

J. Y. Interpretation No.453 ( May 8, 1998 ) \*

**ISSUE:** Does the Business Accounting Act which delegates the certification of business accounting bookkeepers to the executive branch contradict the Constitution?

**RELEVANT LAWS:**

Article 86, Subparagraph 2 of the Constitution ( 憲法第八十六條第二款 ) ; Articles 2, Paragraph 2, and 5, Paragraph 4 of the Business Accounting Act ( 商業會計法第二條第二項、第五條第四項 ) .

**KEYWORDS:**

business accounting matters ( 商業會計事務 ) , accountant ( 會計師 ) , business accounting bookkeeper ( 商業會計記帳人 ) , professional services ( 專門職業 ) , qualification ( 職業資格 ) , certification ( 認可 ) , examination ( 考試 ) , delegation ( 委託 ) , public interest ( 公共利益 ) , property rights ( 財產權 ) , central governing authority ( 中央主管機關 ) .\*\*

**HOLDING:** According to Article 2, Paragraph 2, of the Business Accounting Act, the term “business accounting matters” refers to the engagement in

**解釋文：**商業會計事務，依商業會計法第二條第二項規定，謂依據一般公認會計原則從事商業會計事務之處理及據以編制財務報表，其性質涉及公

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\* Translated by Pijan Wu.

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

business accounting matters and the compilation of financial statements pursuant to generally accepted accounting principles. Its nature relates to the public interest and the private property rights and interests of the people. Accordingly, those whose profession is to deal with business accounting matters shall be equipped with a certain degree of professional accounting knowledge and experience in order to be qualified. Article 5, Paragraph 4, of the Business Accounting Act provides that: “Business accounting matters may be engaged by Accountants or business accounting bookkeepers certified by the central governing authority; the rules for their certification and supervision shall be stipulated by the central governing authority.” Since the so-called “business accounting bookkeepers” deal with business accounting matters, their duties are within the category of professional services. According to Article 86, Subparagraph 2, of the Constitution, the qualifications for professional services shall be determined through examinations held under the relevant laws. The portion of Article 5, Paragraph 4, of the Business Accounting Act,

共利益與人民財產權益，是以辦理商業會計事務為職業者，須具備一定之會計專業知識與經驗，始能勝任。同法第五條第四項規定：「商業會計事務，得委由會計師或經中央主管機關認可之商業會計記帳人辦理之；其認可及管理辦法，由中央主管機關定之」，所稱「商業會計記帳人」既在辦理商業會計事務，係屬專門職業之一種，依憲法第八十六條第二款之規定，其執業資格自應依法考選銓定之。商業會計法第五條第四項規定，委由中央主管機關認可商業會計記帳人之資格部分，有違上開憲法之規定，應不予適用。

which delegates to the central governing authority the power to certify the qualification of business accounting bookkeepers, is in violation of the aforementioned constitutional provision and shall no longer be applied.

**REASONING:** According to Article 86, Subparagraph 2, of the Constitution, the term “professionals and technicians” refers to those who acquire special knowledge or techniques through modern education or technical training processes and engage in practices closely related to the public interest or the life, body, property and other rights of the people.

According to Article 2, Paragraph 2, of the Business Accounting Act, the term “business accounting matters” refers to the engagement in business accounting matters and the compilation of financial statements pursuant to generally accepted accounting principles. Its nature relates to the public interest and the private property rights and interests of the people. Accordingly, those whose profession is to deal with business accounting matters shall be

**解釋理由書：**憲法第八十六條第二款所稱之專門職業及技術人員，係指具備經由現代教育或訓練之培養過程獲得特殊學識或技能，而其所從事之業務，與公共利益或人民之生命、身體、財產等權利有密切關係者而言。商業會計事務，依商業會計法第二條第二項規定，謂依據一般公認會計原則從事商業會計事務之處理及據以編制財務報表，其性質涉及公共利益與人民財產權益，是以辦理商業會計事務為職業者，自須具備一定之會計專業知識與經驗。同法第五條第四項前段規定：「商業會計事務，得委由會計師或經中央主管機關認可之商業會計記帳人辦理之」，其所以於會計師外亦得由商業會計記帳人辦理，旨在解決中小規模營利事業無力負擔雇用會計師之問題，惟為確保商業會計事務詳實無訛，以利主管機關稽核，執行商業會計記帳業務之人，仍必須對記帳及稅務會計有相當之專業知識與經

equipped with a certain degree of professional accounting knowledge and experience in order to be qualified. Furthermore, the first sentence of Article 5, Paragraph 4, of the Business Accounting Act provides that: "Business accounting matters may be engaged by accountants or business accounting bookkeepers certified by the central governing authority." The reason for permitting business accounting bookkeepers, in addition to accountants, to deal with business accounting matters is to provide help for certain small-to-medium enterprises that cannot afford accountants' fees. Nevertheless, in order to ensure the accuracy of the business accounting matters and to facilitate the auditing by the governing authorities, it is imperative that the business accounting bookkeepers have adequate professional knowledge and experience in bookkeeping, tax preparation and accounting. Therefore, since the business accounting bookkeepers deal with business accounting matters and their duties are within the category of professional services, they may practice only after they have passed the examinations or verification proce-

驗，始足以勝任。因而商業會計記帳人既在辦理商業會計事務，屬專門職業之一種，應經依法考試或檢覈始能取得執業資格。商業會計法第五條第四項將之委由中央主管機關認可商業會計記帳人之資格部分，有違上開憲法之規定，應不予適用。

dures according to the relevant laws. The portion of Article 5, Paragraph 4, of the Business Accounting Act, which delegates to the central governing authority the power to certify the qualification of business accounting bookkeepers, is in violation of the aforementioned constitutional provision and shall no longer be applied.

Justice Jyun-Hsiung Su filed dissenting opinion.

Justice Sen-Yen Sun filed dissenting opinion.

本號解釋蘇大法官俊雄、孫大法官森焱分別提出不同意見書。