

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

ANTAM CONSOLIDATED, INC.,

Petitioner,

- versus -

C.T.A. CASE NO. 4580

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 20 2004

[Signature]

x-----x

DECISION

This Petition for Review is seeking for the cancellation and withdrawal and/or declaration of the following Warrant of Dstraint and/or Levy and Assessment Notices as illegal and *void ab initio* for having been issued without legal basis, to wit:

1. Warrant of Dstraint and/or Levy issued by respondent and received by petitioner on January 15, 1991, with respect to the deficiency income tax in the amount of **FOUR MILLION TWO HUNDRED TWENTY-FOUR THOUSAND FIVE HUNDRED THIRTY-SEVEN PESOS AND 60/100 (P4,224,537.60);**
2. Deficiency documentary stamp tax assessment under Assessment Notice No. FAN-4-81-86-006667 issued on April 15, 1986 in the amount of **SIXTY-SEVEN THOUSAND NINE PESOS AND 28/100 (P67,009.28);**
3. Deficiency fixed tax assessment in the amount of **SIX THOUSAND SEVEN HUNDRED EIGHT PESOS (P6,708.00).**

Based on the pleadings and evidence presented by the parties, the following facts have

not been disputed:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office address at 62 N. Domingo Street, San Juan, Metro Manila (*par 1, Petition for Review*).

On April 18, 1986, petitioner received an assessment letter issued by the respondent dated April 15, 1985 (*Exhibit "A"*). Said letter assessed and demanded from the petitioner the amounts of FOUR MILLION TWO HUNDRED TWENTY-FOUR THOUSAND FIVE HUNDRED THIRTY-SEVEN PESOS AND 60/100 (P4,224,537.60), FOUR HUNDRED PESOS (P400.00), AND SIXTY-SEVEN THOUSAND THREE HUNDRED NINE PESOS AND 28/100 (P67,309.28) allegedly representing deficiency income taxes, compromise penalties and documentary stamp taxes, respectively, for the year ending 1981, computed as follows:

1981 DEFICIENCY INCOME TAX

Net Loss per return	(P 110,363.78)
Add:	
Disallowance	
Undeclared rental income	P 6,000,000.00
Net Income per review	<u>P 5,889,636.22</u>
Tax Due thereon	P 2,640,336.00
Add: 20% int from 4/16/82 to	
4/15/85 (60% max)	P 1,584,201.60
Total Amount Due and Collectible	<u>P 4,224,537.60</u>

COMPROMISE PENALTIES

1. No Comparative Financial Statement	P 300.00
2. No Schedule of taxes paid	<u>P 100.00</u>
TOTAL	<u>P 400.00</u>

DEFICIENCY DOCUMENTARY STAMP TAX

Paid-up capital stock	<u>P12,183,507.00</u>
Documentary stamp tax due thereon (P12,183,507.00/P200.00 x P1.10)	P 67,009.28
Compromise Penalty	<u>P 300.00</u>
TOTAL	<u>P 67,309.28</u>

Through a letter-protest dated May 15, 1986, which was received by respondent on May 16, 1986, petitioner timely protested the said assessment notices (*Exhibit "C"*).

On October 30, 1986, petitioner availed of the tax amnesty pursuant to Executive Order No. 41, as amended (*Exhibit "G"*), filing the necessary tax amnesty return and comparative statement of assets, liabilities and net worth as of December 31, 1980 and December 31, 1985. Petitioner then paid the minimum amount of TEN THOUSAND PESOS (P10,000.00).

However, on January 15, 1991, a Warrant of Distrainment and/or Levy was issued by respondent (*Exhibit "D"*) and served on petitioner this time demanding payment from petitioner the total amount of FOUR MILLION TWO HUNDRED NINETY-EIGHT THOUSAND NINE HUNDRED FIFTY-FOUR PESOS AND 88/100 (P4,298,954.88), or exceeding by **SIX THOUSAND SEVEN HUNDRED EIGHT PESOS (P6,708.00)** from the original assessment notice received by petitioner. Said difference allegedly covered the assessed deficiency real estate dealer's fixed tax including a 25% surcharge.

Petitioner, believing that the Warrant of Distrainment and/or Levy constituted as respondent's final decision on the letter-protest, filed the instant Petition for Review on February 14, 1991.

In his Answer filed on June 20, 1991, respondent raised the following as his Special and Affirmative Defenses:

5. The Petition does not state a cause of action;
6. The deficiency income tax assessment issued by respondent to petitioner on April 15, 1985 still subsists despite the latter's subsequent availment of tax amnesty under EO No. 41 (Declaring a

One-Time Tax Amnesty Covering Unpaid Income Taxes for the Years 1981 to 1985). For the cancellation or withdrawal of such assessment, the same must have been issued after August 21, 1986, in view of the explicit provisions of BIR Revenue Memorandum Order (RMO) No. 4-87 (implementing EO No. 41) that:

"1.02. A certification by the Tax Amnesty Implementation Officer of the fact of availment of the said tax amnesty shall be sufficient basis for:

x x x

"1.02.3. In appropriate cases, the cancellation/withdrawal of assessment notices and letters of demand issued after August 21, 1986 for the collection of income, business, estate or donor's taxes during the same taxable years";
(Underlining supplied)

7. To avail of the tax amnesty, it is required that there should be a voluntary disclosure of a previously untaxed income [Nepomuceno v. Montecillo, 118 SCRA 254 (1982)].

There can be no voluntary declaration of untaxed income in the present case in view of the assessment issued to petitioner on April 15, 1985 (prior to the effectivity of EO No. 41 on August 22, 1986) which was the result of a previous investigation and discovery by the revenue examiners of the untaxed income;

8. Furthermore, petitioner has incurred delay in the filing of its Tax Amnesty Return on October 31, 1986, as the deadline for filing was set by EO No. 41 on September 30, 1986 (Sec. 2, EO No. 41);
9. The alleged security deposit amounting to P6,000,000.00 received by petitioner as lessor under its lease contract with Planters Development Bank purportedly "to answer for any default, damage or obligation of the lessee (Planters Development Bank)," is taxable rental income, being within the class of taxable income under par. a(5) Sec. 28, National Internal Revenue Code (NIRC);
10. Moreover, the alleged "security deposit" is taxable, as said Section 28(a), NIRC, taxes "all income from whatever source derived" and "security deposit" is not among the items of income expressly exempted from taxation under Section 28(b), NIRC;
11. The allegation that "the amount of subscribed capital stock that was slapped with a documentary stamp tax liability of P1.10 per P200.00 par value did not represent the fully paid up capital stock of the petitioner" (par 12, Petition), is belied by petitioner's own admission that out of its subscribed capital of P12,706,617.00, "the amount of

P12,183,507 (respondent's basis for computation of documentary stamp tax) was paid" (pp. 8-9, Annex "B", Petition);

12. Contrary to petitioner's theory for the documentary stamp tax under Section 175 (formerly Section 224), NIRC to attach on every original issue of a certificate of stock, the delivery, actual or constructive, of the certificate is not essential. For the tax is in the nature of an excise tax and what is taxed is the privilege of issuing the share of stock and, therefore, the tax accrues at the time the share is issued (Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671 [1986]; see also Philippine Consolidated Coconut Industries, Inc. vs. Collector of Internal Revenue, 70 SCRA 22 ; 1976]);
13. The assessment on petitioner for deficiency fixed tax for 1981 was issued on January 31, 1986, within the 5-year prescriptive period provided for under then Section 318 (now Section 203), NIRC (See also Revenue Memorandum Circular No. 33-34);
14. Petitioner has the burden to show that the full period of limitation upon assessment of said deficiency fixed tax has expired. The Petitioner is bereft of any showing of the dates when the period started to run and when it ended (Querol vs. Collector of Internal Revenue, 116 PHIL 615, [1962]);
15. Since the assessment on petitioner for compromise penalties in 1981 had not been administratively contested by petitioner, the same cannot be questioned for the first time in the present appeal (Sec. [1], Republic Act No. 1125, as amended; Commissioner of Internal Revenue vs. Villa, 22 SCRA 3 [1968]); and
16. In sum, petitioner failed to overcome the presumption in favor of the correctness of tax assessments (Mindanao Bus Co. vs. Collector of Internal Revenue, 1 SCRA 538 [1961]; Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue 98 PHIL 290 [1956]).

In a Resolution dated August 24, 1993, this court resolved to dismiss petitioner's appeal on the basis of this court's lack of jurisdiction. The issue of whether or not the issuance of a Warrant of Dstraint and/or Levy constituted the final decision of the respondent appealable before this court was resolved by this court in the negative. The dispositive portion of the said Resolution is quoted below for reference:

WHEREFORE, in view of the foregoing, this Court hereby RESOLVES to DISMISS this case for lack of jurisdiction without prejudice to the filing of another petition on the part of the petitioner upon receipt of respondent's final decision on the protest.

SO ORDERED.

Subsequently, a Motion for Reconsideration was filed by petitioner on September 16, 1993, seeking for the reversal of the above-mentioned Resolution. On March 8, 1994, this court denied petitioner's motion, remaining steadfast to the wisdom of its questioned Resolution and thus reiterated the same reasons stated therein.

Aggrieved by the resolutions of this court, petitioner then elevated its appeal to the Court of Appeals, raising similar issues raised in its Motion for Reconsideration filed with this court. On March 31, 2004, the Court of Appeals rendered its Decision reversing this court's Resolutions of March 8, 1994 and August 24, 1993, denying the Motion for Reconsideration and Petition for Review filed by herein petitioner, respectively, and remanding back to this court the instant case for proper resolution. The dispositive portion of the said Decision is quoted below:

WHEREFORE, premises considered, the Resolution of the Court of Tax Appeals dated 24 August 1993 dismissing the Petition for Review filed by the petitioner, as well as its Resolution dated 8 March 1994, denying the Motion for Reconsideration filed thereto, are hereby REVERSED and SET ASIDE. The case is hereby REMANDED to the respondent Court of Tax Appeals for the proper resolution of the Petition for Review filed by the petitioner.

SO ORDERED.

Considering that petitioner had already submitted and presented its evidence and respondent had submitted this case for decision based on the pleadings and the records (*CTA Records, page 101*), this case was deemed submitted for decision without having to set the case for hearing anew.

The issues to be resolved by this court are the following:

1. Whether or not the availment of the tax amnesty under E.O. No. 41 relieved petitioner of any and all income tax liabilities on any untaxed income from January 1, 1981 to December 31, 1985, including increments thereto and penalties on account of the non-payment of said tax liabilities;
2. Whether or not the security deposit of P6,000,000.00 paid to

petitioner constituted undeclared rental income,

3. Whether or not petitioner was liable to pay the documentary stamps tax, notwithstanding the non-issuance of its stock certificates; and
4. Whether or not the imposition of compromise penalties have factual and legal basis.

The validity of the assessments is hinged mainly on the legal issue of whether or not E.O. No. 41, decreeing a tax amnesty for unpaid income taxes during the period from 1981 to 1985, can be applied on assessments issued prior to August 21, 1986.

In line with the first issue, this court deems it proper to resolve respondent's allegations one by one.

It is respondent's argument that petitioner's availment of the Tax amnesty under E.O. No. 41 did not cancel nor withdraw the deficiency tax assessment issued on April 15, 1985 for in view of the explicit provisions of Revenue Memorandum Order No. 4-87, more particularly Section 1.02.3, assessment notice and letters of demand must have been issued after August 21, 1986, thus:

"1.02. A certification by the Tax Amnesty Implementation Officer of the fact of availment of the said tax amnesty shall be sufficient basis for:

x x x

"1.02.3. In appropriate cases, the cancellation/withdrawal of assessment notices and letters of demand issued after August 21, 1986 for the collection of income, business, estate or donor's taxes during the same taxable years".
(Underlining supplied)

Furthermore, respondent alleges that petitioner had incurred delay in the filing of its Tax Amnesty Return on October 31, 1986, as the deadline for filing was set by EO No. 41 on September 30, 1986 (Sec. 2, EO No. 41). Likewise, respondent avers that his imposition of the deficiency fixed tax was valid and well within the 5-year prescriptive period provided for under

Section 318 (now Section 203) of the NIRC.

We cannot agree with respondent.

First of all, it is very clear from the wordings of Section 2, Executive Order No. 41, that the deadline for the filing of the tax amnesty return is on October 31, 1986, and to quote:

Section 2. Conditions of the Amnesty. - A Taxpayer who wishes to avail himself of the tax amnesty **shall, on or before October 31, 1986;**

- a. file a sworn statement declaring his net worth as of December 31, 1985;

xxx xxx xxx
(Emphasis supplied.)

Verily then, petitioner's filing of its Tax Amnesty Return on October 31, 1986 was well within the time prescribed by EO No. 41.

Secondly, this court, in the case of *Tikicrafts Industries, Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 4266, January 31, 1991*, has had the occasion to rule on the issue of the coverage of E.O. No. 41, and we quote:

By and large, petitioner posits the proposition this wise:

"It availed of the tax amnesty under Executive Order No. 41 as amended by paying 30% of the basic taxes assessed under File No. 32 F-00460-41-B with payment evidenced by CB Confirmation Receipt No. 5684515 and Payment Order No. 9479701 both dated December 15, 1986. The very nature of a tax amnesty, plus the very title of EO 41 itself, as expanded by EO No. 64 – "Declaring a One-Time Tax Amnesty Covering Income Tax, xxx and the Tax on Business Under Chapter II, Title V of the National Internal Revenue Code, as amended, for the years 1981 – 1986 clearly and obviously imply that the tax amnesty has to be given retroactive effect so as to include in its coverage unpaid income and business taxes for the past years specifically mentioned, namely, 1981 to 1985."

Moreover, Section 4 of EO No. 41, as expanded by EO No. 64, specifically enumerates those excepted from the coverage of the tax amnesty and clearly, tax assessments issued prior to August 22, 1986 are not among the exceptions. Under the rule of "expressio unius est exclusio alterius", "where a statute enumerates the subjects or things on which it is to operate, it is to be construed as excluding from its effects all those not expressly mentioned" (Dave's Place v. Liquor Control Commission, 269 N.W. p. 594). Hence, since Section 4 of EO 41 expressly mentions the exceptions from the intended coverage of the tax amnesty, it follows that

others not mentioned such as assessments issued prior to August 21, 1986 are not included.

On appeal to the Court of Appeals, this court's Decision, as quoted above, was affirmed,

viz.

The interpretation forced upon us by the petitioner with respect to the coverage of those who can avail of the tax amnesty under the provisions of E.O. 41 as amended is erroneous. Petitioner also insists that E.O. 41 as amended must be given only prospective application.

Obviously, the title of E.O. No. 41 itself as amended by E.O. 64 – "Declaring a One-time Amnesty Covering Income Taxes, xxx and the Tax on Business under Chapter II, Title V of the National Internal Revenue Code, as amended, for the years 1981-1986, suggests that the tax amnesty has to be given retroactive effect so as to include in its coverage income and business taxes for the past years specifically mentioned, namely, 1981 to 1986.

It is a basic tenet in our jurisprudence that generally all laws must be given prospective application. The same principle applies to rules and regulations promulgated by administrative authorities as held by the Supreme Court in ABS-CBN vs. Court of Tax Appeals 108 SCRA 142,

xxx

xxx

xxx

By analogy, the aforecited rule may be applied to rules and regulations promulgated by the Secretary of Finance. Conversely, a rule or regulation may be given retroactive application if the same would be beneficial to the taxpayer, as in the case at bar.

Furthermore, Section 1 of Executive Order No. 41 unequivocally enumerates those taxpayers who may not avail themselves of the tax amnesty, and evidently private respondent is not one of them,

The exceptions enumerated in Section 4 of E.O. 41 reads (sic) as follows:

- a. Those falling under the provisions of Executive Orders Nos. 1, 2 and 14;
- b. Those with income tax cases already filed in Court as of the effectivity hereof;
- c. Those with criminal cases involving violations of the income tax law already filed in court as of the

effectivity hereof;

- d. Those that have withholding tax liabilities under the National Internal Revenue Code, as amended, insofar as the said liabilities are concerned;
- e. Those with tax cases pending investigation by the Bureau of Internal Revenue as of the effectivity hereof as a result of information furnished under Section 316 of the National Internal Revenue Code, as amended;
- f. Those with pending cases involving unexplained a\or unlawfully acquired wealth before the Sandiganbayan;
- g. Those liable under Title Seven, Chapter Three (Frauds, Illegal Exactions and Transactions) and Chapter Four (Malversation of Public Funds and Property) of the Revised Penal Code, as amended."

*It is well to stress that taxpayers whose tax assessments were issued prior to August 22, 1986 are not among the exceptions. Under the rule of "expressio unius est exclusio alterius", "where a statute enumerates the subjects or things on which it is to operate, it is to be construed as excluding from its effects all those not expressly mentioned" (Davis Place vs. Liquor Control Commission, 269 N.W., p. 594). Likewise, it is an elementary rule in statutory construction that "an express exception, exemption or saving clause excludes the others" (Lewis Sutherland, Statutory Const. p. 494). Hence, since Section 4 of E.O. 41 specifically mentioned the exceptions from the coverage of the tax amnesty, it necessarily follows that others not mentioned, such as taxpayers who were issued assessments prior to August 21, 1986, are not included in the exceptions (**Commissioner of Internal Revenue vs. Tikicraft Industries, Inc., CA-G.R. SP-24488, August 26, 1991, pp 5-7**).*

In the case of **Commissioner of Internal Revenue vs. Marubeni Corporation, 372**

SCRA 576, citing Republic of the Philippines vs. Intermediate Appellate Court, 196

SCRA 335, it was held that:

"A tax amnesty is a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law, It partakes of an absolute forgiveness or waiver by the Government of its right to collect what is due it, and to give tax

evaders who wish to relent a chance to start with a clean slate."

In addition, the Honorable Supreme Court in the same case of **Republic vs. Intermediate Appellate Court**, *supra*, settled the issue of whether or not tax amnesty payments bar an action for recovery of deficiency income taxes in this wise:

Even assuming that the deficiency tax assessment. . . were correct, since the latter have already paid almost the equivalent amount to the Government by way of amnesty taxes . . . , and were granted not merely an exemption, but an amnesty, for their past failings, the Government is estopped from collecting the difference between the deficiency tax assessment and the amount already paid by them as amnesty tax.

Respondent argues further that to avail of the tax amnesty, there must be a voluntary disclosure of a previously untaxed income, citing the case of *Nepomuceno vs. Montecillo*, 118 SCRA 254. Accordingly, there can be no voluntary declaration of untaxed income in this present case because the assessment notice issued to petitioner on April 15, 1985 (which was prior to the effectivity of E.O. No. 41) was the result of a previous investigation and discovery by the revenue examiners of the untaxed income.

We cannot agree with respondent.

Evidently, petitioner had complied with the requirement of voluntary declaration of untaxed income for the years 1981 to 1985. By the mere filing of sworn statements declaring its net worth as of December 31, 1980 and December 31, 1985, which necessarily included any untaxed income for 1981, petitioner had indeed voluntarily disclosed its untaxed income during the five-year period.

Lastly, the alleged real estate dealer's fixed tax covered under Section 192(3)(aa) of the National Internal Revenue Code of 1977, clearly falls within the coverage of EO No. 64, said fixed tax provision being under Chapter II, Title V of the National Internal Revenue Code, as amended. Executive Order No. 64, (expanding Executive Order No. 41), obviously also implies that the tax amnesty be given a retroactive effect, has included unpaid business taxes covered under Chapter

II, Title V of the National Internal Revenue Code, for the years 1981 to 1985.

Inasmuch as this court finds that petitioner's alleged 1981 deficiency income and fixed taxes fall within the purview of Executive Order No. 41, as expanded by Executive Order No. 64, petitioner's availment of the said tax amnesty has settled its liability for said income and fixed taxes, including the increments and penalties attached thereto.

Having resolved the main issue raised in this case, it is therefore unnecessary to resolve the second issue. However, this court will nevertheless tackle the same if only for the purpose of clarifying the subject matter.

It is the opinion of the respondent that the alleged security deposit amounting to P6,000,000.00 received by petitioner as lessor under its lease contract with Planters Development Bank purportedly to "answer for any default, damage or obligation of the lessee (Planters Development Bank)", is taxable rental income, being within the class of taxable income under par. a (5) Section 28, National Internal Revenue Code.

We do not agree.

Income has been defined as "an amount of money coming to a person or corporation, whether as payment for services, interest or profit from investment. Unless, otherwise specified, it means cash or its equivalent (*Conwi, et al vs. Court of Tax Appeals, 213 SCRA 83 citing Fisher vs. Trinidad, 43 PHIL 973*). Income is any material gain, not excluded by law, realized out of a closed and completed transaction where there is an exchange of economic value for economic value. It is stressed that income does not only refer to the money a taxpayer received but includes anything of value, whether tangible or intangible. Even if there is a material gain, not excluded by law, but if the material gain is not yet realized by the taxpayer, then there is no income to speak of.

Thus, when a person borrows money from another, the amount borrowed is not income, as the same is neither profit nor gain. This holds true also in cases of deposits given by a lessee to the lessor as security for the relationship between lessor and lessee, with regard to the

security deposit, is also that of debtor and creditor, respectively (Keswick Theatres Corporation vs. Real Estate Land Title and Trust Co., 173 A. 313, 314).

In the case presented, the security deposit paid to the petitioner as lessor, should then not be considered as income for tax purposes. By its very nature, the amount received by the lessor as security deposit is eventually returned to the lessee hence, the petitioner did not earn any gain or profit therefrom (*Tourist Trade and Travel Corporation vs. Commissioner of Internal Revenue*, C.T.A. Case No. 4806, January 19, 1996). The term of the lease contract is clear and unequivocal. The amount of SIX MILLION PESOS (P6,000,000.00) was to be deposited in cash to serve as a "guaranty deposit to answer for any default, damage or obligation of the lessee under this agreement, subject deposit to be returned at the termination of this lease, less whatever account which the said LESSEE might then be owing to the LESSOR x x x". Evidently, the deposit received, though formed part of the petitioner's funds and could be used by it without restriction, petitioner was still bound to return said amount after the expiration of the lease contract subject to the conditions as stated therein.

Anent the third issue, respondent assessed petitioner of deficiency documentary stamp tax including a compromise penalty in the amount of SIXTY-SEVEN THOUSAND NINE PESOS AND 28/100 (P67,009.28) based on the total paid-up capital stock in the amount of P12,183,507.00, as stated in petitioner's General Information Sheet dated April 21, 1981, submitted to the Securities and Exchange Commission. Respondent further avers that pursuant to Section 175 (formerly Section 224) of the National Internal Revenue Code, documentary stamp taxes shall attach to every original issue of certificate of stock, the delivery, whether actual or constructive, of which is not essential. The said tax is in the nature of an excise tax and what is taxed is the privilege of issuing the share of stock, therefore, the tax accrues at the time the share is issued citing *Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc.*, 145 SCRA 671.

Petitioner, however, contends that the amount of P12,183,507.00 merely represented a portion of its total subscribed capital in the amount of P12,706,617.00, thus, leaving the amount

of P523,110.00 as subscription receivables. And, accordingly, except for six stockholders owning nominal shares in the aggregate amount of P6.00, all other stockholders had not yet fully paid their subscriptions, thus, no stock certificates can be issued, pursuant to Section 64 of the Corporation Code, which provides that:

Section 64. Issuance of Stock Certificates. - No certificate of stock shall be issued to a subscriber until the full amount of his subscription together with interest and expenses (in case of delinquent shares) if any is due, have been paid.

In view thereof, since petitioner was without any authority to issue certificates of stock to its stockholders pending their full payment of their subscriptions, no documentary stamp tax has accrued yet on the paid up capital stocks.

We agree.

Section 224 (now Section 175) of the National Internal Revenue Code of 1977, specifically provides that:

Section 224. Stamp tax on original issue of certificates of stock. - On every original issue, whether on organizations, reorganization or for any lawful purpose, of certificates of stock by any association, company, or corporation, there shall be collected a documentary stamp tax of one peso and ten centavos on each two hundred pesos, or fractional part thereof, of the par value of such certificates: Provided, That in the case of the original issue of stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration received by the association, company, or corporation for the issuance of such stock, and in the case of stock dividends on the actual value represented by each share.
(Underscoring supplied)

Based on the above-mentioned provision, it is clear that documentary stamp tax is to be imposed on every original issue of certificates of stock. The documentary stamp tax is imposed only once on every original issuance of a certificate of stock and is in the nature of an excise tax because it is levied upon the privilege, the opportunity and the facility of issuing certificates of stocks. It is clear from the provision of Section 224 (now Section 175) of the NIRC that for the tax to attach the certificates of stock need only to be issued but not delivered. The question now

boils down to when is a certificate of stock deemed issued for purposes of the imposition of the tax?

The law speaks of a "certificate of stock". A certificate of stock is defined as a written instrument signed by the proper officer of an association, company or corporation stating or acknowledging that the person named therein is the owner of a designated number of shares of its stock. There is "issuance", therefore, when the corporation releases the stock certificates (the document as properly filled up) to the stockholder, although, the actual or constructive possession thereof by the stockholder is immaterial or is of no consequence at all. Therefore, there can be no documentary stamp tax if a corporation did not issue or deliver the necessary stock certificates to the stockholder but only recorded the stockholder's investment in its books.

However, as correctly pointed out by petitioner, pursuant to Section 64 of the Corporation Code, a corporation is not allowed by law to issue stock certificates to any stockholder unless its subscription is fully paid. Petitioner's allegation that no stock certificates were made out and detached for transmittal to stockholders was not satisfactorily disputed by respondent. Furthermore, based on the records presented, the fact that the respondent based his computation for deficiency documentary stamp tax on the paid-up amount only, justifies the allegation of petitioner that the total subscribed capital stock have not been fully paid. It must be stressed that a documentary stamp tax is a tax on the transaction and the subject taxable transaction is the act of originally issuing the certificate of stocks. In other words, it is the actual issuance of the certificates of stocks to the stockholders that makes the corporation liable to affix the requisite documentary stamps.

Finally, with regard to the last issue, records would show that petitioner had timely filed its protest to the assessment for deficiency income, fixed and documentary stamp taxes. However, nowhere in the records would reveal that a compromise agreement had been entered into between petitioner and respondent. Compromise penalties should not be imposed when there is an absence of a clear agreement freely entered into between the petitioner and

respondent (*Collector of Internal Revenue vs. UST, Nos. L-11274 & L-11280, November 28, 1958; M.R. Arick vs. Commissioner of Internal Revenue, C.T.A. Case No. 1679, May 30, 1969*).

IN VIEW OF THE FOREGOING, petitioner's instant Petition for Review is hereby **GRANTED**. Accordingly, the following Warrant of Dstraint and/or Levy and Assessment Notices, to wit:

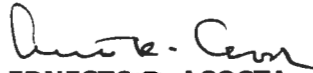
1. Warrant of Dstraint and/or Levy received by petitioner on January 15, 1991, with respect to the deficiency income tax in the amount of **FOUR MILLION TWO HUNDRED TWENTY FOUR THOUSAND FIVE HUNDRED THIRTY-SEVEN PESOS AND 60/100 ONLY (P4,224,537.60)**;
2. Assessment Notice No. FAN-4-81-86-006667 issued on April 15, 1986 for deficiency documentary stamp taxes in the amount of **SIXTY SEVEN THOUSAND AND NINE PESOS AND 28/100 (P67,009.28)**;
3. FAN-8-81-86-006666 representing Compromise Penalties in the amounts of **P300.00 AND P100.00**; and
4. Deficiency fixed tax assessment in the amount of **SIX THOUSAND SEVEN HUNDRED EIGHT PESOS (P6,708.00)**,

issued by respondent against petitioner covering the taxable year 1981 are hereby **CANCELLED AND WITHDRAWN**.

SO ORDERED.


JUANITO C. CASTANEDA, JR.
Associate Justice

WE CONCUR:



ERNESTO D. ACOSTA

Presiding Justice



LOVELL R. BAUTISTA

Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.



ERNESTO D. ACOSTA

Presiding Justice