REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SUN LIFE ASSURANCE COMPANY OF CANADA,
Petitioner,

- versus -

C.T.A. CASE NO. 5925

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 12 2001

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DECISION

The case at bar seeks a tax credit in the amount of P61,485,834.51 allegedly representing Petitioner's erroneously paid premium tax for the third quarter of 1997 in the amount of P31,485,834.51 and erroneously paid documentary stamp tax (DST) for the period beginning August 21 to December 18, 1997 in the amount of P30,000,000.00.

As represented, Petitioner is a mutual life insurance company organized and existing under the laws of Canada (Exhibit A). It is registered and authorized by the Securities and Exchange Commission (SEC) and the Insurance Commission to engage in business in the Philippines as a mutual life insurance company (Exhibits B, B-1, C & C-1) with principal office address at Paseo de Roxas Building, 111 Paseo de Roxas Street, Legaspi Village, Makati City.

On October 20, 1997, Petitioner filed with Respondent its Insurance Premium Tax Return for the third quarter of 1997 and paid premium tax in the amount of P31,485,834.51 (Exhibit D and Joint Stipulation of Facts & Issues, Admission No. 2).

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For the period August 21 to December 18, 1997, Petitioner filed with Respondent its Documentary Stamp Tax (DST) Declaration Returns and paid the total amount of P30,000,000.00 (Exhibits E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S and T, and Joint Stipulation of Facts & Issues, Admission No. 3).

Taking into account the Court's decision in the case of **Insular Life Assurance Company, Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 5336, promulgated December 29, 1997**, which ruled that a mutual life insurance company is a purely cooperative company thus exempted from the payment of premium tax and DST and considering that said CTA decision was affirmed by the Court of Appeals on September 29, 1998 in C.A. G.R. No. SP-46516, Petitioner on August 20, 1999 filed with Respondent an administrative claim for tax credit of its alleged erroneously paid premium tax and documentary stamp tax for the period 1997 to 1999 (Exhibit U).

The same was not acted upon by Respondent, hence, on August 23, 1999, Petitioner filed with this Court the instant Petition for Review, praying for the issuance of a tax credit certificate in the total amount of P61,485,834.51 representing its alleged erroneously paid premium tax for the 3rd quarter of 1997 in the amount of P31,485,834.51 and its alleged erroneously paid DST on policies of insurance for the period August 21 to December 18, 1997 in the total amount of P30,000,000.00.

Petitioner principally argued that since it is a mutual life insurance company which has all the characteristic features or elements of a cooperative company or association as defined in Section 121 (now Section 123) of the Tax Code, partly quoted below, it is exempted from the payment of premium taxes. It said that it is likewise exempted from payment of documentary stamp taxes on policies of insurance by virtue of the cooperative nature of its operation as a mutual life insurance company pursuant to Section 199 of the Tax Code, pertinent portion of which is also quoted below:

> "**Section 123. Tax on life insurance premiums**. – There shall be collected from every person, company or corporation (except purely cooperative companies or associations) doing life insurance business of any sort in the Philippines a tax of five percent (5%) of the total premium collected, whether such premiums are paid in money, notes, credits or substitute for money xxx.
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> '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."
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> "**Section 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:
>
> > (a) 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. xxx"

Petitioner asseverated that its position has been sustained by the Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. The Insular Life Assurance Company, Ltd., C.A. G.R. SP No. 46516, Sept. 29, 1998**, affirming the decision of this Court in the case of **Insular Life Assurance Co., Ltd. vs. Commissioner of Internal Revenue Case No. 5336, promulgated on December 29, 1997** and again by this Court in CTA Case No. 5601, involving the same parties promulgated on May 27, 1999, wherein this Court ruled that a mutual life insurance company is a purely cooperative company and is therefore exempted from the payment of premium and documentary stamp taxes, hence, it concluded that it is entitled to the claimed amount.

On the other hand, Respondent argued that Petitioner is not entitled to the claimed refund on the following grounds, to wit: (1) Petitioner failed to satisfy the qualities of a cooperative company or association, particularly the third characteristic, that is, that it should not be motivated by profit, (2) Petitioner failed to register with the Cooperative Development Authority (CDA) as a "cooperative" under Republic Act No. 6938 otherwise known as the Cooperative Code of the Philippines and that Petitioner failed to comply with Revenue Circular No. 48-91 dated June 18, 1991, which prescribed the extent of tax exemption of "cooperatives" and providing the guidelines for availment thereof, and (3) The premium tax and DST claimed by Petitioner has already been claimed by Petitioner as part of its cost of sales per its Income Tax Return for 1998.

In the Memorandum submitted by Revenue Officer Ofelia L. Metrillo (Exhibit "2"), she acknowledged that Petitioner is a mutual life insurance company but disputes the claim that it is a cooperative company for the following reasons:

1. That in the case of INSULAR LIFE ASSURANCE CO., LTD. vs. CIR, the CTA cited three (3) characteristics of a cooperative company namely:

   (1) the company is conducted by the members thereof; (2) with the money collected from among themselves and solely for their own protection and (3) not for profit. Granted that characteristic no. (1) and (2) are present, however, we do not agree that characteristic no. (3) is present because our lawmaking body itself, with the implementation of Republic Act No. 8424 otherwise known as Tax Reform Act of 1997 subjected mutual life companies to the normal income tax rate of thirty-four percent (34%) effective January 1, 1998, thirty-three percent (33%) effective January 1, 1999 and thirty-two percent (32%) effective January 1, 2000 and thereafter. Before the implementation of the Tax Reform Act of 1997, mutual life companies are subject to income tax at a preferential rate of ten percent (10%) of their gross investment income. The Tax Code is very clear on its grant of exemption whether income tax, sales tax or any other tax for that matter. If our legislature considers mutual

> life insurance companies as cooperative companies as contemplated under Section 123 and 199 of the Tax Code, therefore, not for profit, why did it make such a change if it does not see mutual life companies as a profitable business? This subsequent enactment of law by the legislature gives light to the past interpretation of the CTA doubting the intent of the legislature in treating investment income earned by mutual life companies to be equivalent or synonymous to real business profit.

The decisive issues that comes to fore for our consideration are:

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 ASPECTS OF ITS CLAIM FOR REFUND OR TAX CREDIT.

This is not the first time that this Court has been confronted with such legal issue at hand. This Court had been confronted with and did resolve the same legal issue in **Insular Life Assurance Company, Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 5336,** *supra*, anchored on factual circumstances on all fours with the instant petition. The said decision of this Court has already been upheld in *toto* by the Court of Appeals in C.A. 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 parties similarly situated with Insular, like herein Petitioner. Thus, the Court finds no valid reason to depart from its decision in the earlier case of Insular. 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:

> **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.
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> **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 provision of Section 173 to the contrary notwithstanding, the following instrument, documents, and papers shall be **exempt** from the documentary stamp tax:
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> (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.
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> x x x x x x x x x
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> (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").

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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

As testified by Mr. Cesar P. Altarejos, Jr., Assistant Vice President for Finance and Administration, on March 6, 2000, Petitioner is not organized for profit but solely for the protection of its members – policy holders. Petitioners invest the funds so it will earn additional income to ensure that sufficient funds are available to meet intended benefit claims and to pay operating expenses. The effect of investment income is to reduce the cost of insurance to individual policyholder. Thus, investment made by Petitioner Sun-Life ultimately redounds purely to the protection and benefit of its members – policyholders. In case there is a surplus over the intended benefit claims and the incidental expenses, they are distributed back to the policyholders as return of premiums. Respondent failed to produce contrary evidence.

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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> Wherefore, finding no reversible error in the assailed decision, the same is hereby AFFIRMED in toto."

The Court of Appeals has already spoken. It ruled that a mutual life insurance company is a purely cooperative company, thus, exempted from the payment of premium and documentary stamp taxes. Petitioner Sun Life is without doubt a mutual life insurance company. The Amending Letters Patent of Petitioner Sun Life expressly declares that the company is a mutual company (Exhibit "A" Inclusive of its submarkings). The Securities and Exchange Commission has certified that Petitioner Sun Life is "duly licensed to engage in such business in the Philippines as the said corporation is authorized to do under its charter as a mutual life insurance company" (Exhibit "B" and "B-1"). The Insurance Commission has likewise certified that Petitioner Sun Life is "a foreign mutual insurance company operating in the Philippines" (Exhibit "C" and "C-1"). There is no requirement under the Section 121 (now 123) and Section 199 of the Tax Code that Petitioner should first be registered with the Cooperative Development Authority before it can enjoy exemptions from premium tax and documentary stamp tax on insurance policies.

Being similarly situated with Insular, Petitioner at bar is entitled to the same interpretation given by this Court in the earlier cases of **The Insular Life Assurance Company, Ltd. vs. Commissioner of Internal Revenue (CTA Case Nos. 5336 and 5601)** and by the Court of Appeals in the case entitled Commissioner of Internal Revenue vs. The Insular Life Assurance Company, Ltd., C.A. G.R. SP No. 46516, September 29, 1998. Petitioner Sun Life as a mutual life insurance company is therefore a cooperative company or association and is exempted from the payment of premium tax and documentary stamp tax on policies of insurance pursuant to Section 121 (now Section 123) and Section 199[1] (now Section 199[a]) of the Tax Code. Moreover, the Court agrees with Petitioner's ratiocination that Respondent's contention that the premium tax and DST being claimed as tax credit by Petitioner Sun Life has already been claimed as part of its cost of sales per its Income Tax Return for 1998 is without factual basis and is clearly erroneous insofar as the subject claim for the tax credit is concerned since the instant claim involves premium tax and DST payments made in 1997. What Respondent's Revenue Officer noted in her Memorandum pertains to the 1998 premium tax and DST payments and has no relation with respect to the instant claim for tax credit pertaining to 1997. Petitioner's premium tax and DST payments in 1997 could not have been claimed by Petitioner as part of its cost of sales in 1998. Besides, Petitioner could not have benefited for income tax purposes from the premium tax and DST payments in 1997 because before the effectivity of the Tax Reform Act of 1997 on January 1, 1998, Petitioner Sun Life was subject to the preferential income tax rate of 10% on its gross income. While Respondent maintains that beginning 1998 Mutual Life Insurance companies are now subject to the normal corporate income tax instead of the preferential income tax of 10% under the old code, this Court has noticed that Section 121 (now 123) and Section 199 remain unchanged. Accordingly we agree with Petitioner that where an amendment leaves certain portions of an act unchanged, such portions are continued in force with the same meaning and effect they have, before the amendment. The imposition of a higher income tax rate could not possibly effect other provisions of the law, which may stand independent of the others, unless these various provisions cannot be reconciled. Then, the latest amendment shall prevail, but this is not the case at hand.

Thus, what is left for this Court to do is merely to ascertain whether Petitioner has satisfied the evidentiary requirements of its claim for refund.

A thorough and detailed examination of Petitioner's evidence, particularly its Insurance Premium Tax Return for the third quarter of 1997 (Exhibits D, D-1 and D-2) and its Documentary Stamp Tax Declaration for the period August 21, 1997 to December 18, 1997 (Exhibits E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, and T) convinces this Court that Petitioner has proven the entire amount of its claim for refund.

IN THE LIGHT OF ALL THE FOREGOING, the instant Petition for Review is hereby **GRANTED**. Respondent is hereby **ORDERED** to **ISSUE** in favor of Petitioner a **TAX CREDIT CERTIFICATE** in the total amount of P61,485,834.51, representing the latter's erroneously paid premium tax for the third quarter of 1997 in the amount of P31,485,834.51 and erroneously paid DST on policies of insurance for the period August 21 to December 18, 1997 in the amount of P30,000,000.00. No costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

JUANITO C. CASTAÑEDA, JR.
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