Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

SOLIDBANK CORPORATION (now: First Metro Investment Corporation),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6557

Members:

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

Promulgated:

MAY 0 5 2005 *[illegible] Apolinario*

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DECISION

CASTAÑEDA, JR., *J.*:

This is a petition for review assailing the Final Decision of the respondent which denied petitioner's protest on the assailed findings of deficiency Documentary Stamp Tax assessments on petitioner's interbank call loans and assets-held-in-trust for the taxable years 1994, 1995, 1996 and 1997 covered under Assessment Notice Nos. ST-DST-94-0052-98, ST-DST-95-0054-98, ST-DST-2-94-0053-98, ST-DST-2-95-0055-98, ST-DST-96-0312-2000, and ST-DST-97-0313-2000 in the amounts, with breakdown as follows:

ST-DST-94-0052-98 and ST-DST-95-0054-98	P 8,067,313.23
ST-DST-2-94-0053-98	34,553,797.95
ST-DST-2-95-0055-98	14,984,066.38
ST-DST-96-0312-2000	18,202,723.07
ST-DST-97-0313-2000	24,325,298.80

The undisputed facts as culled from the records of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under Philippine

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laws. It was merged/integrated with First Metro Investment Corporation, a domestic corporation duly organized and existing under Philippine laws, with the surviving entity being petitioner Solidbank Corporation. However, petitioner's corporate name was later renamed to First Metro Investment Corporation. It has its principal address at the 20th Floor G.T. Tower International, Ayala Avenue corner H.V. dela Costa Street, Makati City. (*par 1.1, Petition for Review)*

For the taxable years 1994, 1995, 1996 and 1997, respondent issued the following assessment notices against the petitioner:

1. Assessment Notice No. ST-DST-94-0052-98
2. Assessment Notice No. ST-DST-2-94-0053-98
3. Assessment Notice No. ST-DST-2-95-0055-98
4. Assessment Notice No. ST-DST-95-0054-98
5. Assessment Notice No. ST-DST-96-0312-2000
6. Assessment Notice No. ST-DST-97-0313-2000

for deficiency documentary stamp taxes on interbank call loans, reverse repurchase agreements and trust/assets-held-in-trust. (*par 2, Joint Stipulation of Facts and Issues*)

Through separate protest letters dated September 30, 1998, July 8, 1999 and February 2, 2000, petitioner contested the above assessments. *(par 3, Joint Stipulation of Facts and Issues)*

On August 8, 2002, respondent issued the assailed Final Decision denying petitioner's protests and effectively affirmed the following assessments:

> *"In view of the foregoing, this Office decided to sustain the following assessments:*

Kind of Tax	**Year Involved**	**Assessment Notice Number**	**Amount**
DST on Trust/Assets held in trust	1994	ST-DST-2-94-0053-98	P34,553,797.95
DST on Trust/Assets held in trust	1995	ST-DST-2-95-0055-98	P14,984,066.38
DST on Interbank Call loans and Trust/Assets held in trust	1996	ST-DST-96-0312-2000	P18,202,723.07
DST on Interbank Call loans and Trust/Assets held in trust	1997	ST-DST-97-0313-2000	P24,325,298.80

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With respect to the deficiency documentary stamp tax assessments on interbank call loans/RRPs for the taxable years 1994 and 1995 covered by Assessment Notice Nos. ST-DST-94-0052-98 and ST-DST-95-0054-98, this Office has resolved to reduce/modify the said assessments based on the premise that prior to the issuance of Revenue Regulations No. 3-97, reverse repurchase agreements are not considered as deposit substitutes and thus not subject to the documentary stamp tax under Section 180 of the NIRC of 1977 as amended. A recomputation of deficiency documentary stamp tax assessment on interbank call loans of Solid Bank for the taxable years 1994 and 1995, is therefore necessary in order to determine the correct ax liability. The recomputation is shown as follows:

	1994	1995
Interbank Call Loans	P1,415,370,000.00	P1,391,544,000.00
DST Due	2,123,055.00	2,087,316.00
Add: 25% surcharge	530,763.75	521,829.00
20% interest from 1-25-95 to 10-31-98 (.7533333)	1,599,368.03	
20% interest from 1-25-96 to 10-31-98 (.5533333)		1,154,981.45
Compromise Penalty	25,000.00	25,000.00
TOTAL AMOUNT DUE	**P4,278,186.78**	**P3,789,126.45**

Consequently, Solid Bank Corporation is hereby ordered to pay the above-stated amounts plus interest that may have accrued thereon, to the Large Taxpayer's Service, BIR, National Office, Diliman, Quezon City, after thirty (30) days from receipt hereof, otherwise the collection thereof will be effected through the summary remedies provided by law.

This constitutes the final decision of this Office on the matter."

Petitioner elevated this instant petition on October 29, 2002 pursuant to Section 228 of the 1997 Tax Code.

On December 19, 2002, filed his Answer, raising the following Special and Affirmative Defenses:

1. This Honorable Court has no jurisdiction over the instant case as the subject assessments for deficiency documentary stamp taxes for the years 1994, 1995, 1996 and 1997 have already become final, executory and demandable in accordance with Section 228 of the Tax Code, the pertinent provision of which states that: "xxx. Within sixty (60) days from filing of the protest, all relevant documents shall have been submitted; otherwise, the assessment shall become final."

   Since the sixty (60) day period from the filing of protest expired without the petitioner having submitted all relevant supporting documents as required by law, the assessments in question have become final.

2. Assuming that the Honorable Court has jurisdiction to take cognizance of the instant case, nonetheless, the assessments were issued in accordance with law.

3. The DST on interbank call loans is imposed on the privilege of contracting loans between and among banks even if such transaction is documented merely by call slips and payment transfer tickets. Whether or not there is s piece of document evidencing the transaction is of no moment, as the DST automatically accrues when the said privilege is exercised.

4. Petitioner's trust agreement/assets-held-in-trust account is considered a certificate of deposit contemplated and taxable under Section 180 of the then Tax Code.

5. In the case of BPI-Family Bank vs. CIR, CA-GR. No. SP 29853, September 19, 1994, the Court of Appeals, in interpreting the provision of Section 180 of the NIRC, named with particularity the instruments subject to DST. Said the Court:

> "A perusal of Section 180 of the Tax Code will show that it covers the following instruments:
> 1. promissory notes, whether negotiable or not;
> 2. bills of exchange;
> 3. drafts;
> 4. certificates of deposit; and
> 5. debt instruments used for deposit substitutes.

6. A "certificate of deposit" as defined in the BPI-Family Bank case is a written acknowledgment by a bank of the receipt of money on deposit which the bank promises to pay to the depositor, bearer, or to some other person or order. (Olson Estate 206, Iowa, 706, 219 N.W. 40, cited in Agbayani, op.cit., p 44)

7. Fragmenting the essential elements of the aforestated definition, it can be inferred that a certificate of deposit presupposes:

    1. That a bank received money on deposit;
    2. From someone who is considered a "depositor";
    3. That the bank acknowledges receipt of the deposit in writing;
    4. That the bank promises to pay to the depositor/bearer/or to some other person or order the deposit or any part thereof.

Having met all the above-mentioned technical requirements, trust agreements/assets-held-in-trust (AHIT) account of petitioner is unmistakably a "certificate of deposit" for which taxability to DST lies.

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8. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called (CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671). It is incumbent upon the taxpayer to prove the contrary (Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Antonio Tuazon, Inc. 173 SCRA 397), and failure to do so shall vest legality to respondent's actions and assessments.

After both parties had filed their respective memorandum, this case was deemed submitted for decision on January 25, 2005.

The issues as stipulated by the parties are as follows:

1. Whether or not the following bank transactions are subject to DST under Section 180 of the NIRC of 1997:

    (a) TRUST AGREEMENT / ASSETS-HELD-IN-TRUST
    (b) INTERBANK CALL LOANS

2. Whether or not the assessments have become final, executory and demandable.

Considering that the resolution of the primary issue on the taxability of the mentioned bank transactions would depend on the conclusion and determination of the second issue raised by the parties, this Court deems it essential to discuss the issue of the assessment's finality first.

Respondent avers that this Honorable Court has no jurisdiction over the instant case as the subject deficiency documentary stamp taxes imposed upon the petitioner for its interbank call loans and trust/asset-held-in-trust accounts for the taxable years 1994, 1995, 1996 and 1997 had become final, executory and demandable pursuant to Section 228 of the Tax Code, the pertinent portion of which states that:

> **SEC. 228. Protesting of Assessment -** xxx
>
> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as

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> may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

It is respondent's contention that since the sixty (60)-day period for the filing of the protest expired without the petitioner having submitted all relevant supporting documents as required by the above-mentioned provision of law, the subject assessments have become final.

This Court does not agree.

A cursory reading of the text of Section 228 of the 1997 National Internal Revenue Code (NIRC) clearly presents that an assessment issued by the Commissioner of Internal Revenue on the basis of his findings, may be protested to administratively by the taxpayer by filing a request for reinvestigation or reconsideration within the period of thirty (30) days from its receipt of said assessment notice. Likewise, under the law, the taxpayer is given the period of sixty (60) days from the filing of the protest within which to submit all necessary documents to corroborate and strengthen its position as discussed in its protest. In cases where the taxpayer fails to submit the supporting documents within sixty (60) days, the assessment notice issued shall become final. In other words, the finality of the assessment, as worded in the provision of law, simply means that where the taxpayer decides to forego with its opportunity to present the documents in support of its claim within sixty (60) days from the filing of its protest, it merely lost its chance to further contest the assessment.

Effectively, its non-compliance with the submission of the necessary documents would either mean that the petitioner no longer wishes to further submit any document for the reason that its protest letter filed was more than enough to support its claim, or that the petitioner failed to comply thus it can no longer give justification with regard to its objections as to the correctness of the assessment notices.

Nonetheless, the necessity of the submission of the supporting documents lies on the petitioner. It cannot be left to the discretion of the respondent for in doing so would leave the petitioner's case at the mercy of the whims of the respondent. In other words, it is for the petitioner to decide whether or not supporting documents are necessary to support its protest, for it is in the best position, being the affected party to the assessment, to determine which documents are necessary and essential to garner a favorable decision from the respondent.

Proceeding now to the central issue of whether petitioner is liable to documentary stamp tax, respondent asserts that pursuant to Section 180 of the Tax Code, as amended by R.A. 7660 (effective January 14, 1994), interbank call loans (IBCLs) exceeding five (5) days are subject to documentary stamp taxes. Respondent avers that IBCLs are borrowings from banks and non-bank financial intermediaries engaged in quasi-banking activities. These IBCLs are considered loans and are subject to the documentary stamp tax under Section 180 of the Tax Code, as implemented by Revenue Regulations 9-94. Accordingly, whether or not there is a piece of document evidencing the transaction is of no moment, as the documentary stamp tax automatically accrues when the said privilege is exercised.

This Court agrees with respondent, but only with regard to the accrual of the documentary stamp tax upon the exercise of the privilege. It is undisputed that a documentary stamp tax is an excise tax. It is a tax on documents, instruments and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. Both the person issuing and the person to whom the document is issued may be made liable for the tax. Being an excise tax, it is paid only once. In other words, it is really imposed on the privilege to enter into a transaction rather than on the document. The law taxes the document because of the transaction

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(The Law on Transfer and Business Taxation, Hector S. de Leon, 1998 Ed., p 351). What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction.

However, it must be emphasized that although a documentary stamp tax is a tax on the privilege to enter into a transaction, not all transactions are subjected thereto. Only those specifically enumerated under the provisions of law may be subject to documentary stamp tax. Evidently so, when a certain transaction is neither enumerated categorically nor by implication, such transaction cannot be subject of documentary stamp tax.

As held by this Court in *ING Bank N.V. Manila Branch vs. Commissioner of Internal Revenue, CTA Case No. 6181, promulgated on August 9, 2004*, under the then Section 180 of the National Internal Revenue Code of 1993, the instruments enumerated as subject to documentary stamp tax did not include the term "interbank call loan agreements". The term "interbank call loan agreements" was mentioned under Section 20 (y) of the same Code as part of the proviso on "deposit substitutes". Said provisions of law are quoted hereunder for easy reference, to wit:

> **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 deposits 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 or 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

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> 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. No. 7660)
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> **Section 20. Definition.** – xxx
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> xxx xxx xxx
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> y) "Deposit substitutes" shall mean an alternative form of obtaining funds from the public, other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These instruments may include but need not be limited to banker's acceptances, promissory notes, repurchase agreements, certificates of assignments or participation and similar instruments with recourse as may be authorized by the Central Bank of the Philippines, for banks and non-bank financial intermediaries or by the Securities and Exchange Commission of the Philippines for commercial, industrial, finance companies and other non-financial companies: *Provided, however*, **That only debt instruments issued for interbank call loans to cover deficiency in reserves against deposit liabilities including those between and among banks and quasi-banks shall not be considered as deposit substitute debt instruments.** (as amended by Pres. Decree No. 1959) *(Emphasis supplied)*

Clearly then, the term "interbank call loan" is not one among those enumerated under Section 180 of the NIRC of 1993 as subject to documentary stamp tax. It cannot be inferred that "interbank call loans" should fall under the term "loan agreements", as maintained by respondent, for it is evident that under the provision of Section 20 (y) of the same Code, "interbank call loans" fall under the term "deposit substitutes". And considering that the term "deposit substitutes" was not enumerated as taxable for documentary stamp tax under Section 180, it is but logical to conclude that "interbank call loans" could not be subject to documentary stamp tax. The term "deposit substitutes" was only inserted in the 1997 National Internal Revenue Code (NIRC) which took effect on January 1, 1998. The taxable years in question pertain to 1994, 1995, 1996 and 1997, or definitely prior to the effectivity of the 1997 NIRC. Since it is an elementary rule that a tax law can only have a retroactive application in cases where the rights of the taxpayers are not prejudiced, Section 180 of the 1997 NIRC cannot be made to apply in this instant case.

With regard to petitioner's trust/asset-held-in-trust accounts, petitioner argues that in a trust banking arrangement, a trustor-trustee relationship is established whereby the trustee-bank holds in trust money or property of a trustor-client with the obligation of applying or managing said money or property in accordance with the instructions and wishes of the trustor-client. Ownership and title over the money or property entrusted remains in the trustor-client and is not passed over to the trustee-bank. It must be contra distinguished from a bank deposit arrangement wherein said deposit arrangement constitutes a general deposit and creates a debtor-creditor relation between the bank and the person who deposits his/her money with the bank. Ownership and title over the money being deposited passes over and transfers from the depositor to the bank which in return acquires the right to use said money but with the obligation to return the same amount to the depositor with interest.

On the other hand, it is respondent's argument that petitioner's trust/asset-held-in-trust accounts are considered as a certificate of deposit under Section 180 of the Tax Code, having the essential features of a trust agreement as follows:

a. the required minimum deposit of P50,000.00;
b. the shortest maturity date is 30 days;
c. the interest rate is higher than the regular deposit rate;
d. it is not payable on sight or demand, in case of pretermination, prior written notice is required;
e. it is automatically renewed in case the depositor fails to withdraw the deposit at maturity date;
f. the bank used confirmation of participation to evidence the acceptance of the funds from the trustor.

Thus, according to the respondent, based on the foregoing features, petitioner's trust agreements had the same features as that of a certificate of deposit. Petitioner's use of the term "trust agreement" is regarded as a misnomer considering that the relationship existing between the parties in the subject contract is actually not a trustor-trustee relationship, but that of a creditor-debtor relationship. Respondent further argues that in the questioned "trust agreement" of petitioner, once the specific funds or properties of the trustor are placed under the common trust fund there is a complete transfer of ownership from the trustor-client to the trustee-bank, as distinguished from the "contract of trust" under the Civil Code wherein there is only an equitable transfer of ownership by the trustor to the trustee, the trustor retaining the legal title to the subject property. It is manifested by the fact that said funds or properties may be invested by the bank in whatever manner it may deem necessary, the trustor having no control whatsoever over his funds. In effect, the said trust agreement, although termed as such, is in reality a form of a deposit, subject to documentary stamp tax under Section 180 of the Tax Code.

This Court cannot but disagree with the respondent.

In the case of **Traders Royal Bank vs. Commissioner of Internal Revenue, CTA Case No. 6392, April 28, 2004,** this Court had already an occasion to rule on this issue. To quote:

> *"A Trust Indenture Agreement has a different feature and concept from a certificate of deposit. When a depositor enters into a trust agreement, what is created is a trustor-trustee relationship. The money deposited is placed in trust to a common fund and then invested by the Trust Department into a profitable venture. The yield or return of investment is higher and varies depending on the actual profit earned. In some trust agreements, a depositor may even get a negative return of investment. The fact that there is an "expected rate of return" does not necessarily convert a trust agreement into a time deposit. Under Section X407 of the Manual of Regulations for Banks it is provided that "the basic characteristic of trust, other fiduciary and investment management relationship is the absolute non-existence of a debtor-creditor relationship, thus, there is no obligation on the part of the trustee, fiduciary or investment manager to guarantee returns on the funds or*

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properties regardless of the results of the investment."

The above ruling has been affirmed by the Court *en banc* in **Commissioner of Internal Revenue vs. Traders Royal Bank, CTA-EB No. 32, February 14, 2005**.

To reiterate, trust agreements or assets-held-in-trust accounts do not fall under the term "certificates of deposit", basically, because no debtor-creditor relationship arises in trust agreements. What is established is that of a trustor-trustee relationship. In a trust agreement, no absolute transfer of ownership over the money or property happens. What is merely extended to the trustee-bank is the right to manage and invest the object of the trust under the instructions of the trustor-client. Therefore, the trustee-bank is not obliged to guarantee a positive return on the money or property subject of the trust.

WHEREFORE, IN VIEW OF THE FOREGOING, the Petition for Review is hereby **GRANTED.** Respondent's Decision of August 8, 2002 assessing petitioner of deficiency documentary stamp taxes on its interbank call loans and trust/asset-held-in-trust accounts for the taxable years 1994, 1995, 1996, and 1997, is SET ASIDE. Accordingly, Assessment Notice Nos. ST-DST-94-0052-98, ST-DST-95-0054-98, ST-DST-2-94-0053-98, ST-DST-2-95-0055-98, ST-DST-96-0312-2000, and ST-DST-97-0313-2000 are hereby **CANCELLED**.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

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

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