REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UNITED OVERSEAS BANK PHILIPPINES,
Petitioner,

C.T.A. EB No. 188
(C.T.A. CASE No.6764)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Present:

Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, *JJ.*

Promulgated:

JAN 10 2007

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D E C I S I O N

CASTAÑEDA, Jr., *J.*:

In the Petition for Review before Us, petitioner United Overseas Bank Philippines, pursuant to Section 18 of Republic Act ("R.A.") No. 1125 as amended by R.A. No. 9282, questions the Decision and the Resolution of the First Division of the Court of Tax Appeals (the Court in Division) dated February 8, 2006 and May 22, 2006, respectively, which dismissed for lack of merit its appeal from the decision of respondent Commissioner of Internal Revenue docketed as C.T.A. CASE No. 6764 entitled " *United Overseas Bank Philippines vs. Commissioner of Internal Revenue"*.

The dispositive portion of the assailed Decision reads as follows:

> **WHEREFORE**, the Petition for Review is **DISMISSED** for lack of merit and that respondent's Decision dated August 12, 2003 is hereby **AFFIRMED**. Accordingly, petitioner is **ORDERED TO PAY** the respondent the deficiency documentary stamp tax in the sum of SIX MILLION SEVEN HUNDRED FIFTY THOUSAND ONE HUNDRED THREE PESOS AND SEVENTY ONE CENTAVOS (P6,750,103.71), plus 25% surcharge for late payment as provided in Section 248(3) of the Tax Code and 20% delinquency interest from September 30, 2003 until the amount is fully paid pursuant to Section 249(C) of the Tax Code.
>
> **SO ORDERED.**

Likewise, the dispositive portion of the questioned Resolution reads :

> **WHEREFORE,** petitioner's Motion for Reconsideration filed on March 3, 2006 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

FACTS OF THE CASE

The following are the facts of the instant case as found by the Court in Division:

> Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines and authorized by the Bangko Sentral ng Pilipinas to engage in general banking operations in the Philippines.
>
> Respondent is duly appointed to perform the duties of his office, including, *inter alia*, the power to decide disputed assessments, subject to the exclusive appellate jurisdiction of the Court.
>
> In the Formal Letter of Demand and the Assessment Notice both dated January 14, 2002, which petitioner received on January 25, 2002, respondent was assessing petitioner of deficiency documentary stamp tax ("DST") on its Savings Plus Accounts ("SPAs") for taxable year 1998 in the aggregate amount of SIX MILLION SEVEN HUNDRED FIFTY THOUSAND ONE HUNDRED THREE PESOS AND SEVENTY ONE CENTAVOS (₱6,750,103.71). The Formal Letter of Demand reads:

212

FORMAL LETTER OF DEMAND

UNITED OVERSEAS BANK PHILIPPINES
20/F Pacific Star Building
Buendia Avenue, Makati City

Gentlemen:

Please be informed that after investigation conducted on your 1998 internal revenue tax liabilities pursuant to Letter of Authority No. 00059142 dated June 20, 2000, and after consideration of the documents submitted, there has been found due from you deficiency internal revenue taxes, including increments thereon, details of which are shown hereunder:

ASSESSMENT NO: DST-98-000032
DOCUMENTARY STAMP TAX

Special Savings	Php	2,795,074,000.00
Multiply by		.3/200
Basic tax due	Php	4,192,611.00
Add: Interest (1/11/99-1/31/02)		2,557,492.71
Total deficiency DST	**Php**	**6,750,103.71**

Details of Discrepancies:

Documentary stamp tax (DST) is being assessed on the special savings accounts of the bank's various depositors pending resolution of this industry issue.

The 20% interest per annum has been imposed pursuant to the provisions of Section 249 of the National Internal Revenue Code, as amended. Please note that the interest and the total amount will have to be adjusted if paid beyond January 3, 2002.

In view thereof, you are requested to pay your aforesaid deficiency documentary stamp tax through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed Assessment Notice.

Very truly yours,

RENE G. BAÑEZ
Commissioner of Internal Revenue

By:

VIRGINIA L. TRINIDAD (sgd.)
Assistant Commissioner
Large Taxpayer Service

Pertinent portion of the Assessment Notice reads:

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency) CREDIT/ REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS:

TAX TYPE:	PARTICULARS:	AMOUNT	
Documentary Stamp Tax	Violation on non payment of Documentary Stamp tax on Special Savings Account	Basic	4,192,611.00
BASED ON REASON: Violation Sec. 173 of NIRC		Interest	2,557,492.71
		Compromise	
		Total	**6,750,103.71**

Thereafter, petitioner filed on February 14, 2002 its letter-protest.

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213

On August 28, 2003, petitioner received from respondent the final Decision denying its protest and ordering it to pay the deficiency DST for the taxable year 1998, plus increments that have legally accrued. Respondent ratiocinated:

> To sum up, We believe and so hold that the SSD and the time deposit are just one and the same banking transaction. To evade payment of the documentary stamp tax, efforts were made to place a superficial distinction between the two (2) deposit accounts by introducing an innovation using a regular passbook to document the SSD and by claiming that the said account has no specific maturity date. At first glance, the innovative scheme may have accomplished in putting a semblance of difference 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 labeled as such, it has a fixed maturity date and for all intents and purposes, it has the same nature and substance as a certificate of deposit bearing interest.

On September 10, 2003, petitioner filed its Petition for Review before the Court in Division. On October 29, 2003, respondent filed his Answer.

On February 8, 2006, the Court in Division rendered the assailed Decision.

On March 3, 2006, petitioner filed its Motion for Reconsideration. In a Resolution dated May 22, 2006, the Court in Division denied said motion .

On June 19, 2006, petitioner filed an Urgent Motion for an Extension of Time to File Petition for Review. The Court *En Banc* granted petitioner a non-extendible period of fifteen (15) days from June 20, 2006 or until July 5, 2006 within which to file its Petition for Review. On July 5, 2006, petitioner filed its Petition for Review with the Court *En Banc*.

In an *en banc*[1] Resolution dated July 20, 2006, respondent was ordered to file his Comment within ten (10) days from receipt of the said Resolution. On August 7, 2006, respondent filed a Motion for Extension of

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1 *CTA EB Records*, p. 202

214

Time to File Comment[2]. As prayed for, respondent was granted a final and non-extendible period of thirty (30) days from August 7, 2006 or until September 06, 2006 within which to file his Comment with a strong warning that no further extension shall be granted.[3] However, no Comment was filed by respondent. Hence, the petition was deemed submitted for decision.

ASSIGNMENT OF ERRORS

Petitioner alleged that the Court in Division erred in sustaining the assessment against petitioner for deficiency DST[4], as follows:

A. THE FORMAL LETTER OF DEMAND DATED JANUARY 14, 2002 AND ITS ATTACHMENTS ARE VOID SINCE THEY DID NOT SUFFICIENTLY CITE THE LEGAL AND FACTUAL BASIS OF THE ASSESSMENT AS REQUIRED UNDER SECTION 228 OF THE 1997 TAX CODE.

B. ASSUMING ARGUENDO THAT THE FORMAL LETTER OF DEMAND AND THE CORRESPONDING ASSESSMENT NOTICES ARE VALID, NEITHER THE SPA NOR THE SPA PASSBOOK EVIDENCING THE SAME CAN BE CLASSIFIED AS A LOAN AGREEMENT, PROMISSORY NOTE, BILL OF EXCHANGE, DRAFT, INSTRUMENT OR SECURITY ISSUED BY THE GOVERNMENT OR CERTIFICATE OF DEPOSIT SUBJECT TO DOCUMENTARY STAMP TAXES UNDER SECTION 180 OF THE 1997 TAX CODE.

PETITIONER'S ARGUMENTS

As to the first issue, petitioner contends that respondent failed to comply with the due process requirement despite invoking Section 173 of the 1997 Tax Code because the said provision is merely the opening statement for Title VII of the 1997 Tax Code, which imposes DST on various documents. Petitioner avers that the law strictly requires a detailed appraisal of the facts and the law upon which the assessment is based. Further, petitioner argues

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2 *Ibid.*, p. 204
3 *Ibid.*, p. 208
4 *Petition for Review En Banc*, p. 7, par. 20

215

that neither the Formal Letter of Demand nor the Assessment Notice cites the specific provision which shows that petitioner's Savings Plus Accounts (SPA) are subject to DST. The Formal Letter of Demand merely states an "industry issue" without any explanation.

As to the second issue, petitioner contends that its SPA is not a time deposit in form and substance and that it is not evidenced by any of the documents enumerated under Section 180 of the 1997 Tax Code. Petitioner contends that its SPA is akin to a regular savings account because it is evidenced by a passbook which cannot be considered as a certificate of deposit because a certificate of deposit has been defined, among others, as "a written acknowledgment by a bank of the receipt of money on deposit which the bank promises to pay to the depositor, bearer or to some other person or order."[5] Petitioner avers that a passbook is merely a record of the customer's account with the bank and that it is not a negotiable instrument because it does not contain or stipulate that the bank promises to pay to the depositor, to his order, or to some other person or his order. Whereas, a certificate of deposit is basically a promissory note, since it "promises to pay" the holder thereof a certain sum of money.

Petitioner contends that although certificates of deposits are covered by Section 180 of the Tax Code, it does not necessarily mean that Section 180 subjects any deposit to DST. Petitioner avers that time deposits became subject to tax under Section 180 of the 1997 Tax Code because said deposits

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5 *Supra note* 1, p. 29

are evidenced by certificates of deposits as required under existing rules and regulations of the BSP. Petitioner alleges that under Section 180, the liability for DST is not just based on transaction per se but also on the form of the document such as loan agreements, promissory notes, and of course, certificates of deposit.

Petitioner asserts that the liability of an instrument to DST, and the amount of tax, are determined by the form and face thereof, and cannot be effected by proof of facts outside of the instrument itself.[6] The form of the document is to be looked into, rather than the transaction of which it is a part.[7]

Petitioner argues that even the Legislators themselves have conceded that Section 180 of the 1997 Tax Code subjects to DST the certificates of deposits and not the transactions per se when they enacted Republic Act ("R.A.") No. 9243 [8] for the purpose of rationalizing the provisions of the DST in the 1997 Tax Code and significantly changed the coverage of Section 180 of the 1997 Tax Code from "certificates of deposit drawing interest" to " certificates or other evidences of deposits" that are either drawing interests higher than the regular savings deposit or drawing interest and having specific maturity date" under the new Section 179[9] created by R.A. No. 9243.

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6 *US vs. Isham*, 17 Wall, D 96, 84 U.S. 496; *Supra* note 1, p. 39

7 *Merchant's Warehouse vs. McClain*, 112 F. 787, 26 USCA 900

8 "An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended and for Other Purposes"

9 *SEC. 179. Stamp Tax on All Debt Instruments.*- On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or a fractional part thereof, of the issue price of any such debt instruments: Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five

Petitioner avers that Senator Raphael Recto's sponsorship speech of R.A. No. 9243 clearly stated that special savings accounts, such as petitioner's SPA, are not within the ambit of the then existing law (the 1997 Tax Code), explaining the reason for the amendments in the following manner:

> 5.This bill redefines debt instruments to include "certificates or other evidences of deposits that are either drawing interests higher than the regular savings deposit or drawing interest and having specific maturity date." This amendment will capture revenue losses from a popular banking practice that offers time deposits using passbooks instead of certificates. It corrects the bias against certificates and settles the issue against the taxability of any form of time deposits.
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> In addition, the amendment also captures a "special savings account" into the tax net which is not within the ambit of the law right now. This will draw in an additional P3.4 billion in revenues for government.

Petitioner says that it cannot be said that the amending section carries out any implicit, previous legislative intent of Section 180 of the 1997 Tax Code, quoting:

> "It is well-settled rule of statutory construction that where a statute is susceptible of several interpretations or where there is ambiguity in its language, there is no better measure of ascertaining the will and intention of the legislature than that which is afforded by the history of the statute."[10]
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> "By looking at and investigating the legislative history of the statute, the court will be able to arrive at its correct interpretation."[11]

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(365) days: Provided, further, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instrument, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation. (underline supplied)

10 Agpalo,R., *Statutory Construction*, 3rd Ed. (1995), p.72 citing *Greenfield vs. Meer*, 77 Phil. 394 [1946]; *Canovas vs. Batangas Transportation Company* L-19868, March 31, 1965 (13 SCRA 512); *Supra* note 1, p. 37

11 *Id.*, citing *Collector of Internal Revenue vs. Zamora*, 118 Phil. 164[1963]; *Supra* note 1, p. 37

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218

COURT'S RULING

We deny the petition.

Respondent complied with Section 228 of the 1997 NIRC

The contention of the petitioner that the assessment is void because the due process requirement under Section 228 of the 1997 National Internal Revenue Code ("NIRC", for brevity) was not observed by respondent is bereft of merit.

The purpose of the requirement that the *taxpayer shall be informed in writing of the law and facts on which the assessment is made*, found in second paragraph of Section 228 of the NIRC of 1997, "is to give the taxpayer the opportunity to refute the findings of the examiner and give a more accurate and detailed explanation regarding the proposed assessment(s)" (*Belle Corporation vs. Commissioner of Internal Revenue*, C.T.A. CASE No. 5930, April 4, 2002).

The Supreme Court even explained the rationale behind the second paragraph of Section 228 of the NIRC in this manner:

> The law imposes a substantive, not merely a formal requirement. To proceed heedlessly with tax collection without first establishing the validity of the assessment is evidently violative of the cardinal principle in administrative investigations: **that taxpayers should be able to present their case and adduce supporting evidence.**[12] (emphasis supplied)

It is clear from the above-quoted provision of law itself and its rationale that "so long as the parties are notified and were given an

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12 *Azucena T. Reyes vs. Commissioner of Internal Revenue*, G.R. No. 163581 and *Commissioner of Internal Revenue vs. Azucena T. Reyes*, G.R. No. 159694, January 27, 2006 (480 SCRA 382)

opportunity to explain their side, the requirements of due process are satisfactorily complied with."[13]

Contrary to the allegation of petitioner in the instant case, due process was observed by respondent. Petitioner was notified of the facts and the law on which the assessment is based, to wit: (1) respondent's Conference Letter dated March 7, 2001[14]; (2) Preliminary Assessment Notice dated December 21, 2001[15]; (3) Audit Result/ Assessment Notice dated January 14, 2002 [16]; and (4) Formal Letter of Demand dated January 14, 2002[17].

In fact, petitioner timely protested the assessment. In its protest, petitioner argued that its savings plus account is not among those subject to documentary stamp tax under Section 180 of the Tax Code. Thus, petitioner had been given the opportunity to present his case and adduce supporting evidence. Clearly, petitioner had been informed of the factual and legal bases of the assessment for deficiency DST.

There is substantial compliance with Section 228 when petitioner was given an opportunity to protest the said assessment upon issuance of the assessment notice.[18] Thus, We quote with approval the ruling of the Court in Division:

> Petitioner was informed that it violated Section 173 of the Tax Code and that it was being assessed of deficiency DST, plus increments, for taxable year 1998. Furthermore, petitioner was given the details of the computation. Also, the

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13 *Calma vs. Court of Appeals* G.R. No. 122787, February 9, 1999 (302 SCRA 682)
14 *Supra* note 1, pp.133-136
15 *Supra* note 1, p.139
16 *Supra* note 1, p. 140
17 *Supra* note 1, p. 141
18 *ING. Bank N.V. Manila Branch vs. Commissioner of Internal Revenue*, C.T.A. CASE No. 6187, August 9, 2004

220

> sufficiency in form of the Formal Letter of Demand and Assessment Notice is bolstered by the fact that petitioner promptly protested the assessment for deficiency DST and claimed that it is not covered by Section 180 of the Tax Code.

The requirement set forth in Section 228 of the NIRC was, therefore, **substantially** complied with. Consequently, the assessment notices are **valid.**[19]

Furthermore, although Section 173[20] of the NIRC as mentioned in the assessment notice does not specifically state that SPA are subject to DST, the said section leads us to Section 180 of the NIRC, the legal basis of the taxability of petitioner's SPA. Section 173 of the NIRC provides, in part, that " **there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title**". It is elementary in the rules of statutory construction that when the law is clear, there is no room for interpretation. Thus, applying the letters of Section 173, it is correct to say that petitioner was adequately informed of the legal basis of the assessment because of the phrase "**following Sections of this Title**" which refers to the succeeding Sections 174 to 198 of the NIRC.

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19 *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue*, C.T.A. EB No. 76 , June 22, 2006

20 SEC. 173. *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.* – Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right or property incident thereto, **there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title**, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and the same time such act is done or transaction had: *Provided*, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax. (Emphasis supplied.)

After holding that the Formal Letter of Demand and its attachments are valid, We will now discuss the taxability of petitioner's SPA.

Petitioner's SPA are subject to DST

The issue of whether or not petitioner's SPA are subject to DST is not novel. The Court *En Banc* in a long line of cases[21] ruled that a deposit account which has the same features as a time deposit account like a fixed term in order to earn a higher interest rate, is subject to the documentary stamp tax (DST).

In the instant case, petitioner's SPA are essentially time deposits as correctly found by the Court in Division in the testimony of Mr. Teofisto Rey, petitioner's Manager of General Accounting, thus, We quote, in part, the Court in Division's decision:

> "...its savings plus account is a special savings product of the bank that requires higher deposit and earns higher interest rate. The minimum deposit required for an SPA is ₱100,000.00 that earns a high interest rate of 15% per annum, **provided** that the depositor does not withdraw therefrom. Otherwise, if an account-holder withdraws therefrom and the deposit is below the ₱100,000.00 monthly minimum balance required, the regular interest rate of 3% is applied. A depositor therefore cannot demand from the petitioner to pay the high interest rate if the monthly minimum balance is not maintained."

Thus, petitioner's SPA is subject to documentary stamp tax (DST).

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21 *Banco de Oro Universal Bank vs. Commissioner of Internal Revenue*, C.T.A. EB No. 165 , August 16, 2006;*Prudential Bank vs. Commissioner of Internal Revenue*, C.T.A. EB No. 100, July 31, 2006;*Banco de Oro Universal Bank vs. Commissioner of Internal Revenue*, C.T.A. EB No.138, April 7, 2006;*International Exchange Bank vs. Commissioner of Internal Revenue*, C.T.A. EB NO. 87, January 30, 2006; *China Banking Corporation vs. Commissioner of Internal Revenue*, C.T.A. EB No. 66, January 3, 2006;*Philippine Banking Corporation (Now: Global Business Bank, Inc.) vs. Commissioner of Internal Revenue*, C.T.A. EB No. 63, November 23, 2005;*Banco de Oro Universal Bank vs. Commissioner of Internal Revenue*, C.T.A. EB N o. 39, October 28, 2005; *Allied Banking Corporation vs. Guillermo L. Parayno, Jr., in his official capacity as the Commissioner of Internal Revenue, and Eleanor N. Litao, in her official capacity as Chief, LT- Collection and Enforcement Division, Bureau of Internal Revenue*, C.T.A. EB No.69, July 11, 2005; *Traders Royal Bank vs. Commissioner of Internal Revenue*, C.T.A. EB No. 34, April 26, 2005; *United Overseas Bank Philippines vs. Commissioner of Internal Revenue*, C.T.A. EB No. 31, March 10, 2005

222

Section 180 of the NIRC provides as follows:

> 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 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, 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), 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 note 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."(*underline supplied*)

The above-quoted provision of the NIRC enumerates the documents subject to DST, to wit: (a) bonds; (b) loan agreements; (c) bills of exchange; (d) drafts; (e) instruments and securities issued by the Government or any of its instrumentalities; (f) deposit substitutes; (g) debt instruments; (h) **certificates of deposits drawing interest**; (i) orders for the payment of any sum of money otherwise than at sight or on demand; and (j) promissory notes, whether negotiable or non-negotiable. Clearly, a certificate of deposit is subject to DST.

Petitioner's contention that passbook is not a certificate of deposit is untenable. Section 180 of the NIRC does not prescribe the form of a certificate of deposit.[22] The Supreme Court has defined a certificate of

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22 *Supra* note 16, C.T.A. EB No. 138

223

deposit as "a written acknowledgement by a bank or banker of the receipt of 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."[23] The definition of a certificate of deposit is all encompassing[24] because as long as there is a receipt by a bank of a sum of money for deposit and such receipt is acknowledged in writing, it is a certificate of deposit. The basic requirements that must be met for a document to be classified as a certificate of deposit are the following, to wit: (1) the bank or banker received a sum of money on deposit, and (2) such receipt was duly acknowledged in writing by the bank. A passbook is a record of the depositor's account with the bank which necessarily includes the receipt of sum of money for deposit. Thus, a passbook evidencing the SPA of the petitioner clearly falls within the definition of a certificate of deposit which is subject to DST.

It has been ruled that "in determining whether certain instruments were subject to documentary stamp taxes, substance would control over form and labels, xxx xxx xxx."[25] Moreover, to permit the true nature of the transaction to be disguised by mere formalisms, which exist solely to alter tax

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23 *Far East Bank and Trust Company vs. Querimit* G.R. No. 148582, January 16, 2002 (373 SCRA 665)

24 *Supra* note 16 , C.T.A. EB Nos.100 & 138

25 *Knudsen Creamery Co. of California vs. United States*, Civ. No. 15336, June 3, 1954 (121 Federal Supplement 860)

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liabilities, would seriously impair the effective administration of the tax policies of Congress.[26]

We find no merit in the contention of petitioner citing Legislative discussions/speeches in connection with RA No. 9243 that SPA are not previously included in Section 180 of the NIRC. The Supreme Court has held that views expressed by several persons on the floor of the House of Representatives during the consideration of a bill do not necessarily reflect the feeling of the House of Representatives, and accordingly, they are not controlling in the interpretation of the law; they are deemed to be mere personal opinions of those making them.[27] Likewise, individual statements made by Senators on the floor of the Senate do not necessarily reflect the view of the Senate. Much less do they indicate the intent of the House of Representatives.[28]

The interpretation of statutes is for the courts. And the courts are not necessarily bound by one legislator's opinion, expressed in Congressional debates, concerning the application of existing laws.[29]

The history of the proceedings attending the actual passage of the statute through the legislature as well as the action of the executive with

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26 *Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr. Represented by Special Co-administrators Lorna Kapunan and Mario Luza Bautista*, G.R. No. 147188, September 14, 2004 (438 SCRA 290)

27 Alcantara, S.S., *Statutes*, 1997 Ed., p. 137 citing *The Philippine Association of Government Retirees, Inc. vs. Government Service Insurance System, et al*, G.R. No. L-20503, June 30, 1965 (14 SCRA 610); *Manila Jockey Club, Inc. vs. Games and Amusements Board*, G.R. No. L-12727, February 29, 1960; *Mayon Motors, Inc. vs. Commissioner of Internal Revenue*, G.R. No. L-15000, March 29, 1961(1 SCRA 918); *Legaspi vs. Hon. Executive Secretary*, et al., G.R. No. L-36153 , November 28, 1975 (68 SCRA 253)

28 *Casco Phil. Chem. Co.,Inc. vs. Gimenez* No.L-17931, February 28, 1963 (7 SCRA 347); *Resins, Inc. vs. Auditor General*, No.L-17888, October 29, 1968 (25 SCRA 754)

29 *Song Kiat Chocolate Factory vs. Central Bank of the Phils.* No.-8888, November 29, 1957(102 Phil 477)

225

reference thereto may be resorted to in order to discover the legislative intent **in case of ambiguity**.[30] In the instant case, there is no ambiguity to speak of in the language of Section 180 of the NIRC in relation to R.A. No. 9243. In fact, in the case *of Banco de Oro Universal Bank vs. Commissioner of Internal Revenue*[31], the Court *En Banc* held that in enacting R.A. No. 9243, "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 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." In the same manner, Sec. 9 of R.A. No. 9243 now expressly exempts from DST all "bank deposit accounts without a fixed term or maturity" thereby removing any doubt that deposit accounts **with a fixed term** have always been subject to DST[32].

In view of all the foregoing, We see no convincing reason to disturb the findings and decision of the Court in Division.

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30 *Supra* note 23, p. 136
31 *Supra* note 16, C.T.A. EB No. 39
32 *Supra* note 16, C.T.A. EB No. 165

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WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed **Decision** and the **Resolution** dated February 8, 2006 and May 22, 2006, respectively, are hereby **AFFIRMED**.

SO ORDERED.

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

We Concur:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(With concurring and dissenting opinion)
CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

227

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

UNITED OVERSEAS BANK PHILIPPINES,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE No. 188
(CTA CASE No. 6764)

Promulgated:
JAN 10 2007

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Concurring and Dissenting Opinion

This is an appeal to the Court En Banc by way of a certified Petition for Review, under Section 18 of Republic Act No. 1125, as amended by R.A. No. 9282, of the Decision dated February 8, 2006 promulgated by the CTA First Division in CTA Case No. 6764, entitled: "United Overseas Bank Philippines vs. Commissioner of Internal Revenue" as well as the Resolution dated May 22, 2006 of the First Division. In both the assailed Decision and Resolution, the First Division dismissed the Petition for Review for lack of merit.

In support of the instant Petition for Review, petitioner raised the following grounds in support hereof:

THE HONORABLE FIRST DIVISION ERRED IN SUSTAINING THE ASSESSMENT AGAINST PETITIONER FOR DEFICIENCY DST:

A. THE FORMAL LETTER OF DEMAND DATED JANUARY 14, 2002 AND ITS ATTACHMENTS ARE VOID SINCE THEY DID NOT SUFFICIENTLY CITE THE LEGAL AND FACTUAL BASIS OF THE ASSESSMENTS AS REQUIRED UNDER SECTION 228 OF THE 1997 TAX CODE.

B. ASSUMING *ARGUENDO* THAT THE FORMAL LETTER OF DEMAND AND THE CORRESPONDING ASSESSMENT NOTICES ARE VALID, NEITHER THE SPA NOR THE SPA PASSBOOK EVIDENCING THE SAME CAN BE CLASSIFIED AS A LOAN AGREEMENT, PROMISSORY NOTE, BILL OF EXCHANGE, DRAFT, INSTRUMENT OR SECURITY ISSUED BY THE GOVERNMENT OR CERTIFICATE OF DEPOSIT SUBJECT TO DOCUMENTARY STAMP TAX UNDER SECTION 180 OF THE 1997 TAX CODE.

I agree with the majority opinion finding that contrary to the allegation of petitioner in the instant petition, due process was observed by the respondent. Petitioner was notified of the facts and the law on which the assessment is based, to wit: (1) respondent's Conference Letter dated March 7, 2001; (2) preliminary Assessment Notice dated December 21, 2001; (3) Audit Result/Assessment Notice dated January 14, 2002; and (4) Formal Letter of Demand dated January 14, 2002. In fact, petitioner timely protested the assessment. Petitioner had been given the opportunity to present his case and adduce supporting evidence. Thus, there was substantial compliance with Section 228 when petitioner was given an opportunity to protest the said assessment upon issuance of the assessment notice.

However, with due respect to my colleagues, I am dissenting with the majority opinion holding petitioner United Overseas Bank liable for Deficiency Documentary Stamp Tax on its Special Savings Deposits.

It is my opinion that the Special Savings Deposits, unlike a time deposit, has no holding period or maturity date in order to avail a higher interest. A time deposit has a maturity date wherein the parties mutually agree that the bank will pay the depositor the stipulated interest rate only upon the expiration of a definite, fixed and predetermined date. The depositor in a time deposit is bound by the maturity date agreed upon; otherwise, he or she will be penalized by not receiving the high interest as stated in the certificate of deposit. In contrast, Special Savings Deposits has no maturity date. The period offered to a prospective Special Savings depositor is a length of time provided in a schedule of placement, for which a corresponding rate is given. Still, the depositor is at liberty to withdraw his or her deposit at any time upon the presentation of his or her passbook.

Special Savings Deposit is an innovative product offered by the petitioner to its clients. It is a crossbreed between a regular savings deposit and a time deposit and as such, it contains essential features of both products. This new product offers higher interest rates upon certain conditions similar to a time deposit, but this does not automatically classify it as such.

From the text of Section 180 of the Tax Code, a "certificate of deposit" subject to DST must have the features of a time deposit. A "time deposit", is 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 deposits usually carry penalties for early withdrawal. Cash in a bank earning interest; contrast with demand deposit (*Black's Law Dictionary, 6th Edition*). Thus, it is incorrect for the respondent to conclude that Special Savings Deposits falls within the definition of a "certificate of deposit" to make it liable for DST.

In a Supreme Court decision, it was held that:

> "The Court takes this occasion to reiterate the hornbook doctrine in the interpretation of the tax laws that "(a) statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. Xxx (a) tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. Parenthetically, in answering the question of who is subject to tax statutes, it is basic that "in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subject citizens because burdens are not to be imposed nor presumed to be imposed

231

beyond what statutes expressly and clearly import." (*CIR vs. Court of Appeals, Court of Tax Appeals and Ateneo de Manila, 271 SCRA 605*)

There must be a law or legislative enactment that mandates the imposition of any tax in order for it to be due and demandable. The legislative intent behind Section 180 of the Tax Code is to include time deposits only as those liable for DST. It is through the introduction of Special Savings Deposits and similar transactions by the banking industry that Congress deemed it necessary to enact a new law to specifically cover the said product within the purview of the said law.

Republic Act # 9243, "An Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes" was enacted into law on February 17, 2004. Section 5 of the said law reads, as follows:

> "**SEC. 5.** Section 180 of the National Internal Revenue Code of 1997, as amended, is hereby renumbered as Section 179 and further amended to read as follows:
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> SEC. 179. **Stamp Tax on All Debt Instruments. –** On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or a fractional part thereof, of the issue price of any such debt instruments: Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: Provided, further, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.
>
> For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instrument, <u>certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date</u>, orders for payment of any sum of money otherwise than

at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation."

The above-cited law clearly subjects to DST not only time deposits but also *other evidences of deposits that are drawing interest significantly higher than the regular savings deposit taking into consideration the size of deposit and the risks involved*. Under this provision, bank deposits drawing interest higher than the regular savings rate, even though the same may be withdrawn anytime, are subject to DST. The enactment of Section 5 of RA # 9243 settled the conflict between the Office of the Commissioner of Internal Revenue and the banking industry with regard to the imposition of DST on Special Savings Deposits and similar transactions. The fact that Congress amended Section 180 of the Tax Code shows that the old law was inapplicable to the instant case. There was no law before the passage of RA # 9243 subjecting the Special Savings Deposits of the petitioner to DST.

In view of the foregoing, I vote that the instant "Petition for Review" be **GRANTED**. I vote that the assessed deficiency Documentary Stamp Tax on petitioner's Special Savings Deposits for the taxable years 1998 be cancelled and set aside.

CAESAR A. CASANOVA
Associate Justice

233