inc. ("Philamcare", for short), known as the Comprehensive Health Care Maintenance Program, petitioner paid to the latter membership fees of its employees to said program. The fees were sourced out from the health care maintenance benefits granted to all members by the PNB Provident Fund and from petitioner's 1994 basic hospitalization benefits of bank personnel.

The present controversy arose when petitioner, thinking that Philamcare is an insurance company, subjected said fees to the 5% premium tax provided in Section 121 of the Tax Code in the abovementioned amount

of P1,182,760.52 and, in compliance with Republic Act No. 1051, correspondingly withheld and remitted the same to respondent's Bureau on October 9 and 10, 1995 (Exhibits C and D).

Later, however, petitioner refunded partly the amount of P1,076,266.77 to Philamcare upon being advised by the latter in a letter dated June 15, 1995 (Exhibit E) that it is a health maintenance organization and not an insurance company, the text of which is hereunder pertinently quoted, to wit:

> Moreover, PhilamCare is not even an "insurance company". PhilamCare is a health maintenance organization (an 'HMO' in ordinary parlance) defined as "a juridical entity legally organized to provide or arrange for the provision of pre-agreed or designated health case services to its enrolled members for a fixed pre-paid fee for a specified period of time" (Section 4.4, Rules and Regulations on the Supervision of Health Maintenance Organizations; Administrative Order No. 34 of the Office of the Secretary, Department of Health, 20 July 1994; a copy of which is hereto attached as Annex "A"). The term "insurance company", on the other hand, includes every person, company, corporation or association, holding a certificate of authority from the insurance Commission to engage on the business of underwriting insurance (please refer to Secs. 6 and 186, The Insurance Code).
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> In fact, PhilamCare's license or clearance to operate as an HMO was issued by the Bureau of Licensing and Regulation, Office for Health Facilities Standards and Regulation, Department of Health (attached hereto as Annex "B" is a copy of PhilamCare's Clearance to Operate issued by Undersecretary of Health Juan R. Nanagas, M.D. with validity period of 11 May

(N2)

> 1995 to 10 May 1996). Insurance companies, on the other hand, are required to obtain their license to operate or certificate of authority from the Insurance Commission (Section 186 and 187 of the Insurance Code).
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> Inasmuch as PhilamCare is not an insurance company, and because what it seeks to collect from PNB are 'membership fees', not 'insurance premiums', they are therefore not subject to the 5% premium tax mentioned in Section 121 of the National Internal Revenue Code.

Consequently, on July 18, 1996, petitioner filed the corresponding written claim for refund of the aforementioned amount of 5% premium tax remitted to respondent's Bureau. However, petitioner was constrained to file before this Court the instant refund on June 4, 1997 due to the near expiry of the two-year prescriptive period within which a claim for refund may be filed judicially from date of payment, as provided in Section 230 of the Tax Code.

At bar, petitioner reasserts its stance *a quo*. On the other hand, respondent contends, inter alia, the following special and affirmative defenses, to wit:

> 5. The membership fees of Philippine National Bank employees and their dependents paid to Philamcare Health Systems, Inc. pursuant to an agreement whereby the latter shall provide health care services to the former, are in the nature of insurance premiums. Thus, such fees are subject to the 5% premium tax as provided under Sec. 121 of the National Internal Revenue Code.

(N3)

> 6. Taxes are presumed to have been collected in accordance with law. Hence, petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected.
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> 8. Claims for tax refund are construed strictly against claimants, the same being in the nature of an exemption from taxation (Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351).

Based on the disquisition of the parties, the issues confronting Us are the following, to wit:

> 1. Whether or not Philamcare is an insurance company; and if in the negative,
>
> 2. Whether or not petitioner is entitled to its claim for refund/issuance of tax credit in the amount of P1,182,760.52.

After a painstaking scrutiny of the facts, arguments and laws in point, this Court rules in favor of the respondent.

It is to be noted that both parties, especially in their memoranda, extensively dwelt on the nature of Philamcare whether it is an insurance company or not in presenting their respective argumentations. We find this attempt to be in vain. Philamcare is not a party nor a witness in this case. Petitioner merely submitted in evidence the letter of June 15, 1995 prepared by the law firm of Philamcare (Exhibit E) which argues that the latter is not an insurance company. Such letter, We

believe, is hearsay and leaves so many doubts as to the veracity of its assertions.

> Evidence, oral or written, is hearsay when its probative force depends in whole or in part on the competency and credibility of a person other than the witness (**State vs. Klutz, 206 N.C. 726, 804, 175 S.E. 81,** as cited in Compendium on Evidence, 3rd. Ed. by Sibal and Salazar, Jr.)

Petitioner is definitely not in a position to demonstrate before this Court that Philamcare is not an insurance company. What it says is simply second-hand evidence. It should testify only to those facts which it knows from personal knowledge. (**Section 36, Rule 130, Revised Rules of Court**)

From another point of view, it would be unwise for this Court to decide on the status of Philamcare as a health maintenance organization and not as an insurance company on account of the fact that it is not a party to this case. To rule for or against such an issue would simply be violative of procedural due process of law because Philamcare itself has not been personally afforded any opportunity to be heard. What if We so decide that Philamcare is an insurance company and therefore, subject to the 5% premium tax? Surely, it would raise howl on such a pronouncement.

Even assuming for the sake of argument that We could adjudicate herein case based on available evidence, We would still rule in favor of the respondent. The aforestated letter of June 15, 1995 (Exhibit E) constitutes for all intents and purposes, a self-serving statement, aside from being a hearsay as earlier adverted to.

Moreover, a review of the averments contained therein fails to satisfy the curiosity of this Court. For instance, the mere fact that Philamcare is licensed to operate by the Department of Health as a health management organization does *not ipso facto* make it a non-insurance entity. Under Section 5 of Administrative Order No. 34 of the Department of Health (Exhibit E-3) which was issued pursuant to Section 4 (h) of Executive Order No. 119, the regulatory authority of said Department over health is subject to the powers and functions of other government agencies such as the Securities and Exchange Commission and the Cooperative Development Authority.

Although the Insurance Commission has not been mentioned, We would like to drive the point that having a license from the Department of Health would still require getting clearances from other specific government agencies. On this aspect, there is a possibility that

said Department inadvertently failed to consider the Insurance Commission in the promulgation of the Order.

Petitioner should remember that the term "doing insurance business" or "transacting an insurance business" within the meaning of Section 2 of the Insurance Code embraces the doing or proposing to do ***any business in substance equivalent*** to the legal definition of such term which is designed to evade the provisions of said Code. Could it be that the business of health management organizations falls under this category? Unfortunately however, because Philamcare is not a party to herein case for reasons abovestated, We are reserving Our threshold opinion on whether health maintenance organizations are in substance insurance companies, hence subject to the 5% premium tax.

We note that the resolution of this particular matter can be readily facilitated if any of the parties only bothered to seek the opinion of the Insurance Commission over the actual status of health maintenance organizations and present it as part of their testimonial or documentary evidence.

Also, while it is well-settled that a withholding agent can file a claim for refund on the taxes it has withheld (**Commissioner of Internal Revenue vs. Procter &**

Gamble Philippine Manufacturing Corporation, G.R. 66838, December 2, 1991), We believe that in this particular case, the necessity of joining Philamcare as a party litigant is imperative because of the far reaching consequence of any decision that We may take on the taxability of the very nature of its business.

Prescinding from above, this Court is not at all pleased with respondent's belated effort in his memorandum to digress from the issue at hand by invoking in the alternative that the premiums allegedly paid by the petitioner constitutes an additional salary which is subject to expanded withholding tax. We find otherwise.

A look into the alleged annual membership fees stipulated in the Health Care Agreement signed by petitioner and Philamcare (Exhibit A) shows that they are of modest amounts. Added to this, it cannot be denied that the agreement was secured in order to provide health care services to petitioner's employees. In this regard, We deem the alleged fees as falling under the provisions of Section 2(a) of Revenue Regulations No. 6-82 implementing Section 28 of the Tax Code which treats the same as privileges and not compensation subject to withholding because of their relative small value and purpose of promoting the health, goodwill, contentment and efficiency of petitioner's employees.

Further, respondent should realize that the object of herein refund or issuance of tax credit is the 5% tax on insurance premiums allegedly erroneously remitted. Respondent's insistence on the expanded withholding tax on income is simply out of place. They are two taxes belonging to different titles of the Tax Code.

Notwithstanding respondent's mistaken notion, however, petitioner has unfortunately failed to surmount the burden of proof required in order to convince Us that it is entitled to its claim for refund.

> Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law and cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. v. Llanes, 49 Phil. 466; Northern Phil. Tobacco Corp. v. Mun. of Agoo, La Union, 31 SCRA 304; Reagan v. Commissioner, 30 SCRA 968; Asturias Sugar Central, Inc. v. Commissioner of Customs, 29 SCRA 617; Davao Light and Power Co., Inc. v. Commissioner of Customs, 44 SCRA 122). Thus, when tax exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well founded doubt is fatal to the claim (Farrington v. Tennessee & Country Shelby, 95 U.S. 679,686; Manila Electric Co. v. Vera, L-29987, Oct. 22, 1975; Manila Electric Co. v. Tabios, L-23847, Oct. 22, 1975, 67 SCRA 351). [Towa Industry, Inc. v. Commissioner of Internal Revenue, CTA Case no. 5219, May 13, 1997]

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WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence and the absence of Philamcare as a necessary party.

SO ORDERED.

AMANCIO Q. SAGA
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 consutation with the members of the Court of Tax Appeals in accordance with Section 13, Artice VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals

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