

## J. Y. Interpretation No.248 (November 24, 1989) \*

**ISSUE:** Is the order issued by the Ministry of Finance, providing to the effect that the method of expense restoration will be used to estimate and determine the sales volume in levying the tax, consistent with the principle of fair taxation?

**RELEVANT LAWS:**

Article 19 of the Constitution (憲法第十九條); Articles 13, 17, 24 and 40 of the Business Tax Act (營業稅法第十三條、第十七條、第二十四條、第四十條) .

**KEYWORDS:**

method of deduction from expenses (費用還原法), business revenue appraisal (推計銷售額), equal taxation principle (租稅公平原則) .\*\*

**HOLDING:** The Operational Outlines Regulating the Audit of Income Taxes of Small-Scale Businesses, Standard Fee Schedule for the Audit and Levy of Business Tax on Small-Scale Businesses, Specific Tax Rates for the Audit and Levy of Business Tax on Small-Scale Businesses, and the Regulation Govern-

**解釋文：**財政部於中華民國七十三年五月一日核定發布之小規模營利事業營業稅查定作業要點、小規模營利事業查定課徵營業稅費用標準及小規模營利事業查定課徵營業稅專用費用率，係依據中華民國六十九年六月廿九日修正公布施行之營業稅法第十七條而訂定。該法於中華民國七十四年十一月十

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\* Translated by Chi-chang Yu.

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

ing the Audit on Business Income Taxes Special Amounts, enacted and published on May 17, 1984, by the Ministry of Finance, were promulgated according to Article 17 of the Business Tax Act, amended and published on June 29, 1980. This Act was again amended and published on November 15, 1985 and came into force on April 1, 1986. The Ministry of Finance then concurrently enacted the Regulation pursuant to Section 3, Article 40, of the said Act. The Regulation makes up the “method of deduction from expenses,” which appraises business revenues of taxation from business expenses over the expense rate. The method serves to simplify the taxation procedure for the owners of small-scale businesses. For practical purposes, it applies to economically diverse areas in different ways. In case the owner of a small-scale business does not wish to pay taxes according to the method, he or she is entitled to file an ordinary tax return. This arrangement is consistent with the equal taxation principle. Therefore, the abovementioned regulations are not unconstitutional.

五日修正公布，並於次年四月一日施行後，財政部另又依據該法第四十條第三項合併訂定營業稅特種稅額查定辦法一種。均係用「費用還原法」，依營業費用除以費用率之計算公式，推計銷售額據以課稅，以簡化對於小規模營業人之課稅手續，既已兼顧不同地區不同經濟情形，以期切合實際，而小規模營業人如不願依此特種方法計算稅額，仍得自行申請依一般方法計算稅額，符合租稅公平原則。是上開法令與憲法並無牴觸。

**REASONING:** Article 19 of the Constitution stipulates that the people have the obligation to pay taxes according to the law. This provision does not restrict the law from adopting appraising measures to levy tax under special circumstances, as declared by Interpretation No. 218 of this Yuan. Article 17 of the Business Tax Act was amended on June 29, 1970, to provide that small-scale businesses and dispersed transactions under Paragraph 3 of Article 12, and other businesses permitted to declare no tax under the rules of the Finance Ministry, are assessed at the discovered materials according to the tax bracket stipulated by the competent agency. The tax is levied once every three months. The above assessment formula is stipulated by the Provincial (or City) government, and approved by the Ministry of Finance. Thereafter, the Law was amended on November 15, 1985, and enacted on April 1, 1986. Paragraph 2 of Article 13 declares that the small-scale business is excluded by Articles 11 and 12 because of its size and because its average sales per month are below the standard set by the Ministry of

**解釋理由書：**憲法第十九條規定「人民有依法律納稅之義務。」並未限制法律規定於特定情形下以推計核定方法課稅，前經本院釋字第二一八號解釋闡明其旨。中華民國六十九年六月二十九日修正公布之營業稅法第十七條規定：「第十二條第三項規定規模狹小、交易零星之營利事業，及其他依照財政部規定免予申報營業額之營利事業，由主管稽徵機關依各該業營業狀況，釐訂稅級，根據調查之資料予以查定，每三個月定額課徵一次。前項查定計算公式，由各省（市）政府訂定，報由財政部核定之。」嗣該法於中華民國七十四年十一月十五日修正公布，並於次年四月一日施行，其第十三條第二項規定：「前項小規模營業人，指第十一條、第十二條所列各業以外之規模狹小、平均每月銷售額未達財政部規定標準而按查定課徵營業稅之營業人。」第四十條第一項、第三項分別規定「依第二十一條規定，查定計算營業稅額之典當業及依第二十三條規定，查定計算營業稅額之營業人，由主管稽徵機關查定其銷售額及稅額，每三個月填發繳款書通知繳納一次。」、「前二項查定辦法，由財政部定之。」均屬法律於特定情形下以推計核定方法課稅之規定。財政部依此有

Finance. Paragraphs 2 and 3 provide that the pawn shop business, whose business taxes are assessed under Article 21, and the business, whose business taxes are assessed under Article 23, should calculate their sale amount and tax, and serve the notification of payment of taxes to be collected once every three months. The abovementioned method of assessment is regulated by the Ministry of Finance, and is used by the Law to appraise the tax under special circumstances. Pursuant to these provisions, the Ministry of Finance subsequently published the Operational Outlines Regulating the Audit of Income Taxes of Small-Scale Businesses, the Standard Fee Schedule for the Audit and Levy on Business Tax of Small-Scale Businesses, and the Specific Tax Rates for the Audit and Levy on Business Tax of Small-Scale Businesses on May 1, 1984, and the Regulation Governing the Audit on Business Income Taxes Special Amounts, which were enacted concurrently with the amendment to the Business Tax Act, on July 7, 1976. These provisions are consistent and can be applied together since they all use the “method of

關規定，先後於中華民國七十三年五月一日核定發布小規模營利事業營業稅查定作業要點、小規模營利事業查定課徵營業稅費用標準及小規模營利事業查定課徵營業稅專用費用率，及中華民國七十五年七月七日隨營業稅之修正而合併訂定營業稅特種稅額查定辦法一種。前後規定一貫，可相繼適用，即均係用「費用還原法」，依營業費用除以費用率之計算公式，推計銷售額，而據以依法定稅率課稅，以簡化對於小規模營業人之課稅手續。其中營業費用標準，依該查定辦法第五條第三項規定，省（市）主管稽徵機關應視轄區經濟發展情形，按地段或行政區域，擬定等級評定表，報財政部備案，以資兼顧而期切合實際；而小規模營業人如不願依此特種方法計算稅額，並得依前述七十四年十一月十五日修正公布之營業稅法第二十四條第一項「小規模營業人及其他經財政部規定免予申報銷售額之營業人，得申請依照本章第一節規定計算其營業稅額，並依第三十五條規定申報繳納」之規定，自行申請依一般方法計算稅額，使與一般營業人申報繳納之方法完全相同，符合租稅公平原則。是上開法令，自與憲法並無牴觸。至統一發票給獎辦法第八條，並未為確定終局裁判所

deduction from expenses,” which appraises business revenues of taxation from business expenses over the expense rate. The method serves to simplify the taxation procedure for the owners of small-scale businesses; it is a formula for the expenses calculated by dividing the expense ratio to appraise the sales amount and serves as a basis for taxation under the statutory tax rate in order to simplify the taxation procedures. For practical purpose and completeness, the standard fee schedule is provided in the list of assessment levels enacted by the Provincial (or City) taxation agency pursuant to Paragraph 3 of Article 5 of the Regulation regarding separate economically diverse areas, filed and approved by the Ministry of Finance. In case the owner of a small-scale business does not wish to pay taxes according to the method, he or she is entitled to file an ordinary tax return under the abovementioned Paragraph 1 of Article 24 of the Business Tax Act, amended and implemented on November 15, 1985. This rule stipulates that small business entities or other business entities that are exempted from reporting their sales amount

適用，應不予解釋，合併指明。

by the Ministry of Finance shall compute their tax amounts under Section 1 of this Chapter. They shall file tax returns in accordance with Article 35 to calculate their taxes in the ordinary way consistent with the way general businesses report and pay taxes. This arrangement is consistent with the equal taxation principle. The above-mentioned regulations, therefore, are not unconstitutional. Article 8 of the Regulation Governing the Encouragement of Uniform Invoices, which was not applied in the final decision, should not be interpreted.