

EN BANC

G.R. No. 199669: SOUTHERN LUZON DRUG CORPORATION, Petitioner, v. THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT, THE NATIONAL COUNCIL FOR THE WELFARE OF DISABLED PERSONS, THE DEPARTMENT OF FINANCE, and THE BUREAU OF INTERNAL REVENUE, Respondents.

Promulgated:

April 25, 2017

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CONCURRING and DISSENTING OPINION

LEONEN, J.:

This case involves a Petition for Review on Certiorari questioning the constitutionality of Section 4(a) of Republic Act No. 9257 (Expanded Senior Citizens Act of 2003), Section 32 of Republic Act No. 9442 (Magna Carta of Persons with Disability), and Sections 5.1 and 6.1.d of the Implementing Rules and Regulations of Republic Act No. 9442.

I concur in the *ponencia's* finding that the subject provisions are constitutional.

In *Manila Memorial Park, Inc. et al. vs. Secretary of Department of Social Welfare and Development, et al.*,¹ this Court has ruled on the constitutionality of Republic Act No. 9257, and the validity of the 20% discount granted to senior citizens and of the Tax Deduction Scheme, in which the cost of the discount is allowed as a deduction from the establishment's gross income.²

This case presents the same questions, except it includes as an issue the grant of the same benefits to persons with disability.

Thus, I restate my opinion in *Manila Memorial Park*.³ I concur that the subject provisions are constitutional. The grant of the 20% discount to senior citizens and persons with disability is a valid exercise of police power. However, I opine that the Tax Deduction Scheme is an exercise of the State's power of taxation. Moreover, I insist that establishments are not

¹ 722 Phil. 538 (2013) [Per J. Del Castillo, En Banc].

² Id. at 602.

³ Dissenting Opinion of J. Leonen in *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development*, 722 Phil. 538, 621-644 (2013) [Per J. Del Castillo, En Banc].

entitled to just compensation, whether there is proof of loss of profits or “oppressive taking,” as the subject of the taking is not property, but a mere inchoate right.

I

The subject provisions grant senior citizens and persons with disability a 20% discount on medicine purchases.⁴ Establishments giving the discount may claim the costs of the discount as tax deductions from their gross income.⁵

For senior citizens, Section 4(a) of Republic Act No. 9257⁶ provides:

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;

....

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)

For persons with disability, Republic Act No. 9442⁷ amended Republic Act No. 7277 (Magna Carta for Disabled Persons) to grant persons

⁴ Rep. Act No. 9257, sec. 4(a) or the Expanded Senior Citizens Act of 2003, Rep. Act No. 9442, sec. 32 or the Magna Carta of Persons with Disability, and Implementing Rules and Regulations of Rep. Act No. 9442, sec. 5.1 and 6.1.d.

⁵ Rep. Act No. 9257, sec. 4(a), Rep. Act No. 9442, sec. 32, and Implementing Rules and Regulations of Rep. Act No. 9442, sec. 5.1 and 6.1.d.

⁶ Republic Act No. 9257 amended Republic Act No. 7432 (*Senior Citizens Act*) which had an income ceiling for the grant of the discount to senior citizens and which allowed establishments to claim the cost of the discount as a tax credit.

Rep. Act No. 7432, sec. 4 provides:

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, restaurants and recreation centers and purchase of medicine anywhere in the country: *Provided, That private establishments may claim the cost as tax credit[.]*

⁷ An Act Amending Republic Act No. 7277 (2007).

with disability a 20% discount on the purchase of medicines. It also allowed establishments to deduct the cost of the discount from their gross income:

SECTION 32. Persons with disability shall be entitled to the following:

....

(c) At least twenty percent (20%) discount for the purchase of medicines in all drugstores for the exclusive use or enjoyment of persons with disability;

....

The establishments may claim the discounts granted in sub-sections (a), (b), (c), (e), (f) and (g) as tax deductions based on the net cost of the goods sold or services rendered: Provided, however, 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 (NIRC), as amended. (Emphasis supplied)

Thus, the Department of Social Welfare and Development, the Department of Education, the Department of Finance, the Department of Tourism, and the Department of Transportation promulgated the Implementing Rules and Regulations of Republic Act No. 9442 (Implementing Rules). Sections 5.1 and 6.1.d of the Implementing Rules state:

5.1 *Persons with Disability* — are those individuals defined under Section 4 of RA 7277 “An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Persons with Disability as amended and Their Integration into the Mainstream of Society and for Other Purposes”. This is defined as a person suffering from restriction or different abilities, as a result of a mental, physical or *sensory impairment, to perform an activity in a manner or within the range* considered normal for human being. Disability shall mean (1) a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an individual or activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.

SECTION 6. *Other Privileges and Incentives.* — Persons with disability shall be entitled to the following:

6.1 *Discounts from All Establishments* — At least twenty percent (20%) discount from all establishments relative to the utilization of all services in hotels and similar lodging establishments, restaurants and recreation centers for the exclusive use or enjoyment of persons with disability.

....

6.1.d *Purchase of Medicine* — at least twenty percent (20%) discount on the purchase of medicine for the exclusive use and enjoyment of persons with disability. All drug stores, hospitals, pharmacies, clinics and other similar establishments selling medicines are required to provide at least twenty percent (20%) discount subject to the guidelines issued by DOH and PHILHEALTH. (Emphasis supplied)

II

In *Manila Memorial Park*,⁸ this Court already upheld the constitutionality of Republic Act No. 9257 and of the Tax Deduction Scheme. It strengthened its ruling in *Carlos Superdrug Corporation v. Department of Social Welfare and Development*.⁹ It has held that the tax treatment is a valid exercise of police power:

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.

....

On its face, therefore, the subject regulation is a police power measure.¹⁰

I agree with the ponencia in reiterating this ruling in the present case. The imposition of the 20% discount to senior citizens and persons with disability is a valid exercise of police power. It is a regulatory function to

⁸ 722 Phil. 538 (2013) [Per J. Del Castillo, En Banc].

⁹ 553 Phil. 120 (2007) [Per J. Azcuna, En Banc].

¹⁰ Id. at 578–579.

improve the public welfare, which imposes a differentiated pricing system for two (2) types of customers: (1) those who are subject to the regular price, and (2) those who are senior citizens and persons with disability. The public purpose in granting this discount to the two (2) classifications cannot be denied.

However, as I maintained in my separate opinion in *Manila Memorial Park*, the Tax Deduction Scheme is an exercise of the State's power to tax.¹¹

The power of taxation is an inherent and indispensable power of the State.¹² As taxes are the "lifeblood of the government", the power of the legislature is unlimited and plenary.¹³ The legislature is given a wide range of discretion in determining what to tax, the purpose of the tax, how much the tax will be, who will be taxed, and where the tax will be imposed.¹⁴

Included in this discretion is the power to determine the *method* of collection of the taxes imposed.¹⁵ In *Abakada Guro Party List v. Ermita*:¹⁶

The power of the State to make reasonable and natural classifications for the purposes of taxation has long been established. Whether 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. As a rule, the judiciary will not interfere with such power absent a clear showing of unreasonableness, discrimination, or arbitrariness.¹⁷

The State's power to tax is limited by the Constitution.¹⁸ Taxes must be uniform and equitable,¹⁹ and must not be confiscatory or arbitrary.²⁰ It must be "exercised reasonably and in accordance with the prescribed procedure."²¹

¹¹ Dissenting Opinion of J. Leonen in *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development*, 722 Phil. 538, 632–636 (2013) [Per J. Del Castillo, En Banc].

¹² *Chamber of Real Estate and Builders' Association, Inc. v. Romulo*, 628 Phil. 508, 529–530 (2010) [Per J. Corona, En Banc].

¹³ Id.

¹⁴ Id.

¹⁵ *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 306 (2005) [Per J. Austria-Martinez, En Banc].

¹⁶ 506 Phil. 1 (2005) [Per J. Austria-Martinez, En Banc].

¹⁷ *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 306 (2005) [Per J. Austria-Martinez, En Banc].

¹⁸ *Chamber of Real Estate and Builders' Association, Inc. v. Romulo*, 628 Phil. 508, 529–530 (2010) [Per J. Corona, En Banc].

¹⁹ CONST. (1987), art. VI, sec. 28 provides:

Section 28. (I) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.n...

²⁰ *Commissioner v. Algue, Inc.*, 241 Phil. 829, 836 (1988) [Per J. Cruz, First Division].

²¹ Id.

Nonetheless, the exercise of the power to tax is presumed valid absent any proof of violation of these limitations.²² In *Chamber of Real Estate and Builders' Association, Inc. v. Romulo*.²³

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 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.*²⁴ (Emphasis supplied)

The determination that the cost of the 20% discount will be recovered as a tax deduction instead of a tax credit is within the legislative’s power to tax.²⁵ It is a determination of the method of collection of taxes.²⁶ The legislative has the power to determine if particular costs should be treated as deductions or if it entitles taxpayers to credits.²⁷

In this case, the Congress deemed the tax deduction as the better option. There is no showing that this option is violative of any of the constitutional limitations on the power to tax.

The Tax Deduction Scheme is uniform and equitable. Uniformity of taxation means that all subjects of taxation similarly situated are to be treated alike both in privileges and liabilities.²⁸ The taxes are uniform if: (1) the standards used are substantial and not arbitrary, (2) the categorization is germane to the purpose of the law, (3) the law applies, all things being equal, to both present and future conditions, and (4) the classification applies equally well to all those belonging to the same class.²⁹ Since the 20%

²² *Chamber of Real Estate and Builders' Association, Inc. v. Romulo*, 628 Phil. 508, 530 (2010) [Per J. Corona, En Banc].

²³ Id.

²⁴ Id.

²⁵ Dissenting Opinion of J. Leonen in *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development*, 722 Phil. 538, 633 (2013) [Per J. Del Castillo, En Banc].

²⁶ Id.

²⁷ Id.

²⁸ *Tan v. Del Rosario, Jr.*, 307 Phil. 342, 349–350 (1994) [Per J. Vitug, En Banc].

²⁹ Id.

discount applies to all senior citizens and persons with disability equally, and the tax deduction scheme applies to all establishments granting the discounts, there is no issue on the uniformity of the tax measure.

Likewise, the tax deduction is not confiscatory or arbitrary. While the establishments cannot recover the full cost of the granted discount, they are still not at a full loss as they may claim the cost as a tax deduction from their gross income, and they are free to adjust prices and costs of their products.

III

There is no merit in the contention that the State deprived them of their profits. Establishments can always increase their price to recover their costs and increase their profitability. They can avoid losses altogether such that it can be said that the State took nothing from them.

My opinion in *Manila Memorial Park* discussed the impact of the senior citizen's discount to an establishment's revenue for the sale of memorial lots.³⁰

This same principle applies to the sale of medicine to senior citizens and persons with disability. Revenue still depends on the price, quantity, and costs of the items sold.³¹

To illustrate, if Company XYZ sells medicine, and for the sake of argument, we assume that the medicine is acquired at zero cost, revenue is acquired multiplying the price and the quantity sold.³² Thus:

$$R = P \times Q$$

Where:

R = Revenue

P = Price per unit

Q = Quantity sold

³⁰ Dissenting Opinion of J. Leonen in *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development*, 722 Phil. 538, 627–632 (2013) [Per J. Del Castillo, En Banc].

³¹ Id.

³² Id.

Footnote 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).

Before the discounts are granted to senior citizens and persons with disability, let us assume that Company XYZ sells 16,000 bottles of antibiotic syrup at the price of ₱100.00. Its profit is thus ₱1,600,000.00:

$$\begin{aligned}R &= P \times Q \\R &= \text{₱}100.00 \times 16,000 \\R &= \text{₱}1,600,000.00\end{aligned}$$

Assuming that out of the 16,000 bottles sold, 2,200 bottles are bought by senior citizens and 1,000 bottles are purchased by persons with disability. Thus, 12,800 bottles are bought by ordinary customers.

The subject provisions require that a 20% discount be given to senior citizens and persons with disability. Necessarily, there will be two (2) types of revenue received by Company XYZ: (1) revenue from ordinary customers, and (2) revenue from senior citizens and persons with disability. Thus, a bottle of antibiotic syrup will be sold to ordinary customers at ₱100.00, and to senior citizens and persons with disability at only ₱80.00.

The formula of the revenue of Company XYZ then becomes:

$$\begin{aligned}R_T &= R_{SD} + R_C \\R_{SD} &= P_{SD} \times Q_{SD} \\R_C &= P_C \times Q_C \\R_T &= (P_{SD} \times Q_{SD}) + (P_C \times Q_C)\end{aligned}$$

Where	R_T	=	Total Revenue
	R_{SD}	=	Revenue from Senior Citizens and Persons with Disability
	R_C	=	Revenue from Ordinary Customers
	P_{SD}	=	Price per Unit for Senior Citizens and Persons with Disability
	Q_{SD}	=	Quantity Sold to Senior Citizens and Persons with Disability
	P_C	=	Price for Ordinary Customers per Unit
	Q_C	=	Quantity Sold to Ordinary Customers

Given this equation, the total revenue of Company XYZ becomes ₱1,536,000.00:

$$\begin{aligned}R_{T1} &= R_{SD} + R_C \\R_{T1} &= (P_{SD} \times Q_{SD}) + (P_C \times Q_C) \\R_{T1} &= (80 \times 3,200) + (100 \times 12,800) \\R_{T1} &= 256,000 + 1,280,000 \\R_{T1} &= \text{₱}1,536,000.00\end{aligned}$$

Naturally, the revenue decreases after applying the discounts. However, the subject provisions do not prevent Company XYZ from increasing its price to maintain its profitability.³³ Thus, assuming it increases its price by ₱10.00, the revenue becomes ₱1,689,600, computed as follows:

$$\begin{aligned} R_{T2} &= (P_{SD} \times Q_{SD}) + (P_C \times Q_C) \\ R_{T2} &= (88 \times 3,200) + (110 \times 12,800) \\ R_{T2} &= 281,600 + 1,408,000 \\ \mathbf{R_{T2}} &= \mathbf{₱1,689,600.00} \end{aligned}$$

Clearly, an increase in the item's price results to an increase in the establishment's profitability, even after the implementation of the 20% discount. As shown in the example, the price increase may even be less than the discount given to the senior citizens and persons with disability.

The change in the price also augments the tax implications of the subject provisions. If we treat the discount as a *tax credit* after the implementation of the subject provisions, Company XYZ will have the net income of ₱1,335,480.00:

Gross Income (R_{T1})	₱ 1,536,000
Less: Deductions	(600,000)
Taxable Income	936,000
Income Tax Rate	₱125,000 + 32% of excess over ₱500,000
Income Tax Liability	<u>264,520</u>
Less: Discount for Senior Citizens/Persons with Disability (Tax Credit)	(64,000)
Final Income Tax Liability	<u>200,520</u>
Net Income	₱1,335,480

Without the adjustments, the net income in the Tax Deduction Scheme is less than the net income if the discounts are treated as tax credits. Thus, if the discount is treated as a *tax deduction*, its income is ₱1,291,960.00:

Gross Income (R_{T1})	₱ 1,536,000
Less: Deductions	(600,000)
Less: Discount for Senior	(64,000)

³³ Dissenting Opinion of *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development*, 722 Phil. 538, 627–632 (2013) [Per J. Del Castillo, En Banc].

Footnote 24: To determine the price for both ordinary customers and senior citizens and persons with disability that will retain the same level of profitability, the formula for the price for ordinary customers is $P_C = R_0 / (0.8Q_S + Q_C)$ where R_0 is the total revenue before the senior citizen discount was given.

Citizens and Persons with Disability	
Taxable Income	872,000
Income Tax Rate	₱125,000 + 32% of excess over ₱500,000
Income Tax Liability	244,040
Less: Discount for Senior Citizens/Persons with Disability (Tax Credit)	0
Final Income Tax Liability	244,040
Net Income	₱1,291,960

However, if the price is adjusted as discussed in the earlier example, the net income becomes:

Gross Income (R _{T2})		₱ 1,689,600
Less: Deductions		(600,000)
Less: Discount for Senior Citizens and Persons with Disability		(70,400)
Taxable Income		1,019,200
Income Tax Rate		₱125,000 + 32% of excess over ₱500,000
Income Tax Liability		291,144
Less: Discount for Senior Citizen/Person with Disability (Tax Credit)		0
Final Income Tax Liability		291,144
Net Income		₱ 1,398,456

Thus, the tax deduction scheme can still allow the improvement of net income in case of a price increase. Losses are not unavoidable. By increasing the price of the items, establishments may be able to gain more. Moreover, bettering the efficiency of the business by minimizing costs may maintain or improve profits.³⁴ In such cases, there is no confiscatory taking that justifies the payment of just compensation.

³⁴ Dissenting Opinion of J. Leonen in *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development*, 722 Phil. 538, 627–632 (2013) [Per J. Del Castillo, En Banc].

Footnote 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

IV

In any case, I reiterate that whether or not there is proof of loss of profits, establishments are still not entitled to just compensation under the power of eminent domain.

Petitioners submitted financial statements to prove that they incurred losses because of the imposition of the subject provisions. They thus claim they are entitled to just compensation.

In *Manila Memorial Park*, it was held that Republic Act No. 9257 was not shown to have been unreasonable, oppressive or confiscatory enough as to amount to a “taking” of private property subject to just compensation.³⁵ It emphasized that there was no proof of the losses incurred, and that petitioners merely relied on a hypothetical computation:

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.”

....

We adopted a similar line of reasoning in *Carlos Superdrug Corporation* 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* did. Petitioners went directly to this Court without first establishing the factual bases of their claims. Hence, the present recourse must, likewise, fail.

....

In sum, we sustain our ruling in *Carlos Superdrug Corporation* that the 20% senior citizen discount and tax deduction scheme are valid

³⁵ *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development*, 722 Phil. 538, 581 (2013) [Per J. Del Castillo, En Banc].

exercises of police power of the State absent a clear showing that it is arbitrary, oppressive or confiscatory.³⁶

The *ponencia* reiterated this rule in this case. It found that it must be *proven* that the State regulation is so oppressive as to amount to a compensable taking. In applying this principle to the case at bar, it held that petitioners *failed to prove the oppressive and confiscatory nature of the subject provisions*. The financial statements were deemed not enough to show the confiscatory taking warranting just compensation.³⁷

I maintain my opinion in *Manila Memorial Park*. I disagree insofar as the rule is premised on the *insufficient proof* of the losses caused by the discount.

I opine that whether or not there is sufficient proof of actual losses, there is no compensable taking. The provisions are still not an exercise of the power of eminent domain that requires the payment of just compensation.

The power of eminent domain is found in the Constitution under Article III, Section 9 of the Constitution: "Private property shall not be taken for public use without just compensation."

The requisites for the exercise of eminent domain are: (1) there must be a genuine necessity for its exercise;³⁸ (2) what is taken must be private *property*; (3) there is taking in the constitutional sense;³⁹ (4) the taking is for public use;⁴⁰ and (5) there must be payment of just compensation.⁴¹

The difference between police power and eminent domain was discussed in *Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Gozun*:⁴²

³⁶ Id. at 581–583.

³⁷ *Ponencia*, pp. 17–18; The ponencia found that the financial statements of the petitioners do not show that their incurred losses were due to the discounts. It noted that what depleted the income of the company was its direct costs and operating expenses. It also observed that the records did not show the percentage of regular customers vis-a-vis the senior citizens and persons with disability. Additionally, it found that the entire sales and other services offered to the public must be considered. A singular transaction or the purchases made by senior citizens and persons with disability alone cannot be the sole basis of the law's effect on the profitability of the business. It likewise pointed out that the petitioners did not show how it adjusted to the changes brought by the provisions. It noted the admission that the losses were due to its failure take measures to address the new circumstances brought by the provisions. It asserted that it is inaccurate that the petitioners are not provided a means to recoup their losses. It is not automatic that the change in tax treatment will result in loss of profits considering the law does not place a limit on the amount that they may charge for their items. It also failed to note that business decisions must consider laws in effect.

³⁸ *Lagcao vs. Judge Labra*, 483 Phil. 303, 312 (2004) [Per J. Corona, En Banc].

³⁹ *Republic v. Vda. de Castellvi*, 157 Phil. 329, 344–347 [Per J. Zaldivar, En Banc].

⁴⁰ *Reyes vs. National Housing Authority*, 443 Phil. 603, 610–611 (2003) [Per J. Puno, Third Division].

⁴¹ CONST. (1987), art. III, sec. 9.

⁴² 520 Phil. 457 (2006) [Per J. Chico-Nazario, First Division].

The power of eminent domain is the inherent right of the state (and of those entities to which the power has been lawfully delegated) to condemn private property to public use upon payment of just compensation. On the other hand, police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. Although both police power and the power of eminent domain have the general welfare for their object, and recent trends show a mingling of the two with the latter being used as an implement of the former, there are still traditional distinctions between the two.

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.

....

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.⁴³ (Emphasis supplied, citations omitted)

The exercise of the power of eminent domain requires that there is property that is taken from the owner. In this case, there is no private property that may be the subject of a constitutional taking. The subject of the alleged "taking" is the establishments' *possible profits*. Possible profits cannot be acquired by the State through the exercise of the power of eminent domain. Possible profits are yet to be earned; hence, they are yet to be *owned*. They are intangible property for which establishments do not have a *vested right*.

⁴³ Id. at 476-478.

A vested right is a fixed or established interest in a property that can no longer be doubted or questioned.⁴⁴ It is an “immediate fixed right of present or future enjoyment.”⁴⁵ It is the opposite of an expectant or contingent right.⁴⁶

In *Benguet Consolidated Mining Co. v. Pineda*,⁴⁷ this Court, citing *Corpus Juris Secundum*, elaborated:

Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. The right must be absolute, complete, and unconditional, independent of a contingency, and a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested right. So, inchoate rights which have not been acted on are not vested. (16 C. J. S. 214-215.)⁴⁸

Establishments do not have a vested right on possible profits. Their right is not yet absolute, complete, and unconditional. Profits are earned only after the sale of their products, and after deducting costs. These sales may or may not occur. The existence of the profit or the loss is not certain. It cannot be assumed that the profits will be earned or that losses will be incurred. Assuming there are profits or losses, its amount is undeterminable.

Thus, for purposes of eminent domain, there is still no property that can be taken. There is no property owned. There is nothing to compensate.

The *ponencia* shares the same view. However, I maintain that to be consistent with this view, ***the proof of losses (or the lack of profits) must be irrelevant. No matter the evidence, petitioners cannot be entitled to just compensation.***

Assuming there was a “taking,” what was taken is not property contemplated by the exercise of eminent domain. Eminent domain pertains to physical property. In my opinion in *Manila Memorial Park*:⁴⁹

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

⁴⁴ *Benguet Consolidated Mining Co. v. Pineda*, 98 Phil. 711–739, 722 (1956) [Per J. J.B.L. Reyes, Second Division]; *See also Heirs of Zari v. Santos*, 137 Phil. 79 (1969) [Per J. Sanchez, En Banc].

⁴⁵ *Id.*; *See also Heirs of Zari v. Santos*, 137 Phil. 79 (1969) [Per J. Sanchez, En Banc].

⁴⁶ *Id.*; *See also Heirs of Zari v. Santos*, 137 Phil. 79 (1969) [Per J. Sanchez, En Banc].

⁴⁷ *Benguet Consolidated Mining Co. v. Pineda*, 98 Phil. 711–739 (1956) [Per J. J.B.L. Reyes, Second Division].

⁴⁸ *Id.* at 722.

⁴⁹ *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development*, 722 Phil. 538 (2013) [Per J. Del Castillo, En Banc].

governing expropriation proceedings, requires the complaint to “describe the real *or personal property* sought to be expropriated,” this refers to tangible personal property for which the court will deliberate as to its value for purposes of just compensation.

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 Castellvi*, this Court also laid down five (5) “circumstances [that] must be present in the ‘taking’ of property for purposes of eminent domain” as follows:

First, the expropriator must enter a private property[.]

Second, the entrance 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[.]

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

....

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.⁵⁰

The right to profit is an intangible right, which cannot be appropriated for public use. In fact, it is a right and not property in itself. Moreover, the right was merely restricted, not taken. The establishment still is given a wide discretion on how to address the changes caused by the subject provisions, and how to ensure their profits. As shown in the above example, they may adjust their pricing, and improve on the costs of goods or their efficiency to manage potential outcomes. Profits may thus still be earned.

⁵⁰ Id. at 640-642.

Losses and profits are still highly dependent on business judgments based on the economic environment. Whether or not losses are incurred cannot be attributable to the law alone. In fact, the law is one (1) of the givens that businesses must adjust to. It is not the law that must adjust for businesses. Businesses cannot claim compensation for a regulatory measure, which caused dips in their profit. Pricing and costs may be adjusted accordingly, and it cannot be the law that will be limited by business decisions, which establishments refuse to change.

V

Thus, in the exercise of its police power, the State may make variances in the pricing of goods to accommodate public policy, and to promote social justice. The State's determination of how establishments can recover the cost of the discounted prices is also a valid exercise of its power to tax. In this instance, the legislative chose to allow establishments a partial recovery of the granted discount through a tax deduction instead of a tax credit.

Both tax deductions and tax credits are valid options for the Congress, although the impacts of the two (2) are different.

As shown above, a tax deduction will naturally cause establishments to increase their prices to fully recover the cost of the discounts, and prevent losses. The burden of the cost is thus passed on to ordinary customers – to non-senior citizens with no disability.

However, the Philippine market is not homogenous. The impact of prices on ordinary customers from various sectors in society is different. It is possible that the poorer sectors in society are denied options because they can no longer afford the items that used to be available to them before the price increase caused by the granting of the discounts.

In the example above, a bottle of antibiotic syrup costs ₱100.00 prior to the grant of the discount. When the discount was imposed, Company XYZ adjusted its price by increasing it to ₱110.00. Under the subject provisions, a 78-year-old business tycoon earning billions every year is entitled to a 20% senior citizen discount. Thus, the business tycoon will be charged with only ₱88.00. On the other hand, an ordinary customer will have to allot a bigger portion of his wage to buy antibiotics. This 10-peso difference may be a bigger burden for the ordinary customer belonging to the poorer sectors of society. It may not be felt by some ordinary customers, but it may cause budgetary strains or may make it completely unaffordable for others.

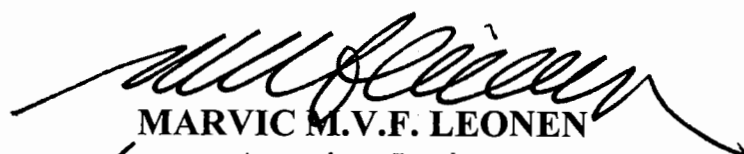
Another example is the grant of free admissions in cinemas to senior citizens. Again, the cost of this discount is passed on to the ordinary consumer. While there may be those who do not feel the impact of the price increase, those who are living on small wages, who used to be able to watch films in the theatres, may no longer have enough in their budgets to pay for the difference in the price.

Necessarily, the public good is affected. The subject provisions seek the betterment of public welfare by improving the lives of its senior citizens and persons with disability. However, the practical effect of the Tax Deduction Scheme may be prejudicial to those ordinary customers who cannot keep up with the price increase. As a consequence, citizens may be denied certain goods and services because the burden falls on all ordinary customers, without considering their resources or their ability to pay. There may be thus an issue on equitability and progressiveness in terms of its effects.

A tax credit, on the other hand, allows the cost to be shouldered completely by the government. In such a case, establishments will not need to adjust its prices to recover the cost of the discount. Moreover, when it is the government who shoulders the cost through taxes paid by its people, the issue on equitability and progressiveness is better addressed. Taxes are constitutionally mandated to be equitable.⁵¹ Congress is directed to evolve a progressive system of taxation.⁵² Thus, when the government carries the burden of the discount through taxes collected in an equitable and progressive manner, the objective of improving the public welfare may still be achieved without much prejudice to the poorer sectors of society.

Nonetheless, this is a question of policy, and one which pertains to the wisdom of the legislative.

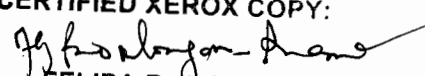
ACCORDINGLY, I vote to **DENY** the Petition, and to declare that Section 4(a) of Republic Act No. 9257 and Section 32 of Republic Act No. 9442 are **CONSTITUTIONAL**.


MARVIC M.V.F. LEONEN
Associate Justice

⁵¹ CONST. (1987), art. VI, sec. 28 provides:
Section 28. (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.n...

⁵² CONST. (1987), art. VI, sec. 28 provides:
Section 28. (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

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FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT