REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST EXPRESS PAWNSHOP COMPANY, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6529

COMMISSIONER OF INTERNAL, REVENUE,
Respondent.

Promulgated:

SEP 2 4 2004

x - x

DECISION

This petition is seeking for the cancellation of the alleged deficiency income and value-added tax assessments in the amounts of P20,712.58 and P601,220.18, respectively and deficiency documentary stamp tax assessments in the amounts of P12,328.45 and P62,128.87 issued by respondent for the taxable year 1998.

The following are the facts as established in the records of the case:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It is engaged in the pawnshop business with business address at 2435 Rizal Avenue, Sta. Cruz, Manila.

Respondent, through then Acting Regional Director Ruperto P. Somera, of Revenue Region 6, Manila, issued the following assessments against the petitioner, all dated December 28, 2001, and received by petitioner on January 3, 2003: a) Assessment No. 31-1- -98 for deficiency income tax in the amount of Twenty Thousand Seven Hundred Twelve Pesos and 58/100 (P20,712.58) with corresponding compromise penalty; b) Assessment No. 31-14-000053-98 for deficiency value-added tax (VAT) in the amount of Six Hundred One Thousand Two Hundred Twenty Pesos and 18/100 (P601,220.18) with corresponding compromise penalty; c) Assessment No. 31-14-000053-98 for deficiency documentary stamp tax (DST) on deposits on subscription in the amount of Twelve Thousand Three Hundred Twenty-Eight Pesos and 45/100 (P12,328.45); and d) Assessment No. 31-1-000053-98 for deficiency DST in the amount of Sixty-Two Thousand One Hundred Twenty-Eight Pesos and 87/100 (P62,128.87).

On February 1, 2002, petitioner filed its protest on the above assessments. Within thirty (30) days from the lapse of the 180-day period within which the respondent has to act on the petitioner's protest as prescribed by Section 228 of the National Internal Revenue Code (NIRC) of 1997, petitioner filed the instant petition on August 28, 2002.

Respondent in his Answer to the petition filed on September 25, 2002, alleged the following Special and Affirmative Defenses:

8. The assessment is valid and correct and the taxpayer has the burden of proof to impugn its validity (Behn Meyer & Co. vs. CIR, 27 Phil 647). Thus, similarly held, tax assessments by tax examiners are presumed correct and made in good faith. The tax payer has the duty to prove otherwise (Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. 145 SCRA 671); and an assessment duly made by a BIR examiner and approved by his superior officers will not be disturbed (Gutierrez vs. Villegas, 8 SCRA 527);

9. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right (Tan Guan vs. Court of Tax Appeals, et al., 19 SCRA 903 [1967]); otherwise, the presumption in favor of the correctness of the tax assessment stands (Inter Provincial Bus Co., Inc. vs. Collector of Internal Revenue, 98 Phil 290, [1956]; Collector of Internal Revenue vs. Bohol Land Transportation, Co., 107 Phil 967 [1960];

10. Petitioner is subject to 10% VAT based on its gross receipts pursuant to R.A. No. 7716 otherwise known as Expanded Value Added Tax (EVAT) Law as amended by the 1997 Tax Code (R.A. No. 8424);

11. Unless expressly exempt from VAT, any person engaged in the sale of goods, property or services in the course of trade or business shall be liable to the 10% VAT (Revenue Memorandum Circular No. 45-2001);

12. BIR Ruling No. 221-91 provides that pawnshop tickets are subject to Documentary Stamp Tax (DST) because a pawnshop ticket virtually evidences a pledge. Since petitioner lent money at interest and requires a pledge of personal property as security, the essence of its operation is *lending money*. Thus, petitioner's pawnshop tickets are subject to DST pursuant to Section 195 of the 1997 Tax Code.

In the course of the proceedings, the parties submitted the following stipulated issues to be adjudicated by this court:

1. Whether or not petitioner's interest expense of P889,909.81 is supported by documentary evidence;

2. Whether or not petitioner's donation and contribution of P8,120.00 is in excess of the deductible donation allowed by law;

3. Whether or not petitioner is liable for deficiency DST on deposits on subscription under Section 175 of the 1997 Tax Code;

4. Whether or not petitioner is subject to 10% VAT under Section 108 of the 1997 Tax Code;

5. Whether or not petitioner is liable for deficiency DST on the pawn tickets under Section 180 of the 1997 Tax Code;

6. Whether or not petitioner is liable for interest and compromise penalty; and

7. Whether or not petitioner submitted its supporting documents to assail the income assessment within sixty (60) days from filing its protest pursuant to Section 228 of the 1997 Tax Code.

On July 1, 2003, petitioner, in the interest of expediency and to save this court's valuable time in resolving the issue on the deficiency income tax, paid the amount of Twenty-Seven Thousand Seven Hundred Forty-Four Pesos and 88/100 (P27,744.88), inclusive of interest.

With the payment of the said deficiency income tax the assessment therefor is considered settled and the court is left with only the following issues to resolve:

1. Whether or not petitioner is subject to 10% VAT under Section 108 of the NIRC of 1997;

2. Whether or not petitioner is liable for deficiency DST on deposits on subscription under Section 175 of the NIRC of 1997;

3. Whether or not the petitioner is liable for deficiency DST on pawn tickets under Section 180 of the 1997 Tax Code;

4. Whether or not petitioner is liable for interest and compromise penalty.

Petitioner contends that pawnshops cannot be subject to 10% VAT for the simple reason that pawnshops are not included in the enumeration of entities or transactions subject to VAT under Section 108 of the NIRC of 1997, nor are their services similar to those rendered by those enumerated therein. The legislature in making an enumeration of the particular services covered by a taxing regulation is deemed to have excluded those not enumerated therein. This is apparent in the use of the catch-all proviso "and similar services regardless of whether or not the performance thereof calls for the exercise or use of physical or mental faculties". In enumerating the particular services subject to the VAT, the enumeration made in Section 108 excluded those not similar to those enumerated therein. Petitioner, hence, deduces that the inclusion of pawnshops in the enumeration by mere implication is a violation of a fundamental principle in taxation prohibiting taxation by mere implications.

Petitioner equates the imposition of VAT on professional services by virtue of R.A. No. 8761 and not under the prior law of R.A. No. 8424 and the subsequent amendment by R.A. No. 9238 as a recognition of the rule that for a service to be exempted under the VAT law, it must first be included among those subject to VAT under Section 108 (A), and conversely, services not enumerated are not subject to VAT, even in the absence of an express provision in Section 109 of the NIRC of 1997.

Also, petitioner, infers from the case of Commissioner of Internal Revenue vs. Court of Appeals and Court of Tax Appeals and Ateneo de Manila University, G.R. No. 115349, April 18, 1997, that in applying a tax statute, a determination should first be made as to its coverage by applying the principle of strict interpretation in favor of taxpayers, before any determination could be had as to its exemptions.

On the other hand, respondent maintains that enumeration of persons performing services for a fee is not exclusive, which means that other persons performing service for a fee, who are not expressly mentioned in the enumeration, are also subject to VAT. To limit the imposition of

10% VAT to those persons who render services enumerated in Section 108 (B) of the 1997 Tax Code would create chaos instead of harmony in the present Philippine tax system. And to interpret the enumeration as exclusive would trigger only unjustness, inequality and partiality. This is so because this would simply mean that, those sale or exchange of services which are not included in the enumeration and those which will be put up in the future are likewise not subject to VAT. Certainly, this is not the legislative intent of the legislature.

Indeed, the legal issue on whether a pawnshop is subject to VAT or not has been passed upon by this court in a litany of pawnshop cases and the recent ones are the cases of *Intergrity 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 pointing to the inclusion of pawnshops as an entity liable to VAT under Section 108 (A) in relation to Section 105 of the NIRC.

Section 108(A) of the 1997 National Internal Revenue Code provides:

> **SEC. 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 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, cafes 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. (Underscoring supplied.)

From the foregoing provision, it is apparent that the sale or exchange of services is subject to value-added tax. The phrase "sale or 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. In the case of ***Gomez vs. Ventura, 54 Phil. 726,*** it was ruled that:

> "xxx The maxim *expressio unius est exclusio alterius* should be applied only as a means of discovering legislative intent and should not be permitted to defeat the plain indicated purpose of the legislature. <u>It does not apply when words are mentioned by way of example, or to remove doubts</u>. (See Cyc., 1122 xxx.)" (Underscoring ours.)

Section 108(A) [formerly Section 102(a)] of the NIRC of 1997 does not limit its application to those enumerated therein because the law speaks of "all kinds of services". To limit its application to the enumeration would contradict the very clear meaning of the phrase "all kinds of services".

In addition, the phrase "including" should be construed merely as an enlargement and not of limitation.

> "The intention of an act will prevail over the literal sense of its terms. Thus, limited words in one part of an act may be expanded by general words in another part, if the general words more nearly express the legislative intent.
>
> A term whose statutory definition declares what it 'includes' is more susceptible to extension of meaning by construction than where the definition declares what a term 'means'. Thus, it has been said that <u>'the word 'includes' is usually a term of enlargement, and not of limitation... It, therefore, conveys the conclusion that there are other items</u>

> includable, though not specifically enumerated..." [Sutherland, Statutory Construction, 4th Ed., Vol. 2A, p. 82, Sec. 47.07 citing United States Argosy Ltd. v. Hennigan, 404 F2d 14 (CA 5th, 1968); See United States v. Gertz, 249 F2d 662 (CA 9th, 1957); Federal Land Bank of St. Paul v. Bismarck Lumber Co., 314 US 95, 86 L Ed 65, 62 S Ct1 (1941)]. (Emphasis supplied.)

Hence, the terms "includes" and "including" do not exclude items otherwise within the scope of the defined term.

> The terms "includes" and "including" when used in the Code are not deemed to exclude items otherwise within the meaning of the term defined. Thus, where Section 1(e) applies to the taxable income of estates "including" and thereafter lists four types of income from trusts or estates that are taxable, other types of estates may also be subject to taxation under Section 1(e). To hold differently would, in effect, substitute the term "limited to" for "including". [Mertens, Law of Federal Income Taxation, 1995 Ed., Section 3.37, Chap. 3, pp. 55-56, citing In re Joplin, Jr., 882 F2d 1507 (CA10 1989), applying IRC & 7701(c)].

Moreover, Section 105 of the Tax Code provides:

> "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."

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. This conclusion finds support in recent decisions laid down by the Court of Appeals (***Commissioner of***

Internal Revenue vs. Agencia Exquisite of Bohol, Inc., C.A. G.R. SP No. 59282, March 23, 2001; ***Commissioner of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc.,*** C.A. G.R. SP No. 59401, September 30, 2002; ***Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc.,*** C.A. G.R. SP No. 68180, promulgated on February 10, 2003 and ***Commissioner of Internal Revenue vs. Exquisite Pawnshop & Jewelry, Inc.,*** CA-G.R. SP No. 70319, May 13, 2003), wherein the Court of Appeals categorically ruled that pawnshops are subject to the 10% VAT imposed under Section 108 (A) of R.A. 8424, thus:

> "A value-added tax is a 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, even in the absence of profit attributable thereto.
>
> In the case at bar, it has been the contention of respondent Agencia Exquisite of Bohol, Inc. that the business of a pawnshop is not similar to that of a lending investor. A pawnshop, according to respondent is principally engaged in the business of delivering money to another, secured by personal property, upon the condition that the latter shall pay the former, otherwise, the thing pawned shall be sold for the payment of the principal obligation. Hence, a pawnshop operator engages in a pledge transaction.
>
> We are not convinced. The business of pawnshops are akin to that of lending investors. Respondent itself admitted that a lending investor is a person who makes a practice of lending money for themselves or others at interest. It seems that respondent forgotten that the business of a pawnshop is also to lend money for others at interest. The difference between lending investors and pawnshops lies only on the

security given, that is, a lending investor may require both real and personal property as security for the loan; whereas a pawnshop can require only personal property as security for the loan. But in the end, a lending investor and a pawnshop both engage in the business of lending money for others at interest. Accordingly, a lending investor and a pawnshop are both subject to VAT, pursuant to the provision of the National Internal Revenue Code of 1997 which provides that "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 x x x lending investors x x x."

Even assuming arguendo that we do not classify pawnshops as lending investors, still pawnshops are subject to the 10% VAT imposed under Section 108(A) of R.A. 8424. Pawnshops refer to persons or entities engaged in the business of lending money on personal property delivered as security for loans. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to value added tax. The personal properties delivered by clients of pawnshops as security for the loans which the former obtained from the latter are in the form of remuneration or consideration, for without such personal properties, pawnshops will not extend any loan to a borrower. Furthermore, the payment of interest imposed on a borrower by a pawnshop is equivalent to a fee in exchange of the service provided by the pawnshop in lending money to such borrower. Thus, the phrase **"all kinds of services"** as stated in the second paragraph of Section 108(A) of R.A. 8424 is broad enough to cover the kind of service, that is, lending money in consideration of personal property delivered as security, which is provided by pawnshops to their borrowers. And the enumeration of sale or exchange of services under Section 108(A) of R.A. 8424 does not limit nor exclude other kinds of services performed for a fee, remuneration or consideration. Rather, such enumeration even expanded the meaning of the phrase "**all kinds of services**".

Besides, pawnshops do not merely engage in the service of lending money to pawners. Rather, pawnshops also sells, 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. Thus, by selling properties, pawnshops shall be subject to VAT.

Finally, respondent Agencia Exquisite of Bohol, Inc. reiterates that it is claiming exclusion from the coverage of the value-added tax law and it is not claiming exemption from payment thereof. We are not persuaded. When a taxpayer claims exclusion from payment of the VAT, he is thereby claiming exemption from payment thereof. For what is the effect of exclusion from the VAT other than exemption from payment thereof? They have the same effect. That is, when a taxpayer claims exclusion or exemption from payment of the VAT, he is in effect claiming that he is not liable to pay a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services.

It is settled that tax exemptions should be strictly construed against those claiming to be qualified thereto. Any exemption from the payment of a tax must be clearly stated in the language of the law. Pawnshops are not clearly stated in the National Internal Revenue Code of 1997 to be exempted from payment of the VAT. Hence, pawnshops shall be liable to pay ten percent (10%) of their gross receipts derived from its sale or exchange of services as value-added tax." **(Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc., supra)**

It is significant to note that Section 3 of Presidential Decree No. 114, otherwise known as the "Pawnshop Regulation Act", defines a pawnshop as follows:

> "Pawnshop shall refer to a person or entity engaged in the business of lending money on personal property delivered as security for loans and shall be synonymous, and may be used interchangeably with, pawnbroker or pawnbrokerage."

Judicial notice may be taken of the fact that the principal activity of pawnshops is lending money at interest on personal property delivered as security for the loan. The act of lending money at interest constitutes the performance of a service for a fee, remuneration or consideration for such service. In other words, the liability of pawnshop operators to pay the VAT no longer depends on the classification of their business but on the services they render. As a consequence thereof, any allegation that pawnshops are not lending investors has lost its bearing. For as long as pawnshops are engaged in lending money on the security of personal property, they are still within the ambit of Section 102(a) [now Section 108(A)]. Petitioner, being engaged in the pawnshop business, is undoubtedly engaged in the sale of services like lending money. Hence, it cannot escape liability to pay the VAT.

Well settled is the jurisprudence that tax exemptions are strictly construed against the taxpayer **(Cyanamid Phils., Inc. vs. Court of Appeals, 322 SCRA 639).** In the absence of any clear provision of law exempting pawnshops from VAT, then, pawnshops are subject to VAT on their gross

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Well settled is the jurisprudence that tax exemptions are strictly construed against the taxpayer **(Cyanamid Phils., Inc. vs. Court of Appeals, 322 SCRA 639).** In the absence of any clear provision of law exempting pawnshops from VAT, then, pawnshops are subject to VAT on their gross receipts considering that they are clearly engaged in the performance of services for a fee, remuneration or consideration.

In the case of **Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation, G.R. No. 125355, March 30, 2000,** the Supreme Court ruled that the taxpayer, not falling within the exemptions mentioned under Section 109 of the Tax Code, is subject to VAT. The High Tribunal held:

> "Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration." xxx
>
> xxx xxx xxx
>
> Hence, it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.
>
> At any rate, it is a rule that because taxes are the lifeblood of the nation, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government. Otherwise stated, any exemption from the payment of a tax must be clearly stated in the language of the law; it cannot be merely implied therefrom. In the case of VAT, Section 109, Republic Act 8424 clearly enumerates the transactions exempted from VAT." (Underscoring supplied)

On the issue of the taxability of deposits on subscription, petitioner points out that the entries in the financial statements *(Exhibit B-2-a)* and

General Information Sheet (GIS) *(Exhibit C-1)* indubitably show that it had only a subscribed capital stock of P500,000.00 for which half of it had been paid up. The same financial statements reflect a deposit on subscriptions in the amount of P800,000.00 According to petitioner these deposits represent advances made by the stockholders and are in the nature of liabilities for which stocks may be issued in the future. Absent any express agreement between the stockholders and the petitioner to convert said advances/deposits to capital stock, either through subscription agreement or any other document, these deposits remain as liabilities owed by petitioner to its stockholders. Therefore, it is imperative that a conversion/subscription agreement first be entered into before any DST can be imposed pursuant to Section 175 of the 1997 Tax Code.

On the other side, respondent relies mainly on the presumption that the assessment on the DST on deposits on subscription are correct and made on good faith. Respondent also contends that the failure of the petitioner to submit supporting documents within sixty days from the filing of its protest as required under Section 228 of the NIRC of 1997 has caused the assessment to become final and unassailable.

As correctly stated by the petitioner, this court in its decision in the case of **First Southern Philippines Enterprises, Inc v. Commissioner of Internal**

Revenue, CTA Case No. 5988 promulgated on January 17, 2002, ruled that deposits on subscription are not subject to DST in the absence of proof that an equivalent amount of shares were subscribed or issued in consideration for said deposits. Expressed otherwise, deposit on stock subscription is not subject to DST if: 1) there is no agreement to subscribe; 2) there were no shares issued nor any additional subscription involved in the restructuring plan and; 3) there is no proof that the issued shares can be considered as issued certificate of stocks.

Section 175 of the NIRC of 1997, states:

> "SEC. 175. *Stamp Tax on Original Issue of Shares of Stock.* - On every original issue, whether on organization or 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 Two pesos (P2.00) on each Two hundred pesos (P200.00) or fractional part thereof, of the par value, of such shares of stock: *Provided,* That in the case of 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."

The above provision contemplates a subscription agreement. There can be subscription only with reference to shares of stock which have never been issued, in the following cases: a) The original issuance from authorized capital stock at the time of incorporation; b) The opening, during the life of the corporation, of the portion of the original authorized capital stock previously unissued; or c) The increase of authorized capital stock achieved through a formal amendment of the articles of incorporation and registration thereof with the Securities and Exchange Commission. *(Philippine Corporate Law, Villanueva, 2001 Ed., p. 367).*

In the case at bar, there is no subscription or any contract for the acquisition of unissued stock in the amount of Eight Hundred Thousand Pesos (P800,000.00) in the taxable year assessed. The same is true with the GIS *(Exhibit C-1)* of petitioner, which showed only a capital structure of Two Hundred Fifty Thousand Pesos (P250,000.00) and did not include the assessed amount. Mere reliance of respondent on the presumption that the assessment is correct and done in good faith is unavailing vis-à-vis the evidence presented by the petitioner. Thus, the assessment on deficiency DST on deposits on stock subscription did not become final.

On the issue as to whether or not pawn tickets are subject to documentary stamp tax under Section 180 of the NIRC as imposed by the respondent in his assessment, petitioner argues that pawnshop tickets are not among the documents referred therein. Should the legislators have intended to impose DST on pawn tickets, they would have expressly provided so.

Petitioner likewise stresses that neither are pawn tickets subject to DST under any other relevant provisions of the Tax Code, to wit: 1) Section 174, on debentures, and certificate of indebtedness; 2) Section 175, on original issue of shares of stocks; 3) Section 176, on sales, agreements to sell, memoranda of sales, deliveries or transfer of due-bills, certificates of obligation, or shares or certificate of stocks; 4) Section 179, on bank checks, drafts, certificates of deposits not bearing interest and other instruments; and 5) Section 195, on mortgages, pledges and deeds of trust.

The enactment of R.A. No. 9243 "An Act Rationalizing the Provisions on Documentary Stamp Tax of the NIRC of 1997, as amended and for Other Purposes", according to the petitioner, incorporates various significant amendments not only on the rates of DST imposed but also on the scope of particular provisions, *e.g.* DST on debt instruments. Despite the long-standing issue on the taxability of pawn tickets involving substantial amounts, nowhere, however in the new act does it expressly provide that pawn tickets are indeed subject to DST. This just indicates that the legislature never intended nor does it now intend to impose DST on pawn tickets.

Respondent counteracts by asserting that pawnshop tickets are subject to DST under Section 195 of the Tax Code because a pawn ticket virtually evidences pledge since pawnshops lend money on the security of personal property, which is virtually a pledge. The pledge is evidenced by a pawn ticket issued by the petitioner. A pawner presents the pawn ticket to the pawnshop in order to redeem the *pawned or pledged* personal property. Hence, the pawn ticket is the logical document subject to documentary stamp tax on pledges of personal property under Section 195 of the Tax Code, as amended.

Section 195 of the NIRC says:

> On every mortgage or pledge of lands, estate or property, real or personal, heritable or movable whatsoever, where the same shall be made as a 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 .... xxx there shall be collected a documentary stamp tax at the following rate: x x x

The foregoing provision of NIRC, undeniably declares that a document evidencing a pledge of personal property which is made as a security for payment of a loan is subject to documentary stamp tax. Corollarily, Section 3 of P.D. 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. Considering that the document taxable under Section 195 must be the document evidencing the indebtedness and considering that under that 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., CA. 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).*

IN VIEW OF ALL THE FOREGOING, the instant petition is hereby **PARTIALLY GRANTED**. Assessment No. 31-1-000053-98 for deficiency documentary stamp tax in the amount of Sixty-Two Thousand One Hundred Twenty-Eight Pesos and 87/100 (P62,128.87) and Assessment No. 31-14-000053-98 for deficiency documentary stamp tax on deposits on subscription in the amount of Twelve Thousand Three Hundred Twenty-Eight Pesos and 45/100 (P12,328.45) are **CANCELLED** and **SET ASIDE**. However, Assessment No. 31-14-000053-98 is hereby **AFFIRMED** except the imposition of compromise penalty in the absence of showing that petitioner consented thereto *(UST vs. Collector, 104 SCRA 1062; Exquisite Pawnshop Jewelry, Inc. vs. Jaime B. Santiago, et al, supra).*

Accordingly petitioner is **ORDERED to PAY** the deficiency value-added tax in the amount of Six Hundred One Thousand Two Hundred Twenty Pesos and 18/100 (P601,220.18) inclusive of deficiency interest for the year 1998. In addition, petitioner is **ORDERED to PAY** 25% surcharge and 20% delinquency interest *per annum* from February 12, 2002 until fully paid pursuant to Sections 248 and 249 of the 1997 Tax Code.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(With Concurring & Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST EXPRESS PAWNSHOP COMPANY, INC.,
Petitioner,

-versus-

C.T.A. CASE NO. 6529

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 24 2004

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CONCURRING AND DISSENTING OPINION

I concur with my distinguished colleagues that petitioner is subject to deficiency value-added tax, including penalties but not to deficiency documentary stamp tax on deposits on subscription and that no compromise penalty may be imposed for the reasons stated in the decision.

However, with due respect to my colleagues, I dissent from the decision insofar as it cancels the documentary stamp tax (DST) assessment on pawn tickets.

Section 195 of the Tax Code provides in pertinent part:

> SEC. 195. *Stamp Tax on Mortgages, Pledges and Deeds or Trust.* - On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a 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, there shall be collected a documentary stamp tax at the following rates:

> "(a) When the amount secured does not exceed Five thousand pesos (P5,000), Twenty pesos (P20.00).
>
> "(b) On each Five thousand pesos (P5,000) or fractional part thereof in excess of Five thousand pesos (P5.000), and additional tax of Ten pesos (P10.00).
>
> "On any mortgage, pledge, or deed of trust, where the same shall be made as a security for the payment of a fluctuating account or future advances without fixed limit the documentary stamp tax on such mortgage, pledge or deed of trust shall be computed on the amount actually loaned or given at the time of the execution of the mortgage, pledge or deed of trust. However, if subsequent advances are made on such mortgage, pledge or deed of trust, additional documentary stamp tax shall be paid which shall be computed on the basis of the amount advanced or loaned at the rates specified above: Provided, however, That if the full amount of the loan or credit, granted under the mortgage, pledge or deed of trust is specified in such mortgage, pledge or deed or trust, the documentary stamp tax prescribed in this Section shall be paid and computed on the full amount of the loan or credit granted." [Underscoring ours]

Pawnshops lend money on the security of personal property, that is, a pledge. The pledge is evidenced by a pawn ticket. Hence, the pawn ticket is the logical document subject to documentary stamp tax on pledges under Section 195 of the Tax Code, as implemented by 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 document evidencing the pledge. Section 173 of the Tax Code 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 thereto who is not exempt shall be the one directly liable for the tax. [Underscoring ours.]

In ***Cruz vs. Chua, G.R. No. 31018, November 6, 1929, 54 Phil. 10***, our Supreme Court refers to the pawn ticket as a contract of pledge as follows:

> In applying this provision to the situation before us it must be borne in mind that the ordinary pawn ticket is a document by virtue of which the property in the thing pledged passes from hand to hand by mere delivery ot the ticket; and the contract of pledge is, therefore, absolvable to bearer. It results that one who takes a pawn ticket in pledge acquires domination over the pledge; and it is the holder who must renew the pledge if it is to be kept alive. [Underscoring ours,]

As the person accepting the pawn ticket, which is the evidence of the pledge, the pawnshop is liable for documentary stamp tax thereon.

It is noteworthy that the Court of Appeals in the case of ***Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., CA-G.R. SP No. 67667, June 29, 2004,*** affirmed the above ruling, to wit:

> Pawn tickets *per se* are not subject to Documentary Stamp Tax. Rather, it is the transaction involved that is being taxed. In the case of pawnshops, 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. xxx
>
> The law is clear. 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 in construction regarding taxation, any claim for exemption must be shown and based on the express provision of the law. Pawnshops are not included in the exemption provided by the National Internal Revenue Code, as amended.

Moreover, while it is true that Section 3 of P.D. No. 114 (Pawnshop Regulation Act) defines a pawn ticket as the pawnbroker's "receipt" for a pawn, this does not detract from the fact such receipt is also an instrument evidencing the pledge. The instrument may be both a receipt and a pledge at the same time.

At any rate, it does not matter whether such instrument is designated by name as a receipt or pledge. What matters is the nature of the instrument considering that the documentary stamp tax is imposed on the transaction itself, not merely the document. It cannot be gainsaid that the pawnshop ticket must be surrendered and the indebtedness of the pawner to the pawnshop paid if the thing pledged is to be returned to the pawner and both the loan and the pledge extinguished. Even if it were to be conceded for the sake of argument that the pawnshop ticket is not an instrument evidencing a pledge but merely a receipt, what is important is the substance of the transaction and not the form. And it is clear that when a pawner pawns an item with the pawnshop that there is a pledge transaction involved as the pawned item is pledged and may only be redeemed upon payment of the loan.

In the recent cases of ***Philippine Banking Corporation (now Global Business Bank, Inc.) vs, Commissioner of Internal Revenue, CTA Case No. 6395, July 16, 2004; Banco de Oro vs. Commissioner of Internal Revenue,***

CTA Case No. 6390, July 1, 2004; Keppel Bank Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6560, June 23, 2004, Traders Royal Bank vs. Commissioner of Internal Revenue, CTA Case No. 6392, April 28, 2004, and ***United Overseas Bank Philippines vs. Commissioner of Internal Revenue, CTA Case No. 6411, April 21, 2004***, this court ruled that the anniversary or special or mega or super savings deposits involved are subject to documentary stamp tax (DST) on time deposits under Section 180 of the Tax Code inasmuch as they partake of the nature of time deposits. In the ***Keppel Bank Philippines, Inc.*** case, this court, in ruling that the Anniversary Savings Deposit (ASD) should be subject to DST in the same manner as time deposits, held:

> Records reveal that ASD is an interest-bearing account and has the same character and has the same characteristics of a time deposit account. There is a required minimum deposit balance and a holding period before the depositor can avail of the preferential rate which is higher than the regular savings account x x x. The only difference lies on the evidence of deposit. In time deposit account, petitioner issues certificate of deposit while in ASD petitioner issues a passbook.
>
> Should this difference in the medium used result in a different tax treatment?
>
> We do not agree. <u>Equity and law always exalt substance over form.</u>
>
> The difference of the documents used to cover the transaction should not be a hindrance to impose the much-needed tax. Well settled is the rule that a documentary stamp tax is an excise tax, the purpose of which is to raise revenues. Documentary stamp tax is a privilege tax because it is really imposed on the privilege to enter into a transaction rather than on the document. The law taxes the document because of the transaction ***(Hector S. De Leon, Comprehensive Review of Taxation, 2000 edition,***

page 381). As held by the Supreme Court in the case of **Philippine Home Assurance Corporation vs. The Hon. Commissioner of Internal Revenue, GR. No. 4208-4211, January 21, 1999,** thus:

> The respondent court correctly characterized a documentary stamp tax as in the nature of an excise tax. As such, it is imposed on the privilege of conducting a particular business or transaction and not on the business or transaction itself. x x x This means then that the documentary stamp tax accrues when the privilege is exercised. As the respondent Court stated, while it is true that a documentary stamp tax is levied on the document and not on the property, which it described, the documentary stamp tax is not intended to be a tax on the document alone. The law taxes the document because of the transaction so that the tax becomes due and payable at the time the transaction is had or accomplished, in this case, at the time of the issuance of the document.

In fact, we already have ruled on two occasions that special savings account is subject to documentary stamp tax. Pertinent portions of the recent case entiled ***Traders Royal Bank vs. Commissioner of Internal Revenue, CTA Case No. 6392, April 28, 2004,*** is hereby quoted for excellent reference:

x x x   x x x   x x x

> But in determining whether a certain instrument is subject to documentary stamp tax, substance would control over over the form and labels xxx **(Knudsa Creamery Co. of California vs. US, 121 F. Suppl. 860, 26 U.S. C.A. 1800, 1801).** The court agrees with the findings of the respondent that the nature of Special Savings Deposit and Time Deposits are akin to each other in such a way that the bank acknowledges the receipt of a sum of money on deposit and which the bank promises to pay to the depositor, bearer or to the order of a bearer on a specified period of time. The difference lies on the document issued to evidence the transaction. In Special Savings Account, the transaction is covered by a passbook, while in time deposit, it is through a certificate of deposit.

> Considering that the transaction evidenced by the different documents are similar and that documentary stamp tax is an excise tax on the privilege to enter into a transaction, we find both the certificate of time deposit as well as the passbook clear evidence of such transaction in favor of the person whose name appears therein, subject to documentary stamp tax.
>
> We find the above pronouncement in all fours with the case at bar. Therefore, the Anniversary Savings Deposit of petitioner, although evidenced by a passbook, is subject to documentary stamp tax. [Underscoring ours.]

I believe that the principles of taxation governing documentary stamp tax applied in the aforementioned cases equally apply to this case. Here, there is a contract of pledge when the pawner pawns an item with the pawnshop. Documentary stamp tax is thus applicable on the transaction whatever the instrument of pledge may be called. It is simply imposed on the pledge transaction whatever form the pledge instrument may take.

In view thereof, petitioner should also be held liable for deficiency documentary stamp taxes on pawn tickets, inclusive of surcharge and interest thereon but not compromise penalty, in the amount of P62,128.87 for the year 1998. In addition, petitioner should be liable for 25% surcharge and 20% delinquency interest *per annum* from February 12, 2002 until the amount is fully paid.

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