REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BANCO DE ORO UNIVERSAL BANK,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 165
(C.T.A. CASE No. 6401)

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

Promulgated:

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DECISION

CASTAÑEDA, JR., J.:

For review is the Decision of the First Division of the Court of Tax Appeals (the Court in Division) dated September 19, 2005, which partially granted petitioner's Petition for Review in C.T.A. Case No. 6401. The Decision of the Court in Division was subsequently affirmed in a Resolution promulgated by the same Division dated January 25, 2006.

The Court in Division cancelled and set aside the deficiency assessments for documentary stamp tax on petitioner's interbank call loans for fiscal years 1996 and 1997 but affirmed the deficiency assessments for documentary stamp tax on petitioner's Investment Savings Accounts. The dispositive portion of the assailed Decision reads as follows:

> "IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby PARTIALLY GRANTED. The assessments for deficiency documentary stamp tax on petitioner's interbank call loans for fiscal years 1996 and 1997 in the respective amounts of P437,839.80 and P6,791,010.65 as well as the compromise penalties amounting to P50,000.00 for both fiscal years 1996 and 1997 are hereby CANCELLED and SET ASIDE. However, the assessments for deficiency documentary stamp tax on petitioner's Investment Savings Accounts for the fiscal years 1996 and 1997 are hereby AFFIRMED.
>
> Accordingly, petitioner is ORDERED TO PAY the respondent the reduced amounts of P10,020,977.10 and P43,285,153.75 as deficiency documentary stamp tax for fiscal years 1996 and 1997, respectively, plus 20% delinquency interest computed from March 1, 2002 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.
>
> SO ORDERED."

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

> "Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission and duly authorized by the Bangko Sentral ng Pilipinas (BSP) as a universal bank with principal business address at No. 12 ADB Ave. cor. J. Vargas, Ortigas Center, Pasig City (par. 1, Summary of Admitted Facts). Banco de Oro is the surviving corporation, while Dao Heng Bank, Inc. (Dao Heng) was the absorbed corporation, pursuant to the Articles and Plan of Merger entered into by the two banks on October 30, 2000 and approved by the Bangko Sentral ng Pilipinas on February 27, 2001. On June 15, 2001, the Securities and Exchange Commission issued the corresponding Certificate of Filing of the Articles and Plan of Merger. Clause 1.4.4 of the Merger provides that "any pending claim, action or proceeding brought by or against DHBI [Dao Heng] may be prosecuted by or against BDO [Banco de Oro]." Dao Heng and Banco de Oro, being one and the same after the merger, are hereafter interchangeably referred to as the petitioner.

Through Letter of Authority No. 000018567 dated July 27, 1998, respondent caused the examination of petitioner's books of accounts/accounting records relative to the latter's all internal revenue tax liabilities for the Fiscal Years (FYs) ended June 30, 1996 and June 30, 1997 (Exhibit 1; par. 6, Summary of Admitted Facts).

As a result of the investigation, petitioner received from respondent on September 7, 1999 a Pre-Assessment Notice dated August 30, 1999 (Exhibit 4) informing petitioner about the proposed assessment for the following deficiency taxes for FYs ended June 30, 1996 and June 30, 1997:

	FY 1996	FY 1997
DEFICIENCY FINAL TAX — ONSHORE INCOME	P27,151.57	P166,277.74
DEFICIENCY GROSS RECEIPTS TAX	466,444.61	12,681,188.35
DEFICIENCY DOCUMENTARY STAMP TAX	10,155,362.73	49,443,518.05

On September 24, 1999, petitioner filed a protest letter detailing therein the reasons why it disagreed with the findings of the respondent (Exhibit 5).

On December 3, 1999, petitioner received from respondent four Formal Assessment Notices and accompanying Formal Letters of Demand, all dated December 1, 1999, this time assessing petitioner for penalties for late payment of final withholding tax on onshore income and deficiency documentary stamp tax (DST) for FYs 1996 and 1997, in the following amounts (pages 451-452 & 462-469, BIR Records):

FISCAL YEAR ENDED JUNE 30, 1996

ASSESSMENT NO. ST-FWT-96-0100-99

PENALTIES FOR LATE PAYMENT OF FWT-ONSHORE INCOME

Basic tax		P2,630.42
Add:	25% surcharge	657.61
	20% interest from 7-11-96 to 8-10-96 (.016666)	43.84
	Compromise penalty	1,000.00
Total		P 4,331.87
Less:	Basic tax paid dated 8-10-96	2,630.42
TOTAL AMOUNT DUE		P1,701.45
		=======

ASSESSMENT NO. ST-DST-96-0101-99

DEFICIENCY DST (INDUSTRY ISSUE)

Investment savings account (private bank)		P1,046,333.34
Investment savings account (individual)		3,972,939,584.67
IBCL-term		175,000,000.00
Basis of DST		P4,148,955,918.01
Rate of tax		.30/200
DST due thereon		P6,223,434.00
Add:	20% interest from 7-11-96 to 12-6-99 (.680554)	4,235,382.90
	Compromise penalty	25,000.00
TOTAL AMOUNT DUE		P10,483,816.90

FISCAL YEAR ENDED JUNE 30,1997

ASSESSMENT NO. ST-FWT-97-0102-99

PENALTIES FOR LATE PAYMENT OF FWT-ONSHORE INCOME

Basic Tax		P107,883.27
Add:	25% surcharge	26,970.82
	20% interest from 7-11-97 to 8-11-97 (.016666)	1,797.98
	Compromise penalty	16,000.00
Total		P152,652.07
Less:	Basic tax paid dated 8-11-97	107,883.27
TOTAL AMOUNT DUE		P44,768.80

ASSESSMENT NO. ST-DST-97-0103-99

DEFICIENCY DST (INDUSTRY ISSUE)

Investment savings account (individual)		P19,483,390,208.15
IBCL-term		3,065,000,000.00
Basis of DST		P22,548,390,208.15
Rate of tax		.30/200
DST due thereon		P33,822,585.60
Add:	20% interest from 7-11-97 to 12-6-99 (.480554)	16,253,578.80
	Compromise penalty	25,000.00
TOTAL AMOUNT DUE		P50,101,164.40

In a letter dated December 21, 1999 and received by respondent on December 23, 1999, petitioner protested the assessments for deficiency DST for FYs 1996 and 1997 in the amounts of P10,483,816.90 and P50,101,164.40 covered under Assessment Notice Nos. ST-DST-96-0101-99 and ST-DST-97-0103-99, respectively (pages 445-449, BIR Records; par. 9, Summary of Admitted Facts).

On January 29, 2002, petitioner received a copy of respondent's Final Decision on the disputed assessments, denying petitioner's protest and ordering petitioner to pay the amounts of P10,483,816.90 and P50,101,164.40 as deficiency DST for FYs 1996 and 1997, respectively (pages 513-522, BIR Records; par. 10, Summary of Admitted Facts).

On February 27, 2002 or within thirty (30) days from January 29, 2002, petitioner elevated its case before this Court."[1]

As stated at the outset, the Court in Division cancelled the deficiency assessments for documentary stamp tax on petitioner's interbank call loans for fiscal years 1996 and 1997 in the respective amounts of P437,839.80 and P6,791,010.65 as well as the compromise penalties imposed by respondent. On the other hand, the Court in Division affirmed the deficiency assessments for documentary stamp tax on petitioner's Investment Savings Accounts for the fiscal years 1996 and 1997 in the respective amounts of P10,020,977.10 and P43,285,153.75.

In a Resolution promulgated on January 25, 2006, petitioner's Motion for Partial Reconsideration of the Decision of the Court in Division was denied for lack of merit.

Hence, petitioner filed a Petition for Review on March 9, 2006, within the extended period, with the Court of Tax Appeals *en banc* (the Court *en banc*) relying on the following grounds in support of its petition:

> **I. PETITIONER'S INVESTMENT SAVINGS ACCOUNTS ARE NOT "DEPOSITS" SUBJECT TO DOCUMENTARY STAMP TAX UNDER SECTION 180 OF THE TAX CODE.**
>
> **II. THE LEGISLATIVE INTENT BEHIND SECTION 180 OF THE TAX CODE IS TO EXCLUDE SAVINGS DEPOSITS FROM ITS COVERAGE, AS EVIDENCED BY THE RECENT ENACTMENT OF REPUBLIC ACT NO. 9243.**

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[1] Assailed Decision, pp. 1–4.

PETITIONER'S ARGUMENTS

Petitioner argues that it is a well-settled principle that in order for any tax to be due, there must be a law or legislative enactment that mandates the imposition thereof. Thus, it must be shown that its Investment Savings Account deposits covered by passbooks fall within the coverage of Section 180 of the tax code which respondent claims to be the basis of the assessment for deficiency DST against petitioner. Petitioner maintains that the documents that are subject to DST under Section 180 are those that provide for the payment of money at a fixed period or maturity date, such as promissory notes, government bonds and securities, and certificates of time deposits. That in the banking industry, the term certificate of deposit refers exclusively to a certificate of time deposit. Petitioner asserts that passbooks being in the nature of orders for the payment of money at sight or on demand are not certificates of deposit subject to DST under Section 180 because it does not have a maturity date unlike all the other documents enumerated in Section 180. By express exclusion, passbooks do not appear anywhere in Section 180 and since it is expressly excluded, passbooks cannot be read into the law by implication or unauthorized interpretation. According to the petitioner, passbooks have never been subjected to DST, simply and clearly because they are not certificates and it is therefore erroneous to conclude that its Investment Savings Accounts are covered by Section 180 and subject to tax thereunder merely because the same have features akin to time deposits.

Petitioner likewise argues that the legislative intent behind Section 180 of the tax code is to exclude savings deposits from the coverage thereof, as evidenced by the recent enactment of Republic Act No. 9243 which shows that during the years pertinent to the contested assessments, there was no law imposing DST on (i) passbooks, (ii) passbooks covering deposits withdrawable at any time, or (iii) passbooks covering deposits withdrawable at any time with variable interest rates. According to the petitioner, Republic Act No. 9243 clearly enlarges the scope of Section 180 because it now subjects to DST not only the traditional certificates of time deposit, 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. Petitioner opines that the enactment of R.A. No. 9243 is evidence of the legislature's intent to cover what was heretofore outside the ambit of the law.

RESPONDENT'S ARGUMENTS

Respondent avers that the present Petition for Review raises the same issues that have been extensively, sufficiently and squarely addressed and resolved by this Honorable Court in its Decision dated September 19, 2005. Hence, petitioner's petition for review should be dismissed for being pro-forma and for lack of merit.

THIS COURT'S RULING

The present petition is not meritorious.

The issues presented before this Court *en banc* are not novel. This Court had already ruled[2] 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, 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)*

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[2] 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.

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. 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".[3]

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

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

interest earning deposit account issued by a bank qualifies as a certificate of deposit drawing interest.

Both law and jurisprudence do not prescribe any particular form before a document covering a bank deposit can be considered as a certificate of deposit. Therefore, restricting the meaning of "certificates of deposit drawing interest" mentioned in Section 180 of the NIRC of 1977 to "certificates of time deposit" only will not be in accordance with both law and jurisprudence. Undeniably, a certificate of time deposit is but a type of a certificate of deposit drawing interest.

It is well-settled that certificates of time deposits are subject to DST while the regular savings deposits are not subject to DST. Petitioner admitted that its Investment Savings Account deposit "is a cross-breed between a time deposit and a regular savings account. As such cross-breed, it will surely contain the features of both a regular savings account and a time deposit"[4]. In this regard, the Court in Division found merit in respondent's arguments, as follows:

> "xxx respondent insists that petitioner's ISAs are subject to DST under Section 180 of the NIRC of 1977, as amended, since it has the same features of a time deposit, namely: a) it has a fixed maturity date and yield a higher interest rate; and b) it can be withdrawn anytime in whole or in part before maturity date, subject, however to the prevailing regular savings account interest rate. The use of an ordinary savings account passbook instead of a certificate of deposit does not alter the substance of the Investment Savings Account.
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> Respondent firmly believes that petitioner's ISAs and time deposits are akin to each other, only that efforts were made by petitioner to place superficial distinction between the two deposit accounts by introducing an innovation i.e., by using a regular

[4] *Petition for Review*, p. 16.

> passbook to document the said special savings account. Respondent maintains that a close scrutiny of an ordinary savings account passbook discloses the following entries, which are reflected in separate columns, to wit: date, withdrawals, deposit/interest, balance and remarks. From these entries, even an ordinary layman could easily decipher that on a certain date, the depositor made either a deposit or withdrawal and that after making such transaction the amount appearing in the "balance column" is what remains of his money that is kept by the bank. In the "remarks column," the bank's representative attaches his initial/signature. The initial/signature signifies that the bank acknowledges the correctness, authenticity and veracity of all the entries therein, which means that the bank recognizes and admits that on the stated date, the depositor made a deposit which is received by the bank and that it will pay the depositor or his representative should he decide to withdraw his money. Clearly, therefore, the regular savings account passbook has the same substance, attributes and qualities as a "certificate of deposit". The fact that petitioner's "Investment Savings Deposit" is evidenced by a regular savings account 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."[5]

We see no cogent reason to reverse or modify the findings of the Court in Division that petitioner's Investment Savings Account (ISA) deposit is, in substance, a time deposit. Petitioner's ISA deposit has a significantly higher interest rate than the regular savings deposit but in order for an ISA depositor to earn the agreed higher interest rate, the amount of deposit must be maintained for a fixed period. Although petitioner's ISA can be withdrawn before its maturity date, such early withdrawal will result to the reduction of the interest rate to the prevailing regular savings account rate. In other words, there is a penalty for an early withdrawal from an ISA deposit in the same way that a time deposit can be withdrawn before maturity date but likewise subject to the reduction of the agreed interest rate. Such being the

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[5] Assailed Decision, p. 9.

case, we agree with the finding that petitioner's ISA is a deposit account with a fixed term. The characteristics of a fixed term and reduction of interest rate in case of early withdrawal or 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 ISA deposit and time deposit is 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."[6] 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"[7], the fact that the ISA deposit 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".[8]

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

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

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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).

In a very recent case involving the same issue, this Court had ruled that in enacting R.A. No. 9243, "[t]he lawmaking body unmis-takably 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] In the same manner, Sec. 9 of R.A. No. 9243 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.

Parenthetically, petitioner quoted the following excerpt from a Hearing of the House Committee on Ways and Means held on February 5, 2002:

> "REP. JESLI A. LAPUS: Thank you, Mr. Chairman. Mr. Chairman, I don't think this will take thirty minutes. We have discussed this previously and if the committee will recall, this has ... this is to finally resolve the issue on whether **time deposits that are evidenced by instruments other than certificates** are subject to documentary stamp tax. And the Department of Finance has requested that this be deferred until the end of last year in order to try to arrive at an amicable settlement or compromise on previous assessment. That having failed the Secretary of Finance has given the green light for the committee in the interest of revenue collection and **to erase any more doubts** on whether time deposits evidenced by instruments other than certificates are taxable that the committee now proceed to pass the same."[11] *(Emphasis supplied)*

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

[11] Petition for Review, p. 23.

The phrase *"to erase any more doubts"* shows that the intention of the proponents of the legislative bills which later became R.A. No. 9243 is only to clarify Sec. 180 of the 1997 NIRC. It likewise shows that the deposit accounts earning a significantly higher interest than the regular savings account, such as petitioner's ISA deposit, are viewed as time deposits. Since time deposits covered by certificates of deposit drawing interest are subject to DST under Section 180 of the 1997 NIRC, it follows that petitioner's ISA deposits are also subject to DST since they have the same nature as time deposits because in determining whether certain instruments are subject to documentary stamp taxes, substance would control over form and labels.

To permit the true nature of the transaction to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of the tax policies of Congress.[12]

All the foregoing considered, this Court *en banc* finds no cogent reason to reverse the assailed Decision and Resolution of the First Division of this Court.

WHEREFORE, the instant petition is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED**.

SO ORDERED.

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

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[12] Commissioner of Internal Revenue v. The Estate of Benigno P. Toda, Jr., Represented by Special Co-administrators Lorna Kapunan and Mario Luza Bautista, G.R. No. 147188, September 14, 2004.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(With Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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

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

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

BANCO DE ORO UNIVERSAL, BANK, Petitioner, -versus- **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**EB NO. 165** (CTA CASE NO. 6401) Members: ACOSTA, P.J CASTAÑEDA JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.: Promulgated: AUG 16 2006

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Dissenting Opinion

This is a Petition for Review filed in accordance with Rule 8 of the Revised Rules of the Court of Tax Appeal seeking the reversal of the Decision of the First Division promulgated on September 19, 2005, affirming the assessments for deficiency DST on petitioner's Investment Savings Accounts (ISA) and ordering petitioner to pay the corresponding amounts of P10,020,977.10 and P43,285,153.75 for the fiscal years 1996 and 1997, respectively; and the Resolution dated January 25, 2006 denying petitioner's Motion for Partial Resolution of the above-cited Decision.

With due respect to my colleagues, I am maintaining my dissenting opinion with regard to the imposition of Documentary Stamp Tax on petitioner Banco de Oro on its Investment Savings Accounts.

It is my opinion that the ISA, 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, ISA has no maturity date. The period offered to a prospective Investment Savings 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.

Investment Savings Account 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 ISA 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 <u>"(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</u>

> 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 ISA 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:

> "**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.
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> 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,

> 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, 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 ISA 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 Investment Savings Account of the petitioner to DST.

WHEREFORE, premises considered, I vote to **GRANT** the instant Petition for Review.

CAESAR A. CASANOVA
Associate Justice