



Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila



Executive Director GLENDA D. RELOVA
National Council on Disability Affairs
NCDA Building, Isidora St.
Brgy. Holy Spirit, Quezon City

08 OCT 2024

Dear **Executive Director Relova**:

This has reference to your request for legal opinion on the application of the 20% discount and Value Added Tax (VAT) exemption on food purchases of persons with disability (PWDs) in instances when the food purchased is ideally for group sharing.

Section 1 of Republic Act (R.A.) No. 10754, entitled: "*An Act Expanding the Benefits and Privileges of Persons with Disability (PWD)*", amending Section 32 of R.A. No. 7277¹, provides:

Section 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**:
 - (1) On the fees and charges relative to the utilization of all services in hotels and similar lodging establishments; **restaurants** and recreation centers; (Emphasis supplied)

It appears that the request stemmed from the letter of a certain Mr. Pheelyp Aytona who sought clarification from your Office on whether the above-quoted PWD benefit applies to all the food and beverages that a PWD purchases and exclusively consumes in a restaurant no matter the quantity thereof. His view is that when there is no doubt that the supposed group meal was purchased and consumed exclusively by the PWD, such as when the PWD dines alone in a restaurant, then the 20% discount and exemption from VAT should apply to the total bill for that group meal.

You stated that as a matter of practice, if the PWD is with a group and the purchased food is for group sharing, the discount will only be applied to the personal share of the PWD by dividing the amount by the number of persons in the group. Otherwise, if the purchased food is good for a single person's consumption, the 20%

¹ Otherwise known as the "Magna Carta for Persons with Disability"

discount and VAT exemption will be applied to the total amount regardless if the food is for dine-in or take-out.

You likewise noted that foods designed for group sharing are usually in bulk servings and for more than one person's consumption.

Hence, this request for legal opinion.

At the outset, please note that pursuant to established precedents, the Secretary of Justice, as Attorney General, renders opinion and gives legal advice only for and upon request of national government functionaries, such as heads of departments and chiefs of bureaus and offices of equivalent rank, and then only on specific legal questions/issues arising in the performance of their respective powers and functions. Accordingly, we have, in practice, consistently declined to render opinion or give legal advice to other government officials and to private individuals and entities, even if coursed through or endorsed by a national government functionary who may, himself, be entitled to seek opinion from this Department.²

Also, the specific issues raised in the instant request necessarily affect the substantive rights of a private party, upon whom the opinion of the Secretary of Justice has no binding effect and would, in all probability, contest the same in court if the opinion turns out be adverse to their interest. This Office does not render opinion or give legal advice on a matter that is justiciable in nature or which may be the subject of a judicial controversy.³

Nonetheless, **for your information and guidance only**, we invite your attention to the pertinent provision of laws, Implementing Rules and Regulations (IRR), and Department of Tourism (DOT) and Bureau of Internal Revenue (BIR) Guidelines on the matter which may be relevant to your query.

It is clear from the above-quoted provision of R.A. No. 10754 that PWDs shall be entitled to 20% discount and VAT exemption on their food purchases from the restaurants as long as it is for their exclusive use, enjoyment or availment.

Section 6, Rule IV of the IRR of R.A. No. 10754 clarifies this benefit and privilege of the PWDs as follows:

Section 6. Twenty Percent (20%) Discount and Value Added Tax (VAT) Exemption – Persons with disability shall be entitled to the grant of 20% discount and VAT-exemption on the purchase of certain goods and services from all establishments **for their exclusive use, enjoyment or availment**;

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Section 6.2 Restaurants – This shall apply to the purchase of food, drinks, beverages, dessert and other consumable items served by the establishments including value meals and other similar food counters, fast food, cooked food and short orders

² DOJ Opn. No. 004, s. 2022.

³ DOJ Opinion No. 26, s. 2022.

including take outs. **To safeguard the establishments from abuse of this privilege, the orders should be limited only to the consumption of the concerned person with disability.**

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The Department of Tourism shall issue the corresponding guidelines, circulars or directives related to Sections 6.2 and 6.3 for its accredited restaurants and recreation centers and disseminate such information to all concerned. (Emphasis supplied)

Basic is the rule in statutory construction that when the law is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. Known as the plain meaning rule, or *verba legis*, derived from the maxim *index animi sermo est* (speech is the index of intention) and rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent and preclude from a different construction. The legislature is presumed to know the meaning of the words, to have used the words advisedly, and to have expressed its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure.⁴

Relative thereto, DOT issued Memorandum Circular No. 2017-02⁵, series of 2017, which reiterates the grant of 20% discount and VAT exemption on sale of goods and services in restaurants for the exclusive use, enjoyment or availment of the PWDs.

The Bureau of Internal Revenue (BIR) likewise issued Revenue Memorandum Circular No. 5-2017⁶ which provides that establishments granting qualified PWDs at least twenty percent (20%) discount from sale of goods and services in restaurants, among other establishments, shall be entitled to deduct the said sales discount net of VAT from their gross income for tax purposes, subject to conditions stated therein.

While the above-mentioned relevant existing laws, IRR and guidelines may be silent on how the 20% discount and VAT exemption will be applied on food purchases which are ideally for group sharing, we would like to emphasize the word "exclusive" as the determining factor to be considered thereon. In other words, in purchase of a group meal which is ideally for food sharing, if it can be clearly determined that it was for the exclusive use, enjoyment or availment of only one (1) person who is a PWD, i.e. dine-in transactions, then the 20% discount and VAT exemption should apply to the total amount of the food purchased.

⁴ *Ibid.*, No. 006, s. 2022.

⁵ Guidelines on the Provision of the Expanded Benefits and Privileges to Persons with Disability Pursuant to Republic Act 10754, Otherwise Known as the 'Magna Carta for Persons with Disability.

⁶ Rules and Regulations Implementing Republic Act No. 10754, entitled: "An Act Expanding the Benefits and Privileges of Persons with Disability (PWD)" Relative to the Tax Privileges of Persons with Disability and Tax Incentives for Establishments Granting Sales Discount, and Prescribing the Guidelines for the Availment Thereof, Amending Revenue Regulations No. 1-2009.

On purchase of group meals through online and phone call/SMS transactions, may we refer you to BIR Revenue Memorandum Circular No. 71-2022 which circularizes Joint Memorandum Circular (JMC) No. 01-2022.⁷ Section 6.2 of JMC No. 01-2022 provides that:

Section 6.2. On the **purchase of group meals**, the **basis of the 20% discount** for a Senior Citizen and Person with Disability **shall be on the amount corresponding to the combination of the most expensive and biggest single serving meal with beverage** served in a quick service restaurant, is deemed **flexible and is adjusted accordingly** by food establishments **to estimate a single food purchase for an individual** Senior Citizen and Person with Disability. (Emphasis supplied)

Please be guided accordingly.

Very truly yours,

By Authority of the Secretary of Justice:



RANDOLPH A. PASCASIO

Assistant Secretary

*Officer-in-Charge, Office of the
Undersecretary for Legal Services and
Liaison Cluster*

(Department Order No. 665, s. 2024)

⁷ Guidelines on the Provision of the Mandatory Statutory Benefits and Privileges of the Senior Citizens and Persons with Disabilities on their Purchases through Online (E-Commerce) and Phone Call/SMS.