

J. Y. Interpretation No.247 (October 27, 1989) *

ISSUE: Is the order issued by the Ministry of Finance, providing to the effect that investigation, re-collection and discretionary fines may still be conducted or imposed on a taxpayer whose declared amount exceeds the criteria for incomes, unconstitutional?

RELEVANT LAWS:

Article 19 of the Constitution (憲法第十九條); Article 80, 103 and 110 of the Income Tax Act (所得稅法第八十條、第一百零三條、第一百十條); Articles 21 and 30 of the Tax Levy Act (稅捐稽徵法第二十一條、第三十條); Articles 3 and 4 of the Regulation Governing the Cases Randomly Selected for Reviewing on Profit-making-Enterprise Tax Return (營利事業所得稅結算申報書面審核案件抽查辦法第三條及第四條); Article 2 of the Regulation Governing the Assessment of Income Tax Returns of Profit-making Enterprises (營利事業所得稅結算申報查核準則第二條); Tai Tsai Swei Tze Ordinance No. 23798 (台財稅字第二三七九八號令).

KEYWORDS:

taxation agency (稽徵機關), simplifying the taxation procedures (簡化稽徵手續), honest filing of income taxes (誠實申報), collecting taxes evaded and rendering a fine (補徵及裁罰), evasion, omission, or under-reporting of taxable income (匿報、短報或漏報).**

* Translated by Chi-chang Yu.

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

HOLDING: When the taxation agency determines the income standard of each trade according to Paragraph 2, Article 80, of the Income Tax Act, and the taxpayer's reported amount is above such standard, the reported income shall be taken as the basis for taxation pursuant to Paragraph 3 of the same Article. The purpose of this rule is to simplify the taxation procedures for the conveniences of both the taxation agency and the taxpayer. However, it does not mean that the taxpayer is exempt from the honest filing of income taxes. The taxation agency may investigate taxation records and documentation, collect evaded taxes, and render a fine in cases of evasion, omission, or under-reporting of taxable income, pursuant to Articles 103 and 110 of the Income Tax Act and Articles 21 and 30 of the Tax Levy Act. The Regulation Governing the Cases Randomly Selected for Reviewing on Profit-making-Enterprise Tax Return, the Regulation Governing the Assessment of Income Tax Returns of Profit-making Enterprises, and Tai Tsai Swei Tze Ordinance No. 23798 published by the Ministry of Finance on May 18, 1970, were en-

解釋文：稽徵機關已依所得稅法第八十條第二項核定各該業所得額標準者，納稅義務人申報之所得額，如在上項標準以上，依同條第三項規定，即以其原申報額為準，旨在簡化稽徵手續，期使徵納兩便，並非謂納稅義務人申報額在標準以上者，即不負誠實申報之義務。故倘有匿報、短報或漏報等情事，仍得依所得稅法第一百零三條、第一百一十條、稅捐稽徵法第二十一條及第三十條等規定，調查課稅資料，予以補徵或裁罰。財政部發布之營利事業所得稅結算申報書面審核案件抽查辦法、營利事業所得稅結算申報查核準則及中華民國五十九年五月十八日台財稅字第二三七九八號令即係為執行該等法律之規定而訂定，就此而言，與憲法尚無牴觸。惟前述抽查辦法第三條、第四條查核準則第二條及上開令示，與所得稅法第八十條第三項之規定，文義上易滋誤解，應予檢討修正。

acted to implement the provisions of the Laws mentioned above. Therefore, they are not unconstitutional. Nevertheless, the wordings of Articles 3 and 4 of the Regulation, Article 2 of the Regulation, of the Ordinance, and Paragraph 2, Article 80, of the Income Tax Act are often misleading and should be amended accordingly.

REASONING: Article 80 of the Income Tax Act provides that the taxation agency shall, after receiving income tax returns, dispatch an agent to verify the amounts of taxable income and taxes due. Where there is great number of taxpayers in the vicinity, the taxation agency may conduct random checks by trade and set the income standard of each trade. If the taxpayer's reported income tax amount is above the standard amount, then the amount reported shall be taken as the basis for taxation. The reported amount, if lower than the standard amount, shall be determined after an individual check. The purpose of such provision is to alleviate the taxation agency's administrative burden of investigating every case, enabling it to assess the taxable income of taxpayer-

解釋理由書：所得稅法第八十條規定：「稽徵機關接到結算申報書後，應派員調查，核定其所得額及應納稅額。前項調查稽徵機關得視當地納稅義務人之多寡，採分業抽樣調查方法，核定各該業所得額之標準。納稅義務人申報之所得額如在前項規定標準以上，即以其原申報額為準，如不及前項規定標準者，應再個別調查核定之」。旨在解決稽徵機關逐案調查之困難，使其得依結算申報書核定納稅義務人所得額，以簡化稽徵手續，而期徵納兩便，並非謂納稅義務人申報額在標準以上者，即不負誠實申報之義務。故倘有匿報、短報或漏報等情事，仍得依所得稅法第一百零三條、第一百一十條、稅捐稽徵法第二十一條及第三十條等規定，調查課稅資料，予以補徵或裁罰。財政部發布之營利事業所得稅結算申報書面審核案

ers on their tax return, as well as to simplify the taxation procedure. It does not mean that a taxpayer whose reported income tax is higher than the standard amount is exempt from the obligation of honest filing of income taxes. According to Articles 103 and 110 of the Income Tax Act and Articles 21 and 30 of the Tax Levy Act, if there is tax evasion, omission, or under-reporting, the taxation agency must still examine documentation and investigate, collect evaded taxes and render a fine. The Regulation Governing the Cases Randomly Selected for Reviewing on Profit-making-Enterprise Tax Return, the Regulation Governing the Assessment of Income Tax Returns of Profit-making Enterprises, and the directive of May 18, 1970, Tai-Tsai-Suei Tze Ordinance No. 23798 were published and enacted by the Ministry of Finance to implement the provisions of the Laws discussed above. Therefore, they are not unconstitutional.

Articles 3 and 4 of the Regulation Governing the Cases Randomly Selected for Reviewing on Profit-making-Enterpri-

件抽查辦法、營利事業所得稅結算申報查核準則及中華民國五十九年五月十八日台財稅字第二三七九八號令即係為執行該等法律之規定而訂定，就此而言，與憲法尚無牴觸。

前述營利事業所得稅結算申報書面審核案件抽查辦法第三條及第四條、營利事業所得稅結算申報查核準則第二

se Tax Return, and Article 2 of the Regulation Governing the Assessment of Income Tax Returns of Profit-making Enterprises provide the wordings regarding random selection. In addition, the Ministry of Finance's May 18, 1970, Tai-Tsai-Suei Tze Ordinance No. 23798 stipulates that the taxation agency should verify the amounts of income tax reported by taxpayers whose reported amounts are higher than or equal to their standard amounts; if the amounts and items reported are not correct, they should be adjusted accordingly. The rule attempts to prevent dishonesty in tax reporting, yet is misleading. The third Paragraph of Article 80 of the Income Tax Act provides that "if the taxpayer's reported income tax amount is above the standard amount, then the amount reported shall be taken as the basis for taxation," causing this rule to be misinterpreted as the taxation agency may adjust or change the taxpayer's reported income through speculation. Therefore, the rule should be amended.

Justice Chien-Hua Yang filed dissenting opinion.

條，對營利事業申報所得額達各該業所得額標準者，均有實施審查及抽查之字樣；又前述財政部五十九年台財稅字第二三七九八號令，指示所屬稽徵機關，對申報之所得額已達各該業所得額標準者，應予以書面審核，如項目及數額與規定不符，並予以調整。雖係為防止不實申報所作之規定，但易使人誤以為稽徵機關對所得稅法第八十條第三項前段所稱「納稅義務人申報之所得額如在前項規定標準以上，即以其原申報額為準」之案件，不問有無事實足認其有逃漏稅情事，均得以推測方式逕行調整或變更納稅義務人申報之所得額，在文義上易滋誤解，應予檢討修正。

本號解釋楊大法官建華提出不同意見書。