

OPINION NO. 14 S. 2017

Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

VNA-L-382
Jun 15, 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 or legal interpretation of the provision of Section 2 of Republic Act (R.A.) No. 10754¹, which amended section 33 of R.A. No. 7277², as amended, to wit:

“SEC. 2. Section 33 of Republic Act No. 7277, as amended, is hereby further amended to read as follows:

“SEC. 33. *Incentives.* – Those **caring for and living with PWD** shall be granted the following incentives..

“(a) **PWD**, who are within the fourth civil degree of consanguinity or affinity to the taxpayer, regardless of age, who are not gainfully employed and chiefly dependent upon the taxpayer, **shall be treated as dependents under Section 35(b) of the NIRC of 1997**, as amended, and as such, individual taxpayers caring for them shall be accorded privileges granted by the Code insofar as having dependents under the same section are concerned; “(*Emphasis supplied*)

It appears that the request relates to the formulation of the Revenue Regulation Guidelines on the implementation of R.A No. 10754 by the Department of Finance, through the Bureau of Internal Revenue (BIR), particularly on the provision of tax incentives for carers and those living with persons with disability (PWD), which has different interpretations from different stakeholders.

¹An Act Expanding the Benefits and Privileges of Person with Disability (PWDs).

²An Act Providing for the Rehabilitation, Self-development and Self-reliance of Disabled Person and Their Integration into the Mainstream of Society and for Other Purposes.

OPINION NO. 14 S. 2017

You state that based on the draft Revenue Regulation of the BIR, the taxpayer with a dependent with disability should be living with a person with disability in order to be entitled to tax incentives.

On the other hand, the NCDA is of the position that those caring for persons with disabilities may not necessarily live with person with disabilities but providing them support in terms of financial and other tangible support, such as food, house rentals, tuition fees, payment for caregivers, among others; and that the purpose of this is to encourage more long term benefactors to support the needs of poor and marginalized persons with disabilities.

Hence, this request for legal interpretation.

At the outset, we note that the issue is a tax matter which falls within the primary jurisdiction of the BIR , which, under Section 2 of the National Internal Revenue Code (NIRC) of 1997, is mandated to assess and collect all national internal revenue taxes, fees and charges and which, you said , is drafting the Revenue Regulation for the implementation of tax matters under the said R.A. No. 10754.

Further , Section 4 of the said NIRC provides that the power to interpret the provisions of the NIRC and other tax law shall be under the exclusive and original jurisdiction of the Commissioner of Internal Revenue, to wit:

*“SEC.4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases – The **power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner**, subject to review by the Secretary of Finance.*

*“The power to decide disputed assessments , refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner , subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.” (*Emphasis supplied*)*

This notwithstanding, this opinion is made due to the importance of the issue presented.

We note that the provision of Section 2 of R.A. No. 10754 makes use of the conjunctive word “and” which signifies the clear legislative intent that the phrase “caring for and living with a PWD” shall be taken jointly and not separately. The use of the word “and” between “caring for” and “living with a PWD” is significant in determining the legislative intent of the said law.

In DOJ Opn. No. 60, s. 1998, this Department had the occasion to state, and we quote:

OPINION NO. 14 S. 2017

“xxx xxx The said provision of law makes use of the **conjunctive word ‘and’ which signifies the clear legislative intent that the words ‘imposed and collected’ shall be taken jointly and not separately for the word and expresses the relation of addition or connection and signifies that something is to follow in addition to that which precedes.** (*In re Harker’s Estate*, 198 p. 2d 51, 53, 88 Cal. App. 2d 6.). The word ‘and’ is a **Conjunctive word used to denote a joinder, a union** (see *Michigan Public Service Co. v. City of Cheboygan*, 37 N.W. 2d 116, 129, 324 Mich. 309); **otherwise, the legislature should have made use of the disjunctive word ‘or’ which would import a notion of separation of words** ‘imposed’ and ‘collected’ (see *Pombano Horse Club v. State*, 52 A.L.R., 51, cited in *Martin, Statutory Construction, Fifth Edition*, p. 90). Manifest, therefore, is the intention That these two prerogatives, i.e., to impose and to collect wharfage dues, shall be exercised by a single authority only.” (*Emphasis supplied*).

“**And,**” it must be stressed, is a conjunction pertinently defined as **meaning “together with,” “joined with,” “along with,”** used to conjoin word with word, phrase with phrase, clause with clause, and does not mean “or” but is used to denote a joinder or union, **“binding together”** or relating the one to the other.³

Further, the Senate Deliberation on Senate Bill No. 2890, which later on became R.A No. 10754, contains this discussions/exchange of views:

“COSPONSORSHIP SPEECH OF SENATOR RECTO⁴

“xxx

“ The Bill has two aims:

“*First*, to exempt persons with disability (PWDs) from paying the VAT on certain goods and services,

“*Second*, to **provide additional income exemption to those who are caring for a PWD.**

“xxx

“ This bill seeks to make a person with disability a dependent for income tax purposes.

³ DOJ Opn. No. 7, s. 1998, citing Philippine Constitution Association, Inc. Vs Mathay, 18 SCRA 300, 329-330

⁴Delivered on August 10 , 2015.

OPINION NO. 14 S. 2017

“A child , parent, or even a legal guardian of a PWD, regardless of age, who is incapable of self-support, can therefore claim additional tax exemption for the said dependent.

“ The tax deduction is the same as what is currently claimed by a parent of a child not over the age of 21, which is P25,000 annually.

“ Because **the bill specifies the caregiver as the one who can avail of the exemption**, then a child who has a disabled parent **in his care under his roof can claim the tax relief**.

“ This is in response to the situation faced by millions of families today who have turned their residences into homes for the aged.xxx” (*Emphasis supplied*)

“INTERPELLATION OF SENATOR SOTTO⁵

“ Senator Sotto noted that **Section 2 of the bill** is an amendment to Section 35(b) of R.A. No. 8424 which provides for a qualification that a person with disability must be living with taxpayer before he or she could be treated as a dependent for tax purposes. However , he pointed out that this qualification is not found in the original law which simply set the condition or if such dependent, regardless of age , is incapable of self- support because of mental or physical defect.’ He **suggested that the provision be reviewed since there may be cases where these taxpayers are not living with the dependent PWD** because they are overseas Filipino workers or are working in different locations.

“Senator Angara clarified that as originally envisioned in the law, **the reason for requiring the PWD to be living with the taxpayer is that the taxpayer is the one paying for the expenses of the PWD**. Specifically , he cited Section 35(b) paragraph 4 pf NIRC which provided that ‘For the purposes of this subsection, a **“dependent”** means a legitimate, illegitimate or legally adopted child **chiefly dependent upon and living with the taxpayer** if such dependent is not more than twenty-one (21) years of age. ‘Although the agreed that there might be instances where the taxpayers might be financially supporting the PWD even if they are not necessarily living with them, he pointed out that there might be difficulty in verifying such situations.

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⁵Interpellation of Senator Vicente C. Sotto III on August 19, 2015

OPINION NO. 14 S. 2017

“ Senator Sotto informed the Body that he and Senator Angara had **discussed** his proposal **to expand the coverage of the exemption by deleting the condition of having the PWDs live with the taxpayers**, and to present the rationale therefore during the period of individual amendments.”

“COMMITTEE REPORT NO. 199 ON SENATE BILL NO. 2890⁶

“SOTTO AMENDMENT

“On page 5, line 8, after the word ‘UPON’ , **as proposed by Senator Sotto and accepted by the sponsor**, there being no objection, **the Body approved the deletion of the phrase ‘AND LIVING WITH.’**”

“ Senator Sotto explained that the amendment would make the bill applicable to cases wherein the taxpayers are not living with their dependent PWDs, like OFWs or those living in different locations.

“**Senate President Drilon noted that the provision applies to PWDs who are not gainfully employed, therefore, they must be living with the taxpayer.** But Senator Sotto pointed out that there are PWDs relying on their relatives working abroad or in the provinces.

“Senator Angara said that he was inclined to accept the amendment which would make the law more inclusive for PWDs. In fact, he said that when representatives from the National Council on Disability Affairs (NCDA) were asking him why he did not accept the amendment, his reply to them was that it was still not the period of individual amendments, and that he would do so at the proper time.” (Emphasis supplied)

It appears from the above quoted Senate deliberations that the Senate approved the deletion of the phrase “AND LIVING WITH” so that the tax payer can claim the tax exemption even if the PWD is not living with him.

However, during the consideration of the Conference Committee Report on the disagreeing provisions on House Bill No. 1039⁷ and Senate Bill No. 2890, which was submitted to the Senate for approval and reconciliation, it appears that the Senate adopted the version of House Bill No. 1039 wherein the phrase “AND LIVING

⁶Period of Individual Amendments, discussed on August 24, 2015.

⁷An Act of Exempting Persons with Disability from the Value-Added Tax on Certain Goods and Services, Amending for the Purpose Republic Act No. 7277, As Amended ,Otherwise Known as the “Magna Carta for Disabled Persons” and for Other Purposes.

OPINION NO. 14 S. 2017

WITH” is stated. The following are the pertinent portions of the said conference Committee Report, to wit:

“CONFERENCE COMMITTEE REPORT ON SENATE BILL NO. 2890 AND HOUSE BILL NO. 1039

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“JOINT EXPLANATION OF THE CONFERENCE COMMITTEE ON THE DISAGREEING PROVISIONS OF SENATE BILL NO. 2890 AND HOUSE BILL NO. 1039

“The Conference Committee on the disagreeing provisions of Senate Bill No. 2890 and House Bill No. 1039, after having met and fully discussed the subject matter, hereby reports to their respective Houses the following , that:

“1. The conferees agreed to use the House version as the point of reference for comparison purposes;

“xxx

“3. Section 2 of the **reconciled version was taken from the amendment proposed by the House panel**, to wit:

“SEC. 2. Section 33 of Republic Act No. 7277, as amended, is hereby further amended to read as follows:

“SEC . 33. Incentives.- **Those caring for and living with a person with disability** shall be granted the following incentives:

“(a) Persons with disability ,WHO ARE WITHIN THE FOURTH CIVIL DEGREE OF CONSANGUINITY OR AFFINITY TO THE TAXPAYER, REGARDLESS OF AGE, WHO ARE NOT GAINFULLY EMPLOYED AND CHIEFLY DEPENDENT UPON THE TAXPAYER, shall be treated as dependents under Section 35 [A] (B) of the National Internal Revenue Code of 1997, as amended, and as such ,individual taxpayers caring for them shall be accorded the privileges granted by the code insofar as having

⁸Approved by the Senate on December 15, 2015.

OPINION NO. 14 S. 2017

dependents under the same section are concerned; xxx
“ (*Emphasis supplied*)

In view of the foregoing, it is our opinion that the legislative intent of Section 2 of R.A No. 10754 , amending Section 33 of R.A No. 7277, is to grant a tax incentive to a taxpayer, with a dependent with disability, who is both caring for and living with that person with disability.

Please be guided accordingly,

Very truly yours,

(ORIGINAL SIGNED)
VITALIANO N. AGUIRRE II
Secretary

Department of Justice
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