REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

BANK OF COMMERCE, *Petitioner,*	**C.T.A. E.B. NO. 160 (C.T.A. CASE NO. 6332)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** AUG 3 1 2006

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition For Review filed by the Bank of Commerce (hereafter "petitioner") under *Section 11 of Republic Act No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks the reversal of the Decision dated April 29, 2005 and the Resolution dated January 20, 2006 issued by the First Division of this Court in C.T.A. Case No. 6332, the respective dispositive portions of which read as follows:

> "**IN VIEW OF THE FOREGOING**, the Petition for Review is hereby **DENIED** and the assessments for deficiency FCDU onshore income, final withholding tax and documentary stamp taxes are hereby **UPHELD**. Accordingly, petitioner is **ORDERED TO PAY** the respondent the amount of P54,764,752.34 representing deficiency FCDU onshore income, final withholding and documentary stamp taxes for taxable year 1994 and the amount of P103,845,058.54 representing deficiency FCDU onshore income and documentary stamp taxes for taxable year 1995. In addition, petitioner is liable to pay 20% delinquency interest on the aforesaid amounts computed from December 29, 2000 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.
>
> **SO ORDERED.**"

> "**IN VIEW OF THE FOREGOING**, petitioner's Motion for Reconsideration is **PARTIALLY GRANTED**. Accordingly, the Decision of this Court promulgated on April 29, 2005 is hereby **MODIFIED**. Petitioner is hereby **ORDERED TO PAY** the respondent the amount of P33,127,121.73 representing deficiency FCDU onshore income, final withholding and documentary stamp taxes for taxable year 1994 and the amount of P66,772,587.06 representing deficiency FCDU onshore income and documentary stamp taxes for taxable year 1995. In addition, petitioner is liable to pay 20% delinquency interest on the aforesaid amounts computed from December 29, 2000 until full payment thereof pursuant to Section 249 (c)(3) of the 1993 Tax Code.
>
> **SO ORDERED.**"

THE FACTS

The facts of the case are undisputed.

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission, with principal business address at 6764 Ayala Avenue, Makati City.

On November 28, 2000, petitioner received from the Commissioner of Internal Revenue (hereafter "respondent") a Formal Letter of Demand dated October 31, 2000, assessing petitioner of deficiency internal revenue taxes covering taxable years 1994 and 1995 in the amounts of P54,959,489.42 and P104,392,782.14, respectively, inclusive of interest and other penalties, broken down as follows:

	1994	1995
DEFICIENCY FCDU ONSHORE INCOME		
Basic	P 1,271,950.67	P 1,390,786.83
Add: Increments		
Interest	1,432,948.26	1,287,906.71
Compromise Penalty	25,000.00	25,000.00
Amount Due & Collectible	P 2,729,898.93	P 2,703,693.54
DEFICIENCY FINAL WIHHOLDING TAX		
Basic	P 127,000.26	
Add: Increments		
Interest	148,990.45	
Compromise Penalty	16,000.00	
Amount Due & Collectible	P 291,990.71	

ac

DEFICIENCY DOCUMENTARY STAMP TAX

Basic		P23,793,666.90	P 51,343,142.26
Add:	Increments		
	Interest	28,043,932.88	50,245,946.34
	Compromise Penalty	100,000.00	100,000.00
Amount Due & Collectible		P51,937,599.78	P101,689,088.60
		P54,959,489.42	P104,392,782.14

On December 22, 2000, petitioner, through its external auditors, filed with the respondent its protest letter requesting for a reinvestigation/reconsideration of the alleged deficiency tax assessments for taxable years 1994 and 1995.

Alleging inaction on the part of the respondent, petitioner elevated its case before this Court on September 18, 2001. However, realizing that the amount of P78,251,221.21 it prayed for to be cancelled in the Petition for Review covered only the deficiency basic taxes and did not include the increments such as interest and compromise penalties being assessed by the respondent for 1994 and 1995, on November 27, 2001, petitioner filed an Amended Petition for Review, in order to state in its prayer the correct amount of the deficiency tax assessments, i.e., P54,959,489.42 for 1994 and P104,392,782.14 for 1995, both inclusive of interest and other penalties or a total amount of P159,352,271.56, which was admitted by the Court on January 11, 2002.

In his Answer, respondent alleged by way of special and affirmative defenses: that respondent's right to assess deficiency taxes for taxable years 1994 and 1995 has not prescribed contrary to petitioner's allegation because it waived its right to invoke prescription under Section 203, 1997 Tax Code; that the deficiency onshore income tax was computed on the basis of Section 24 (e)(3) of the 1993 Tax Code, as amended, which provides for the imposition of 10% final tax on interest income earned by a depository bank under the expanded foreign currency system on foreign currency loans granted to residents; that petitioner is liable for deficiency onshore tax as the income payments in question were in the hands of petitioner and, therefore, at its control and disposition according to *Section 52 (now Section 59) of the Tax Code*; that there is no showing that petitioner has already paid the final withholding tax due on the 'unsupported interest incurred'; that also, there is no showing that the recipients of the interest payments made by petitioner are tax-exempt entities; that in the audit of petitioner's documentary stamp tax liability, accounts subject to DST were identified and summarized and made known to petitioner and that the corresponding DST rates were applied and the resulting DST per audit was compared with the payments made during the year; that there was no error on the part of respondent when it subjected the deficiency Documentary Stamp Tax to interest as under *Sections 248 (a)(1) and (3) and 249 of the Tax Code of 1993, as amended*, the imposition of surcharge and interest is mandatory; that the assessments were issued in accordance with law and regulations; and all presumptions are in favor of the correctness of tax assessments.

After trial on the merits, the First Division rendered the assailed decision on April 29, 2005 denying the Petition For Review.

Not satisfied, petitioner moved for a reconsideration of the same, which the First Division partially granted in its Resolution dated January 20, 2006.

Hence, this Petition For Review, raising the following:

ISSUES

I

WHETHER PETITIONER IN PAYING THE PROPOSED ASSESSMENT OF DEFICIENCY GROSS RECEIPTS TAX (GRT) FOR TAXABLE YEAR 1994 IS RENDERED ESTOPPED FROM QUESTIONING THE VALIDITY OF THE WAIVERS OF THE STATUTE OF LIMITATIONS WITH RESPECT TO THE OTHER ASSESSMENTS OF DEFICIENCY TAXES FOR TAXABLE YEARS 1994 AND 1995.

II

WHETHER PETITIONER AS PAYEE-BANK IS LIABLE TO PAY DEFICIENCY FCDU ONSHORE INCOME TAX.

III

WHETHER THE IMPOSITION OF SURCHARGE AND ADDITIONAL AMOUNTS OF INTEREST PENALTY IN THE ASSESSMENTS OF DEFICIENCY FCDU ONSHORE TAX AND FINAL WITHHOLDING TAX BY THE FIRST DIVISION IN THE RESOLUTION IS PROPER.

IV

WHETHER PETITIONER WAS SUFFICIENTLY INFORMED IN WRITING OF THE LAW AND FACTS ON WHICH THE ASSESSMENTS OF DEFICIENCY DOCUMENTARY STAMP TAX (DST) FOR TAXABLE YEARS 1994 AND 1995 ARE BASED AS REQUIRED UNDER SECTION 228 OF THE 1997 TAX CODE.

V

WHETHER THE SPECIAL SAVINGS ACCOUNTS (SSAs) ARE SUBJECT TO DST AS CERTIFICATE OF DEPOSIT UNDER THEN SECTION 180 OF THE TAX CODE.

On March 20, 2006, without necessarily giving due course to the petition, We required the respondent to file his comment thereto.

On April 5, 2006, respondent filed a "Motion to Admit Comment".

Required to comment on the motion, on May 5, 2006, petitioner filed its "Comment on Respondent's Motion To Admit Comment" interposing objection thereto on the ground that the motion was unsigned and the Comment does not point out inaccuracies in petitioner's statement of facts and issues in the Petition.

On June 6, 2006, We ordered counsel for respondent to submit an amended Motion To Admit Comment bearing their respective signatures, within five (5) days from notice.

Upon respondent's "Compliance and Manifestation" filed on June 9, 2006, We granted respondent's "Motion To Admit Comment" and admitted the attached "Comment".

Hence, the Petition is now deemed submitted for resolution.

THE COURT *EN BANC's* RULING

We find the instant appeal bereft of merit.

After a careful examination of the issues and arguments presented by the petitioner, the Court *En Banc* finds that the same are a mere rehash of its Petition For Review and Motion For Reconsideration filed in C.T.A. Case No. 6332, which had already been thoroughly discussed in the assailed Decision dated April 29, 2005 and Resolution dated January 20, 2006. Nonetheless, the Court *En Banc* will discuss them in seriatim.

First Issue

As regards the first issue, petitioner asserts that respondent's right to assess had already lapsed considering that the waiver executed by the petitioner did not validly extend the three-year prescriptive period under *Section 203*, in relation to *Section 223 (b) of the NIRC of 1997, as amended,* since all the waivers signed by the petitioner have no binding effect for lack of signature on the part of the BIR Commissioner indicating his consent thereto. Petitioner further claims that even if the Commissioner signed the waivers, the same are still invalid because the waiver purportedly to extend the 3-year prescriptive period must be executed before the expiration of the said period. Since the waivers are void *ab initio*, the petitioner cannot be considered estopped from questioning the validity of the waivers of the Statute of Limitations and its act of payment could not have induced the respondent to believe that said waivers are valid.

Respondent, on the other hand, argues that his right to assess has not prescribed since petitioner executed several waivers of the Statute of Limitations extending the period to assess up to November 30, 2000. Thus, the notices issued on October 31, 2000 were within the extended period of November 30, 2000. As regards the DST assessments, the right to assess is imprescriptible since no return was required for DST prior to the effectivity of the NIRC of 1997 on January 1, 1998.

We rule for the respondent.

Section 203 of the NIRC of 1993, as amended, in pertinent part provides:

> "SEC. 203. ***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 period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three-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.

Corollary thereto, *Section 223 (b) of the same* Code provides:

> "SEC. 223. **Exceptions as to Period of Limitation of Assessment and Collection of taxes.-**
>
> (a) xxx xxx
>
> (b) If before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> xxx xxx."

Under the above-quoted *Section 223 (b)* and as implemented by *Revenue Memorandum Order (RMO) 20-90*, a waiver to be valid must be signed by both the taxpayer and the BIR Commissioner or his duly authorized official.

Records show that the petitioner executed several waivers starting December 1, 1997 for the purpose of extending up to November 30, 2000 respondent's right to assess petitioner of deficiency business and income taxes for taxable years 1994 and 1995. A perusal of the first waiver executed by petitioner on December 1, 1997, which extended the period to assess business and income taxes for taxable years 1994 and 1995, shows that the same was not signed by the BIR Commissioner nor by his duly authorized official. Notwithstanding such infirmity in the waiver, petitioner paid on October 24, 2000 the proposed assessment for 1994 deficiency GRT of P324,674.29. Petitioner's act of paying on October 24, 2000 the 1994 deficiency GRT assessment constitutes admission on its part that the waiver covering the same is valid. As such, We cannot allow petitioner to adopt inconsistent postures regarding the said waiver. As aptly ruled by the First Division, petitioner is estopped from questioning the validity of the subject waivers.

Second Issue

Petitioner argues that the onshore income of P13,631,929.00 upon which the 1994 deficiency 10% tax was based refers to the interest income earned by the petitioner from the syndicated loan obtained by PAL from the petitioner and other lenders. Under the loan agreement, PAL agreed to shoulder the burden of paying all taxes incident to the payment of the interest. Pursuant to *Section 13* of its franchise, *P.D. 1590*, PAL is liable for basic corporate income tax based on its annual net taxable income computed in accordance with the provisions of the Tax Code or a franchise of 2% of the gross revenues from all sources, whichever is lower, in lieu of all other taxes, duties, royalties, registration, license and other fees and charges of any kind and nature or description imposed or collected by any municipality, city, provincial or national authority or government agency including specifically all taxes on interest, fees and other charges on foreign loans obtained and other obligations incurred by PAL where it assumes payment thereof. Since PAL assumed the payment of the onshore tax, petitioner's treatment of the 1994 interest income as tax-exempt is correct and in accordance with the OBU/FCDU Regulations.

Petitioner further argues that even assuming that it is not proper to treat said interest as tax-exempt, still it is not liable for the 10% FCDU onshore tax due thereon. Pursuant to *Section 50 (a) of the 1993 Tax Code, as amended,* taxes imposed or prescribed under *Section 24(e)(3)*, among others, shall be withheld by the payor-corporation and/ or person and paid in the same manner and subject to the same conditions, as provided in *Section 51 of the same Code*. Thus, it is the borrower, PAL, which is and should be held responsible for withholding and remitting the FCDU onshore income tax to the BIR and not the petitioner/lender-bank.

Petitioner's contentions are devoid of merit.

It is the petitioner which earned the said income and not PAL. *Section 24 (e) (3) of the NIRC of 1993, as amended,* explicitly provides that interest income from foreign currency loans granted by depository banks under the expanded foreign currency deposit system to residents (other than offshore banking units in the Philippines or other depository banks under the expanded system) shall be subject to a 10% tax. Even if PAL is exempt from the said withholding tax by virtue of its franchise, it does not extend to petitioner herein.

We agree with the respondent in saying that, in instances of non-withholding of the tax, two courses of action are available to the taxing authority. The first, against the withholding agent for the imposition of penalty in not withholding the tax as required by law, and second, is for the collection of the tax against the taxpayer against whom the tax is imposed.

Indeed, the 10% tax imposed on its interest income from FCDU transactions under *Section 24(e)(3) of the NIRC of 1993, as amended*, is in the nature of a final withholding tax.

Thus, pursuant to *Sections 50(a) and 51(a) of the NIRC of 1993, as amended,* the withholding of the 10% FCDU tax and the remittance thereof to the Bureau of Internal Revenue is the primary responsibility of the payor-corporation/persons (withholding agent) and not the payee (income recipient). However, petitioner admits that for convenience and practical purposes, it withholds and remits the 10% final tax due on its FCDU interest income on behalf of its borrower-client. As per BIR records, petitioner withheld and remitted 10% final tax on its FCDU interest income and filed the corresponding Monthly Remittance Return of Income Withheld.

Considering that the petitioner assumed the responsibility of withholding and remitting the 10% final tax due on its own interest income from FCDU transactions, petitioner should be held liable in case of non-withholding and non-remittance thereof. Since the interest income earned from its FCDU loan transactions was at its control and disposition, petitioner cannot be allowed to escape payment of the 10% final withholding tax.

Third & Fourth Issues

Being interrelated, We shall discuss the third and fourth issues simultaneously.

Petitioner questions the imposition of DST in the amount of P1,196,594,202.00 on its "Unaccounted Re-allowed Issue" and claims that this figure merely represents accounting adjustments and reclassifications due to erroneous book entries made, including transfers of loans from different branches. Such branch loans were used as collateral on the emergency loans obtained by petitioner's head office from the Bangko Sentral ng Pilipinas (BSP) as a consequence of the BANCAP scam. The documentary stamp taxes on the loans prior to their transfer or reclassification were paid in full. It does not represent new loan agreements or promissory notes and thus, should not be included in the assessment of the deficiency DST for taxable year 1994.

Petitioner also disputes the validity of the deficiency DST for taxable years 1994 and 1995 on the ground that the revenue examiners computed the assessment simply by applying the DST to the taxable documents and there is no way that the petitioner can determine the factual basis of said computations since the revenue examiners made no explanation as to what particular taxable documents were involved.

We disagree with the petitioner and concur with the ruling of the First Division.

The Schedule of Loans and Discounts, Bills Purchased and photocopies of sample Monthly General Ledger Movement Report, as well as the testimony of petitioner's PRO Manager-Section Head Tax Management and Financial Analysis, are insufficient to support petitioner's allegation that the amount of P1,196,594,202.00 merely represents accounting adjustments and reclassifications due to erroneous book entries made, including transfers of loans from different branches to the head office and back to the respective branches, and that the DST on said loans was paid in full. Petitioner should have presented source documents to establish the original entries made for the same loan transactions.

Anent the allegation that petitioner was not sufficiently informed in writing of the law and facts on which the assessments of deficiency DST for taxable years 1994 and 1995 were based, the details of discrepancies attached to the assessment notices state that:

> "In audit of the said tax, accounts subject to DST were identified and were then summarized. Thereafter, the corresponding DST rates were applied and the resulting DST per audit was compared with the payments made during the year as evidenced by the ATAPs issued by the Bureau".

Petitioner cannot now say that it was not informed on how the deficiency DST assessments for 1994 and 1995, were arrived at. In its protest letter, petitioner even made its own computations of the deficiency DST for 1994 and 1995, thereby admitting that it is liable for said taxes. In the said computations, the petitioner adopted the figures used by the respondent as tax base, but deducted certain amounts which the petitioner deemed excluded from the imposition of the DST. Thus, petitioner cannot claim that it was not aware of the factual basis of the DST assessments for 1994 and 1995.

<u>Fifth Issue</u>

Finally, regarding petitioner's argument that its special savings deposits are not subject to DST because just like ordinary savings account, they are evidenced by passbooks and not by certificates of deposit, under *Section 180 of the 1993 Tax Code*, We adopt the ruling of the First Division, as follows:

> "With reference to petitioner's argument that its special savings deposits are not subject to the DST under Section 180 of the 1993 Tax Code because just like ordinary savings accounts, they are evidenced by passbooks and not certificates of deposits, We disagree. This issue had already been settled in a number of cases, the more recent of which is *PHILIPPINE BANKING CORPORATION (Now: Global Business Bank, Inc.) vs. COMMISSIONER OF INTERNAL REVENUE, CTA EB NO. 63 (CTA Case No. 6395), November 23, 2005,* where the *En Banc* ruled that:
>
> > 'The DST is imposed on all certificates of deposit drawing interest without any qualification. As stated above, the Supreme Court in *Far East Bank and Trust Company vs. Querimit, supra*, defined a certificate of deposit as a 'written acknowledgment by a bank or banker of the receipt of a sum of money on deposit xxx'. Both the law and the aforementioned Supreme Court decision did not prescribe any particular form before a document can be considered as a certificate of deposit. Restricting the meaning of certificates of deposit drawing interest mentioned in Section 180 of the NIRC of 1977 to 'certificates of time deposit' will not be in accordance with both law and jurisprudence.
> >
> > xxx xxx.
> >
> > In determining whether certain instruments were subject to documentary stamp taxes, substance would control over form and labels, xxx xxx xxx.' The fact that Special/Super Savings Account is evidenced by a passbook is immaterial. '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.'"

Finding no reversible error, We affirm the assailed Decision, dated April 29, 2005, and the Resolution, dated January 20, 2006, of the First Division of this Court.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(With Concurring and Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

BANK OF COMMERCE,
Petitioner,

EB CASE NO. 160
(CTA CASE No. 6332)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 3 1 2006 [signature]

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Concurring and Dissenting Opinion

This is a Petition for Review filed by the petitioner under Section 11 of R.A. No. 9282, in relation to Rule 43 of the 1997 Rules of Civil Procedure, as amended, which seeks the reversal of the Decision promulgated on April 29, 2005 and the Resolution dated January 20, 2006 issued by the First Division of this Court in CTA Case No. 6332 entitled, "Bank of Commerce vs. Commissioner of Internal Revenue."

I agree with the Court En Banc's decision with regard to the first four issues raised by the petitioner. However, with due respect to my colleagues, I dissent with the majority decision in holding petitioner Bank of Commerce liable for Deficiency Documentary Stamp Tax on its Super Savings Accounts (SSA).

It is my opinion that the Super Savings Account, unlike a time deposit, has no holding period or maturity date in order to avail a higher interest. A time deposit has a maturity date wherein the parties mutually agree that the bank will pay the depositor the stipulated interest rate only upon the expiration of a definite, fixed and predetermined date. The depositor in a time deposit is bound by the maturity date agreed upon; otherwise, he or she will be penalized by not receiving the high interest as stated in the certificate of deposit. In contrast, SSA has no maturity date. The period offered to a prospective Super Savings depositor is a length of time provided in a schedule of placement, for which a corresponding rate is given. Still, the depositor is at liberty to withdraw his or her deposit at any time upon the presentation of his or her passbook.

Super Savings Account is an innovative product offered by the petitioner to its clients. It is a crossbreed between a regular savings deposit and a time deposit and as such, it contains essential features of both products. This new product offers higher interest rates upon certain conditions similar to a time deposit, but this does not automatically classify it as such.

From the text of Section 180 of the Tax Code, a "certificate of deposit" subject to DST must have the features of a time deposit. A "time deposit", is 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 deposits usually carry penalties for early withdrawal. Cash in a bank earning interest; contrast with demand deposit (*Black's Law Dictionary, 6th Edition*). Thus, it is incorrect for the respondent to conclude that SSA falls within the definition of a "certificate of deposit" to make it liable for DST.

In a Supreme Court decision, it was held that:

> "The Court takes this occasion to reiterate the hornbook doctrine in the interpretation of the tax laws that "(a) statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. Xxx (a) tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. Parenthetically, in answering the question of who is subject to tax statutes, it is basic that "in case of doubt, such statutes are to be

> construed most strongly against the government and in favor of the subject citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import." (*CIR vs. Court of Appeals, Court of Tax Appeals and Ateneo de Manila, 271 SCRA 605*)

There must be a law or legislative enactment that mandates the imposition of any tax in order for it to be due and demandable. The legislative intent behind Section 180 of the Tax Code is to include time deposits only as those liable for DST. It is through the introduction of SSA and similar transactions by the banking industry that Congress deemed it necessary to enact a new law to specifically cover the said product within the purview of the said law.

Republic Act # 9243, "An Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes" was enacted into law on February 17, 2004. Section 5 of the said law reads, as follows:

> "**SEC. 5.** Section 180 of the National Internal Revenue Code of 1997, as amended, is hereby renumbered as Section 179 and further amended to read as follows:
>
> SEC. 179. **Stamp Tax on All Debt Instruments.** – On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or a fractional part thereof, of the issue price of any such debt instruments: Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: Provided, further, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.
>
> For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and

> securities issued by the government or any of its instrumentalities, deposit substitute debt instrument, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation." (*Underlining supplied*)

The above-cited law clearly subjects to DST not only time deposits but also *other evidences of deposits that are drawing interest significantly higher than the regular savings deposit taking into consideration the size of deposit and the risks involved*. Under this provision, bank deposits drawing interest higher than the regular savings rate, even though the same may be withdrawn anytime, are subject to DST. The enactment of Section 5 of RA # 9243 settled the conflict between the Office of the Commissioner of Internal Revenue and the banking industry with regard to the imposition of DST on Super Savings and similar transactions. The fact that Congress amended Section 180 of the Tax Code shows that the old law was inapplicable to the instant case. There was no law before the passage of RA # 9243 subjecting the SSA of the petitioner to DST.

In view of the foregoing, I vote that the "Petitioner for Review" be **PARTIALLY GRANTED**. I vote that the assessed deficiency documentary stamp tax on petitioner's Super Saving Account for the taxable years 1994 and 1995 be reversed and set aside.

CAESAR A. CASANOVA
Associate Justice