REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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BANCO DE ORO UNIVERSAL BANK,
Petitioner,

C.T.A. CASE NO. 6401

Members:

\- versus -

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 19 2005

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DECISION

BAUTISTA, L., J.:

The instant Petition for Review seeks the reversal of the decision of respondent dated December 21, 2001 denying the protest of Dao Heng Bank, a bank absorbed by petitioner in a merger duly approved by the Bangko Sentral ng Pilipinas and the Securities and Exchange Commission, against Assessment Notice Nos. ST-DST-96-0101-99 and ST-DST-97-0103-99 covering deficiency documentary stamp taxes in the amounts of P10,483,816.90 and P50,101,164.40 for taxable years 1996 and 1997, respectively.

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission and duly authorized by the Bangko Sentral ng Pilipinas (BSP) as a universal bank with principal business address at No.12 ADB Ave. cor. J. Vargas, Ortigas Center, Pasig

City (*par. 2, Summary of Admitted Facts*). Banco de Oro is the surviving corporation, while Dao Heng Bank, Inc. (Dao Heng) was the absorbed corporation, pursuant to the Articles and Plan of Merger entered into by the two banks on October 30, 2000 and approved by the Bangko Sentral ng Pilipinas on February 27, 2001. On June 15, 2001, the Securities and Exchange Commission issued the corresponding Certificate of Filing of the Articles and Plan of Merger. Clause 1.4.4 of the Merger provides that "any pending claim, action or proceeding brought by or against DHBI [Dao Heng] may be prosecuted by or against BDO [Banco de Oro]." Dao Heng and Banco de Oro, being one and the same after the merger, are hereafter interchangeably referred to as the petitioner.

Through Letter of Authority No. 000018567 dated July 27, 1998, respondent caused the examination of petitioner's books of accounts/accounting records relative to the latter's all internal revenue tax liabilities for the Fiscal Years (FYs) ended June 30, 1996 and June 30, 1997 (*Exhibit 1; par. 6, Summary of Admitted Facts).*

As a result of the investigation, petitioner received from respondent on September 7, 1999 a Pre-Assessment Notice dated August 30, 1999 (*Exhibit 4*) informing petitioner about the proposed assessment for the following deficiency taxes for FYs ended June 30, 1996 and June 30, 1997:

	FY 1996	FY 1997
DEFICIENCY FINAL TAX – ONSHORE INCOME	P 27,151.57	P 166,277.74
DEFICIENCY GROSS RECEIPTS TAX	466,444.61	12,681,188.35
DEFICIENCY DOCUMENTARY STAMP TAX	10,155,362.73	49,443,518.05

On September 24, 1999, petitioner filed a protest letter detailing therein the reasons why it disagreed with the findings of the respondent (*Exhibit 5*).

On December 3, 1999, petitioner received from respondent four Formal Assessment Notices and accompanying Formal Letters of Demand, all dated December 1, 1999, this time assessing petitioner for penalties for late payment of final withholding tax on onshore income and deficiency documentary stamp tax (DST) for FYs 1996 and 1997, in the following amounts (*pages 451-452 & 462-469, BIR Records*):

FISCAL YEAR ENDED JUNE 30, 1996

ASSESSMENT NO. ST-FWT-96-0100-99

PENALTIES FOR LATE PAYMENT OF FWT-ONSHORE INCOME

Basic tax		P 2,630.42
Add:	25% surcharge	657.61
	20% interest from 7-11-96 to 8-10-96 (.016666)	43.84
	Compromise penalty	1,000.00
Total		P 4,331.87
Less:	Basic tax paid dated 8-10-96	2,630.42
TOTAL AMOUNT DUE		P 1,701.45

ASSESSMENT NO. ST-DST-96-0101-99

DEFICIENCY DST (INDUSTRY ISSUE)

Investment savings account (private bank)		P 1,046,333.34
Investment savings account (individual)		3,972,939,584.67
IBCL – term		175,000,000.00
Basis of DST		P 4,148,955,918.01
Rate of tax		.30/200
DST due thereon		P 6,223,434.00
Add:	20% interest from 7-11-96 to 12-6-99 (.680554)	4,235,382.90
	Compromise penalty	25,000.00
TOTAL AMOUNT DUE		P 10,483,816.90

FISCAL YEAR ENDED JUNE 30, 1997

ASSESSMENT NO. ST-FWT-97-0102-99

PENALTIES FOR LATE PAYMENT OF FWT-ONSHORE INCOME

Basic Tax		P 107,883.27
Add:	25% surcharge	26,970.82
	20% interest from 7-11-97 to 8-11-97 (.016666)	1,797.98
	Compromise penalty	16,000.00
Total		P 152,652.07
Less:	Basic tax paid dated 8-11-97	107,883.27
TOTAL AMOUNT DUE		P 44,768.80

ASSESSMENT NO. ST-DST-97-0103-99

DEFICIENCY DST (INDUSTRY ISSUE)

Investment savings account (individual)		P 19,483,390,208.15
IBCL – term		3,065,000,000.00
Basis of DST		P 22,548,390,208.15
Rate of tax		.30/200
DST due thereon		P 33,822,585.60
Add:	20% interest from 7-11-97 to 12-6-99 (.480554)	16,253,578.80
	Compromise penalty	25,000.00
TOTAL AMOUNT DUE		P 50,101,164.40

In a letter dated December 21, 1999 and received by respondent on December 23, 1999, petitioner protested the assessments for deficiency DST for FYs 1996 and 1997 in the amounts of P10,483,816.90 and P50,101,164.40 covered under Assessment Notice Nos. ST-DST-96-0101-99 and ST-DST-97-0103-99, respectively (*pages 445-449, BIR Records; par. 9, Summary of Admitted Facts*).

On January 29, 2002, petitioner received a copy of respondent's Final Decision on the disputed assessments, denying petitioner's protest and ordering petitioner to pay the amounts of P10,483,816.90 and P50,101,164.40 as deficiency DST for FYs 1996 and 1997, respectively (*pages 513 – 522, BIR Records; par. 10, Summary of Admitted Facts*).

On February 27, 2002 or within thirty (30) days from January 29, 2002, petitioner elevated its case before this Court.

In his Answer filed on April 3, 2002, respondent alleges, among others, that petitioner's interbank call loans (IBCLs) are subject to the documentary stamp tax imposed under Section 180 of the National Internal Revenue Code of 1977, as amended; that petitioner's IBCLs fall squarely within the definition of deposit substitutes; that petitioner's Investments Savings Accounts are considered time deposits and are subject to documentary stamp tax under Section 180 of the Tax Code of 1977, as amended; that the assessments were issued in accordance with law and regulations and that all presumptions are in favor of the correctness of tax assessments.

The issues posed jointly by the parties for this Court's resolution are:

1. Whether or not the 1977 NIRC imposes DST on deposit substitute debt instruments;

2. Whether or not the IBCLs are deposit substitutes;

3. Whether or not petitioner's payment of final withholding tax on IBCLs is pursuant to Revenue Regulations No. 10-86; and

4. Whether or not the ISAs are included within the coverage of Article 180 of the 1977 NIRC, and taxable thereunder.

Records reveal that the disputed assessments arose from the respondent's imposition of DST on petitioner's: 1) interbank call loans (IBCLs) and 2) investment savings accounts (ISAs) for FYs 1996 and 1997.

The first, second and third issues above stipulated relate to the validity of respondent's imposition of DST on petitioner's IBCLs. Anent the first issue, respondent claims that petitioner's IBCLs are deposit substitute debt instruments subject to DST under Section 180 of the NIRC of 1977, as amended, which reads as follows:

> **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 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 notes issued to secure such loan, whichever will yield a higher tax: **Provided however,** *That* loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this section. (as amended by RA 7660)

To support his position, respondent cites the case of ***BPI Family Bank vs. Commissioner of Internal Revenue and Court of Tax Appeals, C.A.-G.R. SP No. 29853, September 19, 1994,*** wherein the Court of Appeals ruled that:

> "A perusal of Section 180 of the Tax Code will show that it covers the following instruments: (1) promissory notes, whether negotiable or not; (2) bills of exchange; (3) drafts; (4) certificates of deposit; and (5) debt instruments used for deposit substitute. The foregoing instruments are defined as follows:
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> xxx xxx xxx
>
> '(y). Deposit substitutes shall mean an alternative form of obtaining funds from the public, other than deposits, through the issuance, indorsement, or acceptance of debt instruments for the borrowers own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These instruments may include but need not be limited to promissory notes, repurchase agreements, certificates of assignment or participation and similar instruments with recourse as may be authorized by the Central Bank of the Philippines, for banks and non-bank financial intermediaries or by the Securities and Exchange Commission of the Philippines for commercial, industrial, finance companies and other. Provided, however, That only debt instruments issued for inter-bank call loans to cover deficiency on reserves against deposit liabilities including those between or among banks and quasi-bank shall not be considered as deposit substitute debt instruments'."

Petitioner, on the other hand, counter-argues that Section 180 of the NIRC of 1977, as amended, the law in effect during the years covered by the subject assessments, did not impose DST on deposit substitute debt instruments. The term "deposit substitute debt instruments" was inserted in Section 180 of the Tax Reform Act of 1997 which took effect only on January 1, 1998. Petitioner further avers that respondent's reliance on the *BPI Family Bank* case is misplaced as the factual circumstances and issues therein do not apply in the instant case.

We rule in favor of petitioner.

Clearly, from the earlier cited provisions of Section 180 of the NIRC of 1977, as amended, only the following documents are subject to DST:

1.) Loan agreements;
2.) Promissory notes;
3.) Bills of exchange;
4.) Drafts, instruments and securities issued by the Government or any of its instrumentalities;
5.) Certificates of deposit bearing interest; and
6.) Other orders for the payment of any sum of money otherwise than at sight or demand.

The term "deposit substitute" or "debt instruments used for deposit substitute" is not among those enumerated as subject to documentary stamp tax under Section 180 of the NIRC of 1977, as amended. As held by this Court in the case ***SOLIDBANK CORPORATION (now: First Metro Investment Corporation) vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 6557, May 5, 2005*** (citing the case of ***ING BANK N.V. MANILA BRANCH vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 6187, dated August 9, 2004,***) the said phrase was only inserted in the following provisions of Section 180 of the NIRC of 1997 which became effective only on January 1, 1998:

> "**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 deposits drawing interest, orders for 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: xxx *(Underscoring supplied).*

The taxable years in question pertain to 1996 and 1997, prior to the effectivity of the NIRC of 1997. Since it is an elementary rule that a tax law can only have a retroactive application in cases where the rights of the taxpayers are not prejudiced, Section 180 of the NIRC of 1997 cannot be made to apply in the instant case.

Inasmuch as Section 180 of the NIRC of 1977, as amended, the law existing in 1996 and 1997 did not cover deposit substitute debt instruments, which respondent claims the IBCLs to be, this Court rules that the assessments for deficiency DST on IBCLs for 1996 and 1997 have no legal basis and must therefore, be cancelled and withdrawn.

Accordingly, it is unnecessary to discuss the second and third issues as they delve on whether or not petitioner's IBCLs for 1996 and 1997 are deposit substitutes within the meaning of the law and regulations then obtaining. Even assuming that the said IBCLs are deposit substitutes, this Court reiterates that there was no law in 1996 and 1997 which subjected deposit substitutes to documentary stamp tax.

We then proceed to the fourth issue of whether or not petitioner's Investment Savings Accounts (ISAs) are included within the coverage of Section 180 of the 1977 NIRC, as amended, and taxable thereunder.

Petitioner asserts that a passbook evidencing its special savings account known as investment savings account (ISA) is not among the documents subject to DST under Section 180 of the NIRC of 1977, as amended. Thus the subject assessments have no leg to stand on. Petitioner interprets Section 180 as to include those documents that provide for the payment of sums of money otherwise than at sight or demand. In other words, the documents that are subject to DST are those that provide for the payment of money at a fixed period or maturity date, such as a certificate of deposit which has the following features: a) it must cover a deposit of a sum of money; b) the deposit must be interest-earning; c) it must be a deposit payable otherwise than at sight or on demand [*in other words, the deposit must have a fixed maturity date*]; and it must be evidenced by a "certificate". In the banking industry, the term "certificate" refers to no other than a certificate of time deposit. Thus, according to the petitioner, passbooks issued by banks to evidence deposits such as ISAs that may be withdrawn at anytime, are clearly excluded from the coverage of Section 180. These documents entitle the holders thereof to payment of money "at sight or on demand" and, by the language of Section 180, are not subject to DST.

On the contrary, respondent insists that petitioner's ISAs are subject to DST under Section 180 of the NIRC of 1977, as amended, since it has the same features of a time deposit, namely: a) it has a fixed maturity date and yield a higher interest rate; and b) it can be withdrawn anytime in whole or in part before maturity date, subject, however to the prevailing regular savings account interest rate. The use of an ordinary savings account passbook instead of a certificate of deposit does not alter the substance of the Investment Savings Account.

Respondent firmly believes that petitioner's ISAs and time deposits are akin to each other, only that efforts were made by petitioner to place superficial distinction between the two deposit accounts by introducing an innovation *i.e.,* by using a regular passbook to document the said special savings account. Respondent maintains that a close scrutiny of an ordinary savings account passbook discloses the following entries, which are reflected in separate columns, to wit: date, withdrawals, deposit/interest, balance and remarks. From these entries, even an ordinary layman could easily decipher that on a certain date, the depositor made either a deposit or withdrawal and that after making such transaction the amount appearing in the "balance column" is what remains of his money that is kept by the bank. In the "remarks column," the bank's representative attaches his initial/signature. The initial/signature signifies that the bank acknowledges the correctness, authenticity and veracity of all the entries therein, which means that the bank recognizes and admits that on the stated date, the depositor made a deposit which is received by the bank and that it will pay the depositor or his representative should he decide to withdraw his money. Clearly, therefore, the regular savings account passbook has the same substance, attributes and qualities as a "certificate of deposit". The fact that petitioner's "Investment Savings Deposit" is evidenced by a 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 passbook and not the particular label or nomenclature attached to it, inasmuch as its substance is paramount than its form.

We agree with the respondent.

We have already ruled in a number of cases[1] that a special savings account such as the ISA in the instant case, is subject to documentary stamp tax. In the more recent case entitled ***TRADERS ROYAL BANK VS COMMISSIONER OF INTERNAL REVENUE, CTA EB NO. 34, APRIL 26, 2005***, the Court *En Banc* ruled:

> A certificate of deposit is defined 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 to some other person his order, whereby the relation of debtor and creditor between the bank and the depositor is created (*Far East Bank and Trust Company vs. Querimit, 373 SCRA 671*).
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> From the aforequoted provision of Section 180, the law subjects a "certificate of deposit" to documentary stamp tax. A documentary stamp tax is a tax on documents, instruments and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right, or property incident thereto (*Hector S. De Leon, The National Internal Revenue Code, 2000, ed., p. 722*). It is in the nature of an excise tax imposed on the privilege, opportunity or facility offered at exchanges for the transaction of the business and not upon the business transacted (*Lincoln Phil. Life Insurance Co., Inc. vs. Court of Appeals, 293 SCRA 92*).

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[1] Union Bank of the Philippines vs. Commissioner of Internal Revenue, CTA Case No. 6436, February 21, 2005; Prudential Bank vs. Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue, CTA Case No. 6198, February 16, 2005; Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6201, December 15, 2004; International Exchange Bank vs. Commissioner of Internal Revenue, CTA Case No. 6159, October 26, 2004; China Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6400, October 14, 2004; ING Bank N.V. Manila Branch vs. Commissioner of Internal Revenue, CTA Case No. 6187, August 9, 2004; Banco de Oro vs. Commissioner of Internal Revenue, CTA Case No. 6390, July 1, 2004; Traders Royal Bank vs. Commissioner of Internal Revenue, CTA Case No. 6392, April 28, 2004 affirmed in Traders Royal Bank vs. Commissioner of Internal Revenue, CTA EB No. 34, April 26, 2005.

It is a privilege tax because it is really imposed on the privilege to enter into a transaction rather than a document. The law taxes the document because of the transaction (*Hector S. De Leon, The Law on Transfer and Business Taxation, 1998, ed., p. 351*). What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction.

On the other hand, 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. Ordinarily, a time deposit is defined as "one, the payment of which cannot legally be required within such a specified number of days" (*BPI Family Savings Bank vs. First Metro Investment Corp., G.R. No. 132390, May 21, 2004, citing 10 Am. Jur. 2d., p. 652*). 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 ed.*). Verily, the main difference between a "savings deposit" and a "time deposit" is the penalty, which may come in the form of reduced interest rate. An instance is when the depositor makes a withdrawal prior to the maturity of the deposit.

A certificate of deposit, undeniably, being subject to documentary stamp tax, it is thus relevant to determine whether petitioner's Special Savings and Mega Savings Deposit bear the same nature or characteristics of a time deposit certificate.

As aptly ruled by the Division:

> "In its attempt to convince the court that the special savings account is not a time deposit, petitioner advances the argument that an SSA is withdrawable anytime and the interest to which depends on how long the money is kept by the depositor with the bank; while in the case of a time deposit, there is a specific maturity date evidenced by a certificate of deposit (**TSN, page 11, August 8, 2002**). It bears stressing though that petitioner's witness himself, Mr. Bayani R. Navarro, admitted that for a depositor under a Special Savings Deposit or Mega Savings Deposit to be able to avail of the higher rate of interest offered by the said kinds of deposit, the money should have been kept by the bank for a period not less than thirty (30) days (**TSN, pages 14-16, August 8, 2002**); otherwise, the deposit earns interest pertaining to a regular savings deposit which is comparatively smaller.
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> It is to be noted that the same holds true in the case of a time deposit. A depositor is still allowed to withdraw his time deposit even before its maturity subject to pretermination charges and the depositor loses his entitlement to earn the interest rate corresponding to the time deposit. Instead, he earns interest likewise pertaining to a regular savings deposit.

> Clearly, petitioner's argument that one is withdrawable anytime and the other is not has no leg to stand on. The fact is: 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.
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> But in determining whether a certain instrument is subject to documentary stamp tax, substance would control over the form and labels xxx (**Knudsa Creamery Co. of California vs. US, 121 F. Suppl. 860, 26 U.S. C.A. 1800, 1801**). The court agrees with the findings of the respondent that the nature of Special Savings Deposit and Time Deposits are akin to each other in such a way that 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. The difference lies on the document issued to evidence the transaction. In Special Savings Account, the transaction is covered by a passbook, while in time deposit, it is through a certificate of deposit."
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> For all intents and purposes, petitioner's Special Savings and Mega Savings Deposit are deemed to be of the same nature and substance as a certificate of deposit bearing interest. Therefore, We hold that said Special Savings and Mega Savings passbooks are in themselves certificates of deposit, subject to documentary stamp tax in accordance with *Section 180, National Internal Revenue Code of 1993, as amended.* While the DST is levied on the document itself, it is not intended to be a tax on the document alone. Rather, the DST is levied on the exercise of a privilege of conducting a particular business or transaction through the execution of specific instruments or documents (*Phil. Home Assurance Corp. vs. Court of Appeals, 301 SCRA 435*).

Considering that the aforecited case is no different from the present case, this Court upholds the assessments for deficiency DST on petitioner's investment savings accounts (ISAs) for fiscal years 1996 and 1997 in the respective amounts of P10,020,977.10 and P43,285,153.75 (inclusive of 20% deficiency interest) computed as follows:

FOR FY ENDED JUNE 30, 1996

Investment savings account (private bank)	P	1,046,333.34
Investment savings account (individual)		3,972,939,584.67
Basis of DST	P	3,973,985,918.01
Rate of tax		.30/200
Basic DST due	P	5,960,978.88
Add: 20% interest from 7-11-96 to 12-6-99		4,059,998.22
Total Amount Due	**P**	**10,020,977.10**

FOR FY ENDED JUNE 30, 1997

Investment savings account (individual)	P19,483,390,208.15
Rate of tax	.30/200
Basic DST due	P 29,225,085.31
Add: 20% interest from 7-11-97 to 12-6-99	14,060,068.44
Total Amount Due	P 43,285,153.75

As there was no compromise agreement between the parties, this Court cancels the compromise penalty of P25,000.00 imposed by the respondent for each subject fiscal year.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assessments for deficiency documentary stamp tax on petitioner's interbank call loans for fiscal years 1996 and 1997 in the respective amounts of P437,839.80 and P6,791,010.65 as well as the compromise penalties amounting to P50,000.00 for both fiscal years 1996 and 1997 are hereby **CANCELLED** and **SET ASIDE**. However, the assessments for deficiency documentary stamp tax on petitioner's Investment Savings Accounts for the fiscal years 1996 and 1997 are hereby **AFFIRMED**.

Accordingly, petitioner is **ORDERED TO PAY** the respondent the reduced amounts of P10,020,977.10 and P43,285,153.75 as deficiency documentary stamp tax for fiscal years 1996 and 1997, respectively, plus 20% delinquency interest computed from March 1, 2002 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO C. ACOSTA
Presiding Justice

(With Concurring and Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above 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
Chairman, First Division
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

BANCO DE ORO, Petitioner, -versus- COMMISSIONER OF INTERNAL REVENUE, Respondent.	CTA CASE No.6401 Members: ACOSTA, P.J BAUTISTA, and CASANOVA, JJ.: Promulgated: SEP 19 2005

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Concurring and Dissenting Opinion

I agree with the majority opinion regarding the cancellation and setting aside of the assessments for deficiency stamp tax on petitioner's interbank call loans for fiscal years 1996 and 1997. However, I am dissenting with my colleagues in holding petitioner Banco de Oro liable for Deficiency Documentary Stamp Tax on its Investment Savings Accounts.

It is my opinion that the Investment 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, Investment Savings Account has no maturity date. The period offered to a prospective Investment Savings depositor is a length of time provided in a schedule of placement, for which a corresponding rate is given. Still, the depositor is at liberty to withdraw his or her deposit at any time upon the presentation of his or her passbook.

Investment 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 Investment 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 Investment 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 Investment 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 Investment Savings Account of the petitioner to DST.

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

CAESAR A. CASANOVA
Associate Justice