REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

EAST WEST BANKING CORPORATION, *Petitioner,*	**C.T.A. CASE NO. 6845**
	Members:
-versus-	CASTAÑEDA, JR., Chairman UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAR 0 2 2006

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 180 of the National Internal Revenue Code of 1997, as amended,* on all bonds, loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities, deposit substitute, debt instruments, certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand, on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each Two hundred pesos (P200.00), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note.

Does petitioner's Savings Maximizer Deposit fall within the definition of certificate of deposit bearing interest, and therefore subject to documentary stamp tax under the aforecited *Section 180 of the National Revenue Code* (hereafter "NIRC") *of 1997, as amended.*

THE CASE

This issue is before us in this appeal by way of Petition For Review filed by East West Banking Corporation (hereafter "petitioner"), which seeks the reversal of the decision dated November 24, 2003 rendered by the Bureau of Internal Revenue in the Matter of the Protest of the East West Banking Corporation against Assessment Notice No. 97-000056 (P08-03), the dispositive portion of which reads as follows:

> "**WHEREFORE**, predicated on all the foregoing, EWBC's protest against Assessment Notice No. 97-000056 is hereby **DENIED**. Consequently, EWBC is hereby

ordered to pay the total amount of **P71,169,228.74** as deficiency documentary stamp tax for the taxable year 1997, plus increments that have legally accrued thereon until its actual payment to the Large Taxpayer's Service, BIR National Office Building, Diliman, Quezon City, within thirty (30) days from receipt hereof; otherwise, collection thereof will be effected thru the summary remedies provided by law.

This constitutes the **Final Decision** of this Office on the matter."

THE FACTS

The facts are not in dispute:

Petitioner East West Banking Corporation is duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 6795 Ayala Avenue, corner Rufino Street, Salcedo Village, Makati City. It is duly registered with the Securities and Exchange Commission and authorized by the Bangko Sentral ng Pilipinas to engage in commercial banking operations in the country.

Respondent is the duly appointed official empowered, among others, to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court.

In a Formal Letter of Demand and Assessment Notice, both dated January 27, 2003, respondent assessed petitioner for deficiency

Documentary Stamp Tax (hereafter "DST") on its special savings deposit transactions for 1997 in the amount of P71,169,228.74. Petitioner received this demand letter on February 21, 2003. Then, on March 21, 2003, petitioner filed its timely protest thereon.

On December 8, 2003 petitioner received the Decision of respondent denying with finality its protest and affirming in all respects the assessment issued by the Bureau of Internal Revenue examiner, computed as follows:

Special Savings Account	P23,406,214,618.09
Rate of Documentary Stamp Tax	x P0.30/200
Total DST Due	P 35,109,321.93
Less: Payments/ Applications	-
Basic Deficiency DST	P 35,109,321.93
Add: Interest (until February 28, 2003)	36,059,906.81
TOTAL AMOUNT DUE	P 71,169,228.74

Consequently, pursuant to *Section 228 of the NIRC* petitioner filed the present Petition for Review.

On February 16, 2004, respondent filed his Answer interposing the following Special and Affirmative Defenses:

> "5. The governing law on the matter is Section 180 of the Tax Code of 1997 which provides:

'**Section 180**. *Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitute Debt Instruments, Certificates of Deposits Bearing Interest and Others Not Payable on Sight or Demand.* — On all bonds, loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities, deposit substitute debt instruments, certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand, on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each Two hundred pesos (P200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note; x x x

xxx xxx xxx.'

6. In the case of BPI vs. Commissioner of Internal Revenue, CA G.R. No. 29853, the decision of which was promulgated on September 19, 1994, the Court of Appeals defined a 'certificate of deposit' as 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 (Olson Estate 206, Iowa, 706219 N.W. 40, cited in Agbayani, op cit, p. 44).

The foregoing definition does not prescribe any particular form, nor does it qualify. It may any written acknowledgment by a bank of the receipt of money as deposit which a bank promises to pay to the depositor is a genus of a certificate of deposit subject to tax under Section 180 of the Tax Code. The fact then that the MSD is evidenced by a passbook and not be a certificate of deposit is of no moment. 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 substance is paramount than form. Thus, in the case of **L.R. Heat Treating Co.**, 28 TC 874, it was declared that:

> 'We have held that it matters little what the transaction is termed, as the facts control and not the terminology. x x x it is a well established principle of law that the name by which an instrument or transaction is denominated is not controlling its true character.'

7. It must be recalled that what distinguishes the Savings Maximizer from the ordinary savings account is the higher interest rate or premium rate which may be availed of by the depositor only if he does not withdraw his deposit before the prescribed holding period. In order to be entitled to the premium rate, the depositor, just like in time deposits, must wait for the holding period before making the withdrawal. In the event that a withdrawal is made prior to the interest payment date, the deposit shall, in lieu of the premium interest rate therein provided, earn interest at the prevailing ordinary savings account interest rate. To our mind, this condition actually contradicts the idea that the deposit under the Savings Maximizer may be withdrawn anytime. In order to be entitled to the premium rate, the depositor, just like in time deposits, must wait for the holding period to expire before making the withdrawal.

Consequently, this restricts the depositor's right to withdraw on his deposit prior to the holding period. It sets a limitation by curtailing the depositor's freedom to withdraw, thus removing the element of free, absolute and unrestricted access to one's deposit.

8. The nature of the penalty imposed on both the MSD and the time deposit lends more credence in logically inferring that the MSD is a class of time deposit rather than a regular savings deposit. In both the MSD and time deposit, a considerable reduction of interest is exacted in cases of withdrawal and/or pretermination. However, in regular savings account, no such reduction occur.

9. To sum up, the Savings Maximizer and Time Deposit Account are one the same banking transaction. To evade payment of the documentary stamp tax, efforts were made by banks to place a superficial distinction between the two (2) deposit accounts by introducing an innovation using a special passbook to document the Market Savings Deposits and by claiming that said special deposit has no specific maturity date. At first glance, the innovative scheme may have accomplished in putting a semblance of difference between the aforesaid two (2) accounts, but an analytical look at the passbook issued clearly reveals that although it does not have the form of a certificate the passbook nor labeled as such, it has a fixed maturity date and for all intents and purposes, it has the same nature and substance as a 'certificate of deposit bearing interest'.

10. Assuming *arguendo* that petitioner's Savings Maximizer account is not a certificate of deposit, it is a loan agreement because the relationship between a depositor and a bank is that of creditor and debtor (Integrated Realty Corp. vs. Philippine National Bank, 174 SCRA 295). As such, it is subject to DST under Section 180 of the Tax Code.

11. Moreover, the protest letter of the taxpayer dated March 20, 2003, duly stamped to have been received on March 21, 2003 by the Large Taxpayers Service, this Bureau, is only a pro-forma protest as it failed to substantially comply with the requirements prescribed under Section 3.1.5 of Revenue Regulations No. 12-99 which implements the provisions of the National Internal Revenue Code of 1997 governing the rules on assessment of National Internal Revenue Taxes, civil penalties and interest and the extra-judicial settlement of a taxpayer's criminal violation of the Code through payment of a suggested compromise penalty. The subject taxpayer, through its counsel failed to categorically specify the facts, the applicable law, rules and regulations, or jurisprudence on which its protest is based. For failure to comply with the provisions of Section 3.1.5 of Revenue Regulations No. 12-99, the protest made by the taxpayer is considered void and without force and effect.

12. It is basic in taxation that the burden of proof lies on the taxpayer to present evidence showing that the assessment was not validly issued. Mere allegation that the assessment is baseless, both in facts and in law, without being substantiated is not enough. Concrete proofs must be presented and failure to do so is fatal considering that the assessment of the Commissioner of Internal Revenue is presumed to be prima facie correct, unless controverted (CIR vs. Bohol Land Transportation, 107 Phil. 965).

13. The assessment was issued in accordance with law and regulation.

14. All presumptions are in favor of the correctness of tax assessments."

Petitioner presented Clarinda B. Martinez, as witness, and documentary evidence marked as *Exhibits "A" to "D"*, together with their submarkings, which were all admitted by the Court.

On the other hand, respondent presented Lilia G. Pascual, as witness, and formally offered in evidence *Exhibits "1", "1-a" and "2"*.

Thereafter, both parties were granted thirty (30) days from notice within which to file their simultaneous memoranda.

Both parties having complied thereto, the case was deemed submitted for decision on November 16, 2005.

<u>ISSUES</u>

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER THE PASSBOOK EVIDENCING THE SAVINGS MAXIMIZER IS A CERTIFICATE OF DEPOSIT BEARING INTEREST SUBJECT TO DST UNDER *SECTION 180* OF THE *1997 TAX CODE*.

II

WHETHER PETITIONER'S SAVINGS MAXIMIZER IS A TIME DEPOSIT.

III

ASSUMING *ARGUENDO* THAT THE SAVINGS MAXIMIZER IS NOT A CERTIFICATE OF DEPOSIT, WHETHER OR NOT IT IS A LOAN AGREEMENT SUBJECT TO DST UNDER *SECTION 180 OF THE TAX CODE.*

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner's Savings Maximizer Deposit is a Certificate of Deposit bearing interest, and is thus subject to DST under *Section 180 of the NIRC of 1997, as amended.*

THE COURT'S RULING

The petition has no merit.

Petitioner claims that its Savings Maximizer and the passbook issued to Savings Maximizer depositors cannot be classified as a loan agreement, promissory note, bill of exchange, draft, or instrument and security issued by the government or any of its instrumentalities subject to DST under *Section 180 of the Tax Code.* It argues that petitioner's Savings Maximizer and the passbook issued to its depositors are not certificates of deposit and loan agreements, because they do not constitute written contracts, but are mere acknowledgments of receipt of a sum of money, and nothing more. It further claims that while a certificate of deposit is evidence of debt, a passbook or a deposit slip of a general bank depositor, being mere receipts, is not evidence of debt. Thus, a passbook is not a certificate of deposit or a loan agreement.

On the other hand, respondent maintains that the Savings Maximizer and Time Deposit Account are just one and the same banking transaction. At first glance, the innovative scheme may have accomplished in putting a semblance of difference between the two (2) accounts, but an analytical look at the passbook issued clearly reveals that although it does not have the form of a certificate nor labeled as such, it has a fixed maturity date and for all intents and purposes, petitioner's Savings Maximizer has the same nature and substance as a "certificate of deposit bearing interest".

Respondent likewise asserts that assuming *arguendo* that petitioner's Savings Maximizer Account is not a Certificate of Deposit, it is a loan agreement because the relationship between a depositor and a bank is that of a creditor and a debtor, citing the case of *Integrated Realty Corp. vs. Philippine National Bank, 174 SCRA 295.*

We rule for the respondent.

Section 180 of the NIRC of 1997, as amended, provides:

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"SEC. 180. *Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitute Debt Instruments, Certificates of Deposits Bearing Interest and Others Not Payable on Sight or Demand.* — On all bonds, loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities, deposit substitute debt instruments, certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand, on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each Two hundred pesos (P200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note; *Provided,* That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: *Provided*, however, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this Section."

A perusal of the above-quoted *Section 180* will show that it covers the following instruments:

1) bonds;
2) loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines;
3) bills of exchange (between points within the Philippines);
4) drafts, instruments and securities issued by the Government or any of its instrumentalities;
5) deposit substitute debt instruments;
6) certificates of deposit drawing interest;
7) order for the payment of any sum of money otherwise than at sight or on demand;
8) on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation; and
9) on each renewal of any such note.

A certificate of deposit is defined as a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created (*Far East Bank and Trust Company vs. Querimit, 373 SCRA 671*).

Section 180 subjects a "certificate of deposit" to documentary stamp tax. A documentary stamp tax is a tax on documents, instruments and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right, or property incident thereto (*Hector S. De Leon, The National Internal Revenue Code, 2000 ed., p. 722*). It is in the nature of an excise tax. It is not imposed upon the business transacted, but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself (*Lincoln Phil. Life Insurance Co., Inc. vs. Court of Appeals, 293 SCRA 99*).

It is a privilege tax because it is really imposed on the privilege to enter into a transaction rather than a document. The law taxes the document because of the transaction. What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction (*Philippine Home Assurance Corporation vs. Court of Appeals, 301 SCRA 447-448*).

On the other hand, a "time deposit", which is also a form of a certificate of deposit, refers to a deposit account paying interest for a fixed term, with the understanding that funds cannot be withdrawn before maturity without giving advance notice. Ordinarily, a time deposit is defined as "one, the payment of which cannot legally be required within such a specified number of days" (*BPI Family Savings Bank vs. First Metro Investment Corp., 429 SCRA 36*). In practice, a "time deposit" is evidenced by a certificate of time deposit. Certificate of deposits or time deposits usually carry penalties for early withdrawal (*Black's Law Dictionary, 6th ed.*). Verily, the main difference between a "savings deposit" and a "time deposit" is the penalty, which may come in the form of reduced interest rate. An instance is when the depositor makes a withdrawal prior to the maturity of the deposit.

A certificate of deposit, undeniably, being subject to documentary stamp tax, it is thus relevant to determine whether petitioner's Savings Maximizer Deposit bears the same nature or characteristics of a time deposit certificate.

In both the time deposit and petitioner's Savings Maximizer Deposit, the deposit may be withdrawn anytime, but the depositor gets to earn a high rate of interest if the money is kept in the bank within the specified number of days. The only difference lies on the document used as evidence of the transaction. While in Savings Maximizer Deposit, the transaction is covered by a passbook (*Exhibit "C"*), the time deposit is evidenced by a certificate of time deposit. Nonetheless, the fact that petitioner's Savings Maximizer Deposit is evidenced by a passbook and not by a certificate of deposit is of no moment. 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 than its form (*L.R. Heat Treating Co., 28 TC 874; BPI vs. Commissioner of Internal Revenue, et al., CA-G.R. SP No. 29853, September 19, 1994*).

Petitioner further claims that like its regular savings account, the Savings Maximizer comes with a passbook and can be withdrawn fully or partially anytime, upon presentation of the passbook and a duly accomplished withdrawal slip. However, it is to be noted that the same holds true also in the case of a time deposit. A depositor is also allowed to withdraw his time deposit prior to the maturity date, subject only to pretermination charges. In which case, the depositor loses his entitlement to earn the interest rate corresponding to the time deposit. Instead, he earns interest pertaining to that of a regular savings deposit. The fact is, in both cases, the deposit may be withdrawn anytime, but the depositor gets a lower rate of interest. The only difference lies on the evidence of deposit. However, as above stated, in determining whether a certain instrument is subject to documentary stamp tax, substance would control over the form and labels.

The Court agrees with respondent that in substance, the Savings Maximizer Account and Time Deposits are akin to each other. In both cases, the bank acknowledges receipt of a sum of money on deposit, which the bank promises to pay to the depositor, bearer or to the order of a bearer on a specified period of time. The difference lies on the document issued to evidence the transaction. In Savings Maximizer Account, the transaction is covered by a passbook, while in time deposit, it is through a certificate of deposit.

For all intents and purposes, We hold that petitioner's Savings Maximizer Deposit is in itself a certificate of deposit as it has the same nature and substance of a certificate of deposit bearing interest. Therefore, petitioner's Savings Maximizer Deposit is subject to DST under *Section 180 of the NIRC of 1997, as amended.*

While the DST is levied on the document itself, it is not intended to be a tax on the document alone. Rather, the DST is levied on the exercise by persons of certain privileges conferred by law for the creation, revision or termination of specific legal relationship through the execution of specific instruments (*Philippine Home Assurance Corporation vs. Court of Appeals, 301 SCRA 447*).

Petitioner further argues that its Savings Maximizer and the passbook issued to its depositors are not loan agreements because they do not constitute written contracts, but are mere acknowledgments of receipt of money and nothing more.

The Court disagrees. In *Central Bank of the Philippines vs. Morfe, 63 SCRA 119*, the Supreme Court held:

> "It should be noted that fixed, savings, and current deposits of money in banks and similar institutions are not true deposits. **They are considered simple loans** and, as such, are not preferred credits (Art. 1980 Civil Code: In re Liquidation of Mercantile Bank of China: Tan Tiong Tick vs. American Apothecaries Co., 65 Phil. 414; Pacific Coast Biscuit Co. vs. Chinese Grocers Association, 65 Phil. 375; Fletcher American National Bank vs. Ang Cheng Lian, 65 Phil. 385; Pacific Commercial Co. vs. American Apothecaries Co., 65 Phil. 429; Gopoco Grocery vs. Pacific Coast Biscuit Co., 65 Phil. 443)."

Then, in *Serrano vs. Central Bank of the Philippines, 96 SCRA 102-103*, the Supreme Court reiterated the above ruling and ruled:

> "Bank deposits are in the nature of irregular deposits. They are really loans because they earn interest. All kinds of bank deposits, whether fixed, savings, or current are to be

> treated as loans and are to be covered by the law on loans. Current and savings deposits are loans to a bank because it can use the same. The petitioner here in making time deposits that earn interests with respondent Overseas Bank of Manila was in reality a creditor of the respondent Bank and not a depositor. The respondent Bank was in turn a debtor of petitioner. Failure of the respondent Bank to honor the time deposit is failure to pay its obligation as a debtor and not a breach of trust arising from a depositary's failure to return the subject matter of the deposit."

Pursuant to the above rulings of the Supreme Court, the nature of relationship between a person making the time deposit and a bank is that of a creditor and a debtor. Petitioner, therefore, is liable to DST under *Section 180 of the NIRC of 1997, as amended.*

For all the foregoing, the Court finds that the appealed decision is not flawed by reversible error but, on the contrary, conforms to the evidence of record and the applicable law and jurisprudence. We, therefore, affirm the same.

Pursuant, however, to *Section 248 of the NIRC of 1997, as amended*, a penalty equivalent to twenty five (25%) percent of the amount due shall be imposed, and pursuant further to *Section 249 of the same Code*, the amount due, P71,169,228.74, shall bear delinquency interest at the rate of twenty (20%) percent per annum from January 8, 2004 (the 31st day from petitioner's receipt of respondent's decision on the protest), until the amount is fully paid.

WHEREFORE, premises considered, the present Petition For Review is hereby **DISMISSED** for lack of merit. The decision dated November 24, 2003 of the Bureau of Internal Revenue is hereby **AFFIRMED**, with the **MODIFICATION** that a penalty equivalent to twenty five (25%) percent of P71,169,228.74, the amount due, is hereby imposed, plus delinquency interest of twenty (20%) percent per annum from January 8, 2004, until the amount is fully paid, pursuant to *Sections 248 and 249 of the NIRC of 1997, as amended.*

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

A T T E S T A T I O N

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

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

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

ERNESTO D. ACOSTA
Presiding Justice