

## EN BANC

[ G.R. NO. 166494, June 29, 2007 ]

**CARLOS SUPERDRUG CORP., DOING BUSINESS UNDER THE NAME AND STYLE "CARLOS SUPERDRUG, ELSIE M. CANO, DOING BUSINESS UNDER THE NAME AND STYLE "ADVANCE DRUG," DR. SIMPLICIO L. YAP, JR., DOING BUSINESS UNDER THE NAME AND STYLE "CITY PHARMACY," MELVIN S. DELA SERNA, DOING BUSINESS UNDER THE NAME AND STYLE "BOTICA DELA SERNA," AND LEYTE SERV-WELL CORP., DOING BUSINESS UNDER THE NAME AND STYLE "LEYTE SERV-WELL DRUGSTORE,""**  
**PETITIONERS, VS. DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT (DSWD), DEPARTMENT OF HEALTH (DOH), DEPARTMENT OF FINANCE (DOF), DEPARTMENT OF JUSTICE (DOJ), AND DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG), RESPONDENTS.**

### DECISION

**AZCUNA, J.:**

This is a petition<sup>[1]</sup> for Prohibition with Prayer for Preliminary Injunction assailing the constitutionality of Section 4(a) of Republic Act (R.A.) No. 9257,<sup>[2]</sup> otherwise known as the "Expanded Senior Citizens Act of 2003."

Petitioners are domestic corporations and proprietors operating drugstores in the Philippines.

Public respondents, on the other hand, include the Department of Social Welfare and Development (DSWD), the Department of Health (DOH), the Department of Finance (DOF), the Department of Justice (DOJ), and the Department of Interior and Local Government (DILG) which have been specifically tasked to monitor the drugstores' compliance with the law; promulgate the implementing rules and regulations for the effective implementation of the law; and prosecute and revoke the licenses of erring drugstore establishments.

The antecedents are as follows:

On February 26, 2004, R.A. No. 9257, amending R.A. No. 7432,<sup>[3]</sup> was signed into law by President Gloria Macapagal-Arroyo and it became effective on March 21, 2004. Section 4(a) of the Act states:

*SEC. 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;

...

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.<sup>[4]</sup>

On May 28, 2004, the DSWD approved and adopted the Implementing Rules and Regulations of R.A. No. 9257, Rule VI, Article 8 of which states:

Article 8. *Tax Deduction of Establishments.* – The establishment may claim the discounts granted under *Rule V, Section 4 – Discounts for Establishments*;<sup>[5]</sup> *Section 9, Medical and Dental Services in Private Facilities*;<sup>[6]</sup> and *Sections 10*<sup>[7]</sup> and *11*<sup>[8]</sup> – 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 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; *Provided, finally*, that the implementation of the tax deduction shall be subject to the Revenue Regulations to be issued by the Bureau of Internal Revenue (BIR) and approved by the Department of Finance (DOF).<sup>[9]</sup>

On July 10, 2004, in reference to the query of the Drug Stores Association of the Philippines (DSAP) concerning the meaning of a *tax deduction* under the Expanded Senior Citizens Act, the DOF, through Director IV Ma. Lourdes B. Recente, clarified as follows:

1) The difference between the Tax Credit (under the Old Senior Citizens Act) and Tax Deduction (under the Expanded Senior Citizens Act).

1.1. The provision of Section 4 of R.A. No. 7432 (the old Senior Citizens Act) grants twenty percent (20%) discount from all establishments relative to the utilization of transportation services, hotels and similar lodging establishment, restaurants and recreation centers and purchase of medicines anywhere in the country, the costs of which may be claimed by the private establishments concerned as **tax credit**.

Effectively, a **tax credit** is a peso-for-peso deduction from a taxpayer's tax liability due to the government of the amount of discounts such establishment has granted to a senior citizen. The establishment recovers the full amount of discount given to a senior citizen and hence, the government shoulders 100% of the discounts granted.

It must be noted, however, that conceptually, a **tax credit** scheme under the Philippine tax system, necessitates that prior payments of taxes have been made and the taxpayer is attempting to recover this tax payment from his/her income tax due. The tax credit scheme under R.A. No. 7432 is, therefore, inapplicable since no tax payments have previously occurred.

1.2. The provision under R.A. No. 9257, on the other hand, provides that the establishment concerned may claim the discounts under Section 4(a), (f), (g) and (h) as **tax deduction** from gross income, based on the net cost of goods sold or services rendered.

Under this scheme, the establishment concerned is allowed to deduct from gross income, in computing for its tax liability, the amount of discounts granted to senior citizens. Effectively, the government loses in terms of foregone revenues an amount equivalent to the marginal tax rate the said establishment is liable to pay the government. This will be an amount equivalent to 32% of the twenty percent (20%) discounts so granted. The establishment shoulders the remaining portion of the granted discounts.

It may be necessary to note that while the burden on [the] government is slightly diminished in terms of its percentage share on the discounts granted to senior citizens, the number of potential establishments that may claim tax deductions, have however, been broadened. Aside from the establishments that may claim **tax credits** under the old law, more establishments were added under the new law such as: establishments providing medical and dental services, diagnostic and laboratory services, including professional fees of attending doctors in all private hospitals and medical facilities, operators of domestic air and sea transport services, public railways and skyways and bus transport services.

A simple illustration might help amplify the points discussed above, as follows:

	<u><b>Tax Deduction</b></u>	<u><b>Tax Credit</b></u>
Gross Sales	x x x x x x	x x x x x x

Less : Cost of	<u>x x x x x</u>	<u>x x x x x</u>
goods sold		
Net Sales	x x x x x x	x x x x x x
Less:		
Operating		
Expenses:		
<b>Tax</b>		
<b>Deduction on</b>	x x x x	--
<b>Discounts</b>		
Other	<u>x x x x</u>	<u>x x x x</u>
deductions:		
Net Taxable		
Income	x x x x x	x x x x x
Tax Due	x x x	x x x
Less: <b>Tax</b>	--	<u>x x</u>
<b>Credit</b>		
Net Tax Due	--	x x

As shown above, under a **tax deduction** scheme, the **tax deduction on discounts** was subtracted from Net Sales together with other deductions which are considered as operating expenses before the Tax Due was computed based on the Net Taxable Income. On the other hand, under a **tax credit** scheme, the amount of discounts which is the **tax credit** item, was deducted directly from the tax due amount.<sup>[10]</sup>

Meanwhile, on October 1, 2004, Administrative Order (A.O.) No. 171 or the *Policies and Guidelines to Implement the Relevant Provisions of Republic Act 9257, otherwise known as the "Expanded Senior Citizens Act of 2003"*<sup>[11]</sup> was issued by the DOH, providing the grant of twenty percent (20%) discount in the purchase of unbranded generic medicines from all establishments dispensing medicines for the exclusive use of the senior citizens.

On November 12, 2004, the DOH issued Administrative Order No 177<sup>[12]</sup> amending A.O. No. 171. Under A.O. No. 177, the twenty percent discount shall not be limited to the purchase of unbranded generic medicines only, but shall extend to both prescription and non-prescription medicines whether branded or generic. Thus, it stated that "[t]he grant of twenty percent (20%) discount shall be provided in the purchase of medicines from all establishments dispensing medicines for the exclusive use of the senior citizens."

Petitioners assail the constitutionality of Section 4(a) of the Expanded Senior Citizens Act based on the following grounds:<sup>[13]</sup>

- 1) The law is confiscatory because it infringes Art. III, Sec. 9 of the Constitution which provides that private property shall not be taken for public use without just compensation;
- 2) It violates the equal protection clause (Art. III, Sec. 1) enshrined in our Constitution which states that "no person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied of the equal protection of the laws;" and
- 3) The 20% discount on medicines violates the constitutional guarantee

in Article XIII, Section 11 that makes "essential goods, health and other social services available to all people at affordable cost."<sup>[14]</sup>

Petitioners assert that Section 4(a) of the law is unconstitutional because it constitutes deprivation of private property. Compelling drugstore owners and establishments to grant the discount will result in a loss of profit

and capital because 1) drugstores impose a mark-up of only 5% to 10% on branded medicines; and 2) the law failed to provide a scheme whereby drugstores will be justly compensated for the discount.

Examining petitioners' arguments, it is apparent that what petitioners are ultimately questioning is the validity of the tax deduction scheme as a reimbursement mechanism for the twenty percent (20%) discount that they extend to senior citizens.

Based on the afore-stated DOF Opinion, the tax deduction scheme does not fully reimburse petitioners for the discount privilege accorded to senior citizens. This is because the discount is treated as a deduction, a tax-deductible expense that is subtracted from the gross income and results in a lower taxable income. Stated otherwise, it is an amount that is allowed by law<sup>[15]</sup> to reduce the income prior to the application of the tax rate to compute the amount of tax which is due.<sup>[16]</sup> Being a tax deduction, the discount does not reduce taxes owed on a peso for peso basis but merely offers a fractional reduction in taxes owed.

Theoretically, the treatment of the discount as a deduction reduces the net income of the private establishments concerned. The discounts given would have entered the coffers and formed part of the gross sales of the private establishments, were it not for R.A. No. 9257.

The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private property for public use or benefit.<sup>[17]</sup> This constitutes compensable taking for which petitioners would ordinarily become entitled to a just compensation.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain but the owner's loss. The word **just** is used to intensify the meaning of the word compensation, and to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.<sup>[18]</sup>

A tax deduction does not offer full reimbursement of the senior citizen discount. As such, it would not meet the definition of just compensation.<sup>[19]</sup>

Having said that, this raises the question of whether the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program.

The Court believes so.

The Senior Citizens Act was enacted primarily to maximize the contribution of senior