

J. Y. Interpretation No.252 (February 16, 1990) *

ISSUE: Is the Ministry of Finance directive in conflict with the Constitution in demanding that a business be held punishable under the Tax Levy Act if it, when making sale of goods, issues sales invoices to customers of its purchasers instead of issuing such invoices to direct purchasers as required by law?

RELEVANT LAWS:

Article 19 of the Constitution (憲法第十九條); Articles 1 and 44 of the Tax Levy Act (稅捐稽徵法第一條、第四十四條); Article 32, Paragraph 1 and Article 48 of the Business Tax Act (營業稅法第三十二條第一項、第四十八條); Ministry of Finance Directive (69) Tai-Tsai-Shui-Tze No. 36624 (August 8, 1980) (財政部六十九年八月八日(六九)台財稅字第三六六二四號函).

KEYWORDS:

Business entity (營利事業), business operator (營業人), correct tax voucher system (正確課稅憑證制度), fair taxation (稅負公平), tax assessment data (稽徵資料), antecedent and subsequent parties to transaction (交易前後手), direct purchaser (直接買受人), direct seller (直接銷售人), sales voucher (銷售憑證), uniform invoice (統一發票), uniform serial number (統一編號), extensive application (擴張適用), prior application (優先適用).**

* Translated by Raymond T. Chu.

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

HOLDING: The Ministry of Finance Directive (69) Tai-Tsai-Shui-Tze No. 36624 (August 8, 1980) takes the position that a business entity which, when making sale of goods, fails to issue uniform invoices to direct purchasers of the goods but instead issues such invoices to customers of such purchasers shall be punishable in the manner as prescribed in Article 44 of the Tax Levy Act. This directive is consistent with the purpose of the Act in establishing a correct tax voucher system among business entities, and is not in conflict with the Constitution.

REASONING: Article 19 of the Constitution provides that the people have the duty to pay tax as prescribed by law. To encourage every citizen to perform such duty honestly so as to ensure fair taxation, the state may of course take necessary actions to prevent tax evasion. Article 44 of the Tax Levy Act before the amendment made on January 24, 1990, provided: "Where a business entity fails to give others vouchers as required by law or to obtain from others vouchers as re-

解釋文：財政部中華民國六十九年八月八日（六九）臺財稅字第三六六二四號函，認為營利事業銷售貨物，不對直接買受人開立統一發票，而對買受人之客戶開立統一發票，應依稅捐稽徵法第四十四條規定論處。此項命令，核與上述法律規定，係為建立營利事業正確課稅憑證制度之意旨相符，與憲法尚無牴觸。

解釋理由書：憲法第十九條規定，人民有依法律納稅之義務。國家為促使人民誠實履行上述義務，達成稅負公平之目的，自得採取必要措施，以防止逃漏稅。中華民國七十九年一月二十四日修正布前之稅捐稽徵法第四十四條規定：「營利事業依法規定應給予他人憑證而未給予，或應自他人取得憑證而未取得者，應就其未給予憑證或未取得憑證，經查明所漏列之金額，處百分之五罰鍰。」係為使營利事業據實給予或取得憑證，俾交易前後手稽徵資料臻於

quired, it shall be liable to a fine of five percent of the amount of business it is found to have failed to enter into books as a result of its failure to give or obtain such vouchers.” This is a statute designed to establish a correct tax voucher system by bringing into line the tax assessment data of the antecedent and subsequent parties to transactions through the giving and obtaining by business entities of vouchers truly reflecting all transactions done, and is necessary for the realization of the substance of Article 19 of the Constitution.

The expression “as required by law” in Article 44 of the abovementioned Tax Levy Act refers to the requirement of Article 32, Paragraph 1, of the Business Tax Act, which states: “A business operator making sale of any goods or services shall issue and deliver to the purchaser a uniform invoice within the time limit set forth in the Schedule of Time Limit on the Issue of Sales Vouchers by Business Operators as annexed hereto.” (The former Business Tax Act, Art. 12, Par. 1, states: “A business entity shall, at the time of doing any business transaction, issue and

翔實，以建立正確課稅憑證制度，乃實現憲法第十九條意旨所必要。

上述稅捐稽徵法第四十四條所謂「依法」，係指依營業稅法第三十二條第一項：「營業人銷售貨物或勞務，應依本法營業人開立銷售憑證時限表規定之時限，開立統一發票交付買受人」之規定而言（舊營業稅法第十二條第一項：「營利事業發生營業行為時，應依本法分類計徵標的表規定之時限，開立統一發票交付買受人」）。而所謂「他人」，則指貨物或勞務之直接買受人或直接銷售人，非指直接買受人或直接銷售人以外之他人。據此，營利事業未依「營業人開立銷售憑證時限表」（舊營業稅法分類計徵標的表）之規定，給予

deliver to the purchaser a uniform invoice within the time limit specified in the Table of Categorized Items Subject to Business Tax herein incorporated.”) And the term “others” means the direct purchasers or direct sellers of goods or services, not any persons other than such direct purchasers and sellers. Accordingly, the failure of a business entity to give a “direct purchaser” a voucher or to obtain from a “direct seller” a voucher as required by the Schedule of Time Limit on the Issue of Sales Vouchers by Business Operators (the Table of Categorized Items Subject to Business Tax in the former Business Tax Act) constitutes an act in violation of Article 44 of the Tax Levy Act.

The Ministry of Finance Directive (69) Tai-Tsai-Shui-Tze No. 36624 (August 8, 1980) (shown as No. 36634 due to clerical error in the criminal ruling of the Taiwan High Court (76) Tsai-Kang-Tze No. 848) states that the corporation in question which, when making sales of plywood to its distributors during 1977, issued uniform invoices to customers of such distributors instead of issuing uni-

「直接買受人」憑證或自「直接銷售人」取得憑證，即構成稅捐稽徵法第四十四條之違法行為。

財政部中華民國六十九年八月八日（六九）臺財稅字第三六六二四號（台灣高等法院七十六年度財抗字第八四八號刑事裁定誤寫為第三六六三四號）函釋示，某股份有限公司於六十六年度銷售合板予經銷商時，未依規定開立發票予該經銷商，而以該經銷商之客戶之名義開立統一發票，應依稅捐稽徵法第四十四條規定論處。此項命令，核與前述法律規定之意旨相符，並未擴張

form invoices to such distributors as required by law is punishable in the manner as prescribed in Article 44 of the Tax Levy Act. We find that said directive is consistent with the aforementioned statute without extensive application and is hence not in conflict with the Constitution.

Incidentally, Article 1 of the Tax Levy Act provides that “The collection of taxes shall be governed by this Act, except for matters not prescribed herein, which shall be governed by provisions of other applicable laws.” Thus, in case of any conflict between the Tax Levy Act and any other law, the provision of the Tax Levy Act shall prevail over such other law. Furthermore, the provision of Article 48 of the Business Tax Act relating to the “failure of a business operator to make such entries in uniform invoices as required to be entered or to make correct entries therein” refers to the situation where a business operator has issued and delivered to the purchaser a uniform invoice in compliance with Article 32 of the Business Tax Act, but has failed to make such entries in the uniform invoice as re-

適用，與憲法尚無牴觸。

稅捐稽徵法第一條規定：「稅捐之稽徵，依本法之規定；本法未規定者，依其他有關法律之規定」。故稅捐稽徵法與其他稅法規定不相同時，應優先適用稅捐稽徵法。且營業稅法第四十八條有關「營業人開立統一發票應行記載事項未依規定或所載不實」之規定，則係指營業人已依營業稅法第三十二條規定開立統一發票交付買受人，惟其應行記載事項未依規定記載或所載不實，如應書立抬頭而未書立，或應填寫買受人統一編號而未填寫等情形而言，並不包括對於直接買受人不給予憑證之情形在內，更無優先適用營業稅法之問題，併此說明。

quired or has made false entries therein, e.g., omission of the name or the uniform serial number of the purchaser. This article is irrelevant to the requirement with respect to the issue of vouchers to direct purchasers, and therefore has nothing to do with the prior application of the Business Tax Act.

Justice Chih-Peng Lee filed dissenting opinion.

本號解釋李大法官志鵬提出不同意見書。