REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FMF DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6153

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 20 2003
apdpalmiano

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DECISION

The instant Petition for Review is an appeal for the cancellation and withdrawal of the deficiency income tax, withholding tax on compensation and expanded withholding tax assessments issued by the respondent against the petitioner for taxable year 1995 in the aggregate amount of P2,053,698.25.

The antecedent facts of the case are as follows:

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Philippines with office address at the 4th Floor, Beneficial Life Bldg., Muralla St., Intramuros, Manila (*Joint Stipulation of Facts, par. 1*).

On April 15, 1996, petitioner filed its Corporate Annual Income Tax Return for the year ended December 31, 1995, showing a loss of P3,348,932.00, computed as follows:

Gross Income	P 7,370,230.00
Less: Deductions	10,719,162.00
Net Loss	(P 3,348,932.00)

(*Exhibits "K" to "K-2"; Joint Stipulation of Facts, par. 3*). This was amended on May 8, 1996 (*Exhibits "L" to "L-3"*), to reflect the following details:

Gross Income	P 8,086,128.00
Less: Deductions	10,912,669.00
Net Loss	(P 2,826,541.00)

On October 6, 1998, respondent, through the BIR's Assessment Division, issued against the petitioner deficiency income tax and withholding tax pre-assessment notices for the year 1995 (*Exhibits "15" and "16"*), which was received by the latter on October 20, 1998 (*Exhibit "E-1", Joint Stipulation of Facts, par. 4*), and contained the following findings:

Net Income per Investigation		(P2,826,541.00)
Add: Unallowable Deductions/additional income		
Total Expenses	P10,912,669.00	
Disallowed Portion	x 81%	8,839,261.89
Total Adjustments		8,839,261.89
Net Income per investigation		P6,012,720.89
Less: Personal & Additional Exemptions		- 0 -
Amount Subject to tax		P6,012,720.89
Income tax due thereon		P2,104,452.00
Less: Amount already assessed		154,995.30
TOTAL TAX DUE (excluding increments)		P2,461,820.87

On November 4, 1998, petitioner filed its protest against the said income tax pre-assessment notice dated October 6, 1998, coupled with a request for reconsideration or reinvestigation (*Exhibits "B" to "B-2"; Joint Stipulation of Facts, par. 5*).

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On November 10, 1998, petitioner received from respondent a one (1)-paged withholding tax Pre-Assessment Notice dated October 6, 1998 informing petitioner of its findings as follows:

A. Increments on late payment of withholding tax on compensation
(dividend bonus payable)

Basic Tax	P304,891.10	
25% Surcharge (Sec. 248)	87,016.20	
Interest (1-26-96 to 11-07-96)(Sec. 249)	60,343.02	
Compromise penalty (Sec. 254)	16,000.00	
Total		**P163,359.22**

B. Increments on late payment of expanded withholding tax on management fee.

Management fee per financial statement	P4,104,800.00	
Less: Management fee subj. to EWT (1995)	260,640.00	
Difference (Mgmt. fee not subj. to EWT until 10-15-96)	P3,844,160.00	
Basic Tax (P3,844,160.00 x 10%)	P 384,416.00	
25% Surcharge (Sec. 248)	96,104.00	
Interest (1-26-96 to 10-15-96)(Sec. 249)	69,942.35	
Compromise penalty (Sec. 254)	16,000.00	
Total		P182,046.35

TOTAL INCREMENTS ON LATE PAYMENTS	**P345,405.57**

On November 25, 1998, petitioner filed its protest against the said Pre-Assessment Notice and requested for reinvestigation of the same (*Exhibits "D" to "D-2"; Joint Stipulation of Facts, pars. 6 and 7*).

Respondent granted petitioner's request and the docket of the case was referred to Revenue Officer Alberto U. Fortaleza. In his letter, Revenue District Officer Rogelio

Zambarrano invited petitioner to an informal conference on February 2, 1999, in order to give the latter the opportunity to give its side of the case.

Records show that petitioner was required to execute a Waiver of the Statute of Limitations as a requirement for reinvestigation. Thus, on February 9, 1999, petitioner, through its representative Enrique C. Fernandez, executed a Waiver extending respondent's period to assess until October 31, 1999. Said waiver was allegedly accepted by respondent's revenue official Rogelio B. Zambarrano, then Revenue District Office of RDO No. 33, BIR-Manila *(Exhibits "10", "10-a" to "10-c").*

On October 18, 1999, petitioner received the amended deficiency income tax pre-assessment notice and the retained withholding tax pre-assessment notices for the taxable year 1995, dated October 6, 1999 *(Exhibits "25" and "26"; Joint Stipulation of Facts, par. 8),* containing the following findings:

Net Income per Investigation		(P2,826,541.00)
Add: Adjustments/Disallowances		
Management Fees – Not necessary (Sec. 29)	4,104,800.00	
Employee Benefits – unsupported (Sec. 29)	58,611.55	
Salaries & Wages – No EWT (Sec. 29)	1,059,118.50	
Withholding Tax – unaccounted (Sec. 28)	348,813.13	
Cash Overdraft – unaccounted (Sec. 28)	254,853.96	
Transportation Exp. – unaccounted (Sec. 28)	22,390.16	
Representation Exp. – unaccounted (Sec. 29)	14,772.59	
Miscellaneous Exp. – unsupported (Sec. 29)	69,404.65	5,932,764.44
Net Taxable Income		P3,106,223.44
Income Tax Due thereon		P1,087,178.20
Less: Tax Credit/Paid		154,995.30
Income Tax Due Thereon (excluding increments)		P 932,182.90

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A. Increments on late payment of withholding tax on compensation (dividend bonus payable)

Basic	P 304,891.10	
25% Surcharge (Sec. 248)	87,016.20	
Int. (1/26/96 to 11/7/96) (Sec. 249)	60,343.02	
Compromise penalty (Sec. 254)	16,000.00	
Total		P163,359.22

B. Increments on late payment of expanded withholding tax on management fee.

Management Fee per financial statement	P4,104,800.00	
Less: Management fee subj. to EWT (1995)	260,640.00	
Difference (Mgmt. fee not subj. to EWT until 10-15-96)	P3,844,160.00	
Basic Tax (P3,844,160.00 x 10%)	P 384,416.00	
25% Surcharge (Sec. 248)	96,104.00	
Interest (1-26-96 to 10-15-96)(Sec. 249)	69,942.35	
Compromise penalty (Sec. 254)	16,000.00	
Total		P182,046.35

TOTAL INCREMENTS ON LATE PAYMENTS	P345,405.57

On November 3, 1999, petitioner filed its letter protesting the October 6, 1999 Pre-Assessment Notice. In said letter, petitioner requested for a conference to be able to discuss with the respondent the bases of the adjustments/disallowances made and reiterated the arguments in its November 5, 1998 letter as regards the increments on the withholding taxes (*Exhibit "F"; Joint Stipulation of Facts, par. 9*).

On the same day, petitioner received from respondent a seven-paged Letter of Demand and Assessment Notice No. 33-1-00487-95 dated October 25, 1999 (*Exhibit "G"; Joint Stipulation of Facts, par. 10*), for the following taxes:

Income Tax Assessment	P1,608,015.50
Compromise Penalty on Income Tax Assessment	20,000.00
Increments on Withholding Tax on Compensation	184,132.26
Compromise Penalty on Increments on Withholding Tax on Compensation	16,000.00
Increments on Withholding Tax on Management Fees	209,550.49
Compromise Penalty on Increments on Withholding Tax on Management Fees	16,000.00
Total	**P2,053,698.25**

the details of which are as follows:

A. INCOME TAX ASSESSMENT:

Net Income per Investigation		(P2,826,541.00)
Add: Adjustments/Disallowances		
Management Fees – Not necessary (Sec. 29)	4,104,800.00	
Employee Benefits – unsupported (Sec. 29)	58,611.55	
Salaries & Wages – No EWT (Sec. 29)	1,059,118.50	
Withholding Tax – unaccounted (Sec. 28)	348,813.13	
Cash Overdraft – unaccounted (Sec. 28)	254,853.96	
Transportation Exp. – unaccounted (Sec. 28)	22,390.16	
Representation Exp. – unaccounted (Sec. 29)	14,772.59	
Miscellaneous Exp. – unsupported (Sec. 29)	69,404.65	5,932,764.44
Net Taxable Income		P3,106,223.44
Income Tax Due thereon		P1,087,178.20
Less: Amount already assessed		154,995.30
Balance:		P 932,182.90
Add: 20% interest from ___ to 11-25-99 (Sec. 249)		675,832.60
Total Income Tax Due		**P1,608,015.00**

B. COMPROMISE PENALTY ON INCOME TAX ASSESSMENT:

Late Payment (Sec. 254) **P 20,000.00**

C. WITHHOLDING TAX ASSESSMENT:

Increments on late payment of withholding tax on compensation (Dividend Bonus Payable)

Basic P304,891.10

25% Surcharge (Sec. 248)	87,016.20
Int. (1/26/96 to 11/7/96) – Sec. 249	60,343.02
Int. (11/8/96 to 11/25/99)	36,773.04
TOTAL TAX DUE	**P184,132.26**

D. COMPROMISE PENALTY ON WITHHOLDING TAX ASSESSMENT:

Late Payment (Sec. 254)	**P16,000.00**

E. WITHHOLDING TAX ASSESSMENT:

Increments on late payment of expanded withholding tax on Management fee.

Basic (P3,844,160.00 x 10%)	P384,416.00	
25% Surcharge (Sec. 248)		96,104.00
Int. (1/26/96 to 10/15/96) – Sec. 249		69,942.35
Int. (10/16/96 to 11/25/99)		43,504.14
TOTAL TAX DUE		**P209,550.49**

F. COMPROMISE PENALTY ON WITHHOLDING TAX ASSESSMENT:

Late Payment (Sec. 254)	**P 16,000.00**

On November 24, 1999, petitioner filed its letter dated November 23, 1999 protesting Assessment Notice No. 33-1-00487-95 on the grounds that:

(a) The Assessment Notice is invalid for its failure to comply with the provisions of Section 228 of the Tax Code as implemented by paragraph 3.1.4 of Revenue Regulations No. 12-99 when it failed to state the facts and the law upon which the assessment was based;

(b) The Letter of Demand and Assessment Notice are already barred by prescription considering that there was no valid waiver of the Statute of Limitations under the Tax Code;

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(c) Existing Bureau of Internal Revenue (BIR) regulations do not require the withholding of tax upon the accrual of the compensation but only upon the actual payment thereof; and

(d) There is no existing BIR regulation which requires a corporation such as petitioner to withhold creditable income taxes of 10% on its payment of management fees to another corporation.

(Exhibits "H" to "H-2"; Joint Stipulation of Facts, par. 11).

On July 18, 2000, petitioner received respondent's March 14, 2000 letter providing clarifications and requesting petitioner to settle its alleged tax liabilities as covered by Assessment Notice No. 33-1-00487-95 dated October 25, 1999. Respondent further advised petitioner that "(t)his case will be forwarded to the Collection Division, this region, upon failure on your part to pay within prescribed period and a proper judicial action will be filed in order to protect the interest of the government" *(Exhibit "I"; Joint Stipulation of Facts, par. 12).*

In view of the fact that respondent has demanded petitioner to settle its alleged tax liabilities as covered by Assessment Notice No. 33-1-00487-95 and respondent has already notified petitioner of its intention to forward the same to the Collection Division and institute judicial action thereon, petitioner considered the said March 14, 2000 letter to be respondent's denial of petitioner's protest letter dated November 23, 1999.

Hence, on August 17, 2000, petitioner filed the instant Petition for Review.

In his Answer, respondent raised the following Special and Affirmative Defenses:

"12. The assessment is valid and correct and the taxpayer has the burden of proof to impugn its validity *(Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil. 647).* Petitioner has miserably failed to present

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concrete evidence to overcome the presumption of validity and correctness attached to the assessment;

13. The assessment was made in accordance with law based on facts, as a result of the investigation conducted against petitioner by the revenue officers of the respondent;

14. Petitioner executed a Waiver of the Statute of Limitation dated February 9, 1999, which is within the three (3) year prescriptive period to assess. Said waiver has been duly signed by petitioner's authorized representative ENRIQUE C. FERNANDEZ and accepted by respondent's authorized representative ROGELIO B. ZAMBARRANO – the then Revenue District Officer of RDO No. 33, BIR, Manila which has remained effective until October 31, 1999;

15. Petitioner's renunciation of its right to invoke the defense of prescription, by way of executing Waiver of Statute of Limitations, is valid and proper. There is nothing unlawful nor immoral about this kind of waiver, just like any other right, the right to avail of the defense of prescription is waivable (Sambrano vs. Court of Tax Appeals [1957], 101 Phil 1; Republic vs. Arcache, L-15547, February 29, 1964);

16. If the assessment is revised after request for reconsideration by the taxpayer, the period used in the determination is excluded from the total prescriptive period (CIR vs. Capital Subdivision, Inc., G.R. No. 18993 dated April 30, 1964; CIR vs. Sison, G.R. No. 13739 dated April 30, 1963). In the instant case, pre-assessment notice has been issued on October 6, 1998. Upon petitioner's two (2) letter protest dated November 3 and 23, 1998, respondent revised the findings in said pre-assessment notice by way of issuing another pre-assessment notice dated October 6, 1999;

17. The words like "not necessary", "unsupported" and "unaccounted" followed by the specific provision of the Tax Code violated is sufficient to inform the petitioner of the factual and legal basis of the assessment issued. The intrinsic validity of the assessment notice should be given more weight rather than its form or extrinsic character;

18. Section 229 of the 1993 Tax Code, and not Section 228 of the 1997 Tax Code, is the applicable law in the case at bar. This is so because statute should be considered as prospective in operation whether it enacts, amends, or repeals a tax provision unless the language of such statute clearly demands or express that it should have retrospective application (Commissioner of Internal Revenue vs. Filipinas Compania de Seguras, 107 Phil. 1055).

19. The term payment implies actual and constructive payment. The term "payroll period" means a period for which payment of taxes is made either actual or constructive. Thus, withholding of taxes on compensation is required whether such as is actually or constructively paid;

20. Revenue Memorandum Circular No. 51-79 dated June 25, 1979, and Revenue Memorandum Circular No. 6-79 dated June 4, 1979, amending Revenue Regulation No. 13-78 provide for the withholding of creditable income, among other things, income payments made to persons, natural or juridical, residing in the Philippines as professional or talent fees. Management fees paid to a general manager is income of the latter (i.e., income payment to the manager for his professional services). Thus, Management fees belong to and are of the same class or nature as professional,, promotional and talent fees, which are income payment and which are subject to the 10% expanded withholding tax;

21. The intent of the law to include managerial fees as subject to the withholding tax is made more evident when it specifically provided that fees paid to management and technical consultants are included among those subject to withholding tax (Anscor Container Corp. vs. CIR, CA G.R. SP No. 22912, March 21, 1991; PBP Financing & Leasing Corp. vs. CIR, CTA Case No. 4223, October 28, 1994); and

22. BIR Ruling dated August 06, 1986 posed by SGV for and in behalf of Orient Pacific Capital Investment Corporation held that "only deduction which produced taxable income can be claimed for income tax purposes. Consequently, deductions which produced non-taxable income cannot be claimed as against taxable income."

The parties likewise stipulated the issues to be resolved by this court, namely:

1. Whether or not the Assessment Notices are valid;

2. Whether or not the Assessment Notice is already barred by prescription;

3. Whether or not the Tax Code and the various BIR regulations require taxes to be withheld and remitted at the time salaries, wages or other compensation are accrued; and

4. Whether or not the Tax Code or BIR regulations require the withholding of 10% creditable income tax on payment of management fees to juridical persons.

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At the outset, it is significant to state that all assessment notices issued on or after January 1, 1998, such as the subject assessment notice which was issued on October 25, 1999, are governed by the Tax Reform Act of 1997 and its implementing rules and regulations.

Section 228 of the Tax Code of 1997 provides, among others, that:

> **Section 228.** ***Protesting of Assessment.*** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
>
> x x x x x x x x x
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.** *(Emphasis supplied)*
>
> x x x x x x x x x

Moreover, Revenue Regulations No. 12-99 provides that:

> **3.1.4** ***Formal Letter of Demand and Assessment Notice.*** - The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpyer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void.** The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof. *(Emphasis supplied).*

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Basically, the aforequoted provisions provide that the taxpayer must be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment shall be considered null and void.

Based on the foregoing, petitioner argues that the subject assessment is invalid because it merely provides for the expenses and disallowance with plain notations, such as "not necessary", "unsupported", "unaccounted" or "no EWT", without any statement whatsoever as to particular acts that petitioner committed or omitted that would justify the disallowance of the expenses or the imposition of the incremental penalties. Moreover, petitioner contends that while the assessment notice provides for certain Tax Code provisions, there are no further explanation as to how those provisions were violated or whether or not petitioner failed to comply with those provisions. Accordingly, petitioner concludes that the assessment should be considered null and void for its failure to comply with the mandate of Section 228 of the Tax Code and Revenue Regulations No. 12-99.

Respondent, however, insists that the words "not necessary", "unsupported" and "unaccounted" followed by the specific provision of the Tax Code violated is sufficient to inform the petitioner of the factual and legal basis of the assessment issued.

We agree with the respondent.

Opposed to petitioner's arguments that the words "unnecessary", "unsupported" and "unaccounted" followed by the specific provision of the Tax Code violated, such as Section 28 for unaccounted income and Section 29 for unnecessary or unsupported expenses, do not meet the requisites of the above-quoted provisions, they are actually sufficient to inform the petitioner of the factual and legal bases of the assessment issued. Said notations were likewise indicated in the income tax demand letter which was attached to the deficiency income tax assessment notice (*Exhibit "27-a"*). This is particularly true where, prior to the issuance of the same, several informal conferences were held to afford the taxpayer the opportunity to present his side and be informed of the basis of the deficiency assessment. These lead to the logical conclusion that the petitioner had prior knowledge of the cause of disallowances and/or unaccounted income. As correctly pointed out by respondent, the intrinsic validity of the assessment notice should be given more weight rather than its form or extrinsic features.

We proceed to the second issue. Petitioner ratiocinates that the right of respondent to assess petitioner for deficiency taxes for taxable year 1995 had lapsed, there having been no valid extension of the three-year period within which the latter may issue an assessment notice. And closely related to this is the issue on the validity of the Waiver of the Statute of Limitations allegedly executed by the Commissioner and herein petitioner.

After carefully examining the questioned Waiver of Statute of Limitations, the court considers the same to be without any binding effect on the petitioner, in accordance with Revenue Memorandum Order No. 20-90.

For easy reference, the pertinent provisions are hereby reproduced:

> "In the execution of said waiver, the following procedures should be followed:
>
> x x x x x x x x x

2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.

   Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. **The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.**

x x x x x x x x x

4. **The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.**

5. **The foregoing procedures shall be strictly followed.** Any revenue official found not to have complied with this Order resulting on the prescription of the right to assess/collect shall be administratively dealt with." *(Emphasis supplied)*

The subject waiver (*Exhibit "10", page 447, BIR Records*), which could have extended the right of respondent to issue the assessment notice in question, failed to state the date of acceptance by the respondent. Under the aforequoted RMO, both the date of execution by the taxpayer and the date of acceptance by the Bureau should be before the expiration of the period of prescription. This is because when the period of prescription has expired, then there will be no more need to execute a waiver as there will be nothing more to extend. Evidently, in this case where the date of acceptance by the Bureau was not indicated, how can we determine with certainty that the waiver was actually accepted before the expiration of the three-year assessment period? Most likely, the date of execution (*February 9, 1999*) as indicated in the Waiver was not the date of acceptance by the Revenue Official who, by affixing his signature, allegedly accepted the Waiver on behalf of the respondent. The said waiver must have been accepted on a much later date, which may even be after the lapse of the three-year period.

Moreover, there is no showing that petitioner was even furnished a copy of the waiver signed by Revenue District Officer Rogelio Zambarrano. Under RMO No. 20-90, the fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

Finally, considering that the case involves more than 1 million pesos, the waiver should have been signed by the respondent himself, especially taking into account that when the same was allegedly executed, the period to assess was not about to prescribe. In the case of ***Hi Cement Corporation vs. Liwayway Vinzons-Chato, in her capacity as the Commissioner of Internal Revenue*, CTA Case No. 5026, January 29, 1998,** the court had the occasion to pass upon a similar case, thus:

> "The aforecited section 223(b) considers the waiver of the defense of prescription as an agreement entered into between the taxpayer and the Commissioner of Internal Revenue such that it must be signed by both of them to be valid. Revenue Memorandum Order No. 20-90 provides that only the Commissioner of Internal Revenue is authorized to sign a waiver for tax cases involving more than 1 million pesos and since the instant case involves more than 6 million pesos, the failure of the Commissioner of Internal Revenue to sign the said waiver renders it void and of no effect *(Luzon Packaging Products, Inc. vs. Liwayway Vinzons-Chato, CTA Case No. 5016 dated June 23, 1997 with Entry of Judgment dated September 25, 1997; Central Cement Corporation vs. Liwayway Vinzons-Chato, CTA Case No. 5024 dated June 13, 1997).*"

"It bears stressing that RMO No. 20-90 is directed to all concerned internal revenue officers. The said RMO even provides that the procedures found therein should be strictly followed, under pain of being administratively dealt with should non-compliance result to prescription of the right to assess/collect. Being one of the revenue officials authorized to sign a waiver, Revenue District Officer (Rogelio Zambarrano) ought to have known the procedures that should be followed in executing a waiver, for it is the only way to extend the BIR's right to assess/collect which could be barred by prescription. RMO No. 20-90 was promulgated pursuant to Section 223 of the Tax Code. (***Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6108, May 14, 2002**). In the case of ***Victorias Milling Co., Inc. vs. Social Security Commission*, 4 SCRA 627**, the Supreme Court ruled on the nature of administrative rules and regulations, thus:

> "When an administrative agency promulgates rules and regulations, it 'makes' a new law with the force and effect of a valid law, while when it renders an opinion or gives a statement of policy, it merely interprets a pre-existing law *(Parker, Administrative Law, p. 197; Davis Administrative Law, p. 194).* Rules and regulations when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, partakes of the nature of a statute, and compliance therewith may be enforced by a penal sanction provided in the law. This is so because statutes are usually couched in general terms, after expressing the policy, purposes, objectives, remedies and sanctions intended by the legislature. The details and the manner of carrying out the law are often times left to the administrative agency entrusted with its enforcement."

Thus, finding the waiver executed by petitioner on February 9, 1999 to be suffering from legal infirmities, the same is, therefore, invalid and ineffective. As a result, there was no valid extension of the period within which the respondent may issue an assessment notice.

Under Section 203 of the 1995 Tax Code, as a general rule, "*internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.*" Since we have earlier ruled that the waiver which could have extended respondent's right to assess up to October 31, 1999 is ineffective, petitioner only had three years from April 15, 1996, or until April 15, 1999, within which to issue an assessment against the petitioner for the taxable year 1995. Verily, the issuance by respondent of Assessment Notice No. 33-1-00487-95 on October 25, 1999 is time-barred. Consequently, the same is null and void.

Inasmuch as the validity of the questioned assessment has not been upheld, the remaining issues need no longer be tackled.

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **GRANTED.** Accordingly, Assessment Notice No. 33-1-00487-95 for deficiency income tax, withholding tax on compensation and EWT assessments for taxable year 1995, in the aggregate amount of P2,053,698.25, inclusive of increments, is **CANCELLED** and **WITHDRAWN.**

SO ORDERED.

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

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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