REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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EAST WEST BANKING CORPORATION, Petitioner,	**C.T.A. CASE NO. 7035**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 16 2008 1:05PM

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DECISION

BAUTISTA, *J.*:

This is a Petition for Review seeking the reversal and annulment of the undated "Final Decision on Disputed Assessment" and the "Final Notice Before Seizure" dated July 21, 2004, which denied petitioner's protest and sustained the assessments for deficiency documentary stamp tax (DST) on petitioner's special savings deposit account for taxable year 2000 and 2001, and for deficiency Gross Receipts Tax (GRT) on onshore income for taxable year 2001, in the aggregate amount of P82,965,216.29, inclusive of increments.

East West Banking Corporation (petitioner) is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office located at 6795 Ayala Avenue corner Rufino Street, Salcedo Village, Makati City. It is duly registered with the

Securities and Exchange Commission and authorized by the *Bangko Sentral ng Pilipinas* (BSP) to engage in commercial banking operations in the Philippines.[1]

Commissioner of Internal Revenue (respondent) is the duly appointed officer of the Bureau of Internal Revenue (BIR) with the power to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court.[2]

In his Formal Letter of Demand dated April 19, 2004, respondent assessed petitioner deficiency DST on its Special Savings Deposit account (SSD) called the Savings Maximizer, for taxable year 2000 in the amount of P35,100,323.90, inclusive of increments.[3] This was protested by petitioner via protest-letter dated June 3, 2004, filed with the BIR Large Taxpayers Service on June 4, 2004.[4]

In another Formal Letter of Demand (dated December 9, 2003), respondent assessed petitioner for deficiency DST on its Savings Maximizer and deficiency GRT on the onshore income of its foreign currency depository unit (FCDU) for taxable year 2001 in the aggregate amount of P46,466,381.76, inclusive of increments.[5] On February 12, 2004, petitioner filed its protest-letter against the said assessment with the Large Taxpayers Service of the BIR.[6]

In his "Final Decision on Disputed Assessment", respondent denied with finality petitioner's protest of the assessment for deficiency DST on the Savings Maximizer for taxable year 2000 in the amount of P36,498,834.53, inclusive of increments, computed as follows:[7]

	Total Amount of Deposits	**Tax Rate**	**Tax Due**
Maximizer Savings Deposit	13,946,895,521.42	0.15%	20,920,343.28
Interest (1/10/01-9/30/04)			15,578,491.25
Total Deficiency DST			**36,498,834.53**

[1] Paragraph 2, Joint Stipulation of Facts and Issues (JSFI), Docket, page 123
[2] Paragraph 4, JSFI, Docket, page 124
[3] Paragraph 6, JSFI, Docket, page 124; Exhibit "A", pages 186-188
[4] Paragraph 7, JSFI, Docket, pages 124-125; Exhibit "D", pages 191-200
[5] Paragraph 6, JSFI, Docket, page 124
[6] Paragraph 7, JSFI, Docket, page 125; Exhibit "E", pages 201-210
[7] Paragraph 13, JSFI, Docket, page 126; Exhibit "B", page 189

In the "Final Notice Before Seizure", respondent likewise held petitioner liable for deficiency DST and GRT for taxable year 2001 in the aggregate amount of P46,466,381.76, inclusive of increments, detailed as follows:[8]

Kind of Tax	Tax Due	Interest	Total Amount Due
2001 DST	32,510,429.70	13,182,311.22	45,692,740.92
2001 GRT	552,600.60	221,040.24	773,640.84
			46,466,381.76

In particular, the deficiency GRT was computed as follows:

Onshore Income per FS	11,052,012.00
GRT Rate (Sec. 121, NIRC)	5%
GRT Still Due	552,600.60
Add: Interest 1/20/02-1/20/04	221,040.24
Total Deficiency GRT	**773,640.84**

Petitioner received a copy of respondent's "Final Decision on Disputed Assessment" on July 21, 2004, while the "Final Notice Before Seizure" was received on July 23, 2004.[9] Since respondent issued the "Final Notice Before Seizure" without issuing any decision on the protest-letter dated February 12, 2004, the "Final Notice Before Seizure" amounts to a final decision on the disputed assessment and is appealable to this Court in accordance with the ruling in **Commissioner of Internal Revenue vs. Isabela Cultural Corporation** (*361 SCRA 71*).[10] Hence, petitioner filed the instant Petition for Review on August 12, 2004, or within thirty (30) days from receipt of the "Final Decision on Disputed Assessment".

The issues[11], as jointly stipulated by the parties, are the following:

1. Whether the passbook evidencing the Savings Maximizer is a certificate of deposit bearing interest subject to DST under Section 180 of the 1997 Tax Code;

2. Whether petitioner's Savings Maximizer is a time deposit;

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8 Paragraph 13, JSFI, Docket, pages 126-127; Exhibit "C", page 190
9 Paragraph 9, JSFI, Docket, page 125
10 Paragraph 1, JSFI, Docket, page 123
11 Paragraph 28, JSFI, Docket, page 132

3. Assuming *arguendo* that the Savings Maximizer is not a time deposit, whether it is a loan agreement subject to DST under Section 180 of the Tax Code; and

4. Whether petitioner's FCDU is liable for GRT on onshore income during the taxable year 2001.

The first and second issues shall be discussed jointly considering that these are intertwined.

Petitioner argues that its Savings Maximizer is not subject to DST under the Tax Code because Congress, through the sponsorship speech of Senator Ralph Recto, acknowledged the same during the deliberations of the bill which gave rise to Republic Act (R.A.) No. 9243.[12] The latter statute did not subject Special Savings Accounts to DST, among others. According to petitioner, such sponsorship speech constitutes an essential part of the legislative history of R.A. No. 9243 necessary for its interpretation.

Another argument raised by petitioner is that the passbook issued to its Savings Maximizer depositors is not included in the enumeration of documents subject to DST under Section 180 of the Tax Code of 1997. Petitioner insists that in its form and substance, the Savings Maximizer is a savings deposit, not a time deposit, and the passbook evidencing Savings Maximizer deposit transactions is not a certificate of deposit bearing interest.

The Court disagrees.

Section 180 of the Tax Code of 1997 provides that:

> "**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 Deposits 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**

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[12] *"An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes"* which became effective in 2004

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 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: xxx." (*Emphasis supplied*)

In order to determine whether an instrument is to be considered a Certificate of Deposit, Revenue Memorandum Circular (RMC) No. 16-03 was issued by respondent providing the guidelines in the determination thereof. The pertinent portion of RMC No. 16-03 are the following:

"xxx the essential elements of a certificate of deposit are as follows:

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 to 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.

From a technical point of view, a *Certificate of Deposit* has the following distinct features:

1. Minimum deposit requirement;
2. Stated maturity period;
3. Interest rate is higher than the ordinary savings account;
4. Not payable on sight or demand, but upon maturity or in case of pre-termination, prior notice is required; and
5. Early withdrawal penalty in the form of partial loss or total loss of interest in case of pre-termination.

If a written instrument or document meets the above-mentioned essential elements/features then such instrument will be considered a 'certificate of deposit' for which a documentary stamp tax under Section 180 of the National Internal Revenue Code of 1997 shall be imposed."

Time deposits are one such example of a Certificate of Deposit. Upon closer study of the evidence on hand, the Court finds Savings Maximizer to be similar to time deposits. Like time deposits, Savings Maximizer has a maturity period and penalty in case of early withdrawal. The Rules and Regulations of the Savings Maximizer passbook[13] states the following pertinent provisions:

"3. How to make Withdrawals

xxx xxx xxx

B. Any amounts withdrawn before the end of the agreed interest payment date shall earn interest at the rate prescribed for regular savings deposits.

xxx xxx xxx

4. Interest

A. The interest payment date for each Savings Maximizer Account shall be that agreed upon and stated in the Passbook for the deposit.

B. All savings maximizer deposits which are maintained until the agreed interest payment dates shall be paid interest at such rate applicable to the account's amount range as maybe prescribed by the Bank from time to time for this type of deposit.

xxx xxx xxx"

During the cross-examination of petitioner's witness, Ms. Irene Arroyo, Vice-President-Treasurer and Head of the Treasury Department, testified as to how the Savings Maximizer operates, to wit:

"ATTY. BIASON:

Q. Let's put it this way, it (Savings Maximizer) earns 2% that is higher than the 1.5% for regular savings account?

[13] Exhibit "F", Docket, page 215

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MS. ARROYO:

A. Yes, Sir.

ATTY. BIASON:

Q. If I withdraw it the interest remains. Let's say if I open an account today and I withdraw tomorrow does it earn interest?

MS. ARROYO:

A. For one (1) day, yes, Sir.
ATTY. BIASON:

Q. It does?

MS. ARROYO:

A. Yes, Sir.

ATTY. BIASON:

Q. How much?

MS. ARROYO:

A. The savings rate of 1.5%.

ATTY. BIASON:

Q. So, the interest reverts to the interest which is earned by a regular savings account?

MS. ARROYO:

A. Yes.

ATTY. BIASON:

Q. So from 2% to 1.5% because it was withdrawn one (1) day after it was deposited?

MS. ARROYO:

A. Yes."[14]

Deduced from the foregoing, the lower interest rate is actually the penalty (in the guise of interest rate for regular savings account) in case of early withdrawal or withdrawal

[14] TSN of the July 14, 2005 hearing, pages 18-20

before the end of the interest payment date agreed upon. The maturity date is that interest payment date in which the depositor must wait to earn the higher interest rate. Thus, the Savings Maximizer is a time deposit and the passbook issued to its Savings Maximizer depositors is a certificate of deposit drawing interest subject to DST.

Besides, the issues presented before this Court involving similar Special Savings Accounts had already been resolved by the Supreme Court in the landmark case of **International Exchange Bank vs. Commissioner of Internal Revenue**[15], in the following manner:

> "The FSD, like a time deposit, provides for a higher interest rate when the deposit is not withdrawn within the required fixed period; otherwise, it earns interest pertaining to a regular savings deposit. Having a fixed term and the reduction of interest rates in case of pre-termination are essential features of a time deposit. Thus explains the CTA En Banc:
>
> > 'It is well-settled that certificates of time deposit are subject to the DST and 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 Savings Account-Fixed Savings Deposit (SA-FSD) has the same nature and characteristics as a time deposit. In this regard, the findings of fact stated in the assailed Decision [of the CTA Division] are as follows:
> >
> > > 'In this case, a <u>depositor of a savings deposit-FSD is required to keep the money with the bank for at least thirty (30) days in order to yield a higher interest rate</u>. <u>Otherwise, the deposit earns interest pertaining only to a regular savings deposit.</u>
> > >
> > > <u>The same feature is present in a time deposit. A depositor is allowed to withdraw his time deposit even before its maturity subject to bank charges on its pre[-]termination and the depositor loses his entitlement to earn the interest rate corresponding to the time deposit</u>. Instead, he earns interest pertaining only to a regular savings deposit. Thus, petitioner's argument that the savings deposit-FSD is withdrawable anytime as opposed to a time deposit which has a maturity date, is not

[15] G.R. No. 171266, April 4, 2007

> tenable. In both cases, the deposit may be withdrawn anytime but the depositor gets to earn a lower rate of interest. The only difference lies on the evidence of deposit, a savings deposit-FSD is evidenced by a passbook, while a time deposit is evidenced by a certificate of time deposit."
>
> In order for a depositor to earn the agreed higher interest rate in a SA-FSD, the amount of deposit must be maintained for a fixed period. Such being the case, We agree with the finding that the SA-FSD is a deposit account with a fixed term. Withdrawal before the expiration of said fixed term results in 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 SA-FSD and time deposit are substantially the same. . . . (Italics in the original; underscoring supplied)"
>
> xxx xxx xxx
>
> It bears emphasis that DST is 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. It is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business.
>
> While tax avoidance schemes and arrangements are not prohibited, tax laws cannot be circumvented in order to evade payment of just taxes. To claim that time deposits evidenced by passbooks should not be subject to DST is a clear evasion of the rule on equality and uniformity in taxation that requires the imposition of DST on documents evidencing transactions of the same kind, in this particular case, on all certificates of deposits drawing interest."

Anent petitioner's argument that Congress acknowledged that Special Savings Accounts were not covered by the old statute; the Supreme Court in the same case of **International Exchange Bank vs. Commissioner of Internal Revenue** [16] had this to say:

> "The further amendment of Section 180 of the NIRC and its renumbering as Section 179 by R.A. 9243, which was approved on February 17, 2004, *viz:*

[16] *Supra*

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 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 of any of its instrumentalities, deposit substitute debt instruments, <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." (Underscoring supplied)

does not mean that as proffered, prior to its further amendment on said date, Section 180 of the Tax Code and the NIRC time deposits for which passbooks were issued were exempted from payment of DST.

If at all, the further amendment was intended to eliminate precisely the scheme used by banks of issuing passbooks to "cloak" its time deposits as regular savings deposits. This is reflected from the following exchanges between Mr. Miguel Andaya of the Bankers Association of the Philippines and Senator Ralph Recto, Senate Chairman of the Committee on Ways and

Means, during the deliberations on Senate Bill No. 2518 which eventually became R.A. 9243:

> MR. MIGUEL ANDAYA (Bankers Association of the Philippines). Just to clarify. Savings deposit at the present time is not subject to DST.
>
> THE CHAIRMAN. That's right.
>
> MR. ANDAYA. Time deposit is subject. I agree with you in principle that if we are going to encourage deposits, whether savings or time...
>
> THE CHAIRMAN. Uh-huh.
>
> MR. ANDAYA. . .it's questionable whether we should tax it with DST at all, even the question of imposing final withholding tax has been raised as an issue.
>
> THE CHAIRMAN. If I had it my way, I'll cut it by half.
>
> MR. ANDAYA. Yeah, but I guess concerning the constraint of government revenue, even the industry itself right now is not pushing in that direction, but in the long term, when most of us in this room are gone, we hope that DST will disappear from the face of this earth, 'no.
>
> Now, I think the move of the DOF to expand the coverage of or to add that phrase, 'Other evidence of indebtedness,' it just removed ambiguity. When we testified earlier in the House on this very same bill, we did not interpose any objections if only for the sake of avoiding further ambiguity in the implementation of DST on deposits. Because of what has happened so far is, we don't know whether the examiner is gonna come in and say, "This savings deposit is not savings but it's time deposit." So, I think what DOF has done is to eliminate any confusion. They said that a deposit that has a maturity. . .
>
> THE CHAIRMAN. Uh-huh.
>
> MR. ANDAYA. . . . which is time, in effect, regardless of what form it takes should be subject to DST.
>
> THE CHAIRMAN. Would that include savings deposit now?
>
> MR. ANDAYA. So that if we cloaked a deposit as savings deposit but it has got a fixed maturity . . .
>
> THE CHAIRMAN. Uh-huh.

MR. ANDAYA. . . that would fall under the purview. (Underscoring supplied)"

The history of a statute refers to all its antecedents, from its inception until its enactment into law. It covers the period and the steps done from the time the bill is introduced until it is finally passed by the legislature.[17] Thus, while it is true that Senator Recto's sponsorship speech constitutes part of legislative history; the above-quoted deliberations showing that the amendment was intended to remove the ambiguity is also an equally important part of legislative history.

Now that it has been established that the Savings Maximizer is a time deposit and that its passbook is a certificate of deposit bearing interest subject to DST, the Court deems it proper not to discuss the third issue for being moot.

In discussing the fourth issue, an overview of the past provisions on FCDU transactions is in order. Prior to the enactment of the disputed provisions of the Tax Code of 1997, Sections 24(e)(3) and 25(a)(6)(B) of the Tax Code of 1997 provided:

> "**SEC. 24.** *Rates of tax on domestic corporations.* —
>
> xxx xxx xxx
>
> (e) *Tax on certain incomes derived by domestic corporations.* — xxx
>
> (3) *Tax on income derived under the Expanded Foreign Currency Deposits System.* — Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with non-residents, off-shore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Central Bank to transact business with foreign currency depository system units and other depository bank under the expanded foreign currency deposit system **shall be exempt from all taxes**, except taxable income from such transactions as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board to be subject to the used income tax payable by banks: *Provided*, That interest income from foreign currency loans granted by such depository banks under said expanded system to residents (other than off-shore banking units in the Philippines or other depository banks under the expanded system) shall be subject to a 10% tax.

[17] Agpalo, Ruben E., Statutory Construction (1998), Fourth Edition, pages 89-90

Any income of non-residents from transactions with depository banks under the expanded system shall be exempt from income tax." (*Emphasis supplied*)

"**SECTION 25.** *Rates of tax on foreign corporation.* — (a) *Tax on resident foreign corporations.* -

xxx xxx xxx

(6) *Tax on certain incomes received by resident foreign corporations.*
xxx

(B) *Income derived under the Expanded Foreign Currency Deposit System.* — Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with non-residents, offshore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Central Bank of the Philippines to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system **shall be exempt from all taxes**, except taxable income from such transactions as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board to be subject to the usual income tax payable by banks: *Provided*, That interest income from foreign currency loans granted by such depository banks under said expanded system to residents (other than offshore banking units in the Philippines or other depository banks under the expanded system) shall be subject to a 10% tax.

Any income of non-residents from transactions with depository banks under the expanded system shall be exempt from income tax." (*Emphasis supplied*)

Despite the several amendments undergone by the Tax Code of 1997, the tax exemption privileges of income from FCDU transactions (except for the 10% final tax) remained intact. However, these privileges were removed in the Tax Code of 1997[18], as follows:

"**SEC. 27.** *Rates of Income Tax on Domestic Corporations.* —

xxx xxx xxx

(D) *Rates of Tax on Certain Passive Incomes.* —

xxx xxx xxx

[18] Effective January 1, 1998

(3) *Tax on Income Derived under the Expanded Foreign Currency Deposit System.* — Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with local commercial banks, including branches of foreign banks that may be authorized by the *Bangko Sentral ng Pilipinas* (BSP) to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system, including interest income from foreign currency loans granted by such depository banks under said expanded foreign currency deposit system to residents, shall be subject to a final income tax at the rate of ten percent (10%) of such income.

Any income of nonresidents, whether individuals or corporations, from transactions with depository banks under the expanded system shall be exempt from income tax."

"**SEC. 28.** *Rates of Income Tax on Foreign Corporations.* —

(A) *Tax on Resident Foreign Corporations.* -

xxx xxx xxx

(7) *Tax on Certain Incomes Received by a Resident Foreign Corporation.* —

xxx xxx xxx

(b) *Income Derived under the Expanded Foreign Currency Deposit System.* — Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with local commercial banks including branches of foreign banks that may be authorized by the *Bangko Sentral ng Pilipinas* (BSP) to transact business with foreign currency deposit system units and other depository banks under the expanded foreign currency deposit system, including interest income from foreign currency loans granted by such depository banks under said expanded foreign currency deposit system to residents, shall be subject to a final income tax at the rate of ten percent (10%) of such income.

Any income of nonresidents, whether individuals or corporations, from transactions with depository banks under the expanded system shall be exempt from income tax."

Notwithstanding the deletion of the exemption clause, petitioner argues that the true intent of the lawmakers is to lift the exemption of the so-called offshore income of FCDUs by treating such income as onshore and therefore subject to the final tax of 10%; citing Senator Juan Ponce Enrile's statements during the August 6, 1997 interpellations. Since only reclassification of income from offshore to onshore was involved, petitioner argues that the deletion of the exemption clause did not remove their exemption from GRT and all other taxes.

The Court finds petitioner's arguments flawed.

As a rule, an amendment by deletion of certain words or phrases in a statute indicates that the legislature intended to change the meaning of the statute, for the presumption is that the legislature would not have made the deletion had the intention been not in effect a change in its meaning. The amended statute should accordingly be given a construction different from that previous to its amendment.[19]

The income derived by depository banks from FCDU transactions was formerly "exempt from all taxes." Thus, when the legislature deleted the phrase "exempt from all taxes", it intended to subject such income not only to the ten percent (10%) final tax imposed under Sections 27(D)(3) and 28(7)(b), but to all other taxes as well.

In this case, no doubt can be ascribed to the interpretation of Sections 27(D)(3) and 28(7)(b) of the Tax Code of 1997 that income from FCDU transactions is subject to all other taxes aside from the 10% final tax when the phrase "exempt from all taxes" was deleted. Thus, petitioner's resort to the legislative deliberations is unnecessary. If a statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum*. From the words of a statute there should be no departure.[20]

Tax exemptions cannot be created by mere implication, but must be clearly provided by law. In case of doubt, non-exemption is favored.[21] Accordingly, he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken.[22] Thus, the imposition of the ten percent (10%) final tax under Section 27(D)(3) and 28(7)(b)

[19] *Gloria vs. Court of Appeals,* 306 SCRA 287
[20] Agpalo, Ruben, Statutory Construction, 4th Edition, 1998, page 120
[21] *Benguet Corporation vs. Central Board of Assessment Appeals*, G.R. No. 100959. June 29, 1992
[22] *Surigao Consolidated Mining Co., Inc. vs. Collector of Internal Revenue, et al.,*(L-14878. December 26, 1963

of the Tax Code of 1997 cannot be construed to mean that such imposition is exclusive and that income derived by depository banks from FCDU transactions is exempt from all other taxes (including GRT[23]). The exemption of such income from other all taxes must be clearly and categorically expressed in the law in order to avail of the same.

As for petitioner's argument that the tax base used by respondent in calculating the alleged deficiency GRT is incorrect and based on mere presumptions, the Court finds such argument bereft of any factual or legal basis. Tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise.[24] Here, petitioner failed to present a scintilla of evidence, whether before the BIR or this Court, which would prove that the tax base was erroneous. Thus, respondent's assessment of GRT stands.

IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of P36,498,834.53 representing deficiency documentary stamp tax for the taxable year 2000 and the aggregate amount of P46,466,381.76 representing

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[23] **SEC. 121.** *Tax on Banks and Non-bank Financial Intermediaries.* — There shall be collected a tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries in accordance with the following schedule:

(a) On interest, commissions and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived:

Short-term maturity (not in excess of two (2) years)		5%
Medium-term maturity (over two (2) years but not exceeding four (4) years)		3%
Long-term maturity — (1) Over four (4) years but not exceeding seven (7) years		1%
(2)	Over seven (7) years	0%
(b)	On dividends	0%
(c)	On royalties, rentals of property, real or personal, profits from exchange and all other items treated as gross income under Section 32 of this Code	5%

Provided, however, That in case the maturity period referred to in paragraph (a) is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction as short, medium or long-term and the correct rate of tax shall be applied accordingly.

Nothing in this Code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar banking activities.

[24] *Cagayan Robina Sugar Milling Co., vs. Court of Appeals, et al.*, G.R. No. 122451. October 12, 2000

deficiency gross receipts and documentary stamp taxes for the taxable year 2001, plus 20% delinquency interest per annum pursuant to Section 249(C)(3) of the National Internal Revenue Code from October 1, 2004[25] and August 2, 2004[26], respectively, until the amount is fully paid.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

[25] Due date provided in the "Final Decision on Disputed Assessment", Exhibit "B"
[26] Due date stated in the "Final Notice Before Seizure" which is ten (10) days from receipt, Exhibit "C"