REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CCT MULTI-PURPOSE COOPERATIVE (formerly CCT Credit Cooperative),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10351

MANAHAN, *Chairperson,*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:

JUN 24 2025
2:15 pm

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D E C I S I O N

MANAHAN, *J.*:

This is a Petition for Review filed by petitioner on September 16, 2020 praying that judgment be rendered cancelling and setting aside respondent's deficiency tax assessments for income tax, value-added tax (VAT), expanded withholding tax (EWT), documentary stamp tax (DST), and compromise penalty, inclusive of interest and surcharge, in the total amount of ₱72,626,789.98, for the taxable year (TY) 2016.[1]

THE PARTIES

Petitioner CCT Multi-Purpose Cooperative is a cooperative duly organized under the laws of the Republic of the Philippines, and registered with the Cooperative Development Authority (CDA) per Certificate of Registration Number CIN-0105161650.[2]

Pursuant to its Articles of Incorporation, it is duly authorized to engage in lending activities to its members.[3] It is also registered with the Bureau of Internal Revenue (BIR) under

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[1] Statement of the Case, Pre-Trial Order dated March 31, 2022, Docket – Vol. II, p. 641.
[2] Par. 1, *Joint Stipulation of Facts* (JSF), Docket – Vol. II, p. 571; Exhibit "P-32", Docket – Vol. IV, p. 1911.
[3] Par. 2, JSF, Docket – Vol. II, p. 571.

Taxpayer's Identification Number 227-983-814-0000, with present office address at 5th Floor, Joshua Center, 1428 Taft Avenue, Ermita, Manila.[4]

Respondent is the Commissioner of Internal Revenue (CIR), duly appointed to perform the duties of his office, including *inter alia*, the power to decide disputed assessments subject to the exclusive appellate jurisdiction of this Court, pursuant to Section 4 of the National Internal Revenue Code (NIRC) and Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

The facts show that petitioner's Certificate of Tax Exemption was set to expire on March 31, 2016.[5] On March 8, 2016, petitioner filed its application for renewal of tax exemption.[6] Thereafter, on August 10, 2016, petitioner's application for renewal/extension of tax exemption was granted by the BIR, and accordingly, a Certificate of Tax Exemption was issued in its favor.[7]

The BIR issued Letter of Authority (LOA) (SN: eLA201500020928 / LOA-033-2018-00000024) dated April 5, 2018,[8] authorizing Revenue Officer (RO) Franklin Mendoza and Group Supervisor (GS) Thelma Concepcion Petalvero, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2016 to December 31, 2016.

Subsequently, the BIR issued LOA (SN: eLA201600044374 / LOA-033-2018-00000536) dated August 28, 2018,[9] authorizing again RO Franklin Mendoza, along with GS, Luzviminda Villamiel, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the same period.

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[4] Par. 3.1, *Petition for Review* vis-à-vis par. 4, *Answer (with Motion to Dismiss)*, Docket – Vol. I, pp. 8 and 439, respectively.
[5] Par. 3, JSF, Docket – Vol. II, p. 571.
[6] Par. 4, JSF, Docket – Vol. II, p. 571.
[7] Par. 5, JSF, Docket – Vol. II, p. 571; Exhibit "P-46", Docket – Vol. IV, pp. 1925 to 1927.
[8] Exhibit "R-13", BIR Records, p. 3.
[9] Exhibit "R-1", BIR Records, p. 4.

On October 21, 2019, petitioner received the Preliminary Assessment Notice (PAN) dated October 17, 2019 from BIR Revenue District Office No. 33, wherein it was assessed ₱71,342,990.66 for income tax, VAT, EWT, DST deficiencies, and compromise penalty, for TY 2016.[10] Petitioner timely filed its reply to the PAN on October 31, 2019.[11]

Subsequently, on November 21, 2019, petitioner received the Formal Letter of Demand (FLD) dated November 19, 2019 for the alleged deficiency taxes for TY 2016,[12] in the total amount of ₱72,626,789.96,[13] broken down as follows:

	Basic tax	**Surcharge**	**Interests**	**Total**
Income tax	₱18,767,809.65	₱4,691,952.41	₱7,104,001.59	₱30,563,763.65
VAT	17,608,811.08	4,402,202.77	7,437,189.91	29,448,203.76
EWT	523,813.97	-	224,106.27	747,920.24
DST	6,433,421.67	1,608,355.42	3,800,125.24	11,841,902.32
Compromise penalty				25,000.00
			TOTAL	**₱72,626,789.96**

On December 20, 2019, petitioner filed a Protest Letter, requesting for reinvestigation and questioning the validity of the assessment.[14] Thereafter, on February 18, 2020, petitioner then filed its supporting documents to substantiate its defenses.[15]

Petitioner filed its Petition for Review on September 16, 2020.[16]

On February 1, 2021, respondent posted his Answer (with Motion to Dismiss).[17]

Respondent transmitted the BIR Records of the present case on February 9, 2021, consisting of 881 pages in one (1) folder.[18]

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[10] Par. 6, JSF, Docket – Vol. II, p. 580; Exhibit "R-8", BIR Records, pp. 746 to 751.
[11] Par. 7, JSF, Docket – Vol. II, p. 580.
[12] Par. 8, JSF, Docket – Vol. II, p. 580; Exhibit "R-9", BIR Records, pp. 792 to 798.
[13] Par. 4.11, *Petition for Review* vis-à-vis par. 9, *Answer (with Motion to Dismiss)*, Docket – Vol. I, pp. 11 and 440, respectively.
[14] Par. 9, JSF, Docket – Vol. II, p. 580.
[15] Par. 4.13, *Petition for Review* vis-à-vis par. 9, *Answer (with Motion to Dismiss)*, Docket – Vol. I, pp. 11 and 440, respectively.
[16] Docket – Vol. I, pp. 6 to 30.
[17] Docket – Vol. I, pp. 439 to 452.
[18] *Compliance* dated February 3, 2021, Docket – Vol. I, pp. 495 to 496.

Petitioner then posted its Comment (To Respondent's Answer with Motion to Dismiss) on February 22, 2021.[19] In the Resolution dated June 25, 2021, [20] the Court denied respondent's Answer (with Motion to Dismiss) for lack of merit.

The Pre-Trial Conference was initially set on September 29, 2021,[21] but was reset to, and held on, November 24, 2021.[22] Prior thereto, the Pre-Trial Brief for the petitioner was posted on October 11, 2021,[23] while respondent's Pre-Trial Brief was filed on October 12, 2021.[24]

On January 3, 2022, the parties posted their Joint Stipulation of Facts,[25] which was admitted and approved in the Resolution dated March 2, 2022.[26] The Pre-Trial Order dated March 31, 2022 was then issued,[27] deeming the termination of the Pre-Trial.

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Alvin Leo C. Bonjoc,[28] petitioner's Accounting Officer; (2) Ms. Rosita Viterbo Dacillo,[29] petitioner's Management Information Officer-Operations Records and Internal Auditor; (3) Mr. Michael Galarpe,[30] petitioner's Area Manager of Davao; (4) Ms. Rubilyn Villanueva Deles, [31] petitioner's Area Manager of Negros; (5) Mr. Sherwin Ducut,[32] petitioner's Area Manager of General Santos; and (6) Mr.

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[19] Docket – Vol. I, pp. 499 to 502.
[20] Docket – Vol. I, pp. 520 to 523.
[21] Resolution dated June 25, 2021, Docket – Vol. I, pp. 520 to 523.
[22] Notice of Resetting dated October 4, 2021, Docket – Vol. II, p. 524; Minutes of the hearing held on, and Order dated November 24, 2021, Docket – Vol. II, pp. 548 to 551.
[23] Docket – Vol. II, pp. 533 to 542.
[24] Docket – Vol. II, pp. 525 to 529.
[25] Docket – Vol. II, pp. 571 to 577.
[26] Docket – Vol. II, pp. 597 to 598.
[27] Docket – Vol. II, pp. 641 to 648.
[28] Exhibit "P-1", Docket – Vol. II, pp. 652 to 661; Minutes of the hearing held on, and Order dated April 26, 2022, Docket – Vol. II, pp. 803 to 805.
[29] Exhibit "P-29", Docket – Vol. II, pp. 727 to 738; Minutes of the hearing held on, and Order dated April 26, 2022, Docket – Vol. II, pp. 803 to 805.
[30] Exhibit "P-50", Docket – Vol. II, pp. 830 to 839; Minutes of the hearing held on, and Order dated May 24, 2022, Docket – Vol. II, pp. 823 and 850 to 851, respectively.
[31] Exhibit "P-51", Docket – Vol. II, pp. 840 to 848; Minutes of the hearing held on, and Order dated May 24, 2022, Docket – Vol. II, pp. 823 and 850 to 851, respectively.
[32] Exhibit "P-57", Docket – Vol. II, pp. 903 to 913; Minutes of the hearing held on, and Order dated October 19, 2022, Docket – Vol. II, p. 1037, and Docket – Vol. III, pp. 1038 to 1039, respectively.

Diandrew Arsenyll Lao Dy, [33] the Court-commissioned Independent Certified Public Accountant (ICPA).[34]

The Report of the ICPA was submitted on August 25, 2022[35] and posted on November 2, 2022.[36]

On June 9, 2023, petitioner simultaneously filed its Manifestation on Copy Certification[37] and Formal Offer of Evidence.[38] Respondent then filed his Comment [Re: Petitioner's Formal Offer of Evidence dated 26 May 2023] on June 23, 2023.[39] In the Resolution dated September 28, 2023,[40] the Court noted petitioner's Manifestation, and respondent's Comment on the same. In the same Resolution, the Court admitted petitioner's offered exhibits, except the following:

1. Exhibits "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-22", "P-23", "P-27", "P-28", "P-30", "P-31", "P-31-1", "P-31-2", "P-31-3", "P-37", "P-45" and "P-47", for failure to present the originals for comparison;

2. Exhibit "P-21", for failure to submit the duly marked exhibit and for failure to present the original for comparison;

3. Exhibits "P-24", "P-25", "P-35" and "P-38", for failure to submit the duly marked exhibit;

4. Exhibit "P-26", for failure of the exhibit formally offered and identified to correspond with the document marked and for failure to present the original for comparison;

5. Exhibits "P-54-1300", "P-54-1731 to P-54-1732", "P-54-1811 to P-54-1866", "P-54-3044 to P-54-

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[33] Exhibit "P-59", Docket – Vol. IV, pp. 1454 to 1461; Minutes of the hearing held on, and Order dated May 10, 2023, Docket – Vol. IV, pp. 1802 to 1803.
[34] *Oath of Commission* dated May 24, 2022, Docket – Vol. II, p. 824; Minutes of the hearing held on, and Order dated May 24, 2022, Docket – Vol. II, pp. 823, and 850 to 851, respectively.
[35] *Submission of ICPA Report* dated August 24, 2022, Docket – Vol. II, pp. 866 to 867.
[36] Exhibit "P-60", Docket – Vol. III, p. 1043.
[37] Docket – Vol. IV, pp. 1805 to 1806.
[38] Docket – Vol. IV, pp. 1819 to 1827.
[39] Docket – Vol. IV, pp. 1933 to 1935.
[40] Docket – Vol. IV, pp. 1940 to 1947.

3049", "P-54-4202", "P-54-4780", "P-54-4851 to P-54-4900", "P-54-4905", "P-54-4955 to P-54-4958", "P-54-5254", "P-54-5357", "P-54-5506 to P-54-5508", "P-54-5610 to P-54-5796", "P-54-6053", "P-54-6069", "P-54-6486 to P-54-6487", "P-54-6560", "P-54-7134 to P-54-7135", "P-54-7140", "P-54-7152 to P-54-7153", "P-54-7156 to P-54-7157", "P-54-7160", "P-54-7162 to P-54-7164", "P-54-7172", "P-54-7202 to P-54-7205", "P-54-7217", "P-54-7310", "P-54-7402 to P-54-7404", "P-54-7483 to P-54-7484", "P-54-7486", "P-54-7724 to P-54-8498", "P-55-1886", "P-55-2588 to P-55-2590", "P-55-3487 to P-55-3488", "P-55-3545", "P-55-3742", "P-55-3873", "P-55-3913", "P-55-4144 to P-55-4189", "P-55-4311 to P-55-4344", "P-55-4449 to P-55-4592" and "P-55-4762 to P-55-4764", for not being found in the records of the case; and

6. Exhibits "P-55-19", "P-55-66", "P-55-267 to P-55-P-290", "P-55-383 to P-55-P-432", "P-55-453 to P-55-480", "P-55-482 to P-55-631", "P-55-633 to P-55-847", "P-55-849 to P-55-1146", "P-55-1148 to P-55-1356", "P-55-1515", "P-55-2537", "P-55-2582 to P-55-2587", "P-55-2621", "P-55-2662", "P-55-2854", "P-55-4030 to P-55-4031" and "P-55-4195", for not being in the records of the case (only sub-markings of these exhibits are found in the records).

For his part, respondent presented the testimony of his lone witness, RO Franklin B. Mendoza.[41]

Respondent's Formal Offer of Evidence was filed on October 20, 2023.[42] Petitioner failed to file its comment thereon.[43] In the Resolution dated April 24, 2024,[44] the Court admitted all of respondent's offered exhibits.

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[41] Exhibit "R-11", Docket – Vol. I, pp. 486 to 492; Minutes of the hearing held on, and Order dated October 17, 2023, Docket – Vol. IV, pp. 1948, and 1951 to 1958, respectively.

[42] Docket – Vol. IV, pp. 1953 to 1958.

[43] Records Verification Report dated January 30, 2024 issued by the Judicial Records Division of this Court, Docket – Vol. IV, p. 1961.

[44] Docket – Vol. IV, pp. 1965 to 1966.

The Memorandum (For Petitioner CCT Multi-Purpose Cooperative) was filed on June 3, 2024;[45] while respondent's Memorandum was submitted on June 11, 2024.[46]

The present case was submitted for decision on June 28, 2024.[47]

THE STIPULATED ISSUES

As agreed during the Pre-Trial Conference held on November 24, 2021,[48] the parties submit the following issues for this Court's resolution, to wit:

1. Whether or not petitioner is liable to pay the aggregate amount of ₱72,626,789.96 for Deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax and Compromise Penalty, for taxable year 2016, as well as 20% Deficiency and Delinquency interests pursuant to Sections 248 and 249 of the NIRC of 1997 and 12% interest until full payment pursuant to Section 249 of the Tax Reform for Acceleration and Inclusion (TRAIN) effective January 1, 2018 as implemented by Revenue Regulations (RR) No. 21-2018.

2. Whether or not petitioner, a duly registered cooperative, is exempt from the assessed deficiency taxes; and

3. Whether or not the assessment for Value-Added Tax and Expanded Withholding Tax for the year 2016 had already prescribed.[49]

Petitioner's arguments:

Petitioner argues that it is exempt from paying the assessed deficiency taxes because it timely filed its application

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[45] Docket – Vol. IV, pp. 1967 to 1984.
[46] Docket – Vol. IV, pp. 1987 to 1996.
[47] Minute Resolution dated June 28, 2024, Docket – Vol. IV, p. 1998.
[48] Minutes of the hearing held on, and Order dated November 24, 2021, Docket – Vol. II, pp. 548 to 551. Refer also to the Pre-Trial Order dated March 31, 2022, Docket – Vol. II, at pp. 642 to 643.
[49] Stipulation of Issues, Pre-Trial Order dated March 31, 2022, Docket – Vol. II, pp. 642 to 643.

for tax clearance before the expiration of its tax exemption and that the phrase "at least two (2) months prior to the expiration of the original certificate" is vague, therefore, should be construed in favor of the taxpayer.

Petitioner avers that the tax exemption of a registered cooperative is granted by law and does not arise from the certificate of tax exemption, hence, maintains that respondent erred in finding it liable for deficiency VAT, EWT, and DST. Petitioner also questions the compromise penalties in the amount of ₱25,000.00 because it has no basis in fact and in law. Lastly, petitioner challenges the validity of the subject assessments because respondent's right to assess deficiency VAT and EWT had already prescribed.

Respondent's counter-arguments:

Respondent notices an alleged defect in petitioner's Petition for Review by pointing out that the Verification and Certification of Non-Forum Shopping attached to the said petition lacks the signature of the notary public to which it was subscribed and sworn to. Also, respondent observes that the attached Secretary's Certificate that contains an excerpt of the Board Resolution authorizing Ms. Ruth Mamerta Callanta, to file the petition pertaining to petitioner's 2016 assessment, does not contain an authority to file those pleadings that will be filed with the Court. These defects according to respondent are sufficient to dismiss the Petition filed by petitioner.

Respondent also maintains that his right to assess petitioner of deficiency EWT is imprescriptible because withholding tax assessments are not internal revenue taxes due from a statutory taxpayer but rather are issued for failure of petitioner to withhold the correct taxes it is duty bound to collect as agent. Thus, the relevant laws prescribing a statutory period to assess taxes do not apply to deficiency EWT.

On the substantive merits of the subject assessments, respondent stands by the legal and factual bases of his findings that in the absence of a Renewed Tax Certificate of Tax Exemption and petitioner's failure to renew its certificate of tax exemption for cooperatives, it becomes liable to pay deficiency Income Tax, VAT and DST computed pro-rata for four (4) months starting from the date of expiration on March 28, 2016 to the issuance date of renewal of tax exemption on August 10, 2016.

RULING OF THE COURT

The Court partially grants petitioner's Petition for Review.

Petitioner argues that its tax-exempt status as a duly registered cooperative is derived from law and not by the certificate of tax exemption, arguing that its exemption is not changed, much less nullified, by a mere delay in the renewal of its certificate of tax exemption.

On the other hand, respondent contends that in the absence of a renewed Certificate of Tax Exemption, and for petitioner's failure to renew its certificate of tax exemption for cooperatives, petitioner is liable to pay deficiency income tax, VAT, and DST computed pro-rata for four (4) months, starting from the date of expiration on March 28, 2016 to the issuance date of the renewal of tax exemption on August 10, 2016.

The Court agrees with petitioner.

A Certificate of Tax Exemption/Ruling is not necessary for petitioner to be entitled to the tax incentives or exemptions granted by law.

Article 144 of Republic Act (RA) No. 6938, as amended by RA No. 9520, otherwise known as the Philippine Cooperative Code of 2008, reads, in part, as follows:

> ART. 144. *Transitory Provisions.* – (1) All cooperatives registered and confirmed with the Authority under Republic Act No. 6938 and Republic Act No. 6939, are hereby deemed registered under this Code, and a new certificate of registration shall be issued by the Authority: *Provided*, That such cooperative shall submit to the nearest office of the Authority a copy of their certificate of registration or certificate of confirmation, the articles of cooperation, their bylaws, and their latest audited financial statements within one (1) year from the effectivity of this Code, otherwise they shall be deemed cancelled *motu proprio*.

> (2) **Following the issuance of the new certificate of registration, the registered cooperatives shall secure their certificate of tax exemption from the nearest office of the Bureau of Internal Revenue (BIR): *Provided*, That such exemptions shall be valid for a period of five (5) years from the date of issue:** *Provided, further*, That all unpaid assessments of previously registered cooperative shall be the subject of compromise settlement on terms favorable to such cooperative; and: *Provided, finally*, That the BIR and the Authority shall jointly issue the necessary regulations on this exemption and compromise within ninety (90) days from the effectivity of this Code. *(Emphasis supplied)*
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> xxx xxx xxx.

Based on the foregoing provisions and upon the effectivity of RA No. 9520, existing cooperatives registered with the CDA are required to obtain a new certificate of registration therefrom. After obtaining a new certificate of registration from the CDA, cooperatives are mandated to secure a certificate of tax exemption from the nearest office of the BIR, and the validity of the exemptions shall be for a period of five (5) years from the date of issuance of the said certificate. Notably, petitioner was able to obtain both the CDA's Certificate of Registration dated November 4, 2009,[50] and a Certificate of Tax Exemption, which was set to expire on March 31, 2016,[51] pursuant to the afore-quoted provisions of RA No. 6938, as amended by RA No. 9520.

However, the same provisions of RA No. 6938, as amended by RA No. 9520, says nothing about the renewal of the certificate of tax exemption, and the tax consequences after the expiration of the said five (5)-year period, in case no renewal of the certificate of tax exemption was made by the concerned cooperative.

Section 3(e) of the Joint Rules and Regulations dated February 5, 2010 promulgated by the Secretary of Finance, upon the recommendation of respondent and the Chair of the CDA (Joint Rules and Regulations, for brevity), [52] which implements the provisions of RA No. 6938, as amended by RA

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[50] Par. 1, *Joint Stipulation of Facts* (JSF), Docket – Vol. II, p. 571; Exhibit "P-32", Docket – Vol. IV, p. 1911.

[51] Par. 3, JSF, Docket – Vol. II, p. 571.

[52] Formally known as the "JOINT RULES AND REGULATIONS IMPLEMENTING ARTICLES 60, 61 AND 144 OF REPUBLIC ACT NO. 9520, OTHERWISE KNOWN AS THE 'PHILIPPINE COOPERATIVE CODE OF 2008' IN RELATION TO RA NO. 8424 OR THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED".

No. 9520, pursuant to the afore-quoted Article 144(2) thereof, defines a "Certificate of Tax Exemption/Ruling", viz.:

> ...**the certificate/<u>ruling</u> issued by the BIR <u>granting exemption</u> to a cooperative**, which is valid for a period of five (5) years from the date of issue. *(Emphasis supplied)*

The flaw in the foregoing definition is that it assumes that it is the BIR which grants tax exemptions to cooperatives. To be clear, as will be shown momentarily, it is the law, particularly, Sections 60 and 61 of RA No. 6938, as amended by RA No. 9520, which grants tax incentives or exemptions to cooperatives—and not the BIR. Instead, what the BIR issues is a certificate which embodies a confirmatory ruling for the tax incentives or exemptions to be enjoyed by a certain cooperative. On this score, such Certificate is akin to, or is in the nature of, a BIR Ruling.

Relative thereto, it is already settled that no prior BIR Ruling or confirmatory ruling is required for tax exemption. In *Commissioner of Internal Revenue vs. Co, et al.*,[53] the Supreme Court said:

> **No prior confirmatory ruling is required for tax exemption or refund.**
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> The CIR also insists that the claim should be denied because respondents failed to secure a prior confirmatory ruling that the subject transaction qualifies as a tax-free exchange. According to the CIR, the certification or ruling is important so as to confirm whether the transaction satisfies the conditions set by law; and the authority to do such is vested upon the BIR.
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> Again, the CIR is mistaken.
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> **BIR rulings are the official position of the Bureau to queries raised by taxpayers and other stakeholders relative to clarification and interpretation of tax laws. In this regard, the primary purpose of a BIR Ruling is simply to determine whether a certain transaction, under the law, is taxable or not based on the circumstances provided by the taxpayer.** As admitted by the CIR, **rulings merely operate to 'confirm' the existence of the conditions for exemption provided under the law. If all the requirements for exemption set forth under the law are complied with, the transaction is considered exempt, whether or not a**

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[53] G.R. No. 241424, February 26, 2020.

prior BIR ruling was secured by the taxpayer. *(Emphases supplied)*

Based on the foregoing jurisprudential pronouncements, since BIR Rulings (which may include the Certificate of Tax Exemption/Ruling contemplated under the Joint Rules and Regulations) merely operate to confirm the existence of the conditions for tax exemption provided under the law, the absence of which should not negate the availment of the tax exemption being invoked. As a corollary, the BIR should instead make a determination on the merits of taxpayer's claim for exemption, and not simply ignore such claim on the sole basis that the taxpayer failed to request or obtain a prior confirmatory ruling or a "Certificate of Tax Exemption/Ruling". Thus, a "Certificate of Tax Exemption/Ruling" cannot be a pre-requisite for availment of tax incentive or exemption by a cooperative.

Correspondingly, petitioner should not be faulted for its failure to observe the prior two (2)-month period, as in this case, in applying for a renewal of the Certificate of Tax Exemption as prescribed by Section 15 of the Joint Rules and Regulations. An otherwise rule has a potential for abuse on the part of unscrupulous BIR officials or employees by simply delaying the issuance of the said Certificate so as to have an easy or quick tax assessment lacking sufficient factual and legal bases.

In any event, while this Court agrees with petitioner that the tax exemption of a registered cooperative is given by law, and it does not arise from the certificate of exemption, it must already be stated, at this juncture, that invoking the provisions on the tax incentives or exemptions granted under RA No. 6938, as amended by RA No. 9520, is one thing; proving that a cooperative, on the basis of the said provisions, is indeed not subject to, or exempt from, taxes is still quite another. In line with this observation, the Court will now proceed to determine the propriety of the subject tax assessments *vis-à-vis* the provisions of RA No. 6938, as amended by RA No. 9520.

For TY 2016, the Court finds that petitioner is not liable for deficiency income tax and compromise penalty, but is liable for VAT, EWT, and DST.

Sections 60 and 61 of RA No. 6938, as amended by RA No. 9520, read as follows:

> ART. 60. *Tax Treatment of Cooperatives.* — **Duly registered cooperatives under this Code which do not transact any business with non-members or the general public shall not be subject to any taxes and fees imposed under the internal revenue laws and other tax laws.** Cooperatives not falling under this article shall be governed by the succeeding section.
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> ART. 61. *Tax and Other Exemptions.* — Cooperatives transacting business with both members and non-members shall not be subject to tax on their transactions with members. In relation to this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including but not limited to final taxes on members' deposits and documentary tax. Notwithstanding the provisions of any law or regulation to the contrary, such cooperatives dealing with nonmembers shall enjoy the following tax exemptions:
>
> (1) **Cooperatives with accumulated reserves and undivided net savings of not more than Ten million pesos (P10,000,000.00) shall be exempt from all national, city, provincial, municipal or barangay taxes of whatever name and nature.** Such cooperatives shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally as certified by the Department of Trade and Industry (DTI). All tax-free importations shall not be sold nor the beneficial ownership thereof be transferred to any person until after five (5) years, otherwise, the cooperative and the transferee or assignee shall be solidarily liable to pay twice the amount of the imposed tax and/or duties.
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> (2) **Cooperatives with accumulated reserves and undivided net savings of more than Ten million pesos (P10,000,000.00)** shall pay the following taxes at the full rate:
>
> (a) **Income Tax** — On the amount allocated for interest on capitals: *Provided,* That the same tax is not consequently imposed on interest individually received by members: *Provided, further,* **That cooperatives, regardless of classification, are exempt from income tax from the date of registration with the Authority**;
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> (b) **Value-Added Tax — On transactions with non-members**: *Provided, however,* That **cooperatives duly registered with the Authority, are exempt from the payment of value-added tax, subject to Section 109, sub-sections L, M and N of Republic Act No. 9337, the National Internal Revenue Code, as amended**: *Provided,* That the exempt transaction under Section 109 (L) shall include sales

made by cooperatives duly registered with the Authority organized and operated by its members to undertake the production and processing of raw materials or of goods produced by its members into finished or processed products for sale by the cooperative to its members and non-members: *Provided, further,* That any processed product or its derivative arising from the raw materials produced by its members, sold in the name and for the account of the cooperative, shall be deemed a product of the cooperative: *Provided, finally,* **That at least twenty-five *per centum* (25%) of the net income of the cooperatives is returned to the members in the form of interest and/or patronage refunds**;

(c) **All other taxes** unless otherwise provided herein; and

xxx xxx xxx. *(Emphases supplied)*

Based on the foregoing provisions, the law or RA No. 9520, in providing preferential tax treatment to cooperatives, differentiated between cooperatives that transact only with their members, and those that transact with both their members and the general public. [54] Under Section 60, duly registered cooperatives under the said law which do not transact business with non-members or the general public shall *not* be subject to any taxes under internal revenue laws and other tax laws. On the other hand, Section 61 clarifies that cooperatives which transact both with members and non-members shall *not* be subject to tax on their transactions with members; and that the tax exemption of cooperatives dealing with non-members would depend on the amount of the cooperative's accumulated reserves and undivided net savings. If the said reserves and net savings are more than ₱10,000,000.00, cooperatives that transact with non-members shall pay income tax and VAT, subject to the conditions stated in the law, as well as to all other taxes, unless otherwise provided. But in case the same reserves and net savings do not exceed ₱10,000,000.00, such type of cooperatives shall be exempt from all taxes, whether national or local.

In this case, while under its Articles of Incorporation, petitioner is duly authorized to engage in lending to its members,[55] it has not sufficiently shown that it only transacted with them for TY 2016. The Court-commissioned ICPA, Mr. Diandrew Arsenyll Lao Dy, testified as follows:

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[54] *Estoconing vs. People of the Philippines*, G.R. No. 231298, October 7, 2020.
[55] Par. 2, JSF, Docket – Vol. II, p. 571.

18. Q: You mentioned that you are here today to testify on whether Petitioner is releasing loans to its members only, what steps did you take to determine this?
A: I evaluated the documents to determine if the signatory of each Loan Application Form will match any name indicated in the Share Certificates issued to [petitioner] CCT's members. If the Loan Application Form matches a Share Certificate issued to a member, this means that loans covered by the Loan Application Forms are released to [petitioner] CCT's members. **However, I was able to include only the Share Certificates issued in 2016 for my comparison. Without verification of Share Certificates issued in 2015 and prior years, the matching of Loan Application Forms to 2016 Share Certificates may not be sufficient.**

19. Q: What are your findings?
A: Of the 4,764 Loan Application Forms covering the year 2016, 1,793 Loan Application Forms already matched the Share Certificates issued to [petitioner] CCT's members for the year 2016 only. This represents loan releases amounting to Php 36,391,200 or 38% of the total loan releases.

20. Q: Can you explain the significance of your findings?
A: This means that Petitioner granted 1,793 Loan Application Forms in favor of its members who were issued Share Certificates in 2016. This is already a significant percentage, considering that I have not yet verified whether the Loan Application Forms will match the Shares Certificates issued to [petitioner] CCT's members before 2016.

21. Q: You mentioned that 1,793 out of 4,764 Loan Application Forms were granted to Petitioner's members, how about the remaining 2,971 Loan Application Forms?
A: The remaining 2,971 Loan Application Forms, amounting to Php 51,069,560.00 or 62% percent of the total loan releases did not match the Share Certificate issued in 2016. But they may match the Share Certificates issued in 2015 or prior years. There could also be mismatching of Loan Application Forms to 2016 Share Certificates due to illegible handwriting in the Loan Application Forms, as well as variances in the spelling of the names in the Loan Application Forms as against the 2016 Share Certificates.

22. Q: Why are the Share Certificates issued in 2015 and prior years not yet verified?
A: **Verification of Loan Application Forms to Shares Certificates issued in 2015 and prior years may be extensive and requires a lot of time, but we can do it if the court requires complete verification of all the**

> **files. But, as I said the 38 percent is a significant percentage.**[56]

Based on the foregoing testimony of the ICPA, his examination only pertained to the verification/comparison of the Shares Certificates issued in 2016 vis-à-vis the Loan Application Forms for the same year; and he concluded that only 38% of the total loan releases pertained to petitioner's members. The ICPA even testified that his verification of "Loan Application Forms to Shares Certificates issued in 2015 and prior years may be extensive and requires a lot of time", and he "can do it if the court requires complete verification of all the files", thereby impliedly admitting that he failed to verify completely all the files of petitioner, for him to have a finding that the latter transacted only with its members in 2016. Plainly, the ICPA has not found that petitioner transacted only with its members in taxable year 2016. Correspondingly, this Court cannot readily apply Section 60 of RA No. 6938, as amended by RA No. 9520, so as not to subject petitioner to taxes (e.g., income tax, VAT, EWT, and DST) for TY 2016.

Moreover, petitioner has been found or is classified as a "cooperative transacting with both members and non-members with accumulated reserves and undivided net savings of more than Ten Million pesos (P10,000,000.00)".[57] Thus, petitioner cannot claim exemption from the same taxes under Section 61(1) of RA No. 6938, as amended by RA No. 9520.

However, this Court finds that petitioner is still exempt from income tax.

In any event, petitioner is exempt from the imposition or payment of income tax for TY 2016, regardless whether it transacted both with its members and non-members. This is so because Section 61(2)(a) of RA No. 6938, as amended by RA No. 9520, states that "cooperatives, regardless of classification, are exempt from income tax from the date of registration with the Authority". To be sure, it is undisputed that petitioner is registered with the CDA per Certificate of Registration Number CIN-0105161650 dated November 4, 2009.[58] Relative thereto,

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[56] Exhibit "P-59", Docket – Vol. IV, at pp. 1458 to 1459.
[57] Exhibit "P-46", Docket – Vol. IV, pp. 1925 to 1927.
[58] Par. 1, *Joint Stipulation of Facts* (JSF), Docket – Vol. II, p. 571; and Exhibit "P-32", Docket – Vol. IV, p. 1911.

Article 17 of RA No. 6938, as amended by RA No. 9520, provides as follows:

> ART. 17. *Certificate of Registration.* — A certificate of registration issued by the Authority under its official seal shall be **conclusive evidence** that the cooperative therein mentioned is **duly registered** unless it is proved that the registration has been cancelled. *(Emphases supplied)*

Considering that there is no indication that petitioner's Certificate of Registration issued by the CDA has been cancelled or revoked, the same shall be a conclusive evidence of such fact of registration, thereby entitling petitioner to the income tax exemption granted under Section 61(2)(a) of RA No. 6938, as amended by RA No. 9520. Such being the case, the deficiency income tax assessment against petitioner in the amount of ₱30,563,763.65, including surcharge and interests, for taxable year 2016, must be cancelled.

Nevertheless, petitioner has not shown that it is exempt from the VAT and EWT. Neither is there any showing that the subject VAT and EWT assessments had prescribed.

Anent the assessment of VAT against petitioner for TY 2016, petitioner failed to prove that it falls under the exempting provisions of Section 61(2)(b) of RA No. 6938, as amended by RA No. 9520.

To implement said Section 61(2)(b), Section 8(b) of the Joint Rules and Regulations reads, in part, as follows:

> **SECTION 8. TAXABILITY/EXEMPTION OF DULY REGISTERED COOPERATIVES WHICH TRANSACT BUSINESS WITH MEMBERS AND NON-MEMBERS.**
>
> xxx xxx xxx
>
> b) **Cooperatives with accumulated reserves and undivided net savings of more than Ten Million Pesos (Php10,000,000.00) –**
>
> b.1) **Business transactions with members – Business activities engaged in by such cooperatives**

> **with its members where said cooperative generates revenues shall be exempt from all national internal revenue taxes for which it is liable as enumerated in Section 7 of this Joint Rules and Regulations;**
>
> b.2) **Business transactions with non-members – Cooperatives with accumulated reserves and undivided net savings of more than Php 10,000,000.00 which transact with non-members shall:**
>
> b.2.1) **Pay the following taxes at the full rate:**
>
> xxx xxx xxx
>
> b.2.1.2) **<u>Value Added Tax (VAT) – On transactions with non-members</u>:** *Provided, however,* That cooperatives, pursuant to Section 109, par. (L)(M) and (N) of the NIRC, as amended by RA 9337, shall be exempt from the imposition of VAT, namely the following:
>
> xxx xxx xxx
>
> ii. **Gross receipts from lending activities by credit or multipurpose cooperatives duly registered with the CTA (Sec. 109 (1)(M) of the NIRC, as amended)**; or
>
> xxx xxx xxx.

Notably, petitioner failed to prove that the subject VAT assessment pertained only to gross receipts from its lending activities to its members. But even granting that it was able to do so, the said VAT assessment must still be maintained because petitioner failed to show that at least twenty-five per centum (25%) of its net income is returned to the members in the form of interest and/or patronage funds, which is a condition under Section 61(2)(b) of RA No. 6938, as amended by RA No. 9520, for a cooperative to be exempt from VAT.

Accordingly, the Court is constrained to uphold the subject VAT assessment.

In addition, petitioner's argument that the deficiency VAT and EWT assessments had prescribed has no leg to stand on. This is so because prescription is a matter of defense. The taxpayer has the burden of proving that the prescriptive period has lapsed, including positively identifying when the prescriptive period began to run and exactly when it expired.[59] Moreover, it is incumbent upon petitioner, if it wanted to avail itself of the benefits of Section 203[60] of the 1997 NIRC, as amended, to prove that it had submitted the pertinent returns, and that, having failed to do so, the conclusion must be that no such returns had been filed and that the Government had ten (10) years within which to make the corresponding assessment,[61] pursuant to Section 222(a)[62] of the same Code.

In this case, there is no indication that petitioner offered or presented any of the pertinent VAT and EWT returns for TY 2016, for this Court to determine as to when the same were respectively filed. Correspondingly, the ten (10)-year prescriptive period to assess petitioner for VAT and EWT applies.

Moreover, while withholding tax assessments, such as EWT, clearly contemplate deficiency internal revenue taxes,[63] petitioner has not shown a clear factual and legal bases for its exemption to the subject EWT assessment. As earlier pointed out, petitioner's case does not fall under Articles 60 and 61(1) of RA No. 6938, as amended by RA No. 9520, so as not to be subjected to, or to be exempt from, taxes. As a corollary thereto, anent the subject EWT assessment, considering that EWT is considered as an internal revenue tax, petitioner may fall under Article 61(2)(c) of the same law, which requires cooperatives with accumulated reserves and undivided net savings of more than ₱10,000,000.00, to be subject to "[a]ll other taxes".

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[59] *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020.

[60] "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

[61] Refer to *Taligaman Lumber Co., Inc. vs. The Collector of Internal Revenue*, G.R. No. L-15716, March 31, 1962.

[62] "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."

[63] *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.*, G.R. No. 211289, January 14, 2019.

Thus, with regard to the EWT assessment, the same must likewise be upheld.

Petitioner is also subject to DST.

Anent the DST assessment, the Details of Discrepancies attached to the FLD dated November 19, 2019[64] provides as follows:

IV. DOCUMENTARY STAMP TAX

➢ Basic Tax Due, ₱19,300,265 -- Verification disclosed that you failed to file pay the documentary stamp tax due on your proceeds from issuance of shares of stock and service fee amounting to ₱30,897,254 and ₱38,291,555 (Note 12 and 15 of Financial Statements) pursuant to Section 174 and Section 179 of the NIRC of 1997.

Section 174. Stamp tax on Original Issue of Stock.
'On every original issue, whether on organization, reorganization, or for any lawful purpose, of shares of stock by any association, company or corporation, there shall be collected a documentary stamp tax of one peso (P1.00) on each two hundred pesos (P200.00) or fractional thereof, of the par value of such shares of stock...'

Section 179. Stamp tax on Debt Instruments.
'On every original issue of debt instruments, there shall be collected a documentary stamp tax of one peso (P1.00) on each two hundred pesos (P200.00) or fractional thereof, of the issue price of any such debt instrument...'

Schedule 4.1:

Additional deposit for future subscription	₱ 20,768,254.00
Proceeds from issuance of shares of stock	10,129,000.00
Total increase in shares of stock/paid up	₱ 30,897,254.00
Multiply by: DST rate	P1/200
Basic Tax Due (₱2.00 for every ₱200.00 or fractional part thereof)	₱ 154,487.00

Schedule 4.2:

Service Fee	₱ 38,291,555.00
Divided by:	1%
Total Loan Granted	₱ 3,829,155,500.00
Multiply by: DST rate	P1/200
Basic Tax Due (₱2.00 for every ₱1,000.00 or fractional part thereof)	₱ 19,145,778.00"

[64] Exhibit "R-9", BIR Records, at pp. 793 to 794.

However, just as in the case of the EWT assessment, since petitioner's case does not fall under Sections 60 and 61(1) of RA No. 6938, as amended by RA No. 9520, petitioner may be held liable under Section 61(2)(c) of the said law.

Petitioner's argument that Section 175 of the 1997 NIRC, as amended, does not apply to cooperatives[65] lacks merit. This is because it is clear that under Section 10(b) of the Joint Rules and Regulations, which implements the said Section 61(2)(c), cooperatives, regardless of classification, are subject to DST on their transactions with non-members. Said Section 10(b) reads, in part, as follows:

> **SECTION 10. TAXABILITY OF COOPERATIVES TO OTHER INTERNAL REVENUE TAXES. – All cooperatives, regardless of classification shall be subject to:**
>
> xxx xxx xxx
>
> b) **Documentary stamp taxes on transactions of cooperatives dealing with non-members**, except transactions with banks and insurance companies. Provided that whenever one party to the taxable document enjoys the exemption from DST, the other party who is exempt shall be the one directly liable for the tax; *(Emphasis supplied)*

Correspondingly, since petitioner failed to prove that it transacted only with its members, it cannot be treated as exempt from the DST under RA No. 6938, as amended by RA No. 9520.

In any event, petitioner additionally contends that the deposit for future subscription of shares amounting to ₱20,768,254.00 should not be subjected to DST as there is no transfer of ownership to subscribers yet.

Petitioner's contention, however, deserves scant consideration, since the allegation that no transfer of ownership to subscribers was yet made was not duly proven.

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[65] Par. 41, *Petition for Review*, Docket – Vol. I, p. 23; and Par. 42, Petitioner's *Memorandum*, Docket – Vol. IV, p. 1979.

In *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.* ("*First Express* case"),[66] the Supreme Court held as follows:

> DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. DST is actually an excise tax because it is imposed on the transaction rather than on the document. DST is also levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. The Tax Code provisions on DST relating to shares or certificate of stock state:
>
>> Section 175. Stamp Tax on Original Issue of Shares of Stock. – On every original issue, whether on organization, reorganization or for any lawful purpose, or shares of stock by any association, company or corporation, there shall be collected a documentary stamp tax of Two pesos (₱2.00) on each Two hundred pesos (₱200), or fractional part thereof, of the par value, of such shares of stock: *Provided,* That in the case of the original issue of shares of stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration for the issuance of such shares of stock: *Provided, further,* That in the case of stock dividends, on the actual value represented by each share. [67]
>>
>> Section 176. Stamp Tax on Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Due-bills, Certificates of Obligation, or Shares or Certificates of Stock. – On all sales, or agreements to sell, or memoranda of sales, or deliveries, or transfer of due-bills, certificates of obligation, or shares or certificates of stock in any association, company or corporation or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such due bills, certificates of obligation or stock, or to secure the future payment of money, or for the future transfer of any due-bill, certificate of obligation or stock, there shall be collected a documentary stamp tax of One peso and fifty

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[66] G.R. Nos. 172045-46, June 16, 2009.

[67] As of taxable year 2016, this is Section 174 of the NIRC of 1997, as amended by Republic Act (RA) No. 9243, but at the rate of ₱1.00 on each ₱200, or fractional part thereof.

> centavos (₱1.50) on each Two hundred pesos (₱200), or fractional part thereof, of the par value of such due-bill, certificate of obligation or stock: *Provided,* That only one tax shall be collected on each sale or transfer of stock or securities from one person to another, regardless of whether or not a certificate of stock or obligation is issued, indorsed, or delivered in pursuance of such sale or transfer: And *provided, further,* That in the case of stock without par value the amount of the documentary stamp tax herein prescribed shall be equivalent to twenty-five percent (25%) of the documentary stamp tax paid upon the original issue of said stock. [68]

In Section 175 of the Tax Code, DST is imposed on the original issue of shares of stock. The DST, as an excise tax, is levied upon the privilege, the opportunity and the facility of issuing shares of stock. In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*,[69] this Court explained that **the DST attaches upon acceptance of the stockholder's subscription in the corporation's capital stock regardless of actual or constructive delivery of the certificates of stock.** Citing *Philippine Consolidated Coconut Ind., Inc. v. Collector of Internal Revenue*,[70] the Court held:

> The documentary stamp tax under this provision of the law may be levied only once, that is upon the original issue of the certificate. The crucial point therefore, in the case before Us is the proper interpretation of the word 'issue.' In other words, when is the certificate of stock deemed 'issued' for the purpose of imposing the documentary stamp tax? Is it at the time the certificates of stock are printed, at the time they are filled up (in whose name the stocks represented in the certificate appear as certified by the proper officials of the corporation), at the time they are released by the corporation, or at the time they are in the possession (actual or constructive) of the stockholders owning them?
>
> x x x
>
> Ordinarily, when a corporation issues a certificate of stock (representing the ownership of stocks in the corporation to fully paid subscription) the certificate of stock can be utilized for the exercise of the attributes of

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[68] As of taxable year 2016, this is Section 175 of the NIRC of 1997, as amended by Republic Act (RA) No. 9243, but at the rate of ₱0.75 on each ₱200, or fractional part thereof, and which deleted references to *"due-bills, certificates of obligation"*, *"securities"*, and *"obligation"*.

[69] 230 Phil. 76, 80-81 (1986).

[70] 162 Phil. 32 (1976).

> ownership over the stocks mentioned on its face. The stocks can be alienated; the dividends or fruits derived therefrom can be enjoyed, and they can be conveyed, pledged or encumbered. The certificate as issued by the corporation, irrespective of whether or not it is in the actual or constructive possession of the stockholder, is considered issued because it is with value and hence the documentary stamp tax must be paid as imposed by Section 212 of the National Internal Revenue Code, as amended.

In Section 176 of the Tax Code, DST is imposed on the sales, agreements to sell, memoranda of sales, deliveries or transfer of shares or certificates of stock in any association, company, or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such certificates of stock. In *Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue*,[71] this Court held that **under Section 176 of the Tax Code, sales to secure the future transfer of** due-bills, certificates of obligation or **certificates of stock are subject to documentary stamp tax.**

Revenue Memorandum Order No. 08-98 (RMO 08-98) provides the guidelines on the corporate stock documentary stamp tax program. RMO 08-98 states that:

> 1. All existing corporations shall file the Corporation Stock DST Declaration, and the DST Return, if applicable **when DST is still due on the subscribed share issued by the corporation**, on or before the tenth day of the month following publication of this Order.
>
> x x x
>
> 3. All existing corporations with authorization for increased capital stock shall file their Corporate Stock DST Declaration, together with the DST Return, if applicable **when DST is due on subscriptions made after the authorization**, on or before the tenth day of the month following the date of authorization. (Boldfacing supplied)

RMO 08-98, reiterating Revenue Memorandum Circular No. 47-97 (RMC 47-97), also states that **what is being taxed is the privilege of issuing shares of stock, and, therefore, the taxes accrue at the time the shares are issued.** RMC 47-97 also defines **issuance as the point in which the**

[71] G.R. No. 133834, August 28, 2006.

stockholder acquires and may exercise attributes of ownership over the stocks.

As pointed out by the CTA, Sections 175 and 176 of the Tax Code contemplate a subscription agreement in order for a taxpayer to be held liable to pay the DST. A subscription contract is defined as any contract for the acquisition of unissued stocks in an existing corporation or a corporation still to be formed. A stock subscription is a contract by which the subscriber agrees to take a certain number of shares of the capital stock of a corporation, paying for the same or expressly or impliedly promising to pay for the same.

xxx xxx xxx

Based on Rosario's testimony and respondent's financial statements as of 1998, there was no agreement to subscribe to the unissued shares. Here, the deposit on stock subscription refers to an amount of money received by the corporation as a deposit with the possibility of applying the same as payment for the future issuance of capital stock. In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*,[72] we held:

> We are firmly convinced that the Government stands to lose nothing in imposing the documentary stamp tax only on those stock certificates duly issued, or wherein the stockholders can freely exercise the attributes of ownership and with value at the time they are originally issued. **As regards those certificates of stocks temporarily subject to suspensive conditions they shall be liable for said tax only when released from said conditions, for then and only then shall they truly acquire any practical value for their owners.** (Boldfacing supplied)

Clearly, the deposit on stock subscription as reflected in respondent's Balance Sheet as of 1998 is not a subscription agreement subject to the payment of DST. There is no ₱800,000 worth of subscribed capital stock that is reflected in respondent's GIS. The deposit on stock subscription is merely an amount of money received by a corporation with a view of applying the same as payment for additional issuance of shares in the future, an event which may or may not happen. The person making a deposit on stock subscription does not have the standing of a stockholder and he is not entitled to dividends, voting rights or other prerogatives and attributes of a stockholder. Hence, respondent is not liable for the payment of DST on its deposit on subscription for the reason that there is yet no

[72] 230 Phil. 76, 80-81 (1986).

> subscription that creates rights and obligations between the subscriber and the corporation. *(Emphases supplied)*

Based on the foregoing jurisprudential pronouncements, it can be readily discerned that the High Court did not outrightly hold that all *"deposit for future subscription of shares"* are not subject to DST, *i.e.*, without qualification or condition. To be sure, in the above-stated case, the Supreme Court relied on the testimonial and documentary evidence presented by the concerned taxpayer, and on that basis, ruled, after a careful analysis, that the latter "is not liable for the payment of DST on its deposit on subscription for the reason that there is yet no subscription that creates rights and obligations between the subscriber and the corporation." This is not the case here.

In this case, petitioner has not presented any evidence to prove that the amount of ₱20,768,254.00 refers to "an amount of money received by [it] as a deposit with the possibility of applying the same as payment for the future issuance of capital stock." Particularly, unlike in the *First Express* case, petitioner did not present its records (such as its Balance Sheet and GIS for TY 2016) or any other equivalent documents, which would support a finding that the payment of said amount did not represent payment for the subscription or the issuance of petitioner's shares.

Such being the case, petitioner's allegation that no transfer of ownership to subscribers was yet made remained an allegation. *Apropos*, the party alleging a fact has the burden of proving it and a mere allegation is not evidence.[73] Hence, the subject DST assessment must remain.

Petitioner, however, is not liable to pay the subject compromise penalty.

Notwithstanding its failure to establish its entitlement to the tax incentives or exemptions under RA No. 6938, as amended by RA No. 9520, petitioner should not be held liable to the compromise penalty imposed.

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[73] *Atienza vs. Castro*, G.R. No. 169698, November 29, 2006.

It must be stressed that a compromise is, by its nature, mutual in essence.[74] It implies agreement. One party cannot impose it upon the other.[75] Compromise penalties are only amounts suggested in settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event of refusal to pay the suggested amount.[76] Considering that there is no indication that petitioner consented to the subject compromise penalty, then with greater reason that the said amount should not be sustained. Thus, petitioner cannot be held liable to the compromise penalty in the amount of ₱25,000.00.

All told, while the subject deficiency income tax assessment and imposed compromise penalty in this case must be cancelled, petitioner is still liable for the subject deficiency VAT, EWT, and DST assessments, and respective increments thereto (*i.e.*, surcharges and interests), for TY 2016.

WHEREFORE, in light of the foregoing considerations, the present Petition for Review is **PARTIALLY GRANTED**.

Accordingly, the subject deficiency income tax assessment totalling ₱30,563,763.65, including increments thereto, and the compromise penalty being imposed amounting to ₱25,000.00, as reflected in the FLD dated November 19, 2019 issued against petitioner, for TY 2016, are **CANCELLED** and **SET ASIDE**.

However, the deficiency assessments for the VAT, EWT, and DST, as stated in the same FLD dated November 19, 2019, for TY 2016, issued against petitioner, are hereby **UPHELD WITH MODIFICATIONS**, as computed below. Hence, petitioner is **ORDERED TO PAY** respondent the amount of ₱41,156,553.13, representing the said deficiency taxes for taxable year 2016, inclusive of the 25% surcharge, and the 20% and 12% deficiency interests respectively imposed under Section 248(A)(3) and Section 249(B) and (C) of the 1997 NIRC, as amended by RA No. 10963, also known as the "Tax Reform for Acceleration and Inclusion" (TRAIN), and as implemented by Revenue Regulations (RR) No. 21-2018, computed until December 19, 2019[77], as follows:

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[74] Refer to *Vda. De San Agustin vs. Commissioner of Internal Revenue,* G.R. No. 138485, September 10, 2001.
[75] *Commissioner of Internal Revenue vs. Abad, et al.,* G.R. No. L-19627, June 27, 1968.
[76] Refer to Part III.4, Revenue Memorandum Order No. 7-2015.
[77] Due date reflected in the FLD dated November 19, 2019 (Exhibit "R-9", BIR Records, pp. 792 to 798).

Particulars	VAT	EWT	DST	TOTAL
Basic tax	₱17,608,811.08	₱523,813.97	₱6,433,421.67	₱24,566,046.72
Add: 25% Surcharge	4,402,202.77	130,953.49	1,608,355.42	6,141,511.68
20% Deficiency interest Jan. 26, 2017 to Dec. 31, 2017 *(₱17,608,811.08 x 20% x 340 /365)*	3,280,545.63			3,280,545.63
20% Deficiency interest Jan. 16, 2017 to Dec. 31, 2017 *(₱523,813.97 x 20% x 350/365)*		100,457.47		100,457.47
20% Deficiency interest Jan. 06, 2017 to Dec. 31, 2017 *(₱6,433,421.67 x 20% x 360/365)*			1,269,058.52	1,269,058.52
Total amount due, Dec. 31, 2017	₱25,291,559.48	₱755,224.94	₱9,310,835.61	₱35,357,620.02
Add: 12% Deficiency interest Jan. 1, 2018 to Dec. 19, 2019				
(₱17,608,811.08 x 12% x 718/365)	4,156,644.28			4,156,644.28
(₱523,813.97 x 12% x 718/365)		123,648.80		123,648.80
(₱6,433,421.67 x 12% x 718/365)			1,518,640.03	1,518,640.03
Total Amount Due, Dec. 19, 2019	**₱29,448,203.76**	**₱878,873.74**	**₱10,829,475.64**	**₱ 41,156,553.13**

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) per annum based on the total unpaid taxes due as of December 19, 2019, in the amount of ₱41,156,553.13 or equivalent to ₱13,530.92[78] per day, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended by RA No. 10963, as implemented by RR No. 21-2018.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

78 ₱41,156,553.13 x 12% / 365.

WE CONCUR:

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
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.

CATHERINE T. MANAHAN
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice