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SPECIAL FIRST DIVISION

[G.R. No. 167330, September 18, 2009]

PHILIPPINE HEALTH CARE PROVIDERS, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

R E S O L U T I O N

CORONA, J.:

ARTICLE II
Declaration of Principles and State Policies

> Section 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

ARTICLE XIII
Social Justice and Human Rights

> Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.[1]

For resolution are a motion for reconsideration and supplemental motion for reconsideration dated July 10, 2008 and July 14, 2008, respectively, filed by petitioner Philippine Health Care Providers, Inc.[2]

We recall the facts of this case, as follows:

> Petitioner is a domestic corporation whose primary purpose is "[t]o establish, maintain, conduct and operate a prepaid group practice health care delivery system or a health maintenance organization to take care of the sick and disabled persons enrolled in the health care plan and to provide for the administrative, legal, and financial responsibilities of the organization." Individuals enrolled in its health care programs pay an annual membership fee and are entitled to various preventive, diagnostic and curative medical services provided by its duly licensed physicians, specialists and other professional technical staff participating in the group practice health delivery system at a hospital or clinic owned, operated or accredited by it.

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On January 27, 2000, respondent Commissioner of Internal Revenue [CIR] sent petitioner a formal demand letter and the corresponding assessment notices demanding the payment of deficiency taxes, including surcharges and interest, for the taxable years 1996 and 1997 in the total amount of P224,702,641.18. xxxx

The deficiency [documentary stamp tax (DST)] assessment was imposed on petitioner's health care agreement with the members of its health care program pursuant to Section 185 of the 1997 Tax Code xxxx

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Petitioner protested the assessment in a letter dated February 23, 2000. As respondent did not act on the protest, petitioner filed a petition for review in the Court of Tax Appeals (CTA) seeking the cancellation of the deficiency VAT and DST assessments.

On April 5, 2002, the CTA rendered a decision, the dispositive portion of which read:

> WHEREFORE, in view of the foregoing, the instant Petition for Review is PARTIALLY GRANTED. Petitioner is hereby ORDERED to PAY the deficiency VAT amounting to P22,054,831.75 inclusive of 25% surcharge plus 20% interest from January 20, 1997 until fully paid for the 1996 VAT deficiency and P31,094,163.87 inclusive of 25% surcharge plus 20% interest from January 20, 1998 until fully paid for the 1997 VAT deficiency. Accordingly, VAT Ruling No. [231]-88 is declared void and without force and effect. The 1996 and 1997 deficiency DST assessment against petitioner is hereby CANCELLED AND SET ASIDE. Respondent is ORDERED to DESIST from collecting the said DST deficiency tax.
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> SO ORDERED.

Respondent appealed the CTA decision to the [Court of Appeals (CA)] insofar as it cancelled the DST assessment. He claimed that petitioner's health care agreement was a contract of insurance subject to DST under Section 185 of the 1997 Tax Code.

On August 16, 2004, the CA rendered its decision. It held that petitioner's health care agreement was in the nature of a non-life insurance contract subject to DST.

> WHEREFORE, the petition for review is GRANTED. The Decision of the Court of Tax Appeals, insofar as it cancelled and set aside the 1996 and 1997 deficiency documentary stamp tax assessment and ordered petitioner to desist from

collecting the same is REVERSED and SET ASIDE.

Respondent is ordered to pay the amounts of P55,746,352.19 and P68,450,258.73 as deficiency Documentary Stamp Tax for 1996 and 1997, respectively, plus 25% surcharge for late payment and 20% interest per annum from January 27, 2000, pursuant to Sections 248 and 249 of the Tax Code, until the same shall have been fully paid.

SO ORDERED.

Petitioner moved for reconsideration but the CA denied it. Hence, petitioner filed this case.

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In a decision dated June 12, 2008, the Court denied the petition and affirmed the CA's decision. We held that petitioner's health care agreement during the pertinent period was in the nature of non-life insurance which is a contract of indemnity, citing *Blue Cross Healthcare, Inc. v. Olivares*[3] and *Philamcare Health Systems, Inc. v. CA*.[4] We also ruled that petitioner's contention that it is a health maintenance organization (HMO) and not an insurance company is irrelevant because contracts between companies like petitioner and the beneficiaries under their plans are treated as insurance contracts. Moreover, DST is not a tax on the business transacted but an excise on the privilege, opportunity or facility offered at exchanges for the transaction of the business.

Unable to accept our verdict, petitioner filed the present motion for reconsideration and supplemental motion for reconsideration, asserting the following arguments:

(a) The DST under Section 185 of the National Internal Revenue of 1997 is imposed only on a company engaged in the business of fidelity bonds and other insurance policies. Petitioner, as an HMO, is a service provider, not an insurance company.
(b) The Court, in dismissing the appeal in *CIR v. Philippine National Bank*, affirmed in effect the CA's disposition that health care services are not in the nature of an insurance business.
(c) Section 185 should be strictly construed.
(d) Legislative intent to exclude health care agreements from items subject to DST is clear, especially in the light of the amendments made in the DST law in 2002.
(e) Assuming *arguendo* that petitioner's agreements are contracts of indemnity, they are not those contemplated under Section 185.
(f) Assuming *arguendo* that petitioner's agreements are akin to health insurance, health insurance is not covered by Section 185.
(g) The agreements do not fall under the phrase "other branch of

insurance" mentioned in Section 185.

(h) The June 12, 2008 decision should only apply prospectively.

(i) Petitioner availed of the tax amnesty benefits under RA[5] 9480 for the taxable year 2005 and all prior years. Therefore, the questioned assessments on the DST are now rendered moot and academic.[6]

Oral arguments were held in Baguio City on April 22, 2009. The parties submitted their memoranda on June 8, 2009.

In its motion for reconsideration, petitioner reveals for the first time that it availed of a tax amnesty under RA 9480[7] (also known as the "Tax Amnesty Act of 2007") by fully paying the amount of P5,127,149.08 representing 5% of its net worth as of the year ending December 31, 2005.[8]

We find merit in petitioner's motion for reconsideration.

Petitioner was formally registered and incorporated with the Securities and Exchange Commission on June 30, 1987.[9] It is engaged in the dispensation of the following medical services to individuals who enter into health care agreements with it:

> **Preventive** medical services such as periodic monitoring of health problems, family planning counseling, consultation and advices on diet, exercise and other healthy habits, and immunization;
>
> **Diagnostic** medical services such as routine physical examinations, x-rays, urinalysis, fecalysis, complete blood count, and the like and
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> **Curative** medical services which pertain to the performing of other remedial and therapeutic processes in the event of an injury or sickness on the part of the enrolled member.[10]

Individuals enrolled in its health care program pay an annual membership fee. Membership is on a year-to-year basis. The medical services are dispensed to enrolled members in a hospital or clinic owned, operated or accredited by petitioner, through physicians, medical and dental practitioners under contract with it. It negotiates with such health care practitioners regarding payment schemes, financing and other procedures for the delivery of health services. Except in cases of emergency, the professional services are to be provided only by petitioner's physicians, *i.e*. those directly employed by it[11] or whose services are contracted by it.[12] Petitioner also provides hospital services such as room and board accommodation, laboratory services, operating rooms, x-ray facilities and general nursing care.[13] If and when a member avails of the benefits under the agreement, petitioner pays the participating physicians and other health care providers for the services rendered, at pre-agreed rates.[14]

To avail of petitioner's health care programs, the individual members are required to

sign and execute a standard health care agreement embodying the terms and conditions for the provision of the health care services. The same agreement contains the various health care services that can be engaged by the enrolled member, *i.e.*, preventive, diagnostic and curative medical services. Except for the curative aspect of the medical service offered, the enrolled member may actually make use of the health care services being offered by petitioner at any time.

HEALTH MAINTENANCE ORGANIZATIONS
ARE NOT ENGAGED IN THE INSURANCE BUSINESS

We said in our June 12, 2008 decision that it is irrelevant that petitioner is an HMO and not an insurer because its agreements are treated as insurance contracts and the DST is not a tax on the business but an excise on the privilege, opportunity or facility used in the transaction of the business.[15]

Petitioner, however, submits that it is of critical importance to characterize the business it is engaged in, that is, to determine whether it is an HMO or an insurance company, as this distinction is indispensable in turn to the issue of whether or not it is liable for DST on its health care agreements.[16]

A second hard look at the relevant law and jurisprudence convinces the Court that the arguments of petitioner are meritorious.

Section 185 of the National Internal Revenue Code of 1997 (NIRC of 1997) provides:

> Section 185. *Stamp tax on fidelity bonds and other insurance policies*. - **On all policies of insurance** or bonds or obligations **of the nature of indemnity for loss, damage, or liability made or renewed by any person, association or company or corporation transacting the business of** accident, fidelity, employer's liability, plate, glass, steam boiler, burglar, elevator, automatic sprinkler, **or other branch of insurance (except life, marine, inland, and fire insurance)**, and all bonds, undertakings, or recognizances, conditioned for the performance of the duties of any office or position, for the doing or not doing of anything therein specified, and on all obligations guaranteeing the validity or legality of any bond or other obligations issued by any province, city, municipality, or other public body or organization, and on all obligations guaranteeing the title to any real estate, or guaranteeing any mercantile credits, which may be made or renewed by any such person, company or corporation, there shall be collected a documentary stamp tax of fifty centavos (P0.50) on each four pesos (P4.00), or fractional part thereof, of the premium charged. (Emphasis supplied)

It is a cardinal rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant. To this end, a construction which renders every word operative is preferred over that which makes some words idle and nugatory.[17] This principle is expressed in the maxim *Ut magis valeat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute - its