

## SECOND DIVISION

[ G.R. No. 119446, January 21, 1999 ]

**PHILIPPINE HOME ASSURANCE CORPORATION, PHILIPPINE AMERICAN ACCIDENT INSURANCE COMPANY, PHILIPPINE AMERICAN GENERAL INSURANCE COMPANY and AMERICAN INTERNATIONAL UNDERWRITERS (Phils.), INC., petitioners, vs. COURT OF APPEALS, and COMMISSIONER OF INTERNAL REVENUE, respondents.**

### DECISION

**MENDOZA, J.:**

This is a petition for review on certiorari of the decision of the Court of Appeals, dated April 27, 1994, which affirmed the decision of the Court of Tax Appeals denying the claims filed by the petitioners for refund of documentary stamp taxes.

Petitioners are the Philippine Home Assurance Corporation (PHAC), the Philippine American Accident Insurance Company (PAAIC), the Philippine American General Insurance Company (PAGIC), and the American International Underwriters (Phils.), Inc. (AIUPI), which are domestic corporations engaged in the insurance business.

From January to June 1986, they paid under protest the total amount of P10,456,067.83 as documentary stamp taxes on various life and non-life insurance policies issued by them, broken down as follows:

PHAC	1,714,459.00
PAAIC	68,046.00
PAGIC	3,816,973.00
AIUPI	<u>4,856,589.83</u>
TOTAL	<u>P10,456,067.83</u> <sup>[1]</sup>

On August 4, 1987, petitioners filed separate claims for refund from the Bureau of Internal Revenue.<sup>[2]</sup> They alleged that the premiums on the insurance policies issued by them had not been paid thus, in accordance with §77 of the Insurance Code,<sup>[3]</sup> no documentary stamp taxes were due on the policies.<sup>[4]</sup>

As the Bureau of Internal Revenue failed to act on their claims,<sup>[5]</sup> the petitioners appealed on December 29, 1987 to the Court of Tax Appeals. In its decision, dated April 26, 1993,<sup>[6]</sup> the Tax Court denied petitioners' claims. It held:<sup>[7]</sup>

. . . . the documentary stamp must be affixed to the insurance policy, which is a contract in itself, between the insurer and the insured, whereby for an agreed premium, the former undertakes to compensate the latter for the loss of a specific subject by reason of specific perils, on

the date it is issued even if no premium has been paid. The payment or non-payment of the premium by the insured is immaterial since a documentary stamp tax is in the nature of an excise tax upon a facility used in the transaction of a business which is separate and distinct from the business itself. Such being the case, . . . the subsequent cancellation of an insurance policy will not exempt the issuer from the corresponding documentary stamp tax. And thus, no refund can be allowed of the documentary stamp tax paid on an insurance policy which for some reason or another has been cancelled or for that matter, the premium was unpaid.

Petitioners filed a joint appeal in the Court of Appeals which, however, in a judgment,<sup>[8]</sup> dated April 27, 1994, affirmed the decision of the Court of Tax Appeals. In part the appellate court said:

The respondent court correctly characterized a documentary stamp tax as in the nature of an 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 said insurance policies. This means then that the documentary stamp tax accrues when the said 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 involved, 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 the subsequent cancellation of the insurance policy. Likewise, when a policy already issued becomes ineffective because of the non-payment of the first premium, the documentary stamp tax cannot be refunded whether or not the policy has, in fact, become effective, since the privilege subject of the tax has already been realized.

Hence, this appeal. Petitioners maintain that since the premiums on the subject life and non-life insurance policies were not paid, the same are considered as never to have taken effect pursuant to §77 of the Insurance Code and, therefore, no documentary stamp taxes were due thereon.

The petition is without merit.

The pertinent provisions of the National Internal Revenue Code state:

*Sec. 183. Stamp Tax on Life Insurance Policies.* — On all policies of insurance or other instruments by whatever name the same may be called, whereby any insurance shall be made or renewed upon any life or lives, there shall be collected a documentary stamp tax of fifty centavos on each two hundred pesos or fractional part thereof, of the amount issued by any such policy.