REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE BANK OF COMMUNICATIONS, *Petitioner,*	**C.T.A. CASE NO. 7129**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson, UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** FEB 20 2008 1:00 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

Are petitioner's Foreign Currency Deposit Unit transactions, save for the 10% final tax, exempt from gross receipts tax and all other kinds of taxes?

THE CASE

This is a Petition for Review filed by Philippine Bank of Communications (hereafter "petitioner") praying for the cancellation of the assessment for deficiency gross receipts tax (hereafter "GRT") on its onshore income on Foreign Currency Deposit Unit (hereafter "FCDU") transactions in the total amount of P25,788,412.92 for the calendar year 2000.

THE FACTS

In their "Joint Stipulation of Facts", the parties stipulated as follows:

> "1.1. The juridical and personal circumstances of PBCom and respondent Commissioner.
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> 1.2. Respondent Commissioner issued a Formal Letter of Demand dated 15 April 2004 against PBCom for deficiency Gross Receipts Tax ("GRT") for the year 2000, pursuant to Section 7 of Republic Act No. 1125, as amended by Republic Act No.9282.
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> 1.3. On 25 May 2004, PBCom received a Final Assessment Notice ("FAN") for deficiency GRT for calendar year 2000.
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> 1.4. On 23 June 2004 or within thirty (30) days from 25 May 2004, PBCom filed a protest ("Protest") that was received by the BIR on the same day.
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> 1.5. By 20 December 2004 or 180 days from 23 June 2004, the BIR had not yet decided or acted on the Protest.
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> 1.6. PBCom filed the Petition for Review within thirty (30) days from 20 December 2004.
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> 1.7. Prior to the enactment of the Comprehensive Tax Reform Program ("CTRP") (which became effective 1 January 1998), FCDU foreign currency ("FX") transactions were "exempt from all taxes". Section 25(a)(6)(B) of the Tax Code,

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before its amendment by the CTRP or Republic Act No. 8424., reads:

> "(B) Income derived under the Expanded Foreign Currency Deposit System-Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with nonresidents, offshore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Central Bank of the Philippines to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system shall be exempt from all taxes, xxx – xxx Provided, That interest income from foreign currency loans granted by such depository banks under said expanded system to residents (other than offshore banking units in the Philippines or other depository banks under the expanded system) shall be subject to a 10% tax."

1.8 The above provision was amended by the CTRP, so as to read as follows:

> "(3) Tax on Income Derived under the Expanded Foreign Currency Deposit System – Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with local commercial banks, including branches of foreign banks that may be authorized by the Bangko Sentral ng Pilipinas (BSP) to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system, including interest income from foreign currency loans granted by such depository banks under said expanded foreign currency deposit system to residents, shall be subject to a final income tax at the rate of ten percent (10%) of such income x x x".

> 1.9. The CTRP made FCDU income from FX transactions with local commercial banks including branches of foreign banks and other FCDU taxable at 10% gross."

In his Answer, respondent alleged by way of special and affirmative defenses that laws and jurisprudence provide that onshore income on FCDU transactions are now subject to gross receipts tax under Section 121 of the Tax Code in view of the deletion of the phrase "exempt from all taxes" from Section 28 (D)(3) of the National Internal Revenue Code of 1997; petitioner failed to submit documents in support of its claim that the corresponding loans of its onshore interest income have different maturities; the assessment was issued in accordance with law and regulations; and all presumptions are in favor of the correctness of tax assessments.

On February 23, 2006, petitioner filed a Motion to Direct Respondent to Cancel Assessment or Suspend Proceedings relying on the January 27, 2006 issue of the newspaper Business World, which quoted then BIR Commissioner Jose Mario Buñag stating that the tax reform program does not intend to collect GRT and DST from FCDUs and OBUs.

On April 5, 2006, respondent filed his opposition thereto stating that a newspaper clipping standing alone is not admissible in evidence to support the relief sought for in the motion of petitioner.

On May 2, 2006, petitioner filed its Reply.

On June 1, 2006, the Court denied the "Motion to Direct Respondent to Cancel Assessment or Suspend Proceedings" for lack of merit.

Trial proceeded and petitioner presented Annabelle Yeo and Dr. Milwilda M. Guevara, as witnesses, and documentary evidence, marked as Exhibits *"A"* to *"K"*, inclusive of submarkings, which were all admitted by the Court.

On the other hand, respondent presented Rudy Carandang, as witness, and documentary evidence marked as Exhibits *"1"* to *"4"*, inclusive of submarkings, which were all admitted by the Court.

Thereafter, both parties were ordered to file their simultaneous memoranda within thirty (30) days from notice. Both parties having filed their respective memorandum, the case was deemed submitted for decision on July 26, 2007.

Hence, this decision.

ISSUES

As stipulated upon by the parties, the following are the issues for the consideration of this Court:

I

WHETHER OR NOT PBCOM'S ONSHORE INCOME ON FCDU TRANSACTIONS ARE NOW SUBJECT TO GROSS RECEIPT TAX ("GRT").

II

WHETHER OR NOT THE PHRASE "EXEMPT FROM ALL TAXES" IN SECTION 27 (D)(3) OF THE TAX CODE WAS DELETED FOR THE PURPOSE OF SUBJECTING PBCOM'S ONSHORE INCOME ON FCDU TRANSACTIONS TO GRT.

III

WHETHER OR NOT PBCOM IS LIABLE FOR THE AMOUNT OF PHP25,788,412.92 AS DEFICIENCY GRT ON FCDU ONSHORE INCOME FOR THE YEAR 2000.

IV

ASSUMING FOR THE SAKE OF ARGUMENT, THAT PBCOM'S FCDU IN 2000 WAS NOT EXEMPT FROM TRANSACTION TAXES, WHETHER THE DISPUTED GRT ASSESSMENT IS ERRONEOUS FOR USING (A TAX BASE AND RATE THAT HAVE NOT BEEN ESTABLISHED AND THEREFORE NOT AUTHORIZED BY LAW) UNIFORM TAX BASE AND RATE OF 5%.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner's FCDU transactions are exempt from GRT and all other kinds of taxes.

THE RULING OF THE COURT

The petition has no merit.

Petitioner's Arguments

Petitioner maintains that the total removal of FCDU/OBU tax exemption was never intended nor reflected in any of the bills that proposed to amend the Tax Code. Its witness, former Undersecretary for the Domestic Finance Group of the Department of Finance, Dr. Milwilda Guevara, testified that said tax exemption was never discussed during Congressional deliberations nor even mentioned in the public hearings on the Comprehensive Tax Reform Program (hereafter "CTRP"). The deletion of the phrase "exempt from all taxes" in *Section 27 (D)(3) of the Tax Code* was a drafting mistake because Congress had no intention to remove the tax exemptions of FCDU on its onshore transactions. Petitioner further asserts that assuming that its FCDU in 2000 was not exempt from transaction taxes, the disputed GRT assessment is erroneous for using a tax base and rate that have not been established and therefore not authorized by law.

Respondent's Counter-Arguments

Respondent counter-argues that the onshore income on FCDU transactions is now subject to gross receipts tax, in view of the deletion of the phrase "exempt from all taxes" from Section 28 (D)(3) of the Tax Code. Citing ING Bank (Manila Branch) vs. Commissioner of Internal Revenue (CTA Case No. 6017, March 11, 2002), respondent argues that the deletion of the phrase "exempt from all taxes" can only mean that FCDUs are subject to all taxes, in addition to the 10% final tax. The deletion should not be considered as mere inadvertent omission. It must be noted that exemptions are not presumed and when granted are strictly construed against the grantee. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed.

We rule for the respondent.

Prior to the effectivity of *Republic Act No. 8424* otherwise known as the *Tax Reform Act of 1997,* on January 1, 1998, the applicable law regarding FCDUs is the *National Internal Revenue Code of 1977* (hereafter "*NIRC of 1977*"), which actually grants tax exemption for

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FCDU's foreign currency transactions, particularly *Section 25 (a)(6)(B)* which provides:

> "(B) **Income derived under the Expanded Foreign Currency Deposit System.** – Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with non-residents, offshore banking units in the Philippines, local commercial banks, including branches of foreign banks that may be authorized by the Central Bank of the Philippines to transact business with foreign currency depository units and other depository banks under the expanded foreign currency deposit system **shall be exempt from all taxes**, except taxable income from such transactions as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board to be subjected to the usual income tax payable by banks: *Provided,* That interest income from foreign currency loans granted by such depository banks under said expanded system to residents (other than offshore banking units in the Philippines or other depository banks under the expanded system) shall be subject to a 10% tax.
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> Any income of non-residents from transaction with depository banks under the expanded system shall be exempt from income tax." *(Emphasis supplied)*

With the enactment of the *Tax Reform Act of 1997,* the abovequoted section was amended, deleting the phrase "exempt from all taxes". Thus, *Section 27(D)(3)* of the *Tax Reform Act of 1997* reads as follows:

> "(3) **Tax on Income Derived under the Expanded Foreign Currency Deposit System.** – Income derived by a depository bank under the expanded foreign currency

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> deposit system from foreign currency transactions with local commercial banks, including branches of foreign banks that may be authorized by the Bangko Sentral ng Pilipinas (BSP) to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system, including interest income from foreign currency loans granted by such depository banks under said expanded foreign currency deposit system to residents shall be subject to a final income tax at the rate of ten percent (10%) of such income.
>
> Any income of nonresidents, whether individuals or corporations, from transactions with depository banks under the expanded system shall be exempt from income tax."

It is clear from the aforequoted provision that the phrase "exempt from all taxes" has been deleted by the legislators and what remains was that the income derived by a depository bank under the foreign currency deposit system from foreign currency transactions with local commercial banks shall be subject to a final tax of ten percent (10%). As a rule, the amendment by deletion of certain words or phrases in a statute indicates that the legislature intended to change the meaning of the statute, for the presumption is that the legislature would not have made the deletion had the intention been not in effect a change in its meaning. The amended statute should accordingly be given a construction different from that

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previous to its amendment *(Gloria vs. Court of Appeals, 306 SCRA 287).* By virtue of such deletion, all applicable taxes became due.

It must be noted that the 10% final tax levied on onshore income under *Section 27(D)(3)* of the *Tax Reform Act of 1997* pertains to income derived by a depository bank under the expanded foreign currency deposit system. It does not include the gross receipts tax which is a form of an excise tax. Similar to a documentary stamp tax which is imposed upon the exercise of a privilege, the gross receipts tax is imposable when a bank exercises the privilege of engaging in foreign currency transactions or business. The *Tax Reform Act of 1997* mandates payment of gross receipts tax aside from the 10% final tax on onshore income.

Contrary to petitioner's stance, the legislative intent is the spirit that gives life to a legislative enactment and it must be enforced when ascertained. The legislative intent to remove the all encompassing exemption of FCDUs income from taxation is shown from a review of the transcript of the Senate Session on the deliberations conducted on August 11, 1997 concerning the amendment on the taxability of FCDUs. Pertinent portion thereof is hereby quoted:

> "Senator Angara: Yes, Mr. President. Let me move to my next point,and that is the lifting of the

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preferential tax treatment of FCDUs as well as OBUs.

Mr. President, would this not cause some drastic consequences on offshore as well as foreign currency deposits which I understand today are the prime sources of our current account spending? Many of our exporters depend on this FCDUs and OBUs for their foreign exchange needs, and if we remove the preferential tax treatment that we (sic) have been enjoying all these years, are we not going to drive away the foreign currency deposits and OBUs from our shore?

Senator Enrile: Mr. President, money goes to a place where it can make money. Whether we have the tax on FCDUs or OBUs, if depositors can make a margin that is favorable to them, they will be here. Business makes profit because it assumes risk.

I do not subscribe to the theory that these people will run away. In fact, they were saying that because of the announcement we made, on this FCDUs, deposits are flying away from the country. But if we look at the figures, Mr. President, out of a total P17 billion or so, only a little over P200 million left the country. But, I think, this P200 million left the country to pay for obligations in order to shave off a potential increase in the peso equivalent of the foreign currency obligation, and not because of the effort to tax FCDUs. That is one.

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> Two, we are not discussing here a problem of competition between pesos and dollars or deutschmark or francs. We are talking here of equity in taxation, Mr. President. These are the more affluent members of the taxable community and yet, they get away with their tax burden. Another thing that I cannot take is, as member of this Senate and as member of the community, that we should tax depositors of our own currency in banks and we exclude from taxation depositors of foreign currencies. We are insulting our own currency.
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> xxx xxx."

It is well settled that the Court may not construe a statute that is clear and free from doubt. Where the law speaks in clear and categorical language, there is only room for application *(Cebu Portland Cement Co., vs. Municipality of Naga, et al., 24 SCRA 708, 712)*. The first and fundamental duty of courts is to apply the law as they find it, not as they like it to be. Fidelity to such a task precludes construction or interpretation, unless application is impossible or inadequate without it. No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application. It must see to it that its mandate is obeyed.

Equally settled is the rule that a statute and its amendment should be read together as a whole. An amended act is ordinarily to be construed as if the original statute has been repealed and a new and independent act in the amended form had been adopted in its stead. In other words, the amended act is regarded as if the statute has been originally enacted in its amended form. The amendment becomes a part of the original statute as if it had always been contained therein *(Estrada vs. Caseda, 84 Phil 791, 793)*. The deliberate selection of language other than that used in an earlier act is indicative that a change in the law was intended and it calls for an application *(Sarcos vs. Castillo, 26 SCRA 853, 859)*. Any other view would be to betray lack of fidelity to the purpose too manifest in the controlling legal provision.

Tax Rate of 5% GRT

Petitioner's contention that respondent erroneously applied the 5% GRT on all its onshore interest income is devoid of merit.

It bears stressing that the one claiming for a lesser tax rate than that assessed by the CIR must be able to first prove and establish its right to such claim by presenting evidence to attest to its entitlement to the same. In this case, petitioner has the burden of proving that the maturities of the loans do not fall within the applied tax rates, in accordance with *Section 121* of the *Tax Code* in order to be entitled to its claim.

A careful scrutiny of the evidence on record shows that petitioner failed to substantiate its claim that the loans should not be subjected to the rate of 5% GRT. It did not present any proof to support that not all the loans fall within the 5% tax rate. Petitioner has the duty of proving the assessment to be erroneous. Absent proof of any irregularity, the assessment must be upheld.

It is basic that the presumption is in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They are presumed to have taken into consideration all the facts to which their attention was called *(CIR vs. Construction Resources of Asia, Inc., 145 SCRA 671)*. It is incumbent upon the taxpayer to prove the contrary *(Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuason, Inc., 173 SCRA 397)* and failure to do so shall vest legality to respondent's actions and assessments.

To reiterate, claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation. And, the law looks with disfavor on tax exemptions and he who would seek to be thus privileged must justify it by words too plain to be

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mistaken and too categorical to be misinterpreted *(Western Minolco Corporation vs. Commissioner of Internal Revenue and Court of Tax Appeals, 124 SCRA 121, 131).*

For all the foregoing, the Court finds that the assessment contained in the Formal Letter of Demand dated April 15, 2004 has factual and legal basis. We, therefore, affirm the same.

However, the compromise penalty amounting to P25,000.00 for taxable year 2000 cannot be imposed in the absence of a mutual agreement by the parties, a compromise being, by its nature, mutual in essence and is therefore deleted. A compromise penalty without the conformity of the taxpayer is illegal and unauthorized *(Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., 193 SCRA 86).*

WHEREFORE, premises considered, the instant Petition For Review is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit. With the deletion of the compromise penalty, respondent's assessment as contained in the Formal Letter of Demand dated April 15, 2004 is hereby **AFFIRMED** in all other respects. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent Commissioner of Internal Revenue the gross receipts tax on onshore income for calendar year ending December 31, 2000, plus surcharge and interests, computed as follows:

Gross Income per Financial Statements		
Onshore Income	P	266,219,715.00
Multiplied by rate of tax		5%
Basic	P	13,310,985.75
Add: 25% Surcharge		3, 327,746.44
20% Interest per annum up to 06/30/04		9, 124,680.73
TOTAL	**P**	**25,763,412.92**

In addition, petitioner is hereby ordered to pay respondent 20% delinquency interest on the total amount of P25,763,412.92 computed from June 30, 2004 until full payment thereof, pursuant to *Section 249 (C)* of the *NIRC of 1997*, as amended.

SO ORDERED.

Olga Palanca-E3

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

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

ERLINDA P. UY
Associate Justice

ATTESTATION

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

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

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 cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice