REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PRUDENTIAL BANK,
Petitioner,
-versus-

C.T.A. CASE NO. 6198

Members:

CASTAÑEDA, JR., *Chairman*
UY, and
PALANCA-ENRIQUEZ, *JJ.*

BUREAU OF INTERNAL REVENUE, represented by the **Commissioner of Internal Revenue,**
Respondent.

Promulgated:

FEB 16 2005

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DECISION

CASTAÑEDA, JR., *J.*:

This petition seeks to declare the following deficiency documentary stamp tax assessments on petitioner's special peso savings deposit and savings account-plus for taxable years 1996-1997:

1.) Assessment No. ST-DST-96-0079-2000 for 1996 in the amount of P13,914,682.78;

2.) Assessment No. ST-DST-97-0143-2000 for 1997 in the amount of P14,330,651.33;
3.) Assessment No. ST-DST-96-0142-2000 for 1996 in the amount of P16,0006,828.04; and
4.) Assessment No. ST-DST-97-0059-2000 for 1997 in the amount of P16.843,730.58,

void *ab initio* and of no effect and to order respondent to desist from collecting the alleged deficiency documentary stamp taxes.

Petitioner is a banking corporation organized and existing under the laws of the Republic of the Philippines, with principal office at Prudential Bank Bldg. Ayala Ave., Makati City. Petitioner (as surviving corporation) merged with Pilipinas Bank (as absorbed corporation) on May 2, 2000 and duly approved by the Bangko Sentral ng Pilipinas.

On January 21, 2000, petitioner simultaneously received final assessment notices and formal demand letters, all dated December 28, 1999, for alleged non-payment of documentary stamp taxes (DST) on its special peso savings account deposit and savings account-plus, including surcharges, interests and penalties, computed as follows:

For Prudential Bank

ST-DST-96-0079-2000 for 1996

Total Special Peso Savings Deposits	P	4,875,625,800.00
Tax Due (P4,875,625,800.00 x .30/200)(Sec. 180)	P	7,313,438.70
Add:		
Surcharge		1,828,359.68
Interest up to 3.31.2000		4,747,884.40
Compromise		25,000.00
TOTAL	P	**13,914,682.78**

ST-DST-97-0143-2000 for 1997

Total Special Peso Savings Deposits		P5,302,424,717.00
Tax Due (P4,875,625,800.00 x .30/200)(Sec. 180)	P	7,953,637.08
Add: Penalties		
Surcharge		1,988,409.27
Interest up to 3.31.2000		4,363,604.98
Compromise		25,000.00
TOTAL	P	**14,330,651.33**

For Pilipinas Bank

ST-DST-96-0142-2000 for 1996

Total Savings Account-Plus			P 5,609,962,000.00
Tax Due (P5,609,962,000.00 x 30/200)(Sec. 180)		P	8,414,943.00
Add:			
Surcharge			2,103,735.75
Interest up to 3.31.2000	(.64922)		5,463,149.29
Compromise			25,000.00
TOTAL		**P**	**16,006,828.04**

ST-DST-97-0059-2000 for 1997

Total Savings Account-Plus			P 6,597,754,000.00
Tax Due (P6,597,754,000.00 x .30/200)(Sec. 180)		P	9,896,631.00
Add:			
Surcharge			2,474,157.75
Interest up to 3.31.2000	(.44944)		4,447,941.83
Compromise			25,000.00
TOTAL		**P**	**16,843,730.58**

On February 3, 2000 and February 16, 2000, within the thirty-day period prescribed by Section 228 of the National Internal Revenue Code (NIRC) of 1997, petitioner administratively protested the above assessments.

In view of the respondent's inaction on petitioner's protest, the instant petition was filed on November 17, 2000.

The respondent forwarded the following special and affirmative defenses, to wit:

3.) Although not specifically mentioning "special peso saving deposit", Section 180 of the Tax Code is certainly broad enough to include the same, inasmuch as it covers "...certificates of deposit bearing interest and others not payable on sight or demand", and thus, subject to documentary stamp tax;

3.1) It is not the form of document, i.e. certificate of deposit or passbook, that determines the nature of the transaction, but the essential characteristics attached to it;

3.2) There may be several kinds of deposits but substance will differentiate one from the other. In this case petitioner's "special peso savings deposit account" has been examined and discovered to have the characteristics and features of a Time Deposit; namely, (1) a definite term of at least 30 days; (2) specific date of withdrawal; (3) interest rate reduction in case of pretermination; and (4) interest earnings credited at maturity;

3.3) Every which way, there is no escaping the fact that petitioner's "special account" is, in substance, a time deposit, subject to documentary stamp tax mandated by Section 180 of the Tax Code;

3.4) To be sure, petitioner's claim that the Special Savings Deposit Account is tax-exempt is belied by jurisprudence:

> "Laws cited by taxpayers granting them exemptions are mere presumptions, which presumptions are contrary to the well-settled principle that the tax exemptions are not presumed (Floro Cement v. Gorospe, 200 SCRA 480)."
>
> "The exceptions contained in the tax statutes must be strictly construed against the one claiming the exemption because the law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (Commissioner of Internal Revenue vs. P.J. Kiener Company, Ltd., 65 SCRA 143)."

3.5) In no way had petitioner shown that the questioned account was clearly, categorically and conclusively a tax-exempt transaction;

4.) The assessments were issued in accordance with law and regulations; and

5.) All presumptions are in favor of the correctness of tax assessments.

The issues submitted for Our consideration are:

(1) Whether or not the subject assessments had already prescribed; and

(2) Whether or not petitioner's special peso savings account deposits and savings account-plus are subject to documentary stamp tax under Section 180 of the then National Internal Revenue Code.

Petitioner objects to the assessments issued by the respondent on the ground of prescription. Petitioner emphasizes that the assessment notices and the formal letters of demand for its alleged deficiency DST for the taxable years 1996 and 1997, all dated December 28, 1999, were received by it only on January 21, 2000. Thus, petitioner argues that even assuming that its special peso savings deposits and savings account-plus (hereafter referred as "special savings accounts") are liable for DST, the Commissioner had only three (3) years after the last day prescribed by law for the filing of the return or from the time the return was filed in case it was filed beyond the prescribed period, to assess petitioner thereof. According to the petitioner, as per its evidence, it religiously filed its DST returns for the taxable years 1996 and 1997 (Exhibits "C" to "W", inclusive). The deficiency documentary stamp tax assessments for the months of April up to December, 1996, had already prescribed. If at all, only that portion of the assessment pertaining to taxable year 1997 and for which petitioner also filed DST returns (Exhibits "L to "W" for Prudential Bank and Exhibits "LL to WW" for Pilipinas Banks) may be collected by the respondent.

We are not persuaded. The assessment for petitioner's deficiency DST has not yet prescribed. Sections 203 and 222 of the 1997 National Internal Revenue Code (NIRC, for brevity), provide:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed <u>within three (3) years after the last day prescribed by law for the filing of the return</u>, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Underlining supplied)*

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a

> fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> xxx xxx xxx"

Section 203 presupposes that a return is required to be filed by law because the three-year prescriptive period to assess is reckoned after the last day prescribed by law for such filing. The same is true with Section 222 which applies when a false or fraudulent return is filed or no return is filed when one is so required. In the case of DST, there was no specific provision under the old NIRC which required the filing of a documentary stamp tax return. Hence, the respondent is not barred from assessing petitioner of deficiency documentary stamp taxes for the taxable years 1996 and 1997.

As aptly explained by the Supreme Court in the case of ***Commissioner of Internal Revenue vs. Ayala Securities Corporation, 101 SCRA 231,*** and We quote, thus:

> "It is well settled limitations upon the right of the government to assess and collect taxes will not be presumed in the absence of clear legislation to the contrary. The existence of a time limit beyond which the government may recover unpaid taxes is purely dependent upon such express statutory provision (51 Am. Jur. 867; 10 Mertens Law on Federal Income Taxation, par. 57.02). <u>It follows that in the absence of express statutory provision, the right of the government to assess unpaid taxes is imprescriptible</u>. Since there is no express statutory provision limiting the right of the Commissioner of Internal Revenue to assess the tax on unreasonable accumulation of surplus provided in Section 25 of the Revenue Code, said tax may be assessed at any time." *(Underscoring Ours)*

It is the position of the petitioner, however, that the monthly information returns it filed relative to the subject transactions (Exhibits "C" to "WW") are the DST returns contemplated by the law.

As already discussed, there was no law mandating for the filing of DST returns prior to the 1997 NIRC. Thus, Section 203 does not apply. In the case of ***International Exchange Bank vs. Commissioner of Internal Revenue, CTA Case No. 6159, October 26, 2004,*** We ruled in this wise:

> "With regard to the second issue, petitioner claims that the deficiency DST assessment for the taxable year 1996 has already prescribed. The monthly information return required to be filed under Revenue Regulations (RR) No. 4-96 was filed by petitioner on January 10, 1997 *(Exhibit 6, p. 616, BIR Records)* and the assessment notice was issued by the respondent on January 12, 2000, or beyond three years from the time the return was filed.
>
> However, respondent argues that the prescriptive period to assess has not yet lapsed. Prior to the effectivity of the 1997 NIRC, there was no DST return required to be filed. Since there was no return required to be filed then there is no specific date from which the prescriptive period to assess will be reckoned. Hence, respondent's right to assess petitioner's deficiency DST is imprescriptible.
>
> He further asserts that the monthly information return contemplated in RR 4-96 is not the return required to be filed for purposes of computing the three-year prescriptive period to assess.
>
> We agree with respondent's arguments.
>
> The assessment for petitioner's deficiency DST has not yet prescribed. Sections 203 and 222 of the 1997 NIRC, provide:

xxx xxx xxx

The foregoing statute of limitations applies to the assessment of National Internal Revenue Taxes which require the filing of returns. In this case, there was no specific provision under the old NIRC nor in the regulations which require the filing of a documentary stamp tax return. Hence, the respondent is not barred by the aforequoted prescriptive periods on the assessment of petitioner's deficiency documentary stamp tax.

Section 203 presupposes that a return is required to be filed by law because the three-year prescriptive period to assess is reckoned after the last day prescribed by law for such filing. Even Section 222 of the same code cannot be made applicable because this section applies to the filing of a false or fraudulent return or failure to file a return. There can be no failure or omission to file a return where no return is required to be filed.

xxx xxx xxx

Moreover, the monthly information return required to be filed by banks, financial institutions, non-bank financial intermediaries and insurance companies under Revenue Regulations (RR) No. 4-96 is not the return contemplated under Sections 203 and 222 of the NIRC. It is merely an information return where the documentary stamp taxes paid for the month is disclosed.

xxx xxx xxx

Besides, if the monthly information return is tantamount to the return required to be filed under the NIRC for the purpose of applying the statute of limitations, the 1997 NIRC should not have amended the 1977 NIRC and added a provision, particularly Section 200 (A), requiring for the filing of a tax return. Hence, petitioner's deficiency DST for the taxable year 1996 and 1997 has not prescribed." *(Emphasis and underlining supplied)*

We now proceed to the pivotal issue of whether or not petitioner's special savings account is subject to documentary stamp tax.

The petitioner claims that its product, special savings account, evidenced by a savings account passbook and which earns a higher interest, is not subject to DST under Section 180 of the old NIRC, quoted hereunder for easy reference:

> "**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 (P200), or fractional part thereof, of the face value of any such agreement, bill or exchange, draft, certificate of deposit, or note: *Provided*, That only one documentary stamp tax shall be imposed on either loan agreements, or promissory notes issued to secure such loan whichever will yield a higher tax: *x x x*"

Petitioner maintains that a mere perusal of the above law shows that the savings account passbook is not among the documents listed therein as subject to DST, hence, the subject assessments have no leg to stand on. Petitioner interprets Section 180 of the NIRC in a limited manner as to cover certificate of deposit bearing the following features: 1.) it bears interest, and 2.) not payable on sight or demand. By the very definition, this document pertains to the money market time deposit certificates commonly issued by banks to its depositors who lock in their funds for a definite period of time in exchange for above market interest rates.

Petitioner differentiates its special savings account from a time deposit in the following manner: *first,* a special savings account is evidenced by a passbook while a time deposit is evidenced by a time deposit certificate; *second,* a time deposit is payable at a fixed determinable future time while special savings account is payable on demand; *third,* a time deposit is renewable upon maturity of the certificate while special savings account is not renewable but with a continuing balance after withdrawal is made; and *lastly,* in a time deposit the deposit certificate must be surrendered and stamp paid upon maturity while with the special savings account, withdrawal is evidenced by an entry on a passbook as evidenced by a withdrawal slip.

Moreover, by enumerating the documents subject to DST, Section 180 partakes of a "classification statute" and as such must be construed strictly against the respondent and more in favor of the petitioner.

Petitioner further postulates that the DST is an imposition on the document which facilitated the transaction and the presence of a transaction alone will not justify the imposition of DST in the absence of the document specifically identified by law. The DST therefore cannot and should not be imposed on the premise that the same is levied on the transaction so had by the parties irrespective of whether or not a document is issued or the form of the document is issued is not that specifically mentioned by law. For DST to attach it is imperative that the document must clearly fall under the enumeration of Section 180 of the NIRC or, at the very least, must have the formal requirements as to be considered among those listed.

Respondent, on the other hand, insists that the special savings account of petitioner is an interest bearing account and has the feature of a time deposit account, since there is a required minimum deposit balance and holding period in order to avail of the preferential rate which is much higher than that of a regular savings account. The only difference is that petitioner does not issue any certificate but a passbook.

Respondent views Section 180 of the afore-cited as to include petitioner's special savings account because it has all the features of time deposit, namely: a.) a definite term; b.) specific date of withdrawal; c.) interest rate reduction in case of pre-termination, and; 4.) interest earnings credit maturity.

Respondent firmly believes that petitioner's special savings account and a time deposit 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. At first glance, the innovative scheme may be accomplished in putting a semblance of difference between the aforesaid two deposit accounts, but an analytical look at the passbook issued clearly reveals that although it does not have the form of a certificate or labeled as such, it has a fixed maturity, albeit hidden, and for all intents and purposes, it has the same nature and substance as a "certificate of deposit bearing interest".

Respondent furthermore argues that assuming the special savings account of the petitioner is not exactly a time deposit, the same easily falls under the definition of certificate of deposit. The fact that the special savings account is evidenced by a passbook and not by a certificate of deposit is of no moment, what is controlling is the nature and meaning conveyed by the document and not the particular label or nomenclature attached to it, for substance prevails over form.

We agree with the respondent.

This is not a case of first impression. We have already ruled in a number of cases[1] that a bank's product such as special savings account is subject to documentary stamp tax. It is to be emphasized, at this point, that

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[1] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6201, December 15, 2004; Allied Banking Corporation vs. Guillermo Parayno, Jr., in his Official Capacity as the Commissioner of Internal Revenue, and Eleanor N. Litao, in her Official Capacity as Chief, LT-Collection and Enforcement Division, Bureau of Internal Revenue, CTA Case No. 6565, November 3, 2004; International Exchange Bank vs. Commissioner of Internal Revenue, CTA Case No. 6159, October 26, 2004; China Banking Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 6400, October 14, 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. 6560, April 28, 2004.

terminologies are mere matters which are capable of being overturned by circumstances. 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).*

From the provision of Section 180 earlier cited, the law subjects a "certificate of deposit" to documentary stamp tax. And to define what is a documentary stamp tax: 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.

In addition, 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 whereby the relation of debtor and creditor between bank and the depositor is created" *(Far East Bank & Trust Company vs. Querimit, 373 SCRA 665).* Certificate of deposit, being a 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*).

Clearly, by the very definition afore-mentioned, petitioner's special savings account falls within the ambit of a "certificate of deposit". The fact that petitioner's special savings account is evidenced by a passbook and not by a certificate is not an issue. It is clear from the above definition that it 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.

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.

In view thereof, We cannot but agree with the respondent that petitioner's special savings account and a time deposit 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 lower 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.

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 the same, 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 petition for review is hereby **DISMISSED** for lack of merit. Petitioner is liable for deficiency documentary stamp tax on its special peso savings account deposit and savings account-plus for the taxable years 1996 and 1997, computed as follows:

1996	*For Prudential Bank* ST-DST-96-0079-2000	*For Pilipinas Bank* ST-96-0142-2000	Total
Total Special Peso Savings Deposit	P 4,875,625,800.00	P5,609,962,000.00	P10,485,587,800.00
Tax Due - Sec. 180	P 7,313,438.70	P 8,414,943.00	P 15,728,381.70
Add:			
Surcharge	1,828,359.68	2,103,735.75	3,932,095.43
Interest	4,747,884.40	5,463,149.29	10,211,033.69
Amount Payable	P 13,889,682.78	P 15,981,828.04	P 29,871,510.82

1997	For Prudential Bank ST-DST-97-0143-2000	For Pilipinas Bank ST-96-0059-2000	Total
Total Special Peso Savings Deposit	P 5,302,424,717.00	P6,597,754,000.00	P11,900,178,717.00
Tax Due - Sec. 180	P 7,953,637.08	P 9,896,631.00	P 17,850,268.08
Add:			
Surcharge	1,988,409.27	2,474,157.75	4,462,567.02
Interest	4,363,604.98	4,447,941.83	8,811,546.81
Amount Payable	P 14,305,651.32	P 16,818,730.58	P 31,124,381.90
Total Amount Payable	P 28,195,334.10	P 32,800,558.62	**P 60,995,892.72**

Accordingly, petitioner is **ORDERED to PAY** the respondent the total amount of P60,995,892.72 representing deficiency documentary stamp taxes for the taxable years 1996 and 1997, plus 20% interest counted from February 22, 2000 until full payment thereof pursuant to Section 249 of the 1997 National Internal Revenue Code.

SO ORDERED.

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

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Chairman