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SECOND DIVISION

[G.R. No. 169899. February 6, 2013]

PHILACOR CREDIT CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; DOCUMENTARY STAMP TAX; PERSONS PRIMARILY AND SECONDARILY LIABLE. — 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 x x x. 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.

2. ID.; ID.; A PARTY TO A TAXABLE TRANSACTION WHO "ACCEPTS" ANY DOCUMENTS OR INSTRUMENTS IN THE PLAIN AND ORDINARY MEANING OF THE ACT DOES NOT BECOME PRIMARILY LIABLE THEREFOR. — 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. Under Section 132 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. 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 x x x. This ruling, to our mind, further clarifies that a party to a taxable transaction

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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 issuance of the subject promissory notes, just because it had "accepted" the promissory notes in the plain and ordinary meaning. In this regard, Section 173 of the 1997 NIRC assumes materiality as it determines liability should the parties who are primarily liable turn out to be exempted from paying tax; the other party to the transaction then becomes liable.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; IMPLEMENTING RULES AND REGULATIONS; CANNOT AMEND A LAW FOR THEY ARE INTENDED TO CARRY OUT, NOT SUPPLANT OR MODIFY, THE LAW. — Nor can the CIR justify his position that Philacor is liable for the tax by citing Section 42 of Regulations No. 26, which was issued by the Department of Finance on March 26, 1924 x x x. The rule uses the word "can" which is permissive, rather than the word "shall," which would make the liability of the persons named definite and unconditional. In this sense, a person using a promissory note can be made liable for the DST if he or she is: (1) among those persons enumerated under the law — *i.e.*, the person who makes, issues, signs, accepts or transfers the document or instrument; or (2) if these persons are exempt, a non-exempt party to the transaction. Such interpretation would avoid any conflict between Section 173 of the 1997 NIRC and Section 42 of Regulations No. 26 and would make it unnecessary for us to strike down the latter as having gone beyond the law it seeks to interpret. However, we cannot interpret Section 42 of Regulations No. 26 to mean that anyone who "uses" the document, regardless of whether such person is a party to the transaction, should be liable, as this reading would go beyond Section 173 of the 1986 Tax Code — the law that the rule seeks to implement. Implementing rules and regulations cannot amend a law for they are intended to carry out, not supplant or modify, the law. To allow Regulations No. 26 to extend the liability for DST to persons who are not even mentioned in the relevant provisions of any of our Tax Codes, particularly the 1986 Tax Code (the relevant law at the time of the subject transactions) would be a clear breach of the rule that a statute must always be superior to its implementing regulations.

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4. TAXATION; DOCUMENTARY STAMP TAX; AN ASSIGNEE OR TRANSFEREE OF PROMISSORY NOTES IS NOT LIABLE FOR THE ASSIGNMENT OR TRANSFER THEREOF AS THIS TRANSACTION IS NOT TAXED UNDER THE LAW. — Philacor, as an assignee or transferee of the promissory notes, is not liable for the assignment or transfer of promissory notes as this transaction is not taxed under the law. x x x [T]here are provisions in the 1997 NIRC that specifically impose the DST on the transfer and/or assignment of documents evidencing particular transactions. **Section 176** imposes a DST on the **transfer** of due bills, certificates of obligation, or shares or certificates of stock in a corporation, apart from **Section 175** which imposes the DST on the issuance of shares of stock in a corporation. **Section 178** imposes the DST on certificates of profits, or any certificate or memorandum showing interest in a property or accumulations of any corporation, and on all **transfers** of such certificate or memoranda. **Section 198** imposes the DST on the **assignment or transfer** of any mortgage, lease or policy of insurance, apart from **Sections 183, 184, 185, 194 and 195** which impose it on the issuances of mortgages, leases and policies of insurance. Indeed, the law has set a pattern of expressly providing for the imposition of DST on the transfer and/or assignment of documents evidencing certain transactions. Thus, we can safely conclude that where the law did not specify that such transfer and/or assignment is to be taxed, there would be no basis to recognize an imposition. A good illustrative example is Section 198 of the 1986 Tax Code x x x. If we look closely at this provision, we would find that an assignment or transfer becomes taxable only in connection with mortgages, leases and policies of insurance. The list does not include the assignment or transfer of evidences of indebtedness; rather, it is the renewal of these that is taxable. The present case does not involve a renewal, but a mere transfer or assignment of the evidences of indebtedness or promissory notes. A renewal would involve an increase in the amount of indebtedness or an extension of a period, and not the mere change in person of the payee.

5. ID.; ID.; IMPOSED ON THE ISSUANCES AND RENEWALS OF PROMISSORY NOTES, BUT NOT ON THEIR ASSIGNMENT OR TRANSFER. — In BIR Ruling No. 139-97 issued on December 29, 1997, then CIR Liwayway Vinzons-Chato pronounced that the assignment of a loan that

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is not for a renewal or a continuance does not result in a liability for DST. Revenue Regulations No. 13-2004, issued on December 23, 2004, states that "[t]he DST on all debt instruments shall be imposed only on every original issue and the tax shall be based on the issue price thereof. Hence, the sale of a debt instrument in the secondary market will not be subject to the DST." Included in the enumeration of debt instruments is a promissory note. The BIR Ruling and Revenue Regulation cited are still applicable to this case, even if they were issued after the transactions in question had already taken place. They apply because they are issuances interpreting the same rule imposing a DST on promissory notes. At the time BIR Ruling No. 139-97 was issued, the law in effect was the 1986 Tax Code; the 1997 NIRC took effect only on January 1, 1998. Moreover, the BIR Ruling referred to a transaction entered into in 1992, when the 1986 Tax Code had been in effect. On the other hand, the BIR issued Revenue Regulations No. 13-2004 when Section 180 of the 1986 Tax Code had already been amended. Nevertheless, the rule would still apply to this case because the pertinent part of Section 180 — the part dealing with promissory notes — remained the same; it imposed the DST on the promissory notes' issuances and renewals, but not on their assignment or transfer x x x.

6. ID.; TAX LAWS; MUST BE CONSTRUED STRICTLY AGAINST THE STATE AND LIBERALLY IN FAVOR OF THE TAXPAYER IN CASE OF DOUBT. — The settled rule is that in case of doubt, tax laws must be construed strictly against the State and liberally in favor of the taxpayer. The reason for this ruling is not hard to grasp: taxes, as burdens which must be endured by the taxpayer should not be presumed to go beyond what the law expressly and clearly declares. That such strict construction is necessary in this case is evidenced by the change in the subject provision as presently worded, which now expressly levies the tax on shares of stock as against the privilege of issuing certificates of stock as formerly provided.

APPEARANCES OF COUNSEL

Tan Venturanza Valdez for petitioner.
The Solicitor General for respondent.

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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

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[1] *Rollo*, pp. 31-51.

[2] *Id.* at 8-27; penned by Associate Justice Olga Palanca-Enriquez, and concurred in by Associate Justices Ernesto D. Acosta, Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy and Caesar A. Casanova.

[3] *Id.* at 114-118.

[4] *Id.* at 31, 39-40.

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Manager, Leticia Pangan, contested the tentative computations of deficiency taxes (totaling ₱20,037,013.83) 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	₱ 9,832,098.22
Deficiency Percentage Tax	866,287.60
Deficiency Documentary Stamp Tax	3,368,169. 45
Total	₱14,066,555.27[6]

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	₱12, 888,085.09
Deficiency Percentage Tax	1,185,977.07
Deficiency DST Tax	3,368,196.45
Total	₱17,442,231.61[8]

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,

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[5] *Id.* at 64-65.

[6] *Id.* at 65.

[7] *Ibid.*

[8] *Id.* at 66.

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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 ₱1,757,262.47 and a deficiency percentage tax of ₱613,987.86. 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 ₱673,633.88, which is computed as follows:

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[9] Amending for the Purpose Certain Provisions of the National Internal Revenue Code, as amended, Allocating Funds for Specific Programs and for Other Purposes.

[10] *Id.* at 67-68.

[11] *Id.* at 68.

[12] *Id.* at 122-143.

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Total Notes purchased during the taxable year	₱269,453,556.94	
Divided by rate under Section 180		200.00
Basis of DST	₱	1,347,267.78
Multiply by DST rate (Section 180, 1993 Tax Code		.20
DST on notes purchased	₱	**269,453.55**
Add: Total DST on Notes assigned (Section 180)		**269,453.55**
Deficiency Documentary Stamp Tax	₱	538,907.10
Add: 25% surcharge		134,726.78
Total Deficiency Documentary Stamp Tax	₱	673,633.88[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 ₱2,180,564.00 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 ₱673,633.88.

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

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[13] *Id.* at 148.

[14] *Id.* at 163-166.

[15] *Supra* note 3.

[16] *Rollo*, pp. 88-109.

[17] *Supra* note 2.

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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"

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[18] In 1993, the applicable law was the 1986 Tax Code, which has been subsequently amended by the 1997 National Internal Revenue Code (Republic Act No. 8424), also known as the "Tax Reform Act Of 1997," which became effective on January 1, 1998.

[19] Section 42. Responsibility for payment of tax on promissory notes. — The person who signs or issues a promissory note and any person transferring or using a promissory note can be held responsible for the payment of the documentary stamp tax.

[20] Issued on March 26, 1924, entitled "The Revised Documentary Stamp Tax Regulations."

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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**?

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[21] *Rollo*, pp. 43-49.

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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.

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[22] Jose Campos Jr. & Maria Clara Lopez-Campos, "*Notes and Selected Cases on Negotiable Instruments Law*," 1994 edition, p. 520.

[23] Sec. 132. Acceptance; how made, by and so forth. — The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

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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 issuance of the subject promissory notes, just because it had "accepted" the promissory notes in the plain and ordinary meaning. In this regard, Section 173 of the 1997 NIRC assumes materiality as it determines liability should the parties who are primarily liable turn out to be exempted from paying tax; the other party to the transaction then becomes liable.

Revenue Regulations No. 9-2000[26] interprets the law more widely so that all parties to a transaction are primarily liable for the DST, and not only the person making, signing, issuing, accepting or transferring the same becomes liable as the law provides. It provides:

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[24] *Supra* note 22.

[25] Jose Arañas, "*Annotations and Jurisprudence on the National Internal Revenue Code, as amended*," Volume 3, 1963 edition, p. 2, citing BIR Ruling dated September 13, 1955 and the Quarterly Bull., Vol. IV, No. 3.

[26] Issued on November 22, 2000.

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SEC. 2. Nature of the Documentary Stamp Tax and Persons Liable for the Tax. —

(a) In General. — The documentary stamp taxes under Title VII of the Code is a tax on certain transactions. It is imposed against "the person making, signing, issuing, accepting, or transferring" the document or facility evidencing the aforesaid transactions. Thus, in general, it may be imposed on the transaction itself or upon the document underlying such act. **Any of the parties thereto shall be liable for the full amount of the tax due**: Provided, however, that as between themselves, the said parties may agree on who shall be liable or how they may share on the cost of the tax.

(b) Exception. — Whenever one of the parties to the taxable transaction is exempt from the tax imposed under Title VII of the Code, the other party thereto who is not exempt shall be the one directly liable for the tax. [emphasis ours]

But even under these terms, the liability of Philacor is not a foregone conclusion as from the face of the promissory note itself, Philacor is not a party to the issuance of the promissory notes, but merely to their assignment. On the face of the documents, the parties to the issuance of the promissory notes would be the buyer of the appliance, as the maker, and the appliance dealer, as the payee.

We are aware that while Philacor denies being a party to the issuance of the promissory notes,[27] the appliance buyer is made to sign a promissory note only after Philacor has approved its credit application. Moreover, the note Philacor marked as Annex "J" of its petition for review[28] is the standard *pro forma* promissory note that Philacor uses in all similar transactions;[29] the same document contains the issuance of the notes in favor of the appliance dealer and their assignments to Philacor. The promissory notes are also transferred to Philacor by the appliance dealer on the same date that the appliance buyer issues the promissory note in favor of the appliance buyer. Thus, it would

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[27] *Rollo*, p. 210.

[28] *Id.* at 167.

[29] *Id.* at 217.

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seem that Philacor is the person who ultimately benefits from the issuance of the notes, if not the intended payee of these notes.

These observations, however, pertain to facts and implications that are found outside the terms of the documents under discussion and are contradictory to their outright terms. To consider these externalities would go against the doctrine that the liability for the DST and the amount due are determined from the document itself — examined through its form and face — and cannot be affected by proof of facts outside it.[30]

Nor can the CIR justify his position that Philacor is liable for the tax by citing Section 42 of Regulations No. 26, which was issued by the Department of Finance on March 26, 1924:

> Section 42. *Responsibility for payment of tax on promissory notes*. — The person who signs or issues a promissory note and any person transferring or **using** a promissory note can be held responsible for the payment of the documentary stamp tax. [emphasis ours; italics supplied]

The rule uses the word "can" which is permissive, rather than the word "shall," which would make the liability of the persons named definite and unconditional. In this sense, a person using a promissory note can be made liable for the DST if he or she is: (1) among those persons enumerated under the law — *i.e.*, the person who makes, issues, signs, accepts or transfers the document or instrument; or (2) if these persons are exempt, a non-exempt party to the transaction. Such interpretation would avoid any conflict between Section 173 of the 1997 NIRC and Section 42 of Regulations No. 26 and would make it unnecessary for us to strike down the latter as having gone beyond the law it seeks to interpret.

However, we cannot interpret Section 42 of Regulations No. 26 to mean that anyone who "uses" the document, regardless of whether such person is a party to the transaction, should be liable, as this reading would go beyond Section 173 of the 1986

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[30] Hector de Leon and Hector de Leon, Jr., "*The National Internal Revenue Code Annotated,* Volume 2, 2003 ed., p. 288, citing *US. v. Isham*, 84 US 496 (1873); and *Danville Building Ass'n v. Pickering* (D. C.) 294 F. 117.

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Tax Code — the law that the rule seeks to implement. Implementing rules and regulations cannot amend a law for they are intended to carry out, not supplant or modify, the law.[31] To allow Regulations No. 26 to extend the liability for DST to persons who are not even mentioned in the relevant provisions of any of our Tax Codes, particularly the 1986 Tax Code (the relevant law at the time of the subject transactions) would be a clear breach of the rule that a statute must always be superior to its implementing regulations.

This expansive interpretation of Regulations No. 26 becomes even more untenable when we look at the difference between the way our law has been phrased and the way the Internal Revenue Law of the United States (US) identified the persons liable for its stamp tax. We also note that despite the subsequent amendments to our DST provisions, our Congress never saw it fit to phrase our laws using the US phraseologies.

In Section 110 of our Internal Revenue Code of 1904, the persons liable for the stamp tax are the "persons who shall make, sign or issue the same[.]" Although our 1904 Tax Code was patterned after the then existing US Internal Revenue Code, also known as the Act of Congress of July 13, 1866,[32] the US provisions on the stamp tax provide for a wider set of taxpayers: Section 158 thereof places the burden on "persons who shall make, sign or issue, or *who shall cause to be made, signed or issued* any instrument, document, or paper of any kind or description whatsoever, or shall *accept, negotiate or pay or cause to be accepted, negotiated and paid*, any bill of exchange, draft, or order, or promissory note for the payment of money." It goes on further by extending the liability not only to the parties mentioned but also to "*any party having an interest therein*." Another US law, the War Revenue Act of June 13, 1898, provides in Section 6 thereof a more succinct phrase whose coverage is just as extensive: "any persons

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[31] *Commissioner of Internal Revenue v. Placer Dome Technical Services (Phils.), Inc.*, G.R. No. 164365, June 8, 2007, 524 SCRA 271, 276.

[32] Hector S. De Leon, "*The National Internal Revenue Code Annotated*," 1991 ed., p. 9.

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or party who shall make, sign or issue the same, *or for whose use or benefit the same shall be made, signed or issued*." These provisions have been adopted by various states such as Florida, South Carolina, New Jersey and Pennsylvania.[33]

Under US laws, liability for the DST is placed on any person who has an interest in the transaction or document and whoever may benefit from it. A person who would use it or benefit from it, including parties who are not named in the instrument, would be liable for the tax. In comparison, our legislators chose to limit the DST liability only to "persons who shall make, sign or issue [the document or instrument]."

Notably, our revenue laws regarding persons liable for the DST have been repeatedly amended. In subsequent amendments, the coverage of the liability for DST included persons who "accept" and "transfer" the instrument, document or paper of the taxable transaction. Thereafter, we included the proviso that should any of the parties be exempt, the other party to the transaction would become liable. However, none of these amendments had ever extended the liability to persons who have any interest in or who would benefit from the document or instrument subject to tax. Thus, we cannot allow Regulations No. 26 to be interpreted in such a way as to extend the DST liability to persons who are not the parties named in the taxable document or instrument and are merely using or benefiting from it, against the clear intention of our legislature.

In our view, it makes more sense to include persons who benefit from or have an interest in the taxable document, instrument or transaction. There appears no reason for distinguishing between the persons who make, sign, issue, transfer or accept these documents and the persons who have an interest in these and/or have caused them to be made, signed or issued.

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[33] See *Choctawhatchee Electric Cooperative, Inc v. Green*, 123 So. 2d 357 (1960); *Loyola Federal Savings and Loan Association v. South Carolina Tax Commission*, 308 S.C. 211 (1992); *Endler v. United States*, 110 F. Supp. 945 (1953); and *Pennsylvania Company for Insurances on Lives and Granting Annuities v. United States*, 39 F. Supp 1019 (1941).

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This also limits the opportunities for avoiding tax. Moreover, there are cases when making all relevant parties taxable could help our administrative officers collect tax more efficiently. In this case, the BIR could simply collect from the financing companies, rather than go after each and every appliance buyer or appliance seller. However, **these are matters that are within the prerogatives of Congress so that any interference from the Court, no matter how well-meaning, would constitute judicial legislation**. At best, we can only air our views in the hope that Congress would take notice.

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

Philacor, as an assignee or transferee of the promissory notes, is not liable for the assignment or transfer of promissory notes as this transaction is not taxed under the law.

The CIR argues that the DST is levied on the exercise of privileges through the execution of specific instruments, or the privilege to enter into a transaction. Therefore, the DST should be imposed on every exercise of the privilege to enter into a transaction.[34] There is nothing in Section 180 of the 1986 Tax Code that supports this argument; the argument is even contradicted by the way the provisions on DST were drafted.

As Philacor correctly points out, there are provisions in the 1997 NIRC that specifically impose the DST on the transfer and/or assignment of documents evidencing particular transactions. **Section 176** imposes a DST on the **transfer** of due bills, certificates of obligation, or shares or certificates of stock in a corporation, apart from **Section 175** which imposes the DST on the issuance of shares of stock in a corporation. **Section 178** imposes the DST on certificates of profits, or any certificate or memorandum showing interest in a property or accumulations of any corporation, and on all **transfers** of such certificate or memoranda. **Section 198** imposes the DST on the **assignment or transfer** of any mortgage, lease or policy of insurance, apart from **Sections**

[34] *Rollo*, p. 72.

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183, 184, 185, 194 and 195 which impose it on the issuances of mortgages, leases and policies of insurance. Indeed, the law has set a pattern of expressly providing for the imposition of DST on the transfer and/or assignment of documents evidencing certain transactions. Thus, we can safely conclude that where the law did not specify that such transfer and/or assignment is to be taxed, there would be no basis to recognize an imposition.

A good illustrative example is Section 198 of the 1986 Tax Code which provides that:

> Section 198. Stamp tax on assignments and renewals of certain instruments. — Upon each and every assignment or transfer of any mortgage, lease or policy of insurance, or the renewal or continuance of any agreement, contract, charter, or any evidence of obligation or indebtedness by altering or otherwise, there shall be levied, collected and paid a documentary stamp tax, at the same rate as that imposed on the original instrument.

If we look closely at this provision, we would find that an assignment or transfer becomes taxable only in connection with mortgages, leases and policies of insurance. The list does not include the assignment or transfer of evidences of indebtedness; rather, it is the renewal of these that is taxable. The present case does not involve a renewal, but a mere transfer or assignment of the evidences of indebtedness or promissory notes. A renewal would involve an increase in the amount of indebtedness or an extension of a period, and not the mere change in person of the payee.[35]

In BIR Ruling No. 139-97 issued on December 29, 1997, then CIR Liwayway Vinzons-Chato pronounced that the assignment of a loan that is not for a renewal or a continuance does not result in a liability for DST. Revenue Regulations No. 13-2004, issued on December 23, 2004, states that "[t]he DST on all debt instruments shall be imposed only on every original issue and the tax shall be based on the issue price thereof. Hence, the sale of a debt instrument in the secondary market will not

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[35] *State of Florida Department of Revenue v. Miami National Bank*, 374 So. 2d 1 (1979).

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be subject to the DST." Included in the enumeration of debt instruments is a promissory note.

The BIR Ruling and Revenue Regulation cited are still applicable to this case, even if they were issued after the transactions in question had already taken place. They apply because they are issuances interpreting the same rule imposing a DST on promissory notes. At the time BIR Ruling No. 139-97 was issued, the law in effect was the 1986 Tax Code; the 1997 NIRC took effect only on January 1, 1998. Moreover, the BIR Ruling referred to a transaction entered into in 1992, when the 1986 Tax Code had been in effect. On the other hand, the BIR issued Revenue Regulations No. 13-2004 when Section 180 of the 1986 Tax Code had already been amended. Nevertheless, the rule would still apply to this case because the pertinent part of Section 180 — the part dealing with promissory notes — remained the same; it imposed the DST on the promissory notes' issuances and renewals, but not on their assignment or transfer:

Section 180 of the 1986 Tax Code, as amended	**Section 180 of the 1997 NIRC, as amended by Republic Act No. 9243**
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 <u>on all promissory notes, whether negotiable or non-negotiable except bank notes issued for circulation, and on each renewal of any such note</u>, 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.	**Section 180.** *Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitute Debt Instruments, Certificates of Deposits Bearing Interest and Others Not Payable on Sight or Demand.* — On all bonds, loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments

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– 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,	and securities issued by the Government or any of its instrumentalities, deposit substitute debt instruments, certificates of deposits drawing interest, 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 Thirty centavos (₱0.30) on each Two hundred pesos (₱200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: Provided, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: Provided, however, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this Section.

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The settled rule is that in case of doubt, tax laws must be construed strictly against the State and liberally in favor of the taxpayer. The reason for this ruling is not hard to grasp: taxes, as burdens which must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares. That such strict construction is necessary in this case is evidenced by the change in the subject provision as presently worded, which now expressly levies the tax on shares of stock as against the privilege of issuing certificates of stock as formerly provided.[36]

WHEREFORE, premises considered, we **GRANT** the petition. The September 23, 2005 Decision of the Court of Tax Appeals *en banc* in C.T.A. E.B. No. 19 (C.T.A. Case No. 5674), ordering Philacor Credit Corporation to pay a deficiency documentary stamp tax in connection with the issuances and transfers or assignments of promissory notes for the fiscal year ended July 31, 1993, is **SET ASIDE.** No costs.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 172044. February 6, 2013]

CAVITE APPAREL, INCORPORATED and ADRIANO TIMOTEO, *petitioners, vs.* **MICHELLE MARQUEZ,** *respondent.*

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[36] *Lincoln Philippine Life Insurance Co. v. CA*, 354 Phil. 896, 904 (1998).