REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

CENTRAL LUZON DRUG CORPORATION, ***Petitioner,***	**C.T.A. CASE NO. 7611**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** MAR 1 1 2009 4:00 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

This case involves *Republic Act (RA) 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*, passed on April 23, 1992. It granted, among others, 20% sales discount on purchases of medicines by qualified senior citizens.

THE CASE

This is a *Petition for Review* filed on April 16, 2007 by Central Luzon Drug Corporation (hereafter "petitioner") praying for the issuance of a tax credit certificate in the amount of P11,571,759.95, representing the twenty percent (20%) sales discounts granted to qualified senior citizens on their purchases of medicines, as provided for in *RA 7432*, during the period from January 1, 2004 to March 20, 2004.

THE PARTIES

Petitioner is a domestic corporation organized and existing under the laws of the Philippines, with principal office address at No. 28 Shaw Boulevard, Pasig City. It is duly licensed to operate drug stores by the Bureau of Food and Drugs, the local government units where the drugstores are located, the Department of Trade and Industry and the Bureau of Internal Revenue.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with office address at BIR National Office Building, Diliman, Quezon City, where he may be served with summons, notices and other legal processes.

THE FACTS

The facts, as culled from the records, are as follows:

In 2004, petitioner operated thirty two (32) drug stores located in Dau; Balanga, Rizal; Camiling; Apalit; Arayat; Balanga, Paterno; Cabanatuan, Maharlika; Tarlac, Juan Luna; Dolores; Cabanatuan, Del

Pilar; Subic; Guimba; Gapan Maharlika; Mabalacat, McArthur; Sindalan; Sta. Cruz; Munoz; Robinsons Seaport; Iba Magsaysay; Floridablanca; Tarlac Concepcion; Tarlac Tanedo; Angeles McArthur; Robinson's Arayat Gate; Talavera; Robinson's Supercenter Angeles; Dinalupihan, Bataan; Tarlac Romulo; Gapan Tinio; Baliuag Mabini; Guagua Plaza Burgos and San Jose Bonifacio.

In its Annual Income Tax Return for taxable year 2004 filed on April 15, 2005 *(Exhibit "C")*, petitioner reported and treated the twenty percent (20%) sales discounts granted to senior citizens between the period January 1, 2004 to March 20, 2004 as pre-paid tax credit, pursuant to *RA 7432.*

On April 14, 2007, petitioner filed with respondent a request for issuance of a tax credit certificate in the amount of P11,571,759.95, equivalent to the twenty percent (20%) sales discounts granted by petitioner to qualified senior citizens from January 1, 2004 to March 20, 2004, in compliance with *RA 7432 (Exhibit "E").*

On April 16, 2007, the instant *Petition for Review* was filed with this Court. As of said date, respondent has not granted petitioner's request for a tax credit certificate.

On June 1, 2007, respondent filed his *Answer* alleging the following special and affirmative defenses:

> "6. The claim for refund is still under examination by the respondent's Bureau;
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> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;
>
> 8. The grant of a claim for refund (is) tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
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> 9. The power of taxation is a high prerogative of sovereignty. Its relinquishment is never presumed and any reduction or dimunition thereof with respect to its mode or its rate must be strictly construed and the same must be couched in clear and unmistakable terms in order that it may be applied (Floro Cement Corporation vs. Gorospe, G.R. No. 46787, Aug. 2, 1991).
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> 10. The instant petition for review was filed with this Honorable Court without the mandatory Resolution of the petitioner's Board of Directors authorizing the filing of the instant petition. Therefore, the instant petition was filed without substantial compliance with the required certification of non-forum shopping per Sec. 5, Rule 7 of the New Rules of Civil Procedures, as amended."

Petitioner presented Marietta Calica, petitioner's District Manager and of Mercury Drug; Cyre M. Clores, the Finance Manager of Mercury Group of Companies, Inc. - Trinity Franchising and Management Division; and Nunilon P. Tagle, the Court-Commissioned Independent Certified Public Accountant (CPA), as witnesses, and documentary

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evidence, marked as *Exhibits "A" to "UU"*, which were all admitted by the Court.

During the hearing on August 20, 2008, counsel for respondent manifested that he has no witnesses to present and that he is submitting the case for decision based on the pleadings. Upon motion of counsels for both parties, they were granted thirty (30) days from said date to file their respective memorandum. On September 17, 2008, petitioner filed its Memorandum.

On October 15, 2008, the case was deemed submitted for decision, without respondent's memorandum having been filed.

Hence, this decision.

THE ISSUES

As stipulated by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT PETITIONER'S CLAIM FOR REFUND OR TAX CREDIT IS SUBSTANTIATED BY DOCUMENTARY EVIDENCE.

II

WHETHER OR NOT PETITIONER ACTUALLY GRANTED AND IS ENTITLED TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE TOTAL

AMOUNT OF P11,571,759.95 REPRESENTING DISCOUNTS IT GRANTED TO SENIOR CITIZENS ON THEIR PURCHASES OF MEDICINES FROM JANUARY 1, 2004 TO MARCH 20, 2004.

Principal Issue

The foregoing issues raised by the parties boil down to the principal issue of whether or not petitioner is entitled to a tax credit in the amount of P11,571,759.95, representing the cost of the twenty percent (20%) sales discounts given to qualified senior citizens for the period from January 1, 2004 to March 20, 2004.

THE COURT'S RULING

The petition is partly meritorious.

Section 4(a) of RA 7432 provides, as follows:

> "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 establishment, 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)*

Pursuant to the above provision, *RA 7432* makes it mandatory for private establishments to give senior citizens a discount privilege at the rate of 20% in their purchase of medicines *(Commissioner of Internal*

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Revenue vs. Central Luzon Drug Corporation, 456 SCRA 414). On the part of such establishments, the said 20% discount privilege is treated as *"cost"* which may be claimed as a tax credit to be deducted from its tax liabilities *(Bicolandia Drug Corporation [Formerly Elmas Drug Corporation] vs. Commissioner of Internal Revenue, 492 SCRA 159).*

Petitioner alleges that it actually granted the said 20% discount privilege to qualified senior citizens for the period covering January 1, 2004 to March 20, 2004, in compliance with *RA 7432.* To prove such allegation, petitioner presented its Summary of Sales for 2004 *(Exhibit "LL"),* Summary of Sales Discount Granted to Senior Citizens 2004 *(Exhibits "MM" and "MM-1"),* Sample Form 153 or Daily Cash, Accounting Receivable and Sales Report of petitioner filed by its MDC-Camiling Quezon branch on January 1, 2004 *(Exhibit "PP"),* Cashier's Report filed by petitioner's MDC-Camiling Quezon branch on January 1, 2004 *(Exhibit "PP-1"),* Daily Sales of Senior Citizens on January 1, 2004 *(Exhibit "PP-2"),* Z Totalizer of all MDC-Camiling Quezon branch, cash register machine on January 1, 2004 *(Exhibits "PP-3" to "PP-4"),* cash slips evidencing the purchases of medicines by senior citizens for 2004 *(Exhibit "TT", including submarkings),* and sample BIR and BFAD Special Record Books for 2004 *(Exhibit "UU").*

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In his final Report dated March 3, 2008 *(Exhibit "VV")*, the Court-Commissioned Independent CPA, Mr. Nunilon P. Tagle, certified that the amount of P11,644,310.45 represents the 20% privilege discounts given by petitioner to qualified senior citizens for the period covering January 1, 2004 to March 20, 2004, broken down as follows:

Branch	Amount Per Book	Amount Per Audit	Variance
Baliuag Mabini	133,945.96	133,698.16	247.80
Guagua Plaza Burgos	9,971.56	9,971.56	-
Balanga Rizal	677,651.89	677,515.60	136.29
Macb Square Mabalacat	242,825.09	228,226.04	14,599.05
Camiling Quezon	321,681.78	319,595.82	2,085.96
Apalit Mc Arthur Highway	903,001.79	898,000.85	5,000.94
Cabanatuan Maharlika	461,396.66	391,915.84	69,480.82
Arayat Poblacion	257,838.49	248,098.92	9,739.57
Tarlac Juan Luna	762,250.43	638,356.65	123,893.78
Balanga Paterno	865,692.89	850,419.48	15,273.41
Hyatt Garden San Fern Dolores	1,178,547.76	1,178,654.89	(107.13)
Cabanatuan Del Pilar	452,195.31	476,449.73	(24,254.42)
Subic National Highway	182,909.02	180,951.06	1,957.96
Guimba Afan Salvador	50,360.72	63,292.01	(12,931.29)
Gapan Maharlika	490,328.08	425,338.60	64,989.48
Mabalacat Mc Arthur	147,380.20	140,637.62	6,742.58
San Fernando Pampanga Sindalan	458,149.34	440,560.89	17,588.45
Sta Cruz National Hiway	136,946.55	136,946.55	-

Munuz Delos Santos	166,023.98	166,088.29	(64.31)
Starmills Pampanga Seaport Gate	674,767.25	655,665.12	19,102.13
Iba Zambales	338,288.07	303,113.90	35,174.17
Florida Balnca Macabulos	339,282.19	308,814.36	30,467.83
Concepcion Cortez	218,641.42	214,917.47	3,723.95
Tarlac Tanedo	1,016,445.03	1,087,855.64	(71,410.61)
Angeles Auf Mc Arthur	980,042.36	980,042.36	-
Starmills Pampanga Arayat Gate	823,699.14	489,183.04	334,516.10
Total	**12,290,262.96**	**11,644,310.45**	**645,952.51**

In support of said certification, the Independent CPA attached thereto a summary *(Exhibit "VV", Annex "C")* wherein the 20% privilege discounts to senior citizens were properly itemized based on the auditing firm's verification of the cash slips issued by each of petitioner's branches and were compared against those that were reflected in petitioner's Special Record Books.

However, after comparing the amounts of the 20% privilege discounts to senior citizens per Special Record Books or as claimed by petitioner, and as audited by Mr. Nunilon P. Tagle, the Court finds that there are instances when the amount per Special Record Books exceeded the audited amounts, or *vice-versa.* To illustrate, for the period from January 1, 2004 to March 20, 2004, in the Summary of Sales Discount given to senior citizens, the amount per Special Record Books for Baliuag Mabini Branch is P133,945.96, while the corresponding audited amount is P133,698.16. Clearly, there is a discrepancy. Such being the case, only the audited amount of P133,698.16 will be considered as basis for computing petitioner's refundable amount, as this amount is the one that is duly substantiated. Similarly, if the amount per Special Record Books or the claimed amount is lower than the audited amount, the former shall be used in determining petitioner's refundable amount since it is a rule that a taxpayer cannot claim beyond what is prayed for in the *Petition for Review*. For the period covering January 1, 2004 to March 20, 2004, the basis of the refundable amount is the lower amount between the Special Record Books *vis-a-vis* audited amounts for each branch, which amounted to P11,535,542.69, broken down as follows:

Branch	Amount Per Book	Amount Per Audit	Should-be Basis of Refundable Amount
Baliuag Mabini	133,945.96	133,698.16	133,698.16
Guagua Plaza Burgos	9,971.56	9,971.56	9,971.56
Balanga Rizal	677,651.89	677,515.60	677,515.60
Macb Square Mabalacat	242,825.09	228,226.04	228,226.04
Camiling Quezon	321,681.78	319,595.82	319,595.82
Apalit Mc Arthur Highway	903,001.79	898,000.85	898,000.85
Cabanatuan Maharlika	461,396.66	391,915.84	391,915.84

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Arayat Poblacion	257,838.49	248,098.92	248,098.92
Tarlac Juan Luna	762,250.43	638,356.65	638,356.65
Balanga Paterno	865,692.89	850,419.48	850,419.48
Hyatt Garden San Fern Dolores	1,178,547.76	1,178,654.89	1,178,547.76
Cabanatuan Del Pilar	452,195.31	476,449.73	452,195.31
Subic National Highway	182,909.02	180,951.06	180,951.06
Guimba Afan Salvador	50,360.72	63,292.01	50,360.72
Gapan Maharlika	490,328.08	425,338.60	425,338.60
Mabalacat Mc Arthur	147,380.20	140,637.62	140,637.62
San Fernando Pampanga Sindalan	458,149.34	440,560.89	440,560.89
Sta Cruz National Hiway	136,946.55	136,946.55	136,946.55
Munuz Delos Santos	166,023.98	166,088.29	166,023.98
Starmills Pampanga Seaport Gate	674,767.25	655,665.12	655,665.12
Iba Zambales	338,288.07	303,113.90	303,113.90
Florida Balnca Macabulos	339,282.19	308,814.36	308,814.36
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Tarlac Tanedo	1,016,445.03	1,087,855.64	1,016,445.03
Angeles Auf Mc Arthur	980,042.36	980,042.36	980,042.36
Starmills Pampanga Arayat Gate	823,699.14	489,183.04	489,183.04
Total	**12,290,262.96**	**11,644,310.45**	**11,535,542.69**

The Court notes though that the substantiated amount of P11,535,542.69 is inclusive of value-added tax (VAT). Hence, it is but proper to exclude the ten percent (10%) VAT or the amount of

P1,048,685.70, and only the resulting amount of P10,486,856.99 may be claimed as tax credit by petitioner.

However, in order to validly claim the amount of P10,486,856.99 as tax credit, petitioner must also establish that the related gross sales to senior citizens (inclusive of the 20% discount privilege) were declared as part of its taxable income.

For taxable year 2004, petitioner reported in its Annual Income Tax Return the amount of P1,143,315,217.00 as sales *(Exhibit "C")*, which was likewise reflected in its Audited Financial Statements for the same taxable year *(Exhibit "D")*. Such sales included the gross sales to senior citizens pertaining to the claimed 20% discount privilege of P10,486,856.99, per examination of petitioner's Cash Receipts and Sales Book *(Exhibit "RR")*, as well as its General Ledger *(Exhibit "QQ")*. Evidently, the gross sales to senior citizens corresponding to the claimed 20% discount privilege of P10,486,856.99 formed part of petitioner's taxable income for 2004.

Considering that petitioner had an income tax liability for 2004 in the amount of P89,028.00, and failed to substantiate its prior year's excess credits of P117,667,572.87, the claimed 20% discount privilege of P10,486,856.99 shall be partially applied against the income tax due of

P89,028.00. Hence, petitioner's unused tax credits arising from the 20% discount privilege it granted to senior citizens for the period covering January 1, 2004 to March 20, 2004 amounted only to P10,397,828.99, computed as follows:

Gross Income	P 4,451,417.00
Less: Deductions	46,051,280.00
Taxable Income	P(41,599,863.00)
Minimum Corporate Income Tax (MCIT) Due	P 89,028.00
Less: Tax Credits	
20% Sales Discounts Granted	
To Senior Citizens	10,486,856.99
Excess Tax Credits	**P 10,397,828.99**

It ought to be noted, however, that on February 26, 2004, *RA 9257,* or *The Expanded Senior Citizens Act of 2003,* amending *RA 7432*, was signed into law and took effect on March 21, 2004, providing that starting taxable year 2004, the 20% sales discount granted by establishments to qualified senior citizens is to be treated as tax deduction, no longer as tax credit (*M.E. Holding Corporation vs. The Hon. Court of Appeals, et al., 547 SCRA 389*).

WHEREFORE, premises considered, the instant *Petition for Review* is **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO ISSUE** a Tax Credit Certificate in favor of petitioner in the amount of **TEN**

MILLION THREE HUNDRED NINETY SEVEN THOUSAND EIGHT HUNDRED TWENTY EIGHT AND 99/100 PESOS (P10,397,828.99) representing the unused tax credits arising from the twenty percent (20%) discount privileges given by petitioner to qualified senior citizens on their purchase of medicines for the period covering January 1, 2004 to March 20, 2004, pursuant to *RA 7432*.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice