

577 Phil. 285

FIRST DIVISION

[G.R. No. 167330, June 12, 2008]

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

D E C I S I O N

CORONA, J.:

Is a health care agreement in the nature of an insurance contract and therefore subject to the documentary stamp tax (DST) imposed under Section 185 of Republic Act 8424 (Tax Code of 1997)?

This is an issue of first impression. The Court of Appeals (CA) answered it affirmatively in its August 16, 2004 decision^[1] in CA-G.R. SP No. 70479. Petitioner Philippine Health Care Providers, Inc. believes otherwise and assails the CA decision in this petition for review under Rule 45 of the Rules of Court.

Petitioner is a domestic corporation whose primary purpose is "[t]o establish, maintain, conduct and operate a prepaid group practice health care delivery system or a health maintenance organization to take care of the sick and disabled persons enrolled in the health care plan and to provide for the administrative, legal, and financial responsibilities of the organization."^[2] Individuals enrolled in its health care programs pay an annual membership fee and are entitled to various preventive, diagnostic and curative medical services provided by its duly licensed physicians, specialists and other professional technical staff participating in the group practice health delivery system at a hospital or clinic owned, operated or accredited by it.^[3]

The pertinent part of petitioner's membership or health care agreement^[4] provides:

VII BENEFITS

Subject to paragraphs VIII [on pre-existing medical condition] and X [on claims for reimbursement] of this Agreement, Members shall have the following

Benefits under this Agreement:

In-Patient Services. In the event that a Member contract[s] sickness or suffers injury which requires confinement in a participating Hospital[,] the services or benefits stated below shall be provided to the Member free of charge, but in no case shall [petitioner] be liable to pay more than P75,000.00 in benefits with respect to anyone sickness, injury or related causes. If a member has exhausted such maximum benefits with respect to a particular sickness, injury or related causes, all accounts in excess of P75,000.00 shall be borne by the enrollee. It is[,] however, understood that the payment by [petitioner] of the said maximum in In-Patient Benefits to any one member shall preclude a subsequent payment of benefits to such member in respect of an unrelated sickness, injury or related causes happening during the remainder of his membership term.

- (a) Room and Board
- (b) Services of physician and/or surgeon or specialist
- (c) Use of operating room and recovery room
- (d) Standard Nursing Services
- (e) Drugs and Medication for use in the hospital except those which are used to dissolve blood clots in the vascular systems (i.e., trombolitic agents)
- (f) Anesthesia and its administration
- (g) Dressings, plaster casts and other miscellaneous supplies
- (h) Laboratory tests, x-rays and other necessary diagnostic services
- (i) Transfusion of blood and other blood elements

Condition for in-Patient Care. The provision of the services or benefits mentioned in the immediately preceding paragraph shall be subject to the following conditions:

- (a) The Hospital Confinement must be approved by [petitioner's] Physician, Participating Physician or [petitioner's] Medical Coordinator in that Hospital prior to confinement.
- (b) The confinement shall be in a Participating Hospital and the accommodation shall be in accordance with the Member[']s benefit classification.
- (c) Professional services shall be provided only by the [petitioner's] Physicians or Participating Physicians.
- (d) If discharge from the Hospital has been authorized by [petitioner's] attending Physician or Participating Physician and the Member shall fail or refuse to do so, [petitioner] shall not be responsible for any charges incurred after discharge has been authorized.

Out-Patient Services. A Member is entitled free of charge to the following services or benefits which shall be rendered or administered either in [petitioner's] Clinic or in a Participating Hospital under the direction or supervision of [petitioner's] Physician, Participating Physician or [petitioner's] Medical Coordinator.

- (a) Gold Plan Standard Annual Physical Examination on the anniversary date of membership, to be done at [petitioner's] designated hospital/clinic, to wit:
- (i) Taking a medical history
 - (ii) Physical examination
 - (iii) Chest x-ray
 - (iv) Stool examination
 - (v) Complete Blood Count
 - (vi) Urinalysis
 - (vii) Fasting Blood Sugar (FBS)
 - (viii) SGPT
 - (ix) Creatinine
 - (x) Uric Acid
 - (xi) Resting Electrocardiogram
 - (xii) Pap Smear (Optional for women 40 years and above)
- (b) Platinum Family Plan/Gold Family Plan and Silver Annual Physical Examination.
- The following tests are to be done as part of the Member[']s Annual check-up program at [petitioner's] designated clinic, to wit:
- 1) Routine Physical Examination
 - 2) CBC (Complete Blood Count)

* Hemoglobin	* Hematocrit
* Differential	* RBC/WBC
 - 3) Chest X-ray
 - 4) Urinalysis
 - 5) Fecalalysis
- (c) Preventive Health Care, which shall include:
- (i) Periodic Monitoring of Health Problems
 - (ii) Family planning counseling
 - (iii) Consultation and advices on diet, exercise and other healthy habits
 - (iv) Immunization but excluding drugs for vaccines used
- (d) Out-Patient Care, which shall include:
- (i) Consultation, including specialist evaluation
 - (ii) Treatment of injury or illness
 - (iii) Necessary x-ray and laboratory examination
 - (iv) Emergency medicines needed for the immediate relief of symptoms
 - (v) Minor surgery not requiring confinement

deficiency documentary stamp tax assessment and ordered petitioner to desist from collecting the same is REVERSED and SET ASIDE.

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

SO ORDERED.^[11]

Petitioner moved for reconsideration but the CA denied it. Hence, this petition.

Petitioner essentially argues that its health care agreement is not a contract of insurance but a contract for the provision on a prepaid basis of medical services, including medical check-up, that are not based on loss or damage. Petitioner also insists that it is not engaged in the insurance business. It is a health maintenance organization regulated by the Department of Health, not an insurance company under the jurisdiction of the Insurance Commission. For these reasons, petitioner asserts that the health care agreement is not subject to DST.

We do not agree.

The DST is 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.^[12] It is an excise upon the privilege, opportunity, or facility offered at exchanges for the transaction of the business.^[13] In particular, **the DST under Section 185 of the 1997 Tax Code is imposed on the privilege of making or renewing any policy of insurance (except life, marine, inland and fire insurance), bond or obligation in the nature of indemnity** for loss, damage, or liability.

Under the law, a contract of insurance is an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event.^[14] The event insured against must be designated in the contract and must either be unknown or contingent.^[15]

Petitioner's health care agreement is primarily a contract of indemnity. And in the recent case of *Blue Cross Healthcare, Inc. v. Olivares*,^[16] this Court ruled that a health care agreement is in the nature of a non-life insurance policy.

Contrary to petitioner's claim, its health care agreement is not a contract for the provision

contract.

Petitioner's contention that it is a health maintenance organization and not an insurance company is irrelevant. Contracts between companies like petitioner and the beneficiaries under their plans are treated as insurance contracts.^[20]

Moreover, DST is not a tax on the business transacted but an excise on the privilege, opportunity, or facility offered at exchanges for the transaction of the business.^[21] **It is an excise on the facilities used in the transaction of the business, separate and apart from the business itself.**^[22]

WHEREFORE, the petition is hereby **DENIED**. The August 16, 2004 decision of the Court of Appeals in CA-G.R. SP No. 70479 is **AFFIRMED**.

Petitioner is ordered to pay the amounts of P55,746,352.19 and P68,450,258.73 as deficiency documentary stamp tax for 1996 and 1997, respectively, plus 25% surcharge for late payment and 20% interest per annum from January 27, 2000 until full payment thereof.

Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Azcuna, and Leonardo-De Castro, JJ., concur.

^[1] Penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Mario L. Guariña III and Santiago Javier Ranada (retired) of the Twelfth Division of the Court of Appeals. *Rollo*, pp. 49-55.

^[2] Paragraph 14, Petition for Review on Certiorari. *Id.*, p. 17.

^[3] Paragraph 15, *id.*

^[4] *Id.*, pp. 132-137.

^[5] The copy of the membership/health care agreement attached to the petition had been cut in this portion. Reference was therefore made to petitioner's description of its member's rights and privileges under the health care agreement as stated in paragraph 20 of the petition. *Id.*, p. 11.

[6] The copy of the membership/health care agreement attached to the petition is blurred in this portion.

[7] Penned by Associate Judge (now Associate Justice) Juanito C. Castañeda, Jr. with Associate Judge Amancio Q. Saga (retired) concurring. Presiding Judge (now Presiding Justice) Ernesto D. Acosta submitted a concurring and dissenting opinion wherein he concurred with the cancellation of the deficiency DST assessment and dissented with the affirmation of the deficiency VAT assessment. *Rollo*, pp. 107-131.

[8] *Id.* On motion for reconsideration, the CTA set aside the deficiency VAT assessment. On appeal, the CA affirmed the CTA resolution on the motion for reconsideration. When the case was elevated to this Court, we affirmed the CA decision. (*See Commissioner of Internal Revenue v. Philippine Health Care Providers, Inc.*, G.R. No. 168129, 24 April 2007.)

[9] Under RA 9282 which took effect on April 23, 2004, decisions of the CTA are now appealable to the Supreme Court instead of the Court of Appeals.

[10] *Supra* note 1.

[11] *Id.*

[12] *International Exchange Bank v. Commissioner of Internal Revenue*, G.R. No. 171266, 04 April 4, 2007.

[13] *Philippine Home Assurance Corporation v. CA*, 361 Phil. 368 (1999).

[14] Section 2(1), Insurance Code.

[15] An unknown event is something which is certain to happen but the time of its happening is not known, while a contingent event is something which is not certain to take place. Campos, Maria Clara L., *INSURANCE*, 1983 edition, U.P. Law Center, p. 15.

[16] G.R. No. 169737, 12 February 2008.

[17] *Commissioner of Internal Revenue v. Philippine Health Care Providers, Inc.*, *supra* note 8.

[18] 429 Phil. 82 (2002).

[19] Id.

[20] *Lutsky v. Blue Cross Hosp. Service, Inc. of Missouri*, 695 S.W.2d 870 (1985); *North Kansas City Memorial Hospital v. Wiley*, 385 S.W.2d 218 (Mo.App.1964); *Myers v. Kitsip Physicians Service*, 78 Wash.2d 286, 474 P.2d 109 (1970).

[21] *Philippine Home Assurance Corporation v. CA*, *supra* note 13.

[22] Id.

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