

EN BANC

[G.R. No. 199669, April 25, 2017]

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.

DECISION

REYES, J.:

Before the Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court, assailing the Decision^[2] dated June 17, 2011, and Resolution^[3] dated November 25, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 102486, which dismissed the petition for prohibition filed by Southern Luzon Drug Corporation (petitioner) against the Department of Social Welfare and Development (DSWD), the National Council for the Welfare of Disabled Persons (NCWDP) (now National Council on Disability Affairs or NCDA), the Department of Finance (DOF) and the Bureau of Internal Revenue (collectively, the respondents), which sought to prohibit the implementation of Section 4(a) of Republic Act (R.A.) No. 9257, otherwise known as the "*Expanded Senior Citizens Act of 2003*" and Section 32 of R.A. No. 9442, which amends the "*Magna Carta for Disabled Persons*," particularly the granting of 20% discount on the purchase of medicines by senior citizens and persons with disability (PWD), respectively, and treating them as tax deduction.

The petitioner is a domestic corporation engaged in the business of drugstore operation in the Philippines while the respondents are government agencies, office and bureau tasked to monitor compliance with R.A. Nos. 9257 and 9442, promulgate implementing rules and regulations for their effective implementation, as well as prosecute and revoke licenses of erring establishments.

Factual Antecedents

On April 23, 1992, R.A. No. 7432, entitled "*An Act to Maximize the Contribution of Senior Citizens to Nation-Building, Grant Benefits and Special Privileges and For Other*

Purposes," was enacted. Under the said law, a senior citizen, who must be at least 60 years old and has an annual income of not more than P60,000.00,^[4] may avail of the privileges provided in Section 4 thereof, one of which is 20% discount on the purchase of medicines. The said provision states:

Sec. 4. Privileges for the Senior Citizen. – x x x:

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 (Emphasis ours)

To recoup the amount given as discount to qualified senior citizens, covered establishments can claim an equal amount as tax credit which can be applied against the income tax due from them.

On February 26, 2004, then President Gloria Macapagal-Arroyo signed R.A. No. 9257, amending some provisions of R.A. No. 7432. The new law retained the 20% discount on the purchase of medicines but removed the annual income ceiling thereby qualifying all senior citizens to the privileges under the law. Further, R.A. No. 9257 modified the tax treatment of the discount granted to senior citizens, from tax credit to tax deduction from gross income, computed based on the net cost of goods sold or services rendered. The pertinent provision, as amended by R.A. No. 9257, reads as follows:

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

(a) the grant of twenty percent (20%) discount from all establishments relative to 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

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 ours)

On May 28, 2004, the DSWD issued the Implementing Rules and Regulations (IRR) of R.A. No. 9257. Article 8 of Rule VI of the said IRR provides:

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). (Emphasis ours)

The change in the tax treatment of the discount given to senior citizens did not sit well with some drug store owners and corporations, claiming it affected the profitability of their business. Thus, on January 13, 2005, Carlos Superdrug Corporation (Carlos Superdrug), together with other corporation and proprietors operating drugstores in the Philippines, filed a Petition for Prohibition with Prayer for Temporary Restraining Order (TRO) and/or Preliminary Injunction before this Court, entitled *Carlos Superdrug Corporation v. DSWD*, [5] docketed as G.R. No. 166494, assailing the constitutionality of Section 4(a) of R.A. No. 9257 primarily on the ground that it amounts to taking of private property without payment of just compensation. In a Decision dated June 29, 2007, the Court upheld the constitutionality of the assailed provision, holding that the same is a legitimate exercise of police power. The relevant portions of the decision read, thus:

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.

x x x x

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.

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.

WHEREFORE, the petition is *DISMISSED* for lack of merit.^[6] (Citations omitted)

On August 1, 2007, Carlos Superdrug filed a motion for reconsideration of the foregoing decision. Subsequently, the Court issued Resolution dated August 21, 2007, denying the said motion with finality.^[7]

Meanwhile, on March 24, 1992, R.A. No. 7277 pertaining to the "*Magna Carta for Disabled Persons*" was enacted, codifying the rights and privileges of PWDs. Thereafter, on April 30, 2007, R.A. No. 9442 was enacted, amending R.A. No. 7277. One of the salient amendments in the law is the insertion of Chapter 8 in Title 2 thereof, which enumerates the other privileges and incentives of PWDs, including the grant of 20% discount on the purchase of medicines. Similar to R.A. No. 9257, covered establishments shall claim the discounts given to PWDs as tax deductions from the gross income, based on the net cost of goods sold or services rendered. Section 32 of R.A. No. 9442 reads:

CHAPTER 8. Other Privileges and Incentives

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

x x x x

(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;

X X X X

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 ours)

Pursuant to the foregoing, the IRR of R.A. No. 9442 was promulgated by the DSWD, Department of Education, DOF, Department of Tourism and the Department of Transportation and Communications.^[8] Sections 5.1 and 6.1.d thereof provide:

Sec. 5. Definition of Terms. For purposes of these Rules and Regulations, these terms are defined as follows:

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.

X X X X

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, hospital, 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.

On February 26, 2008, the petitioner filed a Petition for Prohibition with Application for TRO and/or Writ of Preliminary Injunction^[9] with the CA, seeking to declare as unconstitutional (a) Section 4(a) of R.A. No. 9257, *and* (b) Section 32 of R.A. No. 9442 and Section 5.1 of its IRR, insofar as these provisions only allow tax deduction on the

gross income based on the net cost of goods sold or services rendered as compensation to private establishments for the 20% discount that they are required to grant to senior citizens and PWDs. Further, the petitioner prayed that the respondents be permanently enjoined from implementing the assailed provisions.

Ruling of the CA

On June 17, 2011, the CA dismissed the petition, reiterating the ruling of the Court in *Carlos Superdrug*^[10] particularly that Section 4(a) of R.A. No. 9257 was a valid exercise of police power. Moreover, the CA held that considering that the same question had been raised by parties similarly situated and was resolved in *Carlos Superdrug*, the rule of *stare decisis* stood as a hindrance to any further attempt to relitigate the same issue. It further noted that jurisdictional considerations also compel the dismissal of the action. It particularly emphasized that it has no original or appellate jurisdiction to pass upon the constitutionality of the assailed laws,^[11] the same pertaining to the Regional Trial Court (RTC). Even assuming that it had concurrent jurisdiction with the RTC, the principle of hierarchy of courts mandates that the case be commenced and heard by the lower court.^[12] The CA further ruled that the petitioner resorted to the wrong remedy as a petition for prohibition will not lie to restrain the actions of the respondents for the simple reason that they do not exercise judicial, quasi-judicial or ministerial duties relative to the issuance or implementation of the questioned provisions. Also, the petition was wanting of the allegations of the specific acts committed by the respondents that demonstrate the exercise of these powers which may be properly challenged in a petition for prohibition.^[13]

The petitioner filed its Motion for Reconsideration^[14] of the Decision dated June 17, 2011 of the CA, but the same was denied in a Resolution^[15] dated November 25, 2011.

Unyielding, the petitioner filed the instant petition, raising the following assignment of errors, to wit:

I

THE CA SERIOUSLY ERRED WHEN IT RULED THAT A PETITION FOR PROHIBITION FILED WITH THE CA IS AN IMPROPER REMEDY TO ASSAIL THE CONSTITUTIONALITY OF THE 20% SALES DISCOUNT FOR SENIOR CITIZENS AND PWDs;

II

THE CA SERIOUSLY ERRED WHEN IT HELD THAT THE SUPREME COURT'S RULING IN *CARLOS SUPERDRUG* CONSTITUTES *STARE DECISIS*;

III

THE CA SERIOUSLY ERRED ON A QUESTION OF SUBSTANCE WHEN IT RULED THAT THE 20% SALES DISCOUNT FOR SENIOR CITIZENS AND PWDs IS A VALID EXERCISE OF POLICE POWER. ON THE CONTRARY, IT IS AN INVALID EXERCISE OF THE POWER OF EMINENT DOMAIN BECAUSE IT FAILS TO PROVIDE JUST COMPENSATION TO THE PETITIONER AND OTHER SIMILARLY SITUATED DRUGSTORES;

IV

THE CA SERIOUSLY ERRED ON A QUESTION OF SUBSTANCE WHEN IT RULED THAT THE 20% SALES DISCOUNT FOR SENIOR CITIZENS AND PWDs DOES NOT VIOLATE THE PETITIONER'S RIGHT TO EQUAL PROTECTION OF THE LAW; and

V

THE CA SERIOUSLY ERRED ON A QUESTION OF SUBSTANCE WHEN IT RULED THAT THE DEFINITIONS OF DISABILITIES AND PWDs ARE NOT VAGUE AND DO NOT VIOLATE THE PETITIONER'S RIGHT TO DUE PROCESS OF LAW.^[16]

Ruling of the Court

Prohibition may be filed to question the constitutionality of a law

In the assailed decision, the CA noted that the action, although denominated as one for prohibition, seeks the declaration of the unconstitutionality of Section 4(a) of R.A. No. 9257 and Section 32 of R.A. No. 9442. It held that in such a case, the proper remedy is not a special civil action but a petition for declaratory relief, which falls under the exclusive original jurisdiction of the RTC, in the first instance, and of the Supreme Court, on appeal.^[17]

The Court clarifies.

Generally, the office of prohibition is to prevent the unlawful and oppressive exercise of authority and is directed against proceedings that are done without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy, and adequate remedy in the ordinary course of law. It is the remedy to prevent inferior courts, corporations, boards, or persons from usurping or exercising a jurisdiction or power with which they have not been vested by law.^[18] This is, however, not the lone office of an action for prohibition. In *Diaz, et al. v. The Secretary of Finance, et al.*,^[19] prohibition was also recognized as a proper remedy to prohibit or nullify acts of executive officials that amount to usurpation of legislative authority.^[20] And, in a number of jurisprudence,

prohibition was allowed as a proper action to assail the constitutionality of a law or prohibit its implementation.

In *Social Weather Stations, Inc. v. Commission on Elections*,^[21] therein petitioner filed a petition for prohibition to assail the constitutionality of Section 5.4 of R.A. No. 9006, or the "*Fair Elections Act*," which prohibited the publication of surveys within 15 days before an election for national candidates, and seven days for local candidates. Included in the petition is a prayer to prohibit the Commission on Elections from enforcing the said provision. The Court granted the petition and struck down the assailed provision for being unconstitutional.^[22]

In *Social Justice Society (SJS) v. Dangerous Drugs Board, et al.*,^[23] therein petitioner assailed the constitutionality of paragraphs (c), (d), (f) and (g) of Section 36 of R.A. No. 9165, otherwise known as the "*Comprehensive Dangerous Drugs Act of 2002*," on the ground that they constitute undue delegation of legislative power for granting unbridled discretion to schools and private employers in determining the manner of drug testing of their employees, and that the law constitutes a violation of the right against unreasonable searches and seizures. It also sought to enjoin the Dangerous Drugs Board and the Philippine Drug Enforcement Agency from enforcing the challenged provision.^[24] The Court partially granted the petition by declaring Section 36(f) and (g) of R.A. No. 9165 unconstitutional, and permanently enjoined the concerned agencies from implementing them.^[25]

In another instance, consolidated petitions for prohibitions^[26] questioning the constitutionality of the Priority Development Assistance Fund were deliberated upon by this Court which ultimately granted the same.

Clearly, prohibition has been found an appropriate remedy to challenge the constitutionality of various laws, rules, and regulations.

There is also no question regarding the jurisdiction of the CA to hear and decide a petition for prohibition. By express provision of the law, particularly Section 9(1) of Batas Pambansa Bilang 129,^[27] the CA was granted "original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction." This authority the CA enjoys concurrently with RTCs and this Court.

In the same manner, the supposed violation of the principle of the hierarchy of courts does not pose any hindrance to the full deliberation of the issues at hand. It is well to remember that "the judicial hierarchy of courts is not an iron-clad rule. It generally applies to cases involving warring factual allegations. For this reason, litigants are required to [refer] to the trial courts at the first instance to determine the truth or falsity of these contending allegations on the basis of the evidence of the parties. Cases which depend on disputed facts for decision cannot be brought immediately before appellate courts as they are not

triers of facts. Therefore, a strict application of the rule of hierarchy of courts is not necessary when the cases brought before the appellate courts do not involve factual but legal questions."^[28]

Moreover, the principle of hierarchy of courts may be set aside for special and important reasons, such as when dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice.^[29] Thus, when based on the good judgment of the court, the urgency and significance of the issues presented calls for its intervention, it should not hesitate to exercise its duty to resolve.

The instant petition presents an exception to the principle as it basically raises a legal question on the constitutionality of the mandatory discount and the breadth of its rightful beneficiaries. More importantly, the resolution of the issues will redound to the benefit of the public as it will put to rest the questions on the propriety of the granting of discounts to senior citizens and PWDs amid the fervent insistence of affected establishments that the measure transgresses their property rights. The Court, therefore, finds it to the best interest of justice that the instant petition be resolved.

The instant case is not barred by *stare decisis*

The petitioner contends that the CA erred in holding that the ruling in *Carlos Superdrug* constitutes as *stare decisis* or law of the case which bars the relitigation of the issues that had been resolved therein and had been raised anew in the instant petition. It argues that there are substantial differences between *Carlos Superdrug* and the circumstances in the instant case which take it out from the operation of the doctrine of *stare decisis*. It cites that in *Carlos Superdrug*, the Court denied the petition because the petitioner therein failed to prove the confiscatory effect of the tax deduction scheme as no proof of actual loss was submitted. It believes that its submission of financial statements for the years 2006 and 2007 to prove the confiscatory effect of the law is a material fact that distinguishes the instant case from that of *Carlos Superdrug*.^[30]

The Court agrees that the ruling in *Carlos Superdrug* does not constitute *stare decisis* to the instant case, not because of the petitioner's submission of financial statements which were wanting in the first case, but because it had the good sense of including questions that had not been raised or deliberated in the former case of *Carlos Superdrug*, *i.e.*, validity of the 20% discount granted to PWDs, the supposed vagueness of the provisions of R.A. No. 9442 and violation of the equal protection clause.

Nonetheless, the Court finds nothing in the instant case that merits a reversal of the earlier ruling of the Court in *Carlos Superdrug*. Contrary to the petitioner's claim, there is a very slim difference between the issues in *Carlos Superdrug* and the instant case with respect to the nature of the senior citizen discount. A perfunctory reading of the circumstances of the two cases easily discloses marked similarities in the issues and the arguments raised by the petitioners in both cases that semantics nor careful play of words can hardly obscure.

In both cases, it is apparent that what the petitioners are ultimately questioning is not the grant of the senior citizen discount *per se*, but the manner by which they were allowed to recoup the said discount. In particular, they are protesting the change in the tax treatment of the senior citizen discount from tax credit to being merely a deduction from gross income which they claimed to have significantly reduced their profits.

This question had been settled in *Carlos Superdrug*, where the Court ruled that the change in the tax treatment of the discount was a valid exercise of police power, thus:

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.

x x x x

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.

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. [R.A.] No. 7432 is hereby amended to read as follows:

SEC. 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

(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.

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.

[31] (Citations omitted and emphasis in the original)

Verily, it is the bounden duty of the State to care for the elderly as they reach the point in their lives when the vigor of their youth has diminished and resources have become scarce. Not much because of choice, they become needing of support from the society for whom they presumably spent their productive days and for whose betterment they exhausted their energy, know-how and experience to make our days better to live.

In the same way, providing aid for the disabled persons is an equally important State responsibility. Thus, the State is obliged to give full support to the improvement of the total

well-being of disabled persons and their integration into the mainstream of society.^[32] This entails the creation of opportunities for them and according them privileges if only to balance the playing field which had been unduly tilted against them because of their limitations.

The duty to care for the elderly and the disabled lies not only upon the State, but also on the community and even private entities. As to the State, the duty emanates from its role as *parens patriae* which holds it under obligation to provide protection and look after the welfare of its people especially those who cannot tend to themselves. *Parens patriae* means parent of his or her country, and refers to the State in its role as "sovereign", or the State in its capacity as a provider of protection to those unable to care for themselves.^[33] In fulfilling this duty, the State may resort to the exercise of its inherent powers: police power, eminent domain and power of taxation.

In *Gerochi v. Department of Energy*,^[34] the Court passed upon one of the inherent powers of the state, the police power, where it emphasized, thus:

[P]olice power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in the Latin maxim *salus populi est suprema lex* (the welfare of the people is the supreme law) and *sic utere tuo ut alienum non laedas* (so use your property as not to injure the property of others). As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as *parens patriae*, gives effect to a host of its regulatory powers. We have held that the power to "regulate" means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons.^[35] (Citations omitted)

It is in the exercise of its police power that the Congress enacted R.A. Nos. 9257 and 9442, the laws mandating a 20% discount on purchases of medicines made by senior citizens and PWDs. It is also in further exercise of this power that the legislature opted that the said discount be claimed as tax deduction, rather than tax credit, by covered establishments.

The petitioner, however, claims that the change in the tax treatment of the discount is illegal as it constitutes taking without just compensation. It even submitted financial statements for the years 2006 and 2007 to support its claim of declining profits when the change in the policy was implemented.

The Court is not swayed.

To begin with, the issue of just compensation finds no relevance in the instant case as it had already been made clear in *Carlos Superdrug* that the power being exercised by the State in the imposition of senior citizen discount was its police power. Unlike in the exercise of the

power of eminent domain, just compensation is not required in wielding police power. This is precisely because there is no taking involved, but only an imposition of burden.

In *Manila Memorial Park, Inc., et al. v. Secretary of the DSWD, et al.*,^[36] the Court ruled that by examining the nature and the effects of R.A. No. 9257, it becomes apparent that the challenged governmental act was an exercise of police power. It was held, thus:

[W]e 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. 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.^[37] (Citations omitted)

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."^[38] Even then, the State's claim of police power cannot be arbitrary or unreasonable. After all, the overriding purpose of the exercise of the power is to promote general welfare, public health and safety, among others. It is a measure, which by sheer necessity, the State exercises, even to the point of interfering with personal liberties or property rights in order to advance common good. To warrant such interference, two requisites must concur: (a) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and (b) the means employed are reasonably necessary to the

attainment of the object sought to be accomplished and not unduly oppressive upon individuals. In other words, the proper exercise of the police power requires the concurrence of a lawful subject and a lawful method.^[39]

The subjects of R.A. Nos. 9257 and 9442, i.e., senior citizens and PWDs, are individuals whose well-being is a recognized public duty. As a public duty, the responsibility for their care devolves upon the concerted efforts of the State, the family and the community. In Article XIII, Section 1 of the Constitution, the State is mandated to 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. The more apparent manifestation of these social inequities is the unequal distribution or access to healthcare services. To abet in alleviating this concern, the State is committed to 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, with priority for the needs of the underprivileged sick, elderly, disabled, women, and children.^[40]

In the same manner, the family and the community have equally significant duties to perform in reducing social inequality. The family as the basic social institution has the foremost duty to care for its elderly members.^[41] On the other hand, the community, which include the private sector, is recognized as an active partner of the State in pursuing greater causes. The private sector, being recipients of the privilege to engage business in our land, utilize our goods as well as the services of our people for proprietary purposes, it is only fitting to expect their support in measures that contribute to common good. Moreover, their right to own, establish and operate economic enterprises is always subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.^[42]

The Court also entertains no doubt on the legality of the method taken by the legislature to implement the declared policies of the subject laws, that is, to impose discounts on the medical services and purchases of senior citizens and PWDs and to treat the said discounts as tax deduction rather than tax credit. The measure is fair and reasonable and no credible proof was presented to prove the claim that it was confiscatory. To be considered confiscatory, there must be *taking* of property without just compensation.

Illuminating on this point is the discussion of the Court on the concept of taking in *City of Manila v. Hon. Laguio, Jr.*,^[43] viz.:

There are two different types of taking that can be identified. A "possessory" taking occurs when the government confiscates or physically occupies property. A "regulatory" taking occurs when the government's regulation leaves no reasonable economically viable use of the property.

x x x x

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. x x x.

What is crucial in judicial consideration of regulatory takings is that government regulation is a taking if it leaves no reasonable economically viable use of property in a manner that interferes with reasonable expectations for use. A regulation that permanently denies all economically beneficial or productive use of land is, from the owner's point of view, equivalent to a "taking" unless principles of nuisance or property law that existed when the owner acquired the land make the use prohibitable. When the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking.

x x x x

A restriction on use of property may also constitute a 'taking' if not reasonably necessary to the effectuation of a substantial public purpose or if it has an unduly harsh impact on the distinct investment-backed expectations of the owner.^[44] (Citations omitted)

The petitioner herein attempts to prove its claim that the pertinent provisions of R.A. Nos. 9257 and 9442 amount to taking by presenting financial statements purportedly showing financial losses incurred by them due to the adoption of the tax deduction scheme.

For the petitioner's clarification, the presentation of the financial statement is not of compelling significance in justifying its claim for just compensation. What is imperative is for it to establish that there was taking in the constitutional sense or that, in the imposition of the mandatory discount, the power exercised by the state was eminent domain.

According to *Republic of the Philippines v. Vda. de Castellvi*,^[45] five circumstances must be present in order to qualify "taking" as an exercise of eminent domain. *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.^[46]

The first requirement speaks of entry into a private property which clearly does not obtain in this case. There is no private property that is invaded or appropriated by the State. As it is, the petitioner precipitately deemed future profits as private property and then proceeded

to argue that the State took it away without full compensation. This seemed preposterous considering that the subject of what the petitioner supposed as taking was not even earned profits but merely an expectation of profits, which may not even occur. For obvious reasons, there cannot be taking of a contingency or of a mere possibility because it lacks physical existence that is necessary before there could be any taking. Further, it is impossible to quantify the compensation for the loss of supposed profits before it is earned.

The supposed taking also lacked the characteristics of permanence^[47] and consistency. The presence of these characteristics is significant because they can establish that the effect of the questioned provisions is the same on all establishments and those losses are indeed its unavoidable consequence. But apparently these indications are wanting in this case. The reason is that the impact on the establishments varies depending on their response to the changes brought about by the subject provisions. To be clear, establishments are not prevented from adjusting their prices to accommodate the effects of the granting of the discount and retain their profitability while being fully compliant to the laws. It follows that losses are not inevitable because establishments are free to take business measures to accommodate the contingency. Lacking in permanence and consistency, there can be no taking in the constitutional sense. There cannot be taking in one establishment and none in another, such that the former can claim compensation but the other may not. Simply told, there is no taking to justify compensation; there is only poor business decision to blame.

There is also no ousting of the owner or deprivation of ownership. Establishments are neither divested of ownership of any of their properties nor is anything forcibly taken from them. They remain the owner of their goods and their profit or loss still depends on the performance of their sales.

Apart from the foregoing, covered establishments are also provided with a mechanism to recoup the amount of discounts they grant the senior citizens and PWDs. It is provided in Section 4(a) of R.A. No. 9257 and Section 32 of R.A. No. 9442 that establishments may claim the discounts as "tax deduction based on the net cost of the goods sold or services rendered." Basically, whatever amount was given as discount, covered establishments may claim an equal amount as an expense or tax deduction. The trouble is that the petitioner, in protesting the change in the tax treatment of the discounts, apparently seeks tax incentive and not merely a return of the amount given as discounts. It premised its interpretation of *financial losses* in terms of the effect of the change in the tax treatment of the discount on its tax liability; hence, the claim that the measure was confiscatory. However, as mentioned earlier in the discussion, loss of profits is not the inevitable result of the change in tax treatment of the discounts; it is more appropriately a consequence of poor business decision.

It bears emphasizing that the law does not place a cap on the amount of mark up that covered establishments may impose on their items. This rests on the discretion of the establishment which, of course, is expected to put in the price of the overhead costs, expectation of profits and other considerations into the selling price of an item. In a simple illustration, here is *Drug A*, with acquisition cost of P8.00, and selling price of P10.00. Then comes a law that imposes 20% on senior citizens and PWDs, which affected

Establishments 1, 2 and 3. Let us suppose that the approximate number of patrons who purchases *Drug A* is 100, half of which are senior citizens and PWDs. Before the passage of the law, all of the establishments are earning the same amount from profit from the sale of *Drug A*, viz.:

Before the passage of the law:

Drug A

Acquisition cost P8.00
Selling price P10.00

Number of Patrons 100

Sales:

$$100 \times P10.00 = P1,000.00$$

Profit: P200.00

After the passage of the law, the three establishments reacted differently. Establishment 1 was passive and maintained the price of *Drug A* at P8.00 which understandably resulted in diminution of profits.

Establishment 1

Drug A

Acquisition cost P8.00
Selling price P10.00

Number of Patrons 100

Senior Citizens/PWD 50

Sale:

$$100 \times P10.00 = P1,000.00$$

Deduction: P100.00

Profit: P100.00

On the other hand, Establishment 2, mindful that the new law will affect the profitability of the business, made a calculated decision by increasing the mark up of *Drug A* to P3.20, instead of only P2.00. This brought a positive result to the earnings of the company.

Establishment 2

Drug A

Acquisition cost P8.00
Selling price P11.20

Number of Patrons 100

Senior Citizens/PWD 50

Sale:

$$100 \times P11.20 = P1,120.00$$

Deduction: P112.00

Profit: P208.00

For its part, Establishment 3 raised the mark up on *Drug A* to only P3.00 just to even out the effect of the law. This measure left a negligible effect on its profit, but Establishment 3 took it as a social duty to share in the cause being promoted by the government while still maintaining profitability.

Establishment 3

Drug A

Acquisition cost P8.00
Selling price P11.00

Number of Patrons 100

Senior Citizens/PWD 50

Sale:

$$100 \times P11.00 = P1,100.00$$

Deduction: P110.00

Profit: P190.00

The foregoing demonstrates that it is not the law *per se* which occasioned the losses in the covered establishments but bad business judgment. One of the main considerations in making business decisions is the law because its effect is widespread and inevitable. Literally, anything can be a subject of legislation. It is therefore incumbent upon business managers to cover this contingency and consider it in making business strategies. As shown in the illustration, the better responses were exemplified by Establishments 2 and 3 which promptly put in the additional costs brought about by the law into the price of *Drug A*. In doing so, they were able to maintain the profitability of the business, even earning some more, while at the same time being fully compliant with the law. This is not to mention that the illustration is even too simplistic and not the most ideal since it dealt only with a single drug being purchased by both regular patrons and senior citizens and PWDs. It did not consider the accumulated profits from the other medical and non-medical products being sold by the establishments which are expected to further curb the effect of the granting of the discounts in the business.

It is therefore unthinkable how the petitioner could have suffered losses due to the mandated discounts in R.A. Nos. 9257 and 9442, when a fractional increase in the prices of items could bring the business standing at a balance even with the introduction of the subject laws. A level adjustment in the pricing of items is a reasonable business measure to take in order to adapt to the contingency. This could even make establishments earn more, as shown in the illustration, since every fractional increase in the price of covered items translates to a wider cushion to taper off the effect of the granting of discounts and ultimately results to additional profits gained from the purchases of the same items by regular patrons who are not entitled to the discount. Clearly, the effect of the subject laws in the financial standing of covered companies depends largely on how they respond and forge a balance between profitability and their sense of social responsibility. The adaptation is entirely up to them and they are not powerless to make adjustments to accommodate the subject legislations.

Still, the petitioner argues that the law is confiscatory in the sense that the State takes away a portion of its supposed profits which could have gone into its coffers and utilizes it for public purpose. The petitioner claims that the action of the State amounts to taking for which it should be compensated.

To reiterate, the subject provisions only affect the petitioner's right to profit, and not earned profits. Unfortunately for the petitioner, the right to profit is not a vested right or an entitlement that has accrued on the person or entity such that its invasion or deprivation warrants compensation. Vested rights are "fixed, unalterable, or irrevocable."^[48] More extensively, they are depicted as follows:

Rights which have so completely and definitely accrued to or settled in a person

that they are not subject to be defeated or cancelled by the act of any other private person, and which it is **right** and equitable that the government should recognize and protect, as being lawful in themselves, and settled according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived otherwise than by the established methods of procedure and for the public welfare. x x x A **right** is not 'vested' unless it is more than a mere expectation based on the anticipated continuance of present laws; it must be an established interest in property, not open to doubt. x x x To be vested in its accurate legal sense, a **right** must be complete and consummated, and one of which the person to whom it belongs cannot be divested without his consent. x x x.^[49] (Emphasis ours)

Right to profits does not give the petitioner the cause of action to ask for just compensation, it being only an inchoate right or one that has not fully developed^[50] and therefore cannot be claimed as one's own. An inchoate right is a mere expectation, which may or may not come into existence. It is contingent as it only comes "into existence on an event or condition which may not happen or be performed until some other event may prevent their vesting."^[51] Certainly, the petitioner cannot claim confiscation or taking of something that has yet to exist. It cannot claim deprivation of profit before the consummation of a sale and the purchase by a senior citizen or PWD.

Right to profit is not an accrued right; it is not fixed, absolute nor indefeasible. It does not come into being until the occurrence or realization of a condition precedent. It is a mere "contingency that might never eventuate into a right. It stands for a mere possibility of profit but nothing might ever be payable under it."^[52]

The inchoate nature of the right to profit precludes the possibility of compensation because it lacks the quality or characteristic which is necessary before any act of taking or expropriation can be effected. Moreover, there is no yardstick fitting to quantify a contingency or to determine compensation for a mere possibility. Certainly, "taking" presupposes the existence of a subject that has a quantifiable or determinable value, characteristics which a mere contingency does not possess.

Anent the question regarding the shift from tax credit to tax deduction, suffice it is to say that it is within the province of Congress to do so in the exercise of its legislative power. It has the authority to choose the subject of legislation, outline the effective measures to achieve its declared policies and even impose penalties in case of non-compliance. It has the sole discretion to decide which policies to pursue and devise means to achieve them, and courts often do not interfere in this exercise for as long as it does not transcend constitutional limitations. "In performing this duty, the legislature has no guide but its judgment and discretion and the wisdom of experience."^[53] In *Carter v. Carter Coal Co.*,^[54] legislative discretion has been described as follows:

Legislative congressional **discretion** begins with the choice of means, and ends with the adoption of methods and details to carry the delegated powers into effect. x x x [W]hile the powers are rigidly limited to the enumerations of the Constitution, the means which may be employed to carry the powers into effect are not restricted, save that they must be appropriate, plainly adapted to the end, and not prohibited by, but consistent with, the letter and spirit of the Constitution. x x x.^[55] (Emphasis ours)

Corollary, whether to treat the discount as a tax deduction or tax credit is a matter addressed to the wisdom of the legislature. After all, it is within its prerogative to enact laws which it deems sufficient to address a specific public concern. And, in the process of legislation, a bill goes through rigorous tests of validity, necessity and sufficiency in both houses of Congress before enrolment. It undergoes close scrutiny of the members of Congress and necessarily had to surpass the arguments hurled against its passage. Thus, the presumption of validity that goes with every law as a form of deference to the process it had gone through and also to the legislature's exercise of discretion. Thus, in *Ichong, etc., et al. v. Hernandez, etc., and Sarmiento*,^[56] the Court emphasized, thus:

It must not be overlooked, in the first place, that **the legislature**, which is the constitutional repository of police power and exercises the prerogative of determining the policy of the State, is by force of circumstances primarily **the judge of necessity, adequacy or reasonableness and wisdom, of any law promulgated in the exercise of the police power, or of the measures adopted to implement the public policy or to achieve public interest.** x x x.^[57] (Emphasis ours)

The legislature may also grant rights and impose additional burdens. It may also regulate industries, in the exercise of police power, for the protection of the public. R.A. Nos. 9257 and 9442 are akin to regulatory laws, the issuance of which is within the ambit of police power. 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 fall under this category.^[58]

Indeed, regulatory laws are within the category of police power measures from which affected persons or entities cannot claim exclusion or compensation. For instance, private establishments cannot protest that the imposition of the minimum wage is confiscatory since it eats up a considerable chunk of its profits or that the mandated remuneration is not commensurate for the work done. The compulsory nature of the provision for minimum wages underlies the effort of the State, as R.A. No. 6727^[59] expresses it, to promote productivity-improvement and gain-sharing measures to ensure a decent standard of living for the workers and their families; to guarantee the rights of labor to its just share in the fruits of production; to enhance employment generation in the countryside through industry dispersal; and to allow business and industry reasonable returns on investment, expansion and growth, and as the Constitution expresses it, to affirm labor as a primary social

economic force.^[60]

Similarly, the imposition of price control on staple goods in R.A. No. 7581^[61] is likewise a valid exercise of police power and affected establishments cannot argue that the law was depriving them of supposed gains. The law seeks to ensure the availability of basic necessities and prime commodities at reasonable prices at all times without denying legitimate business a fair return on investment. It likewise aims to provide effective and sufficient protection to consumers against hoarding, profiteering and cartels with respect to the supply, distribution, marketing and pricing of said goods, especially during periods of calamity, emergency, widespread illegal price manipulation and other similar situations.^[62]

More relevantly, in *Manila Memorial Park, Inc.*,^[63] it was ruled that it is within the bounds of the police power of the state to impose burden on private entities, even if it may affect their profits, such as in the imposition of price control measures. There is no compensable taking but only a recognition of the fact that they are subject to the regulation of the State and that all personal or private interests must bow down to the more paramount interest of the State.

This notwithstanding, the regulatory power of the State does not authorize the destruction of the business. While a business may be regulated, such regulation must be within the bounds of reason, i.e., the regulatory ordinance must be reasonable, and its provision cannot be oppressive amounting to an arbitrary interference with the business or calling subject of regulation. A lawful business or calling may not, under the guise of regulation, be unreasonably interfered with even by the exercise of police power.^[64] After all, regulation only signifies control or restraint, it does not mean suppression or absolute prohibition. Thus, in *Philippine Communications Satellite Corporation v. Alcuaz*,^[65] the Court emphasized:

The power to regulate is not the power to destroy useful and harmless enterprises, but is the power to protect, foster, promote, preserve, and control with due regard for the interest, first and foremost, of the public, then of the utility and of its patrons. Any regulation, therefore, which operates as an effective confiscation of private property or constitutes an arbitrary or unreasonable infringement of property rights is void, because it is repugnant to the constitutional guaranties of due process and equal protection of the laws.^[66]
(Citation omitted)

Here, the petitioner failed to show that R.A. Nos. 9257 and 9442, under the guise of regulation, allow undue interference in an otherwise legitimate business. On the contrary, it was shown that the questioned laws do not meddle in the business or take anything from it but only regulate its realization of profits.

The subject laws do not violate the equal protection clause

The petitioner argues that R.A. Nos. 9257 and 9442 are violative of the equal protection clause in that it failed to distinguish between those who have the capacity to pay and those who do not, in granting the 20% discount. R.A. No. 9257, in particular, removed the income qualification in R.A. No. 7432 of P60,000.00 *per annum* before a senior citizen may be entitled to the 20% discount.

The contention lacks merit.

The petitioner's argument is dismissive of the reasonable qualification on which the subject laws were based. In *City of Manila v. Hon. Laguio Jr.*,^[67] the Court emphasized:

Equal protection requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others. The guarantee means that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other classes in like circumstances.^[68]
(Citations omitted)

"The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another."^[69] For a classification to be valid, (1) it must be based upon substantial distinctions, (2) it must be germane to the purposes of the law, (3) it must not be limited to existing conditions only, and (4) it must apply equally to all members of the same class.^[70]

To recognize all senior citizens as a group, without distinction as to income, is a valid classification. The Constitution itself considered the elderly as a class of their own and deemed it a priority to address their needs. When the Constitution declared its intention to prioritize the predicament of the underprivileged sick, elderly, disabled, women, and children,^[71] it did not make any reservation as to income, race, religion or any other personal circumstances. It was a blanket privilege afforded the group of citizens in the enumeration in view of the vulnerability of their class.

R.A. No. 9257 is an implementation of the avowed policy of the Constitution to enact measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities.^[72] Specifically, it caters to the welfare of all senior citizens. The classification is based on age and therefore qualifies all who have attained the age of 60. Senior citizens are a class of their own, who are in need and should be entitled to government support, and the fact that they may still be earning for their own sustenance should not disqualify them from the privilege.

It is well to consider that our senior citizens have already reached the age when work opportunities have dwindled concurrently as their physical health. They are no longer

expected to work, but there are still those who continue to work and contribute what they can to the country. Thus, to single them out and take them out of the privileges of the law for continuing to strive and earn income to fend for themselves is inimical to a welfare state that the Constitution envisions. It is tantamount to penalizing them for their persistence. It is commending indolence rather than rewarding diligence. It encourages them to become wards of the State rather than productive partners.

Our senior citizens were the laborers, professionals and overseas contract workers of the past. While some may be well to do or may have the capacity to support their sustenance, the discretion to avail of the privileges of the law is up to them. But to instantly tag them as undeserving of the privilege would be the height of ingratitude; it is an outright discrimination.

The same ratiocination may be said of the recognition of PWDs as a class in R.A. No. 9442 and in granting them discounts. It needs no further explanation that PWDs have special needs which, for most, last their entire lifetime. They constitute a class of their own, equally deserving of government support as our elderlies. While some of them maybe willing to work and earn income for themselves, their disability deters them from living their full potential. Thus, the need for assistance from the government to augment the reduced income or productivity brought about by their physical or intellectual limitations.

There is also no question that the grant of mandatory discount is germane to the purpose of R.A. Nos. 9257 and 9442, that is, to adopt an integrated and comprehensive approach to health development and make essential goods and other social services available to all the people at affordable cost, with special priority given to the elderlies and the disabled, among others. The privileges granted by the laws ease their concerns and allow them to live more comfortably.

The subject laws also address a continuing concern of the government for the welfare of the senior citizens and PWDs. It is not some random predicament but an actual, continuing and pressing concern that requires preferential attention. Also, the laws apply to all senior citizens and PWDs, respectively, without further distinction or reservation. Without a doubt, all the elements for a valid classification were met.

The definitions of "disabilities" and "PWDs" are clear and unequivocal

Undeterred, the petitioner claims that R.A. No. 9442 is ambiguous particularly in defining the terms "disability" and "PWDs," such that it lack comprehensible standards that men of common intelligence must guess at its meaning. It likewise bewails the futility of the given safeguards to prevent abuse since government officials who are neither experts nor practitioners of medicine are given the authority to issue identification cards that authorizes the granting of the privileges under the law.

The Court disagrees.

Section 4(a) of R.A. No. 7277, the precursor of R.A. No. 9442, defines "disabled persons" as follows:

(a) **Disabled persons** are those suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being[.]

On the other hand, the term "PWDs" is defined in Section 5.1 of the IRR of R.A. No. 9442 as follows;

5.1. **Persons with Disability** are those individuals defined under Section 4 of [R.A. No.] 7277 [or] 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.

The foregoing definitions have a striking conformity with the definition of "PWDs" in Article 1 of the *United Nations Convention on the Rights of Persons with Disabilities* which reads:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. (Emphasis and italics ours)

The seemingly broad definition of the terms was not without good reasons. It recognizes that "disability is an evolving concept"^[73] and appreciates the "diversity of PWDs."^[74] The terms were given comprehensive definitions so as to accommodate the various forms of disabilities, and not confine it to a particular case as this would effectively exclude other forms of physical, intellectual or psychological impairments.

Moreover, in *Estrada v. Sandiganbayan*,^[75] it was declared, thus:

A statute is not rendered uncertain and void merely because general terms are used therein, or because of the employment of terms without defining them; much less do we have to define every word we use. Besides, there is no positive constitutional or statutory command requiring the legislature to define each and every word in an enactment. Congress is not restricted in the form of expression of its will, and its inability to so define the words employed in a statute will not necessarily result in the vagueness or ambiguity of the law so long as the

legislative will is clear, or at least, can be gathered from the whole act x x x.^[76]
(Citation omitted)

At any rate, the Court gathers no ambiguity in the provisions of R.A. No. 9442. As regards the petitioner's claim that the law lacked reasonable standards in determining the persons entitled to the discount, Section 32 thereof is on point as it identifies who may avail of the privilege and the manner of its availment. It states:

Sec. 32. x x x

The abovementioned privileges are available only to persons with disability who are Filipino citizens upon submission of any of the following as proof of his/her entitlement thereto:

- (I) An identification card issued by the city or municipal mayor or the barangay captain of the place where the persons with disability resides;
- (II) The passport of the persons with disability concerned; or
- (III) Transportation discount fare Identification Card (ID) issued by the National Council for the Welfare of Disabled Persons (NCWDP).

It is, however, the petitioner's contention that the foregoing authorizes government officials who had no medical background to exercise discretion in issuing identification cards to those claiming to be PWDs. It argues that the provision lends to the indiscriminate availment of the privileges even by those who are not qualified.

The petitioner's apprehension demonstrates a superficial understanding of the law and its implementing rules. To be clear, the issuance of identification cards to PWDs does not depend on the authority of the city or municipal mayor, the DSWD or officials of the NCDA (formerly NCWDP). It is well to remember that what entitles a person to the privileges of the law is his *disability*, the fact of which he must prove to qualify. Thus, in NCDA Administrative Order (A.O.) No. 001, series of 2008,^[77] it is required that the person claiming disability must submit the following requirements before he shall be issued a PWD Identification Card:

1. Two "1x 1" recent ID pictures with the names, and signatures or thumb marks at the back of the picture.
2. One (1) Valid ID
3. Document to confirm the medical or disability condition^[78]

To confirm his disability, the person must obtain a medical certificate or assessment, as the case maybe, issued by a licensed private or government physician, licensed teacher or head of a business establishment attesting to his impairment. The issuing entity depends on whether the disability is apparent or non-apparent. NCDA A.O. No. 001 further provides:
^[79]

DISABILITY	DOCUMENT	ISSUING ENTITY
Apparent Disability	Medical Certificate	Licensed Private or Government Physician
	School Assessment	Licensed Teacher duly signed by the School Principal
	Certificate of Disability	<ul style="list-style-type: none"> • Head of the Business Establishment • Head of Non-Government Organization
Non-Apparent Disability	Medical Certificate	Licensed Private or Government Physician

To provide further safeguard, the Department of Health issued A.O. No. 2009-0011, providing guidelines for the availment of the 20% discount on the purchase of medicines by PWDs. In making a purchase, the individual must present the documents enumerated in Section VI(4)(b), to wit:

- i. PWD identification card x x x
- ii. Doctor's prescription stating the name of the PWD, age, sex, address, date, generic name of the medicine, dosage form, dosage strength, quantity, signature over printed name of physician, physician's address, contact number of physician or dentist, professional license number, professional tax receipt number and narcotic license number, if applicable. To safeguard the health of PWDs and to prevent abuse of [R.A. No.] 9257, a doctor's prescription is required in the purchase of over-the-counter medicines. x x x.
- iii. Purchase booklet issued by the local social/health office to PWDs for free containing the following basic information:
 - a) PWD ID number
 - b) Booklet control number
 - c) Name of PWD
 - d) Sex
 - e) Address
 - f) Date of Birth
 - g) Picture
 - h) Signature of PWD
 - i) Information of medicine purchased:
 - i.1 Name of medicine
 - i.2 Quantity

- i.3 Attending Physician
- i.4 License Number
- i.5 Servicing drug store name
- i.6 Name of dispensing pharmacist

j) Authorization letter of the PWD x x x in case the medicine is bought by the representative or caregiver of the PWD.

The PWD identification card also has a validity period of only three years which facilitate in the monitoring of those who may need continued support and who have been relieved of their disability, and therefore may be taken out of the coverage of the law.

At any rate, the law has penal provisions which give concerned establishments the option to file a case against those abusing the privilege. Section 46(b) of R.A. No. 9442 provides that "[a]ny person who abuses the privileges granted herein shall be punished with imprisonment of not less than six months or a fine of not less than Five Thousand pesos (P5,000.00), but not more than Fifty Thousand pesos (P50,000.00), or both, at the discretion of the court." Thus, concerned establishments, together with the proper government agencies, must actively participate in monitoring compliance with the law so that only the intended beneficiaries of the law can avail of the privileges.

Indubitably, the law is clear and unequivocal, and the petitioner's claim of vagueness to cast uncertainty in the validity of the law does not stand.

WHEREFORE, in view of the foregoing disquisition, Section 4(a) of Republic Act No. 9257 and Section 32 of Republic Act No. 9442 are hereby declared **CONSTITUTIONAL**.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Mendoza, Caguioa, Martires and Tijam, JJ., concur.

Carpio, J., see dissenting opinion.

Del Castillo, Perlas-Bernabe, and Jardeleza, JJ., no part.

Leonen, J., see separate opinion.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on **April 25, 2017** a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled administrative matter, the original of which was received by this Office on June 7, 2017 at 9:35 a.m.

Very truly yours,

**(SGD.) FELIPA G. BORLONGAN-
ANAMA**
Clerk of Court

[1] *Rollo*, pp. 11-78.

[2] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Estela M. Perlas-Bernabe (now a member of this Court) and Sesinando E. Villon concurring; *id.* at 79-93.

[3] *Id.* at 94.

[4] *R.A. No. 7432*, Section 2.

[5] 553 Phil. 120 (2007).

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

[7] *Rollo*, p. 433.

[8] *Id.* at 434-435.

[9] *Id.* at 100-158.

[10] *Supra* note 5.

[11] *Rollo*, p. 87.

[12] *Id.* at 89.

[13] *Id.* at 91.

[14] *Id.* at 335-383.

[15] *Id.* at 94.

[16] *Id.* at 25.

[17] *Id.* at 89.

- [18] *Lt. Gonzales v. Gen. Abaya*, 530 Phil. 189, 215 (2006).
- [19] 669 Phil. 371 (2011).
- [20] *Id.* at 383.
- [21] 409 Phil. 571 (2001).
- [22] *Id.* at 592.
- [23] 591 Phil. 393 (2008).
- [24] *Id.* at 403.
- [25] *Id.* at 419.
- [26] *Belgica, et al. v. Honorable Executive Secretary Ochoa, Jr., et al.*, 721 Phil. 416 (2013).
- [27] THE JUDICIARY REORGANIZATION ACT OF 1980. Approved on August 14, 1981.
- [28] *Mangaliag v. Judge Catubig-Pastoral*, 510 Phil. 637, 646-647 (2005).
- [29] *Congressman Chong, et al. v. Hon. Dela Cruz, et al.*, 610 Phil. 725, 728 (2009).
- [30] *Rollo*, pp. 33-38.
- [31] *Carlos Superdrug Corp. v. DSWD*, *supra* note 5, at 129-132.
- [32] *R.A. No. 7277*, Section 2(a).
- [33] *Oliver v. Feldner*, 149 Ohio App. 3d 114, 2002 Ohio 3209, 776 N.E.2d 499 (Ct. App. 2002).
- [34] 554 Phil. 563 (2007).
- [35] *Id.* at 579-580.
- [36] 722 Phil. 538 (2013).
- [37] *Id.* at 578-579.

- [38] *Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Sec. Gozun*, 520 Phil. 457, 476 (2006).
- [39] *Department of Education, Culture and Sports v. San Diego*, 259 Phil. 1016, 1021 (1989).
- [40] 1987 CONSTITUTION, Article XIII, Section 11.
- [41] 1987 CONSTITUTION, Article XV, Section 4.
- [42] 1987 CONSTITUTION, Article XII, Section 6.
- [43] 495 Phil. 289 (2005).
- [44] *Id.* at 320-321.
- [45] 157 Phil. 329 (1974).
- [46] *Id.* at 345-346.
- [47] See Concurring Opinion of Associate Justice Lucas P. Bersamin in *Manila Memorial Park, Inc. et al. v. Secretary of the DSWD, et al.*, *supra* note 36, at 614.
- [48] *Luque, et al. v. Hon. Villegas, etc., et al.*, 141 Phil. 108, 118 (1969).
- [49] *Cartwright v. Public Serv. Co.*, 66 N.M. 64, 1958-NMSC-134, 343 P.2d 654, 1959 N.M. LEXIS 944 (N.M. 1959).
- [50] Concurring and Dissenting Opinion of Associate Justice Marvic M.V.F. Leonen, *Manila Memorial Park, Inc., et al. v. Secretary of the DSWD, et al.*, *supra* note 36, at 641.
- [51] *Cartwright v. Public Serv. Co.*, *supra* note 49.
- [52] *Fredrick v. Chicago*, 221 A.D. 588, 224 N.Y.S. 629, 1927 N.Y. App. Div. LEXIS 6510.
- [53] *United States v. Borromeo*, 23 Phil. 279, 288 (1912).
- [54] 298 U.S. 238, 56 S. Ct. 855, 80 L. Ed. 1160, 1936 U.S. LEXIS 950 (U.S. 1936).
- [55] *Id.*
- [56] 101 Phil. 1155 (1957).

[57] *Id.* at 1165-1166.

[58] *Manila Memorial Park, Inc., et al. v. Secretary of the DSWD, et al.*, supra note 36, at 586.

[59] Wage Rationalization Act, approved on June 9, 1989.

[60] *Employees Confederation of the Philippines v. National Wages and Productivity Commission*, 278 Phil. 747, 755 (1991).

[61] The Price Act, approved on May 27, 1992.

[62] *R.A. No. 7581* (1992), Section 2.

[63] Supra note 36.

[64] *Acebedo Optical Company, Inc. v. Court of Appeals*, 385 Phil. 956, 970 (2000), citing *Balacuit v. Court of First Instance of Agusan del Norte and Butuan City, Branch II*, 246 Phil. 189, 204 (1988).

[65] 259 Phil. 707 (1989).

[66] *Id.* at 721-722.

[67] 495 Phil. 289 (2005).

[68] *Id.* at 326.

[69] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 560-561 (2004).

[70] *People v. Cayat*, 68 Phil. 12, 18 (1939).

[71] 1987 CONSTITUTION, Article XIII, Section 11.

[72] 1987 CONSTITUTION, Article XIII, Section 1.

[73] *Preamble of the United Nations Convention on the Rights of Persons with Disabilities*, Section (e).

[74] *Preamble of the United Nations Convention on the Rights of Persons with Disabilities*, Section (i).

[75] 421 Phil. 290 (2001).

[76] *Id.* at 347-348.

[77] Guidelines on the Issuance of Identification Card Relative to R.A. No. 9442.

[78] NCDA A.O. No. 001, series of 2008, V(A).

[79] NCDA A.O. No. 001, series of 2008, IV(D).

DISSENTING OPINION

CARPIO, J.:

The provisions in contention in the case before the Court are Section 4(a) of Republic Act No. 9257^[1] (R.A. 9257) and Section 32 of Republic Act No. 9442^[2] (R.A. 9442) which grant a 20% discount on the purchase of medicines, respectively, to senior citizens and persons with disability. Southern Luzon Drug Corporation (Southern Luzon Drug) assails the constitutionality of the provisions and the tax treatment of the 20% discount as tax deduction from gross income computed from the net cost of the goods sold or services rendered. Southern Luzon Drug alleges, among other things, that the 20% discount is an invalid exercise of the power of eminent domain insofar as it fails to provide just compensation to establishments that grant the discount.

The majority opinion affirms the constitutionality of the assailed provisions and reiterated the rulings in *Carlos Superdrug Corporation v. Department of Social Welfare and Development*^[3] and *Manila Memorial Park, Inc. v. Secretary of the Department of Social Welfare and Development*^[4] that the challenged provisions constitute a valid exercise of police power.

I maintain my dissent in the *Manila Memorial Park* case. I assert that *Carlos Superdrug Corporation* 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 distinguish and clarify taking in police power and taking in eminent domain. Government officials cannot just invoke police power when the act constitutes eminent domain.**

In *People v. Pomar*,^[5] 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."^[6] The Court stated that the "definition of the police power of the [S]tate must depend upon the particular law and the particular facts to which it is to be applied."^[7] **However, it was considered even then that police power, when applied to taking of property without compensation, refers to property that is 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 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. Kansas*, 123 U.S. 623)^[8] (Emphasis supplied)

In *City Government of Quezon City v. Hon. Judge Ericta*,^[9] 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-II, 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; 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, L-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.^[10] (Boldfacing and italicization supplied)

It is very clear that 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.

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.^[11]

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.^[12]

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 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.^[13] (Emphasis supplied)

Both Section 4(a) of R.A. 9257 and Section 32 of R.A. 9442 undeniably contemplate 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 and persons with disability 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(a) of R.A. 9257 and Section 32 of R.A. 9442 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 and persons with disability belongs to private establishments, whether these establishments make a profit or suffer a loss.

Just compensation is **"the full and fair equivalent of the property taken from its owner by the expropriator."**^[14] 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.^[15] (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."**^[16] The Court ruled that **"[t]his constitutes compensable taking for which petitioners would ordinarily become entitled to a just compensation."**^[17] 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.

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). x x x.

x x x x

Article 157 of the Labor Code 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 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 discounts to senior citizens and persons with disability, private establishments are 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, 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 private establishments is the requirement under Section 19 in relation to Section 18 of the Social Security Law^[18] and Section 7 of the Pag-IBIG Fund^[19] 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.

Here, the private establishments are only compensated about 32% of the 20% discount granted to senior citizens and persons with disability. 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." I reiterate that *Carlos Superdrug Corporation* should be abandoned by this Court and *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*,^[20] 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" should be reaffirmed.

Carlos Superdrug Corporation admitted that the permanent reduction in the total revenues of private establishments is a "**compensable taking for which petitioners would ordinarily become entitled to a just compensation.**"^[21] 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 distinct from 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 and persons with disability. Under R.A. 9257, the 20% discount applies to "**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;"^[22] "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;"^[23] "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;"^[24] "fare for domestic air and sea travel for the exclusive use or enjoyment of senior

citizens;"^[25] and "public railways, skyways and bus fare for the exclusive use and enjoyment of senior citizens."^[26]

Likewise, the 20% discount under R.A. 9442 applies to "**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;"^[27] admission fees charged by theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement for the exclusive use or enjoyment of persons with disability;"^[28] "purchase of medicines in all drugstores for the exclusive use or enjoyment of persons with disability;"^[29] "medical and dental services including diagnostic and laboratory fees such as, but not limited to, x-rays, computerized tomography scans and blood tests in all government facilities, in accordance with the rules and regulations to be issued by the Department of Health (DOH), in coordination with the Philippine Health Insurance Corporation (PHILHEALTH);"^[30] "medical and dental services including diagnostic and laboratory fees, and professional fees of attending doctors in all private hospitals and medical facilities, in accordance with the rules and regulations issued by the DOH, in coordination with the PHILHEALTH;"^[31] "fare for domestic air and sea travel for the exclusive use or enjoyment of persons with disability,"^[32] and "public railways, skyways and bus fare for the exclusive use or enjoyment of persons with disability."^[33] **The 20%, discount cannot be 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.**

According to the majority opinion, R.A. Nos. 9257 and 9442 are akin to regulatory laws which are within the ambit of police power, such as the minimum wage law, zoning ordinances, price control laws, laws regulating the operation of motels or hotels, law limiting the working hours to eight, and similar laws falling under the same category.^[34] The majority opinion states that private establishments cannot protest that the imposition of the minimum wage law is confiscatory, or that the imposition of the price control law deprives the affected establishments of their supposed gains.^[35]

There are instances when the State can regulate the profits of establishments but only in specific cases. For instance, the profits of public utilities can be 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 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 also be regulated but only **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 State can take over private property without compensation in times of war or other national emergency under Section 23(2), Article VI of the 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.**

The majority opinion states that the laws do not place a cap on the amount of markup that private establishments may impose on their prices.^[36] Hence, according to the majority opinion, the laws *per se* do not cause the losses but bad business judgment on the part of the establishments.^[37] The majority opinion adds that a level adjustment in the pricing of items is a reasonable business measure and could even make establishments earn more.^[38] However, 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.

I maintain that while the 20% discount granted to senior citizens and persons with disability is not *per se* unreasonable, the tax treatment of the 20% discount as tax deduction from gross income computed from the net cost of the goods sold or services rendered is oppressive and confiscatory. Section 4(a) of R.A. 9257, providing that private establishments may claim the 20% discount to senior citizens as tax deduction, is patently unconstitutional. As such, Section 4 of R.A. 7432, the old law prior to the amendment by R.A. No. 9257, which allows the 20% discount as tax credit, should be automatically reinstated. I reiterate that where amendments to a statute are declared unconstitutional, the original statute as it existed before the amendment remains in force.^[39] An amendatory law, if declared null and void, in legal contemplation does not exist.^[40] The private establishments should therefore be allowed to claim the 20% discount granted to senior citizens as tax credit. Likewise, Section 32 of R.A. 9442, providing that the establishments may claim the discounts given as tax deductions based on the net cost of the goods sold or services rendered, is also , unconstitutional. Instead, establishments should be allowed to claim the 20% discount given to persons with disability as tax credit.

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

[1] 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, the "Expanded Senior Citizens Act of 2010."

[2] An Act Amending Republic Act No. 7277, Otherwise Known as the "Magna Carta for Disabled Persons, and For Other Purposes."

[3] 553 Phil. 120 (2007).

[4] 722 Phil. 538 (2013).

[5] 46 Phil. 440 (1924).

[6] *Id.* at 445.

[7] *Id.*

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

[9] 207 Phil. 648 (1983).

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

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

[12] *Moday v. CA*, 335 Phil. 1057 (1997).

[13] J. Bernas, S.J., *The 1987 Constitution of the Philippines, A Commentary* 379 (1996 ed.)

[14] *National Power Corporation v. Spouses Zabala*, 702 Phil. 491 (2013).

[15] *Id.* at 499-500.

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

[17] *Id.* at 130.

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

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

[20] 496 Phil. 307 (2005).

[21] Supra note 3, at 130.

[22] Section 4(a).

[23] Section 4(b).

[24] Section 4(f).

[25] Section 4(g).

[26] Section 4(h).

[27] Section 32(a),

[28] Section 32(b).

[29] Section 32(c).

[30] Section 32(d).

[31] Section 32(e).

[32] Section 32(f).

[33] Section 32(g).

[34] Decision, p. 24.

[35] Id.

[36] Id. at 19.

[37] Id. at 20.

[38] Id. at 21.

[39] 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].

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

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 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. 9257^[6] 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. 9442^[7] amended Republic Act No. 7277 (Magna Carta for Disabled Persons) to grant persons 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 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]

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% 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

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 P100.00. Its profit is thus P1,600,000.00:

$$R = P \times Q$$

$$R = P100.00 \times 16,000$$

$$\mathbf{R = P1,600,000.00}$$

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 P100.00, and to senior citizens and persons with disability at only P80.00.

The formula of the revenue of Company XYZ then becomes:

$$R_T = R_{SD} + R_C$$

$$R_{SD} = P_{SD} \times Q_{SD}$$

$$R_C = P_C \times Q_C$$

$$R_T = (P_{SD} \times Q_{SD}) + (P_C \times Q_C)$$

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 P1,536,000.00:

$$R_{T1} = R_{SD} + R_C$$

$$R_{T1} = (P_{SD} \times Q_{SD}) + (P_C \times Q_C)$$

$$R_{T1} = (80 \times 3,200) + (100 \times 12,800)$$

$$R_{T1} = 256,000 + 1,280,000$$

$$\mathbf{R_{T1} = P1,536,000.00}$$

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 P10.00, the revenue becomes P1,689,600, computed as follows:

$$R_{T2} = (P_{SD} \times Q_{SD}) + (P_C \times Q_C)$$

$$R_{T2} = (88 \times 3,200) + (110 \times 12,800)$$

$$R_{T2} = 281,600 + 1,408,000$$

$$\mathbf{R_{T2} = P1,689,600.00}$$

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 P1,335,480.00:

Gross Income (R _{T1})	P 1,536,000
Less: Deductions	(600,000)
Taxable Income	936,000
Income Tax Rate	P125,000 + 32% of excess over P500,000
Income Tax Liability	<hr/> 264,520
Less: Discount for Senior Citizens/Persons with Disability (Tax Credit)	(64,000)
Final Income Tax Liability	<hr/> 200,520
Net Income	<hr/> P1,335,480

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 P1,291,960.00:

Gross Income (R _{T1})	P 1,536,000
Less: Deductions	(600,000)
Less: Discount for Senior Citizens and Persons with Disability	(64,000)
Taxable Income	872,000
Income Tax Rate	P125,000 + 32% of excess over P500,000
Income Tax Liability	<hr/> 244,040

Less: Discount for Senior Citizens/Persons with Disability (Tax Credit)	0
Final Income Tax Liability	244,040
Net Income	P1,291,960

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

Gross Income (R _{T2})	P 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	P125,000 + 32% of excess over P500,000
Income Tax Liability	291,144
Less: Discount for Senior Citizen/Person with Disability (Tax Credit)	0
Final Income Tax Liability	291,144
Net Income	P1,398,456

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.

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 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]

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 *US. 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.

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 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.

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 P100.00 prior to the grant of the discount. When the discount was imposed, Company XYZ adjusted its price by increasing it to P110.00. 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 P88.00. 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**.

^[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].
- [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).
- [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.
- [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. (1) 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.*

[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.*

[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).

[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.

[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

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

[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].

[43] *Id.* at 476-478.

[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].

[50] *Id.* at 640-642.

[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.

