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petitioner, Liberty Ayo-Alburo, are forfeited in favor of the government.

Costs against petitioner.

SO ORDERED.

Panganiban (Chairman), Sandoval-Gutierrez, Corona, and *Garcia, JJ.,* concur.

THIRD DIVISION

[G.R. No. 159647. April 15, 2005]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **CENTRAL LUZON DRUG CORPORATION,** *respondent.*

SYLLABUS

1. **TAXATION; TAX CREDIT; UNDER RA 7432, ESTABLISHMENTS WHICH GIVES 20% DISCOUNT TO SENIOR CITIZENS ON MEDICINE PURCHASES MAY CLAIM THE DISCOUNT AS A TAX CREDIT.—** Section 4a) of RA 7432 grants to senior citizens the privilege of obtaining a 20 percent discount on their purchase of medicine from any private establishment in the country. The latter may then claim the cost of the discount as a *tax credit*. But can such credit be claimed, even though an establishment operates at a loss? We, answer in the affirmative. x x x. For to deny such credit, despite the plain mandate of the law and the regulations carrying out that mandate, is indefensible.

2. **ID.; ID.; ELUCIDATED.—** Although the term is not specifically defined in our Tax Code, *tax credit* generally refers to an amount that is "subtracted directly from one's total tax liability." It is an "allowance against the tax itself" or "a

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deduction from what is owed" by a taxpayer to the government. Examples of *tax credits* are withheld taxes, payments of estimated tax, and investment tax credits.

3. ID.; ID.; TAX CREDIT AND TAX DEDUCTION, DISTINGUISHED.— *Tax credit* should be understood in relation to other tax concepts. One of these is *tax deduction* — defined as a subtraction "from income for tax purposes," or an amount that is "allowed by law to reduce income prior to [the] application of the tax rate to compute the amount of tax which is due." An example of a *tax deduction* is any of the allowable deductions enumerated in Section 34 of the Tax Code. A *tax credit* differs from a *tax deduction*. On the one hand, a *tax credit* reduces the tax due, including — whenever applicable — the *income tax* that is determined after applying the corresponding tax rates to *taxable income*. A *tax deduction*, on the other, reduces the income that is subject to tax in order to arrive at *taxable income*. To think of the former as the latter is to avoid, if not entirely confuse, the issue. A *tax credit* is used only *after* the tax has been computed; a *tax deduction*, *before*.

4. ID.; ID.; APPLICATION THEREOF UNDER RA 7432.— Since a *tax credit* is used to reduce directly the tax that is due, there ought to be a tax liability *before* the *tax credit* can be applied. Without that liability, any *tax credit* application will be useless. x x x. If a *net loss* is reported by, and no other taxes are currently due from, a business establishment, there will obviously be no tax liability against which any *tax credit* can be applied. For the establishment to choose the immediate availment of a *tax credit* will be premature and impracticable. Nevertheless, the irrefutable fact remains that, under RA 7432, Congress has granted without conditions a *tax credit* benefit to all covered establishments. Although this *tax credit* benefit is available, it need not be used by losing ventures, since there is no tax liability that calls for its application. Neither can it be reduced to nil by the quick yet callow stroke of an administrative pen, simply because no reduction of taxes can instantly be effected. By its nature, the *tax credit* may still be deducted from a *future*, not a *present*, tax liability, without which it does not have any use. In the meantime, it need not move. But it breathes. x x x. Further, the word *may* in the text of RA 7432 implies

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that the availability of the *tax credit* benefit is neither unrestricted nor mandatory. There is no absolute right conferred upon respondent, or any similar taxpayer, to avail itself of the *tax credit* remedy whenever it 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." For the tax authorities to compel respondent to deduct the 20 percent discount from either its *gross income* or its *gross sales* is, therefore, not only to make an imposition without basis in law, but also to blatantly contravene the law itself. What Section 4.a of RA 7432 means is that the *tax credit* benefit is merely permissive, not imperative. Respondent is given two options — either to claim or not to claim the cost of the discounts as a *tax credit*. In fact, it may even ignore the credit and simply consider the gesture as an act of beneficence, an expression of its social conscience. Granting that there is a tax liability and respondent claims such cost as a *tax credit*, then the *tax credit* can easily be applied. If there is none, the credit cannot be used and will just have to be carried over and revalidated accordingly. If, however, the business continues to operate at a loss and no other taxes are due, thus compelling it to close shop, the credit can never be applied and will be lost altogether. In other words, it is the existence or the lack of a tax liability that determines whether the cost of the discounts can be used as a *tax credit*. RA 7432 does not give respondent the unfettered right to avail itself of the credit whenever it pleases. Neither does it allow our tax administrators to expand or contract the legislative mandate. "The 'plain meaning rule' or *verba legis* in statutory construction is thus applicable x x x. Where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation."

5. ID.; ID.; PRIOR TAX PAYMENTS, NOT A REQUIREMENT.— While a tax liability is essential to the *availment or use* of any *tax credit*, prior tax payments are not. On the contrary, for the *existence or grant* solely of such credit, neither a tax liability nor a prior tax payment is needed. The Tax Code is in fact replete with provisions granting or allowing *tax credits*, even though no taxes have been previously paid. [T]here are also tax treaties and special laws that grant or

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allow *tax credits*, even though no prior tax payments have been made.

6. ID.; ID.; KINDS OF DISCOUNTS, ELUCIDATED.— By ordinary acceptation, a discount is an "abatement or reduction made from the gross amount or value of anything." To be more precise, it is in business parlance "a deduction or lowering of an amount of money;" or "a reduction from the full amount or value of something, especially a price." In business there are many kinds of discount, the most common of which is that affecting the *income statement* or financial report upon which the *income tax* is based. A *cash discount*, for example, is one granted by business establishments to *credit customers* for their prompt payment. It is a "reduction in price offered to the purchaser if payment is made within a shorter period of time than the maximum time specified." Also referred to as a *sales discount* on the part of the seller and a *purchase discount* on the part of the buyer, it may be expressed in such terms as "5/10, n/30." A *quantity discount*, however, is a "reduction in price allowed for purchases made in large quantities, justified by savings in packaging, shipping, and handling." It is also called a *volume* or *bulk discount*. A "percentage reduction from the list price x x x allowed by manufacturers to wholesalers and by wholesalers to retailers" is known as a *trade discount*. No entry for it need be made in the manual or computerized *books of accounts*, since the purchase or sale is already valued at the net price actually charged the buyer. The purpose for the discount is to encourage trading or increase sales, and the prices at which the purchased goods may be resold are also suggested. Even a *chain discount* — a series of discounts from one list price — is recorded at net. Finally, akin to a *trade discount* is a *functional discount*. It is "a supplier's price discount given to a purchaser based on the [latter's] role in the [former's] distribution system." This role usually involves warehousing or advertising.

7. ID.; ID.; ID.; SALES DISCOUNTS, DISCUSSED.— [W]e find that the nature of a *sales discount* is peculiar. Applying generally accepted accounting principles (GAAP) in the country, this type of discount is reflected in the *income statement* as a line item deducted — along with returns, allowances, rebates and other similar expenses — from *gross*

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sales to arrive at *net sales*. This type of presentation is resorted to, because the *accounts receivable* and *sales* figures that arise from *sales discounts*, — as well as from *quantity, volume* or *bulk discounts* — are recorded in the manual and computerized *books of accounts* and reflected in the financial statements at the gross amounts of the invoices. This manner of recording credit sales — known as the *gross method* — is most widely used, because it is simple, more convenient to apply than the *net method*, and produces no material errors over time. However, under the *net method* used in recording *trade, chain* or *functional discounts*, only the net amounts of the invoices — after the discounts have been deducted — are recorded in the *books of accounts* and reflected in the financial statements. A separate line item cannot be shown, because the transactions themselves involving both *accounts receivable* and *sales* have already been entered into, net of the said discounts. The term *sales discounts* is not expressly defined in the Tax Code, but one provision adverts to amounts whose sum — along with *sales returns, allowances* and *cost of goods sold* — is deducted from *gross sales* to come up with the *gross income, profit* or *margin* derived from business. In another provision therein, *sales discounts* that are granted and indicated in the invoices at the time of sale — and that do not depend upon the happening of any future event — may be excluded from the *gross sales* within the same quarter they were given. While determinative only of the VAT, the latter provision also appears as a suitable reference point for income tax purposes already embraced in the former. After all, these two provisions affirm that *sales discounts* are amounts that are always deductible from *gross sales*.

8. ID.; ID.; RA 7432 ON SENIOR CITIZEN'S DISCOUNT ON MEDICINE PURCHASES, ELUCIDATED.— A distinguishing feature of the implementing rules of RA 7432 is the private establishment's outright deduction of the discount from the invoice price of the medicine sold to the senior citizen. It is, therefore, expected that for each retail sale made under this law, the discount period lasts no more than a day, because such discount is given — and the net amount thereof collected — immediately upon perfection of the sale. Although prompt payment is made for an arm's-length transaction by the senior citizen, the real and compelling reason for the

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private establishment giving the discount is that the law itself makes it mandatory. What RA 7432 grants the senior citizen is a mere discount privilege, not a *sales discount* or any of the above discounts in particular. Prompt payment is not the reason for (although a necessary consequence of) such grant. To be sure, the privilege enjoyed by the senior citizen must be equivalent to the *tax credit* benefit enjoyed by the private establishment granting the discount. Yet, under the revenue regulations promulgated by our tax authorities, this benefit has been erroneously likened and confined to a *sales discount*. To a senior citizen, the monetary effect of the privilege may be the same as that resulting from a *sales discount*. However, to a private establishment, the effect is different from a simple reduction in price that results from such discount. In other words, the *tax credit* benefit is not the same as a *sales discount*. To repeat from our earlier discourse, this benefit cannot and should not be treated as a *tax deduction*.

9. ID.; ID.; SALES DISCOUNT AND TAX CREDIT, DISCUSSED.— To stress, the effect of a *sales discount* on the *income statement* and *income tax return* of an establishment covered by RA 7432 is different from that resulting from the *availment* or *use* of its *tax credit* benefit. While the former is a deduction *before*, the latter is a deduction *after*, the *income tax* is computed. As mentioned earlier, a discount is not necessarily a *sales discount*, and a *tax credit* for a simple discount privilege should not be automatically treated like a *sales discount*. *Ubi lex non distinguit, nec nos distinguere debemus*. Where the law does not distinguish, we ought not to distinguish. When the law says that the cost of the discount may be claimed as a *tax credit*, it means that the amount — when claimed — shall be treated as a reduction from any tax liability, plain and simple. The option to avail of the *tax credit* benefit depends upon the existence of a tax liability, but to limit the benefit to a *sales discount* — which is not even identical to the discount privilege that is granted by law — does not define it at all and serves no useful purpose.

10. STATUTORY CONSTRUCTION; STATUTES; A LAW CANNOT BE AMENDED BY MERE REGULATION; CASE AT BAR.— [T]he law cannot be amended by a mere regulation. In fact, a regulation that "operates to create a

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rule out of harmony with the statute is a mere nullity"; it cannot prevail. It is a cardinal rule that courts "will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it x x x." In the scheme of judicial tax administration, the need for certainty and predictability in the implementation of tax laws is crucial. Our tax authorities fill in the details that "Congress may not have the opportunity or competence to provide." The regulations these authorities issue are relied upon by taxpayers, who are certain that these will be followed by the courts. Courts, however, will not uphold these authorities' interpretations when clearly absurd, erroneous or improper. In the present case, the tax authorities have given the term *tax credit* in Sections 2.i and 4 of RR 2-94 a meaning utterly in contrast to what RA 7432 provides. Their interpretation has muddled up the intent of Congress in granting a mere discount privilege, not a *sales discount.* The administrative agency issuing these regulations may not enlarge, alter or restrict the provisions of the law it administers; it cannot engraft additional requirements not contemplated by the legislature. In case of conflict, the law must prevail. A "regulation adopted pursuant to law is law." Conversely, a regulation or any portion thereof not adopted pursuant to law is no law and has neither the force nor the effect of law.

11. TAXATION; TAX CREDIT; BENEFIT UNDER RA 7432, DEEMED JUST COMPENSATION.— [T]he privilege enjoyed by senior citizens does not come *directly* from the State, but rather from the private establishments concerned. Accordingly, the *tax credit* benefit granted to these establishments can be deemed as their *just compensation* for private property taken by the State for public use. The concept of *public use* is no longer confined to the traditional notion of *use by the public*, but held synonymous with *public interest*, *public benefit*, *public welfare*, and *public convenience*. The discount privilege to which our senior citizens are entitled is actually a benefit enjoyed by the general public to which these citizens belong. The discounts given would have entered the coffers and formed part of the *gross sales* of the private establishments concerned, were it not for RA 7432. The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private

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property for *public use or benefit*. As a result of the 20 percent discount imposed by RA 7432, respondent becomes entitled to a *just compensation*. This term refers not only to the issuance of a *tax credit* certificate indicating the correct amount of the discounts given, but also to the promptness in its release. Equivalent to the payment of property taken by the State, such issuance — when not done within a *reasonable time* from the grant of the discounts — cannot be considered as *just compensation*. In effect, respondent is made to suffer the consequences of being immediately deprived of its revenues while awaiting actual receipt, through the certificate, of the equivalent amount it needs to cope with the reduction in its revenues. Besides, the taxation power can also be used as an implement for the exercise of the power of eminent domain. Tax measures are but "enforced contributions exacted on pain of penal sanctions" and "clearly imposed for a *public purpose*." In recent years, the power to tax has indeed become a most effective tool to realize social justice, *public welfare*, and the equitable distribution of wealth. While it is a declared commitment under Section 1 of RA 7432, social justice "cannot be invoked to trample on the rights of property owners who under our Constitution and laws are also entitled to protection. The social justice consecrated in our [C]onstitution [is] not intended to take away rights from a person and give them to another who is not entitled thereto." For this reason, a just compensation for income that is taken away from respondent becomes necessary. It is in the *tax credit* that our legislators find support to realize social justice, and no administrative body can alter that fact. x x x. Congress has allowed all private establishments a simple *tax credit*, not a deduction. In fact, no cash outlay is required from the government for the *availment* or *use* of such credit. The deliberations on February 5, 1992 of the Bicameral Conference Committee Meeting on Social Justice, which finalized RA 7432, disclose the true intent of our legislators to treat the *sales discounts* as a *tax credit*, rather than as a deduction from *gross income*.

12. STATUTORY CONSTRUCTION; SPECIAL LAW PREVAILS OVER GENERAL LAW; CASE AT BAR.— RA 7432 is a special law that should prevail over the Tax Code — a general law. "x x x [T]he rule is that on a specific matter the special law shall prevail over the general law, which shall be resorted

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to only to supply deficiencies in the former." In addition, "[w]here there are two statutes, the earlier special and the later general — the terms of the general broad enough to include the matter provided for in the special — the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case." "It is a canon of statutory construction that a later *statute, general in its terms* and not expressly repealing a *prior special* statute, will ordinarily not affect the special provisions of such earlier statute." RA 7432 is an earlier law not expressly repealed by, and therefore remains an exception to, the Tax Code — a later law. When the former states that a *tax credit* may be claimed, then the requirement of prior tax payments under certain provisions of the latter, as discussed above, cannot be made to apply. Neither can the instances of or references to a *tax deduction* under the Tax Code be made to restrict RA 7432. No provision of any revenue regulation can supplant or modify the acts of Congress.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Joy Ann Marie G. Nolasco for respondent.

D E C I S I O N

PANGANIBAN, *J.*:

The 20 percent discount required by the law to be given to senior citizens is a *tax credit*, not merely a *tax deduction* from the gross income or gross sale of the establishment concerned. A *tax credit* is used by a private establishment only after the tax has been computed; a *tax deduction*, before the tax is computed. RA 7432 unconditionally grants a *tax credit* to all covered entities. Thus, the provisions of the revenue regulation that withdraw or modify such grant are void. Basic is the rule that administrative regulations cannot amend or revoke the law.

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The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to set aside the August 29, 2002 Decision[2] and the August 11, 2003 Resolution[3] of the Court of Appeals (CA) in CA-GR SP No. 67439. The assailed Decision reads as follows:

"WHEREFORE, premises considered, the Resolution appealed from is *AFFIRMED in toto*. No costs."[4]

The assailed Resolution denied petitioner's Motion for Reconsideration.

The Facts

The CA narrated the antecedent facts as follows:

"Respondent is a domestic corporation primarily engaged in retailing of medicines and other pharmaceutical products. In 1996, it operated six (6) drugstores under the business name and style 'Mercury Drug.'

"From January to December 1996, respondent granted twenty (20%) percent sales discount to qualified senior citizens on their purchases of medicines pursuant to Republic Act No. [R.A.] 7432 and its Implementing Rules and Regulations. For the said period, the amount allegedly representing the 20% sales discount granted by respondent to qualified senior citizens totaled ₱904,769.00.

"On April 15, 1997, respondent filed its Annual Income Tax Return for taxable year 1996 declaring therein that it incurred net losses from its operations.

"On January 16, 1998, respondent filed with petitioner a claim for tax refund/credit in the amount of ₱904,769.00 allegedly arising from the 20% sales discount granted by respondent to qualified senior

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[1] *Rollo*, pp. 9-31.

[2] *Id.*, pp. 33-41. Penned by Justice Rebecca de Guia-Salvador, with the concurrence of Justices Godardo A. Jacinto (Fourth Division chair) and Eloy R. Bello Jr. (member, now retired).

[3] *Id.*, p. 43.

[4] CA Decision, p. 9; *rollo*, p. 41.

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citizens in compliance with [R.A.] 7432. Unable to obtain affirmative response from petitioner, respondent elevated its claim to the Court of Tax Appeals [(CTA or Tax Court)] *via* a Petition for Review.

"On February 12, 2001, the Tax Court rendered a *Decision*[5] dismissing respondent's Petition for lack of merit. In said decision, the [CTA] justified its ruling with the following ratiocination:

> 'x x x, if no tax has been paid to the government, erroneously or illegally, or if no amount is due and collectible from the taxpayer, tax refund or tax credit is unavailing. Moreover, whether the recovery of the tax is made by means of a claim for refund or tax credit, before recovery is allowed[,] it must be first established that there was an actual collection and receipt by the government of the tax sought to be recovered. x x x.
>
> 'x x x x x x x x x
>
> 'Prescinding from the above, it could logically be deduced that tax credit is premised on the existence of tax liability on the part of taxpayer. In other words, if there is no tax liability, tax credit is not available.'

"Respondent lodged a Motion for Reconsideration. The [CTA], in its assailed resolution,[6] granted respondent's motion for reconsideration and ordered herein petitioner to issue a Tax Credit Certificate in favor of respondent citing the decision of the then Special Fourth Division of [the CA] in CA G.R. SP No. 60057 entitled '*Central [Luzon] Drug Corporation vs. Commissioner of Internal Revenue*' promulgated on May 31, 2001, to wit:

> 'However, Sec. 229 clearly does not apply in the instant case because the tax sought to be refunded or credited by petitioner was not erroneously paid or illegally collected. We take exception to the CTA's sweeping but unfounded statement that 'both tax refund and tax credit are modes of recovering taxes which are

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[5] Penned by Judge Ramon O. De Veyra with the concurrence of Judge Amancio Q. Saga. Presiding Judge (now Presiding Justice) Ernesto D. Acosta dissented.

[6] Penned by Presiding Judge (now Presiding Justice) Ernesto D. Acosta with the concurrence of Judge (now Justice) Juanito C. Castañeda, Jr. Judge Amancio Q. Saga dissented.

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> either erroneously or illegally paid to the government.' Tax refunds or credits do not exclusively pertain to illegally collected or erroneously paid taxes as they may be other circumstances where a refund is warranted. The tax refund provided under Section 229 deals exclusively with illegally collected or erroneously paid taxes but there are other possible situations, such as the refund of excess estimated corporate quarterly income tax paid, or that of excess input tax paid by a VAT-registered person, or that of excise tax paid on goods locally produced or manufactured but actually exported. The standards and mechanics for the grant of a refund or credit under these situations are different from that under Sec. 229. Sec. 4[.a)] of R.A. 7432, is yet another instance of a tax credit and it does not in any way refer to illegally collected or erroneously paid taxes, x x x.'"[7]

Ruling of the Court of Appeals

The CA affirmed *in toto* the Resolution of the Court of Tax Appeals (CTA) ordering petitioner to issue a tax credit certificate in favor of respondent in the reduced amount of ₱903,038.39. It reasoned that Republic Act No. (RA) 7432 required neither a tax liability nor a payment of taxes by private establishments prior to the availment of a tax credit. Moreover, such credit is not tantamount to an unintended benefit from the law, but rather a just compensation for the taking of private property for public use.

Hence this Petition.[8]

The Issues

Petitioner raises the following issues for our consideration:

"Whether the Court of Appeals erred in holding that respondent may claim the 20% sales discount as a tax credit instead of as a deduction from gross income or gross sales.

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[7] *Id.*, pp. 2-4 & 34-36.

[8] The Petition was deemed submitted for decision on June 10, 2004, upon receipt by the Court of respondent's Memorandum, signed by Atty. Joy Ann Marie G. Nolasco. Petitioner's Memorandum — signed by Solicitor General Alfredo L. Benipayo, Assistant Solicitor General Ma. Antonia Edita C. Dizon, and Solicitor Magtanggol M. Castro — was filed on June 2, 2004.

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"Whether the Court of Appeals erred in holding that respondent is entitled to a refund."[9]

These two issues may be summed up in only one: whether respondent, despite incurring a net loss, may still claim the 20 percent sales discount as a tax credit.

The Court's Ruling

The Petition is not meritorious.

Sole Issue: *Claim of 20 Percent Sales Discount as* Tax Credit *Despite* Net Loss

Section 4a) of RA 7432[10] grants to senior citizens the privilege of obtaining a 20 percent discount on their purchase of medicine from any private establishment in the country.[11] The latter may then claim the cost of the discount as a *tax credit*.[12] But can such credit be claimed, even though an establishment operates at a loss?

We answer in the affirmative.

Tax Credit *versus* Tax Deduction

Although the term is not specifically defined in our Tax Code,[13] *tax credit* generally refers to an amount that is "subtracted

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[9] Petitioner's Memorandum, p. 5; *rollo*, p. 96. Original in upper case.

[10] Entitled "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for other purposes," this law took effect in 1992. See *Santos, Jr. v. Llamas*, 379 Phil. 569, 577, January 20, 2000.

[11] §4.a of RA 7432.

[12] *Ibid*.

[13] Republic Act No. (RA) 8424 as amended by RAs 8761 and 9010.

Likewise, the term *tax credit* is not defined in Presidential Decree No. (PD) 1158, otherwise known as the National Internal Revenue Code of 1977 as amended.

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directly from one's total tax liability."[14] It is an "allowance against the tax itself"[15] or "a deduction from what is owed"[16] by a taxpayer to the government. Examples of *tax credits* are withheld taxes, payments of estimated tax, and investment tax credits.[17]

Tax credit should be understood in relation to other tax concepts. One of these is *tax deduction* — defined as a subtraction "from income for tax purposes,"[18] or an amount that is "allowed by law to reduce income prior to [the] application of the tax rate to compute the amount of tax which is due."[19] An example of a *tax deduction* is any of the allowable deductions enumerated in Section 34[20] of the Tax Code.

A *tax credit* differs from a *tax deduction*. On the one hand, a *tax credit* reduces the tax due, including — whenever applicable — the *income tax* that is determined after applying the corresponding tax rates to *taxable income*.[21] A *tax deduction*,

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[14] Garner (ed.), *Black's Law Dictionary* (8th ed., 1999), p. 1501.

[15] Smith, *West's Tax Law Dictionary* (1993), pp. 177-178.

[16] Oran and Tosti, *Oran's Dictionary of the Law* (3rd ed., 2000), p. 124.

[17] Malapo-Agato and San Andres-Francisco, *Dictionary of Accounting Terms* (2003), p. 258.

[18] Oran and Tosti, *supra*, p. 135.

[19] Smith, *supra*, p. 196.

[20] The itemized deductions considered as allowable deductions from gross income include ordinary and necessary expenses, interest, taxes, losses, bad debts, depreciation, depletion of oil and gas wells and mines, charitable and other contributions, research and development expenditures, and pension trust contributions.

[21] "While *taxable income* is based on the method of accounting used by the taxpayer, it will almost always differ from *accounting income*. This is so because of a fundamental difference in the ends the two concepts serve. Accounting attempts to *match* cost against revenue. Tax law is aimed at *collecting* revenue. It is quick to treat an item as income, slow to recognize deductions or losses. Thus, the tax law will *not* recognize deductions for *contingent future losses* except in very limited situations. Good accounting, on the other hand, *requires* their recognition. Once this fundamental difference in approach is accepted, *income tax* accounting methods can be understood

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on the other, reduces the income that is subject to tax[22] in order to arrive at *taxable income*.[23] To think of the former as the latter is to avoid, if not entirely confuse, the issue. A *tax credit* is used only *after* the tax has been computed; a *tax deduction*, *before*.

***Tax Liability Required for* Tax Credit**

Since a *tax credit* is used to reduce directly the tax that is due, there ought to be a tax liability *before* the *tax credit* can be applied. Without that liability, any *tax credit* application will be useless. There will be no reason for deducting the latter when there is, to begin with, no existing obligation to the government. However, as will be presented shortly, the *existence* of a tax credit or its *grant* by law is not the same as the *availment* or *use* of such credit. While the grant is mandatory, the availment or use is not.

If a *net loss* is reported by, and no other taxes are currently due from, a business establishment, there will obviously be no tax liability against which any *tax credit* can be applied.[24] For the establishment to choose the immediate availment of a *tax credit* will be premature and impracticable. Nevertheless, the irrefutable fact remains that, under RA 7432, Congress has granted without conditions a *tax credit* benefit to all covered establishments.

Although this *tax credit* benefit is available, it need not be used by losing ventures, since there is no tax liability that calls for its application. Neither can it be reduced to nil by the quick yet callow stroke of an administrative pen, simply because no

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more easily." *Consolidated Mines, Inc. v. CTA*, 157 Phil. 608, August 29, 1974, per Makalintal, *CJ.* Italics supplied.

[22] Smith, *supra*, pp. 177-178.

[23] *Id.*, p. 196.

[24] *BPI-Family Savings Bank, Inc. v. CA*, 386 Phil. 719, 727, April 12, 2000.

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reduction of taxes can instantly be effected. By its nature, the *tax credit* may still be deducted from a *future*, not a *present*, tax liability, without which it does not have any use. In the meantime, it need not move. But it breathes.

***Prior Tax Payments Not Required for* Tax Credit**

While a tax liability is essential to the *availment or use* of any *tax credit*, prior tax payments are not. On the contrary, for the *existence or grant* solely of such credit, neither a tax liability nor a prior tax payment is needed. The Tax Code is in fact replete with provisions granting or allowing *tax credits*, even though no taxes have been previously paid.

For example, in computing the *estate tax due*, Section 86(E) allows a *tax credit* — subject to certain limitations — for estate taxes paid to a foreign country. Also found in Section 101(C) is a similar provision for donor's taxes — again when paid to a foreign country — in computing for the *donor's tax due*. The *tax credits* in both instances allude to the prior payment of taxes, even if not made to our government.

Under Section 110, a VAT (Value-Added Tax) — registered person engaging in transactions — whether or not subject to the VAT — is also allowed a *tax credit* that includes a ratable portion of any input tax not directly attributable to either activity. This input tax may *either* be the VAT on the purchase or importation of goods or services that is merely due from — not necessarily paid by — such VAT-registered person in the course of trade or business; *or* the transitional input tax determined in accordance with Section 111(A). The latter type may in fact be an amount equivalent to only eight percent of the value of a VAT-registered person's beginning inventory of goods, materials and supplies, when such amount — as computed — is higher than the actual VAT paid on the said items.[25] Clearly from this provision, the *tax credit* refers to an input tax that is either due only or given a value by mere comparison with

[25] §4.105-1 of BIR Revenue Regulations No. (RR) 7-95.

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the VAT actually paid — then later prorated. No tax is actually paid prior to the availment of such credit.

In Section 111(B), a one and a half percent input *tax credit* that is merely presumptive is allowed. For the purchase of primary agricultural products used as inputs — either in the processing of sardines, mackerel and milk, or in the manufacture of refined sugar and cooking oil — and for the contract price of public work contracts entered into with the government, again, no prior tax payments are needed for the use of the *tax credit*.

More important, a VAT-registered person whose sales are zero-rated or effectively zero-rated may, under Section 112(A), apply for the issuance of a *tax credit* certificate for the amount of creditable input taxes merely due — again not necessarily paid to — the government and attributable to such sales, to the extent that the input taxes have not been applied against output taxes.[26] Where a taxpayer is engaged in zero-rated or effectively zero-rated sales and also in taxable or exempt sales, the amount of creditable input taxes due that are not directly and entirely attributable to any one of these transactions shall be proportionately allocated on the basis of the volume of sales. Indeed, in availing of such *tax credit* for VAT purposes, this provision — as well as the one earlier mentioned — shows that the prior payment of taxes is not a requisite.

It may be argued that Section 28(B)(5)(b) of the Tax Code is another illustration of a *tax credit* allowed, even though no prior tax payments are not required. Specifically, in this provision, the imposition of a final withholding tax rate on cash and/or property dividends received by a nonresident foreign corporation from a domestic corporation is subjected to the condition that a foreign *tax credit* will be given by the domiciliary country in an amount equivalent to taxes that are merely deemed paid.[27] Although true, this provision actually refers to the *tax*

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[26] *Commissioner of Internal Revenue v. Seagate Technology (Phils.), Inc.*, GR No. 153866, February 11, 2005, pp. 13-15.

[27] *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corp.*, 204 SCRA 377, 388, December 2, 1991.

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credit as a *condition* only for the imposition of a lower tax rate, not as a *deduction* from the corresponding tax liability. Besides, it is not our government but the domiciliary country that credits against the income tax payable to the latter by the foreign corporation, the tax to be foregone or spared.[28]

In contrast, Section 34(C)(3), in relation to Section 34(C)(7)(b), categorically allows as credits, against the income tax imposable under Title II, the amount of income taxes merely incurred — not necessarily paid — by a domestic corporation during a taxable year in any foreign country. Moreover, Section 34(C)(5) provides that for such taxes incurred but not paid, a *tax credit* may be allowed, subject to the condition precedent that the taxpayer shall simply give a bond with sureties satisfactory to and approved by petitioner, in such sum as may be required; and further conditioned upon payment by the taxpayer of any tax found due, upon petitioner's redetermination of it.

In addition to the above-cited provisions in the Tax Code, there are also tax treaties and special laws that grant or allow *tax credit*s, even though no prior tax payments have been made.

Under the treaties in which the *tax credit* method is used as a relief to avoid double taxation, income that is taxed in the *state of source* is also taxable in the *state of residence*, but the tax paid in the former is merely allowed as a credit against the tax levied in the latter.[29] Apparently, payment is made to the *state of source*, not the *state of residence*. No tax, therefore, has been *previously* paid to the latter.

Under special laws that particularly affect businesses, there can also be *tax credit* incentives. To illustrate, the incentives provided for in Article 48 of Presidential Decree No. (PD) 1789,

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[28] Deoferio Jr. and Tan Torres, *Know Your CTRP*: *Comments on the Amendments to the National Internal Revenue Code under Republic Act No. 8424* (2nd printing, 1999), p. 61.

[29] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.*, 368 Phil. 388, 405-406, June 25, 1999.

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as amended by Batas Pambansa Blg. (BP) 391, include *tax credit*s equivalent to either five percent of the net value earned, or five or ten percent of the net local content of exports.[30] In order to avail of such credits under the said law and still achieve its objectives, no prior tax payments are necessary.

From all the foregoing instances, it is evident that prior tax payments are not indispensable to the availment of a *tax credit*. Thus, the CA correctly held that the availment under RA 7432 did not require prior tax payments by private establishments concerned.[31] However, we do not agree with its finding[32] that the carry-over of *tax credit*s under the said special law to succeeding taxable periods, and even their application against internal revenue taxes, did not necessitate the existence of a tax liability.

The examples above show that a tax liability is certainly important in the *availment or use*, not the *existence or grant*, of a *tax credit*. Regarding this matter, a private establishment reporting a *net loss* in its financial statements is no different from another that presents a *net income*. Both are entitled to the *tax credit* provided for under RA 7432, since the law itself accords that unconditional benefit. However, for the losing establishment to immediately apply such credit, where no tax is due, will be an improvident usance.

Sections 2.i and 4 of Revenue Regulations No. 2-94 Erroneous

RA 7432 specifically allows private establishments to claim as *tax credit* the amount of discounts they grant.[33] In turn, the Implementing Rules and Regulations, issued pursuant thereto,

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[30] *Pilipinas Kao, Inc. v. CA*, 423 Phil. 834, 838-839, 851, December 18, 2001.

[31] CA Decision, p. 9; *rollo*, pp. 40-41.

[32] *Id.*, pp. 7-8; id., pp. 39-40.

[33] §4.a of RA 7432.

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provide the procedures for its availment.[34] To deny such credit, despite the plain mandate of the law and the regulations carrying out that mandate, is indefensible.

First, the definition given by petitioner is erroneous. It refers to *tax credit* as the amount representing the 20 percent discount that "shall be deducted by the said establishments from their *gross income* for income tax purposes and from their *gross sales* for value-added tax or other percentage tax purposes."[35] In ordinary business language, the *tax credit* represents the amount of such discount. However, the manner by which the discount shall be credited against taxes has not been clarified by the revenue regulations.

By ordinary acceptation, a discount is an "abatement or reduction made from the gross amount or value of anything."[36] To be more precise, it is in business parlance "a deduction or lowering of an amount of money;"[37] or "a reduction from the full amount or value of something, especially a price."[38] In business there are many kinds of discount, the most common of which is that affecting the *income statement*[39] or financial report upon which the *income tax* is based.

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[34] D. and E. of Rule V of the "Rules And Regulations in the Implementation of RA 7432, The Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for other purposes," approved per Resolution No. 1 (Series 1993) issued by the National Economic and Development Authority (NEDA) Social Development Committee.

[35] §2.i of RR 2-94, issued August 23, 1993. See also §4 thereof.

[36] Gove (Ed. in Chief), *Webster's Third New International Dictionary of the English Language, Unabridged* (1976), p. 646.

[37] Oran and Tosti, *supra*, p. 149.

[38] Garner (ed.), *supra*, p. 498.

[39] An *income statement, profit and loss statement, or statement of income and expenses* is a "financial statement prepared from accounts and designed to show the several elements entering into the computation of net income for a given period." Malapo-Agato and San Andres-Francisco, *Dictionary of Accounting Terms* (2003), p. 136.

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Business Discounts
Deducted from Gross Sales

A *cash discount*, for example, is one granted by business establishments to *credit customers* for their prompt payment.[40] It is a "reduction in price offered to the purchaser if payment is made within a shorter period of time than the maximum time specified."[41] Also referred to as a *sales discount* on the part of the seller and a *purchase discount* on the part of the buyer, it may be expressed in such terms as "5/10, n/30."[42]

A *quantity discount*, however, is a "reduction in price allowed for purchases made in large quantities, justified by savings in packaging, shipping, and handling."[43] It is also called a *volume* or *bulk discount*.[44]

A "percentage reduction from the list price x x x allowed by manufacturers to wholesalers and by wholesalers to retailers"[45] is known as a *trade discount*. No entry for it need be made in the manual or computerized *books of accounts*, since the purchase or sale is already valued at the net price actually charged the buyer.[46] The purpose for the discount is to encourage trading or increase sales, and the prices at which the purchased goods may be resold are also suggested.[47] Even a *chain discount*

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[40] Valix and Peralta, *Financial Accounting, Volume One* (2002), p. 347.

[41] Editorial Staff of Prentice-Hall, Inc., *Encyclopedic Dictionary of Business Finance* (2nd printing, 1962), pp. 117-118. *See* Malapo-Agato and San Andres-Francisco, *supra*, p. 49.

[42] This means that the customer is entitled to a 5% discount, if payment is made within 10 days from the invoice date. Beyond that, but within 30 days from the invoice date, the gross amount of the invoice price is due. Valix and Peralta, *supra*, p. 347.

[43] Editorial Staff of Prentice-Hall, Inc., *supra*, pp. 503-504.

[44] Garner (Ed.), *supra*, p. 498.

[45] Editorial Staff of Prentice-Hall, Inc., *supra*, pp. 607-609.

[46] Valix and Peralta, *supra*, p. 453. *See* Malapo-Agato and San Andres-Francisco, *supra*, p. 263.

[47] *Id.*, p. 453.

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— a series of discounts from one list price — is recorded at net.[48]

Finally, akin to a *trade discount* is a *functional discount*. It is "a supplier's price discount given to a purchaser based on the [latter's] role in the [former's] distribution system."[49] This role usually involves warehousing or advertising.

Based on this discussion, we find that the nature of a *sales discount* is peculiar. Applying generally accepted accounting principles (GAAP) in the country, this type of discount is reflected in the *income statement*[50] as a line item deducted — along with returns, allowances, rebates and other similar expenses — from *gross sales* to arrive at *net sales*.[51] This type of presentation is resorted to, because the *accounts receivable* and *sales* figures that arise from *sales discounts*, — as well as from *quantity*, *volume* or *bulk discounts* — are recorded in the manual and computerized *books of accounts* and reflected in the financial statements at the gross amounts of the invoices.[52] This manner of recording credit sales — known as the *gross method* — is most widely used, because it is simple, more

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[48] Editorial Staff of Prentice-Hall, Inc., *supra*, pp. 607-609.

[49] Garner (Ed.), *supra*, p. 498.

[50] *Functional*, as opposed to the *natural*, presentation is the traditional and common form of the *income statement*. *Functional* presentation classifies expenses according to their function — whether as part of *cost of sales*, selling activities, administrative activities, or other operating activities. The Accounting Standards Council (ASC) in the Philippines does not prescribe any format, the choice being based on that which "fairly presents the elements of the enterprise performance." If the *functional* format is used, an additional disclosure of the nature of the expenses is necessary. Valix and Peralta, *supra*, pp. 155 & 162.

[51] Garner (Ed.), *supra*, p. 1365. *See* Valix and Peralta, *supra*, pp. 156-160 & 453.

On the other hand, *purchase discounts* are deducted — also along with returns, allowances, rebates and other similar revenues — from *gross purchases* to arrive at *net purchases*.

[52] Valix and Peralta, *supra*, p. 347.

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convenient to apply than the *net method*, and produces no material errors over time.[53]

However, under the *net method* used in recording *trade*, *chain* or *functional discounts*, only the net amounts of the invoices — after the discounts have been deducted — are recorded in the *books of accounts*[54] and reflected in the financial statements. A separate line item cannot be shown,[55] because the transactions themselves involving both *accounts receivable* and *sales* have already been entered into, net of the said discounts.

The term *sales discounts* is not expressly defined in the Tax Code, but one provision adverts to amounts whose sum — along with *sales returns, allowances* and *cost of goods sold*[56] — is deducted from *gross sales* to come up with the *gross income, profit* or *margin*[57] derived from business.[58] In another provision therein, *sales discounts* that are granted and indicated in the invoices at the time of sale — and that do not depend

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[53] *Id.*, pp. 347 & 456.

[54] *Id.*, p. 347.

[55] Except when presented for managerial or cost accounting reports, these items are chiefly internal and are neither disseminated to the general public nor attested to by the external auditors.

[56] *Cost of goods sold* is the most commonly used term referring to a particular section in the financial statements, reports, or notes to financial statements of trading or merchandising concerns. For a manufacturing business, however, the term used is *cost of goods manufactured and sold* or *cost of goods produced and sold*; for a service enterprise, *cost of services*; and, in general, *cost of sales* of a business. *See* Malapo-Agato and San Andres-Francisco, *supra*, p. 73.

[57] *Gross income, profit or margin* is the "difference between sales revenues and manufacturing costs as an intermediate step in the computation of *operating profits* or *net income*." It is also the "excess of *sales* over the *cost of goods sold*." Malapo-Agato and San Andres-Francisco, *supra*, p. 129.

More simply, *gross sales* less *sales discounts*, returns, allowances, rebates, and other similar expenses equal *net sales*; and *net sales* less *cost of sales* equal *gross income*.

[58] Paragraphs 7 to 10 of §27(A), Chapter IV, Title II of RA 8424 as amended.

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upon the happening of any future event — may be excluded from the *gross sales* within the same quarter they were given.[59] While determinative only of the VAT, the latter provision also appears as a suitable reference point for income tax purposes already embraced in the former. After all, these two provisions affirm that *sales discounts* are amounts that are always deductible from *gross sales*.

Reason for the Senior Citizen Discount: The Law, Not Prompt Payment

A distinguishing feature of the implementing rules of RA 7432 is the private establishment's outright deduction of the discount from the invoice price of the medicine sold to the senior citizen.[60] It is, therefore, expected that for each retail sale made under this law, the discount period lasts no more than a day, because such discount is given — and the net amount thereof collected — immediately upon perfection of the sale.[61] Although prompt payment is made for an arm's-length transaction by the senior citizen, the real and compelling reason for the private establishment giving the discount is that the law itself makes it mandatory.

What RA 7432 grants the senior citizen is a mere discount privilege, not a *sales discount* or any of the above discounts in particular. Prompt payment is not the reason for (although a necessary consequence of) such grant. To be sure, the privilege

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[59] §106(D)(2), Chapter I, Title IV of RA 8424 as amended.

[60] *See* D. of Rule V of the "Rules And Regulations in the Implementation of RA 7432, The Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for other purposes," approved per Resolution No. 1 (Series 1993) issued by the National Economic and Development Authority (NEDA) Social Development Committee.

[61] Theoretically, an *allowance for sales discount* account can also be set up by a business establishment in its books of account at the end of its accounting period to reflect its estimates of cash discounts on open accounts based on past experience. The accounting entry for this account is then reversed at the beginning of the next accounting period, so that such discounts can again be normally charged to the *sales discount* account. Valix and Peralta, *supra*, p. 348.

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enjoyed by the senior citizen must be equivalent to the *tax credit* benefit enjoyed by the private establishment granting the discount. Yet, under the revenue regulations promulgated by our tax authorities, this benefit has been erroneously likened and confined to a *sales discount*.

To a senior citizen, the monetary effect of the privilege may be the same as that resulting from a *sales discount*. However, to a private establishment, the effect is different from a simple reduction in price that results from such discount. In other words, the *tax credit* benefit is not the same as a *sales discount*. To repeat from our earlier discourse, this benefit cannot and should not be treated as a *tax deduction*.

To stress, the effect of a *sales discount* on the *income statement* and *income tax return* of an establishment covered by RA 7432 is different from that resulting from the *availment* or *use* of its *tax credit* benefit. While the former is a deduction *before*, the latter is a deduction *after*, the *income tax* is computed. As mentioned earlier, a discount is not necessarily a *sales discount*, and a *tax credit* for a simple discount privilege should not be automatically treated like a *sales discount*. *Ubi lex non distinguit, nec nos distinguere debemus*. Where the law does not distinguish, we ought not to distinguish.

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

When the law says that the cost of the discount may be claimed as a *tax credit*, it means that the amount — when claimed — shall be treated as a reduction from any tax liability, plain and simple. The option to avail of the *tax credit* benefit depends upon the existence of a tax liability, but to limit the benefit to a *sales discount* — which is not even identical to

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the discount privilege that is granted by law — does not define it at all and serves no useful purpose. The definition must, therefore, be stricken down.

Laws Not Amended by Regulations

Second, the law cannot be amended by a mere regulation. In fact, a regulation that "operates to create a rule out of harmony with the statute is a mere nullity";[62] it cannot prevail.

It is a cardinal rule that courts "will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it x x x."[63] In the scheme of judicial tax administration, the need for certainty and predictability in the implementation of tax laws is crucial.[64] Our tax authorities fill in the details that "Congress may not have the opportunity or competence to provide."[65] The regulations these authorities issue are relied upon by taxpayers, who are certain that these will be followed by the courts.[66] Courts, however, will not uphold these authorities' interpretations when clearly absurd, erroneous or improper.

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[62] *Commissioner of Internal Revenue v. Vda. de Prieto*, 109 Phil. 592, 597, September 30, 1960, per Gutierrez David, *J.* (citing *Miller v. US*, 294 US 435, 439-441, 55 S.Ct. 440,442, March 4, 1935; and *Lynch v. Tilden Produce Co.*, 265 US 315, 321-322, 44 S.Ct. 488, 490, May 26, 1924).

[63] *Molina v. Rafferty*, 37 Phil. 545, 555, February 1, 1918, per Malcolm, *J.* (citing *Government ex rel. Municipality of Cardona v. Municipality of Binangonan*, 34 Phil. 518, 520-521, March 29, 1916; *In re Allen*, 2 Phil. 630, 640, October 29, 1903; and *Pennoyer v. McConnaughy*, 11 S.Ct. 699, 706, April 20, 1891).

[64] *Lim Hoa Ting v. Central Bank of the Philippines*, 104 Phil. 573, 580, September 24, 1958 (citing Griswold, *A Summary of the Regulations Problem*, 54 Harvard Law Review 3, 398, 406, January 1941).

[65] *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration*, 166 SCRA 533, 544, October 18, 1988, per Cruz, *J.*

[66] *Lim Hoa Ting v. Central Bank of the Philippines, supra*, p. 580.

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In the present case, the tax authorities have given the term *tax credit* in Sections 2.i and 4 of RR 2-94 a meaning utterly in contrast to what RA 7432 provides. Their interpretation has muddled up the intent of Congress in granting a mere discount privilege, not a *sales discount*. The administrative agency issuing these regulations may not enlarge, alter or restrict the provisions of the law it administers; it cannot engraft additional requirements not contemplated by the legislature.[67]

In case of conflict, the law must prevail.[68] A "regulation adopted pursuant to law is law."[69] Conversely, a regulation or any portion thereof not adopted pursuant to law is no law and has neither the force nor the effect of law.[70]

Availment of Tax Credit Voluntary

Third, the word *may* in the text of the statute[71] implies that the availability of the *tax credit* benefit is neither unrestricted nor mandatory.[72] There is no absolute right conferred upon respondent, or any similar taxpayer, to avail itself of the *tax credit* remedy whenever it 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

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[67] *Pilipinas Kao, Inc. v. CA, supra*, p. 858.

[68] *Wise & Co., Inc. v. Meer*, 78 Phil. 655, 676, June 30, 1947.

[69] *Macailing v. Andrada*, 31 SCRA 126, 139, January 30, 1970, per Sanchez, *J*.

[70] See *Banco Filipino Savings and Mortgage Bank v. Hon. Navarro*, 158 SCRA 346, 354, July 28, 1987; and *Valerio v. Secretary of Agriculture & Natural Resources*, 117 Phil. 729, 733, April 23, 1963.

[71] §4.a of RA 7432.

[72] See also *Manufacturers Hanover Trust Co. and/or Chemical Bank v. Guerrero*, 445 Phil. 770, 782, February 19, 2003 (citing *Shauf v. CA*, 191 SCRA 713, 738, November 27, 1990; *Ayala Land, Inc. v. Spouses Carpo*, 345 SCRA 579, 585, November 22, 2000; and *In re Guariña*, 24 Phil. 37, 41, January 8, 1913).

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discretion of the taxpayer."[73] For the tax authorities to compel respondent to deduct the 20 percent discount from either its *gross income* or its *gross sales*[74] is, therefore, not only to make an imposition without basis in law, but also to blatantly contravene the law itself.

What Section 4.a of RA 7432 means is that the *tax credit* benefit is merely permissive, not imperative. Respondent is given two options — either to claim or not to claim the cost of the discounts as a *tax credit*. In fact, it may even ignore the credit and simply consider the gesture as an act of beneficence, an expression of its social conscience.

Granting that there is a tax liability and respondent claims such cost as a *tax credit*, then the *tax credit* can easily be applied. If there is none, the credit cannot be used and will just have to be carried over and revalidated[75] accordingly. If, however, the business continues to operate at a loss and no other taxes are due, thus compelling it to close shop, the credit can never be applied and will be lost altogether.

In other words, it is the existence or the lack of a tax liability that determines whether the cost of the discounts can be used as a *tax credit*. RA 7432 does not give respondent the unfettered right to avail itself of the credit whenever it pleases. Neither does it allow our tax administrators to expand or contract the legislative mandate. "The 'plain meaning rule' or *verba legis* in statutory construction is thus applicable x x x. Where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation."[76]

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[73] *San Carlos Milling Co., Inc. v. Commissioner of Internal Revenue*, 228 SCRA 135, 142, November 23, 1993, per Padilla, *J.*

[74] §§2.i & 4 of RR 2-94.

[75] §230(B), Chapter III, Title VIII of RA 8424 as amended.

[76] *National Federation of Labor v. NLRC*, 383 Phil. 910, 918, March 2, 2000, per De Leon Jr., *J.* (quoting *Fianza v. People's Law Enforcement Board*, 243 SCRA 165, 178, March 31, 1995, per Romero, *J.*).

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Tax Credit *Benefit*
***Deemed* Just Compensation**

Fourth, Sections 2.i and 4 of RR 2-94 deny the exercise by the State of its power of eminent domain. Be it stressed that the privilege enjoyed by senior citizens does not come *directly* from the State, but rather from the private establishments concerned. Accordingly, the *tax credit* benefit granted to these establishments can be deemed as their *just compensation* for private property taken by the State for public use.[77]

The concept of *public use* is no longer confined to the traditional notion of *use by the public*, but held synonymous with *public interest, public benefit, public welfare,* and *public convenience*.[78] The discount privilege to which our senior citizens are entitled is actually a benefit enjoyed by the general public to which these citizens belong. The discounts given would have entered the coffers and formed part of the *gross sales* of the private establishments concerned, were it not for RA 7432. The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private property for *public use or benefit.*

As a result of the 20 percent discount imposed by RA 7432, respondent becomes entitled to a *just compensation*. This term refers not only to the issuance of a *tax credit* certificate indicating the correct amount of the discounts given, but also to the promptness in its release. Equivalent to the payment of property taken by the State, such issuance — when not done within a *reasonable time* from the grant of the discounts — cannot be considered as *just compensation*. In effect, respondent is made to suffer the consequences of being immediately deprived of its revenues while awaiting actual receipt, through the certificate,

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[77] See *City of Cebu v. Spouses Dedamo*, 431 Phil. 524, 532, May 7, 2002.

[78] *Reyes v. National Housing Authority*, 443 Phil. 603, 610-611, January 20, 2003 (citing *Heirs of Juancho Ardona v. Hon. Reyes*, 210 Phil. 187, 197-201, October 26, 1983).

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of the equivalent amount it needs to cope with the reduction in its revenues.[79]

Besides, the taxation power can also be used as an implement for the exercise of the power of eminent domain.[80] Tax measures are but "enforced contributions exacted on pain of penal sanctions"[81] and "clearly imposed for a *public purpose*."[82] In recent years, the power to tax has indeed become a most effective tool to realize social justice, *public welfare*, and the equitable distribution of wealth.[83]

While it is a declared commitment under Section 1 of RA 7432, social justice "cannot be invoked to trample on the rights of property owners who under our Constitution and laws are also entitled to protection. The social justice consecrated in our [C]onstitution [is] not intended to take away rights from a person and give them to another who is not entitled thereto."[84] For this reason, a just compensation for income that is taken away from respondent becomes necessary. It is in the *tax credit* that our legislators find support to realize social justice, and no administrative body can alter that fact.

To put it differently, a private establishment that merely breaks even[85] — without the discounts yet — will surely start to incur

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[79] See *Land Bank of the Philippines v. De Leon*, 437 Phil. 347, 359, September 10, 2002 (citing *Estate of Salud Jimenez v. Philippine Export Processing Zone*, 349 SCRA 240, 264, January 16, 2001).

[80] See *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 175 SCRA 343, 371, July 14, 1989 (citing *Powell v. Pennsylvania*, 127 US 678, 683, 8 S.Ct. 992, 995, April 9, 1888).

[81] *Republic v. COCOFED*, 423 Phil. 735, 764, December 14, 2001, per Panganiban, *J.*

[82] *Id*. at 765.

[83] *National Power Corp. v. City of Cabanatuan*, 449 Phil. 233, 248, April 9, 2003 (citing Vitug and Acosta, *Tax Law and Jurisprudence* [2nd ed., 2000], pp. 1-2).

[84] *Salonga v. Farrales*, 192 Phil. 614, 624, July 10, 1981, per Fernandez, *J.*

[85] *Break-even* is the point at which a business neither generates an income nor incurs a loss from its operations.

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losses because of such discounts. The same effect is expected if its mark-up is less than 20 percent, and if all its sales come from retail purchases by senior citizens. Aside from the observation we have already raised earlier, it will also be grossly unfair to an establishment if the discounts will be treated merely as deductions from either its *gross income* or its *gross sales*. Operating at a loss through no fault of its own, it will realize that the *tax credit* limitation under RR 2-94 is inutile, if not improper. Worse, profit-generating businesses will be put in a better position if they avail themselves of *tax credit*s denied those that are losing, because no taxes are due from the latter.

Grant of Tax Credit Intended by the Legislature

Fifth, RA 7432 itself seeks to adopt measures whereby senior citizens are assisted by the community as a whole and to establish a program beneficial to them.[86] These objectives are consonant with the constitutional policy of making "health x x x services available to all the people at affordable cost"[87] and of giving "priority for the needs of the x x x elderly."[88] Sections 2.i and 4 of RR 2-94, however, contradict these constitutional policies and statutory objectives.

Furthermore, Congress has allowed all private establishments a simple *tax credit*, not a deduction. In fact, no cash outlay is required from the government for the *availment* or *use* of such credit. The deliberations on February 5, 1992 of the Bicameral Conference Committee Meeting on Social Justice, which

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[86] Items 1 & 2, 2nd paragraph of §1 of RA 7432.

[87] 1st paragraph of §1 of RA 7432 and §11 of Article XIII of the 1987 Constitution.

[88] *Ibid*. The constitutional references are reiterated in the sponsorship speech delivered on January 23, 1992 by Representative Dionisio S. Ojeda, regarding House Bill No. (HB) 35335, per Committee Report No. 01730, pp. 38-39 (jointly submitted by the Committee on Revision of Laws, the Committee on Family Relations and Population, and the Committee on Ways and Means). HB 35335 was approved on second reading without any amendment.

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finalized RA 7432, disclose the true intent of our legislators to treat the *sales discounts* as a *tax credit*, rather than as a deduction from *gross income*. We quote from those deliberations as follows:

"THE CHAIRMAN: (Rep. Unico). By the way, before that *ano*, about deductions from taxable income. I think we incorporated there a provision *na* — on the responsibility of the private hospitals and drugstores, *hindi ba*?

SEN. ANGARA: *Oo*.

THE CHAIRMAN: (Rep. Unico). So, I think we have to put in also a provision here about the deductions from taxable income of that private hospitals, *di ba ganon 'yan*?

MS. ADVENTO: *Kaya lang po* sir, *ang mga* discounts *po nila* affecting government and public institutions, so, *puwede na po nating hindi isama yung mga* less deductions *ng* taxable income.

THE CHAIRMAN: (Rep. Unico). *Puwede na. Yung* about the private hospitals. *Yung isiningit natin*?

MS. ADVENTO: *Singit na po ba yung* 15% on credit. (inaudible/did not use the microphone).

SEN. ANGARA: *Hindi pa, hindi pa*.

THE CHAIRMAN: (Rep. Unico). *Ah, 'di pa ba naisama natin*?

SEN. ANGARA: *Oo*. You want to insert that?

THE CHAIRMAN: (Rep. Unico). *Yung ang* proposal *ni* Senator Shahani, *e*.

SEN. ANGARA: In the case of private hospitals they got the grant of 15% discount, provided that, the private hospitals can claim the expense as a tax credit.

REP. AQUINO: Yah could be allowed as deductions in the perpetrations of (inaudible) income.

SEN. ANGARA: *I*-tax credit *na lang natin para walang* cash-out *ano*?

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REP. AQUINO:	*Oo*, tax credit. *Tama, Okay*. Hospitals *ba o lahat ng* establishments *na* covered.
THE CHAIRMAN:	(Rep. Unico). *Sa kuwan lang yon*, as private hospitals *lang*.
REP. AQUINO:	*Ano ba yung* establishments *na* covered?
SEN. ANGARA:	Restaurant lodging houses, recreation centers.
REP. AQUINO:	All establishments covered *siguro*?
SEN. ANGARA:	From all establishments. *Alisin na natin 'Yung kuwan kung ganon*. Can we go back to Section 4 *ha*?
REP. AQUINO:	*Oho*.
SEN. ANGARA:	Letter A. To capture that thought, we'll say the grant of 20% discount from all establishments et cetera, et cetera, provided that said establishments — provided that private establishments may claim the cost as a tax credit. *Ganon ba 'yon*?
REP. AQUINO:	Yah.
SEN. ANGARA:	*Dahil kung* government, they don't need to claim it.
THE CHAIRMAN:	(Rep. Unico). Tax credit.
SEN. ANGARA:	*As a tax credit [rather] than a kuwan — deduction*, Okay.
REP. AQUINO:	Okay.
SEN. ANGARA:	*Sige* Okay. *Di* subject to style *na lang sa* Letter A."[89]

Special Law Over General Law

Sixth and last, RA 7432 is a special law that should prevail over the Tax Code — a general law. "x x x [T]he rule is that

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[89] Deliberations of the Bicameral Conference Committee Meeting on Social Justice, February 5, 1992, pp. 22-24. Italics supplied.

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on a specific matter the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former."[90] In addition, "[w]here there are two statutes, the earlier special and the later general — the terms of the general broad enough to include the matter provided for in the special — the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general,[91] one as a general law of the land, the other as the law of a particular case."[92] "It is a canon of statutory construction that a later *statute, general in its terms* and not expressly repealing a *prior special* statute, will ordinarily not affect the special provisions of such earlier statute."[93]

RA 7432 is an earlier law not expressly repealed by, and therefore remains an exception to, the Tax Code — a later law. When the former states that a *tax credit* may be claimed, then the requirement of prior tax payments under certain provisions of the latter, as discussed above, cannot be made to apply. Neither can the instances of or references to a *tax deduction* under the Tax Code[94] be made to restrict RA 7432. No provision of any revenue regulation can supplant or modify the acts of Congress.

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[90] *Leyte Asphalt & Mineral Oil Co., Ltd. v. Block, Johnston & Greenbaum*, 52 Phil. 429, 432, December 14, 1928, per Romualdez, *J.*

[91] *City Mayor v. The Chief Police Constabulary*, 128 Phil. 674, 687, October 31, 1967.

[92] *Manila Railroad Co. v. Rafferty*, 40 Phil. 224, 229, September 30, 1919, per Johnson, *J.* (citing *State v. Stoll*, 84 US 425, 431, 436, 17 Wall. 425, 431, 436, October term, 1873).

[93] *Ibid*, per Johnson, *J.* (citing *Minnesota v. Hitchcock*, 185 US, 373, 396-397, 22 S.Ct. 650, 659, May 5, 1902, *Cass County v. Gillett*, 100 US 585, 593, 10 Otto 585, 593, October term, 1879; and *New Jersey Steamboat Co. v. Collector*, 85 US 478, 490-491, 18 Wall 478, 490-491, October term, 1873).

[94] Not even the provisions of PD 1158 — reiterated later in RA 8424 as amended — change the Court's observations on tax liability, prior tax payments, *sales discount*, *tax deduction*, and *tax credit*. PD 1158 was a general law that preceded RA 7432, a special law; thus, the latter prevails over the former. With all the more reason should the rules on statutory construction apply.

WHEREFORE, the Petition is hereby *DENIED*. The assailed Decision and Resolution of the Court of Appeals *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio Morales, and *Garcia, JJ.*, concur.

EN BANC

[G.R. No. 161065. April 15, 2005]

EUFEMIO C. DOMINGO, CELSO D. GANGAN, PACASIO S. BANARIA, SOFRONIO B. URSAL, ALBERTO P. CRUZ, MARIA L. MATIB, RACHEL U. PACPACO, ANGELO G. SANCHEZ, and SHERWIN A. SIP-AN, *petitioners, vs*. **HON. GUILLERMO N. CARAGUE, in his capacity as Chairman, Commission on Audit, HON. EMMANUEL M. DALMAN and HON. RAUL C. FLORES, in their capacities as Commissioners, Commission on Audit,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; LEGAL STANDING; NOT PRESENT WHERE NO DIRECT AND PERSONAL INTEREST TO THE CASE IS MANIFESTED; CASE AT BAR.— Assailed in this petition for *certiorari* is the legality of Resolution No. 2002-05 of the Commission on Audit (COA) providing for Organizational Restructuring Plan. Whether petitioners have the legal standing to institute the instant petition, however, the Court ruled in the negative. Petitioners have not shown any *direct and personal interest* in the COA Organizational Restructuring Plan. There is no indication that they have sustained or are in imminent danger of sustaining