REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KEPPEL BANK PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 6560

COMMISSIONER OF INTERNAL REVENUE,
Hon. Guillermo L. Parayno, Jr. (as the successor
Of former Commissioner Rene G. Bañez),
Respondent.

Promulgated:
JUN 23 2004

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DECISION

This case seeks the reversal and setting aside of the decision of the Bureau of Internal Revenue promulgated on August 8, 2002 denying petitioner's administrative protest and affirming the deficiency documentary stamp tax assessments on Anniversary Savings Deposit in the total amount of P11,989,465.95, inclusive of surcharge, for the years 1994 and 1995.

The facts as borne out by the records of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the Philippine laws with principal office at E. Rodriguez Sr. Avenue corner Monte de Piedad St., Cubao, Quezon City.

For the years 1994 and 1995, petitioner paid its documentary stamps tax on various dates *(pages 558 to 579 and 1153 to 1176, BIR records)* while the corresponding 1994 and 1995 Information Returns for Documentary Stamp Tax Paid were filed on April 17, 1994[1] and April 10, 1996, respectively *(pages 63 to 635 and 1226 to 1230, BIR records).*

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[1] Should be April 17, **1995**.

On August 14, 1996, petitioner received a Letter of Authority No. 133984 dated August 9, 1996 issued by Commissioner Liwayway Vinzons-Chato of the Bureau of Internal Revenue authorizing Revenue Officers C.J. Abeleda, E. Dulfo, Ma. C. Valenzuela & T. Galicia to be supervised by Group Head A. Aluquin, all of Special Audit Team, to examine its books of accounts and other accounting records for all internal revenue taxes for the years 1994 and 1995 *(page 757, BIR records)*. The said letter of authority was revalidated by Letter of Authority No. 134103 dated April 21, 1998 which was received by petitioner on April 29, 1998 *(page 758, BIR records)*.

On different dates[2], petitioner executed several Waivers of the Defense of Prescription Under the Statute of Limitation of the National Internal Revenue Code. The latest of which was accomplished on December 22, 1999 extending the period for respondent to assess all of petitioner's internal revenue tax liabilities for the years 1994 and 1995 until June 30, 2000 *(page 1337, BIR records)*.

On January 11, 2000, respondent issued assessment notices together with the demand letter covering the following 1994 and 1995 deficiency documentary stamp tax assessments, to wit: *(pages 826, 829& 831, BIR records)*

	1994 Assessment No. ST-DST-94-0353-2000	1995 Assessment No. ST-DST-95-03542000
Tax Due (Sec. 7 of NIRC)	P 3,110,514.17	P 6,481,058.59
Add: 25% Surcharge (Sec. 248)	777,628.54	1,620,264.65
Total Amount Payable	P 3,888,142.71	P 8,101,323.24

[2] April 1, 1997, July 16, 1997, February 20, 1998, July 16, 1998, November 26, 1998, April 19, 1999, and December 22, 1999 *(pages749 to 756, BIR records)*.

The foregoing assessment notices together with the corresponding demand letter were all received by petitioner on March 13, 2000 *(par. 4, Joint Stipulation of Facts and Issues)*.

The deficiency taxes arose from the nonpayment of petitioner of documentary stamp tax on special savings deposit, more particularly known as the Anniversary Savings Deposit (ASD, for brevity).

On April 10, 2000, petitioner filed its protest letter with the Enforcement Service of the Bureau of Internal Revenue, contesting the bases of the aforementioned deficiency tax assessments *(par. 6, Joint Stipulation of Facts and Issues; pages 833 to 834, BIR records).*

On October 7, 2002, petitioner received the decision from then Commissioner of Internal Revenue, Rene G. Bañez, denying its protest and affirming, in all respect, the subject deficiency documentary stamp tax assessments for the years 1994 and 1995 *(par. 8, Joint Stipulation of Facts and Issues; Annex A, Petition for Review, pages 20 to 28, CTA records)*.

On November 6, 2002, petitioner filed the instant Petition for Review in accordance with the Rules of the Court of Tax Appeals and in relation to Section 228 of the National Internal Revenue Code of 1997.

This case was submitted for decision on April 19, 2004 after both parties have filed their respective memorandum.

The jointly stipulated issues to be resolved by the court are the following:

1. Whether or not petitioner's Anniversary Savings Deposit falls within the definition of "Certificate of Deposit Bearing Interest" contemplated under Section 180 of the then Tax Code of 1993; and

2. Whether or not the correct tax base was used in computing the deficiency documentary stamp tax assessment for the taxable year 1995.

Petitioner asseverates that its ASD is a savings deposit and does not fall within the meaning of "certificate of deposit bearing interest" under Section 180 of the National Internal Revenue Code of 1977, as amended, which provides:

> **SEC. 180**. *Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificate 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 <u>certificates of deposits drawing interest</u>, 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: xxx *(Underlining supplied)*.

Petitioner maintains that its ASD is a special type of savings deposit evidenced by a passbook and classified in its Balance Sheet as a savings deposit. Its characteristics are different with that of time deposit certificate. The ASD passbook issued to its depositor is neither negotiable nor transferable.

Respondent, on the other hand, relies on the definition of *certificate of deposit* in the case of **BPI Family Savings Bank vs. Commissioner of Internal Revenue, CTA Case No. 4256, August 7, 1992 which was affirmed by the Court of Appeals in CA-G.R. SP No. 29853 dated September 19, 1994**, as:

> [A] written acknowledgment by a bank of the receipt of money on deposit which the bank promises to pay to the depositor, bearer or to some other person or order (Re: Olson's Estate, 206 Iowa, 706, 219 N.W. 40 cited in Agbayani, OP cit. p. 441).

Respondent elucidates that a certificate of deposit should not be construed as synonymous with a time-deposit certificate. The latter is a mere genus or sample of the former. In other words, not all certificates of deposits are time-deposit certificates but necessarily a time-deposit certificate is a certificate of deposit subject to documentary stamp tax.

At this point, there is no argument that a time deposit certificate is subject to documentary stamp tax. To settle the issue, this court will examine the features of time deposit certificate and the ASD of petitioner. If the ASD of petitioner have the same characteristics of a time deposit certificate, then the same should be subjected to documentary stamp tax.

Records reveal that ASD is an interest-bearing account and has the same characteristics of a time deposit account. There is a required minimum deposit balance and a holding period before the depositor can avail of the preferential rate which is higher than the regular savings account *(see pages 17 to 19, TSN, April 24, 2002)*. The only difference lies on the evidence of deposit. In time deposit account, petitioner issues certificate of deposit while in ASD petitioner issues a passbook.

Should this difference in the medium used results in a different tax treatment?

We do not agree. Equity and law always exalt substance over form.

The difference of the documents used to cover the transaction should not be a hindrance to impose the much-needed tax. Well settled is the rule that a documentary stamp tax is an excise tax, the purpose of which is to raise revenues. Documentary stamp tax is a privilege tax because it is really imposed on the privilege to enter into a transaction rather on the document. The law taxes the document because of the transaction *(Hector S. De Leon, Comprehensive Review of Taxation, 2000 Ed., page 381).* As held by the Supreme Court in the case of **Philippine Home Assurance Corporation et al. vs. Court of Appeals, G.R. No. 119446, dated January 21, 1999,** thus:

> The respondent court correctly characterized a documentary stamp tax as in the nature of an excise tax. As such, it is imposed on the privilege of conducting a particular business or transaction and not on the business or transaction itself. x x x. This means then that the documentary stamp tax accrues when the privilege is exercised. As the respondent Court stated, while it is true that a documentary stamp tax is levied on the document and not on the property, which is described, the documentary stamp tax is not intended to be a tax on the document alone. The law taxes the document because of the transaction so that the tax becomes due and payable at the time the transaction is had or accomplished, in this case, at the time of the issuance of the document.

In fact, we already have ruled on two occasions[3] that special savings account[4] is subject to documentary stamp tax. Pertinent portions of the recent case entitled ***Traders Royal Bank vs. Commissioner of Internal Revenue, CTA Case No. 6392, dated April 28, 2004,*** is hereby quoted for excellent reference:

> In the case at bar, petitioner, as earlier mentioned, claims that the bank's Special Savings Account is not subject to documentary stamp tax considering that it is not a time deposit and is not evidenced by a certificate of deposit.

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[3] Traders Royal Bank vs. Commissioner of Internal Revenue, CTA Case No. 6392, dated April 28, 2004; and United Overseas Bank Philippines vs. Commissioner of Internal Revenue, CTA Case No. 6411, dated April 21, 2004.

[4] In case of petitioner, Anniversary Savings Deposit.

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We do not agree.

The following definitions would be helpful in the disposition of this case.

> **Certificate of Deposit**. A written acknowledgment by a bank or banker of a deposit with promise to pay to depositor, to his order, or to some person or to his order. Bank document evidencing existence of a time deposit, normally paying interest. ***(Underscoring supplied)***
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> **Time Deposit**. 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 deposit usually carry penalties for early withdrawal. ***(Emphasis supplied) (Black's Law Dictionary, 6th Edition)***

From the above-quoted definitions, in relation to then Section 180 of the 1977 Tax Code, it is clear that a certificate of deposit is a taxable document. Petitioner also admitted in its pleadings that a time deposit falls under Section 180. Since the SSA falls within the definition of a time deposit, then, this court believes that said SSA is also subject to documentary stamp tax.

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 of 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.

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.
>
> 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.
>
> Considering that the transaction evidenced by the different documents are similar and that documentary stamp tax is an excise tax on the privilege to enter into a transaction, we find both the certificate of time deposit as well as the passbook clear evidence of such transaction in favor of the person whose name appears therein, subject to documentary stamp tax.

We find the above pronouncement in all fours with the case at bar. Therefore, the Anniversary Savings Deposit of petitioner, although evidenced by a passbook, is subject to documentary stamp tax.

Likewise, House Bill No. 4481 and Senate Bill No. 2368 cited by petitioner do not support its cause. Both bills even proposed that "OTHER EVIDENCES OF TIME deposits bearing/(drawing) interest" is subject to documentary stamp tax. Thus our ruling that ASD which has the same features of a time deposit certificate but evidenced by a passbook (which is other form of evidence of time deposit) is ***really*** subject to documentary stamp tax. The current Section 180 of NIRC, which said bills propose to amend, change the phrase "Certificate of Deposit Bearing Interest" to "OTHER EVIDENCES OF TIME Deposits Bearing/(Drawing) Interest" so as not to further misinterpret the said provision. Indeed, the certificate of deposit bearing interest under Section 180 of the NIRC refers to time deposit account. And ASD is a time deposit account.

With respect to the manner of computation which is the second issue of the present case, this court is convinced that the computation based on the average monthly balance of the ASD is the logical basis of documentary stamp tax assessment.

The position of petitioner that the computation should be based on the amount of new deposit is unfounded considering that petitioner did not provide the details of new deposit under ASD account during the years 1994 and 1995. What was offered in evidence was the schedule of ASD's balances as of the end of the month of the years 1994 and 1995 *(Exhibit C)*.

Let it be stressed that the computation may even favor petitioner because if the ASD is preterminated during the month, the new deposit will no longer be a part of month-end balance. In such case, the "new deposit" under the category of ASD will not be subjected to documentary stamp tax. Hence, the basis of the computation is proper.

As regards the erroneous addition in the month-end balance of ASD committed by petitioner for the year 1995 as per Exhibit C, this court after evaluation has found that the amount of P51,848,468,708.95 is not correct. The said amount represents the total ASD balances as of the year end in the amounts of P24,884,113,399.41 for the year 1994 and P26,964,355,309.54 for the year 1995. Since there was an error, the deficiency documentary stamp tax for the year 1995 should be adjusted. The computation should be as follows:

Month	Amount
January	P 2,074,764,730.17
February	2,017,270,180.78
March	2,007,854,855.20
April	2,048,285,452.78
May	2,174,827,161.07
June	2,364,184,366.61
July	2,434,582,989.72
August	2,444,962,082.83
September	2,475,738,719.52
October	2,207,738,858.02
November	2,193,546,787.35
December	2,520,599,125.49
Total	P 26,964,355,309.54
Divided by the number of months	12
ASD Average Monthly Balance	P 2,247,029,609.13
Rate (Sec. 180)	0.30/200
Basic Deficiency DST Due	P 3,370,544.70
Add 25% Surcharge (Sec.	842,636.17
Deficiency DST Due	P 4,213,180.87

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. The assessment for deficiency documentary stamp tax on Anniversary Savings Deposit for the taxable year 1994 is **AFFIRMED** while the deficiency documentary stamp tax assessment for the year 1995 is **MODIFIED**. Petitioner is **ORDERED TO PAY** the respondent the amounts of P3,888,142.71 and P4,213,180.87, inclusive of 25% surcharge, representing deficiency documentary stamp taxes for the years 1994 and 1995, plus 20% delinquency interest per annum from March 13, 2000 until fully paid pursuant to Sec. 249 of the National Internal Revenue Code of 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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

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

ERNESTO D. ACOSTA
Presiding Justice