J. Y. Interpretation No.685（March 4, 2011）*

ISSUE: Is the administrative fine without a cap for the failures of a business entity, which has entered into a contract with a cooperative store to provide goods for sale, to issue uniform invoices to the customers of the cooperative store and to obtain invoices from the cooperative store in contravention of the Constitution ?

RELEVANT LAWS:

Articles 15, 19 and 23 of the Constitution（憲法第十五條、第十九條與第二十三條）；J.Y. Interpretations Nos. 252, 397, 607, 620, 622, 625, 635, 641, 642, 660 and 674（司法院大法官會議解釋釋字第二五二號、第三九七號、第六〇七號、第六二〇號、第六二二號、第六二五號、第六三五號、第六四一號、第六四二號、第六六〇號與六七四號解釋）；Value-Added and Non-Value-Added Business Tax Act: Article 2, Subparagraph 1; Article 3, Paragraph 1; Articles 14-16 Article 19; Article 32, Paragraph 1; Article 33 and Article 35 of the Value-Added and Non-Value-Added Business Tax Act（加值型及非加值型營業稅法第二條第一款、第三條第一項、第十四條、第十五條、第十六條、第十九條、第三十二條第一項、第三十三條與第三十五條）；Article 44 of the Tax Levy Act（稅捐稽徵法第四十四條）；Administrative In-

---

* Translated by Professor Chun-Jen Chen.

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

terpretation of the Ministry of Finance, Tai-Cai-Shui-Tze No. 761126555 (April 2, 1988)(abolished on March 19, 2009)（財政部七十七年四月二日台財稅字第七六一一二六五五五號函（九十八年三月十九日廢止））； Administrative Interpretation of the Ministry of Finance, Tai- Cai-Shui-Tze No. 910453902 (June 21, 2002)（財政部九十一年六月二十一日台財稅字第九一0四五三九0二號函）；Resolution of the First Joint Meeting of Chief Judges and Judges of the Administrative Court in July, 1998（行政法院八十七年七月份第一次庭長評事聯席會議決議）.

KEYWORDS:

value-added（加值型）, business tax（營業稅）, tax（稅）, levy（徵收）, administrative fine（行政罰）, business entity（營業人）, for-profit enterprise（營利事業）, statutory taxpayer（納稅義務人）, uniform invoice（統一發票）, property right（財產權）, principle of proportionality（比例原則）, principle of taxation by law（租稅法律主義）.**

HOLDING: The Adminis-trative Interpretation of the Ministry of Finance, Tai-Cai-Shui-Tze No. 910453902 (June 21, 2002) stated that a business entity is the seller of the goods when it sells the goods and collects the proceeds by itself. And, the Resolution of the First Joint Meeting of Chief Judges and Judges of

解釋文：財政部中華民國九十一年六月二十一日台財稅字第九一0四五九三九0二號函，係闡釋營業人若自己銷售貨物，其銷售所得之代價亦由該營業人自行向買受人收取，即為該項營業行為之銷售貨物人；又行政法院（現改制為最高行政法院）八十七年七月份第一次庭長評事聯席會議決議，關於非

the Administrative Court (now reorganized as the Supreme Administrative Court) in July, 1998, in the relevant part, stating that, regardless of whether the opposite party of a transaction files a tax return in accordance with the amount of the invoices issued, the obligation of providing a make-up payment for the business entity, which sells goods or services, remains unaffected. These rulings are both consistent with the legislative intent of the Value-Added and Non-Value-Added Business Tax Act (the Business Tax Act was renamed as the Value-Added and Non-Value-Added Business Tax Act on July 9, 2001, *hereinafter* referred to as the Business Tax Act.) Article 2, Subparagraph 1; Article 3, Paragraph 1, and the first half of Article 32, Paragraph 1 of the Business Tax Act and are not in contravention of the principle of taxation by law under Article 19 of the Constitution.

交易對象之人是否已按其開立發票之金額報繳營業稅額，不影響銷售貨物或勞務之營業人補繳加值型營業稅之義務部分，均符合加值型及非加值型營業稅法（營業稅法於九十年七月九日修正公布名稱為加值型及非加值型營業稅法，以下簡稱營業稅法）第二條第一款、第三條第一項、第三十二條第一項前段之立法意旨，與憲法第十九條之租稅法律主義尚無牴觸。

Article 44 of the Tax Levy Act, as amended on January 24, 1990, imposes an administrative fine of five percent of the verified sum of the total amount of

七十九年一月二十四日修正公布之稅捐稽徵法第四十四條關於營利事業依法規定應給與他人憑證而未給與，應自他人取得憑證而未取得者，應就其未

sales which should have been made with invoices when no invoice was given to, or obtained from, the for-profit enterprise, which should by law have given an invoice to, or should have obtained an invoice from the opposite party of the transaction and yet has failed to do so. The administrative fine thus imposed contains no ceiling of a reasonable maximum amount and hence renders statutory taxpayers in individual cases liable to suffer evident harshness of administrative punishments. The administrative fines imposed under Article 44 of the Tax Levy Act exceed the degree of necessity of administrative fines and are therefore in contravention of the principle of proportionality under Article 23 of the Constitution and of the constitutional guarantee of people's property rights under Article 15 of the Constitution and shall no longer be applicable.

給與憑證、未取得憑證，經查明認定之總額，處百分之五罰鍰之規定，其處罰金額未設合理最高額之限制，而造成個案顯然過苛之處罰部分，逾越處罰之必要程度而違反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，應不予適用。

REASONING: I. The Administrative Interpretation of the Ministry of Finance, Tai- Cai-Shui-Tze No. 910453902 (June 21, 2002) and the resolution of the First Joint Meeting of Chief Judges and Judges of the Administrative

解釋理由書：一、財政部九十一年六月二十一日台財稅字第九一0四五三九0二號函，以及行政法院八十七年七月份第一次庭長評事聯席會議決議關於非交易對象之人是否已按其開立發票之金額報繳營業稅額，不影響

Court in July, 1998, in the relevant part, stated that regardless of whether the opposite party of a transaction files a tax return in accordance with the amount of the invoices issued, the obligation of providing a make-up payment for a business entity, which sells goods or services, remains unaffected.

銷售貨物或勞務之營業人補繳加值型營業稅之義務部分。

Article 19 of the Constitution mandates that nationals have the duty to pay tax in accordance with the law. The constitutional mandate stipulates that when the state imposes the duty to pay tax upon nationals or gives nationals tax benefits, there shall be a statutory basis which prescribes the elements of taxation such as the subject of taxation, the object of taxation, the relationship delineating how the object of taxation belongs to the subject of taxation, the tax basis, the tax rate, the method of levy and the taxable period. However, the agency-in-charge has the power to interpret laws which are within the domain of its legal authority, so long as the interpretation is conducted in accordance with the principles of the Constitution and with the relevant legisla-

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，以法律定之。惟主管機關於職權範圍內適用之法律條文，本於法定職權就相關規定予以闡釋，如係秉持憲法原則及相關之立法意旨，遵守一般法律解釋方法為之，即與租稅法律主義無違（本院釋字第六０七號、第六二五號、第六三五號、第六六０號、第六七四號解釋參照）；最高行政法院以決議之方式表示法律見解者，亦同（本院釋字第六二０號、第六二二號解釋參照）。

tive intent and with the general methods of statutory interpretation. Hence the interpretation thus made is not in contravention of the principle of no tax levy in the absence of law. (See Judicial Yuan Interpretations Nos. 607, 625, 635, 660 and 674.) The legal opinions expressed by the Supreme Administrative Court in the form of resolutions are also not in contravention of the principle of no tax levy in the absence of law. (See Judicial Yuan Interpretations Nos. 620 and 622.)

With regard to the fulfillment of the duty to pay tax, the subject of taxation, the object of taxation, and the relationship delineating how the object of taxation belongs to the subject of taxation shall be ascertained first before determining whether the statutory taxpayer has paid the tax in accordance the law or has failed to do so. A third party, of course, cannot pay the tax on behalf of, and under the name of, the statutory taxpayer under law. Although, unless it is prohibited by the tax law, it is not illegal to pay the tax on behalf of a statutory taxpayer when the law makes it clear who the statutory taxpayer is, the

租稅義務之履行，首應依法認定租稅主體、租稅客體及租稅客體對租稅主體之歸屬，始得論斷法定納稅義務人是否已依法納稅或違法漏稅。第三人固非不得依法以納稅義務人之名義，代為履行納稅義務，但除法律有特別規定外，不得以契約改變法律明定之納稅義務人之地位，而自為納稅義務人。因此非法定納稅義務人以自己名義向公庫繳納所謂「稅款」，僅生該筆「稅款」是否應依法退還之問題，但對法定納稅義務人而言，除法律有明文規定者外，並不因第三人將該筆「稅款」以該第三人名義解繳公庫，即可視同法定納稅義務人已履行其租稅義務，或法定納稅義務

legal status of the statutory taxpayer shall not be altered by any contract. Thus, if the "tax" was paid by any-one other than the statutory taxpayer, the "tax" so paid will give rise to the issue whether the government shall return the "tax". Unless the tax law stipulates otherwise, a statutory taxpayer shall not be deemed to have fulfilled his tax obligation and there shall be no exemption for, or relinquishment of, his responsibility to pay the tax merely because a third party paid the "tax" under its own name to the government treasury. In other words, neither the recipient of the government treasury nor the factual consequences of tax collections and makeup payments shall be able to alter the subject of taxation, the object of taxation, and the determinations of the subject of taxation and the object of taxation, all of which are expressly prescribed by the tax law. In order to be consistent with the above-mentioned principle of taxation by law, the question whether the tax obligation is fulfilled in accordance with the law and the Constitution shall be determined by whether, and how, the statutory taxpayer fulfills his tax obligation, and shall not be

人之租稅義務得因而免除或消滅，換言之，公庫財政上之收支情形，或加值型營業稅事實上可能發生之追補效果，均不能改變法律明定之租稅主體、租稅客體及租稅客體對租稅主體之歸屬，而租稅義務之履行是否符合法律及憲法意旨，並非僅依公庫財政上之收支情形或特定稅制之事實效果進行審查，仍應就法定納稅義務人是否及如何履行其納稅義務之行為認定之，始符前揭租稅法律主義之本旨。

determined only by the recipient of the tax or by the factual consequences for the government treasury.

Article 2, Paragraph 1 of the Business Tax Act prescribes that, the "Statutory taxpayers of the business tax are as follows: 1. Business entities that sell goods or services." Article 3, Paragraph 1 of the Business Tax Act prescribes that, "The definition of sale of goods is the transfer of ownership of goods to another or others for a consideration." Article 32, the first half of Paragraph 1 of the Business Tax Act prescribes that, "For the 'Table of the Time Limits for Issuing Documentary Evidence of Sales' under this Act, the business entities of a special nature or small business entities may be exempted from issuing uniform invoices, and may, instead, issue ordinary receipts." Accordingly, when the state imposes tax obligations of the business tax on its nationals, it expressly prescribes in the Business Tax Act the subject of taxation, the object of taxation, the determinations of the object of taxation as contrasted with the subject of taxation, and the duty to cooperate,

營業稅法第二條第一款規定：「營業稅之納稅義務人如左： 一、銷售貨物或勞務之營業人。」同法第三條第一項規定：「將貨物之所有權移轉與他人，以取得代價者，為銷售貨物。」同法第三十二條第一項前段規定：「營業人銷售貨物或勞務，應依本法營業人開立銷售憑證時限表規定之時限，開立統一發票交付買受人。」是國家課人民以繳納營業稅之義務時，就營業稅之租稅主體、租稅客體、租稅客體對租稅主體之歸屬等租稅構成要件，以及營業稅納稅義務人（營業人）應開立銷售憑證等納稅義務人之協力義務，皆係以法律為明文之規定。

such as to issue invoices, owed by the statutory taxpayers of the Business Tax (business entities).

The Administrative Interpretation of the Ministry of Finance, Tai-Cai-Shui-Tze No. 910453902 (June 21, 2002) stated that, "Although the businesses conducted by X company in its cooperative stores are similar to those conducted in sale units of a department store and although both share the same characteristics, namely that the commissions were stipulated by contracts and were calculated in accordance with a certain portion of the total sales, the proceeds of the sale[s] of goods in cooperative stores were collected by X company, the transactions shall be deemed as the sales of X company, and by law X company shall issue the invoices to the purchasers." (hereinafter referred to as the Interpretation) The Interpretation made it clear that if the businesses entities themselves sold the goods and the proceeds of the sales were collected by them directly from the purchasers, this arrangement should constitute "the transfer of ownership of goods to another or others

財政部九十一年六月二十一日台財稅字第九一０四五三九０二號函稱：「○○公司於合作店銷售之經營型態雖與於百貨公司設專櫃銷售之型態類似，且均以合約約定按銷售額之一定比率支付佣金，惟該公司於合作店銷售貨物所得之貨款，係由該公司自行收款，其交易性質應認屬該公司之銷貨，應由該公司依規定開立統一發票交付買受人。」（以下簡稱系爭財政部函釋）係闡釋營業人若自己銷售貨物，其銷售所得之代價亦由該營業人自行向買受人收取，即為該營業人「將貨物之所有權移轉與他人，以取得代價」，而屬該項營業行為之銷售貨物人，其合作店並未參與該營業人將貨物之所有權移轉與他人，以取得代價之營業行為，自非該項營業行為之銷售貨物人，依營業稅法第二條第一款、第三條第一項、第三十二條第一項前段之規定，應由銷售貨物之營業人開立統一發票，交付買受人。而財政部七十七年四月二日台財稅字第七六一一二六五五五號函（九十八年三月十九日廢止）所闡釋百貨公司採專櫃

for a consideration" and the businesses entities shall be deemed to be the sellers of the goods. The cooperative stores did not participate in the transfer of the ownership of the goods to others conducted by the business entities in order to obtain the consideration and therefore they should not be deemed as the sellers of the goods. Pursuant to Article 2, Paragraph 1; Article 3, Paragraph 1; Article 32, Paragraph 1 of the Business Tax Act, it is the business entities who shall issue invoices to the purchasers for the goods they sold. Under the Administrative Interpretation of the Ministry of Finance, Tai-Cai-Shui-Tze No. 761126555 (April 2, 1988) (abolished on March 19, 2009) [hereinafter referred to as Interpretation No. 761126555], when a department store is run in the business mode of leasing its sale units to leasees, it is the department store not its leasees that shall issue invoices to customers, as it is the former not the later that sells the goods to the purchasers and collects the proceeds and hence falls under the statutory definition of the "transfer of ownership of goods to an other or others for a consideration." Accordingly, Interpretation

銷售貨物之經營型態，則係由百貨公司將專櫃貨物銷售買受人，向買受人收取價款，故為該百貨公司「將貨物之所有權移轉與他人，以取得代價」，而非專櫃之貨物供應商銷售，依上開營業稅法之規定，自應以該百貨公司為營業人，開立統一發票，交付買受人。因兩者經營型態不同，其應由何人開立統一發票自應有所不同，系爭財政部函釋並未增加法律所未規定之租稅義務，與憲法第十九條之租稅法律主義及第七條之平等原則尚無牴觸。又該函釋既僅闡釋營業人若自己銷售貨物，且自行向買受人收款，應由該營業人依規定開立統一發票交付買受人，並未限制經營型態之選擇，自不生限制營業自由之問題。

No. 761126555 stated that pursuant to the foregoing provisions of the Business Tax Act, the department store shall be deemed a business entity which in turn shall issue invoices to the purchasers. Because of the business modes of department stores and ordinary stores, the determination of who bears the responsibility of issuing invoices may vary. The Interpretations at issue did not impose additional tax obligations without a legal basis and were not in contravention of the principle of taxation by law under Article 19 of the Constitution and of the principle of equality under Article 7 of the Constitution. Moreover, Interpretation No. 761126555 stated that only when the business entities themselves sell goods and collect the proceeds, shall they issue invoices to the purchasers in accordance with laws and regulations. Interpretation No. 761126555 did not restrict the selection of business modes. Therefore, there is no issue of restricting the freedom of business.

The value-added business tax is the tax on the difference, i.e., the added value, for the sale of goods or services in

加值型營業稅係對貨物或勞務在生產、提供或流通之各階段，就銷售金額扣抵進項金額後之餘額（即附加價

manufacturing, furnishing, or distributing stages after costs are deducted. (See Judicial Yuan Interpretation No. 397.) Pursuant to Articles 14, 15, 16, 19, 33 and 35 of the Business Tax Act, the valueadded tax is calculated by the difference between the amounts of the periodically filed sales and the costs evidenced by the detailed chart of the uniform invoices as well as other documents. After the calculation, the amount of business tax due or overpaid in the given period is thus determined. (See Judicial Yuan Interpretation No. 660. See also Article 29 of the Implementation Rules of the Value-Added and Non-Value-Added Business Tax Act.) Accordingly, the prevailing value-added business tax is a multi-period sales tax which levies the added value of a selling period. The business entities conducting business transactions in a given selling period are statutory taxpayers. The resolution of the First Joint Meeting of Chief Judges and Judges of the Administrative Court in July, 1998, in the relevant part, stated that, "The prevailing value-added business tax is a multi-period sales tax which levies the added value of a selling

值）所課徵之稅（本院釋字第三九七號解釋參照）。依營業稅法第十四條、第十五條、第十六條、第十九條、第三十三條及第三十五條規定，加值型營業稅採稅額相減法，並採按期申報銷售額及統一發票明細表暨依法申報進項稅額憑證，據以計算當期之應納或溢付營業稅額（本院釋字第六六０號解釋、同法施行細則第二十九條規定參照）。是我國現行加值型營業稅制，係就各個銷售階段之加值額分別予以課稅之多階段銷售稅，各銷售階段之營業人皆為營業稅之納稅義務人。行政法院八十七年七月份第一次庭長評事聯席會議決議，其中所稱：「我國現行加值型營業稅係就各個銷售階段之加值額分別予以課稅之多階段銷售稅，各銷售階段之營業人皆為營業稅之納稅義務人。故該非交易對象之人是否已按其開立發票之金額報繳營業稅額，並不影響本件營業人補繳營業稅之義務。」部分，乃依據我國採加值型營業稅制，各銷售階段之營業人皆為營業稅之納稅義務人之法制現況，敘明非交易對象，亦即非銷售相關貨物或勞務之營業人，依法本無就該相關銷售額開立統一發票或報繳營業稅額之義務，故其是否按已開立統一發票之金額報繳營業稅額，僅發生是否得依法請求

period. The business entities conducting business transactions in a given selling period are statutory taxpayers. Therefore, regardless of whether the opposite party of the transaction files the tax return and pays the tax in accordance with the amount of the invoices issued, the obligation of providing a make-up payment of a business entity, which sells goods or services, remains unaffected." This Resolution was made under the prevailing value-added business tax that treats the business entities conducting business transactions in a given selling period as statutory taxpayers and clarifies that anyone who is not the opposite party of a transaction is not a business entity which sells goods or services and hence by law has no duty to issue an invoice or to file a business tax return. Therefore, regardless of whether the one who files the tax return and pays the tax in accordance with the amount of the invoices issued, the filing of the tax return and the payment of tax only give rise to the issue whether there shall be a claim for the return of the tax so paid. Since the payment of tax can neither be deemed to be the fulfillment of the tax obligation

返還之問題，既無從視同法定納稅義務人已履行其租稅義務，亦不發生法定納稅義務人之租稅義務因而免除或消滅之效果，自不影響法定納稅義務人依法補繳營業稅之義務，法定納稅義務人如未依法繳納營業稅者，自應依法補繳營業稅，核與營業稅法第二條第一款、第三條第一項、第三十二條第一項前段規定之意旨無違，符合一般法律解釋方法，並未增加法律所未規定之租稅義務，於憲法第十九條之租稅法律主義尚無違背。

of the statutory taxpayers, nor can give rise to the legal effect of the exemption from, or relinquishment of, the obligation of the statutory taxpayers, the statutory taxpayers' legal obligations of providing make-up payments of business tax remain unaffected. If the statutory taxpayers have not paid the business tax due, they shall provide make-up payments. This Resolution is not in contravention of Article 2, Subparagraph 1, Article 3, Paragraph 1, and the first half of Article 32, Paragraph 1 of the Business Tax Act, and is in accordance with ordinary methods of statutory interpretation[s], and does not impose tax obligations on nationals without any statutory basis, and is not in contravention of the principle of taxation by law under Article 19 of the Constitution.

As to the statutory taxpayers who shall provide make-up payments of business tax by law, it goes without saying that before the competent authority may impose administrative fines in accordance with the Business Tax Act, the illegal actions of the statutory taxpayers shall fall under the statutory elements of the admin-

至對於應依法補繳營業稅款之納稅義務人，依營業稅法裁處漏稅罰時，除須納稅義務人之違法行為符合該法之處罰構成要件外，仍應符合行政罰法受處罰者須有故意、過失之規定，並按個案之情節，注意有無阻卻責任、阻卻違法以及減輕或免除處罰之事由，慎重審酌，乃屬當然。

istrative sanction, and whether the statutory taxpayers acted with scienter or with negligence, the competent authority shall meticulously take into account the special circumstances of any given cases, the availability of any privileges, exemptions, and either complete or partial immunities.

II. Article 44 of the Tax Levy Act, as amended on January 24, 1990 prescribes the administrative fine of five percent of the verified sum of the total amount of sales which should be made with invoices when no invoice was given, or obtained from, the forprofit enterprise which should by law have given an invoice to, or should have obtained an invoice from the opposite party of the transaction and yet has failed to do so.

二、七十九年一月二十四日修正公布之稅捐稽徵法第四十四條關於營利事業依法規定應給與他人憑證而未給與，應自他人取得憑證而未取得者，應就其未給與憑證、未取得憑證，經查明認定之總額，處百分之五罰鍰之規定

Article 44 of the Tax Levy Act, as amended on January 24, 1990 (*hereinafter* referred to as the provision at issue) prescribes an administrative fine of five percent of the verified sum of the total amount of sales which should be made with invoices when no invoice was given,

七十九年一月二十四日修正公布之稅捐稽徵法第四十四條規定，營利事業依法規定應給與他人憑證而未給與，應自他人取得憑證而未取得者，應就其未給與憑證、未取得憑證，經查明認定之總額，處百分之五罰鍰（以下簡稱系爭規定），係為使營利事業據實給與、

or obtained from, the for-profit enterprise which should by law have given an invoice to, or should have obtained an invoice from, the opposite party of the transaction and yet has failed to do so. The provision at issue was enacted with a view to rendering the business entities faithful to giving invoices to, and to obtaining invoices from, the opposite parties in order to establish reliable tax records of business transactions and in order to establish an accurate taxation system based upon tax records. The provision at issue was enacted to implement the constitutional mandate under Article 19 of the Constitution (See Judicial Yuan Interpretations Nos. 252 and 642) and its legislative intent was of course justified.

取得憑證，俾交易前後手稽徵資料臻於翔實，建立正確課稅憑證制度，以實現憲法第十九條之意旨（本院釋字第二五二號、第六四二號解釋參照），立法目的洵屬正當。

With respect to the content of the administrative sanction stipulated under the provision at issue, the legislative branch enjoyed the discretion after taking into account the punishable degree of the violation of the duty under the administrative law and the necessity and the urgency of maintaining public interests. (See Judicial Yuan Interpretation No. 641.)

至於處以罰鍰之內容，於符合責罰相當之前提下，立法者得視違反行政法上義務者應受責難之程度，以及維護公共利益之重要性與急迫性等，而有其形成之空間（本院釋字第六四一號解釋參照）。系爭規定以經查明認定未給與憑證或未取得憑證之總額之固定比例為罰鍰計算方式，固已考量違反協力義務之情節而異其處罰程度，

The administrative fines under the provision at issue are calculated by a certain percentage of the total verified amount of transactions conducted without invoices and are indeed formulated to reflect the degree of punishment based upon the circumstances of the breach of cooperative duty. However, the stipulated fixed percentage may run afoul of substantive justice in particular cases, especially when administrative fines so imposed contain no ceiling and may possibly attain an unlimited amount and render statutory taxpayers liable to suffer evident harshness of administrative punishment. This may lead to the inappropriate consequence of severe infringement of people's property rights. Statistics indicate that from 2006 to 2008 the total administrative fines for violating Article 44 of the Tax Levy Act reached over NT$2,480,000,000. More than ninety percent of this sum came from the violators who were fined over NT$1,000,000. (See the Legislative Yuan Gazette, Volume 98, Issue 75, Pages 326-327.) Accordingly, Article 44 of the Tax Levy Act was amended on January 6, 2010 to add Paragraph 2 stipulating that,

惟如此劃一之處罰方式，於特殊個案情形，難免無法兼顧其實質正義，尤其罰鍰金額有無限擴大之虞，可能造成個案顯然過苛之處罰，致有嚴重侵害人民財產權之不當後果。依統計，九十五年至九十七年間，營利事業依稅捐稽徵法第四十四條處罰之罰鍰金額合計為新臺幣二十四億八千萬餘元，其中處罰金額逾新臺幣一百萬元案件之合計處罰金額，約占總處罰金額之百分之九十（參閱立法院公報第九十八卷第七十五期第三二六頁、第三二七頁），稅捐稽徵法第四十四條因而於九十九年一月六日修正公布增訂第二項規定：「前項之處罰金額最高不得超過新臺幣一百萬元。」已設有最高額之限制。系爭規定之處罰金額未設合理最高額之限制，而造成個案顯然過苛之處罰部分，逾越處罰之必要程度而違反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，應不予適用。

"The amount of the administrative fine under the preceding paragraph shall not exceed NT$1,000,000." A ceiling of the maximum administrative fine was enacted. With respect to the provision at issue that prescribed administrative fines without a reasonable ceiling and may result in evident harshness in individual cases, the provision at issue exceeds the degree of necessity of administrative fines and is therefore in contravention of the principle of proportionality under Article 23 of the Constitution and of the constitutional guarantee of people's property rights under Article 15 of the Constitution and shall no longer be applicable.

III. *Denied Petitions*

In the present case, all three petitioners claimed that the Administrative Interpretation of the Taxation Agency of the Ministry of Finance (The Supreme Administrative Court Decision [1997] Pan-Tze No. 851, the Taipei High Administrative Court Decision [1999] Su-Tze No. 138, and the petitions of all three petitioners mistakenly referred to as the

三、不受理部分

本件中三聲請人指稱財政部賦稅署（最高行政法院九十六年度判字第八五一號、臺北高等行政法院九十八年度訴字第一三八號判決及該三聲請人之聲請書均誤載為財政部）九十二年一月二十八日台稅二發字第九二0四五0七六一號函有違憲疑義，聲請解釋憲法部分，查該函係財政部賦稅署就個案事實對同部臺北市國稅局

Ministry of Finance.), and the Administrative Interpretation of the Taxation Agency of the Ministry of Finance, Tai-Shui-II-Fa-Tze No. 920450761 (June 28, 2003), are in contravention of the Constitution and filed petitions for our interpretation. Petitioners claimed that the Administrative Interpretation was a letter replying to the inquiry of the Taipei National Tax Administration of the Ministry of Finance, and did not fall under the domain of the administrative order under Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Interpretation Procedure Act, and therefore was unsuitable for the petition of interpretation. In addition, all three petitioners also claimed that the rest of the resolution of the First Joint Meeting of Chief Judges and Judges of the Administrative Court in July, 1998, which was not considered by us, was unconstitutional. The remaining part of the resolution of the First Joint Meeting of Chief Judges and Judges of the Administrative Court in July, 1998, which was not considered by us, was not applied by the court in its final and concluding judgments involving the three petitioners and hence is also

所為之函覆，非屬司法院大法官審理案件法第五條第一項第二款所稱之命令，自不得作為聲請解釋之客體；又該三聲請人主張行政法院八十七年七月份第一次庭長評事聯席會議決議其餘部分違憲聲請解釋部分，查上開決議其餘部分並未經該三聲請人據以聲請解釋之確定終局判決所適用，亦不得以之為聲請解釋之客體。其中一聲請人復聲請補充解釋本院釋字第六六０號解釋部分，該聲請人並未具體指明上開解釋有何文字晦澀或論證不周而有補充之必要，其補充解釋之聲請難謂有正當理由，並無受理補充解釋之必要。是前述部分之聲請，均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合，依同條第三項規定，應不受理，併此指明。

unsuitable for the petition of interpretation. One petitioner again filed a petition for interpretation of J.Y. Interpretation No. 660. However, the petitioner failed to concretely delineate any ambiguity or incompleteness of the J.Y. Interpretation No. 660 which might warrant additional interpretation. Thus, the petition for additional interpretation was without just reason and the petition is denied. In sum, all the above mentioned petitions are inconsistent with Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Interpretation Procedure Act and hence shall be denied under Article 3 of the Constitutional Interpretation Procedure Act.

Justice Sea-Yau Lin filed concurring opinion, in which Justice Tzong-Li Hsu joined.

Justice Shin-Min Chen filed concurring opinion.

Justice Yu-hsiu Hsu filed dissenting opinion in part, in which Justice Tzu-Yi Lin and Justice Tzong-Li Hsu joined.

Justice Mao-Zong Huang filed dissenting opinion in part.

Justice Pai-Hsiu Yeh filed dissenting

本號解釋林大法官錫堯提出，許大法官宗力加入之協同意見書；陳大法官新民提出協同意見書；許大法官玉秀提出，林大法官子儀、許大法官宗力加入之部分不同意見書；黃大法官茂榮提出部分不同意見書；葉大法官百修提出部分不同意見書。

opinion in part.

EDITOR'S NOTE:

Summary of facts: This Interpretation is made under the consolidation of four petitions. The facts of each individual petition are delineated below.

I. Petitions filed by the Taiwan Branch Companys of A international, Hong Kong, the Taiwan Branch Company of B Holdings Limited, British Virgin Islands, and the Taiwan Branch Company of C Enterprises Ltd., British Virgin Islands:

1. All three petitioners are brand name manufacturers of garments and cooperate with retailing stores to sell their garments. All three petitioners claimed that their relationship with cooperative stores is of sale of goods, and all relevant business taxes are collected by the cooperative stores with the issuance of uniform invoices in accordance with the amount of sales, and the petitioners will issue uniform invoices to each cooperative store as their certificate of income every month

編者註：

事實摘要：

一、香港商A海外貿易有限公司台灣分公司、英屬維京群島B股份有限公司台灣分公司、英屬維京群島C企業有限公司台灣分公司三聲請人部分：

1.上揭三聲請人均為品牌成衣經銷商，各與合作店合作銷售成衣。聲請人均認其與合作店之合約內容屬買賣關係，相關營業稅由合作店依銷售金額開立統一發票交付消費者，每月再由聲請人依合約約定之利潤分配方式，開立統一發票交付各合作店作為進項憑證。

in accordance with the profit-sharing methods under the contract between each petitioner and each cooperative store.

2. However, the Taipei National Tax Administration of the Ministry of Finance deemed the relationship between each petitioner and each of its cooperative stores as those of leasers and leasees, and ordered that the uniform invoices should be issued by each petitioner to the customers of its cooperative stores, and the cooperative stores shall issue uniform invoices to petitioners for services of leases rendered. Accordingly, the Taipei National Tax Administration of the Ministry of Finance notified the petitioners to provide make-up payments for the unfiled business taxes and imposed administrative sanctions on the petitioners for failing to file tax returns faithfully, for failing to issue uniform invoices to the customers of their cooperative stores, and for failing to obtain uniform invoices from their cooperative stores.

2. 惟臺北市國稅局認其等與各合作店之合約內容應屬租賃關係，故相關營業稅應由聲請人開立統一發票交付消費者，另由各合作店就其租賃服務開立統一發票交付聲請人等；並依此認定，核定各聲請人應補徵營業稅，並處以漏稅罰及未依法開立、取得統一發票之罰鍰處分。

3. The petitioners disagreed with the administrative sanctions, and filed administrative appeals, and instituted administrative proceedings. None of the administrative proceedings were in the petitioners' favor. Furthermore, the decisions of the administrative courts were final and conclusive. Therefore, the petitioners claimed that the Administrative Interpretation of the Ministry of Finance, Tai-Cai-Shui-Tze No. 761126555 (April 2, 1988), the Administrative Interpretation of the Ministry of Finance, Tai-Cai-Shui-Tze No. 910453902 (June 21, 2002), the Administrative Interpretation of the Taxation Agency of the Ministry of Finance, Tai-Shui-II-Fa-Tze No. 920450761 (June 28, 2003), the resolution of the First Joint Meeting of Chief Judges and Judges of the Administrative Court in July, 1998, and Article 44 of the Tax Levy Act with regard to the failures of issuing certificates and of obtaining certificates contained issues of unconstitutionality and respectively filed petitions for

3. 聲請人等不服，提起訴願、行政訴訟，均遭駁回確定，乃主張財政部77年4月2日台財稅字第761126555號、91年6月21日台財稅字第910453902號函、財政部賦稅署92年1月28日台稅二發字第920450761號函、87年7月份第1次庭長評事聯席會議決議及稅捐稽徵法第44條有關未給與憑證及未取得憑證部分規定，有違憲之疑義，分別聲請解釋。

interpretation.

4. The petitioner, the Taiwan Branch Company of C Enterprises Ltd., British Virgin Islands, filed a separate petition for an additional interpretation of J.Y. Interpretation No. 660.

4. 聲請人英屬維京群島C企業有限公司台灣分公司另就釋字第660號解釋，聲請補充解釋。

II. The petitioner, X, Inc., filed a petition for interpretation:

二、聲請人台灣X股份有限公司部分：

1. The petitioner entered into a contract with Y International Corporation to establish sales units in department stores. Under the contract, Y International Corporation promised to provide goods to the petitioner for sale and to pay the petitioner an agreed percentage of the amount of total monthly sales with a guaranteed minimum monthly payment. The petitioner also entered into a cooperative contract with Z Company and both parties agreed that the petitioner would provide Z Company its goods and those of B International Corporation for sale and to pay Jun-Yi Company an agreed amount of

1. 聲請人與Y公司締有專櫃設立合約書，約定由Y公司提供商品予聲請人販賣，Y公司依每月包底月營業額給付聲請人一定比例之金額。另聲請人與Z公司亦締有合作契約書，約定由聲請人提供其自身及Y公司之商品予Z公司販賣，每月並給付一定金額予Z公司。聲請人認為其與Y公司及Z公司間之合約內容係屬買賣關係，相關營業稅由Z公司依銷售金額開立統一發票交付消費者，每月再由聲請人依合約約定之利潤分配方式，開立統一發票交付Z公司作為進項憑證；由Y公司依合約約定之利潤分配方式，開立統一發票交付聲請人作為進項憑證。

money. The petitioner claimed that its relationships with B International Corporation and Z Company are of sale of goods, and all relevant business taxes are collected by Z Company with the issuance of uniform invoices in accordance with the amount of sale, and the petitioners will issue uniform invoices to Z Company as its certificates of income every month in accordance with the profit-sharing methods under the contract between the petitioner and Z Company. B International Corporation will issue uniform invoices to the petitioner as its certificates of income every month in accordance with the profit-sharing methods under the contract between the petitioner and B International Corporation.

2. However, the Taipei National Tax Administration of the Ministry of Finance deemed the relationships between B International Corporation and the petitioner and between the petitioner and Z Company as those of leasers and leasees, and ordered that

2. 惟臺北市國稅局認Y公司與聲請人間，聲請人與Z公司間之合約內容屬租賃關係，故相關營業稅應分別由Y公司及聲請人就其銷售額開立統一發票予消費者，另關於租賃服務部分，則由聲請人開立統一發票交付Y公司，由Z公司開立統一發

the uniform invoices should be issued by the petitioner to B International Corporation and that Z Company should issue uniform invoices to the petitioner. Accordingly, the Taipei National Tax Administration of the Ministry of Finance notified the petitioner to provide make-up payments for the unfiled business taxes and imposed administrative sanctions on the petitioner for failing to file tax returns faithfully, for failing to issue uniform invoices to its customers, and for failing to obtain uniform invoices from Z Company.

票交付聲請人；並依此認定，核定聲請人應補徵營業稅，並裁處漏稅罰及未依法開立、取得統一發票之罰鍰處分。

3. The petitioner disagreed with the administrative sanctions so imposed and instituted the administrative proceeding.The result of the administrative proceeding was not in the petitioner's favor and the petitioner claimed that the resolution of the First Joint Meeting of Chief Judges and Judges of the Administrative Court in July, 1998 applied by the administrative court in its final and concluding decision was unc-onstitutional and filed

3. 聲請人不服，提起行政爭訟，經駁回確定，乃主張確定終局判決所適用之系爭行政法院決議有違憲疑義，聲請解釋。

a petition for interpretation.