

SECOND DIVISION

[G.R. No. 169899, February 06, 2013]

**PHILACOR CREDIT CORPORATION, PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

D E C I S I O N

BRION, J.:

Before us is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court seeking the reversal of the decision^[2] dated September 23, 2005 of the Court of Tax Appeals (CTA) *en banc* in C.T.A. E.B. No. 19 (C.T.A. Case No. 5674). In the assailed decision, the CTA *en banc* affirmed the CTA Division's resolution^[3] of April 6, 2004. Both courts held that petitioner Philacor Credit Corporation (*Philacor*), as an assignee of promissory notes, is liable for deficiency documentary stamp tax (*DST*) on (1) the issuance of promissory notes; and (2) the assignment of promissory notes for the fiscal year ended 1993.

The facts are not disputed.

Philacor is a domestic corporation organized under Philippine laws and is engaged in the business of retail financing. Through retail financing, a prospective buyer of a home appliance – with neither cash nor any credit card – may purchase appliances on installment basis from an appliance dealer. After Philacor conducts a credit investigation and approves the buyer's application, the buyer executes a unilateral promissory note in favor of the appliance dealer. The same promissory note is subsequently assigned by the appliance dealer to Philacor.^[4]

Pursuant to Letter of Authority No. 17107 dated July 6, 1974, Revenue Officer Celestino Mejia examined Philacor's books of accounts and other accounting records for the fiscal year August 1, 1992 to July 31, 1993. Philacor received tentative computations of deficiency taxes for this year. Philacor's Finance Manager, Leticia Pangan, contested the tentative computations of deficiency taxes (totaling P20,037,013.83) through a letter dated April 17, 1995.^[5]

On May 16, 1995, Mr. Mejia sent a letter to Philacor revising the preliminary assessments as follows:

Deficiency Income Tax	P 9,832,098.22
Deficiency Percentage Tax	866,287.60
Deficiency Documentary Stamp Tax	3,368,169. 45
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Total	P14,066,555.27 ^[6]
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Philacor then received Pre-Assessment Notices (*PANs*), all dated July 18, 1996, covering the alleged deficiency income, percentage and DSTs, including increments.
[7]

On February 3, 1998, Philacor received demand letters and the corresponding assessment notices, all dated January 28, 1998. The assessments, inclusive of increments, cover the following:

Deficiency Income Tax	P12, 888,085.09
Deficiency Percentage Tax	1,185,977.07
Deficiency DST Tax	3,368,196. 45
	=====
Total	P17,442,231.61 ^[8]
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On March 4, 1998, Philacor protested the *PANs*, with a request for reconsideration and reinvestigation. It alleged that the assessed **deficiency income tax** was erroneously computed when it failed to take into account the reversing entries of the revenue accounts and income adjustments, such as repossessions, write-offs and legal accounts. Similarly, the Bureau of Internal Revenue (*BIR*) failed to take into account the reversing entries of repossessions, legal accounts, and write-offs when it computed the **percentage tax**; thus, the total income reported, that the *BIR* arrived at, was not equal to the actual receipts of payment from the customers. As for the **deficiency DST**, Philacor claims that the accredited appliance dealers were required by law to affix the documentary stamps on all promissory notes purchased until the enactment of Republic Act No. 7660, otherwise known as *An Act Rationalizing Further the Structure and Administration of the Documentary Stamp Tax*,^[9] which took effect on January 15, 1994. In addition, Philacor filed, on the following day, a supplemental protest, arguing that the assessments were void for failure to state the law and the facts on which they were based.^[10]

On September 30, 1998, Philacor filed a petition for review before the CTA Division, docketed as C.T.A. Case No. 5674. ^[11]

The CTA Division rendered its decision on August 14, 2003.^[12] After examining the documents submitted by the parties, it concluded that Philacor failed to declare part of its income, making it liable for deficiency income tax and percentage tax. However, it also found that the Commissioner of Internal Revenue (*CIR*) erred in his analysis of the entries in Philacor's books thereby considerably reducing Philacor's liability to a deficiency income tax of P1,757,262.47 and a deficiency percentage tax of P613,987.86. The CTA also ruled that Philacor is liable for the DST on the issuance of the promissory notes and their subsequent transfer or assignment. Noting that Philacor failed to prove that the DST on its promissory notes had been paid for these two transactions, the CTA held Philacor liable for deficiency DST of P673,633.88, which is computed as follows:

Total Notes purchased during the taxable year	P 269,453,556.94
Divided by rate under Section 180	200.00

Basis of DST	P 1,347,267.78
Multiply by DST rate (Section 180, 1993Tax Code	.20
DST on notes purchased	P 269,453.55
Add: Total DST on Notes assigned (Section 180)	<u>269,453.55</u>
Deficiency Documentary Stamp Tax	P 538,907.10
Add: 25% surcharge	<u>134,726.78</u>
Total Deficiency Documentary Stamp Tax	<u>P 673,633.88</u> ^[13]
=====	

All sums for deficiency taxes included surcharge and interest.

Both parties filed their motions for reconsideration. The CIR's motion was denied for having been filed out of time.^[14] On the other hand, **the CTA partially granted Philacor's motion in the resolution of April 6, 2004,**^[15] **wherein it cancelled the assessment for deficiency income tax and deficiency percentage tax.** These assessments were withdrawn because the CTA found that Philacor had correctly declared its income; the discrepancy of P2,180,564.00 had been properly accounted for as proper adjustments to Philacor's net revenues. Nevertheless, the CTA Division **sustained the assessment for deficiency DST** in the amount of P673,633.88.

Philacor filed a petition for review before the CTA *en banc*.^[16]

In its decision^[17] dated September 23, 2005, **the CTA *en banc* affirmed the resolution of April 6, 2004 of the CTA Division.** It reiterated that Philacor is liable for the DST due on two transactions – the issuance of promissory notes and their subsequent assignment in favor of Philacor. With respect to the issuance of the promissory notes, Philacor is liable as the transferee which "accepted" the promissory notes from the appliance dealer in accordance with Section 180 of Presidential Decree No. 1158, as amended (1986 Tax Code).^[18] Further citing Section 42^[19] of Regulations No. 26,^[20] the CTA *en banc* held that a person "using" a promissory note is one of the persons who can be held liable to pay the DST. Since the subject promissory notes do not bear documentary stamps, Philacor can be held liable for DST. As for the assignment of the promissory notes, the CTA *en banc* held that each and every transaction involving promissory notes is subject to the DST under Section 173 of the 1986 Tax Code; Philacor is liable as the transferee and assignee of the promissory notes.

On November 18, 2005, Philacor filed the present petition, raising the following assignment of errors:

I

"USING" IN REGULATIONS NO. 26 DOES NOT APPEAR IN SECTIONS [SIC] 173 NOR 180 OF THE TAX CODE; AND, THEREFORE WENT BEYOND

THE LAW [SIC]

II

"ACCEPTING" IN SECTION 173 OF THE TAX CODE DOES NOT APPLY TO PROMISSORY NOTES

III

THE CTA EN BANC DECISION EXTENDED THE WORDS "ASSIGNMENT" AND "TRANSFERRING" IN SECTION 173 TO THE PROMISSORY NOTES; SUCH THAT, THE "ASSIGNMENT" OR "TRANSFERRING" OF PROMISSORY NOTES IS SUBJECT TO DST. HOWEVER SECTIONS 176, 178, AND 198 OF TITLE VII OF THE TAX CODE EXPRESSLY IMPOSES [SIC] DST ON THE TRANSFER/ASSIGNMENT OF CERTAIN DOCUMENTS WHICH REVEALS THE LEGISLATIVE INTENT THAT ONLY THE ASSIGNMENT/TRANSFER OF CERTAIN DOCUMENTS IN SECTIONS 176, 178, AND 198 ARE SUBJECT TO DST

IV

BIR RULING 139-97 RULED THAT THE ASSIGNMENT OF A LOAN, WHICH IN SECTION 180 IS TREATED IN THE SAME BREATH AS A PROMISSORY NOTE, IS NOT SUBJECT TO DST^[21]

We find the petition meritorious.

Philacor is not liable for the DST on the issuance of the promissory notes.

Neither party questions that the issuances of promissory notes are transactions which are taxable under the DST. The 1986 Tax Code clearly states that:

Section 180. **Stamp tax on promissory notes, bills of exchange, drafts, certificates of deposit, debt instruments used for deposit substitutes and others not payable on sight or demand.**—On all bills of exchange (between points within the Philippines), drafts, or certificates of deposits, debt instruments used for deposit substitutes or orders for the payment of any sum of money otherwise than at sight or on demand, on all promissory notes, whether negotiable or non-negotiable except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of twenty centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange, draft certificate of deposit, debt instrument, or note. [emphasis supplied; underscores ours]

Under the undisputed facts and the above law, the issue that emerges is: **who is liable for the tax?**

Section 173 of the 1997 National Internal Revenue Code (1997 NIRC) names those who are primarily liable for the DST and those who would be secondarily liable:

Section 173. **Stamp taxes upon documents, instruments, and papers.** – Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same, and at the same time such act is done or transaction had: **Provided**, that wherever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax. [emphases supplied; underscores ours]

The persons primarily liable for the payment of the DST are the person (1) making; (2) signing; (3) issuing; (4) accepting; or (5) transferring the taxable documents, instruments or papers. Should these parties be exempted from paying tax, the other party who is not exempt would then be liable.

Philacor did not make, sign, issue, accept or transfer the promissory notes. The acts of making, signing, issuing and transferring are unambiguous. The buyers of the appliances made, signed and issued the documents subject to tax, while the appliance dealer transferred these documents to Philacor which likewise indisputably received or “accepted” them. “Acceptance,” however, is an act that is not even applicable to promissory notes, but only to bills of exchange.^[22] Under Section 132^[23] of the Negotiable Instruments Law (which provides for how acceptance should be made), the act of acceptance refers solely to bills of exchange. Its object is to bind the drawee of a bill and make him an actual and bound party to the instrument.^[24] Further, in a ruling adopted by the BIR as early as 1955, acceptance has already been given a narrow definition with respect to incoming foreign bills of exchange, not the common usage of the word “accepting” as in receiving:

The word “accepting” appearing in Section 210 of the National Internal Revenue Code has reference to incoming foreign bills of exchange which are accepted in the Philippines by the drawees thereof. Accordingly, the documentary stamp tax on freight receipts is due at the time the receipts are issued and from the transportation company issuing the same. The fact that the transportation contractor issuing the freight receipts shifts the burden of the tax to the shipper does not make the latter primarily liable to the payment of the tax.^[25] (underscore ours)

This ruling, to our mind, further clarifies that a party to a taxable transaction who “accepts” any documents or instruments in the plain and ordinary meaning of the act (such as the shipper in the cited case) does not become primarily liable for the tax. In the same way, Philacor cannot be made primarily liable for the DST on the