December 9, 2019

BIR RULING NO. 773-19

Sec. 4 of RA 7432, as amended by RA 9994;
Sec. 32 (a) of RA 7277, as amended by RA 10754

Isla Lipana & Co.
29th Floor, Philamlife Tower,
8767 Paseo de Roxas,
1226 Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated August 25, 2016, requesting for confirmation on behalf of your client, Rose Pharmacy, Inc., that by virtue of the special laws exempting senior citizens and Persons with Disabilities (PWD) from value-added tax (VAT), sales to such persons are effectively VAT zero-rated.

In reply, please be informed that Section 4 of Republic Act (RA) No. 7432, as amended by RA No. 9994, provides that:

> *"SEC. 4. Privileges for the Senior Citizens. —*
>
> *The senior citizens shall be entitled to the following:*
>
> *(a) the grant of twenty percent (20%) discount and exemption from the value-added tax (VAT), if applicable, on the sale of the following goods and services from all establishments, for the exclusive use and enjoyment or availment of the senior citizen:*
>
> xxx xxx xxx"

and Section 32 (a) of RA 7277, as amended by RA 10754, provides that:

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"SEC. 32. Persons with disability shall be entitled to:

(a) At least twenty percent (20%) discount and exemption from the value-added tax (VAT), if applicable, on the following sale of goods and services for the exclusive use and enjoyment or availment of the PWD:

xxx xxx xxx"

The above quoted provisions provide for the grant of twenty percent (20%) discount and exemption from VAT, if applicable, on the sale of certain goods and services from all establishments, for the exclusive use and enjoyment or availment of senior citizens and PWD. RA No. 7432, as amended by RA No. 9994, and RA 7277, as amended by RA 10754, do not mention anything regarding the sale of goods and services to senior citizens and PWDs be subjected to VAT at zero percent (0%).

Moreover, Article 7 of the Implementing Rules and Regulations of RA 9994 provides that:

"ARTICLE 7. Twenty Percent (20%) Discount and VAT Exemption. — The senior citizens shall be entitled to the grant of twenty percent (20%) discount and to an exemption from the value-added tax (VAT), IF APPLICABLE, on the sale of the goods and services covered by Section 1 to 6 of this Article, from all establishments for the exclusive use and enjoyment or availment of senior citizens.

For this purpose, the Department of Finance (DOF) through the Bureau of Internal Revenue (BIR) shall come up with the appropriate Revenue Regulations on the 20% senior citizens discount and VAT exemption within thirty (30) days from effectivity of these Rules that shall cover among others, new invoicing procedures, reportorial requirements, and a system for claiming tax deductions."

Thus, pursuant thereto, the Bureau of Internal Revenue (BIR) issued Revenue Regulations (RR) No. 07-2010 dated July 20, 2010 entitled "Implementing the Tax Privileges Provisions of Republic Act No. 9994, Otherwise Known as the "Expanded Senior Citizens Act of 2010," and Prescribing the Guidelines for the Availment Thereof." Section 10 of the said RR provides that:

"SECTION 10. Exemption from VAT of the Sale to Senior Citizens. —

Sales of any goods and services under Sections 4 and 5 of these Regulations to Senior Citizens shall be exempt from the value-added tax. To ensure the full entitlement of the Senior Citizen to the discount prescribed in the Act, the sellers are precluded from billing any VAT to the Senior Citizen.

The sale to a Senior Citizen must follow the invoicing requirements prescribed

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under Revenue Regulations No. 16-2005. If the seller uses a Point of Sale Machine or a Cash Register Machine in lieu of the regular sales invoice, the machine tape must properly segregate the exempt sales from the taxable sales.

The input tax attributable to the exempt sale shall not be allowed as an input tax credit and must be closed to cost or expense account by the seller.

The exemption herein granted will not cover other indirect taxes that may be passed on by the seller to a Senior Citizen buyer, such as percentage tax, excise tax, etc. In such a case, the discount must be on the total cost of the goods or services charged by the seller exclusive of the tax."

Furthermore, the BIR has also issued Revenue Memorandum Circular (RMC) No. 038-2012 dated August 3, 2012, entitled "Questions and Answers Further Clarifying the Provisions of Revenue Regulations (RR) No. 7-2010, as Amended by RR No. 8-2010, Implementing the Tax Privileges Provisions of Republic Act (RA) No. 9994, Otherwise Known as the Expanded Senior Citizens Act of 2010." It provides as follows:

"B. On the Tax Treatment of Discounts and VAT Exemptions Granted to Senior Citizens

The tax treatment of discounts and exemptions from payment of VAT granted to Senior Citizens on the sale of goods and services provided under the Implementing Rules and Regulations of RA No. 9994 and RR No. 7-2010 as amended by RR No. 8-2010 are privileges subject to the guidelines prescribed by the BIR.

xxx xxx xxx

Q25. How do establishments present the discount and VAT exemption of their sales to Senior Citizens in the tape receipt (for POS machines and CRM)?

A25. The amount of sales that must be reported for tax purposes is the undiscounted selling price and not the amount of sales net of the discount. The gross selling price and the sales discount must be separately indicated in the official receipt or sales invoice issued by the establishment for the sale of goods or services to the Senior Citizen. With regard to the VAT exemption, the machine tape must properly segregate the VAT exempt sales from the taxable sales. (Sections 7 and 10 of RR No. 7-2010)

Q26. What would be the new format or itemized breakdown that should be reflected in the official receipts or sales invoices to be issued to Senior Citizens?

A26. If the seller uses a POS or CRM, the machine tape should be able to segregate the exempt sale from the taxable sale. If the POS or CRM is incapable of segregation, they should be re-programmed to comply with the requirement. In the meantime, a manual invoice/receipt shall be issued by the seller.

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The seller of qualified goods or services may opt to issue a separate invoice/receipt on its sale to Senior Citizens. The separate invoice/receipt will reflect the amount of discount and the total amount payable. The word "VAT Exempt Sale" must be written or printed prominently on the face of the invoice/receipt.

If the merchandise/service sold under a single transaction is comprised of a sale to a Senior Citizen and a sale to a Non-senior citizen, the seller may issue one invoice/receipt for the entire transaction providing for a proper breakdown of the exempt sale and the taxable sale. The invoice must properly reflect the discount on the exempt sale. The VAT due on the taxable sale must be separately billed in the invoice/receipt.

xxx xxx xxx

Q28. Can the input tax attributable to VAT-exempt sales to Senior Citizens be claimed as tax credit?

A28. No, the input tax attributable to the exempt sale shall not be allowed as an input tax credit but must be treated as a cost or an expense account by the seller. (Section 10 of RR No. 7-2010)

xxx xxx xxx"

Under the above quoted provisions, it is clear that sale of certain goods and services by VAT registered establishments, for the exclusive use and enjoyment or availment of senior citizens, shall be considered as "VAT Exempt Sale" and not as "Zero-rated Sale." Also, the input tax attributable to the exempt sale shall not be allowed as an input tax credit but must be treated as a cost or an expense account by the seller.

It should be noted that the tax treatment of the twenty percent (20%) discount and VAT exemption granted to PWDs and senior citizens under RA 10754 and RA 9994 are basically the same. Thus, with regard to the tax treatment of the twenty percent (20%) discount and VAT exemption granted by the seller/establishment for the exclusive use and enjoyment or availment of PWD, the rules under RR No. 7-2010, as amended, and RMC 38-2012 shall be observed.

In view of the foregoing, this Office regrets to inform you that your request for confirmation that, by virtue of special laws exempting senior citizens and PWD from VAT, sales to such special persons are effectively VAT zero-rated, is hereby denied.

Please be guided accordingly.

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Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

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