Supreme Court E-Library

WHEREFORE, the Court finds Judge Romeo B. Casalan of the Regional Trial Court of Culasi, Antique, Branch 13, **GUILTY** of the less serious charges of **undue delay in rendering decision or order** and of **violation of Supreme Court rules and directives**, under Section 9, Rule 140 of the Rules of Court. Pursuant to Section 11 of the same Rule, he is **ORDERED** to pay a **FINE** in the amount equivalent to Three (3) months' salary at the time of his retirement for undue delay in the disposition of cases and for insubordination, to be deducted from his retirement/gratuity benefits.

SO ORDERED.

Velasco, Jr. (Chairperson), Perez, Reyes, and *Jardeleza, JJ.*, concur.

SECOND DIVISION

[G.R. No. 167679. April 20, 2016]

ING BANK N.V., engaged in banking operations in the Philippines as ING BANK N.V. MANILA BRANCH, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; REPUBLIC ACT NO. 9480 (THE TAX AMNESTY PROGRAM); PROVIDES A GENERAL GRANT OF TAX AMNESTY; EXCEPTIONS; THE LAW COVERS ALL INTERNAL REVENUE TAXES WHICH INCLUDE DOCUMENTARY STAMP TAX.— "The [documentary stamp tax] is one of the taxes covered by the Tax Amnesty Program under [Republic Act No.] 9480." The law expressly covers "*all national internal revenue taxes for the taxable year 2005 and prior years* … that have remained unpaid as of December 31, 2005[.]" The

Supreme Court E-Library

documentary stamp tax is considered a national internal revenue tax under Section 21 of Republic Act No. 8424, otherwise known as the National Internal Revenue Code of 1997. Republic Act No. 9480 provides a general grant of tax amnesty subject only to the cases *specifically* excepted by it. Thus, excluded from the tax amnesty are only those cases enumerated under Section 8 x x x. The same exceptions were reiterated in Department of Finance Order No. 29-07, otherwise known as the Rule and Regulations to Implement Republic Act No. 9480.

2. ID.; ID.; ID.; ID.; A TAXPAYER WHO IS DEEMED TO BE A WITHHOLDING OR COLLECTING AGENT OF THE TAX COLLECTED FROM ITS CUSTOMERS IS EXCLUDED FROM THE COVERAGE OF THE TAX AMNESTY, WITH RESPECT TO ITS LIABILITY AS A WITHHOLDING OR COLLECTING AGENT.— One of the exceptions provided under Section 8 of Republic Act No. 9480 is "[w]ithholding agents with respect to their withholding tax liabilities[.]" Withholding tax is merely a method of collecting income tax in advance. The perceived tax is collected at the source of income payment to ensure collection. "In the operation of the withholding tax system, the [income] payee is the taxpayer, the person on whom the tax is imposed, while the [income] payor, a separate entity, acts no more than an agent of the government for the collection of the tax in order to ensure its payment." "In other words, the withholding agent is merely a tax collector, not a taxpayer." In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue,* this Court ruled that "the liability of the withholding agents is independent from that of the taxpayer." x x x To be sustainable, therefore, the added exception "taxes passed-on and collected from customers for remittance to the [Bureau of Internal Revenue]" provided in Revenue Memorandum Circular Nos. 69-2007 and 19-2008 must be essentially equivalent to the withholding tax liabilities of a withholding agent. Thus, a taxpayer who is deemed to be a "withholding or collecting agent" of "the tax collected from [its] customer" is excluded from the coverage of the tax amnesty, with respect to its liability as a withholding or collecting agent.

3. ID.; REPUBLIC ACT NO. 8424 (THE NATIONAL INTERNAL REVENUE CODE OF 1997): DOCUMENTARY STAMP TAX; DEFINED; ANY OF THE PARTIES TO A TRANSACTION SHALL BE LIABLE FOR THE FULL AMOUNT OF THE

Supreme Court E-Library

DOCUMENTARY STAMP TAX DUE, UNLESS THEY AGREE AMONG THEMSELVES ON WHO SHALL BE LIABLE FOR THE SAME.— A documentary stamp tax is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale, or transfer of an obligation, right, or property. The tax is "levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments." The law taxes the document because of the transaction. Under Section 173 of the 1997 National Internal Revenue Code, the documentary stamp tax due is paid by the person "making, signing, issuing, accepting, or transferring" the instrument. Revenue Regulations No. 9-2000 clarifies that all parties to a transaction, and not only the person making, signing, issuing, accepting, or transferring the document, are primarily liable for the documentary stamp tax. "As a general rule, x x x any of the parties to a transaction shall be liable for the full amount of the documentary stamp tax due, unless they agree among themselves on who shall be liable for the same."

4. ID.; ID.; ID.; CERTIFICATE OF DEPOSIT, DEFINED; THE MAKER OR ISSUER OF A CERTIFICATE OF DEPOSIT IS DIRECTLY LIABLE FOR THE DOCUMENTARY STAMP TAX.— This Court has previously declared a special savings account or special savings deposit account to be a certificate of deposit drawing interest subject to the documentary stamp tax. A certificate of deposit is "a written acknowledgment by a bank of the receipt of a sum of money on deposit which the bank promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor or creditor between the bank and the depositor is created." Petitioner is directly liable for the documentary stamp tax as the maker and issuer of the instrument or any written memorandum evidencing the special savings account transaction. As a party to a taxable transaction, petitioner is responsible for the payment and remittance of the documentary stamp tax. However, if petitioner were exempt from the tax, it should be required to remit the same only as a collecting agent of respondent. In this case, there is no proof that petitioner is exempt from the documentary stamp tax on the special savings accounts. Neither is there any agreement/evidence on record showing the party liable for the documentary stamp tax due on the accounts. We cannot simply give credence to respondent's

Supreme Court E-Library

unsubstantiated allegation that petitioner passed on and collected the documentary stamp taxes on special savings account from its clients. Bare allegations do not constitute substantial evidence and, thus, have no probative value.

APPEARANCES OF COUNSEL

Tan Acut & Lopez for petitioner.
Rowell B. Vicente for respondent.

R E S O L U T I O N

LEONEN, *J.*:

For resolution is respondent Commissioner of Internal Revenue's Motion for Partial Reconsideration[1] of our Decision[2] dated July 22, 2015, which partly granted the Rule 45 Petition of ING Bank N.V. Manila Branch.[3] We set aside the assessments for deficiency documentary stamp taxes on petitioner's special savings accounts for the taxable years 1996 and 1997 and deficiency tax on onshore interest income for taxable year 1996 "in view of [its] availment of the tax amnesty program under Republic Act No. 9480."[4] However, we affirmed the Court of Tax Appeals En Banc's April 5, 2005 Decision holding petitioner "liable for deficiency withholding tax on compensation for the taxable years 1996 and 1997 in the total amount of ₱564,542.67 inclusive of interest[.]"[5]

---

[1] *Rollo*, pp. 957-964. The Motion was received by this Court on September 18, 2015.

[2] *Id.* at 918-943; *ING Bank N.V. v. Commissioner of Internal Revenue,* G.R. No. 167679, July 22, 2015 <http://sc judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/167679.pdf> [Per *J.* Leonen, Second Division].

[3] *Rollo*, p. 942, Supreme Court Decision; *ING Bank N.V. v. Commissioner of Internal Revenue,* G.R. No. 167679, July 22, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/167679.pdf> 25 [Per *J.* Leonen, Second Division].

[4] *Id.*

[5] *Id.*

Supreme Court E-Library

Petitioner filed its Opposition.[6]

The sole issue raised in the Motion for Partial Reconsideration is whether documentary stamp taxes are excluded from the tax amnesty granted by Republic Act No. 9480.[7]

Earlier, respondent argued that petitioner could not avail itself of the tax amnesty under Republic Act No. 9480[8] because both the Court of Tax Appeals En Banc and Second Division ruled in respondent's favor and confirmed the liability of petitioner for deficiency documentary stamp taxes, onshore taxes, and withholding taxes.[9] Respondent contended that the Bureau of Internal Revenue's Revenue Memorandum Circular No. 19-2008[10] specifically excludes "cases which were ruled by any court (even without finality) in favor of the [Bureau of Internal Revenue] prior to amnesty availment of the taxpayer" from the coverage of the tax amnesty under Republic Act No. 9480.[11]

In our Decision dated July 22, 2015, we found respondent's argument untenable. We held that "[t]axpayers with pending tax cases may avail [themselves] . . . of the tax amnesty program[.]"[12] We also held that Revenue Memorandum Circular No. 19-2008 cannot override Republic Act No. 9480 and its Implementing Rules

---

[6] *Rollo*, pp. 986-995.

[7] *Id.* at 958.

[8] An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years (2007).

[9] *Rollo*, pp. 876-879, Comment.

[10] Circularizing the Full Text of "*A Basic Guide on the Tax Amnesty Act of 2007"* for Taxpayers Who Wish to Avail of the Tax Amnesty Pursuant to Republic Act No. 9480 (2008).

[11] *Rollo*, pp. 877-878.

[12] *Id.* at 926, Supreme Court Decision; *ING Bank N.V. v. Commissioner of Internal Revenue,* G.R. No. 167679, July 22, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/167679.pdf> 9 [Per *J.* Leonen, Second Division].

Supreme Court E-Library

and Regulations, which only exclude from tax amnesty "tax cases subject of final and executory judgment by the courts."[13]

In its present Motion for Partial Reconsideration, respondent argues for the first time that the documentary stamp taxes on petitioner's special savings accounts for taxable years 1996 and 1997 are not covered by Republic Act No. 9480, pursuant to Q-1 of Revenue Memorandum Circular Nos. 69-2007[14] and 19-2008.[15] This time, respondent claims that the revenue memorandum circulars exclude documentary stamp taxes for being "[t]axes passed-on and collected from customers for remittance to the [Bureau of Internal Revenue] [.]"[16]

The pertinent provisions of the revenue memorandum circulars are as follows:

REVENUE MEMORANDUM CIRCULAR NO. 69-2007

. . . . . .

Q-1 What type of taxes and what taxable period/s are covered by the Tax Amnesty Program under RA 9480 as implemented by DO 29-07?

A-1 The Tax Amnesty Program (TAP) covers all national internal revenue taxes such as income tax, estate tax, donor's tax and capital gains tax, value added tax, other percentage taxes, excise taxes and documentary stamp taxes, except withholding taxes ***and taxes passed-on and already collected from the customers for remittance to the BIR, these taxes/funds being considered as funds held in trust for the government***. Moreover, the time-honored doctrine that *"No person shall unjustly enrich himself at the expense of another"* should always be observed. (Emphasis supplied)

---

[13] *Rollo*, p. 927, Supreme Court Decision; *ING Bank N.V. v. Commissioner of Internal Revenue,* G.R. No. 167679, July 22, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/167679.pdf> 10 [Per *J.* Leonen, Second Division].

[14] Clarification of Issues Concerning the Tax Amnesty Program Under Republic Act No. 9480 as Implemented by Department Order No. 29-07 (2007).

[15] *Rollo*, pp. 958-959, Motion for Partial Reconsideration.

[16] *Id.* at 960-961.

Supreme Court E-Library

REVENUE MEMORANDUM CIRCULAR NO. 19-2008

. . . . . .

Who may avail of the amnesty?

The following taxpayers may avail of the Tax Amnesty Program:

- ✓ Individuals
- ✓ Estates and Trusts
- ✓ Corporations
- ✓ Cooperatives and tax-exempt entities that have become taxable as of December 31, 2005
- ✓ Other juridical entities including partnerships.
  - ➢ Fiscal year taxpayers may likewise avail of the tax amnesty using their Financial Statement ending in any month of 2005.

EXCEPT:

- ☒ Withholding agents with respect to their withholding tax liabilities
- ☒ Those with pending cases:
  - Under the jurisdiction of the PCGG
  - Involving violations of the Anti-Graft and Corrupt Practices Act
  - Involving violations of the Anti-Money Laundering Law
  - For tax evasion and other criminal offenses under the NIRC and/or the RPC
- ☒ Issues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer. (e.g., Taxpayers who have failed to observe or follow BOI and/or PEZA rules on entitlement to Income Tax Holiday Incentives and other incentives)
- ☒ Cases involving issues ruled with finality by the Supreme Court prior to the effectivity of RA 9480 (e.g., DST on Special Savings Account)
- ☒ ***Taxes passed on and collected from customers for remittance to the BIR***
- ☒ Delinquent Accounts/Accounts Receivable considered as assets of the BIR/Government, including self-assessed tax. (Emphasis supplied)

Supreme Court E-Library

Respondent contends that the ruling in *Metropolitan Bank and Trust Company v. Commissioner of Internal Revenue,*[17] to the effect that documentary stamp tax is not among the taxes excluded from the coverage of Republic Act No. 9480, must be revisited.[18]

On the other hand, petitioner avers that respondent's position on the exclusion of documentary stamp taxes from the coverage of Republic Act No. 9480 is nothing but a "disguised variant"[19] of her previous argument, which was rejected by this Court.[20] Petitioner directs respondent's attention to previous rulings of this Court holding that "administrative issuances, such [as revenue memorandum circulars], cannot amend or modify the law."[21] It argues that "[r]espondent, through mere administrative issuances, cannot impose additional requirements and conditions which would remove taxpayers who are otherwise qualified to avail themselves of the tax amnesty[.]"[22]

Finally, petitioner faults respondent for misleading this Court by falsely asserting that it collected documentary stamp taxes from its clients. Allegedly, there is nothing in the records to support such claim.[23] Petitioner argues that on the contrary, the assessment for deficiency taxes arose from respondent's failure to collect and remit the documentary stamp taxes on its special savings accounts, because at that time, there was yet no conclusive ruling on whether these accounts were subject to documentary stamp taxes under Section 180[24] of the 1977 National Internal Revenue Code.[25]

---

[17] 612 Phil. 544 (2009) [Per *J.* Chico-Nazario, Third Division].

[18] *Rollo*, pp. 958-959, Motion for Partial Reconsideration.

[19] *Id.* at 990, Opposition.

[20] *Id.*

[21] *Id.* at 991.

[22] *Id.* at 993.

[23] *Id.*

[24] 1977 TAX CODE, Sec. 180, as amended by Rep. Act No. 7660 (1993), Sec. 7, 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

Supreme Court E-Library

We deny the Motion for Partial Reconsideration.

I

"The [documentary stamp tax] is one of the taxes covered by the Tax Amnesty Program under [Republic Act No.] 9480."[26] The law expressly covers "*all national internal revenue taxes for the taxable year 2005 and prior years* . . . that have remained unpaid as of December 31, 2005[.]"[27] The documentary stamp tax is considered a national internal revenue tax under Section 21[28] of Republic Act No. 8424, otherwise known as the National Internal Revenue Code of 1997.

Republic Act No. 9480 provides a general grant of tax amnesty subject only to the cases *specifically* excepted by it. Thus, excluded from the tax amnesty are only those cases enumerated under Section 8:

---

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 (₱0.30) 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 (₱250,000) 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.

[25] *Rollo*, pp. 993-994, Opposition.

[26] *Philippine Banking Corporation v. Commissioner of Internal Revenue,* 597 Phil. 363, 388 (2009) [Per *J.* Carpio, First Division].

[27] Rep. Act No. 9480 (2007), Sec. 1.

[28] TAX CODE, Sec. 21 provides:

SEC. 21. Sources of Revenue. — The following taxes, fees and charges are deemed to be national internal revenue taxes:

Supreme Court E-Library

SEC. 8. *Exceptions*. — The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:

a. Withholding agents with respect to their withholding tax liabilities;

b. Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;

c. Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;

d. Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;

e. Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and

f. Tax cases subject of final and executory judgment by the courts.

The same exceptions were reiterated in Department of Finance Order No. 29-07, otherwise known as the Rules and Regulations to Implement Republic Act No. 9480.

Respondent claims that petitioner's liability for deficiency documentary stamp taxes is excluded from the tax amnesty program because documentary stamp taxes are "[t]axes passed-on and

---

(a) Income tax;

(b) Estate and donor's taxes;

(c) Value-added tax;

(d) Other percentage taxes;

(e) Excise taxes;

(f) Documentary stamp taxes; and

(g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue.

Supreme Court E-Library

collected from customers for remittance to the [Bureau of Internal Revenue][,]" pursuant to Revenue Memorandum Circular Nos. 69-2007 and 19-2008.[29]

This Court has previously held that administrative issuances such as revenue memorandum circulars cannot amend nor modify the law.

In *Philippine Bank of Communications v. Commissioner of Internal Revenue*,[30] this Court upheld the nullification of Revenue Memorandum Circular No. 7-85 issued by the Acting Commissioner of Internal Revenue because it was not in harmony with, or was contrary to, the express provision of Section 230 of 1977 National Internal Revenue Code. Hence, the circular cannot be given weight for to do so would, in effect, amend the statute.[31] This Court emphasized:

> It bears repeating that Revenue memorandum-circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.[32] (Citations omitted)

In *Commissioner of Internal Revenue v. Court of Appeals, et al.*,[33] another case involving tax amnesty:

> The authority of the Minister of Finance (now the Secretary of Finance), in conjunction with the Commissioner of Internal Revenue, to promulgate all needful rules and regulations for the effective

---

[29] *Rollo*, pp. 960-961, Motion for Partial Reconsideration.

[30] 361 Phil. 916 (1999) [Per *J.* Quisumbing, Second Division].

[31] *Id.* at 926-928.

[32] *Id.* at 928-929.

[33] 310 Phil. 392 (1995) [Per *J.* Vitug, Third Division].

Supreme Court E-Library

enforcement of internal revenue laws cannot be controverted. Neither can it be disputed that such rules and regulations, as well as administrative opinions and rulings, ordinarily should deserve weight and respect by the courts. *Much more fundamental than either of the above, however, is that all such issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. Administrative rules and regulations are intended to carry out, neither to supplant nor to modify, the law*.[34] (Emphasis supplied)

In that case, the Commissioner of Internal Revenue refused to cancel its assessment of deficiency income and business taxes against the taxpayer.[35] The Commissioner argued that "Revenue Memorandum Order No. 4-87 . . . implementing Executive Order No. 41, had construed the amnesty coverage to include only assessments issued by the Bureau of Internal Revenue after the promulgation of the executive order on 22 August 1986 and not to assessments theretofore made."[36] This Court rejected the Commissioner's claim and ruled that if "Executive Order No. 41 had not been intended to include 1981-1985 tax liabilities already assessed (administratively) prior to 22 August 1986, the law could have simply so provided in its exclusionary clauses."[37]

Similarly, in *CS Garment, Inc. v. Commissioner of Internal Revenue,*[38] this Court struck down as exception "[i]ssues and cases which were ruled by any court (even without finality) in favor of the [Bureau of Internal Revenue] prior to amnesty availment of the taxpayer" under the Bureau's Revenue Memorandum Circular No. 19-2008, for going beyond the scope of the provisions of the 2007 Tax Amnesty Law.[39]

One of the exceptions provided under Section 8 of Republic Act No. 9480 is "[w]ithholding agents with respect to their withholding tax liabilities[.]"

---

[34] *Id.* at 397.

[35] *Id.* at 394.

[36] *Id.*

[37] *Id.* at 399.

[38] G.R. No. 182399, March 12, 2014, 718 SCRA 614 [Per *C.J.* Sereno, First Division].

[39] *Id.* at 633-634.

Supreme Court E-Library

Withholding tax is merely a method of collecting income tax in advance. The perceived tax is collected at the source of income payment to ensure collection. "In the operation of the withholding tax system, the [income] payee is the taxpayer, the person on whom the tax is imposed, while the [income] payor, a separate entity, acts no more than an agent of the government for the collection of the tax in order to ensure its payment."[40] "In other words, the withholding agent is merely a tax collector, not a taxpayer."[41]

In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,[42] this Court ruled that "the liability of the withholding agent is independent from that of the taxpayer."[43] Further:

> The [withholding agent] cannot be made liable for the tax due because it is the [taxpayer] who earned the income subject to withholding tax. The withholding agent is liable only insofar as he failed to perform his duty to withhold the tax and remit the same to the government. The liability for the tax, however, remains with the taxpayer because the gain was realized and received by him.[44]

Parenthetically, withholding tax is different from indirect tax. In *Asia International Auctioneers, Inc. v. Commissioner of Internal Revenue*:[45]

> Indirect taxes, like VAT and excise tax, are different from withholding taxes. To distinguish, in indirect taxes, the incidence of taxation falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. On the other hand, in case of withholding taxes, the incidence and burden of taxation fall on

---

[40] *Bank of America NT & SA v. Court of Appeals*, G.R. No. 103092, July 21, 1994, 234 SCRA 302, 310 [Per *J.* Vitug, Third Division].

[41] *Commissioner of Internal Revenue v. Court of Appeals*, 361 Phil. 103, 117 (1999) [Per *J.* Martinez, First Division].

[42] 672 Phil. 514 (2011) [Per *J.* Mendoza, Third Division].

[43] *Id.* at 529.

[44] *Id.*

[45] 695 Phil. 852 (2012) [Per *J.* Perlas-Bernabe, Second Division].

Supreme Court E-Library

the same entity, the statutory taxpayer. The burden of taxation is not shifted to the withholding agent who merely collects, by withholding, the tax due from income payments to entities arising from certain transactions and remits the same to the government. Due to this difference, the deficiency VAT and excise tax cannot be "deemed" as withholding taxes merely because they constitute indirect taxes.[46] (Citations omitted)

To be sustainable, therefore, the added exception "taxes passed-on and collected from customers for remittance to the [Bureau of Internal Revenue]" provided in Revenue Memorandum Circular Nos. 69-2007 and 19-2008 must be essentially equivalent to the withholding tax liabilities of a withholding agent. Thus, a taxpayer who is deemed to be a "withholding or collecting agent" of "the tax collected from [its] customer" is excluded from the coverage of the tax amnesty, with respect to its liability as a withholding or collecting agent.

II

Documentary stamp taxes on special savings accounts are direct liabilities of petitioner and not simply "[t]axes passed-on and collected from customers for remittance to the [Bureau of Internal Revenue]" as argued by respondent.

A documentary stamp tax is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale, or transfer of an obligation, right, or property.[47] The tax is

---

[46] *Id.* at 859-860.

[47] TAX CODE, Sec. 173 provides:

SEC. 173. Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers. — Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and the same time such act is done or transaction had: Provided, That whenever one party to the taxable document enjoys exemption from the

Supreme Court E-Library

"levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments."[48] The law taxes the document because of the transaction.

Under Section 173 of the 1997 National Internal Revenue Code, the documentary stamp tax due is paid by the person "making, signing, issuing, accepting, or transferring" the instrument.

Revenue Regulations No. 9-2000[49] clarifies that all parties to a transaction, and not only the person making, signing, issuing, accepting, or transferring the document, are primarily liable for the documentary stamp tax. It provides:

SEC. 2. Nature of the Documentary Stamp Tax and Persons Liable for the Tax. —

(a) *In General* — The documentary stamp taxes under Title VII of the Code is a tax on certain transactions. It is imposed against "the person making, signing, issuing, accepting, or transferring" the document or facility evidencing the aforesaid transactions. Thus, in general, it may be imposed on the transaction itself or upon the document underlying such act. *Any of the parties thereto shall be liable for the full amount of the tax due:* Provided, however, that as between themselves, the said parties may agree on who shall be liable or how they may share on the cost of the tax.

(b) *Exception* — Whenever one of the parties to the taxable transaction is exempt from the tax imposed under Title VII of the Code, the other party thereto who is not exempt shall be the one directly liable for the tax. (Emphasis supplied)

"As a general rule, therefore, any of the parties to a transaction shall be liable for the full amount of the documentary stamp tax

---

tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax.

[48] *International Exchange Bank v. Commissioner of Internal Revenue*, 549 Phil. 456, 467 (2007) [Per *J.* Carpio-Morales, Second Division], citing *Philippine Home Assurance Corporation v. Court of Appeals*, 361 Phil. 368, 372-373 (1999) [Per *J.* Mendoza, Second Division].

[49] Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions (2000).

Supreme Court E-Library

due, unless they agree among themselves on who shall be liable for the same."[50]

Section 3 of Revenue Regulations No. 9-2000 further prescribes the mode of payment and remittance of the documentary stamp tax:

SEC. 3. **Mode of Payment and Remittance of the Tax. —**

(a) *In general* — Unless otherwise provided in these Regulations, any of the aforesaid *parties to the taxable transaction shall pay and remit* the full amount of the tax in accordance with the provisions of Section 200 of the Code.

(b) *Exceptions* —

(1) *If one of the parties to the taxable transaction is exempt* from the tax, the other party who is not exempt shall be the one directly liable for the tax, in which case, the *tax shall be paid and remitted by the said non-exempt party*, unless otherwise provided in these Regulations.

(2) *If the said tax-exempt party is one of the persons enumerated in Section 3(c)(4) hereof, he shall be constituted as agent of the Commissioner for the collection of the tax*, in which case, he shall remit the tax so collected in the same manner and in accordance with the provisions of Section 200 of the Code: Provided, however, that if he fails to collect and remit the same as herein required, he shall be treated personally liable for the tax, in addition to the penalties prescribed under Title X of the Code for failure to pay the tax on time.

(3) The said tax-exempt party, who is constituted as agent for the collection of the tax, shall issue an acknowledged receipt in respect of the documentary stamp tax so collected from the aforesaid another party and the same shall be remitted in accordance with the provisions of these Regulations.

(c) *Person liable to remit the DST* — In general, the full amount of the tax imposed under Title VII of the Code may be remitted by any of the party or parties to the taxable transaction, except in the following cases:

(1) *Stamp tax on bonds, debentures, certificates of indebtedness, deposit substitute, or other similar instruments* — The tax shall be

---

[50] *Republic v. Soriano,* G.R. No. 211666, February 25, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/211666.pdf> 11 [Per *J.* Peralta, Third Division].

Supreme Court E-Library

remitted by the person who issued the instrument (e.g., "X" CORPORATION borrowed funds from the public though the issuance and sale of its interest-bearing Bonds. In this case, the stamp tax due thereon shall be remitted by "X" CORPORATION.)

. . . . . .

(4) When one of the parties to the taxable document or transaction is included in any of the entities enumerated below, such *entity shall be responsible for the remittance of the stamp tax* prescribed under Title VII of the Code: Provided, however, that *if such entity is exempt* from the tax herein imposed, it shall *remit the tax as a collecting agent*, pursuant to the preceding paragraph 3 (b) (2) hereof, any provision of these Regulations to the contrary notwithstanding:

(a) A *bank*, a quasi-bank or non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company[.] (Emphases supplied)

This Court has previously declared a special savings account or special savings deposit account to be a certificate of deposit drawing interest subject to the documentary stamp tax.[51] A certificate of deposit is "a written acknowledgment by a bank of the receipt of a sum of money on deposit which the bank promises to pay to the depositor, to the order of the depositor, or to some other person or

---

[51] *Philippine Banking Corporation v. Commissioner of Internal Revenue*, 597 Phil. 363, 379-382 (2009) [Per *J.* Carpio, First Division]. These products as well as the Savings Plus Deposit Account in *China Banking Corporation v. Commissioner of Internal Revenue* (617 Phil. 522, 539 (2009) [Per *J.* Peralta, Third Division]), the Savings Account-Fixed Savings Deposit in *International Exchange Bank v. Commissioner of Internal Revenue* (549 Phil. 456, 463-466 (2007) [Per *J.* Carpio-Morales, Second Division]), and Savings Account Plus in *Prudential Bank v. Commissioner of Internal Revenue* (670 Phil. 339, 347-349 (2011) [Per *J.* Del Castillo, First Division]) were all essentially the same and considered as deposit drawing interest subject to documentary stamp tax. They all possess the following features:

(1) Amount deposited is withdrawable anytime;

(2) The same is evidenced by a passbook;

(3) The rate of interest offered is the prevailing market rate, provided the depositor would maintain his minimum balance within a certain period, and should he withdraw before the period, his deposit would earn the regular savings deposit rate.

Supreme Court E-Library

his order, whereby the relation of debtor or creditor between the bank and the depositor is created."[52]

Petitioner is directly liable for the documentary stamp tax as the maker and issuer of the instrument or any written memorandum evidencing the special savings account transaction.

As a party to a taxable transaction, petitioner is responsible for the payment and remittance of the documentary stamp tax. However, if petitioner were exempt from the tax, it should be required to remit the same only as a collecting agent of respondent.

In this case, there is no proof that petitioner is exempt from the documentary stamp tax on the special savings accounts. Neither is there any agreement/evidence on record showing the party liable for the documentary stamp tax due on the accounts. We cannot simply give credence to respondent's unsubstantiated allegation that petitioner passed on and collected the documentary stamp taxes on special savings accounts from its clients. Bare allegations do not constitute substantial evidence and, thus, have no probative value.

WHEREFORE, the Motion for Partial Reconsideration is **DENIED WITH FINALITY.**

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Mendoza, JJ.,* concur.

---

[52] *Id.* at 382, citing *Far East Bank and Trust Company v. Querimit*, 424 Phil. 721, 730 (2002) [Per *J.* Mendoza, Second Division].