

[BIR REVENUE MEMORANDUM CIRCULAR NO. 47-97, November 12, 1997]

DOCUMENTARY STAMP TAX ON ORIGINAL ISSUES OF CERTIFICATES OF STOCK

It has been observed that there are many corporations which have not paid the documentary stamp taxes on their original issues of shares of stock required under Section 175 of the Tax Code, as amended, and its implementing rules and regulations.

Under the BIR Handbook on National Internal Revenue Taxes (1988 Edition), the Opinion of the Secretary of Justice cited therein, and the jurisprudence enunciated by the Supreme Court, the documentary stamp tax on original issues of certificates of stock as provided under Sec. 175 of the Tax Code attaches upon acceptance of the stockholder's subscription in the capital stock of a corporation regardless of the physical issuance and delivery to the stockholder of the certificate of stock evidencing his stockholding.

Thus, the Supreme Court in the case of Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. and the Court of Tax Appeals (L-68230, November 25, 1986, 145 SCRA 671) held that "the delivery of the certificates of stock to the x x x stockholders, whether actual or constructive, is not essential for the documentary x x x stamps taxes to attach. What is taxed is the privilege of issuing shares of stock and, therefore, the taxes accrue at the time the shares are issued.x.x.x."

It simply means therefore that the documentary stamp tax attaches upon acceptance by the corporation of the stockholder's subscription in the capital stock of the corporation, and that the meaning of the term "original issue" of the certificate of stock is — the point at which the stockholder acquires and may exercise attributes of ownership over the stocks. The stocks can be alienated; the dividends or fruits derived therefrom can be enjoyed, and they can be conveyed, pledged or encumbered. The certificate irrespective of whether or not it is in the actual or constructive possession of the stockholder, is considered issued because it is with value and hence the documentary stamp tax must be paid. A person may therefore own shares of stock without possessing a certificate of stock.

It is well settled as a general rule of Corporation Law that a subscriber for stock in a corporation or purchaser of stock becomes a stockholder as soon as his subscription is accepted by the corporation whether a certificate of stock is issued to him or not, and although he may have no certificate, he is thereupon entitled to all the rights and is subject to all the liabilities of a stockholder. (SEC Opinion dated December 16, 1983 citing 11 Fletcher Cyc. Corp., 5094)

All revenue officials and employees are enjoined to give this circular as wide a