REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNITED OVERSEAS BANK PHILIPPINES,
Petitioner,

- **versus** -

C.T.A. CASE NO. 6411

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 2 1 2004

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DECISION

This is a judicial appeal involving disputed assessments for deficiency documentary stamp taxes (DST) in the amounts of P10,969,066.54 and P12,647,298.29, for the taxable years 1996 and 1997, respectively.

Based on the records of the case, the antecedent facts are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines and authorized by the *Bangko Sentral ng Pilipinas* to engage in general banking operations in the Philippines *(par. 2, Joint Stipulation of Facts and Issues, CTA Records, p. 63).*

On March 23, 2000, Commissioner Dakila B. Fonacier, issued Letter of Authority No. 00058964, which authorized Revenue Officers Gloria Morales, Wilfredo Reyes, Buenaventura Lomibao, Jose Maria Reyes, Frances Leonida and Felina Guimbao, to be supervised by Ma. Annabella A. Abuloc of the Large Taxpayers Assessment Division, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes (*Exhibit 1, BIR Records, p. 1207*).

As a result of the examination, the above-mentioned Revenue Officers made a report on the internal revenue tax liabilities of petitioner for the taxable years 1996 and 1997. The report stated, thus:

> "In view of the foregoing, we, the undersigned Revenue Officers respectfully recommend that this report be approved and a demand letter and assessment notices be issued against the taxpayer on the deficiency documentary stamp taxes which the taxpayer refused to pay on the ground that this is an industry issue which is still unresolved up to this date (*Exhibit 2, BIR Records, pp. 1271-1280*)."

On December 11, 2000, Virginia L. Trinidad, Assistant Commissioner for Large Taxpayers Service, issued a Preliminary Assessment Notice to petitioner informing the latter that there has been found documentary stamp taxes due, including increments thereon for the taxable years 1996 and 1997 in the amounts of P15,678,042.92 and P16,053,165.13, respectively (*Exhibits 3, BIR Records, pp. 1305-1306*).

On March 30, 2001, Assessment Notices Nos. DST-2-96-000009 and DST-2-97-000010 were issued to petitioner along with the Formal Letter of Demand. Respondent requested petitioner to pay deficiency documentary stamp tax through the duly authorized agent bank the amounts of P10,969,066.54 for taxable year 1996 and P12,647,298.29 for the taxable year 1997. These were received by petitioner on June 26, 2001 (*Exhibits 4 and 4-A, BIR Records, pp. 2585-2587*).

Petitioner disagreed with the assessments. Consequently, on June 28, 2001, petitioner filed a protest before the office of the respondent. Petitioner argued that the bank's Special Savings Deposit or Savings Plus Deposit products are not one of those subject to documentary stamp taxes under Section 180 of the National Internal Revenue Code (NIRC)

Up to this date, respondent has not yet rendered a decision on petitioner's protest, thus, petitioner on March 21, 2002 elevated the case through a petition for review with this court pursuant to Section 228 of the 1997 NIRC.

The court is tasked to resolved the following issues:

1. Whether or not petitioner was sufficiently informed of the law and the facts on which the assessments are based as required under Section 228 of the Tax Code;

2. Whether or not petitioner's Special Savings Account is a Certificate of Deposit;

3. Whether or not petitioner's Special Savings Account Deposit is subject to documentary stamp tax (DST) under Section 180 of the Tax Code; and

4. Whether or not petitioner is liable for the payment of documentary stamp tax (DST).

On the first issue, petitioner claims that the Formal Letter of Demand and the assessments issued by respondent failed to clearly and sufficiently state the facts and the law upon which such assessments are based. According to petitioner, the Formal Letter of Demand merely stated in very general and vague terms that petitioner failed to affix the documentary stamp tax on the Special Savings Deposit transactions in violation of Section 180 of the National Internal Revenue Code and that respondent did not specify under what particular taxable document the Special Savings Account falls.

On the other hand, respondent argues that petitioner was informed of the facts and the law that gave rise to the written demand to pay, that is, its failure to notifying the taxpayer that its failure to affix the DST on the Special Savings Deposit transactions constitutes a violation of Section 180 of the Tax Code, is sufficient compliance with the law. We cannot agree with petitioner that the legal provision upon which respondent based its assessments is too general for as long as the taxpayer is duly informed of the factual and legal basis of the assessment.

Besides, the protest-letter of petitioner discussed comprehensively its disagreement with the assessments. This points nothing but the fact that petitioner understood fully the factual and legal basis of respondent's assessments. We believe that the law merely requires the respondent to state the factual basis of the assessment as well as the provision or provisions of the law, which justifies the deficiency assessment. It may not be in conformity with petitioner's view, but what is important is that respondent's findings logically follows from the facts and laws under consideration. Thus, the Tax Code allows the taxpayers to file their protest in case their views are opposed to the respondent. In this case, petitioner clearly manifested its disagreement with the respondent's findings through its protest. This presupposes a sufficient information about the facts and the law upon which the assessments were based. Therefore, its claim that it was not informed of the factual and legal basis of the assessments is untenable.

We shall discuss the second, third and fourth issues simultaneously as they are closely intertwined. Petitioner maintains that special savings account evidenced by a special savings account passbook is not among the documents subject to documentary stamp tax under Section 180 of the 1977 Tax Code. Considering so, petitioner is not liable to pay deficiency documentary stamp tax. In support of its affix the documentary stamps, which is in violation of Section 180 of the Tax Code. If petitioner was not informed of the facts and the law which brought about the assessment and the demand for payment, the former could not have filed a protest thereon.

We find respondent's arguments meritorious.

Section 228 of the Tax Code provides:

> **Sec. 228.** *Protesting of Assessment* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. xxx
>
> xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise the assessment shall be void.
>
> xxx

The court opines that respondent substantially complied with the requirements regarding assessment as provided for in the above-cited provision of the Tax Code. The Preliminary Assessment Notice issued to petitioner reveals that respondent informed petitioner of the factual and legal basis of his assessments. Thus, we quote:

> "Verification disclosed that you failed to affix the documentary stamp tax on the Special Savings Deposit transactions in violation of Section 180 of the National Internal Revenue Code *(Exhibit 3, BIR Records, p. 1306).*

The Formal Letter of Demand attached to the assessment notices likewise stated petitioner's failure to affix the DST on the Special Savings Deposit transactions, in violation of Section 180 of the NIRC. To us, respondent's act of contention, petitioner advanced the argument that Special Savings Account is not a time deposit, both in form and substance. For one thing, "savings deposits" represent interest-bearing deposits which are withdrawable either upon presentation of a properly accomplished withdrawal slip together with the corresponding passbook or through automated tellering machines while "time certificate of deposits" represent "interest-bearing deposits" with specific maturity dates and evidenced by certificates issued by the bank *(Section 34 (b) BSP Manual of Accounts for Expanded Commercial Banks and Commercial Banks)*.

Secondly, under Section 2 (f) of Revenue Regulations No. 12-80 and Section 2 (g) of Revenue Regulations No. 17-84, a "time deposit" which has a definite time of maturity and cannot be withdrawn by depositor until maturity except in cases of authorized pretermination. On the other hand "savings deposit" is a deposit which may be withdrawn by the depositor any time, subject only to the right of the depository bank to require reasonable prior notice in writing before withdrawal may be made (Section 2 (e), Revenue Regulations No. 12-80, reiterated in Section 2 (g) Revenue Regulations No. 17-84 dated October 12, 1984.

Respondent claims otherwise – that petitioner's Special Savings Account is a certificate of deposit, which is subject to documentary stamp tax under Section 180 of the Tax Code. According to respondent, it was found by the Revenue Officers that Special Savings Account is an interest-bearing account and has the same feature of a time deposit account. There is a required minimum deposit balance and a holding period in order to avail of the preferential interest rate, that is higher than that of the regular savings account. The only difference is that petitioner does not issue any certificate but only a passbook.

Moreover, respondent argues that the *"certificate of deposit"* stated in Section 180 of the Tax Code does not prescribe any particular form, nor does it qualify. Consequently, the fact that the SA-Plus is evidenced by a regular savings account passbook and not by a certificate is immaterial. What is important and controlling is the nature and meaning conveyed by the document and not by the particular label or nomenclature attached to it, inasmuch as its substance is paramount to its form.

Respondent added that Special Savings and Time deposit are akin to each other and that efforts were made by banks to place a superficial distinction between the two deposit accounts by introducing an innovation using a regular passbook to document the Special Savings Account and by claiming that the said special deposit has no specific maturity date. However, an analytical look at the passbook issued reveals that although it is not in the form of a certificate nor is labeled as such, it has a fixed maturity date and is of the same nature and substance as a "certificate of deposit bearing interest." Thus, a passbook is tantamount to a certificate of deposit.

We agree with the respondent.

At this point, we find it noteworthy to discuss the nature of a documentary stamp tax. In the case of **Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6149, promulgated March 5, 2003,** this court citing the case of **Philippine Home Assurance Corporation et al. vs. Court of Tax Appeals, SP-32531, April 27, 1994, which was later on affirmed by the Supreme Court in the case of Philippine**

Home Assurance Corporation vs. The Honorable Commissioner of Internal Revenue, G.R. No. 4208-4211, January 21, 1999, held thus:

> "The respondent court correctly characterized a documentary stamp tax as in the nature of an excise tax. As such, it is imposed on the privilege of conducting a particular business or transaction and not on the business or transaction itself. x x x This means then that the documentary stamp tax accrues when the privilege is exercised. As the respondent Court stated, while it is true that a documentary stamp tax is levied on the document and not on the property, which it described, the documentary stamp tax is not intended to be a tax on the document alone. The law taxes the document because of the transaction so that the tax becomes due and payable at the time the transaction is had or accomplished, in this case, at the time of the issuance of the document."

Documentary stamp tax is a privilege tax because it is really imposed on the privilege to enter into a transaction rather on the document. The law taxes the document because of the transaction *(Hector S. De Leon, Comprehensive Review of Taxation, 2000 edition, p. 381).* What is being taxed here is the privilege of the petitioner to enter into such a transaction.

Section 180 of the Tax Code 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 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.

"*Certificate of deposit*" is defined to be a written acknowledgement by a bank of the receipt of a sum of money on deposit which it promises to pay to the depositor, to his order, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created. Certificate of deposit being written instrument evidencing transaction between parties must be considered in the light of same rules of law as other written instrument **(Montgomery v. Smith, 145 So. 822,826,226 Ala. 91).**

Moreover, a certificate of deposit, like a deposit credited in a passbook, represents money actually left with the bank for safekeeping, which are to be retained until the depositor demands them **(Bank of Commerce v. Harrison, N.M., 66 P 460, 461).** And it is generally made negotiable. **(Reed vs. Board of Education, 39, Ohio St. 635, 638)** *(Words and Phrases, Permanent Edition p. 432).*

We do not agree with petitioner's argument that the bank's Special Savings Account is not subject to documentary stamp tax considering that it is not a time deposit and is not evidenced by a certificate of deposit. In determining whether a certain instrument is subject to documentary stamp tax, substance would control over the form and labels xxx **(Knudsa Creamery Co. of California vs. US, 121 F. Suppl. 860, 26 U.S. C.A. 1800, 1801).** The court agrees with the findings of the respondent that the nature of Special Savings Deposit and Time deposits are akin to each other 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. In both cases, the banks allows pretermination but the rate of interest is lowered than the agreed interest. The difference lies on the document issued to evidence the transaction. In Special Savings Account, 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 evidence of such transaction in favor of the person whose name appears therein, subject to documentary stamp tax.

Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise **(Phil. Explosives Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5201, promulgated August 29, 1997).** In the case at bar, petitioner failed to rebut the presumption of correctness, therefore, we find petitioner liable for deficiency documentary stamp tax.

Accordingly, petitioner is **ORDERED** to **PAY** the respondent **COMMISSIONER OF INTERNAL REVENUE** the amounts of P10,969,066.54 and

P12,647,298.29, inclusive of surcharges, representing deficiency documentary stamp taxes for the years 1996 and 1997, plus 20% delinquency interest from June 30, 2001 until fully paid pursuant to Sections 248 and 249 of the Tax Code, as amended.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge