REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

ALLIED BANKING CORPORATION,
Petitioner,

- versus -

GUILLERMO L. PARAYNO, JR., in his official capacity as the COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6844

Members:

CASTAÑEDA, JR., *Chairman*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
MAY 1 1 2006

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DECISION

CASTAÑEDA, JR., J.:

This case seeks the review and reversal of the decision rendered by the respondent on November 24, 2003 denying the protest against Assessment Notice No. DST-2-99-000016 and ordering petitioner to pay the respondent the amount of P57,570,201.96 as deficiency documentary stamp tax for taxable year 1999.

Petitioner is a duly licensed commercial bank organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Allied Bank Center, 6754 Ayala Avenue, Makati

City, Metro Manila. On the other hand, respondent is the duly designated and incumbent Commissioner of Internal Revenue authorized to act on claims for refund and protests against assessments, among others, with office address at the National Office Building of the Bureau of Internal Revenue, Agham Road, Diliman, Quezon City.

On April 22, 2002, petitioner received a Preliminary Assessment Notice, Assessment No. DST-2-99-000016 for deficiency documentary stamp tax - industry issue, on its Special Savings Placements in the amount of Fifty-Three Million Three Hundred Seventy-Six Thousand Eight Hundred Pesos and Ninety-Nine Centavos (P53,376,800.99), inclusive of surcharge and interest.[1]

On May 7, 2002, petitioner filed with the Bureau of Internal Revenue (BIR) a protest letter dated May 7, 2002 against the said Preliminary Assessment Notice.

On December 3, 2002, petitioner received a Formal Letter of Demand from the BIR informing it that after investigation, there has been found due from petitioner deficiency documentary stamp tax – industry issue, for calendar year 1999 as shown in Assessment No. DST 2-99-000016 in the total amount of P57,570,201.96 representing documentary stamp tax due on its Special Savings Placements, plus surcharge, interest and

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[1] As shown in Assessment Notice No. DST-2-99-000016

compromise penalty. On December 17, 2002, petitioner filed with the BIR its protest thereon.[2]

On December 4, 2003, petitioner received a copy of the appealed decision denying its protest and affirming *in toto* the disputed Preliminary Assessment Notice and Formal Letter of Demand.[3]

Hence, the present petition filed on January 5, 2004.

In his Answer filed on February 16, 2004, respondent alleges, among others, that the governing law is Section 180 of the Tax Code of 1997 which imposes documentary stamp taxes 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. In this case, what is taxed is a certificate of deposit.

Respondent argues that there is no merit in petitioner's claim that its Market Savings Deposit is but a regular savings account considering that the depositor can withdraw his deposit anytime. The nature of the penalty imposed on both the Market Savings Deposit and the time deposit lends more credence in logically inferring that the Market Savings Deposit is a class of time deposit rather than a regular savings deposit. In both the Market Savings Deposit and time deposit, a considerable reduction of

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[2] Stipulation of Facts, pars. 5 & 7, Records, page 78
[3] *Ibid.*, par. 13, Records, page 79

interest is exacted in cases of withdrawal and/or pre-termination. However, in regular savings account, no such reduction occurs. Assuming *arguendo* that the Market Savings Deposit 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. As such, it is subject to documentary stamp tax under Section 180 of the Tax Code.

The parties agreed to submit the following issues to be resolved by this Court:

> ***1. Whether or not the market savings deposit is a certificate of deposit subject to documentary stamp tax under Section 180 of the National Internal Revenue Code (NIRC); and***
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> ***2. Assuming arguendo that the market savings deposit is not a certificate of deposit, whether or not it is a loan agreement subject to the documentary stamp tax under Section 180 of the NIRC.***

According to the petitioner, its Market Savings Deposits are not subject to documentary stamp tax. Unlike a Time Deposit, the Market Savings Deposit has no specific maturity date and the depositor can withdraw his deposit any time. Thus, petitioner contends that its Market Savings Deposit has no fixed maturity but is payable on sight or demand, hence, cannot be subject to documentary stamp tax which is imposed only on "certificates of deposits bearing interest x x x not payable on sight or demand". Unlike in a Time Deposit, wherein the maturity date is clearly specified on the face of the certificate itself; and corresponds to the exact date when the obligation on the part of the Bank to pay the certificate holder becomes due; and the contract of time deposit with a higher interest rate comes to an end, subject to renewal only upon mutual agreement of the parties; in petitioner's Market Savings Deposit, the contract between the Bank and the depositor does not cease but continues in accordance with the terms and conditions of the deposit notwithstanding the existence of circumstances that would warrant the imposition of a reduced interest rate. For this reason, in petitioner's Market Savings Deposit, there is no contract that fixes the maturity date of the placement renewable at the end of each period but a continuing agreement between the depositor and the Bank for the latter to pay interest at an increased or reduced rate for as long as the deposit is maintained.

Petitioner believes that the present controversy in the interpretation of Section 180 of the National Internal Revenue Code (NIRC) of 1997 can be readily revealed on the "face value" of the "certificate of deposit" on which the documentary stamp tax must be based, and such certificate of deposit must not be payable on demand but must have a fixed maturity. Petitioner considers its Market Savings Deposit as not having a fixed maturity rate as to come within the contemplation of Section 180 of the 1997 NIRC.

In addition, petitioner claims that the regular savings account passbook evidencing the Market Savings Deposit transactions is no more than a bankbook, that is, the depositor's book in which bank records deposits and withdrawals. It contains no such words normally found in a certificate of deposit, either acknowledging petitioner's receipt of a sum of money on deposit or promising to pay to the depositor, to the order of the depositor, or to some other person or his order the sum of money. As elucidated by petitioner, in the Market Savings Deposit Passbook (Exhibit A), the Market Savings Deposit is recorded in an ordinary passbook which is merely a record of all the transactions of the depositor and the date of such transactions but the same is not signed by the Bank or its representative. Thus, it cannot be deemed as an acknowledgment by the Bank or its representative, that a depositor has made a deposit which was received by the Bank and that it will pay the depositor should he decide to withdraw his money.

Further, for documentary stamp tax to be imposed, there must be a taxable document for, as the word itself implies, the same is a tax on documents. The use of the phrase "certificate of deposit" under the same Section of the 1997 NIRC is deliberate for the rate of the documentary tax to be collected on "certificates of deposit drawing interest, orders for the payment of any sum of money otherwise than on sight or demand" is the "face value thereof". Thus, petitioner argues that the tax liability, if any, and the amount thereof, must be determined solely on the basis of the certificate itself. Therefore, its Market Savings Deposit not being evidenced by any certificate of deposit bearing a face value upon which the amount of tax can be determined, the same is not subject to documentary stamp tax under Section 180 of the NIRC.

For his part, respondent counters that the Market Savings Deposit and the Time Deposit Account are just one and the same banking transaction. Although the Market Savings Deposit does not have the form of a certificate nor labeled as such, it has a fixed maturity date and earns premium rate, hence, for all intents and purposes, has the same nature and substance as a certificate of deposit bearing interest. The fact that the Market Savings 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 substance is paramount than form. Thus, the passbook is in itself a "certificate of deposit" subject to documentary stamp tax.

We rule in favor of the respondent.

The issue of whether a special savings account (market savings deposit in this case) is a certificate of deposit subject to documentary stamp tax under Section 180 of the 1997 NIRC is not novel. In a quite number of cases,[4] this issue has already been resolved by this Court in the affirmative.

Section 180 of the National Internal Revenue Code of 1997, as amended, provides:

> "**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 such

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[4] United Overseas Bank Philippines vs. Commissioner of Internal Revenue, CTA Case No. 6411, April 21, 2004; Traders Royal Bank vs. Commissioner of Internal Revenue, CTA Case No. 6392, April 28,2004; Keppel Bank Philippines, Inc. vs. Commissioner of Internal Revenue, Hon. Guillermo L. Parayno, Jr. (as the successor of former Commissioner Rene G. Bañez), CTA Case No. 6560, June 23, 2004; Banco de Oro vs. Commissioner of Internal Revenue, CTA Case No. 6390; Philippine Banking Corporation (now Global Business Bank, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6395, July 16,2004; ING Bank N. V. Manila Branch vs. Commissioner of Internal Revenue, CTA Case No. 6187, August 9, 2004 [CTA E.B. No. 52, April 5, 2005]; China Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6400, October 14, 2004; International Exchange Bank vs. Commissioner of Internal Revenue, CTA Case No. 6159, October 26, 2004; Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6201, December 15, 2004; Prudential Bank vs. Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue, CTA Case No. 6198, February 16, 2005, Union Bank of the Philippines vs. Commissioner of Internal Revenue. CTA Case No. 6436. February 21, 2005, and Banco de Oro v. Commissioner of Internal Revenue, CTA Case No. 6588, August 5, 2005)

agreement, bill of exchange, draft, certificate of deposit, or note: xxx"

A perusal of the above-quoted law shows 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 deposits drawing interest;
7) order for the payment of any sum of money otherwise than at sight or on demand;
8) all promissory notes, whether negotiable or non-negotiable, expect bank notes issued for circulations; and
9) on each renewal of any such note.[5]

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.[6] 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

[5] East West Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6845, March 2, 2006
[6] Far East Bank and Trust Company vs. Querimit, 373 SCRA 671

legally be required within such a specified number of days".[7] 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.[8] 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.

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.[9] It is in the nature of an excise tax imposed on the privilege, opportunity or facility offered at exchanges for the transaction of the business and not upon the business transacted.[10] What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction.

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

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[7] BPI Family Savings Bank vs. First Metro Investment Corp., G.R. No. 132390, May 21, 2004, citing 10 Am. Jur. 2d., p. 652
[8] Black's Law Dictionary, 6th Ed.
[9] Hector S. De Leon, The National Internal Revenue Code, 2000 Ed., p. 722
[10] Lincoln Phil. Life Insurance Co., Inc. vs. Court of Appeals, 293 SCRA 92

Notwithstanding The Universal Terms and Conditions for Deposit and Accounts,[11] petitioner's product cannot be viewed in an isolated manner with the rest of its features. The mere fact that its Market Savings Deposit is not covered by a certificate and its product's documentation consists principally in an "ordinary savings account passbook", does not change its essential feature. As admitted by petitioner, in its Market Savings Deposit, the contract between the Bank and the depositor does not cease but continues in accordance with the terms and conditions of the deposit despite the existence of circumstances that would warrant the imposition of a reduced interest rate. For this reason, in petitioner's Market Savings Deposit, there is no contract that fixes the maturity date of the placement renewable at the end of each period.

In an attempt to convince this Court that the Market Savings Deposit account is not a time deposit, petitioner advances the argument that its Market Savings Deposit is withdrawable anytime and the interest of which depends on how long the money is kept by the depositor with the bank; while in the case of a time deposit, there is a specific maturity date evidenced by a certificate of deposit.

We are not convinced. It is to be noted that the same holds true in case of a time deposit. A depositor is still allowed to withdraw his time deposit even before its maturity subject to pretermination charges and the

[11] Exhibits B and B-1

depositor loses his entitlement to earn the interest corresponding to the time deposit. Instead, he earns interest likewise pertaining to a regular savings deposit. Clearly, petitioner's argument that one is withdrawable anytime and the other is not, is fallible. The fact is: in both cases, the deposit may be withdrawn anytime but the depositor gets to earn a lower rate of interest.

In determining whether a certain instrument is subject to documentary stamp tax, substance would control over the form and labels. The nature of Market Savings Deposit is akin to a time deposit in such a way that the bank acknowledges the receipt of a sum of money on deposit and 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 petitioner Market Savings Deposit, the transaction is covered by a passbook, while in time deposit, it is through a certificate of deposit.

Considering that the transaction evidenced by the different documents are similar and that documentary stamp tax is an excise tax on the privilege to enter into a transaction, We find both the certificate of time deposit as well as the passbook, clear evidence of such transaction in favor of the person whose name appears therein, thus, subject to documentary stamp tax.

WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of merit. The assailed decision of the respondent Commissioner of

Internal Revenue promulgated on November 24, 2003 is hereby **AFFIRMED** except for the compromise penalty of P25,000.00 inasmuch as there was no mutual agreement between the parties.[12]

Accordingly, petitioner is **ORDERED TO PAY** the respondent the assessed amount of Fifty-Seven Million Five Hundred Forty-Five Thousand Two Hundred One Pesos and Ninety-Six Centavos (P57,545,201.96) as deficiency documentary stamp tax for the taxable year 1999. In addition, petitioner is **ORDERED TO PAY** 20% delinquency interest computed from January 4, 2004 until the amount is fully paid pursuant to Section 249(C) of the 1997 NIRC.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

(Inhibited)
OLGA PALANCA-ENRIQUEZ
Associate Justice

[12] Collector of Internal Revenue vs. UST, 104 Phil 1062

ATTESTATION

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

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

CERTIFICATION

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 case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice