REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PRODUCERS BANK OF THE PHILIPPINES,
Petitioner,

- versus -

C.T.A. CASE NO. 4808

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 11 1998

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DECISION

This is a petition for review seeking the cancellation of an assessment notice, dated January 9, 1990, with number FAS 1-86-89-000071, issued by the respondent against the petitioner for deficiency gross receipts tax for the year 1986 in the amount of ₱1,594,018.38, inclusive of surcharge, interest and compromise.

Petitioner is a commercial banking corporation duly registered and operating under Philippine laws, with principal office at Producers Bank Building, 8737 Paseo de Roxas, Makati City, Philippines.

The facts are simple.

After receipt of the abovesaid assessment notice on January 18, 1990, petitioner protested the same in a letter dated February 11, 1990 which was received by the respondent on February 13, 1990. In said protest, petitioner stated, thus:

> In the computation of the assessment, the tax exempt receipts from the Foreign Currency Deposit Unit for ₱21,126,720.00 was included; trading loss of ₱57,179.52 was not deducted from gross receipts; interest receivable at the beginning of the period of ₱39,674,269.70; unearned interest income end of the period of ₱1,734,239.41; interest receivable at the end of the period of ₱32,299,203.51 and unearned income at the beginning of the period were all not considered. Had these items been properly taken into account in the computation, there would have been a refundable tax of ₱168,519.87.

On April 27, 1992, however, while the protest was still pending action, respondent issued a warrant of Distraint and/or Levy, with number N-B263-92, against the petitioner. The latter deemed the issuance of the warrant as the decision of the respondent on its protest. Hence, this appeal.

Petitioner reiterates its stance *a quo* and further prays for the nullification of the disputed assessment on the ground of prescription. It posits that the law provides for the gross receipts tax returns to be filed within ten (10) days from the end of the quarter in which the tax is to be collected. With the assessment for the year 1986 having been received only on January 18, 1990, it argues that the same has already prescribed beyond the three-year period allowed under Section 268 of the 1986 Tax Code.

Petitioner, likewise, prays for the lifting and withdrawal of the subject warrant due to prematurity in its issuance.

Respondent initially moved for the dismissal of herein appeal allegedly for lack of a decision on the disputed assessment. But this Court, in a resolution, dated February 19, 1993, denied said motion and ruled that the warrant of distraint and levy, was to all intendments, a final decision on the protest, as it foreclosed all avenues to further reconsideration, in consonance with the doctrine established in **Commissioner of Internal Revenue vs. Algue, Inc., 158 SCRA 9 (1988).**

> "It is true that as a rule the warrant of distraint and levy is 'proof of the finality of the assessment' and 'renders hopeless a request for reconsideration,' being tantamount to an outright denial thereof and makes the said request deemed rejected."

With the above denial, respondent filed her requisite answer and invoked therein, from among the others, the following pertinent special and affirmative defenses, to wit:

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> 6. Based on the investigation conducted by respondent's revenue enforcement officers, petitioner as commercial bank has a gross earnings for the year 1986 in the total amount of ₱173,680,617.70 including its interest income receivable at the beginning and unearned income at the end of the said year. However, only the amount of ₱108,528,973.80 were subjected to tax and the balance thereof of ₱16,528,887.91 was not subjected to 5% gross receipts tax for failure of petitioner to declare the same for gross receipts tax purposes, hence, the assessed amount of ₱1,594,018.38, representing its 1986 deficiency gross receipts tax, inclusive of interest and surcharges incident to delinquency;
>
> x x x
>
> 9. The filing of the last quarter return for taxable year 1986 is April 15, 1987. The subject assessment was issued on January 18, 1990 which is well-within the three year period as provided for under the Tax Code. Hence, the said assessment has not yet prescribed pursuant to Section 268 of the Tax Code, as amended.
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> x x x

During the trial, both parties presented their respective evidence. Petitioner submitted its memorandum while respondent failed to do the same. In its memorandum, petitioner emphasizes that the examiner of the respondent who investigated the assessment in question failed to consider the reconciling items it had previously stated in its protest letter, *supra*, and that had those items been taken into account, there would instead, be a refundable amount of ₱168,519.87 from the

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gross receipts tax it has paid. Thus, petitioner prays for the refund of the latter amount.

From the preceding facts and circumstances, this Court is confronted with the following issues, to wit:

> 1. Whether or not respondent's right to make an assessment has already prescribed;
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> 2. Whether or not petitioner's income from the operations of its Foreign Currency Deposit Unit (FCDU) is tax exempt and should not be included anymore in the computation of its gross receipts tax; and
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> 3. Whether or not petitioner is entitled to its claim for refund.

For clarity, the pertinent sections of the 1986 Tax Code, as amended by Executive Order No. 37, dated July 1, 1986, are hereunder quoted, to wit:

> **Section 24. *Rates of tax on domestic corporations.*** x x x
>
> (e) *Tax on certain incomes derived by domestic corporations.* -
>
> (3) *Tax on income derived under the Expanded Foreign Currency Deposit System.* - **Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with non-residents, off-shore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Central Bank to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system shall be exempt from all taxes, except taxable income from such transactions as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board to be**

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> **subject to the usual income tax payable by banks:** *Provided*, That interest income from foreign currency loans granted by such depository banks under said expanded system to residents (other than off-shore banking units in the Philippines or other depository banks under the expanded system) shall be subject to a 10% tax.
>
> Any income of non-residents from transactions with depository banks under the expanded system shall be exempt from income tax.
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> ***Sec. 222. Time for payment of tax.***- The tax imposed in Sections 220 and 221 shall be due every calendar quarter. It shall be the duty of every bank or finance company, **within twenty days after the end of each calendar quarter**, to make a true and complete return of the amount of gross income derived during the preceding calendar quarter and pay the tax due thereon.
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> SEC. 268. ***Period of limitation upon assessment and collection.*** - Except as provided in the succeeding section, **internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: xxx
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> (Emphasis supplied)

Anent the first issue, this Court finds the right of the respondent to make the assessment in question to have already prescribed for the first three quarters of 1986. Respondent's assertion that the filing of the last quarter return for taxable year 1986 is on April 15, 1987 reveals a lack of understanding of the crystal clear provisions of the Tax Code, as amended.

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Under the abovequoted Section 222 of the 1986 Tax Code, as amended (now Section 125), the filing of the quarterly return for income subject to gross receipts tax is within 20 days after the close of each taxable quarter. For each quarter the taxpayer is required to render a true and complete return. This should be distinguished from Section 46 of the NIRC in the filing of corporate income tax returns which require the filing of quarterly and final or adjustment return at the end of the calendar or fiscal year. A final or adjustment return is not required in the case of gross receipts tax. This accounts for the difference in the reckoning of the date of finality of return. On the other hand, Section 268 of the same Code (now Section 203), provides that internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, which in this case, is counted after the 20th day following the close of the calendar quarter involved. When reckoned from the latter period, the latest of which is October 21, 1986 of the third quarter, the receipt of the subject assessment on January 18, 1990 by the petitioner would result in a period of 3 years, 2 months and 18 days having lapsed already.

The last quarter of 1986, however, has not prescribed. It must be noted that Section 268 of the Tax

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Code as amended, *supra*, states that internal revenue taxes shall be assessed within three years *after the last day prescribed by law* for the filing of the return. In the case at bar, therefore, an assessment is valid if it is issued within three years after the 20th day of the taxable quarter involved. The assessment in question having been issued on January 18, 1990 would still fall within the three year period when reckoned from the 21st day of January 1987.

As regards the second issue, this Court rules in favor of the petitioner. Based on the provision of Section 24(e)(3) of the Tax Code, *supra*, We can see that the tax on income derived under the Expanded Foreign Currency Deposits System ("EFCDS" for short) by a duly authorized bank, such as the petitioner, is exempt from ALL TAXES (e.g. gross receipts tax) except taxable income subject to income tax, as may be specified by the Secretary of Finance.

Legally, thus, we find the assessment in question which deals on deficiency gross receipts tax arising from the alleged failure of the petitioner to include its income from EFCDS, to be in direct contravention of said provision of law, inasmuch as income from EFCDS is clearly exempted from all kinds of taxes except income tax under certain conditions. On the latter exception, petitioner does not have to prove either that it is exempt from income tax or that it has not been subjected to the same by the Secretary of Finance because the said assessment concerns a percentage tax and not an income tax, both of which are treated under different titles of the Tax Code.

With respect to the last issue, this Court peremptorily rules against the prayer of the petitioner for a refund in the case at bar. Petitioner should bear in mind that its petition for review only seeks the cancellation of the disputed assessment. No specific refund has been asked. Even if it did so, this Court would frown upon the same because, as the record shows, no requisite written claim for refund has been filed before the respondent as provided under Section 230 of the Tax Code.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. **ACCORDINGLY**, Assessment Notice No. **FAS-1-86-89-000071** and **Warrant of Distraint and/or Levy No. N-B263-92** are hereby **CANCELLED** and **WITHDRAWN** and declared **WITHOUT FORCE AND EFFECT**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

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WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

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 Judge
Court of Tax Appeals

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