# REPUBLIC OF THE PHILIPPINES
# Court of Tax Appeals
# QUEZON CITY

## *FORMER SECOND DIVISION*

**PHILIPPINE VETERANS BANK,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**C.T.A. CASE NO. 6563**

Members:

**CASTAÑEDA, JR.,** *Chairperson*
**UY,** *and*
**PALANCA-ENRIQUEZ,** *JJ.*

**Promulgated:**

OCT 0 8 2010

1:05 p.m.

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# DECISION

**UY, *J.*:**

Before this Court is a Petition for Review filed by Philippine Veterans Bank, pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997 and Sections 7 and 11 of Republic Act No. (RA) 1125, seeking the reversal and nullification of the Decision dated June 8, 2002 of the Commissioner of Internal Revenue involving the assessments issued by the latter against Philippine Veterans Bank.

**THE FACTS**

Petitioner Philippine Veterans Bank is a commercial banking institution organized and existing under and by virtue of the laws of the Republic of the

Philippines, with principal office address at PVB Building, 101 V.A. Rufino cor. Dela Rosa Sts., Legaspi Village, Makati City.[1]

Respondent is the duly appointed Commissioner of Internal Revenue with office address at the 4th floor, Bureau of Internal Revenue (BIR), National Office Building, Agham Road, Diliman, Quezon City.[2]

On December 9, 1999, Mr. Percival T. Salazar, BIR Assistant Commissioner for the Enforcement Service of the BIR, sent petitioner a Final Notice of Assessment in the total amount of ₱ 22,092,035.21 as deficiency documentary stamp tax for taxable years 1994 and 1995.[3] On December 13, 1999, Atty. Florencio Z. Sioson, the Executive Vice President-Chief Operating Officer of petitioner, replied to the aforesaid Notice of Assessment.[4] In the reply, Atty. Sioson requested that the demand letter be held in abeyance pending the resolution of the issues involved.[5]

Subsequently, the Appellate Division of the BIR scheduled conference hearings, wherein petitioner presented two witnesses and documentary evidence. After two conferences, petitioner submitted its position paper.[6]

Thereafter, respondent issued a Formal Letter of Demand dated December 4, 2000 and Audit Results/Assessment Notices, requiring petitioner to pay deficiency gross receipts tax (GRT) for the year 1996 in the amount of ₱ 5,009,876.88 and deficiency documentary stamp tax (DST) for the year 1996 in the amount of ₱ 28,180,746.63.[7] The said assessments were received by petitioner,[8] and were

[1] Par. 1, Facts, Joint Stipulation of Facts (JSF), Docket, p. 104.
[2] Par. 2, Facts, JSF, Docket, p. 104.
[3] Par. 4, Facts, JSF, Docket, p. 105.
[4] Par. 5, Facts, JSF, Docket, p. 105.
[5] Exhibit "C".
[6] Pars. 6 and 7, Facts, JSF, Docket, p. 105.
[7] Exhibit "4". BIR Records, pp. 3242 to 3245.
[8] Par. 9, Facts, JSF, Docket, p. 105.

protested in a letter dated January 10, 2001[9], wherein petitioner reiterated its request to hold in abeyance the enforcement of the assessments.[10]

On August 8, 2002, herein respondent rendered the assailed Decision (numbered "P 21-02")[11] *In the Matter of the Internal Revenue Tax Case of Philippine Veterans Bank Involving the Total Amount of ₱ 55,282,658.72 as Deficiency Gross Receipts and Documentary Stamp Taxes for Taxable Years 1994, 1995 and 1996, Covered by Assessment Notice Nos. ST-DST-94-0114-99; ST-DST-95-0113-99; DST-96-000003; GRT-96-000005 dated December 9, 1999 and December 4, 2000, respectively.* In the said decision, respondent denied the request for deferment and protest of petitioner,[12] and thus, ordered petitioner to pay, within a period of thirty (30) days from receipt thereof, the total amount of ₱ 55,282,658.72 as deficiency gross receipts and documentary stamp taxes for taxable years 1994, 1995, and 1996, plus interest that may have accrued thereon. The said amount is broken down as follows:

| Year | Tax Base | Tax Rate | Tax Due | Interest | Total |
|---|---|---|---|---|---|
| *(I. Deficiency Documentary Stamp Tax- on Special Savings Accounts; Special Savings Deposit and Golden V)* | | | | | |
| 1994 | ₱ 72,418,680.00 | 0.15% | ₱ 108,628.02 | ₱ 27,157.00 | ₱ 135,785.02 |
| 1995 | ₱ 5,130,000,009.71 | 0.15% | ₱ 7,695,000.15 | ₱ 1,923,750.04 | ₱ 9,618,750.19 |
| 1996 | ₱ 8,508,029,564.15 | 0.15% | ₱ 12,762,044.35 | ₱ 10,209,635.48 | ₱ 22,971,679.83 |
| *(II. Deficiency Documentary Stamp Tax- Increase in Capitalization)* | | | | | |
| 1995 | ₱ 987,000,000.00 | 1.00% | ₱ 9,870,000.00 | ₱ 2,467,500.00 | ₱ 12,337,500.00 |
| 1996 | ₱ 289,392,600.00 | 1.00% | ₱ 2,893,926.00 | ₱ 2,315,140.80 | ₱ 5,209,066.80 |
| *(III. Deficiency Gross Receipts Tax)* | | | | | |
| 1996 | ₱ 55,989,132.31 | 5% | ₱ 2,799,456.62 | ₱ 2,210,420.26 | ₱ 5,009,876.88 |
| | | | | Grand Total | ₱ 55,282,658.72 |

[9] Par. 10, Facts, JSF, Docket, p. 105.
[10] BIR Records, p. 3257.
[11] BIR Records, pp. 3266 to 3279.
[12] Par. 8, Facts, JSF, Docket, p. 105.

A copy of the said Decision was received by petitioner on October 9, 2002.[13]

Petitioner then filed the instant Petition for Review on November 8, 2002.

Respondent filed an Answer[14] on December 23, 2002 and interposed the following Special and Affirmative Defenses:

"3. Petitioner's Power Savings Accounts (PSA) are considered time deposits and are subject to documentary stamp tax (DST) under Section 180 of the National Internal Revenue Code of 1977.

4. In interpreting the provisions of Section 180 of the NIRC, the Court of Appeals, in the case of **BPI-Family Bank vs. CIR & CTA, CA-G.R. Sp. No. 29853**, September 19, 1994, held:

> 'A perusal of Section 180 of the tax Code will show that it covers the following instruments: (1) promissory note, whether negotiable or not; (2) bills of exchange; (3) drafts; (4) certificates of deposit; and (5) debt instrument used for deposit substitute.'

5. The Court of Appeals, further, defined a ***'certificate of deposit'*** as a written acknowledgement by a bank of the receipt of money on deposit which the bank promises to pay the depositor, bearer or to some other person or order. (Olsons Estate, Iowa, 706, 219 N.W. 40, cited in Agbayani, op cit, p. 441).'

6. The 'certificate of deposit' stated in Section 180 of the NIRC does not prescribe any particular form, nor does it qualify. It may be **any** 'written acknowledgment by a bank of the receipt of money on deposit'. The fact that SSA, SSD and GV are evidenced by regular savings account passbooks and not by a certificate of deposit is of no moment. What is important and controlling is the nature or meaning conveyed by the document and not the particular label or nomenclature attached to it, inasmuch as its substance is paramount than its form. Thus, in the case of L.R. Heat Treating Co., 28TC874, the Court laid down this dictum:

> 'We have held that it matters little what a transaction is termed, as the facts control and not the terminology x x x it is well established principle of law that the name by which an instrument or transaction is denominated is not controlling in determining its true character.'

[13] Par. 3, Facts, JSF, Docket, pp. 104 to 105.
[14] Docket, pp. 77 to 81.

7. As to the allegation that SSA, SSD and GV are exempt from DST because they are payable at sight or demand, this is a clear misapprehension of the law.

   Section 180 of the NIRC of 1977, as amended specifically provides:

   > '**Section 180. Stamp Tax on Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or any of its Instrumentalities, Certificates of Deposit Bearing Interest and Others Not Payable on Sight or Demand**. – On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the government or any of its instrumentalities or **certificates of deposits drawing interest,** *__or__* **orders for the payment of any sum of money otherwise than at sight or demand**, xxx" (Underscoring supplied)

   Clearly, under the above provision, the phrase 'otherwise than at sight or demand', does not refer to a 'certificate of deposit bearing interest'. It refers to 'orders for the payment of any sum of money'.

8. Petitioner is not exempt from the payment of DST on the original issue of shares of stock as well as increase in capitalization. Republic Act No. 3518, Charter of the Philippine Veterans Bank, does not contain any provision exempting the bank from payment of DST.

9. Petitioner is liable for deficiency gross receipts tax based on Section 119 of the Tax Code of 1977. The 20% final tax withheld from its gross interest income forms part of the taxable gross receipts in computing the 5% gross receipts tax (CIR vs. Asian Bank Corp., CA-G.R. Sp. No. 51248, November 22, 1999)

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

11. All presumptions are in favor of the correctness of tax assessments."

Trial ensued, giving both parties the opportunity to present their respective evidence. Thereafter, in the Court's Resolution promulgated on August 18, 2009, the parties were granted thirty (30) days from receipt thereof within which to file their respective memorandum.[15] Petitioner filed its Memorandum on October 12, 2009. Respondent, however, failed to file his memorandum and this case was submitted for Decision on October 26, 2009.[16]

Parenthetically, on August 25, 2010, petitioner filed a Manifestation, stating that on August 11, 2010, petitioner received a Termination Letter dated June 7, 2010 from Assistant Commissioner Nestor S. Valeroso of the BIR Large Taxpayers Service, informing petitioner that its tax liabilities under Assessment Nos. ST-DST-95-01113-99 and DST-96-000003, covering taxable years 1995 and 1996, respectively, which are subjects of this instant case, are already closed and terminated.

Hence, this Decision.

## THE ISSUES

The following are the issues[17] submitted for this Court's resolution:

"1. Whether or not PVB's Special Savings Accounts are subject to documentary stamp tax under Section 180 of the 1997 Tax Code.

2. Whether or not PVB's passbooks are payable on sight or demand.

3. Whether or not PVB's passbooks on SSAs are considered certificates of deposits.

4. Whether or not PVB is exempt from the payment of documentary stamp tax on increase in capitalization.

5. Assuming PVB is liable for DST on increase in capitalization, whether or not PVB has accumulated excess payment of DST on issued stock dividend certificates.

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[15] Docket, pp. 363 to 364.
[16] Resolution dated October 26, 2009, docket, p. 385.
[17] Docket, p. 106.

6. Whether or not the 20% final taxes withheld from gross interest income should be included in determining gross receipts.

7. Whether or not PVB is liable for the amount of P55,282,658.72 representing deficiency gross receipts tax and documentary stamp tax for taxable years 1994, 1995 and 1996."

The foregoing stipulated issues may be summarized as follows:

1. Whether or not petitioner's Special Savings Accounts are subject to documentary stamp tax under Section 180 of the 1977 Tax Code;

2. Whether or not petitioner is exempt from documentary stamp tax on increase in capitalization;

3. Assuming petitioner is liable for DST on increase in capitalization, whether or not petitioner has accumulated excess payment of DST on issued stock dividend certificates; and

4. Whether or not the twenty percent (20%) final taxes withheld from gross interest income of petitioner should be included in determining its gross receipts for purposes of the imposition of the Gross Receipts Tax.

***Petitioner's arguments***

Petitioner argues that its Special Savings Accounts are not among the documents covered under Section 180 of the NIRC of 1997 and that said accounts are separate and distinct from time deposits. The supposed differences between them were testified to by petitioner's witness, Ms. Marita M. Vargas, to wit:

"5.Q: Could you please tell us the significant features of this kind of deposit?
5.A: Like the Ordinary Savings Deposit, the Special Saving Deposit is also evidenced by a passbook sir. However, it earns a relatively higher interest than an Ordinary Savings Deposit.

6.Q: You mentioned of a passbook, I am showing to you this passbook previously marked as Exhibit 'A' for the petitioner, could you please tell us what is the relation of this passbook with that one you mentioned earlier?
6.A: This is the same kind of passbook that we issued to the depositor of a Special Savings Deposit, sir.

7.Q: How about an Ordinary Savings Deposit, it this also the same passbook that your Bank issues to the depositor?

7.A: The same kind of passbook, sir.

8.Q: Madame Witness, your Bank has been assessed by respondent BIR for deficiency documentary stamp tax on your Special Savings Deposit on the basis that your Special Savings Deposit is the same as a Time Deposit, what could you say to that?
8.A: It is wrong to equate the Special Savings Deposit sir with the Time Deposit.

9.Q: Why did you say so?
9.A: The Special Savings Deposit and Time Deposit have been several distinct features, sir.

10.Q: What are these distinct features, Madame Witness?
10.A: First, as I earlier mentioned, the deposits made in a Special Savings Deposit are posted in a **passbook** while that of a Time Deposit, the placement is posted in a document called a **certificate of time deposit**.

11.Q: What else?
11.A: In Special Savings Deposit, **additional or multiple** deposits are allowed. However, in a Time Deposit **no additional deposit** can be posted on the same certificate. Both Special Savings Deposit and Time Deposit have fixed terms and if ever partial withdrawal is made it would be subjected to penalty. However, partial withdrawal in Time Deposit would require change of the certificate while in Special Savings Deposit, the same passbook is retained. Another distinguishing feature is that the passbook evidencing the Special Savings Deposit **cannot be negotiated** while the Certificate of Time Deposit can be negotiated or assigned. Finally, a Special Savings Deposit is payable **at sight or on demand** while a Time Deposit is **not** payable at sight or on demand.

xxx xxx xxx."

Hence, respondent allegedly erred in ruling that petitioner is liable to pay documentary stamp tax on its Special Savings Accounts.

Furthermore, petitioner contends that it is not liable to pay documentary stamp tax on its increased capitalization in the form of stock dividends considering that the original shares of stocks, from which these increased capitalization were derived, were exempt from the documentary stamp tax. Petitioner is of the view that it is not liable to pay documentary stamp tax following the principle: *"the accessory follows the principal"*.

Lastly, petitioner asserts that the twenty percent (20%) final tax withheld from gross interest income are no longer part of the "gross receipts". Hence, respondent erred in ruling that petitioner incurred deficiency in Gross Receipts Tax.

***Respondent's counter-arguments***

In respondent's Answer, it is contended that petitioner's Power Savings Accounts are considered time deposits and are subject to documentary stamp tax under Section 180 of the NIRC of 1977 considering that the "certificate of deposit" stated in said Section does not prescribe any particular form, nor does it qualify. It may be any "written acknowledgment by a bank of the receipt of money on deposit". The fact that the SSA is evidenced by regular savings account passbook and not by a certificate of deposit is of no moment. What is important and controlling is the nature or meaning conveyed by the document and not the particular label or nomenclature attached to it, inasmuch as its substance is paramount than its form.

Moreover, according to respondent, petitioner is not exempt from the payment of documentary stamp tax on the original issues of shares of stock as well as the increase in capitalization, there being no provision in petitioner's Charter exempting it from payment of documentary stamp tax; and that petitioner is liable for deficiency Gross Receipts Tax based on then Section 119 of the NIRC of 1977.

**THE COURT'S RULING**

Two kinds of taxes are involved in the instant case, namely: documentary stamp tax (DST) and gross receipts tax (GRT). The first three issues pertain to DST and the fourth issue pertains to GRT.

Documentary stamp tax (DST) is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. DST is actually an excise tax because it is imposed on the transaction rather than on the document. A DST is also levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Hence, in imposing the DST, the Court considers not only the document but also the nature and character of the transaction.[18]

Anent the first issue, considering that the assessed documentary stamp tax refer to those incurred before the effectivity of the provisions of the NIRC of 1997 (*i.e.*, on January 1, 1998),[19] We will apply Section 180 of the NIRC of 1977, as amended by RA 7660[20], which provides as follows:

> "SECTION 180. *Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.* - On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities **or certificates of deposits drawing interest,** or orders for the payment of any sum of money otherwise than at sight or 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 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

[18] *Philippine Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 170574, January 30, 2009.
[19] Section 8, Republic Act No. 8424.
[20] AN ACT RATIONALIZING FURTHER THE STRUCTURE AND ADMINISTRATION OF THE DOCUMENTARY STAMP TAX, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, ALLOCATING FUNDS FOR SPECIFIC PROGRAMS, AND FOR OTHER PURPOSES. This law took effect on January 13, 1994.

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exceed Two hundred fifty thousand pesos (₱ 250,000) 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." *(Emphasis supplied)*

It is clear from the foregoing that certificates of deposit drawing interest are subject to documentary stamp tax. What is to be determined then is whether petitioner's Special Savings Account (SSA) is a "certificate of deposit drawing interest" as contemplated in the above-mentioned provision.

A certificate of deposit is "a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created." A certificate of deposit is also defined as "a receipt issued by a bank for an interest-bearing time deposit coming due at a specified future date."[21]

Based on the foregoing, a document to be deemed a certificate of deposit requires no specific form as long as there is some written memorandum that the bank accepted a deposit of a sum of money from a depositor. What is important and controlling is the nature or meaning conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as substance, not form, is paramount.[22]

Such being the case, the fact that petitioner's Special Savings Accounts, like Ordinary Savings Deposits, are evidenced by a "passbook" and by a "certificate of time deposit", is of no moment in imposing DST.

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[21] *China Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No, 172359, October 2, 2009.
[22] *International Exchange Bank vs. Commissioner of Internal Revenue*, G.R. No. 171266, April 4, 2007.

It must also be pointed out that in including "certificates of deposits drawing interest" from the coverage of the imposition of the DST under the aforequoted Section 180, the law is indifferent whether "additional or multiple deposits are allowed". Thus, even when petitioner's Special Savings Deposit allows additional or multiple deposits, the same will have no bearing. Where the law does not distinguish, neither do We distinguish.[23]

Moreover, a certificate of deposit may be payable to the depositor, to the order of the depositor, or to some other person or his order. From the use of the conjunction *or*, instead of *and*, the negotiable character of a certificate of deposit is immaterial in determining the imposition of DST.[24]

There being no further proof to the contrary, petitioner's Special Savings Account is correctly classified as a certificate of deposit bearing interest, which is subject to documentary stamp tax for taxable years 1994, 1995, and 1996, under Section 180 of the NIRC of 1977, as amended by RA 7660.

The assessment made by respondent as to petitioner's deficiency documentary stamp tax on Special Savings Deposits and Golden Vs is hereunder quoted:

| YEAR | TAX BASE | TAX RATE | TAX DUE | INTEREST | TOTAL |
|---|---|---|---|---|---|
| 1994 | ₱ 72,418,680.00 | 0.15% | ₱ 108,628.02 | ₱ 27,157.00 | ₱ 135,785.02 |
| 1995 | ₱ 5,130,000,009.71 | 0.15% | ₱ 7,695,000.15 | ₱ 1,923,750.04 | ₱ 9,618,750.19 |
| 1996 | ₱ 8,508,029,564.15 | 0.15% | ₱ 12,762,044.35 | ₱ 10,209,635.48 | ₱ 22,971,679.83 |

Considering that the law applicable is the NIRC of 1977, surcharge has to be imposed on the respective tax due pursuant to Section 248(d) of NIRC of 1977, as amended. And since the amounts assessed remain unpaid after the lapse of the

[23] *Colgate-Palmolive Philippines, Inc. vs. Gimenez, et al.*, G.R. No. L-14787, January 28, 1961.
[24] *Philippine Banking Corporation vs. Commissioner of Internal Revenue,* supra.

thirty-day period given under the assailed Decision[25] of respondent from the date of receipt thereof by petitioner (*i.e.*, October 9, 2002)[26], interest prescribed under Section 249(a) of the same law, should likewise be imposed. Said provisions state:

> "SEC. 248. *Civil Penalties.* -
>
> xxx xxx xxx
>
> (d) In the case of failure to affix the proper documentary stamps to a document or instrument, there shall, for every violation, be imposed, in addition to the amount of documentary stamp tax required to be paid, **an amount equivalent to twenty-five percent of such unpaid amount which shall be in lieu of the interest prescribed in Section 249; *Provided*, That when the amount is not paid within the time prescribed in the notice and demand, there shall be collected on the total unpaid amount, including the surcharge, the interest prescribed in Section 249 (a) from the due date prescribed in the notice and demand until the amount is fully paid, which interest shall form part of the tax.**" *(Emphasis supplied)*
>
> "SEC. 249. *Interest. – (a) In general.-* There shall be assessed and collected on any unpaid amount of tax, **interest at the rate of twenty percent (20%) *per annum***, or such higher rate as may be prescribed by regulations, from the date prescribed for payment until the amount is fully paid." *(Emphasis supplied)*

Thus, the aforequoted computation of deficiency documentary stamp tax, including the surcharge thereon, on petitioner's SSAs and Golden Vs is hereby modified as follows:

| YEAR | TAX BASE | TAX RATE | TAX DUE | SURCHARGE (25%) | TOTAL |
|---|---|---|---|---|---|
| 1994 | ₱ 72,418,680.00 | 0.15% | ₱ 108,628.02 | ₱ 27,157.01 | ₱ 135,785.03 |
| 1995 | ₱ 5,130,000,009.71 | 0.15% | ₱ 7,695,000.15 | ₱ 1,923,750.04 | ₱ 9,618,750.19 |
| 1996 | ₱ 8,508,029,564.15 | 0.15% | ₱ 12,762,044.35 | ₱ 3,190,511.09 | ₱ 15,952,555.44 |
| **GRAND TOTAL** | | | | | **₱ 25,707,090.66** |

In addition to the amount of ₱ 25,707,090.66, an interest thereon at the rate of twenty percent (20%) *per annum* shall accrue from November 8, 2002[27] until full payment thereof.

[25] BIR Records, p. 3266 to 3268.
[26] Par. 3, Facts, JSF, Docket, pp. 104 to 105.

As to the second issue, petitioner maintains that the original shares of stocks of petitioner were exempt from DST (and other taxes), considering that the same was fully subscribed by the Government of the Republic of the Philippines, citing Section 3 of Republic Act No. 3518 (petitioner's charter) as its legal basis, to wit:

**"REPUBLIC ACT NO. 3518**

**AN ACT CREATING THE PHILIPPINE VETERANS' BANK, AND FOR OTHER PURPOSES.**

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Section 3. *Authorized capital stock Par value.* —

(a) The capital stock of the Veterans shall be one hundred million pesos (P100,000,000.00) divided into five hundred ten thousand (510,000) common shares and four hundred ninety thousand (490,000) preferred shares with a par value of one hundred (P100.00) pesos each.

(b) At least fifty-one per cent (51%) of the capital stock of the Veterans Bank shall be divided into common shares which shall be fully subscribed by the government of the Republic of the Philippines for and in behalf of the veterans, their widows, orphans or compulsory heirs as defined and determined under Section 4, subsection (e) of this Act, and shall be initially paid from the Veterans Trust Fund provided for in Section 2, subsection (d) of Republic Act Numbered Seventeen hundred and eighty-nine as amended, and from or out of earnings, dividends, or profits from the operations of the Veterans Bank; and for the payment of said subscription, all the available cash deposits with the Philippine National Bank and/or any other banks to the credit of the Veterans Trust Fund shall be transferred immediately to the Veterans Bank: *Provided,* That after the approval of this Act and notwithstanding the provisions of any existing law and/or executive orders, rules and regulations to the contrary, every and all additional cash payments on account of the said Veterans' Trust Fund shall be remitted and paid directly and exclusively to the said Veterans' Bank to be applied as additional paid-up payments of the aforesaid common shares subscription: *Provided, further,* That nothing shall be transferred to, or received by, the said

[27] This the 30th day from the date of receipt of the assailed decision of respondent on October 9, 2002. It must be remembered that respondent gave petitioner a period of thirty (30) days within which to pay to assessed amounts.

> Veterans' Bank representing any portion of the proceeds of the aforesaid Veterans' Trust Fund except cash payments only of the peso equivalent thereof at the prevailing rate of exchange: And *provided, finally,* That within five years from the organization of the Bank all shares of stock equivalent to fifty-one per cent subscription of the capital stock held by the government of the Republic of the Philippines for and in behalf of the veterans, their widows, orphans or compulsory heirs shall be transferred to and in the name of the veterans who shall thereafter vote said common shares. The shares shall be divided equally among the veterans at the rate of one share of one hundred pesos for each veteran or fraction thereof. The balance of about forty-nine (49%) per cent shall be divided into preferred shares which shall be opened for subscription by any recognized veteran, widow, orphans or compulsory heirs of said veteran at the rate of one (1) preferred share per veteran: *Provided,* That in case of failure of any particular veteran to subscribe for any preferred share of stock so offered to him as herein provided, within thirty (30) days from the date of receipt of notice, said share of stock shall be available for subscription to other veterans in accordance with such rules or regulations as may be promulgated by the Board of Directors. Any share of stock corresponding to the capital stock subscribed and paid by the Republic of the Philippines, in the manner aforementioned, shall be issued in the name of the Republic of the Philippines, in trust for the benefit of veterans, their widows, orphans or compulsory heirs as determined in this Act, and any share of stock subscribed and paid by individual veteran shall be issued in the name of the individual veteran, his widow, orphan or compulsory heir. The sale or transfer of a share or stock of a veteran, widow, orphan or compulsory heir of a veteran to a party not a veteran, widow, orphan or compulsory heir of a veteran shall not be allowed under any circumstances. Any share may be sold or transferred to the Bank which shall issue the same to the stockholders who are veterans, their widows, orphans or compulsory heirs: *Provided,* That no veterans, widow, orphan or compulsory heir shall be issued a total of more than twenty shares."

A cursory reading of petitioner's charter reveals that there is nothing in the provisions of the said law which expressly grants petitioner exemption from payment of documentary stamp tax on the original issue of shares of stock and increase in capitalization. Furthermore, it is well settled that exemptions from taxation are highly disfavored, so much so that they may almost be said to be odious to the law.[28] And he who claims an exemption must be able to justify his claim by the clearest grant of statute.[29]

As regards the second issue, petitioner claims that assuming it is liable to pay documentary stamp tax on increase in capitalization, the tax base of ₱ 987,000,000.00 indicated in the deficiency documentary stamp tax assessment on the increase in capitalization of petitioner is incorrect, considering that on various dates, from 1992 to 1995, only 980,519 stock certificates were allegedly issued as shown in the Certification dated May 11, 2000 of Atty. Florencio Z. Sioson, petitioner's Assistant Corporate Secretary. Petitioner further argues that the tax rate on the issuance of stock dividends should only be ₱ 0.50 per ₱ 200.00 and not ₱ 2.00 per ₱ 200.00 shares, citing as basis the tax rate for certificate of profits under column DS 104 found at the back page of BIR Form No. 2000 (January 1999) entitled Documentary Stamp Tax Declaration/Return. It is petitioner's belief that it is only liable in the amount of ₱ 245,129.75 and thus, overpaid the BIR the total amount of ₱ 1,635,212.75, since it had already paid the amount of ₱ 1,880,342.50.

A close scrutiny of the records of this case show that respondent has factual and legal basis in using ₱ 987,000,000.00 as the tax base in the computation of the deficiency documentary stamp tax against petitioner for issuance of stock dividends for the year 1995. In the Memorandum Report[30] of Revenue Officer Maria Theresa D. Gerona dated January 29, 2001 addressed to the Chief of Large Taxpayer Audit and Investigation Division I, Ms. Gerona stated that the amount of shares of stock

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[28] *Philippine Long Distance Telephone Company, Inc. v. City of Bacolod*, G.R. No. 149179, July 15, 2005
[29] *Compagnie Financiere Sucres Et Denrees v. Commissioner of Internal Revenue*, G.R. No. 133834, August 28, 2006.
[30] Exhibit "6". BIR Records, pp. 2194 to 2199.

dividends equivalent to ₱ 987,000,000.00 was derived from petitioner's Audited Financial Statement.[31] Verification of the said document would reveal that the amount of ₱ 987,000,000.00 is indicated under the item Stock Dividends. Moreover, validation of the attachments to petitioner's Annual Income Tax Return for taxable year 1995 shows that it was petitioner that actually declared that it paid stock dividends in the amount of ₱ 987,000,000.00.[32]

It is significant to note that tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.[33]

As to the amount of petitioner's deficiency documentary stamp tax liability, a closer inspection of the evidence presented by petitioner reveals that it partly paid the deficiency documentary stamp tax assessed against it for 1995 and 1996. Details of the said payments are as follows:

| Exhibit | Date | Tax Due |
|---|---|---|
| ***1995 Deficiency DST Tax Due*** | | **₱ 9,870,000.00** |
| Less: Payments | | |
| G | 09/25/95 | (24,189.00) |
| H | 09/26/95 | (22,671.00) |
| I | 09/29/95 | (15,941.00) |
| J | 10/24/95 | (9,988.00) |
| K | 10/26/95 | (11,027.00) |
| L | 10/27/95 | (10,879.00) |
| M | 11/06/95 | (9,522.00) |
| N | 11/08/95 | (13,651.00) |

[31] BIR Records, p. 3079.
[32] BIR Records, p. 3074.
[33] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 134062, April 17, 2007, citing *Sy Po vs. Honorable Court of Tax Appeals, et al.*, G.R. No. L-81446, August 18, 1988.

| | | |
|---|---|---|
| O | 11/14/95 | (5,670.00) |
| P | 11/14/95 | (10,296.00) |
| Q | 12/14/95 | (16,522.00) |
| R | 12/29/95 | (15,378.00) |
| **DST Deficiency – 1995** | | **₱ 9,704,266.00** |

| Exhibit | Date | Tax Due |
|---|---|---|
| ***1996 Deficiency DST Tax Due*** | | **₱ 2,893,926.00** |
| Less: Payments | | |
| S | 01/11/96 | (24,596.00) |
| T | 01/25/96 | (36,894.00) |
| U | 03/20/96 | (26,990.50) |
| V | 04/03/96 | (35,408.50) |
| W | 08/21/96 | (24,403.00) |
| **DST Deficiency – 1996** | | **₱ 2,745,634.00** |

Thus, in accordance with the provisions of Section 248(d) in relation to Section 249(a) of the NIRC of 1977, as amended, the computation of petitioner should be modified as follows:

| ***Year*** | ***1995*** | ***1996*** | ***Total*** |
|---|---|---|---|
| Deficiency Tax Due | ₱ 9,704,266.00 | ₱ 2,745,634.00 | ₱ 12,449,900.00 |
| Add: Surcharge (25%) | 2,426,066.50 | 686,408.50 | 3,112,475.00 |
| **Total DST Deficiency** | **₱ 12,130,332.50** | **₱ 3,432,042.50** | **₱ 15,562,375.00** |

In addition to the amount of ₱ 15,562,375.00, an interest thereon at the rate of twenty percent (20%) *per annum* should accrue from November 8, 2002[34] until full payment thereof.

However, as earlier mentioned, after the case was submitted for decision, petitioner manifested that it availed of the Abatement Program under Revenue Regulations No. 15-2006 and that it had subsequently received from the BIR a Termination Letter pertaining thereto.

Taking into consideration the said Manifestation, this Court shall look into petitioner's compliance with the requirements of the Abatement Program under

[34] This the 30th day from the date of receipt of the assailed decision of respondent on October 9, 2002. It must be remembered that respondent gave petitioner a period of thirty (30) days within which to pay to assessed amounts.

Revenue Regulations No. 15-2006. The pertinent provisions of the said Revenue Regulations read:

"SECTION 1. PURPOSE. - These regulations prescribe the guidelines for the availment by taxpayers of the opportunity to settle their delinquent accounts or assessments, preliminary and final, disputed or not, by way of application for abatement of all penalties, including surcharge and interest, under Section 204 of the National Internal Revenue Code (NIRC) of 1997 as another step towards the collection and reduction of the Bureau's Accounts Receivables and pending assessments.

SECTION 2. COVERAGE. – The following cases shall be covered hereof:

xxx xxx xxx

f.) Civil tax cases being disputed before the Department of Justice and the courts, e.g., MTC, RTC, CTA, CA and SC including decided cases which are not yet final and executory except those cases where the Presidential Commission on Good Government (PCGG) has an interest and/or there is a need to coordinate with the PCGG;

xxx xxx xxx

SECTION 4. WHO MAY AVAIL. – Any person/taxpayer, natural or juridical, may settle thru this abatement program any delinquent account or assessment which has been released as of June 30, 2006, by paying an amount equal to One Hundred Percent (100%) of the Basic Tax assessed with the Accredited Agent Bank (AAB) of the Revenue District Office (RDO)/Large Taxpayers Service (LTS)/Large Taxpayers District Office (LTDO) that has jurisdiction over the taxpayer. In the absence of an AAB, payment may be made with the Revenue Collection Officer/Deputized Treasurer of the RDO that has jurisdiction over the taxpayer. **After payment of the basic tax, the assessment for penalties/surcharge and interest shall be cancelled by the concerned BIR Office following existing rules and procedures. Thereafter, the docket of the case shall be forwarded to the Office of the Commissioner, thru the Deputy Commissioner for Operations Group, for issuance of Termination Letter**." *(Emphasis supplied)*

It is clear from the foregoing that the effect of compliance with the requirements of and qualification for the Abatement Program must be evidenced by a Termination Letter as provided under the aforequoted Section 4 of Revenue

Regulations No. 15-2006. In this case, petitioner was able to submit to this Court the Termination Letter pertaining to petitioner's deficiency documentary stamp tax liability on Increase in Capitalization for taxable years 1995-1997.

The Termination Letter dated June 7, 2010 was issued covering Assessment Nos. ST-DST-95-01113-99, DST-96-000003, and DST-97-000017, stating in part:

> "This refers to your availment of the **ONE TIME ADMINISTRATIVE ABATEMENT** of interest pursuant to the provisions of Section 204 of the Tax Code, as amended and implemented by Revenue Regulations No. 15-2006 as amended by RR 3-2007, bearing on your internal revenue tax liabilities, xxx;
>
> xxx xxx xxx
>
> In this connection, we are pleased to inform you that in view of your availment of the aforesaid benefits granted under the special provisions of Section 204 of the National Internal Revenue Code (NIRC) as amended, and its implementing rules and regulations, and the payment of **EIGHTEEN MILLION EIGHTY EIGHT THOUSAND NINE HUNDRED ONE PESOS ONLY (P18,088,901.00)**, representing ONE HUNDRED PERCENT (100%) of the basic tax under this ABATEMENT PROGRAM, the tax liability stated above is hereby **CLOSED and TERMINATED."**

Hence, by virtue of petitioner's submission of the Termination Letter to this Court evidencing its compliance with the provisions of Revenue Regulations No. 15-2006, petitioner's deficiency documentary stamp tax liability on Increase in Capitalization for taxable years 1995 to 1996, the subject of the present petition and covered by Assessment Notice Nos. ST-DST-95-01113-99 and DST-96-000003, are hereby considered cancelled and withdrawn.

Anent the fourth issue involving GRT, the same is resolved in favor of respondent pursuant to the ruling of the Supreme Court in the case of *Philippine National Bank vs. Commissioner of Internal Revenue*,[35] to wit:

[35] G.R. No. 158175, October 18, 2007.

"The issues raised herein are not novel. **In a catena of cases,[36] we categorically ruled that the 20% FWT on a bank's interest income forms part of the taxable gross receipts for purposes of computing the 5% GRT. The 5% GRT, as imposed by Section 119 (now Section 121) of the Tax Code, by its nature applies to all the receipts without any deduction, unless otherwise provided by law.** Any deduction, exemption or exclusion from gross receipts is inconsistent with the policy of the law and is not normally allowed in a gross receipts tax, to maintain simplicity in tax collection, and to assure a steady source of state revenue even during periods of economic slowdown. It also changes the result and meaning of gross receipts to net receipts." *(Emphasis supplied)*

Based on the foregoing, the twenty percent (20%) final taxes withheld from the gross interest income of petitioner should be included in determining its gross receipts for purposes of the imposition of the Gross Receipts Tax.

As to the amount of petitioner's deficiency gross receipts tax, the assessment made by respondent against petitioner for deficiency gross receipts tax is shown as follows:

| YEAR | TAX BASE | TAX RATE | TAX DUE | INTEREST | TOTAL |
|---|---|---|---|---|---|
| 1996 | ₱ 55,989,132.31 | 5% | ₱ 2,799,456.62 | ₱ 2,210,420.26 | **₱ 5,009,876.88** |

However, the applicable law in this case is the NIRC of 1977, as amended, imposing both surcharge and interest on the basic tax due.

Section 248 in relation to Section 249, both of the NIRC of 1977, provide:

"SEC. 248. *Civil Penalties.*— (a) There shall be imposed, in addition to the tax required to be paid, penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

xxx xxx xxx

(3) Failure to pay the tax within the time prescribed for its payment; or

[36] *Commissioner of Internal Revenue v. Citytrust Investment Phils., Inc.*, G.R. Nos. 139786 and 140857, September 27, 2006, 503 SCRA 398; *Commissioner of Internal Revenue v. Bank of Commerce,* G.R. No. 149636, June 8, 2005, 459 SCRA 638; *Commissioner of Internal Revenue v. Bank of the Philippine Islands,* G.R. No. 147375, June 26, 2006, 492 SCRA 551; *Commissioner of Internal Revenue v. Solidbank Corporation,* G.R. No. 148191, November 25, 2003, 416 SCRA 436; *China Banking Corporation v. Court of Appeals*, G.R. Nos. 146749 and 147938, June 10, 2003, 403 SCRA 634.

xxx xxx xxx

(c) The penalties imposed hereunder shall form part of the tax and the entire amount shall be subject to the interest prescribed in Section 249."

"SEC. 249. *Interest.*— (a) *In general.*— There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum*, or such higher rate as may be prescribed by regulations, from the date prescribed for payment until the amount is fully paid.

xxx xxx xxx

(c) *Delinquency interest.*— In case of failure to pay:

xxx xxx xxx

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in paragraph (a) hereof until the amount is fully paid, which interest shall form part of the tax.

xxx xxx xxx."

Applying the foregoing provisions to the present case, the computation of petitioner's deficiency gross receipts tax liability should be modified as follows:

**Deficiency Gross Receipts Tax for the Year 1996:**

| | |
|---|---|
| Basic Tax Due | ₱ 2,799,456.62 |
| 25% Surcharge | 699,864.16 |
| **TOTAL** | **₱ 3,499,320.78** |

In addition to the amount of ₱ 3,499,320.78, an interest thereon at the rate of twenty percent (20%) *per annum* shall accrue from January 20, 1997 until full payment thereof, pursuant to the above-quoted Section 249(a); and delinquency interest at the rate of twenty percent (20%) *per annum* shall accrue from November 8, 2002 until full payment thereof, pursuant to the said Section 249(c).

**WHEREFORE**, the Petition for Review is hereby **PARTIALLY GRANTED**. The assessments for deficiency documentary stamp tax on the Increase in Capitalization issued by respondent against petitioner for taxable years 1995 and

1996 in the amounts of ₱ 12,337,500.00 and ₱ 5,209,066.80, respectively, are hereby **CANCELLED** and **WITHDRAWN** in view of the Termination Letter dated June 7, 2010 issued by respondent as regards petitioner's availment of the Abatement Program under Revenue Regulations No. 15-2006, as amended by Revenue Regulations No. 03-07, in relation to Sections 204 and 244 of the NIRC of 1997, as amended.

The assessments for deficiency documentary stamp tax on petitioner's Special Savings Accounts, Special Savings Deposits and Golden Vs for taxable years 1994, 1995, and 1996, are hereby **AFFIRMED WITH MODIFICATION**. Petitioner is hereby **ORDERED TO PAY** respondent the amount of **₱ 25,707,090.66**, computed as follows:

| *Deficiency Tax* | 1994 | 1995 | 1996 | Total |
|---|---|---|---|---|
| Basic Tax Due | ₱ 108,628.02 | ₱ 7,695,000.15 | ₱ 12,762,044.35 | |
| 25% Surcharge | 27,157.01 | 1,923,750.04 | 3,190,511.09 | |
| **Subtotal** | **₱ 135,785.03** | **₱ 9,618,750.19** | **₱ 15,952,555.44** | **₱ 25,707,090.66** |

In addition, petitioner is likewise **ORDERED TO PAY** interest thereon at the rate of twenty percent (20%) *per annum* commencing from November 8, 2002 until full payment thereof, pursuant to Section 248(d), in relation to Section 249, both of the NIRC of 1977, as amended.

The assessment for deficiency Gross Receipts Tax for taxable year 1996 and deficiency gross receipts tax for taxable year 1996, is also **AFFIRMED WITH MODIFICATION**. Petitioner is hereby **ORDERED TO PAY** respondent the amount of **₱ 3,499,320.78**, computed as follows:

| **Gross Receipts Tax** | |
|---|---|
| Basic Tax Due | ₱ 2,799,456.62 |
| 25% Surcharge | 699,864.16 |
| **Total** | **₱ 3,499,320.78** |

In addition, petitioner is likewise **ORDERED TO PAY** interest thereon at the rate of twenty percent (20%) *per annum* commencing from January 20, 1997 until full payment thereof, pursuant to the above-quoted Section 249(a) of the NIRC of 1997; and delinquency interest at the rate of twenty percent (20%) *per annum* commencing from November 8, 2002 until full payment thereof, pursuant to the said Section 249(c) of the same law.

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

WE CONCUR:

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

## ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
Chairperson

## CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice