REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

INTERNATIONAL EXCHANGE BANK,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 87
(C.T.A. CASE NO. 6159)

Present:
Acosta, *Presiding Justice*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, *JJ.*

Promulgated:

JAN 3 0 2006

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D E C I S I O N

CASTAÑEDA, JR., J.:

For review is the Decision of a Division of the Court of Tax Appeals (the Court in Division) dated October 26, 2004, which partially granted petitioner's Petition for Review in C.T.A. Case No. 6159. The Decision of the Court in Division was subsequently affirmed in all respects in a Resolution dated April 20, 2005. The Court in Division ordered the cancellation and withdrawal of deficiency assessments for documentary stamp tax on petitioner's reverse repurchase agreements in the amounts of P6,720,183.77 and P22,838,302.16 inclusive of surcharges, for the years 1996 and 1997, respectively, but upheld respondent's deficiency assessments for documentary stamp tax on petitioner's Savings Deposits-Fixed Savings Deposits for the taxable years 1996 and 1997 in the total amount of P71,005,757.77. In addition, the petitioner was ordered to pay the respondent a 20% delinquency interest from February 12, 2000, until fully paid pursuant to Section 249 of the 1997 NIRC.

The facts as found by the Court in Division are as follows:

> "Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. *(par. 1, Joint Stipulation of Facts)*
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> On April 13, 1999, Letter of Authority No. 000020535 was served upon petitioner for the examination of its "books of accounts and other accounting records" for the year 1997 and "unverified prior years". The examination was conducted by the "Special Team created pursuant to RSO 697-98" headed by Group Head/Supervisor Cecilia C. Campos. *(par. 3, Joint Stipulation of Facts)*
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> On November 16, 1999, petitioner received a notice for an informal conference. Thereafter, petitioner's representatives met with the Special Team in December 1999, whereby issues relating to transactions, such as final withholding taxes and gross receipts tax (GRT) were resolved. *(par. 4 & 5, Joint Stipulation of Facts)*
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> On January 6, 2000, petitioner paid the deficiency taxes for particular transactions and items (specially for final withholding taxes, gross receipts tax, etc.) in the total amount of P7,122,656.99. *(par. 6, Joint Stipulation of Facts)*
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> On the same date, an undated Pre-Assessment Notice (PAN) was personally served to petitioner with attached "Details of

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Discrepancies" for 1996 and 1997 consisting of the "industry issues", i.e. alleged deficiency documentary stamp tax on GS-RRPA (Reverse Repurchase Agreement) and SA-FSD (Savings Deposit). *(par. 7, Joint Stipulation of Facts)* Details of Discrepancies are as follows:

Details of Discrepancies
(Taxable Year 1996)

INDUSTRY ISSUES

DOCUMENTARY STAMP TAX (DST) — On Government Securities Purchased — RRPA and Savings Deposits — FSD totaling P25,180,492.15

Government Securities Purchased — RRP amounting to P3,584,098,013.35 is subject to DST under Sec. 180 of the NIRC, as amended, since this falls under the classification of Deposit Substitutes as defined by RR 3-97.

Savings Deposits — FSD amounting to P9,845,497,800.27 should be treated as time deposits considering that its features are very much the same as time deposits (interest rates; terms). In substance, these are certificates of deposit subject to Documentary Stamp Tax under Section 180 of the NIRC which provides among others that certificates of deposit bearing interest and others not payable on sight or demand are subject to DST.

(Taxable Year 1997)

DOCUMENTARY STAMP TAX (DST) — On Government Securities Purchased — RRPA and Savings Deposits — FSD totaling P75,383,751.55.

Government Securities Purchased — RRP amounting to P12,180,427,820.44 is subject to DST under Sec. 180 of the NIRC, as amended, since this falls under the classification of Deposit Substitutes as defined by RR 3-97.

Savings Deposits — FSD amounting to P28,024,239,673.35 should be treated as time deposits considering that its features are very much the same as time deposits (interest rates; terms). In substance, these are certificate of deposits subject to Documentary Stamp Tax under Section 180 of the NIRC which provides among others that certificates of deposit bearing interest and others not payable on sight or demand are subject to DST.

The PAN expressly granted petitioner a fifteen-day period from receipt within which to "see the Assistant Commissioner-Enforcement Service to clarify issues arising from the investigation and/or review of [its] tax case" should petitioner be "not agreeable to the findings." *(par. 8, Joint Stipulation of Facts)*

Petitioner received the Assessment Notices and the Demand Letter on January 12, 2000. Details are shown below:

Documentary Stamp Tax
Period Covered 1996

Tax Due S.180 NIRC	*P20,144,393.72*
Add: Surcharge S.248 NIRC	*5,036,098.43*
Total Amount Payable	*P25,180,492.15*

(Annex "J", Petition for Review)

Documentary Stamp Tax
Period Covered 1997

Tax Due S.180 NIRC	*P60,307,001.24*
Add: Surcharge S.248 NIRC	*15,076,750.31*
Total Amount Payable	*P75,383,751.55*

(Annex "K", Petition for Review)

On February 11, 2000, petitioner filed a protest letter requesting for a reconsideration of the foregoing assessments. *(par. 10, Joint Stipulation of Facts)*

The following objections were raised by petitioner in the protest letter, to wit:

A. The assessments were null and void for having been issued —

1. Without authority and due process; and
2. Beyond the prescribed period for making assessments

B. The assessments are null and void for utter lack of factual and legal bases.

1. There was no law in 1996 and 1997 imposing the DST on Reverse Repurchase Agreements.

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2. The Bangko Sentral ng Pilipinas (BSP) not the Bank, is liable for DST.
3. There is no law imposing DST on Savings Account-Fixed Savings Deposit.

C. But even on the gratuitous assumption that the deficiency assessments for DST are proper, the imposition of the surcharge is patently without legal authority. *(pp. 632–651, BIR Records)*

Due to respondent's inaction on the protest, petitioner filed its petition for review with this court on September 7, 2000.

The issues which were jointly stipulated by the parties are:

1. Whether or not the Assessment Notice was issued without authority, as such was an industry policy audit pursuant to Revenue Memorandum Order No. 2-98 (sic) and, as it was issued in violation of the petitioner's right to due process.

2. On the assumption that the Assessment is valid, whether the three (3) year prescriptive period provided in Section 203 of the National Internal Revenue Code for the assessment of taxes has lapsed with respect to the DST accruing and payable as of December 31, 1996.

3. On the assumption that the Assessment is valid, whether the amendments to Section 180 of the National Internal Revenue Code which took effect on January 1, 1998 can be made to apply retroactively to the petitioner, considering that the subject assessment was for taxable years 1996 and 1997.

4. On the assumption that the Assessment is valid, whether the petitioner should be held liable for the payment of DST on its purchase of reverse repurchase agreements from the BSP, despite the BSP's express covenant to shoulder the DST.

5. On the assumption that the Assessment is valid, whether the petitioner is liable for the total amount of P100,564,243.70 as deficiency documentary stamp tax for taxable years ended December 31, 1996 and 1997.

After trial on the merits of the case, the Court in Division promulgated its Decision on October 26, 2004 holding that 1) there was substantial compliance with the requirements of due process; 2) the assessment for petitioner's deficiency DST has not yet prescribed because there was no specific provision under the old NIRC nor in the regulations which require the filing of a documentary stamp tax return, hence, the prescriptive periods provided in Sections 203 and 222 do not apply; 3) deposit substitutes are not subject to DST under Section 180 of the old NIRC, hence, petitioner's transactions pertaining to reverse repurchase agreements are not taxable under Section 180 of the old NIRC; 4) petitioner is liable for the deficiency DST assessments for the years 1996 and 1997 on its Savings Deposits-Fixed Savings Deposit (FSD), which shall be treated as time deposits considering that its features are very much the same as time deposits (interest rates; terms). The dispositive portion of the Decision of the Court in Division reads:

> WHEREFORE, petitioner's deficiency assessments pertaining to the reverse repurchase agreements in the amounts of P6,720,183.77 and P22,838,302.16 inclusive of surcharges, for the years 1996 and 1997, respectively, are hereby CANCELLED and WITHDRAWN. However, the deficiency assessments pertaining to savings deposits-FSD are hereby UPHELD and petitioner is ORDERED to PAY the respondent the amount of P71,005,757.77 representing deficiency documentary stamp tax for the years 1996 and 1997. In addition thereto, petitioner is ORDERED to PAY respondent 20% delinquency interest from February 12, 2000 until fully paid pursuant to Section 249 of the 1997 NIRC.

On November 22, 2004, the petitioner filed a Motion for Reconsideration which the Court in Division denied in a Resolution promulgated on April 20, 2005. Hence, this appeal to the Court of Tax Appeals *En Banc* (the Court *En Banc*). Petitioner assigns the following as the errors committed by the Court in Division:

A. THE HONORABLE FIRST DIVISION ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION ON THE GROUND THAT THE ISSUES RAISED THEREIN, SAVE FOR THE FOURTH ISSUE, ARE "MERE REHASH OF THE JOINT STIPULATION OF ISSUES ALREADY PASSED UPON AND SETTLED" BY THE HONORABLE FIRST DIVISION IN ITS DECISION OF 26 OCTOBER 2004, THUS HOLDING THAT PETITIONER'S SAVINGS ACCOUNT-FSD IS SUBJECT TO DST FOR THE YEARS 1996 AND 1997.

B. THE LEGISLATIVE INTERPRETATION THAT THE SO-CALLED "SPECIAL SAVINGS ACCOUNT" IS NOT SUBJECT TO DST UNDER THE 1977 AND 1997 TAX CODES SHOULD BE GIVEN GREAT WEIGHT.

a. THE HONORABLE FIRST DIVISION ERRED IN HOLDING THAT THE COMMITTEE REPORTS AND THE LEGISLATIVE JOURNALS MAY NOT BE CONSIDERED FOR THE PURPOSE OF CLEARING AN AMBIGUITY IN THE INTERPRETATION OF A LAW.

b. THE HONORABLE FIRST DIVISION ERRED IN RULING THAT THE STATEMENTS STATED IN THE COMMITTEE REPORTS ARE MERE OPINIONS OF SOME MEMBERS OF CONGRESS AND CANNOT BE CONSIDERED AS THE VOICE OF THE LEGISLATURE IN THE INTERPRETATION OF THE NEW DST LAW.

Petitioner argues that the Documentary Stamps Tax will accrue only upon the execution of the document evidencing the exercise of a privilege. It is not imposed on the transaction or the exercise of the privilege alone. This is very clear from the ruling of the Supreme Court in the case of Philippine Home Assurance Corporation vs. The

Honorable Commissioner of Internal Revenue[1] that documentary stamp taxes are thus levied on the exercise of these privileges through the execution of specific instruments and the documentary stamp taxes must be paid upon the issuance of the said instruments. And although petitioner agrees "that a certificate of deposit is a taxable document, it takes exception to the ruling of the Court in Division that its Savings Account-FSD is equivalent to a certificate of deposit relying on the definition of "time deposit" found in Black's Law Dictionary because such definition also expressly includes or even considers a savings account as synonymous to a time deposit.

In lieu of Black's definition, the petitioner proposes the Supreme Court's definition of a certificate of deposit in the case of Far East Bank and Trust Company vs. Estrella O. Quirimit[2] as the more appropriate definition for this purpose, thus:

> 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. xxx xxx xxx

Petitioner contends that the foregoing definition clearly states that a certificate of deposit is a negotiable instrument, in contrast, the

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[1] G.R. No. 119446, January 21, 1999 (301 SCRA 443).
[2] G.R. No. 148582, January 16, 2002 (373 SCRA 665).

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passbook issued by petitioner for its Savings Account-FSD is not payable to the order of the depositor or to some other person; hence, it cannot be considered a negotiable instrument. Further, applying the principle of ejusdem generis, all the documents (promissory notes, bills of exchange, drafts, certificates of deposit bearing interest and others not payable at sight or demand) enumerated in Section 180 of the 1977 Tax Code are negotiable instruments. The Savings Account-FSD passbook clearly states that the money can only be withdrawn by the depositor or a duly authorized representative of the depositor; thus, it is not negotiable. Petitioner reiterates that only the following documents are subject to DST under Section 180 of the 1977 Tax Code, to wit:

1. Promissory notes;
2. Bills of exchanges;
3. Drafts;
4. Certificates of deposit bearing interest;
5. Others not payable on sight or demand.

Petitioner avers that considering that none of the foregoing documents were issued by it for its Savings Account-FSD, no DST is due from said Savings Account-FSD.

In addition, petitioner argues that the assessment notices issued by respondent for calendar year 1996 are null and void for having been issued beyond the 3-year prescriptive period. According to the

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petitioner, it filed its monthly information return for DST paid for the month of December 1996 on 10 January 1997 while the assessment notices were issued by respondent on 12 January 2000, or beyond three (3) years from the time the return was filed.

Petitioner alleges that the monthly information returns filed by petitioner with respondent are the returns contemplated under Section 203 for the purpose of determining the commencement of the running of the 3-year prescriptive period to issue an assessment. According to the petitioner, Revenue Regulations No. 4-96 requires banks to, among others, file monthly information return for the DST paid for the month within ten (10) days following the close of each month. Hence, contrary to the findings of the Honorable First Division, the filing of the monthly information return is clearly required by law. Petitioner argues that as long as the regulation requires the filing of a return, the rule on prescription would become operative. Therefore, the assessment notices issued by respondent against petitioner for calendar year 1996 are null and void for having been issued beyond the 3-year prescriptive period.

Petitioner likewise argues that its right to due process was violated when respondent issued the assessment notices six (6) days after the issuance of the PAN on January 6, 2000 and before petitioner's 15-day period to respond had expired. This is a clear violation of Section 228 of the 1997 Tax Code and Revenue Regulations No. 12-99. Although it is true that petitioner's representative met with the representatives of the respondent in December 1999, the holding of such conference cannot be considered as "substantial compliance" with petitioner's right to due process required under Sec. 228 and Revenue Regulations No. 12-99. In other words, the informal conference is between petitioner and the special team, and it cannot be substituted with the right of petitioner to respond to the PAN issued by respondent. Moreover, the filing of the protest to the assessment notices cannot be equated as the response of petitioner to the PAN just because the "deficiency taxes specified in the PAN are similar to those stated in the assessment notices". Petitioner believes that the assessment notices should have been issued only after considering the explanation given by the petitioner on the PAN.

On the second assigned error, petitioner argues that it was Section 5 of R.A. No. 9243 (the "2004 DST Amendment") which amended Section 180 of the 1997 Tax Code (which, to reiterate, is to a large extent the same Section 180 of the 1977 Tax Code), by changing "certificates of deposits drawing interest" to "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" in the enumeration of taxable documents.

Petitioner alleges that this expanded definition of "certificates of deposits" should be understood in connection with Section 9 of the 2004 DST Amendment which included bank deposit accounts without a fixed term or maturity in the enumeration of DST-exempt documents – to establish that such accounts which were not subject to DST prior to the 2004 DST Amendment continue to be exempt from DST. Thus, Section 9 reads, as follows:

> SEC. 9. Section 199 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:
>
> SEC. 199 – Documents and Papers Not Subject to Stamp Tax. – The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents, and papers shall be exempt from the documentary stamp tax:
>
> (K) Bank deposit accounts without a fixed term or maturity.

Petitioner avers that since it is well-settled that laws shall have no retroactive effect, unless the contrary is provided, the taxability of the transactions covered by the Savings Account – FSD only commenced after the enactment of R.A. 9243 and not anytime prior to that date.

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Petitioner submits that it was error for the Honorable First Division to rationalize that the quoted reports, as recorded in the legislative journals, are not controlling and may not be considered for the purpose of clearing an ambiguity of a given law, thereby utterly disregarding the same. "Although these deliberations and interpretations of the members of Congress do not control the interpretation of an ambiguous law, these still carry a persuasive effect on the interpreting magistrate. It was thus a grave mistake on the part of the Honorable First Division to blindly ignore the committee deliberations, which clearly could be some form of means that could possibly shed light with respect to the present controversy" *(Petition for Review, p.34).*

"The quoted portions were maintained by the Chairman of the Committee on Ways and Means deliberating with the Undersecretary of the Department of Finance and a member of the Bankers Association of the Philippines. Still, another quoted record was given by Senator Ralph Recto, who sponsored the bill. The deliberations and speeches, which transcripts were quoted herein, cannot be considered as mere opinions as these were stated by members of Congress and/or the Committee on Ways and Means who carried the bill through until its passage. It is thus flawed to relegate these quoted portions of the deliberations as mere opinions of just "some members" of Congress" *(Petition for Review, pp.34-35)*.

We are not persuaded.

The issue in the case before Us is not novel. This Court had already ruled[3] that a deposit account which has the same features as a time deposit account, *i.e.*, a fixed term in order to earn a higher interest rate, is subject to the Documentary Stamp Tax (DST) imposed in Section 180 of the National Internal Revenue Code of 1977, as amended. Said Section provides:

> "Sec. 180. **Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.** — On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities, or *certificates of deposit drawing interest*, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each two hundred pesos, 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*,

[3] United Overseas Bank Philippines vs. Commissioner of Internal Revenue, C.T.A. E.B. NO. 31, March 10, 2005; Traders Royal Bank vs. Commissioner of Internal Revenue, C.T.A. E.B. NO. 34, April 26, 2005; and Allied Banking Corporation vs. Guillermo L. Parayno, Jr., in his official capacity as the Commissioner of Internal Revenue, and Eleanor N. Litao, in her official capacity as Chief, LT-Collection and Enforcement Division, Bureau of Internal Revenue, C.T.A. E.B. NO. 69, July 11, 2005; Banco de Oro Universal Bank vs. Commis-sioner of Internal Revenue, C.T.A. E.B. NO. 39, October 28, 2005; Philippine Banking Corporation (Now: Global Business Bank, Inc.) vs. Commissioner of Internal Revenue, C.T.A. E.B. NO. 63, November 23, 2005.

> *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. *(As amended by R.A. 7660)*" *(Italics supplied)*

The provision itself already specified the documents that are subject to the DST, to wit:

1. Loan Agreements;
2. Bills of Exchange;
3. Drafts;
4. Instruments and Securities issued by the Government or any of its instrumentalities;
5. *Certificates of deposit drawing interest*;
6. Orders for the payment of any sum of money otherwise than at sight or on demand; and
7. Promissory Notes, whether negotiable or non-negotiable.

The language of the statute is clear, the DST is imposed on all certificates of deposit drawing interest. It is therefore important to know what is meant by the term "certificate of deposit". The Supreme Court defined a *certificate of deposit* 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 some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created".[4]

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[4] Far East Bank and Trust Company vs. Querimit, G.R. No. 148582, January 16, 2002 (373 SCRA 665).

In the foregoing definition of a certificate of deposit, the Supreme Court neither referred to a particular form of deposit nor limited the coverage thereof to time deposits only. This Court is bound by such pronouncement. The High Court used the term "written acknowledgment" which means that for as long as there is some written memorandum of the fact that the bank accepted a deposit of a sum of money from a depositor, the writing constitutes a certificate of deposit. Hence, a passbook representing an interest earning deposit account issued by a bank qualifies as a certificate of deposit drawing interest.

Both the law and jurisprudence 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.

It is well-settled that certificates of time deposit are subject to the DST and that a certificate of time deposit is but a type of a certificate of deposit drawing interest. Thus, in resolving the issue before Us, it is necessary to determine whether petitioner's Savings Account – Fixed Savings Deposit (SA-FSD) has the same nature and characteristics as a time deposit. In this regard, the findings of fact stated in the assailed Decision are as follows:

> "In this case, a depositor of a savings deposit-FSD is required to keep the money with the bank for at least thirty (30) days in order to yield a higher interest rate. Otherwise, the deposit earns interest pertaining only to a regular savings deposit.
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> The same feature is present in a time deposit. A depositor is allowed to withdraw his time deposit even before its maturity subject to bank charges on its pretermination and the depositor loses his entitlement to earn the interest rate corresponding to the time deposit. Instead, he earns interest pertaining only to a regular savings deposit. Thus, petitioner's argument that the savings deposit-FSD is withdrawable anytime as opposed to a time deposit which has a maturity date, is not tenable. In both cases, the deposit may be withdrawn anytime but the depositor gets to earn a lower rate of interest. The only difference lies on the evidence of deposit, a savings deposit-FSD is evidenced by a passbook, while a time deposit is evidenced by a certificate of time deposit.

In order for a depositor to earn the agreed higher interest rate in a SA-FSD, the amount of deposit must be maintained for a fixed period. Such being the case, We agree with the finding that the SA-FSD is a deposit account with a fixed term. Withdrawal before the expiration of said fixed term results in the reduction of the interest rate. Having a fixed term and reduction of interest rate in case of pre-termination are *essentially* the features of a time deposit. Hence, this Court concurs with the conclusion reached in the assailed Decision that petitioner's SA-FSD and time deposit are substantially the same, if not one and the same product, and therefore both are subject to the DST on certificates of deposit drawing interest under Sec. 180 of the NIRC.

It has been ruled that "in determining whether certain instruments were subject to documentary stamp taxes, substance would control over form and labels, xxx xxx xxx."[5] Since the Documentary Stamp Tax is an excise tax "upon documents xxx xxx xxx levied, collected and paid for, and in respect of the transaction so had or accomplished"[6], the fact that the SA-FSD is evidenced by a passbook is immaterial considering that the rule on equality and uniformity in taxation requires the imposition of Documentary Stamp Tax on documents evidencing transactions of the same kind, in this case on all certificates of deposits drawing interest. "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".[7]

Petitioner contends that Sec. 180 of the NIRC of 1977 imposes the tax only on *negotiable* certificates of deposit. This argument is also untenable considering that in Sec. 217 of the old Tax Code (Commonwealth Act No. 466, as amended) the requirement of negotiability pertained only to promissory notes. Said section reads as follows:

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[5] Knudsen Creamery Co. of California v. United States, Civ. No. 15336, June 3, 1954 [121 F. Suppl. 860].
[6] Sec. 173, National Internal Revenue Code of 1977.
[7] Resolution, Philippine Banking Corporation, now: Global Business Bank, Inc. vs. Commissioner of Internal Revenue, C.T.A. CASE NO. 6395, January 14, 2005.

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> SEC. 217. **Stamp tax on negotiable promissory notes, bills of exchange, drafts, certificate of deposit bearing interest and others not payable on sight or demand**. – On all bills of exchange (between points within the Philippines), drafts or certificates of deposit drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or **all negotiable promissory notes**, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of four centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange, draft, certificate of deposit, or note. (As amended by Sec. 6, Republic Act No. 40) *(Emphasis supplied)*

A perusal of the aforementioned provision would readily show the intention of the legislature to limit the requirement of negotiability to promissory notes only. Such intention is disclosed by the fact that the word *negotiable* was written before *promissory notes* followed by a comma, hence, the word *negotiable* modifies promissory notes only. Moreover, the body of the provision clearly stated that the DST is due on *all negotiable promissory notes* thereby removing any doubt as to which document was required to be negotiable before the DST can be imposed. Therefore, with respect to all the other documents mentioned in Sec. 217 of the old NIRC, the attribute of negotiability is not required.

Secondly, the applicable provision is Sec. 180 of the NIRC of 1977, as amended, which expressly provides that all promissory notes, whether negotiable or non-negotiable, are subject to DST. Thus, the DST was imposed on all promissory notes irrespective of their negotiability. Consequently, the negotiable character of any and all documents mentioned in Sec. 180 had been rendered irrelevant in the imposition of the DST. Hence, all documents mentioned therein are subject to DST regardless of whether the documents are negotiable or not.

With regard to petitioner's argument that the assessment notices issued by respondent for calendar year 1996 are null and void for having been issued beyond the 3-year prescriptive period, We concur with the ruling of the Court in Division that the deficiency DST assessment was not barred by prescription because there was no requirement for the filing of a documentary stamp tax return under the NIRC of 1977, as amended, thus:

> "The assessment for petitioner's deficiency DST has not yet prescribed. Sections 203 and 222 of the 1997 NIRC, provides:
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> xxx xxx xxx
>
> The foregoing statute of limitations applies to the assessment of National Internal Revenue Taxes which require the filing of returns. In this case, there was no specific provision under the old NIRC nor in the regulations which require the filing of a documentary stamp tax return. Hence, the respondent is not barred by the aforequoted prescriptive periods on the assessment of petitioner's deficiency documentary stamp tax.
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> Section 203 presupposes that a return is required to be filed by law because the three-year prescriptive period to assess is reckoned after the last day prescribed by law for such filing. Even Section 222 of the same code cannot be made applicable because this section applies to the filing of a false or fraudulent return or failure to file a return. There can be no failure or omission to file a return where no return is required to be filed by law.

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> As aptly explained by the Supreme Court in the case of Commissioner of Internal Revenue vs. Ayala Securities Corporation, 101 SCRA 231, and we quote, thus:
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> > "It is well settled limitations upon the right of the government to assess and collect taxes will not be presumed in the absence of clear legislation to the contrary. The existence of a time limit beyond which the government may recover unpaid taxes is purely dependent upon such express statutory provision (51 Am. Jur. 867; 10 Mertens Law on Federal Income Taxation, par. 57.02). It follows that in the absence of express statutory provision, the right of the government to assess unpaid taxes is imprescriptible. Since there is no express statutory provision limiting the right of the Commissioner of Internal Revenue to assess the tax on unreasonable accumulation of surplus provided in Section 25 of the Revenue Code, said tax may be assessed at any time."
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> Moreover, the monthly information return required to be filed by banks, financial institutions, non-bank financial intermediaries and insurance companies under Revenue Regulations (RR) No. 4-96 is not the return contemplated under Sections 203 and 222 of the NIRC. It is merely an information return where the documentary stamp taxes paid for the month is disclosed."

Petitioner further argues that the assessments were issued in violation of its right to due process. Again, We concur with the ruling of the Court in Division that there was substantial compliance with the requirement of due process. The essence of due process is the "opportunity to raise objections to government action"[8]. Petitioner was given the opportunity to protest the assessment notices and it even requested for a re-investigation (*p. 651, BIR Records*).

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[8] Ferdinand R. Marcos II vs. Court of Appeals, The Commissioner of the Bureau of Internal Revenue and Herminia D. de Guzman, G.R. No. 120880, June 5, 1997 (273 SCRA 47).

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We also cannot sustain petitioner's argument that the legislative discussions on the House and Senate bills pertaining to Republic Act No. 9243, "An Act Rationalizing the Provisions on the Documentary Stamps Tax of the National Internal Revenue Code of 1997", contained in the Committee Reports and the Legislative Journals are controlling and should be given great weight. As aptly stated by the Court in Division in the assailed Resolution, "[c]ourts are the final arbiters as to the proper construction of statutes". This was explained by the Supreme Court in the following manner:

> "In the case of *Manila Jockey Club, Inc, v. Games and Amusements Board, supra*, we held that legislative debates are expressive of the views and motives of individual members and are not always safe guides and, hence, may not be resorted to, in ascertaining the meaning and purpose of the lawmaking body. It is impossible to determine with certainty what construction was put upon an act by the members of the legislative body that passed the bill, by resorting to the speeches of the members thereof. Those who did not speak, may not have agreed with those who did; and those who spoke, might differ from each other (Sutherland on Statutory Construction, 499-501; Ramos vs. Alvarez, 97 Phil 844).
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> There have been cases in the past where we adhered to this doctrine. Thus, we held that individual statements made by Senators on the floor of the Senate do not necessarily reflect the view of the Senate. Much less do they indicate the intent of the House of Representatives (Casco Phil. Chem. Co., Inc. v. Gimenez, 7 SCRA 347; Resins, Inc. v. Auditor General, 25 SCRA 754). Accordingly, they are not controlling in the interpretation of the law in question (Phil. Assn. of Government Retirees, Inc. v. GSIS, 14 SCRA 610). Some statements may be deemed to be a mere personal opinion of the legislator (Mayon Motors, Inc. vs. Acting Com. of Internal Revenue, 1 SCRA 918).
>
> The interpretation of statutes is for the courts. And the courts are not necessarily bound by one legislator's opinion, expressed in Congressional debates, concerning the application of existing laws

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(Song Kiat Chocolate Factory vs. Central Bank of the Phils., 102 Phil. 477)."[9]

In a very recent case involving the same issue, We have ruled that in enacting R.A. No. 9243, "[t]he lawmaking body unmistakably adopted this Court's interpretation of Section 180 of the National Internal Revenue Code of 1997, and made clearer the language used to include therein certificates and other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit or drawing interest having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand. When a statute is re-enacted or revised after it has received judicial construction, it is presumed that the legislature intended that construction to continue."[10] Likewise, R.A. No. 9243 in Sec. 9 thereof, now expressly exempts from DST all "bank deposit accounts without a fixed term or maturity" thereby removing any doubt that deposit accounts with a fixed term have always been subject to DST.

All the foregoing considered, We find no cogent reason to reverse the assailed Decision and Resolution of the Division of this Court.

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[9] Hospicio Nilo vs. Honorable Court of Appeals and Almario Gatchalian, No. L-34586, April 2, 1984; and Fortunato Castro vs. Juan Castro, No. L-36625, April 2, 1984 (128 SCRA 519).

[10] Banco De Oro Universal Bank vs. Commissioner of Internal Revenue, C.T.A. E.B. No. 39, October 28, 2005.

WHEREFORE, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit. The assailed Decision and Resolution are hereby **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

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

OLGA PALANCA-ENRIQUEZ
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 this Court.

ERNESTO D. ACOSTA
Presiding Justice

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Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

INTERNATIONAL EXHANGE BANK,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

EB CASE NO. 87
CTA CASE No.6159

Members:
ACOSTA, P.J
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.:

Promulgated:
JAN 3 0 2006

x---x

Dissenting Opinion

In a Resolution dated April 20, 2005, the Court's First Division composed of Justice Acosta, as Chairperson, and Justice Bautista and the undersigned as Members, We affirmed the Decision promulgated on October 26, 2004, which partially granted petitioner's Petition for Review in C.T.A Case No. 6159. In the assailed Decision, the Court ordered the cancellation and withdrawal of deficiency assessments for documentary stamp tax on petitioner's reverse repurchase agreements, but upheld respondent's assessments for documentary stamp tax on petitioner's Savings Deposits-Fixed Savings Deposits (FSD). However, upon careful and thorough perusal, evaluation and consideration of the arguments raised by both parties, I would like to reverse my decision with regard to the liability of the petitioner's Savings Deposits-FSD for deficiency documentary stamp tax.

It is my opinion that the Savings Deposits-FSD, 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, Savings Deposits-FSD has no maturity date. The period offered to a prospective Savings Deposits-FSD 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.

Savings Deposits-FSD 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 Savings Account-FSD 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 Savings Deposits-FSD 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 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:

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"**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, <u>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</u>, 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."

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 Savings Deposits-FSD 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 Savings Account-FSD of the petitioner to DST.

WHEREFORE, premises considered, I would like to reverse my decision in the Resolution dated April 20, 2005 and vote to **GRANT** the Petition for Review.

CAESAR A. CASANOVA
Associate Justice