

J. Y. Interpretation No.426 (May 9, 1997) *

ISSUE: Is the assessment of air pollution control fees under the Regulation on the Assessment of Air Pollution Control Fees established by the relevant supervising authority as authorized by the Air Pollution Control Act constitutional?

RELEVANT LAWS:

Article 9, Paragraph 2, of the Amendments to the Constitution (憲法增修條文第九條第二項) ; Articles 8, 10, 23, 24, 25, 26 and 27 of the Air Pollution Control Act (空氣污染防制法第八條、第十條、第二十三條、第二十四條、第二十五條、第二十六條及第二十七條) ; Article 4 of the Regulation on the Assessment of Air Pollution Control Fees (空氣污染防制費收費辦法第四條) ; J.Y. Interpretation Nos. 391 and 394 (司法院釋字第三九一號及第三九四號解釋) .

KEYWORDS:

air pollution control fee (空氣污染防制費) , special common levies (特別公課) , air pollution control fund (空氣污染防制基金) , pollution source (污染源) , air pollutants (污染) , stationary pollution source (固定污染源) , mobile pollution sources (移動污染源) , the principle of the polluter pays (污染者付費原則) , behavior constraint (行為制約) .**

* Translated by Raymond T. Chu.

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

HOLDING: The Regulation on the Assessment of Air Pollution Control Fees is established by the competent authority under the authorization of Article 10 of the Air Pollution Control Act, and the air pollution control fees charged thereunder are by nature special common levies rather than taxes and dues. Nevertheless, special common levies are, after all, moneys charged to the payers as a burden thereon. As such, the purposes and application of the levies as well as the persons to whom such levies are charged must of course be prescribed by law. It will also be constitutional if such matters are prescribed by administrative ordinances as authorized by law in a specific and unequivocal manner. The authorization of the statute mentioned above, as judged from the viewpoint of the relevancy as expressed by the Air Pollution Control Act in its entirety, does not appear to lack specificity and clarity. Furthermore, to the extent that those classes of fees being levied currently are entered under the “Air Pollution Control Fund” as an agency budget established by the competent authority in pursuance of the

解釋文：空氣污染防治費收費辦法係主管機關根據空氣污染防治法第十條授權訂定，依此徵收之空氣污染防治費，性質上屬於特別公課，與稅捐有別。惟特別公課亦係對義務人課予繳納金錢之負擔，其徵收目的、對象、用途自應以法律定之，如由法律授權以命令訂定者，其授權符合具體明確之標準，亦為憲法之所許。上開法條之授權規定，就空氣污染防治法整體所表明之關聯性意義判斷，尚難謂有欠具體明確。又已開徵部分之費率類別，既由主管機關依預算法之規定，設置單位預算「空氣污染防治基金」加以列明，編入中央政府年度總預算，經立法院審議通過後實施，與憲法尚無違背。有關機關對費率類別、支出項目等，如何為因地制宜之考量，仍須檢討改進，逕以法律為必要之規範。至主管機關徵收費用之後，應妥為管理運用，俾符合立法所欲實現之環境保護政策目標，不得悖離徵收之目的，乃屬當然。

Budget Act and being implemented upon adoption by the Legislature as a part of the general annual budget of the central government, they are not against the Constitution. Even so, the competent authority must endeavor to make review of and improvements to the classification of fees, items of expenditure, etc., in the light of the local conditions and establish by law necessary regulations thereof. It goes without saying that all fees collected by the competent authority must be managed and applied well so as to be consistent with the aim of the environmental protection policy as contemplated by the legislation without any departure from the purposes for which such fees are assessed.

What the Air Pollution Control Act is designed to prevent and control are pollution sources that emit air pollutants, including stationary pollution sources installed at public places and private premises and mobile sources of pollution composed of pollutants emitted by motor vehicles, as explicitly provided by the Act under Articles 8, 23 to 27, and other relevant articles. Article 4 of said Regulation

空氣污染防治法所防制者為排放空氣污染物之各類污染源，包括裝置於公私場所之固定污染源及機動車輛排放污染物所形成之移動污染源，此觀該法第八條、第二十三條至第二十七條等相關條文甚明。上開收費辦法第四條規定按移動污染源之排放量所使用油（燃料）之數量徵收費用，與法律授權意旨無違，於憲法亦無牴觸。惟主管機關自中華民國八十四年七月一日起僅就油

requiring payment of fees to be assessed on the basis of the volume of pollutants emitted by mobile sources of pollution in line with the quantity of fuel consumed thereby is not contrary to the purpose of authorization of the law; nor is it in conflict with the Constitution. Nevertheless, since July 1, 1995, the competent authority has been charging fees on fuel consumption only, ignoring other pollutants emitted by stationary pollution sources. This is obviously contrary to the principle of fair payment of common levies, and must be promptly reviewed and corrected by relevant authority.

REASONING: By Amendment to the Constitution, Article 9, Paragraph 2, which provides that “environmental and ecological protection shall be given equal consideration with economic and technological development,” the state is charged with the duty to maintain the living environment and the natural ecology. To put air pollution under control is one of the important undertakings. The enactment of the Air Pollution Control Act is consistent with the purpose embodied in the Consti-

(燃)料徵收，而未及固定污染源所排放之其他污染物，顯已違背公課公平負擔之原則，有關機關應迅予檢討改進，併此指明。

解釋理由書：憲法增修條文第九條第二項規定：「經濟及科學技術發展，應與環境及生態保護兼籌並顧」，係課國家以維護生活環境及自然生態之義務，防制空氣污染為上述義務中重要項目之一。空氣污染防制法之制定符合上開憲法意旨。依該法徵收之空氣污染防制費係本於污染者付費之原則，對具有造成空氣污染共同特性之污染源，徵收一定之費用，俾經由此種付費制度，達成行為制約之功能，減少空氣中污染之程度；並以徵收所得之金錢，在環保

tution. On the principle of “the polluter pays”, the air pollution control fees charged under said Act are fees levied on sources of pollution with the common characteristics of producing air pollution, with the hope of minimizing the air pollution through the function of behavior constraint to be realized by payment of fees. An Air Pollution Control Fund is also established under the competent environmental protection agency with the money so collected to be applied for the exclusive purpose of improving the quality of the air to insure the health of the nation. As the fees are burdens imposed upon nationals with specific legal relation to meet the need of the state for specific policies and are subject to limitations in terms of their application, they are called in jurisprudence theories “special common levies” and are mechanisms widely adopted by modern industrialized nations. Special common levies are different from taxes in that taxes are levied on ordinary citizens to meet the expenditure for the implementation of the government’s regular or special policies and are collected by taxing authorities insofar as the elements

主管機關之下成立空氣污染防治基金，專供改善空氣品質、維護國民健康之用途。此項防制費既係國家為一定政策目標之需要，對於有特定關係之國民所課徵之公法上負擔，並限定其課徵所得之用途，在學理上稱為特別公課，乃現代工業先進國家常用之工具。特別公課與稅捐不同，稅捐係以支應國家普通或特別施政支出為目的，以一般國民為對象，課稅構成要件須由法律明確規定，凡合乎要件者，一律由稅捐稽徵機關徵收，並以之歸入公庫，其支出則按通常預算程序辦理；特別公課之性質雖與稅捐有異，惟特別公課既係對義務人課予繳納金錢之負擔，故其徵收目的、對象、用途應由法律予以規定，其由法律授權命令訂定者，如授權符合具體明確之標準，亦為憲法之所許。所謂授權須具體明確應就該授權法律整體所表現之關聯意義為判斷，而非拘泥於特定法條之文字（參照本院釋字第三九四號解釋理由書）。空氣污染防治法第十條第一項：「各級主管機關應依污染源排放空氣污染物之種類及排放量，徵收空氣污染防治費用」，第二項：「前項污染源之類別及收費辦法，由中央主管機關會商有關機關定之」，依此條文之規定，再參酌上開法律全部內容，其徵收目

for tax payment specifically prescribed by law are met, that all taxes collected are turned in to the National Treasury and that the revenue of taxes may be expended in pursuance of the regular budgetary procedure; whereas special common levies, although different from taxes by nature, are after all monetary burdens imposed on those liable to pay, and as such, the purposes and application of the levies as well as the persons on whom such levies are charged must of course be prescribed by law. It will also be constitutional if such matters are prescribed by administrative ordinances as authorized by law in a specific and unequivocal manner. The so-called specific and unequivocal authorization of law must be judged from the viewpoint of the relevancy as expressed by the enabling statute in its entirety rather than being judged by rigid adherence to the language of any particular provision (see our J.Y. Interpretation No. 394). When read within the context of the Air Pollution Control Act as a whole, the text of Article 10, Paragraph 1, of the Act: "The competent authority at each level of the government shall levy air pollution

的、對象、場所及用途等項，尚難謂有欠具體明確。行政院環境保護署據此於八十四年三月二十三日發布空氣污染防治費收費辦法，就相關事項為補充規定。而已開徵部分之費率類別連同歲入歲出科目金額，既由主管機關依預算法之規定，設置單位預算「空氣污染防治基金」加以列明，編入中央政府年度總預算，經立法院通過後實施，徵收之法源及主要項目均有法律與預算為依據，與憲法尚無違背。但預算案有其特殊性，與法律案性質不同，立法機關對預算案與法律案審議之重點亦有差異（參照本院釋字第三九一號解釋理由書），空氣污染防治費之徵收尚涉及地方政府之權限，基金支出尤與地方環保工作攸關，預算案受形式及內容之限制，規定難期周全，有關機關對費率類別、支出項目等，如何為因地制宜之考量，仍須檢討改進，逕以法律為必要之規範。至主管機關徵收費費用之後，自應妥為管理運用，俾符合立法所欲實現之環境保護政策目標，不得悖離徵收特別公課之目的，乃屬當然。

control fees based on the type of pollutants and quantity of emission from pollution sources”; and Paragraph 2: “The classes of pollution sources and payment of fees as referred to in the preceding paragraph shall be established by the central competent authority upon consultation with other agencies concerned” can hardly be deemed to lack specificity and clarity in the purposes, places and application of the levies as well as the persons on whom such levies are charged. Under the Act, the Environmental Protection Administration under the Executive Yuan promulgated on March 23, 1995, the Regulation on the Assessment of Air Pollution Control Fees to supplement the Act. To the extent that the rates and classes of the fees being assessed currently are entered by the competent authority into the Air Pollution Control Fund as an agency budget together with the amounts of anticipated revenue and annual expenditure and incorporated into the general annual budget of the central government as required by the Budget Act and are put under implementation upon adoption by the Legislature, such assessment and the items as-

essed are based on law and budget and are not in conflict with the Constitution. Nevertheless, there are certain particularities to a budgetary bill that make it different from statutory bills. There are also differences in the key points to be reviewed by the legislature in cases of budgetary bills and statutory bills (See J.Y. Interpretation No. 391). The assessment of air pollution control fees also involves the power of local governments, and the expenditure of the Fund is especially relevant to the local environmental protection work. The provisions of a budgetary bill are by no means comprehensive because such a bill is subject to certain limitations on its form and substance. Thus, the competent authority must endeavor to make review of and improvements to the classification of fees, items of expenditure, etc., in the light of the local conditions and set out by law necessary regulation thereof. It goes without saying that all fees collected by the competent authority must be managed and applied well so as to be consistent with the aim of the environmental protection policy as contemplated by the legislation

without any departure from the purposes for which such special common levies are assessed.

What the Air Pollution Control Act is designed to prevent and control are pollution sources that emit air pollutants, including stationary sources of pollution installed at public places and private premises and mobile sources of pollution composed of pollutants emitted by motor vehicles, as explicitly provided by the Act under Articles 8, 23 to 27, and other relevant articles. As mobile air pollutants are not precluded by Article 10 of the Act, mobile pollution sources such as automobiles and motorcycles are undoubtedly included for the purpose of assessment of air pollution control fees. Article 4 of the Regulation on the Assessment of Air Pollution Control Fees requiring payment of fees on the basis of the volume of pollutants emitted by mobile sources of pollution in line with the quantity of fuel consumed thereby is reasonable because the emission of pollutants is closely related with the quantity of fuel consumed. And, viewed from the point that both technical

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and cost issues must be taken into consideration in the implementation of a law, we do not consider said article to be against the purpose of authorization of the law. Even so, it is desirable that the competent authority establishes promptly a periodical inspection system for mobile pollution sources and a system of assessment with more encouraging economic reasons. Since July 1, 1995, the competent authority has been charging fees on fuel consumption only, ignoring other pollutants emitted by stationary pollution sources. This is obviously contrary to the principle of fair payment of common levies based on pollution sources and is apt to lead to the misunderstanding by the general public that collecting common levies for the real purpose of financial revenue is in the guise of behavior constraint. The competent authority must therefore promptly take appropriate actions to make improvements.

Justice Tong-Schung Tai filed dissenting opinion in part.

Justice Jyun-Hsiung Su filed dissenting opinion.

本號解釋戴大法官東雄提出部分不同意見書；蘇大法官俊雄提出不同意見書。