REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPS. STEPHEN C. ROXAS
AND HELEN C. ROXAS,
Petitioners,

- versus -

CASE NO. 5383

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 24 1998

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D E C I S I O N

The issue which is presented for our consideration is whether or not petitioners are entitled to the refund or to the issuance of a tax credit certificate in the amount of ₱388,214.00 allegedly representing the documentary stamps tax they erroneously paid on May 30, 1994.

Petitioners are the registered owners of a house and lot located at 1392 Campanilla St., Dasmariñas Village, Makati City. Said real property has a lot area of 1,201 square meters and is covered by Transfer Certificate of Title No. 157144.

On May 27, 1994, petitioners and OBADIAH, Inc., executed a Deed of Exchange wherein the former transfers, conveys, and assigns to the latter all the rights, titles and interest over the above described properties, including all improvements existing thereon, in exchange for additional shares of stocks of OBADIAH, Inc.

The corresponding documentary stamp tax due on the aforementioned Deed of Exchange amounting to ₱388,214.00 was paid by the petitioners to the Bureau of Internal Revenue on May 30, 1994.

On May 13, 1996, the aforementioned Deed of Exchange was rescinded/cancelled by the petitioners and OBADIAH, Inc., on the ground that it was erroneously entered into by the parties.

In a letter, dated May 20, 1996, which was received by the respondent's Bureau on May 23, 1996, petitioners requested for the refund or tax credit of the documentary stamp tax they previously paid on the aforementioned exchange transaction in the amount of ₱388,214.00.

The said claim for refund was not acted upon by the respondent, hence, on May 27, 1996, petitioners filed with this Court the instant petition for review.

Petitioners present the proposition as reason of the petition for review that they are entitled to the refund of the aforementioned amount, as the said amount represents the documentary stamps tax on a Deed of Exchange which was executed but later on canceled or rescinded by the parties. They stressed that said Deed of Exchange did not materialize as clearly shown in the title to the property, remained in the name of the petitioners as of the filing of the petition. In its memorandum, it reasoned out that to be liable to DST under Sec. 196 of the Tax Code, infra, the sale, or conveyance must be consummated. It states that "a sale or conveyance is consummated if the parties have fully performed their obligations under the contract and this happens when the seller/transferor has fully transferred the property to the purchaser and the latter has paid the price for the sale", (p. 5, Pet. memo), thus, it further stressed that in the case at bar, the obligations under the said Deed were obviously not fulfilled or performed, as there was no actual transfer of title nor any payment of the consideration. Moreover, petitioner expounded that the conveyance contract is void and cannot be consummated because (1) there was no payment of the price and (2) there was lack of consent or no intention of transferring the property (p. 6, Pet. memo).

Respondent on the other hand, in her Answer raised the herein special and affirmative defenses, thus: (1) petitioner's claim for tax refund/credit is pending administrative investigation; (2) the amount of ₱388,214 being hereto claimed by petitioners allegedly representing tax payment for erroneously executed Deed of Exchange x x x was collected in accordance with law and regulations, hence, not refundable; and (3) that claims for refund are construed strictly against claimants since they partake of the nature of exemption from taxation. Respondent reasoned out in her memorandum that petitioners' liability for documentary stamp tax (DST) cannot be determined solely by Sec. 196 of the NIRC but

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by the provision of Sec. 173, ***ibid, infra***. It rationalized that (1) under Sec. 173, ***ibid***, the DST is payable at the time such act is done or transaction had, thus, the DST accrues at the time the contract is executed, (2) it is not necessary that the contract be consummated but only perfected and (3) it does not matter that the contract was later on mutually cancelled by the parties, hence, the mere fact that they executed the Deed of Exchange will make the herein petitioners liable for DST. Further, it states that petitioners' argument, that the contract is void and that their consent were vitiated, are erroneous, because the essential requisites of a contract, the consent, object and cause, existed making the contract valid. It was further invoked by respondent that petitioners failed to prove to the Court that indeed the consent of the petitioners were vitiated when they signed the said contract.

As earlier adverted to at the outset the issue to be resolved by the Court is whether or not petitioners are entitled to the refund or to the issuance of a tax credit certificate in the amount of ₱388,214.00 allegedly representing the DST they erroneously paid on May 30, 1994.

As discussed above, the provisions of law invoked by the parties as applicable in the case at bar are Sections

173 and 196 of the National Internal Revenue Code, to wit:

> **SEC. 173. Stamp taxes upon documents, instruments, loan agreements 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 transaction 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. (as amended by RA 7660)(underscoring supplied)

> **SEC. 196. Stamp tax on deeds of sale and conveyance of real property.**-On all conveyances, deeds, instruments, or writings, other than grants, patents, or original certificates of adjudication issued by the Government, whereby any lands, tenements or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax at the following rates:
>
> (a) When the consideration, or value received or contracted to be paid for such realty, after making proper allowance of any encumbrance, does not exceed one thousand pesos, Fifteen pesos(₱15.00).

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> (b) For each additional one thousand pesos, or fractional part thereof in excess of one thousand pesos of such consideration or value, Fifteen pesos (₱15.00).
>
> When it appears that the amount of the documentary stamp tax payable hereunder has been reduced by an incorrect statement, of the consideration in any conveyance, deed, instrument, or writing subject to such tax the Commissioner, provincial or city treasurer, or other revenues officer shall from the assessment rolls or other reliable source of information assess the property of its true market value and collect the proper tax thereon. (as amended by RA 7660)

The Court after a careful examination of the aforecited provisions of law finds that they are not in conflict with each other and that they both apply to the case at bar. The former laid down the general rule on what documents, instruments and papers will be subjected to DST and who are liable thereof, while the latter specifically deals with the amount of DST to be imposed on the documents, i. e. the deeds of sale and conveyance of real property.

It is very clear from Section 173, ***ibid.***, that the DST is due and payable at the time the transaction was made or completed, while in the wordings of Sec. 196, ibid., it is not vivid that the transaction must be first consummated before the same shall be subjected to DST. Be that as it may, the Court agrees with the respondent that at the time the Deed of Exchange was accomplished by the parties, the DST became due to the government, regardless of whether or not the said deed will be at a later date nullified or canceled. In this case, the contract was rescinded/canceled two(2) years after its execution. The consequent rescission of the Deed will not make the prior payment of the DST on the deed erroneous. The DST is in the nature of an excise tax; it is a tax on the privilege to enter into a transaction. The tax is assigned to raise revenues and not to render the document void.

The documentary stamp tax upon the taxable document should be paid at the same time such act is done or transaction had. The documentary stamp tax shall be paid by the purchase and affixture of documentary stamps to the document or instrument taxed or to such other paper and by the subsequent cancellation thereof or in appropriate cases by imprinting on certain documents upon payment of the face value of such stamps (***Commissioner of Internal Revenue vs. Lincoln Phil. Life Insurance Co., CA-GR. SP 31224, 11/18/94***). The law requires that the corresponding documentary stamp taxes shall be paid at the time "the act is done or transaction had." The implication is that the documentary stamp shall be affixed to the taxable document at the time it is issued or executed (*see Del Castillo vs. Madrileña, 49 PHIL. 749*). In other words, the documentary stamp tax shall be due and payable on every instrument of sale or conveyance

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of real property regardless of the circumstances that will happen in the future like rescission and annulment thereof. This means that the documentary stamp tax accrues when the privilege is exercised. The overriding purpose of the law is the collection of taxes.

As ruled in the case of *Commissioner of Internal Revenue v. Heald Lumber Co., 10 SCRA 372* [1964], the Supreme Court held that:

> "A documentary stamp tax is in the nature of an excise tax. It is not imposed upon the business transacted but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. (Du Pont v. U.S., 300 U.S. 150; Thomas v. U.S., 192 U.S. 363; Nicol v. Ames, 173 U.S. 509). With respect to stock certificates, it is levied upon the privilege of issuing them; not on the money or property received by the issuing company for such certificates. Neither is it imposed upon the share of stock. As Justice Learned Head pointed out in one case, documentary stamp tax is, levied on the document and not on the property which it described. (Empire Trust Co. v. Hoey, 103 F 2d. 430). If, therefore, as is apparent from the foregoing discussion, that the tax in question is imposed on the privilege of issuing certificates, then the tax may be collected only once: when the certificates are first or originally issued. The reason is because a certificate is issued only once. Whatever documentary tax is due, is due at that time. (Empire Trust Co. v. Hoey, *supra*).

In the case of Philippine Home Assurance Corporation, Philippine American Accident Insurance Company, Philippine American General Issurance Company and American International Underwriters (Phils.) Inc. vs.

Court of Tax Appeals and Commissioner of Internal Revenue; C.A. G.R. 5P No. 32531, promulgated on April 27, 1994, which is applicable to the case at bar, it ruled:

> "The respondent court correctly characterized a documentary stamp tax as in the nature of 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. Thus, the documentary stamp tax on insurance policies is, in effect, imposed on the privilege to conduct insurance business and not on the insurance business itself or on the premiums paid under the policies of insurance. 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.
>
> This is the reason that the documentary stamp tax will not be refunded upon subsequent cancellation of the insurance policy. Likewise, when a policy already issued becomes ineffective because of the non-payment of the first premium, the stamp tax cannot be refunded. Whether or not the policy has, in fact, become effective, the privilege subject of the tax has already been exercised."

This decision of the Court of Appeals affirmed <u>in toto</u> the consolidated cases of *American International*

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Underwriters (Phils.), Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4208; Philippine American General Insurance Company vs. Commissioner of Internal Revenue; CTA Case No. 4209; Philippine American Accident Insurance Company vs. Commissioner of International Revenue, CTA Case No. 4210; Philippine Home Assurance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4211, which denied the claims for refund by the petitioners in said cases, thereby dismissing the petitions for review for lack of merit.

IN THE LIGHT OF ALL THE FOREGOING, the instant petition for review is DISMISSED and the claim for refund in the amount of ₱388,214.00 representing payment of documentary stamp tax is hereby DENIED.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(DISSENTING OPINION)
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 III of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals

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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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SPS. STEPHEN C. ROXAS AND HELEN C. ROXAS
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Respondent.

C.T.A. CASE NO. 5383

PROMULGATED:

JUL 24 1998

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DISSENTING OPINION

With due respect to my esteemed colleagues, I humbly disagree with their findings in the case at bar that documentary stamp tax (DST) should be paid by the petitioners, notwithstanding the fact that the Deed of Exchange that they have entered with OBADIAH, Inc. was later on rescinded or cancelled two (2) years after its execution. In gist, the majority opinion concluded that DST is due and payable at the time a transaction is made or completed; and that such transaction need not be consummated before it shall be subjected to DST.

Let me interpose a totally different approach in the appreciation of the attending facts and the provisions of the Tax Code applicable to the instant case.

Hereunder stated are the facts.

Petitioners are the registered owners of a house and lot located at 1392 Campanilla St., Dasmarinas Village, Makati City. Said real property has a lot area of 1,201 square meters and is covered by Transfer Certificate of Title No. 157144.

On May 27, 1994, petitioners and OBADIAH, Inc., executed a Deed of Exchange wherein the former transferred, conveyed and assigned to the latter all rights, titles and interest over the above described properties, including all improvements existing thereon, in exchange for additional shares of stock of OBADIAH, Inc.

The corresponding documentary stamp tax due on the aforementioned Deed of Exchange amounting to P388,214.00 was paid by the petitioners to the Bureau of Internal Revenue on May 30, 1994.

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In a letter dated May 20, 1996 which was received by the respondent's Bureau on May 23, 1996, petitioners requested for the refund or tax credit of the documentary stamp tax they previously paid on the aforementioned exchange transaction in the amount of P388,214.00.

The said claim for refund was not acted upon by the respondent, hence, on May 27, 1996, petitioners filed with this Court the instant petition for review.

Petitioners contend that they are entitled to the refund or tax credit of the aforementioned amount as the said amount represents the documentary stamp tax on a Deed of Exchange which was executed but later on cancelled or rescinded by the parties. They stressed that the said Deed of Exchange did not materialize as clearly shown in the title to the property which has remained in the name of the petitioners as of the date of filing of the present petition. In its memorandum, it reasoned out that to be liable to the DST under Section 196 of the Tax Code, ***infra*** the sale, or conveyance must be consummated. It states: "a sale or conveyance is consummated if the parties have fully performed their obligations under the contract and this happens when the seller/transferor has fully transferred the property to the purchaser and the latter has paid the price for the sale", (p. 5, Petitioner's Memorandum), thus, it further stressed that in the case at bar, the obligations under the Deed were obviously not fulfilled or performed, as there was no actual transfer of title nor any payment of the consideration. Moreover, petitioner argues that the conveyance contract is void and cannot be consummated because: (1) there was no payment of the price and (2) there was lack of consent or no intention to transfer the property (p. 6, Petitioner's Memorandum).

Respondent on the other hand, in her Answer raised the herein special and affirmative defenses, thus: (1) petitioner's claim for refund/tax credit is pending administrative investigation; (2) the amount of ₱388,214.00 being hereto claimed by petitioners allegedly representing tax payment for erroneously executed Deed of Exchange x x x was collected in accordance with law and regulations, hence, not refundable; and (3) that claims for refund are construed strictly against claimants since they partake of the nature of exemption from taxation. Respondent reasoned out in her memorandum that petitioner's liability for DST cannot be determined solely by Section 196 of the NIRC but by the provision of Section 173, wherein the DST is payable at the time such act is done or transaction had, thus, the DST accrues at the time the contract is executed, (2) it is not necessary that the contract be consummated but only perfected and (3) it does not matter that the contract was later on mutually cancelled by the parties, hence, the mere fact that they executed the Deed of Exchange will make the herein petitioners liable for DST. Furthermore, respondent contends that the claim of the petitioners that the contract was void because their consent was vitiated is not valid because the essential requisites of a contract, consent, object and cause were all present. Respondent pointed out that the petitioners failed to prove to the Court that their consent was vitiated at the time of the signing of the Deed of Exchange.

The issue to be settled in this case is whether or not the petitioners are entitled to the refund or to the issuance of a tax credit certificate in the amount of ₱388,214.00 allegedly representing the DST they erroneously paid on May 30, 1994.

As discussed above, the provisions of law invoked by the parties in the case at bar are Sections 173 and 196 of the National Internal Revenue Code, to wit:

> **SEC. 173. *Stamp Taxes upon documents, instruments, loan agreements 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 transaction 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. (as amended by R.A. 7760)

> **SEC. 196. *Stamp tax on deeds of sale and conveyance of real property*.** - On all conveyances, deeds, instruments or writings, other than grants, patents, or original certificates of adjudication issued by the Government, whereby any lands, tenements or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser

> or purchasers, there shall be collected a documentary stamp tax at the following rates:
>
> (a) When the consideration, or value received or contracted to be paid for such realty, after making proper allowance of any encumbrance, does not exceed one thousand pesos, Fifteen pesos (₱15.00).
>
> (b) For each additional one thousand pesos, or fractional part thereof in excess of one thousand pesos of such consideration or value, Fifteen pesos (₱15.00)
>
> When it appears that the amount of the documentary stamp tax payable hereunder has been reduced by an incorrect statement, or the consideration in any conveyance, deed, instrument, or writing subject to such tax the Commissioner, provincial or city treasurer, or other revenue officer shall from the assessment rolls or other reliable source of information assess the property of its true market value and collect the proper tax thereon. (as amended by R.A. 7660)

After a brief scrutiny of the aforecited provisions of law, I readily find them to be not in conflict with each other. The former states the general rule on what documents, instruments and papers will be subject to DST and who are liable for it, while the latter specifically deals with the amount of DST to be imposed on the documents, i.e. deeds of sale or conveyance of real property.

Section 196 of the Tax Code clearly provides that stamp tax is due on deeds of sale or conveyance of property. Thus, DST is due only if there is a transfer of ownership of real property from one person to another.

Here lies the crux of my dissent.

In the case at bar, there was no transfer of ownership as the Deed of Exchange which was previously signed by the parties is not a contract of sale of real property. It should be stressed that the enumeration of the documents which are subject to documentary stamp tax under Sections 174 to 198 of the Tax Code is exclusive, hence a deed of exchange of property for shares of stock in a corporation under Section 34 (c)(2) to (c)(6)(c) of the Tax Code is not a contract of sale of real property as defined in Section 1468 of the Civil Code of the Philippines, thus making Section 196 of the Tax Code inapplicable. It should be noted that the petitioners in this case were already the controlling stockholders of OBADIAH, Inc., prior to the execution of the Deed of Exchange. The petitioners held 18,044,929 shares (68.35%) out of the total outstanding capital stock of 26,400,000 shares, and the minority stockholders owned

8,355,071 shares (31.65%). In the subject Deed of Exchange, the petitioner were the only transferors of real property valued at P25,880,000.00 which were exchanged for additional shares of stock of the transferee, OBADIAH, Inc., Inasmuch as the minority interest did not exercise its right to subscribe to additional shares, the petitioners' interest increased to 43,924,929 shares (84.02%) and the minority interest remained at 8,355,071 shares (15.98%).

Section 34(c)(2) to (c) (6)(c) of the Tax Code provides:

> ***Section 34. Determination of amount of and recognition of gain or loss.***
>
> (C) Exchange of property
>
> (1) x x x
>
> (2) x x x
>
> No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock in such corporation of which as a result of such exchange said person, alone or together with others, not exceeding four persons gains control of said corporation: ***Provided,*** That stocks issued for services shall not be considered as issued in return of property.
>
> x x x
>
> (c)(6)(c) The term "control" when used in this section shall mean ownership of stocks in a

> corporation possessing at least fifty-one percent of the total voting power of all classes of stocks entitled to vote.

For the aforesaid exchanges of property for shares of stock in the transferee corporation to enjoy the tax deferred treatment, the following requisites must be present:

1. That the property transferred must be exchanged solely for shares of stock of the transferee corporation;
2. That the transferor may either be alone or together with others not more than four;
3. That said transferor or transferors shall immediately gain control of said corporation after the exchange; and
4. Control shall mean ownership of stocks in a corporation possessing at least fifty one percent of the total voting power of all classes of stocks entitled to vote.

As mentioned earlier, the petitioners had 68.35% control of the corporation prior to the execution of the Deed of Exchange, and their control increased to 84.02% after the said exchange.

The case of *Delpher Trades Corporation and Delphin Pacheco, petitioners vs. Intermediate Appellate Court and Hydro Pipes Philippines, Inc.* respondents (**157 SCRA 349**), where the Supreme Court held that the "Deed of Exchange of property between the Pachecos and Delpher Trades Corporation cannot be considered a contract of sale as there was no actual transfer of ownership to a third party", finds application in the case at bar.

In the Delpher case, the petitioners, siblings Delfin and Pelagia Pacheco were owners of a parcel of land in Bulacan which they leased to a corporation. It was provided in the contract of lease that should the petitioners decide to sell the property leased, it would first be offered to the lessee-corporation. Two years later, the petitioners transferred the leased property to Delpher Trades Corporation in exchange for 2,5000 shares of stock with a value of ₱1,500,000.00 in the said corporation. On the ground that it was not given the first option to buy the leased property, the lessee-corporation filed a complaint for the reconveyance of the lot. Reconveyance was ordered by the Court of First Instance and affirmed by the Intermediate Appellate

Court. The Supreme Court at first denied the petition for review of the IAC decision but later gave it due course.

The petitioners in the Delpher case argued that there was actually no transfer of ownership of the subject parcel of land since they remained in control of the property. Petitioners alleged: "considering the beneficial ownership and control of Delpher Trades Corporation remained in the hands of the original co-owners, there was no transfer of actual ownership interests over the land when the same was transferred to Delpher Trades Corporation in exchange for the latter's shares of stock. The transfer of ownership if anything, was merely in form but not in substance." The Supreme Court upheld the arguments of the petitioners saying: "The Deed of Exchange of property between the Pachecos and Delpher Trades Corporation cannot be considered a contract of sale. There was no transfer of actual ownership interests by the Pachecos to a third party. The Pacheco family merely changed their ownership from one form to another. The ownership remained in the same hands."

Considering that exchanges of real property under Section 34(c)(2) and (c)(6)(c) of the Tax Code for shares of stock in the transferee corporation cannot legally be treated as a contract of sale of real property, Section 196 of the Tax Code finds no application in the case at bar.

The question of whether or not the Deed of Exchange was consummated will be of no moment in settling the issue of the petitioner's right to the refund or tax credit. For as long as the exchange transaction is covered by the Tax Code provisions on tax-free exchanges [34(c)92) to 9c)(6)(c)], the imposition of the documentary stamp tax under Section 196 will not apply pursuant to the Delpher Trades case.

IN THE LIGHT OF THE FOREGOING, I hereby register my dissent to the majority opinion and declare that petitioners are entitled to their claim for refund in the amount of P388,214.00 representing the amount of documentary stamp tax erroneously paid on May 30, 1994.

Quezon City, Metro Manila, 24 July, 1998.

AMANCIO Q. SAGA
Associate Judge