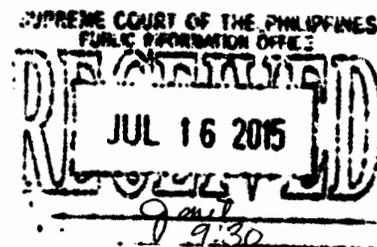




Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **June 22, 2015**, which reads as follows:

**“G.R. No. 210987 (The Philippine American Life and General Insurance Company vs. Secretary of Finance and Commissioner of Bureau of Internal Revenue).** – For resolution is the Omnibus Motion<sup>1</sup> filed by petitioner-movant Philippine American Life and General Insurance Company (Philamlife) praying that the Court issue an Order:<sup>2</sup>

1. **REFERRING** the instant Petition for Review to the Honorable Court En Banc;
2. a. **REFERRING** to the Honorable Court of Tax Appeals [CTA] the presentation of evidence of petitioner PHILAM and respondents in the instant case; or in the alternative –  
  
b. **SUSPENDING** the instant proceedings to await the presentation of petitioner PHILAM and respondents’ evidence at the Honorable Court of Tax Appeals in the CTA Case No. 8894, entitled, **“The Philippine American Life and General Insurance Company v. Commissioner of Bureau of Internal Revenue, Assistant Commissioner Elvira R. Vera, The National Evaluation Board of the Bureau of Internal Revenue and the Bureau of Internal Revenue”**
3. **THEREAFTER, PARTIALLY RECONSIDERING, REVERSING, and SETTING ASIDE** its *Decision*<sup>3</sup> dated 24 November 2014 insofar as it ruled that that [sic] PHILAM’s sale of the Subject PCHSI Shares is supposedly subject to donor’s tax given the supposed price difference between the “fair market value” of the property and the value of the consideration in the sale of the Subject PCHSI Shares.

We deny the Omnibus Motion for reasons to be discussed seriatim.

<sup>1</sup> *Rollo*, pp. 407-467.

<sup>2</sup> *Id.* at 464.

<sup>3</sup> *Id.* at 378-392.

***Referral to the Court En Banc  
is not necessary***

To validate its claim that the case at bar ought to be referred to the Court *En Banc*, Philamlife cites Bar Matter No. 209, which, in part, reads:

For said purposes, the following are considered *en banc* cases:

1. Cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, or presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;

x x x x

4. Cases raising novel questions of law;

x x x x

10. All other cases as the Court *En Banc* or by a majority of its actual membership may deem of sufficient importance to merit its attention.

According to Philamlife, the above-cited bar matter is applicable considering that the validity, constitutionality, application, and operation of Section 7(C.2.2) of BIR RR No. 06-08, in relation to Section 100 of the NIRC and RMC No. 25-11, have been questioned before the Court.<sup>4</sup>

The argument fails to persuade.

The principal issue raised in the Petition for Review<sup>5</sup> filed before the Court is **whether or not the Court of Appeals (CA) correctly dismissed petitioner's appeal from the ruling of the Secretary of Finance for lack of jurisdiction**, which the divisions of the Court are competent and capable enough to resolve. There is, therefore, no reasonable necessity to refer the case to the Court *En Banc*.

***The Court can properly rule  
on the applicability of Sec.  
7(C.2.2) of BIR RR No. 06-08,  
in relation to Section 100 of  
the NIRC, on the transaction  
involved***

Philamlife next postulates that it was improper for the Court to have ruled in the following wise:

***The price difference is  
subject to donor's tax***

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<sup>4</sup> Id. at 411.

<sup>5</sup> Id. at 3.

Petitioner's substantive arguments are unavailing. The absence of donative intent, if that be the case, does not exempt the sales of stock transaction from donor's tax since Sec. 100 of the NIRC categorically states that the amount by which the fair market value of the property exceeded the value of the consideration shall be **deemed** a gift. Thus, even if there is no actual donation, the difference in price is considered a donation by fiction of law.

Moreover, Sec. 7(c.2.2) of RR 06-08 does not alter Sec. 100 of the NIRC but merely sets the parameters for determining the "fair market value" of a sale of stocks. Such issuance was made pursuant to the Commissioner's power to interpret tax laws and to promulgate rules and regulations for their implementation.

Lastly, petitioner is mistaken in stating that RMC 25-11, having been issued after the sale, was being applied retroactively in contravention to Sec. 246 of the NIRC. Instead, it merely called for the strict application of Sec. 100, which was already in force the moment the NIRC was enacted.

It is petitioner-movant's contention that this discussion is mere *obiter dictum* since it did not, allegedly, raise substantive arguments—that the only issue the Court was asked to resolve was the propriety of filing a petition for review with the Court of Appeals.

The argument is specious.

Petitioner-movant's allegation that the Court's elucidation is mere *obiter dictum*, having pontificated on an issue not expressly raised in the Petition for Review, is incorrect. Although the question on the applicability of Sec. 7(C.2.2) of BIR RR No. 06-08 in relation to Section 100 of the NIRC was not expressly raised in the Petition for Review filed before the Court, We are, nevertheless, not precluded from resolving the same since it was, in the first place, the main argument raised before the CA. To be clear, **while the main issue raised in the Petition for Certiorari is on the jurisdiction of the CA, the case advanced in the CA included arguments on the assailed revenue regulation's applicability.** On this point, a perusal of Philamlife's Petition for Review<sup>6</sup> filed before the CA would reveal that it assigned the following errors in its appeal:<sup>7</sup>

#### IV. ASSIGNMENT OF ERRORS

##### A.

**The Honorable Secretary of Finance gravely erred in not finding that the application of Section 7(c.2.2) of RR 06-08 in the Assailed Ruling and RMC 25-11 is void insofar as it alters the meaning and scope of Section 100 of the Tax Code.**

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<sup>6</sup> Id. at 64.

<sup>7</sup> Id. at 72.

## B.

**The Honorable Secretary of Finance gravely erred in finding that Section 100 of the Tax Code is applicable to the sale of the Sale Shares.**

## 1.

The Sale Shares were sold at their fair market value and for fair and full consideration in money's worth.

## 2.

The sale of the Sale Shares is a bona fide business transaction without any donative intent and is therefore beyond the ambit of Section 100 of the Tax Code.

## 3.

It is superfluous for the BIR to require an express provision for the exemption of the sale of the Sale Shares from donor's tax since Section 100 of the Tax Code does not explicitly subject transaction to donor's tax.

## C.

The Honorable Secretary of Finance grave [sic] erred in failing to find that in the absence of any of the grounds mentioned in Section 246 of the Tax Code, rules and regulations, rulings or circulars – such as RMC 25-11 – cannot be given retroactive application to the prejudice of Philamlife.

Moreover, the discussion in the assailed Decision explaining that the price difference shall be subject to donor's tax is but a necessary consequence of the CA's dismissal, and eventual finality, of the challenge against the RR 06-08's validity. Simply put, Sec. 7(C.2.2) of RR 06-08, until now, remains in force and effect. Therefore, the amount, if any, by which the fair market value of the shares sold, based on the definition of "fair market value" in the assailed revenue regulation, exceeded the value of the consideration in the transaction being taxed, shall be deemed a gift and subject to donor's tax. As applied in this case, the fact that the shares were subjected to a competitive bidding did not make it any less of a sales transaction that could properly attract donor's tax liability if sold below fair market value, as defined by Sec. 7(C.2.2) of RR 06-08.

***The case need not be referred to the CTA for reception of evidence***

Lastly, it bears stressing that even though the Court has ruled that the amount the fair market value of the shares sold exceeded the transaction is subject to donor's tax, the Court, nevertheless, refrained from ascertaining the exact amount of Philamlife's tax liability. We agree that it is not the office of the Court, at this juncture, to determine the same as it is a function

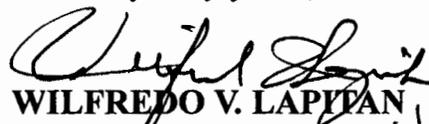
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best left to the BIR through its issuance of assessment notices. Should the BIR find in its assessment that the sales transaction is taxable, this would be without prejudice to Philamlife's right to avail of its legal remedies, including, but not limited to, questioning the amount due in the proper forum, assailing the validity of the assessment notices on grounds other than the alleged nullity of the issuances challenged herein, or entering into a compromise agreement with the BIR.

**WHEREFORE**, premises considered, the Omnibus Motion is hereby **DENIED** for lack of merit. (**Jardeleza, J.**, no part, due to his prior action as Solicitor General; **Mendoza, J.**, designated Additional Member in lieu of Leonen, J., per Special Order No. 2058 dated June 10, 2015)

**SO ORDERED."**

Very truly yours,

  
**WILFREDO V. LAPITAN**  
Division Clerk of Court 7/14/15

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