

J. Y. Interpretation No.701 (July 6, 2012) *

【Discrimination on itemized deductions of medical expenses for long-term care Principle of Equality, Right of Equality, Right of Survival】

ISSUE: Is the requirement limiting the itemized deductions of medical expenses for long term care of disabled persons to expenses paid to health care providers prescribed in the Income Tax Act unconstitutional ?

RELEVANT LAWS:

Articles 7, 15, 155 of the Constitution (憲法第七條、第十五條、第一五五條) ; J.Y. Interpretations Nos. 682, 694 (司法院釋字第六八二號、第六九四號解釋) ; first part of Article 17, Paragraph 1, Subparagraph 2, Item 2, Division 3 of the Income Tax Act revised and publicized on December 28, 2005 and December 26, 2008 (所得稅法第十七條第一項第二款第二目之3前段 (中華民國九十四年十二月二十八日暨九十七年十二月二十六日修正公布)) .

KEYWORDS:

right of equality (平等權) , rght of survival (生存權) , medical expenses (醫藥費) , mental dsability (失智症) , persons in a vgetative state (植物人) , long-term care (長期照護) , health care providers (醫療院所) , discrimination (差

* Translated by Huai-Ching Tsai.

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

別待遇), preferential tax treatment (租稅優惠), Tax Avoidance (規避稅負), cost of tax collection (稽徵成本), Itemized deductions (列舉扣除額), persons in long-term care (受長期照護者).**

HOLDING: The first part of Article 17, Paragraph 1, Subparagraph 2, Item 2, Division 3 of the Income Tax Act revised and publicized on December 28, 2005 provides: “.....(2)Itemized Deductions: 3.Medical Expenses: The medical expenses deductible by a taxpayer, spouse, and supported family members are limited to public hospitals, contract hospitals of the Civil Servants Insurance Plan, contract hospitals of the Labor Insurance Plan, and hospitals with sound accounting records certified by the Ministry of Finance (The name of the said “contract hospitals of the Civil Servants Insurance Plan, and contract hospitals of the Labor Insurance Plan” has been revised and publicized on December 26, 2008, as “contract hospitals of the Public Health Insurance Plan,” with the same legislative intent.). For the medical expenses of disabled persons in need of

解釋文：中華民國九十四年十二月二十八日修正公布之所得稅法第十七條第一項第二款第二目之3前段規定：「……(二)列舉扣除額：……3.醫藥……費：納稅義務人及其配偶或受扶養親屬之醫藥費……，以付與公立醫院、公務人員保險特約醫院、勞工保險特約醫療院、所，或經財政部認定其會計紀錄完備正確之醫院者為限」(上開規定之「公務人員保險特約醫院、勞工保險特約醫療院、所」，於九十七年十二月二十六日經修正公布為「全民健康保險特約醫療院、所」，規定意旨相同)，就身心失能無力自理生活而須長期照護者(如失智症、植物人、極重度慢性精神病、因中風或其他重症長期臥病在床等)之醫藥費，亦以付與上開規定之醫療院所為限始得列舉扣除，而對於付與其他合法醫療院所之醫藥費不得列舉扣除，與憲法第七條平等原則之意旨不符，在此範圍內，系爭規定應不予適用。

long-term care (e.g. persons with mental disability, persons in a vegetative state, persons with severe chronic psychosis, persons bedridden as the result of a stroke or other severe disease) to be eligible for itemized deductions, they must have been paid to health care providers prescribed in the abovementioned provision, thus disallowing deduction for medical expenses paid to other lawful health care providers. The said provision is inconsistent with the principle of equality in Article 7 of the Constitution, and to the extent that such inconsistency exists, the said provision shall not be applicable.

REASONING: Article 7 of the Constitution provides that the right to equality of the people shall be protected. The determination as to whether the stipulations of a law are in accordance with the requirement of protection of the right to equality should be decided inasmuch as the purpose of the discrimination is in accord with the Constitution, that is, whether between the distinctions created and the stated purpose of the law there is a certain degree of connection. (see J.Y.

解釋理由書：憲法第七條規定人民之平等權應予保障。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、第六九四號解釋參照）。

Interpretations Nos. 682 and 694).

The first part of Article 17, Paragraph 1, Subparagraph 2, Item 2, Division 3 of the Income Tax Act revised and publicized on December 28, 2005 provides: “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 exemptions and deductions:

…… II、deductions: a taxpayer apart from according to the standards for deductions listed below or one of the itemized deductions listed below, and deducting special deductions:

……(2)Itemized Deductions: ……
3.Medical Expenses: The medical expenses deductible by a taxpayer, spouse, and supported family members are limited to public hospitals, contract hospitals of the Civil Servants Insurance Plan, contract hospitals of the Labor Insurance Plan, and hospitals with sound accounting records certified by the Ministry of Finance (The name of the said “contract hospitals of the Civil Servants Insurance Plan, and contract hospitals of the

九十四年十二月二十八日修正公布之所得稅法第十七條第一項第二款第二目之3前段規定：「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：……二、扣除額：納稅義務人就下列標準扣除額或列舉扣除額擇一減除外，並減除特別扣除額：……（二）列舉扣除額：……3. 醫藥……費：納稅義務人及其配偶或受扶養親屬之醫藥費……，以付與公立醫院、公務人員保險特約醫院、勞工保險特約醫療院、所，或經財政部認定其會計紀錄完備正確之醫院者為限」（上開規定之「公務人員保險特約醫院、勞工保險特約醫療院、所」，於九十七年十二月二十六日經修正公布為「全民健康保險特約醫療院、所」，規定意旨相同，下稱系爭規定），明定納稅義務人及其配偶或受扶養親屬之醫藥費須以付與上開醫療院所者，始得列舉扣除。系爭規定關於身心失能無力自理生活而須長期照護者（如失智症、植物人、極重度慢性精神病、因中風或其他重症長期臥病在床等；以下簡稱受長期照護者）所須支付之醫藥費部分，仍以付與上開醫療院所為限，

Labor Insurance Plan” has been revised and publicized on December 26, 2008, as “contract hospitals of the Public Health Insurance Plan,” with the same legislative intent, hereafter called “the provision at issue”). This provides that for the medical expenses of a taxpayer, spouse, and supported family members to be eligible for itemized deductions, it must be paid to health care providers prescribed in the abovementioned provision. For the medical expenses of disabled persons in need of long-term care (e.g. persons with mental disability, persons in a vegetative state, persons with severe chronic psychosis, persons bedridden as the result of a stroke or other severe disease; hereinafter called persons in long-term care), the provision at issue allows itemized deduction only for expenses paid to the abovementioned health care providers and excludes expenses paid to other lawful health care providers. As a result, there is discrimination against patients receiving medical care from other health care providers. The scope of this Interpretation is confined to whether such discrimination violates the principle of equality guaranteed by Article

始得列舉扣除，而對於付與其他合法醫療院所之醫藥費，卻不得申報列舉扣除，形成因就診醫療院所不同所為之差別待遇，爰以此部分有無違反憲法第七條平等原則，為本件解釋範圍。

7 of the Constitution.

Article 15 of the Constitution provides that the right of survival of the people shall be protected. Article 155 of the Constitution provides that elderly persons, feeble and disabled persons incapable of being self-sufficient and victims of major catastrophes shall be liable to receive adequate help and relief from the government. There are many measures of assistance that can be taken by the government to protect people's survival and life, preferential tax treatment being one such. According to the provision at issue, medical expenses paid by a taxpayer for persons in need of longterm care may be permitted for inclusion in itemized deduction only if they were paid to the abovementioned health care providers, whilst expenses paid to other lawful health care providers not listed above are not allowed. This is due to a disparity in the distribution of the nation's medical resources and a limitation on the geographic spread of the abovementioned health care providers. As such the provision frustrates the constitutional intent of granting equal protec-

憲法第十五條規定，人民之生存權應予保障。又憲法第一百五十五條規定，人民之老弱殘廢，無力生活，及受非常災患者，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，租稅優惠亦屬其中之一環。依系爭規定，納稅義務人就受長期照護者所支付之醫藥費，一律以付與上開醫療院所為限，始得列舉扣除，而對因受國家醫療資源分配使用及上開醫療院所分布情形之侷限，而至上開醫療院所以外之其他合法醫療院所就醫所支付之醫藥費，卻無法列舉扣除，將影響受長期照護者生存權受憲法平等保障之意旨。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，始與憲法平等原則之意旨相符（本院釋字第六九四號解釋參照）。

tion of the right of survival for persons in need of long-term care. Therefore, whether the discriminatory measures taken by the said provision violate the principle of equality should be scrutinized closely. To be consistent with the Constitution's principle of equality, not only there shall be a legitimate government purpose, there must also be a substantial connection between the discriminatory measure taken and the purpose it aims to achieve.

The purpose of the provision at issue in classifying health care providers for itemized deduction was to avoid superfluous claims and to guard against tax avoidance. Furthermore the medical expenses of taxpayers are numerous and complicated, whilst the manpower of the tax agencies is limited and unable to verify all medical bills. In order for tax agencies to have a firm and accurate grip on all medical expense claims, also, in light of the verifiability of the abovementioned health care providers given their sound accounting system which can facilitate tax audits, it was determined that itemized deduction for medical expenses

系爭規定以上開醫療院所作為得否申報醫藥費列舉扣除額之分類標準，旨在避免浮濫或淪為規避稅負之工具；抑且，因全體納稅義務人之醫藥費支出，數量眾多龐雜，而稅捐稽徵機關人力有限，逐一查證不易，為使稅捐稽徵機關正確掌握醫藥費用支出，考量上開醫療院所健全會計制度具有公信力，有利稅捐稽徵機關之查核，而就醫藥費申報列舉扣除額須以付與上開醫療院所者為限始准予減除（財政部九十九年七月八日台財稅字第0九九00一八一二三0號函參照）。惟受長期照護者因醫療所生之費用，其性質屬維持生存所必需之支出，於計算應稅所得淨額時應予以扣除，不應因其

should be allowable only for expenses paid to the abovementioned health care providers (Letter of Ministry of Finance, Tai_Chai_Sui No. 09900181230, issued on July 8, 2010). Yet the nature of medical expenses for persons under long-term care is an expense essential for survival. They should be deductible when calculating net taxable income. There should be no difference solely because it was paid to a lawful health care provider other than the abovementioned health care providers. Also, whether it is a genuine medical expense may be reviewed by the tax agencies. The review will not add onerous administrative costs to the collection of taxes. Therefore, the benefit for tax enforcement generated by the discrimination of the provision at issue is not significant, yet it has an adverse and substantial effect on the right of survival of persons in long-term care. It cannot be said that this is in line with the intent of the Constitution. Therefore, with regard to the provision at issue limiting itemized deduction of medical expenses for long-term care to expenses paid to the abovementioned health care providers and disallowing expenses

醫療費用付與上開醫療院所以外之其他合法醫療院所而有所差異。況是否屬醫藥費支出，稅捐稽徵機關仍可基於職權予以審核，以免規避稅負，不致增加過多行政稽徵成本。故系爭規定所為之差別待遇對避免浮濫或淪為規避稅負達成之效果尚非顯著，卻對受長期照護者之生存權形成重大不利之影響，難謂合於憲法保障受長期照護者生存權之意旨。是系爭規定就受長期照護者之醫藥費，以付與上開醫療院所為限始得列舉扣除，而對於付與其他合法醫療院所之醫藥費不得列舉扣除，其差別待遇之手段與目的之達成間欠缺實質關聯，與憲法第七條平等原則之意旨不符，在此範圍內，系爭規定應不予適用。

paid to other lawful health care providers, there is no substantial connection between the discriminatory measures taken and the purpose it aims to achieve. The said provision is inconsistent with the principle of equality in Article 7 of the Constitution. To the extent that such inconsistency exists, the said provision shall not be applicable.

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 concurring opinion in part and dissenting opinion in part.

Justice Huang, Hsi-Chun filed dissenting opinion, in which Justice ChiMing, Chih joined.

EDITOR'S NOTE:

Summary of facts: Petitioner A listed NT\$680,000 in expenses for long-term medical care for relatives he supported as an itemized deduction in his 2005 in-

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；湯大法官德宗提出部分協同暨部分不同意見書；黃大法官璽君提出，池大法官啟明加入之不同意見書。

編者註：

事實摘要：聲請人 A 申報 94 年度綜合所得稅時，列報受其扶養、需長期照護親屬之醫藥費為列舉扣除額，計 68 萬餘元。財政部北區國稅局依 94 年

408 J. Y. Interpretation No.701

come tax return. Pursuant to the first part of Article 17, Paragraph 1, Subparagraph 2, Item 2, Division 3 of the Income Tax Act revised and publicized on December 28, 2005, the Northern District Office of the National Taxation Bureau, Ministry of Finance determined that NT\$460,000 of the said deductions were neither medical expenses, nor receipts issued by statutorily defined health care facilities, hence it disallowed the deduction and levied an additional tax of NT\$1,950.

The petitioner disagreed. The petitioner claimed that the said medical expenses were home care with hospital assistance, including regular visits and examinations by hospital staff—who performed actions such as replacing medical materials such as gastric tubes and respiratory tubes (pus suction bags, oxygen and respiratory tubes) —, service expenses for personal care and tube feeding, and traffic expenses for medical staff.

The result of a re-examination found that some NT\$20,000 receipts were issued by statutorily defined health care

12月28日修正公布之所得稅法第17條第1項第2款第2目之3前段規定，認定其中46萬餘元非醫療費用，亦非該規定所定之醫療院所出具之收據，而予剔除，並補徵應納稅額1950元。

聲請人不服，主張該醫藥費係居家照護在醫院協助下，定期派員訪視，進行體檢、更換胃管及呼吸管等醫療相關之醫材費（抽痰包、氧氣及呼吸皮管）、照顧服務費、管灌食品費及醫事人員探訪車資等，為醫療行為之必要費用，而申請復查。

復查結果追認其中2萬餘元為上開規定所定醫療院所之特約機構所開立，屬醫療必要費用，其餘部分仍不准

facilities and hence were allowable medical expenses, while the rest of the claimed deductions were still not allowable. The petitioner was not satisfied with this decision and filed an administrative lawsuit. He is of the opinion that the provision at issue allowing deduction for medical expenses only for limited health care facilities violates the principle of equality in the Constitution. Therefore, after exhausting all remedies, he petitioned for a constitutional interpretation.

列扣。聲請人不服，於行政訴訟敗訴確定後，認系爭規定限定醫藥費出具之醫療院所，違反憲法平等原則，聲請解釋。