REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE PHILIPPINE AMERICAN
LIFE INSURANCE COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 4072

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - - x

D E C I S I O N

Assailed by petitioner Philippine American Life Insurance Company is respondent Commissioner of Internal Revenue's right to the sum of P4,613,794.28 assesssed as deficiency documentary and science stamp taxes on life insurance policies issued during the year 1978, computed as follows:

Documentary/Science Stamp Taxes Due:

P1,638,255,570 / P200	x P0.32 =	P2,621,208.91
P1,138,448,786 / P200	x P0.35 =	1,992,285.37
TOTAL DOCUMENTARY/SCIENCE STAMP TAX DUE..		P4,613,494.28
Add: Compromise Penalty		300.00
TOTAL AMOUNT DUE AND COLLECTIBLE		P4,613,794.28

As borne by the records, the material facts are:

Petitioner is a corporation organized and existing under the laws of the Republic of the Philippines, with principal office at the Philamlife Building, United Nations Avenue, Ermita, Manila. On June 21, 1984, petitioner received from respondent a pre-assessment notice for unpaid documentary and science stamp taxes on life insurance policies issued during the year 1978 in the amount of P4,613,794.28.

On June 26, 1984 petitioner protested the pre-assessment on grounds of prescription and lack of factual and legal basis, and requested the withdrawal and cancellation of the assessment by respondent. However, on July 18, 1984 petitioner received a combination tax clearance-assessment letter from respondent informing petitioner that while no deficiency business tax was found to be due from petitioner, documentary and science stamp taxes in the amount of P4,613,794.28 were found to be still due and collectible from it. Again, petitioner on August 16, 1984 protested the aforesaid assessment on grounds of payment, prescription and lack of factual and legal basis. On May 26, 1986, however, petitioner received a letter from respondent denying its protest or request for reconsideration and reiterating that said assessment be settled.

Hence, this appeal.

As special and affirmative defenses, respondent in his answer to the petition for review alleges that:

Per investigation conducted by agents of the respondent and per records furnished by the petitioner, petitioner is liable in the amount of P4,613,794.28 as deficiency documentary and science stamps taxes on life insurance policies issued during the year 1978;

During the investigation of this case by respondent's examiners, petitioner failed to show official receipts of documentary and science stamp taxes pursuant to P.D. 1045 approved on November 5, 1976 as implemented by Revenue Regulations No. 9-75 (38-76) dated November 25, 1976;

As no tax return is filed for documentary stamp tax purposes, the case falls within the coverage of exceptions to the then 5-year period of limitation of assessment under Section 319 of the 1977 Tax Code (now Section 269). Hence, respondent has 10 yea s from discovery of the omission to affix the documentary and science stamp taxes on petitioner's insurance policies. In this case, the omission was discovered on March 12, 1984 per examiner's report, consequently, respondent has up to March 12, 1994 within which to issue the assessment. As the assessment was issued on July 10, 1984 petitioner was assessed within the period. *(Commissioner vs. Ayala Securities Corp. & The Honorable Court of Tax Appeals, G.R. No. L-29485, November 21, 1980, 101 SCRA 231-242)*

The assessment in question was issued in accordance with law and revenue regulations;

All presumptions are in favor of the correctness of the assessment.

On the question of prescription, the rule now established is that if there is no law or regulation requiring the filing of a return, the right of the Government to assess or collect national internal revenue tax does not prescribe. Limitations upon the right of the government to assess and collect taxes will not be presumed in the absence of clear legislation to the contrary and where the government has not by express statutory provision provided a limitation upon its right to assess unpaid taxes, such right is imprescriptible. ***(Commissioner of Internal Revenue vs. Ayala Securities Corporation**, L-29485, November 21, 1980, 101 SCRA 231.)* Since there is no law or regulation requiring the filing of a return for documentary stamp tax, and none has been pointed to by petitioner, and stamp taxes are national internal revenue taxes, the right of the Government to assess or collect the documentary and science stamp taxes involved in this case does not therefore prescribe.

Petitioner maintains however that it has fully paid all documentary and science stamp taxes due on the insurance policies it issued in the year 1978. And the evidence presented by petitioner, which was not disputed or controverted by respondent, shows that petitioner made the following payments of documentary stamp taxes in the year 1978:

DOCUMENTARY STAMP TAX PAID IN 1978

CB Revenue Tax Receipt #		Date	Amount
1.	17526600	01-04-78	P40,000.00
2.	17526611	01-04-78	40,000.00
3.	19779712	01-16-87	40,000.00
4.	19779701	01-16-87	40,000.00

5.	20010082	01-24-87	40,000.00
6.	20010071	01-24-87	40,000.00
7.	22037175	02-01-78	40,000.00
8.	22037164	02-01-78	40,000.00
9.	22068911	02-08-78	40,000.00
10.	22068900	02-13-78	40,000.00
11.	22113792	02-13-78	90,000.00
12.	22113803	02-13-78	90,000.00
13.	22124410	02-16-78	40,000.00
14.	22124421	02-16-78	40,000.00
15.	22714591	02-21-78	40,000.00
16.	22714602	02-21-78	40,000.00
17.	23953742	03-01-78	40,000.00
18.	23953753	03-01-78	40,000.00
19.	24172422	03-07-78	40,000.00
20.	24172433	03-07-78	40,000.00
21.	27484155	03-13-78	40,000.00
22.	27484166	03-13-78	40,000.00
23.	29608493	04-05-78	40,000.00
24.	29608493	03-21-78	40,000.00
25.	29663620	04-05-78	40,000.00
26.	29663631	04-05-78	40,000.00
27.	33266085	04-18-78	40,000.00
28.	33266074	04-18-78	40,000.00
29.	33401852	04-25-78	40,000.00
30.	33401841	04-25-78	40,000.00
31.	33460324	05-10-78	40,000.00
32.	33460313	05-10-78	40,000.00
33.	33486762	05-16-78	40,000.00
34.	33486773	05-16-78	40,000.00
35.	33513163	05-22-78	40,000.00
36.	33513152	05-30-78	40,000.00

37.	29244526	05-30-78	40,000.00
38.	29244515	05-30-78	40,000.00
39.	33547102	06-16-78	80,000.00
40.	33547113	06-16-78	80,000.00
41.	28078971	06-20-78	80,000.00
42.	28078982	06-20-78	80,000.00
43.	33557440	06-22-78	40,000.00
44.	33557436	06-22-78	40,000.00
45.	33573352	06-28-78	40,000.00
46.	33573363	06-28-78	40,000.00
47.	34602024	07-10-78	40,000.00
48.	34602035	07-11-78	40,000.00
49.	34632953	07-11-78	40,000.00
50.	34632975	07-11-78	40,000.00
51.	35275420	07-18-78	90,000.00
52.	35275391	07-18-78	90,000.00
			P2,440,000.00

DOCUMENTARY STAMP TAX PAID IN 1978

CB Revenue Tax Receipt #		Date	Amount
1.	35401951	07-24-78	P90,000.00
2.	35401962	07-24-78	90,000.00
3.	35374006	07-31-78	90,000.00
4.	35374010	07-31-78	90,000.00
5.	35237090	08-08-78	90,000.00
6.	36098941	08-22-78	90,000.00
7.	22085103	09-05-78	90,000.00
8.	36181865	09-08-78	90,000.00
9.	36189005	09-18-78	90,000.00
10.	36285421	09-26-78	90,000.00
11.	36324960	10-04-78	90,000.00

12.	36335891	10-06-78	90,000.00
13.	36364823	10-10-78	90,000.00
14.	37165284	10-24-78	90,000.00
15.	37456440	10-30-78	90,000.00
16.	37457162	11-07-78	90,000.00
17.	38140885	11-10-78	90,000.00
18.	38177602	11-21-78	90,000.00
19.	38177694	11-24-78	90,000.00
20.	38454415	12-05-78	90,000.00
21.	38464296	12-07-78	90,000.00
22.	38509354	12-12-78	90,000.00
23.	38555554	12-19-78	90,000.00
24.	38555720	12-27-78	90,000.00
			P2,160,000.00

On the basis of the evidence presented, it seems plain that petitioner has paid documentary and science stamp taxes due on insurance policies issued by it during the year 1978 in the total amount of P4,600,000.00; that is, P2,440,000.00 plus P2,160,000.00. Respondent's assessment for deficiency documentary and science stamp taxes in the year under consideration, however, is in the sum of P4,613,494.28, or a discrepancy of P13,494.28. We have carefully examined the records of this case, but we fail to find any proof which would show the payment of this shortage of P13,494.28. And petitioner has not accounted for or explained this discrepancy or shortage of P13,494.28 from the amount established by the evidence presented by it. All presumptions are in favor of the correctness of respondent's assessment and it is incumbent upon petitioner to prove the contrary. *(Commissioner of Internal Revenue vs. Antonio Tuason, Inc., G.R. No. 85749, May 15, 1989, citing Mindanao Bus Company vs. Commissioner of Internal Revenue, 1 SCRA 538.)* Unfortunately, petitioner failed to overcome the presumption of correctness of respondent's assessment or explain the discrepancy of P13,494.28.

Accordingly, petitioner Philippine American Life Insurance Company is hereby ordered to pay to respondent Commissioner of Internal Revenue the amount of P13,494.28 as deficiency documentary and science stamp taxes on insurance policies issued during the year 1978. The compromise penalty of P300.00 suggested by respondent in his assessment cannot be imposed as it does not appear that petitioner agreed to its imposition. The rule has been established that compromise penalty cannot be imposed or collected without the agreement and conformity of the taxpayer. *(Wonder Mechanical*

Engineering Corporation vs. Court of Tax Appeals, L-22805 & 27658, June 30, 1975, 64 SCRA 555.)

WHEREFORE, the decision appealed from is modified as indicated in the above opinion of the Court. No costs.

SO ORDERED.

Quezon City, Metro Manila, July 7, 1989.

AMANTE FILLER
Presiding Judge

WE CONCUR:

(on leave)
CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals