

J. Y. Interpretation No.692 (November 4, 2011) *

ISSUE: Is Administrative Letter Tai-cai-shui-zi No. 841657896 issued on 15 November 1995 by the Ministry of Finance Administrative, reading: "If a taxpayer has children who are over twenty years old and are studying at schools in mainland China not recognized by Taiwan authorities, the taxpayer may not declare such dependants on his/her final consolidated tax return to claim tax exemption" unconstitutional ?

RELEVANT LAWS:

Article 19 of the Constitution (憲法第十九條) ; J. Y. Interpretation No. 620, No. 622, No. 640, No. 674 (司法院釋字第六二〇號、第六二二號、第六四〇號、第六七四號解釋) ; Item 2, Subparagraph 1, Paragraph 1, Article 17 of the Income Tax Act (所得稅法第十七條第一項第一款第二目) ; Article 22 of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area (臺灣地區與大陸地區人民關係條例第二十二條) ; Subparagraph 2, Paragraph 1 and Paragraph 3, Article 5 of the Constitutional Interpretation Procedure Act. (司法院大法官審理案件法第五條第一項第二款及第三項) ; The Ministry of Finance Administrative Letter Tai-cai-shui-zi No. 841657896 dated 15 November 1995 (財政部八十四年十一月十五日台財稅第

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

八四一六五七八九六號函釋)；The Ministry of Education Administrative Letter Tai-she-zi No. 27756 dated 30 May 1994 (教育部八十三年五月三十日台社字第二七七五六號函)；The Ministry of Finance Administrative Letter Tai-cai-shui-zi No. 831602325, dated 27 July 1994 (財政部八十三年七月二十七日台財稅第八三一六〇二三二五號函釋)。

KEYWORDS:

In school (在校就學), tax exemptions for supporting dependents (扶養親屬免稅額), the principle of taxation by law (租稅法律主義), the general principle of legal interpretation (一般法律解釋方法), official degree (正式學籍), the recognition of academic degrees from the mainland China area (大陸地區學校學歷認可).**

HOLDING: The twice-amended Item 2, Subparagraph 1, Paragraph 1, Article 17 of the Income Tax Act, amended and promulgated on January 3, 2001 and June 25, 2003, reads: "If a taxpayer has children who are over twenty years old and are being supported by the taxpayer for being in school, the taxpayer may claim deduction when declaring individual consolidated income." However, Administrative Letter Tai-cai-shui-zi No. 841657896 ("Letter"), issued on 15

解釋文：中華民國九十年一月三日及九十二年六月二十五日修正公布之所得稅法第十七條第一項第一款第二目均規定，納稅義務人之子女滿二十歲以上，而因在校就學受納稅義務人扶養者，納稅義務人依該法規定計算個人綜合所得淨額時，得減除此項扶養親屬免稅額。惟迄今仍繼續援用之財政部八十四年十一月十五日台財稅第八四一六五七八九六號函釋：「現階段臺灣地區人民年滿二十歲，就讀學歷未經教育部認可之大陸地區學校，納稅義

November 1995 by the Ministry of Finance, still applicable to date, states: "If a taxpayer in Taiwan has children who are twenty years old and studying at the universities in mainland China that are not recognized by the Ministry of Education, the taxpayer may not claim the tax exemption for supporting dependents when filing a final consolidated income tax return." The Administrative letter, which limits the scope of the above Income Tax Act provisions and creates tax obligations not provided in the act, is in contravention of the principle of taxation by law under Article 19 of the Constitution. The Administrative letter shall no longer be applied as of the issuance date of this Interpretation.

REASONING: By Article 19 of the Constitution, all citizens have the duty to pay taxes in accordance with the law. It means that the State must impose the obligation to pay tax or provide preferential tax deduction or exemption treatment to its people based on laws or regulations having clear authorization of a given law, taking into consideration such conditions

務人於辦理綜合所得稅結算申報時，不得列報扶養親屬免稅額。」限縮上開所得稅法之適用，增加法律所無之租稅義務，違反憲法第十九條租稅法律主義，應自本解釋公布之日起不再援用。

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所為之闡釋，自應秉持憲法原則及相關法律之立

as the subject, subject matter, tax base or tax rates. The related interpretations by the competent authority shall abide by the principles of the Constitution and the meanings and purposes of the relevant statutes, and comply with the general rules of legislative interpretation. Any interpretation that exceeds the scope of legal interpretation that creates tax obligations not provided under the statutes is forbidden by the principle of taxation by law under Article 19 of the Constitution (see J.Y. Interpretation Nos. 620, 622, 640 and 674).

The twice-amended Item 2, Sub-paragraph 1, Paragraph 1, Article 17 of the Income Tax Act, as amended and promulgated on January 3, 2001 and June 25, 2003, reads: The net consolidated income of an individual shall be the gross consolidated income as computed in accordance with the preceding three Articles less the following exemption and deductions: 1. Exemption: Taxpayers may deduct a prescribed amount of exemption for themselves, their spouses, and dependents that meet any of the conditions below...

法意旨，遵守一般法律解釋方法而為之；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、第六四〇號、第六七四號解釋參照）。

九十年一月三日及九十二年六月二十五日修正公布之所得稅法第十七條第一項第一款第二目均規定：「按前三條規定計得之個人綜合所得總額，減除下列免稅額及扣除額後之餘額，為個人之綜合所得淨額：一、免稅額：納稅義務人按規定減除其本人、配偶及合於下列規定扶養親屬之免稅額；……『(二) 納稅義務人之子女……滿二十歲以上，而因在校就學……受納稅義務人扶養者。』(下稱上開所得稅法)」惟迄今仍繼續援用之財政部八十四年十一月十五日台財稅第八四一六五七八九六號

292 J. Y. Interpretation No.692

(2) Children of the taxpayer ... who are over twenty years of age, and are being supported by the taxpayer by reason of being in school." (the "Income Tax Act") However, Administrative Letter Tai-cai-shui-zi No. 841657896 ("Letter"), issued on 15 November 1995 by the Ministry of Finance, still applicable to date, states: "If a taxpayer in Taiwan has children who are twenty years old and studying at the universities in mainland China that are not recognized by the Ministry of Education, the taxpayer may not claim the tax exemption for supporting dependents when filing a final consolidated income tax return."

According to the Income Tax Act, if a taxpayer has children who are over twenty years old and are being supported by the taxpayer for being in school, the taxpayer may claim deduction when declaring individual consolidated income. The deduction is not limited to children who are studying in school in the Taiwan area. As to the criterion of "being in school," there is no definition of it in the Income Tax Act. People who study in

函則認為：「現階段臺灣地區人民年滿二十歲，就讀學歷未經教育部認可之大陸地區學校，納稅義務人於辦理綜合所得稅結算申報時，不得列報扶養親屬免稅額。」（下稱系爭函釋）

依上開所得稅法規定，納稅義務人扶養之子女滿二十歲以上，而在校就學者，納稅義務人得減除其扶養親屬免稅額。惟並未限制該子女以在臺灣地區就學者為限。至於在校就學之認定標準如何，所得稅法並未明白規定。在臺灣地區就學者，其入學資格經學校報我國主管教育行政機關核備並領有學生證者，即具正式學籍，如其並依學校行事曆至校上課或其學籍在學年度內為有效之在校肄業學生者，固屬在校就學（參

Taiwan and are admitted to schools accredited by the educational authority of the R.O.C. and hold a student ID are regarded as students. If they attend school in accordance with the school calendar or drop out of school while being registered as students for the rest of the school year, they shall be deemed as students for "being in school" (*see* The Ministry of Education Administrative Letter No. Tai She Zi-27756, issued on 30 May 1994) However, since we cannot expect schools in mainland China area to report the student status of people studying in the mainland China area to the educational authority of the R.O.C., the standards to determine whether the student are "being in school" in the mainland China area cannot be the same as the standards applied in determining "being in school" in Taiwan area, and should be consistent with the legislative intent of the Income Tax Act and be interpreted by the general legal interpretation methods in accordance with the principle of taxation by law aforementioned. The legislative intent of the aforementioned Income Tax Act is to preserve the national tradition of valuing children's

見教育部八十三年五月三十日台社字第二七七五六號函說明二)，然在大陸地區就學者，既不可能期待其入學資格經大陸地區學校報我國主管教育行政機關核備，自無從比照於臺灣地區求學之情形認定是否符合在校就學之要件，則在大陸地區求學是否具備在校就學之要件，自應秉持所得稅法之立法意旨及依一般法律解釋方法為闡釋，始符首開租稅法律主義之要求。查上開所得稅法之立法意旨在於維護我國重視子女教育之固有美德，考量納稅義務人因之增加扶養支出，而減少負擔所得稅之經濟能力；再參酌前述於臺灣地區在校就學之認定標準，對前往大陸地區求學，是否符合上開所得稅法在校就學之要件，應以確有就學之事實，且該子女所就讀者為當地政府權責機關所認可之正式學校，具有正式學籍，如其學籍在學年度內為有效之在校肄業學生，即堪認為在校就學，而符合上開所得稅法之要件。對在校就學之認定，縱因考量兩地區差異而有其他標準，仍應以符合在校就學之事實，且與上開所得稅法規定之意旨確實相關者為限，始不逾越租稅法律主義之界限。

294 J. Y. Interpretation No.692

education, taking into consideration the fact that taxpayers' ability to pay income tax is hampered by the extra expenditure from raising children. When applying the abovementioned criterion of "being in school" in the Taiwan area to taxpayers whose children attend schools in the mainland China, whether the children meet the requirement of "being in school" should depend on the fact of school attendance and whether the school the children are enrolled is officially recognized as a school by the local government authority. If a child drops out of school while his/her school registration is still valid for the rest of the school year, he/she shall be deemed "being in school" and fulfilling the Income Tax Act requirements. Given the differences between the Taiwan and mainland China areas and other standards may be adapted to determine whether a student "is in school," that the determination shall rest on whether the student is in school and not defy the abovementioned intent of the Income Tax Act to uphold the principle of taxation by law.

Given the educational systems and curricula of the Taiwan and mainland China areas are different, Article 22 of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area ("Act") as amended and promulgated on 29 October 2003, authorizes the Ministry of Education ("MOE") to enact measures to recognize the mainland China area high school's research and teaching quality and to announce a list of the schools recognized to facilitate the recognition of the degree granted by mainland Chinese schools. In recognizing the mainland China school degrees, Students may be deemed to have a degree granted by a comparable school in Taiwan. However, the subject and legislative purpose of Article 22 of the Act are obviously different from the Income Tax Act and the two provisions are not reasonably related. Such degree recognition is also irrelevant to whether taxpayers can afford to pay tax. Therefore, the MOE cannot determine whether a mainland China area student is "being in school" on the basis of whether his/her mainland China area school's degree is recognized by the

鑒於兩地區教育學制及課程不一，九十二年十月二十九日修正公布之臺灣地區與大陸地區人民關係條例第二十二條規定，授權教育部擬訂採認辦法，就大陸地區高等學校之研究及教學品質進行認可，並公告認可名冊，俾據以辦理採認大陸地區學校學歷。此大陸地區學校學歷之認可，旨在採認與臺灣地區同級同類學校相當之大陸地區學歷，與上開所得稅法規定之立法意旨、適用對象，顯然有別，並無正當合理之關聯，亦與納稅義務人負稅能力減少之考量無涉，自非得據大陸地區學校學歷是否認可資為認定有無在校就學之標準。是系爭函釋逕以教育部對大陸地區學校學歷認可作為認定是否在校就學之標準，與上開所得稅法之立法意旨不符，逾越法律解釋之範圍，限制人民依法享有減除扶養親屬免稅額之權利，增加法律所無之租稅義務，違反憲法第十九條租稅法律主義，應自本解釋公布之日起不再援用。

MOE. The Letter, which arbitrarily considered the recognition of the mainland China area Schools' degrees by the MOE as the standard for determining whether certain students are "in school" is inconsistent with the legislative purpose of the Income Tax Act, and exceeds the scope of legal interpretation and restricts people's right to enjoy tax deduction for supporting dependents. The Letter therefore creates tax obligation not provided by law and violates the principle of taxation by law under Article 19 of the Constitution. The Letter shall no longer be applied as of the issuance date of this Interpretation.

The petitioner further argues that Ministry of Finance Administrative Letter Tai-cai-shui-zi No. 831602325 dated 27 July 1994, invoked in Taipei High Administrative Court Judgment 95 Jian-zi No. 576 (2006) and Judgment 96 Jian-zi No. 83 (2007), is unconstitutional. According to his submission, the petitioner only disputes the legal opinion expressed in Judgment 95 Jian-zi No. 576 (2006) regarding the Ministry of Finance Administrative Letter without specifically indicating

本件聲請人另認臺北高等行政法院九十五年度簡字第五七六號及九十六年度簡字第八三號確定終局判決所適用之財政部八十三年七月二十七日台財稅第八三一六〇二三二五號函釋，有違憲疑義。核其所陳，關於前述九十五年度簡字第五七六號判決部分，聲請人僅係爭執法院適用上開函釋之法律見解為不當，並未具體指摘該函釋究有如何抵觸憲法之疑義；至於前述九十六年度簡字第八三號判決部分，經查該判決並未適用上開函釋。依司法院大法官審理案件

how such letter violates the Constitution. With regard to Judgment 96 Jian-zi No. 83 (2007), the court did not invoke the administrative letter and therefore the relevant part of the petition does not meet the standards set forth in Subparagraph 2, Paragraph 1, and Paragraph 3, Article 5 of the Constitutional Interpretation Procedure Act. The Court therefore will not review this part of the petition.

Justice Mao-Zong Huang filed concurring opinion.

Justice Shin-Min Chen filed concurring opinion.

Justice Chang-Fa Lo filed concurring opinion.

Justice Dennis Te-Chung Tang filed dissenting opinion.

EDITOR'S NOTE:

Summary of facts: When the petitioner Jian Fan-Sheng filed a consolidated income tax report in 2003 and 2004, he applied for a tax exemption of NT \$ 74,000 for supporting his daughter, who was over twenty years old and studying at Beijing University. The Jhonghe

法第五條第一項第二款及第三項之規定，此等部分之聲請，均應不受理，併此指明。

本號解釋黃大法官茂榮提出協同意見書；陳大法官新民提出協同意見書；羅大法官昌發提出協同意見書；湯大法官德宗提出不同意書。

編者註：

事實摘要：聲請人簡繁勝 92 年及 93 年度綜合所得稅結算申報，以其女在北京大學就學，列報扶養滿 20 歲以上子女免稅額 7 萬 4000 元，均經財政部臺灣省北區國稅局所屬中和稽徵所以北京大學學歷當時並未經教育部認可，依財政部函釋意旨予以剔除並補徵應納

298 J. Y. Interpretation No.692

Office of the National Tax Administration of Northern Taiwan Province under the Ministry of Finance (MOF) found Beijing University degree were not yet recognized by the Ministry of Education at that time and rejected the deduction and issued a decision to request the petitioner to pay the tax.

The petitioner was not willing to accept the decision and brought an administrative appeal and litigation. However, the case was dismissed respectively by Taipei High Administrative Court Judgment 95 Jian-zi No. 576 (2006) and the Judgment 96 Jian-zi No. 83 (2007). He further appealed to the Supreme Administrative Court, but the Supreme Administrative Court rendered Ruling 96 Cai-zi No. 2397 and Ruling 97 Cai-zi No. 1677 to dismiss the appeal on the grounds that the case did not meet the appeal requirements. He therefore petitioned for a constitutional interpretation respectfully to argue that Ministry of Finance Administrative Letter Tai-cai-shui-zi No. 841657896 dated 15 November 1995, in which whether MOE recognized a student's degree was

稅額。

聲請人不服，先後提起行政訴訟，經臺北高等行政法院 95 年度簡字第 576 號及 96 年度簡字第 83 號判決分別駁回；上訴後再經最高行政法院 96 年度裁字第 2397 號及 97 年度裁字第 1677 號裁定，以上訴不合法駁回，爰認判決所適用之財政部 84 年 11 月 15 日台財稅第 841657896 號函釋，以教育部認可學歷與否，作為核定是否符合所得稅法第 17 條第 1 項第 1 款第 2 目「在校就學」之免稅額標準，有抵觸憲法第 7 條與第 172 條等之疑義，先後聲請解釋。二案合併審理。

declared the basis to determine whether a student is "in school" and qualifies for the tax exemption of Item 2, Subparagraph 1, Paragraph 1, Article 17 of the Income Tax Act, defies Article 7 and Article 172 of the Constitution. The two cases were combined and reviewed as one.