

J. Y. Interpretation No.277 (March 22, 1991) *

ISSUE: Are the relevant provision of the Act Governing the Allocation of Government Revenues and Expenditures, prescribing that “the central government shall lay down general principles for the various taxes as the basis of lawmaking for the provincial and county governments, “ and that the central government shall make an overall planning for and allocation of certain local tax revenues, in violation of the Constitution?

RELEVANT LAWS:

Articles 107, Subparagraph 7, 109, Paragraph 1, Subparagraph 7 and 110, Paragraph 1, Subparagraph 6, 147 of the Constitution (憲法第一百零七條第七款、第一百零九條第一項第七款及第一百十條第一項第六款、第一百四十七條) ; Article 7 and 12 of the Division of Financial Revenue and Expenditure Act (財政收支劃分法第七條、第十二條) .

KEYWORDS:

national tax (國稅) , provincial tax (省稅) , central government (中央政府) , general tax principles (稅法通則) .**

HOLDING: The second sentence of Article 7 of the Act Governing the Allocation of Government Revenues

解釋文：財政收支劃分法第七條後段關於省及直轄市、縣（市）（局）稅課立法，由中央制定各該稅法

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and Expenditures, which stipulates that the general tax principles of provinces, municipalities and counties (cities and bureaus) under the direct governance of the Executive Yuan shall be established by the central government as the basis of tax legislation of provinces and counties, is enacted in accordance with Article 107, Subparagraph 7 of the Constitution for the separation of national, provincial, and county tax and to meet the principle of taxation-by-law and is not contrary to the Constitution. Therefore, in order to enable the local governments to exercise the power of legislation as authorized by Article 109, Paragraph 1, Subparagraph 7 and Article 110, Paragraph 1, Subparagraph 6 of the Constitution, the central government shall, for tax allocated to local governments, enact general tax principles for local governments or establish general tax principles in the various tax laws applicable to local governments in accordance with the provisions of the Act Governing the Allocation of Government Revenues and Expenditures referred to in the above. Currently there are no general tax principles for local governments nor

通則，以為省、縣立法依據之規定，係中央依憲法第一百零七條第七款為實施國稅與省稅、縣稅之劃分，並貫徹租稅法律主義而設，與憲法尚無牴觸。因此中央應就劃歸地方之稅課，依財政收支劃分法前開規定，制定地方稅法通則，或在各該稅法內訂定可適用於地方之通則性規定，俾地方得據以行使憲法第一百零九條第一項第七款及第一百十條第一項第六款賦予之立法權。目前既無地方稅法通則，現行稅法又有未設上述通則性規定者，應從速制定或增訂。在地方未完成立法前，仍應依中央有關稅法辦理。至中央與地方財政收支劃分之規定，中央自應斟酌實際情形，適時調整，以符憲法兼顧中央與地方財政均衡之意旨，併予說明。

do the current tax laws provide general tax principles applicable to local governments. Such laws shall be enacted as soon as possible. However, before the enactment of such laws, local taxation shall be implemented according to the relevant central government tax laws. As for the division of revenue and expenditure between the central and local governments, the central government shall adjust such division from time to time according to the factual situation so as to meet the spirit of the Constitution with due consideration of the central government.

REASONING: Article 7 of the Act Governing the Allocation of Government Revenues and Expenditures stipulates that “the legislation of the provincial and county (city and bureau) taxes shall be proposed only when it is expressly provided in the Act, and the central government shall establish general tax principles as the legislative basis of the local governments.” The second part of the above quoted provision is based on Article 107, Paragraph 7 of the Constitution to implement the separation of national, pro-

解釋理由書：財政收支劃分法第七條規定：「省及直轄市、縣（市）（局）稅課立法，以本法有明文規定者為限，並由中央制定各該稅法通則，以為省、縣立法之依據」，其後段部分，係中央依憲法第一百零七條第七款為實施國稅與省稅、縣稅之劃分，並貫徹租稅法律主義而設，與憲法尚無牴觸。憲法第一百零九條第一項第七款及第一百十條第一項第六款規定，省稅及縣稅由省縣立法並執行之，係指地方得依國稅與省縣稅合理劃分之中央立法，就已劃歸省縣之稅課，自行立法並執行之。因

vincial, and county tax and to meet the principle of taxation-by-law and is not contrary to the Constitution. The provisions of Article 109, Paragraph 1, Subparagraph 7 and Article 110, Paragraph 1, Subparagraph 6, which stipulate that the local governments shall have the power of legislation and taxation of the provincial and county tax means the provincial and county taxes that have been reasonably allocated to the local governments according to the laws made by the central government. Therefore, in order to enable the local government to exercise the power of tax legislation authorized by the Constitution, the central government shall enact general tax principles for local taxes, or establish general tax principles in the various tax laws applicable to local government in accordance with the Act Governing the Allocation of Government Revenues and Expenditures referred to in the above. Currently, there are no general tax principles nor do the current tax laws provide general tax principles applicable to local governments. Such laws shall be enacted as soon as possible. However, before the enactment of local tax laws, the

此中央應就劃歸地方之稅課，依財政收支劃分法前開規定，制定地方稅法通則，或在各該稅法內訂定可適用於地方之通則性規定，俾地方得據以行使憲法賦予之立法權。目前既無地方稅法通則，現行稅法又有未設上述通則性規定者，應從速制定或增訂。在地方未完成立法前，有關地方稅課之中央立法繼續有效，仍應依其規定辦理。至財政收支劃分之規定，中央自應斟酌經濟發展及稅課來源等實際情形，適時調整，以符憲法兼顧中央與地方財政均衡之意旨；又財政收支劃分法第十二條第二項及第三項就有關營業稅與印花稅統籌分配之規定，符合憲法第一百四十七條謀求地方經濟平衡發展之意旨，與憲法並無牴觸，業經本院釋字第二三四號解釋示在案，併此說明。

relevant provisions regarding local tax as provided in the tax laws of the central government shall continue to be valid and shall be enforced accordingly. As for the allocations of revenue and expenditure, the central government shall adjust them from time to time according to the factual situation of economic development and the sources of tax. Such allocations should comply with the constitutional spirit of financial balance of the central and local governments. Furthermore, Paragraphs 2 and 3 of Article 12 of the Act Governing the Allocation of Government Revenues and Expenditures, which provide for the centralized collection and allocation of business tax and stamp duty, are in conformity with the provision of Article 147 of the Constitution, which advocates balanced local economic development, and therefore are not contrary to the Constitution. This has already been interpreted by this Court in Interpretation No. 234.

Justice Chung-Sheng Lee filed dissenting opinion in part.

本號解釋李大法官鐘聲提出一部不同意見書。