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CLARIFICATION OF THE TERM “TAX CREDIT” UNDER SECTION 4(A) OF REPUBLIC ACT NO. 7432, OTHERWISE KNOWN AS THE “SENIOR CITIZENS ACT” VIS A VIS SECTION 2(I) OF REVENUE REGULATIONS NO...

BIR REVENUE MEMORANDUM CIRCULAR NO. 35-97, November 21, 1997

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For the information and guidance of all concerned, quoted hereunder is BIR Ruling No. 065-97 dated May 15, 1997:

Bureau of Internal Revenue Ruling

"Quezon City 065-97 Persons to Contact: Chief, Law Division Tel. No. 926-55-36

Date: _____

Mr. Jude Allaga
Legislative Staff Officer VI
Sen. Leticia Ramos Shahani's Office
5th Floor, PICC Bldg.
CCP Complex
Roxas Boulevard, Manila

S i r :

This refers to your letter dated November 7, 1996 referred to us by Assistant Secretary for Legislative Affairs Ricardo V. Paras III of the Department of Justice in his 1st Indorsement dated December 3, 1996 regarding the letter-request of Mr. James A. Sandoval, President of the Drugstores Association of the Philippines (DSAP), seeking for an amendment of Section 4(a) of Republic Act No. 7432, otherwise known as the "Senior Citizens Act", which states as follows:

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

which, according to him, clearly entitles drugstores to a "tax credit" for all discounts given to senior citizens but which the BIR refuses to recognize resulting to the drugstores shouldering the loss in the implementation of the law. Mr. Sandoval insists that the same is not the spirit of the law when it was enacted.

In reply, please be informed that this Office has been consistent that the word "discount" as contemplated under Section 4 of RA No. 7432 shall be considered as deduction from gross income for income tax purposes and from the gross sales for value-added tax or other percentage tax purposes. [Sec. 2 (I), Rev. Regs. No. 2-94]. As aptly applied under the generally accepted accounting principles, "discounts" are treated as follows:

> "(1) The discount can be recorded as a reduction from gross sales.

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> "(2) The discount can be recorded as an expense of the period.
>
> (3) Sales revenue can be initially recorded at the net amount after deduction of the discount. Amounts received from customers who do not take the discount would then be recorded as additional revenue." (p. 142, Accounting, Text and Cases by Anthony and Reece, 1979 Edition).

Simply put, it can be said that "sales discount" is merely a deduction from gross income/sales/receipts to arrive at the taxable income, while a tax credit is in the nature of a tax refund, which is treated as a return for tax payments erroneously or excessively assessed against a taxpayer. In other words, in order that one can claim a tax credit, the taxes due must be paid first by a taxpayer (which payment may be erroneously or excessively paid), after which he could request for a tax refund or tax credit. Section 204(3) of the Tax Code, as amended, provides as follows:

> "(3) .x .x x. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty."

It may be noteworthy to state that the Highest Court in the case of San Carlos Milling Co., Inc. vs. CA, G.R. No. 193379, November 23, 1993, although not squarely in point, has touched on a significant aspect directly related to the issue at hand. There it was said:

> "x x x An opportunity must be given the internal revenue branch of the government to investigate and confirm the veracity of the claims of the taxpayer. The absolute freedom that petitioner seeks to automatically credit tax payments against tax liabilities for a succeeding taxable year can easily give rise to confusion and abuse, depriving the government of authority and control over the manner by which the taxpayers credit and offset their tax liabilities, not to mention the resultant loss of revenue to the government under such a scheme."

It is likewise important to note that the legal provision in question (Sec. 4 of RA No. 7432) employs the word "may" in the clause,

"Provided, That private establishments MAY claim the cost as tax credit"

implying that the availability of the remedy of tax credit is not absolute and mandatory; it does not confer an absolute right on the taxpayer to avail of the tax credit scheme if it so chooses; neither does it impose a duty on the part of the government to sit back and allow an important facet of tax collection to be at the sole control and discretion of the taxpayer.

Accordingly, it is the opinion of this Office that the treatment of "sales discounts" as deduction from the gross income for income tax purposes and from the gross sales for value-added tax or other percentage tax purposes, as provided for under Sec. 2, paragraph (I) of Revenue Regulations No. 2-94, is the better interpretation rather than as a "tax credit". We would like to suggest though that the subject law (i.e., RA No. 7432) be amended clearly stating that the "discount" referred to therein should be treated as plain "deduction" and not as a "tax credit" to avoid confusion.

Very truly yours,

(SGD.) LIWAYWAY VINZONS-CHATO
Commissioner of Internal Revenue"

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