

J. Y. Interpretation No.694 (December 30, 2011) *

ISSUE: Are the provisions of the Income Tax Act that allow only taxpayers who support relatives or family members under twenty years of age or over sixty years of age to claim an exemption when calculating tax unconstitutional ?

RELEVANT LAWS:

Articles 7, 15, 155 of the Constitution (憲法第七條、第十五條、第一百五十五條) ; Judicial Yuan Interpretation Nos. 547, 584, 596, 605, 614, 647, 648, 666, 682 (司法院釋字第五四七號、第五八四號、第五九六號、第六〇五號、第六一四號、第六四七號、第六四八號、第六六六號、第六八二號解釋) ; Article 17, Paragraph 1, Sub-paragraph 1, Item 4, of the Income Tax Act (as amended on January 3, 2001 and on January 19, 2011) (所得稅法第十七條第一項第一款第四目, 中華民國九十年一月三日修正公布、一〇〇年一月十九日修正公布) ; Article 1114, Paragraph 4, and Article 1123, Paragraph 2 of the Civil Code (民法第一千一百十四條第四項、第一千一百二十三條第二項) ; The Ministry of Finance Letle Tai-Chai-Shui-10004134920 of November 21, 2011 (財政部中華民國一〇〇年十一月二十一日台財稅字第一〇〇〇四一三四九二〇號函) 。

* Translated by Chi Chung.

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

KEYWORDS:

Support (扶養), taxpayers (納稅義務人), other relatives or family members (其他親屬或家屬), an exemption amount (免稅額), the inability to earn a living (無謀生能力), the principle of equality (平等原則), differential treatment (差別待遇), substantial relationship (實質關聯), livelihood or sustainability of life (生存或生活上之維持).**

HOLDING: Article 17, Paragraph 1, Sub-paragraph 1, Item 4, of the Income Tax Act as amended on January 3, 2001, stipulates: “The net consolidated income of an individual equals the gross consolidated income, as computed in accordance with the preceding three Articles, subtracted by the following exemption and deductions: 1. Exemption: Taxpayers may claim a prescribed amount of exemption for themselves, their spouses, and their family dependents that meet any of the conditions below. ... (4) Other relatives or family members of the taxpayer within the meaning of Article 1114, Sub-paragraph 4, or Article 1123, Paragraph 3, of the Civil Code who are either under twenty years of age or over sixty years of age, are incapable of earning a livelihood,

解釋文: 中華民國九十年一月三日修正公布之所得稅法第十七條第一項第一款第四目規定：「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；……（四）納稅義務人其他親屬或家屬，合於民法第一千一百十四條第四款及第一千一百二十三條第三項之規定，未滿二十歲或滿六十歲以上無謀生能力，確係受納稅義務人扶養者。……」其中以「未滿二十歲或滿六十歲以上」為減除免稅額之限制要件部分（一〇〇年一月十九日修正公布之所得稅法第十七條第一項第一款第四目亦有相同限制），違反憲法第七條平等原則，應自本解釋公布日起，至遲於屆滿一年時，失其效

and are supported by the taxpayer...” The requirement that dependents be “under twenty years of age or over sixty years of age” for taxpayers to claim the exemption (The same requirement appears in Article 17, Paragraph 1, Sub-paragraph 1, Item 4, of the Income Tax Act amended on January 19, 2011.) violates the principle of equality prescribed by Article 7 of the Constitution, and therefore it shall become void within one year from the date of this Interpretation.

REASONING: The principle of equality prescribed by Article 7 of the Constitution does not mean equality that is absolute, mechanical, or formal. Instead, the principle of equality protects substantive equal status under the law, which requires that matters that are similar in nature be handled similarly, and that differential treatment be justified by appropriate reasons (see J.Y. Interpretation Nos. 547, 584, 596, 605, 614, 647, 648 and 666). Whether a particular legal rule is consistent with the principle of equality depends on whether the purpose of the differential treatment is constitu-

力。

解釋理由書：憲法第七條所揭示之平等原則非指絕對、機械之形式上平等，而係保障人民在法律上地位之實質平等，要求本質上相同之事物應為相同之處理，不得恣意為無正當理由之差別待遇（本院釋字第五四七號、第五八四號、第五九六號、第六〇五號、第六一四號、第六四七號、第六四八號、第六六六號解釋參照）。法規範是否符合平等權保障之要求，其判斷應取決於該法規範所以為差別待遇之目的是否合憲，其所採取之分類與規範目的之達成之間，是否存有一定程度之關聯性而定（本院釋字第六八二號解釋參照）。

tional, and whether there is a certain level of nexus between the classification and the purpose that the classification seeks to achieve (see J.Y. Interpretation No. 682).

Article 17, Paragraph 1, Subparagraph 1, Item 4, of the Income Tax Act as amended on January 3, 2001, stipulates: “The net consolidated income of an individual equals the gross consolidated income, as computed in accordance with the preceding three Articles, subtracted by the following exemption and deductions: 1. Exemption: Taxpayers may claim a prescribed amount of exemption for themselves, their spouses, and their family dependents that meet any of the conditions below. ... (4) Other relatives or family members of the taxpayer within the meaning of Article 1114, Subparagraph 4, or Article 1123, Paragraph 3, of the Civil Code who are either under twenty years of age or over sixty years of age, are incapable of earning a livelihood, and are supported by the taxpayer....” (The same requirement also appears in Article 17, Paragraph 1, Sub-paragraph 1, Item 4, of the Income Tax Act as amend-

九十年一月三日修正公布之所得稅法第十七條第一項第一款第四目規定：「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；……（四）納稅義務人其他親屬或家屬，合於民法第一千一百二十四條第四款及第一千一百二十三條第三項之規定，未滿二十歲或滿六十歲以上無謀生能力，確係受納稅義務人扶養者。……」（一〇〇年一月十九日修正公布之所得稅法第十七條第一項第一款第四目規定，就有關以「未滿二十歲或滿六十歲以上」為減除免稅額之限制要件部分亦同；上開第四目規定以下簡稱系爭規定），其減除免稅額之要件，除受扶養人須為納稅義務人合於上開民法規定之親屬或家屬（以下簡稱其他親屬或家屬），無謀生能力並確係受納稅義務人扶養者外，且須未滿二十歲或滿六十歲以上。系爭規定之年齡限制，使

318 J. Y. Interpretation No.694

ed on January 19, 2011. The requirement in Item 4 is referred to hereinafter as the provision in dispute). Taxpayers who seek to claim the exemption have to satisfy the following requirements: Their relatives or family members (hereinafter referred to as “other relatives or family members”) have to meet the requirement of the Civil Code set out above, to be incapable of earning a livelihood, to be supported by the taxpayer, and have to be under twenty years of age or over sixty years of age. The age requirement of the provision in dispute prevents the taxpayers who support other relatives or family members more than twenty years of age but less than sixty years of age from claiming an exemption, which constitutes differential treatment on the basis of the different ages of the dependents.

According to Article 15 of the Constitution, people’s right of existence shall be protected. Moreover, Article 155 of the Constitution stipulates that the State shall give appropriate assistance and relief to the aged, the infirm, and those who are unable to earn a living. One of the

納稅義務人扶養滿二十歲而未滿六十歲無謀生能力之其他親屬或家屬，卻無法同樣減除免稅額，形成因受扶養人之年齡不同而為差別待遇。

憲法第十五條規定，人民之生存權應予保障。憲法第一百五十五條規定，人民之老弱殘廢，無力生活者，國家應予以適當之扶助與救濟。國家所採取保障人民生存與生活之扶助措施原有多端，所得稅法有關扶養無謀生能力者之免稅額規定，亦屬其中之一環。如因

measures that may be used by the State to ensure people's livelihood is the provision that taxpayers may claim an exemption when they support their relatives or family members who are incapable of earning a livelihood. If the State limits the age of the dependents to the range between twenty and sixty years of age, such a limit would decrease the will of taxpayers to support their relatives or family members who are more than twenty years of age but less than sixty years of age and are unable to earn a living. As a result, such a limit would adversely affect the livelihood or sustainability of these disadvantaged people. Therefore, whether the differential treatment caused by the provision in dispute violates the principle of equality should be subject to strict scrutiny, which means that the purpose of the provision in dispute has to be constitutional, and that the classifying standards and differential treatment are substantially related to the achievement of the purpose of the provision in dispute.

According to the Ministry of Finance Letter Tai-Chai-Shui-10004134920

無謀生能力者之年齡限制，而使納稅義務人無法減除免稅額，將影響納稅義務人扶養滿二十歲而未滿六十歲無謀生能力者之意願，進而影響此等弱勢者生存或生活上之維持。故系爭規定所形成之差別待遇是否違反平等原則，應受較為嚴格之審查，除其目的須係合憲外，所採差別待遇與目的之達成間亦須有實質關聯，始合於平等原則。

依財政部一〇〇年十一月二十一日台財稅字第一〇〇〇四一三四九二

320 J. Y. Interpretation No.694

of November 21, 2011, the provision in dispute uses the age of dependents who are unable to earn a living as a classifying standard for the purpose of encouraging people to be filial, promoting fair taxation, raising tax revenue, and increasing the efficiency of tax administration.

However, those who need support due to their inability to earn a living do not become self-sustaining simply because they become more than twenty years old and less than sixty years old. Similarly, the taxpayers who support their relatives and family members who are more than twenty years old and less than sixty years old face a financial burden that is the same as that faced by taxpayers who support dependents who are less than twenty years old or more than sixty years old. In other words, the financial burden of the taxpayers who support their relatives who are unable to earn a living is fixed across the different age groups of the supported family members. The provision in dispute affects the will of taxpayers to support relatives or family members who are over twenty years old but less than sixty years old, which

0號函所示，系爭規定以無謀生能力之受扶養人之年齡作為分類標準，旨在鼓勵國人孝親、課稅公平、徵起適足稅收及提昇稅務行政效率。惟無謀生能力而有受扶養之需要者，不因其年齡滿二十歲及未滿六十歲，而改變其對於受扶養之需要，為扶養之納稅義務人亦因扶養而有相同之財務負擔，不因無謀生能力者之年齡而有所差異。系爭規定影響納稅義務人扶養較為年長而未滿六十歲之其他親屬或家屬之意願，致此等親屬或家屬可能無法獲得扶養，此與鼓勵國人孝親之目的有違；且僅因受扶養者之年齡因素，致已扶養其他親屬或家屬之納稅義務人不能減除扶養親屬免稅額，亦難謂合於課稅公平原則。

may decrease the level of family support provided to these relatives or family members. Therefore, the provision in dispute is inconsistent with the purpose of encouraging people to be filial. Moreover, it amounts to unfair taxation that some taxpayers who are supporting their relatives or family members cannot claim an exemption when calculating their taxable income simply because the supported relatives or family members are over twenty years old but less than sixty years old.

Furthermore, the taxpayers who want to claim the exemption pursuant to the provision in dispute have to provide documents proving that the dependents are indeed unable to earn a living. The provision in dispute not only requires that the dependents indeed are unable to earn a living, but also requires that the dependents be under twenty years old or over sixty years old. The requirement that the dependents be under twenty years old or over sixty years old does not enhance the efficiency of tax administration, but significantly harms the interests of taxpayers and their dependents. Therefore, the

再者，依系爭規定主張減除免稅額之納稅義務人，本即應提出受扶養者無謀生能力之證明文件，系爭規定除以受扶養者無謀生能力為要件外，另規定未滿二十歲或滿六十歲為限制要件，並無大幅提升稅務行政效率之效益，卻對納稅義務人及其受扶養親屬之權益構成重大不利影響。是系爭規定所採以年齡為分類標準之差別待遇，其所採手段與目的之達成尚欠實質關聯，其差別待遇乃屬恣意，違反憲法第七條平等原則。系爭規定有關年齡限制部分，應自本解釋公布日起，至遲於屆滿一年時，失其效力。

322 J. Y. Interpretation No.694

differential treatment caused by the age classification in the provision in dispute is a means that lacks substantial relationship to the end that the means seeks to achieve, which means that the differential treatment is arbitrary and thereby inconsistent with the principle of equality enshrined in Article 7 of the Constitution. The age restriction in the provision in dispute therefore shall become void within one year from the date of this Interpretation.

Justice Yeong-Chin Su filed concurring opinion.

Justice Si-Yao Lin filed concurring opinion.

Justice Mao-Zong Huang filed concurring opinion.

Justice Pai-Hsiu Yeh filed concurring opinion.

Justice Shin-Min Chen filed concurring opinion.

Justice Chang-Fa Lo filed concurring opinion in part and dissenting opinion in part.

Justice Dennis Te-Chung Tang filed concurring opinion in part and dissenting

本號解釋蘇大法官永欽提出協同意見書；林大法官錫堯提出協同意見書；黃大法官茂榮提出協同意見書；葉大法官百修提出協同意見書；陳大法官新民提出協同意見書；羅大法官昌發提出部分協同部分不同意見書；湯大法官德宗提出部分協同部分不同意見書；陳大法官春生、池大法官啟明及黃大法官璽君共同提出不同意見書。

opinion in part.

Justice Chun-Sheng Chen filed dissenting opinion, in which Justice Chi-Ming Chih and Justice Huang, Hsi-Chun joined.

EDITOR'S NOTE:

Summary of facts: Article 17, Paragraph 1, Sub-paragraph 1, Item 4, of the Income Tax Act as amended on January 3, 2001, stipulates: "The net consolidated income of an individual equals the gross consolidated income, as computed in accordance with the preceding three Articles, subtracted by the following exemption and deductions: 1. Exemption: Taxpayers may claim a prescribed amount of exemption for themselves, their spouses, and their family dependents that meet any of the conditions below. ... (4) Other relatives or family members of the taxpayer within the meaning of Article 1114, Sub-paragraph 4, or Article 1123, Paragraph 3, of the Civil Code who are either under twenty years of age or over sixty years of age, are incapable of earning a livelihood, and are supported by the taxpayer...." The same requirement appears in Article

編者註：

事實摘要：90.1.3 修訂之所得稅法 17 條 1 項本文規定，個人綜合所得總額，減除免稅額及扣除額後之餘額，為個人之綜合所得淨額。該項第 1 款並規定，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。其第 4 目所定「納稅義務人其他親屬或家屬，合於民法第 1114 條第 4 款及第 1123 條第 3 項之規定，未滿 20 歲或滿 60 歲以上無謀生能力，確係受納稅義務人扶養者」（下稱系爭規定），即屬得扣除免稅額之受扶養親屬。（現行法亦有相同之年齡限制）。

324 J. Y. Interpretation No.694

17, Paragraph 1, Sub-paragraph 1, Item 4, of the Income Tax Act amended on January 19, 2011.

The applicant claimed an exemption for supporting other relatives or family members when filing annual tax returns in 2003, 2005, 2006, and 2007. The National Taxation Administration of the Northern Taiwan Province found that the applicant's claim failed to meet the requirement that other relatives or family members be less than twenty years old or more than sixty years old. The applicant disputed the government's finding and sued the National Taxation Administration in the Administrative Court. The applicant lost the suit and applied for interpretation on the question whether the provision in dispute as applied by the Administrative Court was unconstitutional.

聲請人於 92、94 至 96 年度綜合所得稅結算申報，分別列報扶養其他親屬免稅額，經財政部台灣省北區國稅局以該其他親屬未符合系爭規定未滿 20 歲或滿 60 歲之要件，予以剔除。聲請人不服，提起行政訴訟敗訴確定，認終局確定判決所適用之系爭規定，關於年齡之限制，有違憲疑義，聲請解釋。