REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE INSULAR LIFE ASSURANCE COMPANY, LTD.,
Petitioner,

- versus -

C.T.A. CASE NO. 5601

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 27 1999 S.Apolinario

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DECISION

Before Us for consideration is a judicial claim for refund or tax credit instituted by the Petitioner in the aggregate amount of P219,741,965.35 allegedly representing erroneously paid premium taxes for the four quarters of 1996 and the first three quarters of 1997.

Petitioner is a non-stock mutual life insurance corporation duly organized and existing under and by virtue of Philippine laws with office address at Insular Life Building, 6781 Ayala Avenue, Makati City.

The facts are simple.

For the period abovestated, Petitioner allegedly paid its quarterly liability on premium taxes, as follows:

Date of filing/ payment of Quarterly Insurance Tax Return		Amount	Exhibit
April	22, 1996	P 25,406,192.52	"A"
July	22, 1996	24,980,996.25	"B"
October	21, 1996	35,773,075.94	"C"
January	21, 1997	32,521,618.11	"D"
April	21, 1997	30,319,265.29	"E"
July	21, 1997	35,762,204.14	"F"
October	20, 1997	34,978,613.10	"G"
	GRAND TOTAL	P219,741,965.35	

On March 26, 1998, Petitioner filed with Respondent's Bureau a written claim for refund of said amount of premium taxes based on the Decision of this Court in **Insular Life Assurance Company Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 5336, promulgated on December 29, 1997,** wherein it was ruled that Petitioner therein, who, together with herein Respondent, is also the principal party in the instant case, is exempted from the payment of premium and documentary stamp taxes by virtue of its being a purely cooperative company, an insurance entity which is exempt from said taxes under Sections 121 and 199 of the Tax Code (1996) (see Exhibit "I").

On April 6, 1998, Petitioner elevated its administrative claim before this Court allegedly due to Respondent's inaction thereto and the fact that judicial action for its claim for the first quarter of 1996 is about to expire when reckoned from the prescriptive period of two years from date of payment of the tax, as provided in Section 230 (now Section 229) of the Tax Code.

At bar, Petitioner basically reasserts its stance *a quo*. On the other hand, Respondent interposes from among others the special and affirmative defenses that Petitioner is legally subject to premium tax pursuant to Section 121 of the Tax Code on the ground that a mutual life insurance company is not a purely cooperative company as contemplated in the exempting clause of the said section, hence, not entitled to the refund claimed; and that the decision in CTA Case No. 5336, dated December 29, 1997 which is solely relied upon by the Petitioner as the basis of its claim for refund is still pending appeal at the Court of Appeals, hence, the instant petition is still premature for the reason that the said decision has not yet become final and executory.

The trial proceedings involved mainly the presentation, identification and formal offer of exhibits for the Petitioner with the Respondent opting not to adduce evidence on his part. Petitioner submitted a memorandum while Respondent failed to do so within the mandated period.

Based on the foregoing facts and arguments of the parties, this Court is confronted with the following issues, namely:

> 1. Legally, whether or not Petitioner is a purely cooperative company, as provided in Section 121 of the Tax Code, and therefore exempt from the payment of premium tax on insurance policies; and if in the affirmative,
>
> 2. Whether or not Petitioner has presented sufficient evidence to prove the factual aspect of its claim for refund or tax credit.

Anent the first issue, there is no more impediment at this point in time to the legality of Petitioner's contention that it is a purely cooperative company. The decision of this Court in the case of **Insular Life Assurance Company, Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 5336,** *supra*, has already been upheld *in toto* by the Court of Appeals in CA G. R. SP No. 46516 with the corresponding Entry of Judgment made on October 23, 1998. The finality of such case now serves as a *res judicata* on the similar legal issue being raised by the parties in the case at bar. Hereunder are pertinent portions of the aforementioned decision of this Court which ruled in favor of petitioner:

> As regards the second issue, this Court rules in favor of the petitioner. A mutual insurance company such as petitioner is a purely cooperative company.
>
> For easy reference, the pertinent provisions of the Tax Code are herein-below quoted, to wit:
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>> **SEC. 121.** ***Tax on insurance premium.*** - There shall be collected from every person, company, or corporation (except purely cooperative companies or

associations) doing insurance business of any sort in the Philippines a tax of five per centum (5%) of the total premium collected, whether such premiums are paid in money, notes, credits or any substitute for money; but premiums refunded within six months after payment on account of rejection of risk or returned for other reason to a person insured shall not be included in the taxable receipts; nor shall any tax be paid upon reinsurance by a company that has already paid the tax; nor upon premiums collected or received by any branch of a domestic corporation, firm or association doing business outside the Philippines on account of any life insurance of the insured who is a non-resident, if any tax on such premiums is imposed by the foreign country where the branch is established nor upon premiums collected or received on account of any reinsurance, if the risk insure against covers property located outside the Philippines, or the insured, in case of personal insurance, resides outside the Philippines if any tax on such premiums is imposed by the foreign country where the original insurance has been issued or perfected; nor upon that portion of the premiums collected or received by the insurance companies on variable contracts (as defined in Sec. 232(2) of the Presidential Decree No. 612) in excess of the amounts necessary to insure the lives of the variable contract workers.

Cooperative companies or associations are such as are conducted by the members thereof with the money collected from among themselves and solely for their own protection and not for profit. (Emphasis supplied)

Sec. 199. ***Documents and papers not subject to stamp tax.*** - The

> provisions of Section 173 to the contrary notwithstanding, the following instruments, documents, and papers shall be **exempt** from the documentary stamp tax:
>
> (1) Policies of insurance or annuities made or granted by a fraternal or beneficiary society, order, association, or cooperative company, operated on the lodge system or local cooperation plan and organized and conducted solely by the members thereof for the exclusive benefit of each member and not for profit.
>
> x x x x x x x x x
>
> (Emphasis supplied)

As defined above, cooperative companies are such as are: (1) conducted by the members thereof, (2) with the money collected from among themselves and solely for their own protection and, (3) not for profit.

Petitioner has demonstrated that its management and affairs are conducted by its member-policyholders. Article 7 of its Amended Articles of Incorporation (Exh. "A") indubitably shows that petitioner has been converted to a non-stock mutual life insurance corporation for the benefit of its policyholders pursuant to Section 266, Title 17 of the Insurance Code of 1978. Under such set-up, the ownership of petitioner is vested in its members who are entitled to one vote each and who, in turn, elect the members of the Board of Trustees from among themselves (Exhibits "B-1" to "B-4"; Amended By-laws of the petitioner). The Board of Trustees on its part, exercises the powers and conducts the business of the corporation (Exh. "B-4").

x x x x x x x x x

Likewise, it cannot be gainsaid that member-policyholders pay money premiums from among themselves for their exclusive benefit and protection from risks assumed by insurance policy. Inasmuch as petitioner is composed of members who are all policy-holders thereof, all

> premiums collected are entirely sourced from the members only. Such premiums collected are then pooled and earmarked for payment of indemnity and benefit claims of member-policyholders (TSN, dated December 12, 1996, pp. 10-14).
>
> The aforementioned payment of indemnity and benefit claims clearly represent the type of protection constitutive of a cooperative company. x x x

In affirming the decision of this Court in the case of **Insular Life Assurance Company, Ltd. vs. Commissioner of Internal Revenue,** *supra*, the Court of Appeals had this to say:

> "We find no cogent reason to dispute the factual findings of the respondent Court that private respondent Insular Life Assurance Company, Ltd.. has satisfactorily demonstrated that it is a cooperative association as defined in its Amended Articles of Incorporation and By-laws.
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> x x x x x x x x x
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> Wherefore, finding no reversible error in the assailed decision, the same is hereby AFFIRMED in toto."

What remains thus is the sole determination of the second issue on whether or not Petitioner has proven the factual elements of its claim for refund or tax credit.

A review of the various exhibits presented by the Petitioner, namely: insurance premium tax returns for the four quarters of 1996 and the first three quarters of 1997, BPI Checks and computations of premium tax due for the quarters (Exhibits "A" to "G", inclusive, *supra*) clearly demonstrates the fact that actual payments for premium taxes in the aggregate amount of P219,741,965.35, as shown by the machine validation entries on the returns, were duly made to Respondent's accredited Union Bank. Clearly, thus, Petitioner is deserving of its claim for refund or tax credit.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED.** Accordingly, Respondent is hereby **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **P219,741,965.35** in favor of the Petitioner immediately.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(On leave)
RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

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 Judge