

J. Y. Interpretation No.460 (July 10, 1998) *

ISSUE: Does the Ministry of Finance directive declaring that a structure on land used as a “house of worship” is not a “residence” as defined in Article 9 of the Land Tax Act for tax exemption purposes constitute discrimination against any particular religion and is it thus in violation of the Constitutional provision guaranteeing the people’s freedom of religion?

RELEVANT LAWS:

Articles 7, 13 and 19 of the Constitution (憲法第七條、第十三條、第十九條) ; Articles 6 and 9 of the Land Tax Act (土地稅法第六條、第九條) ; Article 8, Paragraph 1, Subparagraph 9 of the Regulation Governing the Reduction or Exemption of Land Tax (土地稅減免規則第八條第一項第九款) ; Ministry of Finance in its directive Tai-Tsai-Shui-Tze No. 31627 (March 14, 1983) (財政部七十二年三月十四日台財稅字第三一六二七號函) ; J. Y. Interpretation No. 420 (司法院釋字第四二〇號解釋) .

KEYWORDS:

tax reduction or exemption (稅捐減免) , homestead; residence for own use (自用住宅) , residential land for own use (自用住宅用地) , house of worship (神壇) , negative construction (消極性釋示) , doctrine of statutory taxation (租

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稅法定主義), principle of equality of actual taxation (實質課稅之公平原則), privacy (私密性), land value increment tax (土地增值稅), freedom of religious belief (信仰宗教之自由), foundation (財團法人), religious organizations (宗教團體), discrimination (差別待遇).**

HOLDING: Under Article 6 of the Land Tax Act, reasonable tax reduction or exemption may be allowed for land used for such purposes as religion and reasonable homesteads, in order to develop the economy, encourage land utilization and promote social welfare. The second sentence of the Article grants the administrative authorities the power to establish the criteria of and procedure for such reduction or exemption. While the term “homestead land” is explicitly defined in Article 9 of said Act, the law is silent on the meaning of “residence.” The view expressed by the Ministry of Finance in its directive Tai-Tsai-Shui-Tze No. 31627 (March 14, 1983) that “a structure on land used as a house of worship is not land used for ‘residence’ for own use as defined in Article 9 of the Land Tax

解釋文：土地稅法第六條規定，為發展經濟，促進土地利用，增進社會福利，對於宗教及合理之自用住宅等所使用之土地，得予適當之減免；同條後段並授權由行政機關訂定其減免標準及程序。同法第九條雖就自用住宅用地之定義設有明文，然其中關於何謂「住宅」，則未見規定。財政部中華民國七十二年三月十四日台財稅字第三一六二七號函所稱「地上建物係供神壇使用，已非土地稅法第九條所稱之自用『住宅』用地」，乃主管機關適用前開規定時就住宅之涵義所為之消極性釋示，符合土地稅法之立法目的且未逾越住宅概念之範疇，與憲法所定租稅法定主義尚無牴觸。又前開函釋並未區分不同宗教信仰，均有其適用，復非就人民之宗教信仰課予賦稅上之差別待遇，亦與憲法第七條、第十三條規定之意旨無違。

Act” is a negative construction of the term “residence” made by the competent authority in applying the aforesaid statute, and is consistent with the legislative purposes of the Land Tax Act, without going beyond the scope of the concept of residence. It is thus not in conflict with the doctrine of taxation by law as embodied in the Constitution. Furthermore, the directive is applicable to all religions without distinctions, and does not bring about any discrimination in taxation between different religions. It is therefore not contrary to the intent expressed in Articles 7 and 13 of the Constitution.

REASONING: That the people have the duty to pay tax as prescribed by law is explicitly provided in Article 19 of the Constitution. The expression “to pay tax as prescribed by law” means that the ranges of both tax payment and tax exemption are subject to explicit prescription of law. When any doubt occurs in connection with the application of any statutory provision, however, the competent authority is certainly empowered to make interpretation in accordance with

解釋理由書：人民有依法律納稅之義務，為憲法第十九條所明定。所謂依法律納稅，兼指納稅及免稅之範圍，均應依法律之明文。惟法律條文適用時發生疑義者，主管機關自得為符合立法意旨之闡釋，本院釋字第二六七號解釋敘述甚明。涉及租稅事項之法律，其解釋應本於租稅法定主義之精神，依各該法律之立法目的，衡酌經濟上之意義及實質課稅之公平原則為之，亦經本院釋字第四二〇號解釋釋示在案。

the legislative purposes of the law. This has been clearly explicated in our Interpretation No. 267. It is also held by this Yuan in Interpretation No. 420 that laws involving taxation should be construed in light of the essence of the principle of taxation by law and the respective legislative purpose of the law, with due consideration to be given to the economic significance and the principle of equality of actual taxation.

The Land Tax Act provides in Article 6 that “in order to develop the economy, encourage land utilization and promote social welfare, reasonable tax reduction or exemption may be allowed for land used for national defense, government agencies, public facilities, covered sidewalks, research institutes, education, transportation, irrigation, water supply, salt production industry, religions, medical care, sanitation, graveyards and cemeteries, charitable or public welfare organizations, reasonable homesteads, and other purposes, and for rezoned, reclaimed, and improved land; the criteria of and procedure for such reduction or exemption shall be es-

土地稅法第六條規定：「為發展經濟，促進土地利用，增進社會福利，對於國防、政府機關、公共設施、騎樓走廊、研究機構、教育、交通、水利、給水、鹽業、宗教、醫療、衛生、公私墓、慈善或公益事業及合理之自用住宅等所用之土地，及重劃、墾荒、改良土地者，得予適當之減免；其減免標準及程序，由行政院定之。」又同法第九條規定：「本法所稱自用住宅用地，指土地所有權人或其配偶、直系親屬於該地辦竣戶籍登記，且無出租或供營業用之住宅用地。」雖未就「住宅」之定義有所界定，然法規之適用除須依法條之明文外，尚應受事物本質之內在限制。而依一般觀念，所謂住宅，係指供人日常

established by the Executive Yuan.” Article 9 of the same Act provides: “The term ‘homestead land’ in this Act refers to the land used for a residence for which the landowner or his spouse or any linear relative thereof has effectuated household registration and which is not held by any lease or used for commercial purposes.” Although no definition is given by the law of the term “residence,” it must be noted that the application of any law and regulation is not only governed by the text of the law but also subject to the intrinsic limits of the nature of the matter, and that as a general concept a “residence” is a fixed structure on land that serves as a place for people’s daily living and is usually equipped with basic functional facilities for living, with space controllable and manageable by the residents as well as privacy. The view expressed by the Ministry of Finance in its directive Tai-Tsai-Shui-Tze No. 31627 (March 14, 1983) that a structure on land used as a house of worship is not “residential” land for own use as defined in Article 9 of the Land Tax Act, and that no preferential tax rate may be allowed under Article 34 of the

住居生活作息之用，固定於土地上之建築物；外觀上具備基本生活功能設施，屬於居住者支配管理之空間，具有高度的私密性。財政部七十二年三月十四日台財稅字第三一六二七號函謂：建物係供神壇使用，已非土地稅法第九條所稱之自用「住宅」用地，不得依同法第三十四條規定按優惠稅率計課土地增值稅，乃主管機關適用土地稅法第九條，就住宅之涵義所為之消極性釋示，符合土地稅法之立法目的且未逾越住宅概念之本質，依首開解釋意旨，與憲法所定租稅法定主義尚無牴觸。

Act for the purpose of assessment of land value increment tax thereon, is a negative construction of the term “residence” made by the competent authority in applying Article 9 of the Land Tax Act, and is consistent with the legislative purposes of the Land Tax Act, without going beyond the scope of the concept of residence. On the ground of the essence of this Interpretation as stated above, the directive is, thus, not in conflict with the doctrine of taxation by law as embodied in the Constitution.

Article 13 of the Constitution provides that “the people shall have the freedom of religious belief.” This means that people have the freedom to believe in or not to believe in any religion and the freedom to participate in or not to participate in any religious activities. In addition, the state may not grant any aid or award to or impose any restraint on any particular religion, nor shall the state confer any privilege on any person or place any person at a disadvantage because of his religious belief. Under Article 6 of the Land Tax Act, tax on land for religious uses may be

憲法第十三條規定：「人民有信仰宗教之自由。」係指人民有信仰與不信仰任何宗教之自由，以及參與或不參與宗教活動之自由；國家亦不得對特定之宗教加以獎助或禁止，或基於人民之特定信仰為理由予以優待或不利益。土地稅法第六條規定宗教用地之土地稅得予減免，只須符合同條授權訂定之土地稅減免規則第八條第一項第九款所定之減免標準均得適用，並未區分不同宗教信仰而有差別。神壇未辦妥財團法人或寺廟登記者，尚無適用該款所定宗教團體減免土地稅之餘地，與信仰宗教之自由無關。又「神壇」既係由一般信奉人

reduced or exempted. The provision is applicable insofar as the land meets the criteria for tax reduction or exemption specified in the Regulation Governing the Reduction or Exemption of Land Tax, Article 8, Paragraph 1, Subparagraph 9, established by authority granted under the same article of the act, with no distinction between religions. Where a house of worship has not effectuated the registration as a foundation or temple, the land tax reduction or exemption accorded to religious organizations under said subparagraph is not available thereto, and this has nothing to do with the freedom of religion. Furthermore, to the extent that a “house of worship” is a place where an altar is freely set up by believers to offer sacrifices to gods and for the followers to pay to worship, it is distinguishable by nature from a residence, which is characterized by privacy. The Ministry of Finance directive mentioned above, which declares that a structure on land used as a house of worship is not a “residence” under Article 9 of the Land Tax Act, does not bring about any discrimination in taxation between different religions, and is therefore not in

士自由設壇祭祀神祇，供信眾膜拜之場所，與前述具有私密性之住宅性質有異。上揭財政部函釋示供「神壇」使用之建物非土地稅法第九條所稱之住宅，並非就人民之宗教信仰課予賦稅上之差別待遇，亦與憲法第七條、第十三條規定意旨無違。

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