

J. Y. Interpretation No.484 ( May 14, 1999 ) \*

**ISSUE:** Does the Directive T.T.S.T. No. 36889 of the Ministry of Finance exceed the legislative intent of Article 2 of the Deed Tax Act, and is it thus unconstitutional?

**RELEVANT LAWS:**

Article 15 of the Constitution (憲法第十五條) ; Articles 2, Paragraph 1, 18, Paragraph 1, and 23 of the Deed Tax Act (契稅條例第二條第一項、第十八條第一項、第二十三條) .

**KEYWORDS:**

payment of deed tax (繳納契稅) , amendment registration of right to real estate (不動產權利變更登記) , equality of claim (債權平等) , suspension of issuing notice of tax payment (暫緩核發納稅通知書) .\*\*

**HOLDING:** Article 2, Paragraph 1, of the Deed Tax Act (hereinafter the “Act”) provides: “Any purchaser and acceptor of a pledge, exchange, donation or partition of immovable property, and any acquirer of ownership thereof by virtue of possession shall procure and use official deed forms and pay deed taxes.” Article

**解釋文：**契稅條例第二條第一項規定：「不動產之買賣、承典、交換、贈與、分割或因占有而取得所有權者，均應購用公定契紙，申報繳納契稅。」同條例第十八條第一項規定：「主管稽徵機關收到納稅義務人契稅申報案件，應於十五日內審查完竣，查定應納稅額，發單通知納稅義務人依限繳

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

18, Paragraph 1, of the Act provides: "Upon receipt of the deed tax declaration submitted by the taxpayer, the collection authority-in-charge shall, within 15 days therefrom, complete the examination thereof, assess the amount of the deed tax payable, and give a notice to the taxpayer requiring him/her to pay the tax within the prescribed time limit." Article 23 of the Act further provides: "Where the registration of ownership is to be effected as a result of sale, pledge, exchange, donation, partition or possession of immovable property, the land office shall effect the registration of the change in rights against the tax payment receipt." Therefore, declaration and payment of deed tax concerns the exercise and acquisition of the people's property rights. The Directive T.T.S.T. No. 36889 of the Ministry of Finance dated August 19, 1981, states: "If several persons submit declarations for the same building or land and if all of them have a legal basis, to avoid any subsequent dispute, the tax collection authority-in-charge may notify all the parties concerned to coordinate by themselves. Before the parties reach an agreement or

納。」又同條例第二十三條規定：「凡因不動產之買賣、承典、交換、贈與、分割及占有而辦理所有權登記者，地政機關應憑繳納契稅收據辦理權利變更登記。」是申報繳納契稅關係人民財產權之行使及取得。財政部中華民國七十年八月十九日台財稅字第三六八八九號關於「同一建物、土地先後有數人申報，且各有其合法依據時，為避免日後可能發生糾紛起見，稅捐稽徵機關得通知各有關當事人自行協調，在當事人未達成協議或訴請司法機關確認所有權移轉登記權利前，稅捐稽徵機關得暫緩就申報案件核發納稅通知書」之函示，逾越上開法律規定之意旨，指示稅捐稽徵機關得暫緩就申報案件核發納稅通知書，致人民無從完成納稅手續憑以辦理所有權移轉登記，妨害人民行使財產上之權利，與憲法第十五條保障人民財產權之意旨不符，應不再援用。

institute an action to the court for confirmation of the right to register the transfer of ownership, the collection authority-in-charge may suspend the issuance of the notice of tax payment related to the declaration.” The said directive exceeds the legislative intent of the abovementioned law by instructing that the tax collection authority-in-charge may suspend the issuance of tax payment notice for the declaration, which renders the people unable to complete the tax payment procedures for the purpose of ownership transfer registration and impedes the people’s exercise of their property rights. As the said directive is inconsistent with Article 15 of the Constitution intended to protect the people’s property rights, it shall no longer be applied.

**REASONING:** Article 2, Paragraph 1, of the Act provides: “Any purchaser and acceptor of a pledge, exchange, donation or partition of immovable property, and any acquirer of ownership thereof by virtue of possession shall procure and use official deed forms and pay deed taxes.” Article 23 of the Act

**解釋理由書：**契稅條例第二條第一項規定：「不動產之買賣、承典、交換、贈與、分割或因占有而取得所有權者，均應購用公定契紙，申報繳納契稅。」同條例第二十三條規定：「凡因不動產之買賣、承典、交換、贈與、分割及占有而辦理所有權登記者，地政機關應憑繳納契稅收據辦理權利變更

provides: “Where the registration of ownership is to be effected as a result of sale, pledge, exchange, donation, partition or possession of immovable property, the land office shall effect the registration of the change in rights against the tax payment receipt.” Therefore, declaration and payment of deed tax concerns the exercise and acquisition of the people’s property rights. Article 18, Paragraph 1, of the Act provides further: “Upon receipt of the deed tax declaration submitted by the taxpayer, the collection authority-in-charge shall, within 15 days therefrom, complete the examination thereof, assess the amount of the deed tax payable, and give a notice to the taxpayer requiring him/her to pay the tax within the prescribed time limit.” Where several persons apply for payment of deed tax for the same building or land, the tax collection agency shall issue a notice of tax payment to each of the applicants to allow them to register the change of real estate property right after payment of deed tax. In addition, a civil dispute involves the people’s rights and obligations and should be resolved by the parties concerned in accordance with legal

登記。」是申報繳納契稅關係人民財產權之行使及取得。同條例第十八條第一項規定：「主管稽徵機關收到納稅義務人契稅申報案件，應於十五日內審查完竣，查定應納稅額，發單通知納稅義務人依限繳納。」在同一建築物、土地先後有數人申報繳納契稅時，依法應即由稅捐稽徵機關核發納稅通知書與各申請人，使其得於繳納契稅後，辦理不動產權利變更登記。且民事糾紛，涉及人民之權利義務關係，應由當事人依法律程序，尋求解決，行政機關不宜加以介入，要求當事人自行協調，達成協議。又在一物數賣之情形，其買賣契約均屬有效成立，數買受人對出賣人不妨有同一內容之債權，本諸債權平等原則，其相互間並無排他之效力，均有請求所有權移轉登記之權利。財政部七十年八月十九日台財稅字第三六八八九號關於「同一建物、土地先後有數人申報，且各有其合法依據時，為避免日後可能發生糾紛起見，稅捐稽徵機關得通知各有關當事人自行協調，在當事人未達成協議或訴請司法機關確認所有權移轉登記權利前，稅捐稽徵機關得暫緩就申報案件核發納稅通知書」之函示，逾越上開法律規定之意旨，指示稅捐稽徵機關得暫緩就申報案件核發納稅通知書，致人

procedures, and the administrative agency should not intervene by requesting the parties concerned to coordinate by themselves and reach an agreement. Where a thing is sold to several persons, each of the sales contracts is valid. The buyers have the same claim against the seller. Based on the principle of equal claims, none of the creditors can validly exclude any other creditors, and each of them has the right to make a request for ownership transfer registration. The Directive T.T. S.T. No. 36889 of the Ministry of Finance dated August 19, 1981, states: "If several persons submit declarations for the same building or land and if all of them have legal basis, to avoid any subsequent dispute, the tax collection authority-in-charge may notify all the parties concerned to coordinate by themselves. Before the parties reach an agreement or institute an action to the court for confirmation of the right to register the transfer of ownership, the collection authority-in-charge may suspend the issuance of the notice of tax payment related to the declaration." The said directive exceeds the legislative intent of the abovementioned

民無從完成納稅手續憑以辦理所有權移轉登記，妨害人民行使財產上之權利，與憲法第十五條保障人民財產權之意旨不符，應不再援用。

law by instructing that the tax collection authority-in-charge may suspend the issuance of tax payment notice for the declaration, which renders the people unable to complete the tax payment procedures for the purpose of ownership transfer registration and impedes the people's exercise of their property rights. As the said directive is inconsistent with Article 15 of the Constitution intended to protect the people's property rights, it shall no longer be applied.