REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF AMERICA, NT & SA,
Petitioner,

- versus - **C.T.A. CASE NO. 3352**

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue reiterating payment of the deficiency 5% bank tax for the fourth quarter covering the year 1975 amounting to P79,769.10 computed as follows:

Taxable gross receipts per investigation	P50,531,733.00
5% tax due thereon	P 2,526,586.65
Less: Tax already paid	2,462,771.37
	P 63,815.28
25% surcharge for late payment	P 15,953.82
Total amount due	P 79,769.10

The undisputed facts of this case are as follows:

On September 2, 1980, petitioner Bank of America National Trust and Savings Association, a foreign corporation licensed to engage in banking business in the Philippines through its branch office at BA-Lepanto Building, Paseo de Roxas, Makati, Metro Manila, received a letter from respondent Commissioner of Internal Revenue dated June 25, 1980 assessing the former deficiency 5% bank tax for the year 1975 inclusive of surcharge for late payment (Exhibit A, p. 45, BIR record). The assessment was timely protested by petitioner on September 10, 1980 when it requested for an opportunity to examine the records on which the assessment was based in order to determine how the amount of P50,531,733.00 as taxable gross receipts for the fourth quarter of 1975 was arrived at by the investigating Bureau of Internal Revenue examiners (Exhibit B, pp. 47-48, BIR record). This request was granted by the Chief, Indirect Taxes Division of the Bureau of Internal Revenue in his letter dated October 8, 1980 addressed to Sycip, Gorres, Velayo & Company, auditors of petitioner. After going over the records of the assessment, petitioner filed its supplemental protest on

October 10, 1980 (Exhibit C, pp. 61-62, BIR record). On May 20, 1981, respondent denied the protest and reiterated his demand for payment of the alleged deficiency 5% bank tax inclusive of the 25% surcharge for late payment (Exhibit D, p. 71, BIR record). Hence, this petition for review.

The issue is whether or not petitioner's taxable gross receipts for the fourth quarter of 1975 is P50,531,733.00 as per computation of the Bureau of Internal Revenue examiners making petitioner liable to pay the deficiency 5% bank tax plus surcharge amounting to P79,769.10 for the year 1975.

On May 20, 1980 the Bureau of Internal Revenue examiners, after conducting an investigation, prepared a memorandum report for the Commissioner of Internal Revenue recommending an assessment notice to be sent to petitioner for the collection of P240,125.81 representing deficiency 5% bank tax inclusive of surcharge and compromise penalty (pp. 39-40, BIR record). However, this report of investigation was amended and a new memorandum report dated June 16, 1980 was submitted to the Commissioner of Internal Revenue, this time in compliance with the request of the review clerk of the Indirect Tax Division of the Bureau of Internal Revenue to make a quarterly report in lieu of the previous report of May 20, 1980.

In the memorandum report dated June 16, 1980, the Bureau of Internal Revenue examiners found the petitioner liable for deficiency 5% bank tax due and payable on the fourth quarter of 1975 amounting to P79,769.10 inclusive of surcharge with a compromise penalty of P500.00 in addition to P79,769.10 or a total of P80,269.10. It was further stated therein that this memorandum report supersedes the first report dated May 20, 1980 prepared by the same examiners.

In view of the amended report of investigation and the memorandum report of June 16, 1980, the Commissioner of Internal Revenue issued an assessment letter dated June 25, 1980 requesting petitioner to pay the amount of P79,769.10 as deficiency 5% bank tax for the fourth quarter of 1975 inclusive of surcharge.

Petitioner contends that for the fourth quarter of 1975, its taxable gross receipts is only P49,255,427.00 hence, the 5% bank tax is only

P2,462,771.37 (5% of P49,255,427.00). Respondent on the other hand maintains that the gross receipts of petitioner for the fourth quarter is P50,531,733.00 instead of P49,255,427.00 as claimed by petitioner and therefore the 5% bank tax should be P2,526,586.65 (5% of P50,531,733.00).

A comparison of both computations as shown by the parties are presented as follows:

Computation of 5% Bank Tax
Fourth Quarter of 1975

	B I R (Exh. 2, p. 32, BIR record)	S G V (Exh. C-3, p. 57, BIR record)
Gross receipts	P38,295,563.10	P38,295,563.10
Less:		
Tax exempt interest income	180,689.75	180,689.75
Interest received: Branches	259,939.73*	259,339.73
Total deductions	P 440,629.48	P 440,029.48
Balance	P37,855,533.62	P37,855,533.62
Add: Other gross receipts Interest on direct loans to Phil. borrowers	12,676,199.00	11,399,893.68
Gross receipts subject to 5% tax	P50,531,733.00	P49,255,427.30
5% Bank tax	P 2,526,586.65	P 2,462,771.37

* (Clerical error on BIR worksheet, but the balance tallies with SGV figure).

The difference of the bases in the computation of the 5% bank tax lies on the amount claimed as interest on direct loans to Philippine borrowers. According to the petitioner, the amount of interest income on direct loans to Philippine borrowers for the fourth quarter of 1975 amounted only to P11,399,893.68 broken down as follows: (Exhibit A-Rebuttal, p. 57, BIR record).

Interest and fees:		
IBO-Los Angeles	P	12,955.74
Interest-direct dollar loans:		
IBO-Los Angeles		
Eastern Telecommunications		161,956.20
Hongkong		
Atlas Consolidated Mining Development Corporation		951,076.35
Central Bank of the Phils.		7,449,623.44
Dole Philippines, Inc.		1,262,219.00
Standard Fruit & Steamship Co.		1,562,062.95
T o t a l		P11,399,893.68

However, respondent is of the view that petitioner concentrated its attention only on the fourth quarter of 1975 and thus failed to take into consideration the total amount of interest income derived from direct loans granted to Philippine borrowers for the whole year 1975. Thus, as per investigation of the Bureau of Internal Revenue examiners, the total amount of interest on direct loans to Philippine borrowers amounted to P41,201,939.00 for the year 1975 computed as follows: (Exhibit 3, 3-a, and 3-b, p. 34, BIR record).

Interest on loans granted by San Francisco office, Los Angeles and Hongkong branches to Philippine borrowers	P41,179,878.00
Interest on overdraft and commission on letters of credit earned by Los Angeles Branch from Philippine sources	22,061.00
T o t a l	P41,201,939.00

This computation was based on the attached supplement to the income tax return of petitioner for the year 1975, under the heading "Computation of Income Tax" (p. 7, TSN, July 16, 1985).

On the other hand, the total amount of interest on direct loans to Philippine borrowers for the year 1975, as per the books of petitioner, appear to be P39,925,634.12 itemized as follows:

First quarter	P14,298,707.11
Second quarter	5,071,977.99
Third quarter	9,155,055.34
Fourth quarter	11,399,893.68
T o t a l	P39,925,634.12

The difference in the computation of the interest on direct loans to Philippine borrowers for the year 1975 by the Bureau of Internal Revenue examiners and that of the auditors (SGV) of petitioner amounting to P1,276,305.00 (P41,201,939.00 less P39,925,634.00) was added to

P11,339,893.68 and was treated by the Bureau of Internal Revenue examiners as part of the gross receipts for the fourth quarter of 1975 since the last quarter of the year would constitute as the final basis for reporting the gross receipts of petitioner for purposes of computing the 5% bank tax (Exhibit 4, p. 67, BIR record).

Therefore, the Bureau's computation of the interest on direct loans to Philippine borrowers for the fourth quarter of 1975 amounted to P12,676,199.00 (rounded off), to wit: (p. 66, BIR record).

Interest on direct loans to Philippine borrowers (fourth quarter of 1975)	P11,399,893.68
Difference above	1,276,305.00
Total interest on direct loans to Philippine borrowers for the fourth quarter 1975 per investigation	P12,676,198.68

Thus, the gross receipts of petitioner for the fourth quarter of 1975 is P50,531,733.00.

Based on the foregoing computations made by the Bureau of Internal Revenue examiners We see no reason why We should disturb the decision of respondent in denying petitioner's protest and holding petitioner liable for the deficiency 5% bank tax for the year 1975.

The assessment of the tax involved herein was based on actual facts obtainable and directly originating from the petitioner, i.e., the computation of net income tax as an annex to the Income Tax Return of petitioner in 1975. The Bureau of Internal Revenue examiners' investigation was not limited to an examination of the schedule prepared by the auditors of petitioner on the amount of interest income earned from Philippine borrowers on a quarterly basis but includes such other schedules necessary in order to determine correctly its gross receipts for the whole year under review which in this case covers the examination of the schedule for the computation of income tax for the year 1975 as an annex to the income tax return of petitioner for that year in order to determine correctly its gross receipts for purposes of computing the 5% bank tax.

It has been an established doctrine in taxation that the assessment of respondent Commissioner of Internal Revenue is prima facie correct and the burden of proof is upon the taxpayer to overcome the presumption of correctness thereof.

The taxpayer was not able to rebut the presumption of correctness, therefore, it cannot claim that the burden of proof was on the respondent to show that there was an error in petitioner's interest income on direct loans to Philippine borrowers for the fourth quarter of 1975 amounting to P11,399,893.68.

Respondent was able to prove the correctness of the assessment by convincing evidence when he presented the schedule for the computation of income tax also prepared by petitioner as an annex to its income tax return for 1975. The evaluation of the amounts of P41,179,878.00 and P22,061.00 as interest on loans granted by San Francisco office, Los Angeles and Hongkong branches to Philippine borrowers and interest on overdraft and commission on letter of credit earned by Los Angeles Branch from Philippine sources respectively appearing in the "Computation of Income Tax" is a clear declaration and admission on the part of petitioner that such were interest earned and effectively connected in the Philippines, therefore taxable within the Philippines subject to the 5% bank tax.

There being no compelling reason advanced by petitioner to justify its being relieved from the binding effects of such admission, this Court sees no reason why respondent's assessment should be declared null and void.

WHEREFORE, the decision of respondent is hereby affirmed and the instant petition for review is dismissed for lack of merit.

Accordingly, petitioner is hereby ordered to pay the amount of P79,769.10 inclusive of 25% surcharge for late payment pursuant to Section 260 and 262 of the 1977 National Internal Revenue Code. With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, February 2, 1989.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge

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

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

AMANTE FILLER
Presiding Judge
Court of Tax Appeals