REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ALLIED BANKING CORPORATION, Petitioner,	**C.T.A. EB No. 215** (C.T.A. Case No. 6844)
	Present:
- versus -	**Acosta , *P.J.,* Castañeda, Jr., Bautista, Uy, Casanova, Palanca-Enriquez, *JJ.***
GUILLERMO L. PARAYNO, JR., In his capacity as the COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:**
	JUL 0 9 2007

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DECISION

ACOSTA, *P.J.*:

This is a Petition for Review *En Banc* seeking the review and reversal of the Decision of this Court's Second Division dated May 11, 2006, which ordered herein petitioner Allied Banking Corporation to pay herein respondent Commissioner of Internal Revenue (CIR) the amount of P57,545,201.96 (exclusive of 20% delinquency interest) as deficiency Documentary Stamp Tax (DST) for the taxable year 1999 on petitioner's Market Savings Deposit (MSD) and the subsequent Resolution dated August 16, 2006, affirming the assailed Decision.

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The antecedent facts as culled from the records are as follows:

Petitioner is a duly licensed commercial banking institution organized and existing under and by virtue of Philippine Laws, with principal office address at Allied Bank Center, 6754 Ayala Avenue, Makati City, Metro Manila.

Respondent Guillermo L. Parayno, Jr., in his capacity as the Commissioner of Internal Revenue, was being impleaded in his official capacity as the duly appointed Commissioner of Internal Revenue and holds office at the National Office Building of the Bureau of Internal Revenue (BIR), Diliman, Quezon City.

On April 22, 2002, petitioner received a Preliminary Assessment Notice (PAN), Assessment No. DST-2-99-000016, assessing petitioner of deficiency Documentary Stamp Tax-industry issue, on its Special Savings Placement in the amount of P53,376,800.99, inclusive of surcharge and interest. Petitioner protested the said PAN on May 7, 2002.

On December 3, 2002, petitioner received a Formal Letter of Demand from respondent assessing petitioner in the increased amount of P57,570,201.96, representing its allegedly deficiency DST on its Special Savings Placement, plus surcharges, interest, and compromise penalty. Petitioner filed its protest with the BIR on December 17, 2002.

However, on December 4, 2003, petitioner received a copy of respondent's Decision denying its protests and affirming both the disputed Preliminary Assessment Notice and Formal Letter of Demand *in toto*.

Respondent's Decision prompted petitioner to file a Petition for Review before the Court of Tax Appeals on January 5, 2004.

The CTA Second Division in its Decision promulgated on May 11, 2006 dismissed the Petition on the ground that petitioner's Market Savings Deposit has the same nature or characteristics as that of a time deposit, thus subject to Documentary Stamp Tax. Consequently, petitioner filed a Motion for Reconsideration on June 5, 2006, which was denied through a Resolution dated August 16, 2006.

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Hence, on September 14, 2006, petitioner filed the instant Petition for Review *En Banc* raising the following issues:

> "1. The Honorable Court of Tax Appeals Second Division grievously erred in holding that petitioner's Market Savings Deposit is akin to a time deposit subject to documentary stamp tax.
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> 2. The Honorable Court of Tax Appeals Second Division grievously erred in disregarding the fact that there is no law that subjects petitioner's Market Savings Deposit to documentary stamp tax."

After considering and evaluating all the arguments and evidence presented and the applicable laws and jurisprudence, the Court *En Banc* finds the instant Petition for Review unmeritorious.

There is nothing novel with the first issue as the Supreme Court itself had already settled that a special savings account similar to a time deposit, although evidenced by a passbook, is subject to DST. The High Tribunal in the recent case of **International Exchange Bank vs. Commissioner of Internal Revenue**[1] sustained the Decision of this Court *En Banc* on the issue, the pertinent portion of which is hereunder quoted, to wit:

> "As correctly ruled by the CTA En Banc, a passbook representing an interest earning deposit account issued by a bank qualifies as a certificate of deposit drawing interest.
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> A document to be deemed a certificate of deposit requires no specific form as long as there is some written memorandum that the bank accepted a deposit of a sum of money from a depositor. What is important and controlling is the nature or meaning conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as substance, not form, is paramount.
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> As for petitioner's argument that its FSD is similar to a regular savings deposit because it is evidence by a passbook, and that based on the legislative deliberations on the bill which was to become R.A. 9243 which amended Section 180 of the NIRC (which is to a large extent the same as Section 180 of the Tax Code, as amended by R.A. 7660), Congress admitted that deposits evidenced by passbooks which have features akin to time deposits are not subject to DST, the same does not lie."

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[1] GR No. 171266, April 4, 2007

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However, for emphasis, this Court quotes the discussion of the Court's Second Division in its assailed Decision on the liability of certificates of deposit drawing interest to DST as provided under Section 180 of the NIRC, as amended, thus:

> 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. On the other hand, a "time deposit", which is also a form of a certificate of 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. Ordinarily, a time deposit is defined as "one, the payment of which cannot legally be required within such a specified number of days". 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. Verily, the main difference between a "savings deposit" and a "time deposit" is the penalty, which may come in the form of reduced interest rate. An instance is when the depositor makes a withdrawal prior to the maturity of the deposit.
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> 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. 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. What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction.
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> A certificate of deposit, undeniably, being subject to documentary stamp tax, it is thus necessary to determine whether petitioner's Market Savings Deposit bears the same nature or characteristics as that of a time deposit."

Records reveal that petitioner's MSD earns a premium interest rate, higher than the regular savings' rate provided that the depositor would not withdraw the same before the stated period. This is tantamount to imposing a maturity date or fixed term to the deposit account. Although the MSD depositor can withdraw anytime, such early withdrawal would mean losing the interest at premium rate and earning only at regular savings' rate. Clearly, the penalty for early withdrawal is under the guise of reducing the interest to be earned by the MSD. The two attributes of having a fixed term and pre-termination charges are essentially the features prevalent in a time deposit.

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Furthermore, the ability of petitioner to withdraw petitioner's MSD is immaterial in the imposition of DST; for even in the case of time deposits, the deposit can be withdrawn prior to the maturity date but subject only to penalty charges.

Apparently, petitioner's Market Savings Deposit has the same characteristics as a time deposit and thus subject to DST.

It bears stressing that the fact that petitioner's Market Savings Deposit is evidenced by a passbook is likewise not controlling in determining whether the deposit account is subject to DST or not. What is important is the nature or meaning conveyed by the passbook and not the particular label or nomenclature attached to it; inasmuch as its substance is paramount than its form.

With respect to the second issue, the Court cannot sustain petitioner's argument that its Market Savings Deposit account became subject to Documentary Stamp Tax only after the enactment of Republic Act (RA) No. 9243 entitled "An Act Rationalizing the Provisions on the Documentary Stamps Tax of the National Internal Revenue Code of 1997" which clearly included within the ambit of the law "other evidences of deposits that are drawing interest significantly higher than the regular savings deposit...".

On the contrary, the further amendment of Section 180 of the NIRC and its renumbering as Section 179 by R.A. 9243 does not mean that prior to its amendment, time deposits for which passbooks were issued were exempted from payment of DST. If at all, the further amendment was intended to eliminate precisely the scheme used by banks of issuing passbooks to "cloak" its time deposits as regular savings deposits.[2] This Court's explanation in the case of **Banco de Oro Universal Bank vs. Commissioner of Internal Revenue**[3] is equally significant and hereunder quoted:

> "The finding of the First Division of this Court in its assailed Decision that time deposits evidenced by passbooks are subject to documentary

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[2] International Exchange Bank vs. CIR, G.R. No. 171266
[3] CTA EB 39, October 28, 2005, (CTA Case No. 6390)

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stamp tax under Section 180 of the National Internal Revenue Code of 1997 received an affirmation with the passage of Republic Act No. 9243 ("An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes") by Congress and signed into law by President Gloria Macapagal-Arroyo on February 17, 2004.

R.A. No. 9243 states that it is "rationalizing" the provisions of the documentary stamp tax of the present Tax Code. The lawmaking body unmistakably adopted this Court's interpretation of Section 180 of the National Internal Revenue Code of 1997, and made clearer the language used to include therein 'certificates and other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit' or 'drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand:' When a statute is re-enacted or revised after it has received judicial construction, it is presumed that the legislature intended that construction to continue." (*Emphasis supplied*)

WHEREFORE, finding no reversible error in the assailed Decision promulgated on May 11, 2006 and Resolution dated August 16, 2006, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(Inhibited)
OLGA PALANCA-ENRIQUEZ
Associate Justice

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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.

ERNESTO D. ACOSTA
Presiding Justice