REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILIPPINE VETERANS BANK,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. E.B. NO. 332
(C.T.A. CASE NOS. 7095)

Present:

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

Promulgated:

JUN 1 2 2008 [illegible] 9:45 a.m.

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DECISION

UY, J.:

This is a Petition for Review filed before the Court of Tax Appeals *En Banc* on December 14, 2007 seeking a review of the Decision dated July 12, 2007[1] and Resolution dated November 7, 2007, rendered by the First Division of this Court (Court in Division), in CTA Case No. 7095 entitled "Philippine Veterans Bank vs. Commissioner of Internal Revenue", the dispositive portions of which read as follows:

[1] Ponencia of Associate Justice Lovell R. Bautista, concurred by Presiding Justice Ernesto D. Acosta, and Associate Justice Caesar A. Casanova.

Decision promulgated on July 12, 2007:

"**IN VIEW OF THE FOREGOING,** the subject Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the modified amount of **EIGHT HUNDRED SIXTY NINE THOUSAND SEVEN HUNDRED EIGHTY THREE AND 20/100 PESOS (P869,783.20)** representing deficiency Gross Receipts tax on FCDU for taxable year 2000, computed as follows:

Interest Income (FCDU)	
Loans	3,842,902.00
Deposit with other banks	2,188,618.00
Total Interest Income	6,031,520.00
Add: Miscellaneous Income	2,688,111.00
Gross Receipts Subject to GRT	8,719,631.00
GRT Rate	5%
Gross Receipts Tax Due	**435,981.55**
GRT Paid	-
Basic Tax Deficiency	435,981.55
Add: Surcharge	108,995.39
Interest 1.25.01 to 10.15.04	324,806.26
TOTAL GRT DEFICIENCY	**869,783.20**

In addition, a twenty (20%) percent delinquency interest per annum from October 16, 2004 until such amount is fully paid is hereby imposed, pursuant to Section 249 of the NIRC of 1997, as amended.

SO ORDERED."

Resolution promulgated on November 7, 2007:

"**WHEREFORE**, there being no new matters or arguments advanced in petitioner's Motion for Partial Reconsideration which may compel this Court to reverse, modify or amend the assailed Decision, the same is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

As found by the Court in Division in its assailed Decision, the facts are as follows:

Petitioner Philippine Veterans Bank is a commercial banking institution organized and existing under and by virtue of the laws of the Republic of the Philippines, particularly Republic Act No. 3518 (Philippine Veterans Bank's Charter) and Republic Act No. 7169 (An Act Rehabilitating Philippine Veterans Bank), with principal office address at PVB Building, 101 V.A. Rufino corner Dela Rosa Sts., Legaspi Village, Makati City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue with office address at the 4th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

On May 7, 2004, petitioner received a Preliminary Assessment Notice (PAN) dated April 14, 2004 issued by the Officer-in-Charge of the Bureau of Internal Revenue (BIR) Large Taxpayers Service, Deputy Commissioner Estrelita C. Aguirre, assessing petitioner of deficiency Gross Receipts Tax (GRT) on Foreign Currency Deposit Unit (FCDU) in the total amount of P952,924.02, details of which are as follows:

Interest Income (FCDU)	
Loans	3,842,902.00
Deposit with other banks	2,188,618.00
Total Interest Income	6,031,520.00
Add: Miscellaneous Income	2,688,111.00
Gross Receipts Subject to GRT	8,719,631.00

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GRT Rate	5%
Gross Receipts Tax Due	435,981.55
GRT Paid	-
Basic Tax Deficiency	435,981.55
Add: Surcharge	108,995.39
Interest up to 06.15.04	382,947.08
Compromise	25,000.00
TOTAL GRT DEFICIENCY	952,924.02

In reply to the foregoing PAN, petitioner, through its President and CEO, Ricardo A. Balbido, Jr., filed a protest-letter dated May 20, 2004. Subsequently on July 6, 2004, petitioner received respondent's Formal Letter of Demand upholding the findings on the PAN of May 7, 2004 for petitioner's deficiency GRT on FCDU for the taxable year 2000. This assessment notice was duly protested to by petitioner through a Letter dated July 19, 2004.

On October 13, 2004, respondent issued a Final Decision on Disputed Assessment dated September 6, 2004, thereby affirming the assessment against petitioner for deficiency GRT on FCDU in the amount of P982,069.09 inclusive of interests up to October 15, 2004 and other penalties.

Consequently, petitioner filed its Petition for Review on November 12, 2004 with the Court in Division, pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997.

In its July 12, 2007 Decision[2], the Court in Division found petitioner to be liable for the assessed GRT on FCDU for taxable year 2000 in the reduced amount of **P869,783.20** plus twenty (20%) percent delinquency interest per

[2] Docket, pp. 27 -39.

annum from October 16, 2004 until such amount is fully paid pursuant to Section 249 of the NIRC of 1997, as amended. The Court in Division held that the amendment made to Section 25(a)(6)(B) of the 1977 Tax Code under Section 27(D)(3) and Section 28(A)(7)(b) of the NIRC of 1997, whereby the phrase "exempt from tax" has been deleted, clearly shows the legislative intent to remove the tax exemption of Offshore Banking Units (OBU) and FCDUs on their foreign currency transactions. Moreover, a subsequent enactment of a law[3] restoring the tax exemption of these transactions does not necessarily show that the true intention of the Legislature to be otherwise.

It was further held that the ten percent (10%) final tax levied on onshore income under Section 27(D)(3) of the NIRC of 1997 pertains to income derived by a depository bank under the expanded foreign currency deposit system. It does not include the GRT which is a form of excise tax. Just as a documentary stamp tax is imposed upon the exercise of a privilege, in like manner, the GRT is imposable when the bank exercises the privilege of engaging in foreign currency transactions or business.[4]

On the issue pertaining to the correct amount of interest imposed by respondent, the Court in Division held that since the taxable year covered is for 2000, and GRT returns are filed on a quarterly basis and the tax due thereon is to be paid within twenty five (25) days after the end of the taxable quarter, therefore the last day for the payment of the GRT on FCDU would

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[3] R.A. 9294 "An Act Restoring the Tax Exemption of Offshore Banking Units (OBUs) and Foreign Currency Deposit Units (FCDUs), amending for the purpose Section 27 (D) and Section 28, paragraph (A) (4) and (A) (7) (b) of the National Internal Revenue Code as amended."
[4] Docket, p. 36. Decision, p. 10.

then be on January 25, 2001. Consequently, the interest due on petitioner's deficiency GRT on FCDU should be computed from January 25, 2001, and not on January 23, 2003, as erroneously stated on the notices and Final Decision of respondent. Counting from January 25, 2001 up to October 15, 2004, the correct amount of interest due for deficiency GRT on FCDU should only be in the amount of P324,806.26.

Thereafter, petitioner's Motion for Reconsideration of aforesaid decision was likewise denied in the Resolution[5] dated November 7, 2007 as the Court in Division found no compelling reason to either modify or alter its subject Decision. Hence, this recourse before the Court *En Banc* praying that the assailed Decision and Resolution of the Court in Division promulgated on July 12, 2007 and November 7, 2007, respectively, be reversed and nullified.

On January 18, 2008, the Court *En Banc* issued a Resolution[6] requiring respondent to file Comment thereto, within ten (10) days from receipt thereof. However, no comment was filed by respondent within the given period and this case was deemed submitted for decision in the Resolution dated March 24, 2008[7]. Hence, this decision.

THE ISSUES

The petitioner raises the following issues for the Court En Banc's consideration:

[5] Docket pp. 40 – 42.
[6] Docket pp. 157 – 158.
[7] Docket p. 160.

"I

Whether or not the disappearance of the clause "exempt from all taxes" in Section 27(D)(3) and Section 28(A)(7) in the 1997 reflects Tax Code reflects the clear intent of the legislature to subject interest incomes from FCDU's to Gross Receipt Tax.

II

Whether or not the Tax Code of 1997 specifically subjects incomes from FCDU's to Gross Receipts Tax.

III

Assuming *arguendo* that petitioner is liable for the assessed tax deficiency, whether or not the computation of the tax liability is correct and accurate.

IV

Whether or not petitioner is liable for the assessed tax liability.[8]"

Petitioner's Arguments:

Petitioner submits that prior to the amendments introduced by the NIRC of 1997, Section 25(a)(6)(B) of the NIRC of 1977, as amended, provides:

> ***"SEC. 25. Rates of tax on foreign corporation. —***
>
> (a) Tax on resident foreign corporations. —
> xxx xxx xxx
>
> (6) Tax on certain incomes received by resident foreign corporations.
> xxx xxx xxx
>
> (B) Income derived under the Expanded Foreign Currency Deposit System. — Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with non-residents, offshore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by

[8] Issues, Petition for Review p. 6, Docket, p. 13.

the Central Bank of the Philippines to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system ***shall be exempt from all taxes***, except taxable income from such transactions as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board to be subject to the usual income tax payable by banks: Provided, That interest income from foreign currency loans granted by such depository banks under said expanded system to residents (other than offshore banking units in the Philippines or other depository banks under the expanded system) shall be subject to a 10% tax.

Any income of non-residents from transaction with depository banks under the expanded system shall be exempt from income tax." (*Emphasis supplied*)

With the enactment of the NIRC of 1997, the above-quoted section was amended to read as follows:

"SEC. 27. Rates of Income Tax on Domestic Corporations. —

xxx xxx xxx

(D)Rates of Tax on Certain Passive Incomes. — . . .

xxx xxx xxx

(3) Tax on Income Derived under the Expanded Foreign Currency Deposit System. — Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with local commercial banks, including branches of foreign banks that may be authorized by the Bangko Sentral ng Pilipinas (BSP) to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system, including interest income from foreign currency loans granted by such depository banks under said expanded foreign currency deposit system to residents, shall be subject to a final income tax at the rate of ten percent (10%) of such income.

Any income of nonresidents, whether individuals or corporations, from transactions with depository banks under the expanded system shall be exempt from income tax."

According to petitioner, a close scrutiny of Section 25(a)(6)(B) of the NIRC of 1977, as amended, against Section 27(D)(3) of the NIRC of 1997 would reveal that the wordings are substantially similar except that under the latter provisions, FCDU interest income are being subjected to final income tax at the rate of 10%. Apparently, it is the only significant amendment in the provisions since the old tax code exempts FCDU interest income from all taxes. The clause "shall be exempt from all taxes" had to be removed in order to prevent any inconsistencies due to the imposition of final income tax.

Petitioner further claims that Congress did not really intend to remove the exemption of the FCDU income from other taxes. The deliberate reproduction of the old provision speaks well of the intent of Congress to retain the meaning and application of the old provision, that is to exempt FCDU interest income from all taxes except for final income tax. Moreover, petitioner insists that an excerpt of the Bicameral Report of the Deliberation of the Comprehensive Tax Reform Program signed by Senator Juan Ponce Enrile and Congressman Exequiel Javier [9] would show that there is never an iota of indication that Congress intended to remove the exemption or otherwise subject the FCDU interest income to taxes other than to final income tax.

Thus, in the absence of a clear intent on the part of Congress to remove the exemption of FCDU income from non-income taxes, it is allegedly incumbent upon respondent to show the specific provision under the NIRC of

[9] Annex "K" of Petition for Review– Joint Explanatory Statement of the Conference Committee, Docket, p. 81.

1997 that imposes GRT on FCDU income. Petitioner also argues that in order to validly subject an item to taxes, there must be a specific provision particularly imposing the tax. Absent such clear provision, it is patently erroneous to impose GRT to FCDU income.

Finally, petitioner emphasizes that it is a settled rule in statutory construction that repeals of statutes by implication are not favored, and will not be decreed unless it is manifest that the legislature so intended. In the absence of a clear evidence that the Congress intended to remove the exemptions, the assessment made by the respondent has no basis and therefore erroneous and void.

THE COURT EN BANC'S RULING

The petition is bereft of merit.

As a rule, the amendment by deletion of certain words or phrases in a statute indicates that the legislators intended to change the meaning of a statute, for the presumption is that the legislature would not have made the deletion had the intention been not to effect a change in its meaning. The amendment should accordingly be given a construction different from that previous to its amendment.[10]

The deliberate selection of language other than that used in an earlier act is indicative that a change in the law was intended and it calls for an application. An amended act is ordinarily to be construed as if the original statute has been repealed and a new and independent act in the amended

[10] Hon. Ricardo T. Gloria vs. Court of Appeals, G.R. No. 131012; April 21, 1999, 307 SCRA 287.

form had been adopted in its stead. In other words, the amended act is regarded as if the statute has been originally enacted in its amended form and the amendment becomes a part of the original statute as if it had always been contained therein.[11]

Basic is the rule in statutory construction, that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application. This Court has no choice but to see to it that its mandate is obeyed.[12]

Despite the insistence of petitioner that there was no mention of the amendment during the Joint Explanatory Statement as regards the 'exemption from all taxes' therefore it was the intention of the legislators to retain the said phrase, We rule that by the language used, in deleting the phrase "shall be exempt from all taxes", it should be taken that there is no construction to speak of in the first place and it shows the clear intention on the part of the legislature to remove the blanket exemption given by the NIRC of 1977, as amended, to FCDU income from all forms of taxes.

Furthermore, in the case of **METROPOLITAN BANK & TRUST COMPANY VS. COMMISSIONER OF INTERNAL REVENUE**[13], We ruled that:

> "By the clear import of the above law, income derived by a depository bank under the foreign currency deposit system units from foreign currency transactions with local commercial banks shall be subject to a final tax of 10%. The phrase

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[11] Estrada vs. Caseda, No. L-1560, October 25, 1949, 84 Phil 791.
[12] Commissioner of Internal Revenue vs. American Express Int'l., Inc. (Phil. Branch), G.R. No. 152609, June 29, 2005.
[13] C.T.A. Case No. 6504, October 25, 2006.

"exempt from all taxes" has definitely been deleted by the legislators. The amendment by deletion of certain words or phrases in a statute indicates that the legislature intended to change the meaning the statute. Thus, by virtue of such deletion, Revenue Regulations No. 10-76, which implemented the old law is no longer applicable and the payment by petitioner of the 10% final tax on FCDU income does not exempt it from gross receipts tax or other taxes for that matter. As correctly argued by the respondent, there being no effective exemption to speak [of] in this case, then all applicable taxes became due. It must be noted that the ten percent (10%) final tax levied on onshore income under Section 27(D)(3) of the 1997 NIRC pertains to income derived by a depository bank under the expanded foreign currency deposit system. It does not include the gross receipts tax which is a form of excise tax. Just as a documentary stamp tax is imposed upon the exercise of a privilege, in like manner, the gross receipts tax is imposable when a bank exercises the privilege of engaging in foreign currency transactions or business."

On the issue as to whether or not there is a specific provision that imposes GRT on FCDU income, We rule in the affirmative.

Section 121 of the NIRC of 1997 provides that:

"**SECTION 121. Tax on Banks and Non-bank Financial Intermediaries**. — There shall be collected a **<u>tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries</u>** in accordance with the following schedule:

(a) On interest, commissions and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived:

Short-term maturity (not in excess of two (2) years)	5%
Medium-term maturity (over two (2) years but not exceeding four (4) years)	3%
Long-term maturity —	
(1) Over four (4) years but not exceeding seven (7) years	1%
(2) Over seven (7) years	0%
(b) On dividends	0%
(c) On royalties, rentals of property,	

> real or personal, profits from exchange and all other items treated as gross income under Section 32 of this Code 5%
>
> Provided, however, That in case the maturity period referred to in paragraph (a) is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction as short, medium or long-term and the correct rate of tax shall be applied accordingly.
>
> Nothing in this Code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar banking activities." (Emphasis supplied)

Clearly from the above-quoted provision, the NIRC of 1997 imposes GRT on all banks and financial institutions for all income derived from sources within the Philippines embodied in Section 121of said Code. Thus, petitioner's claimed exemption from the imposition of GRT on its FCDU income cannot be allowed.

It is well-settled that tax exemption must be expressed in the statute in clear language. The exemption must be interpreted in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[14] For taxes, being the lifeblood of the government, are meant to be paid without delay and often oblivious to contingencies or conditions.[15] The tax exemption cannot arise by mere implication and any doubt about whether the tax exemption exists is strictly construed against the taxpayer and in favor of the taxing authority.[16]

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[14] Philippine Long Distance Telephone Company, Inc. vs. City of Bacolod, et al., G.R. No. 149179, July 15, 2005.
[15] Dr. Felisa L. Vda. De San Agustin vs. Commissioner of Internal Revenue, G.R. No. 138485, September 10, 2001.
[16] China Banking Corporation vs. Court of Appeals and Commissioner of Internal Revenue, G. R. Nos. 146749 and 147938, 403 SCRA 634, June 10, 2003.

On the issue as to whether or not the computation of petitioner's tax liability is correct, no discussion was presented by petitioner in the instant petition. For emphasis however, We reiterate the findings of the Court in Division in its assailed Decision, to wit:

> "A thorough examination of the records of the case reveals that indeed respondent made a mistake in his computation of the interest imposable against petitioner for its deficiency Gross Receipts Tax on FCDUs. However, this Court does not subscribe to petitioner's submission that the interest to be charged must start from January 25, 2003. Although respondent's Formal Letter of Demand, from which his Final Decision on Disputed Assessment was based, shows that the interest due is computed starting January 25, 2003, this unmistakably is a result of a typographical error. It cannot be overemphasized that the taxable year covered is for 2000. Gross Receipts Tax (GRT) returns are filed on a quarterly basis and the tax due thereon is to be paid within twenty five (25) days after the end of each taxable quarter.
>
> In this instant case, for the taxable year ending in December 31, 2000, the last day of payment for the GRT on FCDU would then be on January 25, 2001. Consequently, for petitioner's deficiency GRT on FCDU, the interest due should be computed from January 25, 2001, and not on January 23, 2003 as erroneously stated on the notices and Final Decision. Counting from January 25, 2001 up to October 15, 2004, the correct amount of interest due would only have a factor of .745 (i.e., 1360 days x 20% /365 days per year). In this regard, petitioner's interest for deficiency GRT on FCDU should only be in the amount of P324,806.26.
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> Petitioner, likewise, cannot be made to pay the compromise penalty of P25,000.00. The imposition of a compromise penalty presupposes an arrangement or agreement between the parties as to the payment of the amount due. As the same is not present in this case, no compromise penalty may be imposed."[17]

[17] Docket, pp. 37 – 38.

In the light of the foregoing discussions, We find no reversible error committed by the Court in Division when it rendered its assailed Decision and Resolution finding petitioner liable to pay deficiency Gross Receipts Tax on FCDU for the taxable year 2000 in the modified amount of Eight Hundred Sixty Nine Thousand Seven Hundred Eighty Three and 20/100 Pesos (P869,783.20).

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit. The assailed Decision dated July 12, 2007 and Resolution dated November 7, 2007 are **AFFIRMED *IN TOTO.***

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice