

# OPINION NO. 18 S. 2017

Republika ng Pilipinas  
**KAGAWARAN NG KATARUNGAN**  
*Department of Justice*  
*Manila*

VNA-L-416  
Jun 16, 2017

## **Acting Executive Director CARMEN REYES-ZUBIAGA**

National Council on Disability Affairs (NCDA)  
NCDA Building, Isidora Street, Brgy. Holy Spirit  
Quezon City 1127

### **Dear Acting Executive Director REYES-ZUBIAGA:**

This refers to your request for legal opinion relative to Mercury Drug's continuous refusal to exempt from value-added tax (VAT) the purchases of medicines made by person with disabilities (PWDs). You also allege that the Mercury Drug is spreading misleading and false information about the implementing rules and regulations (IRR) of Republic Act (R.A.) No. 10754.

It appears that the request stemmed from the bulk of complaints against Mercury Drug by PWDs and their families for its blatant disregard of R.A No. 10754. You state that Mercury Drug posted a Notice in its stores stating that they cannot yet apply the 12% VAT exemption on medicine purchases by PWDs even with the issuance of the IRR because they are waiting for the issuance of the corresponding guidelines, circulars or directives related thereto by the Department of Health (DOH). In coordination with the Philippine Health Insurance Administration (PHIA) and Food and Drug Administration (FDA), pursuant to Section 6.4 of the said IRR, which provides:

Section 6.4. Purchases of Medicines and Foods for Special Medical Purposes – This shall apply to the purchase of prescribed generic and branded drugs/medicines as well as foods for special medical purposes in all drugstores for the exclusive use and availment of persons with disability.

The Department of Health, in coordination with the Philippine Health Insurance Corporation and Food and Drug Administration, **shall issue the corresponding guidelines, circulars or directives related to this Section and disseminate such information to all concerned.** (*Emphasis supplied*)

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<sup>1</sup> An Act Expanding the Benefits and Privileges of Persons with Disability (PWDs)

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You submitted the following as proof:

1. Reply of Mercury Drug's Legal Counsel Atty. Edsel Manuel to Xavier Cortes, one of the complainants;
2. Notice to PWD customers for not granting the VAT exemption in their branches as identified PWDs;
3. Compilation of complaints from PWDs;
4. Decision of Supreme Court denying the Petition of Drugstore Association of the Philippines on Prohibition and Upholding the Constitutionality and granting 20% discount on purchases by PWDs (for reference of previous actions of Mercury Drug againsts R.A. No. 9442<sup>2</sup>); and
5. Copy of R.A. No. 10754 and its IRR.

We take it that the issue relates to the implementation of Section 1 of R. A No. 10754, particularly on whether PWDs are entitled to VAT exemption on their medicine purchases while the corresponding guidelines, circulars or directives related thereto has not yet been issued by the DOH, in coordination with the PHIA and FDA.

It bears to stress, at the outset, that R.A. No. 10754 had already been published in the Official Gazette on the very day of its approval on March 23, 2016. While it was likewise published in two (2) newspapers of general circulation on March 31, 2016. It already became effective on April 8, 2016, which is fifteen (15) days after its publication in the Official Gazette. Nowhere in the said law is it stated that it only takes effect when the IRR or other pertinent guidelines are issued or take effect. Section 6 of R.A. No. 10754 is explicit in this regard, thus:

**SEC. 6. *Effectivity.*** – This act **shall take effect fifteen (15) days after its publication in the *Official Gazette*** or in two (2) Newspapers of general circulation. (*Emphasis supplied*)

Relative thereto, Section 1 of R.A. No. 10754 clearly provides that PWDs shall be entitled to exemption from VAT on the purchases of medicines in all drugstores, to wit:

SECTION 1. Section 32 of Republic Act No. 7277, as amended, otherwise known as the “Magna Carta for Persons with Disability,” is hereby further amended to read as follows:

**SEC. 32. Person with disability shall be entitled to :**

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<sup>2</sup> An act Amending Republic Act No. 7277, Otherwise known as the “Magna Carta For Disabled Persons , and for other Purposes.”

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- (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

- (3) **On the purchase of medicines in all drugstores;**  
xxx xxx (*Emphasis supplied*)

Further, Section 3 of R.A. No. 10754 provides that an IRR containing the necessary rules and regulations shall be promulgated for the effective implementation of the provisions of R.A. No. 10754. In this regard, we note the fact that the said IRR has already been issued and same took effect on December 23, 2016, and hence, the provisions of the said law can now be effectively implemented. Nevertheless, we would also like to note that even the failure of the concerned agencies to promulgate the said rules shall not prevent the implementation of R.A. No. 10754 upon its effectivity, to wit:

Section 3 *Implementing Rules and Regulations*, - The Department of Social Welfare and Development (DSWD), in consultation with the Department of Health (DOH), the Department of Finance (DOF), and the National Council on Disability Affairs (NCDA), shall promulgate the necessary rules and regulations for the effective implementation of the provision of this act: *Provided*, That **the failure of the concerned agencies to promulgate the said rules and regulations shall not prevent the implementation of this act upon its effectivity.** (*Emphasis supplied*)

In the case of Abakada Guro Party List, et. Al. Vs. Hon. Cesar V. Purisima, et. Al.,<sup>3</sup> the Supreme Court ruled that administrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect, to wit:

**Administrative regulations enacted by administrative Agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect. Such rules and regulations partake of the nature of a statute and are just as binding as if they have been written in the statute itself. As such, they have the force and effect of**

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<sup>3</sup>ABAKADA GURO PARTY LIST (formerly AASJS) OFFICERS/MEMBERS, et. Al. Vs. HON. CESAR V. PURISIMA, in his capacity as Secretary of Finance, et. Al. G.R. No. 166715, August 14, 2008.

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**law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court. (*Emphasis supplied*)**

Moreover, Section 4 of said IRR clearly provides that it is the declared policy of the State give full support to the improvement of well being and integration into the mainstream society of PWDs. Said Section further states that it is also the objective of R.A. No. 10754 to provide PWDs the opportunity to participate fully into the mainstream of society by granting them at least twenty percent (20%) discount and exemption from the value added tax on the sale of certain goods and services identified under R.A. No. 9442 for the exclusive use, enjoyment or availment of PWDs.

In view of the foregoing ,we are of the opinion that the non-issuance of such guidelines, circulars or directives by the DOH, in coordination with the PHIA and FDA cannot be used as an excuse to delay or prevent the implementation of VAT exemption in medicines purchases by PWDs. As mentioned above, R.A. No. 10754 already became effective on April 8, 2016 and nowhere in the said law is it stated that it only takes effects when the IRR or the other pertinent guidelines is issued or takes effect. Now that the IRR has been issued and took effect on December 23, 2016, it is with more reason that drugstore, like Mercury Drug in this case, should give and implement the necessary VAT exemption on purchase of medicines, including foods for special medical purposes by PWDs.

Please be guided accordingly.

Very truly yours,

(ORIGINAL SIGNED)  
**VITALIANO N. AGUIRRE II**  
*Secretary*

Department of Justice  
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