REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

THE MANILA BANKING CORPORATION, Petitioner,	**C.T.A. CASE NO. 7019**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** FEB 05 2007

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DECISION

CASTAÑEDA, JR., *J.*:

Before Us is a Petition for Review seeking the cancellation of Assessment Notice No. LTDO-122-DST-2000-00002 for alleged deficiency documentary stamp taxes in the amount of P2,081,701.25 covering the months of October and November 2000[1] on the ground that the petitioner's Golden Savings Accounts are not in the nature of time deposits or certificates of deposit subject to documentary stamp tax under Section 180 of the National Internal Revenue Code, as amended.

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[1] Inclusive of interest until October 31, 2003 and compromise penalty of P25,000.00.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines and authorized by the Bangko Sentral ng Pilipinas (BSP) to engage in general banking operations in the Philippines, with principal place of business at Manilabank Building, 6772 Ayala Ave., Makati City, Metro Manila. *(paragraph 4, Stipulation of Facts)*

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with powers, among others, to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court, and in general, enforce the provisions of the Tax Code and other laws with office address at BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner offers to its clients a savings deposit product called Golden Savings Account (GSA) which possesses the following features:

1. The GSA is a savings account which earns the prevailing interest rate for any types of savings account. The deposit may earn an incentive interest rate if there are no movements in the account between posting dates;

2. GSA deposits earn interest daily and the interest is posted on the account on the scheduled interest posting date;

3. To deposit, the client prepares a deposit slip (the same form used for savings and current accounts), and tenders the amount to be deposited to the teller who then validates the client's portion of the deposit slip which is returned to the client as proof of his having made a deposit;

4. Withdrawals may be made by the depositor at anytime, without need of prior notice or demand, by filling up a withdrawal slip (the same slip being used for savings accounts). The depositor may also withdraw a portion or the entire amount of his GSA;

5. All movement of funds is recorded in the passbook; and

6. The passbook is maintained even though there are withdrawals reducing the amount of deposits, or deposits of additional funds, or additions due to accruing interest, and it

maintains the same account number despite movement of funds. *(paragraph 6, Stipulation of Facts)*

As a result of an authorized audit conducted by respondent, petitioner, on September 22, 2003, received a Formal Letter of Demand and Assessment Notice No. LTDO-122-DST-2000-00002 for alleged deficiency documentary stamp tax (DST),[2] computed as follows:

Deficiency Doc. Stamps still due	P1,303,772.58
Add: Surcharge -	
Interest (12.11.00 to 10.31.03)	752,928.66
Compromise	25,000.00
Total Deficiency Documentary Stamps Tax	P2,081,701.24

(*Please note that the interest and the total amount due will have to be adjusted if paid beyond October 31, 2003.)

On October 7, 2003, petitioner filed its protest against the assessment. Respondent, however, failed to act on petitioner's protest within the 180-day period. *(paragraphs 12 and 15, Stipulation of Facts)* Hence, this Petition for Review filed on July 2, 2004.

On August 23, 2004, respondent filed his Answer and interposed the following Special and Affirmative defenses:

3. Petitioner's Golden Savings Account (GSA) is subject to the documentary stamp tax (DST) under Section 180 of the Tax Code because it is in the nature of a time deposit having the following features:

    a. Minimum deposit requirements: aside from the higher initial deposit requirement, the depositor is required to maintain a minimum deposit to get the agreed interest rate.

    b. Interest rate is higher than the rate in the case of ordinary savings account: the deposits will earn a higher interest if no movements are made between the posting dates.

[2] Paragraphs 7-10, Stipulation of Facts

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c. Early withdrawal penalty in the form of partial loss of the total of interest in case of pre-termination: in case of withdrawal before the posting date, the deposit will earn interest rate of regular savings account.

d. Stated maturity period: indicating the posting date of interest, different from the posting date of regular savings, is tantamount to identifying maturity date of deposits.

e. Not payable on sight or demand, but upon maturity incaseof pre-termination: prior notice is required, proving that deposit is not payable on sight.

4. This Honorable Court has ruled that special savings account, such as petitioner's GSA, are certificates of deposit bearing interest, hence, subject to DST under Section 180 of the Tax Code *(United Overseas Bank Phils. vs. CIR,* CTA Case No. 6411, April 21, 2004; *Traders Royal Bank vs. CIR*, CTA Case No. 6392, April 21, 2004; *Keppel Bank Philippines, Inc. vs. CIR,* CTA Case No. 6560, June 23, 2004; *Philippine Banking Corp. vs. CIR,* CTA Case No. 6395, July 16, 2004).

5. The fact that under the amendatory law (R.A. No. 9243), special savings accounts are expressly subject to DST, is not a valid argument that the same were not subject to DST prior to the amendment. The power to construe the law is essentially judicial. To declare what the law is or has been is judicial (*Foote vs. Nickerson*, 54 L.R.A., p. 554). The legislature cannot bind the courts to a particular construction of an existing law, unless the declaratory act amounts to prospective operation (Crawford Statutory Construction, Sec. 180, p. 300).

6. Assuming *arguendo* that the GSA is not a certificate of deposit, it is a loan agreement because the relationship between depositor and a bank is that of creditor and debtor (*Gullas vs. Philippine National Bank*, 62 Phil. 519; *Integrated Realty Corp. vs. PNB*, 174 SCRA 295 [1989]. As such, it is subject to DST under Section 180 of the Tax Code.

7. The assessment was issued in accordance with law and regulations.

8. All presumptions are in favor of the correctness of tax assessments (*CIR vs. Construction Resources of Asia, Inc.,* 145 SCRA 671 [1986]).

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The parties have jointly stipulated on the following issues for resolution of this Court, to wit:

1. Whether the term "certificate of deposit" under Section 180 of the Tax Code, as amended includes other evidence of deposits such as passbooks; and
2. Whether respondent erred in finding that Golden Savings Accounts (GSA) are in the nature of a "time deposit" or a " certificate of deposit bearing interest" taxable under Section 180 of the Tax Code as amended.

The above stated issues boil down to the principal issue of whether or not petitioner's GSA is subject to documentary stamp tax.

Section 180 of the 1997 National Internal Revenue Code (NIRC), 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, Certificates of Deposit 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, 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 (P200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: *Provided*, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: *Provided, however*, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the

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> documentary stamp tax provided under this Section. *(Emphasis supplied)*

Petitioner alleged that it is clear from the above-quoted provision that the law imposes tax on certificates of deposit only and not on any other form of deposit accounts. Petitioner further claimed that through Republic Act 9243, Section 180 of the NIRC was amended by the Legislature to read in part:

> SEC. 179. Stamp Tax on All Debt Instruments. – On every original issue of debt instruments, there shall be collected a documentary stamp tax ...
>
> For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to xxx deposit substitute debt instrument, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit xxx

According to petitioner, under the old provision, only "certificates of deposit" are taxed, thus, the Legislature deemed it necessary to broaden/extend the coverage of "other evidence of deposits".

Petitioner furthermore argued that the features of its Golden Savings Account (GSA) are inconsistent with the nature of "time deposit" or "certificate of deposit bearing interest" since it: a) does not have a definite time of maturity and may be withdrawn on demand; b) is evidenced by a passbook; and c) is subject to interest as regular savings account. Thus, petitioner conceded that the above said features of the Golden Savings Account would conform to the definition of a savings deposit rather than of a time deposit. A "savings account" is defined as a "deposit which may be withdrawn by the depositor at anytime, subject only to the right of the depository bank to require prior notice in writing before withdrawal may be made.

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We do not agree.

A certificate of deposit is "any 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] Thus, the petitioner's Golden Savings Account can be considered as a certificate of deposit.

When a client opens a Golden Savings Account with the petitioner, he is issued a passbook serving as a record of his funds and the movement thereof. As already ruled by this Court in ***Philippine Banking Corporation vs. Commissioner of Internal Revenue,***[4] "xxx 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."

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. In practice, a "time deposit" is evidenced by a certificate of time deposit. Certificate of deposit or time deposits usually carry penalties for early withdrawals.[5] In fine, it appears that a time deposit bears an interest for a fixed term and it cannot be withdrawn before maturity otherwise, there would be a corresponding penalty.

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[3] Far East Bank and Trust Company vs. Querimit, 373 SCRA 671.
[4] CTA EB No. 63 (CTA EB 6395) November 23, 2005.
[5] Black's Law Dictionary, 6th Edition.

In the present case, petitioner's Golden Savings Account is not designated as a "time deposit". However, this Court cannot ignore the fact that it has the same features as that of a time deposit. *First:* the Golden Savings Account earns interest daily and the interest is posted on the account on the scheduled interest posting date, different from the posting date of regular savings. As correctly pointed by the respondent, this feature is similar to fixing a term for the Golden Savings Account. *Second:* the deposits are withdrawable anytime. But in case of withdrawal before the posting date, the deposit will earn interest rate of regular savings account. Clearly, penalty for early withdrawal is under the guise of a reduction in the interest which the deposit may earn. The right of the depositor is constrained. *Finally:* petitioner contended that since its Golden Savings Account earns the prevailing interest rate for any other types of savings account, it is a regular savings account. However, as admitted by the parties in their Joint Stipulation of Facts, the deposit may earn an incentive interest rate if there are no movements in the account between posting date which is higher than the interest rate of a regular savings account. In practice, this is inherent to a time deposit.

Moreover, the fact that petitioner's Golden Savings Account is evidenced by a passbook 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.[6]

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[6] L.R. Heat Treating Co., 28 TC 874; BPI vs. CIR, et al., CA-GR SP No. 29853, September 19, 1994.

Time and time again, it has already been settled that substance prevails over form. This Court cannot countenance the practice of giving "deposits subject to documentary stamp tax" the name of "savings account" or any other name just to remove it under its subjectivity to the said tax, instead of designating it a name that would really conform to its true nature.

In addition, the issue of "withdrawability" of the Golden Savings Account is also immaterial because even in the case of a time deposit, a depositor is allowed to withdraw his time deposit prior to the maturity date, subject only to "penalties for early withdrawal".

Lastly, petitioner asserted that Section 180 of the NIRC, as amended, imposes Documentary Stamp Tax only on "certificates" and not on other evidence of deposits.

This Court had already ruled 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 imposed in Section 180 of the National Internal Revenue Code, as amended.[7]

It bears stressing that this Court is mindful of the well-settled principle that tax burdens are not to be imposed nor presumed to be imposed beyond what the statute expressly and clearly imports, tax statutes being construed

[7] Philippine Banking Corporation vs. CIR, CTA EB No. 63 (CTA Case No. 6395), November 23, 2005; United Overseas Bank Philippines vs. CIR, CTA EB No. 31, March 10, 2005; Traders Royal Bank vs. CIR, CTA EB No. 34, April 26, 2005; Allied Banking Corporation vs. Guillermo Parayno, Jr., et al., CTA EB No. 69, July 11, 2005.

strictissimi juris against the government.[8] It must be remembered however that this principle is not a license to evade tax liabilities.

When it comes to tax exemptions: exemptions (or equivalent provisions such as tax amnesties and tax condonations) are not presumed[9] and, when granted, are strictly construed against the grantee. In other words, the exemption must be worded in clear and unequivocal terms and the grantee must fully prove that it is within the ambit of the exemption.

In claiming that the Golden Savings Account is not subject to documentary stamp tax, petitioner's claim is in the nature of tax exemptions. Thus, it follows that petitioner must fully satisfy the fact that its Golden Savings Account is really exempted from the documentary stamp tax. Unfortunately, petitioner failed to fully satisfy this Court that its Golden Savings Account is not a certificate of deposit bearing interest.

It is clear under Section 180 of the Tax Code, as amended, that a certificate of deposit bearing interest is subject to documentary stamp tax. Undeniably therefore, the petitioner's General Savings Account is a certificate of deposit as it is the same as a certificate of deposit bearing interest, in substance and in nature, thus subject to Documentary Stamp Tax.

WHEREFORE, in light of the foregoing, the instant Petition for Review is **DENIED.** Assessment Notice No. LTDO-122-DST-00002 issued by respondent against petitioner for deficiency Documentary Stamps Tax is hereby **AFFIRMED with some modifications**. The compromise penalty is

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[8] Commissioner of Internal Revenue vs. Court of Appeals, Central Vegetable Mfg. Co. and CTA, G.R. No. 122161, February 23, 1999.
[9] Floro Cement vs. Gorospe, 200 SCRA 480.

cancelled there being no mutual agreement between the parties.[10] However, a 25% surcharge is imposed pursuant to Section 248 of the 1997 NIRC, as amended.

Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of P2,382,644.39 representing deficiency documentary stamp taxes for the months of October and November 2000, computed as follows:

Basic Documentary Stamp Tax Due	P1,303,772.58
Add: 25% Surcharge	325,943.15
20% Interest	752,928.66
Total Amount Payable	P2,382,644.39

In addition, petitioner is **ORDERED TO PAY** 20% delinquency interest on P2,382,644.39 computed from October 31, 2003 until full payment thereof 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

OLGA PALANCA-ENRIQUEZ
Associate Justice

[10] 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
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson'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.

ERNESTO D. ACOSTA
Presiding Justice

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