REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE VETERANS BANK, Petitioner,	**C.T.A. CASE NO. 6950**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 01 2009 4:30 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed by Philippine Veterans Bank pursuant to Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282[1], seeking the review and reversal of the denial of its protest by respondent Commissioner of Internal Revenue.

Philippine Veterans Bank (Petitioner) is a commercial banking institution organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at PVB Building, 101 V.A. Rufino cor. Dela Rosa Sts., Legaspi Village, Makati City.[2]

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[1] As further amended by Republic Act No. 9503.
[2] Par. 1, Joint Stipulation of Facts, docket, p. 104-a.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), the government agency charged with the assessment and collection of all national internal revenue taxes, fees, and charges, as well as the enforcement of all forfeitures, penalties, and fines connected therewith. He holds office at the 4th Floor, BIR Building, Agham Road, Diliman, Quezon City.

On August 8, 2001, Hon. Rene G. Bañez, then Commissioner of Internal Revenue, through Hon. Virginia L. Trinidad, BIR Assistant Commissioner for Large Taxpayer Service, sent to petitioner a Formal Letter of Demand[3] and Assessment Notice No. DST-97-000017[4], demanding from the latter the payment of deficiency documentary stamp tax (DST) in the total amount of P73,955,391.94, the details of which are as follows:

Assessment No. DST-97-000017	
Documentary Stamp Tax	**1997**
Special Savings Deposit	P 37,144,688.40
Stock Dividends	5,324,975.00
Basic Documentary Stamp Tax Due	42,469,663.40
Interest	31,485,728.54
TOTAL	**P 73,955,391.94**

In reply, Ricardo A. Balbido, Jr., President and CEO of petitioner, wrote to Commissioner Bañez on September 19, 2001, requesting that the enforcement of the Formal Letter of Demand be held in abeyance until the matter is finally resolved, since the issue involved is an industry issue.[5] Jr

[3] Annex "B", Petition for Review.
[4] Annex "C", Petition for Review.
[5] Annex "D", Petition for Review.

Another letter[6], dated September 28, 2001, was sent by petitioner to formally protest the said assessment anchored on the following grounds:

> "***Special Savings Deposit*** – This is an industry issue which has not been resolve. It was always been the stand of the banking industry that this is not subject to Documentary Stamp Tax as it is not a fixed term deposit since it is withdrawable anytime just like the regular savings account.
>
> ***Stock Dividend*** – The stock certificate has not yet issued nor delivered to the stockholders. We conclude that the Documentary Stamp Tax liability accrue at the time certificate are issued."

On March 17, 2004, petitioner received a copy of the assailed decision[7] of respondent, captioned as "In the Matter of the Protest of Philippine Veterans Bank against Assessment Notice No. DST-97-000017 Demanding Payment of the Amount of P73,955,391.94 as Deficiency Documentary Stamp Tax for Taxable Year 1997", denying the protest and the request for deferment of payment.

Hence, this "Petition for Review with Prayer for Suspension of Collection" filed on April 16, 2004.

In his Answer[8] filed on June 21, 2004, respondent raised the following Special and Affirmative Defenses:

> "3. Petitioner's Special Savings Accounts (SSA) are considered certificates of deposits that are subject to documentary stamp tax (DST) under Section 180 of the National Internal Revenue Code of 1977.
>
> 4. In interpreting the provisions of Section 180 of the NIRC, the Court of Appeals, in the case of **BPI-Family Bank vs. CIR & CTA, CA-G.R. Sp. No. 29853**, September 19, 1994, held: JL

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[6] Annex "E", Petition for Review.
[7] Annex "A", Petition for Review.
[8] Docket, pp. 74-80.

> 'A perusal of Section 180 of the tax Code will show that it covers the following instruments: (1) promissory note, whether negotiable or not; (2) bills of exchange; (3) drafts; (4) certificates of deposit; and (5) debt instrument used for deposit substitute.'

5. The Court of Appeals, further, defined a ***'certificate of deposit'*** as a written acknowledgment by a bank of the receipt of money on deposit which the bank promises to pay the depositor, bearer or to some other person or order (Olsons Estate, Iowa, 706, 219, N.W. 40, cited in Agbayani, op. cit. p.441).

6. The 'certificate of deposit' stated on Section 180 of the NIRC does not prescribe any particular form, nor does it qualify. It may be **any** 'written acknowledgment by a bank of the receipt of money on deposit'. The fact that SSA's are evidenced by regular savings account passbooks and not by a certificate of deposit is of no moment. What is important and controlling is the nature or meaning conveyed by the document and not the particular label or nomenclature attached to it, inasmuch as its substance is paramount than its form. Thus, in the case of L.R. Heat Treating Co., 28TC874, the Court laid down this dictum:

> 'We have held that it matters little what a transaction is termed, as the facts control and not the terminology x x x it is well established principle of law that the name by which an instrument or transaction is denominated is not controlling in determining its true character.'

7. As to the allegation that SSA's are exempt from DST because they are payable at sight or demand, this is a clear misapprehension of the law.

   Section 180 of the NIRC of 1977, as amended specifically provides:

> **'SEC. 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 loan agreements 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 and securities issued by the government or any of its instrumentalities, or **certificates of deposits drawing interest**, *or* **orders for the payment of any sum of money otherwise than at sight or on demand,** xxx' (Underscoring supplied)

Clearly, under the above provision, the phrase 'otherwise than at sight or demand', does not refer to a 'certificate of deposit bearing interest'. It refers to 'orders for the payment of any sum of money'.

8. In the case of **United Overseas bank Philippines vs. Commissioner of Internal Revenue, CTA case No. 6411**, this Honorable Court ruled, thus:

"At this point, we find it noteworthy to discuss the nature of a documentary stamp tax. In the case of **Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, CTA case No. 6149,** promulgated on March 5, 2003, this court citing the case of **Philippine Home Assurance Corporation et al. vs. Court of Tax Appeals, SP-32531, April 27, 1994 which was later on affirmed by the Supreme Court in the case of Philippine Home Assurance Corporation vs. the Honorable Commissioner of Internal Revenue, G.R. No. 4208-4211, January 21, 1999,** held thus:

'The respondent Court correctly characterized a documentary stamp tax as in the nature of an excise tax. As such, it is imposed on the privilege of conducting a particular business or transaction and not on the business or transaction itself. x x x This means then that the documentary stamp tax accrues when the privilege is exercised. As the respondent Court stated, while it is true that a documentary stamp tax is levied on the document and not on the property, which it described, the documentary stamp tax is not intended to be a tax on the document alone. The law taxes the document because of the transaction so that the tax becomes due and payable at the time the transaction is had or accomplished, in this case, at the time of the issuance of the document.'

xxx xxx xxx

Documentary stamp tax is a privilege tax because it is really imposed on the privilege to enter into a transaction rather on the document. The law taxes the document because of the transaction *(Hector S. De Leon, comprehensive Review of Taxation, 2000 edition, p. 381)*. What is being taxes here in the privilege of the petitioner to enter into such a transaction.

'Certificate of deposit' is defined to be written acknowledgment by a bank of the receipt of a sum of money on deposit which it promises to pay to the depositor, to his order, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created. Certificate of deposit being a written instrument evidencing transaction between parties must be considered in the light of the same rules of law as other written instrument. **(Montgomery v. Smith, 145 So. 822,826,226 Ala. 91).**

Moreover, a certificate of deposit, like a deposit credited in a passbook, represents money actually left with the bank for safekeeping, which are to be retained until the depositor demands them **(Bank of Commerce v. Harisson, N.M., 66 P 460, 461).** And it is generally made negotiable. **(Reed vs. Board of Education, 39, Ohio, St. 635, 638)** *(Words and Phrases, Permanent Edition, p. 432)*.

We do not agree with petitioner's argument that the bank's Special Savings Account is not subject to documentary stamp tax considering that it is not a time deposit and is not evidenced by a certificate of deposit. In determining whether a certain instrument is subject to documentary stamp tax, substance would control over the form and labels x x x **(Knudsa Creamery Co. of California vs. US, 121 F. Suppl. 860, 26 U.S. C.A. 1800, 1801).** The court agrees with the findings of the respondent that the nature of the Special Savings Deposit and Time deposits are akin to each other in such a way that the bank acknowledges the receipt of a sum of money on deposit and which the bank promises to pay to the depositor, bearer or to the order of a bearer on a specified period of time. In both cases, the banks allows pretermination but the rate of interest is lowered than the agreed interest. The difference lies on the document issued to evidence the transaction. In Special Savings Account, the transaction is covered by a passbook, while in time deposit, it is through a certificate of deposit. *gc*

Considering that the transaction evidenced by the different documents are similar and that documentary stamp tax is an excise tax on the privilege to enter into a transaction, we find both the certificate of time deposit as well as the passbook evidence of such transaction in favor of the person whose name appears therein, subject to documentary stamp tax.

9. The fact that under R.A. 9243, transactions in the nature of SSAs expressly subject to DST, is not a valid argument that prior to the said law, SSAs were not subject to DST. The power to construe the law is essentially judicial. To declare what the law shall be is a legislative power, but to declare what the law is or has been is judicial (Foote v. Nickerson, 54 L.R.A. p. 554). The legislature cannot bind the courts to a particular construction of an existing law, unless the declaratory act amounts to prospective operation (Crawford, Statutory Construction, Sec. 180, p.300).

10. Petitioner is not exempt from the payment of DST on the original issue of shares of stock as well as increase in capitalization. Republic Act No. 3518, Charter of the Philippine Veterans Bank, does not contain any provision exempting the bank from payment of DST.

11. All presumptions are in favor of the correctness of tax assessments."

On July 28, 2008, petitioner filed a "Manifestation and Motion for Extension of Time to File Memorandum", praying for an extension of thirty (30) days from July 27, 2008 within which to file its Memorandum, while waiting for the Termination Letter to be issued by respondent. Petitioner allegedly availed of the Abatement Program extended by the BIR under Revenue Regulations Nos. 15-2006 and 15-2007 and paid the aggregate amount of P42,469,663.40 on January 24, 2007[9] and January 2, 2008[10], respectively.

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[9] Docket, p. 447.
[10] Docket, p. 450.

The instant petition was submitted for decision on September 29, 2008, taking into consideration respondent's Memorandum filed on September 15, 2008, sans petitioner's Memorandum and Termination Letter.

Hence, this Decision.

The parties submitted the following issues[11] for this Court's resolution:

> "1. Whether or not PVB's Special Savings Accounts are subject to documentary stamp tax under Section 180 of the 1997 Tax Code.
>
> 2. Whether or not petitioner is subject to DST on increase in capitalization.
>
> 3. Whether or not petitioner is liable for the amount of P73,955,391.94 representing deficiency documentary stamp taxes for taxable year 1997."

Whether or not petitioner's Special Savings Accounts are subject to documentary stamp tax under Section 180 of the 1977 Tax Code

Petitioner claims that its Special Savings Accounts (SSAs) are separate and distinct from time deposits; the latter is subject to documentary stamp tax, while the former is not, since it is payable on sight or demand just like any ordinary savings account. Petitioner relies on Section 180 of the NIRC of 1997, which provides:

> "**SEC. 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 and securities issued by the Government or any of

[11] Issues, Joint Stipulation of Facts, docket, p. 104-c.

> 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** xxx" *(Emphasis supplied)*

Petitioner further states that analysis of the afore-quoted provision would show that the enumerated commercial papers are subject to DST except those payable on sight or demand. Hence, the ordinary savings account evidenced by a passbook issued by petitioner is not subject to DST as the same is payable on sight or demand.

Petitioner goes on by saying that a passbook bearer can withdraw some or all of his deposit at anytime. It asserts that the same is true with SSA which is also evidenced by a passbook. The depositor can likewise withdraw any or all of his deposit anytime by simply presenting the passbook. The only reason why it is called "special" is because the amount of the deposit runs into millions of pesos, and has a special rate of interest. Petitioner submits that its SSA is still unquestionably payable on sight or demand.

Petitioner also presented a comparison[12] of the differences between a Certificate of Deposit and an SSA, to wit:

Certificate of Deposit	**SSA**
1. Account or deposit posted in only one (1) instrument, called the Certificate of Time Deposit.	1. Account or deposit is posted in a passbook with many pages.
2. No additional deposit can be posted on the same Certificate.	2. Allows posting of additional or multiple deposits.
3. No partial withdrawal is allowed.	3. Partial or multiple withdrawals are allowed.
4. Account has a fixed maturity.	4. Account has no fixed maturity, hence, multiple deposits and withdrawals are allowed at anytime.
5. Can be negotiated or assigned.	5. Cannot be negotiated or assigned.
6. Pre-termination allowed under certain rules and regulations of the BSP.	6. No such thing as pre-termination.

[12] Petition for Review, docket, p. 8.

Meanwhile, respondent claims that Section 180 of the NIRC subjects the following to DST:

1. bonds;
2. loan agreements;
3. promissory notes;
4. bills of exchange;
5. drafts;
6. instruments and securities issued by the government;
7. deposit substitute debt instruments;
8. certificates of deposits drawing interest; and
9. orders for the payment of any sum of money other than at sight or demand.

Respondent contends that it is beyond doubt that what is being taxed in the afore-mentioned provision is not just a time deposit but a certificate of deposit. A "certificate of deposit", as defined by this Court in *BPI Family Bank vs. Commissioner of Internal Revenue*[13], is a written acknowledgment by a bank of the receipt of money on deposit which the bank promises to pay to the depositor, bearer or to some other person or order.

Respondent further explains that from the said definition, it can be inferred that a certificate of deposit presupposes the following: (1) that a bank receives money on deposit; (2) from someone who is called a "depositor"; (3) that the bank acknowledges the receipt in writing; and (4) that the bank promises to pay to the depositor/bearer/or to some other person or order the deposit or any part thereof.

Respondent avers that petitioner's SSA meets all the said elements; thus, it is a certificate of deposit which is subject to DST.

Respondent's contentions are correct.

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[13] CTA Case No. 4256, August 7, 1992.

At this juncture, it must be pointed out that the applicable provision in the present case is Section 180 the NIRC of 1977[14]. In the said law, there is a provision on certificate of deposit drawing interest, which is the subject of the instant case. The same is true with the NIRC of 1997. A comparison of the coverage of Section 180 of the Tax Code of 1977 and the NIRC of 1997 is as follows:

1977 Tax Code	NIRC of 1997
Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, **certificates of deposit bearing interest** and others not payable on sight or demand	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

From the foregoing, it can be ascertained that both the NIRC of 1977 and 1997 cover certificates of deposits bearing interest, which is the subject of the instant petition. Notwithstanding their similarities, the NIRC of 1977 will be applied for purposes of resolving the issues of this case, and not Section 180 ge

[14] Section 180. *Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit 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 and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any of sum of money otherwise than at sight or on demand, or 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 (P0.30) on each two hundred pesos, 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 (P250,000) 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. *(As amended by R.A. 7660).*

of the NIRC of 1997 as stipulated by the parties in the Joint Stipulation of Facts.[15]

The deciding issue now is whether petitioner's SSA is a "certificate of deposits drawing interest" as contemplated in Section 180 of the NIRC of 1977. If they are, then the SSA is subject to DST. If not, then it is merely a regular savings account; hence, not subject to DST.

A "certificate of deposit" as defined by the Supreme Court in *Far East Bank and Trust Company vs. Querimit*[16], is "a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created."

The High Tribunal said in *Philippine Banking Corporation (Now: Global Business Bank, Inc.) vs. Commissioner of Internal Revenue*[17], that as listed in the *Bangko Sentral ng Pilipinas* Manual of Regulations for Banks, the deposit operations of the bank consist of the following:

1. Demand Deposits – are deposits subject to withdrawal either by check or through automated tellering machines which are otherwise known as current or checking accounts. The Bank may or may not pay interest on these accounts.

2. Savings Deposits – are interest-bearing deposits which are withdrawable either upon presentation of a properly accomplished withdrawal slip together with the corresponding passbook or thru the automated tellering machines.

[15] Docket, p. 104-c.
[16] G.R. No. 148582, January 16, 2002.
[17] G.R. No. 170574, January 30, 2009.

3. Negotiable Order of Withdrawal Accounts – are interest-bearing savings deposit which are withdrawable by means of Negotiable Orders of Withdrawal.

4. Time Deposits – are interest-bearing deposits with specific maturity dates and evidenced by certificates issued by the bank.

Moreover, the Supreme Court in the same case differentiated three of the four above-mentioned categories, to wit:

	Savings Account	**Time Deposit**	**SSDA**[18]
Interest rate	Regular savings interest	Higher interest rate	Higher interest rate
Period	None	Fixed Term	Fixed Term
Evidenced by:	Passbook	Certificate of Time Deposit	Passbook
Pre-termination	None	With penalty	With penalty
Holding Period	None	Yes	Yes
Withdrawal	Allowed	Withdrawal amounts to pre-termination	Allowed provided the minimum amount to earn the higher interest rate is maintained, otherwise, the regular savings interest rate will apply

Petitioner maintains that its SSA partakes the nature of a regular savings deposit account since it is evidenced by a passbook and allows withdrawal. Respondent counters that petitioner's SSA amounts to a certificate of deposit.

Perusal of the records reveals that in addition to the passbook and the allowance for withdrawal, the SSA deposits amount to millions and has a special rate of interest.

Petitioner's SSA has the distinct features of SSDA as seen in the afore-quoted table. Jc

[18] Similar to SSA.

Anent petitioner's argument that its SSAs cannot be construed as certificates of deposit subject to DST since they are evidenced by a passbook, this Court rules in the negative.

The Supreme Court squarely answered the same in *International Exchange Bank vs. Commissioner of Internal Revenue*[19], in this wise:

> "As correctly found by the CTA En Banc, a passbook representing an interest earning deposit account issued by a bank qualifies as a certificate of deposit drawing interest.
>
> A document to be deemed a certificate of deposit requires no specific form as long as there is some written memorandum that the bank accepted a deposit of a sum of money from a depositor. xxx."

Petitioner contends that the subsequent enactment of Republic Act (RA) No. 9243 or the "An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as amended, and for Other Purposes", specifically incorporated transactions in the nature of SSAs, which means that prior to the passage of the said law, SSAs are not subject to documentary stamp tax.

Petitioner's contention is wrong.

In *International Exchange Bank vs. Commissioner of Internal Revenue*[20], as cited in the *Philippine Banking Corporation case*[21], the Supreme Court held that the amendment to include "other evidences of deposits that are drawing interest significantly higher than the regular savings deposit" was intended to eliminate the ambiguity. The High Court explained:

> "If at all, the further amendment was intended to eliminate precisely the scheme used by banks of issuing passbooks to

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[19] G.R. No. 171266, April 4, 2007.
[20] *Supra,* footnote No. 18.
[21] *Supra*, footnote No. 15.

'cloak' its time deposits as regular savings deposits. This is reflected from the following exchanges between Mr. Miguel Andaya of the Bankers Association of the Philippines and Senator Ralph Recto, Senate Chairman of the Committee on Ways and Means, during the deliberations on Senate Bill No. 2518 which eventually became RA 9243:

> MR. MIGUEL ANDAYA (Bankers Association of the Philippines). Just to clarify. Savings deposit at the present is not subject to DST.
>
> THE CHAIRMAN. That's right.
>
> MR. ANDAYA. Time deposit is subject. I agree with you in principle that if we are going to encourage deposits, whether savings or time...
>
> THE CHAIRMAN. Uh-huh.
>
> MR. ANDAYA. ...it's questionable whether we should tax it with DST at all, even the question of imposing final withholding tax has been raised as an issue.
>
> THE CHAIRMAN. If I had it my way, I'll cut it by half.
>
> MR. ANDAYA. Yeah, but I guess concerning the constraint of government revenue, even the industry itself right now is not pushing in that direction, but in the long term, when most of us in this room are gone, we hope that DST will disappear from the face of this earth, no.
>
> Now, I think the move of the DOF to expand the coverage of or to add that phrase, 'Other evidence of indebtedness,' it just removed ambiguity. When we testified earlier in the House on this very same bill, we did not interpose any objections if only for the sake of avoiding further ambiguity in the implementation of DST on deposits. Because of what has happened so far is, we don't know whether the examiner is gonna come in and say, 'This savings deposit is not savings but it's time deposit.' So, I think what DOF has done is to eliminate any confusion. They said that a deposit that has a maturity...
>
> THE CHAIRMAN. Uh-huh.
>
> MR. ANDAYA. ...which is time, in effect, regardless of what form it takes should be subject to DST.

THE CHAIRMAN. Would you include savings deposit now?

MR. ANDAYA. So that if we cloaked a deposit as savings deposit but it has got a fixed maturity...

THE CHAIRMAN. Uh-huh.

MR. ANDAYA. ...that would fall under the purview. (Underscoring supplied)"

The afore-cited *Philippine Banking Corporation case* is a *stare decisis* of the instant case since the circumstances in the said case and the present case are similar. The Supreme Court defined *stare decisis* in its previous rulings, in the following manner:

> "(U)nder the doctrine of *stare decisis*, once a point of law has been established by the court, that point of law will, generally, be followed by the same court and by all courts of lower rank in subsequent cases where the same legal issue is raised. *Stare decisis* proceeds from the first principle of justice that, absent powerful countervailing considerations, like cases ought to be decided alike."[22]

Moreover, this Court, in a long line of cases[23], consistently held that a bank's product such as Special Savings Account is subject to DST. It must be underscored that the name by which an instrument or transaction is denominated is not controlling in determining its true character.[24]

From the foregoing, it is therefore clear that petitioner's SSA is a certificate of deposit, which is subject to DST under Section 180 of the Tax Code of 1977.

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[22] *Ayala Corporation vs. Rosa-Diana Realty Corporation*, G.R. No. 134284, December 1, 2000.

[23] *United Overseas Bank Philippines vs. Commissioner of Internal Revenue*, CTA EB No. 229, July 19, 2007; *China Banking Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 66, January 3, 2006; *ING Bank N.V. Manila Branch vs. Commissioner of Internal Revenue*, CTA EB No. 52, April 5, 2005; *Keppel Bank Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6560, June 23, 2004; *Traders Royal Bank vs. Commissioner of Internal Revenue*, CTA Case No. 6392, April 28, 2004.

[24] *Prudential Bank vs. Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue*, CTA Case No. 6198, February 16, 2005, citing *LR Heat Treating Co.*, 28 TC 874.

Whether or not petitioner is subject to DST on increase in capitalization

Petitioner alleges that its original shares of stocks are exempted from DST and other taxes considering that the same are fully subscribed to by the Government of the Republic of the Philippines. Petitioner anchors its claim on:

"REPUBLIC ACT No. 3518

AN ACT CREATING THE PHILIPPINE VETERANS' BANK, AND FOR OTHER PURPOSES.

xxx xxx xxx

Section 3. *Authorized capital stock Par value.*

(a) The capital stock of the Veterans shall be one hundred million pesos (P100,000,000.00) divided into five hundred ten thousand (510,000) common shares and four hundred ninety thousand (490,000) preferred shares with a par value of one hundred (P100.00) pesos each.

(b) At least fifty-one per cent (51%) of the capital stock of the Veterans Bank shall be divided into common shares which shall be fully subscribed by the government of the Republic of the Philippines for and in behalf of the veterans, their widows, orphans or compulsory heirs as defined and determined under Section 4, subsection (e) of this Act, and shall be initially paid from the Veterans Trust Fund provided for in Section 2, subsection (d) of Republic Act Numbered Seventeen hundred and eighty-nine as amended, and from or out of earnings, dividends, or profits from the operations of the Veterans Bank; and for the payment of said subscription, all the available cash deposits with the Philippine National Bank and/or any other banks to the credit of the Veterans Trust Fund shall be transferred immediately to the Veterans Bank: *Provided*, That after the approval of this Act and notwithstanding the provisions of any existing law and/or executive orders, rules and regulations to the contrary, every and all additional cash payments on account of the said Veterans' Trust Fund shall be remitted and paid directly and exclusively to the said Veterans' Bank to be applied as additional paid-up payments of the

> aforesaid common shares subscription: *Provided, further*, That nothing shall be transferred to, or received by, the said Veterans' Bank representing any portion of the proceeds of the aforesaid Veterans' Trust Fund except cash payments only of the peso equivalent thereof at the prevailing rate of exchange: And *provided, finally*, That within five years from the organization of the Bank all shares of stock equivalent to fifty-one per cent subscription of the capital stock held by the government of the Republic of the Philippines for and in behalf of the veterans, their widows, orphans or compulsory heirs shall be transferred to and in the name of the veterans who shall thereafter vote said common shares. The shares shall be divided equally among the veterans at the rate of one share of one hundred pesos for each veteran or fraction thereof. The balance of about forty-nine (49%) per cent shall be divided into preferred shares which shall be opened for subscription by any recognized veteran, widow, orphans or compulsory heirs of said veteran at the rate of one (1) preferred share per veteran: *Provided*, That in case of failure of any particular veteran to subscribe for any preferred share of stock so offered to him as herein provided, within thirty (30) days from the date of receipt of notice, said share of stock shall be available for subscription to other veterans in accordance with such rules or regulations as may be promulgated by the Board of Directors. Any share of stock corresponding to the capital stock subscribed and paid by the Republic of the Philippines in the manner aforementioned, shall be issued in the name of the Republic of the Philippines, in trust for the benefit of veterans, their widows, orphans or compulsory heirs as determined in this Act, and any share of stock subscribed and paid by individual veteran shall be issued in the name of the individual veteran, his widow, orphan or compulsory heir. The sale or transfer of a share or stock of a veteran, widow, orphan or compulsory heir of a veteran to a party not a veteran, widow, orphan or compulsory heir of a veteran shall not be allowed under any circumstances. Any share may be sold or transferred to the Bank which shall issue the same to the stockholders who are veterans, their widows, orphans or compulsory heirs: *Provided*, That no veterans, widow, orphan or compulsory heir shall be issued a total of more than twenty shares."

Respondent, on the other hand, states that petitioner is not exempt from the payment of DST on the original issue of shares of stock as well as increase in capitalization, because its charter does not contain any provision exempting the bank from payment of DST. Je

Respondent is correct.

A tax exemption is regarded as in derogation of the sovereign authority, and should be construed in ***strictissimi juris*** against the person or entity claiming the exemption. The taxpayer who claims exemption must justify his claim by the clearest grant of organic or statute law and cannot be permitted to exist upon vague implications.[25]

A perusal of petitioner's charter reveals that there is no provision that grants exemption on the payment of DST on the original issue of shares of stock and increase in capitalization. *Ergo*, petitioner is subject to DST on increase of its capitalization.

Anent the issue on petitioner's tax abatement, which it supposedly availed under Revenue Regulations Nos. 15-2006 and 15-2007, this Court held in *East West Banking Corporation vs. Commissioner of Internal Revenue*[26] that the effect of compliance with the requirements of the Abatement Program must be evidenced by a Termination Letter as provided under Section 4 of Revenue Regulations No. 15-2006; the same Abatement Program availed of by petitioner. The pertinent portion of the said Section reads:

> "... **After payment of the basic tax, the assessment for penalties/surcharge and interest shall be cancelled by the concerned BIR Office** following existing rules and procedures. **Thereafter, the docket of the case shall be forwarded to the Office of the Commissioner**, thru the Deputy Commissioner for operations Group, **for issuance of Termination Letter**." *(Emphasis supplied)*

[25] *Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation and Court of Tax Appeals*, G.R. No. 66838, December 2, 1991.
[26] CTA Case No. 7090, September 10, 2008.

Records reveal that there was no Termination Letter submitted by petitioner. While the BIR may have accepted the payment of the settlement, the same act of the BIR does not constitute the Termination Letter contemplated by law. Therefore, petitioner has not complied with the requirements of the Abatement Program.

WHEREFORE, the instant Petition for Review with Prayer for the Suspension of Collection is hereby **DENIED** for lack of merit. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent Commissioner of Internal Revenue the total amount of P73,955,391.94, representing deficiency documentary stamp taxes on Special Savings Deposit and stock dividends for taxable year 1997, as contained in Assessment Notice No. DST-97-000017, detailed as follows:

Documentary Stamp Tax		**1997**
Special Savings Deposit	P	37,144,688.40
Stock Dividends		5,324,975.00
Basic Documentary Stamp Tax Due		42,469,663.40
Interest		31,485,728.54
TOTAL	**P**	**73,955,391.94**

In addition, petitioner is hereby **ORDERED TO PAY** twenty percent (20%) interest on the amount of P73,955,391.94, counted from April 17, 2004 until full payment thereof, pursuant to Section 249 of the Tax Code of 1977.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice