

SECOND DIVISION

[G.R. No. 171138, April 07, 2009]

**H. TAMBUNTING PAWNSHOP, INC., PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

DECISION

QUISUMBING, J.:

This petition for review assails the Decision^[1] dated June 30, 2005 of the Court of Appeals in CA-G.R.-SP No. 79116 and its Resolution^[2] dated January 10, 2006, denying the motion for reconsideration. The appellate court had modified the Decision^[3] dated March 18, 2003 of the Court of Tax Appeals (CTA) in C.T.A. Case No. 6366.

The case stemmed from a Pre-Assessment Notice^[4] issued by the Commissioner of Internal Revenue (CIR) against H. Tambunting Pawnshop, Inc. (Tambunting) for, among others, deficiency documentary stamp tax (DST) of P50,910. Thereafter, the CIR issued an assessment notice^[5] with the corresponding demand letters^[6] for the payment of the DST and the corresponding compromise penalty for taxable year 1997.

Tambunting filed its written protest to the assessment notice alleging that it was not subject to documentary stamp tax under Section 195^[7] of the National Internal Revenue Code (NIRC) because documentary stamp taxes were applicable only to pledge contracts, and the pawnshop business did not involve contracts of pledge.

When Tambunting's written protest was not acted upon by the CIR, the former filed a petition with the CTA appealing the assessments issued by the CIR. The CTA gave due course to Tambunting's petition for review and rendered a Decision, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED** to **PAY** deficiency VAT assessment.... However, finding that petitioner is not subject to the documentary stamp tax under Section 195 of the Tax Code, Assessment Notice No. 32-97 dated April 11, 2001 for deficiency documentary stamp tax is hereby **CANCELLED and SET ASIDE**.

SO ORDERED.^[8]

The CIR's motion for reconsideration was denied by the CTA. Thus, the CIR elevated the case to the Court of Appeals. The appellate court ruled in favor of the CIR and decreed:

WHEREFORE, premises considered, Petition for Partial Review by the Commissioner of Internal Revenue is hereby **GRANTED** and the assailed March 18, 2003 Decision of the Court of Tax Appeals, ..., in so far as it cancelled the deficiency documentary stamp tax assessment of Php 50,910.00 against respondent TAMBUNTING, is hereby **MODIFIED** in that respondent TAMBUNTING is hereby ordered to pay petitioner Commissioner of Internal Revenue, the amount of Php50,910.00 as 1997 deficiency documentary stamp tax assessment, plus 25% surcharge, 20% deficiency interest, and 20% delinquency interest thereon from May 11, 2001 until fully paid pursuant to Section 248 and 249 (B) of the Tax Code.

SO ORDERED.^[9]

Tambunting now before us raises the following issue:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING PETITIONER LIABLE FOR DST ON PAWN TICKETS.^[10]

Stated simply, is Tambunting liable for documentary stamp taxes based on the pawn tickets that it issued?

Petitioner contends that it is the document evidencing a pledge of personal property which is subject to the DST. A pawn ticket is defined under Section 3 of Presidential Decree No. 114^[11] as "the pawnbroker's receipt for a pawn [and] is neither a security nor a printed evidence of indebtedness." Petitioner argues that since the document taxable under Section 195 must show the existence of a debt, a pawn ticket which is merely a receipt for a pawn is not subject to DST.

Petitioner further contends that the DST is imposed on the documents issued, not the "transactions so had or accomplished." It insists that the document to be taxed under the transaction contemplated should be the pledge agreement, if any is issued, not the pawn ticket.

On the other hand, the CIR, through the Office of the Solicitor General, argues that Section 195 of the NIRC expressly provides that a documentary stamp tax shall be collected on every pledge of personal property as a security for the fulfillment of the contract of loan. Since the transactions in a pawnshop business partake of the nature of pledge transactions, then pawn transactions evidenced by pawn tickets, are subject to documentary stamp taxes.

The CIR further argues that the pawn ticket is the pledge contract itself and thus, it is subject to documentary stamp tax.

After considering the submission of the parties, we find that the instant petition lacks merit.

First, on the subject of pawn tickets, the Bangko Sentral ng Pilipinas Manual of Regulations for Non-Bank Financial Institutions^[12] provides:

Sec. 4322P **Pawn Ticket.** Pawnshops shall at the time of the loan, deliver to each pawner a pawn ticket which shall contain the following:

- a. Name and residence of the pawner;
- b. Date the loan is granted;
- c. Amount of the principal loan;
- d. Interest rate in percent;
- e. Period of maturity;
- f. Description of the pawn;
- g. Expiry date of redemption period;
- h. Signature of the pawnshop's authorized representative;
- i. Signature or thumbmark of the pawner or his authorized representative;
and
- j. Such other terms and conditions as may be agreed upon between the pawnshop and the pawner.

Notably, a pledge is an accessory, real and unilateral contract by virtue of which the debtor or a third person delivers to the creditor or to a third person movable property as security for the performance of the principal obligation, upon fulfillment of which the thing pledged, with all its accessions and accessories, shall be returned to the debtor or to the third person.^[13] The pawn ticket is required to contain the same essential information that would be found in a pledge agreement. Only the nomenclature of the requirements in the pawn ticket is changed to refer to the specific kind of pledge transactions undertaken by pawnshops. The property or thing pledged is referred to as the pawn, the creditor (pledgee) is referred to as the pawnee^[14] and the debtor (pledgor) is referred to as the pawner.

Petitioner's explanations fail to dissuade us from recognizing the pawn ticket as the document that evidences the pledge. True, the pawn ticket is neither a security nor a printed evidence of indebtedness. But, precisely being a *receipt for a pawn*, it documents the pledge. A pledge is a real contract, hence, it is necessary in order to constitute the contract of pledge, that the thing pledged be placed in the possession of the creditor, or of a third person by common agreement.^[15] Consequently, the issuance of the pawn ticket by the pawnshop means that the thing pledged has already been placed in its possession and that the pledge has been constituted.

Second, on the subject of documentary stamp tax, the NIRC provides:

SEC. 173. *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.* - **Upon documents, instruments, loan agreements 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... (Emphasis supplied.)

SEC. 195. *Stamp Tax on Mortgages, Pledges and Deeds of Trust.* - **On every mortgage or pledge** of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable, and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, **there shall be collected a documentary stamp tax** at the following rates:

(a) When the amount secured does not exceed Five thousand pesos (P5,000), Twenty pesos (P20.00).

(b) On each Five thousand pesos (P5,000), or fractional part thereof in excess of Five thousand pesos (P5,000), an additional tax of Ten pesos (P10.00). (Emphasis supplied.)

x x x x

The law imposes DST on documents issued in respect of the specified transactions, such as pledge, and not only on papers evidencing indebtedness. Therefore, a pawn ticket, being issued in respect of a pledge transaction, is subject to documentary stamp tax.

Third, the issue in this case is not novel. The question of whether pawnshop transactions evidenced by pawn tickets are subject to documentary stamp taxes has been answered in the affirmative in *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*.

[16] There the Court held:

x x x x

Section 195 of the National Internal Revenue Code (NIRC) imposes a DST on **every** pledge regardless of whether the same is a conventional pledge governed by the Civil Code or one that is governed by the provisions of P.D. No. 114. All pledges are subject to DST, unless there is a law exempting them in clear and categorical language....

x x x x

... No law on legal hermeneutics could change the fact that the entries contained in a pawnshop ticket spell out a contract of pledge and that the exercise of the privilege to conclude such a

contract is taxable under Section 195 of the NIRC.^[17]

Even so, we note that the present case was filed with the Supreme Court before September 11, 2006, when the Court resolved for the first time the matter of surcharges and interest for failure to pay documentary stamp taxes on pledge transactions in *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*. Hence, as in the said case, we can still ascribe good faith to petitioner. Consequently, the imposition of surcharges and interest in the present case must also be deleted.^[18]

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated June 30, 2005 of the Court of Appeals in CA-G.R.-SP No. 79116 is **AFFIRMED with the MODIFICATION** that surcharges and interest imposed on the deficiency documentary stamp tax assessment are **DELETED**.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] *Rollo*, pp. 42-50. Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr. concurring.

[2] *Id.* at 52-53.

[3] *Id.* at 54-70.

[4] *Id.* at 137.

[5] *Id.* at 141.

[6] *Id.* at 143-146.

[7] SEC. 195. *Stamp Tax on Mortgages, Pledges and Deeds of Trust.* - On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable, and on any conveyance of land, estate, or property whatsoever, in trust or to be

sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates:

(a) When the amount secured does not exceed Five thousand pesos (P5,000), Twenty pesos (P20.00).

(b) On each Five thousand pesos (P5,000), or fractional part thereof in excess of Five thousand pesos (P5,000), an additional tax of Ten pesos (P10.00).

x x x x

[8] *Rollo*, p. 69.

[9] *Id.* at 50.

[10] *Id.* at 212.

[11] REGULATING THE ESTABLISHMENT AND OPERATION OF PAWNSHOPS, done on January 29, 1973.

[12] *P REGULATIONS*, updated as of December 2007.

[13] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, May 3, 2006, 489 SCRA 147, 153.

[14] Presidential Decree No. 114 (1973),

Sec. 3. *Definitions.*-As used in this Decree, unless the context otherwise requires, the following terms shall have the following meanings:

"Pawnshop" shall refer to a person or entity engaged in the business of lending money on personal property delivered as security for loans ...

x x x x

"Pawnee" shall refer to the pawnshop or pawnbroker.

x x x x

[15] CIVIL CODE OF THE PHILIPPINES, Art. 2093.

[16] *Supra* note 13; G.R. No. 166786, September 11, 2006, 501 SCRA 450.

[17] Id. at 454-456.

[18] Id. at 460.

DISSENTING OPINION

With all due respect to my well-esteemed colleague, I take a contrary position to the majority opinion that the pawn ticket is subject to Documentary Stamp Tax (DST).

The *ponencia* while admitting that the pawn ticket is neither a security nor a printed evidence of indebtedness however asseverates that the pawn ticket, being the receipt for a pawn, documents the pledge.

I beg to disagree.

The pawn ticket is simply defined as the "pawnbroker's receipt for a pawn."^[1] PD 114 declares that "it is neither a security nor a printed evidence of indebtedness."^[2] Section 12 of said law clearly explains the nature of the pawn ticket, thus:

SEC. 12. Pawn ticket.--Every pawnbroker shall, at the time of every such loan or pledge, deliver to each person pawning or pledging any article or thing a memorandum or ticket signed by such pawnbroker and containing the substance of the record required to be kept in such pawnbroker's memorandum book in section eleven hereof, excluding the description of the person so pawning or pledging such article or thing, and no compensation of any kind whatsoever shall be received by any pawnbroker for any such memorandum of ticket.

Thus the ticket is simply a receipt and nothing more. It does NOT document the pledge. Such purpose is accomplished by the pawnbroker in the memorandum book which is governed by Sec. 11 which reads:

SEC. 11. Maintenance of records.--Every pawnbroker shall keep a memorandum book in which shall be entered, in ink, at the time of each loan or pledge, an accurate account and description, in Pilipino or English with corresponding translation in the local dialect of every pawn, the amount of money loaned thereon, the date of pawning or pledging the same, the rate of interest to be paid on the loan, and the name and residence of each pawner, together with a particular description of such pawner, including his or her nationality, sex, and general appearance, and no pawnbroker or other person

shall alter or erase any entry made in such book. Every person pawning or pledging any article or thing with a pawnbroker shall sign his name and give his address to said pawnbroker and such name and address shall be made part of the record heretofore described in this section: Provided, That a person who is unable to write shall imprint his thumbmark, and his name shall be written by a competent person, who shall sign his own name as witness to said thumbmark.

From the foregoing, the entries in the memorandum book document the loan or pledge agreement and not the pawn ticket.

PD 114 does not consider a pawn ticket an evidence of indebtedness or a security for the payment of any sum of money, since it is in the possession of the pawnee. This is differentiated from a promissory note, bond or debenture which is in the possession of the creditor. If the pawn ticket is an evidence of indebtedness, it would only be logical for the pawnbroker to hold on the "ticket" as his evidence. This does not obtain in the pawnshop industry. The inescapable conclusion is that a "pawnshop ticket" is merely a pawnshop's receipt for a pawn. It does not document or substantiate the existence of a loan as the loan transaction itself is required to be registered in the Loans Extended Register per the Manual of Regulations for Non-Bank Financial Institutions. The pawn ticket, not being a document or instrument evidencing an indebtedness nor a security, then it is not subject to DST.

Moreover, the *ponencia* relies on Sec. 173 of the National Internal Revenue Code (NIRC) which reads:

SEC. 173. *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.--Upon documents, instruments, loan agreements 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 x x x. (Emphasis supplied.)*

Based on the abovequoted provision, the *ponencia* argues that the "law imposes DST on documents issued in respect of the specified transactions, such as pledge and not only on papers evidencing indebtedness."

Moreover, the *ponencia* relies on Sec. 195 of the NIRC as basis for its conclusion that the pledge contained in the pawn ticket is subject to DST, thus:

SEC. 195. *Stamp Tax on Mortgages, Pledges and Deeds of Trust.--On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable, and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, otherwise converted into money which shall be and intended only as security, either by express*

stipulation or otherwise, **there shall be collected a documentary stamp tax** at the following rates:

(a) When the amount secured does not exceed Five thousand pesos (P5,000), Twenty pesos (P20.00).

(b) On each Five thousand pesos (P5,000), or fractional part thereof in excess of Five thousand pesos (P5,000), an additional tax of Ten pesos (P10.00). (Emphasis supplied.)

x x x x

While it can be conceded that a pawn ticket is a paper issued in respect of the pledge, it is my view that a pawn ticket is excluded from the coverage of Sec. 195 of the NIRC and the pledge that relates to the ticket is an exempt transaction anchored on PD 114, a special law which must prevail over the NIRC, a general law.

A pawn transaction is a kind of pledge covered by a special law--PD 114 regulating the establishment and operation of pawnshop (Article 2123). All other pledges are governed by Arts. 2085 up to 2122 of the Civil Code. Art. 2096 requires that a pledge must be in a public instrument if the pledge has to take effect against third persons. Art. 2096 reads:

Article 2096. A pledge shall not take effect against third persons if a description of the thing pledged and the date of the pledge do not appear in a public instrument.

While Art. 1358 does not require a pledge in a public document, it requires that all other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one.

It is my submission that the "documents loan agreements, instruments and papers" referred to in Sec. 173 of the NIRC applies only on pledges covered by a written document under Art. 1358 or a public instrument under Art. 2096 where an agreement is clearly reflected. The pawn ticket by itself cannot be a document, instrument or paper under Sec. 173 because of the explicit definition of a pawn ticket that it is neither a security nor a written evidence of indebtedness. It is a ticket evidencing the receipt of the thing pledged but does not embody the agreement of pledge on the thing pawned and the loan secured by the pledge. It is merely the receipt of the pawned item.

With respect to the pledge covered by a pawn ticket, PD 114 does not require a contract but simply entries in the memorandum book and the issuance of a pawn ticket. Why is this so? It is because the document evidencing the loan and pledge was made to be simple as it involves only small borrowers who may not be able to comprehend the legal terms in a contract of pledge. Secondly, a pawn ticket shall not be imposed any DST because the policy of the law is to alleviate the financial condition of small borrowers who are mainly poor or who do not have sufficient income. Thus one of the policies of PD 114 is for

pawnshops "to provide an additional source of credit especially for small borrowers left unserved by the banking and other financial institutions in the country." Pursuant thereto, a pawn ticket was defined simply as a pawnbrokers' receipt for the pawn and it is neither a security nor a printed evidence of indebtedness. While the contents of a pawn ticket as prescribed by CBC No. 374 clearly demonstrate that it is a printed evidence of indebtedness as the amount of the principal loan, the period of maturity and interest rate are reflected in the ticket, still the law defines it otherwise, revealing the clear intent of Congress to exempt the pawn ticket and the pledge agreement from the coverage of DST. Moreover, the ticket also describes the pawned item yet PD 114 does not consider it a security. This does not make sense. The only logical explanation to such a seeming aberration is the intent of Congress to exempt the pawn transaction from DST.

More importantly, the history of the statutes on DST easily reveals that Congress never intended to impose DST on a pawn ticket or a pawn transaction. Pawning was never mentioned in the laws imposing DST nor its amendments, viz:

| LAW | PERTINENT PROVISIONS |
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| <p>ACT NO. 2339 (An Act Revising And Consolidating The Laws Relative To Internal Revenue 1), 27 February 1914</p> | <p>SECTION 30. <i>Stamp Tax Upon Documents and Papers.</i>--Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto documentary taxes for and in respect of the transaction so had or accomplished shall be paid as hereinafter prescribed, by the persons making, signing, issuing, accepting, or transferring the same, and at the time such act is done or transaction had:</p> <p>x x x x</p> <p>(w) On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid being payable, and on any conveyance of land, estate, or property whatsoever in trust or to be sold or otherwise converted into money, which shall be and intended only as security, either by</p> |

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| | <p>express stipulation or otherwise:</p> <ol style="list-style-type: none"> 1. When the amount for which the mortgage or deed of trust is given is not less than one thousand pesos nor more than three thousand pesos, fifty centavos; 2. On each three thousand pesos, or fractional part thereof, in excess of three thousand pesos, an additional tax of fifty centavos; |
| <p>COMMONWEALTH ACT NO. 466 (An Act To Revise, Amend And Codify The Internal Revenue Laws Of The Philippines), 15 June 1939</p> | <p>SECTION 232. <i>Stamp tax on mortgages, pledges, and deeds of trust.</i>--On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid being payable, and on any conveyance of land, estate, or property, whatsoever, in trust or to be sold, or otherwise converted into money, which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates:</p> <p>(a) When the amount for which the mortgage or deed of trust is given exceeds one thousand pesos and does not exceed three thousand pesos, one peso.</p> <p>(b) On each three thousand pesos or fractional part thereof in excess of three thousand pesos, an additional tax of one peso.</p> |
| <p>REPUBLIC ACT NO. 40 (An Act To Amend Certain Sections Of The National Internal Revenue Code, Relative To Documentary Stamp</p> | <p>SEC. 232. <i>Stamp tax on mortgages, pledges, and deeds of trust.</i>--On every mortgage or pledge of lands, estate, or property, real or personal, heritable or</p> |

Taxes), 1 October 1946

movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid being payable, and on any conveyance of land, estate, or property, whatsoever in trust or to be sold, or otherwise converted into money, which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates:

(a) When the amount for which the mortgage or deed of trust is given exceeds one thousand pesos and does not exceed three thousand pesos, one peso and fifty centavos.

(b) On each three thousand pesos or fractional part thereof in excess of three thousand pesos, an additional tax of one peso and fifty centavos.

REPUBLIC ACT NO. 567 (An Act To Amend Title VI Of Commonwealth Act Numbered Four Hundred And Sixty-Six, Otherwise Known As The National Internal Revenue Code), 31 August 1950

SECTION 5. Section two hundred and thirty-two of Commonwealth Act Numbered Four hundred and sixty-six, as amended by section twenty-one of Republic Act Numbered Forty, is hereby further amended to read as follows:

Sec. 232. Stamp tax on mortgages, pledges, and deeds of trust.--On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid being payable, and on any conveyance of land, estate, or property, whatsoever, in trust or to be sold, or

otherwise converted into money, which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates:

(a) When the amount for which the mortgage or deed or trust is given exceeds one thousand pesos and does not exceed three thousand pesos, one peso and fifty centavos.

(b) On each three thousand pesos or fractional part thereof in excess of three thousand pesos, an additional tax of one peso and fifty centavos.

On any mortgage, pledge, or deed of trust, where the same shall be made as a security for the payment of a fluctuating account or future advances without fixed limit, the documentary stamp tax on such mortgage, pledge or deed of trust shall be computed on the amount actually loaned or given at the time of the execution of the mortgage, pledge or deed of trust. However, if subsequent advances are made on such mortgage, pledge or deed of trust, additional documentary stamp tax shall be paid which shall be computed on the basis of the amount advanced or loaned at the rates specified above: Provided, however, That if the full amount of the loan or credit granted under the mortgage, pledge, or deed of trust, the documentary stamp tax prescribed in this section shall be paid and computed on the full amount of the loan or credit granted.

REPUBLIC ACT NO. 1980 (An Act To Further Amend Section Two Hundred Twenty-Seven Of The National Internal Revenue Code), 22

The law increased the rate of DST on bills of lading or receipt.

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| June 1957 | |
| REPUBLIC ACT NO. 6110 (An Act Amending Certain Provisions Of The National Internal Revenue Code, As Amended), 4 August 1969 | The law increased the DST rate on some of the documents mentioned in CA 466. The law also introduced additional documents and papers not subject to stamp tax. |
| PRESIDENTIAL DECREE NO. 69 (Amending Certain Sections Of The National Internal Revenue Code), 24 November 1972 | DST of the Tax Code, there was no amendment on Section 232. |
| PRESIDENTIAL DECREE NO. 1158 (A Decree To Consolidate And Codify All The Internal Revenue Laws Of The Philippines), 3 June 1977 | <p>Section 232 was renumbered to Section 195.</p> <p>SECTION 195. <i>Stamp tax on mortgages, pledges, and deeds of trust.</i>--On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid being payable, and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax the following rates:</p> <p>(a) When the amount secured does not exceed five thousand pesos, ten pesos.</p> <p>(b) On each five thousand pesos, or fractional part thereof in excess of five thousand pesos, an additional tax of five pesos.</p> |
| PRESIDENTIAL DECREE NO. 1959 (Amending Certain Sections Of The National Internal Revenue Code, As Amended), 10 October 1984 | The law renumbered and increased the rates of DST on certain documents. Section 195 was renumbered to Section 244, without increase in the rate of DST. |
| PRESIDENTIAL DECREE NO. 1994 | Section 244 was renumbered to Section |

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| <p>(Further Amending Certain Provisions Of The National Internal Revenue Code), 1 January 1986</p> | <p>195. There was no change in the rate.</p> |
| <p>REPUBLIC ACT NO. 7660 (An Act Rationalizing Further The Structure And Administration Of The Administration Of The Documentary Stamp Tax, Amending For The Purpose Certain Provisions Of The National Internal Revenue Code, As Amended, Allocating Funds For Specific Programs, And For Other Purposes), 23 December 1993</p> | <p>SECTION 19. Section 195 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:</p> <p>Sec. 195. <i>Stamp tax on mortgages, pledges, and deeds of trust.</i>--On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid being payable, and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates:</p> <p>(a) When the amount secured does not exceed Five thousand pesos, Twenty pesos (P20.00);</p> <p>(b) On each Five Thousand pesos, or fractional part thereof in excess of Five thousand pesos, an additional tax of Ten pesos (P10.00).</p> |
| <p>REPUBLIC ACT NO. 8424 (An Act Amending The National Internal Revenue Code, As Amended, And For Other Purposes), 1 January 1998</p> | <p>SECTION 195. <i>Stamp Tax on Mortgages, Pledges and Deeds of Trust.</i>--On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being</p> |

payable, and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates:

(a) When the amount secured does not exceed Five thousand pesos (P5,000), Twenty pesos (P20.00).

(b) On each Five thousand pesos (P5,000), or fractional part thereof in excess of Five thousand pesos (P5,000), an additional tax of Ten pesos (P10.00).

Since the enactment on 27 February 1914 of Act No. 2339, the first imposition of DST upon documents by the BIR is found in RMO No. 15-91 and RMC No. 43-91 promulgated in 1991. Prior to said revenue memorandum issuances, the BIR, for seventy-seven (77) years, never assessed DST on any pawn ticket or pawn transaction. Thus, BIR has not collected DST on pawn transactions despite the fact that Secs. 173 and 195 of the NIRC has been in force for a long period of time. Prior to RMO 15-91 and RMC 43-91 which sought to impose DST on pawn transactions, the BIR, in its BIR ruling 325-88 ruled that the pawn ticket cannot be considered a document subject to DST, thus:

Under Section 195 of the Tax Code, documentary stamp tax is imposed on every pledge of personal property "where the same (personal property) shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid being payable, x x x" In other words, a document evidencing a pledge of personal property which is made as a security for payment of a loan is subject to the documentary stamp tax. This implies that, under the document subject to tax, the pledgor is indebted to the pledgee and, therefore, the former has pledged personal property to secure payment of the debt.

In the case of the pawnshop business, the pawnee (pawnshop or pawnbroker) issues a "pawn ticket" to the pawner (borrower from a pawnshop). The pawn is the personal property delivered by the pawner to the pawnee as security for a loan. **The "pawn ticket" is the pawnbroker's receipt for a pawn. It is neither a security nor a printed evidence of indebtedness.** (Sec. 3, P.D. No. 114 or the Pawnshop Regulation Act) Accordingly, considering that the

document taxable under Section 195 of the Tax Code must show the existence of debt and inasmuch as, under the law, a pawn ticket is not a printed evidence of indebtedness, such pawn ticket cannot be considered as a document subject to the documentary stamp tax imposed by Section 195 of the Tax Code.

The BIR cannot now be allowed to change the interpretation it gave to the pertinent legal provisions on DST.

Lastly, it is my submission that PD 114 is a piece of legislation granting social justice to the poor, the marginalized and the weak. Our view on the exclusion of pawn transactions from the coverage of DST hews closely with the principle that those who have less in life should have more in law. It commands a legal bias in favor of those who are underprivileged.^[3] In *Federation of Free Farmers*,^[4] it was explained that when the law is clear and valid, it simply must be applied; but when the law can be interpreted in more ways than one, an interpretation that favors the underprivileged must be sustained.

PD 114 and NIRC must be given the most liberal interpretation to benefit the poor and marginalized, hence the exemption of the pawn transactions from DST.

I vote to grant the petition.

^[1] Sec. 3, PD No. 114.

^[2] Id.

^[3] Bernas, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, p. 1191.

^[4] 107 SCRA 352-362.