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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI FAMILY BANK,
Petitioner,

-versus -

C.T.A. CASE NO. 4256

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

8/7/92

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D E C I S I O N

This is an appeal instituted by petitioner primarily to interrupt the prescriptive period for refund considering that since the filing of this claim for refund with the respondent on October 6, 1987, he has not granted nor acted on the said claim for refund up to the date of the filing of this petition for review.

Petitioner BPI Family Bank, for the period April 28, 1986 to December 19, 1986, affixed and paid documentary stamps tax on confirmations of sale of Central Bank and treasury bills amounting to P1,116,612.00. On April 6, 1987, the BIR issued Revenue Circular No. 13-87 which states, among others, that documents of conveyance of instruments enumerated in Section 229 of the National Internal Revenue Code as distinguished from instruments enumerated in Sections 223 and 224, are not subject to documentary stamp tax. In view of the circular, petitioner, in a letter dated August 20, 1987 filed with the Bureau of Internal Revenue on October 6, 1987, a claim for refund alleging that since government securities fall within the purview of instruments enumerated in Section 229 of the Revenue Code, confirmations of sales covering said securities are not subject to documentary stamp tax.

Since the prescriptive period to file a valid suit or proceeding for refund was about to expire, petitioner filed the instant appeal or petition for review.

The issue for resolution is whether or not confirmations of sale of Central Bank bills and treasury bills are subject to documentary stamp tax.

Petitioner contends that confirmation of sale of Central Bank bills and treasury bills are not subject to documentary stamp tax because these CB and treasury bills are instruments falling under Section 229 of the NIRC which, by virtue of Revenue Memorandum Circular No. 13-87, the documents of conveyance thereof are not subject to documentary stamp tax.

Respondent, on his part, does not dispute the facts of the case but maintains that pursuant to Section 222 (now Section 173) of the Internal Revenue Code, documentary stamp tax is imposed on the document or instrument by reason of the transaction and, therefore, is payable at the time the transaction is had. So that in the instant case, the confirmation of sale made by petitioner is the very transaction itself subject to documentary stamp tax which petitioner properly paid at the time the sale was made or consummated. Further, he avers that petitioner has the burden of proof to show that the tax was erroneously paid or illegally collected, otherwise, such tax would be presumed to have been paid and collected in accordance with law. Finally, respondent postulates that the right to recover the tax allegedly paid by petitioner from April 15, 1986 to December 19, 1986 has already prescribed.

For a better understanding and analysis of the legal questions involved, we reproduce hereunder the pertinent provisions of the National Internal Revenue Code, thus:

> Section 222 (later Sec. 186, and now Sec. 173). Stamp taxes upon documents, instruments, and papers. -

"Upon documents, instrument, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same, and at the same time such act is done or transaction had: Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax. (As amended by PD No. 1994.)

<u>Section 223</u> (later Sec. 187 and, now Sec. 174). Stamp tax on bonds, debentures, and certificates of indebtedness. -

"On all bonds, debentures, and certificates of indebtedness issued by any association, company, or corporation, there shall be collected a documentary stamp tax of one peso on each two hundred pesos, or fractional part thereof, of the face value of such documents. (As amended by PD No. 1959.)

<u>Section 225</u> (later Sec 189 and now Sec 176). Stamp tax on sales, agreements to sell, memoranda of sales, deliveries or transfer of bonds, due-bills, certificates of obligation, or shares or certificates of stock. -

"<u>On all sales, or agreements to sell</u>, or memoranda or sales, or deliveries, or transfer of bonds, due-bills, <u>certificates of obligation</u>, or shares or certificates of stock of any association, company or corporation, <u>or transfer of such securities by assignment in blank, or by delivery, or by any paper</u>

<u>or agreement</u>, or memorandum or other evidences of transfer or sale of whether entitling the holder in any manner to the benefit of such bonds, due-bills, certificates of obligation or stock, or to secure the future payment of money, or for the future transfer of any bond, due-bill, certificates of obligation or stock, <u>there shall be collected a documentary stamp tax of fifty centavos on each two hundred pesos, or fractional part thereof</u>, of the par value of such bond, due-bill, certificates of obligation or stock: Provided, That only one tax shall be collected on each sale or transfer of stock or securities from one person to another, regardless of whether or not a certificate of stock or obligation is issued, indorsed, or delivered in pursuance of such sale or transfer; and provided, further, That in the case of stock without par value the amount of the documentary stamp tax herein prescribed shall be equivalent to twenty-five per centum of the documentary stamp tax paid upon the original issue of said stock. (Underscoring supplied.)

<u>Section 229</u> (later Sec. 193 and now Sec. 180). Stamp tax on promissory notes, bills of exchange, drafts, certificates of deposit, debt instruments used for deposit substitutes, and others not payable on sight or demand. -

"On the bill of exchange (between points within the Philippines), drafts, certificates of deposit, <u>debt instrument used for deposit substitute</u>, 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, <u>there shall be collected a documentary stamp tax of twenty centavos on each two hundred pesos, or fractional part thereof</u>, of the

> face value of any such or exchange, draft, certificate of deposit, debt instrument, or note. (As amended by PDs No. 1457 and 1959.) (Underscoring supplied.)

As earlier stated petitioner relies heavily on the assumption that treasury bills or Central Bank bills are instruments falling under Section 229 aforequoted which pursuant to Revenue Memorandum Circular 13-87, the corresponding documents of conveyance are not subject to documentary stamp tax. An examination of said section will show that it covers the following instruments: (1) bills of exchange, (2) drafts, (3) certificates of deposit, (4) promissory notes whether negotiable or not, and (5) debt instrument used for deposit substitutes.

A "promissory note" is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or bearer (Sec. 184, Act No. 2031.) A "bill of exchange" is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand at a fixed or determinable future time, a sum certain in money to order or to bearer (Sec.

126, Act No. 2031). A "draft" is a common term for all bills of exchange and they are used synonymously (9 C.J. 40-41, cited in the book of Aguedo F. Agbayani, Commentaries and Jurisprudence on the Commercial Law of the Philippines, 1989 ed., p. 396. A "certificate of deposit" is a written acknowledgment by a bank of the receipt of money on deposit which the bank promises to pay to the depositor, bearer or to some other person or order. (Re: Olson's Estate, 206 Iowa, 706, 219 N.W. 40 cited in Agbayani, *op cit* p. 441). Lastly, debt instrument used for deposit substitute. The term "debt instrument" is self-explanatory and easily understood; while the term "deposit substitute" is defined under Section 20(y) of the Tax Code, as follows:

> Section 20(y) "Deposit substitutes" shall mean an alternative form of obtaining fund from the public, other than deposit, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These instruments may include but may not be limited to banker's acceptances, promissory notes, repurchase agreement, certificate of assignment or participation and similar instruments with recourse as may be authorized by the Central Bank of the Philippine, for banks and non-bank financial intermediaries or

> by the Securities and Exchange Commission of the Philippines for commercial, industrial, finance companies and other non-financial companies. Provided, however, That only debt instrument issued for inter-bank call loans to cover deficiency in reserves including those between or among banks and quasi-banks shall not be considered as deposit substitute debt instrument." (Underscoring supplied.)

A "deposit subtitute" was thought of by the banking institutions as well a by other non-financial institutions as an alternative form of obtaining funds from the public. Alternative in the sense that the traditional or common way of obtaining funds from the public is through the issuance of a certificate of deposit evidencing savings or time deposit. This is clear from the above-quoted definition. Likewise apparent from the above provision of law is that the instrument covering "deposit substitutes" are issued by private entities such as banks, non-bank financial intermediaries, commercial, industrial, finance companies and other non-financial companies upon authorization by the Central Bank of the Philippines or the Securities and Exchange Commission, as the case may be. Nowhere does it say or even imply that the above instruments will cover evidence of indebtedness issued by the

National Government or by the Central Bank such as treasury bills or Central Bank bills.

The ultimate issue for resolution is whether or not treasury bills or CB bills fall under any of the aforementioned instruments.

To resolve the issue we have to determine the nature of treasury or CB bills. Treasury bills are evidence of indebtedness issued by the National Government under authority of Republic Act No. 245, as amended. They are offered for sale either at auction on competitive or non-competitive basis and at fixed discount or interest rate. It represents a direct, unconditional and general obligation of the National Government (Section 1, R.A. 245). "Central Bank bills" is similar to treasury bills except that it is issued pursuant to Republic Act 265, as amended, otherwise known as the Central Bank Act. CB bills are also evidence of indebtedness issued by the Central Bank against its international reserve or against other government securities it has acquired, or may be issued without relation to specific types of assets of the bank. (Section 98, R.A. 265) Treasury bills and CB bills are the two most popular government securities being traded in the open market operation of the Central Bank.

From the above concepts of treasury bills and CB bills, it may not be concluded that they fall under the term promissory notes, bill of exchange, draft, certificate of deposit nor debt instruments used for deposit substitutes as defined above. However, it is worthy to note that respondent in BIR Ruling No. 036-88 dated February 10, 1988, addressed to the Chief, Banks, Financing & Insurance Division, has issued an opinion that since treasury bills are considered as deposit substitutes, they are subject to documentary stamp tax under Section 229 of the NIRC. The Commissioner of Internal Revenue, Bienvenido A. Tan, Jr., based his opinion on Revenue Regulation No. 17-84, entitled "Income Taxation of Interest Derived from Bank Deposit Substitutes". Section 2(h) of which regulation includes within the scope of the definition deposit substitutes, as follows:

> (h) Deposit substitute shall mean
> xxx xxx xxx
>
> (iii) In the case of other non-financial companies, including the National and local government and its instrumentalities, all borrowings through the issuance of debt instruments denoted as treasury bonds, treasury bills, treasury notes and similar instruments".

Again, under Section 2(h)(b) of said

regulation, the following borrowings shall be considered as deposit substitutes:

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"(b) All borrowings of the National and local government and its instrumentalities including the Central Bank of the Philippines, evidenced by debt instruments denoted as treasury bonds, bills, notes, certificates of indebtedness and similar instruments".

These BIR opinion and regulation served as the basis for the answer on question number one under Revenue Memorandum Circular No. 13-87 relied upon by the petitioner in its petition for review, when it states as follows:

"Since NIRC Section 225 (now numbered 189) applies only to documents of conveyance covering instruments stated in NIRC Sections 223 and 224, it follows that documents of conveyance covering instruments stated in NIRC Section 229 are not subject to DST".

Accordingly, petitioner alleged that the sale of government securities like CB bills and T-bills covered by a confirmation sale is not subject to DST under Section 189 of the Tax Code since government securities fall within the purview of instruments stated in NIRC Section 229.

However, we disagree with the stand of the petitioner and the previous Commissioner of Internal Revenue in this case. This Court believes that government securities such as treasury bills and CB bills fall under Section 223, now Section 174 of the Tax Code. Indubitably, they are in the category of "certificates of indebtedness" and, therefore, their sale or transfer is subject to documentary stamp tax pursuant to the aforequoted Section 225, now Section 176 of the Tax Code.

In addition, it should be noted that the aforementioned instruments are referred to in general as "securities". This term, by definition of law, "means shares of stock in corporation and rights to subscribe for or to secure such shares. The term includes bonds, debentures, notes, or certificates, or <u>other evidence of indebtedness</u>, issued by any corporation, <u>including those issued by a government or political subdivision thereof</u>, with interest coupons or in registered form". (Underscoring for emphasis, Sec. 20(t) NIRC). While Section 176 uses the term "certificate of obligation", Section 174 uses the term "certificate of indebtedness" and Section 20 of the same Tax Code uses "evidence of indebtedness", this Court believes that they bear the same meaning but are only being used interchangeably by the law.

The Revised Documentary Stamp Tax Regulation promulgated by the Department of Finance on September 16, 1924 (XXII O.G. 112, p. 2335), provides a very stable and acceptable definition of a "certificate of indebtedness". The term "includes only instruments having the general character of investment securities as distinguished from instruments evidencing debts arising in ordinary transactions between individuals" (Section 9). The basic features of a treasury bill, reproduced below, will show that it has the general character of investment securities:

> TERMS: 63, 91, 182 and 364 days
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> PRICE: Issued on a discount basis under competitive and non-competitive bidding and payable at maturity at face value.
>
> INTEREST RATE: Determined by the results of the weekly auctions which are reflective of market rate.
>
> DENOMINATION: P10,000, P50,000, P1000,000, P500,000, P1,000,000, P5,000,000, P10,000,000.
>
> SECURITY OF ISSUE: Direct, unconditional and general obligations of the National Government.
>
> FORM: Bearer
>
> REDEMPTION: Redeemable at maturity at par value.
>
> OTHER UTILITIES: May be accepted as collateral in transactions with the government.
>
> (Primer On The Auction System For Treasury Bills And Other Government

Securities, published by the Government Securities Department, Central Bank of the Philippines.)

This should be distinguished from ordinary debt instruments arising from transactions between individuals such as promissory notes, bills of exchange, drafts, certificate of deposits and deposit substitutes.

We believe the inclusion by the BIR of government borrowings in the definition of "deposit substitutes" is without legal basis and contrary to law. Republic Act Nos. 245 and 265 classify treasury bills and CB bills respectively as evidence of indebtedness or certificate of indebtedness. Moreover, the definition of "deposit substitutes" clearly does not include within its definition borrowings or securities issued by the government. The definition which is similar to the definition of "deposit substitute" under the Central Bank Act, although not limited to the instruments enumerated, should be confined to instruments authorized by the Central Bank of the Philippines for banks and non-bank financial intermediaries, or by the Securities and Exchange Commission of the Philippines for commercial, industrial, finance companies and other non-financial companies. Apparently, the obvious intention of the law is to cover only debt instruments issued by the private sectors. Treasury bills and CB bills are issued by the government for its own account and not for banks and non-bank financial instrumentalities nor for the account of other companies.

Furthermore, if the lawmaker had intended to include certificates of indebtedness within the definition of "deposit substitutes", it should not have been specified and treated separately under Section 174. Also the intention of the law to treat obligations issued by the government apart from "deposit substitute" can be found in Section 28(b)(4). For while interests from deposit substitute are being taxed pursuant to Section 24(e) of the Tax Code, interest on government securities are in general excluded from gross income pursuant to Section 28(b)(4). In other words, interests on government securities, unlike interests on deposit substitutes, are exempted from tax to the extent provided for in the Act authorizing the issuance of said government securities. It so happened that in the instant case, Republic Act Nos. 245 & 265 fail to exempt interest on treasury bills and CB bills, respectively from taxation. However, in the cases as when bonds and securities are intended for sale in the international market, PD 81 provides exemption of income derived therefrom by recipient. The income from bonds and other instruments which the Export Processing Zone Authority (EPZA) is authorized to issue are likewise exempted from tax pursuant to PD 66. In other words, while taxation of "deposit substitute" is governed by the provisions of the National Internal Revenue Code, taxation of government securities are governed by special laws authorizing their issuance. Thus, the intention of the lawmaker to treat "evidence of indebtedness" or securities issued by the government separately is very apparent.

In view of all the foregoing, we believe treasury bills and Central Bank bills should be classified as "certificate of indebtedness" under Section 223 (now Section 174) of the Tax Code and its sale or transfer subject to documentary stamps tax pursuant to Section 225 (now Section 176) of the Tax Code falling under the term "certificate of obligation".

WHEREFORE, this Court finds the payment of documentary stamps tax by petitioner in order and consequently the claim for refund is denied. Accordingly, the instant petition for review is hereby dismissed without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, August 7, 1992.

ERNESTO D. ACOSTA
Associate Judge

I CONCUR:

STELLA DADIVAS-FARRALES
Acting Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals