REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

THE INSULAR LIFE ASSURANCE CO., LTD, Petitioner,	**C.T.A. CASE NO. 7291**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 1 2 2008 4:03 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

The instant Petition for Review seeks the cancellation of the Formal Letter of Demand and Assessment Notice dated September 3, 2004, assessing petitioner for alleged deficiency documentary stamp tax (DST) in the amount of P95,575,261.42, inclusive of interest and compromise penalties for calendar year 2001.

The Insular Life Assurance Co., Ltd. (Petitioner) is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office located at IL Corporate Center, Insular Drive, Filinvest Corporate City,

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Alabang, Muntinlupa City.[1] It is duly registered with the Insurance Commission and authorized to engage in the business of providing life insurance[2], but is not registered with the Cooperative Development Authority (CDA).[3]

The Commissioner of Internal Revenue (Respondent) is the official of the Bureau of Internal Revenue (BIR) duly authorized to assess and collect internal revenue taxes, and to decide disputed assessments, among others.

On October 26, 2004, petitioner received the Formal Letter of Demand and Assessment Notice dated September 3, 2004 (FAN), which assessed petitioner for deficiency DST on its premiums on direct business/sums assured in the amount of P63,073,860.00 and interest in the amount of P34,501,401.42 or a total of P95,575,261.42 for calendar year 2001. The assessment was based on Section 183 of the National Internal Revenue Code (NIRC) of 1997[4], which provides:

> "**Section 183.** *Stamp Tax on Life Insurance Policies.* - On all policies of insurance or other instruments by whatever name the same may be called, whereby any insurance shall be made or renewed upon any life or lives, there shall be collected a documentary stamp tax of Fifty centavos (P0.50) on each Two hundred pesos (P200), or fractional part thereof, of the amount insured by any such policy."

On November 25, 2004, petitioner wrote and filed a protest to the FAN.[5] On December 14, 2004, petitioner submitted all its relevant supporting documents to the BIR.[6]

Hence, the instant Petition for Review filed on July 15, 2005. Je

[1] Paragraph 1.01, Joint Stipulation of Facts and Issues (JSFI); Docket, pages 148 to 149.
[2] Paragraph 1.02, JSFI, Docket, page 149; Exhibit "E", Docket, page 320.
[3] Paragraph 2.04, JSFI, Docket, page 150.
[4] Paragraph 2.02, JSFI, Docket, page 149.
[5] Paragraph 2.03, JSFI, Docket, page 149; Docket, pages 321 to 329.
[6] Exhibit "G", Docket, pages 331 to 332.

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On July 22, 2005, petitioner received a decision dated June 30, 2005 denying petitioner's protest.[7]

On September 29, 2005, respondent filed her Answer with the following Special and Affirmative Defenses:

> "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.
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> 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.
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> 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.
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> 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 of Internal Revenue v. Manila Jockey Club, Inc. 98 Phil. 670; Davao Light & Power Co., Inc. v. Commissioner of Customs, et al., L-28739 & L-28902, March 29, 1972).*
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> 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, GR No.*

[7] Exhibit "B", Docket, pages 287 to 288.

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> *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).*"

On January 9, 2006, the parties filed their *"Joint Stipulation of Facts and Issues"* to the Court.[8]

During trial, petitioner and respondent submitted their respective testimonial and documentary evidence in support of their position.

On May 20, 2008, the case was submitted for decision, taking into consideration the Memorandum filed by petitioner and respondent on March 18, 2008 and April 21, 2008, respectively.

The parties stipulated the following issues[9] for this Court's resolution:

1. Whether or not the assailed Formal Letter of Demand and Assessment Notice for deficiency documentary stamp taxes for calendar year 2001 is void for failing to state the facts on which it is based.

2. Whether the petitioner is liable for deficiency DST in the total amount of P95,575,261.42.

Petitioner's arguments

Petitioner argues that the FAN sent to it is void for respondent's failure to state the factual basis for the assessment. It further argues that it is a cooperative company or association under Section 123 of the NIRC; thus, it is exempt from the payment of DST under Section 199(a) of the NIRC. Petitioner adds that while it is not registered with the Cooperative Development Authority, registration with the same is not required for a

[8] Docket, pages 148 to 151.
[9] Docket, page 150.

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corporation to be considered a cooperative company for purposes of tax exemption under the NIRC.

Respondent's arguments

Respondent counter-argues that the FAN for deficiency DST for calendar year 2001 states the factual bases of the assessment, since petitioner was able to ventilate its opposition to the same in its protest. She also argues that petitioner as a cooperative company is liable for the aggregate amount of P95,575,261.42 representing deficiency DST, because it is not duly registered with the Cooperative Development Authority as required under Republic Act (R.A.) No. 6938[10].

This Court's Ruling

The Formal Letter of Demand and the Assessment Notice were issued and factually supported. Gleaned from the "Details of Discrepancy" attached to the same, respondent based her assessment for deficiency DST on the Annual Statement Report submitted by petitioner to the Insurance Commission. The Annual Statement Report stated the total amount of policies, both ordinary and group insurance, for which petitioner allegedly did not remit the corresponding DST. Moreover, petitioner was even able to refute the assessment and to explain why the same should be cancelled and withdrawn. Evidently, petitioner was duly informed of the basis of assessment and was accorded due process.

The taxability or non-taxability of the policies issued by petitioner shall now be discussed.

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[10] Otherwise known as *"The Cooperative Code of the Philippines"*.

Section 199 of the NIRC of 1997 enumerates the documents and papers which are not subject to DST, to wit:

> "**Section 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:
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> (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 members thereof for the exclusive benefit of each member and not for profit.
>
> xxx xxx xxx"

Under Section 123 of the NIRC of 1997, a "cooperative" is defined as a company or association conducted by the members thereof with the money collected from among themselves and solely for their own protection and not for profit. Indubitably, petitioner is a "cooperative" engaged in mutual life insurance business for the following reasons:

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.[11] Article 7 of its Amended Articles of Incorporation[12] shows that petitioner has been converted from a stock life insurance company to a nonstock 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

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[11] Last paragraph, Section 188 of the Insurance Code of 1978, as amended by Presidential Decree (P.D.) No. 1455.
[12] Exhibit "C", Article 7, Docket, page 293.

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members of its board of trustees.[13] The board of trustees, on their part, exercises the powers and conducts the business of the corporation.[14]

Seen from the above, all the members of petitioner have actual democratic participation in their choice of who should represent them in the running of corporate affairs. In this sense, petitioner is solely conducted, managed or guided by its member-policyholders.

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 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.[15]

Third, petitioner is licensed for the mutual protection of its members, 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 the policyholders. As such, these investments ultimately redound to the protection and benefit of its members-policyholders. In case there is surplus

[13] Exhibit "D", Article 3.1, 3.2 and 3.3, Docket, page 302.
[14] Exhibit "D", Article 4.1, Docket, page 306.
[15] Exhibit "M", paragraph 15.0, Docket, page 404.

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over the intended benefit claims and the incidental expenses, they are distributed back to the policyholders as return of premiums.[16]

It does not follow that because petitioner is registered as a non-stock corporation and thus exists for a purpose other than profit, the company can no longer make any profits. Earning profits is merely its 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.[17]

Likewise, the argument that petitioner must be registered with the Cooperative Development Authority in order to be entitled to tax exemption, will not prosper. In *Republic of the Philippines, et al. vs. Sunlife Assurance Company of Canada*[18], the Supreme Court exhaustively explained its reasons in the following manner:

> "*First*, the Tax Code does not require registration with the CDA. No tax provision requires a mutual life insurance company to register with that agency in order to enjoy exemption from both percentage and documentary stamp taxes.
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> A provision of Section 8 of Revenue Memorandum Circular (RMC) No. 48-91 requires the submission of the Certificate of Registration with the CDA, before the issuance of a tax exemption certificate. That provision cannot prevail over

[16] Exhibit "M", paragraph 16.0, Docket, page 404.
[17] *Republic of the Philippines vs. Sunlife Assurance Company of Canada*, G.R. No. 158085, October 14, 2005, 473 SCRA 129).
[18] *Ibid.*

the clear absence of an equivalent requirement under the Tax Code. *One*, as we will explain below, the Circular does not apply to respondent, but only to cooperatives that need to be registered under the Cooperative Code. *Two*, it is a mere issuance directing all internal revenue officers to publicize a new tax legislation. Although the Circular does not derogate from their authority to implement the law, it cannot add a registration requirement, when there is none under the law to begin with.

Second, the provisions of the Cooperative Code of the Philippines do not apply. Let us trace the Code's development in our history.

As early as 1917, a cooperative company or association was already defined as one 'conducted by the members thereof with money collected from among themselves and solely for their own protection and not profit.' In 1990, it was further defined by the Cooperative Code as a 'duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve a lawful common social or economic end, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles.'

The Cooperative Code was actually an offshoot of the old law on cooperatives. In 1973, Presidential Decree (PD) No. 175 was signed into law by then President Ferdinand E. Marcos in order to strengthen the cooperative movement. The promotion of cooperative development was one of the major programs of the 'New Society' under his administration. It sought to improve the country's trade and commerce by enhancing agricultural production, cottage industries, community development, and agrarian reform through cooperatives.

The whole cooperative system, with its vertical and horizontal linkages -- from the market cooperative of agricultural products to cooperative rural banks, consumer cooperatives and cooperative insurance -- was envisioned to offer considerable economic opportunities to people who joined cooperatives. As an effective instrument in redistributing income and wealth, cooperatives were promoted primarily to support the agrarian reform program of the government.

Notably, the cooperative under PD 175 referred only to an organization composed primarily of small producers and consumers who voluntarily joined to form a business enterprise that they themselves owned, controlled, and patronized. The Bureau of Cooperatives Development -- under the Department

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of Local Government and Community Development (later Ministry of Agriculture) -- had the authority to register, regulate and supervise only the following cooperatives: (1) barrio associations involved in the issuance of certificates of land transfer; (2) local or primary cooperatives composed of natural persons and/or barrio associations; (3) federations composed of cooperatives that may or may not perform business activities; and (4) unions of cooperatives that did not perform any business activities. Respondent does not fall under any of the above-mentioned types of cooperatives required to be registered under PD 175.

When the Cooperative Code was enacted years later, all cooperatives that were registered under PD 175 and previous laws were also deemed registered with the CDA. Since respondent was not required to be registered under the old law on cooperatives, it followed that it was not required to be registered even under the new law.

Furthermore, only cooperatives to be formed or organized under the Cooperative Code needed registration with the CDA. Respondent already existed before the passage of the new law on cooperatives. It was not even required to organize under the Cooperative Code, not only because it performed a different set of functions, but also because it did not operate to serve the same objectives under the new law -- particularly on productivity, marketing and credit extension.

The insurance against losses of the members of a cooperative referred to in Article 6(7) of the Cooperative Code is not the same as the life insurance provided by respondent to member-policyholders. The former is a function of a service cooperative, the latter is not. Cooperative insurance under the Code is limited in scope and local in character. It is not the same as mutual life insurance.

We have already determined that respondent is a cooperative. The distinguishing feature of a cooperative enterprise is the mutuality of cooperation among its member-policyholders united for that purpose. So long as respondent meets this essential feature, it does not even have to use and carry the name of a cooperative to operate its mutual life insurance business. *Gratia argumenti* that registration is mandatory, it cannot deprive respondent of its tax exemption privilege merely because it failed to register. The nature of its operations is clear; its purpose Jc

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> **well-defined. Exemption when granted cannot prevail over administrative convenience.**
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> *Third*, not even the Insurance Code requires registration with the CDA. The provisions of this Code primarily govern insurance contracts; only if a particular matter in question is not specifically provided for shall the provisions of the Civil Code on contracts and special laws govern.
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> True, the provisions of the Insurance Code relative to the organization and operation of an insurance company also apply to cooperative insurance entities organized under the Cooperative Code. The latter law, however, does not apply to respondent, which already existed as a cooperative company engaged in mutual life insurance prior to the laws passage of that law. The statutes prevailing at the time of its organization and mutualization were the Insurance Code and the Corporation Code, which imposed no registration requirement with the CDA." (*Emphasis supplied*)

Having established that petitioner is a cooperative that does not have to be registered with the Cooperative Development Authority, the Court holds that petitioner is entitled to exemption from DST on the insurance policies it issues to its members.

WHEREFORE, the instant Petition for Review is hereby **GRANTED.** The Formal Letter of Demand and Assessment Notice dated September 3, 2004 assessing petitioner of deficiency DST in the amount of P95,575,261.42, inclusive of interest and compromise penalties for calendar year 2001, are hereby **CANCELLED** and **WITHDRAWN.**

SO ORDERED.

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

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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.
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

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