REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHINA BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6400

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 14 2004

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DECISION

This Petition for Review is seeking for the modification of the Decision rendered by the respondent on January 11, 2002 and received by petitioner on January 25, 2002, with regard to the findings of deficiency documentary stamp tax liabilities of the petitioner on the following transactions, to wit:

1. Deficiency documentary stamp taxes on Reverse Repurchase Agreements for the taxable year 1997 in the amount of **P3,523,600.00** covered under Assessment Notice No. ST-DST-97-0372-99;

2. Deficiency documentary stamp taxes on Special Savings Accounts for the taxable years 1994, 1995, 1996 and 1997 in the total amount of **P12,561,619.09** covered under the following Assessment Notice Nos., to wit:

a. ST-DST-94-0054-99	P4,041,822.48	1994
b. ST-DST-95-0055	4,290,646.61	1995
c. ST-DST-96-0371-99	1,633,750.00	1996
d. ST-DST-97-0373-99	2,595,400.00	1997

Petitioner, China Banking Corporation, is a universal banking institution duly organized and existing in accordance with the laws of the Philippines, with principal office at 8745 Paseo de Roxas corner Villar St., Makati City *(par 1, Petition for Review).*

For the taxable years 1994 to 1997, petitioner was engaged in the transactions involving purchases/sales of securities to the Bangko Sentral ng Pilipinas, or commonly known as Reverse Repurchase Agreements (RRP). Likewise, during these same years, petitioner was engaged in the transactions of accepting Special Savings Deposits (SSA) from its clientele (*par 4, Joint Stipulation of Facts and Issues*).

On September 23, 1999, petitioner received a Pre-Assessment Notice (PAN) dated September 21, 1999, issued by herein respondent, assessing it of deficiency documentary stamp taxes on its RRPs and SSAs for the taxable years 1994 and 1995 in the total amount of TWENTY SEVEN MILLION FOUR HUNDRED FIFTY ONE THOUSAND EIGHT HUNDRED FORTY FOUR AND 09/100 PESOS (P27,451,844.09), including increments thereon (*par 5, Joint Stipulation of Facts and Issues).* Consequently, a protest letter dated October 4, 1999 was filed by petitioner, stating therein its disagreement with the findings of the respondent (*par 6, Joint Stipulation of Facts and Issues*).

Thereafter, petitioner received the Final Assessment Notices dated October 8, 1999, for deficiency documentary stamp taxes on its RRPs and SSAs, including increments thereon, in the amounts of FOUR MILLION EIGHT HUNDRED THIRTY SIX THOUSAND EIGHT HUNDRED TWENTY TWO AND 48/100 PESOS (P4,836,822.48) and TWENTY TWO MILLION SIX HUNDRED FIFTEEN THOUSAND TWENTY ONE AND 61/100 PESOS (P22,615,021.61) covering the taxable years 1994 and 1995, respectively, with details as follows:

Transactions subject to DST:

For the year 1994

A. Reverse Repurchase Agreements		P 424,000,000.00
B. Special Savings Accounts		2,142,305,326.67
Total		P 2,566,305,326.67
Rate of Tax		.15%
Total Tax due thereon		P 3,849,457.98
Add:		
25% Surcharge	P 962,364.50	
Compromise Penalty	25,000.00	987,364.50
Total Deficiency DST-Industry Issue		**P 4,836,822.48**

For the year 1995

A. Reverse Repurchase Agreements		P	9,773,000,000.00
B. Special Savings Accounts			2,275,011,526.88
Total		P	12,048,011,526.88
Rate of Tax			.15%
Total Tax due thereon		P	18,072,017.29
Add:			
25% Surcharge	P 4,518,004.32		
Compromise Penalty	25,000.00		4,543,004.32
Total Deficiency DST-Industry Issue		**P**	**22,615,021.61**

(Exhibit "C" to "C-4")

On November 22, 1999, petitioner filed its formal administrative protest to the Final Assessment Notice with the respondent (*par 8, Joint Stipulation of Facts and Issues*).

Before a reply to the above letter-protest was rendered, respondent issued a Preliminary Assessment Notice dated December 17, 1999 and which was received by petitioner on December 20, 1999, assessing petitioner of deficiency documentary stamp taxes on its RRPs and SSAs covering the taxable years 1996 and 1997. A protest-letter was likewise filed by petitioner on December 27, 1999 (*pars 9 & 10, Joint Stipulation of Facts and Issues*).

On December 29, 1999, a Formal Letter of Demand dated December 27, 1999 was received by petitioner, whereby payment of the total amount of THIRTEEN MILLION SEVEN HUNDRED EIGHTY ONE THOUSAND THREE HUNDRED FIFTY PESOS (P13,781,350.00) for the alleged deficiency documentary stamp taxes on petitioner's RRPs and SSAs covering the taxable years 1996 and 1997 was demanded (*par 11, Joint Stipulation of Facts and Issues*).

On February 18, 2000, a notice setting an informal hearing scheduled on March 21, 2000 with regard to the protest of petitioner on the deficiency documentary stamp tax on its RRPs and SSAs covering the taxable years 1994 and 1995 was received by petitioner *(Exhibit "H")*. Thereafter, on April 7, 2000, petitioner submitted its final position paper with regard to its protest to the assessments issued *(Exhibit "J")*.

Finally, on January 25, 2002, a Decision promulgated on January 11, 2002, was received by petitioner. In the said Decision, respondent resolved to cancel and withdraw the assessments for deficiency documentary stamp tax on petitioner's RRPs covering the taxable years 1994, 1995 and 1996, however, said decision reiterated and affirmed the assessments for alleged deficiency documentary stamp tax on petitioner's RRPs for the years 1997 as well as on its SSAs covering the taxable years 1994 to 1997 *(Exhibit "K")*. The dispositive portion of the questioned Decision is quoted below for easy reference:

> *IN VIEW WHEREOF, this Office do hereby resolved the following:*
>
> 1. *The protest of herein protestant bank on the deficiency stamp taxes on RRPs covering the years 1994, 1995 and 1996 under the following Assessment Notices, to wit:*
>
> | *Assessment Notices Nos.* | *Amount* | *Year* |
> |---|---|---|
> | *ST-DST-94-0054-99* | *P 820,000.00* | *1994* |
> | *ST-DST-95-0055-99* | *18,349,375.00* | *1995* |
> | *ST-DST2-96-0374-99* | *1,976,250.00* | *1996* |
>
> *are hereby withdrawn and cancelled and the same are considered closed and terminated.*
>
> 2. *The protest of herein protestant bank on the deficiency stamp tax on RRPs for 1997 under Assessment Notice No. ST-DST-97-0372-99 demanding payment of P3,523,600.00 is hereby affirmed and reiterated.*
>
> 3. *The protest of herein protestant bank on the deficiency stamp taxes on SSA covering the taxable years 1994, 1995, 1996 and 1997 under the following Assessment Notices, to wit:*
>
> | *Assessment Notices Nos.* | *Amount* | *Year* |
> |---|---|---|
> | *ST-DST-94-0054-99* | *P 4,041,822.48* | *1994* |
> | *ST-DST-95-0055-99* | *4,290,646.61* | *1995* |
> | *ST-DST-96-0371-99* | *1,633,750.00* | *1996* |
> | *ST-DST-97-0373-99* | *2,595,400.00* | *1997* |
>
> *are hereby affirmed in all respects.*
>
> *Consequently, the protestant bank is hereby ordered to pay the above stated amounts plus interest that may have accrued thereon until actual payment to the Collection Service, BIR national Office, Diliman, Quezon City, within thirty (30) days from receipt hereof, otherwise, the collection thereof shall be effected through the summary remedies provided by law.*

This constitutes the final decision of this Office on the matter.

Thus, this petition filed on February 22, 2002.

On April 15, 2002, respondent filed his Answer, raising the following as his Special and Affirmative Defenses, to wit:

3. Petitioner, in its petition for review, argued that in no way they could be held liable for deficiency documentary stamp taxes (DST) relative to its 1997 Reverse Repurchase Agreement (RRA) with the Bangko Sentral ng Pilipinas since that time, there is no law which specifically subjects the said agreement to DST. According to them, the provision of R.A. 8424, otherwise known as the Comprehensive Tax Code of 1997 can not be made as the basis of such imposition since the aforementioned law became effective only in 01 January 1998. Also, Revenue Regulations No. 3-97 which mandated that effective 02 January 1997 the Reverse Repurchase Agreement is subject to documentary stamp tax is ineffective and unenforceable because there was yet no law under which it could be validly issued.

4. We disagree. Section 1 (g) of Revenue Regulations No. 12-80 (Taxation of Certain Income Derived from Banking Activities) was issued defining the so called "deposit substitutes". And under said regulation the term "deposit substitute" was defined to mean as "*an alternative form of obtaining funds from the public, other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations. These instruments may include, but not limited to, promissory notes, repurchase agreements, certificates of assignments or participation, and similar instruments with recourse as may be authorized by the Bangko Sentral ng Pilipinas for banks and non-bank financial intermediaries. Provided, however, that debt instruments issued for interbank loans, including those between and among quasi-banks shall not be considered as deposit substitute debt instruments.*" However, Revenue Regulations No. 3-97 was issued amending the above-mentioned definition, this time the so-called Reverse Repurchase Agreement is included as one of those enumerated as deposit substitute. In its clear wording the said Revenue Regulations provides that "*effective 02 January 1997, Reverse Repurchase Agreements entered into by and between the Bangko Sentral ng Pilipinas (BSP) and any authorized agent bank shall be considered as deposit substitutes.*"

5. Furthermore, Section 20(y) of the former Tax Code came up with a more complete and detailed definition of the term *deposit substitutes* subject to documentary stamp tax under Section 180 of the same code. The Code provides; that:

(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 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 commercial, industrial finance companies and other non-financial companies (sic). Provided however that only debt instruments issued for interbank call loans to cover deficiency in reserves including those between or among banks and quasi banks shall not be considered as deposit substitute debt instruments (As added by PD No. 1959).

6. Lastly, the Honorable Court of Appeals in the case of Bank of the Philippines Islands vs. Commissioner of Internal Revenue and Court of Tax Appeals, C.A. G.R. SP No. 29853, September 19, 1994 (CTA Case No. 4256), had the occasion to explain that repurchase agreements, categorized as deposit substitutes, are subject to documentary stamp tax under Section 180 of the Tax Code as amended. Thus:

> "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 substitutes.**

7. On the second issue, regarding, the taxability of Special Savings Account to documentary stamp tax, according to petitioner, the main feature of a Special Savings Account is its withdrawability any time which makes it fall under the category of a certificate of deposit at sight or demand, which is expressly exempt from documentary stamp tax, under Section 180 of the Tax Code. The position is without merit. From the investigation reports, Special Savings Account were subjected to the documentary stamp tax under Section 180 of the tax Code, these transactions are in substance **certificates of deposit.**

8. In the BPI case (supra), the Honorable Court of Appeals defined a certificate of deposit 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 (Olsons Estate 206, Iowa, 706,219 N.W. 40 cited in Agbayani, op cit, p. 441). 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 qualifies as a "certificate of deposit". The fact then, that the SSA 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 rather than its form. Thus, in the case of L.R. Heat Treating Co., 28TC874, the Court laid down the dictum that:

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

9. Besides, the "certificate of deposit" stated in Section 180 does not prescribe any form, nor does it qualify. As defined above, it may be any written acknowledgement by a bank of the receipt of money on deposit. Hence, a traditional passbook, being a written acknowledgement of the receipt of money as deposit which a bank promises to pay to the depositor, bearer, to some other person or order, is a genus of a certificate of deposit subject to DST under the aforesaid section.

10. Verily, the above-cited provisions of law and jurisprudence relative to the issue involved lead us to the conclusion that the "certificate of deposit" (passbook) evidencing the Special Savings Account transactions of petitioner China Bank is subject to the documentary stamp tax.

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

Both parties having filed their respective Memorandum, this case was deemed submitted for decision on July 16, 2004.

The parties have stipulated the following as the issues of the case, to wit:

1. Whether or not petitioner's transactions involving the so-called Reverse Repurchase Agreement and Special Savings Deposits are subject to documentary stamp tax for the years assessed.

2. Whether or not the so-called Reverse Repurchase Agreement is included in the definition of the term deposit substitutes under the Tax Code subject to documentary stamp tax.

3. What was the point in time when Reverse Repurchase Agreements were taxable for documentary stamp tax under the Tax Code?

The issues being interrelated, this court finds it proper to discuss and resolve them together.

Petitioner argued that its transactions, particularly, those involving the purchase/sale of securities to the Bangko Sentral ng Pilipinas or otherwise commonly known as Reverse Repurchase Agreements (RRPs), are not subject to documentary stamp taxes (DST), for the main reason that the law, Republic Act No. 8424 or the Comprehensive Tax Code of 1997, which subjects reverse repurchase agreements to documentary stamp tax took effect only on January 1, 1998. Consequently, respondent erred in subjecting petitioner's RRP transactions to DST pursuant to Revenue Regulations No. 3-97 dated December 22, 1996 which mandated that reverse repurchase agreements shall be subject to documentary stamp taxes effective January 2, 1997. Accordingly, a revenue regulation cannot be issued prior or ahead of the law that it seeks to implement.

Respondent, for his part, counter-argued that a reverse repurchase agreement is actually a repurchase agreement, whereby the lender of funds (in this case, the Bangko Sentral ng Pilipinas) will buy and sell back a security owned by another party. Effectively, the buyer is lending funds, taking the security as collateral, which, in effect, are also the same features involved in a reverse repurchase agreement transaction. Additionally, even if the definition of "deposit substitutes" under the old Tax Code did not expressly include in its enumeration reverse repurchase agreement transactions, in the case of BPI Family Bank vs. CIR, C.A. GR-SP No. 29853, September 19, 1994, the Honorable Court of Appeals has held 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) <u>debt instrument used for deposit substitutes</u>."

Moreover, respondent averred that Revenue Regulations No. 3-97 dated December 22, 1996 was issued to include the so-called "Reverse Repurchase Agreements entered into by and between the Bangko Sentral ng Pilipinas and any authorized agent bank" in the enumeration of a "deposit substitute" effective January 2, 1997.

Finally, respondent claimed that since the Bangko Sentral ng Pilipinas is exempt from paying taxes, it is thus the petitioner which is liable to pay the subject taxes pursuant to the last paragraph of Section 173 of the Tax Code which provides that "Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax."

We find for the petitioner.

It is not disputed that for the taxable years 1994 to 1997 petitioner was engaged in the transactions involving the purchases and or sales of securities to the Bangko Sentral ng Pilipinas, or commonly known as Reverse Repurchase Agreements. Reverse repurchase agreement pertains to the government securities from the Bangko Sentral ng Pilipinas under an agreement that the Bangko Sentral ng Pilipinas shall buy back the said securities on a stipulated future date.

Section 180 of the then Tax Code imposed documentary stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its intrumentalities, certificates of deposit bearing interest and others not payable on sight or demand. The 1997 Tax Code expanded the coverage of this section to include bonds and deposit substitute debt instruments. Section 20 (y) of the old Tax Code defines a 'deposit substitute" as:

> (y) "Deposit substitutes" shall mean an alternative form of obtaining funds from the public, other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's 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 assignments 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 non-financial companies: provided, however, That only debt instruments issued for interbank call loans to cover deficiency in reserves against deposit liabilities including those between and among banks and quasi-banks shall not be considered as deposit substitute debt instruments. (as amended by Pres. Decree No. 1959) (Emphasis supplied)

However, Section 22 (Y) of the Tax Code of 1997 defines "deposit substitutes" in this wise:

> (Y) The term "deposit substitutes" shall mean an alternative form of obtaining funds from the public (the term "public" means borrowing from twenty (20) or more individual or corporate lenders at any one time), other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's 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**, banker's acceptance, promissory notes, **repurchase agreements including reverse repurchase agreements entered into by and between the Bangko Sentral ng Pilipinas (BSP) and any authorized agent bank**, certificates of assignment or participation and similar instruments with recourse. *Provided, however*, That debt instruments issued for interbank call loans with maturity of not more than five (5) days to cover deficiency in reserves against deposit liabilities including those between and among banks and quasi-banks shall not be considered as deposit substitute debt instruments.
> (Emphasis supplied)

Clearly then, it was only in the Tax Code of 1997, which took effect on January 1, 1998, and when the definition of a deposit substitute was amended to include reverse repurchase agreements, that the so-called Reverse Repurchase Agreement transactions entered into by and between the Bangko Sentral ng Pilipinas and any authorized agent bank were subject to documentary stamp tax. Respondent's Revenue Regulations No. 3-97 cannot be made to apply since it is evident from the provisions of Section 20 (y) that the so-called reverse repurchase agreements were not one of those enumerated in the definition of "deposit substitutes". Section 20 (y) only made mention of the term "repurchase agreements" and thus, when the new Tax Code of 1997 included the term "reverse repurchase agreement" in the enumeration covered under "deposit substitutes", it just shows that the legislature then did not intend to include "reverse repurchase agreements" in the definition of "deposit substitutes" in the old Tax Code. Revenue regulations are issued to implement the existing laws and it is fundamental that revenue regulations cannot go beyond what is mandated or provided for in the provisions of the law they seek to implement.

As to the second transaction involved in this case, petitioner asserted that its product Special Savings Deposit is not the same as the "Time Deposit", since the terms and conditions of the Special Savings Deposit are provided for in the traditional passbook form and not in a Certificate of Deposit like the Time Deposit. Its main feature is its withdrawability any time which makes it fall under the category of a certificate of deposit at sight or on demand, which is expressly exempt from documentary stamp tax, under then Section 180 of the Tax Code. Petitioner further presented the testimonies of its witness, Ms. Juliet Martires, Senior Assistant Manager, to prove the withdrawability and no maturity features of the subject Special Savings Deposit transactions.

On the other hand, respondent maintained that petitioner's Special Savings Deposit is subject to documentary stamp tax under said Section 180 for these transactions are in substance certificates of deposits. The fact that the Special Savings Deposit is evidenced by a passbook does not remove it from the sphere of the definition of a certificate of deposit. 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 rather than its form.

Respondent cited the case of *Far East Bank & Trust Company vs Querimit, G.R. No. 148582, January 16, 2002 (373 SCRA 665),* wherein a certificate of deposit has been defined as "a written acknowledgement 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 some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created".

We agree with respondent.

Petitioner's argument that its product Special Savings Deposit is not the same as that of a "Time Deposit" is clearly erroneous. It is to be emphasized at this point, that terminologies are mere matters which are capable of being overturned by circumstances. It has been held in a number of cases that what is controlling is the nature and the true character of the transaction as it is conveyed by the instrument or document attached to it. The name by which an instrument or transaction is denominated is not controlling in determining its true character (L.R. Heat Treating Co., 28 TC 874).

Section 180 of then Tax Code, provides that:

> **Section 180. Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.** - On all loan agreements isigned 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 (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

From the foregoing, the law subjects a "certificate of deposit" to documentary stamp tax. And to define what a documentary stamp tax is, it is a privilege tax because it is really imposed on the privilege to enter into a transaction rather than on the document. The law taxes the document because of the transaction *(The Law on Transfer and Business Taxation, Hector S. de Leon, 1998 Ed., p 351)*. What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction.

It has been defined that a certificate of deposit is "any 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 some other person or his order" *(Far East Bank & Trust Company vs Querimit, supra).* Certificate of deposit being written instrument evidencing transaction between parties must be considered in the light of the same rule of law as other written instrument (*Montgomery v. Smith, 145 So. 822, 826, 226 Ala. 91*).

Therefore, based on the aforementioned definition, petitioner's Special Savings Deposit falls within the ambit of a "certificate of deposit". The fact that petitioner's Special Savings Deposit is evidenced by a passbook and not by a certificate is not an issue. It is clear that the said definition does not prescribe or require any particular form nor does it qualify. In determining what instruments are subject to documentary stamp tax, substance would control over the form. In other words, what matters are the facts and circumstances that surround the document and the transaction itself.

Moreover, 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. 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 Edition).* Verily, the main difference between a "savings deposit" and a "time deposit" is the penalty, which may come in a form of reduced interest rates, attached to it in instances when the depositor makes a withdrawal prior to the maturity of the deposit.

Thus, this court cannot but agree with respondent that petitioner's Special Savings Deposit and Time Deposits are akin to each other. In both cases, the bank acknowledges the receipt of the money or funds on deposit and which the bank promises to pay the depositor, bearer, or to the order on a specified period of time. Also, in both cases, the bank allows the withdrawal of the funds on deposit prior to the expiry of the pre-determined time but the rate of interest is lesser than the agreed interest. The difference lies on the document used to evidence the existence of the said transaction, which in the case of the time deposit, a certificate is issued, while that of the market savings deposit, a savings passbook is issued to the depositor. The argument of petitioner that there is no maturity date in their market savings deposit is clearly contradicted by the very testimony of its witness. The testimony of the witness presented during the hearing on August 5, 2002, patently showed that the features of petitioner's Special Savings Deposit are akin to that of a "time deposit", to wit:

<u>CROSS EXAMINATION BY ATTY. PABLO M. BASTES, JR.</u>

ATTY. BASTES, JR.:

Q. Ms. Witness, there is a maturity date for this Special Savings Deposit Account, is that correct?

MS. MARTIRES:

A. No, Sir, there is no maturity date for the Special Savings Account.

ATTY. BASTES, JR.:

Q. There is no maturity date, Mr. Witness?

MS. MARTIRES:

A. No, Sir.

ATTY. BASTES, JR.:

Q. You mean to say it is just a Regular Savings Account where a depositor may deposit and withdraw at any time, daily, monthly or quarterly, Mr. Witness?

MS. MARTIRES:

A. It is similar to a savings account because the depositor may withdraw and deposit anytime to the same account but it enjoys the premium rate than the Regular Savings Account, Sir.

ATTY. BASTES, JR.:

Q. Aside from the Premium Rate what is the difference between the Special Savings Account and Regular Savings Account, Ms. Witness?

MS. MARTIRES:

A. It's the initial deposit required, Sir. The Regular Savings Account would only require P1,000.00 initial deposit whereas this Special Savings Account it required P50,000.00 as initial deposit minimum.

ATTY. BASTES, JR."

Q. Now, as to this Premium rate, it is higher than the Regular Savings Account Ms. Witness?

MR. MARTIRES:

A. Yes, Sir.

ATTY. BASTES, JR.:

Q. Why is it higher than the Regular Savings Account, Ms. Witness?

MS. MARTIRES:

B. It is higher because the initial deposit required or the minimum deposit required is higher also, Sir.

ATTY. BASTES, JR.:

Q. Aside from the minimum deposit required why is it the interest rate is higher than a Regular Savings Account, Ms. Witness?

MS. MARTIRES:

A. It is higher in the sense that you are given an incentive, sir.

ATTY. BASTES, JR.:

Q. What is that incentive, Ms. Witness?

MS. MARTIRES:

A. Assuming you hold on to your money for a certain period of time and you will get the higher interest rate, Sir.

ATTY. BASTES, JR.:

Q. You mean to say that for example I do not withdraw the deposit within thirty (30) days I entitled (sic) to the premium rate of interest, Ms. Witness?

MS. MARTIRES:

A. Yes, that is right, Sir.

ATTY. BASTES, JR.:

Q. And if I am withdraw (sic) that less than thirty (30) days I am entitled only to the rate of Regular Savings Account, Ms. Witness?

MS. MARTIRES:

A. Yes, Sir.

ATTY. BASTES, JR.:

Q. In that sense there is a maturity date in order that the premium interest will be available to the depositor, Ms. Witness.

MS. MARTIRES:

A. I don't think its maturity date, Sir.

ATTY. BASTES, JR.:

Q. Suppose I go to your bank and apply for this Special Savings Account do you mean to say when I placed the deposit the bank will tell that you can deposit that any time and I will be entitled to only to interest rate for Regular Savings Account, Ms. Witness?

MS. MARTIRES:

A. It is on the intention of the depositor assuming that the depositor would look for a deposit account which will give him the higher rate, Sir.

ATTY. BASTES, JR.:

Q. Suppose I will say I will withdraw this only after thirty (30) days am I entitled to the Premium Interest Rate, Ms. Witness?

MS. MARTIRES:

A. You will be entitled based on the agreement between us that you will not withdraw it on let's say thirty (30) days, Sir.
(TSN, August 5, 2002, pp. 12-17)

Apparently, in both cases of market savings deposits and time deposits, the deposit may be withdrawn anytime but the depositor gets to earn a lower rate of interest. Petitioner may have argued that there is no maturity date imposed on its Special Savings Deposit, nevertheless, by the very testimony of its own witness, it is clear that its product offers a higher interest in cases where the money deposited is being kept by the bank for a period of thirty or sixty days without being withdrawn by the depositor. The term used by the petitioner may not be "maturity date" but nonetheless, the nature and effect is the same as that of having a maturity date. And the only difference lies on the evidence of deposit. In Special Savings Deposit, the transaction is covered by a passbook while in time deposits; it is through a certificate of deposit. However, in both cases, 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.

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 evidencing special savings deposit, clear pieces of evidence of such transactions in favor of the person whose name appears thereon, subject to documentary stamp tax.

IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby **PARTIALLY GRANTED**. Assessment Notice No. ST-DST-97-0372-99 for deficiency documentary stamp taxes on petitioner's Reverse Repurchase Agreement Transactions in the amount of P3,523,600.00 covering the taxable year 1997 is hereby **CANCELLED AND WITHDRAWN**. However, Assessment Notice Nos. ST-DST-94-0054-99, ST-DST-95-0055-

99, ST-DST-96-0371-99, and ST-DST-96-0373-99 for deficiency documentary stamp taxes on petitioner's Special Savings Deposit Accounts for the taxable years 1994, 1995, 1996 & 1997, respectively, are **UPHELD** but in the following modified amounts:

1994

Special Savings Deposit Accounts	P 2,142,305,326.67
Rate of Tax	.15%
Tax Due	P 3,213,457.99
Add: 25% Surcharge	803,364.49
Total Amount Due for 1994	**P 4,016,822.48**

1995

Special Savings Deposit Accounts	P 2,275,011,526.88
Rate of Tax	.15%
Tax Due	P 3,412,517.29
Add: 25% Surcharge	853,129.32
Total Amount Due for 1995	**P 4,265,646.61**

1996

Tax Due	P 975,000.00
Add: 25% Surcharge	243,750.00
Total Amount Due for 1996	**P 1,218,750.00**

1997

Tax Due	P 1,512,000.00
Add: 25% Surcharge	378,000.00
Total Amount Due for 1997	**P 1,890,000.00**

Accordingly, petitioner is **ORDERED TO PAY** the above recomputed documentary stamp tax liabilities of P4,016,822.48, P4,265,646.61, P1,218,750.00 and P1,890,000.00 or in the total amount of P11,391,219.09, plus 20% delinquency interest from February 24, 2002 until full payment thereof pursuant to Section 249 (C) of the 1997 Tax Code.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CERTIFICATION

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