

J. Y. Interpretation No.673 (March 26, 2010) *

ISSUE: (1) Is the designation of certain individuals as tax withholders for businesses or organizations and subject them to certain legal consequences for not or under reporting constitutional ?

(2) Are the administrative fines on tax withholder who fail to withhold or underreport under the Income Tax Act unconstitutional ?

RELEVANT LAWS:

Articles 7, 19, and 23 of the Constitution (憲法第七、十九、二十三條) ; J.Y. Interpretation Nos. 317, and 517 (司法院釋字第三一七號、第五一七號解釋) ; Article 7, Paragraph 5, Article 71, Paragraph 1, Articles 88, 89, Paragraph 1, Subparagraph 2 (amended as of December 30, 1989, February 9, 1999, and May 30, 2006), Articles 92, 94, 114, Paragraph 1 of the Income Tax Act (amended on December 30, 1989) (所得稅法第七條第五項、第七十一條第一項、第八十八條、第八十九條第一項第二款(七十八年十二月三十日、八十八年二月九日及九十五年五月三十日修正公布) ; 第九十二條、第九十四條、第一百一十四條第一項(七十八年十二月三十日修正公布)) ; Article 95 of the Certified Public Accountant Act (會計師法第九十五條), Article 48-3 of the Tax Collection Act (稅捐稽徵法第四十八條之三) .

* Translated by Lawrence L. C. Lee,.

** Contents within frame, not part of the original text, are added for reference purposes only.

KEYWORDS:

Principle of proportionality (比例原則), Principle of taxation by law (租稅法律主義), equal rights (平等權), tax withholder (納稅義務人), property rights (財產權), individual income (個人所得), profit-seeking business (營利事業), annual income (年度所得), tax due (應納稅額).**

HOLDING: On the anterior of Article 89, Paragraph 1, Subparagraph 2 of the Income Tax Act, amended as of December 30, 1989, concerning the use of the chief accounting officer of an institution or organization as the tax withholder (obligator) for tax withholding and the same provision, amended as of February 9, 1999 and May 30, 2006, by using the person in-charge of a business as the tax withholder do not contravene the principle of proportionality under Article 23 of the Constitution.

The posterior of Article 114, Subparagraph 1 of Income Tax Act, amended as of December 31, 1989 and January 3, 2001, concerning the doubling of tax discrepancy amount as the administrative

解釋文：中華民國七十八年十二月三十日修正公布之所得稅法第八十九條第一項第二款前段，有關以機關、團體之主辦會計人員為扣繳義務人部分，及八十八年二月九日修正公布與九十五年五月三十日修正公布之同條款前段，關於以事業負責人為扣繳義務人部分，與憲法第二十三條比例原則尚無牴觸。

七十八年十二月三十日修正公布及九十年一月三日修正公布之所得稅法第一百四條第一款，有關限期責令扣繳義務人補繳應扣未扣或短扣之稅款及補報扣繳憑單，暨就已於限期內補繳應

finer for tax withholders who paid what should have been withheld but was not or under reported and submitted the supplemental withholding certificates within the designated deadline as well as trebling the discrepancy amount as administrative fines for those who did not pay within the designated deadline neither contravenes the principle of proportionality under Article 23 of the Constitution, nor the protection of people's property rights under Article 15 of the Constitution.

On the latter part of Article 114, Paragraph 1 of the Income Tax Act concerning the trebling of tax discrepancy payment as the administrative fine for untruthful filing of withholding certificates (returns), given that it did not authorize the tax authorities to exercise discretion, by taking into consideration the circumstances of the specific violation and seriousness to determine the amount of fines, thus the penalty has apparently exceeded the necessary degree and, in this confine, is not consistent with the principle of proportionality under Article 23 of the Constitution and affronts the protection of

扣未扣或短扣之稅款及補報扣繳憑單，按應扣未扣或短扣之稅額處一倍之罰鍰部分；就未於限期內補繳應扣未扣或短扣之稅款，按應扣未扣或短扣之稅額處三倍之罰鍰部分，尚未抵觸憲法第二十三條比例原則，與憲法第十五條保障人民財產權之意旨無違。

上開所得稅法第一百四條第一款後段，有關扣繳義務人不按實補報扣繳憑單者，應按應扣未扣或短扣之稅額處三倍之罰鍰部分，未賦予稅捐稽徵機關得參酌具體違章狀況，按情節輕重裁量罰鍰之數額，其處罰顯已逾越必要程度，就此範圍內，不符憲法第二十三條之比例原則，與憲法第十五條保障人民財產權之意旨有違，應自本解釋公布之日起停止適用。有關機關對未於限期內按實補報扣繳憑單，而處罰尚未確定之案件，應斟酌個案情節輕重，並參酌稅捐稽徵法第四十八條之三之規定，另為符合比例原則之適當處置，併予指明。

people's property rights under Article 15 of the Constitution. The provision shall cease to be applicable as of the issuance date of this Interpretation. It is also pointed out that by rendering penalties on cases yet to be ripened for not filing the withholding certificates (returns) within the deadline, the relevant authority shall take into account the seriousness of individual cases and make reference to Article 48-3 of the Tax Collection Act to render appropriate dispositions that meet the principle of proportionality

REASONING: The Income Tax Act adopts the system of pay-as-you-earn (PAYE) by designating specific individual as the tax withholder (obligator), who, at the time of paying tax payer's income, deducts the tax amount in accordance with the regulated withholding rate or procedure, submits to the national treasury within the statutory period, completes the tax withholding voucher to the taxing authority and issues the withholding certificates to the tax payers (*see* Article 7, Paragraph 5, Article 88, Article 89, Paragraph 1, and Article 92 of the Income Tax

解釋理由書：所得稅法設有就源扣繳制度，責成特定人為扣繳義務人，就納稅義務人之所得，於給付時依規定之扣繳率或扣繳辦法，扣取稅款，在法定期限內，向國庫繳清，並開具扣繳憑單彙報該管稽徵機關，及填具扣繳憑單發給納稅義務人（所得稅法第七條第五項、第八十八條、第八十九條第一項、第九十二條規定參照）。此項扣繳義務，其目的在使國家得即時獲取稅收，便利國庫資金調度，並確實掌握課稅資料，為增進公共利益所必要（本院釋字第三一七號解釋參照）。至於國家課予何人此項扣繳義務，立法機關自得

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Act). The purpose of this tax withholding obligation is to ensure the state's timely collection of tax income, to facilitate the dispatching of funds, and to take actual control over the taxing information, necessity to enhance the public interests (*see* J.Y. Interpretation No. 317). With regard to whom should be designated as the tax withholder(s), it is for the legislative body to consider candidates who are [most] suitable to carry out the above-indicated withholding system and under the premises that the principle of proportionality is complied with.

The anterior of Article 89, Paragraph 1, Sub-paragraph 2 of the Income Tax Act, as amended on December 30, 1989, stipulates: "For salary, interest, rental, commission, royalty, remuneration for carrying out occupational works, cash award or gifts given in any contest or game competition, prizes from chance winning, and income of a foreign profit-seeking business having no fixed location of business or business agent within the territory of the Republic of China, the tax withholders shall be the chief accounting

在符合比例原則之前提下，斟酌可有效貫徹上開扣繳制度之人選而為決定。

七十八年十二月三十日修正公布之所得稅法第八十九條第一項第二款前段規定：「薪資、利息、租金、佣金、權利金、執行業務報酬、競技、競賽或機會中獎獎金或給與，及給付在中華民國境內無固定營業場所或營業代理人之國外營利事業之所得，其扣繳義務人為機關、團體之主辦會計人員、事業負責人及執行業務者」。八十八年二月九日修正公布之同條款前段規定：「薪資、利息、租金、佣金、權利金、執行業務報酬、競技、競賽或機會中獎獎金或給與，及給付在中華民國境內無固定營業

personnel of the relevant organizations or institutions, the responsible person(s) of the businesses and the business executive(s).” The same provision, as amended on February 9, 1999, stipulated: “For salary, interest, rental, commission, royalty, remuneration for carrying out occupational works, cash award or gifts given in any contest or game competition, prizes from chance winning and income of a foreign profitseeking business having no fixed location of business or business agent within the territory of the Republic of China, the tax withholders shall be the head of the unit responsible for tax withholding for the relevant organizations or institutions, the responsible person(s) of the businesses and business executive(s).” The amendment on May 30, 2006 to the same provision stipulates: “For salary, interest, rental, commission, royalty, remuneration for carrying out occupational works, cash award or gifts given in any contest or game competition, prizes from chance winning, retirement pension, severance payment, termination allowance, departure allowance, lifetime pension, retirement annuity not as insurance benefits,

場所或營業代理人之國外營利事業之所得，其扣繳義務人為機關、團體之責應扣繳單位主管、事業負責人及執行業務者」，及九十五年五月三十日修正公布之同條款前段規定：「薪資、利息、租金、佣金、權利金、執行業務報酬、競技、競賽或機會中獎獎金或給與、退休金、資遣費、退職金、離職金、終身俸、非屬保險給付之養老金、告發或檢舉獎金，及給付在中華民國境內無固定營業場所或營業代理人之國外營利事業之所得，其扣繳義務人為機關、團體、學校之責應扣繳單位主管、事業負責人、破產財團之破產管理人及執行業務者」。上開規定其中以機關、團體之主辦會計人員及事業負責人為扣繳義務人，旨在使就源扣繳事項得以有效執行，目的洵屬正當。

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reward for crime information or reporting, and business income of a foreign profit-seeking business having no fixed location of business or business agent within the territory of the Republic of China, the tax withholders shall be the head of the unit responsible for tax withholding for the relevant organizations, institutions, or schools, the responsible person(s) of the businesses, the trustee(s) of bankrupt estates and the business executive(s).” In order to effectively enforce the PAYE items, by designating the chief accounting personnel of the organizations or institutions, and the responsible person(s) of the businesses as tax withholders carries an appropriate objective.

As far as a taxpayer’s income received from institutions, organizations or businesses, as defined under Article 88, Paragraph 1, Subparagraph 2 of the Income Tax Act, is concerned, although the payers of the respective incomes are the institutions, organizations or businesses, not the chief accounting officers of organizations or institutions or the responsible persons of the businesses, the accounting

納稅義務人自機關、團體或事業受有所得稅法第八十八條第一項第二款之所得，雖給付各該所得者為機關、團體或事業，並非機關、團體之主辦會計人員或事業負責人。惟政府機關出納人員據以辦理扣繳事務等出納工作之會計憑證，須由主辦會計人員或其授權人簽名、蓋章，會計人員並負責機關內部各項收支之事前審核與事後複核（會計法第一百零一條第一項、第九十五條規定

certificates based on which the cashiers of the government agencies conduct withholding, require the signature or seal of the chief accounting personnel or his/her authorized agent, provided that the accounting personnel is responsible for the pre-examination and reexamination of all internal expenses and receipts of the institutions (*see* Article 101 Paragraph 1 and Article 95 of the Certified Public Accountant Act). Therefore, the accounting personnel are the ones who participate the substantive withholding businesses, or, in terms of an organization, possibly conduct the substantive withholding work for that organization. In addition, since the responsible person for a business carries out duties on behalf of that business and is responsible for its success or failure, the relevant financial- expenditures, including, among other things, income tax withholding, are indeed matters under his/her supervision. Thus by bestowing the withholding obligations to the chief accounting personnel and responsible person of the business, the above-indicated provision can better implement the legislative objectives of the PAYE withholding

參照)，因此係由會計人員實質參與扣繳事務；而於團體之情形，可能由會計人員實際辦理團體之扣繳事務。另事業負責人則代表事業執行業務，實際負該事業經營成敗之責，有關財務之支出，包括所得稅法上之扣繳事項，自為其監督之事務。是上開規定課予主辦會計人員及事業負責人扣繳義務，較能貫徹就源扣繳制度之立法目的，且對上開人員業務執行所增加之負擔亦屬合理，並非不可期待，與憲法第二十三條比例原則尚無抵觸。

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system, provided that the added burden to the above stated personnel in their conducting of businesses is reasonable and not unexpected, thus does not contravene the principle of proportionality under Article 23 of the Constitution.

Withholding is an important measure for the taxing authority to control tax income, tax information, and to achieve tax fairness. A tax withholder who fails to withhold, under-withhold or does not truthfully file withholding documents not only causes the source of taxes being unable to control, impacts the dispatching of state funds, but also makes it easier for taxpayer to evade taxes. Especially in the event the incomer earner is an individual not residing in the Republic of China or a foreign profitseeking business having no fixed location of business or business agent within the territory of the Republic of China, given that PAYE is the chief taxing measure, the tax withholder's failure to comply with the regulations is likely to result in tax evasion and jeopardize the state's tax revenue. Article 114, Paragraph 1 of the Income Tax Act,

扣繳為稽徵機關掌握稅收、課稅資料及達成租稅公平重要手段，扣繳義務人如未扣繳或扣繳不實，或未按實申報扣繳憑單，不僅使稅源無法掌握，影響國家資金調度，亦造成所得人易於逃漏稅。尤以所得人為非中華民國境內居住之個人或在中華民國境內無固定營業場所或營業代理人之國外營利事業，係以就源扣繳作為主要課稅手段，倘扣繳義務人未依規定辦理扣繳稅款，可能導致逃漏稅之結果，損及國家稅收。七十八年十二月三十日修正公布及九十年一月三日修正公布之所得稅法第一百十四條第一款（九十年一月三日僅就同條第二款而為修正，第一款並未修正）規定：「扣繳義務人未依第八十八條規定扣繳稅款者，除限期責令補繳應扣未扣或短扣之稅款及補報扣繳憑單外，並按應扣未扣或短扣之稅額處一倍之罰鍰；其未於限期內補繳應扣未扣或短扣之稅款，或不按實補報扣繳憑單

as amended on December 30, 1989 and January 3, 2001 (the latter only amended Subparagraph 2 and left Subparagraph 1 intact) stipulates: “A tax withholder who fails to withhold tax in accordance with the provision of Article 88 shall, in addition to being ordered to pay the tax amount which should be withheld but was not withheld or has underwithheld and to submit supplemental taxwithholding certificates within a given time limit, be subject to a fine of no more than one fold of the amount of the tax amount that should be withheld but was not withheld or was short withheld. If the tax withholder still does not comply with the order to pay the tax amount or to submit supplemental taxwithholding truthfully within the given time limit, he/she shall be subject to a fine of no more than three folds the amount of the tax amount which should be withheld but was not withheld or was short withheld” (*hereinafter* the disputed provision) (the amendments on May 27, 2009 has revised the administrative penalty from double and treble to a fine of no more than double or treble, respectively.) To subject tax withholders who fail to with-

者，應按應扣未扣或短扣之稅額處三倍之罰鍰。」（下稱系爭所得稅法第一百十四條第一款規定）（九十八年五月二十七日修正公布之本款規定，已將前、後段處一倍、三倍之罰鍰，分別修正為一倍以下、三倍以下之罰鍰）於扣繳義務人未依所得稅法第八十八條規定扣繳稅款者，限期責令其補繳應扣未扣或短扣之稅款及補報扣繳憑單，並予以處罰，以督促為扣繳義務人之機關、團體主辦會計人員、事業負責人依規定辦理扣繳稅款事項，乃為確保扣繳制度之貫徹及公共利益所必要。

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hold in accordance with Article 88 of the Income Tax Act to pay the tax discrepancy and to supplement the withholding certificates (returns) within the designated deadline, together with penalties, serves to urge the chief accounting personnel of an institution or organization or person(s) responsible for a business, acting as tax withholders, conduct withholding in accordance with the regulations, and is necessary to ensure that the withholding system is carried out as well as the public interest.

How to sanction an act in violation of a duty under the administrative law is, by definition, subject to the discretionary authority of the legislative body, which should weigh in the particular nature of the matter, the extent of the legal interests being infringed upon, and the effectiveness of control it intends to achieve. As long as it does not exceed the principle of proportionality, it cannot be easily said to be unconstitutional (*see* J.Y. Interpretation No. 517). In the above-indicated provisions on the supplemental tax payment and submitting the withholding cer-

違反行政法上之義務應如何制裁，本屬立法機關衡酌事件之特性、侵害法益之輕重程度以及所欲達到之管制效果，所為立法裁量之權限，苟未逾越比例原則，要不能遽指其為違憲（本院釋字第五一七號解釋參照）。上開責令補繳稅款及補報扣繳憑單暨處罰之規定中，基於確保國家稅收，而命扣繳義務人補繳應扣未扣或短扣之稅款，扣繳義務人於補繳上開稅款後，納稅義務人固可抵繳其年度應繳納之稅額，然扣繳義務人仍可向納稅義務人追償之（所得稅法第七十一條第一項前段、第九十四條但書規定參照），亦即補繳之稅款仍須

tificates order, it is to ensure the state tax revenue that orders are issued to tax withholders to pay the unreported or underreported but should have been reported tax amount. After a tax withholder makes the supplemental tax withholding payment, while the taxpayer can offset it against the annual tax payment, the tax withholder can nevertheless file claim against the taxpayer. (see Article 71, Paragraph 1 and the proviso of Article 94 of the Income Tax Act). In other words, the taxpayers are obligated to retribute the tax withholders for the discrepancy. Therefore, by ordering the tax withholder to pay the supplemental tax withholding amount and the filing of certificates would not have caused excessive damages to the property right of the tax withholder. For tax withholder who pay the discrepant tax withholding amount and file the certificates within the deadline, given that it has caused relatively minor damages to the national treasury and tax fairness, by subjecting to a fine no more than double the discrepant tax amount is not excessive; for those who refuse to pay within the deadline after receiving the notice, since it constitutes a

由納稅義務人負返還扣繳義務人之責，是責令扣繳義務人補繳稅款及補報扣繳憑單部分，並未對扣繳義務人財產權造成過度之損害。而扣繳義務人已於限期內補繳應扣未扣或短扣之稅款及補報扣繳憑單者，因所造成國庫及租稅公平損害情節較輕，乃按應扣未扣或短扣之稅額處一倍之罰鍰，處罰尚未過重；其於通知補繳後仍拒未於限期內補繳應扣未扣或短扣之稅款者，因違反國家所課予扣繳稅捐之義務，尤其所得人如非中華民國境內居住之個人或在中華民國境內無固定營業場所或營業代理人之國外營利事業，扣繳義務人未補繳稅款，對國家稅收所造成損害之結果，與納稅義務人之漏稅實無二致，且又係於通知補繳後仍拒未補繳，違規情節自較已補繳稅款之情形為重，乃按上開稅額處三倍之罰鍰，其處罰尚非過當。準此，系爭所得稅法第一百四條第一款規定，限期責令扣繳義務人補繳應扣未扣或短扣之稅款及補報扣繳憑單部分，暨就已於限期內補繳應扣未扣或短扣之稅款及補報扣繳憑單，按應扣未扣或短扣之稅額處一倍之罰鍰部分；就未於限期內補繳應扣未扣或短扣之稅款，按應扣未扣或短扣之稅額處三倍之罰鍰部分，尚未抵觸憲法第二十三條之比例原則，與憲法保

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violation of the duty to pay tax, particularly for individuals who do not reside in the territory of the Republic of China or foreign profit-seeking businesses that do not have fixed locations for businesses or business agent within the territory of the Republic of China, the failure to pay withholding taxes by the tax withholders results in damages to the state tax revenue not different from tax payers' evasion of taxes. Furthermore, because the refusal to pay occurs after being notified, the degree of violation is certainly more significant than those who eventually pay in time. Thus, an administrative fine trebling the tax amount is not overbearing. As such, on the part of the disputed provision that provides an administrative fine doubling the withholding tax discrepancy for tax withholders who make the supplemental payment and filing of certificates in time, and the trebling of fines for those who fail to pay within the deadline, it neither contravenes the principle of proportionality under Article 23 of the Constitution, nor the protection of people's property rights, equal protection under Article 7 of the Constitution, and the principle of taxation

障人民財產權之意旨無違，亦無違背憲法第七條平等權、第十九條租稅法律主義可言。

by law under Article 19 of the Constitution.

The withholding obligations bestowed to a tax withholder, however, consists of withholding tax payment and the submission of tax withholding certificates, the violation of which should carry different degrees of damage to the national treasury's tax revenue and public interests. On the posterior of the disputed provision, if the tax withholder should have timely paid the discrepant amount that should have been withheld, but did not truthfully submit the supplemental tax withholding certificates, while the tax authority's control over the taxing data and tax payers' return filing may be impacted, now that the discrepant tax amount has been paid, it should generate lesser adverse impact on tax revenue than those who fail to make the payment. Thus by imposing the same treble administrative fines on this part as those who do not make the payment within the deadline, and without authorizing the tax authorities to exercise discretion, by taking into consideration the circumstances of the

惟扣繳義務人之扣繳義務，包括扣繳稅款義務及申報扣繳憑單義務，二者之違反對國庫稅收及租稅公益之維護所造成之損害，程度上應有所差異。系爭所得稅法第一百四條第一款後段規定中，如扣繳義務人已於限期內補繳應扣未扣或短扣之稅款，僅不按實補報扣繳憑單者，雖影響稅捐稽徵機關對課稅資料之掌握及納稅義務人之結算申報，然因其已補繳稅款，較諸不補繳稅款對國家稅收所造成之不利影響為輕，乃系爭所得稅法第一百四條第一款後段規定，就此部分之處罰，與未於限期內補繳稅款之處罰等同視之，一律按應扣未扣或短扣之稅額處三倍之罰鍰，未賦予稅捐稽徵機關得參酌具體違章狀況，按情節輕重裁量罰鍰之數額，其處罰顯已逾越必要程度，不符憲法第二十三條之比例原則，與憲法第十五條保障人民財產權之意旨有違，應自本解釋公布之日起停止適用。有關機關對未於限期內按實補報扣繳憑單，而處罰尚未確定之案件，應斟酌個案情節輕重，並參酌稅捐稽徵法第四十八條之三之規定，另為符合比例原則之適當處置，併予指明。

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specific violation and seriousness to determine the amount of fines, the penalty has apparently exceeded the necessary degree and is not consistent with the principle of proportionality under Article 23 of the Constitution and affronts the protection of people's property rights under Article 15 of the Constitution. The provision shall cease to be applicable as of the issuance date of this Interpretation. It is also pointed out that by rendering penalties on cases yet to be ripened for not filing the withholding certificates (returns) within the deadline, the relevant authority shall take into account the seriousness of individual cases and make reference to Article 48-3 of the Tax Collection Act to render appropriate dispositions that meet the principle of proportionality.

Justice Pai-Hsiu Yeh filed concurring opinion.

Justice Yu-hsiu Hsu filed dissenting opinion.

Justice Mao-Zong Huang filed dissenting opinion.

本號解釋葉大法官百修提出協同意見書；許大法官玉秀提出不同意見書；黃大法官茂榮提出不同意見書。

EDITOR'S NOTE:

Summary of Facts: I. Petition for Interpretation by Petitioner A

2. Summary of the four petitions:

(A)

Petitioner A is the responsible person of a technology company. The company purchased foreign computer online software in 2001, but did not withhold the tax in the amount of NT\$4,507,940 in accordance with the regulations, nor tendered the payment and submitting the supplemental tax-withholding certificates within the deadlines, thus was subject to the treble fine of NT\$ 13,523,820.

After the case was overturned through the administrative litigation, the technology company claimed that Article 89, Paragraph 1, Subparagraph 2 of the Income Tax Act, as amended on February 9, 1999 and applied by the Supreme Administrative Court in its (98) Pan Zi No. 275 judgment (2009), which designated the responsible persons of businesses as tax withholders and Article 114, Paragraph 1 of the Income Tax Acts, as

編者註：

事實摘要：我。請願人請求解釋

2. 四份請願書摘要：

A. 林○裕聲請案

聲請人為奧○科技股份有限公司負責人，90年間購買外國電腦線上軟體，未依規定扣取稅款4,507,940元，且未依限補繳稅款、補報扣繳憑單，被按稅額處以3倍罰鍰13,523,820元。

案經提起行政爭訟均遭駁回，認最高行政法院98年度判字第275號判決所適用之第89條第1項第2款前段（88.2.9修正公布），以事業負責人為扣繳義務人規定；第114條第1款後段（90.1.3修正公布），未補繳稅、未補報憑單，按應扣未扣稅額處3倍罰鍰規定違憲，聲請解釋。

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amended on January 3, 2001, which imposes treble administrative fine over the discrepant tax amount for nonpayment of withholding taxes or nonsubmission of withholding certificates, are unconstitutional.

(B)

Petitioner B is the responsible person of a business and signed a contract with a foreign company in 2001 to rent certain offshore oil storage tanks, but did not deduct the 20% tax withholding based on the rental and management fee in the amount of NT\$ 4,316,811. The Taipei National Tax Administration then ordered the Petitioner to pay what should have been withheld but did not and submitted supplemental tax withholding certificates, the Petitioner only paid the tax but did not submit supplemental tax withholding certificates, and was fined the treble amount of NT\$ 1,295, 0433.

After the case was overturned through the administrative litigation, the present petition was filed, claiming that the posterior of Article 114, Paragraph 1

B. 鄒〇明聲請案

聲請人為眾〇實業股份有限公司負責人，於90年間與外國公司簽訂契約，出租境外儲油槽，未按租金及管理費之給付額扣繳20%稅款4,316,811元，臺北市國稅局乃責令聲請人補繳應扣未扣稅款及補報扣繳憑單，聲請人於期限內補繳稅款，惟仍未依限按實補報扣繳憑單，被按稅額處以3倍罰鍰計1,295,0433元。

案經提起行政爭訟均遭駁回，認最高行政法院98年判字第685號判決所適用之所得稅法第114條第1款後段（90.1.3修正公布），不按實補報扣繳

of the Income Tax Act, as amended on January 3, 2001 and applied by the Supreme Administrative Court in its (98) Pan Zi No. 685 (2009) judgment, which imposes treble administrative fines on the discrepant tax payment to those who did not truthfully submit their tax withholding certificates, is unconstitutional.

(C)

C is the responsible person of a technology company, thus also the tax withholder of income taxes. Because the company did not withhold taxes in accordance with the regulation between 2004-2006, nor pay the withholding taxes or submit supplemental tax withholding certificates within the deadline after being notified, the Kaoshiung National Tax Administration issued the discrepant tax in the amount of NT\$ 92, 9138, 1,562,682, and 964,113 respectively and imposed the treble administrative fines on the company in the sum of NT\$ 2,787,900, 4,688,000, and 2,892,300.

After the case was overturned through the administrative litigation, the present petition was filed, claiming that

憑單者，按應扣未扣或短扣之稅額處 3 倍罰鍰規定違憲，聲請解釋。

C. 薛 O 承聲請案

聲請人為詳 O 科技股份有限公司負責人，亦即所得稅規定之扣繳義務人，財政部高雄市國稅局以該公司於 93 年度、94 年度、95 年度給付納稅義務人薪資所得，未依規定辦理扣繳稅款，經通知限期補繳應扣未扣稅款及補報扣繳憑單，惟未依限補繳及補報，遂分別發單補徵應扣未扣稅款 92,9138 元、1,562,682 元、964,113 元，並按應扣繳稅額裁處 3 倍罰鍰，計 2,787,900 元、4,688,000 元、2,892,300 元。

案經提起行政爭訟均遭駁回，認為 97 年裁字第 3165 號裁字第 3163 號、第 3164 號、第 3165 號裁定，所適用之

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Article 89, Paragraph 1, Subparagraph 2 of the Income Tax Act, as promulgated on February 9, 1999, amended on May 30, 2006 and applied by the Supreme Administrative Court (97) Zhai Zi Nos. 3165, 3163, 3164 and 3165 rulings, which designates the tax withholder shall be the responsible persons of businesses as tax withholders, is unconstitutional..

(D)

D, the responsible person and chief accounting officer of an cultural and educational foundation, also the tax withholder designated by the Income Tax Act, did not withhold tax and submit tax withholding certificates in accordance with the regulations. The Taipei National Tax Administration ordered D to pay NT\$ 4,572,076, the amount that should have been withheld but did not from the performance remunerations in 1996, to submit the supplemental tax withholding certificates and NT\$ 6,065,263 that should have been withheld from the performance remunerations, rental income and performing salaries in 1997, but D did not pay the taxes nor submitted the supplemental tax withholding certificate. Therefore, the

所得稅法第 89 條第 1 項第 2 款（88.2.9 修正公布、95.5.30 修正公布），以事業負責人為扣繳義務人，以及第 114 條第 1 款前、後段規定（90.1.3 修正公布），有違憲疑義，聲請解釋。

D. 樊 O 儂聲請案

聲請人為財團法人新 O 文教基金會負責人兼主辦會計，亦即所得稅法規定之扣繳義務人，未依法扣取稅款並申報扣繳憑單，經臺北市國稅局限期責令補繳 85 年度演出報酬之應扣未扣稅款 457 萬 2076 元及補申報扣繳憑單、86 年度演出薪資、租賃所得、演出報酬之應扣未扣稅款 6,065,263 元，惟聲請人未依限補繳及補報，臺北市財稅局乃按應扣未扣稅額處 3 倍罰鍰，計 85 年度 13,716,228 元、86 年度 18,195,789 元。

Taipei National Tax Administration imposed treble penalty of NT\$ 13,716,228 for 1996 and NT\$ 18,195,789 for 1997.

After the case was overturned through administrative litigation, D filed the present petition, claiming that Article 89, Paragraph 1, Subparagraph 2 of the Income Tax Acts, as amended on February 9, 1999 and applied by the Supreme Administrative Court in (95) Pan Zi Nos. 1817 and 1752 judgments, which designates the responsible persons of businesses as tax withholders and the anterior and posterior of Article 114, Paragraph 1 of the Income Tax Act, as amended on January 3, 2001, are unconstitutional.

案經提起行政爭訟均遭駁回，認最高行政法院 95 年度判字第 1817 號、第 1752 號判決，所適用之所得稅法第 89 條第 1 項第 2 款規定（78.12.30 修正公布），以機關、團體之主辦會計人員為扣繳義務人，以及第 114 條第 1 款前、後段規定（78.12.30 修正公布），有違憲疑義，聲請解釋。。