

## EN BANC

[ G.R. No. 175356, December 03, 2013 ]

**MANILA MEMORIAL PARK, INC. AND LA FUNERARIA PAZ-SUCAT, INC., PETITIONERS, VS. SECRETARY OF THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT AND THE SECRETARY OF THE DEPARTMENT OF FINANCE, RESPONDENTS.**

### DECISION

**DEL CASTILLO, J.:**

When a party challenges the constitutionality of a law, the burden of proof rests upon him.<sup>[1]</sup>

Before us is a Petition for Prohibition<sup>[2]</sup> under Rule 65 of the Rules of Court filed by petitioners Manila Memorial Park, Inc. and La Funeraria Paz-Sucat, Inc., domestic corporations engaged in the business of providing funeral and burial services, against public respondents Secretaries of the Department of Social Welfare and Development (DSWD) and the Department of Finance (DOF).

Petitioners assail the constitutionality of Section 4 of Republic Act (RA) No. 7432,<sup>[3]</sup> as amended by RA 9257,<sup>[4]</sup> and the implementing rules and regulations issued by the DSWD and DOF insofar as these allow business establishments to claim the 20% discount given to senior citizens as a tax deduction.

#### ***Factual Antecedents***

On April 23, 1992, RA 7432 was passed into law, granting senior citizens the following privileges:

SECTION 4. Privileges for the Senior Citizens. – The senior citizens shall be entitled to the following:

a) the grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishment[s], restaurants and recreation centers and purchase of medicine anywhere in the country: Provided, That private establishments may claim the cost as tax credit;

b) a minimum of twenty percent (20%) discount on admission fees charged by theaters, cinema houses and concert halls, circuses, carnivals and other similar places of culture, leisure, and amusement;

c) exemption from the payment of individual income taxes: Provided, That their annual taxable income does not exceed the property level as determined by the National Economic and Development Authority (NEDA)

for that year;

d) exemption from training fees for socioeconomic programs undertaken by the OSCA as part of its work;

e) free medical and dental services in government establishment[s] anywhere in the country, subject to guidelines to be issued by the Department of Health, the Government Service Insurance System and the Social Security System;

f) to the extent practicable and feasible, the continuance of the same benefits and privileges given by the Government Service Insurance System (GSIS), Social Security System (SSS) and PAG-IBIG, as the case may be, as are enjoyed by those in actual service.

On August 23, 1993, Revenue Regulations (RR) No. 02-94 was issued to implement RA 7432. Sections 2(i) and 4 of RR No. 02-94 provide:

Sec. 2. DEFINITIONS. – For purposes of these regulations:

i. Tax Credit – refers to the amount representing the 20% discount granted to a qualified senior citizen by all establishments relative to their utilization of transportation services, hotels and similar lodging establishments, restaurants, drugstores, recreation centers, theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement, which discount shall be deducted by the said establishments from their gross income for income tax purposes and from their gross sales for value-added tax or other percentage tax purposes.

x x x x

Sec. 4. RECORDING/BOOKKEEPING REQUIREMENTS FOR PRIVATE ESTABLISHMENTS. – Private establishments, i.e., transport services, hotels and similar lodging establishments, restaurants, recreation centers, drugstores, theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture[,] leisure and amusement, giving 20% discounts to qualified senior citizens are required to keep separate and accurate record[s] of sales made to senior citizens, which shall include the name, identification number, gross sales/receipts, discounts, dates of transactions and invoice number for every transaction.

The amount of 20% discount shall be deducted from the gross income for income tax purposes and from gross sales of the business enterprise concerned for purposes of the VAT and other percentage taxes.

In *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*,<sup>[5]</sup> the Court declared Sections 2(i) and 4 of RR No. 02-94 as erroneous because these contravene RA 7432,<sup>[6]</sup> thus:

RA 7432 specifically allows private establishments to claim as tax credit the amount of discounts they grant. In turn, the Implementing Rules and

Regulations, issued pursuant thereto, provide the procedures for its availment. To deny such credit, despite the plain mandate of the law and the regulations carrying out that mandate, is indefensible.

First, the definition given by petitioner is erroneous. It refers to tax credit as the amount representing the 20 percent discount that "shall be deducted by the said establishments from their gross income for income tax purposes and from their gross sales for value-added tax or other percentage tax purposes." In ordinary business language, the tax credit represents the amount of such discount. However, the manner by which the discount shall be credited against taxes has not been clarified by the revenue regulations.

By ordinary acceptance, a discount is an "abatement or reduction made from the gross amount or value of anything." To be more precise, it is in business parlance "a deduction or lowering of an amount of money;" or "a reduction from the full amount or value of something, especially a price." In business there are many kinds of discount, the most common of which is that affecting the income statement or financial report upon which the income tax is based.

x x x x

Sections 2.i and 4 of Revenue Regulations No. (RR) 2-94 define tax credit as the 20 percent discount deductible from gross income for income tax purposes, or from gross sales for VAT or other percentage tax purposes. In effect, the tax credit benefit under RA 7432 is related to a sales discount. This contrived definition is improper, considering that the latter has to be deducted from gross sales in order to compute the gross income in the income statement and cannot be deducted again, even for purposes of computing the income tax.

When the law says that the cost of the discount may be claimed as a tax credit, it means that the amount — when claimed — shall be treated as a reduction from any tax liability, plain and simple. The option to avail of the tax credit benefit depends upon the existence of a tax liability, but to limit the benefit to a sales discount — which is not even identical to the discount privilege that is granted by law — does not define it at all and serves no useful purpose. The definition must, therefore, be stricken down.

*Laws Not Amended  
by Regulations*

Second, the law cannot be amended by a mere regulation. In fact, a regulation that "operates to create a rule out of harmony with the statute is a mere nullity;" it cannot prevail.

It is a cardinal rule that courts "will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it x x x." In the scheme of judicial tax administration, the need for certainty and predictability in the

implementation of tax laws is crucial. Our tax authorities fill in the details that "Congress may not have the opportunity or competence to provide." The regulations these authorities issue are relied upon by taxpayers, who are certain that these will be followed by the courts. Courts, however, will not uphold these authorities' interpretations when clearly absurd, erroneous or improper.

In the present case, the tax authorities have given the term tax credit in Sections 2.i and 4 of RR 2-94 a meaning utterly in contrast to what RA 7432 provides. Their interpretation has muddled x x x the intent of Congress in granting a mere discount privilege, not a sales discount. The administrative agency issuing these regulations may not enlarge, alter or restrict the provisions of the law it administers; it cannot engraft additional requirements not contemplated by the legislature.

In case of conflict, the law must prevail. A "regulation adopted pursuant to law is law." Conversely, a regulation or any portion thereof not adopted pursuant to law is no law and has neither the force nor the effect of law.

[7]

On February 26, 2004, RA 9257<sup>[8]</sup> amended certain provisions of RA 7432, to wit:

SECTION 4. Privileges for the Senior Citizens. – The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishments, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

x x x x

The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: Provided, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. Provided, further, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended.

To implement the tax provisions of RA 9257, the Secretary of Finance issued RR No. 4-2006, the pertinent provision of which provides:

SEC. 8. AVAILMENT BY ESTABLISHMENTS OF SALES DISCOUNTS AS DEDUCTION FROM GROSS INCOME. – Establishments enumerated in subparagraph (6) hereunder granting sales discounts to senior citizens on the sale of goods and/or services specified thereunder are entitled to deduct the said discount from gross income subject to the following conditions:

- (1) Only that portion of the gross sales EXCLUSIVELY USED, CONSUMED OR ENJOYED BY THE SENIOR CITIZEN shall be eligible for the deductible sales discount.
- (2) The gross selling price and the sales discount MUST BE SEPARATELY INDICATED IN THE OFFICIAL RECEIPT OR SALES INVOICE issued by the establishment for the sale of goods or services to the senior citizen.
- (3) Only the actual amount of the discount granted or a sales discount not exceeding 20% of the gross selling price can be deducted from the gross income, net of value added tax, if applicable, for income tax purposes, and from gross sales or gross receipts of the business enterprise concerned, for VAT or other percentage tax purposes.
- (4) The discount can only be allowed as deduction from gross income for the same taxable year that the discount is granted.
- (5) The business establishment giving sales discounts to qualified senior citizens is required to keep separate and accurate record[s] of sales, which shall include the name of the senior citizen, TIN, OSCA ID, gross sales/receipts, sales discount granted, [date] of [transaction] and invoice number for every sale transaction to senior citizen.
- (6) Only the following business establishments which granted sales discount to senior citizens on their sale of goods and/or services may claim the said discount granted as deduction from gross income, namely:

x x x x

(i) Funeral parlors and similar establishments – The beneficiary or any person who shall shoulder the funeral and burial expenses of the deceased senior citizen shall claim the discount, such as casket, embalmment, cremation cost and other related services for the senior citizen upon payment and presentation of [his] death certificate.

The DSWD likewise issued its own Rules and Regulations Implementing RA 9257, to wit:

## RULE VI

### DISCOUNTS AS TAX DEDUCTION OF ESTABLISHMENTS

Article 8. Tax Deduction of Establishments. – The establishment may claim the discounts granted under Rule V, Section 4 – Discounts for Establishments, Section 9, Medical and Dental Services in Private Facilities and Sections 10 and 11 – Air, Sea and Land Transportation as tax deduction based on the net cost of the goods sold or services rendered. *Provided*, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount