REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANCO DE ORO,
Petitioner,

\- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6390

Promulgated:

JUL 0 1 2004

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DECISION

This Petition for Review is seeking for the reversal of the following:

1) Decision of the Commissioner of Internal Revenue dated December 21, 2001, denying the protest filed by petitioner on June 29, 1999 thereby affirming Assessment Notice No. ST-DST-96-0036-2000 dated January 28, 2000 in the amount of P7,206,797.13 as deficiency documentary stamp taxes for the taxable year 1995; and

2) Decision of the Commissioner of Internal Revenue dated December 21, 2001, denying the protest filed by petitioner on February 4, 2000, thereby affirming Assessment Notice Nos. ST-DST-96-0199-00 and ST-DST-97-0200-99 in the aggregate amount of P7,914,240.46 as deficiency documentary stamp taxes for the taxable years 1996 and 1997.

Petitioner, Banco de Oro, is a domestic corporation duly organized and existing under Philippines laws and duly licensed as a universal bank by the Bangko Sentral ng Pilipinas with principal office located at Banco de Oro Building, No.12 ADB Avenue corner Julia Vargas, Ortigas Center, Pasig City *(par 2, Joint Stipulation of Facts and*

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Issues).

The Bureau of Internal Revenue conducted an investigation of petitioner's internal revenue tax liabilities for the taxable years 1995, 1996 and 1997 pursuant to the issued Letters of Authority Nos. 000133988 and 18399 *(pars 4 & 10, Joint Stipulation of Facts & Issues).* Consequently, on December 3, 1999, a pre-assessment notice (PAN) was received by petitioner assessing it of deficiency documentary stamp taxes due on its Mega Savings Deposits for the taxable years 1996 & 1997. A protest letter against the PAN was subsequently filed by petitioner on December 14, 1999 *(pars 11 & 12, Joint Stipulation of Facts & Issues).*

On January 10, 2000, petitioner received Formal Assessment Notice Nos. ST-DST-96-0199-99 and ST-DST-97-0200-99, both dated December 14, 1999, for deficiency documentary stamp tax liabilities due on its Mega Savings Deposits for the taxable years 1996 & 1997, including surcharge, in the total amount of SEVEN MILLION NINE HUNDRED FOURTEEN THOUSAND TWO HUNDRED FORTY AND 46/100 PESOS (P7,914,240.46) *(par 13, Joint Stipulation of Facts & Issues).*

On January 19, 2000, petitioner received another pre-assessment notice, also for deficiency documentary stamp tax liabilities but for the taxable year 1995, which was dated December 20, 1999. A protest letter was also filed by petitioner on January 25, 2000 *(pars 5 & 6, Joint Stipulation of Facts & Issues).*

Subsequently, on February 9, 2000, petitioner filed a Protest-Letter against the formal assessment notices dated December 14, 1999 *(par 14, Joint Stipulation of Facts*

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& Issues).

On March 31, 2000, Formal Assessment Notice No. ST-DST-96-0036-2000 dated January 28, 2000 was received by petitioner, assessing it of deficiency documentary stamp taxes due on its Mega Savings Deposits for the taxable year 1995, including surcharges, in the total amount of SEVEN MILLION TWO HUNDRED SIX THOUSAND SEVEN HUNDRED NINETY SEVEN AND 13/100 PESOS (P7,206,797.13). Consequently, on April 4, 2000, petitioner filed its protest-letter against the said formal assessment notice *(pars 7 & 8, Joint Stipulation of Facts).*

Finally, on January 21, 2002, petitioner received the Decisions, both dated December 21, 2001, rendered by respondent denying its protests thereby affirming the Formal Assessment Notices issued for the taxable years 1995, 1996 & 1997 *(pars 9 & 15, Joint Stipulation of Facts & Issues).* The dispositive portions of the said Decisions are quoted below:

Assessment Notice No. ST-DST-96-0036-2000

> "In view of the foregoing, this Office resolves to DENY the protest of BANCO DE ORO COMMERCIAL BANK dated June 29, 1999. Assessment Notice No. ST-DST-96-0036-2000 dated January 28, 2000 issued by this Bureau demanding payment of the sum of P7,206,797.13, as deficiency documentary stamp tax for the year 1995, is hereby AFFIRMED in all respects. Consequently, the Banco de Oro Commercial Bank is hereby ordered to pay the above-stated amount plus interest that may have accrued thereon up to the date of full payment to the Large Taxpayers Service, BIR National Office, Diliman, Quezon City, within thirty (30) days from receipt hereof, otherwise, the collection thereof shall be effected through summary remedies provided by law.
>
> This constitutes the final decision of this Office on the

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matter.

Quezon City, Philippines.

RENE G. BANEZ
Commissioner of Internal Revenue

Assessment Notice Nos. ST-DST-96-00199-99 & ST-ST-97-0200-99

"IN VIEW WHEREOF, this Office resolves, as it hereby resolves, to DENY the protest of BANCO DE ORO UNIVERSAL BANK dated February 4, 2000. Assessment Notice Nos. ST-DST-96-00199-99; ST-DST-97-0200-99 both dated December 4, 1999 issued by this Bureau demanding payment of the total amount of P7,914,240.46, as deficiency documentary stamp tax for taxable years 1996 and 1997, are hereby AFFIRMED in all respects. Consequently, the protestant-bank is hereby ordered to pay the above-stated amount plus interest that may have accrued thereon, to the Large Taxpayers Service, BIR National Office, Diliman, Quezon City, within thirty (30) days from receipt hereof, otherwise, the collection thereof shall be effected through summary remedies provided by law.

This constitutes the **final decision** of this Office on the matter.

Quezon City, Philippines.

RENE G. BANEZ
Commissioner of Internal Revenue

On February 13, 2002, petitioner filed this instant Petition for Review with this court.

Both parties having submitted their respective memorandum, this case was deemed submitted for decision on March 11, 2004.

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Petitioner and respondent mutually agreed to the following stipulated issues:

1. Whether or not the Mega Savings Deposit is of the same nature as regular savings and therefore exempt from DST.

2. Whether or not the imposition of surcharges is improper, presuming that the deficiency DST is, in fact, due from petitioner.

3. Whether or not the Honorable Court has jurisdiction over the instant case for failure of the petitioner to comply with Section 228 of the 1997 Tax Code.

The court finds it proper to discuss first the third issue raised by the parties.

It is alleged by respondent that petitioner failed to submit all the relevant documents within sixty (60) days from the filing of the protest letters dated February 9, 2000 (protest letter for the 1996 and 1997 assessments) and April 4, 2000 (protest letter for the 1995 assessment). Consequently, upon the expiration of the sixty (60)-day period pursuant to Section 228 of the Tax Code, the assessment notices became final. And the assessment notices having become final, this court no longer has jurisdiction to try the case.

We do not agree.

Section 228 of the 1997 Tax Code is partly quoted below for easy reference:

> Section 228. Protesting an Assessment
>
> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and

> regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted otherwise the assessment shall become final.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

When the law requires that the taxpayer-protestant submits all relevant supporting documents within sixty (60) days from the date the letter-protest has been filed, it is for the purpose of granting the taxpayer-protestant an opportunity to defend his claim or objections to the assessment notice issued. And thus, failure on the part of the taxpayer-protestant to submit the necessary documents in support of his claim will eventually render the assessment notice final and unappealable.

It must be pointed out that said provision of law requiring the submission of all the relevant documents within sixty (60) days from the filing of the letter-protest is not absolute and the same does not apply to the present case.

Based on the records of this case, it is evident that all relevant supporting documents have already been submitted by the petitioner in the course of investigation. In fact, when the respondent received the protest letters of petitioner, they were immediately indorsed on February 9, 2000 by Assistant Commissioner Percival T. Salazar to the Assistant Commissioner for Legal Service Attn: Chief of the Appellate

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Division for proper resolution of industry issue, without requiring petitioner to submit all relevant documents to support its case *(BIR Records, page 1624)*. And respondent was able to rule on petitioner's protests by rendering the questioned decisions on December 21, 2001 principally by interpreting Section 180 of the NIRC, a purely legal issue. Verily then, respondent cannot now argue that petitioner failed to submit all the relevant documents within sixty (60) days from the filing of its protest letters, thus, the assessment notices already became final and that this court has no jurisdiction to try this case.

We now proceed to the core issue of this case of whether or not petitioner's Mega Savings Deposit is of the same nature as regular savings and therefore exempt from documentary stamp tax.

It is petitioner's stand that the product Mega Savings Deposit it carries, as the name indicates, is a "savings deposit" which is being offered to its clients in addition to its "time deposits". Pursuant to Section 2(e) of Revenue Regulations No. 12-80, as amended, it has been defined that a "savings deposit" is a deposit which may be withdrawn at any time, subject only to the right of the depository bank to require reasonable prior notice in writing before withdrawal may be made. On the other hand, Section 2(f) of the same regulations defined "time deposits" as a deposit which has a definite time of maturity and cannot be withdrawn by the depositor until maturity except in cases of authorized pre-termination. It is a time-honored tradition and industry practice, that savings deposits maintained in banks are evidenced by a savings

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passbook while time deposit placements are covered by certificates of time deposit. Petitioner maintains that its Mega Savings Deposit has the following features:

(1) It is an interest-earning deposit;
(2) It may be withdrawn by the depositor upon demand;
(3) It is evidenced by a regular passbook.

Petitioner further avers that pursuant to Section 180 of the 1997 Tax Code, the phrase "otherwise than at sight or on demand" qualifies all the documents previously enumerated in the provision as they all pertain to "orders for the payment of any sum of money". Accordingly, petitioner submits that the "certificate" subject to documentary stamp tax under the aforementioned provision must meet the following requirements, to wit:

(1) It must cover a deposit;
(2) The deposit must be interest-bearing;
(3) It must be a deposit payable otherwise than at sight or on demand (in other words, the deposit must have a fixed maturity date).

Petitioner argues that even assuming that the form of document evidencing the deposit is not relevant, the "deposit" covered under Section 180 of the Tax Code, must be one with a fixed maturity, that is, it must not be payable at sight or on demand. Contrary to requirements as mentioned in the said provision of the law, its Mega Savings Deposit may be withdrawn by the depositor at any time.

On the other hand, respondent counters that petitioner's Mega Savings Deposit has the features similar to a time deposit such as higher interest rate, a required minimum deposit balance and a holding period in order to avail of a preferential rate

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which is much higher than that of a regular savings account. The fact that the Mega Savings Deposit is evidenced by a passbook does not remove it from the sphere of the definition. Furthermore, Section 180 of the Tax Code clearly mentions "certificates of deposits" drawings interests as subject to the documentary stamp tax. The "certificate of deposit" stated in the said section does not prescribe any particular form. What is important and controlling is the nature or meaning conveyed by the passbook and not the particular label or nomenclature attached to it. Respondent asserts that as defined in the case of *Far East Bank & Trust Company vs Querimit, G.R. No. 148582, January 16, 2002, 373 SCRA 665,* a certificate of deposit is "a written acknowledgement 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 some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created". Thus, petitioner's Mega Savings Deposit accounts are plainly and clearly a species of certificates of deposits within the purview of Section 180 of the Tax Code.

We agree with respondent.

Petitioner's argument that its product Mega Savings Deposit falls under the definition of a "savings deposit" and not of a "time deposit" is implausible. It is absurd to even consider petitioner's contention that by the very name its product carries, among others, it is to be considered as a "savings deposit". It is to be emphasized, at this point, that terminologies are mere matters which are capable of being overturned

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by circumstances. It has been held in a number of cases that what is controlling is the nature and the true character of the transaction as it is conveyed by the instrument or document attached to it. The name by which an instrument or transaction is denominated is not controlling in determining its true character (L.R. Heat Treating Co., 28 TC 874).

This court believes that petitioner's appreciation and understanding of Section 180 of the Tax Code is clearly erroneous. Section 180 of the Tax Code, provides:

> **Section 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 Substitutes, Debt Instruments, Certificates of Deposit 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 or <u>certificates of deposits drawing interest</u>, 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), or fractional part thereof, of the face value of any such agreement, bill or exchange, draft, certificate of deposit, or note: *Provided*, That only one documentary stamp tax shall be imposed on either loan 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.

From the foregoing, the law subjects a "certificate of deposit" to documentary stamp tax. It does not prescribe nor require any particular form nor does it qualify. It has been defined that a certificate of deposit is "any written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or some other person or his order" *(Far East Bank & Trust Company vs Querimit, supra).* Clearly, therefore, by the very definition aforementioned, petitioner's Mega Savings Deposit falls within its ambit. The fact that petitioner's Mega Savings Deposit is evidenced by a passbook and not by a certificate is not an issue. What matters are the facts that surrounds the document and the transaction itself.

From the text of Section 180 of the Tax Code, a "certificate of deposit" subject to documentary stamp tax must have the essential features of a time deposit. A "time deposit" is a form of a certificate of deposit which refers to a deposit account paying interest for a fixed term, with the understanding that funds cannot be withdrawn before maturity without giving advance notice. In practice, a "time deposit" is evidenced by a certificate of time deposit. Certificate of deposits or time deposits usually carry penalties for early withdrawal *(Black's Law Dictionary, 6th Edition).* Verily, the main difference between a "savings deposit" and a "time deposit" is the penalty, which may come in a form of reduced interest rates, attached to it in instances when the depositor

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makes a withdrawal prior to the maturity of the deposit.

Based on the facts presented, this court is convinced that the Mega Savings Deposits of petitioner fall under the category of "certificates of deposits" pursuant to Section 180 of the Tax Code and are subject to documentary stamp tax as they have all the features of a "time deposit", although the form is modified by the usage of a passbook instead of a certificate.

Additionally, the testimony of the witness presented during the hearing on March 10, 2003, patently showed that the features of petitioner's Mega Savings Deposit are akin to that of a "time deposit", to wit:

<u>CROSS EXAMINATION BY ATTY. RHODORA CORCUERA-MENZON</u>

ATTY. MENZON:

Q. Madame Witness, earlier you said that there is a cut-off time for Mega Savings Account. So, you are saying that there is a holding period for Mega Savings Account?

MS. OLIZON:

A. There is a holding period in such a way that if you complete the holding period, you will be able to get the additional interest, Ma'am.

ATTY. MENZON:

Q. What is the holding period for Mega Savings Account, Ms. Witness?

MS. OLIZON:

A. There are various holding periods, Ma'am.

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ATTY. MENZON:

Q. Like?

MS. OLIZON:

A. Like it could be a minimum of seven (7) days, two (2) weeks, three (3) weeks or about a month, Ma'am.

ATTY. MENZON:

Q. So, if the depositor withdraw it on the 4th day, he does not get interest rate given in the Mega Savings Account, Ms. Witness?

MS. OLIZON:

A. The interest rate would be given is a savings rate. It is between 1-7 days. So, like in this case its 4th day, its going to be savings rate, Ma'am.

Apparently, in both cases of regular savings and time deposits, 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. In Mega Savings Deposit, the transaction is covered by a passbook while in time deposit, it is through a certificate of deposit. Nonetheless, in both cases, the bank acknowledges the receipt of a sum of money on deposit and which the bank promises to pay to the depositor, bearer or to the order of a bearer on a specified period of time.

Considering that the transaction evidenced by the different documents are similar and that 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 thereon,

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subject to documentary stamp tax.

Anent the issue of whether or not the imposition of the 25% surcharge was proper, we rule for the respondent.

Section 248(A) of the Tax Code, provides that:

> Section 248. *Civil Penalties.* –
>
> A. There shall be imposed, in addition, to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> 1. Failure to file any return required under the provisions of this Code or rules and regulations on the date prescribed; or
>
> 2. Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer than those with whom the return is required to be filed; or
>
> 3. **Failure to pay the tax within the time prescribed for its payments in the notice of assessments;** or
>
> 4. Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment. (Emphasis supplied)

The imposition of surcharge is mandatory. This is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State. The delay in the payment of the deficiency tax within the time prescribed for its payment in the notice of assessment justifies the imposition of a 25% surcharge in consonance with Section 248(A)(3) of the Tax Code. *(Dr. Felisa L. Vda de San Agustin,*

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in subsitition of Jose Y. Feria, in his capacity as Executor of the Estate of San Jose Agustin vs. Commissioner of Internal Revenue, G.R. 138485, September 10, 2001). Even the alleged good faith of the taxpayer in failing to pay the tax upon advice of counsel is not sufficient justification for seeking exemption from the payment of surcharges *(Commissioner of Internal Revenue vs Royal Interocean Lines & The CTA, L-26806, July 30, 1970).*

It is worth emphasizing that "surcharge" is an overcharge or exaction imposed by law as an addition to the main tax required to be paid. It is not really a penalty as used in criminal law but a civil administrative sanction provided primarily as a safeguard for the protection of the State revenue and to reimburse the government for the expenses in investigating and the loss resulting from the taxpayer's fraud *(Helvering vs Mitchell, 303 U.S. 390; Spies vs U.S. 314 U.S. 492).* In other words, the imposition of a surcharge is not penal but compensatory in nature – they are compensation to the State for the delay in the payment, or for the concomitant use of the funds by the taxpayer beyond the date he is supposed to have paid them to the State *(Republic vs. The Phil Bank of Commerce, L-20951, July 31, 1970; Vera vs. Navarro, L-27745, October 18, 1977).*

Inasmuch as Assessment Notice No. ST-DST-96-0036-2000, assessing petitioner for deficiency documentary stamp taxes for the year 1995 did not demand for a 25% surcharge, it is hereby modified to include a 25% surcharge pursuant to Section 248 of the Tax Code, in addition to the basic documentary stamp tax due, recomputed as

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follows:

ASSESSMENT NOTICE NO. ST-DST-96-0036-2000

Total Mega Savings	P 2,588,034,943.00
Documentary Stamp Tax Due	
(P2,588,034,943.00 X .30/200)	3,882,052.50
Add: **25% Surcharge** (Section 248)	970,513.13
TOTAL	**P 4,852,565.63**
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IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby **DISMISSED** for lack of merit. The subject Decisions of the Commissioner of Internal Revenue, both dated December 21, 2001, assessing petitioner of deficiency documentary stamp taxes, are hereby **PARTIALLY AFFIRMED**. Accordingly, petitioner is **DIRECTED TO PAY** respondent the amounts of:

1. **FOUR MILLION EIGHT HUNDRED FIFTY TWO THOUSAND FIVE HUNDRED SIXTY FIVE AND 63/100 (P4,852,565.63)** as deficiency documentary stamp tax for the year 1995, plus 20% delinquency interest per annum, pursuant to Section 249 of the Tax Code, from May 1, 2000 until such time the said amount is fully paid; and

2. **SEVEN MILLION NINE HUNDRED FOURTEEN THOUSAND TWO HUNDRED FORTY AND 46/100 (P7,914,240.46)** as deficiency documentary stamp tax for the years 1996 and 1997, plus 20% delinquency interest, pursuant to Section 249 of the Tax Code, from February 10, 2000 until such time the said amount is fully paid.

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SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

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