REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY
FIRST DIVISION

INTERNATIONAL EXCHANGE BANK,
Petitioner,

- versus -

C.T.A. CASE NO. 6159
Promulgated:

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

OCT 26 2004

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DECISION

This case seeks for the cancellation and/or withdrawal of the undated assessment notices issued by respondent against petitioner for alleged deficiency documentary stamp taxes for the taxable years ended December 31, 1996 and 1997 in the aggregate amount of P100,564,243.70.

The antecedent facts are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. *(par. 1, Joint Stipulation of Facts)*

On April 13, 1999, Letter of Authority No. 000020535 was served upon petitioner for the examination of its "books of accounts and other accounting records" for the year 1997 and "unverified prior years". The examination was conducted by the "Special Team created pursuant to RSO 697-98" headed by Group Head/Supervisor Cecilia C. Campos. *(par. 3, Joint Stipulation of Facts)*

On November 16, 1999, petitioner received a notice for an informal conference. Thereafter, petitioner's representatives met with the Special Team in December 1999, whereby issues relating to transactions, such as final withholding taxes and gross receipts tax (GRT) were resolved. *(par. 4 & 5, Joint Stipulation of Facts)*

On January 6, 2000, petitioner paid the deficiency taxes for particular transactions and items (specially for final withholding taxes, gross receipts tax, etc.) in the total amount of P7,122,656.99. *(par. 6, Joint Stipulation of Facts)*

On the same date, an undated Pre-Assessment Notice (PAN) was personally served to petitioner with attached "Details of Discrepancies" for 1996 and 1997 consisting of the "industry issues", i.e. alleged deficiency documentary stamp tax on GS-RRPA (Reverse Repurchase Agreement) and SA-FSD (Savings Deposit). *(par. 7, Joint Stipulation of Facts)* Details of Discrepancies are as follows:

Details of Discrepancies
(Taxable Year 1996)

INDUSTRY ISSUES

DOCUMENTARY STAMP TAX (DST) – On Government Securities Purchased – RRPA and Savings Deposits – FSD totaling P25,180,492.15

Government Securities Purchased – RRP amounting to P3,584,098,013.35 is subject to DST under Sec. 180 of the NIRC, as amended, since this falls under the classification of Deposit Substitutes as defined by RR 3-97.

Savings Deposits – FSD amounting to P9,845,497,800.27 should be treated as time deposits considering that its features are very much the same as time deposits (interest rates; terms). In substance, these are certificates of deposit subject to Documentary Stamp Tax under Section 180 of the NIRC which provides among others that certificates of deposit bearing interest and others not payable on sight or demand are subject to DST.

(Taxable Year 1997)

DOCUMENTARY STAMP TAX (DST) – On Government Securities Purchased-RRPA and Savings Deposits-FSD totaling P75,383,751.55

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Government Securities Purchased – RRP amounting to P12,180,427,820.44 is subject to DST under Sec. 180 of the NIRC, as amended, since this falls under the classification of Deposit Substitutes as defined by RR 3-97.

Savings Deposits-FSD amounting to P28,024,239,673.35 should be treated as time deposits considering that its features are very much the same as time deposits (interest rates; terms). In substance, these are certificate of deposits subject to Documentary Stamp Tax under Section 180 of the NIRC which provides among others that certificates of deposit bearing interest and others not payable on sight or demand are subject to DST.

The PAN expressly granted petitioner a fifteen-day period from receipt within which to "see the Assistant Commissioner-Enforcement Service to clarify issues arising from the investigation and/or review of [its] tax case" should petitioner be "not agreeable to the findings."*(par. 8, Joint Stipulation of Facts)*

Petitioner received the Assessment Notices and the Demand Letter on January 12, 2000. Details are shown below:

Documentary Stamp Tax
Period Covered 1996

Tax Due S.180 NIRC	*P20,144,393.72*
Add: Surcharge S.248 NIRC	*5,036,098.43*
Total Amount Payable	*P25,180,492.15*

(Annex "J", Petition for Review)

Documentary Stamp Tax
Period Covered 1997

Tax Due S.180 NIRC	*P60,307,001.24*
Add: Surcharge S.248 NIRC	*15,076,750.31*
Total Amount Payable	*P75,383,751.55*

(Annex "K", Petition for Review)

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On February 11, 2000, petitioner filed a protest letter requesting for a reconsideration of the foregoing assessments. *(par. 10, Joint Stipulation of Facts)*

The following objections were raised by petitioner in the protest letter, to wit:

A. The assessments were null and void for having been issued -
   1. Without authority and due process; and
   2. Beyond the prescribed period for making assessments

B. The assessments are null and void for utter lack of factual and legal bases.
   1. There was no law in 1996 and 1997 imposing the DST on Reverse Repurchase Agreements.
   2. The Bangko Sentral ng Pilipinas (BSP) not the Bank, is liable for DST.
   3. There is no law imposing DST on Savings Account-Fixed Savings Deposit.

C. But even on the gratuitous assumption that the deficiency assessments for DST are proper, the imposition of the surcharge is patently without legal authority. *(pp.632-651, BIR Records)*

Due to respondent's inaction on the protest, petitioner filed its petition for review with this court on September 7, 2000.

Respondent filed his Answer on October 24, 2000, and raised therein the following Special and Affirmative Defenses, to wit:

> "5. Government securities purchased for taxable year 1996 amounting to P3,584,098,013.35 and government securities purchased for taxable year 1997 amounting to P12,180,427,820.44 are subject to documentary stamp tax under Sec. 180 of the NIRC, as amended, since they fall under the classification of deposit substitutes as defined by Revenue Regulations 3-97;
>
> 6. Savings deposits for taxable year 1996 amounting to P9,845,497,800.27 and savings deposits for taxable year 1997 amounting to P28,024,239,673.35 are treated as time deposits considering that the features of said deposits are the same as time deposits with respect to interest rates and terms. Hence, these certificates of deposits are subject to

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documentary stamp tax under Section 180 of the NIRC which provides, among others, that certificates of deposits bearing interest and others not payable on sight or demand are subject to documentary stamp tax.

7. The assessment was issued in accordance with law and regulations.

8. All presumptions are in favor of the correctness of tax assessments *(CIR vs. Construction Resources of Asia, Inc. 145 SCRA 67)*, and the burden to prove otherwise is upon petitioner.

The Issues which were jointly stipulated by the parties are:

"1. Whether or not the Assessment Notice was issued without authority, as such was an industry policy audit pursuant to Revenue Memorandum Order No. 2-98 (sic) and, as it was issued in violation of the petitioner's right to due process.

2. On the assumption that the Assessment is valid, whether the three (3) year prescriptive period provided in Section 203 of the National Internal Revenue Code for the assessment of taxes has lapsed with respect to the DST accruing and payable as of December 31, 1996.

3. On the assumption that the Assessment is valid, whether the amendments to Section 180 of the National Internal Revenue Code which took effect on January 1, 1998 can be made to apply retroactively to the petitioner, considering that the subject assessment was for taxable years 1996 and 1997.

4. On the assumption that the Assessment is valid, whether the petitioner should be held liable for the payment of DST on its purchase of reverse repurchase agreements from the BSP, despite the BSP's express covenant to shoulder the DST.

5. On the assumption that the Assessment is valid, whether the petitioner is liable for the total amount of P100,564,243.70 as deficiency documentary stamp tax for taxable years ended December 31, 1996 and 1997."

On the first issue, we rule in the negative.

Petitioner claims that the assessments were null and void for having been issued in direct conflict with the terms and provisions of Revenue Memorandum Order (RMO)

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No. 27-98. It asserts that the issuance of the individual assessments against particular taxpayers (under industry policy audit) based on "industry issues" is beyond the authority granted to the Special Team and the Enforcement Service. The mandate respecting such industry policy audit is to develop and prescribe audit policies and guidelines, and to adopt fair and uniform rules and procedures, on the basis of the audit findings, to "guide subsequent audits in the assessment units in the District Offices".

We do not agree with petitioner's contentions.

The validity of an assessment is governed by Section 228 of the 1997 National Internal Revenue Code (NIRC) and pertinent portions are hereunder quoted as follows:

> "SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> xxx xxx xxx"

RMO No. 27-98, on the other hand, which was relied upon by petitioner provided for the procedures in the conduct of audit of the revenue officers concerned. Pertinent portions are likewise quoted as follows:

"2. AUDIT POLICIES AND PROCEDURES:

2.1 In General

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2.1.1 Coverage. This Audit Program shall cover 1996 and 1997 Income, Value-Added Tax, Percentage, Withholding and other tax returns and liabilities of the following sector/industries:

For Policy Cases

a. Banks, Insurance and other Financial Intermediaries;
b. International Carriers;
c. Telecommunication companies;
d. Pharmaceutical companies;
e. Top 1,500 large taxpayers as may be identified by the Large Taxpayers Division.

xxx xxx xxx

2.3 Reporting of Cases

xxx xxx xxx

Industry Audit. Audits undertaken to develop industry procedures, guidelines and standards must be treated/audited as an industry rather as individual taxpayers. Hence, a joint and coordinated audit must be undertaken in order to ensure uniformity of action.

xxx xxx xxx"

As perused from the contents of the aforequoted RMO, a specialized audit is provided for certain industries such as the banking industry which prescribed a uniform procedure in the conduct of audit of similar industries. Contrary to petitioner's contention, it did not contain any prohibition against the issuance of an individual assessment to a particular taxpayer.

As to petitioner's assertion that the assessments were issued without the approval of the Commissioner, we are not convinced.

The Commissioner of Internal Revenue has the authority to delegate his power as enunciated in Section 7 of the 1997 NIRC which provides:

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> "SEC. 7. Authority of the Commissioner to Delegate Power. – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue ruling of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of he Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
>
> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

The pre-assessment and the assessment notices which were signed by the Assistant Commissioner of the Enforcement Service, Percival T. Salazar *(pp. 610-611, BIR Records),* were valid because he was validly and legally acting on behalf of the Commissioner pursuant to the aforecited section.

Petitioner further argues that the assessments were issued in violation of its right to due process.

As stipulated by the parties, the PAN was issued on January 6, 2000 while the assessment notices were issued on January 12, 2000. The issuance of the assessment notices prior to the expiration of the fifteen-day period is a violation of petitioner's right to due process because it was not afforded the opportunity to present its side before respondent issued the assessment notices.

Petitioner relied on Section 3 of Revenue Regulations (RR) No. 12-99, and is hereunder quoted as follows:

> "Section 3. Due process requirement in the issuance of a deficiency tax assessment.
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> 3.1.1 Notice for informal conference. - The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference", in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from the date of receipt of the notice for informal conference he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.
>
> 3.1.2 Preliminary Assessment Notice (PAN). – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for

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the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

3.1.3 Exceptions to Prior Notice of the Assessment. – The notice for informal conference and the preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return fled by the taxpayer; or

(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(iv) When the excise tax due on excisable articles has not been paid; or

(v) When an article locally purchased or imported by an exempt person, such as, but not limited to vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

3.1.4 Formal Letter of Demand and Assessment Notice. – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void. The same shall be sent

> to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof. (Underlining supplied)
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> xxx xxx xxx"

The foregoing provisions clearly provide for the procedures to be undertaken by the revenue officers in the issuance of a deficiency assessment. As stated therein, the taxpayer is given a fifteen-day period from receipt of the PAN within which to reply. In case of failure to reply, the taxpayer shall be considered in default and a formal demand letter and an assessment notice shall be issued by the respondent.

While we agree with petitioner that respondent did not await the lapse of the fifteen-day period before the latter issued the assessment notices and the demand letter, the requirement of due process under Section 3 of RR 12-99 was substantially complied with.

Firstly, a notice for informal conference was issued to petitioner on November 16, 1999 and in compliance with such notice, petitioner's representatives met with the respondent's Special Team in December 1999 *(pars. 4 & 5, Joint Stipulation of Facts)*. The purpose of such informal conference is to afford the taxpayer with an opportunity to present his side of the case *(par. 3.1.1, RR 12-99)*. Thus, even during such informal conference, petitioner was already given the opportunity to present its side of the case.

Secondly, while petitioner was not able to file its reply to the pre-assessment notice, it was nevertheless, given the opportunity to protest the assessment notices as it

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even requested for a re-investigation. *(p.651, BIR Records)* Besides, the amounts of deficiency taxes specified in the PAN are similar to those stated in the assessment notices. Thus, petitioner's contention that it was denied due process is devoid of factual and legal bases.

With regard to the second issue, petitioner claims that the deficiency DST assessment for the taxable year 1996 has already prescribed. The monthly information return required to be filed under Revenue Regulations (RR) No. 4-96 was filed by petitioner on January 10, 1997 *(Exhibit 6, p. 616 BIR Records)* and the assessment notice was issued by respondent on January 12, 2000, or beyond three years from the time the said return was filed.

However, respondent argues that the prescriptive period to assess has not yet lapsed. Prior to the effectivity of the 1997 NIRC, there was no DST return required to be filed. Since there was no return required to be filed, then there is no specific date from which the prescriptive period to assess will be reckoned. Hence, respondent's right to assess petitioner's deficiency DST is imprescriptible.

He further asserts that the monthly information return contemplated in RR 4-96 is not the return required to be filed for purposes of computing the three-year prescriptive period to assess.

We agree with respondent's arguments.

The assessment for petitioner's deficiency DST has not yet prescribed. Sections 203 and 222 of the 1997 NIRC, provides:

> "SEC. 203. Period of Limitation Upon Assessment. – Except as provided in Section 222, internal revenue taxes shall be assessed <u>within three (3) years</u>

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> 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." *(Underlining supplied)*

> "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"
>
> *(Underlining supplied)*

The foregoing statute of limitations applies to the assessment of National Internal Revenue Taxes which require the filing of returns. In this case, there was no specific provision under the old NIRC nor in the regulations which require the filing of a documentary stamp tax return. Hence, the respondent is not barred by the aforequoted prescriptive periods on the assessment of petitioner's deficiency documentary stamp tax.

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. Even Section 222 of the same code cannot be made applicable because this section applies to the filing of a false or fraudulent return or failure to file a return. There can be no failure or omission to file a return where no return is required to be filed by law.

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As aptly explained by the Supreme Court in the case of ***Commissioner of Internal Revenue vs. Ayala Securities Corporation, 101 SCRA 231,*** and we quote, thus:

> "It is well settled limitations upon the right of the government to assess and collect taxes will not be presumed in the absence of clear legislation to the contrary. The existence of a time limit beyond which the government may recover unpaid taxes is purely dependent upon such express statutory provision (51 Am. Jur. 867; 10 Mertens Law on Federal Income Taxation, par. 57.02). It follows that in the absence of express statutory provision, the right of the government to assess unpaid taxes is imprescriptible. Since there is no express statutory provision limiting the right of the Commissioner of Internal Revenue to assess the tax on unreasonable accumulation of surplus provided in Section 25 of the Revenue Code, said tax may be assessed at any time."

Moreover, the monthly information return required to be filed by banks, financial institutions, non-bank financial intermediaries and insurance companies under Revenue Regulations (RR) No. 4-96 is not the return contemplated under Sections 203 and 222 of the NIRC. It is merely an information return where the documentary stamp taxes paid for the month is disclosed.

Pertinent portions of RR 4-96 are hereunder quoted, thus:

> "SUBJECT: Amending Revenue Regulations No. 4-89 Requiring Banks, Financial Institutions, Non-Bank Financial Intermediaries, and Insurance Companies to File a Monthly Information Return for Documentary Stamp Taxes Paid.
>
> TO : All Banks, Financial Institutions, Non-Bank Financial Intermediaries, Insurance Companies, Internal Revenue Officers and Others Concerned.
>
> SECTION 1. Scope – Pursuant to Section 245 in relation to Section 4 of the National Internal Revenue Code (NIRC), as amended, these regulations are hereby promulgated amending Revenue Regulations No. 4-89, requiring Banks, Financial Institutions, Non-Bank Financial Intermediaries, and Insurance Companies to <u>file a monthly information return for documentary stamp taxes paid</u>.
>
> SECTION 2. Requirements. – Every Bank, Financial Institution, Non-Bank Financial Intermediary and Insurance Company doing business in the Philippines shall file a monthly information return under a BIR Form as may be

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> prescribed by the Commissioner of Internal Revenue concerning its payment/s of documentary stamp taxes during the month showing, among others, the kind or class of taxable documents for which the documentary stamp taxes were paid, the amount of documentary stamp taxes paid thereon, the official receipt evidencing payment and the date/s of payment thereof.
>
> xxx xxx xxx
>
> SECTION 4. Penalty Clause. – Failure to file the aforesaid information return or failure to file the same within the time herein prescribed shall be punishable as provided for under Section 274, NIRC.
>
> xxx xxx xxx"

Besides, if the monthly information return is tantamount to the return required to be filed under the NIRC for the purpose of applying the statute of limitations, the 1997 NIRC should not have amended the 1977 NIRC and added a provision, particularly Section 200 (A), requiring for the filing of a tax return. Hence, petitioner's deficiency DST for the taxable year 1996 has not prescribed.

On the third issue, we rule in the negative.

Petitioner maintains that there was no law imposing DST on the Government Securities Purchased-Reverse Repurchase Agreements in 1996 and 1997. Furthermore, it alleges that the Enforcement Service/Special Team unilaterally applied Section 180 of the 1997 NIRC, since Revenue Regulations No. 3-97 provides that "effective 2 January 1997, Reverse Repurchase Agreements entered into by and between the BSP and any authorized agent bank shall be considered as deposit substitutes".

Furthermore, it submits that the DST was imposed upon the Government Securities Purchased-RRPA pursuant to Section 180 of the NIRC, as they fall under the classification "deposit substitutes" under RR 3-97. In other words, the basis for the deficiency assessment is Section 180 of the 1997 NIRC which provides as follows:

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> "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 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, 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), 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."

Since No. RR 3-97 provides that "effective 2 January 1997, Reverse Repurchase Agreements entered into by and between the BSP and any authorized agent bank shall be considered as deposit substitutes", the Enforcement Service/Special Team unilaterally applied Section 180.

Petitioner explains further that what the Enforcement Service has sought to tax are not government securities in themselves, but the reverse repurchase agreements between the Bank and the BSP covering securities forming part of the portfolio of the BSP under the Registry of Scripless Securities with the Bureau of Treasury. Such securities were not in any manner delivered, nor were their possession otherwise transferred to the Bank.

Still further, the deposit substitute debt instruments are not included among the documents subject to the DST imposed under Section 180 of the old NIRC. Thus, even assuming that the subject reverse repurchase agreements are considered as deposit substitutes effective January 2, 1997, petitioner cannot be held liable for DST under Section 180 of the old NIRC.

We agree with petitioner's arguments.

The Enforcement Service/Special Team failed to consider that Section 180 of the 1997 NIRC took effect only on January 1, 1998. Significantly, deposit substitute debt instruments were not included among the objects subject to the DST under Section 180 of the old code. Accordingly, even on the assumption that the reverse repurchase agreements are considered as deposit substitutes effective January 2, 1997, pursuant to RR No. 3-97, they cannot be subject to DST under Section 180 of the old code because at that time and prior to January 1, 1998, "deposit substitute debt instruments" were not included in the enumeration under Section 180 as subject to the DST.

RR No. 3-97 cannot be extended nor read into Section 180 because these regulations implement income tax provisions, and not provisions on DST. Furthermore, such regulation merely amended Section 1 of RR 12-80, defining "deposit substitutes". The latter regulation governs the manner of taxation of certain income derived from banking activities as provided for by P.D. No. 1739. The taxes imposed under P.D. No. 1739 as implemented by RR No. 12-80 are final withholding tax on interest and yield from deposit substitutes; gross receipts tax; and percentage tax on dealers in securities and lending investors.

In addition thereto, P.D. No. 1739 did not impose DST on deposit substitutes. Rather, it imposed a final withholding tax on the yield from such deposit substitutes. RR No. 12-80 cannot, therefore, impose DST-as in fact they do not. They merely define what are "deposit substitutes" for the purpose of the final withholding tax, which is a tax on income. Consequently, the amendments to RR No. 12-80, which are provided in RR No. 3-97 cannot go beyond the scope and purview of P.D. No. 1739 nor of RR No. 12-80. They are limited in scope and particularly implement only the final withholding tax provisions on yield from deposit substitutes. They cannot be the basis for imposing DST, which is an entirely different tax.

Moreover, a reading of Section 180 of the old NIRC, which is quoted hereunder,

> "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 in 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."

reveals that deposit substitutes are not included in the objects subject to DST. It is only in Section 180 of the 1997 NIRC that deposit substitute debt instruments are made subject to the DST. Hence, petitioner's transactions pertaining to revenue repurchase agreements are not taxable under Section 180 of the old NIRC.

Finding that the reverse repurchase agreements are not subject to the DST during the taxable years 1996 and 1997, it is no longer necessary to delve into the fourth issue.

In view of all the foregoing discussions, petitioner is not liable for the deficiency DST assessments on the reverse repurchase agreements in the amounts of P6,720,183.77 and P22,838,302.16, for taxable years 1996 and 1997, respectively, computed as follows:

Total Reverse Repurchase Agreements for the year 1996 - P3,584,098,013.35

Basic DST	P5,376,147.02
Add: Surcharge	1,344,036.75

	P6,720,183.77
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Total Reverse Repurchase Agreements for the year 1997 – P12,180,427,820.44

Basic DST	P18,270,641.73
Add: Surcharge	4,567,660.43

	P22,838,302.16
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However, we rule otherwise with respect to petitioner's deficiency DST on its Savings Deposits-Fixed Savings Deposit (FSD).

The 1996 and 1997 deficiency assessments on petitioner's Savings Deposit-FSD were based on Section 180 of the NIRC, viz:

> "Savings Deposits-FSD… should be treated as time deposits considering that its features are very much the same as time deposits (interest rates; terms). In substance, these are certificates of deposit subject to Documentary Stamp Tax under Section 180 of the NIRC which provides among others that certificates of deposits bearing interest and others not payable on sight or demand are subject to DST." *(Details of Discrepancies, 1996 & 1997, Annexes I-1 and I-2, Petition for Review)*

Petitioner, in assailing the assessments, contends that the savings deposits-FSD are not subject to DST. A cursory reading of Section 180, both from the 1977 and 1997

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NIRC, reveals that "savings deposit-fixed savings deposit" is not included in the enumeration of instruments subject to DST. It emphasized that the DST imposed under Section 180 is a tax on document, which is evident from the enumeration of objects subject thereto, viz: loan agreements, signed bills of exchange, drafts, instruments, and securities issued by the government, certificates of deposit, orders for the payment of money, and promissory notes. These are subject to DST under Section 180 because they are so enumerated and not because they may have "features" similar to or "very much the same" as the others. Thus, since the savings deposit-FSD or the passbook usually containing the entries thereof are not expressly mentioned in the enumeration of taxable documents under Section 180, it necessarily follows that such savings deposits are not subject to DST.

We do not agree.

It is well settled that a documentary stamp tax is in the nature of an excise tax. This was aptly explained in the case of ***Fort Bonifacio Dvelopment Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6149, promulgated 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***, as affirmed by the Supreme Court in the case of ***Philippine Home Assurance Corporation vs. The Hon. Commissioner of Internal Revenue, GR. 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

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> 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."

A documentary stamp tax 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 ***(Hector S. De Leon, Comprehensive Review of Taxation, 2000 Edition, page 381)*** What is being taxed is the privilege of the petitioner to enter into such a transaction. ***(Traders Royal Bank vs. Commissioner of Internal Revenue, CTA Case No. 6392, promulgated on April 28, 2004)***

Furthermore, in its Memorandum, petitioner explained that a savings deposit-FSD is a special savings account offered to clients, whereby the bank grants a higher interest rate than the interest rate given to regular savings accounts.

To prove that the savings deposit-FSD is similar to a regular savings deposit, petitioner presented the documentary requirements in applying for a fixed savings deposit or *iSave* account, namely, (a) information card *(Exh. G)*, (b) signature card *(Exh. H)*, (c) passbook *(Exh. I)* and the (d) terms and conditions *(Exh. J)*. During the hearing held on May 8, 2003, petitioner's witness, Ms. Hermilita Ambrosio, Quality Assurance Officer, testified that there is no agreement or stipulation in the aforesaid documents with respect to maturity date and interest, since the money deposited can be withdrawn anytime, and interest is determined based on the average daily balance. *(pp. 9-19, TSN, May 8, 2003)*

Petitioner further claims that the savings deposit-FSD is akin to a regular savings account because it is evidenced by a passbook which is not subject to DST.

Contrariwise, respondent insists that a savings deposit-FSD has features similar to a time deposit such as higher interest rate, a required minimum deposit balance and holding period in order to avail of the preferential rate which is higher than that of a regular savings account. One of the features that differentiates a fixed savings account 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 a bank which led petitioner to conclude that the fixed savings deposit is not subject to DST under Section 180, which taxes "certificates of deposit drawing interest."

We rule in favor of respondent.

The following definitions are beneficial in the disposition of this case.

> **Certificate of Deposit**. A written acknowledgment by a bank or banker of a deposit with promise to pay to depositor, to his order, or to some person or to his order. Bank document evidencing existence of a time deposit, normally paying interest. *(Underscoring supplied)*
>
> **Time Deposit**. 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 deposit usually carry penalties for early withdrawal. *(Underscoring supplied)* ***(Black's Law Dictionary, 6th Edition)***

From the foregoing definitions, in relation to Section 180 of the 1977 NIRC, it is clear that a certificate of deposit is a taxable document. The savings deposit-FSD is similar to a time deposit because their features are akin to each other. Since a time deposit is subject to DST under Section 180, then the savings deposit-FSD, which falls within the purview of a time deposit, is likewise subject to DST.

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Furthermore, as correctly pointed out by respondent in his Memorandum, a certificate of deposit need not be in any specific form in order to be construed as such, citing the case of ***Bank of Commerce v. Harrison, N.M. 66 P 460, 11 N.M. 50***, where it was held that:

> "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."

and in the case of ***Dollar Bldg. Loan Association v. Shield, 93 Colo 480***, where it was ruled:

> "A certificate of deposit ordinarily 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, or to the order of the depositor, or to some other person or to his order whereby the relation of debtor and creditor between the bank and the depositor is created. No particular form is necessary to constitute a certificate of deposit."

Under the afore-cited cases, it is not necessary that a certificate of deposit be in the form of a certificate in order to fall within the purview of Section 180. What matters is that there is a written acknowledgement by a bank, in whatever form, evidencing the deposit made by the depositor.

In this case, a depositor of a savings deposit-FSD is required to keep the money with the bank for at least thirty (30) days in order to yield a higher interest rate. Otherwise, the deposit earns interest pertaining only to a regular savings deposit.

The same feature is present in a time deposit. A depositor is allowed to withdraw his time deposit even before its maturity subject to bank charges on its pretermination and the depositor loses his entitlement to earn the interest rate corresponding to the time

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deposit. Instead, he earns interest pertaining only to a regular savings deposit. Thus, petitioner's argument that the savings deposit-FSD is withdrawable anytime as opposed to a time deposit which has a maturity date, is not tenable. In both cases, the deposit may be withdrawn anytime but the depositor gets to earn a lower rate of interest. The only difference lies on the evidence of deposit, a savings deposit-FSD is evidenced by a passbook, while a time deposit is evidenced by a certificate of time deposit.

But in determining whether a certain instrument is subject to documentary stamp tax, substance would control over the form and labels xxx ***(Knudsa Creamery Co. of California vs. US, 121 F. Suppl. 860, 26 U.S. C.A. 1800, 1801)*** xxx Considering that the transaction evidenced by the different documents are similar and that the 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 clear evidence of such transaction in favor of the person whose name appears therein, subject to documentary stamp tax. ***(Traders Royal Bank vs. Commissioner of Internal Revenue, supra)***

Such being the case, petitioner's savings deposits-FSD are subject to DST under Section 180 of the 1977 NIRC, computed as follows:

Total Savings Deposits-FSD for the year 1996 -- P9,845,497,800.27

Basic DST	P14,768,246.70
Add: 25% Surcharge	3,692,061.67
	P18,460,308.38
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Total Savings Deposits-FSD for the year 1997 -- P28,024,239,673.35

Basic DST	P42,036,359.51
Add: 25% Surcharge	10,509,089.87
	P52,545,449.39
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WHEREFORE, petitioner's deficiency assessments pertaining to the reverse repurchase agreements in the amounts of P6,720,183.77 and P22,838,302.16 inclusive of surcharges, for the years 1996 and 1997, respectively, are hereby **CANCELLED** and **WITHDRAWN.** However, the deficiency assessments pertaining to savings deposits-FSD are hereby **UPHELD** and petitioner is **ORDERED** to **PAY** the respondent the amount of P71,005,757.77 representing deficiency documentary stamp tax for the years 1996 and 1997. In addition thereto, petitioner is **ORDERED** to **PAY** respondent 20% delinquency interest from February 12, 2000 until fully paid pursuant to Section 249 of the 1997 NIRC.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

I CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the First Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division

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