Supreme Court E-Library

re-impleaded as a party-defendant. Lacking the identity of parties, subject matter, and cause of action, the doctrine of *res judicata* is inapplicable. This, however, should not detract from the fact that the CA was correct in granting the petition.

WHEREFORE, we *DENY* this petition and *AFFIRM* the CA's Decision dated January 9, 2004 and Resolution dated July 13, 2004 in CA-G.R. SP No. 67765.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 167765. June 30, 2008]

COMMISSIONER OF INTERNAL REVENUE, *petitioner,* *vs.* **FMF DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. TAXATION; INTERNAL REVENUE TAXES; PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION; THREE-YEAR PRESCRIPTIVE PERIOD ON THE ASSESSMENT OF TAXES; EXPLAINED.— Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.

Supreme Court E-Library

2. ID.; ID.; ID.; ID.; EXCEPTION.— An exception to the three-year prescriptive period on the assessment of taxes is Section 222 (b) of the NIRC, which provides: "x x x x (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. x x x x" The above provision authorizes the extension of the original three-year period by the execution of a valid waiver, where the taxpayer and the BIR agreed in writing that the period to issue an assessment and collect the taxes due is extended to an agreed upon date. Under RMO No. 20-90, which implements Sections 203 and 222 (b), the following procedures should be followed: "1. The waiver must be in the form identified as Annex "A" hereof…. 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. The following revenue officials are authorized to sign the waiver. A. In the National Office x x x 3. **Commissioner For tax cases involving more than ₱1M** B. In the Regional Offices 1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount. 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 in prescription of the right to assess/collect shall be administratively dealt with."

Supreme Court E-Library

3. ID.; ID.; ID.; ID.; A WAIVER OF THE STATUTE OF LIMITATIONS IS NOT A WAIVER OF THE RIGHT TO INVOKE THE DEFENSE OF PRESCRIPTION; CASE AT BAR.— In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, we ruled that a waiver of the statute of limitations under the NIRC, to a certain extent being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed. The waiver of the statute of limitations does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally, particularly where the language of the document is equivocal. Notably, in this case, the waiver became unlimited in time because it did not specify a definite date, agreed upon between the BIR and respondent, within which the former may assess and collect taxes. It also had no binding effect on respondent because there was no consent by the Commissioner. On this basis, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Salvador Guevarra and Associates for respondent.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* is the Decision[1] and Resolution[2] dated January 31, 2005 and April 14, 2005, respectively, of the Court of Appeals in CA- G.R. SP No. 79675, which affirmed the Decision[3] dated March 20, 2003 of the Court of Tax Appeals (CTA) in C.T.A. Case No. 6153. In effect, the Court of Appeals cancelled the assessment notice issued by the Bureau of Internal Revenue (BIR) for the deficiency income and withholding taxes for the

[1] *Rollo*, pp. 58-71. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Romeo A. Brawner and Magdangal M. De Leon concurring.

[2] *Id*. at 88.

[3] *Id*. at 179-196.

Supreme Court E-Library

taxable year 1995 of respondent FMF Development Corporation (FMF), a domestic corporation organized and existing under Philippine laws.

The facts are as follows:

On April 15, 1996, FMF filed its Corporate Annual Income Tax Return for taxable year 1995 and declared a loss of ₱3,348,932. On May 8, 1996, however, it filed an amended return and declared a loss of ₱2,826,541. The BIR then sent FMF pre-assessment notices, all dated October 6, 1998, informing it of its alleged tax liabilities.[4] FMF filed a protest against these notices with the BIR and requested for a reconsideration/reinvestigation.

On January 22, 1999, Revenue District Officer (RDO) Rogelio

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[4] *Id*. at 59-60.

DEFICIENCY INCOME TAX

Net Income per investigation		(₱2,826,541.00)
Add: Unallowable Deductions/Additional Income		
Total Expenses	₱10,912,669.00	
Disallowed Portion	x 81%	
Total Adjustments		8,839,261.89
Net Income per investigation		₱6,012,720.89
Less: Personal and Additional Exemptions		- 0 -
		₱6,012,720.89
Income Tax Due (35%)		₱2,104,452.00
Less: Amount already assessed		154,995.30
TOTAL TAX DUE (excl. increments)		**₱2,461,820.87**

A. INCREMENTS ON LATE PAYMENT OF WITHHOLDING TAX ON COMPENSATION (dividend bonus payable)

Basic Tax	₱304,891.10
25% surcharge (Sec. 248)	87,016.20
Interest (1/26/96 to 11/7/96) (Sec. 249)	+ 60,343.02
Compromise Penalty (Sec. 254)	16,000.00
TOTAL	**₱163,359.22**

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Zambarrano informed FMF that the reinvestigation had been referred to Revenue Officer Alberto Fortaleza. He also advised FMF of the informal conference set on February 2, 1999 to allow it to present evidence to dispute the BIR assessments.

On February 9, 1999, FMF President Enrique Fernandez executed a waiver of the three-year prescriptive period for the BIR to assess internal revenue taxes, hence extending the assessment period until October 31, 1999. The waiver was accepted and signed by RDO Zambarrano.

On October 18, 1999, FMF received amended pre-assessment notices[5] dated October 6, 1999 from the BIR. FMF immediately filed a protest on November 3, 1999 but on the same day, it received BIR's Demand Letter and Assessment Notice No. 33-1-00487-95 dated October 25, 1999 reflecting FMF's alleged deficiency taxes and accrued interests, as follows:

Income Tax Assessment	₱1,608,015.50
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

B. INCREMENTS ON LATE PAYMENT OF EXPANDED WITHHOLDING TAX ON MANAGEMENT FEE

Management fee per financial statement	₱4,104,800.00
Less: Management fee subj. to EWT (1995)	260,640.00
Mgmt. Fee not subject to EWT until 10-15-96	₱3,844,160.00
Basic Tax (10%)	₱ 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	**₱ 182,046.35**
INCREMENTS DUE (A + B)	**₱ 345,405.57**

[5] *Id*. at 61-62.

Net Income per Investigation	(₱2,826,541.00)
Add: Adjustments/Disallowances	
Management Fees-Not necessary (Sec. 29)	4,104,800.00
Employee Benefits-unsupported (Sec. 29)	58,611.55

Supreme Court E-Library

Increments on Withholding Tax on Management Fees	209,550.49
Compromise Penalty on Increments on Withholding Tax on Management Fees	16,000.00
TOTAL	**₱2,053,698.25**[6]

Salaries and 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	₱3,106,223.44
Income Tax Due Thereon	₱1,087,178.20
Less Tax Credit/Paid	154,995.30
Income Tax Due Thereon (excluding increments)	**₱ 932,182.90**

A. Increments on Late Payment of Withholding Tax on Compensation (dividend bonus payable)

Basic	₱ 304,891.10
25% surcharge (Sec. 248)	87,016.20
Interest (1/26/96 to 11/7/96) (Sec. 249)	60,343.02
Compromise Penalty (Sec. 254)	16,000.00
Total	₱ 163,359.22

B. Increments on Late Payment of Expanded Withholding Tax on Management Fee

Management Fee per financial Statement	₱4,104,800.00
Less: Management Fee subj. to EWT (1995)	260,640.00
Difference (Mgmt. fee subj. to EWT until 10-15-96)	₱3,844,160.00
Basic Tax (₱3,844,160.00 x 10%)	₱384,416.00
25% Surcharge (Sec. 248)	96,104.00
Interest (1-2-96 to 10-15-96) (Sec. 249)	69,942.35
Compromise Penalty (Sec. 254)	16,000.00
Total	₱182,046.35

TOTAL INCREMENTS ON LATE PAYMENTS (A+B) ₱345,405.57

[6] *Id.* at 63.

Supreme Court E-Library

On November 24, 1999, FMF filed a letter of protest on the assessment invoking, *inter alia*,[7] the defense of prescription by reason of the invalidity of the waiver. In its reply, the BIR insisted that the waiver is valid because it was signed by the RDO, a duly authorized representative of petitioner. It also ordered FMF to immediately settle its tax liabilities; otherwise, judicial action will be taken. Treating this as BIR's final decision, FMF filed a petition for review with the CTA challenging the validity of the assessment.

On March 20, 2003, the CTA granted the petition and cancelled Assessment Notice No. 33-1-00487-95 because it was already time-barred. The CTA ruled that the waiver did not extend the three-year prescriptive period within which the BIR can make a valid assessment because it did not comply with the procedures laid down in Revenue Memorandum Order (RMO) No. 20-90.[8] *First*, the waiver did not state the dates of execution and acceptance of the waiver, by the taxpayer and the BIR, respectively; thus, it cannot be determined with certainty if the waiver was executed and accepted within the prescribed period. *Second*, the CTA also found that FMF was not furnished a copy of the waiver signed by RDO Zambarrano. *Third*, the CTA pointed out that since the case involves an amount of more than ₱1 million, and the period to assess is not yet about to prescribe, the waiver should have been signed by the

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[7] *Id*. at 63-64.

Nullity of the Assessment Notice for want of legal or factual basis:

a) That the taxpayer was not informed in writing of the law and facts on which the assessment was based;

b) The [BIR] erred in disallowing business expenses as deductions (management fees, cash overdraft, salaries, *etc*.)

c) That withholding tax should only be upon actual payment of compensation and not upon its accrual; and

d) That the withholding tax on management fees paid to another corporation (*i.e*., IPCP) should be only 5% and not 10%.

[8] SUBJECT: PROPER EXECUTION OF THE WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE, dated April 4, 1990.

Supreme Court E-Library

Commissioner of Internal Revenue, and not a mere RDO.[9] The Commissioner of Internal Revenue filed a motion for reconsideration, but it was denied.

On appeal to the Court of Appeals, the decision of the CTA was affirmed. Sustaining the findings of the CTA, the Court of Appeals held that the waiver did not strictly comply with RMO No. 20-90. Thus, it nullified Assessment Notice No. 33-1-00487-95. The *fallo* of the Court of Appeals' decision reads:

> WHEREFORE, finding the instant petition not impressed with merit, the same is **DENIED DUE COURSE** and is hereby **DISMISSED.** No costs.
>
> SO ORDERED.[10]

The Commissioner of Internal Revenue sought reconsideration, but it was denied.

Hence the instant petition, raising the following issues:

> I.
>
> WHETHER OR NOT RESPONDENT'S WAIVER OF THE STATUTE OF LIMITATIONS WAS VALIDLY EXECUTED.
>
> II.
>
> WHETHER O[R] NOT THE PERIOD TO ASSESS HAD PRESCRIBED.
>
> III.
>
> WHETHER OR NOT THE COURT OF APPEALS CORRECTLY DISREGARDED PETITIONER'S SUBSTANTIVE ARGUMENT.[11]

Essentially, the present controversy deals with the validity of the waiver and whether it validly extended the original three-year prescriptive period so as to make Assessment Notice No. 33-1-00487-95 valid. The basic questions to be resolved

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[9] *Rollo,* pp. 191-195.

[10] *Id.* at 70.

[11] *Id.* at 606.

Supreme Court E-Library

therefore are: (1) Is the waiver valid? and (2) Did the three-year period to assess internal revenue taxes already prescribe?

Petitioner contends that the waiver was validly executed mainly because it complied with Section 222 (b)[12] of the National Internal Revenue Code (NIRC). Petitioner points out that the waiver was in writing, signed by the taxpayer and the Commissioner, and executed within the three-year prescriptive period. Petitioner also argues that the requirements in RMO No. 20-90 are merely directory; thus, the indication of the dates of execution and acceptance of the waiver, by the taxpayer and the BIR, respectively, are not required by law. Petitioner adds that there is no provision in RMO No. 20-90 stating that a waiver may be invalidated upon failure of the BIR to furnish the taxpayer a copy of the waiver. Further, it contends that respondent's execution of the waiver was a renunciation of its right to invoke prescription. Petitioner also argues that the government cannot be estopped by the mistakes committed by its revenue officer in the enforcement of RMO No. 20-90.

On the other hand, respondent counters that the waiver is void because it did not comply with RMO No. 20-90. Respondent assails the waiver because (1) it was not signed by the Commissioner despite the fact that the assessment involves an amount of more than ₱1 million; (2) there is no stated date of acceptance by the Commissioner or his duly authorized representative; and (3) it was not furnished a copy of the BIR-accepted waiver. Respondent also cites *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[13] and contends that

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[12] Section 222. ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –***

x x x x x x x x x

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

x x x x x x x x x

[13] G.R. No. 162852, December 16, 2004, 447 SCRA 214.

Supreme Court E-Library

the procedures in RMO No. 20-90 are mandatory in character, precisely to give full effect to Section 222 (b) of the NIRC. Moreover, a waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription.[14]

After considering the issues and the submissions of the parties in the light of the facts of this case, we are in agreement that the petition lacks merit.

Under Section 203[15] of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.[16]

An exception to the three-year prescriptive period on the assessment of taxes is Section 222 (b) of the NIRC, which provides:

x x x x x x x x x

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the

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[14] *Id.* at 224-225, 227.

[15] Section 203. ***Period of Limitation Upon Assessment and Collection.*** **–** Except as provided in Section 222, ***internal revenue taxes shall be assessed within three (3) 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: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed…. (Emphasis supplied.)

[16] See *Philippine Journalists, Inc. v. Commissioner of Internal Revenue, supra* note 13, at 225.

Supreme Court E-Library

taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

x x x x x x x x x

The above provision authorizes the extension of the original three-year period by the execution of a valid waiver, where the taxpayer and the BIR agreed in writing that the period to issue an assessment and collect the taxes due is extended to an agreed upon date. Under RMO No. 20-90, which implements Sections 203 and 222 (b), the following procedures should be followed:

1. The waiver must be in the form identified as Annex "A" hereof….

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.

3. The following revenue officials are authorized to sign the waiver.

A. In the National Office

x x x x x x x x x

3. **Commissioner For tax cases involving more than ₱1M**

B. In the Regional Offices

1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.

x x x x x x x x x

Supreme Court E-Library

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 in prescription of the right to assess/collect shall be administratively dealt with. (Emphasis supplied.)

Applying RMO No. 20-90, the waiver in question here was defective and did not validly extend the original three-year prescriptive period. Firstly, it was not proven that respondent was furnished a copy of the BIR-accepted waiver. Secondly, the waiver was signed only by a revenue district officer, when it should have been signed by the Commissioner as mandated by the NIRC and RMO No. 20-90, considering that the case involves an amount of more than ₱1 million, and the period to assess is not yet about to prescribe. Lastly, it did not contain the date of acceptance by the Commissioner of Internal Revenue, a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period. Bear in mind that the waiver in question is a bilateral agreement, thus necessitating the very signatures of both the Commissioner and the taxpayer to give birth to a valid agreement.[17]

Petitioner contends that the procedures in RMO No. 20-90 are merely directory and that the execution of a waiver was a renunciation of respondent's right to invoke prescription. We do not agree. RMO No. 20-90 must be strictly followed. In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,[18] we ruled that a waiver of the statute of limitations under the NIRC, to a certain extent being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed. The waiver of the statute of limitations does not mean that the taxpayer

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[17] *Id*. at 228-229.

[18] *Supra* note 13.

Supreme Court E-Library

relinquishes the right to invoke prescription unequivocally, particularly where the language of the document is equivocal.[19] Notably, in this case, the waiver became unlimited in time because it did not specify a definite date, agreed upon between the BIR and respondent, within which the former may assess and collect taxes. It also had no binding effect on respondent because there was no consent by the Commissioner. On this basis, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality.[20]

Consequently, petitioner cannot rely on its invocation of the rule that the government cannot be estopped by the mistakes of its revenue officers in the enforcement of RMO No. 20-90 because the law on prescription should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law. To the Government, its tax officers are obliged to act promptly in the making of assessment so that taxpayers, after the lapse of the period of prescription, would have a feeling of security against unscrupulous tax agents who will always try to find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of a possible opportunity to harass even law-abiding businessmen. Without such legal defense, taxpayers would be open season to harassment by unscrupulous tax agents.[21]

In fine, Assessment Notice No. 33-1-00487-95 dated October 25, 1999, was issued beyond the three-year prescriptive period. The waiver was incomplete and defective and thus, the three-year prescriptive period was not tolled nor extended and continued to run until April 15, 1999. Even if the three-year period be counted from May 8, 1996, the date of filing of the amended return, assuming the amended return was substantially

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[19] *Id*. at 227.

[20] *Id*. at 229, citing *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 115712, February 25, 1999, 303 SCRA 614, 620-622.

[21] See *Republic of the Phils. v. Ablaza*, 108 Phil. 1105, 1108 (1960).

Supreme Court E-Library

different from the original return, a case which affects the reckoning point of the prescriptive period,[22] still, the subject assessment is definitely considered time-barred.

WHEREFORE, the petition is *DENIED* for lack of merit**.** The assailed Decision and Resolution dated January 31, 2005 and April 14, 2005, respectively, of the Court of Appeals in CA-G.R. SP No. 79675 are hereby *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 171042. June 30, 2008]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **LYNNETTE CABANTUG-BAGUIO,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; VOID MARRIAGES; PETITIONS FOR DECLARATION OF NULLITY OF MARRIAGE BASED ON PSYCHOLOGICAL INCAPACITY; PSYCHOLOGICAL INCAPACITY; ELUCIDATED.— Article 36 of the Family Code x x x provides that "[a] marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after

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[22] See B. ABAN, *LAW OF BASIC TAXATION IN THE PHILIPPINES* 271 (Rev. Ed., 2001), citing *Commissioner of Internal Revenue v. Phoenix Assurance Co., Ltd.,* No. L-19727, May 20, 1965, 14 SCRA 52, 59.