

J. Y. Interpretation No.241 (May 26, 1989) *

ISSUE: Shall the special tax benefit of a 70% land value increment tax reduction be applied to condemned lands that had been designated for public facilities reservation prior to the amendment of the Urban Planning Act on September 6, 1973, and the government published land value was fixed then, but a transfer by inheritance occurred thereafter?

RELEVANT LAWS:

Articles 15,19, and 172 of the Constitution (憲法第十五條、第十九條及第一百七十二條) ; the amendment of the Urban Planning Act on September 6, 1973 (六十二年九月六日都市計畫法修正) ; Article 42, Paragraph 1, of the Equalization of Land Rights Act (平均地權條例第四十二條) ; Article 39, Paragraph 1, of the Land Tax Act (土地稅法第三十九條) .

KEYWORDS:

land designated for public facilities reservation (公共設施保留地) , government published land value (公告地價) , transfer by inheritance (繼承移轉) , land value at the time of transfer (移轉現值) , land value increment tax (增值稅) , principle of taxation by law (租稅法律主義) , principle of fairness (公平原則) .**

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

HOLDING: Ordinance T.T.S. No. 34819 (Ministry of Finance, July 25, 1977) states that: “For land that had been designated for public facilities reservation prior to the amendment of the Urban Planning Act on September 6, 1973, and because the government published land value was fixed then, but a transfer by inheritance occurred thereafter, the proviso of Article 42, Paragraph 1, of the Equalization of Land Rights Act shall not be applied upon the condemnation of said land.” This is because the transfer by inheritance occurred after the amendment of the Urban Planning Act, and calculation of the capital gain for the condemnation price was based on the government published land value at the commencement of the inheritance which had been fixed beforehand, so generally the burden of land value increment tax has been lessened. Therefore, the provision for 40% land value increment tax reduction contained in the first part of Article 42, Paragraph 1, of the aforementioned Act shall be applied, and the 70% land value increment tax reduction contained in the proviso of the same Act shall not be applicable. The

解釋文：財政部中華民國六十六年七月二十五日台財稅字第三四八一九號函稱：「在六十二年九月六日都市計畫法修正公布前經編為公共設施保留地，並已規定地價；但在該法修正公布後曾發生繼承移轉者，於被徵收時，不適用平均地權條例第四十二條第一項但書規定」，係基於都市計畫法修正公布後，已有因繼承而移轉之事實，於該土地被徵收時，既以繼承開始時之公告土地現值為計算土地漲價總額之基礎，則其土地增值稅負在一般情形已獲減輕，故應依上開條例第四十二條第一項前段規定減徵土地增值稅百分之四十，不適用同條但書減徵土地增值稅百分之七十之規定。上開財政部函符合前述法條之立法意旨，於租稅法律主義及公平原則無違，並不牴觸憲法。

abovementioned Ministry of Finance's Ordinance is consistent with the legislative intent of said Act, is not in violation of the principle of taxation by law and the principle of fairness, and hence, is not unconstitutional.

REASONING: The state may condemn private land for public purpose. However, for fairness, it must compensate the land owner for the land value with complements, as well as tax benefits whenever appropriate. Article 39, Paragraph 1, of the Land Tax Act and Article 42, Paragraph 1, of the Equalization of Land Rights Act prescribe: "The land value increment tax for condemned lands shall be reduced by 40%. But the land value increment tax reduction shall be 70% for land that was designated for public facilities reservation prior to the amendment of the Urban Planning Act on September 6, 1973, and the government published land value was fixed then, but no transfer occurred after said amendment of the Urban Planning Act." The legislative intent was founded on this principle of fairness.

解釋理由書：國家因興辦公共事業之需要，得依法徵收私有土地，惟對於為公益而犧牲其權利之土地所有權人，除給予地價補償及其他補償費外，並斟酌情形給予相當之租稅優惠，以符公平原則。土地稅法第三十九條第一項及平均地權條例第四十二條第一項均規定：「被徵收之土地，其土地增值稅一律減徵百分之四十。但在中華民國六十二年九月六日都市計畫法修正公布前，經編定為公共設施保留地，並已規定地價，且在該次都市計畫法修正公布後未曾移轉者，其土地增值稅減徵百分之七十」，即係本於上述意旨。

The capital gain for land that has been condemned usually is calculated on the current government published land value minus the original value or prior land value at the time of transfer. If there was an inheritance of land, the prior land value at the time of transfer was the government published land value at the commencement of inheritance. According to the aforementioned Act, the land value increment tax reduction for condemned lands is generally 40%. For those lands that did not change hands after the amendment of the Urban Planning Act on September 6, 1973, the gap between the current government published land value and the original value has widened because of the time lapse. Therefore, a benefit of 70% land value increment tax reduction shall be given. If an inheritance commenced after the abovementioned date, the land value increment tax had been exempted for transfer by inheritance. Generally, the difference between the current government published land value at condemnation and prior land value at the time of transfer is smaller, and the tax burden has been lessened. Therefore, the

土地被徵收者，其土地漲價總數額之計算，通常係以被徵收時之公告土地現值，減去原規定地價或前次移轉現值為準，其經過繼承之土地，則以繼承開始時之公告土地現值作為前次移轉現值。又依上開法條規定，被徵收土地之土地增值稅，一般減徵率為百分之四十，其在中華民國六十二年九月六日都市計畫法修正公布後，未曾移轉者，因經過時間較久，徵收時之公告土地現值與原規定地價相差較大，特給予減徵百分之七十之優惠；其在前開日期以後，有繼承開始之事實者，屬於因繼承而移轉，依法已免徵土地增值稅，而徵收時之公告土地現值與前次移轉現值，在一般情形相差較小，其稅負已獲減輕，故應依一般減徵率計算土地增值稅，不適用減徵百分之七十之規定。否則，反失其平。財政部中華民國六十六年七月二十五日台財稅字第三四八一九號函，認為繼承亦屬土地移轉方式之一種，與財產權主體變更即為權利移轉之概念相符，其所稱：「在六十二年九月六日都市計畫法修正公布前經編為公共設施保留地，並已規定地價；但在該法修正公布後曾發生繼承移轉者，於被徵收時，不適用平均地權條例第四十二條第一項但書規定」，即係基於前述旨趣，符合

ordinary reduction rate for capital gain shall be applicable in lieu of the 70% reduction rate, or unfairness may result. Ordinance T.T.S.No.34819 (Ministry of Finance, July 25, 1977) regards inheritance as one method of land transfer and conforms to the concept that change in the subject of property is equal to transfer of rights. The statement that: "For land that had been designated for public facilities reservation prior to the amendment of the Urban Planning Act on September 6, 1973, and the government published land value was fixed then, but a transfer by inheritance occurred thereafter, the proviso of Article 42, Paragraph 1, of the Equalization of Land Rights Act shall not be applied upon the condemnation of said land" was derived from this viewpoint. It is consistent with the legislative intent of said Act, is not in violation of the principle of tax by law or the principle of fairness, and hence, is not unconstitutional.

首揭法條之立法意旨，於租稅法律主義及公平原則無違，並不牴觸憲法。