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All the other sub-issues raised by petitioners are rendered inconsequential by the above disquisitions of this Court.

**WHEREFORE,** the petition for review on *certiorari* dated May 3, 1995 is *DENIED*. Consequently, the Decision dated January 23, 1995 and the Resolution dated March 28, 1995, of the Court of Appeals, are hereby *AFFIRMED*.

**SO ORDERED.**

*Nachura, Villarama, Jr.,*[*] *Abad,* and *Mendoza, JJ.,* concur.

*Carpio, J. (Chairperson),* no part.

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**FIRST DIVISION**

[G.R. No. 147629. July 28, 2010]

**JAKA INVESTMENTS CORPORATION,** *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

**SYLLABUS**

**1. TAXATION; NATIONAL INTERNAL REVENUE CODE; CLAIM FOR REFUND; BURDEN OF PROOF IS ON THE TAXPAYER TO PROVE ENTITLEMENT TO SUCH REFUND.—** In claims for refund, the burden of proof is on the taxpayer to prove entitlement to such refund. As we held in *Compagnie Financiere Sucres Et Denrees v. Commissioner of Internal Revenue*- Along with police power and eminent domain, taxation is one of the three basic and necessary attributes of sovereignty. Thus, the State cannot be deprived of this most essential power and attribute of sovereignty by

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[*] Designated as an additional member in lieu of Senior Associate Justice Antonio T. Carpio per raffle dated July 12, 2010.

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vague implications of law. Rather, being derogatory of sovereignty, the governing principle is that tax exemptions are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and **he who claims an exemption must be able to justify his claim by the clearest grant of statute**. x x x Tax refunds are a derogation of the State's taxing power. Hence, like tax exemptions, they are construed strictly against the taxpayer and liberally in favor of the State. Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted. x x x. It was thus incumbent upon petitioner to show clearly its basis for claiming that it is entitled to a tax refund. This, to our mind, the petitioner failed to do.

**2. ID.; ID.; ID.; DOCUMENTARY STAMP TAX; NATURE; LEVIED INDEPENDENTLY OF THE LEGAL STATUS OF THE TRANSACTIONS GIVING RISE THERETO; IT MUST BE PAID UPON ISSUANCE OF THE INSTRUMENTS, WITHOUT REGARD TO WHETHER THE CONTRACTS WHICH GAVE RISE TO THEM ARE RESCISSIBLE, VOID, VOIDABLE, OR UNENFORCEABLE.—** A documentary stamp tax is in the nature of an excise tax. It is not imposed 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. Documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Thus, we have held that **documentary stamp taxes are levied 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**.

**3. ID.; ID.; ID.; PETITIONER'S BASIS FOR CLAIMS OF REFUND IS NOT CLEAR.—** Petitioner claims overpayment of the documentary stamp tax but its basis for such is not clear at all. While insisting that the documentary stamp tax it had paid for was not based on the original issuance of JEC shares

as provided in Section 175 of the 1994 Tax Code, petitioner failed in showing, even through a mere basic computation of the tax base and the tax rate, that the documentary stamp tax was based on the transfer of shares under Section 176 either. It would have been helpful for petitioner's cause had it submitted proof of the par value of the shares of stock involved, to show the actual basis for the documentary stamp tax computation. For comparison, the original Subscription Agreement ought to have been submitted as well. All that petitioner submitted to back up its claim were the certifications issued by then RDO Esquivias. As correctly pointed out by respondent, however, the amounts in the RDO certificates were the amounts of documentary stamp tax representing the equivalent of each group of shares being applied for payment. The purpose for issuing such certifications was to allow registration of transfer of shares of stock used in partial payment for petitioner's subscription to the original issuance of JEC shares. It should not be used as evidence of payment of documentary stamp tax. Neither should it be the lone basis of a claim for a documentary stamp tax refund. The fact that it was petitioner and not JEC that paid for the documentary stamp tax on the original issuance of shares is of no moment, as Section 173 of the 1994 Tax Code states that the documentary stamp tax shall be paid by the person making, signing, issuing, accepting or transferring the property, right or obligation.

**4. REMEDIAL LAW; EVIDENCE; CONCLUSION REACHED BY THE COURT OF TAX APPEALS IS BINDING ON THE COURT.—** [W]e deem it appropriate to reiterate the well-established doctrine that as a matter of practice and principle, this Court will not set aside the conclusion reached by an agency, like the Court of Tax Appeals, especially if affirmed by the Court of Appeals. By the very nature of its function, it has dedicated itself to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part, which we find is not present here.

**APPEARANCES OF COUNSEL**

*Ponce Enrile Reyes & Manalastas* for petitioner.
*Alberto R. Bomediano, Jr.* for respondent.

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## D E C I S I O N

**LEONARDO-DE CASTRO, *J.*:**

Before the Court is a petition for review of the **Decision**[1] of the Court of Appeals dated August 22, 2000 sustaining the Court of Tax Appeals in denying petitioner's (JAKA Investments Corporation's) claim for refund of its alleged overpayment of documentary stamp tax and surcharges, as well as the **Resolution**[2] dated March 27, 2001 likewise denying petitioner's Motion for Reconsideration.

The antecedent facts are undisputed.

Sometime in 1994, petitioner sought to invest in **JAKA Equities Corporation (JEC)**, which was then planning to undertake an initial public offering (IPO) and listing of its shares of stock with the Philippine Stock Exchange. JEC increased its authorized capital stock from One Hundred Eighty-Five Million Pesos (₱185,000,000.00) to Two Billion Pesos (₱2,000,000,000.00). Petitioner proposed to subscribe to Five Hundred Eight Million Eight Hundred Six Thousand Two Hundred Pesos (₱508,806,200.00) out of the increase in the authorized capital stock of JEC through a tax-free exchange under Section 34(c)(2) of the National Internal Revenue Code (NIRC) of 1977, as amended, which was effected by the execution of a Subscription Agreement and Deed of Assignment of Property in Payment of Subscription. Under this Agreement, as payment for its subscription, petitioner will assign and transfer to JEC the following shares of stock:

(a) 154,208,404 shares in Republic Glass Holdings Corporation (RGHC),

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[1] Penned by Justice Delilah Vidallon-Magtolis with Associate Justices Eloy R. Bello, Jr. and Elvi John S. Asuncion, concurring; *rollo*, pp. 33-41.

[2] *Rollo*, p. 43.

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(b) 2,822,500 shares in Philippine Global Communications, Inc. (PGCI),

(c) 7,495,488 shares in United Coconut Planters Bank (UCPB), and

(d) 1,313,176 shares in Far East Bank and Trust Company (FEBTC).[3]

The intended IPO and listing of shares of JEC did not materialize. However, JEC still decided to proceed with the increase in its authorized capital stock and petitioner agreed to subscribe thereto, but under different terms of payment. Thus, petitioner and JEC executed the **Amended Subscription Agreement**[4] on September 5, 1994, wherein the above-enumerated RGHC, PGCI, and UCPB shares of stock were transferred to JEC. In lieu of the FEBTC shares, however, the amount of Three Hundred Seventy Million Seven Hundred Sixty-Six Thousand Pesos (₱370,766,000.00) was paid for in cash by petitioner to JEC.

On October 14, 1994, petitioner paid One Million Three Thousand Eight Hundred Ninety-Five Pesos and Sixty-Five Centavos (₱1,003,895.65) for basic documentary stamp tax inclusive of the 25% surcharge for late payment on the Amended Subscription Agreement, broken down as follows:

| | | |
|---|---|---|
| Documentary Stamp Tax | - | ₱803,116.72 |
| 25% Surcharge | - | 200,778.93 |
| Total | | ₱1,003,895.65[5] |

On October 17, 1994, Revenue District Officer (RDO) Atty. Sixto S. Esquivias IV (RDO Esquivias) issued three Certifications,[6] as follows:

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[3] *Id.* at 5.

[4] *Id.* at 44-49.

[5] As shown in the Authority to Accept Payment (BIR Form No. 2319) SN:1511920, *rollo,* p. 50.

[6] *Rollo,* pp. 51-53.

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| Cert. No. | Shares of Stock | Documentary Stamps |
|---|---|---|
| 94-10-17-07 | 7,495,488 UCPB shares | ₱ 23,423.14 |
| 94-10-17-08 | 154,208,403 RGHC shares | 481,901.88 |
| 94-10-17-14 | 2,822,500 PGCI shares | 88,203.13 |
| | | ₱593,528.15 |

Petitioner, after seeing the RDO's certifications, the total amount of which was less than the actual amount it had paid as documentary stamp tax, concluded that it had overpaid. Petitioner subsequently sought a refund for the alleged excess documentary stamp tax and surcharges it had paid on the Amended Subscription Agreement in the amount of Four Hundred Ten Thousand Three Hundred Sixty-Seven Pesos (₱410,367.00), the difference between the amount of documentary stamp tax it had paid and the amount of documentary stamp tax certified to by the RDO, through a letter-request[7] to the BIR dated October 10, 1996.

On October 11, 1996, petitioner filed a petition for refund before the Court of Tax Appeals, docketed as **C.T.A. Case No. 5428**, which was denied in a **Decision**[8] dated January 19, 1999. The Court of Tax Appeals likewise denied petitioner's Motion for Reconsideration in its **Resolution**[9] dated March 1, 1999.

Petitioner appealed to the Court of Appeals by way of petition for review. The Court of Appeals sustained the Court of Tax Appeals in its **Decision** on CA-G.R. SP No. 51834 dated August 22, 2000 as well as in its **Resolution** dated March 27, 2001 of petitioner's Motion for Reconsideration.

Hence, petitioner is now before this Court to seek the reversal of the questioned Decision and Resolution of the Court of Appeals.

Petitioner's main contention in this claim for refund is that the tax base for the documentary stamp tax on the Amended Subscription Agreement should have been only the shares of

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[7] *Id.* at 54-57.

[8] *Id.* at 22-29.

[9] *Id.* at 31.

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stock in RGHC, PGCI, and UCPB that petitioner had transferred to JEC as payment for its subscription to the JEC shares, and should not have included the cash portion of its payment, based on **Section 176** of the National Internal Revenue Code of 1977, as amended by Republic Act No. 7660, or the New Documentary Stamps Tax Law (the 1994 Tax Code), the law applicable at the time of the transaction. Petitioner argues that the cash component of its payment for its subscription to the JEC shares, totaling Three Hundred Seventy Million Seven Hundred Sixty-Six Thousand Pesos (₱370,766,000.00) should not have been charged any documentary stamp tax. Petitioner claims that there was overpayment because the tax due on the transferred shares was only Five Hundred Ninety-Three Thousand Five Hundred Twenty-Eight and 15/100 Pesos (₱593,528.15), as indicated in the certifications issued by RDO Esquivias. Petitioner alleges that it is entitled to a refund for the overpayment, which is the difference in the amount it had actually paid (₱1,003,895.65) and the amount of documentary stamp tax due on the transfer of said shares (₱593,528.15), or a total of Four Hundred Ten Thousand Three Hundred Sixty-Seven Pesos (₱410,367.00).

Petitioner contends that both the Court of Appeals and the Court of Tax Appeals erroneously relied on respondent's (Commissioner of Internal Revenue's) assertions that it had paid the documentary stamp tax on the original issuance of the shares of stock of JEC under **Section 175** of the 1994 Tax Code.

Petitioner explains that in this instance where shares of stock are used as subscription payment, there are two documentary stamp tax incidences, namely, the documentary stamp tax on the original issuance of the shares subscribed (the JEC shares), which is imposed under Section 175; and the documentary stamp tax on the shares transferred in payment of such subscription (the transfer of the RGHC, PGCI and UCPB shares of stock from petitioner to JEC), which is imposed under Section 176 of the 1994 Tax Code. Petitioner argues that the documentary stamp tax imposed under Section 175 is due on original issuances of certificates of stock and is computed based on the aggregate

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par value of the shares to be issued; and that these certificates of stock are issued only upon full payment of the subscription price such that under the Bureau of Internal Revenue's (BIR's) Revised Documentary Stamp Tax Regulations,[10] it is stated that the documentary stamp tax on the original issuance of certificates of stock is imposed on fully paid shares of stock only. Petitioner alleges that it is the issuing corporation which is primarily liable for the payment of the documentary stamp tax on the original issuance of shares of stock. Petitioner further argues that the documentary stamp tax on Section 176 of the 1994 Tax Code is imposed for every transfer of shares or certificates of stock, computed based on the par value of the shares to be transferred, and is due whether a certificate of stock is actually issued, indorsed or delivered pursuant to such transfer. It is the transferor who is liable for the documentary stamp tax on the transfer of shares.

Petitioner claims that the documentary stamp tax under Section 175 attaches to the certificate/s of stock to be issued by virtue of petitioner's subscription while the documentary stamp tax under Section 176 attaches to the Amended Subscription Agreement, since it is this instrument that evidences the transfer of the RGHC, PGCI and UCPB shares from petitioner to JEC.

Petitioner contends that at the time of the execution of the Amended Subscription Agreement, the JEC shares or certificates subscribed by petitioner could not have been issued by JEC because the same were yet to be sourced from the increase in authorized capital stock of JEC, which in turn had yet to be approved by the Securities and Exchange Commission (SEC). Petitioner thus reasons that the documentary stamp tax under Section 175 could not have accrued at the time the Amended Subscription Agreement was executed because no right to the shares had neither been nor could be established in favor of the petitioner at such time. Petitioner theorizes that the earliest time that the subscription could actually be executed would be when the SEC approves the increase in the authorized capital stock

[10] BIR Revenue Regulations No. 9-94 effective January 1994.

of JEC. On the other hand, upon the execution of the Amended Subscription Agreement, the assignment or the transfer of RGHC, PGCI and UCPB shares in favor of JEC (which is evidenced by said agreement), is deemed immediately enforceable as this is a necessary requirement of the SEC.

Petitioner points out that Section 175 of the 1994 Tax Code imposes a documentary stamp tax on every original issuance of **certificates of stock**, whereas Republic Act No. 8424, the Tax Reform Act of 1997 (the 1997 Tax Code), amended this provision and imposed a documentary stamp tax on the original issuance of **shares of stock.** Petitioner argues that under Section 175 of the 1994 Tax Code, there was no documentary stamp tax due on the mere execution of a subscription agreement to shares of stock, and the tax only accrued upon issuance of the certificates of stock. In this case, the change in wording introduced by the 1997 Tax Code cannot be made applicable to the Amended Subscription Agreement, which was executed in 1994, because it is a well-settled doctrine in taxation that a law must have prospective application.

Lastly, petitioner alleges that it is entitled to refund under the NIRC.[11]

In his **Comment (To Petition for Review)**,[12] respondent avers that the lower courts did not err in denying petitioner's claim for refund, and that petitioner is raising issues in this petition which were not raised in the lower courts.

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[11] Sec. 295. Authority of Commissioner to make compromise and to refund taxes. — The Commissioner may:

x x x x x x x x x

(3) Credit or refund taxes erroneously or illegally received, or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty.

[12] *Rollo*, pp. 90-100.

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Respondent maintains that the documentary stamp tax imposed in this case is on the original issue of certificates of stock of JEC on the subscription by the petitioner of the ₱508,806,200.00 shares out of the increase in the authorized capital stock of the former pursuant to Section 175 of the NIRC. The documentary stamp tax was not imposed on the shares of stock owned by petitioner in RGHC, PGCI, and UCPB, which merely form part of the partial payment of the subscribed shares in JEC. Respondent avers that the amounts indicated in the Certificates of RDO Esquivias are the amounts of documentary stamp tax representing the equivalent of each group of shares being applied for payment. Considering that the amount of documentary stamp tax represented by the shares of stock in the aforementioned companies amounted only to ₱593,528.15, while the basic documentary stamp tax for the entire subscription of ₱508,806,200.00 was computed by respondent's revenue officers to the tune of ₱803,116.72, exclusive of the penalties, leaving a balance of ₱209,588.57, is a clear indication that the payment made with the shares of stock is insufficient.

Respondent claims that the certifications were issued by RDO Esquivias purposely to allow the registration of transfer of the shares of stock used in payment of the subscribed shares in the name of JEC from petitioner by the Corporate Secretary of the UCPB and are not evidence of the payment of the documentary stamp tax on the issuance of the increased shares of stocks of JEC.[13]

Respondent argues 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 term "original issue" of the certificate of stock means "the point at which the stockholder acquires and may exercise attributes of ownership over the stocks."[14] Respondent further argues that the stocks can be alienated; the dividends or fruits derived therefrom can be enjoyed; and they can be conveyed, pledged,

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[13] *Id.* at 95.

[14] *Id.* at 97.

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or encumbered; that the certificate, irrespective of whether or not it is in the actual constructive possession of the stockholder, is considered issued because it is with value and, hence, the documentary stamp tax must be paid; and concludes that a person may own shares of stock without possessing a certificate of stock. Respondent cites *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*,[15] where the Court held:

> The delivery of the certificates of stocks to the private respondent's stockholders whether actual or constructive, is not essential for the documentary and science 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. The only question before us is whether or not said private respondents issued the certificates of stock covering the paid-in-capital of ₱17,880,000.00.

Respondent claims that 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.

Respondent argues, based on the above, that the contention of petitioner that the documentary stamp tax under Section 175 of the 1994 Tax Code could not have accrued at the time the Amended Subscription Agreement was executed since the increase in capital stock of JEC had yet to be approved by the SEC was inaccurate. He states that it is evident from the Amended Subscription Agreement that the subscribed shares from the increase in JEC's stock were fully paid through cash and shares of stock.

Respondent submits that the change in wording, from "certificates" to "shares" of stock, introduced to Section 175 by the 1997 Tax Code, was a mere clarification and codification of the foregoing principle or policy.

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[15] 230 Phil. 76, 81 (1986).

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Respondent stresses that the documentary stamp tax can be levied or collected from the person making, signing, issuing, accepting, or transferring the obligation or property, as provided in Section 173 of the Tax Code.

In its **Reply to Respondent's Comment to the Petition**,[16] petitioner contends that respondent erroneously insists that the documentary stamp tax sought to be refunded is the one imposed on the subscription by petitioner to ₱508,806,200.00 new shares of JEC. Petitioner further contends that since the documentary stamp tax due on the issuance of new shares or on original shares is ₱2.00 for every ₱200 under Section 175 of the Tax Code, then the documentary stamp tax on petitioner's subscription to JEC shares should amount to ₱5,088,062.00, which is much higher than the ₱803,116.72 basic documentary stamp tax paid under ATAP No. 1511920.[17] Petitioner argues that at the time the documentary stamp tax was paid, before a taxpayer was allowed to pay the taxes due, a BIR revenue officer would first compute the tax due and then issue an authority to accept payment (ATAP) and it was very unlikely that the revenue officer could have made such a glaring mistake.

Petitioner alleges that there is no BIR certification requirement prior to the issuance of original shares of stock; and that it is only upon the regular annual audit of the books of a corporation that the BIR determines if the documentary stamp tax on new or original issuances of shares, if any were issued, had in fact been paid. If not, then a deficiency assessment, with penalties and surcharges, would then be made by the BIR. Petitioner further alleges that, on the other hand, before the transfer of issued and outstanding shares to a new owner is recorded in the books of a corporation, the capital gains tax thereon and the documentary stamp tax on the transfer must first be paid, and a BIR certification must be presented to the Corporate Secretary authorizing the corporation to record the transfer, otherwise, the corporate secretary shall be subjected to penalties.

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[16] *Rollo,* pp. 103-111.

[17] *Id.* at 50.

Petitioner claims that the three BIR certifications in this case specifically allow the registration of the UCPB, RGHC, and PGCI shares in the name of JEC, the transferee, and that said certifications evidence payment of the taxes due on the transfer of the shares from petitioner to JEC, not on the original issuance of shares of JEC.

The parties' respective memoranda contained reiterations of the allegations raised in their respective pleadings as discussed above.

**The sole issue to be resolved is whether petitioner is entitled to a partial refund of the documentary stamp tax and surcharges it paid on the execution of the Amended Subscription Agreement.**

In claims for refund, the burden of proof is on the taxpayer to prove entitlement to such refund. As we held in *Compagnie Financiere Sucres Et Denrees v. Commissioner of Internal Revenue*[18] —

> Along with police power and eminent domain, taxation is one of the three basic and necessary attributes of sovereignty. Thus, the State cannot be deprived of this most essential power and attribute of sovereignty by vague implications of law. Rather, being derogatory of sovereignty, the governing principle is that tax exemptions are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and **he who claims an exemption must be able to justify his claim by the clearest grant of statute**.
>
> x x x Tax refunds are a derogation of the State's taxing power. Hence, like tax exemptions, they are construed strictly against the taxpayer and liberally in favor of the State. Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted. x x x.

It was thus incumbent upon petitioner to show clearly its basis for claiming that it is entitled to a tax refund. This, to our mind, the petitioner failed to do.

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[18] G.R. No. 133834, August 28, 2006, 499 SCRA 664, 667-668.

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The Court of Tax Appeals construed the claim for exemption strictly against petitioner and held that:

> The focal issue which is presented for our consideration is whether or not the transfer of the 1,313,176 FEBTC shares under the "Amended Subscription Agreement and Deed of Assignment of Property in Payment of Subscription" should be excluded in the taxable base for the computation of DST, thus entitling petitioner to the refund of the amount of ₱410,367.00.
>
> **We find nothing ambiguous nor obscure in the language of Section 173, taken in relation to Section 175 of the 1994 Tax Code x x x insofar as the same is brought to bear upon the circumstances in the instant case. These provisions furnish the best means of their own exposition that a documentary stamp tax (DST) is due and payable on documents, instruments, loan agreements and papers, acceptances, assignments, sales and transfers which evidenced the transaction agreed upon by the parties and should be paid by the person making, signing, issuing, accepting or transferring the property, right or obligation.**
>
> > Sec. 173. *Stamp taxes upon documents, instruments, and papers*. — Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, 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, whenever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: *Provided*, That whenever 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. (as amended by R.A. No. 7660)
>
> x x x x x x x x x
>
> Understood to mean what it plainly expressed, the DST imposition is essentially addressed and directly brought to bear upon the DOCUMENT evidencing the transaction of the parties which establishes its rights and obligations.

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In the case at bar, the rights and obligations between petitioner JAKA Investments Corporation and JAKA Equities Corporation are established and enforceable at the time the "Amended Subscription Agreement and Deed of Assignment of Property in Payment of Subscription" were signed by the parties and their witness, so is the right of the state to tax the aforestated document evidencing the transaction. **DST is a tax on the document itself and therefore the rate of tax must be determined on the basis of what is written or indicated on the instrument itself independent of any adjustment which the parties may agree on in the future** x x x**.** The DST upon the taxable document should be paid at the time the contract is executed or at the time the transaction is accomplished. The overriding purpose of the law is the collection of taxes. So that when it paid in cash the amount of ₱370,766,000.00 in substitution for, or replacement of the 1,313,176 FEBTC shares, its payment of ₱1,003,835.65 documentary stamps tax pursuant to Section 175 of NIRC is in order.

**Thus, applying the settled rule in this jurisdiction that, a claim for refund is in the nature of a claim for exemption, thus, should be construed in *strictissimi juris* against the taxpayer (*Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd.*, 244 SCRA 332) and since the petitioner failed to adduce evidence that will show that it is exempt from DST under Section 199 or other provision of the tax code, We rule the focal issue in the negative.**[19] (Emphases ours.)

In the questioned Decision, the Court of Appeals concurred with the findings of the Court of Tax Appeals and we quote with approval the relevant portions below:

Petitioner alleges, though, that considering that the assessment of payment of documentary stamp tax was made payable only to the aforesaid issuances of certificates of [stock] exclusive of that of FEBTC shares of stock which were paid in cash, and that it has paid a total of Php1,003,895.65 inclusive of surcharges for late payment, the petitioner is entitled to a refund of Php410,367.00. This argument does not hold water. As discussed earlier, **a documentary stamp is levied upon the privilege, the opportunity and the facility offered at exchanges for the transaction of the business. This being the case, and as correctly found by the tax court, the**

[19] *Rollo,* pp. 26-29.

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**documentary stamp tax imposition is essentially addressed and directly brought to bear upon the document evidencing the transaction of the parties which establishes its rights and obligations**, which in the case at bar, was established and enforceable upon the execution of the Amended Subscription Agreement and Deed of Assignment of Property in Payment of Subscription.

Moreover, the documentary stamp tax is imposed on the entire subscription (*i.e.,* subscribed capital stock) which is the amount of the capital stock subscribed whether fully paid or not. It connotes an original subscription contract for the acquisition by a subscriber of unissued shares in a corporation, which in this case is equivalent to a total par value of Php508,806,200.00.

Besides, a tax cannot be imposed unless it is supported by the clear and express language of a statute; on the other hand, once the tax is unquestionably imposed, a claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken. And since a claim for refund is in the nature of a claim for exemption the same is likewise construed in *strictissimi juris* against the taxpayer. Furthermore, it is a basic rule in taxation that the factual findings of the Court of Tax Appeals, when supported by substantial evidence, will not be disturbed on appeal unless it [is] shown that the said court committed gross error in the appreciation of facts. In this case, the tax court did not deviate from this rule.

We find no error in the above pronouncements of the Court of Appeals.

A documentary stamp tax is in the nature of an excise tax. It is not imposed 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. Documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments.[20]

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[20] *Antam Pawnshop Corporation v. Commissioner of Internal Revenue,* G.R. No. 167962, September 19, 2008, 566 SCRA 57, 70.

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Thus, we have held that **documentary stamp taxes are levied 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**.[21]

The relevant provisions of the Tax Code at the time of the transaction are quoted below:

**Sec. 175.** ***Stamp tax on original issue of certificates of stock***. — **On every original issue**, whether on organization, reorganization or for any lawful purpose, **of certificates of stock by any association, company, or corporations, there shall be collected a documentary stamp tax of Two pesos (₱2.00) on each two hundred pesos, or fractional part thereof, of the par value of such certificates**: Provided, That in the case of the original issue of stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration received by the association, company, or corporation for the issuance of such stock, and in the case of stock dividends on the actual value represented by each share.

**Sec. 176.** ***Stamp tax on sales, agreements to sell, memoranda of sales, deliveries or transfer of due-bills, certificates of obligation, or shares or certificates of stock.*** — On all sales, or agreements to sell, or memoranda of sales, or deliveries, or transfer of due-bills, certificates of obligation, or shares or certificates of stock in any association, company or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such due-bills, certificates of obligation or stock, or to secure the future payment of money, or for the future transfer of any due-bill, certificates of obligation or stock, there shall be collected a documentary stamp tax of One peso (₱1.00) on each two hundred pesos, or fractional part thereof, of the par value of such due-bill, certificates of obligation or stock: *Provided*, That only one tax shall be collected on each sale or transfer of stock or securities from

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[21] *Philippine Home Assurance Corporation v. Court of Appeals*, 361 Phil. 368, 373 (1999).

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one person to another, regardless of whether or not a certificate of stock or obligation is issued, endorsed, or delivered in pursuance of such sale or transfer: and *Provided, further*, That in the case of stock without par value the amount of the documentary stamp herein prescribed shall be equivalent to twenty-five *per centum* of the documentary stamp tax paid upon the original issue of said stock: *Provided, furthermore*, That the tax herein imposed shall be increased to One peso and fifty centavos (₱1.50) beginning 1996.

We find our discussion in the case of *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc*.[22] regarding these same provisions of the Tax Code to be instructive, and we quote:

In Section 175 of the Tax Code, DST is imposed on the original issue of shares of stock. The DST, as an excise tax, is levied upon the privilege, the opportunity and the facility of issuing shares of stock. In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc*., this Court explained that **the DST attaches upon acceptance of the stockholder's subscription in the corporation's capital stock regardless of actual or constructive delivery of the certificates of stock**. Citing *Philippine Consolidated Coconut Ind., Inc. v. Collector of Internal Revenue*, the Court held:

> The documentary stamp tax under this provision of the law may be levied only once, that is upon the original issue of the certificate. The crucial point therefore, in the case before Us is the proper interpretation of the word 'issue'. In other words, when is the certificate of stock deemed 'issued' for the purpose of imposing the documentary stamp tax? Is it at the time the certificates of stock are printed, at the time they are filled up (in whose name the stocks represented in the certificate appear as certified by the proper officials of the corporation), at the time they are released by the corporation, or at the time they are in the possession (actual or constructive) of the stockholders owning them?
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> x x x x x x x x x

[22] G.R. Nos. 172045-46, June 16, 2009, 589 SCRA 253, 265-267.

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> Ordinarily, when a corporation issues a certificate of stock (representing the ownership of stocks in the corporation to fully paid subscription) the certificate of stock can be utilized for the exercise of the attributes of ownership over the stocks mentioned on its face. The stocks can be alienated; the dividends or fruits derived therefrom can be enjoyed, and they can be conveyed, pledged or encumbered. The certificate as issued by the corporation, 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 as imposed by Section 212 of the National Internal Revenue Code, as amended.

In Section 176 of the Tax Code, DST is imposed on the sales, agreements to sell, memoranda of sales, deliveries or transfer of shares or certificates of stock in any association, company, or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such certificates of stock, or to secure the future payment of money, or for the future transfer of certificates of stock. In *Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue*, this Court held that under Section 176 of the Tax Code, sales to secure the future transfer of due-bills, certificates of obligation or certificates of stock are subject to documentary stamp tax.

Revenue Memorandum Order No. 08-98 (RMO 08-98) provides the guidelines on the corporate stock documentary stamp tax program. RMO 08-98 states that:

> 1. All existing corporations shall file the Corporation Stock DST Declaration, and the DST Return, if applicable **when DST is still due on the subscribed share issued by the corporation**, on or before the tenth day of the month following publication of this Order.
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> x x x x x x x x x
>
> 3. All existing corporations with authorization for increased capital stock shall file their Corporate Stock DST Declaration, together with the DST Return, if applicable **when DST is due on subscriptions made after the authorization**, on or before the tenth day of the month following the date of authorization. (Boldfacing supplied)

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RMO 08-98, reiterating Revenue Memorandum Circular No. 47-97 (RMC 47-97), also states that what is being taxed is the privilege of issuing shares of stock, and, therefore, the taxes accrue at the time the shares are issued. RMC 47-97 also defines issuance as the point in which the stockholder acquires and may exercise attributes of ownership over the stocks.

As pointed out by the CTA, Sections 175 and 176 of the Tax Code contemplate a subscription agreement in order for a taxpayer to be liable to pay the DST. A subscription contract is defined as any contract for the acquisition of unissued stocks in an existing corporation or a corporation still to be formed. A stock subscription is a contract by which the subscriber agrees to take a certain number of shares of the capital stock of a corporation, paying for the same or expressly or impliedly promising to pay for the same. (Emphases ours.)

Petitioner claims overpayment of the documentary stamp tax but its basis for such is not clear at all. While insisting that the documentary stamp tax it had paid for was not based on the original issuance of JEC shares as provided in Section 175 of the 1994 Tax Code, petitioner failed in showing, even through a mere basic computation of the tax base and the tax rate, that the documentary stamp tax was based on the transfer of shares under Section 176 either. It would have been helpful for petitioner's cause had it submitted proof of the par value of the shares of stock involved, to show the actual basis for the documentary stamp tax computation. For comparison, the original Subscription Agreement ought to have been submitted as well.

All that petitioner submitted to back up its claim were the certifications issued by then RDO Esquivias. As correctly pointed out by respondent, however, the amounts in the RDO certificates were the amounts of documentary stamp tax representing the equivalent of each group of shares being applied for payment. The purpose for issuing such certifications was to allow registration of transfer of shares of stock used in partial payment for petitioner's subscription to the original issuance of JEC shares. It should not be used as evidence of payment of documentary stamp tax. Neither should it be the lone basis of a claim for a documentary stamp tax refund.

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The fact that it was petitioner and not JEC that paid for the documentary stamp tax on the original issuance of shares is of no moment, as Section 173 of the 1994 Tax Code states that the documentary stamp tax shall be paid by the person making, signing, issuing, accepting or transferring the property, right or obligation.

Lastly, we deem it appropriate to reiterate the well-established doctrine that as a matter of practice and principle, this Court will not set aside the conclusion reached by an agency, like the Court of Tax Appeals, especially if affirmed by the Court of Appeals. By the very nature of its function, it has dedicated itself to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part, which we find is not present here.[23]

**WHEREFORE,** premises considered, the petition is hereby *DISMISSED*.

**SO ORDERED.**

*Corona, C.J. (Chairperson), Velasco, Jr., Del Castillo,* and *Perez, JJ.,* concur.

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[23] *Compagnie Financiere Sucres Et Denrees v. Commissioner of Internal Revenue, supra* note 18 at 669.