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[G.R. No. 175356. December 3, 2013]

MANILA MEMORIAL PARK, INC. AND LA FUNERARIA PAZ-SUCAT, INC., *petitioners, vs.* **SECRETARY OF THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT and THE SECRETARY OF THE DEPARTMENT OF FINANCE,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; REQUISITES; ACTUAL CONTROVERSY IS PRESENT IN CASE AT BAR.—** When the constitutionality of a law is put in issue, judicial review may be availed of only if the following requisites concur: "(1) the existence of an actual and appropriate case; (2) the existence of personal and substantial interest on the part of the party raising the [question of constitutionality]; (3) recourse to judicial review is made at the earliest opportunity; and (4) the [question of constitutionality] is the *lis mota* of the case." x x x An actual case or controversy exists when there is "a conflict of legal rights" or "an assertion of opposite legal claims susceptible of judicial resolution." The Petition must therefore show that "the governmental act being challenged has a direct adverse effect on the individual challenging it." In this case, the tax deduction scheme challenged by petitioners has a direct adverse effect on them. Thus, it cannot be denied that there exists an actual case or controversy.

2. **ID.; STATE; INHERENT POWERS; POLICE POWER AND EMINENT DOMAIN; DEFINED.—** Police power is the inherent power of the State to regulate or to restrain the use of liberty and property for public welfare. The only limitation is that the restriction imposed should be reasonable, not oppressive. In other words, to be a valid exercise of police power, it must have a lawful subject or objective and a lawful method of accomplishing the goal. Under the police power of the State, "property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government." The State "may interfere with personal liberty,

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property, lawful businesses and occupations to promote the general welfare [as long as] the interference [is] reasonable and not arbitrary." Eminent domain, on the other hand, is the inherent power of the State to take or appropriate private property for public use. The Constitution, however, requires that private property shall not be taken without due process of law and the payment of just compensation.

3. ID.; ID.; ID.; ID.; TRADITIONAL DISTINCTIONS, EXEMPLIFIED.— Traditional distinctions exist between police power and eminent domain. In the exercise of police power, a property right is impaired by regulation, or the use of property is merely prohibited, regulated or restricted to promote public welfare. In such cases, there is no compensable taking, hence, payment of just compensation is not required. Examples of these regulations are property condemned for being noxious or intended for noxious purposes (*e.g.*, a building on the verge of collapse to be demolished for public safety, or obscene materials to be destroyed in the interest of public morals) as well as zoning ordinances prohibiting the use of property for purposes injurious to the health, morals or safety of the community (*e.g.*, dividing a city's territory into residential and industrial areas). It has, thus, been observed that, in the exercise of police power (as distinguished from eminent domain), although the regulation affects the right of ownership, none of the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public. On the other hand, in the exercise of the power of eminent domain, property interests are appropriated and applied to some public purpose which necessitates the payment of just compensation therefor. Normally, the title to and possession of the property are transferred to the expropriating authority. Examples include the acquisition of lands for the construction of public highways as well as agricultural lands acquired by the government under the agrarian reform law for redistribution to qualified farmer beneficiaries. However, it is a settled rule that the acquisition of title or total destruction of the property is not essential for "taking" under the power of eminent domain to be present. Examples of these include establishment of easements such as where the land owner is perpetually deprived of his proprietary rights because of the hazards posed by electric transmission lines constructed above his property or the compelled interconnection of the telephone system between the government

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and a private company. In these cases, although the private property owner is not divested of ownership or possession, payment of just compensation is warranted because of the burden placed on the property for the use or benefit of the public.

4. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 7432 (SENIOR CITIZENS ACT), AS AMENDED BY REPUBLIC ACT NO. 9257 (EXPANDED SENIOR CITIZENS ACT OF 2003); THE VALIDITY OF THE 20% SENIOR CITIZENS DISCOUNT AND TAX DEDUCTION SCHEME UNDER RA 9257, AS AN EXERCISE OF POLICE POWER OF THE STATE HAS ALREADY BEEN SETTLED; SUSTAINED.— ***The validity of the 20% senior citizen discount and tax deduction scheme under RA 9257, as an exercise of police power of the State, has already been settled in Carlos Superdrug Corporation.*** We agree with petitioners' observation that there are statements in *Central Luzon Drug Corporation describing* the 20% discount as an exercise of the power of eminent domain, *viz.*: x x x The present case, thus, affords an opportunity for us to clarify the above-quoted statements in *Central Luzon Drug Corporation* and *Carlos Superdrug Corporation*. First, we note that the above-quoted disquisition on eminent domain in *Central Luzon Drug Corporation* is *obiter dicta* and, thus, not binding precedent. As stated earlier, in *Central Luzon Drug Corporation*, we ruled that the BIR acted *ultra vires* when it effectively treated the 20% discount as a tax deduction, under Sections 2.i and 4 of RR No. 2-94, despite the clear wording of the previous law that the same should be treated as a tax credit. We were, therefore, not confronted in that case with the issue as to whether the 20% discount is an exercise of police power or eminent domain. Second, although we adverted to *Central Luzon Drug Corporation* in our ruling in *Carlos Superdrug Corporation*, this referred only to preliminary matters. A fair reading of *Carlos Superdrug Corporation* would show that we categorically ruled therein that the 20% discount is a valid exercise of police power. Thus, even if the current law, through its tax deduction scheme (which abandoned the tax credit scheme under the previous law), does not provide for a peso for peso reimbursement of the 20% discount given by private establishments, no constitutional infirmity obtains because, being a valid exercise of police power, payment of just compensation is not warranted. We have carefully reviewed the basis of our ruling in *Carlos*

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Superdrug Corporation and we find no cogent reason to overturn, modify or abandon it. We also note that petitioners' arguments are a mere reiteration of those raised and resolved in *Carlos Superdrug Corporation*.

5. ID.; ID.; THE PURPOSE OF THE LAW IS TO IMPROVE THE WELFARE OF SENIOR CITIZENS; NATURE AND EFFECT THEREOF, EXPLAINED.— The 20% discount is intended to improve the welfare of senior citizens who, at their age, are less likely to be gainfully employed, more prone to illnesses and other disabilities, and, thus, in need of subsidy in purchasing basic commodities. It may not be amiss to mention also that the discount serves to honor senior citizens who presumably spent the productive years of their lives on contributing to the development and progress of the nation. This distinct cultural Filipino practice of honoring the elderly is an integral part of this law. As to its nature and effects, the 20% discount is a regulation affecting the ability of private establishments to price their products and services relative to a special class of individuals, senior citizens, for which the Constitution affords preferential concern. In turn, this affects the amount of profits or income/gross sales that a private establishment can derive from senior citizens. In other words, the subject regulation affects the pricing, and, hence, the profitability of a private establishment. However, it does not purport to appropriate or burden specific properties, used in the operation or conduct of the business of private establishments, for the use or benefit of the public, or senior citizens for that matter, but merely regulates the pricing of goods and services relative to, and the amount of profits or income/gross sales that such private establishments may derive from, senior citizens. The subject regulation may be said to be similar to, but with substantial distinctions from, price control or rate of return on investment control laws which are traditionally regarded as police power measures. x x x The subject regulation differs therefrom in that (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given establishment but only to the class of senior citizens. Nonetheless, to the degree material to the resolution of this case, the 20% discount may be properly viewed as belonging to the category of price regulatory measures which affect the profitability of establishments subjected thereto.

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6. ID.; ID.; THE SENIOR CITIZENS DISCOUNT AND TAX DEDUCTION SCHEME ARE VALID EXERCISES OF POLICE POWER OF THE STATE ABSENT A CLEAR SHOWING THAT IT IS ARBITRARY, OPPRESSIVE OR CONFISCATORY; ELUCIDATED.— Because all laws enjoy the presumption of constitutionality, courts will uphold a law's validity if any set of facts may be conceived to sustain it. On its face, we find that there are at least two conceivable bases to sustain the subject regulation's validity absent clear and convincing proof that it is unreasonable, oppressive or confiscatory. Congress may have legitimately concluded that business establishments have the capacity to absorb a decrease in profits or income/gross sales due to the 20% discount without substantially affecting the reasonable rate of return on their investments considering (1) not all customers of a business establishment are senior citizens and (2) the level of its profit margins on goods and services offered to the general public. Concurrently, Congress may have, likewise, legitimately concluded that the establishments, which will be required to extend the 20% discount, have the capacity to revise their pricing strategy so that whatever reduction in profits or income/gross sales that they may sustain because of sales to senior citizens, can be recouped through higher mark-ups or from other products not subject of discounts. As a result, the discounts resulting from sales to senior citizens will not be confiscatory or unduly oppressive. In sum, we sustain our ruling in *Carlos Superdrug Corporation* that the 20% senior citizen discount and tax deduction scheme are valid exercises of police power of the State absent a clear showing that it is arbitrary, oppressive or confiscatory. x x x In a way, this law pursues its social equity objective in a non-traditional manner unlike past and existing direct subsidy programs of the government for the poor and marginalized sectors of our society. Verily, Congress must be given sufficient leeway in formulating welfare legislations given the enormous challenges that the government faces relative to, among others, resource adequacy and administrative capability in implementing social reform measures which aim to protect and uphold the interests of those most vulnerable in our society. In the process, the individual, who enjoys the rights, benefits and privileges of living in a democratic polity, must bear his share in supporting measures intended for the common good. This is only fair. In fine, without the requisite showing

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of a clear and unequivocal breach of the Constitution, the validity of the assailed law must be sustained.

7. ID.; ID.; EVIDENCE IS INDISPENSABLE BEFORE A DETERMINATION OF A CONSTITUTIONAL VIOLATION CAN BE MADE; RATIONALE; APPLICATION IN CASE AT BAR.— In the case at bar, evidence is indispensable before a determination of a constitutional violation can be made because of the following reasons. First, the assailed law, by imposing the senior citizen discount, does not take any of the properties used by a business establishment like, say, the land on which a manufacturing plant is constructed or the equipment being used to produce goods or services. Second, rather than taking specific properties of a business establishment, the senior citizen discount law *merely regulates* the prices of the goods or services being sold to senior citizens by mandating a 20% discount. x x x Third, because the law impacts the prices of the goods or services of a particular establishment relative to its sales to senior citizens, its profits or income/gross sales are affected. The extent of the impact would, however, depend on the profit margin of the business establishment on a particular good or service. x x x Fourth, when the law imposes the 20% discount in favor of senior citizens, it *does not* prevent the business establishment from revising its pricing strategy. x x x Verily, we cannot invalidate the assailed law based on assumptions and conjectures. Without adequate proof, the presumption of constitutionality must prevail. x x x We maintain that the correct rule in determining whether the subject regulatory measure has amounted to a "taking" under the power of eminent domain is the one laid down in *Alalayan v. National Power Corporation* and followed in *Carlos Superdrug Corporation* consistent with long standing principles in police power and eminent domain analysis. Thus, the deprivation or reduction of profits or income/gross sales must be clearly shown to be unreasonable, oppressive or confiscatory. Under the specific circumstances of this case, such determination can only be made upon the presentation of competent proof which petitioners failed to do. A law, which has been in operation for many years and promotes the welfare of a group accorded special concern by the Constitution, cannot and should not be summarily invalidated on a mere allegation that it reduces the profits or income/gross sales of business establishments.

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VELASCO, JR., *J., concurring opinion:*

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 7432 (SENIOR CITIZENS ACT), AS AMENDED BY REPUBLIC ACT NO. 9257 (EXPANDED SENIOR CITIZENS ACT OF 2003); THE LAW IS NO MORE THAN A REGULATION OF THE RIGHT TO PROFITS OF CERTAIN TAXPAYERS IN ORDER TO BENEFIT A SIGNIFICANT SECTOR OF SOCIETY THUS A VALID EXERCISE OF POLICE POWER OF THE STATE.— Sec. 4 of RA 9257 is no more than a regulation of the right to profits of certain taxpayers in order to benefit a significant sector of society. It is, thus, a valid exercise of the police power of the State. The right to profit, as distinguished from profit itself, is not subject to expropriation as it is of a mercurial character that denies the possibility of taking for a public purpose. It is a right solely within the discretion of the taxpayers that cannot be appropriated by the government. The mandated 20% discount for the benefit of senior citizens is not a property already vested with the taxpayer before the sale of the product or service. Such percentage of the sale price may include both the markup on the cost of the good or service and the income to be gained from the sale. Without the sale and corresponding purchase by senior citizens, there is no gain derived by the taxpayer. This nebulous nature of the financial gain of the seller deters the acquisition by the state of the "domain" or ownership of the right to such financial gain through expropriation. At best, the State is empowered to **regulate this *right* to the acquisition of this financial gain** to benefit senior citizens by ensuring that the good or service be sold to them at a price 20% less than the regular selling price. x x x The fact that the State has not fixed an amount to be deducted from the selling price of certain goods and services to senior citizens indicates that RA 9257 is a regulatory law under the police power of the State. It is an acknowledgment that proprietors can and will factor in the potential deduction of 20% of the price given to some of their customers, *i.e.*, the senior citizens, in the overall pricing strategy of their products and services. RA 9257 has to be sure not obliterated the right of taxpayers to profit nor divested them of profits already earned; it simply regulated the right to the attainment of these profits. The enforcement of the 20% discount in favor of senior citizens

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does not, therefore, partake the nature of "taking" in the context of eminent domain. As such, proprietors like petitioners cannot insist that they are entitled to a peso-for-peso compensation for complying with the valid regulation embodied in RA 9257 that restricts their right to profit.

2. **ID.; ID.; THE 20% DISCOUNT GIVEN TO SENIOR CITIZENS AS A TAX DEDUCTION IS NOT INTENDED AS COMPENSATION BUT A RECOGNITION THAT NO INCOME WAS REALIZED BY THE TAX PAYER.—** As it is a regulatory law, not a law implementing the power of eminent domain, the assertion that the use of the 20% discount as a deduction negates its role as a "just compensation" is mislaid and irrelevant. In the first place, as RA 9257 is a regulatory law, the allowance to use the 20% discount, as a deduction from the gross income for purposes of computing the income tax payable to the government, is not intended as compensation. Rather, it is simply a recognition of the fact that no income was realized by the taxpayer to the extent of the 20% of the selling price by virtue of the discount given to senior citizens. Be that as it may, the logical result is that no tax on income can be imposed by the State. In other words, by forcing some businesses to give a 20% discount to senior citizens, the government is likewise foregoing the taxes it could have otherwise earned from the earnings pertinent to the 20% discount. This is the real import of Sec. 4 of RA 9257. As RA 9257 does not sanction any taking of private property, the regulatory law does not require the payment of compensation.

BERSAMIN, *J., concurring opinion:*

1. **POLITICAL LAW; STATE; INHERENT POWERS; EMINENT DOMAIN, DEFINED.—** Eminent domain is defined as –[T]he power of the nation or a sovereign state to take, or to authorize the taking of, private property for a public use without the owner's consent, conditioned upon payment of just compensation." It is acknowledged as "an inherent political right, founded on a common necessity and interest of appropriating the property of individual members of the community to the great necessities of the whole community.

2. **ID.; ID.; ID.; ID.; TAKING IN EMINENT DOMAIN; REQUISITES; NOT PRESENT IN CASE AT BAR.—** The

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State's exercise of the power of eminent domain is not without limitations, but is constrained by Section 9, Article III of the Constitution, which requires that private property shall not be taken for public use without just compensation, as well as by the Due Process Clause found in Section 1, Article III of the Constitution. According to *Republic v. Vda. de Castellvi*, the requisites of taking in eminent domain are as follows: *first*, the expropriator must enter a private property; *second*, the entry into private property must be for more than a momentary period; *third*, the entry into the property should be under warrant or color of legal authority; *fourth*, the property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and, *fifth*, the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property. The essential component of the proper exercise of the power of eminent domain is, therefore, the existence of *compensable taking*. x x x As I see it, the nature and effects of the 20% senior citizen discount do not meet all the requisites of *taking* for purposes of exercising the power of eminent domain as delineated in *Republic v. Vda. de Castellvi*, considering that the second of the requisites, that the taking must be for more than a momentary period, is not met. I base this conclusion on the universal understanding of the term *momentary*, rendered in *Republic v. Vda. De Castellvi*. x x x In concept, discount is an abatement or reduction made from the gross amount or value of anything; a reduction from a price made to a specific customer or class of customers. Under the *Expanded Senior Citizens Act*, the 20% senior citizen discount is a special privilege granted only to senior citizens or the elderly, as defined by law, when a sale is made or a service is rendered by a covered establishment to a senior citizen or an elderly. The income or revenue corresponding to the amount of the discount granted to a senior citizen is thus unrealized only in the event that a sale is made or a service is rendered to a senior citizen. Verily, the discount is not availed of when there is no sale or service rendered to a senior citizen. The amount of unrealized revenue or lost *potential* profits on the part of the covered establishment – should it be subsequently shown that the 20% senior citizen discount granted could have covered operating expenses – lacks the character of indefiniteness and permanence considering that the *taking* was conditioned upon the occurrence of a sale

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or service to a senior citizen. The tax deduction scheme is, therefore, not the compensation contemplated under Section 9, Article III of the Constitution.

3. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 7432 (SENIOR CITIZENS ACT), AS AMENDED BY REPUBLIC ACT NO. 9257 (EXPANDED SENIOR CITIZENS ACT OF 2003); UNLIKE TRADITIONAL REGULATORY LEGISLATIONS, THE EXPANDED SENIOR CITIZENS ACT DOES NOT INTEND TO PREVENT ANY EVIL OR DESTROY ANYTHING OBNOXIOUS, BUT REMAINS A VALID EXERCISE OF POLICE POWER; ELUCIDATED.— The 20% senior citizen discount forbids a covered establishment from selling certain goods or rendering services to senior citizens in excess of 80% of the offered price, thereby causing a diminution in the revenue or profits of the covered establishment. The amount corresponding to the discount, instead of being converted to income of the covered establishments, is *retained* by the senior citizen to be used by him in order to promote his well-being, to recognize his important role in society, and to maximize his contribution to nation-building. Although a form of regulation of or limitation on property right is thereby manifest, what the law clearly and primarily intends is to grant benefits and special privileges to senior citizens. x x x Police power, insofar as it is being exercised by the State, is depicted as a regulating, prohibiting, and punishing power. It is neither benevolent nor generous. Unlike traditional regulatory legislations, however, the *Expanded Senior Citizens Act* does not intend to prevent any evil or destroy anything obnoxious. Even so, the *Expanded Senior Citizens Act* remains a valid exercise of the State's police power. The ruling in *Binay v. Domingo*, which involves police power as exercised by a local government unit pursuant to the general welfare clause, proves instructive x x x The *Expanded Senior Citizens Act* is similar to the municipal resolution in *Binay* because both accord benefits to a specific class of citizens, and both on their faces do not primarily intend to burden or regulate any person in giving such benefit. On the one hand, the *Expanded Senior Citizens Act* aims to achieve this by, among others, requiring select establishments to grant senior citizens the 20% discount for their goods or services, while, on the other, the municipal resolution in *Binay* appropriated money from the Municipal Treasury to achieve its goal of giving support to the poor. If

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the Court sustained in *Binay* a municipality's exercise of police power to enact benevolent and beneficial resolutions, we have a greater reason to uphold the State's exercise of the same power through the enactment of a law of a similar nature. Indeed, it is but opportune for the Court to now make an unequivocal and definitive pronouncement on this new dimension of the State's police power.

LEONEN, *J., concurring and dissenting opinion:*

1. POLITICAL LAW; REPUBLIC ACT NO. 7432 (SENIOR CITIZENS ACT), AS AMENDED BY REPUBLIC ACT NO. 9257 (EXPANDED SENIOR CITIZENS ACT OF 2003); THE IMPOSITION OF THE SENIOR CITIZEN DISCOUNT IS AN EXERCISE OF POLICE POWER WHILE THE DETERMINATION THAT IT WILL BE A TAX DEDUCTION IS AN EXERCISE OF THE POWER TO TAX; RATIONALE.— The imposition of the senior citizen discount is an exercise of police power. The determination that it will be a tax deduction, not a tax credit, is an exercise of the power to tax. The imposition of a discount for senior citizens affects the price. It is thus an inherently regulatory function. However, nothing in the law controls the prices of the goods subject to such discount. Legislation interferes with the autonomy of contractual arrangements in that it imposes a two-tiered pricing system. There will be two prices for every good or service: one is the regular price for everyone except for senior citizens who get a twenty percent (20%) discount. Businesses' discretion to fix the regular price or improve the costs of the goods or the service that they offer to the public — and therefore determine their profit — is not affected by the law. Of course, rational businesses will take into consideration economic factors such as price elasticity, the market structure, the kind of competition businesses face, the barriers to entry that will make possible the expansion of suppliers should there be a change in the prices and the profits that can be made in that industry. Taxes, which include qualifications such as exemptions, exclusions and deductions, will be part of the cost of doing business for all such businesses. x x x *[L]osses are not inevitable. On this basis alone, the constitutional challenge should fail. The case is premised on the inevitable loss to be suffered by the petitioners. There is*

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no factual basis for that kind of certainty. We do not decide constitutional issues on the basis of inchoate losses and uncertain burdens.

2. ID.; STATE; INHERENT POWERS; POWER TO TAX; THE SCOPE OF THE LEGISLATIVE POWER TO TAX NECESSARILY INCLUDES NOT ONLY THE POWER TO DETERMINE THE RATE OF TAX BUT THE METHOD OF COLLECTION AS WELL; SUSTAINED.— The power to tax is "a principal attribute of sovereignty." Such inherent power of the State anchors on its "social contract with its citizens [which] obliges it to promote public interest and common good." The scope of the legislative power to tax necessarily includes not only the power to determine the rate of tax but the method of its collection as well. We have held that Congress has the power to "define what tax shall be imposed, why it should be imposed, how much tax shall be imposed, against whom (or what) it shall be imposed and *where it shall be imposed.*" In fact, the State has the power "to make reasonable and natural classifications for the purposes of taxation x x x [w]hether it relates to the subject of taxation, the kind of property, the rates to be levied, or the amounts to be raised, the *methods of assessment, valuation and collection*, the State's power is entitled to presumption of validity x x x." This means that the power to tax also allows Congress to determine matters as whether tax rates will be applied to gross income or net income and whether costs such as discounts may be allowed as a deduction from gross income or a tax credit from net income after tax.

3. ID.; ID.; ID.; ID.; LIMITATIONS; NOT APPLICABLE IN CASE AT BAR.— While the power to tax has been considered the strongest of all of government's powers with taxes as the "lifeblood of the government," this power has its limits. In a number of cases, we have referred to our discussion in the 1988 case of *Commissioner of Internal Revenue v. Algue.* x x x The Constitution provides for limitations on the power of taxation. First, "[t]he rule of taxation shall be uniform and equitable." This requirement for uniformity and equality means that "all taxable articles or kinds of property of the same class [shall] be taxed at the same rate." The tax deduction scheme for the 20% discount applies equally and uniformly to all the private establishments covered by the law. Thus, it complies

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with this limitation. Second, taxes must neither be confiscatory nor arbitrary as to amount to a "[deprivation] of property without due process of law." x x x In the present case, there is no showing that the tax deduction scheme is confiscatory. The portion of the 20% discount petitioners are made to bear under the tax deduction scheme will not result in a complete loss of business for private establishments. x x x Neither is the scheme arbitrary. Rules and Regulations have been issued by agencies as respondent Department of Finance to serve as guidelines for the implementation of the 20% discount and its tax deduction scheme. In fact, this Court has consistently upheld the doctrine that "taxing power may be used as an implement of police power" in order to promote the general welfare of the people.

4. ID.; ID.; ID.; EMINENT DOMAIN, DEFINED; PROFIT IS NOT ONLY INTANGIBLE PROPERTY BUT ALSO INCHOATE RIGHT WHICH IS NOT THE PRIVATE PROPERTY REFERRED TO IN THE CONSTITUTION THAT CAN BE TAKEN AND WOULD REQUIRE THE PAYMENT OF JUST COMPENSATION.— Profits are not only intangible personal property. They are also inchoate rights. An inchoate right means that the right "has not fully developed, matured, or vested." It may or may not ripen. The existence of profits, more so its specific amount, is uncertain. Business decisions are made every day dealing with factors such as price, quantity, and cost in order to manage potential outcomes of profit or loss at any given point. Profits are thus considered as "future economic benefits" which, at best, entitles petitioners only to an inchoate right. This is not the private property referred in the Constitution that can be taken and would require the payment of just compensation. Just compensation has been defined "to be the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation."

CARPIO*, J., dissenting opinion:*

1. POLITICAL LAW; STATE; INHERENT POWERS; THE CONCEPT OF TAKING IN POLICE POWER AND EMINENT DOMAIN, DISTINGUISHED.— While it is true that police power is similar to the power of eminent domain because both have the general welfare of the people for their

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object, we need to clarify the concept of taking in eminent domain as against taking in police power to prevent any claim of police power when the power actually exercised is eminent domain. When police power is exercised, there is no just compensation to the citizen who loses his private property. When eminent domain is exercised, there must be just compensation. Thus, the Court must clarify taking in police power and taking in eminent domain. Government officials cannot just invoke police power when the act constitutes eminent domain. In the early case of *People v. Pomar,* the Court acknowledged that "[b]y reason of the constant growth of public opinion in a developing civilization, the term 'police power' has never been, and we do not believe can be, clearly and definitely defined and circumscribed." The Court stated that the "definition of the police power of the state must depend upon the particular law and the particular facts to which it is to be applied." **However, it was considered even then that police power, when applied to taking of property without compensation, refers to property that are destroyed or placed outside the commerce of man**. x x x **Clearly, taking under the exercise of police power does not require any compensation because the property taken is either destroyed or placed outside the commerce of man**. x x x In order to be valid, the taking of private property by the government under eminent domain has to be for public use and there must be just compensation. x x x The State can take over private property without compensation in times of war or other national emergency under Section 23(2), Article VI of the 1987 Constitution **but only for a limited period** and subject to such restrictions as Congress may provide. Under its police power, the State may also **temporarily** limit or suspend business activities. x x x However, any form of **permanent** taking of private property is an exercise of eminent domain that requires the State to pay just compensation. **The police power to regulate business cannot negate another provision of the Constitution like the eminent domain clause, which requires just compensation to be paid for the taking of private property for public use. The State has the power to regulate the conduct of the business of private establishments as long as the regulation is reasonable, but when the regulation amounts to permanent taking of private property for public use, there**

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must be just compensation because the regulation now reaches the level of eminent domain.

2. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 7432 (SENIOR CITIZENS ACT OF 2003); THE TAKING OF PROPERTY UNDER SECTION 4 OF R.A. 7432 (PRIVILEGES FOR THE SENIOR CITIZENS) IS AN EXERCISE OF POWER OF EMINENT DOMAIN AND NOT THAT OF POLICE POWER OF THE STATE; RATIONALE. — The amount of mandatory discount is money that belongs to the private establishment. For sure, money or cash is private property because it is something of value that is subject to private ownership. The taking of property under Section 4 of R.A. 7432 is an exercise of the power of eminent domain and not an exercise of the police power of the State. **A clear and sharp distinction should be made because private property owners will be left at the mercy of government officials if these officials are allowed to invoke police power when what is actually exercised is the power of eminent domain.** Section 9, Article III of the 1987 Constitution speaks of private property without any distinction. It does not state that there should be profit before the taking of property is subject to just compensation. The private property referred to for purposes of taking could be inherited, donated, purchased, mortgaged, or as in this case, part of the gross sales of private establishments. They are all private property and any taking should be attended by a corresponding payment of just compensation. The 20% discount granted to senior citizens belongs to private establishments, whether these establishments make a profit or suffer a loss. In fact, the 20% discount applies to **non-profit establishments** like country, social, or golf clubs which are open to the public and not only for exclusive membership. The issue of profit or loss to the establishments is immaterial. Just compensation is "the full and fair equivalent of the property taken from its owner by the expropriator." x x x The 32% of the discount that the private establishments could recover under the tax deduction scheme cannot be considered real, substantial, full and ample compensation. In *Carlos Superdrug Corporation*, the Court conceded that **"[t]he permanent reduction in [private establishments'] total revenue is a forced subsidy corresponding to the taking of private property for public use or benefit."** The Court ruled that **"[t]his constitutes compensable taking for which petitioners**

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would ordinarily become entitled to a just compensation." Despite these pronouncements admitting there was compensable taking, **the Court still proceeded to rule that "the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program."** There may be valid instances when the State can impose burdens on private establishments that effectively subsidize a government program. However, the moment a constitutional threshold is crossed — when the burden constitutes a taking of private property for public use — then the burden becomes an exercise of eminent domain for which just compensation is required. x x x In the present case, the private establishments are only compensated about 32% of the 20% discount granted to senior citizens. They shoulder 68% of the discount they are forced to give to senior citizens. The Court should correct this situation as it clearly violates Section 9, Article III of the Constitution which provides that "[p]rivate property shall not be taken for public use without just compensation." *Carlos Superdrug Corporation* should be abandoned by this Court and *Central Luzon Drug Corporation* re-affirmed.

3. **ID.; ID.; ID.; THE ABILITY TO INCREASE PRICES BY THE PRIVATE ESTABLISHMENTS CANNOT LEGALLY VALIDATE A VIOLATION OF THE EMINENT DOMAIN CLAUSE; EXPLAINED.—** The explanation by the majority that private establishments can always increase their prices to recover the mandatory discount will only encourage private establishments to adjust their prices upwards to the prejudice of customers who do not enjoy the 20% discount. It was likewise suggested that if a company increases its prices, despite the application of the 20% discount, the establishment becomes more profitable than it was before the implementation of R.A. 7432. Such an economic justification is self-defeating, for more consumers will suffer from the price increase than will benefit from the 20% discount. Even then, such ability to increase prices cannot legally validate a violation of the eminent domain clause.

4. **ID.; ID.; THE PROVISION THAT THE 20% DISCOUNT MAY BE CLAIMED BY PRIVATE ESTABLISHMENTS AS TAX DEDUCTION THAT IS OPPRESSIVE AND CONFISCATORY; EFFECT THEREOF, EXPLAINED.—**

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> Finally, the 20% discount granted to senior citizens is not *per se* unreasonable. It is the provision that the 20% discount may be claimed by private establishments as tax deduction, and no longer as tax credit, that is oppressive and confiscatory. x x x Due to the patent unconstitutionality of Section 4 of R.A. 7432, as amended by R.A. 9257, providing that private establishments may claim the 20% discount to senior citizens as tax deduction, the old law, or Section 4 of R.A. 7432, which allows the 20% discount as tax credit, is automatically reinstated. Where amendments to a statute are declared unconstitutional, the original statute as it existed before the amendment remains in force. An amendatory law, if declared null and void, in legal contemplation does not exist. The private establishments should therefore be allowed to claim the 20% discount granted to senior citizens as tax credit.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioners.
The Solicitor General for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

When a party challenges the constitutionality of a law, the burden of proof rests upon him.[1]

Before us is a Petition for Prohibition[2] under Rule 65 of the Rules of Court filed by petitioners Manila Memorial Park, Inc. and La Funeraria Paz-Sucat, Inc., domestic corporations engaged in the business of providing funeral and burial services, against public respondents Secretaries of the Department of Social Welfare and Development (DSWD) and the Department of Finance (DOF).

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[1] *Cordillera Broad Coalition v. Commission on Audit*, 260 Phil. 528, 535 (1990).

[2] *Rollo*, pp. 3-36.

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Petitioners assail the constitutionality of Section 4 of Republic Act (RA) No. 7432,[3] as amended by RA 9257,[4] and the implementing rules and regulations issued by the DSWD and DOF insofar as these allow business establishments to claim the 20% discount given to senior citizens as a tax deduction.

Factual Antecedents

On April 23, 1992, RA 7432 was passed into law, granting senior citizens the following privileges:

SECTION 4. Privileges for the Senior Citizens. – The senior citizens shall be entitled to the following:

a) the grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishment[s], restaurants and recreation centers and purchase of medicine anywhere in the country: Provided, That private establishments may claim the cost as tax credit;

b) a minimum of twenty percent (20%) discount on admission fees charged by theaters, cinema houses and concert halls, circuses, carnivals and other similar places of culture, leisure, and amusement;

c) exemption from the payment of individual income taxes: Provided, That their annual taxable income does not exceed the property level as determined by the National Economic and Development Authority (NEDA) for that year;

d) exemption from training fees for socioeconomic programs undertaken by the OSCA as part of its work;

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[3] AN ACT TO MAXIMIZE THE CONTRIBUTION OF SENIOR CITIZENS TO NATION BUILDING, GRANT BENEFITS AND SPECIAL PRIVILEGES AND FOR OTHER PURPOSES, otherwise known as the Senior Citizens Act. Approved April 23, 1992.

[4] AN ACT GRANTING ADDITIONAL BENEFITS AND PRIVILEGES TO SENIOR CITIZENS AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 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," otherwise known as the Expanded Senior Citizens Act of 2003. Approved February 26, 2004.

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e) free medical and dental services in government establishment[s] anywhere in the country, subject to guidelines to be issued by the Department of Health, the Government Service Insurance System and the Social Security System;

f) to the extent practicable and feasible, the continuance of the same benefits and privileges given by the Government Service Insurance System (GSIS), Social Security System (SSS) and PAG-IBIG, as the case may be, as are enjoyed by those in actual service.

On August 23, 1993, Revenue Regulations (RR) No. 02-94 was issued to implement RA 7432. Sections 2(i) and 4 of RR No. 02-94 provide:

Sec. 2. DEFINITIONS. – For purposes of these regulations:

i. Tax Credit – refers to the amount representing the 20% discount granted to a qualified senior citizen by all establishments relative to their utilization of transportation services, hotels and similar lodging establishments, restaurants, drugstores, recreation centers, theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement, which discount shall be deducted by the said establishments from their gross income for income tax purposes and from their gross sales for value-added tax or other percentage tax purposes.

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Sec. 4. RECORDING/BOOKKEEPING REQUIREMENTS FOR PRIVATE ESTABLISHMENTS. – Private establishments, *i.e.*, transport services, hotels and similar lodging establishments, restaurants, recreation centers, drugstores, theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture[,] leisure and amusement, giving 20% discounts to qualified senior citizens are required to keep separate and accurate record[s] of sales made to senior citizens, which shall include the name, identification number, gross sales/receipts, discounts, dates of transactions and invoice number for every transaction.

The amount of 20% discount shall be deducted from the gross income for income tax purposes and from gross sales of the business enterprise concerned for purposes of the VAT and other percentage taxes.

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In *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*,[5] the Court declared Sections 2(i) and 4 of RR No. 02-94 as erroneous because these contravene RA 7432,[6] thus:

> RA 7432 specifically allows private establishments to claim as tax credit the amount of discounts they grant. In turn, the Implementing Rules and Regulations, issued pursuant thereto, provide the procedures for its availment. To deny such credit, despite the plain mandate of the law and the regulations carrying out that mandate, is indefensible.
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> 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." 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.
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> 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.
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> 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.

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[5] 496 Phil. 307 (2005).

[6] *Id*. at 325-326 and 332-333.

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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. 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"; 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 x x x 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.[7]

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[7] *Id*. at 325-333.

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On February 26, 2004, RA 9257[8] amended certain provisions of RA 7432, to wit:

SECTION 4. Privileges for the Senior Citizens. – The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishments, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

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The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: Provided, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. Provided, further, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended.

To implement the tax provisions of RA 9257, the Secretary of Finance issued RR No. 4-2006, the pertinent provision of which provides:

SEC. 8. AVAILMENT BY ESTABLISHMENTS OF SALES DISCOUNTS AS DEDUCTION FROM GROSS INCOME. – Establishments enumerated in subparagraph (6) hereunder granting sales discounts to senior citizens on the sale of goods and/or services specified thereunder are entitled to deduct the said discount from gross income subject to the following conditions:

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[8] Amended by Republic Act No. 9994 (February 15, 2010), AN ACT GRANTING ADDITIONAL BENEFITS AND PRIVILEGES TO SENIOR CITIZENS, FURTHER AMENDING REPUBLIC ACT NO. 7432, AS AMENDED, OTHERWISE KNOWN AS "AN ACT TO MAXIMIZE THE CONTRIBUTION OF SENIOR CITIZENS TO NATION BUILDING, GRANT BENEFITS AND SPECIAL PRIVILEGES AND FOR OTHER PURPOSES."

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(1) Only that portion of the gross sales EXCLUSIVELY USED, CONSUMED OR ENJOYED BY THE SENIOR CITIZEN shall be eligible for the deductible sales discount.

(2) The gross selling price and the sales discount MUST BE SEPARATELY INDICATED IN THE OFFICIAL RECEIPT OR SALES INVOICE issued by the establishment for the sale of goods or services to the senior citizen.

(3) Only the actual amount of the discount granted or a sales discount not exceeding 20% of the gross selling price can be deducted from the gross income, net of value added tax, if applicable, for income tax purposes, and from gross sales or gross receipts of the business enterprise concerned, for VAT or other percentage tax purposes.

(4) The discount can only be allowed as deduction from gross income for the same taxable year that the discount is granted.

(5) The business establishment giving sales discounts to qualified senior citizens is required to keep separate and accurate record[s] of sales, which shall include the name of the senior citizen, TIN, OSCA ID, gross sales/receipts, sales discount granted, [date] of [transaction] and invoice number for every sale transaction to senior citizen.

(6) Only the following business establishments which granted sales discount to senior citizens on their sale of goods and/or services may claim the said discount granted as deduction from gross income, namely:

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(i) Funeral parlors and similar establishments – The beneficiary or any person who shall shoulder the funeral and burial expenses of the deceased senior citizen shall claim the discount, such as casket, embalmment, cremation cost and other related services for the senior citizen upon payment and presentation of [his] death certificate.

The DSWD likewise issued its own Rules and Regulations Implementing RA 9257, to wit:

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RULE VI

DISCOUNTS AS TAX DEDUCTION OF ESTABLISHMENTS

Article 8. Tax Deduction of Establishments. – The establishment may claim the discounts granted under Rule V, Section 4 – Discounts for Establishments, Section 9, Medical and Dental Services in Private Facilities and Sections 10 and 11 – Air, Sea and Land Transportation as tax deduction based on the net cost of the goods sold or services rendered. *Provided,* That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted; *Provided, further,* That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended; Provided, finally, that the implementation of the tax deduction shall be subject to the Revenue Regulations to be issued by the Bureau of Internal Revenue (BIR) and approved by the Department of Finance (DOF).

Feeling aggrieved by the tax deduction scheme, petitioners filed the present recourse, praying that Section 4 of RA 7432, as amended by RA 9257, and the implementing rules and regulations issued by the DSWD and the DOF be declared unconstitutional insofar as these allow business establishments to claim the 20% discount given to senior citizens as a tax deduction; that the DSWD and the DOF be prohibited from enforcing the same; and that the tax credit treatment of the 20% discount under the former Section 4 (a) of RA 7432 be reinstated.

Issues

Petitioners raise the following issues:

A.

WHETHER THE PETITION PRESENTS AN ACTUAL CASE OR CONTROVERSY.

B.

WHETHER SECTION 4 OF REPUBLIC ACT NO. 9257 AND X X X ITS IMPLEMENTING RULES AND REGULATIONS, INSOFAR AS THEY PROVIDE THAT THE TWENTY PERCENT (20%) DISCOUNT TO SENIOR CITIZENS MAY BE CLAIMED AS A

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TAX DEDUCTION BY THE PRIVATE ESTABLISHMENTS, ARE INVALID AND UNCONSTITUTIONAL.[9]

Petitioners' Arguments

Petitioners emphasize that they are not questioning the 20% discount granted to senior citizens but are only assailing the constitutionality of the tax deduction scheme prescribed under RA 9257 and the implementing rules and regulations issued by the DSWD and the DOF.[10]

Petitioners posit that the tax deduction scheme contravenes Article III, Section 9 of the Constitution, which provides that: "[p]rivate property shall not be taken for public use without just compensation."[11] In support of their position, petitioners cite *Central Luzon Drug Corporation*,[12] where it was ruled that the 20% discount privilege constitutes taking of private property for public use which requires the payment of just compensation,[13] and *Carlos Superdrug Corporation v. Department of Social Welfare and Development*,[14] where it was acknowledged that the tax deduction scheme does not meet the definition of just compensation.[15]

Petitioners likewise seek a reversal of the ruling in *Carlos Superdrug Corporation*[16] that the tax deduction scheme adopted by the government is justified by police power.[17] They assert that "[a]lthough both police power and the power of eminent domain have the general welfare for their object, there are still

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[9] *Rollo*, p. 392.

[10] *Id*. at 383.

[11] Id. at 401-420.

[12] *Supra* note 5.

[13] *Rollo*, pp. 402-403.

[14] 553 Phil. 120 (2007).

[15] *Rollo*, pp. 405-409.

[16] *Supra*.

[17] *Rollo*, pp. 410-420.

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traditional distinctions between the two"[18] and that "eminent domain cannot be made less supreme than police power."[19] Petitioners further claim that the legislature, in amending RA 7432, relied on an erroneous contemporaneous construction that prior payment of taxes is required for tax credit.[20]

Petitioners also contend that the tax deduction scheme violates Article XV, Section 4[21] and Article XIII, Section 11[22] of the Constitution because it shifts the State's constitutional mandate or duty of improving the welfare of the elderly to the private sector.[23] Under the tax deduction scheme, the private sector shoulders 65% of the discount because only 35%[24] of it is actually returned by the government.[25] Consequently, the implementation of the tax deduction scheme prescribed under Section 4 of RA 9257 affects the businesses of petitioners.[26] Thus, there exists an actual case or controversy of transcendental importance which deserves judicious disposition on the merits by the highest court of the land.[27]

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[18] *Id*. at 411-412.

[19] *Id*. at 413.

[20] *Id*. at 427-436.

[21] Sec. 4. The family has the duty to care for its elderly members but the State may also do so through just programs of social security.

[22] Sec. 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.

[23] *Rollo,* pp. 421-427.

[24] Now 30% (Section 27 of the National Internal Revenue Code, as amended by Republic Act No. 9337, AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 228 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.)

[25] *Rollo,* p. 425.

[26] *Id*. at 424.

[27] *Id*. at 394-401.

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Respondents' Arguments

Respondents, on the other hand, question the filing of the instant Petition directly with the Supreme Court as this disregards the hierarchy of courts.[28] They likewise assert that there is no justiciable controversy as petitioners failed to prove that the tax deduction treatment is not a "fair and full equivalent of the loss sustained" by them.[29] As to the constitutionality of RA 9257 and its implementing rules and regulations, respondents contend that petitioners failed to overturn its presumption of constitutionality.[30] More important, respondents maintain that the tax deduction scheme is a legitimate exercise of the State's police power.[31]

Our Ruling

The Petition lacks merit.

There exists an actual case or controversy.

We shall first resolve the procedural issue.

When the constitutionality of a law is put in issue, judicial review may be availed of only if the following requisites concur: "(1) the existence of an actual and appropriate case; (2) the existence of personal and substantial interest on the part of the party raising the [question of constitutionality]; (3) recourse to judicial review is made at the earliest opportunity; and (4) the [question of constitutionality] is the *lis mota* of the case."[32]

In this case, petitioners are challenging the constitutionality of the tax deduction scheme provided in RA 9257 and the implementing rules and regulations issued by the DSWD and

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[28] *Id*. at 363-364.

[29] *Id*. at 359-363.

[30] *Id*. at 368-370.

[31] *Id*. at 364-368.

[32] *General v. Urro*, G.R. No. 191560, March 29, 2011, 646 SCRA 567, 577.

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the DOF. Respondents, however, oppose the Petition on the ground that there is no actual case or controversy. We do not agree with respondents.

An actual case or controversy exists when there is "a conflict of legal rights" or "an assertion of opposite legal claims susceptible of judicial resolution."[33] The Petition must therefore show that "the governmental act being challenged has a direct adverse effect on the individual challenging it."[34] In this case, the tax deduction scheme challenged by petitioners has a direct adverse effect on them. Thus, it cannot be denied that there exists an actual case or controversy.

The validity of the 20% senior citizen discount and tax deduction scheme under RA 9257, as an exercise of police power of the State, has already been settled in Carlos Superdrug Corporation.

Petitioners posit that the resolution of this case lies in the determination of whether the legally mandated 20% senior citizen discount is an exercise of police power or eminent domain. If it is police power, no just compensation is warranted. But if it is eminent domain, the tax deduction scheme is unconstitutional because it is not a peso for peso reimbursement of the 20% discount given to senior citizens. Thus, it constitutes taking of private property without payment of just compensation.

At the outset, we note that this question has been settled in *Carlos Superdrug Corporation.*[35] In that case, we ruled:

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

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[33] *Republic Telecommunications Holdings, Inc. v. Santiago*, G.R. No. 140338, August 7, 2007, 529 SCRA 232, 242.

[34] *Abakada Guro Party List v. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251, 270.

[35] *Supra* note 14.

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

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

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

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

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

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

A tax deduction does not offer full reimbursement of the senior citizen discount. As such, it would not meet the definition of just compensation.

Having said that, this raises the question of whether the State, in promoting the health and welfare of a special group of citizens,

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can impose upon private establishments the burden of partly subsidizing a government program.

The Court believes so.

The Senior Citizens Act was enacted primarily to maximize the contribution of senior citizens to nation-building, and to grant benefits and privileges to them for their improvement and well-being as the State considers them an integral part of our society.

The priority given to senior citizens finds its basis in the Constitution as set forth in the law itself. Thus, the Act provides:

> SEC. 2. Republic Act No. 7432 is hereby amended to read as follows:
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> SECTION 1. *Declaration of Policies and Objectives.* — Pursuant to Article XV, Section 4 of the Constitution, it is the duty of the family to take care of its elderly members while the State may design programs of social security for them. In addition to this, Section 10 in the Declaration of Principles and State Policies provides: "The State shall provide social justice in all phases of national development." Further, Article XIII, Section 11, provides: "The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women and children." Consonant with these constitutional principles the following are the declared policies of this Act:
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> **(f) To recognize the important role of the private sector in the improvement of the welfare of senior citizens and to actively seek their partnership.**

To implement the above policy, the law grants a twenty percent discount to senior citizens for medical and dental services, and diagnostic and laboratory fees; admission fees charged by theaters, concert halls, circuses, carnivals, and other similar places of culture, leisure and amusement; fares for domestic land, air and sea travel; utilization of services in hotels and similar lodging establishments, restaurants and recreation centers; and purchases of medicines for

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the exclusive use or enjoyment of senior citizens. As a form of reimbursement, the law provides that business establishments extending the twenty percent discount to senior citizens may claim the discount as a tax deduction.

The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as "the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs." It is "[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same."

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.

Given these, it is incorrect for petitioners to insist that the grant of the senior citizen discount is unduly oppressive to their business, because petitioners have not taken time to calculate correctly and come up with a financial report, so that they have not been able to show properly whether or not the tax deduction scheme really works greatly to their disadvantage.

In treating the discount as a tax deduction, petitioners insist that they will incur losses because, referring to the DOF Opinion, for every ₱1.00 senior citizen discount that petitioners would give, ₱0.68

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will be shouldered by them as only ₱0.32 will be refunded by the government by way of a tax deduction.

To illustrate this point, petitioner Carlos Super Drug cited the anti-hypertensive maintenance drug *Norvasc* as an example. According to the latter, it acquires *Norvasc* from the distributors at ₱37.57 per tablet, and retails it at ₱39.60 (or at a margin of 5%). If it grants a 20% discount to senior citizens or an amount equivalent to ₱7.92, then it would have to sell *Norvasc* at ₱31.68 which translates to a loss from capital of ₱5.89 per tablet. Even if the government will allow a tax deduction, only ₱2.53 per tablet will be refunded and not the full amount of the discount which is ₱7.92. In short, only 32% of the 20% discount will be reimbursed to the drugstores.

Petitioners' computation is flawed. For purposes of reimbursement, the law states that the cost of the discount shall be deducted from gross income, the amount of income derived from all sources before deducting allowable expenses, which will result in net income. Here, petitioners tried to show a loss on a per transaction basis, which should not be the case. An income statement, showing an accounting of petitioners' sales, expenses, and net profit (or loss) for a given period could have accurately reflected the effect of the discount on their income. Absent any financial statement, petitioners cannot substantiate their claim that they will be operating at a loss should they give the discount. In addition, the computation was erroneously based on the assumption that their customers consisted wholly of senior citizens. Lastly, the 32% tax rate is to be imposed on income, not on the amount of the discount.

Furthermore, it is unfair for petitioners to criticize the law because they cannot raise the prices of their medicines given the cutthroat nature of the players in the industry. It is a business decision on the part of petitioners to peg the mark-up at 5%. Selling the medicines below acquisition cost, as alleged by petitioners, is merely a result of this decision. Inasmuch as pricing is a property right, petitioners cannot reproach the law for being oppressive, simply because they cannot afford to raise their prices for fear of losing their customers to competition.

The Court is not oblivious of the retail side of the pharmaceutical industry and the competitive pricing component of the business. While the Constitution protects property rights, petitioners must accept the realities of business and the State, in the exercise of police

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power, can intervene in the operations of a business which may result in an impairment of property rights in the process.

Moreover, the right to property has a social dimension. While Article XIII of the Constitution provides the precept for the protection of property, various laws and jurisprudence, particularly on agrarian reform and the regulation of contracts and public utilities, continuously serve as x x x reminder[s] that the right to property can be relinquished upon the command of the State for the promotion of public good.

Undeniably, the success of the senior citizens program rests largely on the support imparted by petitioners and the other private establishments concerned. This being the case, the means employed in invoking the active participation of the private sector, in order to achieve the purpose or objective of the law, is reasonably and directly related. Without sufficient proof that Section 4 (a) of R.A. No. 9257 is arbitrary, and that the continued implementation of the same would be unconscionably detrimental to petitioners, the Court will refrain from quashing a legislative act.[36] (Bold in the original; underline supplied)

We, thus, found that the 20% discount as well as the tax deduction scheme is a valid exercise of the police power of the State.

No compelling reason has been proffered to overturn, modify or abandon the ruling in Carlos Superdrug Corporation.

Petitioners argue that we have previously ruled in *Central Luzon Drug Corporation*[37] that the 20% discount is an exercise of the power of eminent domain, thus, requiring the payment of just compensation. They urge us to re-examine our ruling in *Carlos Superdrug Corporation*[38] which allegedly reversed the ruling in *Central Luzon Drug Corporation*.[39] They also point

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[36] *Id*. at 128-147.

[37] *Supra* note 5.

[38] *Supra* note 14.

[39] *Supra* note 5.

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out that *Carlos Superdrug Corporation*[40] recognized that the tax deduction scheme under the assailed law does not provide for sufficient just compensation.

We agree with petitioners' observation that there are statements in *Central Luzon Drug Corporation*[41] *describing* the 20% discount as an exercise of the power of eminent domain, *viz.*:

> [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 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

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[40] *Supra* note 14.

[41] *Supra* note 5.

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"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.

To put it differently, a private establishment that merely breaks even — without the discounts yet — will surely start to incur 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 credits denied those that are losing, because no taxes are due from the latter.[42] (Italics in the original; emphasis supplied)

The above was partly incorporated in our ruling in *Carlos Superdrug Corporation*[43] when we stated *preliminarily* that—

Petitioners assert that Section 4(a) of the law is unconstitutional because it constitutes deprivation of private property. Compelling drugstore owners and establishments to grant the discount will result in a loss of profit and capital because 1) drugstores impose a mark-up of only 5% to 10% on branded medicines; and 2) the law failed to provide a scheme whereby drugstores will be justly compensated for the discount.

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[42] *Id*. at 335-337.

[43] *Supra* note 14.

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

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

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

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

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

A tax deduction does not offer full reimbursement of the senior citizen discount. As such, it would not meet the definition of just compensation.

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

The Court believes so.[44]

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[44] *Id*. at 128-130.

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This, notwithstanding, we went on to rule in *Carlos Superdrug Corporation*[45] that the 20% discount and tax deduction scheme is a valid exercise of the police power of the State.

The present case, thus, affords an opportunity for us to clarify the above-quoted statements in *Central Luzon Drug Corporation*[46] and *Carlos Superdrug Corporation*.[47]

First, we note that the above-quoted disquisition on eminent domain in *Central Luzon Drug Corporation*[48] is *obiter dicta* and, thus, not binding precedent. As stated earlier, in *Central Luzon Drug Corporation*,[49] we ruled that the BIR acted *ultra vires* when it effectively treated the 20% discount as a tax deduction, under Sections 2.i and 4 of RR No. 2-94, despite the clear wording of the previous law that the same should be treated as a tax credit. We were, therefore, not confronted in that case with the issue as to whether the 20% discount is an exercise of police power or eminent domain.

Second, although we adverted to *Central Luzon Drug Corporation*[50] in our ruling in *Carlos Superdrug Corporation*,[51] this referred only to preliminary matters. A fair reading of *Carlos Superdrug Corporation*[52] would show that we categorically ruled therein that the 20% discount is a valid exercise of police power. Thus, even if the current law, through its tax deduction scheme (which abandoned the tax credit scheme under the previous law), does not provide for a peso for peso reimbursement of the 20% discount given by private establishments, no constitutional infirmity obtains because, being a valid exercise of police power, payment of just compensation is not warranted.

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[45] *Supra* note 14.

[46] *Supra* note 5.

[47] *Supra* note 14.

[48] *Supra* note 5.

[49] *Id*.

[50] *Id*.

[51] *Supra* note 14.

[52] *Id*.

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We have carefully reviewed the basis of our ruling in *Carlos Superdrug Corporation*[53] and we find no cogent reason to overturn, modify or abandon it. We also note that petitioners' arguments are a mere reiteration of those raised and resolved in *Carlos Superdrug Corporation*.[54] Thus, we sustain *Carlos Superdrug Corporation*.[55]

Nonetheless, we deem it proper, in what follows, to amplify our explanation in *Carlos Superdrug Corporation*[56] as to why the 20% discount is a valid exercise of police power and why it may not, *under the specific circumstances of this case*, be considered as an exercise of the power of eminent domain contrary to the *obiter* in *Central Luzon Drug Corporation*.[57]

Police power versus eminent domain.

Police power is the inherent power of the State to regulate or to restrain the use of liberty and property for public welfare.[58] The only limitation is that the restriction imposed should be reasonable, not oppressive.[59] In other words, to be a valid exercise of police power, it must have a lawful subject or objective and a lawful method of accomplishing the goal.[60] Under the police power of the State, "property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government."[61] The State "may interfere with personal

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[53] *Id*.

[54] *Id*.

[55] *Id*.

[56] *Id*.

[57] *Supra* note 5.

[58] *Gerochi v. Department of Energy*, 554 Phil. 563, 579 (2007).

[59] *Mirasol v. Department of Public Works and Highways*, 523 Phil. 713, 747 (2006).

[60] *Association of Small Landowners in the Phils., Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777, 808-809 (1989).

[61] *Social Justice Society (SJS) v. Atienza, Jr.*, G.R. No. 156052, February 13, 2008, 545 SCRA 92, 139.

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liberty, property, lawful businesses and occupations to promote the general welfare [as long as] the interference [is] reasonable and not arbitrary."[62] Eminent domain, on the other hand, is the inherent power of the State to take or appropriate private property for public use.[63] The Constitution, however, requires that private property shall not be taken without due process of law and the payment of just compensation.[64]

Traditional distinctions exist between police power and eminent domain.

In the exercise of police power, a property right is impaired by regulation,[65] or the use of property is merely prohibited, regulated or restricted[66] to promote public welfare. In such cases, there is no compensable taking, hence, payment of just compensation is not required. Examples of these regulations are property condemned for being noxious or intended for noxious purposes (*e.g.*, a building on the verge of collapse to be demolished for public safety, or obscene materials to be destroyed in the interest of public morals)[67] as well as zoning ordinances prohibiting the use of property for purposes injurious to the health, morals or safety of the community (*e.g.*, dividing a city's territory into residential and industrial areas).[68] It has, thus, been observed that, in the exercise of police power (as distinguished from eminent domain), although the regulation affects the right of ownership, none of the bundle of rights which

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[62] *Id*. at 139-140.

[63] *Apo Fruits Corporation v. Land Bank*, G.R. No. 164195, October 12, 2010, 632 SCRA 727, 739.

[64] *Heirs of Suguitan v. City of Mandaluyong*, 384 Phil. 676, 688 (2000).

[65] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, at 420 (2003).

[66] De Leon and De Leon, Jr., *Philippine Constitutional Law: Principles and Cases Vol. 1*, at 696 (2012).

[67] *Association of Small Landowners in the Phils., Inc. v. Secretary of Agrarian Reform*, *supra* note 60 at 804.

[68] *Seng Kee & Co. v. Earnshaw*, 56 Phil. 204 (1931) cited in Bernas, *supra*.

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constitute ownership is appropriated for use by or for the benefit of the public.[69]

On the other hand, in the exercise of the power of eminent domain, property interests are appropriated and applied to some public purpose which necessitates the payment of just compensation therefor. Normally, the title to and possession of the property are transferred to the expropriating authority. Examples include the acquisition of lands for the construction of public highways as well as agricultural lands acquired by the government under the agrarian reform law for redistribution to qualified farmer beneficiaries. However, it is a settled rule that the acquisition of title or total destruction of the property is not essential for "taking" under the power of eminent domain to be present.[70] Examples of these include establishment of easements such as where the land owner is perpetually deprived of his proprietary rights because of the hazards posed by electric transmission lines constructed above his property[71] or the compelled interconnection of the telephone system between the government and a private company.[72] In these cases, although the private property owner is not divested of ownership or possession, payment of just compensation is warranted because of the burden placed on the property for the use or benefit of the public.

The 20% senior citizen discount is an exercise of police power.

It may not always be easy to determine whether a challenged governmental act is an exercise of police power or eminent domain. The very nature of police power as elastic and responsive to various social conditions[73] as well as the evolving meaning and

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[69] Bernas, *supra* at 421.

[70] *Id*. at 420.

[71] *National Power Corporation v. Gutierrez*, 271 Phil. 1 (1991) cited in Bernas, *supra* at 422-423.

[72] *Republic v. Philippine Long Distance Telephone Co.,* 136 Phil. 20 (1969) cited in Bernas, *supra* at 423-424.

[73] *Philippine Long Distance Telephone Company v. City of Davao,* 122 Phil. 478, 489 (1965).

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scope of public use[74] and just compensation[75] in eminent domain evinces that these are not static concepts. Because of the exigencies of rapidly changing times, Congress may be compelled to adopt or experiment with different measures to promote the general welfare which may not fall squarely within the traditionally recognized categories of police power and eminent domain. The judicious approach, therefore, is to look at the nature and effects of the challenged governmental act and decide, on the basis thereof, whether the act is the exercise of police power or eminent domain. Thus, we now look at the nature and effects of the 20% discount to determine if it constitutes an exercise of police power or eminent domain.

The 20% discount is intended to improve the welfare of senior citizens who, at their age, are less likely to be gainfully employed, more prone to illnesses and other disabilities, and, thus, in need of subsidy in purchasing basic commodities. It may not be amiss to mention also that the discount serves to honor senior citizens who presumably spent the productive years of their lives on contributing to the development and progress of the nation. This distinct cultural Filipino practice of honoring the elderly is an integral part of this law.

As to its nature and effects, the 20% discount is a regulation affecting the ability of private establishments to price their products and services relative to a special class of individuals, senior citizens, for which the Constitution affords preferential concern.[76] In turn, this affects the amount of profits or income/ gross sales that a private establishment can derive from senior citizens. In other words, the subject regulation affects the pricing,

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[74] *See Heirs of Ardona v. Reyes*, 210 Phil. 187, 197-201 (1983).

[75] *See Association of Small Landowners in the Phils., Inc. v. Secretary of Agrarian Reform, supra* note 60 at 819-822.

[76] Article XIII, Section 11 of the Constitution provides:

The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.

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and, hence, the profitability of a private establishment. However, it does not purport to appropriate or burden specific properties, used in the operation or conduct of the business of private establishments, for the use or benefit of the public, or senior citizens for that matter, but merely regulates the pricing of goods and services relative to, and the amount of profits or income/ gross sales that such private establishments may derive from, senior citizens.

The subject regulation may be said to be similar to, but with substantial distinctions from, price control or rate of return on investment control laws which are traditionally regarded as police power measures.[77] These laws generally regulate public utilities or industries/enterprises imbued with public interest in order to protect consumers from exorbitant or unreasonable pricing as well as temper corporate greed by controlling the rate of return on investment of these corporations considering that they have a monopoly over the goods or services that they provide to the general public. The subject regulation differs therefrom in that (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given establishment but only to the class of senior citizens. Nonetheless, to the degree material to the resolution of this case, the 20% discount may be properly viewed as belonging to the category of price regulatory measures which affect the profitability of establishments subjected thereto.

On its face, therefore, the subject regulation is a police power measure.

The *obiter* in *Central Luzon Drug Corporation*,[78] however, describes the 20% discount as an exercise of the power of eminent domain and the tax credit, under the previous law, equivalent

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[77] See *Munn v. Illinois*, 94 U.S. 113 (1877); *People v. Chu Chi*, 92 Phil. 977 (1953); and *Alalayan v. National Power Corporation*, 133 Phil. 279 (1968). The rate-making or rate-regulation by governmental bodies of public utilities is included in this category of police power measures.

[78] *Supra* note 5.

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to the amount of discount given as the just compensation therefor. The reason is that (1) the discount would have formed part of the gross sales of the establishment were it not for the law prescribing the 20% discount, and (2) the permanent reduction in total revenues is a forced subsidy corresponding to the taking of private property for public use or benefit.

The flaw in this reasoning is in its premise. It presupposes that the subject regulation, which impacts the pricing and, hence, the profitability of a private establishment, *automatically* amounts to a deprivation of property without due process of law. If this were so, then all price and rate of return on investment control laws would have to be invalidated because they impact, at some level, the regulated establishment's profits or income/gross sales, yet there is no provision for payment of just compensation. It would also mean that government cannot set price or rate of return on investment limits, which reduce the profits or income/gross sales of private establishments, if no just compensation is paid *even if* the measure is not confiscatory. The *obiter* is, thus, at odds with the settled doctrine that the State can employ police power measures to regulate the pricing of goods and services, and, hence, the profitability of business establishments in order to pursue legitimate State objectives for the common good, provided that the regulation does not go too far as to amount to "taking."[79]

In *City of Manila v. Laguio, Jr.*,[80] we recognized that—

> x x x a taking also could be found if government regulation of the use of property went "too far." When regulation reaches a certain magnitude, in most if not in all cases there must be an exercise of eminent domain and compensation to support the act. While property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.
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> No formula or rule can be devised to answer the questions of what is too far and when regulation becomes a taking. In *Mahon*, Justice Holmes recognized that it was "a question of degree and

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[79] See *Munn v. Illinois*, 94 U.S. 113 (1877).

[80] 495 Phil. 289 (2005).

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therefore cannot be disposed of by general propositions." On many other occasions as well, the U.S. Supreme Court has said that the issue of when regulation constitutes a taking is a matter of considering the facts in each case. The Court asks whether justice and fairness require that the economic loss caused by public action must be compensated by the government and thus borne by the public as a whole, or whether the loss should remain concentrated on those few persons subject to the public action.[81]

The impact or effect of a regulation, such as the one under consideration, must, thus, be determined on a case-to-case basis. Whether that line between permissible regulation under police power and "taking" under eminent domain has been crossed must, under the specific circumstances of this case, be subject to proof and the one assailing the constitutionality of the regulation carries the heavy burden of proving that the measure is unreasonable, oppressive or confiscatory. The time-honored rule is that the burden of proving the unconstitutionality of a law rests upon the one assailing it and "the burden becomes heavier when police power is at issue."[82]

The 20% senior citizen discount has not been shown to be unreasonable, oppressive or confiscatory.

In *Alalayan v. National Power Corporation*,[83] petitioners, who were franchise holders of electric plants, challenged the validity of a law limiting their allowable net profits to no more than 12% per annum of their investments plus two-month operating expenses. In rejecting their plea, we ruled that, in an earlier case, it was found that 12% is a reasonable rate of return and that petitioners failed to prove that the aforesaid rate is confiscatory in view of the presumption of constitutionality.[84]

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[81] *Id*. at 320-321.

[82] *Mirasol v. Department of Public Works and Highways, supra* note 59.

[83] 133 Phil. 279 (1968).

[84] *Id*. at 292.

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We adopted a similar line of reasoning in *Carlos Superdrug Corporation*[85] when we ruled that petitioners therein failed to prove that the 20% discount is arbitrary, oppressive or confiscatory. We noted that no evidence, such as a financial report, to establish the impact of the 20% discount on the overall profitability of petitioners was presented in order to show that they would be operating at a loss due to the subject regulation or that the continued implementation of the law would be unconscionably detrimental to the business operations of petitioners. In the case at bar, petitioners proceeded with a hypothetical computation of the alleged loss that they will suffer similar to what the petitioners in *Carlos Superdrug Corporation*[86] did. Petitioners went directly to this Court without first establishing the factual bases of their claims. Hence, the present recourse must, likewise, fail.

Because all laws enjoy the presumption of constitutionality, courts will uphold a law's validity if any set of facts may be conceived to sustain it.[87] On its face, we find that there are at least two conceivable bases to sustain the subject regulation's validity absent clear and convincing proof that it is unreasonable, oppressive or confiscatory. Congress may have legitimately concluded that business establishments have the capacity to absorb a decrease in profits or income/gross sales due to the 20% discount without substantially affecting the reasonable rate of return on their investments considering (1) not all customers of a business establishment are senior citizens and (2) the level of its profit margins on goods and services offered to the general public. Concurrently, Congress may have, likewise, legitimately concluded that the establishments, which will be required to extend the 20% discount, have the capacity to revise their pricing strategy so that whatever reduction in profits or income/gross sales that they may sustain because of

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[85] *Supra* note 14.

[86] *Id*.

[87] *Basco v. Philippine Amusements and Gaming Corporation*, 274 Phil. 323, 335 (1991).

sales to senior citizens, can be recouped through higher mark-ups or from other products not subject of discounts. As a result, the discounts resulting from sales to senior citizens will not be confiscatory or unduly oppressive.

In sum, we sustain our ruling in *Carlos Superdrug Corporation*[88] that the 20% senior citizen discount and tax deduction scheme are valid exercises of police power of the State absent a clear showing that it is arbitrary, oppressive or confiscatory.

Conclusion

In closing, we note that petitioners hypothesize, consistent with our previous ratiocinations, that the discount will force establishments to raise their prices in order to compensate for its impact on overall profits or income/gross sales. The general public, or those not belonging to the senior citizen class, are, thus, made to effectively shoulder the subsidy for senior citizens. This, in petitioners' view, is unfair.

As already mentioned, Congress may be reasonably assumed to have foreseen this eventuality. But, more importantly, this goes into the wisdom, efficacy and expediency of the subject law which is not proper for judicial review. In a way, this law pursues its social equity objective in a non-traditional manner unlike past and existing direct subsidy programs of the government for the poor and marginalized sectors of our society. Verily, Congress must be given sufficient leeway in formulating welfare legislations given the enormous challenges that the government faces relative to, among others, resource adequacy and administrative capability in implementing social reform measures which aim to protect and uphold the interests of those most vulnerable in our society. In the process, the individual, who enjoys the rights, benefits and privileges of living in a democratic polity, must bear his share in supporting measures intended for the common good. This is only fair.

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[88] *Supra* note 14.

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In fine, without the requisite showing of a clear and unequivocal breach of the Constitution, the validity of the assailed law must be sustained.

Refutation of the Dissent

The main points of Justice Carpio's Dissent may be summarized as follows: (1) the discussion on eminent domain in *Central Luzon Drug Corporation*[89] is not *obiter dicta*; (2) allowable taking, in police power, is limited to property that is destroyed or placed outside the commerce of man for public welfare; (3) the amount of mandatory discount is private property within the ambit of Article III, Section 9[90] of the Constitution; and (4) the permanent reduction in a private establishment's total revenue, arising from the mandatory discount, is a taking of private property for public use or benefit, hence, an exercise of the power of eminent domain requiring the payment of just compensation.

I

We maintain that the discussion on eminent domain in *Central Luzon Drug Corporation*[91] is *obiter dicta*.

As previously discussed, in *Central Luzon Drug Corporation*,[92] the BIR, pursuant to Sections 2.i and 4 of RR No. 2-94, treated the senior citizen discount in the previous law, RA 7432, as a tax deduction instead of a tax credit despite the *clear* provision in that law which stated –

SECTION 4. *Privileges for the Senior Citizens*. – The senior citizens shall be entitled to the following:

a) The grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels

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[89] *Supra* note 5.

[90] Section 9. Private property shall not be taken for public use without just compensation.

[91] *Supra* note 5.

[92] *Id*.

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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)

Thus, the Court ruled that the subject revenue regulation violated the law, *viz*:

> 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.[93]

As can be readily seen, the discussion on eminent domain was *not necessary* in order to arrive at this conclusion. All that was needed was to point out that the revenue regulation contravened the law which it sought to implement. And, precisely, this was done in *Central Luzon Drug Corporation*[94] by comparing the wording of the previous law *vis-à-vis* the revenue regulation; employing the rules of statutory construction; and applying the settled principle that a regulation cannot amend the law it seeks to implement.

A close reading of *Central Luzon Drug Corporation*[95] would show that the Court *went on* to state that the tax credit "can be deemed" as just compensation only to explain *why* the previous law provides for a tax credit instead of a tax deduction. The Court *surmised* that the tax credit was a form of just compensation given to the establishments covered by the 20% discount. However, the reason why the previous law provided for a tax credit and not a tax deduction was *not necessary* to

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[93] *Id*. at 315.

[94] *Id*.

[95] *Id*.

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resolve the issue as to whether the revenue regulation contravenes the law. Hence, the discussion on eminent domain is *obiter dicta.*

A court, in resolving cases before it, may look into the possible purposes or reasons that impelled the enactment of a particular statute or legal provision. However, statements made relative thereto are not always necessary in resolving the actual controversies presented before it. This was the case in *Central Luzon Drug Corporation*[96] resulting in that unfortunate statement that the tax credit "can be deemed" as just compensation. This, in turn, led to the erroneous conclusion, by deductive reasoning, that the 20% discount is an exercise of the power of eminent domain. The Dissent essentially adopts this theory and reasoning which, as will be shown below, is contrary to settled principles in police power and eminent domain analysis.

II

The Dissent discusses at length the doctrine on "taking" in police power which occurs when private property is destroyed or placed outside the commerce of man. Indeed, there is a whole class of police power measures which justify the destruction of private property in order to preserve public health, morals, safety or welfare. As earlier mentioned, these would include a building on the verge of collapse or confiscated obscene materials as well as those mentioned by the Dissent with regard to property used in violating a criminal statute or one which constitutes a nuisance. In such cases, no compensation is required.

However, it is equally true that there is another class of police power measures which do not involve the destruction of private property but *merely regulate* its use. The minimum wage law, zoning ordinances, price control laws, laws regulating the operation of motels and hotels, laws limiting the working hours to eight, and the like would fall under this category. The examples cited by the Dissent, likewise, fall under this category: Article 157 of the Labor Code, Sections 19 and 18 of the Social Security Law, and Section 7 of the Pag-IBIG Fund Law. These laws

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[96] *Id*.

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merely regulate or, to use the term of the Dissent, burden the conduct of the affairs of business establishments. In such cases, payment of just compensation is not required because they fall within the sphere of permissible police power measures. The senior citizen discount law falls under this latter category.

III

The Dissent proceeds from the theory that the permanent reduction of profits or income/gross sales, due to the 20% discount, is a "taking" of private property for public purpose without payment of just compensation.

At the outset, it must be emphasized that petitioners **never** presented **any evidence** to establish that they were forced to suffer enormous losses or operate at a loss due to the effects of the assailed law. They came directly to this Court and provided a hypothetical computation of the loss they would allegedly suffer due to the operation of the assailed law. The central premise of the Dissent's argument that the 20% discount results in a permanent reduction in profits or income/gross sales, or forces a business establishment to operate at a loss is, thus, **wholly unsupported** by competent evidence. To be sure, the Court can invalidate a law which, on its face, is arbitrary, oppressive or confiscatory.[97] But this is not the case here.

In the case at bar, evidence is indispensable before a determination of a constitutional violation can be made because of the following reasons.

First, the assailed law, by imposing the senior citizen discount, does not take any of the properties used by a business establishment like, say, the land on which a manufacturing plant is constructed or the equipment being used to produce goods or services.

Second, rather than taking specific properties of a business establishment, the senior citizen discount law *merely regulates* the prices of the goods or services being sold to senior citizens

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[97] See, for instance, *City of Manila v. Laguio, Jr., supra* note 80.

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by mandating a 20% discount. Thus, if a product is sold at ₱10.00 to the general public, then it shall be sold at ₱8.00 (*i.e.*, ₱10.00 less 20%) to senior citizens. Note that the law does not impose at what *specific* price the product shall be sold, only that a 20% discount shall be given to senior citizens based on the price set by the business establishment. A business establishment is, thus, free to adjust the prices of the goods or services it provides to the general public. Accordingly, it can increase the price of the above product to ₱20.00 but is required to sell it at ₱16.00 (*i.e.*, ₱20.00 less 20%) to senior citizens.

Third, because the law impacts the prices of the goods or services of a particular establishment relative to its sales to senior citizens, its profits or income/gross sales are affected. The extent of the impact would, however, depend on the profit margin of the business establishment on a particular good or service. If a product costs ₱5.00 to produce and is sold at ₱10.00, then the profit[98] is ₱5.00[99] or a profit margin[100] of 50%.[101] Under the assailed law, the aforesaid product would have to be sold at ₱8.00 to senior citizens yet the business would still earn ₱3.00[102] or a 30%[103] profit margin. On the other hand, if the product costs ₱9.00 to produce and is required to be sold at ₱8.00 to senior citizens, then the business would experience a loss of ₱1.00.[104] But note that since not all customers of a business

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[98] Profit= selling price-cost price

[99] 10-5=5

[100] Profit margin= profit/selling price.

[101] 5/10= .50

[102] 8-5=3

This example merely illustrates the effect of the 20% discount on the selling price and profit. To be more accurate, however, the business will not only earn a profit of ₱3.00 but will also be entitled to a tax deduction pertaining to the 20% discount given. In short, the profit would be greater than ₱3.00.

[103] 3/10= .30

[104] By parity of reasoning, as in *supra* note 102, the exact loss will not necessarily be ₱1.00 because the business may claim the 20% discount as a tax deduction so that the loss may be less than ₱1.00.

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establishment are senior citizens, the business establishment may continue to earn ₱1.00 from non-senior citizens which, in turn, can offset any loss arising from sales to senior citizens.

Fourth, when the law imposes the 20% discount in favor of senior citizens, it *does not* prevent the business establishment from revising its pricing strategy. By revising its pricing strategy, a business establishment can recoup any reduction of profits or income/gross sales which would otherwise arise from the giving of the 20% discount. To illustrate, suppose A has two customers: X, a senior citizen, and Y, a non-senior citizen. Prior to the law, A sells his products at ₱10.00 a piece to X and Y resulting in income/gross sales of ₱20.00 (₱10.00 + ₱10.00). With the passage of the law, A must now sell his product to X at ₱8.00 (*i.e.*, ₱10.00 less 20%) so that his income/gross sales would be ₱18.00 (₱8.00 + ₱10.00) or lower by ₱2.00. To prevent this from happening, A decides to increase the price of his products to ₱11.11 per piece. Thus, he sells his product to X at ₱8.89 (*i.e.*, ₱11.11 less 20%) and to Y at ₱11.11. As a result, his income/gross sales would still be ₱20.00[105] (₱8.89 + ₱11.11). The capacity, then, of business establishments to revise their pricing strategy makes it possible for them not to suffer any reduction in profits or income/gross sales, or, in the alternative, mitigate the reduction of their profits or income/gross sales even after the passage of the law. In other words, business establishments have the capacity to adjust their prices so that they may remain profitable even under the operation of the assailed law.

The Dissent, however, states that –

The explanation by the majority that private establishments can always increase their prices to recover the mandatory discount will only encourage private establishments to adjust their prices upwards

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[105] This merely illustrates how a company can adjust its prices to recoup or mitigate any possible reduction of profits or income/gross sales under the operation of the assailed law. However, to be more accurate, if A were to raise the price of his products to ₱11.11 a piece, he would not only retain his previous income/gross sales of ₱20.00 but would be better off because he would be able to claim a tax deduction equivalent to the 20% discount he gave to X.

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to the prejudice of customers who do not enjoy the 20% discount. It was likewise suggested that if a company increases its prices, despite the application of the 20% discount, the establishment becomes more profitable than it was before the implementation of R.A. 7432. Such an economic justification is self-defeating, for more consumers will suffer from the price increase than will benefit from the 20% discount. Even then, such ability to increase prices cannot legally validate a violation of the eminent domain clause.[106]

But, if it is possible that the business establishment, by adjusting its prices, will suffer no reduction in its profits or income/gross sales (or suffer some reduction but continue to operate profitably) despite giving the discount, what would be the basis to strike down the law? If it is possible that the business establishment, by adjusting its prices, will not be unduly burdened, how can there be a finding that the assailed law is an unconstitutional exercise of police power or eminent domain?

That there may be a burden placed on business establishments or the consuming public as a result of the operation of the assailed law is not, by itself, a ground to declare it unconstitutional for this goes into the wisdom and expediency of the law. The cost of most, if not all, regulatory measures of the government on business establishments is ultimately passed on to the consumers but that, by itself, does not justify the wholesale nullification of these measures. It is a basic postulate of our democratic system of government that the Constitution is a social contract whereby the people have surrendered their sovereign powers to the State for the common good.[107] All persons may be burdened by regulatory measures intended for the common good or to serve some important governmental interest, such as protecting or improving the welfare of a special class of people for which the Constitution affords preferential concern. Indubitably, the one assailing the law has the heavy burden of proving that the regulation is unreasonable, oppressive or confiscatory, or has gone "too far" as to amount to a "taking." Yet, here, the Dissent

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[106] Dissenting Opinion, p. 14.

[107] *Marcos v. Manglapus*, 258 Phil. 479, 504 (1989).

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would have this Court nullify the law without any proof of such nature.

Further, this Court is not the proper forum to debate the economic theories or realities that impelled Congress to shift from the tax credit to the tax deduction scheme. It is not within our power or competence to judge which scheme is more or less burdensome to business establishments or the consuming public and, thereafter, to choose which scheme the State should use or pursue. The shift from the tax credit to tax deduction scheme is a policy determination by Congress and the Court will respect it for as long as there is no showing, as here, that the subject regulation has transgressed constitutional limitations.

Unavoidably, the lack of evidence constrains the Dissent to rely on *speculative* and *hypothetical* argumentation when it states that the 20% discount is a significant amount and not a minimal loss (which erroneously assumes that the discount automatically results in a loss when it is possible that the profit margin is greater than 20% and/or the pricing strategy can be revised to prevent or mitigate any reduction in profits or income/gross sales as illustrated above),[108] and not all private establishments make a 20% profit margin (which conversely implies that there are those who make more and, thus, would not be greatly affected by this regulation).[109]

In fine, because of the *possible* scenarios discussed above, we cannot assume that the 20% discount results in a permanent reduction in profits or income/gross sales, much less that business establishments are forced to operate at a loss under the assailed law. And, even if we gratuitously assume that the 20% discount results in *some* degree of reduction in profits or income/gross sales, we cannot assume that such reduction is arbitrary, oppressive or confiscatory. To repeat, there is no actual proof to back up this claim, and it could be that the loss suffered by a business establishment was occasioned through its fault or

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[108] Parenthetical comment supplied.

[109] *Id*.

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negligence in not adapting to the effects of the assailed law. The law uniformly applies to all business establishments covered thereunder. There is, therefore, no unjust discrimination as the aforesaid business establishments are faced with the same constraints.

The necessity of proof is all the more pertinent in this case because, as similarly observed by Justice Velasco in his *Concurring Opinion*, the law has been in operation for over nine years now. However, the grim picture painted by petitioners on the unconscionable losses to be indiscriminately suffered by business establishments, which should have led to the closure of numerous business establishments, has not come to pass.

Verily, we cannot invalidate the assailed law based on assumptions and conjectures. Without adequate proof, the presumption of constitutionality must prevail.

IV

At this juncture, we note that the Dissent modified its original arguments by including a new paragraph, to wit:

> Section 9, Article III of the 1987 Constitution speaks of private property without any distinction. It does not state that there should be profit before the taking of property is subject to just compensation. The private property referred to for purposes of taking could be inherited, donated, purchased, mortgaged, or as in this case, part of the gross sales of private establishments. They are all private property and any taking should be attended by corresponding payment of just compensation. The 20% discount granted to senior citizens belong to private establishments, whether these establishments make a profit or suffer a loss. In fact, the 20% discount applies to **non-profit establishments** like country, social, or golf clubs which are open to the public and not only for exclusive membership. The issue of profit or loss to the establishments is immaterial.[110]

Two things may be said of this argument.

First, it contradicts the rest of the arguments of the Dissent. After it states that the issue of profit or loss is immaterial, the

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[110] Dissenting Opinion, p. 9.

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Dissent proceeds to argue that the 20% discount is not a minimal loss[111] and that the 20% discount forces business establishments to operate at a loss.[112] Even the obiter in *Central Luzon Drug Corporation*,[113] which the Dissent essentially adopts and relies on, is premised on the permanent reduction of total revenues and the loss that business establishments will be forced to suffer in arguing that the 20% discount constitutes a "taking" under the power of eminent domain. Thus, when the Dissent now argues that the issue of profit or loss is immaterial, it contradicts itself because it later argues, in order to justify that there is a "taking" under the power of eminent domain in this case, that the 20% discount forces business establishments to suffer a significant loss or to operate at a loss.

Second, this argument suffers from the same flaw as the Dissent's original arguments. It is an erroneous characterization of the 20% discount.

According to the Dissent, the 20% discount is part of the gross sales and, hence, private property belonging to business establishments. However, as previously discussed, the 20% discount is not private property actually owned and/or used by the business establishment. It should be distinguished from properties like lands or buildings actually used in the operation of a business establishment which, if appropriated for public use, would amount to a "taking" under the power of eminent domain.

Instead, the 20% discount is a regulatory measure which impacts the pricing and, hence, the profitability of business establishments. At the time the discount is imposed, no particular property of the business establishment can be said to be "taken." That is, the State does not acquire or take anything from the business establishment in the way that it takes a piece of private land to build a public road. While the 20% discount may form

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[111] *Id*. at 12.

[112] *Id*. At 13.

[113] *Supra* note 5.

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part of the potential profits or income/gross sales[114] of the business establishment, as similarly characterized by Justice Bersamin in his Concurring Opinion, potential profits or income/gross sales are not private property, specifically cash or money, already belonging to the business establishment. They are a mere expectancy because they are potential fruits of the successful conduct of the business.

Prior to the sale of goods or services, a business establishment may be subject to State regulations, such as the 20% senior citizen discount, which may impact the level or amount of profits or income/gross sales that can be generated by such establishment. For this reason, the validity of the discount is to be determined based on its overall effects on the operations of the business establishment.

Again, as previously discussed, the 20% discount does not automatically result in a 20% reduction in profits, or, to align it with the term used by the Dissent, the 20% discount does not mean that a 20% reduction in gross sales necessarily results. Because (1) the profit margin of a product is not necessarily less than 20%, (2) not all customers of a business establishment are senior citizens, and (3) the establishment may revise its pricing strategy, such reduction in profits or income/gross sales may be prevented or, in the alternative, mitigated so that the business establishment continues to operate profitably. Thus,

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[114] The Dissent uses the term "gross sales" instead of "income" but "income" and "gross sales" are used in the same sense throughout this *ponencia*. That is, they are money derived from the sale of goods or services. The reference to or mention of "income"/"gross sales", apart from "profits," is intentionally made because the 20% discount may cover more than the profits from the sale of goods or services in cases where the profit margin is less than 20% and the business establishment does not adjust its pricing strategy.

Income/gross sales is a broader concept *vis-a-vis* profits because income/gross sales less cost of the goods or services equals profits. If the subject regulation affects income/gross sales, then it follows that it affects profits and vice versa. The shift in the use of terms, *i.e.*, from "profits" to "gross sales," cannot erase or conceal the materiality of profits or losses in determining the validity of the subject regulation in this case.

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even if we gratuitously assume that some degree of reduction in profits or income/gross sales occurs because of the 20% discount, it does not follow that the regulation is unreasonable, oppressive or confiscatory because the business establishment may make the necessary adjustments to continue to operate profitably. No evidence was presented by petitioners to show otherwise. In fact, no evidence was presented by petitioners at all.

Justice Leonen, in his *Concurring and Dissenting Opinion*, characterizes "profits" (or income/gross sales) as an inchoate right. Another way to view it, as stated by Justice Velasco in his Concurring Opinion, is that the business establishment merely has a right to profits. The Constitution adverts to it as the right of an enterprise to a reasonable return on investment.[115] Undeniably, this right, like any other right, may be regulated under the police power of the State to achieve important governmental objectives like protecting the interests and improving the welfare of senior citizens.

It should be noted though that potential profits or income/gross sales are relevant in police power and eminent domain analyses because they may, in appropriate cases, serve as an indicia when a regulation has gone "too far" as to amount to a "taking" under the power of eminent domain. When the deprivation or reduction of profits or income/gross sales is shown to be unreasonable, oppressive or confiscatory, then the challenged governmental regulation may be nullified for being a "taking" under the power of eminent domain. In such a case, it is not profits or income/gross sales which are actually taken and appropriated for public use. Rather, when the regulation causes an establishment to incur losses in an unreasonable, oppressive or confiscatory manner, what is actually taken is capital and the right of the business establishment to a reasonable return on investment. If the business losses are not halted because of the continued operation of the regulation, this eventually leads to the destruction of the business and the total loss of the capital

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[115] Article XIII, Section 3.

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invested therein. But, again, petitioners in this case failed to prove that the subject regulation is unreasonable, oppressive or confiscatory.

V.

The Dissent further argues that we erroneously used price and rate of return on investment control laws to justify the senior citizen discount law. According to the Dissent, only profits from industries imbued with public interest may be regulated because this is a condition of their franchises. Profits of establishments without franchises cannot be regulated permanently because there is no law regulating their profits. The Dissent concludes that the permanent reduction of total revenues or gross sales of business establishments without franchises is a taking of private property under the power of eminent domain.

In making this argument, it is unfortunate that the Dissent quotes only a portion of the *ponencia* –

> The subject regulation may be said to be similar to, but with substantial distinctions from, price control or rate of return on investment control laws which are traditionally regarded as police power measures. These laws generally regulate public utilities or industries/enterprises imbued with public interest in order to protect consumers from exorbitant or unreasonable pricing as well as temper corporate greed by controlling the rate of return on investment of these corporations considering that they have a monopoly over the goods or services that they provide to the general public. The subject regulation differs therefrom in that (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given establishment but only to the class of senior citizens. x x x[116]

The above paragraph, in full, states –

> The subject regulation may be said to be similar to, but with substantial distinctions from, price control or rate of return on investment control laws which are traditionally regarded as police

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[116] Dissenting Opinion, p. 12.

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power measures. These laws generally regulate public utilities or industries/enterprises imbued with public interest in order to protect consumers from exorbitant or unreasonable pricing as well as temper corporate greed by controlling the rate of return on investment of these corporations considering that they have a monopoly over the goods or services that they provide to the general public. The subject regulation differs therefrom in that (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given establishment but only to the class of senior citizens. **Nonetheless, to the degree material to the resolution of this case, the 20% discount may be properly viewed as belonging to the category of price regulatory measures which affects the profitability of establishments subjected thereto**. (Emphasis supplied)

The point of this paragraph is to simply show that the State has, in the past, regulated prices and profits of business establishments. In other words, this type of regulatory measures is traditionally recognized as police power measures so that the senior citizen discount may be considered as a police power measure as well. What is more, the substantial distinctions between price and rate of return on investment control laws *vis-à-vis* the senior citizen discount law provide *greater reason* to uphold the validity of the senior citizen discount law. As previously discussed, the ability to adjust prices allows the establishment subject to the senior citizen discount to prevent or mitigate any reduction of profits or income/gross sales arising from the giving of the discount. In contrast, establishments subject to price and rate of return on investment control laws cannot adjust prices accordingly.

Certainly, there is no intention to say that price and rate of return on investment control laws are the justification for the senior citizen discount law. Not at all. The justification for the senior citizen discount law *is* the plenary powers of Congress. The legislative power to regulate business establishments is broad and covers a wide array of areas and subjects. It is well within Congress' legislative powers to regulate the profits or income/gross sales of industries and enterprises, *even those without franchises*. For what are franchises but mere legislative enactments?

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There is nothing in the Constitution that prohibits Congress from regulating the profits or income/gross sales of industries and enterprises without franchises. On the contrary, the social justice provisions of the Constitution enjoin the State to regulate the "acquisition, ownership, use, and disposition" of property and its increments.[117] This may cover the regulation of profits or income/gross sales of all businesses, without qualification, to attain the objective of diffusing wealth in order to protect and enhance the right of all the people to human dignity.[118] Thus, under the social justice policy of the Constitution, business establishments may be compelled to contribute to uplifting the plight of vulnerable or marginalized groups in our society provided that the regulation is not arbitrary, oppressive or confiscatory, or is not in breach of some specific constitutional limitation.

When the Dissent, therefore, states that the "profits of private establishments which are non-franchisees cannot be regulated **permanently**, and there is no such law regulating their profits permanently,"[119] it is assuming what it ought to prove. First, there *are* laws which, in effect, permanently regulate profits or income/gross sales of establishments without franchises, and RA 9257 *is* one such law. And, second, Congress *can* regulate such profits or income/gross sales because, as previously noted, there is nothing in the Constitution to prevent it from doing so. Here, again, it must be emphasized that petitioners failed to present any proof to show that the effects of the assailed law on their operations has been unreasonable, oppressive or confiscatory.

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[117] Article XIII, Section 1 of the Constitution states:

The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

[118] *Id*.

[119] Dissenting Opinion, p. 13.

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The *permanent* regulation of profits or income/gross sales of business establishments, even those without franchises, is not as uncommon as the Dissent depicts it to be.

For instance, the minimum wage law allows the State to set the minimum wage of employees in a given region or geographical area. Because of the added labor costs arising from the minimum wage, a permanent reduction of profits or income/gross sales would result, assuming that the employer does not increase the prices of his goods or services. To illustrate, suppose it costs a company ₱5.00 to produce a product and it sells the same at ₱10.00 with a 50% profit margin. Later, the State increases the minimum wage. As a result, the company incurs greater labor costs so that it now costs ₱7.00 to produce the same product. The profit per product of the company would be reduced to ₱3.00 with a profit margin of 30%. The net effect would be the same as in the earlier example of granting a 20% senior citizen discount. As can be seen, the minimum wage law could, likewise, lead to a permanent reduction of profits. Does this mean that the minimum wage law should, likewise, be declared unconstitutional on the mere plea that it results in a permanent reduction of profits? Taking it a step further, suppose the company decides to increase the price of its product in order to offset the effects of the increase in labor cost; does this mean that the minimum wage law, following the reasoning of the Dissent, is unconstitutional because the consuming public is effectively made to subsidize the wage of a group of laborers, *i.e.*, minimum wage earners?

The same reasoning can be adopted relative to the examples cited by the Dissent which, according to it, are valid police power regulations. Article 157 of the Labor Code, Sections 19 and 18 of the Social Security Law, and Section 7 of the Pag-IBIG Fund Law would effectively increase the labor cost of a business establishment. This would, in turn, be integrated as part of the cost of its goods or services. Again, if the establishment does not increase its prices, the net effect would be a permanent reduction in its profits or income/gross sales. Following the reasoning of the Dissent that "any form of **permanent** taking

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of private property (including profits or income/gross sales)[120] is an exercise of eminent domain that requires the State to pay just compensation,"[121] then these statutory provisions would, likewise, have to be declared unconstitutional. It does not matter that these benefits are deemed part of the employees' legislated wages because the net effect is the same, that is, it leads to higher labor costs and a permanent reduction in the profits or income/gross sales of the business establishments.[122]

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[120] Parenthetical comment supplied.

[121] Dissenting Opinion, p. 14.

[122] According to the Dissent, these statutorily mandated employee benefits are valid police power measures because the employer is deemed fully compensated therefor as they form part of the employee's legislated wage.

The Dissent confuses police power with eminent domain.

In police power, no compensation is required, and it is not necessary, as the Dissent mistakenly assumes, to show that the employer is deemed fully compensated in order for the statutorily mandated benefits to be a valid exercise of police power. It is immaterial whether the employer is deemed fully compensated because the justification for these statutorily mandated benefits is the overriding State interest to protect and uphold the welfare of employees. This State interest is principally rooted in the historical abuses suffered by employees when employers solely determined the terms and conditions of employment. Further, the direct or incidental benefit derived by the employer (*i.e.,* healthier work environment which presumably translates to more productive employees) from these statutorily mandated benefits is not a requirement to make them valid police power measures. Again, it is the paramount State interest in protecting the welfare of employees which justifies these measures as valid exercises of police power subject, of course, to the test of reasonableness as to the means adopted to achieve such legitimate ends.

That the assailed law benefits senior citizens and not employees of a business establishment makes no material difference because, precisely, police power is employed to protect and uphold the welfare of marginalized and vulnerable groups in our society. Police power would be a meaningless State attribute if an individual, or a business establishment for that matter, can only be compelled to accede to State regulations provided he (or it) is directly or incidentally benefited thereby. Precisely in instances when the individual resists or opposes a regulation because it burdens him or her that the State exercises its police power in order to uphold the common good. Many laudable existing police power measures would have to be invalidated if, as a condition for their validity, the individual subjected thereto should be directly or incidentally benefited by such measures.

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The point then is this – most, if not all, regulatory measures imposed by the State on business establishments impact, at some level, the latter's prices and/or profits or income/gross sales.[123] If the Court were to sustain the Dissent's theory, then a wholesale nullification of such measures would inevitably result. The police power of the State and the social justice provisions of the Constitution would, thus, be rendered nugatory.

There is nothing sacrosanct about profits or income/gross sales. This, we made clear in *Carlos Superdrug Corporation*:[124]

> Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.
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> x x x x x x x x x
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> The Court is not oblivious of the retail side of the pharmaceutical industry and the competitive pricing component of the business. While the Constitution protects property rights, petitioners must accept the realities of business and the State, in the exercise of police power, can intervene in the operations of a business which may result in an impairment of property rights in the process.
>
> Moreover, the right to property has a social dimension. While Article XIII of the Constitution provides the precept for the protection of property, various laws and jurisprudence, particularly on agrarian reform and the regulation of contracts and public utilities, continuously serve as a reminder that the right to property can be relinquished upon the command of the State for the promotion of public good.

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[123] See De Leon and De Leon, Jr., *Philippine Constitutional Law: Principles and Cases Vol. 1*, at 671-673 (2012), for a list of police power measures upheld by this Court. A good number of these measures impact, directly or indirectly, the profitability of business establishments yet the same were upheld by the Court because they were not shown to be unreasonable, oppressive or confiscatory.

[124] *Supra* note 14.

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Undeniably, the success of the senior citizens program rests largely on the support imparted by petitioners and the other private establishments concerned. This being the case, the means employed in invoking the active participation of the private sector, in order to achieve the purpose or objective of the law, is reasonably and directly related. Without sufficient proof that Section 4(a) of R.A. No. 9257 is arbitrary, and that the continued implementation of the same would be unconscionably detrimental to petitioners, the Court will refrain from quashing a legislative act.[125]

In conclusion, we maintain that the correct rule in determining whether the subject regulatory measure has amounted to a "taking" under the power of eminent domain is the one laid down in *Alalayan v. National Power Corporation*[126] and followed in *Carlos Superdrug Corporation*[127] consistent with long standing principles in police power and eminent domain analysis. Thus, the deprivation or reduction of profits or income/gross sales must be clearly shown to be unreasonable, oppressive or confiscatory. Under the specific circumstances of this case, such determination can only be made upon the presentation of competent proof which petitioners failed to do. A law, which has been in operation for many years and promotes the welfare of a group accorded special concern by the Constitution, cannot and should not be summarily invalidated on a mere allegation that it reduces the profits or income/gross sales of business establishments.

WHEREFORE, the Petition is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Sereno, C.J., Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr. and *Bersamin, JJ.,* see concurring opinions.

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[125] *Id.* at 132-135.

[126] *Supra* note 83.

[127] *Supra* note 14.

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Leonardo-de Castro and *Peralta, JJ.,* the *C.J.* certifies that *J.* de Castro and *J.* Peralta left their votes concurring with *ponencia* of *J.* del Castillo.

Leonen, J., see concurring and dissenting opinion.

Carpio, J., see dissenting opinion.

Brion, J., no part.

CONCURRING OPINION

VELASCO, JR., *J.*:

The issue in the present case hinges upon the consequence of a reclassification of a mandated discount as a deduction from the gross income instead of a tax credit deductible from the tax liability of affected taxpayers. In particular, the petition questions the constitutionality of Section 4 of Republic Act No. (RA) 9257, and its implementing rules, which has allowed the amount representing the 20% forcible discount to senior citizens as a deduction from gross income rather than a tax credit.

As cited by the *ponencia*, this Court had previously resolved the issue in *Carlos Superdrug v. DSWD* (*Carlos Superdrug*) by sustaining the reclassification as a proper implement of the police power of the State. A view, however, has been advanced that We should take a second look at the doctrine laid down in *Carlos Superdrug* and declare Sec. 4 of RA 9257 as an improper exercise of the power of eminent domain by the State as it permits the deprivation of private property without just compensation.

Indeed, the practice of allowing taking of private property without just compensation is an abhorrent policy. However, I do not agree that such policy underpins Sec. 4 of RA 9257. Rather, it is my humble opinion that Sec. 4 of RA 9257 is no more than a regulation of the right to profits of certain taxpayers in order to benefit a significant sector of society. It is, thus, a valid exercise of the police power of the State.

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The right to profit, as distinguished from profit itself, is not subject to expropriation as it is of a mercurial character that denies the possibility of taking for a public purpose. It is a right solely within the discretion of the taxpayers that cannot be appropriated by the government. The mandated 20% discount for the benefit of senior citizens is not a property already vested with the taxpayer before the sale of the product or service. Such percentage of the sale price may include both the markup on the cost of the good or service and the income to be gained from the sale. Without the sale and corresponding purchase by senior citizens, there is no gain derived by the taxpayer. This nebulous nature of the financial gain of the seller deters the acquisition by the state of the "domain" or ownership of the right to such financial gain through expropriation. At best, the State is empowered to **regulate this *right* to the acquisition of this financial gain** to benefit senior citizens by ensuring that the good or service be sold to them at a price 20% less than the regular selling price.

Time and again, this Court has recognized the fundamental police power of the State to regulate the exercise of various rights holding that "equally fundamental with the private right is that of the public to regulate it in the common interest."[1] This Court has, for instance, recognized the power of the State to regulate and temper the right of employers to dismiss their employees.[2] Similarly, We have sustained the State's power to regulate the right to acquire and possess arms.[3] Contractual rights are also subject to the regulatory police power of the State.[4] The right to profit is not immune from this regulatory power of the State intended to promote the common good and

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[1] *Philippine American Life Insurance Company v. Auditor General*, No. L-19255, January 18, 1968; citing *Nebbia v. New York*, 291 U.S. 502, 523, 78 L. ed. 940, 948-949.

[2] *Gelmart Industries, Inc. v. National Labor Relations Commission*, G.R. No. 85668, August 10, 1989, 176 SCRA 295.

[3] *Chavez v. Romulo*, G.R. No. 157036, June 9, 2004, 431 SCRA 534.

[4] *Philippine American Life Insurance Company*, *supra* note 1.

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the attainment of social justice. As early as the first half of the past century, this Court has rejected the doctrine of *laissez faire* as an axiom of economic theory and has upheld the power of the State to regulate businesses even to the extent of limiting their profit.[5] Thus, the imposition of price control is recognized as a valid exercise of police power that does not give businessmen the right to be compensated for the amount of what they could have earned considering the demand of the market. The effect of RA 9257 is not dissimilar to a price control law.

The fact that the State has not fixed an amount to be deducted from the selling price of certain goods and services to senior citizens indicates that RA 9257 is a regulatory law under the police power of the State. It is an acknowledgment that proprietors can and will factor in the potential deduction of 20% of the price given to some of their customers, *i.e.*, the senior citizens, in the overall pricing strategy of their products and services. RA 9257 has to be sure not obliterated the right of taxpayers to profit nor divested them of profits already earned; it simply regulated the right to the attainment of these profits. The enforcement of the 20% discount in favor of senior citizens does not, therefore, partake the nature of "taking" in the context

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[5] *Ermita-Malate Hotel and Hotel Operators Association, Inc., et al. v. City Mayor of Manila*, No. L-24693, July 31, 1967, 20 SCRA 849. See also *Edu v. Ericta*, No. L-32096, October 24, 1970, citing *Pampanga Bus Co. v. Pambusco's Employees' Union*, 68 Phil. 541 (1939); *Manila Trading and Supply Co. v. Zulueta*, 69 Phil. 485 (1940); *International Hardwood and Veneer Company v. The Pangil Federation of Labor*, 70 Phil. 602 (1940); *Antamok Goldfields Mining Company v. Court of Industrial Relations*, 70 Phil. 340 (1940); *Tapang v. Court of Industrial Relations*, 72 Phil. 79 (1941); *People v. Rosenthal*, 68 Phil. 328 (1939); *Pangasinan Trans. Co., Inc. v. Public Service Com.*, 70 Phil. 221 (1940); *Camacho v. Court of Industrial Relations*, 80 Phil. 848 (1948); *Ongsiaco v. Gamboa*, 86 Phil. 50 (1950); *De Ramas v. Court of Agrarian Relations*, No. L-19555, May 29, 1964, 11 SCRA 171; *Del Rosario v. De los Santos*, No. L-20589, March 21, 1968, 22 SCRA 1196; *Ichong v. Hernandez*, 101 Phil. 1155 (1957); *Phil. Air Lines Employees' Asso. v. Phil Air Lines, Inc.*, No. L-18559, June 30, 1964, 11 SCRA 387; *People v. Chu Chi*, 92 Phil. 977 (1953); *Roman Catholic Archbishop of Manila v. Social Security Com.*, No. L-15045, January 20, 1961, 1 SCRA 10. cf. *Director of Forestry v. Muñoz*, No. L-24746, June 28, 1968, 23 SCRA 1183.

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of eminent domain. As such, proprietors like petitioners cannot insist that they are entitled to a peso-for-peso compensation for complying with the valid regulation embodied in RA 9257 that restricts their right to profit.

As it is a regulatory law, not a law implementing the power of eminent domain, the assertion that the use of the 20% discount as a deduction negates its role as a "just compensation" is mislaid and irrelevant. In the first place, as RA 9257 is a regulatory law, the allowance to use the 20% discount, as a deduction from the gross income for purposes of computing the income tax payable to the government, is not intended as compensation. Rather, it is simply a recognition of the fact that no income was realized by the taxpayer to the extent of the 20% of the selling price by virtue of the discount given to senior citizens. Be that as it may, the logical result is that no tax on income can be imposed by the State. In other words, by forcing some businesses to give a 20% discount to senior citizens, the government is likewise foregoing the taxes it could have otherwise earned from the earnings pertinent to the 20% discount. This is the real import of Sec. 4 of RA 9257. As RA 9257 does not sanction any taking of private property, the regulatory law does not require the payment of compensation.

Finally, it must be noted that the issue of validity of Sec. 4 of RA 9257 has already been settled. After years of implementation of the law, economic progress has not been put to a halt. In fact, it has not been alleged that a business establishment commonly patronized by senior citizens and covered by RA 9257 had shut down because of the mandate to give the 20% discount and the supposed deficient "compensation" under Sec. 4 of RA 9257. This clearly shows that the regulation made in the subject law is a minimal encumbrance to businesses that must not be employed to overthrow an otherwise reasonable, logical, and just instrument of the social justice policy of our Constitution.

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CONCURRING OPINION

BERSAMIN, *J.*:

At issue is the constitutionality of the treatment as a tax deduction by covered establishments of the 20% discount granted to senior citizens under Republic Act (RA) No. 9257 (*Expanded Senior Citizens Act of 2003*)[1] and the implementing rules and regulations issued by the Department of Social Welfare and Development (DSWD) and Department of Finance (DOF).

The assailed provision is Section 4 of the *Expanded Senior Citizens Act of 2003*, which provides —

SECTION 2. Republic Act. No. 7432 is hereby amended to read as follows:

x x x x x x x x x

SEC. 4. *Privileges for the Senior Citizens*. – The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishment, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

x x x x x x x x x

The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: Provided That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. Provided, further, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended.

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[1] Amended by RA No. 9994, February 15, 2010.

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The petitioners contend that Section 4, *supra*, violates Section 9, Article III of the Constitution, which mandates that "[p]rivate property shall not be taken for public use without just compensation."

On the other hand, Justice del Castillo observes in his opinion ably written for the Majority that the validity of the 20% senior citizen discount must be upheld as an exercise by the State of its police power; and reminds that the issue has already been settled in *Carlos Superdrug Corporation v. Department of Social Welfare and Development*,[2] with the Court pronouncing therein that:

> Theoretically, the treatment of the discount as a deduction reduces the net income of the private establishments concerned. The discounts given would have entered the coffers and formed part of the gross sales of the private establishments, were it not for R.A. No. 9257.
>
> The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private property for public use or benefit. This constitutes compensable taking for which petitioners would ordinarily become entitled to a just compensation.
>
> Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain but the owner's loss. The word **just** is used to intensify the meaning of the word **compensation**, and to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.
>
> A tax deduction does not offer full reimbursement of the senior citizen discount. As such, it would not meet the definition of just compensation.
>
> Having said that, this raises the question of whether the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program.
>
> The Court believes so.

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[2] G.R. No. 166494, June 29, 2007, 526 SCRA 130.

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The Senior Citizens Act was enacted primarily to maximize the contribution of senior citizens to nation-building, and to grant benefits and privileges to them for their improvement and well-being as the State considers them an integral part of our society.

The priority given to senior citizens finds its basis in the Constitution as set forth in the law itself. Thus, the Act provides:

> SEC. 2. Republic Act No. 7432 is hereby amended to read as follows:
>
> SECTION 1. *Declaration of Policies and Objectives.* – Pursuant to Article XV, Section 4 of the Constitution, it is the duty of the family to take care of its elderly members while the State may design programs of social security for them. In addition to this, Section 10 in the Declaration of Principles and State Policies provides: "The State shall provide social justice in all phases of national development." Further, Article XIII, Section 11, provides: "The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women and children." Consonant with these constitutional principles the following are the declared policies of this Act:
>
> x x x x x x x x x
>
> **(f) To recognize the important role of the private sector in the improvement of the welfare of senior citizens and to actively seek their partnership**.

To implement the above policy, the law grants a twenty percent discount to senior citizens for medical and dental services, and diagnostic and laboratory fees; admission fees charged by theaters, concert halls, circuses, carnivals, and other similar places of culture, leisure and amusement; fares for domestic land, air and sea travel; utilization of services in hotels and similar lodging establishments, restaurants and recreation centers; and purchases of medicines for the exclusive use or enjoyment of senior citizens. As a form of reimbursement, the law provides that business establishments extending the twenty percent discount to senior citizens may claim the discount as a tax deduction.

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The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as "the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs." It is "[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same."

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.[3]

The Majority hold that the 20% senior citizen discount is, by its nature and effects, "a regulation affecting the ability of private establishments to price their products and services relative to a special class of individuals, senior citizens, for which the Constitution affords preferential concern."[4] As such, the discount may be properly viewed as a price regulatory measure that affects the profitability of establishments subjected thereto, only that: (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given

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[3] *Id*. at 141-144.

[4] Decision, p. 19.

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establishment but only to the class of senior citizens.[5] Nonetheless, the Majority posits that the discount has not been proved to be unreasonable, oppressive or confiscatory in the absence of evidence showing that its continued implementation causes an establishment to operate at a loss, or will be unconscionably detrimental to the business operations of covered establishments such as that of the petitioners.[6]

Submissions

I **JOIN** the Majority.

I **VOTE** for the dismissal of the petition in order to uphold the constitutionality of the tax deduction scheme as a valid exercise of the State's police power.

I.
The 20% senior citizen discount under the *Expanded Senior Citizens Act* does not amount to compensable taking

The petitioners' claim of unconstitutionality of the tax deduction scheme under the *Expanded Senior Citizens Act* rests on the premise that the 20% senior citizen discount was enacted by Congress in the exercise of its power of eminent domain.

Like the Majority, I cannot sustain the claim of the petitioners, because I find that the imposition of the discount does not emanate from the exercise of the power of eminent domain, but from the exercise of police power.

Let me explain.

Eminent domain is defined as –

[T]he power of the nation or a sovereign state to take, or to authorize the taking of, private property for a public use without the owner's consent, conditioned upon payment of just compensation." It is acknowledged as "an inherent political right, founded on a common

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[5] *Id*. at 20.

[6] *Id*. at 21-22.

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necessity and interest of appropriating the property of individual members of the community to the great necessities of the whole community.[7]

The State's exercise of the power of eminent domain is not without limitations, but is constrained by Section 9, Article III of the Constitution, which requires that private property shall not be taken for public use without just compensation, as well as by the Due Process Clause found in Section 1,[8] Article III of the Constitution. According to *Republic v. Vda. de Castellvi*,[9] the requisites of taking in eminent domain are as follows: *first*, the expropriator must enter a private property; *second*, the entry into private property must be for more than a momentary period; *third*, the entry into the property should be under warrant or color of legal authority; *fourth*, the property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and, *fifth*, the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.

The essential component of the proper exercise of the power of eminent domain is, therefore, the existence of *compensable taking*. There is *taking* when –

> [T]he owner is actually deprived or dispossessed of his property; when there is a practical destruction or a material impairment of the value of his property or when he is deprived of the ordinary use thereof. There is a "taking" in this sense when the expropriator enters private property not only for a momentary period but for a more permanent duration, for the purpose of devoting the property to a public use in such a manner as to oust the owner and deprive him of all beneficial enjoyment thereof. For ownership, after all, "is nothing without the inherent rights of possession, control and

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[7] *Barangay Sindalan, San Fernando, Pampanga v. Court of Appeals*, G.R. No. 150640, March 22, 2007, 518 SCRA 649, 657-658.

[8] Section 1. No person shall be deprived of his/her life, liberty, or property without due process of law.

[9] No. L-20620, August 15, 1974, 58 SCRA 336, 350-352.

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enjoyment." Where the owner is deprived of the ordinary and beneficial use of his property or of its value by its being diverted to public use, there is taking within the Constitutional sense.[10]

As I see it, the nature and effects of the 20% senior citizen discount do not meet all the requisites of *taking* for purposes of exercising the power of eminent domain as delineated in *Republic v. Vda. de Castellvi*, considering that the second of the requisites, that the taking must be for more than a momentary period, is not met. I base this conclusion on the universal understanding of the term *momentary*, rendered in *Republic v. Vda. de Castellvi* thusly*:*

"Momentary" means, "lasting but a moment; of but a moment's duration" (The Oxford English Dictionary, Volume VI, page 596); "lasting a very short time; transitory; having a very brief life; operative or recurring at every moment" (Webster's Third International Dictionary, 1963 edition.) The word "momentary" when applied to possession or occupancy of (real) property should be construed to mean "a limited period" — not indefinite or permanent.[11]

In concept, discount is an abatement or reduction made from the gross amount or value of anything; a reduction from a price made to a specific customer or class of customers.[12] Under the *Expanded Senior Citizens Act*, the 20% senior citizen discount is a special privilege granted only to senior citizens or the elderly, as defined by law,[13] when a sale is made or a service is rendered by a covered establishment to a senior citizen or an elderly. The income or revenue corresponding to the amount of the discount granted to a senior citizen is thus unrealized only in the event that a sale is made or a service is rendered to a senior citizen. Verily, the discount is not availed of when there is no sale or service rendered to a senior citizen.

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[10] *Ansaldo v. Tantuico, Jr.*, G.R. No. 50147, August 3, 1990, 188 SCRA 300, 304.

[11] *Supra* note 9, at 350.

[12] *Webster's Third New International Dictionary*, p. 646.

[13] "Senior citizen" or "elderly" shall mean any resident citizen of the Philippines at least sixty (60) years old. (Section 2(a), RA No. 9257).

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The amount of unrealized revenue or lost *potential* profits on the part of the covered establishment – should it be subsequently shown that the 20% senior citizen discount granted could have covered operating expenses – lacks the character of indefiniteness and permanence considering that the *taking* was conditioned upon the occurrence of a sale or service to a senior citizen. The tax deduction scheme is, therefore, not the compensation contemplated under Section 9, Article III of the Constitution.

Even assuming that the unrealized revenue or lost potential profits resulting from the grant of the 20% senior citizen discount qualifies as *taking* within the contemplation of the power of eminent domain, the tax deduction scheme suffices as a form of just compensation. For that purpose, just compensation is defined as —

> [T]he full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be **real**, substantial, full, and ample. Indeed, the "just"-ness of the compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property.[14]

The petitioners, relying on the ruling in *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*,[15] appear to espouse the view that the tax credit method, rather than the tax deduction scheme, meets the definition of just compensation. This, because "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*" while a "*tax deduction*, on the other, reduces the income that is subject to tax in order to arrive at *taxable income*."[16]

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[14] *National Power Corporation v. Diato-Bernal,* G.R. No. 180979, December 15, 2010, 638 SCRA 660, 669 (bold emphasis is supplied).

[15] G.R. No. 159647, April 15, 2005, 456 SCRA 414.

[16] *Id*. at 428-429.

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At the time when the supposed *taking* happens, *i.e.*, upon the sale of the goods or the rendition of a service to a senior citizen, the loss incurred by the covered establishment represents only the *gross amount of discount* granted to the senior citizen. At that point, the **real** equivalent of the property taken is the amount of unrealized income or revenue of the covered establishment, without the benefit of operating expenses and exemptions, if any. The tax deduction scheme substantially compensates such loss, therefore, because the loss corresponds to the real and actual value of the property at the time of taking.

II.
The 20% senior citizen discount is a *taking* in the form of regulation; thus, just compensation is not required

In *Didipio Earth Savers' Multi-Purpose Association, Inc. v. Gozun*,[17] the Court has distinguished the element of *taking* in eminent domain from the concept of *taking* in the exercise of police power, *viz*:

> Property condemned under police power is usually noxious or intended for a noxious purpose; hence, no compensation shall be paid. Likewise, in the exercise of police power, property rights of private individuals are subjected to restraints and burdens in order to secure the general comfort, health, and prosperity of the state. Thus, an ordinance prohibiting theaters from selling tickets in excess of their seating capacity (which would result in the diminution of profits of the theater-owners) was upheld valid as this would promote the comfort, convenience and safety of the customers. In *U.S. v. Toribio*, the court upheld the provisions of Act No. 1147, a statute regulating the slaughter of carabao for the purpose of conserving an adequate supply of draft animals, as a valid exercise of police power, notwithstanding the property rights impairment that the ordinance imposed on cattle owners. A zoning ordinance prohibiting the operation of a lumber yard within certain areas was assailed as unconstitutional in that it was an invasion of the property rights of the lumber yard owners in *People v. De Guzman*. The Court nonetheless ruled that the regulation was a valid exercise of police

[17] G.R. No. 157882, March 30, 2006, 485 SCRA 586, 604-607.

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power. A similar ruling was arrived at in *Seng Kee S Co. v. Earnshaw and Piatt* where an ordinance divided the City of Manila into industrial and residential areas.

A thorough scrutiny of the extant jurisprudence leads to a cogent deduction that where a property interest is merely restricted because the continued use thereof would be injurious to public welfare, or where property is destroyed because its continued existence would be injurious to public interest, there is no compensable taking. However, when a property interest is appropriated and applied to some public purpose, there is compensable taking.

According to noted constitutionalist, Fr. Joaquin Bernas, SJ, in the exercise of its police power regulation, the state restricts the use of private property, but none of the property interests in the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public. Use of the property by the owner was limited, but no aspect of the property is used by or for the public. The deprivation of use can in fact be total and it will not constitute compensable taking if nobody else acquires use of the property or any interest therein.

If, however, in the regulation of the use of the property, somebody else acquires the use or interest thereof, such restriction constitutes compensable taking.

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While the power of eminent domain often results in the appropriation of title to or possession of property, it need not always be the case. Taking may include trespass without actual eviction of the owner, material impairment of the value of the property or prevention of the ordinary uses for which the property was intended such as the establishment of an easement.

In order to determine whether a challenged legislation involves regulation or taking, the purpose of the law should be revisited, analyzed, and scrutinized.[18] There is no more direct and better way to do so now than to look at the declared policies and objectives of the *Expanded Seniors Citizens Act*, to wit:

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[18] Bernas, *The 1987 Constitution of the Republic of the Philippines A Commentary*, 2009 ed., p. 435.

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SECTION 1. *Declaration of Policies and Objectives*. — Pursuant to Article XV, Section 4 of the Constitution, it is the duty of the family to take care of its elderly members while the State may design programs of social security for them. In addition to this, Section 10 in the Declaration of Principles and State Policies provides: 'The State shall provide social justice in all phases of national development.' Further, Article XIII, Section 11 provides: 'The State shall adopt an integrated and comprehensive approach to health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underpriviledged, sick, elderly, disabled, women and children.' Consonant with these constitution principles the following are the declared policies of this Act:

(a) To motivate and encourage the senior citizens to contribute to nation building;

(b) To encourage their families and the communities they live with to reaffirm the valued Filipino tradition of caring for the senior citizens;

(c) **To give full support to the improvement of the total well-being of the elderly and their full participation in society considering that senior citizens are integral part of Philippine society**;

(d) **To recognize the rights of senior citizens to take their proper place in society. This must be the concern of the family, community, and government**;

(e) **To provide a comprehensive health care and rehabilitation system for disabled senior citizens to foster their capacity to attain a more meaningful and productive ageing**; and

(f) **To recognize the important role of the private sector in the improvement of the welfare of senior citizens and to actively seek their partnership**.

In accordance with these policies, this Act aims to:

(1) establish mechanism whereby the contribution of the senior citizens are maximized;

(2) **adopt measures whereby our senior citizens are assisted and appreciated by the community as a whole**;

(3) **establish a program beneficial to the senior citizens, their families and the rest of the community that they serve**; and

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(4) establish community-based health and rehabilitation programs in every political unit of society. (Bold emphasis supplied)

As the foregoing shows, the 20% senior citizen discount forbids a covered establishment from selling certain goods or rendering services to senior citizens in excess of 80% of the offered price, thereby causing a diminution in the revenue or profits of the covered establishment. The amount corresponding to the discount, instead of being converted to income of the covered establishments, is *retained* by the senior citizen to be used by him in order to promote his well-being, to recognize his important role in society, and to maximize his contribution to nation-building. Although a form of regulation of or limitation on property right is thereby manifest, what the law clearly and primarily intends is to grant benefits and special privileges to senior citizens.

A new question necessarily arises. Can a law, whose chief purpose is to give benefits to a special class of citizens, be justified as a valid exercise of the State's police power?

Police power, insofar as it is being exercised by the State, is depicted as a regulating, prohibiting, and punishing power. It is neither benevolent nor generous. Unlike traditional regulatory legislations, however, the *Expanded Senior Citizens Act* does not intend to prevent any evil or destroy anything obnoxious. Even so, the *Expanded Senior Citizens Act* remains a valid exercise of the State's police power. The ruling in *Binay v. Domingo*,[19] which involves police power as exercised by a local government unit pursuant to the general welfare clause, proves instructive. Therein, the erstwhile Municipality of Makati had passed a resolution granting burial assistance of ₱500.00 to qualified beneficiaries, to be taken out of the unappropriated available existing funds from the Municipal Treasury.[20] The Commission on Audit disallowed on the ground that there was "no perceptible connection or relation between the objective

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[19] G.R. No. 92389, September 11, 1991, 201 SCRA 508.

[20] *Id*. at 511.

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sought to be attained under Resolution No. 60, s. 1988, *supra*, and the alleged public safety, general welfare, *etc*. of the inhabitants of Makati."[21] In upholding the validity of the resolution, the Court ruled:

> Municipal governments exercise this power under the general welfare clause: pursuant thereto they are clothed with authority to 'enact such ordinances and issue such regulations as may be necessary to carry out and discharge the responsibilities conferred upon it by law, and such as shall be necessary and proper to provide for the health, safety, comfort and convenience, maintain peace and order, improve public morals, promote the prosperity and general welfare of the municipality and the inhabitants thereof, and insure the protection of property therein.' (Sections 91, 149, 177 and 208, BP 337). And under Section 7 of BP 337, 'every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary and proper for governance such as to promote health and safety, enhance prosperity, improve morals, and maintain peace and order in the local government unit, and preserve the comfort and convenience of the inhabitants therein.'
>
> **Police power is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and general welfare of the people. It is the most essential, insistent, and illimitable of powers. In a sense it is the greatest and most powerful attribute of the government. It is elastic and must be responsive to various social conditions.** (*Sangalang, et al. vs. IAC,* 176 SCRA 719). On it depends the security of social order, the life and health of the citizen, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property, and it has been said to be the very foundation on which our social system rests. (16 C.J.S., p. 896) **However, it is not confined within narrow circumstances of precedents resting on past conditions; it must follow the legal progress of a democratic way of life.** (*Sangalang, et al. vs. IAC, supra*).
>
> In the case at bar, COA is of the position that there is 'no perceptible connection or relation between the objective sought to be attained under Resolution No. 60, s. 1988, *supra*, and the alleged public

[21] *Id*. at 512.

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safety, general welfare *etc*. of the inhabitants of Makati.' (*Rollo*, Annex "G", p. 51).

Apparently, COA tries to redefine the scope of police power by circumscribing its exercise to 'public safety, general welfare, *etc*. of the inhabitants of Makati.'

In the case of *Sangalang vs. IAC, supra*, We ruled that police power is not capable of an exact definition but has been, purposely, veiled in general terms to underscore its all-comprehensiveness. Its scope, over-expanding to meet the exigencies of the times, even to anticipate the future where it could be done, provides enough room for an efficient and flexible response to conditions and circumstances thus assuring the greatest benefits.

The police power of a municipal corporation is broad, and has been said to be commensurate with, but not to exceed, the duty to provide for the real needs of the people in their health, safety, comfort, and convenience as consistently as may be with private rights. It extends to all the great public needs, and, in a broad sense includes all legislation and almost every function of the municipal government. It covers a wide scope of subjects, and, while it is especially occupied with whatever affects the peace, security, health, morals, and general welfare of the community, it is not limited thereto, but is broadened to deal with conditions which exist so as to bring out of them the greatest welfare of the people by promoting public convenience or general prosperity, and to everything worthwhile for the preservation of comfort of the inhabitants of the corporation (62 C.J.S. Sec. 128). Thus, it is deemed inadvisable to attempt to frame any definition which shall absolutely indicate the limits of police power.

COA's additional objection is based on its contention that 'Resolution No. 60 is still subject to the limitation that the expenditure covered thereby should be for a public purpose, x x x should be for the benefit of the whole, if not the majority, of the inhabitants of the Municipality and not for the benefit of only a few individuals as in the present case.' (*Rollo*, Annex 'G', p. 51).

COA is not attuned to the changing of the times. Public purpose is not unconstitutional merely because it incidentally benefits a limited number of persons. As correctly pointed out by the Office of the Solicitor General, 'the drift is towards social welfare legislation geared towards state policies to provide adequate social services (Section 9, Art. II, Constitution), the promotion of the general

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welfare (Section 5, *ibid*) social justice (Section 10, *ibid*) as well as human dignity and respect for human rights (Section 11, *ibid*).' (Comment, p. 12)

The care for the poor is generally recognized as a public duty. The support for the poor has long been an accepted exercise of police power in the promotion of the common good.[22] (Bold emphasis supplied.)

The *Expanded Senior Citizens Act* is similar to the municipal resolution in *Binay* because both accord benefits to a specific class of citizens, and both on their faces do not primarily intend to burden or regulate any person in giving such benefit. On the one hand, the *Expanded Senior Citizens Act* aims to achieve this by, among others, requiring select establishments to grant senior citizens the 20% discount for their goods or services, while, on the other, the municipal resolution in *Binay* appropriated money from the Municipal Treasury to achieve its goal of giving support to the poor.

If the Court sustained in *Binay* a municipality's exercise of police power to enact benevolent and beneficial resolutions, we have a greater reason to uphold the State's exercise of the same power through the enactment of a law of a similar nature. Indeed, it is but opportune for the Court to now make an unequivocal and definitive pronouncement on this new dimension of the State's police power.

ACCORDINGLY, I vote to **DISMISS** the petition.

CONCURRING AND DISSENTING OPINION

LEONEN, *J.*,

This case involves the constitutionality of Section 4 of Republic Act No. 7432 as amended by Republic Act No. 9257[1] as well

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[22] *Id*. at 514-516.

[1] Republic Act No. 9257 is otherwise known as the Expanded Seniors Citizens Act of 2003. It was amended by Republic Act No. 9994, February 15, 2010

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as the implementing rules and regulations issued by respondents Department of Social Welfare and Development and Department of Finance. The provisions allow the 20% discount given by business establishments to senior citizens only as ***a tax deduction*** from their gross income. The provisions amend an earlier law that allows the senior citizen discount as ***a tax credit*** from their total tax liability.

I concur with the *ponencia* in denying the constitutional challenge.

The enactment of the provision as well as its implementing rules is a proper exercise of the inherent power to tax and police power. However, I regret I cannot join my esteemed colleagues Justice Mariano del Castillo as the *ponencia* and Justice Antonio Carpio in his thoughtful dissent that the power of eminent domain is also involved. It is for these reasons that I offer this separate opinion.

The Petition

Before us is a Petition for Prohibition[2] filed by Manila Memorial Park, Inc. and La Funeraria Paz-Sucat, Inc. against the Secretaries of the Department of Social Welfare and Development and the Department of Finance. Petitioners are domestic corporations engaged in the business of providing funeral and burial services.

On April 23, 1992, Republic Act No. 7432 was passed granting senior citizens privileges. Section 4(a) grants them a 20% discount from certain establishments provided "[t]hat private establishments may claim the cost as tax credit."

On August 23, 1993, Revenue Regulation No. 02-94 was issued to implement Republic Act No. 7432. Section 2(i) on the definition of "tax credit" provides that the discount "shall be deducted by the said establishments from their gross income x x x." Section 4 on bookkeeping requirements for private establishments similarly states that "[t]he amount of 20%

[2] Petition is filed pursuant to Rule 65 of the Rules of Court.

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discount shall be deducted from the gross income for income tax purposes and from gross sales of the business enterprise concerned for purposes of VAT and other percentage taxes."

Commissioner of Internal Revenue v. Central Luzon Drug Corporation[3] later declared these sections of Revenue Regulation No. 02-94 as erroneous for contravening Republic Act No. 7432, which specifically allows establishments to claim a tax credit.

On February 26, 2004, Republic Act No. 9257 was passed amending certain provisions of Republic Act No. 7432. Specifically, Section 4 now provides as follows:

> SECTION 4. Privileges for the Senior Citizens. — The senior citizens shall be entitled to the following:
>
> (a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishments, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;
>
> x x x x x x x x x
>
> The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: Provided, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. Provided, further, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended.

The Secretary of Finance issued Revenue Regulation No. 4-2006 to implement Republic Act No. 9257. The Department of Social Welfare and Development also issued its own Rules and Regulations Implementing Republic Act No. 9257.

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[3] 496 Phil. 307 (2005).

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Petitioners, thus, filed this Petition urging that Section 4 of Republic Act No. 7432 as amended by Republic Act No. 9257, as well as the implementing rules and regulations issued by respondents, be declared unconstitutional insofar as these allow business establishments to claim the 20% discount given as a tax deduction; that respondents be prohibited from enforcing them; and that the tax credit treatment of the 20% discount under the former Section 4(a) of Republic Act No. 7432 be reinstated.[4]

The most salient issue is as follows: whether Section 4 of Republic Act No. 7432 as amended by Republic Act No. 9257, as well as its implementing rules and regulations, insofar as they provide that the 20% discount to senior citizens may be claimed as a tax deduction by private establishments, is invalid and unconstitutional.

The arguments of the parties as summarized in the *ponencia* are as follows:

Petitioners contend that the tax deduction scheme contravenes Article III, Section 9 of the Constitution, which states that: "[p]rivate property shall not be taken for public use without just compensation."[5] Moreover, petitioners cite *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*[6] ruling that the 20% discount privilege constitutes taking of private property for public use which requires the payment of just compensation,[7] and *Carlos Superdrug Corporation v. Department of Social Welfare and Development*[8] acknowledging that the tax deduction scheme does not meet the definition of just compensation.[9]

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[4] *Rollo,* p. 31.

[5] *Id.* at 401-402.

[6] 496 Phil. 307 (2005).

[7] *Rollo,* pp. 402-403.

[8] 553 Phil. 120 (2007).

[9] *Rollo,* pp. 405-409.

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Petitioners also seek a reversal of the ruling in *Carlos Superdrug* that the tax deduction scheme is justified by police power.[10] They assert that "[a]lthough both police power and the power of eminent domain have the general welfare for their object, there are still traditional distinctions between the two"[11] and that "eminent domain cannot be made less supreme than police power."[12] They claim that in amending Republic Act No. 7432, the legislature relied on an erroneous contemporaneous construction that prior payment of taxes is required for tax credit.[13]

Petitioners likewise argue that the tax deduction scheme violates Article XV, Section 4, and Article XIII, Section 11 of the Constitution because it shifts the State's constitutional mandate or duty of improving the welfare of the elderly to the private sector.[14] Under the tax deduction scheme, the private sector shoulders 65% of the discount because only 35% (now 30%) of it is actually returned by the government.[15] Consequently, its implementation affects petitioners' businesses,[16] and there exists an actual case or controversy of transcendental importance.[17]

Respondents, on the other hand, question the filing of the instant Petition directly with this Court in disregard of the hierarchy of courts.[18] They assert that there is no justiciable controversy as petitioners failed to prove that the tax deduction treatment is not a "fair and full equivalent of the loss sustained" by them.[19] On the constitutionality of Republic Act No. 9257

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[10] *Id*. at 410-420.

[11] *Id*. at 411-412.

[12] *Id*. at 413.

[13] *Id*. at 427-436.

[14] *Id*. at 421-427.

[15] *Id*. at 425.

[16] *Id*. at 424.

[17] *Id*. at 394-401.

[18] *Id*. at 363-364.

[19] *Id*. at 359-363.

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and its implementing rules and regulations, respondents argue that petitioners failed to overturn its presumption of constitutionality.[20] They maintain that the tax deduction scheme is a legitimate exercise of the State's police power.[21]

I

Uncertain Burdens and Inchoate Losses

What is in question here is ***not*** the actual imposition of a senior citizen discount; ***rather, it is the treatment of that senior citizen discount for taxation purposes***. From being a tax credit, it is now only a tax deduction. The imposition of the senior citizen discount is an exercise of police power. The determination that it will be a tax deduction, not a tax credit, is an exercise of the power to tax.

The imposition of a discount for senior citizens affects the price. It is thus an inherently regulatory function. However, nothing in the law controls the prices of the goods subject to such discount. Legislation interferes with the autonomy of contractual arrangements in that it imposes a two-tiered pricing system. There will be two prices for every good or service: one is the regular price for everyone except for senior citizens who get a twenty percent (20%) discount.

Businesses' discretion to fix the regular price or improve the costs of the goods or the service that they offer to the public — and therefore determine their profit — is not affected by the law. Of course, rational businesses will take into consideration economic factors such as price elasticity,[22] the market structure, the kind of competition businesses face, the barriers to entry that will make possible the expansion of suppliers should there be a change in the prices and the profits that can be made in that industry. Taxes, which include qualifications such as

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[20] *Id*. at 368-370.

[21] *Id*. at 364-368.

[22] "[Price elasticity] measures how much the quantity demanded of a good changes when its price changes." P. A. SAMUELSON AND W. D. NORDHAUS, *ECONOMICS* 66 (Eighteenth Edition, 2005).

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exemptions, exclusions and deductions, will be part of the cost of doing business for all such businesses.

No price restriction, no certain losses

There is no restriction in the law for businesses to attempt to recover the same amount of profits for the businesses affected by the law.

To put this idea in perspective, let us assume that Company A is in the business of the sale of memorial lots. The demand for memorial lots is not usually influenced by price fluctuations. There will always be a static demand for memorial lots because it is strictly based on a non-negotiable preference of the purchaser.

Let us also assume, for purposes of argument, that Company A acquired the plots of land at zero cost. This means that the price of the plot multiplied by the number of plots sold will always be considered revenue.[23] To simplify, consider this formula:

$$R = P \times Q$$

Where R = Revenue
P = Price per unit
Q = Quantity sold

Given these assumptions, let us presume that in any given year before the promulgation of any law for senior citizen discounting, Company A sells 1,600 square meters of memorial plots at the price of ₱100.00 per square meter. Considering the formula, the total profit of Company A will be:

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[23] Revenue in the economic sense is not usually subject to such simplistic treatment. Costs must be taken into consideration. In economics, to evaluate the combination of factors to be used by a profit-maximizing firm, an analysis of the marginal product of inputs is compared to the marginal revenue. Economists usually compare if an additional unit of labor will contribute to additional productivity. For a more comprehensive explanation, refer to P. A. SAMUELSON AND W. D. NORDHAUS, *ECONOMICS* 225-239 (Eighteenth Edition, 2005).

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$$R_0 = P \times Q$$
$$R_0 = ₱100.00 \times 1{,}600 \text{ sq. m.}$$
$$R_0 = \textbf{₱160,000.00}$$

Let us assume further that out of the 1,600 square meters sold, only 320 square meters are bought by senior citizens, and 1,280 square meters are bought by ordinary citizens.

When Congress enacted Republic Act No. 7432, Company A was forced to give a 20% discount to senior citizens. There will be a price discrimination scheme wherein senior citizens can avail a square meter of a memorial plot for only ₱80.00 per square meter. The total revenue received by Company A will now constitute revenue derived from plots sold to senior citizens added to the revenue derived from plots sold to ordinary citizens. Hence, the formula becomes:

$$R_T = R_S + R_C$$
$$R_S = P_S \times Q_S$$
$$R_C = P_C \times Q_C$$
$$\mathbf{R_T = (P_S \times Q_S) + (P_C \times Q_C)}$$

Where R_T =Total Revenue
R_S =Revenue from Senior Citizens
R_C =Revenue from Ordinary Citizens
P_S =Price for Senior Citizens per Unit
Q_S =Quantity Sold to Senior Citizens
P_C =Price for Ordinary Citizens per Unit
Q_C =Quantity Sold to Ordinary Citizens

In our example, this means that the total revenue of Company A becomes:

$$R_{T1} = (P_S \times Q_S) + (P_C \times Q_C)$$
$$R_{T1} = (₱80.00 \times 320 \text{ sq. m.}) + (₱100.00 \times 1{,}280 \text{ sq. m.})$$
$$R_{T1} = ₱25{,}600.00 + ₱128{,}000.00$$
$$R_{T1} = \textbf{₱153,600.00}$$

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Obviously, the Total Revenue after the discount was applied is lower than the Revenue derived by Company A before the discount was imposed.

The natural consequence of Company A, in order to maintain its profitability, is to increase the price per square meter of a memorial lot. Assume that the price increase was ₱10.00. This makes the price for ordinary citizens go up to ₱110.00 per square meter. Meanwhile, the discounted price for senior citizens becomes ₱88.00 per square meter. The effects of that with respect to total revenue of Company A become:

$$R_{T2} = (P_S \times Q_S) + (P_C \times Q_C)$$
$$R_{T2} = (₱88.00 \times 320 \text{ sq. m.}) + (₱110.00 \times 1{,}280 \text{ sq. m.})$$
$$R_{T2} = ₱28{,}160.00 + ₱140{,}800.00$$
$$R_{T2} = \mathbf{₱168{,}960.00}$$

After Company A increases its prices, despite the application of the mandated discount rates, Company A becomes more profitable than it was before the implementation of Republic Act No. 7432.

Again, nothing in the law prohibits Company A from increasing its prices for regular customers.[24]

The tax implications of Republic Act No. 7432 *vis-à-vis* the tax implications of the amendment introduced in Republic Act No. 9257 are also augmented by controlling the price. If we compute for the tax liability and the net income of Company A after the implementation of Republic Act No. 7432 and after treating the discount given to senior citizens becomes tax credit for Company A, we will get:

Gross Income (R_{T1})	₱ 153,600
Less: Deductions	(₱60,000)
Taxable Income	₱ 93,600

[24] To determine the price for both ordinary customers and senior citizens that will retain the same level of profitability, the formula for the price for ordinary customers is $\boldsymbol{P_C = R_0 / (0.8Q_S + Q_C)}$ where R_0 is the total revenue before the senior citizen discount was given.

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Income Tax Rate	30%
Income Tax Liability	₱ 28,080
Less: Senior Citizen Discount ***Tax Credit***	(₱ 6,400)
Final Income Tax Liability	**₱ 21,680**
Net Income	**₱ 131,920**

Given the changes made in Republic Act No. 9257, senior citizen discount is considered a deduction. Hence:

Gross Income (R_{T1})	₱ 153,600
Less: Deductions	(₱60,000)
Less: Senior Citizen Discount	(₱6,400)
Taxable Income	₱ 87,200
Income Tax Rate	30%
Income Tax Liability	₱ 26,160
Less: Tax Credit	₱ 0
Final Income Tax Liability	**₱26,160**
Net Income	**₱127,440**

Keeping the number of units sold to senior citizens and ordinary citizens constant, Republic Act No. 9257 will mean a smaller net income for Company A. However, if Company A uses pricing to respond to Republic Act No. 9257, as discussed in the earlier example where Company A increased its prices from ₱100.00 to ₱110.00, the net income becomes:

Gross Income (R_{T2})	₱ 168,960
Less: Deductions	(₱ 60,000)
Less: Senior Citizen Discount	(₱ 7,040)
Taxable Income	₱ 101,920
Income Tax Rate	30%
Income Tax Liability	₱ 30,576
Less: Tax Credit	₱ 0
Final Income Tax Liability	**₱ 30,576**
Net Income	**₱ 138,384**

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It becomes apparent that despite converting the discount from tax credit to an income deduction, Company A could improve its net income than in the situation where the senior citizen discount was treated as a tax credit if it imposes a price increase. Note that the price increase we provided in this example was even less than the discount given to senior citizens.

The decision to increase price as well as its magnitude depends upon a number of non-legal factors. Businesses, for instance, will consider whether they are in a situation of near monopoly or a competitive market. They will want to know whether the change in their prices would encourage customers to shift their preferences to cremating their loved ones instead of burying them.[25] They might also want to determine if the subsequent increase in relative profits will encourage the setting up of more competition into their market.

Losses, therefore, are not guaranteed by the change in legislation challenged in this Petition. Put simply, losses are not inevitable. On this basis alone, the constitutional challenge should fail. The case is premised on the inevitable loss to be suffered by the petitioners. There is no factual basis for that kind of certainty. We do not decide constitutional issues on the basis of inchoate losses and uncertain burdens.

Furthermore, income and profits are not vested rights. They are the results of good or bad business judgments occasioned by the proper response to their economic environment. Profits and the maintenance of a steady stream of income should be the reward of business acumen of entrepreneurship. Courts read law and in doing so provide the givens in a business environment. We should not allow ourselves to become the tools for good business results for some businesses.

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[25] This sensitivity is referred to as price elasticity. "The precise definition of price elasticity is the percentage change in quantity demanded divided by the percentage change in price." P. A. SAMUELSON AND W. D. NORDHAUS, *ECONOMICS* 66 (Eighteenth Edition, 2005).

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Profits can improve with efficiency

Apart from increasing the price of goods and services, efficiency in the business can also maintain or even increase profits. A more restrictive business environment should occasion a review of the cost structure of the economic agent.[26] We cannot simply assume that businesses, including the businesses of petitioners, are at their optimum level of efficiency. The change in the tax treatment of senior citizen's discount, therefore, in some cases, can be better for the economy although it may, without any certainty, occasion some pain on some businesses. Our view should be more all-encompassing.

Besides, compensating for the alleged losses of the petitioners assumes that we accept their current pricing as correct. That is, it is the price that covers their costs and provides them with profits that a competitive market can bear. We cannot have the situation where establishments can just set any price and come to court to recover whatever profit they were enjoying prior to a regulatory measure.

II

Power to Tax

The power to tax is "a principal attribute of sovereignty."[27] Such inherent power of the State anchors on its "social contract with its citizens [which] obliges it to promote public interest and common good."[28]

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[26] Another algebraic formula will show us how costs should be minimized to retain the same level of profitability. The formula is $C_1 = C_0 - [(20\% \times P_C) \times Q_S]$ where:

C_1 = Cost of producing all quantities after the discount policy

C_0 = Cost of producing all quantities before the discount policy

P_C = Price per unit for Ordinary Citizens

Q_S = Quantity sold to Senior Citizens

[27] *National Power Corporation v. City of Cabanatuan*, 449 Phil. 233, 247 (2003) *citing Hong Kong & Shanghai Banking Corp. v. Rafferty*, 39 Phil. 145 (1918); *Wee Poco & Co. v. Posadas*, 64 Phil. 640 (1937); *Reyes v. Almanzor*, 273 Phil. 558, 564 (1991).

[28] *National Power Corporation v. City of Cabanatuan*, *supra* at 248.

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The scope of the legislative power to tax necessarily includes not only the power to determine the rate of tax but the method of its collection as well.[29] We have held that Congress has the power to "define what tax shall be imposed, why it should be imposed, how much tax shall be imposed, against whom (or what) it shall be imposed and *where it shall be imposed.*"[30] In fact, the State has the power "to make reasonable and natural classifications for the purposes of taxation x x x [w]hether it relates to the subject of taxation, the kind of property, the rates to be levied, or the amounts to be raised, the *methods of assessment, valuation and collection*, the State's power is entitled to presumption of validity x x x."[31] This means that the power to tax also allows Congress to determine matters as whether tax rates will be applied to gross income or net income and whether costs such as discounts may be allowed as a deduction from gross income or a tax credit from net income after tax.

While the power to tax has been considered the strongest of all of government's powers[32] with taxes as the "lifeblood of the government," this power has its limits. In a number of cases,[33]

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[29] For instance, Republic Act No. 9337 introducing further reforms to the Value Added Tax (VAT) system was upheld as constitutional. Sections 106, 107, and 108 of the Tax Code were amended to impose a Value Added Tax rate of 10% to be increased to 12% upon satisfaction of enumerated conditions. Relevant portions of Sections 110 and 114 of the Tax Code were also amended, providing for limitations on a taxpayer's claim for input tax. *See Abakada Guro Party List v. Executive Secretary*, 506 Phil. 1 (2005).

[30] *Chamber of Real Estate and Builders' Associations, Inc. v. Executive Secretary Romulo,* G.R. No. 160756, March 9, 2010, 614 SCRA 605, 626. (Emphasis supplied)

[31] *Abakada Guro Party List v. Executive Secretary Ermita, supra* at 129. (Emphasis supplied)

[32] *Reyes v. Almanzor,* 273 Phil. 558, 564 (1991).

[33] *See for instance Lascona Land Co. v. Commissioner of Internal Revenue,* G.R. No. 171251, March 5, 2012, 667 SCRA 455; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633, 647-648.

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we have referred to our discussion in the 1988 case of *Commissioner of Internal Revenue v. Algue,*[34] as follows:

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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> x x x x x x x x x
>
> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government, for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
>
> *But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.* If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.[35] (Emphasis supplied)

The Constitution provides for limitations on the power of taxation. First, "[t]he rule of taxation shall be uniform and equitable."[36]

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[34] 241 Phil. 829 (1988).

[35] *Id*. at 830-836.

[36] CONSTITUTION, Art. VI, Sec. 28 (1).

Sec. 28 (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

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This requirement for uniformity and equality means that "all taxable articles or kinds of property of the same class [shall] be taxed at the same rate."[37] The tax deduction scheme for the 20% discount applies equally and uniformly to all the private establishments covered by the law. Thus, it complies with this limitation.

Second, taxes must neither be confiscatory nor arbitrary as to amount to a "[deprivation] of property without due process of law."[38] In *Chamber of Real Estate and Builders' Associations, Inc. v. Executive Secretary Romulo*,[39] petitioners questioned the constitutionality of the Minimum Corporate Income Tax (MCIT) alleging among others that "pegging the tax base of the MCIT to a corporation's gross income is tantamount to a confiscation of capital because gross income, unlike net income, is not 'realized gain.'"[40] In dismissing the Petition, this Court discussed the due process limitation on the power to tax:

> As a general rule, the power to tax is plenary and unlimited in its range, acknowledging in its very nature no limits, so that the principal check against its abuse is to be found only in the responsibility of the legislature (which imposes the tax) to its constituency who are to pay it. Nevertheless, it is circumscribed by constitutional limitations. At the same time, like any other statute, tax legislation carries a presumption of constitutionality.
>
> The constitutional safeguard of due process is embodied in the fiat "[no] person shall be deprived of life, liberty or property without due process of law." In *Sison, Jr. v. Ancheta, et al.*, we held that the due process clause may properly be invoked to invalidate, in appropriate cases, a revenue measure when it amounts to a confiscation of property. But in the same case, we also explained that we will

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[37] *Tolentino v. Secretary of Finance*, 319 Phil. 755, 795 (1995).

[38] CONSTITUTION, Art. III, Sec. 1.

> Sec. 1 No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[39] G.R. No. 160756, March 9, 2010, 614 SCRA 605.

[40] *Id*. at 625.

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not strike down a revenue measure as unconstitutional (for being violative of the due process clause) on the mere allegation of arbitrariness by the taxpayer. There must be a factual foundation to such an unconstitutional taint. This merely adheres to the authoritative doctrine that, where the due process clause is invoked, considering that it is not a fixed rule but rather a broad standard, there is a need for proof of such persuasive character. (Citations omitted)[41]

In the present case, there is no showing that the tax deduction scheme is confiscatory. The portion of the 20% discount petitioners are made to bear under the tax deduction scheme will not result in a complete loss of business for private establishments. As illustrated earlier, these establishments are free to adjust factors as prices and costs to recoup the 20% discount given to senior citizens. Neither is the scheme arbitrary. Rules and Regulations have been issued by agencies as respondent Department of Finance to serve as guidelines for the implementation of the 20% discount and its tax deduction scheme.

In fact, this Court has consistently upheld the doctrine that "taxing power may be used as an implement of police power"[42] in order to promote the general welfare of the people.

III
Eminent Domain

Even assuming that the losses and the burdens can be determined and are specific, these are not enough to show that eminent domain is involved. It is not enough to conclude that there is a violation of Article III, Section 9 of the Constitution. This provision mandates that "[p]rivate property shall not be taken for public use without just compensation."

Petitioners claim that there is taking by the government of that portion of the 20% discount they are required to give senior

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[41] *Id*. at 626-627.

[42] *Gerochi v. Department of Energy*, 554 Phil. 563, 582 (2007) *citing Osmeña v. Orbos*, G.R. No. 99886, March 31, 1993, 220 SCRA 703, 710-711; *Gaston v. Republic Planters Bank*, 242 Phil. 377 (1988); *Tio v. Videogram Regulatory Board*, 235 Phil. 198 (1987); and *Lutz v. Araneta*, 98 Phil. 148 (1955).

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citizens under Republic Act No. 9257 but are not allowed to deduct from their tax liability in full as a tax credit. They argue that they are inevitably made to bear a portion of the loss from the 20% discount required by law. In their view, these speculative losses are to be provided with just compensation.

Thus, they seek to declare as unconstitutional Section 4 of Republic Act No. 7432 as amended by Republic Act No. 9257, as well as the implementing rules and regulations issued by respondents Department of Social Welfare and Development and Department of Finance, for only allowing the 20% discount as a tax deduction from gross income, and not as a tax credit from total tax liability.

Petitioners cannot be faulted for this view. *Carlos Superdrug Corporation v. Department of Social Welfare and Development,*[43] cited in the *ponencia*, hinted:

> The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private property for public use or benefit. This constitutes compensable taking for which petitioners would ordinarily become entitled to a just compensation.
>
> Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain but the owner's loss. The word just is used to intensify the meaning of the word compensation, and to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.
>
> A tax deduction does not offer full reimbursement of the senior citizen discount. As such, it would not meet the definition of just compensation.
>
> Having said that, this raises the question of whether the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program.
>
> The Court believes so.[44]

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[43] *Supra* note 8.

[44] *Id*. at 129-130. (Citations omitted)

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The *ponencia* is, however, open to the possibility that eminent domain will apply. While the main opinion held that the 20% senior citizen discount is a valid exercise of police power, it explained that this is due to the absence of any clear showing that the discount is unreasonable, oppressive or confiscatory as to amount to a taking under eminent domain requiring the payment of just compensation.[45] *Alalayan v. National Power Corporation*[46] and *Carlos Superdrug Corp. v. Department of Social Welfare and Development*[47] were cited as examples when there was failure to prove that the limited rate of return for franchise holders, or the required 20% senior citizens discount, "were arbitrary, oppressive or confiscatory."[48] It found that petitioners similarly did not establish the factual bases of their claims and relied on hypothetical computations.[49]

The *ponencia* refers to *City of Manila v. Hon. Laguio, Jr.*[50] citing the U.S. case of *Pennsylvania Coal v. Mahon* in that we must determine on a case to case basis as to when the regulation of property becomes a taking under eminent domain.[51] It cites

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[45] *Ponencia,* p. 21.

[46] 133 Phil. 279 (1968).

[47] *Supra* note 8.

[48] *Ponencia,* p. 22.

[49] *Id*. at 22.

[50] 495 Phil. 289 (2005).

[51] *Id*. at 320-321 *citing Pennsylvania Coal v. Mahon*, 260 U.S. 393, 415 (1922) and *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978).

No formula or rule can be devised to answer the questions of what is too far and when regulation becomes a taking. In *Mahon,* Justice Holmes recognized that it was "a question of degree and therefore cannot be disposed of by general propositions." On many other occasions as well, the U.S. Supreme Court has said that the issue of when regulation constitutes a taking is a matter of considering the facts in each case. The Court asks whether justice and fairness require that the economic loss caused by public action must be compensated by the government and thus borne by the public as a whole, or whether the loss should remain concentrated on those few persons subject to the public action.

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the U.S. case of *Munn v. Illinois*[52] in that the State can employ police power measures to regulate pricing pursuant to the common good "provided that the regulation does not go too far as to amount to 'taking'."[53] This concept of regulatory taking, as opposed to ordinary taking, is amorphous and has not been applied in our jurisdiction. What we have is indirect expropriation amounting to compensable taking.

In *National Power Corporation v. Sps. Gutierrez*,[54] for example, we held that "the easement of right-of-way [due to electric transmission lines constructed over the property] is definitely a taking under the power of eminent domain. x x x the limitation imposed by NPC against the use of the land for an indefinite period deprives private respondents of its ordinary use."[55]

The *ponencia* also compares the tax deduction scheme for the 20% discount with price controls or rate of return on investment control laws which are valid exercises of police power. While it acknowledges that there are differences between these laws and the subject tax deduction scheme,[56] it held that "the 20% discount may be properly viewed as belonging to the category of price regulatory measures which affects the profitability of establishments subjected thereto."[57]

I disagree.

The eminent domain clause will still not apply even if we assume, without conceding, that the 20% discount or a portion of it is lost profits for petitioners. Profits are intangible personal property[58]

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[52] 94 U.S. 113 (1877).

[53] *Ponencia,* p. 20.

[54] 271 Phil. 1 (1991).

[55] *Id*. at 7. *See also Republic of the Phil. v. PLDT*, 136 Phil. 20 (1969).

[56] *Ponencia,* p. 20.

[57] *Id*. at 20.

[58] *See* CIVIL CODE, Article 416. This provides for the definition of personal property.

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for which petitioners merely have an inchoate right. These are types of property which cannot be "taken."

Nature of Profits: Inchoate and Intangible Property

Eminent domain has been defined as "an inherent power of the State that enables it to forcibly acquire private lands intended for public use upon payment of just compensation to the owner."[59] Most if not all jurisprudence on eminent domain involves real property, specifically that of land. Although Rule 67 of the Rules of Court, the rules governing expropriation proceedings, requires the complaint to "describe the real *or personal property* sought to be expropriated,"[60] this refers to tangible personal property for which the court will deliberate as to its value for purposes of just compensation.[61]

In a sense, the forced nature of a sale under eminent domain is more justified for real property such as land. The common situation is that the government needs a specific plot, for the construction of a public highway for example, and the private owner cannot move his land to avoid being part of the project. On the other hand, most tangible personal or movable property need not be subject of a forced sale when the government can procure these items in a public bidding with several able and willing private sellers.

In *Republic of the Philippines v. Vda. de Castelvi*,[62] this Court also laid down five (5) "circumstances [that] must be present in the 'taking' of property for purposes of eminent domain"[63] as follows:

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[59] *Association of Small Land Owners in the Phil., Inc. v. Hon. Secretary of Agrarian Reform*, 256 Phil. 777, 809 (1989).

[60] RULES OF COURT, Rule 67, Sec. 1.

[61] *See National Power Corporation v. Tuazon*, G.R. No. 193023, June 29, 2011, 653 SCRA 84, 95 where this Court held that "[t]he determination of just compensation in expropriation cases is a function addressed to the discretion of the courts x x x."

[62] 157 Phil. 329 (1974).

[63] *Id*. at 345.

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First, the expropriator must enter a private property. x x x.

Second, the entrance into private property must be for more than a momentary period. x x x.

Third, the entry into the property should be under warrant or color of legal authority. x x x.

Fourth, the property must be devoted to a public use or otherwise informally appropriated or injuriously affected. x x x.

Fifth, the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property. x x x.[64]

The requirement for "entry" or the element of "oust[ing] the owner" is not possible for intangible personal property such as profits.

Profits are not only intangible personal property. They are also inchoate rights. An inchoate right means that the right "has not fully developed, matured, or vested."[65] It may or may not ripen. The existence of profits, more so its specific amount, is uncertain. Business decisions are made every day dealing with factors such as price, quantity, and cost in order to manage potential outcomes of profit or loss at any given point. Profits are thus considered as "future economic benefits" which, at best, entitles petitioners only to an inchoate right.[66]

This is not the private property referred in the Constitution that can be taken and would require the payment of just compensation.[67] Just compensation has been defined "to be the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation."[68]

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[64] *Id*. at 345-346.

[65] *BLACK'S LAW DICTIONARY* 777 (Eighth Ed., 2004).

[66] *See Ermita v. Aldecoa-Delorino,* G.R. No. 177130, June 7, 2011, 651 SCRA 128,143.

[67] CONSTITUTION, Art. III, Sec. 9.

[68] *National Power Corporation v. Gutierrez,* 271 Phil. 1, 7 (1991) *citing Province of Tayabas v. Perez,* 66 Phil. 467 (1938); *Assoc. of Small Land*

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Petitioners' position in seeking just compensation for the 20% discount assumes that the discount always translates to lost profits. This is not always the case. There may be taxable periods when they will be reporting a loss in their ending balance as a result of other factors such as high costs of goods sold. Moreover, not all their sales are made to senior citizens.

At most, profits can materialize in the form of cash, but even then, this is not the private property contemplated by the Constitution and whose value will be deliberated by courts for purposes of just compensation. We cannot compensate cash for cash.

Justice Carpio submits in his dissent that the Constitution speaks of private property without distinction, thus, the issue of profit or loss to private establishments like petitioners is immaterial. The 20% discount belongs to them whether they make a profit or suffer a loss.[69]

When the 20% discount is given to customers who are senior citizens, there is a *perceived* loss for the establishment for that same amount at that precise moment. However, this moment is fleeting and the perceived loss can easily be recouped by sales to ordinary citizens at higher prices. The concern that more consumers will suffer as a result of a price increase[70] is a matter better addressed to the wisdom of the Congress. As it stands, Republic Act No. 9257 does not establish a price control. For non-profit establishments, they may cut down on costs and make other business decisions to optimize performance. Business decisions like these have been made even before the 20% discount became law, and will continue to be made to adapt to the ever changing market. We cannot consider this fluid concept of possible loss and potential profit as private property belonging to private establishments. They are inchoate. They may or may not exist depending on many factors, some of which are within the control

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[69] *Dissenting Opinion of Justice Carpio,* p. 9.

Owners of the Phils., Inc. v. Hon. Secretary of Agrarian Reform, Acuna v. Arroyo, Pabrico v. Juico, Manaay v. Juico, 256 Phil. 777 (1989).

[70] *Id*. at 14.

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of the private establishments. There is nothing concrete, earmarked, actual or specific for taking in this scenario. Necessarily, there is nothing to compensate.

Our determination of profits as a form of personal property that can be taken in a constitutional sense as a result of valid regulation would invite untold consequences on our legal system. Loss of profits will be difficult to prove and will tax the imagination and speculative abilities of judges and justices. Every piece of legislation in the future would cause the filing of cases that will ask us to determine the loss or damage caused to an ongoing business. This certainly is not the intent of the eminent domain provisions in our bill of rights. This is not the sort of protection to property imagined by our constitutional order.

Final Note

Article XIII was introduced in the 1987 Constitution to specifically address Social Justice and Human Rights. For this purpose, the state may regulate the acquisition, ownership, use, and disposition of property and its increments, *viz*:

> Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.
>
> To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.[71]

Thus, in the exercise of its police power and in promoting senior citizens' welfare, the government "can impose upon private establishments [like petitioners] the burden of partly subsidizing a government program."[72]

Accordingly, I vote to DENY the Petition and hold that the challenge to the constitutionality of Section 4 of Republic Act

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[71] *CONSTITUTION*, Art. XIII, Sec. 1.

[72] *Carlos Superdrug Corp. v. Department of Social Welfare and Development, supra* note 8, at 130.

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No. 7432 as amended by Republic Act No. 9257, as well as the implementing rules and regulations issued by respondents Department of Social Welfare and Development and Department of Finance, should fail.

DISSENTING OPINION

CARPIO, *J.*:

The main issue in this case is the constitutionality of Section 4 of Republic Act No. 7432[1] (R.A. 7432), as amended by Republic Act No. 9257[2] (R.A. 9257), which states that establishments may claim the 20% mandatory discount to senior citizens as tax deduction, and thus no longer as tax credit. Manila Memorial Park, Inc. and La Funeraria Paz-Sucat, Inc. (petitioners) allege that the tax deduction scheme under R.A. 9257 violates Section 9, Article III of the Constitution which provides that "[p]rivate property shall not be taken for public use without just compensation."

Section 4 of R.A. 7432, as amended by R.A. 9257, provides:

SEC. 4. *Privileges for the Senior Citizens.* – The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishment, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

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[1] An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and For Other Purposes.

[2] An Act Granting Additional Benefits and Privileges to Senior Citizens Amending for the Purpose Republic Act No. 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." It was further amended by R.A. No. 9994, or the "Expanded Senior Citizens Act of 2010.

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The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: **Provided, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted.** Provided, further, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended. (Emphasis supplied)

The constitutionality of Section 4(a) of R.A. 7432, as amended by R.A. 9257, had been passed upon by the Court in *Carlos Superdrug Corporation v. Department of Social Welfare and Development.*[3]

In *Carlos Superdrug Corporation,* the Court made a distinction between the tax credit scheme under Section 4 of R.A. 7432 (the old Senior Citizens Act) and the tax deduction scheme under R.A. 9257 (the Expanded Senior Citizens Act). Under the tax credit scheme, the establishments are paid back 100% of the discount they give to senior citizens. Under the tax deduction scheme, they are only paid back about 32% of the 20% discount granted to senior citizens.

The Court cited in *Carlos Superdrug Corporation* the clarification by the Department of Finance, through Director IV Ma. Lourdes B. Recente, which explained the difference between tax credit and tax deduction, as follows:

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

1.1. The provision of Section 4 of R.A. No. 7432 (the old Senior Citizens Act) grants twenty percent (20%) discount from all establishments relative to the utilization of transportation services, hotels and similar lodging establishment, restaurants and recreation

[3] 553 Phil. 120 (2007).

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centers and purchase of medicines anywhere in the country, the costs of which may be claimed by the private establishments concerned as **tax credit**.

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

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

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

Under this scheme, the establishment concerned is allowed to deduct from gross income, in computing for its tax liability, the amount of discounts granted to senior citizens. Effectively, the government loses in terms of foregone revenues an amount equivalent to the marginal tax rate the said establishment is liable to pay the government. This will be an amount equivalent to 32% of the twenty percent (20%) discounts so granted. The establishment shoulders the remaining portion of the granted discounts.[4] (Emphasis in the original)

Thus, under the tax deduction scheme, there is no full compensation for the 20% discount that private establishments are forced to give to senior citizens.

The justification for the validity of the tax deduction, which the majority opinion adopts, was explained by the Court in *Carlos Superdrug Corporation* as a lawful exercise of police power. The Court ruled:

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[4] *Id.* at 125-126.

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The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as "the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs." It is "[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same."

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.

Given these, it is incorrect for petitioners to insist that the grant of the senior citizen discount is unduly oppressive to their business, because petitioners have not taken time to calculate correctly and come up with a financial report, so that they have not been able to show properly whether or not the tax deduction scheme really works greatly to their disadvantage.[5]

In the case before us, the majority opinion declares that it finds no reason to overturn or modify the ruling in *Carlos Superdrug Corporation*. The majority opinion also declares that the Court's earlier decision in *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*[6] (*Central Luzon Drug*

[5] *Id*. at 132-133. Citations omitted.

[6] 496 Phil. 307 (2005).

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Corporation) holding that "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"[7] and that the permanent reduction in the total revenues of private establishments is "a forced subsidy corresponding to the taking of private property for *public use or benefit*"[8] is an *obiter dictum* and is not a binding precedent. The majority opinion reasons that the Court in *Central Luzon Drug Corporation* was not confronted with the issue of whether the 20% discount was an exercise of police power or eminent domain.

The sole issue, according to the Court's decision in *Central Luzon Drug Corporation*, was whether a private establishment may claim the cost of the 20% discount granted to senior citizens as a tax credit even though an establishment operates at a loss. However, a reading of the decision shows that petitioner raised the issue of "**[w]hether the Court of Appeals erred in holding that respondent may claim the 20% sales discount as a tax credit instead of as a tax deduction from gross income or gross sales**."[9] In that case, the BIR erroneously treated the 20% discount as a tax deduction under Sections 2.i and 4 of Revenue Regulations No. 2-94 (RR 2-94), despite the provision of the law mandating that it should be treated as a tax credit. The erroneous treatment by the BIR under RR 2-94 necessitated the discussion explaining why the tax credit benefit given to private establishments should be deemed just compensation. The Court explained in *Central Luzon Drug Corporation*:

> *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**.

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[7] *Id.* at 335.

[8] *Id*.

[9] *Id.* at 318.

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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 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.

To put it differently, a private establishment that merely breaks even— without the discounts yet — will surely start to incur losses because of such discounts. The same effect is expected if its mark-

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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 credits* denied those that are losing, because no taxes are due from the latter.[10] (Emphasis supplied)

The foregoing discussion formed part of the explanation of this Court in *Central Luzon Drug Corporation* why Sections 2.i and 4 of RR 2-94 were erroneously issued. The foregoing discussion was certainly **not** unnecessary or immaterial in the resolution of the case;[11] hence, the discussion is definitely **not** *obiter dictum*.

As regards *Carlos Superdrug Corporation*, a second look at the case shows that it barely distinguished between police power and eminent domain. While it is true that police power is similar to the power of eminent domain because both have the general welfare of the people for their object, we need to clarify the concept of taking in eminent domain as against taking in police power to prevent any claim of police power when the power actually exercised is eminent domain. When police power is exercised, there is no just compensation to the citizen who loses his private property. When eminent domain is exercised, there must be just compensation. Thus, the Court must clarify taking in police power and taking in eminent domain. Government officials cannot just invoke police power when the act constitutes eminent domain.

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[10] *Id.* at 335-337. Citations omitted.

[11] In *Sta. Lucia Realty and Development, Inc. v. Cabrigas*, 411 Phil. 369, 382-383 (2001), the Court defined *obiter dictum* as "words of a prior opinion entirely unnecessary for the decision of the case" ("*Black's Law Dictionary*," p. 1222, citing the case of "*Noel v. Olds*," 78 U.S. App. D.C. 155) or an incidental and collateral opinion uttered by a judge and therefore not material to his decision or judgment and not binding ("*Webster's Third New International Dictionary*," p. 1555).

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In the early case of *People v. Pomar,*[12] the Court acknowledged that "[b]y reason of the constant growth of public opinion in a developing civilization, the term 'police power' has never been, and we do not believe can be, clearly and definitely defined and circumscribed."[13] The Court stated that the "definition of the police power of the state must depend upon the particular law and the particular facts to which it is to be applied."[14] **However, it was considered even then that police power, when applied to taking of property without compensation, refers to property that are destroyed or placed outside the commerce of man.** The Court declared in *Pomar*:

> **It is believed and confidently asserted that no case can be found, in civilized society and well-organized governments, where individuals have been deprived of their property, under the police power of the state, without compensation, *except* in cases where the property in question was used for the purpose of violating some law legally adopted, or constitutes a nuisance.** Among such cases may be mentioned: Apparatus used in counterfeiting the money of the state; firearms illegally possessed; opium possessed in violation of law; apparatus used for gambling in violation of law; buildings and property used for the purpose of violating laws prohibiting the manufacture and sale of intoxicating liquors; and all cases in which the property itself has become a nuisance and dangerous and detrimental to the public health, morals and general welfare of the state. In all of such cases, and in many more which might be cited, the destruction of the property is permitted in the exercise of the police power of the state. But it must first be established that such property was used as the instrument for the violation of a valid existing law. (*Mugler vs. Kansan,* 123 U.S. 623; Slaughter-House Cases, 16 Wall. [U.S.] 36; *Butchers' Union, etc., Co. vs. Crescent City, etc.,* Co., 111 U.S. 746; John Stuart Mill — "On Liberty," 28, 29)

Without further attempting to define what are the peculiar subjects or limits of the police power, it may safely be affirmed, that every

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[12] 46 Phil. 440 (1924).

[13] *Id.* at 445.

[14] *Id*.

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law for the restraint and punishment of crimes, for the preservation of the public peace, health, and morals, must come within this category. But the state, when providing by legislation for the protection of the public health, the public morals, or the public safety, is subject to and is controlled by the paramount authority of the constitution of the state, and will not be permitted to violate rights secured or guaranteed by that instrument or interfere with the execution of the powers and rights guaranteed to the people under their law – the constitution. (*Mugler vs. Kansan,* 123 U.S. 623)[15] (Emphasis supplied)

In *City Government of Quezon City v. Hon. Judge Ericta*,[16] the Court quoted with approval the trial court's decision declaring null and void Section 9 of Ordinance No. 6118, S-64, of the Quezon City Council, thus:

We start the discussion with a restatement of certain basic principles. Occupying the forefront in the bill of rights is the provision which states that 'no person shall be deprived of life, liberty or property without due process of law. (Art. III, Section 1 subparagraph 1, Constitution)

On the other hand, there are three inherent powers of government by which the state interferes with the property rights, namely — (1) police power, (2) eminent domain, [and] (3) taxation. These are said to exist independently of the Constitution as necessary attributes of sovereignty.

Police power is defined by Freund as 'the power of promoting the public welfare by restraining and regulating the use of liberty and property' (Quoted in Political Law by Tañada and Carreon, V-11, p. 50). It is usually exerted in order to merely regulate the use and enjoyment of property of the owner. *If he is deprived of his property outright, it is not taken for public use but rather to destroy in order to promote the general welfare.* In police power, the owner does not recover from the government for injury sustained in consequence thereof (12 C.J. 623). It has been said that police power is the most essential of government powers, at times the most insistent, and always one of the least limitable of the powers of government (*Ruby vs. Provincial Board,* 39 Phil. 660;

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[15] *Id.* at 454-455.

[16] 207 Phil. 648 (1983).

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Ichong vs. Hernandez, L-7995, May 31, 1957). This power embraces the whole system of public regulation (*U.S. vs. Linsuya Fan*, 10 Phil. 104). The Supreme Court has said that police power is so far-reaching in scope that it has almost become impossible to limit its sweep. As it derives its existence from the very existence of the state itself, it does not need to be expressed or defined in its scope. Being coextensive with self-preservation and survival itself, it is the most positive and active of all governmental processes, the most essential insistent and illimitable. Especially it is so under the modern democratic framework where the demands of society and nations have multiplied to almost unimaginable proportions. The field and scope of police power have become almost boundless, just as the fields of public interest and public welfare have become almost all embracing and have transcended human foresight. Since the Court cannot foresee the needs and demands of public interest and welfare, they cannot delimit beforehand the extent or scope of the police power by which and through which the state seeks to attain or achieve public interest and welfare. (*Ichong vs. Hernandez,* 7995, May 31, 1957).

The police power being the most active power of the government and the due process clause being the broadest limitation on governmental power, the conflict between this power of government and the due process clause of the Constitution is oftentimes inevitable.

It will be seen from the foregoing authorities that police power is usually exercised in the form of mere regulation or restriction in the use of liberty or property for the promotion of the general welfare. It does not involve the taking or confiscation of property with the exception of a few cases where there is a necessity to confiscate private property in order to destroy it for the purpose of protecting the peace and order and of promoting the general welfare as for instance, the confiscation of an illegally possessed article, such as opium and firearms.[17] (Boldfacing and italicization supplied)

Clearly, taking under the exercise of police power does not require any compensation because the property taken is either destroyed or placed outside the commerce of man.

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[17] *Id.* at 654-655.

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On the other hand, the power of eminent domain has been described as —

> x x x 'the highest and most exact idea of property remaining in the government' that may be acquired for some public purpose through a method in the nature of a forced purchase by the State. It is a right to take or reassert dominion over property within the state for public use or to meet public exigency. It is said to be an essential part of governance even in its most primitive form and thus inseparable from sovereignty. The only direct constitutional qualification is that "private property should not be taken for public use without just compensation." This proscription is intended to provide a safeguard against possible abuse and so to protect as well the individual against whose property the power is sought to be enforced.[18]

In order to be valid, the taking of private property by the government under eminent domain has to be for public use and there must be just compensation.[19]

Fr. Joaquin G. Bernas, S.J., expounded:

> Both police power and the power of eminent domain have the general welfare for their object. The former achieves its object by regulation while the latter by "taking". When property right is impaired by regulation, compensation is not required; whereas, when property is taken, the Constitution prescribes just compensation. **Hence, a sharp distinction must be made between regulation and taking**.
>
> When title to property is transferred to the expropriating authority, there is a clear case of compensable taking. However, as will be seen, it is a settled rule that neither acquisition of title nor total destruction of value is essential to taking. It is in cases where title remains with the private owner that inquiry must be made whether the impairment of property right is merely regulation or already amounts to compensable taking.
>
> **An analysis of existing jurisprudence yields the rule that when a property interest is appropriated and applied to some public purpose, there is compensable taking. Where, however, a property**

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[18] *Manosca v. CA*, 322 Phil. 442, 448 (1996).

[19] *Moday v. Court of Appeals*, 335 Phil. 1057 (1997).

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interest is merely restricted because continued unrestricted use would be injurious to public welfare or where property is destroyed because continued existence of the property would be injurious to public interest, there is no compensable taking.[20] (Emphasis supplied)

In Section 4 of R.A. 7432, it is undeniable that there is taking of property for public use. Private property is anything that is subject to private ownership. The property taken for public use applies not only to land but also to other proprietary property, including the mandatory discounts given to senior citizens which form part of the gross sales of the private establishments that are forced to give them. **The amount of mandatory discount is money that belongs to the private establishment. For sure, money or cash is private property because it is something of value that is subject to private ownership**. The taking of property under Section 4 of R.A. 7432 is an exercise of the power of eminent domain and not an exercise of the police power of the State. **A clear and sharp distinction should be made because private property owners will be left at the mercy of government officials if these officials are allowed to invoke police power when what is actually exercised is the power of eminent domain**.

Section 9, Article III of the 1987 Constitution speaks of private property without any distinction. It does not state that there should be profit before the taking of property is subject to just compensation. The private property referred to for purposes of taking could be inherited, donated, purchased, mortgaged, or as in this case, part of the gross sales of private establishments. They are all private property and any taking should be attended by a corresponding payment of just compensation. The 20% discount granted to senior citizens belongs to private establishments, whether these establishments make a profit or suffer a loss. In fact, the 20% discount applies to **non-profit establishments** like country, social, or golf clubs which are

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[20] J. Bernas, S.J., THE 1987 *CONSTITUTION OF THE PHILIPPINES, A COMMENTARY* 379 (1996 ed.)

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open to the public and not only for exclusive membership.[21] The issue of profit or loss to the establishments is immaterial.

Just compensation is "the full and fair equivalent of the property taken from its owner by the expropriator."[22] The Court explained:

> x x x. The measure is not the taker's gain, but the owner's loss. The word 'just' is used to qualify the meaning of the word 'compensation' and to convey thereby the idea that **the amount to be tendered for the property to be taken shall be real, substantial, full and ample**. x x x.[23] (Emphasis supplied)

The 32% of the discount that the private establishments could recover under the tax deduction scheme cannot be considered real, substantial, full and ample compensation. In *Carlos Superdrug Corporation*, the Court conceded that "**[t]he permanent reduction in [private establishments'] total revenue is a forced subsidy corresponding to the taking of private property for public use or benefit**."[24] The Court ruled that "**[t]his constitutes compensable taking for which petitioners would ordinarily become entitled to a just compensation**."[25] Despite these pronouncements admitting there was compensable taking, **the Court still proceeded to rule that "the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program."**

There may be valid instances when the State can impose burdens on private establishments that effectively subsidize a government program. However, the moment a constitutional threshold is crossed – when the burden constitutes a taking of

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[21] See Section 4, Rule IV, Implementing Rules and Regulations of R.A. No. 9994.

[22] *National Power Corporation v. Spouses Zabala*, G.R. No. 173520, 30 January 2013, 689 SCRA 554.

[23] *Id.* at 562.

[24] *Supra* note 3, at 129-130.

[25] *Id.* at 130.

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private property for public use – then the burden becomes an exercise of eminent domain for which just compensation is required.

An example of a burden that can be validly imposed on private establishments is the requirement under Article 157 of the Labor Code that employers with a certain number of employees should maintain a clinic and employ a registered nurse, a physician, and a dentist, depending on the number of employees. Article 157 of the Labor Code provides:

> Art. 157. Emergency medical and dental services. — It shall be the duty of every employer to furnish his employees in any locality with free medical and dental attendance and facilities consisting of:
>
> a. The services of a full-time registered nurse when the number of employees exceeds fifty (50) but not more than two hundred (200) except when the employer does not maintain hazardous workplaces, in which case, the services of a graduate first-aider shall be provided for the protection of workers, where no registered nurse is available. The Secretary of Labor and Employment shall provide by appropriate regulations, the services that shall be required where the number of employees does not exceed fifty (50) and shall determine by appropriate order, hazardous workplaces for purposes of this Article;
>
> b. The services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred (200) but not more than three hundred (300); and
>
> c. The services of a full-time physician, dentist and a full-time registered nurse as well as a dental clinic and an infirmary or emergency hospital with one bed capacity for every one hundred (100) employees when the number of employees exceeds three hundred (300).
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> x x x x x x x x x

Article 157 is a burden imposed by the State on private employers to complement a government program of promoting a healthy workplace. The employer itself, however, benefits fully from this burden because the health of its workers while

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in the workplace is a legitimate concern of the private employer. Moreover, the cost of maintaining the clinic and staff is part of the **legislated wages** for which the private employer is **fully compensated** by the services of the employees. In the case of the senior citizen's discount, the private establishment is compensated only in the equivalent amount of 32% of the mandatory discount. There are no services rendered by the senior citizens, or any other form of payment, that could make up for the 68% balance of the mandatory discount. Clearly, the private establishments cannot recover the full amount of the discount they give and thus there is taking to the extent of the amount that cannot be recovered.

Another example of a burden that can be validly imposed on a private establishment is the requirement under Section 19 in relation to Section 18 of the Social Security Law[26] and Section 7 of the Pag-IBIG Fund[27] for the employer to contribute a certain amount to fund the benefits of its employees. The amounts contributed by private employers form part of the **legislated wages** of employees. The private employers are deemed **fully compensated** for these amounts by the services rendered by the employees.

In the present case, the private establishments are only compensated about 32% of the 20% discount granted to senior citizens. They shoulder 68% of the discount they are forced to give to senior citizens. The Court should correct this situation as it clearly violates Section 9, Article III of the Constitution which provides that "[p]rivate property shall not be taken for public use without just compensation." *Carlos Superdrug Corporation* should be abandoned by this Court and *Central Luzon Drug Corporation* re-affirmed.

Carlos Superdrug Corporation admitted that the permanent reduction in the total revenues of private establishments is a

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[26] Republic Act No. 8282, otherwise known as the Social Security Act of 1997, which amended Republic Act No. 1161.

[27] Republic Act No. 9679, otherwise known as the Home Development Mutual Fund Law of 2009.

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"**compensable taking for which petitioners would ordinarily become entitled to a just compensation**."[28] However, *Carlos Superdrug Corporation* considered that there was sufficient basis for taking without compensation by invoking the exercise of police power of the State. In doing so, the Court failed to consider that a **permanent** taking of property for public use is an exercise of eminent domain for which the government must pay compensation. Eminent domain is a sub-class of police power and its exercise is subject to certain conditions, that is, the taking of property for public use and payment of just compensation.

It is incorrect to say that private establishments only suffer a minimal loss when they give a 20% discount to senior citizens. Under R.A. 9257, the 20% discount applies to "**all establishments** relative to the utilization of services in hotels and similar lodging establishment, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens";[29] "admission fees charged by theaters, cinema houses and concert halls, circuses, carnivals, and other similar places of culture, leisure and amusement for the exclusive use or enjoyment of senior citizens";[30] "medical and dental services, and diagnostic and laboratory fees provided under Section 4(e) including professional fees of attending doctors in all private hospitals and medical facilities, in accordance with the rules and regulations to be issued by the Department of Health, in coordination with the Philippine Health Insurance Corporation";[31] "fare for domestic air and sea travel for the exclusive use or enjoyment of senior citizens";[32] and "public railways, skyways and bus fare for the exclusive use and enjoyment of senior citizens."[33] **The 20% discount cannot be**

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[28] *Supra* note 3, at 130.

[29] Section 4(a).

[30] Section 4(b).

[31] Section 4(f).

[32] Section 4(g).

[33] Section 4(h).

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considered minimal because not all private establishments make a 20% margin of profit. Besides, on its face alone, a 20% mandatory discount based on the gross selling price is huge. The 20% mandatory discount is more than the 12% Value Added Tax, itself not an insignificant amount.

The majority opinion states that the grant of 20% discount to senior citizens is a regulation of businesses similar to the regulation of public utilities and businesses imbued with public interest. The majority opinion states:

> The subject regulation may be said to be similar to, but with substantial distinctions from, price control or rate of return on investment control laws which are traditionally regarded as police power measures. These laws generally regulate public utilities or industries/enterprises imbued with public interest in order to protect consumers from exorbitant or unreasonable pricing as well as temper corporate greed by controlling the rate or return on investment of these corporations considering that they have a monopoly over the goods or services that they provide to the general public. The subject regulation differs therefrom in that (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given establishment but only to a class of senior citizens. x x x.[34]

However, the majority opinion admits that the 20% mandatory discount is **only** "**similar to, but with substantial distinctions** from price control or rate of return on investment control laws" which "regulate public utilities or industries/enterprises imbued with public interest." Since there are admittedly "**substantial distinctions**," regulatory laws on public utilities and industries imbued with public interest cannot be used as justification for the 20% mandatory discount without payment of just compensation. The profits of public utilities are regulated because they operate under franchises granted by the State. Only those who are granted franchises by the State can operate public utilities, and these franchisees have agreed to limit their profits

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[34] Decision, p. 20.

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as condition for the grant of the franchises. The profits of industries imbued with public interest, but which do not enjoy franchises from the State, can only be regulated **temporarily** during emergencies like calamities. There has to be an emergency to trigger price control on businesses and only for the duration of the emergency. The profits of private establishments which are non-franchisees cannot be regulated **permanently**, and there is no such law regulating their profits permanently. The majority opinion cites a case[35] that allegedly allows the State to limit the net profits of private establishments. However, the case cited by the majority opinion refers to **franchise holders of electric plants**.

The State cannot compel private establishments without franchises to grant discounts, or to operate at a loss, because that constitutes taking of private property for public use without just compensation. The State can take over private property without compensation in times of war or other national emergency under Section 23(2), Article VI of the 1987 Constitution **but only for a limited period** and subject to such restrictions as Congress may provide. Under its police power, the State may also **temporarily** limit or suspend business activities. One example is the two-day liquor ban during elections under Article 261 of the Omnibus Election Code but this, again, is only **for a limited period**. This is a valid exercise of police power of the State.

However, any form of **permanent** taking of private property is an exercise of eminent domain that requires the State to pay just compensation. **The police power to regulate business cannot negate another provision of the Constitution like the eminent domain clause, which requires just compensation to be paid for the taking of private property for public use. The State has the power to regulate the conduct of the business of private establishments as long as the regulation is reasonable, but when the regulation amounts to permanent taking of private property for public use, there must be just compensation because the regulation now reaches the level of eminent domain**.

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[35] *Alalayan v. National Power Corporation*, 133 Phil. 279 (1968).

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The explanation by the majority that private establishments can always increase their prices to recover the mandatory discount will only encourage private establishments to adjust their prices upwards to the prejudice of customers who do not enjoy the 20% discount. It was likewise suggested that if a company increases its prices, despite the application of the 20% discount, the establishment becomes more profitable than it was before the implementation of R.A. 7432. Such an economic justification is self-defeating, for more consumers will suffer from the price increase than will benefit from the 20% discount. Even then, such ability to increase prices cannot legally validate a violation of the eminent domain clause.

Finally, the 20% discount granted to senior citizens is not *per se* unreasonable. It is the provision that the 20% discount may be claimed by private establishments as tax deduction, and no longer as tax credit, that is oppressive and confiscatory.

Prior to its amendment, Section 4 of R.A. 7432 reads:

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 medicine anywhere in the country: **Provided, That private establishments may claim the cost as tax credit**;

x x x x x x x x x (Emphasis supplied)

Under R.A. 9257, the amendment reads:

SEC. 4. *Privileges for the Senior Citizens*. — The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishment, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

x x x x x x x x x

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The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: **Provided, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted**. Provided, further, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended. (Emphasis supplied)

Due to the patent unconstitutionality of Section 4 of R.A. 7432, as amended by R.A. 9257, providing that private establishments may claim the 20% discount to senior citizens as tax deduction, the old law, or Section 4 of R.A. 7432, which allows the 20% discount as tax credit, is automatically reinstated. Where amendments to a statute are declared unconstitutional, the original statute as it existed before the amendment remains in force.[36] An amendatory law, if declared null and void, in legal contemplation does not exist.[37] The private establishments should therefore be allowed to claim the 20% discount granted to senior citizens as tax credit.

ACCORDINGLY, I vote to **GRANT** the petition.

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[36] See *Government of the Philippine Islands v. Agoncillo*, 50 Phil. 348 (1927), citing *Eberle v. Michigan* 232 U.S. 700 [1914], *People v. Mensching*, 187 N.Y.S., 8, 10 L.R.A., 625 [1907].

[37] See *Coca-Cola Bottlers Phils., Inc. v. City of Manila*, 526 Phil. 249 (2006).