REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB No. 396
(C.T.A. Case No. 7438)

Present:

-*versus*-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

ANNO DOMINI DRUG, INC.,
Respondent.

Promulgated:
MAY 06 2009 [illegible] 2:40 p.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed on June 16, 2008, assailing the Decision[2] dated January 29, 2008 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 7438, ordering petitioner to issue a tax credit certificate in favor of respondent in the reduced amount of Four Hundred

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[1] *Rollo*, C.T.A. EB No. 396 (C.T.A. Case No. 7438), pp. 7 - 43 with Annexes.
[2] Penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez.

Ninety-Nine Thousand Nine Hundred Forty-Four Pesos and 35/100 (P499,944.35), representing respondent's unused tax credits/income tax overpayment arising from the erroneous deduction from its gross income of the twenty percent (20%) sales discounts granted to qualified senior citizens for the periods January 1, 2003 to December 31, 2003 and January 1, 2004 to March 20, 2004; and the Resolution dated May 12, 2008, denying the "Motion for Reconsideration" of herein petitioner.

Antecedent Facts

The antecedent facts, as narrated by the Court in Division in its Decision, are as follows:

> "Petitioner[3] is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with business address at J. P. Rizal Street, Laoag City. Respondent,[4] on the other hand, is the duly appointed Commissioner of Internal Revenue, with office address at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.
>
> As a franchisee under the business name and style of 'Mercury Drug,' petitioner is duly licensed by the Department of Trade and Industry, the Bureau of Food and Drugs, and the local government unit of Laoag City to operate a drug store.
>
> On April 15, 2004 and April 14, 2005, petitioner filed its Annual Income Tax Returns reflecting the respective amounts of P102,624.74 and P139,146.26 as income taxes for taxable years 2003 and 2004, respectively.
>
> Relying on the mandate of Republic Act (RA) No. 7432 (Senior Citizens Law), petitioner filed with the BIR a letter dated April 12, 2004, questioning the erroneous treatment of the 20% sales discounts to senior citizens as deductions from gross income rather than as tax credits.
>
> On March 8, 2006, petitioner filed with respondent a claim for tax credit/refund in the total amount of P706,524.53, representing the cost of the twenty percent (20%) discounts granted to qualified senior citizens on their purchases of medicines during the period from January 1, 2003 to

[3] Herein Respondent.
[4] Herein Petitioner.

December 31, 2004 and overpaid income taxes less income taxes payable for 2003 and 2004 taxable years, computed as follows:

TAXABLE YEAR 2003

SALES, Net		P61,498,051.83
Add: Cost of 20% Discounts to Senior Citizens		725,915.41
Sales, Gross		P62,223,967.24
Less: Cost of Sales		
Merchandise Inventory, Beginning	P6,851,300.56	
Purchases	59,021,867.40	
Merchandise Inventory, Ending	(8,454,670.18)	57,418,497.78
GROSS PROFIT		P 4,805,469.46
Add: Other Income (Net of Interest Income Subject o Final Tax)		72,024.88
TOTAL INCOME		P 4,877,494.34
Less: Operating Expenses		3,830,876.62
NET INCOME BEFORE INCOME TAX		P 1,046,617.72
INCOME TAX (32%)		P 334,917.67
Less: Income Tax Actually Paid		(102,624.74)
Cost of 20% Discounts to Senior Citizens		(725,915.41)
INCOME TAX (REFUNDABLE/CREDITABLE)		**P (493,622.48)**

TAXABLE YEAR 2004

SALES, Net		P69,566,346.65
Add: Cost of 20% Discounts to Senior Citizens		313,091.25
Sales, Gross		P69,879,437.90
Less: Cost of Sales		
Merchandise Inventory, Beginning	P8,454,670.18	
Purchases	65,586,899.20	
Merchandise Inventory, Ending	(9,132,602.77)	64,908,966.61
GROSS PROFIT		P 4,970,471.29
Less: Interest Income Subjected to Final Tax (Net of Other Income)		110.73
TOTAL INCOME		P 4,970,360.56
Less: Operating Expenses		4,222,437.26
NET INCOME BEFORE INCOME TAX		P 747,923.30
INCOME TAX (32%)		P 239,335.46
Less: Income Tax Actually Paid		(139,146.26)
Cost of 20% Discounts to Senior Citizens		(313,091.25)
INCOME TAX (REFUNDABLE/CREDITABLE)		**P (212,902.05)**
TOTAL INCOME TAX (REFUNDABLE/CREDITABLE)		**P (706,524.53)**

As the two-year prescriptive period for the filing of a judicial claim for taxable year 2003 was about to expire without action on the part of respondent, petitioner filed the instant Petition for Review on April 11, 2006.

In his Answer filed on May 15, 2006, respondent presented the following Special and Affirmative Defenses:

> '4. Revenue Regulations No. 2-94 did not alter, modify or amend the intent of the law to consider the 20% discount granted to qualified senior citizen as deduction from petitioner's gross income and not as credit against its tax liability as petitioner insists.
>
> 5. R.A. 7432 allows the discounts granted to senior citizens to be claimed as a tax credit but is silent as to the mechanics of availing the same. For clarification and as a curative measure, Revenue Regulations No. 2-94 was issued defining the term 'tax credit' as used in the law and providing therein the manner of claiming the same, which is by deduction from the establishment's gross income and not from its income tax liability. Otherwise an absurdity, not intended by the law, will arise.
>
> 6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 7. The amount of P706,524.53 being claimed by petitioner as alleged sales discount to senior citizens on their purchases of medicines for taxable years 2003 and 2004 was not properly documented;
>
> 8. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit **(Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670);**
>
> 9. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;
>
> 10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)**.'"[5] *(Citations omitted)*

The Ruling of the Court in Division

During the Pre-Trial Conference, the following issues were submitted by the parties for resolution by the Court in Division:

[5] *Rollo*, pp. 23 - 26.

"a. Whether or not the claim of Petitioner[6] for tax credit/refund was administratively and judicially filed within the two (2) – year statutory period.

b. Whether the twenty (20%) percent discount granted to qualified senior citizens on their purchases of medicines should be treated as a tax credit/refund deductible from the tax due as provided under Section 4(a) of Republic Act No. 7432 or merely as a deduction from gross income as provided under Revenue Regulations No. 2-94.

c. (1) Whether or not the phrase 'tax deduction' under Section 4 of Republic Act No. 9257 should be applied/construed to mean as 'deduction from tax' or 'tax credit' and (2) Whether or not to hold a contrary interpretation would make said legal provision unconstitutional for being confiscatory of private property without due process of law.

d. Whether or not during the period from January 1, 2003 to December 31, 2004, Petitioner granted the twenty (20%) percent discounts to qualified senior citizens on their purchases of medicines in compliance with Republic Act No. 7432, as amended by Republic Act No. 9257 in the total amount of P1,039,006.66.

e. Whether or not Petitioner is entitled to a tax credit/refund in the amount of P706,524.53 representing the cost of the twenty (20%) percent discounts granted to qualified senior citizens on their purchases of medicines during the period from January 1, 2003 to December 31, 2004 and overpaid income taxes less income taxes payable for 2003 and 2004 taxable years."[7]

In the "Joint Stipulation of Facts and Issues,"[8] the following facts were admitted by both parties:

1. that respondent filed its income tax returns for taxable years 2003 and 2004 on April 15, 2004 and April 14, 2005, respectively;

2. that respondent filed its administrative claim on March 8, 2006 in the total amount of P706,524.53, representing the cost of the 20% sales discounts granted to qualified senior

[6] Herein Respondent.
[7] *Rollo*, p. 26.
[8] *Records*, C.T.A. Case No. 7438, pp. 69 – 71.

citizens on their purchases of medicines during the period from January 1, 2003 to December 31, 2004; and

3. that respondent filed its judicial claim on April 11, 2006.

Based on the foregoing, the Court in Division ruled that both the administrative and the judicial claims were filed within the two-year prescriptive period.

In resolving the second and third issues, the Court in Division distinguished the nature of the 20% sales discount granted to senior citizens under Republic Act No. 7432 ("RA 7432")[9] from that under Republic Act No. 9257 ("RA 9257").[10]

Under RA 7432, the Court in Division, citing the case of ***Commissioner of Internal Revenue v. Central Luzon Drug Corporation,***[11] declared that the 20% sales discount granted to qualified senior citizens is a tax credit, and not merely a tax deduction from the gross income or gross sale of the establishment concerned. Corollary thereto, the Court in Division mentioned that Revenue Regulations No. 2-94 ("RR 2-94") has been declared void by the Supreme Court in the case of ***Commissioner of Internal Revenue v. Bicolandia Drug Corporation (Formerly known as Elmas Drug, Co.),***[12] for failing to conform to the law it seeks to implement.

[9] "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and For Other Purposes."
[10] "Expanded Senior Citizens Act of 2003."
[11] G.R. No. 159647, 456 SCRA 414, April 15, 2005.
[12] G.R. No. 148083, 496 SCRA 176, July 21, 2006.

In contrast, under the new law, RA 9257, the 20% sales discount granted to senior citizens is now a tax deduction from the gross income and not a tax credit pursuant to the ruling of the Supreme Court in the ***Bicolandia*** case.[13]

Having discussed the proper construction of the 20% sales discount granted to senior citizens, the Court in Division proceeded to settle the fourth and fifth issues.

Following the rulings of the Supreme Court, the Court in Division resolved that the 20% sales discounts granted to senior citizens by respondent in the amounts of P661,647.33 and P78,369.45, covering the periods of January 1, 2003 to December 31, 2003 and January 1, 2004 to March 20, 2004, should be treated as tax credits. However, since RA 9257 took effect on March 21, 2004, the 20% sales discount granted to senior citizens by respondent in the amount of P222,677.15, covering the period of March 21, 2004 to December 31, 2004, can no longer be treated as a tax credit. Pursuant to the new law, RA 9257, it should be treated as a deduction from the gross income. Accordingly, the Court in Division found respondent entitled to a tax credit in the reduced amount of P499,944.35. It explained that:

> "In his report submitted before this Court on September 6, 2006, the commissioned Independent Certified Public Accountant (CPA), Mr. Rodor M. Paraiso, stated that the sales discounts given by petitioner to senior citizens for the years 2003 and 2004 wherein the required details for the issuance of cash slips were complete amounted to P1,058,963.32, broken down as follows:

Period Covered	20% Sales Discounts to Senior Citizens
a.) January 1 - December 2003	P 727,812.06
b.) January 1 - March 20, 2004	86,206.40
c.) March 21 - December 31, 2004	244,944.86
	P1,058,963.32

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[13] *Supra*, at note 12.

After careful verification of related cash slips/invoices, Summary of Sales Discounts to Senior Citizens, Special Record Books, We find the commissioned Independent CPA's Report to be in order. However, the 10% Value-added Tax (VAT) in the amount of P96,269.39 should be excluded from the amount of P1,058,963.32. Thus, the resulting amount of P962,693.93 represents valid 20% sales discounts granted by petitioner to senior citizens for taxable years 2003 and 2004, computed as follows:

Period Covered	20% Sales Discounts to Senior Citizens (net of 10% VAT)
a.) January 1 - December 2003	P661,647.33
b.) January 1 - March 20, 2004	78,369.45
c.) March 21 - December 31, 2004	222,677.15
	P962,693.93

As R.A. No. 9257 took effect on March 21, 2004, the 20% sales discounts granted to senior citizens after said date shall be treated as deductions from gross income instead of tax credits. Hence, petitioner cannot claim as tax credits the 20% sales discounts it granted to senior citizens for the period from March 21, 2004 to December 31, 2004 in the amount of P222,677.15; and the alleged income tax overpayment arising from the erroneous deduction thereof from its gross income cannot be allowed.

However, prior to the amendment of R.A. No. 7432 on March 21, 2004, and pursuant thereto, petitioner may still validly claim as tax credits the 20% sales discounts it granted to senior citizens for the periods of January 1, 2003 to December 31, 2003 and January 1, 2004 to March 20, 2004, in the respective amounts of P661,647.33 and P78,369.45, or in the total sum of P740,016.78.

A scrutiny of petitioner's Cash Receipts Books, Special Record Books, General Ledgers, income tax returns, and financial statements for taxable years 2003 and 2004 shows that petitioner's reported net sales for the said years included its sales to qualified senior citizens (net of the 20% sales discounts). In other words, petitioner erroneously treated the 20% sales discounts granted to senior citizens for the periods January 1, 2003 to December 31, 2003 and January 1, 2004 to March 20, 2004 in the respective amounts of P661,647.33 and P78,369.45 as deductions from its gross income instead of as tax credits. As a result, petitioner overpaid its income taxes for the said periods.

Nevertheless, to determine petitioner's refundable amount in this case, it is necessary that We verify petitioner's actual income tax payments for 2003 and 2004 by going over its documentary evidence on record, such as the official receipts issued by authorized agent banks of the Bureau of Internal Revenue, various Certificates of Creditable Tax Withheld at Source, and annual/quarterly income tax returns.

A thorough examination thereof reveals that creditable VAT withheld in the amount of P298.52 was utilized by petitioner in paying off its 2003 income tax liability. Since the creditable VAT withheld of P298.52 should be offset/applied against petitioner's output VAT liability and not against its income tax liability, the same shall be disallowed. Thus, out of petitioner's claimed income tax payment for 2003 in the amount of P102,624.74, We find that only the amount of P102,326.22 is properly substantiated.

With reference to petitioner's actual income tax payment for taxable year 2004 in the amount of P139,146.26, the same was verified and found to be duly supported by corresponding receipts and withholding tax certificates.

Looking now at petitioner's income tax liability for taxable year January 1, 2003 to December 31, 2003, it appears that petitioner actually made an overpayment of its 2003 income tax by P446,653.12, computed as follows:

Sales, Net		P61,498,051.83
Add: 20% Discounts to Senior Citizens		670,924.05
Sales, Gross		P62,168,975.88
Less: Cost of Sales		57,418,497.78
Income from Operation		P 4,750,478.10
Add: Non-Operating & Other Income		72,024.88
Gross Income		P 4,822,502.98
Less: Deductions		3,830,876.62
Taxable Income		P 991,626.36
Income Tax Due (32%)		P 317,320.43
Less: Validly supported income tax payment	P102,326.22	
Validly supported sales discounts to senior citizens	661,647.33	763,973.55
Income Tax Overpayment		P 446,653.12

As regards petitioner's income tax overpayment for the period January 1, 2004 to March 20, 2004, We computed the same by using the formula of income tax benefit of tax credit (100%) minus income tax benefit of tax deduction (32%) equals the differential of 68% which shall be multiplied by the amount of P78,369.45, representing the 20% sales discounts granted by petitioner to senior citizens for the said period, as shown below:

Income Tax Benefit of Tax Credit	100%
Less: Income Tax Benefit of Tax Deduction	32%
Income Tax Differential	68%
Multiplied by: 20% Sales Discounts to Senior Citizens	P78,369.45
Income Tax Overpayment	**P53,291.23**

To recapitulate, the Court hereby finds that petitioner's income tax overpayment for the periods January 1, 2003 to December 31, 2003 and January 1, 2004 to March 20, 2004 amounted to P446,653.12 and P53,291.23, respectively, or in the total sum of P499,944.35, to wit:

Period Covered	**Income Tax Overpayment**
January 1, 2003 to December 31, 2003	P446,653.12

January 1, 2004 to March 20, 2004		53,291.23
	Total:	**P499,944.35**"[14]

Thus, the Court in Division disposed of the case in this wise:

> "**WHEREFORE**, this instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent[15] is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner[16] in the reduced amount of **FOUR HUNDRED NINETY-NINE THOUSAND NINE HUNDRED FORTY-FOUR PESOS AND 35/100 (P499,944.35)**, representing unused tax credits/income tax overpayment arising from the erroneous deduction from its gross income of the 20% sales discounts granted to qualified senior citizens for the periods January 1, 2003 to December 31, 2003 and January 1, 2004 to March 20, 2004.
>
> **SO ORDERED.**"[17]

On February 19, 2008, petitioner filed a "Motion for Reconsideration"[18] to which respondent filed its "Opposition/Comment."[19]

On May 12, 2008, the Court in Division denied the "Motion for Reconsideration" for lack of merit.[20]

The Issue

Hence, the instant Petition for Review where petitioner raises the lone issue of whether or not respondent is entitled to a tax credit representing overpaid income taxes for taxable years 2003 and 2004.[21]

Petitioner's Arguments

Petitioner contends that the Court in Division erred in holding that the 20% sales discount granted to senior citizens under Section 4 of RA 7432 may be

[14] *Rollo*, pp. 30 – 34.
[15] Herein Petitioner.
[16] Herein Respondent.
[17] *Rollo*, pp. 34 - 35.
[18] *Records*, pp. 370 - 381.
[19] *Id.*, pp. 383 - 391.
[20] *Rollo*, pp. 37 – 40.
[21] *Id.*, p. 10.

claimed by respondent as a tax credit, and not as a mere deduction from its gross income or gross sales.

Petitioner claims that the use of the word "may" in Section 4 of RA 7432 means that the availability of tax credit to private establishments is only permissive and not absolute or mandatory. The taxpayer therefore does not have an absolute right to avail of a tax credit.

In this connection, petitioner puts emphasis on the fact that Section 4 of RA 7432 is silent as to when and how the costs of the 20% sales discount incurred by private establishments should be claimed as a tax credit. He views the silence of the law as the reason RR 2-94 was issued. RR 2-94 prescribes the guidelines for the effective and proper implementation of Section 4 of RA 7432. To the mind of petitioner, the issuance of this regulation is a valid exercise of his rule-making power as expressly mandated in Section 10 of RA 7432.

Moreover, petitioner maintains his position that an establishment that gave the mandated 20% sales discount to senior citizens should deduct the said amount from its gross sales prior to the determination of the taxable amount. According to him, to hold otherwise would lead to an absurd situation whereby Section 204 (c) of the NIRC, which grants him the authority to credit or refund taxes erroneously paid or collected, would be impliedly repealed by Section 4 of RA 7432.

Petitioner further argues that to allow respondent to claim the 20% sales discount granted to senior citizens, as a tax credit instead of a tax deduction from its gross income, is tantamount to refunding respondent a tax not paid by it to the government. In effect, the government would be subsidizing respondent, which is a clear violation of the cardinal rule in taxation that public funds should be used for a public purpose. It would also give respondent benefits not intended by the law. Petitioner points out that the primary purpose of RA 7432 is to grant benefits and special privileges to senior citizens, and while the law gives an incentive to private establishments in the form of a tax benefit, it was not the intention of the law to extend to these establishments more than what they actually give as 20% sales discount.

To support his arguments, petitioner submits that the amendatory law, RA 9257, which he considers a clarificatory law, was legislated to treat the 20% sales discounts given to senior citizens as tax deductions and not as tax credits.

Respondent's Counter-Arguments

For its part, respondent counters that the issue raised by petitioner has been passed upon in several cases by the Supreme Court. In fact, RR 2-94 has been declared void by the Supreme Court. For this reason, respondent asserts that petitioner may no longer invoke the said regulation to support his view.

Respondent also avers that Sections 4 of RA 7432 should not be interpreted in conjunction with Section 204 (c) of the NIRC, as the former is a special law that prevails over the latter one, which is a general law, and must therefore be taken as an exception to the general law.

Finally, as to the enactment of RA 9257, respondent is adamant that it cannot be given a retroactive application, in the sense that it was promulgated as a clarificatory law of RA 7432. RA 9257 did not clearly and expressly declare that it should be given a retroactive application. Consequently, the rule on prospective operation of the law should apply.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

As the Court *En Banc* sees it, the crux of the controversy lies on whether the 20% sales discount granted to senior citizens on their purchases of medicines, pursuant to RA 7432, should be treated as a tax credit deductible from the tax due or merely as a tax deduction from the gross income.

This issue is not novel as there is ample jurisprudence on the matter.

Section 4 (a) of RA 7432 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 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.
>
> xxx xxx xxx"

In the case of ***Commissioner of Internal Revenue v. Central Luzon Drug Corporation***,[22] the Supreme Court construed the 20% sales discount granted to senior citizens in Section 4 of RA 7432 as a tax credit, and not a tax deduction. It rationalized that:

> "It is a fundamental rule in statutory construction that the legislative intent must be determined from the language of the statute itself especially when the words and phrases therein are clear and unequivocal. The statute in such a case must be taken to mean exactly what it says. Its literal meaning should be followed; to depart from the meaning expressed by the words is to alter the statute.

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[22] G.R. No. 148512, 492 SCRA 575, June 26, 2006.

The above provision explicitly employed the word 'tax credit.' Nothing in the provision suggests for it to mean a 'deduction' from gross sales. To construe it otherwise would be a departure from the clear mandate of the law.

Thus, the 20% discount required by the Act to be given to senior citizens is a tax credit, not a deduction from the gross sales of the establishment concerned. As a corollary to this, the definition of 'tax credit' found in Section 2(1) of Revenue Regulations No. 2-94 is erroneous as it refers to tax credit as the amount representing the 20% discount that 'shall be deducted by the said establishment from their gross sales for value added tax and other percentage tax purposes.' This definition is contrary to what our lawmakers had envisioned with regard to the treatment of the discount granted to senior citizens.

Accordingly, 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. The law cannot be amended by a mere regulation. The administrative agencies issuing these regulations may not enlarge, alter or restrict the provisions of the law they administer. In fact, a regulation that 'operates to create a rule out of harmony with the statute is a mere nullity.'

Finally, for purposes of clarity, Sec. 229 of the Tax Code does not apply to cases that fall under Sec. 4 of R.A. No. 7432 because the former provision governs exclusively all kinds of refund or credit of internal revenue taxes that were erroneously or illegally imposed and collected pursuant to the Tax Code while the latter extends the tax credit benefit to the private establishments concerned even before tax payments have been made. **The tax credit that is contemplated under the Act is a form of just compensation, not a remedy for taxes that were erroneously or illegally assessed and collected.** In the same vein, prior payment of any tax liability is not a precondition before a taxable entity can benefit from the tax credit. The credit may be availed of upon payment of the tax due, if any. Where there is no tax liability or where a private establishment reports a net loss for the period, the tax credit can be availed of and carried over to the next taxable year.

It must also be stressed that unlike in Sec. 229 of the Tax Code wherein the remedy of refund is available to the taxpayer, **Sec. 4 of the law speaks only of a tax credit, not a refund.**

As earlier mentioned, the tax credit benefit granted to the establishments can be deemed as their just compensation for private property taken by the State for public use. The privilege enjoyed by the senior citizens does not come directly from the State, but rather from the private establishments concerned." *(Emphasis supplied)*

The contention of petitioner that since RA 7432 used the word "may," the availability of the tax credit to private establishments is only permissive and not absolute or mandatory, has been refuted by the Supreme Court. Likewise rejected by the Supreme Court is the reasoning of petitioner that to allow respondent's claim for a tax credit would be an implied repeal of Section 204 (c) of the NIRC by Section 4 of RA 7432. Quoted hereunder is the disquisition of the Supreme Court in the ***Bicolandia*** case,[23] addressing the same arguments raised by petitioner:

> "**Petitioner contends that since R.A. No. 7432 used the word 'may,' the availability of the tax credit to private establishments is only permissive and not absolute or mandatory.** From that starting point, petitioner further argues that the definition of the term 'tax credit' in Revenue Regulations No. 2-94 was validly issued under the authority granted by the law to the Department of Finance to formulate the needed guidelines. It further explained that Revenue Regulations No. 2-94 can be harmonized with R.A No. 7432, such that the definition of the term 'tax credit' in Revenue Regulations No. 2-94 is controlling. **It claims that to do otherwise would result in Section 4(a) of R.A. No. 7432 impliedly repealing Section 204 (c) of the National Internal Revenue Code.**
>
> **These arguments must also fail.**
>
> Revenue Regulations No. 2-94 is still subordinate to R.A. No. 7432, and in cases of conflict, the implementing rule will not prevail over the law it seeks to implement. While seemingly conflicting laws must be harmonized as far as practicable, in this particular case, the conflict cannot be resolved in the manner the petitioner wishes. There is a great divide separating the idea of 'tax credit' and 'tax deduction,' as seen in the definition in Black's Law Dictionary.
>
> **The claimed absurdity of Section 4(a) of R.A. No. 7432 impliedly repealing Section 204(c) of the National Internal Revenue Code could only come about if it is accepted that a tax credit is akin to a tax refund wherein payment of taxes must be made in order for it to be claimed.** But as shown in Section 112(a) of the National Internal Revenue Code, it is not always necessary for payment to be made for a tax credit to be available." *(Emphasis supplied)*

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[23] *Supra,* at note 12.

As a matter of fact, RR 2-94 relied upon by petitioner has been struck down by the Supreme Court for being inconsistent with the very statute it seeks to implement. The Supreme Court in the ***Bicolandia*** case[24] said:

> "The problem stems from the issuance of Revenue Regulations No. 2-94, which was supposed to implement R.A. No. 7432, and the radical departure it made when it defined the 'tax credit' that would be granted to establishments that give 20 percent discount to senior citizens. Under Revenue Regulations No. 2-94, the tax credit is 'the amount representing the 20 percent 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.' It equated 'tax credit' with 'tax deduction,' contrary to the definition in Black's Law Dictionary, which defined tax credit as:
>
> > An amount subtracted from an individual's or entity's tax liability to arrive at the total tax liability. A tax credit reduces the taxpayer's liability xxx, compared to a deduction which reduces taxable income upon which the tax liability is calculated. A credit differs from deduction to the extent that the former is subtracted from the tax while the latter is subtracted from income before the tax is computed.
>
> The interpretation of an administrative government agency, which is tasked to implement the statute, is accorded great respect and ordinarily controls the construction of the courts. Be that as it may, the definition laid down in the questioned Revenue Regulations can still be subjected to scrutiny. Courts will not hesitate to set aside an executive interpretation when it is clearly erroneous. There is no need for interpretation when there is no ambiguity in the rule, or when the language or words used are clear and plain or readily understandable to an ordinary reader. The definition of the term 'tax credit' is plain and clear, and the attempt of Revenue Regulations No. 2-94 to define it differently is the root of the conflict.
>
> xxx xxx xxx
>
> From the above discussion, it must be concluded that **Revenue Regulations No. 2-94 is null and void for failing to conform to the law it sought to implement.** In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails

[24] *Supra*, at note 12.

because said rule or regulation cannot go beyond the terms and provisions of the basic law.

Revenue Regulations No. 2-94 being null and void, it must be ruled then that under R.A. No. 7432, which was effective at the time, **respondent is entitled to its claim of a tax credit**, and the ruling of the Court of Appeals must be affirmed." *(Emphasis supplied)*

Neither is there a violation of the cardinal rule in taxation that public funds should be used for a public purpose. As the Supreme Court in the *Bicolandia* case[25] has explained:

"xxx However, while the purpose of the law to benefit senior citizens is praiseworthy, the concerns of the affected private establishments were also considered by the lawmakers. **As in other cases wherein private property is taken by the State for public use, there must be just compensation. In this particular case, it took the form of the tax credit granted to private establishments**, purposely chosen by the lawmakers. xxx xxx xxx

It is clear that the lawmakers intended the grant of a tax credit to complying private establishments like the respondent.

If the private establishments appear to benefit more from the tax credit than originally intended, it is not for petitioner to say that they shouldn't. The tax credit may actually have provided greater incentive for the private establishments to comply with R.A. No. 7432, or quicker relief from the cut into profits of these businesses." *(Emphasis supplied)*

Finally, the subsequent amendment of RA 7432 by RA 9257 has no effect on the application of Section 4 of RA 7432 to the instant case. There is no provision in RA 9257 stating that it should be given a retroactive effect. It bears stressing that tax laws are prospective in operation, unless the language of the statute clearly provides otherwise.[26] Thus, the familiar legal maxim, *Lex prospicit, non respicit*. The law looks forward, not backward.[27]

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[25] *Supra,* at note 12.
[26] Commissioner of Internal Revenue v. Acosta, G.R. No. 154068, 529 SCRA 177, August 3, 2007.
[27] Municipality of Nueva Era, Ilocos Norte, v. Municipality of Marcos, Ilocos Norte, G.R. No. 169435, 547 SCRA 71, February 27, 2008.

All told, the Court *En Banc* affirms the Court in Division in ordering petitioner to issue a tax credit certificate in favor of respondent in the reduced amount of P499,944.35, representing respondent's unused tax credits/income tax overpayment arising from the erroneous deduction from its gross income of the 20% sales discounts granted to qualified senior citizens for the periods January 1, 2003 to December 31, 2003 and January 1, 2004 to March 20, 2004, pursuant to RA 7432.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED**. Accordingly, the Decision dated January 29, 2008 and the Resolution dated May 12, 2008 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice