REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

THE INSULAR LIFE ASSURANCE CO., LTD., Petitioner,	**C.T.A. CASE NO. 7292**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 2 1 2009 2:00 p.m.

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DECISION

CASTAÑEDA JR., *J.*:

The *Petition for Review* seeks the cancellation of the *Assessment Notice* with *Formal Letter of Demand* both dated July 29, 2004, assessing petitioner for alleged deficiency documentary stamp tax (DST) in the amount of P93,934,359.21 for calendar year 2002.

The Insular Life Assurance, Co., Ltd. (Petitioner) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at IL Corporate Center, Insular Life Drive, Filinvest Corporate City, Alabang, Muntinlupa City.[1]

[1] Par. 1.01, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 161.

Respondent Commissioner of Internal Revenue is the official duly authorized under Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended, to assess and collect internal revenue taxes, as well as the power to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court.[2]

On October 7, 2004, petitioner received an *Assessment Notice* with *Formal Letter of Demand* both dated July 29, 2004, assessing petitioner for deficiency DST on its premiums on direct business/sums assured for calendar year 2002; computed as follows:[3]

Documentary Stamp Tax	
Deficiency Documentary Stamp Tax – Basic	70,732,389.83
Add: Increments (Interest and Compromise Penalty)	23,201,969.38
Total Amount Due	**93,934,359.21**

Consequently, petitioner filed its *Protest Letter* on November 4, 2004.[4]

On June 23, 2005, petitioner received the *Final Decision on Disputed Assessment* dated April 15, 2005, denying its protest for lack of factual and legal bases.[5] Hence, petitioner filed the present *Petition for Review* on July 15, 2005.

Respondent made counter allegations in his *Answer*, the following pertinent portions of which are hereunder quoted:[6]

> "3. He SPECIFICALLY DENIES the allegations in paragraphs 3.07 and 4.04, and the allegations and discussions in the petition under the headings THE ISSUE and DISCUSSION for being, as a whole, erroneous conclusions of fact and/or law, the truth of the matter being those stated hereunder;

[2] Par. 2.01, JSFI, Docket, p. 162.
[3] Par. 2.02, JSFI, Docket, p. 162; Exhibit "A".
[4] Exhibit "F".
[5] Par. 2.04, JSFI, Docket, p. 163; Exhibit "B".
[6] Docket, pp. 124-126.

4. The assessment was issued in accordance with existing law and regulations. The factual and legal bases for the assessment are incorporated in the subject assessment.

5. Petitioner is not registered as a cooperative company pursuant to the Cooperative Development Authority, or Republic Act No. 6938, and the Bureau of Internal Revenue's implementing revenue regulations; hence, it is not entitled to tax exemptions enumerated under the law, including exemption from the payment of DST. Petitioner as an ordinary corporation is, therefore, subject to the DST prescribed under Section 183 of the Tax Code, as amended;

6. Investigation of the BIR disclosed that the tax due per information gathered from the Insurance Commission against the petitioner's actual payments showed a discrepancy in the DST liability for the year 2002. Petitioner did not introduce any evidence in its protest to overthrow the validity of the questioned assessment. Hence, the denial of the protest.

7. Tax exemptions are not presumed *(Lealda Electric Co., Inc. v. Collector of Internal Revenue, L-16428, April 30, 1963)*. Exemption from taxation are highly disfavored in law, and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implications *(Asiatic Petroleum Co. (P.I.), Ltd., v. Llanes, 49 Phil 466* cited in *Collector on Internal Revenue v. Manila Jockey Club, Inc., 98 Phil 670; Davao Light & Power Co., Inc. vs. Commissioner of Customs, et al., L-28739 & L-28902, Match 29, 1972).*

8. Assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of the correctness of tax assessments. *(Interprovincial Autobus Co., Inc., v. Collector of Internal Revenue, 98 Phil. 290; Sy Po v. CTA, et. al., G.R. No. 81446, August 18, 1988; Dayrit, et. al., v. Cruz et. al., L-39910, September 26, 1988; Cagayan Robina Sugar Milling Company v. Court of Appeals, et. al., G.R. No. 122451, October 12, 2000)* Failure to present proof of error in the assessment will justify judicial affirmation of said assessment. *(Delta Motors Co. v. Commissioner, CTA Case No. 3782, May 21, 1986; Commissioner of Internal Revenue v. Court of Appeals, et. al., G.R. Nos. 104151 and 105563, March 10, 1995).*" ge

Petitioner filed its *Pre-Trial Brief* on November 21, 2005;[7] while respondent filed its *Pre-Trial Brief (For the Respondent)* on November 22, 2005.[8]

During the Pre-trial on November 24, 2005, the parties stipulated on the facts and issues, and were ordered by this Court to submit their Joint Stipulation of Facts and Issues.[9]

In a *Resolution* dated January 19, 2006, the Court approved the parties *Joint Stipulation of Facts and Issues*[10] filed on January 9, 2006; thereby terminating the Pre-Trial and ordering the parties to proceed with the trial proper.[11]

After the presentation of its evidence, petitioner filed its *Formal Offer of Evidence* on June 27, 2006, wherein it offered *Exhibits "A" to "M"*, inclusive of submarkings.[12] Respondent filed its *Comment (To Petitioner's Formal Offer of Evidence)* on July 31, 2006.[13]

In a *Resolution* dated August 29, 2006, the Court resolved to admit petitioner's offer of evidence subject to final evaluation and appreciation of their purpose, materiality, relevancy, and probative value. The Court thereafter ordered the presentation of respondent's evidence.[14]

[7] Docket, pp. 131-140.
[8] Docket, pp. 141-145.
[9] Docket, p. 150.
[10] Docket, pp. 161-165.
[11] Docket, p. 166.
[12] Docket, pp. 290-295.
[13] Docket, pp. 428-430.
[14] Docket, pp. 433-434.

On April 20, 2007, respondent filed a *Manifestation with Motion*[15] praying for the resetting of the scheduled hearing and for the issuance of a *Subpoena Ad Testificandum* and *Subpoena Duces Tecum.*[16]

On April 23, 2007, the Court gave petitioner's counsel a period of ten (10) days to file an Opposition/Comment and respondent's counsel a period of five (5) days to file a Reply thereto.[17]

Petitioner filed a *Motion for Leave to File and to Admit Attached Comment/Opposition* on May 18, 2007[18], and its *Comment/Opposition (Re: Manifestation with Motion and Request for the Issuance of Subpoena Ad Testificandum and Subpoena Duces Tecum dated 30 August 2006)* on May 19, 2007.[19] The Court, in the interest of substantial justice, admitted petitioner's *Comment/Opposition* in an *Order* dated May 23, 2007.[20]

In a *Resolution* dated July 4, 2007, the Court resolved to deny respondent's *Manifestation with Motion* for lack of merit, which consequently terminated respondent's continuation of presentation of evidence and respondent was ordered to file its Formal Offer of Evidence.[21]

Respondent filed an *Omnibus Motion* on July 24, 2007, praying for the reconsideration of the *Resolution* dated July 4, 2007;[22] and in an *Order* dated July 26, 2007, the Court ordered petitioner to file a comment thereto.[23]

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[15] Docket, pp. 451-454.
[16] Docket, pp. 456-457.
[17] Docket, p. 460.
[18] Docket, pp. 461-465.
[19] Docket, pp. 466-474.
[20] Docket, p. 476.
[21] Docket, pp. 479-482.
[22] Docket, pp. 483-490.
[23] Docket, p. 501.

Petitioner filed a *Manifestation*[24] with attached *Motion for Extension of Time to File Comment/Opposition (Re: Omnibus Motion dated 3 July 2007)*[25] on August 9, 2007. Subsequently, on August 13, 2007, petitioner filed its *Comment/Opposition (Re: Omnibus Motion dated 3 July 2007).*[26]

However, on August 30, 2007, petitioner filed a *Motion for Leave to File and to Admit Attached Comment/Opposition (Re: Omnibus Motion dated 23 July 2007)*[27], with its *Comment/Opposition (Re: Omnibus Motion dated 23 July 2007).*[28] In a *Manifestation* dated August 31, 2007, petitioner stated that the *Comment/Opposition* filed on August 13, 2007 was intended for CTA Case No. 7291 and not for the instant case; hence, it prayed for the correction of the records.[29]

In a *Resolution* dated September 20, 2007, the Court denied respondent's *Omnibus Motion* for lack of merit and ordered it to file its Formal Offer of Evidence.[30]

Respondent filed its *Formal Offer of Evidence* on October 22, 2007, wherein it offered *Exhibits "1" to "15"*, inclusive of submarkings.[31] In a *Resolution* dated January 3, 2008, the Court admitted the same and ordered the parties to file their respective Memorandum.[32]

On January 29, 2008, petitioner filed a *Motion for Suspension of Collection of Taxes* manifesting that on January 24, 2008, petitioner received

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[24] Docket, pp. 502-503.
[25] Docket, pp. 504-507.
[26] Docket, pp. 508-522.
[27] Docket, pp. 560-562.
[28] Docket, pp. 563-576.
[29] Docket, pp. 614-616.
[30] Docket, pp. 618-620.
[31] Docket, pp. 626-636.
[32] Docket, pp. 642-643.

a Letter dated January 21, 2008 from the BIR stating that it was among the taxpayers who is subject to the issuance of a Warrant of Distraint and Garnishment and/or Levy involving outstanding delinquent accounts; thus, petitioner prayed for the suspension of the collection of taxes and the reduction of the bond which may be required to be posted for the said purpose.[33] Respondent filed on February 14, 2008 its *Comment to Petitioner's Motion to Suspend Collection of Tax filed on 04 February 2008* [34]; while petitioner filed its *Reply to the Respondent's Comment to the Motion to Suspend Collection of Tax dated 14 February 2008* [35] on February 27, 2008.

In a *Resolution* dated March 17, 2008, the Court granted petitioner's *Motion for Suspension of Collection of Taxes* subject to the filing of a bond. [36]

Petitioner filed its *Memorandum*[37] on March 10, 2008 and its *Submission/Compliance*[38] on March 31, 2008.

Respondent filed its *Memorandum (for Respondent)*[39] on April 8, 2008.

The Court in a *Resolution* dated April 28, 2008, finding the documents submitted in order, resolved to approve petitioner's surety bond.[40]

In a *Resolution* dated May 19, 2008, considering petitioner's *Memorandum* filed on March 10, 2008 and respondent's *Memorandum* filed on April 8, 2008, the case was ordered submitted for decision.[41]

Hence, this Decision.

[33] Docket, pp. 644-651.
[34] Docket, pp. 659-668.
[35] Docket, pp. 678-684.
[36] Docket, pp. 705-708.
[37] Docket, pp. 718-748.
[38] Docket, pp. 750-753.
[39] Docket, pp. 762-773.
[40] Docket, p. 776.
[41] Docket, p. 778.

The parties agreed on the following issues for this Court's resolution:[42]

1. Whether or not the assailed *Formal Letter of Demand* and *Assessment Notice* for deficiency documentary stamp taxes for calendar year 2002 is void for failing to state the facts on which it is based; and

2. Whether or not petitioner is liable for deficiency DST in the total amount of P95,575,261.42.

Petitioner argues that inasmuch as the *Assessment Notice* failed to comply with the requirements pursuant to Section 3.1.4 of Revenue Regulations No. 12-99, the same should be declared void and without legal effect. It further alleges that since it is a non-stock mutual life insurance company, which is considered by law and jurisprudence as a cooperative company, it is therefore exempt from DST on its insurance policies pursuant to Section 199 of the NIRC, as amended.

On the other hand, respondent counters that the assessment was issued in accordance with existing law and regulations. In fact a *Detail of Discrepancies*, which contains the factual and legal bases of the subject assessment, was attached to the *Formal Letter of Demand* and *Assessment Notice*. Accordingly, petitioner was fully apprised of how the BIR computed the purported deficiency documentary stamp tax.

At this juncture, the Court reckons it proper to quote Section 228 of the NIRC, as amended, considering that its provision and correct application will determine the proper resolution of this case, to wit:

> "**SEC. Protesting of Assessment.** – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx

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[42] Pars. 3.01 and 3.02, JSFI, Docket, p. 163.

> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Here, petitioner received the *Assessment Notice* and *Formal Letter of Demand* for deficiency DST for calendar year 2002 on October 7, 2004.[43] Counting therefrom, petitioner had thirty (30) days within which to file its administrative protest or until November 6, 2004, and a period of sixty (60) days thereafter to submit all relevant documents in support of its protest or until January 3, 2005.

Petitioner filed its *Protest Letter*[44] dated November 3, 2004 on November 4, 2004 and its *Transmittal Letter of Relevant Supporting Documents*[45] dated December 14, 2004 on December 17, 2004. From the gr

[43] Exhibit "A".
[44] Exhibit "F".
[45] Exhibit "G".

foregoing, petitioner's administrative protest on the assessment was filed well within the prescribed period.

Counting from the date petitioner submitted its supporting documents for its protest or from December 17, 2004, respondent had a period of one hundred eighty (180) days within which to act upon the said protest, or until June 15, 2005.

Respondent rendered his *Final Decision on the Disputed Assessment* on April 15, 2005, which was received by petitioner on June 23, 2005.[46] Counting from the period given, petitioner had thirty (30) days within which to appeal the decision to this Court or until July 23, 2005.

However, petitioner received respondent's *Final Decision* on its Protest beyond the one hundred eighty day (180)-day period from its submission of supporting documents, or as earlier stated, beyond June 15, 2005.

In any case, petitioner's appeal to this Court was within the prescribed period. Petitioner filed the present *Petition for Review* on July 15, 2005 or the last day of the thirty days within which to appeal from the lapse of the 180-day period.

From the foregoing, petitioner had timely filed its judicial appeal within the prescriptive period.

As regards the validity of the issued *Assessment Notice*, the Court quotes the relevant portions of Section 228 of the NIRC of 1997 and Section 3.1.4 of Revenue Regulations No. 12-99, which state:

> "The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

[46] Exhibit "B".

> "**SECTION 3.1.4.** *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* xxx."

From the foregoing, a taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against him.

In the present case, petitioner claimed that immediately evident from a perusal of the *Assessment Notice* that it does not contain the statement of facts upon which the assessment for deficiency DST was based; hence, such should be declared void and without legal effect.

The Court finds such allegation untenable.

Based on the records of the case, petitioner received the *Formal Letter of Demand* and *Assessment Notice No. LTS-116-LN-DST-02-04-00030* both dated July 29, 2004 on October 7, 2004.[47] The *Formal Letter of Demand* reads:

> "Please be informed that after reconciliation, there has been found due from you deficiency Documentary Stamp Taxes for the calendar year 2002 pursuant to Letter Notice No. 025-031 dated August 1, 2003, summarized below:
>
> xxx xxx xxx
>
> The complete details covering the aforementioned assessment and discrepancies established during the reconciliation are shown in the accompanying SCHEDULE-1 of this Letter of Demand."

On the other hand, the attached *Schedule 1* titled *Calendar Year 2002 Details of Discrepancies* provides:

[47] Exhibit "A".

"**Documentary Stamp Tax**

Per reconciliation of the documentary stamp tax due per information from the Insurance Commission against your actual payment sourced from our records, there appears a discrepancy in your documentary stamp tax liability for the year 2002 as detailed hereunder:

Documentary Stamp Tax		
DST due on Premiums on Direct Business/Sums Assured per IC Schedule		86,312,647.50
DST due paid on Premiums Direct Business per DST Return/Form 2000		15,580,257.67
Deficiency Documentary Stamp Tax – Basic		70,732,389.83
Add: Increments		
Interest from 01/11/03 to 08/31/04 at 20%pa	23,176,969.38	
Compromise Penalty	25,000.00	23,201,969.38
Total Amount Due		**93,934,359.21**

The deficiency represents underpayment of your documentary stamp tax due on your premiums on direct business/sums assured only for the year as provided for under Section 183, NIRC of 1997, as amended.

The 20% interest per annum has been imposed pursuant to the provisions of Section 249 (B) of the said Code."

Clearly, the *Formal Letter of Demand* with the attached *Details of Discrepancies*, and *Assessment Notice*, taken as a whole, are sufficient to meet the requisites under Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of Revenue Regulations No. 12-99. *Ergo*, the Court finds the foregoing sufficient to inform petitioner of the law and facts on which the deficiency tax assessment was based.

On petitioner's claim that it is a cooperative company, Section 123 of the NIRC of 1997, as amended, defines the term "cooperative companies" as follows:

"Cooperative companies or associations are such as are conducted by the members thereof with the money collected from among themselves and solely for their own protection and not for profit."

In the case of *The Insular Life Assurance Company, Ltd. vs. Commissioner of Internal Revenue*[48], this Court ruled that:

> "xxx [T]here is no more impediment at this point in time to the legality of petitioner's contention that it is a purely cooperative company. The decision of this Court in the case of *Insular Life Assurance Company, Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 5336, supra,* has already been upheld *in toto* by the Court of Appeals in CA G.R. SP No. 46516 with the corresponding Entry of Judgment made on October 23, 1998. The finality of such now serves as a *res judicata* on the similar legal issue being raised by the parties in the case at bar. xxx"

Likewise, in the recent case of *The Insular Life Assurance, Co., Ltd. vs. Commissioner of Internal Revenue*[49], whose factual and legal circumstances are analogous to the present case, this Court declared:

> "*First,* petitioner is managed by its members. A stock insurance company doing business in the Philippines may alter its organization and transform itself into a mutual insurance company. Article 7 of its Amended Articles of Incorporation shows that petitioner has been converted from a stock life insurance company to a non-stock mutual life insurance corporation pursuant to Section 266, Title 17 of the Insurance Code of 1978. Under such set-up, the ownership of petitioner is vested in its members who are entitled to one vote each and who, in turn, elect from among themselves the members of its board of trustees. The board of trustees, on their part, exercises the powers and conducts the business of the corporation.
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> Seen from the above, all the members of petitioner have actual democratic participation in their choice of who represent them in the running of corporate affairs. In this sense, petitioner is solely conducted, managed or guided by its member-policyholders.
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> *Second,* petitioner is operated with money collected from its members by way of premiums for their exclusive benefit and protection from risks assumed by their insurance policy. Since petitioner is composed of members who are all

[48] CTA Case No. 5601, May 27, 1999.
[49] CTA Case No. 7291, August 12, 2008, citing *Republic of the Philippines vs. Sunlife Assurance Company of Canada*, G.R. No. 158085, October 14, 2005, 473 SCRA 129.

policyholders thereof, all premiums collected are entirely sourced from the members only. Such premiums are thereafter pooled in a common fund to answer directly for the cost of insurance protection, which includes operating costs and payment of indemnity and benefit claims of the member-policyholders. The cash paid in for premiums constitute the assets of petitioner.

Third, petitioner is licensed for the mutual protection of its member, not for the profit of anyone. Petitioner invests the common fund in order to earn additional income to ensure that sufficient funds are available to meet benefit claims of members-policyholders and to pay operating expenses. The effect of investment income is to reduce the cost of insurance to policyholders. As such, these investments ultimately redound to the protection and benefit of its members-policyholders. In case there is surplus over the intended benefit claims and the incidental expenses, they are distributed back to the policyholders as return of premiums.

It does not follow that because petitioner is registered as a non-stock corporation and thus exists for a purpose other that profit, the company can no longer make any profits. Earning profits is merely secondary, not primary, purpose. In fact, it may not lawfully engage in any business activity for profit, for to do so would change or contradict its nature as a non-profit entity. It may, however, invest its corporate funds in order to earn additional income for paying its operating expenses and meeting benefit claims. Any excess profit it obtains as an incident to its operations can only be used, whenever necessary or proper, for the furtherance of the purpose for which it was organized."

Similarly, in this case, the ownership of the corporation is vested in its members, consisting of policyholders;[50] the conduct of business, the control of properties, and the powers are exercised through the Board of Trustees who are all members of the corporation;[51] the operations of the corporation are funded by its members through the payment of capital by way of premiums, which constitute the common fund to answer for the cost and payment of

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[50] Exhibit "D".
[51] Exhibit "D".

indemnity and benefit claims of its members;[52] and the investment of its common fund is to reduce the cost of insurance to the policyholders.[53]

Equally noteworthy is the fact that registration with the Cooperative Development Authority is not a requisite to be entitled to the disputed tax exemption. Neither the Tax Code nor the Insurance Code prescribes its registration. In fact, not even the Cooperative Code applies to the case at bar. The insurance that petitioner provides to its members is different from the insurance business referred to in the Cooperative Code.[54]

Apparently, petitioner has complied with the requisites of a cooperative company organized for the mutual protection of its members.

As to petitioner's claim that as a non-stock mutual life insurance company it is a cooperative company, and is thus exempt from payment of DST, Section 199(a) of the NIRC of 1997, as amended, provides:

> "**SEC. 199. Documents and Papers Not Subject to Stamp Tax.** – The provision of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:
>
> (a) Policies of insurance or annuities made or granted by a fraternal or beneficiary society, order, association, or cooperative company, operated on the lodge system or local cooperation plan and organized and conducted solely by the member thereof for the exclusive benefit of each member and not for profit."

Inasmuch as petitioner sufficiently established that it is a cooperative company, it follows and this Court so holds that petitioner is exempt from DST on the insurance policies it grants to its members.

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[52] Exhibit "M".
[53] Exhibit "M".
[54] Article 6(7), Republic Act No. 6938. See also *Republic of the Philippines vs. Sunlife Assurance Company of Canada*, supra.

WHEREFORE, premises considered, the *Petition for Review* is hereby **GRANTED**. Accordingly, the *Formal Letter of Demand* and *Assessment Notice* dated July 29, 2004 are hereby **CANCELLED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice