REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

M.E. HOLDING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5604

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 25 2000

x - x

DECISION

Before Us for consideration is petitioner's claim for refund of alleged overpaid income tax arising from its interpretation that the 20% sales discount granted to senior citizens under Republic Act (R.A.) 7432 should be treated as tax credit instead of a deduction from gross income as declared by the respondent in Revenue Regulations No. 2-94 and BIR Ruling No. 67-95, in the total amount of P392,226.00 for the calendar year ended December 31, 1995.

The facts of the case are simple.

Petitioner is a corporation duly organized and existing under the laws of the Philippines (Exh. A). It is engaged in the business of retailing pharmaceutical products under the business style of "MERCURY DRUG" (Exh. G). It is duly licensed by the Bureau of Food and Drugs to operate a drugstore with proper permits and licenses from the local government unit of Baguio City, and other government agencies (Exhs. B, B-1, C, D, E, and F).

For the year 1995, petitioner granted 20% sales discounts to qualified senior citizens on their purchases of medicines pursuant to R.A. 7432, otherwise known as "An Act To Maximize The Contribution Of Senior Citizens To Nation Building, Grant Benefits And Special Privileges And For Other Purposes". Petitioner treated these discounts as a deduction from its gross income in compliance with Revenue Regulations No. 2-94 issued by the respondent which implemented the aforesaid law.

On April 15, 1996, petitioner filed its 1995 Corporation Annual Income Tax Return and claimed among others, as a deduction the amount of P603,424.00, representing the 20% sales discounts granted by the petitioner to senior citizens on their purchases of medicines (Exhs. M, M-a and M-2). This final adjustment return was filed by petitioner under protest considering that these discounts were claimed as mere deductions instead of as tax credit (Exh. N).

Unconvinced with the interpretation of the respondent regarding R.A. 7432, particularly Section 4(a) thereof, petitioner on December 27, 1996, filed a letter claim for tax refund or credit with the Appellate Division of the Bureau of Internal Revenue.(Exh. O). The request for tax refund or credit represents the alleged overpaid income tax arising from respondent's erroneous interpretation that the 20% sales discounts given to senior citizens on their purchases of medicines should be treated by petitioner as a deduction from its gross income for income tax purposes or from gross sales for value-added tax or other percentage tax purposes rather than as a tax credit. In the said letter-request for refund, petitioner treated the 20% sales discounts in complete disagreement with respondent's view, that is, as a tax credit rather than as a mere deduction.

On April 7, 1998, petitioner lodged its appeal with this Court in order to toll the running of the two-year prescriptive period to file a claim for refund pursuant to Section 230 of the Tax Code, as amended. In its petition for review, petitioner argues that the 20% sales discount granted to senior citizens should be treated as tax credit because Section 4 of R.A. 7432 provides in clear and unequivocal language that discounts granted to senior citizens may be claimed as TAX CREDIT. It further asseverates that Section 2(i) of Revenue Regulations No. 2-94 which is a mere administrative regulation, cannot modify or alter the clear mandate of said law. Petitioner believes that Section 2(i) of Revenue Regulations No. 2-94 is illegal, void and without effect for being inconsistent with the statute it seeks to implement.

Respondent, on the other hand, submits "that the provision under Republic Act 7432, which states that the 20% sales discounts on purchases of medicines by senior citizens to be treated as tax credit is a misnomer as it runs counter to the solemn duty of the government to collect taxes." Respondent adds "that it is likewise important to note that the legal provision in question employs the word "may", implying that the availability of the remedy of tax credit is not absolute and mandatory and it does not confer an absolute right on the taxpayer to avail of the tax credit scheme if it so chooses, neither does it impose a duty on the part of the government to sit back and allow an important facet of tax collection to be at the sole control and discretion of the taxpayer (**BIR Ruling 067-95, dated April 11, 1995**)." Lastly, respondent contends that "in

Statutory Construction, the principle that the contemporaneous construction of a statute by executive officers of the government whose duty is to execute it is entitled to great respect and should ordinarily control the construction is so firmly embedded in our jurisprudence that no authorities need be cited to support it (**Phil. Association of Free Labor Unions vs. Bureau of Labor Relations, 72 SCRA 396**)."

Thus, the issues to be resolved by this Court are as follows:

1. The proper interpretation of Section 4(a) of Republic Act No. 7432, insofar as the treatment of the 20% sales discount granted to qualified senior citizens on their purchases of medicines;

2. The validity of Revenue Regulations No. 2-94 implementing the aforesaid law which treats the 20% sales discounts as deduction from gross income for income tax purposes and from gross sales for value-added tax or other percentage tax purposes; and

3. Whether or not petitioner was able to prove with substantial evidence its claim for refund.

We find all the legal issues in favor of petitioner. In fact, We have already ruled on these similar issues in a number of cases (**Tropical Hut Food Market, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5312, May 28, 1999, Elmas Drug Corporation vs. Commissioner of Internal Revenue, CTA Case NO. 5311, August 27, 1998; Trinity Franchising & Management Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 5313, August 18, 1998; M.E. Holding Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5314, August 17, 1998; Baliuag Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No.**

5365, May 13, 1998, Del Rosario Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5357, April 6, 1998; and Sto. Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5367, February 16, 1998) wherein it was held:

> After a painstaking scrutiny of the attending facts, the issues involved, the respective argumentation of the parties and the applicable jurisprudence, laws and regulations in point, this Court hereby rules in favor of the petitioner.
>
> For easy reference, the pertinent provisions of law and regulations in question are hereby reproduced, to wit:
>
> A) Section 4 of the Republic Act No. 7432:
>
> "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 establishments, restaurants and recreation centers and purchase of medicines anywhere in the country: Provided, That private establishments may claim the cost as tax credit. . . ."(emphasis supplied)
>
> B) Section 2 (i) of RR No. 2-94
>
> 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." (emphasis supplied)

> A cursory review of the wordings of Section 4 of Republic Act No. 7432 would reveal that the law literally intended the cost of the 20% discount to be claimed as tax credit by private establishments. We could not see any plausible reason for the respondent to interpret the phrase in a different way. The discount being available for tax credit as stated in the law cannot be made incoherent to mean that such discount be utilized instead as a deduction from gross income and from gross sales what is provided in RR No. 2-94.
>
> To be valid, an administrative regulation must not be in contravention but should conform to the standards that the law prescribes. (Tayug Rural Bank vs. Central Bank, 146 SCRA 120) Its promulgation must be authorized by the legislature. (Philippine Administrative Law, Cruz, 1994 ed., p. 32)
>
> x x x x x x x x x
>
> In declaring that the provisions of RA 7432 prevail over Revenue Regulations No. 2-94, it is important to point out that the cost of the 20% discount shall not be treated as deduction from the gross income of the petitioner nor deducted from its gross sales for VAT or other percentage tax purposes. The benefit that can be derived by taxpayers is the privilege of claiming these discounts as tax credit and no longer as deductions as what other taxpayers have done. They cannot avail of tax credit and claim said discounts as deductions at the same time because this would be tantamount to granting them benefits that are already disproportionate to the obligations imposed upon them by virtue of said law. This is to make clear for both the taxpayers and respondent that the tax credit privilege takes the place of claiming these discounts as deductions pursuant to this Court's stand that Section 2(1) of Revenue Regulations No. 2-94 is null and void and it is Section 4(a) of RA 7432 that will apply in cases of this nature (Del Rosario Drug Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 5357, dated April 6, 1998, supra).

The aforecited ruling has already been affirmed by the Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. Elmas Drug Corporation, CA-G.R. SP No. 49946, dated October 19, 1999**. Pertinent portions of the said decision are quoted hereunder, thus:

> (W)here the law is very clear, there is no room for interpretation. Section 4 of Republic Act 7432 clearly provides that the cost of the 20% discount may be claimed by respondent as tax credit and there is nothing more to interpret.
>
> The Court of Tax Appeals, in its decision dated August 27, 1998 correctly ruled that the *direct cost or the cost of sales of the 20% discount given to senior citizens is deductible as* ***tax credit***. (Underlining supplied).

Having settled the legal issues involved in the case at bar, We are now tasked to resolve the factual issue of whether or not petitioner is entitled to the claim for refund of overpaid income tax for the year 1995 based on the evidence submitted during trial.

It is apparent from the records of the case that the present claim for refund was seasonably filed within the reglementary period of two years from the date of payment of the tax pursuant to Section 230 of the Tax Code, as amended. The letter claim for refund was filed with the respondent on December 26, 1996, and the petition for review with this Court was filed on April 7, 1998. The two-year period commences on April 15, 1996, the time when petitioner filed its 1995 final adjustment return (**Commissioner of Internal Revenue vs. TMX Sales, Inc. et al., G.R. No. 837736, dated January 15, 1992**).

In order to prove that it is entitled to the claim for refund, petitioner engaged the services of Vicente E. Reyes And Associates, an independent auditing firm, pursuant to CTA Circular 1-95, as amended, to examine the voluminous documents supporting the alleged 20% sales discount in the amount of P603,424.00 granted to qualified senior citizens. In its report, dated February 8, 1999, the independent auditor, Mr. Rene Amby Reyes noted the following: (Exh. V, V-1 to V-3)

III. Findings

Based on the aforementioned procedures, we ascertained that:

a) the details appearing in the cash slips agree with the details per 1995 Summary of Sales and Discounts to Senior Citizens;
b) the cash slips on file are duplicate and triplicate original copies;
c) the 20% sales discounts were properly computed;
d) the sales discounts given to senior citizens for the year 1995 are summarized as follows:

Discounts given wherein the required details for the issuance of cash slips are complete	604,083.73

This amount of P604,083.73 as found by the independent auditor is more than the P603,424.00 claimed by petitioner in its petition for review. However, the full amount of P604,083.73 as verified by Mr. Reyes is not properly supported by proper documents.

A meticulous scrutiny of the evidence on record together with that of the certification issued by Vicente E. Reyes And Associates reveals that:

1. Not all the cash slips supporting the Summary of Sales and Discounts to Senior Citizens were presented;

2. Some of the cash slips offered in evidence were not admitted by the Court in its Resolution, dated September 3, 1999;

3. There is a minor footing error; and

4. Some of the cash slips were not properly inputted.

These observations by the Court will reduce petitioner's claimed 20% sales discount to P362,574.57 only, details of which are enumerated hereunder:

Summary Page No.	Summation Per Page	Substantiated By Evidence	Disallowances Made by the Court	R E M A R K S
1	P 3,122.40	P -	P 3,122.40	No supporting documents and not offerred
2	3,301.22	-	3,301.22	No supporting documents and not offerred
3	3,326.30	-	3,326.30	No supporting documents and not offerred
4	4,012.24	3,971.14	41.10	No supporting documents and not offerred
5	4,221.36	4,221.36	- -	
6	4,342.07	4,342.07	- -	
7	4,660.80	4,660.80	- -	
8	2,849.21	2,849.21	- -	
9	4,037.66	4,037.66	- -	
10	4,558.03	4,558.03	- -	
11	3,207.77	3,207.77	- -	
12	4,338.34	4,338.34	- -	
13	4,925.59	4,831.59	94.00	Exh. Q-130901 not admitted
14	3,817.22	3,817.22	- -	
15	5,682.66	5,643.99	38.67	Exh. Q-130100 no supporting document
16	3,932.52	3,932.52	- -	
17	4,711.27	4,709.27	2.00	Overstatement in Exh. Q-131765
18	4,853.99	4,853.99	- -	
19	3,898.24	3,898.24	- -	
20	4,609.43	4,609.43	- -	
21	3,836.89	3,836.89	- -	
22	4,299.37	4,299.37	- -	
23	4,676.73	4,676.73	- -	
24	4,157.46	4,157.46	- -	
25	4,187.16	4,187.16	- -	
26	4,879.64	4,879.64	- -	
27	3,862.72	3,862.72	- -	
28	5,263.28	5,263.28	- -	
29	4,877.08	4,877.08	- -	
30	513.25	512.45	0.80	Error in summation (footing)
31	2,743.97	-	2,743.97	No supporting documents and not offerred
32	2,994.72	-	2,994.72	No supporting documents and not offerred
33	2,498.91	-	2,498.91	No supporting documents and not offerred
34	3,600.91	-	3,600.91	No supporting documents and not offerred
35	3,253.18	-	3,253.18	No supporting documents and not offerred
36	3,689.29	-	3,689.29	No supporting documents and not offerred
37	3,069.59	-	3,069.59	No supporting documents and not offerred
38	4,172.98	-	4,172.98	No supporting documents and not offerred
39	4,178.33	-	4,178.33	No supporting documents and not offerred
40	3,861.20	795.50	3,065.70	No supporting documents and not offerred
41	4,369.50	4,369.50	- -	
42	4,299.96	4,293.73	6.23	Exh. Q-211887 no supporting document
43	3,254.25	3,187.90	66.35	Exh. Q-212213 no supporting document
44	3,719.27	3,719.27	- -	
45	3,250.21	3,250.21	- -	

46	3,274.99	2,549.30	725.69	Exhs Q-212786, and Exhs. Q-216101 to Q-216114 no supporting documents
47	3,813.96	-	3,813.96	No supporting documents and not offerred
48	3,683.41	-	3,683.41	No supporting documents and not offerred
49	2,735.55	-	2,735.55	No supporting documents and not offerred
50	3,936.31	-	3,936.31	No supporting documents and not offerred
51	3,857.89	-	3,857.89	No supporting documents and not offerred
52	4,162.57	-	4,162.57	No supporting documents and not offerred
53	3,432.03	-	3,432.03	No supporting documents and not offerred
54	2,971.85	2,334.38	637.47	Double Exhs. Q-217650 to Q-217657; Exh. Q-217503 not admitted
55	3,994.40	3,994.40	- -	
56	3,139.35	3,139.35	- -	
57	1,486.23	1,486.23	- -	
58	4,122.04	4,122.04	- -	
59	3,231.00	3,231.00	- -	
60	3,048.32	3,048.32	- -	
61	2,844.51	2,844.51	- -	
62	3,168.79	3,168.79	- -	
63	5,039.31	5,039.31	- -	
64	5,559.79	5,559.79	- -	
65	4,058.29	4,058.29	- -	
66	4,545.61	4,545.61	- -	
67	3,880.31	3,880.31	- -	
68	3,776.20	3,751.89	24.31	Exh. Q-238101 no supporting document
69	4,774.95	-	4,774.95	No supporting documents and not offerred
70	3,777.10	-	3,777.10	No supporting documents and not offerred
71	3,922.64	-	3,922.64	No supporting documents and not offerred
72	3,978.32	-	3,978.32	No supporting documents and not offerred
73	3,654.95	-	3,654.95	No supporting documents and not offerred
74	4,698.78	-	4,698.78	No supporting documents and not offerred
75	4,264.24	-	4,264.24	No supporting documents and not offerred
76	4,470.55	-	4,470.55	No supporting documents and not offerred
77	3,790.32	-	3,790.32	No supporting documents and not offerred
78	4,383.29	-	4,383.29	No supporting documents and not offerred
79	3,765.83	-	3,765.83	No supporting documents and not offerred
80	4,110.65	-	4,110.65	No supporting documents and not offerred
81	3,947.85	-	3,947.85	No supporting documents and not offerred
82	3,718.98	-	3,718.98	No supporting documents and not offerred
83	2,145.73	-	2,145.73	No supporting documents and not offerred
84	4,666.64	-	4,666.64	No supporting documents and not offerred
85	3,486.50	-	3,486.50	No supporting documents and not offerred
86	3,640.05	-	3,640.05	No supporting documents and not offerred
87	4,321.68	-	4,321.68	No supporting documents and not offerred
88	4,262.50	-	4,262.50	No supporting documents and not offerred
89	3,389.70	-	3,389.70	No supporting documents and not offerred
90	5,109.56	-	5,109.56	No supporting documents and not offerred
91	5,570.03	-	5,570.03	No supporting documents and not offerred
92	4,319.01	-	4,319.01	No supporting documents and not offerred

93	4,930.30	-	4,930.30	No supporting documents and not offerred
94	4,659.00	-	4,659.00	No supporting documents and not offerred
95	4,743.42	-	4,743.42	No supporting documents and not offerred
96	4,457.21	-	4,457.21	No supporting documents and not offerred
97	3,923.01	-	3,923.01	No supporting documents and not offerred
98	4,298.38	-	4,298.38	No supporting documents and not offerred
99	4,842.22	-	4,842.22	No supporting documents and not offerred
100	5,339.82	-	5,339.82	No supporting documents and not offerred
101	4,781.36	3,673.52	1,107.84	Exhs. Q-239690 to Q-239700 no supporting documents
102	4,977.04	4,977.04	- -	
103	4,446.23	4,446.23	- -	
104	6,479.42	6,479.42	- -	
105	4,468.59	4,468.59	- -	
106	5,968.27	5,968.27	- -	
107	4,892.04	4,892.04	- -	
108	4,415.02	4,415.02	- -	
109	3,478.33	3,478.33	- -	
110	4,209.96	4,209.96	- -	
111	4,286.26	4,286.26	- -	
112	4,584.86	4,584.86	- -	
113	5,321.63	5,321.63	- -	
114	498.58	498.58	- -	
115	5,333.08	4,810.18	522.90	Exh. Q-237401 not admitted
116	5,237.51	5,186.56	50.95	Exh. Q-237402 not admitted
117	5,312.22	5,312.22	- -	
118	4,419.94	4,119.54	300.40	Exh. Q-237501 not admitted
119	3,991.50	3,991.50	- -	
120	4,035.94	4,035.94	- -	
121	4,352.34	4,352.34	- -	
122	4,976.36	4,976.36	- -	
[illegible]	4,469.22	4,469.22	- -	
124	4,794.97	4,794.97	- -	
125	4,628.68	4,628.68	- -	
126	4,494.16	4,494.16	- -	
127	4,412.12	4,412.12	- -	
128	5,790.55	4,306.88	1,483.67	Double Exhs. Q-238010 to Q-238023
129	4,484.09	4,484.09	- -	
130	4,827.54	4,827.54	- -	
131	3,789.55	3,789.55	- -	
132	3,943.06	3,943.06	- -	
133	4,609.15	4,365.25	243.90	Exh. Q-236300 not admitted
134	5,105.14	5,105.14	- -	
135	4,294.97	3,740.72	554.25	Exhs. Q-246401 to Q-246407 not admitted
136	6,076.20	6,076.20	- -	
137	3,832.63	3,832.63	- -	
138	3,988.79	3,988.79	- -	
139	3,921.96	3,426.14	495.82	Exhs. Q-236601 to Q-236610 no supporting documents

140	6,485.87	-	6,485.87	No supporting documents and not offerred
141	5,754.61	-	5,754.61	No supporting documents and not offerred
142	6,396.41	-	6,396.41	No supporting documents and not offerred
143	5,227.47	-	5,227.47	No supporting documents and not offerred
144	4,463.04	-	4,463.04	No supporting documents and not offerred
145	2,622.71	-	2,622.71	No supporting documents and not offerred
Total	P 603,923.46	P 362,574.57	P 241,348.89	

Hence, petitioner is only entitled to a lesser amount of P122,195.74, computed as follows:

Net Sales		P94,724,284.00
Add: 20% Discount to Senior Citizens (Per Petitioner's Summary)		603,923.46
Gross Sales		P95,328,207.46
Less: Cost of Sales		
Merchandise Inventory, beg.	P 9,519,210.00	
Add Purchases	87,288,988.00	
Total Goods Available for Sales	P96,808,198.00	
Less: Merchandise Inventory, End	9,469,349.00	87,338,849.00
Gross Income		P 7,989,358.46
Less: Operating Expenses		17,006,032.00
Net Operating Loss		P 9,016,673.54
Add: Miscellaneous Income		43,489,663.00
Net Income		P 34,472,989.46
Less: Interest Income Subject to Final Tax		22,242,227.00
Net Taxable Income		P 12,230,762.46

Tax Due (P12,230,762.46 x 35%)	P 4,280,766.86
Less: 1) Tax Credit – Cost of 20% Discounts with supporting documents[1] [(P87,338,849 / P95,328,207.46) x P362,574.57]	P 333,568.60
2) Income Tax Payment for the Year	4,069,394.00
Total	P 4,402,962.60
Amount Refundable	P 122,195.74

[1] Computation based on the latest decision of the Court of Appeals in the case entitled Commissioner of Internal Revenue vs. Elmas Drug Corporation, CA-G.R. SP No. 49946, dated October 19, 1999, *supra.*

WHEREFORE, in view of the foregoing, petitioner's claim for refund is hereby partially **GRANTED.** Respondent is hereby **ORDERED** to **REFUND** in favor of petitioner the amount of P122,195.74, representing overpaid income tax the year 1995.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

(Dissenting)
AMANCIO Q. SAGA
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

M. E. HOLDING CORPORATON,
Petitioner,

- versus -

C.T.A. CASE NO. 5604

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 25 2000

x -x

DISSENTING OPINION

The majority opinion granted the amount of P122,195.74 as tax credit based on Section 4 of Republic Act No. 7432. The amount of P122,195.74 was the result of the formula adopted by the majority where the cost of the 20% discount was added back to the net sales resulting to a gross sales of P95,328,207.46.

I am of the opinion that the amount to be refunded to Petitioner should be P334,293.75 based on the following formula:

Taxpayers Annual Gross Sales		P95,327,708.00
Less: Sales discounts granted to Senior Citizens		603,424.00
Sales Net of 20% Sales Discounts to Senior Citizens		P94,724,284.00
Less: Cost of Goods Sold		87,338,849.00
Gross Profits		P 7,385,435.00
Less: Operating Expenses		17,006,032.00
Net Operating Loss		(P 9,620,597.00)
Add: Miscellaneous Income -		
Schedule 2, ITR	P 6,422,142.00	
Schedule 3, ITR	14,825,294.00	21,247,436.00
Net Taxable Income Subject to 35% Tax		P11,626,839.00

Corporate Income Tax Due		P 4,069,394.00
Less: Payments made –		
Section E(b)(1)	P2,417,914.62	
Section E(c)	1,083,616.54	
Payment per final ITR	567,862.84	
Approved Cost of the 20% Sales Discount	334,293.75	P 4,403,687.75
Tax Credit per return representing the cost of 20% Sales Discount		P 334,293.75

Amount of 20% Sales discount per books		P 603,923.46
Less: Amount per audit by the Court's technical staff		241,348.89
Allowable 20% sales discounts		P 362,574.57

Cost thereof = P87,338,849.00/P94,724,284.00
= 92.2% x P362,574.57 = P 334,293.75

Amount of Tax Credit claimed per Petition for Review P 392,226.00

> The amount of tax credit (cost) as determined by the Court of P334,293.75 should prevail and not the amount of the claim of P392,226.00.

Under Section 4 of Republic Act No. 7432, the senior citizens are entitled to the following:

> "(a) the grant of 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: Provided, That private establishments <u>may claim the cost as tax credit;</u>
>
> (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;
>
> x x x x x x x x x

Section 4(a) refers to private establishments which are engaged in businesses requiring the use of inventories and purchases of goods as a necessary requirement in order to determine clearly the income of any such taxpayers, (Section 35, Tax Code, as amended by P.D. No. 1994). Under sub-section (a) of Section 4, the private establishments granting the 20% sales discount to senior citizens can directly deduct the 20% sales discount from the gross sales. However, in order to countervail the effect in the reduction of sales income, the same Section 4(a) allows the private establishments to use the cost of the 20% sales discounts as tax credit. The said cost of the 20% sales discounts can be determined by the following formula, thus:

> Cost of Goods sold divided by Sales net of 20% sales discount equals the percentage rate of the Cost of Goods Sold multiplied by 20% sales discounts net of disallowed amounts by the Court's technical staff.

However, for private establishments granting the 20% sales discounts to senior citizens classified under Section 4(b), the same are directly deductible on the gross sales made to senior citizens as is done under Section 4(a). The only difference is that the private establishments are not allowed to tax credit the cost of the 20% sales discounts.

In addition to the above legal provision is Section 100(d)(3) of the 1995 Tax Code which provides, thus:

> Sales Return, allowances and sales discounts – the value of goods sold and subsequently returned or for which allowances were granted by a VAT-registered person may be deducted from the gross sales or receipts for the quarter in which a refund is made or a credit memorandum or refund is issued. Sales discounts granted and indicated in the invoice at the time of sale may be excluded from the gross sales within the same quarter. (underlining for emphasis).

WHEREFORE, in view of the foregoing, I disagree with the opinion of the majority and hold that Petitioner is entitled to the amount of P334,293.75 as Tax Credit.

AMANCIO Q. SAGA
Associate Judge