REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CHINA BANKING CORPORATION, Petitioner,	**C.T.A. EB NO. 66** **(C.T.A. CASE NO. 6400)**
-versus-	Present: Acosta, *Presiding Justice*, Castañeda, Jr., Bautista, Uy, Casanova, Palanca-Enriquez, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 03 2006

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DECISION

CASTAÑEDA, *J.:*

For review is the Decision of a Division of the Court of Tax Appeals (the Court in Division) dated October 14, 2004, which partially granted petitioner's Petition for Review in C.T.A. Case No. 6400. The Decision of the Court in Division was subsequently affirmed in a Resolution dated February 2, 2005. The Court in Division ordered the cancellation and withdrawal of Assessment Notice No. ST-DST-97-0372-99 for deficiency documentary stamp taxes on petitioner's Reverse Repurchase Agreement Transactions in the amount of P3,523,600.00 covering the taxable year 1997 but upheld Assessment Notice Nos. ST-DST-94-0054-99, ST-DST-95-0055-99, ST-DST-96-0371-99, and ST-DST-97-0373-99 for deficiency documentary stamp taxes in the following amounts P4,016,822.48, P4,265,646.61, P1,218,750.00 and 1,890,000.00 on petitioner's Special Savings Deposit Accounts for the taxable years 1994, 1995, 1996 and 1997, respectively, the total amount being P11,391,219.09. Petitioner also prays for the issuance of a temporary restraining order enjoining the respondent from proceeding with the collection efforts based on the aforementioned assessment notices.

Petitioner is a universal banking institution organized and existing under the laws of the Philippines, with principal office at No. 8745 Paseo de Roxas corner Villar Sts., Makati City while respondent is the duly appointed Commissioner of Internal Revenue (CIR).

The facts as found by the Court in Division are as follows:

> "For the taxable years 1994 to 1997, petitioner was engaged in the transactions involving purchases/sales of securities to the Bangko Sentral ng Pilipinas, or commonly known as Reverse Repurchase Agreements (RRP). Likewise, during these same years, petitioner was engaged in the transactions of accepting Special

Savings Deposits (SSA) from its clientele *(par 4, Joint Stipulation of Facts and Issues).*

On September 23, 1999, petitioner received a Pre-Assessment Notice (PAN) dated September 21, 1999, issued by herein respondent, assessing it of deficiency documentary stamp taxes on its RRPs and SSAs for the taxable years 1994 and 1995 in the total amount of TWENTY SEVEN MILLION FOUR HUNDRED FIFTY ONE THOUSAND EIGHT HUNDRED FORTY FOUR AND 09/100 PESOS (P27,451,844.09), including increments thereon *(par 5, Joint Stipulation of Facts and Issues).* Consequently, a protest letter dated October 4, 1999 was filed by petitioner, stating therein its disagreement with the findings of the respondent *(par 6, Joint Stipulation of Facts and Issues).*

Thereafter, petitioner received the Final Assessment Notices dated October 8, 1999, for deficiency documentary stamp taxes on its RRPs and SSAs, including increments thereon, in the amounts of FOUR MILLION EIGHT HUNDRED THIRTY SIX THOUSAND EIGHT HUNDRED TWENTY TWO AND 48/100 PESOS (P4,836,822.48) and TWENTY TWO MILLION SIX HUNDRED FIFTEEN THOUSAND TWENTY ONE AND 61/100 PESOS (P22,615,021.61) covering the taxable years 1994 and 1995, respectively, with details as follows:

Transactions subject to DST:

For the year 1994

A.	Reverse Repurchase Agreements		P 424,000,000.00
B.	Special Savings Accounts		2,142,305,326.67
	Total		P2,566,305,326.67
	Rate of Tax		.15%
	Total Tax due thereon		P3,849,457.98
	Add:		
	25% Surcharge	P962,364.50	
	Compromise Penalty	25,000.00	987,364.50
	Total Deficiency DST-Industry Issue		P4,836,822.48

For the year 1995

A.	Reverse Repurchase Agreements		P9,773,000,000.00
B.	Special Savings Accounts		2,275,011,526.88
	Total		P12,048,011,526.88
	Rate of Tax		.15%
	Total Tax due thereon		P18,072,017.29
	Add:		
	25% Surcharge	P4,518,004.32	
	Compromise Penalty	25,000.00	4,543,004.32
	Total Deficiency DST-Industry Issue		**P22,615,021.61**

(Exhibit "C" to "C-4")

On November 22, 1999, petitioner filed its formal administrative protest to the Final Assessment Notice with the respondent *(par 8, Joint Stipulation of Facts and Issues)*.

Before a reply to the above letter-protest was rendered, respondent issued a Preliminary Assessment Notice dated December 17, 1999 and which was received by petitioner on December 20, 1999, assessing petitioner of deficiency documentary stamp taxes on its RRPs and SSAs covering the taxable years 1996 and 1997. A protest-letter was likewise filed by petitioner on December 27, 1999 *(pars 9 & 10, Joint Stipulation of Facts and Issues)*.

On December 29, 1999, a Formal Letter of Demand dated December 27, 1999 was received by petitioner, whereby payment of the total amount of THIRTEEN MILLION SEVEN HUNDRED EIGHTY ONE THOUSAND THREE HUNDRED FIFTY PESOS (P13,781,350.00) for the alleged deficiency documentary stamp taxes on petitioner's RRPs and SSAs covering the taxable years 1996 and 1997 was demanded *(par 11, Joint Stipulation of Facts and Issues)*.

On February 18, 2000, a notice setting an informal hearing scheduled on March 21, 2000 with regard to the protest of petitioner on the deficiency documentary stamp tax on its RRPs and SSAs covering the taxable years 1994 and 1995 was received by petitioner *(Exhibit "H")*. Thereafter, on April 7, 2000, petitioner submitted its final position paper with regard to its protest to the assessments issued *(Exhibit "J")*.

Finally, on January 25, 2002, a Decision promulgated on January 11, 2002, was received by petitioner. In the said Decision, respondent resolved to cancel and withdraw the assessments for deficiency documentary stamp tax on petitioner's RRPs covering the taxable years 1994, 1995 and 1996, however, said decision reiterated and affirmed the assessments for alleged deficiency documentary stamp tax on petitioner's RRPs for the years 1997 as well as on its SSAs covering the taxable years 1994 to 1997 *(Exhibit "K")*. The dispositive portion of the questioned Decision is quoted below for easy reference:

> *"IN VIEW WHEREOF, this Office do hereby resolved the following:*
>
> *1. The protest of herein protestant bank on the deficiency stamp taxes on RRPs covering the years 1994, 1995 and 1996 under the following Assessment Notices, to wit:*
>
> *Assessment Notices Nos.* *Amount* *Year*

ST-DST-94-0054-99	*P820,000.00*	*1994*
ST-DST-95-0055-99	*18,349,375.00*	*1995*
ST-DST2-96-0374-99	*1,976,250.00*	*1996*

are hereby withdrawn and cancelled and the same are considered closed and terminated.

2. *The protest of herein protestant bank on the deficiency stamp tax on RRPs for 1997 under Assessment Notice No. ST-DST-97-0372-99 demanding payment of P3,523,600.00 is hereby affirmed and reiterated.*

3. *The protest of herein protestant bank on the deficiency stamp taxes on SSA covering the taxable years 1994, 1995, 1996 and 1997 under the following Assessment Notices, to wit:*

Assessment Notices Nos.	*Amount*	*Year*
ST-DST-94-0054-99	*P4,041,822.48*	*1994*
ST-DST-95-0055-99	*4,290,646.61*	*1995*
ST-DST-96-0371-99	*1,633,750.00*	*1996*
ST-DST-97-0373-99	*2,595,400.00*	*1997*

are hereby affirmed in all respects.

Consequently, the protestant bank is hereby ordered to pay the above stated amounts plus interest that may have accrued thereon until actual payment to the Collection Service, BIR national Office, Diliman, Quezon City, within thirty (30) days from receipt hereof, otherwise, the collection thereof shall be effected through the summary remedies provided by law.

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

Petitioner appealed to the Court in Division through a Petition for Review filed on February 22, 2002 docketed as C.T.A. Case No. 6400. The following issues were presented to the Court for resolution.

1. Whether or not petitioner's transactions involving the so-called Reverse Repurchase Agreement and Special Savings Deposits are subject to documentary stamp tax for the years assessed.

2. Whether or not the so-called Reverse Repurchase Agreement is included in the definition of the term deposit substitutes under the Tax Code subject to documentary stamp tax.

3. What was the point in time when Reverse Repurchase Agreements were taxable for documentary stamp tax under the Tax Code?

The Court in Division found the petition for review partly meritorious. As stated at the outset, the Court in Division cancelled the assessment for deficiency Documentary Stamps Tax on petitioner's Reverse Repurchase Agreement Transactions amounting to P3,523,600.00 for the year 1997 because the same became taxable only beginning January 1, 1998, the effectivity date of the NIRC of 1997. On the other hand, with respect to the assessments for deficiency documentary stamps taxes on petitioner's Special Savings Deposit (SSD), the Court upheld the same but with modifications on the amounts thereof. The Court in Division ruled as follows:

> "Petitioner's argument that its product Special Savings Deposit is not the same as that of a "Time Deposit" is clearly erroneous. It is to be emphasized at this point, that terminologies are mere matters which are capable of being overturned 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)."

The Court in Division ruled that under Sec. 180 of the NIRC, certificates of deposits drawing interest are subject to documentary stamps tax. It explained the meaning of the term certificate of deposit in the following manner:

> "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).* Certificate of deposit being written instrument evidencing transaction between parties must be considered in the light of the same rule of law as other written instrument *(Montgomery v. Smith, 145 So. 822, 826, 226 Ala. 91).*"
>
> Therefore, based on the aforementioned definition, petitioner's Special Savings Deposit falls within the ambit of a "certificate of deposit". The fact that petitioner's Special Savings Deposit is evidenced by a passbook and not by a certificate is not an issue. It is clear that the said definition does not prescribe or require any particular form nor does it qualify. In determining what instruments are subject to documentary stamp tax, substance would control over the form. In other words, what matters are the facts and circumstances that surround the document and the transaction itself.

On November 9, 2004, the petitioner filed a Motion for Partial Reconsideration and argued that:

> "While it is true that what is controlling is the nature and the true character of a transaction as it is conveyed by the instrument or document attached to it, necessarily a distinction must be recognized, as the law itself, speaks of "certificate of deposit" and not merely "documents of deposit". This being the case, deposits which are not evidenced by certificates quite clearly do not come under the enumeration of the pertinent provision of law."

The Court in Division denied petitioner's Motion for Partial Reconsideration in a Resolution promulgated on February 2, 2005. In denying said Motion, the Court ruled:

> "It is worth emphasizing that a certificate of deposit, as defined in the case of **Far East Bank and Trust Company vs. Querimit, 373 SCRA 665**, "is a written acknowledgment by a bank or a 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 a depositor, or to some other person or his order." When the definition uses the term written acknowledgment, i t definitely concerns documents, for a document is also defined as a formal piece of writing that provides information (Microsoft (R) Encarta (R) Reference Library 2003). Certificates of deposit being written instrument evidencing transaction between parties must be considered in the light of the same rule of law as other instruments *(Montgomery v Smith, 145 So. 822, 826, 226 Ala.91)*. Thus, to try to differentiate a "certificate of deposit" from a "document of deposit" is clearly absurd."

Hence, this appeal to the Court of Tax Appeals *En Banc* (the Court *En Banc*). The sole issue presented by the petitioner is:

WHETHER OR NOT SPECIAL SAVINGS DEPOSITS ARE SUBJECT TO DOCUMENTARY STAMP TAX FOR THE YEARS ASSESSED.

Petitioner argues that the terms and conditions of the Special Savings Deposit (SSD) are provided for in the traditional passbook form and not in a Certificate of Deposit like Time Deposit. Citing Sec. 180 of the NIRC, petitioner asserts that "it is a certificate of deposit which is subject to tax" and pursuant to the principle of *inclusio unios est exclusio alterius* its SSD is not subject to the documentary stamp tax because of its withdrawability any time, making it fall under the category of a certificate of deposit at sight, or on demand, which is expressly exempt from documentary stamp tax.

According to the petitioner, "[t]he argument that there is a penalty imposed is foreign to the discussion as the matter of penalty was never mentioned in the law. And considering that tax laws are construed in *strictissimi juris* against the taxing authority, the discussion on penalties may be uncalled for. Assuming, for the sake of argument, that the subject of penalty is a legitimate issue, the petitioner submits that there is no penalty in the life of its Special Savings Deposit. The fact that a premium rate could be availed of in this product does not indicate there is a penalty; if there is any relation at all, it is a reward rather than penalty. It is for all the above that petitioner's Special Savings Deposit is not included among the items mentioned in Section 180 of the National Internal Revenue Code." *(Petition for Review, pp. 10 & 11).*

ALLEGATION IN SUPPORT OF THE APPLICATION FOR THE ISSUANCE OF A PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER

Petitioner alleges the following grounds in support of its application for the issuance of a preliminary injunction:

> "That the petitioner is entitled to the reliefs demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in the performance of an act or acts, either for a limited period or perpetually;

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> That the commission or continuance of some act complained of during the litigation of the non-performance thereof would certainly work injustice to the plaintiffs, especially considering that the contested assessment is highly questionable, based on speculation, and contrary to law, and is admittedly of novel or first impression that is, without judicial precedent;
>
> That the petitioner are ready, able and willing to post a bond executed to the party enjoined, in an amount to be fixed by the court, to the effect that the petitioner will pay to such party all damages which they may sustain by reason of the injunction if the Court should finally decide that the petitioner was not entitled thereto;
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> That unless a temporary restraining order be forthwith issued ex-parte and upon the filing of this complaint, great and irreparable damage or injury would result to the applicant before the matter can be heard in notice."

On the other hand, respondent argues that petitioner's SSD is subject to the documentary stamps tax imposed by Sec. 180 of the NIRC on certificates of deposit drawing interest. According to the respondent, the essential elements of a certificate of deposit are the following:

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

Respondent argues that "whether a deposit is evidenced by a certificate or a passbook, the same is subject to documentary stamp tax pursuant to the provisions of Section 180" of the Tax Code.

The petition is bereft of merit.

The issue in the case before Us is not novel. This Court had already ruled[1] that a deposit account which have the same features as a time deposit account, *i.e.*, a fixed term in order to earn a higher interest rate, is subject to the Documentary Stamp Tax (DST) imposed in Section 180 of the National Internal Revenue Code of 1977, as amended. Said Section provides:

> "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 deposit drawing interest,* or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: *Provided,* That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: *Provided, however,* That loan agreements or promissory notes the aggregate of which does not exceed two hundred fifty thousand pesos (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

[1] United Overseas Bank Philippines vs. Commissioner of Internal Revenue, C.T.A. E.B. NO. 31, March 10, 2005; Traders Royal Bank vs. Commissioner of Internal Revenue, C.T.A. E.B. NO. 34, April 26, 2005; and 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. E.B. NO. 69, July 11, 2005; Banco de Oro Universal Bank vs. Commissioner of Internal Revenue, C.T.A. E.B. No. 39, October 28, 2005.

> exempt from the payment of the documentary stamp tax provided under this Section. *(As amended by R.A. 7660)*" *(Italics supplied)*

The language of the statute is clear, the DST is imposed on all certificates of deposit drawing interest without any qualification. The provision itself already specified the documents that are subject to the DST, to wit:

1. Loan Agreements;
2. Bills of Exchange;
3. Drafts;
4. Instruments and Securities issued by the Government or any of its instrumentalities;
5. *Certificates of deposit drawing interest*;
6. Orders for the payment of any sum of money otherwise than at sight or on demand; and
7. Promissory Notes, whether negotiable or non-negotiable.

In the above-quoted provision, it is clear that "certificates of deposit drawing interest" is subject to Documentary Stamp Tax. It is therefore important to know what is meant by the term "certificate of deposit". The Supreme Court defined a *certificate of deposit* 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 some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created".[2]

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[2] Far East Bank and Trust Company vs. Querimit, G.R. No. 148582, January 16, 2002, 373 SCRA 665.

In the foregoing definition of a certificate of deposit, the Supreme Court neither referred to a particular form of deposit nor limited the coverage thereof to time deposits only. This Court is bound by such pronouncement. The High Court used the term "written acknowledgment" which means that for as long as there is some written memorandum of the fact that the bank accepted a deposit of a sum of money from a depositor, the writing constitutes a certificate of deposit. Hence, a passbook representing an interest earning deposit account issued by a bank qualifies as a certificate of deposit drawing interest.

Both the law and jurisprudence did not prescribe any particular form before a document can be considered as a certificate of deposit. Restricting the meaning of certificates of deposit drawing interest mentioned in Section 180 of the NIRC of 1977 to "certificates of time deposit" will not be in accordance with both law and jurisprudence.

It is well-settled that certificates of time deposit are subject to the DST. Also, that a certificate of time deposit is but a type of a certificate of deposit drawing interest. Thus, in resolving the issue before Us, it is necessary to determine whether petitioner's Special Savings Deposit (SSD) has the same nature and characteristics as a time deposit. In this regard, the findings of fact stated in the assailed Decision are as follows:

> "Moreover, 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. 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 makes a withdrawal prior to the maturity of the deposit.
>
> Thus this court cannot but agree with respondent that petitioner's Special Savings Deposit and Time Deposits are akin to each other. In both cases, the bank acknowledges the receipt of the money or funds on deposit and which the bank promises to pay the depositor, bearer, or to the order on a specified period of time. Also, in both cases, the bank allows the withdrawal of the funds on deposit prior to the expiry of the pre-determined time but the rate of interest is lesser that the agreed interest. xxx xxx xxx
>
> xxx xxx xxx. And the only difference lies on the evidence of deposit. In Special Savings Deposit, the transaction is covered by a passbook while in time deposits; it is through a certificate of deposit. However, 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.

In order for an SSD depositor to earn the agreed higher interest rate, the required minimum amount of deposit must not only be met but should also be maintained for a definite period. Such being the case, We agree with the finding that the SSD is a deposit account with a fixed term as succinctly stated by the Court in Division:

> "Petitioner's witness may not have confirmed that its Special Savings Deposit had a maturity date. Nonetheless, in his testimony, it is clear that the product offers a higher interest in cases where the

> money deposited is being kept by the bank for a fixed period of 30 or sixty days without any withdrawals being made. It may be true that petitioner did not use the word "maturity", however, the nature and effect is the same as that having a maturity date."[3]

Withdrawal before the expiration of said fixed term results to the reduction of the interest rate. Having a fixed term and reduction of interest rate in case of pre-termination are *essentially* the features of a time deposit. Hence, this Court concurs with the conclusion reached in the assailed Decision that petitioner's Special Savings Deposit and time deposit are substantially the same, if not one and the same product, and therefore both are subject to the DST on certificates of deposit.

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."[4] Since the Documentary Stamp Tax is an excise tax "upon documents xxx xxx xxx levied, collected and paid for, and in respect of the transaction so had or accomplished"[5], the fact that the Special Savings Deposit is evidenced by a passbook is immaterial considering that the rule on equality and uniformity in taxation requires the imposition of Documentary Stamps Tax on documents evidencing transactions of the

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[3] Resolution, C.T.A. CASE NO. 6400, February 2, 2005, p. 3.
[4] Knudsen Creamery Co. of California v. United States, Civ. No. 15336, June 3, 1954 [121 F. Suppl. 860].
[5] Sec. 173, National Internal Revenue Code of 1977.

same kind, in this case on all certificates of deposits drawing interest. "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 its substance is paramount rather than its form".[6]

All the foregoing considered, We find no cogent reason to reverse the assailed Decision and Resolution of the Division of this Court.

The Court *En Banc* finds that the allegations stated by the petitioner in support of its application for the issuance of a preliminary injunction and/or temporary restraining order as well as the circumstances of the case do not warrant the issuance of a temporary restraining order considering that the respondent has not committed any overt act of collection manifested by the lack of a Warrant of Distraint or Levy issued against the petitioner or an action for collection. Consequently, the application for the issuance of a preliminary injunction and/or temporary restraining order is hereby denied for lack of merit.

WHEREFORE, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for the above-stated reasons. The assailed Decision and Resolution are hereby **AFFIRMED**.

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[6] Resolution, Philippine Banking Corporation, now: Global Business Bank, Inc. vs. Commissioner of Internal Revenue, C.T.A. CASE NO. 6395, January 14, 2005.

SO ORDERED.

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

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 Resolution 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 this Court.

ERNESTO D. ACOSTA
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

CHINA BANKING CORPORATION Petitioner,	CTA EB NO. 66 (CTA CASE No.6400) Members:
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 03 2006

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Concurring and Dissenting Opinion

I agree with the majority opinion regarding the cancellation and withdrawal of Assessment Notice No. ST-DST-97-0372-99 for deficiency documentary stamp taxes on petitioner's Reverse Repurchase Agreement Transactions and the denial of the application for the issuance of a Temporary Restraining Order. However, I am dissenting with my colleagues in holding petitioner China Banking Corporation liable for Deficiency Documentary Stamp Tax on its Special Savings Accounts.

It is my opinion that the Special Savings Account, 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 Account has no maturity date. The period offered to a prospective Special Savings Account 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 Account 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 Account 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 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 Account 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 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:
>
> 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 Account 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 Account of the petitioner to DST.

WHEREFORE, premises considered, I vote to **GRANT** the Petition for Review.

CAESAR A. CASANOVA
Associate Justice