REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

BANK OF THE PHILIPPINE ISLANDS, Petitioner,	**C.T.A. CASE NO. 7397**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 09 2008 4:07 p.m.

x- x

DECISION

CASTAÑEDA, JR., *J*.:

Before this Court is a Petition for Review filed by petitioner Bank of the Philippine Islands, seeking the cancellation and withdrawal of Assessment Notice No. FAS 5-82 to 86/89-000535 in the amount of **THREE MILLION FOUR HUNDRED FORTY-NINE THOUSAND EIGHT HUNDRED AND 60/100 PESOS (P3,449,800.60)**, representing alleged deficiency documentary stamp taxes arising out of its SWAP Arrangements for taxable years 1982 to 1986.

Bank of the Philippine Islands (petitioner) is a banking institution, a corporation duly created and existing under the laws of the Republic of the Philippines, with principal office at Ayala Avenue corner Paseo de Roxas, Makati City.

On the other hand, respondent Commissioner of Internal Revenue is a public officer authorized under the National Internal Revenue Code (NIRC) to examine any taxpayer, including *inter alia* the power to issue tax assessments, evaluate and decide upon protests relative thereto. Respondent holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On April 11, 1989, petitioner was issued Demand Letter/Assessment Notice No. FAS 5-82 to 86/89-000535 for its deficiency documentary stamp taxes in the amount of P3,246,856.82, covering taxable years 1982 to 1986, involving petitioner's sales of foreign exchange under the SWAP Arrangements and/or Forward Exchange Agreements it entered into with then Central Bank of the Philippines (now Bangko Sentral ng Pilipinas).[1]

On May 18, 1989, petitioner filed with respondent its Letter of Protest, seeking not for a reconsideration of respondent's assessment against it, but rather, "asking that the assessment issued against it be totally revoked and cancelled."[2]

On August 2, 2005, respondent rendered a Decision which was received by petitioner on December 15, 2005, affirming with finality the subject assessments issued against petitioner for deficiency documentary

[1] Par. 3, Joint Stipulation of Facts and Admissions, Docket, p. 65.
[2] Par. 4, Joint Stipulation of Facts and Admissions, Docket, p. 65.

150

stamp taxes amounting to P3,449,800.60 plus interest that may have accrued thereon until fully paid; the dispositive portion[3] of which reads:

> "**IN VIEW OF ALL THE FOREGOING**, this Office hereby resolved to CANCEL and WITHDRAW Assessment Notice No. FAS-8a to 86/89-000534, demanding payment of deficiency withholding taxes involving the amount of P27,797,056.22 for the taxable years 1982 to 1986. The deficiency documentary stamp taxes on telegraphic transfer under swap arrangement in the aggregate amount of P3,449,800.60 for taxable years 1982-1986 covered by Assessment Notice No. FAS 5-82 to 86/89-000535 is however REITERATED. Consequently, the **BANK OF PHILIPPINE ISLANDS** is hereby ordered to pay the amount of P3,449,800.60 plus increments that may have accrued thereon, 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 summary remedies provided by law."

On January 10, 2006, petitioner then appealed the Decision of respondent via Petition for Review to this Court.

The issues[4] as stipulated by the parties are as follows:

"1. Whether or not petitioner was denied of its right to procedural due process;

2. Whether or not the assessment notices were validly issued by respondent;

3. Whether or not respondent violated Revenue Regulations No. 12-85 respecting the issuance of Notice for Informal Conference and Pre-Assessment Notice prior to the Formal Assessment Notice;

4. Whether or not petitioner is liable to pay the deficiency DST on SWAP transactions;

5. Whether or not collection of the deficiency DST for 1982-1986 has prescribed;

6. Whether or nor petitioner's cabled instruction to its correspondent bank to remit a sum of money in dollars to the Federal Reserve Bank and to be credited to Central

[3] Par. 6, Joint Stipulation of Facts and Admissions, Docket, p. 66.
[4] Joint Stipulation of Facts and Admissions, Issues, Docket, pp. 67-68.

> Bank's account is in the nature of a telegraphic transfer subject to DST."

The issues raised basically boil down to only three questions, namely: (1) whether petitioner was denied of its right to due process; (2) whether petitioner's SWAP Arrangements are subject to documentary stamp tax; and (3) whether respondent's right to collect had already prescribed.

Anent the issue of whether petitioner was denied of its right to due process, petitioner argues that the post reporting and pre-assessment notice required under Revenue Regulations No. 12-85 and which were supposed to be issued prior to the issuance of the assessment notice were absent in this case; such absence constitutes a denial of its right to due process.

This Court does not agree.

Revenue Regulations No. 12-85 provides for the procedure covering the Administrative Protests on Assessments of the BIR. Under the said Revenue Regulation, a post-reporting notice is sent to the taxpayer for an informal conference when there are findings of deficiency taxes. Subsequent to this notice is the issuance of the pre-assessment notice upon findings of the Commissioner that an assessment for deficiency taxes should be issued. However, such pre-assessment notice may or may not be protested by the taxpayer. In fact, Section 5 of the same Revenue Regulation provides that "In the event that the taxpayer fails to respond to the pre-assessment notice within the prescribed period ... he should be informed of such fact and the report of investigation shall be given due course."

Petitioner cannot feign denial of due process. The essential elements of due process are notice and opportunity to present one's side. To begin with, petitioner had knowledge of the investigation being conducted by the BIR on its tax liabilities for the taxable years 1982-1986, as evidenced by the letter of respondent addressed to petitioner dated September 25, 1986 and received by petitioner on September 26, 1986[5]. The said letter, in fact, requested for an informal conference on the matter and requested further that petitioner submits documentary evidence to support its stand.

As the facts would demonstrate, petitioner was never deprived of due process as it was fully appraised of the legal and factual bases of the assessment issued against it; which enabled petitioner to substantially protest the arguments and issues raised. It is sufficient that there is notice to the taxpayer of the legal and factual bases of the assessment; and to the Court, this is substantial compliance of what is mandated by Section 228 of the NIRC. Thus, so long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.[6]

Although a pre-assessment notice is required to be issued to petitioner, however, failure on the part of respondent to issue the same cannot be considered as a violation of petitioner's right to due process. It may be required but the issuance of a pre-assessment notice is not indispensable. This finds support in the fact that a taxpayer is not obligated to protest a pre-assessment notice. And even the failure of the taxpayer to protest a pre-assessment notice does not result in the finality of the assessment against it. This Court in the case of ***Security Bank Corporation vs. Commissioner of***

---

[5] BIR Records, p. 29.
[6] *Calma vs. Court of Appeals*, 302 SCRA 682.

153

Internal Revenue[7] corroborates the foregoing and explained the significance and effects of a preliminary assessment notice (PAN) vis-à-vis a final assessment notice (FAN), in the following manner:

> "It must be emphasized that a protest to the preliminary assessment notice is not the same as the protest required to be filed as an answer to the final assessment notice. In fact, a preliminary assessment notice may or may not even be protested to by the taxpayer, and the fact of non-protest shall not in any way make the preliminary assessment notice final and unappealable. What is clear from Section 319-A of the Tax Code of 1977, as amended, is that failure on the part of the taxpayer to protest or reply to a preliminary assessment notice paves the way for the issuance of a final assessment notice. However, evident under the said Section is that failure on the part of the taxpayer to file a valid administrative protest through a request for reconsideration or reinvestigation on the final assessment notice, shall result in the finality of the said FAN."

What the law demands is the issuance of a final assessment notice which should be formally protested to by petitioner; otherwise, the same becomes final and executory.[8] Hence, when petitioner received the final assessment notice and duly protested the same, petitioner's right to due process was properly protected and observed.

As regards the issue of petitioner's liability to the documentary stamp tax, the same is not novel.

During the years 1982 to 1986, petitioner entered into SWAP Arrangements and/or Forward Exchange Agreements with then Central Bank of the Philippines (now Bangko Sentral ng Pilipinas). A SWAP Arrangement is a spot purchase of foreign currency and a forward sale of the same amount of currency. In the spot purchase of foreign currency, the Central Bank of the

---

[7] CTA Case No. 6564, November 28, 2006.

[8] *Subic Bay Motors Corporation, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 98 (CTA Case No. 7042), October 21, 2005.

Philippines is the buyer, and in the forward sale of the same amount of currency, it is the seller. In this instant case, petitioner effected the SWAP transactions via cable instructions to its foreign correspondent banks to transfer foreign currency to the Federal Reserve Bank for credit to the account of the Central Bank of the Philippines.

In the recent case of ***Bank of the Philippine Islands vs. Commissioner of Internal Revenue***[9], the Supreme Court categorically ruled that the sale of foreign exchange to the Central Bank of the Philippines via order by cable instruction is subject to documentary stamp tax pursuant to Section 195 (now Section 182) of the NIRC, which provision is quoted hereunder:

> "Section 182. Stamp Tax on Foreign Bills of Exchange and Letters of Credit. — On all foreign bills of exchange and letters of credit (including orders, by telegraph or otherwise, for the payment of money issued by express or steamship companies or by any person or persons) drawn in but payable out of the Philippines in a set of three or more according to the custom of merchants and bankers, there shall be collected a documentary stamp tax of thirty centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange or letter of credit, or the Philippine equivalent of such face value, if expressed in foreign currency."

In the said Decision, the Honorable Supreme Court discussed the nature of the acts covered by Section 195 (now Section 182) of the NIRC. It held that the said NIRC provision imposes documentary stamp tax on (1) foreign bills of exchange, (2) letters of credit, and (3) orders, by telegraph or otherwise, for the payment of money issued by express or steamship companies or by any person or persons; ruling that the order to pay in the

[9] G.R. No. 137002, July 27, 2006.

form of cable instruction is included among those taxed under the said section. The Highest Tribunal likewise explained the meaning of the phrase "orders, by telegraph or otherwise, for the payment of money", in the following manner:

> "The phrase 'orders, by telegraph or otherwise, for the payment of money' used in reference to documentary stamp taxes may be found in an earlier documentary tax provision, Section 1449(i) of the Administrative Code of 1917, which was substantially reproduced in Section 195 (now Section 182) of the NIRC. Regulations No. 26, which provided the rules and guidelines for the documentary stamp tax imposed under the Administrative Code of 1917, contains an explanation for the phrase 'orders by telegraph or otherwise, for the payment of money'.
>
> > *What may be regarded as telegraphic transfer.* — a local bank cables to a certain bank in a foreign country with which bank said local bank has a credit, and directs that foreign bank to pay another bank or person in the same locality a certain sum of money, the document for and in respect such transaction will be regarded as a telegraphic transfer, taxable under the provisions of Section 1449(i) of the Administrative Code.
>
> In this case, BPI ordered its correspondent bank in the U.S. to pay the Federal Reserve Bank in New York a sum of money, which is to be credited to the account of the Central Bank. These are the same acts described under Section 51 of Regulations No. 26, interpreting the documentary stamp tax provision in the Administrative Code of 1917, which is substantially identical to Section 195 (now Section 182) of the NIRC. These acts performed by BPI incidental to its sale of foreign exchange to the Central Bank are included among those taxed under Section 195 (now Section 182) of the NIRC."

Furthermore, the Supreme Court identified the common elements of the instruments under Section 195 (now Section 182) of the NIRC:

> "Section 195 (now Section 182) of the NIRC covers foreign bills of exchange, letters of credit, and orders of payment for money, drawn in Philippines, but payable outside the Philippines. From this enumeration, two common elements need

156

to be present: (1) drawing the instrument or ordering a drawee, within the Philippines; and (2) ordering that drawee to pay another person a specified amount of money outside the Philippines. What is being taxed is the facility that allows a party to draw the draft or make the order to pay within the Philippines and have the payment made in another country."

Applying the foregoing ruling of the High Court to the present case, it appears that all the elements of a taxable telegraphic transfer, as defined in Section 51 of Revenue Regulations No. 26 in relation to Section 195 (now Section 182) of the NIRC are present, namely:

1. Petitioner cables its foreign correspondent bank in the United States; and

2. Petitioner bank directs that foreign bank to remit a specific sum in dollars/foreign exchange to the Federal Reserve Bank for credit to the account of the Central Bank of the Philippines.

Section 51 of Revenue Regulations No. 26 provides that:

"**Section 51. What may be considered as telegraphic transfers**. – If a local bank **cables to a certain bank in a foreign country** with which bank said local bank has a credit, and directs that foreign bank to pay to another bank or person in the same locality a certain sum of money, the document for and in respect of such transaction will be regarded as a telegraphic transfer, taxable under the provisions of Section 1449(i) of the Administrative Code." (*Emphasis supplied*)

A close scrutiny of Section 51 of Revenue Regulations No. 26 in relation to Section 195 shows that mere cable instructions to the foreign correspondent bank of petitioner ordering that a certain amount of foreign currency be transferred to the Federal Reserve Bank for credit to the Central Bank of the Philippines are in the nature of telegraphic transfers and subject to documentary stamp tax. gr

157

It bears emphasis that a documentary stamp tax is in the nature of an excise tax. It is not imposed upon the business transacted but upon the privilege, opportunity or facility offered at exchanges for the transaction of the business.[10] The power to levy an excise tax upon the performance of an act or the engagement in an occupation does not depend upon the domicile of the person subject to the excise tax, nor upon the physical location of the property and in connection with the act or occupation taxed, but depends upon the place in which the act is performed or occupation engaged in. In this case, the cable instruction of petitioner to its correspondent bank in the United States to remit a specific sum in dollars/foreign exchange to the Federal Reserve Bank for credit to the account of the Central Bank of the Philippines, had been done or performed in the Philippines.

Such ruling is but a confirmation of the previous Decisions of this Court in a long line of cases, such as in ***China Banking Corporation vs. The Commissioner of Internal Revenue*** (CTA Case No. 4361, December 22, 1993), ***Consolidated Bank and Trust Company vs. The Commissioner of Internal Revenue*** (CTA Case No. 4647, November 21, 1994), and ***Bank of the Philippine Islands vs. The Commissioner of Internal Revenue*** (CTA Case No. 4481, May 31, 1994); where this Court had ruled that the local banks are liable for the payment of documentary stamp taxes for the transfer or sale of foreign bills of exchange pursuant to Section 51 of Revenue Regulations No. 26.

This Court likewise cannot accept petitioner's argument that renewals of the SWAP Arrangements are not subject to documentary stamp tax.

[10] *Commissioner of Internal Revenue vs. Heald Lumber Co.*, L-16340, February 29, 1964.

Section 198 of the NIRC of 1977 provides that any "renewal or continuance of any agreement" shall also be subject to the documentary stamp tax at the same rate. Section 198 is quoted hereunder for ready reference, to wit:

> "Section 198. Stamp tax on assignments and renewals of certain instruments. — Upon each and every assignment or transfer of any mortgage, lease or policy of insurance, or **the renewal or continuance of any agreement**, contract, charter, or, any evidence of obligation or indebtedness by altering or otherwise, there shall be levied, collected and paid a documentary stamp tax, at the same rate as that imposed on the original instrument." (*Emphasis supplied*)

The word "renewal" is not qualified by the provision. As long as there is an agreement and such is renewed, the levy, collection and payment of the documentary stamp tax are proper. Clearly, documentary stamp tax is imposed not only on the orders by telegraph but also on the renewals or extensions of the SWAP Arrangements.

As regards the last issue, it bears stressing that petitioner does not question the timeliness of the issuance of the final assessment notices within the period allowed by law. There is likewise no question as to whether petitioner seasonably filed its protest-letter relative to respondent's final assessment notices.

It has been jointly stipulated by the parties that Assessment No. FAS 5-82 to 86/89-00535 was accordingly issued on April 7, 1989 and received by petitioner on April 11, 1989. The only issue now lies on the prescription of the period to collect the deficiency documentary stamp taxes following its assessment.

After a careful analysis of the facts of the case, this Court finds that, although petitioner is liable for documentary stamp taxes on its SWAP

Arrangements, the effort of respondent to collect on Assessment No. FAS 5-82 to 86/89-000535 is already barred by prescription.

The period for respondent to assess and collect an internal revenue tax is limited to three (3) years by Section 203 of the NIRC of 1977, as amended, which states:

> "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 such 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 the 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."

Evidently, respondent has three years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment. When respondent validly issues an assessment against a taxpayer for deficiency taxes, within either the three (3) year or ten (10)-year period, then respondent has another three (3) years after the assessment within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding.

However, the three-year period of limitations on the assessment and collection of national internal revenue taxes as set by Section 203 of the Tax Code of 1977, as amended, can be affected, adjusted, or suspended, in accordance with the following quoted provisions of the same Code:

160

"SEC. 223. — 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 begun without assessment, at any time within ten 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.

(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.

(c) Any internal revenue tax which has been assessed within the period of iimitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax.

(d) Any internal revenue tax which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the three-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) Provided, however, That nothing in the immediately preceding section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax returns filed in accordance with the provisions of any tax amnesty law or decree."

"SEC. 224. Suspension of running of statute. — The running of the statute of limitation provided in Section[s] 203 and 223 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, That, if the taxpayer informs the Commissioner of any change in address, the running of the statute of limitations will not be suspended; when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines."

Based on paragraphs (b) and (d) of Section 223 of the Tax Code of 1977, as amended, the prescriptive periods for assessment and collection of national internal revenue taxes, respectively, could be waived by agreement, to wit:

"SEC. 223. — Exceptions as to period of limitation of assessment and collection of taxes. —

xxx 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 xxx

(d) Any internal revenue tax which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing **before the expiration of the three-year period**. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon." (*Emphasis supplied*)

162

Thus, a Waiver of the Statute of Limitations under the aforementioned paragraphs, to be valid, must be: (1) in writing; (2) agreed to by both the Commissioner and the taxpayer; (3) before the expiration of the ordinary prescriptive periods for assessment and collection; and (4) for a definite period beyond the ordinary prescriptive periods for assessment and collection. The period agreed upon can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon.

The BIR had issued Revenue Memorandum Order (RMO) No. 20-90 on April 4, 1990 to lay down an even more detailed procedure for the proper execution of such a waiver. RMO No. 20-90 mandates that the procedure for execution of the waiver shall be strictly followed, and any revenue official who fails to comply therewith resulting in the prescription of the right to assess and collect shall be dealt with administratively.

The pertinent parts of RMO No. 20-90 states:

> "1. The **waiver must be in the form identified hereof**. This form may be reproduced by the Office concerned but **there should be no deviation from such form**. The phrase **'but not after ____________19___' should be filled up**. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.
>
> 2. **The waiver shall be signed by the taxpayer himself or his duly authorized representative**. In the case of a corporation, the waiver must be signed by any of its responsible officials.
>
> **Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him**, as hereinafter provided, **shall sign the waiver**

163

indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

3. The following revenue officials are authorized to sign the waiver.

A. **In the National Office**

1.	ACIRs for Collection, Special Operations, National Assessment, Excise and Legal on tax cases pending before their respective offices. In the absence of the ACIR, the Head Executive Assistant may sign the waiver.	For tax cases involving not more than P500,000.00
2.	Deputy Commissioner	For tax cases involving more than P500,000.00 but not more than P1M
3.	Commissioner	For tax cases involving more than P1M

B. In the Regional Offices

1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.

2. The Regional Director, the Assistant Regional Director, the Chief, Assessment Branch or the Chief, Legal Branch with respect to cases still pending review and the period to assess/collect is about to prescribe, regardless of amount.

3. The Regional Director, the Assistant Regional Director, the Chief, Collection Branch or the Chief, Legal Branch with respect to cases still pending collection and

164

the period to assess/collect is about to prescribe regardless of amount.

4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

5. The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with."

In other words, the waiver must be in the following tenor:

WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE[11]

____
in consideration of the approval by the Commissioner of Internal Revenue of my request for re-investigation and/or reconsideration of my pending internal revenue case involving the assessment of the sums of ____________________________________ as ________________ for the years ______________, hereby waive the running of the prescriptive period provided for in Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, and consent to the assessment and collection of the taxes which may be found due after re-investigation and reconsideration at any time before or after the lapse of the period of limitations fixed by said Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, but not after ____________, 19___.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the instant protest of the undersigned taxpayer against the assessment. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admit in advance the correctness of the assessment which may be made against him for the periods above mentioned; nor does he waive his right to use any of the legal remedies afforded by law to secure a credit or refund on such tax that may be

[11] Annex "A", Revenue Memorandum Order No. 20-90, April 4, 1990.

assessed and paid for the same period pursuant to Sections 204 and 230 of the National Internal Revenue Code. The period of suspension agreed upon herein may be extended by subsequent agreement in writing made before the expiration of said period of extension.

Executed this ________ day of ___________ 19 ___, in Quezon City, Philippines.

____

(Taxpayer or Authorized Representative)

ACCEPTED AND AGREED TO:

Commissioner of Internal Revenue
Date _________________

A perusal, however, of the Waivers of the Statute of Limitations[12] executed by petitioner, reveals that the waivers were not even accepted/approved or signed as received by respondent Commissioner. It must be pointed out that the purpose of a Waiver of the Statute of Limitations is to afford the Commissioner or his duly authorized representative ample time to verify whatever tax or taxes which may be found due from petitioner. This waiver, however, does not give the Commissioner or his duly authorized representative an indefinite period of time within which to examine petitioner's alleged deficiency taxes. It is noteworthy that the prescriptive period or statute of limitations benefits both the government and the taxpayer. The government is benefited because tax officers would be obliged to act properly

[12] BIR Records, pp. 147 and 194.

and promptly in making assessments. On the other hand, the taxpayer is benefited because after the lapse of the period of prescription, he would have the feeling of security against unscrupulous tax agents who would find an excuse to inspect the books of the taxpayer to take advantage of every opportunity to abuse law-abiding taxpayers. Without such legal defense, taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the positive purpose of affording protection to the taxpayer within the contemplation of the law.

Equally important is the fact that not only were the waivers wanting of the required signatures, the same waivers do not even show the **date of acceptance** by the Commissioner. Both the date of execution by the taxpayer and date of acceptance by respondent must be before the expiration of the period of prescription. The date of acceptance is vital because it determines whether or not the acceptance was made within the prescriptive period; for if the acceptance was made after the prescriptive period, the same is ineffectual because there is no more period to extend.

Likewise, Section 224 of the NIRC of 1977, as amended, also recognizes the instances when the running of the Statute of Limitations on the assessment and collection of national internal revenue taxes could be suspended, even in the absence of a waiver. Said section provides that:

> "SEC. 224. Suspension of running of statute. — The running of the statute of limitation provided in Section[s] 203 and 223 on the making of assessment and the beginning of distraint

> or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, That, if the taxpayer informs the Commissioner of any change in address, the running of the statute of limitations will not be suspended; when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines."

Section 224 of the NIRC of 1977, as amended, specifically provides that "when the taxpayer requests for a reinvestigation which is granted by the Commissioner", the running of the statute is suspended.

In relation to the aforementioned Section, Revenue Regulations No. 12-85, issued on November 27, 1985, governs the procedure for protesting an assessment and distinguishes between two types of protest:

> "**PROTEST TO ASSESSMENT**
>
> SEC. 6. Protest. — The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation. . .
>
> xxx xxx xxx
>
> For the purpose of the protest herein —
>
> (a) *Request for reconsideration.* — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (b) *Request for reinvestigation.* — refers to a plea of re-evaluation of an assessment on the basis of newly-discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or law or both."

Based on the above-quoted Section 224 of the Tax Code of 1977, as amended, the running of the prescriptive period for collection of taxes can only be suspended through a request for a reinvestigation, and not through a request for reconsideration. Undoubtedly, a reinvestigation, which entails the reception and evaluation of additional evidence, will take more time than a reconsideration of a tax assessment, which will be limited only to the evidence already at hand. Moreover, not only is the type of protest important, equally pertinent is the fact that Article 224 of the NIRC of 1977, as amended, very plainly requires that the request for reinvestigation must be granted by the Commissioner to suspend the running of the prescriptive periods for assessment and collection. The requisite that the BIR Commissioner must first grant the request for reinvestigation before the Statute of Limitations may be suspended is supported by existing jurisprudence.[13] The burden of proof that the taxpayer's request for reinvestigation had been actually granted shall be on respondent Commissioner. The grant may be expressed in communications with the taxpayer or implied from the actions of respondent or his authorized representatives in response to the request for reinvestigation.[14]

The foregoing discussion is further strengthened by the ruling of the Supreme Court in the case of ***Bank of the Philippine Islands vs. Commissioner of Internal Revenue***[15], where the Highest Tribunal explained thus: ge

---

[13] *Republic of the Philippines vs. Felix B. Acebedo*, G.R. No. L-20477, March 29, 1968.
[14] *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.
[15] G.R. No. 139736, October 17, 2005.

(169)

> "The statute of limitations on collection may only be interrupted or suspended by a valid waiver executed in accordance with paragraph (d) of Section 223 of the Tax Code of 1977, as amended, and the existence of the circumstances enumerated in Section 224 of the same Code, which include a request for reinvestigation granted by the BIR Commissioner.
>
> Even when the request for reconsideration or reinvestigation is not accompanied by a valid waiver or there is no request for reinvestigation that had been granted by the BIR Commissioner, the taxpayer may still be held in estoppel and be prevented from setting up the defense of prescription of the statute of limitations on collection when, by his own repeated requests or positive acts, the Government had been, for good reasons, persuaded to postpone collection to make the taxpayer feel that the demand is not unreasonable or that no harassment or injustice is meant by the Government, as laid down by this Court in the *Suyoc* case.
>
> xxx xxx xxx
>
> This is a simple case wherein respondent BIR Commissioner and other BIR officials failed to act promptly in resolving and denying the request for reconsideration filed by petitioner BPI and in enforcing collection on the assessment. They presented no reason or explanation as to why it took them almost eight years to address the protest of petitioner BPI. The statute on limitations imposed by the Tax Code precisely intends to protect the taxpayer from such prolonged and unreasonable assessment and investigation by the BIR."

A careful reading of petitioner's protest letter dated May 18, 1989, however, would reveal that the same did not specifically request for either a reconsideration or reinvestigation. The same protest letter did not raise any question of fact; neither did it offer to present any new evidence. In fact, the protest letter asked for the revocation and cancellation of the subject Assessment No. FAS 5-82 to 86/89-000535 based on questions of law.

In this instant case: (1) the protest filed by petitioner BPI was a request for reconsideration, not a reinvestigation, of the assessment against it; and (2) even granting that the protest of petitioner BPI was a request for reinvestigation, there was no showing that it was granted by respondent Commissioner and that actual reinvestigation had been conducted. Thus, the running of the statute of limitations was not suspended.

To recapitulate, although petitioner is liable for documentary stamp taxes on its SWAP Arrangements, respondent's authority to collect on Assessment No. FAS 5-82 to 86/89-000535 is already barred by prescription.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. The Decision dated August 15, 2005 rendered by the Commissioner of Internal Revenue is hereby **SET ASIDE**. Accordingly, Assessment No. FAS 5-82 to 86/89-000535 is hereby **CANCELLED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

171

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

172