REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

WESTCHESTER CORPORATION, *Petitioner,*	**C.T.A. E.B. NO. 127 (C.T.A. CASE NO. 6969)**
	Present:
-versus-	ACOSTA, Presiding Justice CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAY 17 2006

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DECISION

PALANCA-ENRIQUEZ, J.:

Are pawnshops engaged in the sale or exchange of services, and thus liable to pay Value-Added Tax (hereafter "VAT") thereon under *Section 108 of the National Internal Revenue Code of 1997, as amended*? Are pawn tickets subject to Documentary Stamp Tax (hereafter "DST") under *Section 195 of the same Code*?

THE CASE

These issues are again before Us in this Petition For Review filed by Westchester Corporation (herein petitioner) under *Section 11 of Republic Act No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks the reversal of the Decision of 20 June 2005 and the Resolution of 5 October 2005 issued by the Second Division of this Court in C.T.A Case No. 6969, the respective dispositive portions of which read as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of merit. Petitioner is hereby **ORDERED TO PAY** the respondent the amount of P517,385.28 and P22,736.09 as deficiency value-added tax and documentary stamp tax, respectively, for the year 2000, plus 20% delinquency interest from February 25, 2004, until full payment thereof pursuant to Sections 249 (C) of the 1997 National Internal Revenue Code.
>
> SO ORDERED."
>
> "**WHEREFORE**, the Motion For Reconsideration is **DENIED** for lack of merit.
>
> SO ORDERED."

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THE FACTS

The facts of the case are undisputed:

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal business address at 8th floor Builder's Center Building, Salcedo Street, Legaspi Village, Makati City. It is engaged in pawnshop business under the name and style of "Tambunting Pawnshop".

On January 22, 2004, petitioner received from respondent Formal Assessment Notice (FAN) Nos. WE-53476-00-04-643, VT-53476-00-04-643 and DS-53476-00-04-643, for deficiency withholding tax (EWT), value-added tax (VAT) and documentary stamp tax (DST) for the year 2000 in the amounts of P2,448.03, P586,718.65 and P25,768.64, respectively, inclusive of penalties, computed as follows:

Deficiency EWT

EWT Still Due	P1,515.27
Add: interest (20% p.a.)	932.76
EWT Still Due	**P2,448.03**

Deficiency VAT

Gross Receipts per FS	P2,773,335.00
Output Tax	277,333.50
Less: Input VAT	

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VAT Due	277,333.50
Add: Surcharge (50%)	138,666.75
Interest (20% p.a.)	170,718.40
VAT Still Due	**P 586,718.65**

Deficiency DST

Pledge Loan Receivable per FS	P6,060,100.00
DST Due	12,130.20
Less: DST Paid	-
Deficiency DST	12,130.20
Add: Surcharge (50%)	6,065.10
Interest (20% p.a.)	7,573.34
	P25,768.64

On February 3, 2004, petitioner filed a written protest questioning the deficiency VAT and DST assessments and requesting for the cancellation and withdrawal thereof. However, petitioner settled its EWT deficiency in the amount of P2,448.03.

Thus, on March 22, 2004, the Bureau of Internal Revenue issued its final decision on the disputed assessments, a copy of which was received by petitioner on March 29, 2004. Said decision cancelled the assessment for deficiency EWT by reason of payment, but denied the protest with respect to deficiency VAT and DST. Aggrieved, petitioner filed the instant petition on April 26, 2004.

In his Answer, filed on June 8, 2004, respondent alleged, by way of special and affirmative defenses, that the enumeration of persons under *Section 108 (A) of the Tax Code* performing services for a fee is not exclusive, and the enumeration is merely intended to give examples of businesses performing services that are subject to VAT; that by selling properties, pawnshops shall be subject to VAT; and that pawn tickets are subject to DST, as enunciated in the case of *Cruz vs. Chua, 54 Phil. 10.*

After trial on the merits, the Second Division of this Court rendered the assailed decision on June 20, 2005 denying the Petition For Review.

Not satisfied, petitioner moved for a reconsideration of the same, which the Second Division denied in a Resolution dated October 5, 2005.

THE ISSUE

Hence, this Petition For Review raising the following sole issue, to wit:

> THE SECOND DIVISION'S DECISION OF 20 JUNE 2005 AND RESOLUTION OF 05 OCTOBER 2005 ARE NOT IN ACCORDANCE WITH LAW AND SETTLED JURISPRUDENCE ON THE MATTER.

On 18 November 2005, We required the respondent to file comment on the petition.

For failure of the respondent to file his comment despite notice, both parties were ordered to file their simultaneous memoranda, within fifteen (15) days from notice, afterwhich the petition shall be deemed submitted for decision.

Only the petitioner filed its Memorandum on March 17, 2006. The case is now deemed submitted for decision.

THE COURT *EN BANC'S* RULING

The petition is not meritorious.

The principal issues posed for resolution by this Court *En Banc* are whether the petitioner, a pawnshop operator, is subject to Value-Added Tax under *Section 108 of the NIRC*, and whether pawn tickets are subject to DST under *Section 195 of the same Code*.

There is nothing novel in this case as the principal issues raised herein had, in a long line of cases, been previously ruled by this Court in the affirmative, and sustained by the Court of Appeals.

Petitioner contends that pawnshops are not subject to VAT pursuant to *Section 108 of the 1997 NIRC*. It argues that pawnshops are not lending investors, whose services can be subject to VAT.

Petitioner further points out that VAT cannot be imposed on pawnshops by mere implication, without violating the fundamental rule in construction of tax statutes prohibiting taxation by mere implication.

Petitioner further argues that petitioner is not subject to VAT, as there is no express provision in the *1997 NIRC* which subjects pawnshops to VAT. The enumeration under *Section 108 (A)* is exclusive – only those services listed therein are subject to VAT. The phrase "and similar services x x x" bolsters the exclusivity of the above provision.

We sustain the findings of the Second Division.

Pawnshops are subject to VAT under Sections 105 & 108 of the NIRC

Section 105 of the NIRC of 1997, as amended, provides that:

> "SEC. 105. *Persons Liable.*- Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase '*in the course of trade or business*' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business."

Corollarily thereto, *Section 108 (A) of the same Code* provides:

"Section 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties. –*

(A) *Rate and Base of Tax*.- There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and

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immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafés and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. xxx."

The law is clear. VAT is a percentage tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services (*Commissioner of Internal Revenue vs. Court of Appeals, 329 SCRA 237*). *Section 102(A) of the NIRC of 1977* defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration".

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Section 3 of P.D. No. 114 (*The Pawnshop Regulations Act)* defines pawnshop as a person or entity engaged in the business of lending money on personal property delivered as security for loans and shall be synonymous, and maybe used interchangeably with, pawnbrokers or pawnbrokerage.

Considering that pawnshops are engaged in the business of lending money at interest, the same constitutes the performance of a service for a fee, remuneration or consideration for such service. As such, pawnshops are liable to pay VAT for the sale of services.

As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to value-added tax (*Commissioner of Internal Revenue vs. Court of Appeals, supra*). The personal properties delivered by clients of pawnshops as security for the loan which the former obtained from the latter are in the form of remuneration or consideration, for without such personal properties, pawnshop will not extend any loan to a borrower. Thus, the phrase "all kinds of services" as stated in the second paragraph of *Section 102(A) of the NIRC of 1977, as amended*, is broad enough to cover the kind of service, that is, lending money in consideration of personal property delivered as security, provided by pawnshops to their borrowers.

Furthermore, under *Section 15 of P.D. No. 114*, pawnshops also sell at public auction, personal properties pawned to them, in the event that the pawner fails to redeem the pawn within ninety days from the date of maturity of the obligation. The pawnbroker may sell or otherwise dispose of any article taken or received by him in pawn (*Section 14, P.D. No. 114*). Therefore, by selling properties, pawnshops shall be subject to VAT.

Finally, *Section 109* of the same Code enumerates the transactions that are exempt from VAT. Pawnshop transactions do not fall within the exemptions.

Petitioner's argument for the exclusivity of the enumeration in *Section 108(A) of the 1997 NIRC, as amended*, is misplaced. The phrases "the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration", "including those performed or rendered by", and "similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties" necessarily convey the very idea of non-exclusivity of the enumeration.

Reliance on the principle of *inclusio unius est exclusio alterius* is likewise erroneous where the law is clear and unambiguous. The law on VAT clearly includes pawnshops since they are engaged in the performance of service for fee. Thus, adhering to the well-settled rule in statutory construction, where the language of the statute imposing a tax is plain and there is no room for construction, any claim for exemption must be clearly shown and based on the express intent of the law (*Davao Gulf Lumber Corporation vs. Commissioner of Internal Revenue, 293 SCRA 76, 88*). Otherwise stated, "taxation is the rule, exemption therefrom is the exception" (*Mactan Cebu International Airport Authority vs. Hon. Ferdinand J. Marcos, 261 SCRA 667, 680*).

Moreover, the said settled rule in statutory construction does not apply where other circumstances indicate that the enumeration was not intended to be exclusive (*Escribano vs. Avila, 85 SCRA 245*), or where the enumeration is by way of example only (*Gomez vs. Ventura, 54 Phil 726; Binay vs. Sandiganbayan, 316 SCRA 86*). Rather, such enumeration even expanded the meaning of the phrase "all kinds of services".

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Pawn Tickets
are subject to DST
under Section 195
of the same Code

Also, without merit is petitioner's contention that pawnshops are not subject to DST on pawn tickets. Pawnshops lend money on the security of personal property, a pledge. The pledge is evidenced by a pawn ticket. Hence, the pawn ticket is the logical document subject to DST on pledges under *Section 195 of the NIRC of 1997, as amended (Revenue Memorandum Circular No. 43-91, May 27, 1991)*. In this regard, it should be noted that the pawner presents the pawn ticket to redeem the pawned or pledged item. The pawn ticket is, thus, a document evidencing the pledge. Thus, *Section 173 of the NIRC of 1997, as amended*, provides:

> "SEC. 173. Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers. – Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transactions so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the

property is situated in the Philippines, and at the same time such act is done or transaction had: Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax."

As aptly ruled by the Second Division:

"As the person issuing the pawn ticket, which is the evidence of the pledge, the pawnshop is liable for documentary stamp tax thereon. Even though a pawn ticket is a mere receipt for the pawn and not an evidence of indebtedness as expressly provided by Presidential Decree No. 114, it is still subject to documentary stamp tax.

Pawn tickets per se are not being subject to documentary stamp tax. Rather, it is the transaction involved that is being taxed. In the case of pawnshop, the property pawned, or pledged, is transferred to the pawnshop as security for the payment of money lent. This is where the documentary stamp tax is imposed. (Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., CA-G.R. SP No. 67667, June 29, 2004) The law provides that on every pledge of personal property, 'where the same shall be made as a security for the payment of any definite and certain sum of money lent,' a documentary stamp tax is imposed, based on the amount involved. Again, adhering to the fundamental rule on construction regarding taxation, any claim for exemption must be shown and based on the express provision of law. Pawnshops are not included in the exemption provided in the National Internal Revenue Code, as amended.

"Even granting that P.D. 114 defines a pawn ticket neither as a security nor a printed evidence of indebtedness but as a 'pawnbroker's receipt for a pawn' it nevertheless defines a 'pawn' as the personal property delivered by the

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pawner to the pawnee as security for a loan, hence, the Pawnshop Regulation Act itself acknowledges that pawnshops enter into contracts of pledge." (Commissioner of Internal Revenue vs. Antam Pawnshop Corp., CA-G.R. SP No. 79117, January 21, 2005) A pawn ticket is the logical document evidencing a pledge contract that is subject to DST.

It is a settled principle that equity and law always exalt substance over form. It is the nature of the instrument which will determine whether it will be subjected to documentary stamp tax or not. Thus, it does not matter that the pawn ticket is called a receipt. This does not alter the fact that such receipt is also the document evidencing the pledge. It is therefore both a receipt and a pledge at the same time.

In *Philippine Home Assurance Corporation vs. Commissioner of Internal Revenue, 301 SCRA 443[1999],* the Supreme Court said:

> 'In general, documentary stamp taxes are levied on the exercise by certain persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of lands, mortgages, pledges, and trusts, and conveyances of real property.
>
> Documentary stamp taxes are thus levied on the exercise of these privileges through the execution of specific instruments, xxx. The documentary stamp taxes must be paid upon the issuance of the said instruments, xxx.'

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The documentary tax is therefore imposable on the transaction whatever form or name the instrument of pledge may have. It accrues upon the exercise of the privilege to enter into certain transactions, in this case, a pledge."

Petitioner's contention that the questioned VAT and DST assessments are void for non-compliance with *Section 228 of the 1997 NIRC, as amended*, is likewise devoid of merit.

It bears emphasis that the purpose of the requirement that the taxpayer should be fully informed of the law and facts on which the assessment is made is to give the taxpayer the opportunity to refute the findings of the examiner and give a more accurate and detailed explanation regarding the proposed assessment(s). In its written protest, dated February 2, 2004, questioning the deficiency VAT and DST assessments, and requesting for the cancellation and withdrawal of the same, petitioner cited in detail the laws and decisions of this Court and the Court of Appeals as basis of its claim that said assessments were erroneous. Clearly, therefore, at the time the assessments were issued, petitioner knew very well the law and facts on which they were issued. In fact, petitioner paid the EWT assessment in the amount of P2,448.03. The fact that petitioner was able to intelligently protest the deficiency VAT and DST assessments, and paid the EWT assessment, shows that it had actual knowledge of the law and facts on which the assessments were made. Thus, the requirement in *Section 228 of the NIRC of 1997, as amended,* had been complied with.

For all the foregoing, We see no reason to reverse the assailed Decision of the Second Division of this Court.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

Concurring & Dissenting
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(on leave)
CAESAR A. CASANOVA
Associate Justice

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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

WESTCHESTER CORPORATION
Petitioner,

C.T.A. EB No. 127
(C.T.A. Case No. 6969)

Present:

-versus-

Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 17 2006 [signature]

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Concurring and Dissenting Opinion

With due respect to my esteemed colleagues, although I agree with the majority as regards the finding that petitioner is subject to deficiency value-added tax (VAT), I wish to manifest my dissent with respect to the portion of the Decision that finds petitioner Westchester Corporation liable to Documentary Stamp Tax (DST) on pawn tickets.

Section 195 of the Tax Code, upon which the Court of Tax Appeals *En Banc* based its decision that pawnshop tickets are liable for DST, is hereunder quoted for ready reference, thus:

> **Section 195. Stamp Tax on Mortgages, Pledge, and Deeds of Trust.** – On every mortgage or pledge of lands, estate, or property, real of personal, heritable or movable, whatsoever, where the same shall be

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> made as security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable, and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, xxx.

Clearly from the foregoing, what is contemplated as taxable for DST are documents evidencing a pledge of personal property and made as a security for repayment of a loan.

The undersigned reckons that a definition of a "pawn ticket" is in order. **Section 3 of Presidential Decree No. 114** (Pawnshop Regulation Act) defines a "pawn ticket" as the pawnbroker's receipt for a pawn. It is neither a security nor a printed evidence of indebtedness.

The BIR itself expressed a corroborative opinion to the above view that "pawn tickets" are neither a security nor a printed evidence of indebtedness, the security in a pawn transaction being the personal property itself which is delivered to the pawnee or the pawnshop, in **BIR Ruling No. 325-88** dated July 13, 1998, thus:

> In the case of the pawnshop business, the pawnee (pawnshop or pawn broker) issues a 'pawn ticket' to the pawner (borrower from a pawnshop). **The pawn is the personal property delivered by the pawner to the pawnee as security for the loan. The 'pawn ticket' is the pawnbroker's receipt for a pawn. This is neither a security nor a printed evidence of indebtedness.** (Sec. 3, P.D. 114 or the Pawnshop Regulatory Act). Accordingly, considering that the document taxable under Section 195 of the Tax Code must show the existence of debt and inasmuch as, under the law, a pawn ticket is not a printed evidence of indebtedness, such pawn ticket cannot be considered as a document subject to the documentary stamp tax imposed by Section 195 of the Tax Code. (*Emphasis supplied*)

Equally noteworthy is the fact that a pawn ticket is not a contract in writing but merely a unilateral acknowledgement of receipt of personal property. In defining a

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contract of pledge, **Articles 2085 and 2093 of the New Civil Code** enumerate the essential requisites:

> "**Article 2085.** The following requisites are essential to the contracts of pledge and mortgage:
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> (1) That they be constituted to secure the fulfillment of a principal obligation;
>
> (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
>
> (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.
>
> **Article 2093.** In addition to the requisites prescribed in Article 2085, it is necessary, in order to constitute the contract of pledge, that the thing pledged be placed in the possession of the creditor, or of a third person by common agreement."

If a pawn ticket satisfies the requirements of a contract of pledge, then it must be subject to DST under Section 195 of the Tax Code. The fact remains, however, that a pawn ticket is a mere receipt for a pawn and does not contain the elements of a contract of pledge. Necessarily, a pawn ticket cannot be subject to DST under Section 195 of the Tax Code. The foregoing considered, the pawn tickets issued by petitioner to evidence receipt of a pawn are not subject to DST since they do not evidence a pledge or security for the repayment of a loan.

As regards the issue of pawnshops' liability to VAT, this Court in several so-called pawnshop cases such as **Integrity Pawnshop, Inc. vs. Bureau of Internal Revenue, Karuhatan Road, Valenzuela City**, *CTA Case No. 6721, September 6, 2004* and **Forum Pawnshop, Inc. vs. Bureau of Internal Revenue, Tuguegarao City**, *CTA Case No. 6718, September 6, 2004*, all point to the inclusion of pawnshops as an entity liable to VAT under Section 108 (A) in relation to Section 105 of the NIRC. The finding of liability is based on this Court's view that the phrase "sale or

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exchange of services" encompasses the performance of all kinds of services for others for a fee, remuneration or consideration. The listing provided for in Section 108 (A) is intended merely to give examples of persons or businesses performing services for a fee, remuneration or consideration. The enumeration is not exclusive, which means that other persons performing services for a fee, remuneration or consideration, who are not expressly mentioned in the enumeration, are also subject to VAT. Inasmuch as pawnshops are engaged in the sale of services for a fee, remuneration or consideration, they are subject to VAT under Section 108(A) of the NIRC of 1997, as amended.

To recapitulate, inasmuch as the document taxable under Section 195 must be the document evidencing indebtedness and considering that under the Pawnshop Regulation Act, a pawn ticket is not a printed evidence of indebtedness, consequently, such pawn ticket cannot be considered as a document subject to documentary stamp tax. (**CIR v. Hon. Andres B. Reyes, Jr.,** *C.A. G.R. SP No. 28824, December 23, 1993* cited in **Exquisite Pawnshop Jewelry, Inc. vs. Jaime B. Santiago in his capacity as Revenue Regional Director, Revenue Region No. 13 of the Bureau of Internal Revenue and the Commissioner of Internal Revenue**, *CTA Case No. 6755, July 6, 2004*). Accordingly, I manifest my dissent to the majority opinion insofar as the portion of the Decision that finds pawn tickets subject to Documentary Stamp Tax.

ERNESTO D. ACOSTA
Presiding Justice

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