

J. Y. Interpretation No.674 (April 2, 2010) *

ISSUE: According to the administrative letter by Ministry of Finance and administrative order of Ministry of the Interior, whether the preclusion of the application of agricultural land tax levy to specific urban odd-shaped lots is unconstitutional?

RELEVANT LAWS:

Article 19 of the Constitution of the Republic of China (憲法第十九條) ; J.Y. Interpretation Nos. 620, 622 and 625 (司法院釋字第六二〇號、第六二二號、第六二五號解釋) ; Article 14, Article 22, Paragraph 1, Subparagraph 4 of the Land Tax Act (土地稅法第十四條、第二十二條第一項第四款) ; Article 22, Paragraph 1, Subparagraph 4 of the Equalization of Land Rights Act (平均地權條例第二十二條第一項第四款) ; Article 44 of the Building Act (建築法第四十四條) ; Administrative Letter *Tai Cai Shui Zi* No. 820570901 of December 16, 1993, issued by Ministry of Finance (財政部八十二年十二月十六日發布之台財稅字第八二〇五七〇九〇一號函) ; Point 4 of the Operation Principles on the Delineation of Construction Limitations or Restrictions under Article 22 of the Equalization of Land Rights Act as published in Administrative Order *Tai Nei Zi* No. 0930069450 of April 12, 2004, issued by Ministry of the Interior (內政部九十三年四月十二日台內地

* Translated by Spenser Y. Hor, Esq. and Chien Yeh Law Offices.

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

字第○九三○○六九四五○號令訂定發布之「平均地權條例第二十二條有關依法限制建築、依法不能建築之界定作業原則」第四點)。

KEYWORDS:

principle of taxation by law (租稅法律主義), agricultural land tax levy (田賦), land value tax (地價稅), odd shaped lots (畸零地).**

HOLDING: The Ministry of Finance Administrative Letter *Tai Cai Shui Zi* No. 820570901, issued on December 16, 1993, explicitly states: “For odd-shaped lots not independently eligible for construction application and lands not suitable as building sites without rearrangement, Article 22, Paragraph 1, Subparagraph 4 of the Land Tax Act concerning the levy of agricultural tax does not apply.” Point 4 of the Operation Principles on the Delineation of Construction Limitations or Restrictions under Article 22 of the Equalization of Land Rights Act, issued by Ministry of the Interior Administrative Order *Tai Nei Di Zi* No. 0930069450 of April 12, 2004, provides: “Since oddshaped lots can be agreed to

解釋文：財政部於中華民國八十二年十二月十六日發布之台財稅字第八二〇五七〇九〇一號函明示：「不能單獨申請建築之畸零地，及非經整理不能建築之土地，應無土地稅法第二十二條第一項第四款課徵田賦規定之適用」；內政部九十三年四月十二日台內地字第〇九三〇〇六九四五〇號令訂定發布之「平均地權條例第二十二條有關依法限制建築、依法不能建築之界定作業原則」第四點規定：「畸零地因尚可協議合併建築，不得視為依法限制建築或依法不能建築之土地」。上開兩項命令，就都市土地依法不能建築，仍作農業用地使用之畸零地適用課徵田賦之規定，均增加法律所無之要件，違反憲法第十九條租稅法律主義，其與本解釋意旨不符部分，應自本解釋公布之日起

60 J. Y. Interpretation No.674

merge with a construction, restriction cannot be placed on it as building sites and such odd lot can be used as building sites by law.” The abovementioned administrative orders created additional requirements not provided under the statute concerning the application of agricultural land tax levy to urban odd-shaped lands that cannot be used as building sites by law for construction, but are still used for agricultural purpose contravenes the principle of taxation by law under Article 19 of the Constitution. To the extent that they are inconsistent with this Interpretation, these administrative orders shall no longer be applied as of the issuance date of this Interpretation.

REASONING: Article 19 of the Constitution states that the people shall have the duty to pay taxes in accordance with law. It means that the State must impose tax duty or provide preferential tax deduction or exemption treatment to its people based on laws or regulations having clear authorization of a given law, taken into consideration such conditions as the subject, subject matter, tax base or tax

不再援用。

解釋理由書：憲法第十九條規定，人民有依法律納稅之義務，係指國家課人民以繳納稅捐之義務或給予人民減免稅捐之優惠時，應就租稅主體、租稅客體、租稅客體對租稅主體之歸屬、稅基、稅率、納稅方法及納稅期間等租稅構成要件，以法律明文規定。主管機關本於法定職權就相關法律規定所為之闡釋，自應秉持憲法原則及相關法律之立法意旨，遵守一般法律解釋方法而為

rates. The related statutory interpretations by the competent authority shall abide by the principles of the Constitution and the meanings and purpose of the relevant statutes, and comply with the general rules of legislative interpretation. Any interpretation that exceeds the boundary of the law that creates levy duties not provided under the statute is not permitted by the principle of taxation by law under Article 19 of the Constitution (*see* J.Y. Interpretation Nos. 620, 622 and 625).

Article 14 of the Land Tax Act states: "Except for lands subject to agricultural land tax levy under Article 22, lands whose value has been determined shall be subject to land value (real property) tax." Pursuant to Article 22, Paragraph 1, Subparagraph 4 of the Land Tax Act and Article 22, Paragraph 1, Subparagraph 4 of the Equalization of Land Rights Act, non-urban lands designated by law for agricultural purpose or its value has not been determined are subject to agricultural land tax levy, so are urban lands which "cannot be building sites by law, but are still being used for agricul-

之；如逾越法律解釋之範圍，而增加法律所無之租稅義務，則非憲法第十九條規定之租稅法律主義所許（本院釋字第六二〇號、第六二二號、第六二五號解釋參照）。

土地稅法第十四條規定：「已規定地價之土地，除依第二十二條規定課徵田賦者外，應課徵地價稅」；依同法第二十二條第一項第四款及平均地權條例第二十二條第一項第四款之規定，非都市土地依法編定之農業用地或未規定地價者，徵收田賦；而都市土地「依法不能建築，仍作農業用地使用者」，亦同。依土地稅法規定，田賦之負擔，一般較地價稅為輕（土地稅法第二章、第三章參照；實務上田賦自七十六年第二期起停徵，見行政院七十六年八月二十日台七十六財字第一九三六五號函）。都市土地已規定地價者，原應改課徵地價稅，惟依法不能建築之都市土地，仍

tural purpose.” In general, the agricultural land tax levy under the Land Tax Act is less burdensome than land value tax (*see* Chapters 2 and 3 of the Land Tax Act; whereas in practice the agricultural land tax levy was halted as of the second period of 1987, *see* Executive Yuan Directive *Tai (76) Cai Zi* No. 19365 (August 20, 1987). While the levy of urban lands whose values have been determined should have been switched and subjected to land value tax, yet for the urban lands that cannot be used as building sites by law but still being used for agricultural purpose, due to their limited incomes, agricultural land tax levy is nevertheless levied upon farmers to release their burdens (*see* the Legislative Yuan Gazette: vol. 65, No. 71, pages 8, 11, 18; vol. 65, No. 95, page 28; vol. 66, No. 44, pages 6, 26; vol. 66, No. 51, pages 19-20; vol. 75, No. 45, page 39).

The so-called “cannot be used as building sites by law” is not clearly defined in the Land Tax Act and the Equalization of Land Rights Act, and the competent authority is not explicitly

作農業用地使用者，收益有限，為減輕農民負擔，仍課徵田賦（立法院公報第六十五卷第七十一期第八頁、第十一頁、第十八頁；第六十五卷第九十五期第二十八頁；第六十六卷第四十四期第六頁、第二十六頁；第六十六卷第五十一期第十九至二十頁；第七十五卷第四十五期第三十九頁參照）。

所謂「依法不能建築」，土地稅法及平均地權條例未明定其意義，亦未明確授權主管機關以命令為補充之規定。而依建築法第四十四條規定：「直轄市、縣（市）（局）政府應視當地實

authorized to promulgate supplemental regulations. Yet Article 44 of Building Act stipulates: “The special municipality or county (city) (bureau) government shall regulate, based on the actual condition of the locality, the width and depth of minimum square measurement for the construction foundation. For oddshaped or narrow square measurement not in compliance with the regulations, there shall be no construction unless the width and depth of the minimum square measurement is met with negotiated adjustment of landscape or combination of usage with the adjacent land(s).” Thus, for lands that have odd-shaped or narrow square measurement not in compliance with the regulations (*i.e.*, “odd-shaped lots”) to reach the minimum width and depth square measurement for construction, they must be in negotiations for combined usage with the adjacent lands to reach that minimum requirement. Thus, before this combined usage is to take place, given that no independent construction can be made under the Building Act, the [odd-shaped] lot should be qualified as “cannot be used as building sites by law” under Article

際情形，規定建築基地最小面積之寬度及深度；建築基地面積畸零狹小不合規定者，非與鄰接土地協議調整地形或合併使用，達到規定最小面積之寬度及深度，不得建築。」故建築基地面積畸零狹小不合規定之土地（即「畸零地」），如欲建築者，必須與鄰接土地協議合併使用，達到規定最小面積之寬度及深度後，始得為之。是畸零地在與鄰接土地合併使用前，依建築法規定既不得單獨建築，應屬上開土地稅法第二十二條第一項第四款及平均地權條例第二十二條第一項第四款「依法不能建築」之情形。而仍作農業用地使用之畸零地，在與鄰接土地合併使用前，既無法建築以獲取較高之土地收益，依土地稅法及平均地權條例上開規定之立法意旨，自應課徵田賦。

64 J. Y. Interpretation No.674

22, Paragraph 1, Subparagraph 4 of the Land Tax Act and Article 22, Paragraph 1, Subparagraph 4 of the Equalization of Land Rights Act. As to the oddshaped lot still being used for agricultural purpose, before the combined usage with the adjacent land is to take place, since it cannot be constructed for higher profits, based on the legislative purpose of the above-mentioned provisions under the Land Tax Act and the Equalization of Land Rights Act, it shall naturally be subject to the levy of agricultural land tax.

The Ministry of Finance Administrative Letter *Tai Cai Shui Zi No.* 820570901, issued on December 16, 1993, explicitly states: “For oddshaped lots not independently eligible for construction application and lands not suitable for construction without rearrangement, Article 22, Paragraph 1, Subparagraph 4 of the Land Tax Act concerning the levy of agricultural tax does not apply.” Point 4 of the Operation Principles on the Delineation of Construction Limitations or Restrictions under Article 22 of the Equalization of Land Rights Act, issued by the Ministry of

財政部八十二年十二月十六日台財稅字第八二〇五七〇九〇一號函明示：「不能單獨申請建築之畸零地，及非經整理不能建築之土地，應無土地稅法第二十二條第一項第四款課徵田賦規定之適用」；內政部九十三年四月十二日台內地字第〇九三〇〇六九四五〇號令訂定發布之「平均地權條例第二十二條有關依法限制建築、依法不能建築之界定作業原則」第四點規定：「畸零地因尚可協議合併建築，不得視為依法限制建築或依法不能建築之土地」。上開兩項命令，固為主管機關本於法定職權所發布，惟都市土地仍作農業用地使用

the Interior Administrative Order *Tai Nei Di Zi No.* 0930069450 on April 12, 2004, provides that odd-shaped lots subject to negotiated combined-construction may not be considered as limited or restrictive construction lands under the statute. “Since odd-shaped lots can be agreed to merge with a construction, restriction cannot be placed on it as building sites and such odd lot can be used as building sites by law.” Although these two administrative orders were issued by the competent authority based on statutory authorization, yet by precluding the oddshaped urban lands still being used for agricultural purpose from applying the agricultural land tax levy under Article 22, Paragraph 1, Subparagraph 4 of the Land Tax Act and Article 22, Paragraph 1, Subparagraph 4 of the Equalization of Land Rights Act has exceeded the scope of statutory interpretation, created additional requirements not provided under the statute, and contravenes the principle of taxation by law under Article 19 of the Constitution. To the extent that they are inconsistent with this Interpretation, these administrative orders shall no longer be applied as of the

之畸零地，因而無從適用土地稅法第二十二條第一項第四款及平均地權條例第二十二條第一項第四款之規定課徵田賦，逾越法律解釋之範圍，增加土地稅法及平均地權條例上開課徵田賦規定所無之要件，違反憲法第十九條租稅法律主義，其與本解釋意旨不符部分，應自本解釋公布之日起不再援用。

issuance date of this Interpretation.

On the Petitioner's claim that the Ministry of Finance's Administrative Letter *Tai Cai Shui Zi* No. 37278 of October 30, 1976 (mistakenly identified as No. 37378 in the petition) also violates the Constitution, given that the Petitioner did not specify how his right protected under the Constitution was infringed, it does not meet the requirement under Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Interpretation Procedure Act and shall be dismissed under Subparagraph 3 of the same provision.

EDITOR'S NOTE:

Summary of facts: In 2005, the Petitioner acquired two parcels of urban lands located in Changhua County, and both were odd-shaped lots being used for agricultural purpose (hereinafter disputed land), and were originally subject to the levy of agricultural land tax.

Then the tax-assessing authority determined that the disputed land does not qualify as "cannot be used as build-

至於聲請人指稱財政部六十五年十月三十日台財稅字第三七二七八號（聲請書誤植為第三七三七八號）函釋亦有違憲疑義，並據以聲請解釋憲法部分，查聲請人並未具體指摘該號函釋如何侵害其受憲法所保障之權利，核與司法院大法官審理案件法第五條第一項第二款規定不符，依同條第三項規定，應不受理，併此指明。

編者註：

事實摘要：（一）本件聲請人於94年間，取得2筆位於彰化縣的都市土地，該2筆土地是仍作農業用地使用之畸零地（下稱系爭土地）。

（二）稽徵機關認為系爭土地不符合土地稅法第22條第1項第4款及平均地權條例第22條第1項第4款有關

ing sites by law and is still being used for agricultural purpose” under Article 22, Paragraph 1, Subparagraph 4 of the Land Tax Act and Article 22, Paragraph 1, Subparagraph 4 of the Equalization of Land Rights Act, thus ineligible for agricultural land tax levy and should be subject to property value tax levy. As a result, the taxing authority imposed back taxes in the amount of NT\$5,308 each year for 2005 and 2006 respectively, bring the total to NT\$10,616.

The Petitioner is not satisfied with the result and instituted the Administrative litigation. The Supreme Administrative Court denied the case in (98) Cai Zi No. 2108 (2009), and the judgment was final. The Petitioner asserted that the disputed administrative orders relied on in the judgment rendered the disputed land ineligible for agricultural land tax levy. The ruling was on the ground that “the odd-shaped lot may still be combined with the adjacent lot for construction, thus does not qualify as non-constructible land by the law.” This has created additional requirements not provided under the stat-

課徵田賦規定的要件，應課徵地價稅，於是發單補徵系爭土地 94、95 年度地價稅分別為 5,308 元，合計共 10,616 元。聲請人不服，提起複查、訴願、行政訴訟，經最高行政法院 98 年度裁字第 2108 號裁定駁回確定。

(三) 聲請人主張，上開裁定所適用之系爭行政命令，以「畸零地尚可與鄰地協議合併建築，故非依法不能建築之土地」為由，使都市土地仍作農業用地使用之畸零地，無法適用土地稅法及平均地權條例上開課徵田賦之規定，係增加法律所無之要件，有違反憲法第 19 條租稅法律主義之疑義，聲請解釋。

68 J. Y. Interpretation No.674

ute and raised the question of violating the principle of taxation by law under Article 19 of the Constitution.