REPUBLIC OF THE PHILIPPINES

Court Of Tax Appeals

QUEZON CITY

SECOND DIVISION

THE PREMIER INSURANCE & SURETY CORP., *Petitioner,*	**C.T.A. CASE NO. 6707**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** DEC 24 2008 JPBFernando 11:30 a.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by The Premier Insurance & Surety Corp. (hereafter "petitioner") praying for the cancellation of the deficiency assessment for Documentary Stamp Tax in the amount of P9,925,725.16 against petitioner for taxable year 1999.

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office at Suite 702 Federal Tower, Dasmarinas St., San Nicolas, Manila. It is engaged in the business of non-life insurance, which includes fire, motor car, marine hull, marine cargo, bonds and other products that are permitted to be sold by a non-life insurance company in the Philippines.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to administer and enforce national internal revenue laws, including among others, the power to issue tax assessments, with office address at the National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

The facts, as stipulated by the parties, are as follows:

On January 3, 2003, petitioner received three Assessment Notices, together with a Formal Letter of Demand dated November 25, 2002, for petitioner's alleged deficiency Expanded Withholding Tax, Premium Tax and Documentary Stamp Tax for CY 1999, computed as follows:

Nature of Deficiency	Amount (w/ increments)
Expanded withholding tax	P115,511.17
Premium tax	1,404.05
Documentary stamp tax	9,925,725.16
Total	**P10,042,640.38**

Prior to filing its protest to the aforementioned Formal Assessment Notices, petitioner availed itself of the Voluntary Assessment and

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Abatement Program (VAAP) under BIR Revenue Regulations No. 17-2002, as amended.

On January 31, 2003, petitioner seasonably filed its formal protest to said deficiency tax assessments, together with the supporting documents, with the Large Taxpayers Service of the Bureau of Internal Revenue.

On May 23, 2003, petitioner received a formal letter from respondent dated March 31, 2003, which cancelled the deficiency Expanded Withholding Tax and Premium Tax assessments, but sustained the alleged deficiency Documentary Stamp Tax assessment for CY 1999.

In her "Answer" filed on July 25, 2003, respondent, by way of special and affirmative defenses, averred that petitioner paid/purchased documentary stamp tax for P3,550,000.00, out of the DST due of P9,693,768.59, or a mere 36.6% of the total that should have been paid for calendar year 1999, petitioner, therefore, did not pay DST on 63.4% of its premium income, which is a clear violation of Section 248 (B) of the 1997 Tax Code; petitioner falsely under-declared its returns for DST purposes, consequently, the applicable provision is Section 222 (a) of the Tax Code, which prescribes a ten-year period for the assessment of deficiency tax; at the initial conferences, petitioner's representative never refuted the basis of the tax, which is direct premiums per Annual Report, in other words, petitioner accepted the fact that it is deficient in the payment of DST on the direct premium since the beginning of the audit; the glaring issue of false return, though not expressly mentioned by the Revenue Officers who conducted the investigation, is already moot and academic because petitioner had already accepted the fact that it did not pay the subject deficiency tax being assessed; the questioned assessment, issued on January 3, 2003, is well within the prescriptive period since the latest DST return for 1999 filed by petitioner was on January 4, 2000, hence, the government's right to make assessment was until January 5, 2003; the Annual Information Return of DST Paid/Purchased, which encompasses all the DST payments from January to December of a certain year, is the last mandatory return for DST, from which the three year prescriptive period is to be reckoned with, which petitioner failed to file in this case; prescription should, therefore, commence on April 15, 2000 and to end on April 15, 2003; petitioner repeatedly requested sufficient time to submit several documents, but petitioner repeatedly failed to submit supporting documents; the deliberate deferment of petitioner's counsel in the submission of documents is *prima facie* evidence of delay in the issuance of the assessment and ultimately delay the collection of the deficiency tax, such act of petitioner is an implied waiver of the Statute of Limitations in favor of the government; when an insurance company issues a policy, all the charges are indicated in the insurance policy, including DST, hence only on the premium charged can an insurance company claim propriety since the DST collected does not accrue to it, but to the government, said DST collected by the insurance company is only held in trust for the government, consequently, once a fund already inures to the government, but was not remitted by a taxpayer, the case does not prescribe; since the policies imprinted with DST were only 36.6% of the total amount of policies issued, in effect no return was filed/paid with respect to the 63.4% remaining un-imprinted policies, and when no return was filed, prescription will not set in.

Petitioner presented its Assistant Vice President for Accounting, Emerito Berzamine, and Joseph Cedric Calica, the Court-Commissioned Independent CPA, as witnesses, and documentary evidence, marked as *Exhibits "D"* to *"LL"* and *"NN"*, inclusive of their submarkings, which were all admitted by the Court, in the Resolutions dated November 27, 2006, February 3, 2007, and March 23, 2007, after petitioner filed a Supplemental Formal Offer of Evidence.

On the other hand, respondent presented Revenue Officer Narciso Laguerta, as witness, and documentary evidence, marked as *Exhibits "1" to "2"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated September 17, 2007.

Thereafter, both parties were ordered to file their simultaneous memoranda within thirty days from notice, afterwhich, the case shall be deemed submitted for decision.

Both parties having filed their respective memorandum, the case was deemed submitted for decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT RESPONDENT'S RIGHT TO ASSESS THE DOCUMENTARY STAMP TAX HAD ALREADY PRESCRIBED.

II

WHETHER OR NOT THE COUNTING OF THE PRESCRIPTIVE PERIOD STARTS TO RUN FROM THE DATE OF FILING OF THE DST DECLARATION/RETURN (BIR FORM NO. 2000), WHICH IS UPON LOADING OR RELOADING IN THE METERING MACHINE.

III

WHETHER OR NOT THE COUNTING OF THE PRESCRIPTIVE PERIOD STARTS TO RUN FROM THE DATE OF FILING OF THE ANNUAL DST INFORMATION RETURN.

IV

WHETHER OR NOT THE WAIVER OF THE STATUTE OF LIMITATIONS EXECUTED BY PETITIONER ON SEPTEMBER 23, 2002 IS VALID.

V

WHETHER OR NOT PETITIONER VIOLATED THE PROVISIONS OF SECTION 248 (B) OF THE TAX CODE OF 1997.

VI

WHETHER OR NOT PETITIONER COMMITTED ACTUAL FRAUD UNDER SECTION 222 (A) OF THE TAX CODE OF 1997.

VII

WHETHER OR NOT DOCUMENTARY STAMP TAX ACCRUED ON UNACCEPTED INSURANCE POLICIES AND NON-PAYMENT OF PREMIUM THEREON.

VIII

WHETHER OR NOT THE DEFICIENCY ASSESSMENTS FOR DOCUMENTARY STAMP TAX AMOUNTING TO NINE MILLION NINE HUNDRED TWENTY FIVE THOUSAND SEVEN HUNDRED TWENTY FIVE AND 16/100 PESOS (P9,925,725.16) SHOULD BE

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CANCELLED FOR LACK OF FACTUAL AND LEGAL BASIS.

Principal Issue

The above issues boil down to the principal issue of:

WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY DOCUMENTARY STAMP TAX IN THE AMOUNT OF NINE MILLION NINE HUNDRED TWENTY FIVE THOUSAND SEVEN HUNDRED TWENTY FIVE AND 16/100 PESOS (P9,925,725.16) .

THE COURT'S RULING

The petition is partly meritorious.

Before We resolve the main issue of whether or not petitioner is liable for deficiency Documentary Stamp Tax in the amount of P9,925,725.16 , We will first resolve the issue on the validity of the Waiver of the Statute of Limitations and Prescription.

Waiver of the Statute
of Limitations is Valid

Petitioner contends that the Waiver of the Statute of Limitations ("Waiver") is defective, as said waiver included taxes that had already prescribed and failed to indicate the date of receipt by petitioner.

Petitioner's contention is devoid of merit.

In the case of *Commissioner of Internal Revenue vs. FMF Development Corporation, 556 SCRA 707-708*, the Supreme Court ruled:

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"An exception to the three-year prescriptive period on the assessment of taxes is Section 222 (b) of the NIRC, which provides:

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(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

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The above provision authorizes the extension of the original three-year period by the execution of a valid waiver, where the taxpayer and the BIR agreed in writing that the period to issue an assessment and collect the taxes due is extended to an agreed upon date. Under RMO No. 20-90, which implements Sections 203 and 222 (b), the following procedures should be followed:

1. The waiver must be in the form identified as Annex "A" hereof....

2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.

Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. **The date of such acceptance by the Bureau should be indicated.** Both the date of execution by the taxpayer and date of acceptance by the Bureau should be <u>before</u> the expiration of the period of prescription or <u>before</u> the lapse of the period agreed upon in case a subsequent agreement is executed.

3. The following revenue officials are authorized to sign the waiver.

A. <u>In the National Office</u>

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3. **Commissioner For tax cases involving more than P1M**

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B. In the Regional Offices

1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.

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4. The **waiver must be executed in three (3) copies**, the original copy to be attached to the docket of the case, **the second copy for the taxpayer** and the third copy for the Office accepting the waiver. **The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.**

5. The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with."

The evidence on record shows that the Waiver was executed by petitioner on September 23, 2003, and signed by its President *(Exhibit "Y")*. It was accepted by the Commissioner of Internal Revenue, signed by Assistant Commissioner Edwin Abella, also on September 23, 2003 *(Exhibit "Y")*. The original copy of the Waiver bears the date of receipt of petitioner's representative, Punongbayan and Araullo *(BIR Records, pp. 914-915)*. Applying the aforequoted RMO No. 20-90, the Waiver has complied with its provisions; thus, the same was validly executed.

Prescription

However, for a waiver of the Statute of Limitations to toll the running of the prescriptive period, *Section 222 (b) of the NIRC of 1997,* *as amended*, expressly provides that the same must be executed "before the expiration of the time prescribed in Section 203". *Section 203 of the NIRC of 1997, as amended*, prescribes the ordinary period of limitation for assessment and collection of taxes, which is within three (3) years after the last day prescribed by law for the filing of the return, or from the day the return was filed.

For the payment of DST, *Section 200 of the NIRC of 1997, as amended,* provides:

> "SEC. 200. Payment of Documentary Stamp Tax. –
>
> (A) In General. – The provisions of Presidential Decree No. 1045 notwithstanding, any person liable to pay documentary stamp tax upon any document subject to tax under Title VII of this Code shall file a tax return and pay the tax in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.
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> (B) Time for Filing and Payment of the Tax. – Except as provided by rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, the tax return prescribed in this Section shall be filed within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed.
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> (C) Where to File. – Except in cases where the Commissioner otherwise permits, the aforesaid tax return shall be filed with and the tax due shall be paid through the authorized agent bank within the territorial jurisdiction of the Revenue District Office which has jurisdiction over the residence or principal place of business of the taxpayer. In places where there is no authorized agent bank, the return shall be filed with the Revenue District Officer, collection agent, or his

> duly authorized treasurer of the city or municipality in which the taxpayer has his legal residence or principal place of business.
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> (D) Exception. – In lieu of the foregoing provisions of this Section, the tax may be paid either through purchase and actual affixture, or by imprinting the stamps through a documentary stamp metering machine, on the taxable document, in the manner as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

Pursuant to the aforequoted *Subsection (A)*, any person liable to pay Documentary Stamp Tax upon any document subject to tax under Title VII of the Tax Code shall file a tax return and pay the tax in accordance with the rules and regulations. While *Subsection (B)* provides that the tax return prescribed in this Section shall be filed within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed. Finally, *Subsection (C)* provides for the place of filing of the tax return.

On the other hand, the aforequoted *Section 200 (D)* provides for an exception to *Subsections (A) (B) and (C) of Section 200* as to the manner, time and place of payment of DST. Pursuant to *Subsection (D),* the DST may be paid either through purchase and actual affixture, or by imprinting the stamps through a documentary stamp metering machine, on the taxable document, as may be prescribed by the rules and regulations.

Section 5.3 of Revenue Regulations 05-97 prescribes the filing of Documentary Stamp Tax Declaration under BIR Form 2000 for persons using DST Metering Machine, each time Documentary Stamp Tax are purchased for loading or reloading, to wit:

> "SEC. 5.3. Any person duly authorized to use DST Metering Machine shall file a DST Declaration under BIR Form No. 2000 each time documentary stamps are purchased for loading or reloading on the said machine. This declaration shall be filed with any duly Authorized Agent Bank, Revenue Collection Officer, or duly authorized City or Municipal Treasurer in the Philippines. The amount of documentary stamps to be reloaded on the Metering Machine should be equal to the amount of documentary stamps consumed from previous purchase. The details of usage or consumption of documentary stamps should be indicated on the declaration."

It is clear from the above provision that for taxpayers using DST metering machine, the DST is deemed paid upon purchase for loading or reloading of DST on the metering machine, through the filing of DST Declaration under BIR Form No. 2000. It follows that for taxpayers using DST metering machine, the DST Declaration under BIR Form No. 2000 is the return contemplated by law. Hence, for purposes of counting the prescriptive period for taxpayers using DST metering machine, the same starts to run from the date of filing of the DST Declaration (BIR Form No. 2000), and not upon filing of the Annual Information Return of Documentary Stamp Taxes Paid/Purchased ("Annual Information Return of DST"), as claimed by the respondent.

It must be stressed that the Annual Information Return of DST required to be filed by all banks, quasi-banks and insurance companies under *Revenue Regulations 4-89*, relied on by the respondent as the return contemplated by law for purposes of counting the prescriptive period, was already amended by *Revenue Regulations 4-96*. *Revenue Regulations 4-96* requires all banks, financial institutions, non-bank financial intermediaries, and insurance companies to file a Monthly Information Return for Documentary Stamp Taxes Paid. However, as ruled by this Court in a litany of cases, said Monthly Information Return of DST Paid under *Revenue Regulations 4-96* is not the return contemplated under *Sections 203 and 222 of the NIRC of 1997*, as amended. It is merely an information return where the documentary stamp taxes paid for the month are disclosed.

In the case at bench, record shows that petitioner was issued a permit to use Documentary Stamps Metering Machine on February 19, 1998 *(Exhibits "W" and "W-1")*. Pursuant to the foregoing provisions, petitioner is required to file DST Declaration under BIR Form No. 2000 each time documentary stamps are purchased for loading or reloading on said machine. Record further shows that for the year 1999, petitioner paid/purchased the following DST for their metering machine:

Date Filed	Period	OR No.	Check No.	Check Date	Amount	Source (Exhibit/ BIR Records)
01/04/99	01/31/99	4652664	12075	01/04/99	P50,000.00	p. 840
01/07/99	01/31/99	4652698	374105	01/07/99	50,000.00	p. 839
01/12/99	01/31/99	4653442	26908	01/11/99	100,000.00	pp. 819, 838
01/15/99	01/31/99	3824752	374148	01/15/99	50,000.00	p. 837
01/25/99	01/31/99	3824852	27002	01/21/99	200,000.00	p. 836
01/25/99	01/31/99	3824851	27003	01/21/99	100,000.00	p. 835
01/25/99	01/31/99	3824874	374219	01/25/99	50,000.00	p. 834
02/03/99	12/31/99	4901147	374249	02/03/99	50,000.00	p. 833
02/11/99	01/31/99	4902421	381169	02/11/99	50,000.00	Respondent's ITS
03/04/99	01/31/99	4903310	27238	02/26/99	100,000.00	p. 817
02/25/99	02/02/99	4903117	381205	02/25/99	50,000.00	Respondent's ITS
02/25/99	02/25/99	4903169	27196	02/19/99	100,000.00	p. 818
03/10/99	02/28/99	5024166	381267	03/09/99	150,000.00	Respondent's ITS
03/19/99	02/28/99				50,000.00	Same
03/26/99	03/26/99	5025086	381346	03/26/99	50,000.00	Same
04/13/99	04/13/99	5025394	27431	04/08/99	100,000.00	Same
04/13/99	04/13/99	5025395	27432	04/08/99	100,000.00	Same
04/14/99	04/14/99	5025049	34633		50,000.00	Same
04/20/99	04/20/99	5025897	17013	04/15/99	100,000.00	p. 815
04/20/99	04/20/99	5025898	27459	04/19/99	100,000.00	p. 816
04/26/99	04/26/99	5231772	391348	04/20/99	50,000.00	Same
05/12/99	05/12/99				50,000.00	Same
05/25/99	05/25/99	5232767	34663	05/24/99	50,000.00	Same
05/28/99	05/28/99	5232726	27666	05/26/99	100,000.00	pp. 813, 831
05/28/99	05/28/99	5232725	27668	05/26/99	100,000.00	pp. 814, 835
06/08/99	06/08/99	5233120	391542	06/08/99	50,000.00	Respondent's ITS
07/02/99	07/02/99	5417507	412375	07/02/99	50,000.00	Same
07/15/99	07/15/99	5418143	28500	07/15/99	50,000.00	Same
07/21/99	07/21/99	5418384	419566	07/21/99	50,000.00	Same
07/23/99	07/23/99	5418473	41258	07/22/99	150,000.00	Same
07/28/99	07/28/99	5684299	419597	07/28/99	50,000.00	Same
08/16/99	08/16/99	5684988	419696	08/16/99	50,000.00	Same
08/18/99	08/18/99	5685509	419706	08/18/99	50,000.00	Same
08/24/99	08/24/99	5685804	17094	08/12/99	100,000.00	"S" to "S-2"
09/02/99	09/02/99	5686290	78516	09/01/99	50,000.00	"T" to "T-2", pp. 812, 830
09/13/99	09/13/99	5686965	425688	09/13/99	50,000.00	"U" to "U-2"
09/20/99	09/20/99	5418447	425720	09/20/99	50,000.00	"V" to "V-2"
09/28/99	**09/28/99**	**5687541**	**17278**	**09/27/99**	**100,000.00**	**"F" to "F-2"**
10/08/99	**10/08/99**	**5688311**	**425825**	**10/08/99**	**50,000.00**	**"G" to "G-2"**
10/19/99	**10/19/99**	**5672436**	**432332**	**10/19/99**	**50,000.00**	**"H" to "H-2"**
11/03/99	**11/03/99**	**4205602**			**50,000.00**	**"I" to "I-2"**
11/11/99	**11/11/99**	**3778166**	**432476**	**11/11/99**	**50,000.00**	**"J" to "J-2", p. 826**
11/12/99	**11/12/99**	**3778186**	**10320246**	**11/11/99**	**100,000.00**	**"K" to "K-2"**
11/22/99	**11/22/99**	**4884404**	**432530**	**11/22/99**	**50,000.00**	**"L" to "L-2"**
11/26/99	**11/26/99**		**432542**	**11/26/99**	**50,000.00**	**"M" & "M-1", p. 825**
12/10/99	**12/10/99**		**3024901**	**12/09/99**	**50,000.00**	**"N" & "N-1", p. 823**
12/20/99	**12/17/99**				**50,000.00**	**"O" & "O-1"**
01/04/00	**12/31/99**	**1223325**	**17502**	**11/23/99**	**100,000.00**	**p. 828**
01/04/00	**12/31/99**	**1223318**	**17646**	**12/28/99**	**100,000.00**	**p. 821**

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Total DST Paid/Purchased					P3,550,000.00	
						(BIR Records, p. 916).
12/27/99	12/27/99		3027009	12/27/99	P50,000.00	"P" & "P-1"
Grand Total DST Paid/Purchased					**P3,600,000.00**	

As shown above, for the year 1999, the earliest date petitioner loaded its DST metering machine and filed the corresponding DST Declaration (BIR Form 2000) was on January 4, 1999, while the latest was on January 4, 2000. Pursuant to *Section 222 (b) of the NIRC of 1997, as amended*, in order for the Waiver of the Statute of Limitations to toll the running of the prescriptive period, it must be executed within three (3) years from the date the return was filed. Counting 3 years from January 4, 1999, the instant Waiver should have been executed not later than January 4, 2002 in order to toll the running of the prescriptive period of the earliest DST payment (January 4, 1999). Considering that in the present case, the Waiver was executed only on September 23, 2003 *(Exhibit "Y", BIR Records, pp. 914-915)*, We sustain petitioner's contention that as to the DST payments for the periods January 4, 1999 to September 20, 1999, the Waiver did not toll the running of the prescriptive period.

However, as regards the DST payments from September 28, 1999 to January 4, 2000, since the Waiver was executed on September 23, 2003, or within the 3-year prescriptive period, it has effectively tolled the running of the prescriptive period.

DST Assessment Has Not Yet Prescribed

Notwithstanding that the Waiver did not toll the running of the prescriptive period for the DST payments for the period January 4, 1999 to September 20, 1999, We find that Assessment Notice No. DST-99-000055 finding petitioner liable for basic deficiency DST in the amount of P6,143,768.59, plus increments of P3,781,956.57, or for the total amount of P9,925,725.16, for the year 1999, has not yet prescribed.

In addition to the execution of the waiver of the Statute of Limitations, *Section 222 (a) of the NIRC of 1997, as amended*, provides:

> "SEC. 222. – Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."

The foregoing provision provides for three additional instances when the running of the three-year prescriptive period will not apply.

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These are: (1) filing a false return, (2) filing a fraudulent return with intent to evade tax, or (3) failure to file a return *(Commissioner of Internal Revenue vs. Tulio, 474 SCRA 151)*. The period within which to assess tax is ten years from discovery of the fraud, falsification or omission *(Commissioner of Internal Revenue vs. Tulio, supra)*.

Respondent contends that petitioner filed false returns, as petitioner underdeclared the premiums in its DST returns filed, by more than 30% of its total premiums. In the Preliminary Assessment Notice dated June 15, 2002, respondent initially found that per verification of petitioner's endorsement register, the total returned and cancelled premiums of petitioner that were not subjected to DST amounts to P14,865,919.80 *(BIR Records, p. 626)*. However, after petitioner submitted schedules and supporting documents in a Letter dated August 7, 2002 showing that a total of P11,744,042.94 policies were cancelled since the insurance contract did not become valid and binding for lack of insurable interest on the part of the insured and for failure to pay the premiums *(BIR Records, pp. 649-808)*, respondent CIR sustained petitioner's contention and excluded the amount of P11,744,042.94 from the returned and cancelled premiums that were not subjected to DST, in the computation of petitioner's deficiency DST assessment *(BIR Records, p. 928)*.

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Only a portion of the returned and cancelled premiums of P3,121,876.86 (P14,865,919.80–P11,744,042.94) was assessed of deficiency DST, for petitioner's failure to present evidence that the policies of said premium have not become valid and binding, or that said premium was subjected to DST.

In addition, the total direct premiums written, per Annual Report of petitioner, amounts to P77,428,271.88.

Thus, respondent found that the total direct premiums written that were not subjected to DST amounts to P77,550,148.74 (P74,428,271.88 + P3,121,876.86). Hence, the total DST due amounts to P9,693,768.59 (P77,550,148.74 x .125). Considering that per respondent's findings, the DST purchased/paid by petitioner for the year 1999 amounts to P3,550,000.00, respondent found that petitioner did not report the corresponding premium income in the DST returns filed and did not pay the corresponding DST thereof by over 30%, or 63.4% (P6,143,768.59 ÷ P9,693,768.59). Applying *Section 248 (B) of the NIRC of 1997, as amended*, respondent found *prima facie* evidence of false returns. Hence, the applicable prescriptive period is ten years from the discovery of the falsity.

We agree with the respondent that the applicable prescriptive period is *Section 222 of the NIRC of 1997, as amended,* on the ground that the returns filed by petitioner are false. A return is considered false when there is deviation from the truth, whether intentional or not *(Aznar vs. Court of Tax Appeals, 58 SCRA 532)*. It is differentiated from a fraudulent return, which has an intentional or deceitful entry with intent to evade the taxes due *(Aznar vs. Court of Tax Appeals, supra)*.

In the instant case, the Court-Commissioned Independent Certified Public Accountant ("CPA") found that petitioner's total direct premiums amount to P74,428,471.88, consisting of the following:

Direct Premiums	Exhibit to Audit Report	Amount
Fire	FF1	P18,020,805.98
Motor Car	FF2	30,882,204.18
Marine Cargo	FF3	1,292,341.98
Marine Hull	FF3	196,000.00
Bonds	FF4	20,182,284.03
Miscellaneous	FF5	3,852,303.34
Miscellaneous – PA	FF5	2,532.37
	HH5	P74,428,471.88

(Schedule 5, Exhibits "II" and "KK").

However, considering that respondent found that petitioner's direct premium written, as reflected in the Annual Report of petitioner is only

P74,428,271.88, the Court's ruling will be based on the assessed direct premium written of P74,428,271.88.

A perusal of the evidence on record further shows that despite the opportunity given to petitioner to explain the difference in the returned and cancelled premiums that were not subjected to DST per its endorsement register and as found by the respondent, petitioner failed to prove that the amount of P3,121,876.86 should be excluded from the assessment. Out of the P14,865,919.80 returned and cancelled premiums that were not subjected to DST, petitioner was able to reconcile and prove the amount of P11,744,042.94 only, as the amount that should be excluded from the assessment. In the case of *Philippine Home Assurance Corporation vs. Court of Appeals, 301 SCRA 447-448*, the Supreme Court ruled, as follows:

> "Documentary stamp taxes are thus levied on the exercise of these privileges through the execution of specific instruments, independently of the legal status of the transactions giving rise thereto. The documentary stamp taxes must be paid upon the issuance of the said instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable. As the Supreme Court of the United States held in *Du Pont v. United States*:
>
> > The tax is not 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. In this view it is immaterial whether the transfer of the account constituted a sale.

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> This case has been cited in several of this Court's decisions, first in *Commissioner of Internal Revenue v. Heald Lumber Co.*, then in *Philippine Consolidated Coconut Industries, Inc. v. Collector of Internal Revenue*, then in *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*, and most recently in Lincoln Philippine Life Insurance Company, Inc. v. Court of Appeals. It is thus settled that the life and non-life insurance policies in question are subject to documentary stamp taxes pursuant to §183 and §184 of the National Internal Revenue Code by their mere issuance, and the fact that the policies have not become effective for non-payment of the corresponding premiums as required by §77 of the Insuarnce Code cannot affect petitioners' liability for payment of documentary stamp taxes. Their claim for refund was correctly denied."

Pursuant to settled jurisprudence, DST, therefore, must be paid upon the issuance of the instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable. Non-life insurance policies are subject to DST by their mere issuance, and the fact that the policies have not become effective for non-payment of the corresponding premiums, as required by *Section 77 of the Insurance Code*, cannot affect petitioner's liability for payment of DST. Accordingly, respondent correctly added the unsubstantiated returned and cancelled premiums of P3,121,876.86 in computing petitioner's deficiency DST.

Since for taxable year 1999, the total direct premiums written by petitioner, as found by the respondent, amounts to P74,428,271.88 (*Schedule 5, Exhibits "II" and "KK"*), and the unsubstantiated returned and cancelled premiums amounts to P3,121,876.86, the total direct premiums

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written subject to DST is P77,550,148.74. *Section 184 of the NIRC of 1997, as amended,* provides that a DST of fifty centavos on each four pesos, or fractional part thereof of the premiums charged shall be collected on the policies of insurance upon property. Thus, the DST due on the P77,550,148.74 direct premiums written is P9,693,768.59 (P77,550,148.74/4x.50). Considering that per this Court's findings, the total DST payments made by petitioner for the year 1999 amounts to P3,600,000.00 only, the deficiency DST of petitioner is P6,093,768.59 (P9,693,768.59-P3,600,000.00). In effect, for taxable year 1999, petitioner declared premium income in its DST returns and paid the corresponding DST for 37.14% (P3,600,000.00/P9,693,768.59) only of its total DST liability, or a total of 62.86% (P6,093,768.59/P9,693,768.59) premium income was underdeclared in its DST returns and was not subjected to DST. Having not declared more than 30% of its premium income as the tax base of the DST consumed in its DST Declarations/Returns and having not paid more than 30% of its DST liability, applying by analogy *Section 248 (B) of the NIRC of 1997, as amended*, it is clear that petitioner's DST Declarations/Returns are false. Other than petitioner's bare allegation that the difference in the deficiency DST due and DST paid per DST Declarations/Returns pertains to cancelled and/or returned policies, which was already considered by respondent and excluded in the computation of the deficiency DST in the Final Assessment Notice *(BIR Records, p. 928)*, petitioner failed to explain said discrepancy, and therefore failed to rebut the falsity of its returns.

In fact, a perusal of the documentary evidence presented by petitioner shows that petitioner did not file any Monthly Information Return for Documentary Stamp Taxes Paid required by *Revenue Regulations 4-96,* which will show the DST and amount of DST paid during the month, the ORs evidencing payment and dates of payment. Said Monthly Information Return for DST Paid would have facilitated the government's assessment of taxes against petitioner considering that the same is the summary of DST payments during the month. Petitioner's negligence cannot be countenanced to the disadvantage of the other party's interest.

More importantly, it must be stressed that the Court-Commissioned Independent CPA himself, who conducted an independent special audit and examination of petitioner's insurance policies, invoices, receipts and long accounts for the period September 23, 1999 to December 31, 1999, found petitioner deficient of DST in the amount of P239,039.83 *(Exhibits "II" and "KK", both p. 4)*.

Considering that petitioner's DST Declarations/Returns do not contain its true DST liability, which deficiency is more than 30%, or 62.86% of its total DST liability, there is therefore deviation from the truth in the DST Declarations/Return filed by petitioner, making said DST Declarations/Returns false.

<u>No DST Declarations/ Returns Were Filed With Respect to 62.86% Issued Policies</u>

In addition to the false DST Declarations/Returns, the Court finds that for taxable year 1999, the total DST payments made by petitioner is only P3,600,000.00, corresponding to P28,800,000.00 (P3,600,000.00/.125) direct premiums written. Hence, as to 62.86% policies or P48,750,148.74 (P77,550,148.74-P28,800,000.00) direct premiums written, no DST Declarations/Returns were filed by petitioner. Again, applying *Section 222 of the NIRC of 1997, as amended*, the applicable prescriptive period to assess petitioner's deficiency DST is ten (10) years from the discovery of the omission.

In the present case, the discovery of the falsity and omission was made on June 6, 2001 *(Final Decision on Disputed Assessment dated March 31, 2003)*. Counting ten years from June 6, 2001, the last day prescribed by law for assessing petitioner's deficiency DST is on June 7, 2011. Considering that the Final Assessment Notice and Formal Letter of Demand was issued and received by petitioner on January 3, 2000 *(Joint Stipulation of Facts and Issues, par. 4)*, the assessment was made within the ten-year prescriptive period.

However, as regards the compromise penalty of P25,000.00, the same is hereby cancelled. Compromise implies mutual agreement. Although petitioner is willing to compromise its DST liability, there was no showing on the part of the respondent that it consented thereto. Such being the case, respondent cannot validly impose the compromise penalty against petitioner.

In sum, the Court finds petitioner liable for deficiency DST in the reduced amount of P9,820,149.82, inclusive of interest, computed as follows:

Direct Premiums per Annual Report			P74,428,271.88
Add:	Unsubstantiated Returns/Cancellations		3,121,876.86
Gross Premiums Written			P77,550,148.74
Multiply by Rate of Tax			0.125
DST Due			P9,693,768.59

Less:	DST Purchased/Paid		P3,600,000.00
Basic Deficiency DST			P6,093,768.59
Add:	Increments		
	Interest from 1/11/2000 to 1/31/2003		P3,726,381.23
Total Deficiency DST			**P9,820,149.82**

WHEREFORE, premises considered, the present Petition For Review is **PARTIALLY GRANTED**. Accordingly, petitioner is hereby ORDERED to pay respondent Commissioner of Internal Revenue the reduced amount of NINE MILLION EIGHT HUNDRED TWENTY THOUSAND ONE HUNDRED FORTY NINE AND 82/100 PESOS (**P9,820,149.82**), representing deficiency Documentary Stamp Tax for taxable year 1999, plus 25% surcharge pursuant to *Section 248 (A) of the NIRC of 1997, as amended.*

In addition, petitioner is hereby **ORDERED** to pay respondent 20% delinquency interest per annum on the total amount of P9,820,149.82, counted from May 23, 2003 until full payment thereof, pursuant to *Section 249(C) of the NIRC of 1997, as amended.*

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

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

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, Second Division