REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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EQUITABLE PCI BANK formerly known as EQUITABLE BANKING CORPORATION,
Petitioner,

C.T.A. CASE NO. 6713

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 09 2007, 10:00 A.M.

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DECISION

BAUTISTA, L., J.:

This is a Petition for Review of respondent's decisions dated May 26, 2003 and April 23, 2003 denying petitioner's protest dated January 2, 2002 and sustaining the assessment for deficiency documentary stamp tax on petitioner's Special Savings Account for the taxable years 1996 and 1997 in the amounts of FOURTEEN MILLION THIRTY ONE THOUSAND THREE HUNDRED FIVE & 89/100 PESOS (P14,031,305.89) and THIRTY MILLION FIVE HUNDRED THIRTY ONE THOUSAND TWO HUNDRED NINE & 5/100 PESOS (P30,531,209.05), respectively, both inclusive of increments.

The following are the facts as stipulated by the parties and borne by the records of the case:

Petitioner Equitable PCI Bank (formerly, Equitable Banking Corporation) is a corporation duly organized and existing under the laws of the Philippines, with principal place of office located at Equitable PCI Bank Tower, Makati Avenue cor. H.V. de la Costa Street, Makati City. It is registered with the Securities and Exchange Commission and authorized by the Bangko Sentral ng Pilipinas to engage in general banking operations in the Philippines.

Respondent, on the other hand, is the Commissioner of Internal Revenue duly appointed to perform the duties of his office, including, *inter alia,* the power to decide disputed assessments, with office address at the 5th Floor, Bureau of Internal Revenue ("BIR") National Office Building, BIR Road, Diliman, Quezon City.

In his Decisions, as well as the Formal Letter of Demand and Assessment Notices attached thereto, respondent assessed petitioner for alleged deficiency documentary stamp taxes ("DST") on its Special Savings Account ("SSA") for taxable years 1996 and 1997 in the respective amounts of FOURTEEN MILLION THIRTY ONE THOUSAND THREE HUNDRED FIVE & 89/100 PESOS (P14,031,305.89) and THIRTY MILLION FIVE HUNDRED THIRTY ONE THOUSAND TWO HUNDRED NINE & 5/100 (PESOS P30,531,209.05).

Petitioner received a copy of the decision dated May 26, 2003 on June 9, 2003 and the decision dated April 23, 2003 on May 29, 2003.[1]

Hence, this Petition for Review filed on June 30, 2003.

On August 18, 2003, respondent filed his Answer raising the following Special and Affirmative Defenses:

> 1. Petitioner was informed of the law and the facts on which the assessments are made in compliance with Section 228 of the Tax Code;

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[1] Joint Stipulation of Facts par. 4, Records, page 72.

2. As found by the investigating Revenue Officers, Special Savings Account (SSA) is an interest bearing account and as the feature of time deposit account. There is a required minimum deposit balance and holding period in order to avail of a preferential rate which is much higher than that of a regular savings account. The only difference is that petitioner does not issue any certificate but, instead, a passbook is provided;

3. One of the features that differentiates SSA from a time deposit is the fact that while the former is evidenced by a passbook, the latter is evidenced by a certificate issued by the bank. Petitioner argues that what is subjected to the documentary stamp tax is a "certificate of deposit," and not an ordinary saving account passbook;

4. Section 180 of the Tax Code, as amended by R.A. No. 7660 (effective January 14, 1994) 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 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, on either loan agreement, 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 (P250,000.00) executed by an individual for his purchase on instalment *[sic]* for his personal use or that of his family and not for business, resale, barter or hire of house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under the section"; (Underscoring ours).

5. Under the law, certificates of deposits drawing interest are subject to DST. **In Far East Bank and Trust Company vs. Querimit, G.R. No. 148582, January 16, 2002,** a "certificate of deposit" is defined as "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';

6. "Time deposit", on the other hand, is another form of a certificate of deposit in a bank. The term "time deposit" 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." (Barron's Dictionary of Banking Terms). "It is so called because in theory (though no longer in practice) a person must await a certain amount of time after notice of his or her desire to withdraw part or all of his or her savings before the scheduled maturity date. Certificates of deposits or time deposits usually carry penalties for early withdrawal"; (Black's Law Dictionary, 6th Edition)

7. From the aforesaid definitions, the essential elements of a certificate of deposit are as follows:

1. The bank receives money for deposit;
2. The bank acknowledges the receipt of the deposit through the issuance of a written document;
3. The bank promises to pay to the depositor or bearer or to some other person or order the deposit upon maturity; and
4. The bank imposes an early withdrawal penalty in case of withdrawal prior to maturity which comes in the form of reduced interest;

8. In the case at bar, it has been found through investigation that petitioner's SSA has the features of a time deposit, namely, (1) a definite term; (2) specific date of withdrawal; (3) interest rate reduction in case of pretermination; and (4) interest earnings credited at maturity;

9. Respondent believes that SSA and time deposit are akin to each other. Efforts were made by petitioner to place a superficial distinction between the two deposit accounts by introducing an innovation using a regular passbook to document the SSA by claiming that the said special deposit has no specific maturity date. At first glance, the innovative scheme may be accomplished in putting a semblance of different between the aforesaid two deposit accounts, but an analytical look at the passbook issued clearly reveals that although it does not have the form of a certificate nor labelled *[sic]* as such, it has a fixed maturity date, albeit hidden, and for all intents and purposes, it has the same nature and substance as a '*certificate of deposit bearing interest*.' In fact, it could be said that the passbook is itself a certificate of deposit;

10. Assuming *arguendo* that SSA is not a certificate of certificate of deposit, it is a loan agreement because the relationship between a depositor and a bank is that of creditor and debtor **(Intergrated Realty Corp. vs. PNB, 174 SCRA 295).** As such, it is subject to DST under Section 180 of the Tax Code.

Respondent and petitioner filed their respective Memoranda on April 21, 2006 and June 2, 2006. Hence, in a resolution dated June 6, 2006, the case was deemed submitted for decision.

The parties agreed to limit to the following the issues for the resolution of this Court:

1. Whether petitioner's SSA is, in substance, a time-deposit;
2. Whether the passbook evidencing the SSA is a certificate of deposit bearing interest subject to DST under *Section 180 of the 1977 Tax Code;*
3. Assuming *arguendo* that the SSA is not a certificate of deposit, whether it is a loan agreement subject to DST under *Section 180 of the Tax Code;* and
4. Whether petitioner was informed of the law and the facts on which the assessments are based.

The resolution of the case therefore rests on the determination of two issues: *First,* whether or not petitioner's Special Savings Deposit Account/FASTSaver Account/HIGHSaver Account (collectively, "HIGHSaver Account") are subject to documentary stamp tax, and, *second,* whether petitioner was informed of the law and the facts upon which the assessments were based.

We shall first resolve the procedural issue of whether petitioner was informed of the law and the facts upon which the assessments were based.

Section 229 of the National Internal Revenue Code of 1977, as amended, provides:

> SEC. 229. *Protesting of assessment.* - When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify that taxpayer of his findings. Within a period to be prescribed by the implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.

> If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of said decision; otherwise, the decision shall become final, executory and demandable.

Indeed, petitioner is correct that the taxpayer should be informed in writing of the law and facts on which the assessment is made. The law however, provides no specific form as to the notice to be sent by respondent or his duly authorized representative.

In the present case, petitioner argues that the Decisions, the Formal Letter of Demand and the Assessment Notices were all based on a non-existent law at the time the taxable event took place in 1996 and 1997, *i.e.,* Section 180 of the present Tax Code.

The Court finds the contested Formal Letters of Demand and Assessment Notices sufficient in form. Petitioner was informed that it was being assessed deficiency documentary stamp tax for the years 1996 and 1997. The fact that it was sufficiently informed of the basis of the assessments is even bolstered by the fact that it was able to file a timely protest against it.

Since the subject matter of the case are assessments against petitioner for deficiency taxes for the years 1996 and 1997 the applicable provision is Section 180 of the National Internal Revenue Code of 1977, as amended, which 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, 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 (₱250,000.00) 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.

Clearly, Section 180 covers the following instruments:

1) loan agreements;
2) bills of exchange;
3) drafts;
4) instruments and securities;
5) certificates of deposits bearing interest;
6) orders for the payment of any sum of money otherwise than at sight or on demand;
7) promissory notes, whether negotiable or non-negotiable; and
8) renewal of any such note.

From the above provision of Section 180, the law subjects a "certificate of deposit" to documentary stamp tax. A documentary stamp tax is a tax on documents, instruments and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right, or property incident thereto.[2] It is in the nature of an excise tax imposed on the privilege, opportunity or facility offered at exchanges for the transaction of the business and not upon the business transacted.[3] It is a privilege tax because it is really imposed on the privilege to enter into a transaction rather than a document. The law taxes the document because of the transaction.[4] What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction.

Respondent correctly pointed out that a certificate of deposit 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

[2] Hector S. De Leon, The National Internal Revenue Code, 2000 Ed., p. 722.
[3] Lincoln Philippine Life Insurance Co., Inc. vs. Court of Appeals, 293 SCRA 92.
[4] Hector S. De Leon, The Law on Transfer and Business Taxation, 1998, Ed., p. 351.

other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created".[5]

On the other hand, a "time deposit", is also a form of a certificate of deposit, referring to a deposit account paying interest for a fixed term, with the understanding that funds cannot be withdrawn before maturity without giving advance notice. Ordinarily, a time deposit is defined as "one, the payment of which cannot legally be required within such a specified number of days".[6] In practice, a "time deposit" is evidenced by a certificate of time deposit. Certificate of deposits or time deposits usually carry penalties 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 upon the happening of certain events like when the depositor makes a withdrawal prior to the maturity of the deposit.[8]

It is thus relevant to determine whether petitioner's HIGHSaver Account bears the same nature and/or characteristics of a time deposit.

To convince the Court that its special savings account is not a time deposit, petitioner advances the argument that the features and the mechanics of both the HIGHSaver Account and regular savings account are strikingly similar. Petitioner issues a passbook to record additional amounts deposited and withdrawn. According to petitioner, the only noticeable distinction between the HIGHSaver Account and the regular savings account is in the interest rates. A regular peso savings account earns interest at 1% per annum while the HIGHSaver Account guarantees an interest of 1% per annum, but offered

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[5] Far East Bank and Trust Company vs. Querimit, 373 SCRA 671.
[6] BPI Family Savings Bank vs. First Metro Investment Corporation, G.R. No. 132390, May 21, 2004, citing 10 Am. Jur. 2d., p. 652.
[7] Black's Law Dictionary, 6th Ed.
[8] Keppel Bank Philippines, Inc. vs. Commissioner of Internal Revenue, C.T.A. EB No. 38, March 18, 2005, (C.T.A. Case No. 6560).

an incentive of high interest rates ranging from 3.75% to 6% per annum (depending on the amount deposited), if the depositor maintained a P50,000.00 balance in his account.[9]

It bears stressing though that petitioner admitted that if the balance fell below P50,000.00, petitioner paid an interest rate of 1% which is the same as the interest rate for regular savings accounts. Moreover, petitioner also stated that just like in time deposits, to be entitled to the higher interest rates in case of the HighSaver Account, the deposit of P50,000.00 must be held by the bank for thirty (30) days.[10]

Simply put, for a depositor to be entitled to a higher interest rate under petitoner's HIGHSaver Account, the money should be kept by the bank for a period not less than thirty (30) days and the balance should not fall below the minimum requirement of P50,000.00, otherwise, the deposit will earn interest pertaining to a regular savings deposit which is comparatively smaller.

It is to be noted that the same holds true in the case of a time deposit. A depositor is still allowed to withdraw his time deposit even before its maturity subject to pre-termination charges and the depositor loses his entitlement to earn the interest rate corresponding to the time deposit. Instead, he earns interest likewise pertaining to a regular savings deposit. Clearly, petitioner's argument that one is withdrawable anytime and the other is not, has no leg to stand on. The fact is, in both cases, the deposit may be withdrawn anytime but the depositor gets to earn a lower rate of interest.

Therefore, the only difference lies on the evidence of deposit. But in determining whether a certain instrument is subject to documentary stamp tax, substance would control over the form and labels.[11]

This Court agrees with the findings of the respondent that the nature of the HighSaver Account and Time Deposits are akin to each other. In both accounts, the bank

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[9] Petitioner's Memorandum, Records, page 222.
[10] TSN, July 12, 2004, pages 15 – 25.
[11] Knudsa Creamery Co. of California vs. US, 121 F. Suppl. 860, 26 U.S. C.A. 1800, 1801.

acknowledges the receipt of a sum of money on deposit and the bank promises to pay to the depositor, bearer or to the order of a bearer on a specified period of time. The difference lies on the document issued to evidence the transaction. In HIGHSaver Account, the transaction is covered by a passbook, while in a time deposit, it is through a certificate of deposit. This is a superficial difference that should be ignored.

Accordingly, this Court holds that for all intents and purposes, petitioner's HIGHSaver Accounts are deemed to be of the same nature and substance as that of a certificate of deposit bearing interest. Therefore, these accounts are subject to documentary stamp tax in accordance with Section 180 of the National Internal Revenue Code of 1977, as amended. While the DST is levied on the document itself, it is not intended to be a tax on the document alone. Rather, the DST is levied on the exercise of a privilege of conducting a particular business or transaction through the execution of specific instruments or documents.[12]

IN VIEW OF THE FOREGOING, the Petition for Review is **DENIED** for lack of merit and the Final Decision on Disputed Assessment dated May 26, 2003 is hereby **AFFIRMED** *in toto* while the Final Decision on Disputed Assessment dated April 23, 2003 is hereby **MODIFIED** as to exclude the compromise penalty of P25,000.00 there being no agreement between the petitioner and the respondent.[13]

Accordingly, petitioner is **ORDERED TO PAY** respondent the amounts of FOURTEEN MILLION THIRTY ONE THOUSAND THREE HUNDRED FIVE & 89/100 PESOS (P14,031,305.89) and THIRTY MILLION FIVE HUNDRED SIX THOUSAND TWO HUNDRED NINE & 5/100 PESOS (P30,506,209.05) representing deficiency documentary taxes for the taxable years 1996 and 1997, respectively. In addition, petitioner is **ORDERED TO PAY** delinquency interest from June 9, 2003 and May 29, 2003 until the above amounts are fully

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[12] Philippine Home Assurance Corporation vs. Court of Appeals, 301 SCRA 435.
[13] Collector of Internal Revenue vs. UST, Nos. L-11274 & L-11280, November 28, 1958.

paid pursuant to Section 249(c)(3) of the 1977 National Internal Revenue Code, as amended.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

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.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division