REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PRUDENTIAL BANK, Petitioner,	**C.T.A. E.B. NO. 100** **(C.T.A. CASE NO. 6198)**
	Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUL 3 1 2006 GrApolinario

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DECISION

UY, J.:

This is a petition for review before the Court of Tax Appeals *En Banc* filed on July 28, 2005 of the Decision promulgated on February 16, 2005 and the Resolution promulgated on June 15, 2005 rendered by the Second Division of this Court pursuant to Section 11 of Republic Act No. 9282, the respective dispositive portions of which read as follows:

> "**IN VIEW OF THE FOREGOING**, the petition for review is hereby DISMISSED for lack of merit. Petitioner is liable for deficiency documentary stamp tax on its special peso savings account deposit and savings account-plus for the taxable years 1996 and 1997, computed as follows:

1996	For Prudential Bank ST-DST-96-0079-2000	For Pilipinas Bank ST-96-0142-2000	Total

136

Total Special Peso Savings Deposit	P4,875,625,800.00	P5,609,962,000.00	P10,485,587,800.00
Tax Due-Sec. 180	P 7,313,438.70	P 8,414,943.00	P 15,728,381.70
Add:			
Surcharge	1,828,359.68	2,103,735.75	3,932,095.43
Interest	4,747,884.40	5,463,149.29	10,211,033.69
Amount Payable	P 13,889,682.78	P 15,981,828.04	P 29,871,510.82

1997	For Prudential Bank ST-DST-97-0143-2000	For Pilipinas Bank ST-96-0059-2000	Total
Total Special Peso Savings Deposit	P5,302,424,717.00	P6,597,754,000.00	P11,900,178,717.00
Tax Due-Sec. 180	P 7,953,637.08	P 9,896,631.00	P 17,850,268.08
Add:			
Surcharge	1,988,409.27	2,474,157.75	4,462,567.02
Interest	4,363,604.98	4,447,941.83	8,811,546.81
Amount Payable	P 14,305,651.32	P 16,818,730.58	P 31,124,381.90
Total Amount Payable	P 28,195,334.10	P 32,800,558.62	P 60,995,892.72

Accordingly, petitioner is **ORDERED to PAY** the respondent the total amount of P60,995,892.72 representing deficiency documentary stamp taxes for the taxable years 1996 and 1997, plus 20% interest counted from February 22, 2000 until full payment thereof pursuant to Section 249 of the 1997 National Internal Revenue Code.

SO ORDERED."[1]

"**WHEREFORE**, petitioner's motion for reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."[2]

THE FACTS

The antecedent facts are undisputed.

Petitioner is a banking corporation organized and existing under the laws of the Republic of the Philippines, with principal office at Prudential Bank Bldg. Ayala Ave., Makati City. Petitioner (as surviving corporation) merged with Pilipinas Bank (as absorbed corporation) on May 2, 2000 and duly approved by the Bangko Sentral ng Pilipinas.

[1] Decision, February 16, 2005, CTA Case No. 6198, pp. 16-17.
[2] Resolution, June 15, 2005, CTA Case No. 6198, p. 5.

On January 21, 2000, petitioner simultaneously received final assessment notices and formal demand letters, all dated December 28, 1999, for alleged non-payment of documentary stamp taxes (DST) on its special peso savings account deposit and savings account-plus, including surcharges, interests and penalties, computed as follows:

For Prudential Bank

ST-DST-96-0079-2000 for 1996

Total Special Peso Savings Deposits		P4,875,625,800.00
Tax Due (P4,875,625,800.00 x .30/200)(Sec. 180)		P 7,313,438.70
Add:		
Surcharge		1,828,359.68
Interest up to 3.31.2000		4,747,884.40
Compromise		25,000.00
TOTAL		**P 13,914,682.78**

ST-DST-97-0143-2000 for 1997

Total Special Peso Savings Deposits		P5,302,424,717.00
Tax Due (P4,875,625,800.00 x .30/200)(Sec. 180)		P 7,953,637.08
Add: Penalties		
Surcharge		1,988,409.27
Interest up to 3.31.2000		4,363,604.98
Compromise		25,000.00
TOTAL		**P 14,330,651.33**

For Pilipinas Bank

ST-DST-96-0142-2000 for 1996

Total Savings Account-Plus		P5,609,962,000.00
Tax Due (P5,609,962,000.00 x 30/200)(Sec. 180)		P 8,414,943.00
Add:		
Surcharge		2,103,735.75
Interest up to 3.31.2000	(.64922)	5,463,149.29
Compromise		25,000.00
TOTAL		**P 16,006,828.04**

ST-DST-97-0059-2000 for 1997

Total Savings Account-Plus		P6,597,754,000.00
Tax Due (P6,597,754,000.00 x .30/200)(Sec. 180)		P 9,896,631.00
Add:		
Surcharge		2,474,157.75
Interest up to 3.31.2000	(.44944)	4,447,941.83
Compromise		25,000.00
TOTAL		**P 16,843,730.58**

138

On February 3, 2000 and February 16, 2000, within the thirty-day period prescribed by Section 228 of the National Internal Revenue Code (NIRC) of 1997, petitioner administratively protested the above assessments.

In view of the respondent's inaction on petitioner's protest, the instant petition was filed on November 17, 2000. After trial on the merits, the Second Division of this Court rendered the assailed Decision on February 16, 2005. Thereafter, petitioner filed a Motion for Reconsideration of the said Decision on March 8, 2005 which was denied for lack of merit in the Resolution promulgated on June 15, 2005. Hence, the instant Petition for Review before the Court *En Banc* filed on July 28, 2005.

In support of its Petition for Review, petitioner submits the following arguments:

I. The savings account passbook issued by petitioner to evidence the savings account which earns a higher interest is not subject to DST under Section 180 of the Tax Code because a perusal of the provisions of said law shows that a savings account passbook is not among the documents listed therein as subject to DST;

II. Section 180 of the Tax Code covers certificates of deposit drawing interest and others not payable on sight or demand considering that by its very definition, this document pertains to the money market time deposit certificates commonly issued by banks to its depositors who lock in their funds for a definite period of time in exchange for higher market interest rates and this type of certificate is not and cannot be equated to include a passbook which evidences a different type of transaction, in this particular case, a savings account transaction;

III. Contrary to respondent's position, the savings account which petitioner offers at a higher interest is not a time deposit account because the features of the two accounts are not the same;

IV. DST is an imposition or tax on the document which facilitated the transaction. The presence of a transaction alone will not justify the imposition of DST in the absence of the document identified by law. And without a document issued, no taxable event arises even in the presence and consummation of the transaction which should have been documented;

V. The document must not only evidence the transaction the parties had but should also comply with the strict formal requirements of what the document should be for the DST to attach or must clearly fall under the enumeration of Section 180 of the Tax Code;.

VI. Congress had no intention to impose DST on Special Savings Account during the period assessed by the respondent because the legislature already declared that special savings account deposits are "not within the ambit of the law right now", thus the need to amend Section 180 of the Tax Code;.

VII. Respondent's assessment notices were arbitrarily issued and have no factual basis because during the trial on the merits, petitioner vigorously opposed the factual validity of the assessment stating that its special savings account and regular savings account are not recorded separately showing, among others, that there is no separate treatment of Special Savings Accounts;

VIII. The assessments had already prescribed considering that the Assessment Notices/ Formal Letter of Demand dated 28 December 1999 for alleged deficiency documentary stamp tax for taxable years 1996 and 1997 were received by petitioner only on 21 January 2000 thus beyond the three (3) year prescriptive period provided under the NIRC;

IX. Compromise penalty may not be collected without the consent of the taxpayer pursuant to existing jurisprudence.

Respondent filed his Comment thereto on September 9, 2005 and prayed for the dismissal of the present petition for lack of merit as petitioner raised issues that have been extensively, sufficiently and squarely addressed and resolved by the Second Division of this Court in the assailed Decision and Resolution promulgated on February 16, 2005 and June 15, 2005, respectively.

The Court *En Banc* gave due course to the present petition and required the parties to submit their respective memorandum.[3] Petitioner filed its Memorandum on December 5, 2005; while respondent did not file his Memorandum within the given thirty (30) day period. Hence, this Decision.

THE ISSUES

Petitioner submits the following issues for the resolution of the Court *en banc*, to wit:

> "1. The 2nd Division's Decision dated 16 February 2005 and Resolution dated 15 June 2005 both denying petitioner's Petition for Review for lack of merit and subjecting petitioner's savings account with a higher interest to DST under Section 180 of the National Internal Revenue Code are not in accordance with law and settled jurisprudence.
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> 2. The Honorable 2nd Division erred in holding that Letters of Authority and Memorandum Report are sufficient to establish the factual basis of the assessment."

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[3] Resolution, October 21, 2005, CTA EB No. 100.

141

THE COURT'S RULING

We find no merit in the petition.

A careful and closer look at the arguments set forth by the petitioner in the instant petition for review, and its annexes, would readily reveal that the grounds relied upon and the matters raised herein are mere restatements of petitioner's previous arguments raised before the Second Division of this Court which had already been exhaustively discussed and passed upon by the Second Division of this Court in its assailed Decision and Resolution promulgated on February 16, 2005 and June 15, 2005, respectively.

Be that as it may, with the end view of further clarifying the decision of the Second Division, We adopt its pronouncement on the focal issue as to whether or not petitioner's "special savings account" is subject to the payment of DST, and We quote:

> "This is not a case of first impression. We have already ruled in a number of cases that a bank's product such as special savings account is subject to documentary stamp tax. It is to be emphasized, at this point, that terminologies are mere matters which are capable of being overturned by circumstances. What is controlling is the nature and the true character of the transaction as it is conveyed by the instrument or document attached to it. The name by which an instrument or transaction is denominated is not controlling.
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> From the provision of Section 180 earlier cited, the law subjects a "certificate of deposit" to documentary stamp tax. And to define what is a documentary stamp tax: it is a privilege tax because it is really imposed on the privilege to enter into a transaction rather than on the document. The law taxes the document because of the transaction. What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction (Decision dated February 16, 2005, pp. 13-14)."

142

The pertinent provisions of Section 180 of the old NIRC, the applicable law pertaining to the taxable years 1996-1997, reads:

> **"SEC. 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 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, 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 (P200), or fractional part thereof, of the face value of any such agreement, bill or exchange, draft, certificate of deposit, or note: *Provided*, That only one documentary stamp tax shall be imposed on either loan agreements, or promissory notes issued to secure such loan whichever will yield a higher tax: *x x x*"

Based on the foregoing legal provision, it is readily apparent that there is no prescribed form for a certificate of deposit. It may be any "written acknowledgment by a bank of the receipt of money on deposit". A certificate of deposit, being a written instrument evidencing transaction between parties, must be considered in the light of the same rule of law as other written instrument.[4] The definition of a certificate of deposit is all encompassing to include petitioner's savings account passbook. Thus, the form of the document embodying the transaction is immaterial because DST liability does not arise from execution of the document.

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[4] Montgomery vs. Smith, 145 So. 822, 826, 226 Ala. 91 cited in the case of United Overseas Bank of the Philippines vs. Commissioner of Internal Revenue, C.T.A. E.B. NO. 31 (March 10, 2005).

A DST is an excise tax, meaning, a tax on the privilege to enter into a transaction evidenced by the document as explained in the case of ***Philippine Home Assurance Corporation vs. Court of Appeals***[5] where the Supreme Court ruled, *viz*:

> "In general, documentary stamp taxes are 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. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of lands, mortgages, pledges, and trusts, and conveyances of real property.
>
> Documentary stamp taxes are thus levied on the exercise of these privileges through the execution of specific instruments, independently of the legal status of the transactions giving rise thereto. xxx"

As a matter of fact, the Supreme Court has defined the "certificate of deposit" as "any 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 is created. The principles governing other types of bank deposits are applicable to certificate of deposits xxx".[6]

Clearly, petitioner's special peso savings account deposit and savings account-plus (savings deposit) fall within the ambit of the term "certificate of deposit". The fact that the aforesaid account is evidenced by a passbook and not by a certificate of deposit is not controlling to determine the nature of the

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[5] 301 SCRA 443 (1999).
[6] Far East Bank & Trust Company vs. Querimit ,373 SCRA 665 (2002); citing 10 Am Jur 2d S455.

deposits. Passbooks and certificates are mere evidence of different types of bank deposits or accounts. What distinguishes one from the other is not the passbook or certificate, but the distinct features of each kind of account that the banks offer to the public. And in determining what instruments are subject to documentary stamp tax, substance would control over the form.

Petitioner asserts that its "special savings account" is not a time deposit as what the respondent would want this Court to believe.

To the mind of the Court, a "time deposit", is also a form of a certificate of deposit, as it refers to a deposit account paying interest for a fixed term, with the understanding that funds cannot be withdrawn before maturity without giving advance notice. In practice, a "time deposit" is evidenced by a certificate of time deposit which usually carries a penalty for early withdrawal.[7] Verily, the main difference between a "savings deposit" and a "time deposit" is the penalty, which may come in the form of reduced interest rates, attached to it in instances when the depositor makes a withdrawal prior to the maturity of a deposit.

Applying the above principles, We agree with respondent's position that petitioner's special savings account and a time deposit are akin to each other. Although there is an obvious difference as to the documents used to evidence the existence of the transactions, to wit: (a) a certificate is issued in the case of a time deposit; while (b) a savings passbook is issued in the case of the market savings deposit, however, it is likewise worth emphasizing that in both cases, the bank: (a) acknowledges the receipt of the money or funds

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[7] Black's Law Dictionary, 6th Edition.

on deposit and which the bank promises to pay the depositor, bearer, or to the order on a specified period of time; and (b) allows the withdrawal of the funds on deposit prior to the expiry of the pre-determined time but the rate of interest is lower than the agreed interest.

Thus, We find that both the certificate of time deposit, as well as, the passbook evidencing the same, are documentary evidence of specific transactions in favor of the person whose name appears thereon, thereby subjecting said transactions to documentary stamp tax.

On the factual and legal bases of the subject assessments, assailing that respondent merely opted and confined himself to the identification of the Letters of Authority and the Memorandum Report, it bears stressing that "[t]ax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments".[8] As a matter of fact, "[e]ven an assessment based on estimates is prima facie valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of

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[8] Bonifacia Sy Po vs. Honorable Court of Tax Appeals and Honorable Commissioner of Internal Revenue, G.R. No. L-81446, August 18, 1988.

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said assessment".[9] Petitioner, in the case at bench, failed to overcome such presumption. Thus, We are constrained to consider the audit investigation conducted by respondent as a valid and sufficient factual basis of the subject assessments.

In the light of the foregoing discussions, the Court *En Banc* finds no reversible error committed by the Second Division of this Court when it rendered its assailed Decision and Resolution dated February 16, 2005 and June 15, 2005, respectively.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(With Concurring and Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[9] Ferdinand R. Marcos II vs. Court of Appeals, The Commissioner of the Bureau of Internal Revenue and Herminia D. De Guzman, G.R. No. 120880, June 5, 1997.

147

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PRUDENTIAL BANK,
Petitioner,

EB No. 100
(C.T.A. CASE NO. 6198)

-versus-

COMMISSONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 3 1 2006 [signature]

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Concurring and Dissenting Opinion

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed under Republic Act No. 9282, seeking to review the Decision of the Second Division of the Court of Tax Appeals promulgated on February 16, 2005, and the Resolution dated June 15, 2005, dismissing Petitioner's Petition for Review for lack of merit and denying Petitioner's Motion for Reconsideration, respectively.

Upon a careful re-evaluation of the arguments adduced in the instant Petition for Review, I concur with the majority opinion with regard to the second issue raised by the petitioner. The assessment for petitioner's deficiency DST has not yet prescribed. Sections 203 and 222 of the 1997 NIRC, as amended, provide:

> "**Sec. 203**. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3) year period shall be counted from the

day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

"**Sec. 222**. *Exceptions as to period of Limitation of Assessment and Collection of Taxes.* –

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

xxx xxx xxx."

Section 203 presupposes that a return is required to be filed by law because the three-year prescriptive period to assess is reckoned after the last day prescribed by law for such filing. The same is true with Section 222 which applies when a false or fraudulent return is filed or no return is filed when one is so required. In the case of DST, there was no specific provision under the old NIRC which required the filing of a documentary stamp tax return. Hence, the respondent is not barred from assessing petitioner of deficiency stamp taxes for the taxable years 1996 and 1997.

Proceeding to the issue of whether or not the imposition of deficiency documentary stamp taxes on petitioner's Special Peso Savings Account Deposit (SPSAD) and Special Accounts-Plus (SA-Plus) with higher interest under Section 180 of the NIRC, as amended, was in accordance with law and settled jurisprudence, I disagree with my esteemed colleagues.

Petitioner's SPSAD and SA-Plus are neither a savings deposit nor a time deposit. While it is true that SPSAD and SA-Plus, like regular savings, are evidenced by a passbook and can be withdrawn anytime, they have a higher interest rate than a regular savings deposit. This higher interest rate can be availed of by the depositors only if they complete the holding period; otherwise, the regular savings rate would apply.

Respondent posits that petitioner's SPSAD and SA-Plus have a maturity date similar to that of a time deposit. This conclusion is incorrect. The period offered to a prospective SPSAD and SA-Plus depositor is a length of time provided in a schedule of placement, for which a corresponding rate is given. A time deposit has a maturity date wherein the parties mutually agree that the Bank will pay the depositor the stipulated interest rate only upon the expiration of a definite, fixed and predetermined date. The depositor in a time deposit is bound by the maturity date agreed upon; otherwise, he or she will be penalized by not receiving the high interest as stated in the certificate of deposit. In contrast, SPSAD and SA-Plus have no maturity dates. Still, the depositor is at liberty to withdraw his or her deposit at any time upon the presentation of his or her passbook.

SPSAD and SA-Plus are innovative products offered by the petitioner to its clients. They are a crossbreed between a regular savings deposit and a time deposit and as such, they contain essential features of both products. These new products offer higher interest rates upon certain conditions similar to a time deposit, but this does not automatically classify them as such.

From the text of Section 180 of the Tax Code above-cited, a "certificate of deposit" subject to DST must have the features of a time deposit. A "time deposit", is another term for a savings account or certificate of deposit in a commercial bank. It is so called because in theory (though no longer in practice) a person must wait a certain amount of time after notice of desire to withdraw part or all of his or her savings. Certificates of deposits usually carry penalties for early withdrawal. Cash in a bank earning interest; contrast with demand deposit (*Black's Law Dictionary, 6th Edition*). Thus, it is incorrect for the respondent to conclude that SPSAD and SA-Plus fall within the definition of a "certificate of deposit" to make them liable for DST.

In a Supreme Court decision, it was held that:

> "The Court takes this occasion to reiterate the hornbook doctrine in the interpretation of the tax laws that "(a) statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. Xxx (a) tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. Parenthetically, in answering the question of who is subject to tax statutes, it is basic that "in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subject citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import." (*CIR vs. Court of Appeals, Court of Tax Appeals and Ateneo de Manila, 271 SCRA 605*)

There must be a law or legislative enactment that mandates the imposition of any tax in order for it to be due and demandable. The legislative intent behind Section 180 of the Tax Code is to include time deposits only as those liable for DST. It is through the introduction of SPSAD and SA-Plus and similar transactions by the banking industry that Congress deemed it necessary to enact a new law to specifically cover the said product within the purview of the said law.

Republic Act # 9243, "An Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes" was enacted into law on February 17, 2004. Section 5 of the said law reads, as follows:

> "**SEC. 5.** Section 180 of the National Internal Revenue Code of 1997, as amended, is hereby renumbered as Section 179 and further amended to read as follows:
>
> SEC. 179. **Stamp Tax on All Debt Instruments. –** On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or a

152