

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

**SPS. HORDON H. EVONO and
MARIBEL C. EVONO,**
Petitioners,

C.T.A. CASE NO. 7573

- versus -

Members:

**ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.**

**DEPARTMENT OF FINANCE,
COMMISSIONER OF INTERNAL
REVENUE and THE REPUBLIC OF
THE PHILIPPINES,**
Respondents.

Promulgated:

JUN 03 2010, 3:37 pm

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DECISION

CASANOVA, J.:

Before this Court is an *Appeal and Petition for Review* praying that judgment be rendered ordering respondents as follows:

"a. To void and cancel the assessment of a Donors Tax for the properties purchased in this matter;

b. To refund the petitioner the amount of P336,074.00 for the taxes paid with interest (20-25%) including the penalties assessed at the dollar/peso rate on June 20, 2005 from the date paid to the date refunded;

c. To reimbursement (sic) to petitioner of all expenses incurred in their attempts to resolve the matters presented in this action, including Court cost, filing fees document copying, service fees, lodging and transportation; 

- d. To pay Compensatory damages in the sum of P100,000 for the mental anguish, pain and suffering experienced by petitioner;
- e. To pay petitioner P150,000 due to respondent's unlawful arbitrary and capricious acts;
- f. Attorney fees if one of record;
- g. Petitioner's pray for such other relief as may be deemed fair and reasonable under the premises."¹

On March 12, 2001, petitioner-MARIBEL C. EVONO acting in her own capacity and in behalf of her minor children, Mariangeli, Hordon Herberto II and Hordon Herberto III, all surnamed Evono, and a certain Vicenta F. Diores, married to Luis V. Diores (SPS. DIORES) executed a "*Deed of Conditional Sale*" involving a parcel of land located in Barrio Gon-ob, Lapu-lapu City covered by TCT No. 3085 for a consideration of PhP4,117,500.00.²

On February 19, 2003, petitioner-MARIBEL C. EVONO and Spouses Olympio Credo and Clara Credo (SPS. CREDO) executed a "*Deed of Absolute Sale*" wherein the latter sold to the former two parcels of lands with areas of 328 square meters and 350 square meters, respectively, covered by TCT No. 18185 and TCT No. 3085, for a consideration of ₱1,356,000.00.³

On April 16, 2004, MARIBEL C. EVONO and SPS. DIORES executed a "*Deed of Absolute Sale.*" In said Deed, SPS. DIORES sold, ceded, transferred and conveyed to MARIBEL C. EVONO the same parcel of land located in Barrio Gun-ob, Lapu-lapu City covered by TCT No. 3085 for a consideration of PhP4,117,500.00.⁴

On May 27, 2004 and July 12, 2004, then Revenue Officer Ramer D. Narvaez of BIR, RR No. 13, RDO 80 - Mandaue City issued Certificates of Authority to Register (CARs) Nos. 00234066 and 00234306, in the name of MARIBEL C. EVONO.⁵



¹ Docket, p. 8.

² Exhibits "A-4" to "A-7."

³ Exhibit "A-11" and "A-12."

⁴ Exhibit "A-8."

⁵ Exhibits "C-2" and "C-3."

On September 11, 2004, Ms. CLARA CREDO executed an *"Amendment to Deed of Absolute Sale (to coincide the same with the Deed of Conditional Sale)"* wherein she acknowledged having received the amount of PhP1,356,000.00 as full payment after she sold parcels of land covered by TCT Nos. 3085 and 18185.⁶

On September 14, 2004, SPS. DIORES executed an *"Amendment to Deed of Absolute Sale (to co[in]cide the same with the Deed of Conditional Sale)"* wherein they acknowledged having received the amount of ₱4,117,500.00 as full payment after they sold parcels of land covered by TCT Nos. 3085 and 18185⁷ to MARIBEL C. EVONO, in behalf of her minor legitimate children, namely: Mariangeli C. Evono, Hordon Herberto C. Evono II, and Hordon Herberto C. Evono III.

On September 15, 2004, MARIBEL C. EVONO wrote Revenue District Officer Ramer D. Narvaez of BIR Cebu, requesting that the names of her children be added in the CARs so that their names be affixed in the titles of the property they bought.⁸

On September 24, 2004, MARIBEL C. EVONO wrote the BIR Cebu a "Letter of Ratification" stating that she was submitting a certified true copy of the original Conditional Deed of Sale so that "the properties be Titled in the names of Maribel C. Evono; Mariangeli C. Evono, Hordon H. Evono II, and Hordon H. Evono III."⁹

On June 3, 2005, MARIBEL C. EVONO received a Computation of Donor's Tax, which reads:¹⁰

I. Property purchased from Clara C. Credo & Olympio Credo:

Date of Donation: February 19, 2003 (date of execution of absolute sale)

<u>Kind</u>	<u>Area (sq.m.)</u>	<u>Location</u>	<u>OCT/TCT</u>	<u>Tax Dec. No.</u>	<u>Market Value</u>	<u>Selling Price</u>
Land	350	Gun-ob, Lapu-lapu City	3085	03999	280,000.00	
Land	328	Gun-ob, Lapu-lapu City	18185	04664	262,400.00	
					<u>₱ 542,400.00</u>	<u>₱ 1,356,000.00</u>
VALUE of the Donation (3/4 of the value of the property)						<u>₱ 1,017,000.00</u>

⁶ Exhibit "A-13" and "A-14."

⁷ Exhibits "A-9" to "A-10."

⁸ Exhibit "A-2."

⁹ Exhibit "A-18."

¹⁰ Exhibit "B."

	Husband	Wife	
Value of Donation/spouse	₱ 508,500.00	₱ 508,500.00	1,017,000.00
Donor's Tax	14,510.00	14,510.00	
Add: 25% Surcharge (Sec. 248 (A) NIRC)	3,627.50	3,627.50	
20% Interest (3/19/03 to 06/19/05) - Sec. 249 (B) NIRC	6,529.50	6,529.50	
Compromise Penalty (RMO 1-90)	3,000.00	3,000.00	
	13,157.00	13,157.00	
TOTAL AMOUNT DUE & PAYABLE	27,667.00	27,667.00	₱ 55,334.00

II. Property purchased from Atty. Diore & Vicenta Diore:
Date of Donation: April 23, 2004 (date of execution of absolute sale)

Kind	Area (sq.m.)	Location	OCT/TCT	Tax Dec. No.	Market Value	Selling Price
Land	7,885	Gun-ob, Lapu-lapu City	3085	03999	4,533,875.00	
Land	103	Gun-ob, Lapu-lapu City	18185	04664	59,225.00	
					₱ 4,593,100.00	₱ 4,117,500.00
VALUE of the Donation (3/4 of the value of the property)						₱ 3,088,125.00

	Husband	Wife	
Value of Donation/spouse	1,544,062.50	1,544,062.50	3,088,125.00
Donor's Tax	87,525.00	87,525.00	
Add: 25% Surcharge (Sec. 248 (A) NIRC)	21,881.25	21,881.25	
20% Interest (5/23/04 to 06/19/05) - Sec. 249 (B) NIRC	18,963.75	18,963.75	
Compromise Penalty (RMO 1-90)	12,000.00	12,000.00	
	52,845.00	52,845.00	
TOTAL AMOUNT DUE & PAYABLE	140,370.00	140,370.00	280,740.00

GRAND TOTAL (Three Hundred Thirty Six Thousand Seventy Four Pesos) ₱ 336,074.00

On June 20, 2005, petitioners-SPS. HORDON H. EVONO and MARIBEL C. EVONO (SPS. EVONO) paid the Donor's Tax in the amount of Php55,334.00 and Php280,740.00 under protest, and surrendered the original CAR Nos. 00234252 and 00234306 for cancellation.¹¹

On July 18, 2005, Revenue District Officer Ramer D. Narvaez of the BIR, Revenue District No. 81, Cebu City – North, informed the SPS. EVONO that CAR Nos. 00234252 and 00234306 have been amended by including the names of the latter's three minor children. Further, the Office of the Revenue District Officer has considered the transactions completed, closed and terminated since the CARs had been issued.¹²

¹¹ Exhibits "C," "C-2," "C-4," "C-5," and "D-2."

¹² Exhibit "D."

On August 9, 2005, SPS. EVONO wrote respondent-Commissioner of Internal Revenue (CIR) to rescind the assessment for Donor's Tax.¹³ As a follow up, petitioner-HORDON H. EVONO wrote respondent a letter dated December 12, 2006, regarding their previous request and informed the latter that petitioners intend to file an action in the appropriate court if the request remained unacted upon.¹⁴

On February 13, 2007, SPS. EVONO filed this "*Appeal and Petition for Review*" via LBC.

Respondent-CIR filed his Answer on March 23, 2007.

Petitioners filed their "*Reply*" to respondent's "*Answer*" on April 10, 2007 via LBC.

After Pre-Trial Conference was terminated, trial proceeded. Petitioners presented Hordon H. Evono as lone witness and various documentary evidence. After petitioners rested their case, respondent Commissioner, through counsel, manifested during the March 24, 2009 hearing that he will not present evidence.

Upon submission of the parties' respective "*Memorandum*," the above-captioned case was deemed submitted for decision on June 9, 2009.¹⁵

The issue submitted for this Court's resolution is whether the inclusion of petitioners' minor children in the CAR is subject to Donor's Tax under Section 98 of the National Internal Revenue Code of 1997 (Tax Code).¹⁶

Among the issues raised by the SPS. EVONO in their *Appeal, Pre-Trial Brief and Memorandum*, is whether respondent correctly assessed petitioners of Donor's Tax on the transfer of subject properties, which was paid under protest.

In disposing the present *Appeal*, this Court must take into consideration various contracts executed which were presented as evidence, apply the prevailing statutes and applicable jurisprudence, aside from the arguments raised by the parties.

Donor's Tax is defined as a "a tax on the privilege of transmitting one's property or property rights to another or others without adequate and full valuable consideration."¹⁷ 

¹³ Exhibits "E" to "E-5."

¹⁴ Exhibits "H" to "H-3."

¹⁵ Docket, p. 452.

¹⁶ Statement of Issue; docket, p. 207.

Section 98 of the National Internal Revenue Code of 1997 ("Tax Code") imposes tax upon transfer of property by gift. It reads:

"SEC. 98. *Imposition of Tax.* -

(A) There shall be levied, assessed, collected and paid upon the transfer by any person, resident or nonresident, of the property by gift, a tax, computed as provided in Section 99.

(B) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible."

In relation to the above-quoted section, Section 104 of the same Code defined *gift* as follows:

"SEC. 104. *Definitions.* - For purposes of this Title, the terms 'gross estate' and 'gifts' include real and personal property, whether tangible or intangible, or mixed, wherever situated: xxx."

The purposes in imposing Donor's Tax are to: (a) raise revenues; (b) tax the wealthy and reduce certain other excise taxes; (c) discourage *inter vivos* transfers of property which could reduce the *mortis causa* transfers on which a higher tax, the estate tax, would be collected; (d) reduce the incentive to make gifts in order that distribution of future income from the donated property may be to a number of persons with the result that the taxes imposed by the higher brackets of the income are avoided.¹⁷

***Sale of Property Between
Petitioners and Spouses Diores***

In this sale, this Court cannot presume that MARIBEL C. EVONO had donative intent and does not agree with respondent Commissioner in imposing Donor's Tax. 

¹⁷ *Commissioner of Internal Revenue vs. B.F. Goodrich Phils., Inc. (now Sime Darby International Tire Co., Inc.) and the Court of Appeals* (G.R. No. 104171. February 24, 1999).

¹⁸ Domondon, *Bar Reviewer in Taxation*, vol. 1, 7th ed., p. 902.

Based from the documentary evidence presented, MARIBEL C. EVONO bought the parcel of land for herself and in behalf of her children. It was erroneous for respondent Commissioner to disregard the "*Deed of Conditional Sale*" and only consider the "*Deed of Absolute Sale*" for the imposition of Donor's Tax.

This Court notes that there was a "*Deed of Conditional Sale*" between MARIBEL C. EVONO and a certain Vicenta F. Diores. Said *Deed* states that MARIBEL C. EVONO was acting in her own behalf and in behalf of her minor legitimate children (namely: Mariangell C. Evono, Hordon Herbert C. Evono II and Hordon Herbert C. Evono III); and that they were the buyers of a certain parcel of land owned by Vicenta F. Diores.

While the "*Deed of Absolute Sale*" named only petitioner Maribel C. Evono as the buyer, the execution of the "*Amendment To Deed of Absolute Sale*" acknowledging petitioner Maribel C. Evono and her three children as buyers merely corrected the omission.

***Sale of Property Between
Petitioners and Spouses Credo***

As regards the sale of property between MARIBEL C. EVONO and SPS. CREDO, there was no evidence to establish that petitioner-Maribel C. Evono purchased the subject parcels of land for herself and in behalf of her children.

It took more than a year to realize that there was alleged omission of the names of petitioners' children as buyers in the "*Deed of Absolute Sale*" before the SPS. CREDO executed the "*Amendment to Deed of Absolute Sale (to coincide the same with the Deed of Conditional Sale).*"

In fact, said amendment is a misnomer as there was no "Deed of Conditional Sale" presented before this Court as proof that petitioners and their children bought the two parcels of land from SPS. CREDO.

As petitioners intend their children to be co-owners of the two parcels of land and put the latter's names in the title, it is correct for respondent Commissioner to impose Donor's tax as there is clearly *animus donandi* on the part of petitioners. 

In determining whether there was intention to donate, the Supreme Court ruled in *Abello, et al. vs. Commissioner of Internal Revenue and Court of Appeals*¹⁹ that: "xxx donative intent is a creature of the mind". It cannot be perceived except by the material and tangible acts which manifest its presence. This being the case, donative intent is presumed present when one gives a part of ones patrimony to another without consideration. Second, donative intent is not negated when the person donating has other intentions, motives or purposes which do not contradict donative intent."

It must be emphasized that what was being taxed is the transfer of property by gift, and not the monies which petitioner Hordon H. Evono gave to his children. One of the basic principles in taxation is that the power of taxation is limited to persons, property or business within its jurisdiction; or, simply put, to subject within its jurisdiction or over which it can exercise dominion.²⁰ Thus, as the subject of taxation over the instant case is the transfer of properties found in the Philippines, the Philippine Government has the authority to impose transfer tax or, more specifically, Donor's Tax.

The evidence presented showing that petitioners' children have their own savings account and received monies have no probative value. The "*Deed of Absolute Sale*" and the "*Amendment to the Deed of Absolute Sale*" were executed years before petitioners' children received monies alleged to have been used to purchase the subject properties.

***Petitioners' Appeal Has
Prescribed***

In a Letter dated July 18, 2005, RDO Ramer D. Narvaez advised petitioners to forward their protest to respondent-CIR as the Office of Revenue District Officer has considered the transactions completed, closed and terminated as the CARs were already issued.



¹⁹ G.R. No. 120721, February 23, 2005.

²⁰ Aban, *Law of Basic Taxation in the Philippines*, rev. ed., p. 57.

Petitioners wrote respondent-CIR on August 9, 2005 requesting for the rescission of the assessment for Donor's Tax and for the "reimbursement" of taxes paid, plus interest and penalties.

As protest has been filed, Section 228 of the Tax Code applies, which states:

"SEC. 228. *Protesting of Assessment.* - xxx

"xxx.

"If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Petitioners made several follows-up through letters and visits in the main office of the respondent Commissioner and knew that their requests for immediate resolution of their request remained unacted upon.

Petitioners filed their "*Appeal and Petition for Review*" only on February 12, 2007, or more than one year, beyond the period provided in the above-quoted Section.

Failure to comply with the 30-day statutory period would bar appeal and deprive this Court of jurisdiction to entertain and determine the correctness of the assessment.²¹

WHEREFORE, premises considered, the "*Appeal and Petition for Review*" is hereby **DENIED** for petitioners' failure to comply with the statutory period provided under Section 228 of the National Internal Revenue Code of 1997.

SO ORDERED.



CAESAR A. CASANOVA
Associate Justice

²¹ *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue* (G.R. No. 168498, June 16, 2006).

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice