CARLOS SUPERDRUG CORP., DOING BUSINESS UNDER THE NAME AND STYLE “CARLOS SUPERDRUG, ELSIE M. CANO, DOING BUSINESS UNDER THE NAME AND STYLE “ADVANCE DRUG,” DR. SIMPLICIO L. YAP, J...

G.R. NO. 166494. June 29, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition[1] for Prohibition with Prayer for Preliminary Injunction assailing the constitutionality of Section 4(a) of Republic Act (R.A.) No. 9257,[2] otherwise known as the "Expanded Senior Citizens Act of 2003."

Petitioners are domestic corporations and proprietors operating drugstores in the Philippines.

Public respondents, on the other hand, include the Department of Social Welfare and Development (DSWD), the Department of Health (DOH), the Department of Finance (DOF), the Department of Justice (DOJ), and the Department of Interior and Local Government (DILG) which have been specifically tasked to monitor the drugstores' compliance with the law; promulgate the implementing rules and regulations for the effective implementation of the law; and prosecute and revoke the licenses of erring drugstore establishments.

The antecedents are as follows:

On February 26, 2004, R.A. No. 9257, amending R.A. No. 7432,[3] was signed into law by President Gloria Macapagal-Arroyo and it became effective on March 21, 2004. Section 4(a) of the Act states:

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

On May 28, 2004, the DSWD approved and adopted the Implementing Rules and Regulations of R.A. No. 9257, Rule VI, Article 8 of which states:

> Article 8. Tax Deduction of Establishments. – The establishment may claim the discounts granted under Rule V, Section 4 – Discounts for Establishments;[5] Section 9, Medical and Dental Services in Private Facilities[,][6] and Sections 10[7] and 11[8] – 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).[9]

On July 10, 2004, in reference to the query of the Drug Stores Association of the Philippines (DSAP) concerning the meaning of a tax deduction under the Expanded Senior Citizens Act, the DOF, through Director IV Ma. Lourdes B. Recente, clarified as follows:

> 1) The difference between the Tax Credit (under the Old Senior Citizens Act) and Tax Deduction (under the Expanded Senior Citizens Act).
> 1.1. The provision of Section 4 of R.A. No. 7432 (the old Senior Citizens Act) grants twenty percent (20%) discount from all establishments relative to the utilization of transportation services, hotels and similar lodging establishment, restaurants and recreation centers and purchase of medicines anywhere in the country, the costs of which may be claimed by the private establishments concerned as tax credit.
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> Effectively, a tax credit is a peso-for-peso deduction from a taxpayer's tax liability due to the government of the amount of discounts such establishment has granted to a senior citizen. The establishment recovers the full amount of discount given to a senior citizen and hence, the government shoulders 100% of the discounts granted.
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> It must be noted, however, that conceptually, a tax credit scheme under the Philippine tax system, necessitates that prior payments of taxes have been made and the taxpayer is attempting to recover this tax payment from his/her income tax due. The tax credit scheme under R.A. No. 7432 is, therefore, inapplicable since no tax payments have previously occurred.
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> 1.2. The provision under R.A. No. 9257, on the other hand, provides that the establishment concerned may claim the discounts under Section 4(a), (f), (g) and (h) as tax deduction from gross income, based on the net cost of goods sold or services rendered.
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> Under this scheme, the establishment concerned is allowed to deduct from gross income, in computing for its tax liability, the amount of discounts granted to senior citizens. Effectively, the government loses in terms of foregone revenues an amount equivalent to the marginal tax rate the said establishment is liable to pay the government. This will be an amount equivalent to 32% of the twenty percent (20%) discounts so granted. The establishment shoulders the remaining portion of the granted discounts.
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> It may be necessary to note that while the burden on [the] government is slightly diminished in terms of its percentage share on the discounts granted to senior citizens, the number of potential establishments that may claim tax deductions, have however, been broadened. Aside from the establishments that may claim tax credits under the old law, more establishments were added under the new law such as: establishments providing medical and dental services, diagnostic and laboratory services, including professional fees of attending doctors in all private hospitals and medical facilities, operators of domestic air and sea transport services, public railways and skyways and bus transport services.
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> A simple illustration might help amplify the points discussed above, as follows:

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Tax Credit

Gross Sales x x x x x x
x x x x x x

Less : Cost of goods sold x x x x x
x x x x x

Net Sales x x x x x x
x x x x x x

Less: Operating Expenses:

Tax Deduction on Discounts
x x x x

--

Other deductions: x x x x
x x x x

Net Taxable Income
x x x x x

x x x x x

Tax Due x x x
x x x

Less: Tax Credit --
x x

Net Tax Due --
x x

As shown above, under a tax deduction scheme, the tax deduction on discounts was subtracted from Net Sales together with other deductions which are considered as operating expenses before the Tax Due was computed based on the Net Taxable Income. On the other hand, under a tax credit scheme, the amount of discounts which is the tax credit item, was deducted directly from the tax due amount.[10]

Meanwhile, on October 1, 2004, Administrative Order (A.O.) No. 171 or the Policies and Guidelines to Implement the Relevant Provisions of Republic Act 9257, otherwise known as the "Expanded Senior Citizens Act of 2003"[11] was issued by the DOH, providing the grant of twenty percent (20%) discount in the purchase of unbranded generic medicines from all establishments dispensing medicines for the exclusive use of the senior citizens.

On November 12, 2004, the DOH issued Administrative Order No 177[12] amending A.O. No. 171. Under A.O. No. 177, the twenty percent discount shall not be limited to the purchase of unbranded generic medicines only, but shall extend to both prescription and non-prescription medicines whether branded or generic. Thus, it stated that "[t]he grant of twenty percent (20%) discount shall be provided in the purchase of medicines from all establishments dispensing medicines for the exclusive use of the senior citizens."

Petitioners assail the constitutionality of Section 4(a) of the Expanded Senior Citizens Act based on the following

grounds:[13]

> 1) The law is confiscatory because it infringes Art. III, Sec. 9 of the Constitution which provides that private property shall not be taken for public use without just compensation;
>
> 2) It violates the equal protection clause (Art. III, Sec. 1) enshrined in our Constitution which states that "no person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied of the equal protection of the laws;" and
>
> 3) The 20% discount on medicines violates the constitutional guarantee in Article XIII, Section 11 that makes "essential goods, health and other social services available to all people at affordable cost."[14]

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

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

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

Based on the afore-stated DOF Opinion, the tax deduction scheme does not fully reimburse petitioners for the discount privilege accorded to senior citizens. This is because the discount is treated as a deduction, a tax-deductible expense that is subtracted from the gross income and results in a lower taxable income. Stated otherwise, it is an amount that is allowed by law[15] to reduce the income prior to the application of the tax rate to compute the amount of tax which is due.[16] Being a tax deduction, the discount does not reduce taxes owed on a peso for peso basis but merely offers a fractional reduction in taxes owed.

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

The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private property for public use or benefit.[17] This constitutes compensable taking for which petitioners would ordinarily become entitled to a just compensation.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain but the owner's loss. The word just is used to intensify the meaning of the word compensation, and to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.[18]

A tax deduction does not offer full reimbursement of the senior citizen discount. As such, it would not meet the definition of just compensation.[19]

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.[20]

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

> SEC. 2. Republic Act No. 7432 is hereby amended to read as follows:
>
> SECTION 1. Declaration of Policies and Objectives. – Pursuant to Article XV, Section 4 of the Constitution, it is the duty of the family to take care of its elderly members while the State may design programs of social security for them. In addition to this, Section 10 in the Declaration of Principles and State Policies provides: "The State shall provide social justice in all phases of national development." Further, Article XIII, Section 11, provides: "The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women and children." Consonant with these constitutional principles the following are the declared policies of this Act:
>
> . . .
>
> (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.[21]

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. [22] 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."[23] 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."[24]

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.[25]

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.[26]

Given these, it is incorrect for petitioners to insist that the grant of the senior citizen discount is unduly oppressive to their business, because petitioners have not taken time to calculate correctly and come up with a financial report, so that they have not been able to show properly whether or not the tax deduction scheme really works greatly to their disadvantage.[27]

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In treating the discount as a tax deduction, petitioners insist that they will incur losses because, referring to the DOF Opinion, for every P1.00 senior citizen discount that petitioners would give, P0.68 will be shouldered by them as only P0.32 will be refunded by the government by way of a tax deduction.

To illustrate this point, petitioner Carlos Super Drug cited the anti-hypertensive maintenance drug Norvasc as an example. According to the latter, it acquires Norvasc from the distributors at P37.57 per tablet, and retails it at P39.60 (or at a margin of 5%). If it grants a 20% discount to senior citizens or an amount equivalent to P7.92, then it would have to sell Norvasc at P31.68 which translates to a loss from capital of P5.89 per tablet. Even if the government will allow a tax deduction, only P2.53 per tablet will be refunded and not the full amount of the discount which is P7.92. In short, only 32% of the 20% discount will be reimbursed to the drugstores.[28]

Petitioners' computation is flawed. For purposes of reimbursement, the law states that the cost of the discount shall be deducted from gross income,[29] the amount of income derived from all sources before deducting allowable expenses, which will result in net income. Here, petitioners tried to show a loss on a per transaction basis, which should not be the case. An income statement, showing an accounting of petitioners' sales, expenses, and net profit (or loss) for a given period could have accurately reflected the effect of the discount on their income. Absent any financial statement, petitioners cannot substantiate their claim that they will be operating at a loss should they give the discount. In addition, the computation was erroneously based on the assumption that their customers consisted wholly of senior citizens. Lastly, the 32% tax rate is to be imposed on income, not on the amount of the discount.

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

The Court is not oblivious of the retail side of the pharmaceutical industry and the competitive pricing component of the business. While the Constitution protects property rights, petitioners must accept the realities of business and the State, in the exercise of police power, can intervene in the operations of a business which may result in an impairment of property rights in the process.

Moreover, the right to property has a social dimension. While Article XIII of the Constitution provides the precept for the protection of property, various laws and jurisprudence, particularly on agrarian reform and the regulation of contracts and public utilities, continuously serve as a reminder that the right to property can be relinquished upon the command of the State for the promotion of public good.[30]

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.[31]

WHEREFORE, the petition is DISMISSED for lack of merit.

No costs.

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SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Nachura, JJ., concur.
Quisumbing, J., on official leave.
Sandoval-Gutierrez, on leave.

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[1] Under Rule 65 of the Rules of Court.

[2] An Act Granting Additional Benefits and Privileges to Senior Citizens Amending for the Purpose Republic Act No. 7432, otherwise known as "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for other Purposes."

[3] Otherwise known as the Senior Citizens Act.

[4] Emphasis supplied.

[5] Section 4. Discounts from Establishments – The grant of twenty percent (20%) discount on all prices of goods and services offered to the general public regardless of the amount purchased from all establishments, irrespective of classification, relative to the utilization of services for the exclusive use of senior citizen in the following:

. . .

d) DRUG STORES, HOSPITAL PHARMACIES, MEDICAL AND OPTICAL CLINICS AND SIMILAR ESTABLISHMENTS DISPENSING MEDICINES – The discount for purchases of drugs/medicines shall be subject to the Guidelines to be issued by the Bureau of Food and Drugs, Department of Health (BFAD-DOH), in coordination with the Philippine Health Insurance Corporation (PHILHEALTH).

[6] Section 9. Medical and Dental Services in Private Facilities. - The senior citizen shall be granted twenty percent (20%) discount on medical and dental services and diagnostic and laboratory fees such as but not limited to x-ray, computerized tomography scans and blood tests, 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.

[7] Section 10. Air and Transportation Privileges. – At least twenty percent (20%) discount in fare for domestic air, and sea travel based on the actual fare, including the promotional fare, advance booking and similar discounted fare shall be granted for the exclusive use and enjoyment of senior citizens.

[8] Section 11. Public Land Transportation Privileges. - Twenty percent (20%) discount in public railways, including LRT, MRT, PNR, Skyways and fares in buses (PUB), jeepneys (PUJ), taxi and shuttle services (AUV) shall be granted for the exclusive use and enjoyment of senior citizens.

[9] Rollo, p. 57.

[10] Id. at 67-69; emphasis supplied.

[11] The A.O. became effective on October 9, 2004, after its publication in two national newspapers of general circulation.

[12]"Amendment to Administrative Order No. 171, s. 2004 on the Policies and Guidelines to Implement the Relevant Provisions of Republic Act 9257, otherwise known as the "Expanded Senior Citizens Act of 2003."

[13] Rollo, pp. 17-24.

[14] According to petitioners, of the five (5) million Filipinos who are 60 years old and above, only 500,000 are in Metro Manila and thus, have access to Mercury Drug which, because of the bulk discounts it gets from pharmaceutical companies and suppliers, can afford to give the 20% discount. Unlike Mercury Drug, small- to medium-scale drugstores similar to those of petitioners', however, can only impose minimal mark-ups for competitive pricing but are constrained to raise the prices of their medicines so that they would be able to recoup the 20% discount that they extend to senior citizens. In the end, roughly 4.5 million senior citizens in the provinces or in the areas where Mercury Drug is not present will not be able to benefit fully from the discount that the law provides.

[15] Under Section 34 of the Tax Code, the itemized deductions considered as allowable deductions from gross income include ordinary and necessary expenses, interest, taxes, losses, bad debts, depreciation, depletion of oil and gas wells and mines, charitable and other contributions, research and development expenditures, and pension trust contributions.

[16]Commissioner of Internal Revenue v. Central Luzon Drug Corporation, G.R. No. 159647, April 15, 2005, 456 SCRA 414, 428-429 citing Smith, West's Tax Law Dictionary (1993), pp. 177-178, 196.

[17]The concept of public use is no longer confined to the traditional notion of use by the public, but held synonymous with public interest, public benefit, public welfare, and public convenience. The discount privilege to which senior citizens are entitled is actually a benefit enjoyed by the general public to which these citizens belong (Commissioner of Internal Revenue v. Central Luzon Drug Corporation, supra note 14, at 444; Land Bank of the Philippines v. De Leon, 437 Phil. 347, 359 [2002] citing Estate of Salud Jimenez v. Philippine Export Processing Zone, G.R. No. 137285, January 16, 2001, 349 SCRA 240, 264).

[18] National Power Corporation v. Manubay Agro-Industrial Development Corporation, G.R. No. 150936, August 18, 2004, 437 SCRA 60, 68 citing Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, G.R. No. 78742, July 14, 1989, 175 SCRA 343.

[19]In the case of Commissioner of Internal Revenue v. Central Luzon Drug Corporation, supra note 14, the Court held that just compensation confers the right to receive an equivalent amount for the discount given and the prompt payment of such amount. The advantage of a tax deduction is that the cost of the discount can immediately be refunded, though not fully, by declaring it as a deductible expense in computing for taxable income. In a tax credit, one has to await the issuance of a tax credit certificate indicating the correct amount of the discounts given before the latter can be refunded. Thus, the availment of a tax credit necessitates prior payment of income tax.

[20] Article XV of the Constitution states: "Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development."

[21] Emphasis supplied.

[22] Sangalang v. IAC, G.R. No. 71169, August 25, 1989, 176 SCRA 719.

[23]Ermita-Malate Hotel and Motel Operators Association , Inc. v. City Mayor of Manila, L-24693, July 31, 1967, 20 SCRA 849 citing Noble State Bank v. Haskell, 219 U.S. 412 (1911).

[24] U.S. v. Toribio, 15 Phil.85 (1910) citing Commonwealth v. Alger, 7 Cush., 53 (Mass. 1851); U.S. v. Pompeya, 31 Phil. 245, 253-254 (1915).

[25]Alalayan v. National Power Corporation, 24 Phil. 172 (1968).

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[26] Id.

[27] The person who impugns the validity of a statute must have personal interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement (People v. Vera, 65 Phil. 56 [1937]).

[28] Rollo, p. 11.

[29] Section 27(E)(4) of the National Internal Revenue Code (NIRC) provides that for purposes of applying the minimum corporate income tax on domestic corporations, the term "gross income" shall mean gross sales less sales returns, discounts and allowances and cost of goods sold. For a trading or merchandising concern, "cost of goods sold" shall include the invoice cost of the goods sold, plus import duties, freight in transporting the goods to the place where the goods are actually sold including insurance while the goods are in transit.

[30] By the "general police power of the State, persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the State; of the perfect right in the legislature to do which, no question ever was, or, upon acknowledged and general principles, ever can be made, so far as natural persons are concerned." (U.S. v. Toribio, supra note 24, at 98-99, citing Thorpe v. Rutland & Burlington R.R. Co. (27 Vt., 140, 149).

[31]Subject to the determination of the courts as to what is a proper exercise of police power using the due process clause and the equal protection clause as yardsticks, the State may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what interests of the public require, but what measures are necessary for the protection of such interests (U.S. v. Toribio, supra note 24, at 98, citing Lawton v. Steele, 152 U.S. 133,136; Barbier v. Connoly, 113 U.S. 27; Kidd v. Pearson, 128 U.S. 1).

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