

J. Y. Interpretation No.286 (November 29, 1991) \*

**ISSUE:** Are the relevant provisions of the Equalization of Land Rights Act and the Enforcement Rules thereof, providing that the land value increment tax for a land whose value increases naturally shall be levied based on the balance of the aggregate amount of price increase minus the cost of its improvement, in violation of the Constitution?

**RELEVANT LAWS:**

Article 15, Paragraph 3, of Article 143 of the Constitution (憲法第十五條、第一百四十三條第三項) ; Article 35, and Paragraphs 1 and 2 of Article 36 of the Equalization of Land Rights Act (平均地權條例第三十五條、第三十六條第一項、第二項) ; Article 53 of the Enforcement Rules of the Equalization of Land Rights Act (平均地權條例施行細則五十三條) .

**KEYWORDS:**

property right (財產權) , land value increment tax (土地增值稅) , accruing the increased land value to the public (漲價歸公) , the total amount of the increased land value (土地漲價總數額) , expenses for land improvement (土地改良費用) .\*\*

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\* Translated by Jer -Sheng Shieh.

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

**HOLDING:** Paragraph 3 of Article 143 of the Constitution provides: “If the value of a parcel of land has increased, not through the exertion of labor or the employment of capital, the State shall levy thereon a land value increment tax, the proceeds of which shall accrue to the public.” This provision is for the purpose of implementing the policy of accruing the automatically increased land value to the public. Article 35, and Paragraphs 1 and 2 of Article 36 of the Equalization of Land Rights Act, which was amended and promulgated on February 2, 1977, and Article 53 of the Enforcement Rules of this Act issued by the Executive Yuan on April 1 in the same year provide that, the land value which has automatically increased after the landowner declared the land value shall be calculated on the basis of the remainder of the total amount of the increased land value by subtracting all of the expenses for land improvement already paid by the landowner, and the land value increment tax shall thus be levied; though this remainder might include the value which has increased because of the improvement on the land, this calculation

**解釋文：**憲法第一百四十三條第三項規定：「土地價值非因施以勞力資本而增加者，應由國家徵收土地增值稅，歸人民共享之」，旨在實施土地自然漲價歸公政策。中華民國六十六年二月二日修正公布之平均地權條例第三十五條、第三十六條第一項、第二項及同年四月一日行政院發布之同條例施行細則第五十三條規定，土地所有權人於申報地價後之土地自然漲價，應依照土地漲價總數額，減去土地所有權人為改良土地已支付之全部費用後之餘額計算，徵收土地增值稅；其間縱有因改良土地而增加之價值，亦因認定及計算不易，難以將之與自然漲價部分明確劃分，且土地增值稅並未就漲價部分全額徵收，已足以兼顧其利益，與憲法第十五條及第一百四十三條第三項規定之意旨尚無抵觸。

of the automatically increased land value is still not in conflict with the intent of Article 15 and Paragraph 3 of Article 143 of the Constitution, for this value which has increased because of the improvement on the land is not easily recognized and calculated, is hard to clearly distinguish from the value which has automatically increased, and the interests of the landowner have to be taken into account because the land value increment tax is not levied on the full amount of the increased land value.

**REASONING:** Paragraph 3 of Article 143 of the Constitution provides: “If the value of a parcel of land has increased, not through the exertion of labor or the employment of capital, the State shall levy thereon a land value increment tax, the proceeds of which shall accrue to the public.” This provision is for the purpose of implementing the policy of accruing the automatically increased land value to the public. The first part of Article 35 of the Equalization of Land Rights Act, which was amended and promulgated on February 2, 1977, provides: “In order to

**解釋理由書：**憲法第一百四十三條第三項規定：「土地價值非因施以勞力資本而增加者，應由國家徵收土地增值稅，歸人民共享之」，旨在實施土地自然漲價歸公政策。中華民國六十六年二月二日修正公布之平均地權條例第三十五條前段規定：「為實施漲價歸公，土地所有權人自行申報地價後之土地自然漲價，應徵收土地增值稅」。同條例第三十六條第一項前段及第二項規定：「土地增值稅之徵收，應依照土地漲價總數額計算，於土地所有權移轉或設定典權時行之」、「前項土地漲價總數額，應減去土地所有權人為改良土地

implement the policy of accruing the increased land value to the public, the land value increment tax shall be levied on the land, the value of which has automatically increased after the landowner declared the land value.” Paragraph 1, the first part, and Paragraph 2 of Article 36 of the same Act provide: “The levy of land value increment tax shall be calculated on the basis of the total amount of the increased land value and shall accrue to the public at every transfer of land ownership or at creation of the right of *dian*”; and “From the total amount of the increased land value as referred to in the preceding paragraph, there shall be subtracted all of the expenses for land improvement already paid by the landowner.” Paragraph 1, the first part, and Paragraph 2 of Article 53 of the Enforcement Rules of this Act issued by the Executive Yuan on April 1 in the same year further provide: “The expenses which shall be subtracted according to Paragraph 2 of Article 36 of this Act include the expenses for land improvement, construction benefit charge, and the costs of land consolidation”; and “The expenses subtracted according to the preceding

已支付之全部費用」。同年四月一日行政院發布之同條例施行細則第五十三條第一項前段及第二項復規定：「依本條例第三十六條第二項規定應減去之費用，包括改良土地費、工程受益費及土地重劃負擔總費用。」、「依前項規定減去之費用，應由土地所有權人於土地增值稅繳納前，提出工程受益費繳納收據、工務（建設）機關發給之改良土地費用證明書或地政機關發給之土地重劃負擔總費用證明書。」是土地所有權人於申報地價後之土地自然漲價，應依照土地漲價總數額，減去土地所有權人為改良土地已支付之全部費用後之餘額計算，徵收土地增值稅。其間縱有因改良土地而增加之價值，亦因認定及計算不易，難以將之與自然漲價部分明確劃分，且土地增值稅並未就漲價部分全額徵收，已足以兼顧其利益，與憲法第十五條及第一百四十三條第三項規定之意旨尚無牴觸。至計算土地自然漲價數額時，應如何核實訂定扣減改良土地費用之標準，本可有從嚴從寬之抉擇，而此與增值稅稅率之調整及是否另徵所得稅有密切關連，應由有關機關隨稅捐稽徵技術之進步，在立法得裁量之範圍內，適時通盤檢討改進，併予指明。

paragraph shall be proved by a receipt of payment of the construction benefit charge, a certificate of expenses for land improvement made by the engineering (construction) office, or a certificate of costs of land consolidation made by the land administration office, and these receipts or certificates shall be submitted by the landowner before paying the land value increment tax.” Therefore the land value which has automatically increased after the landowner declared the land value shall be calculated on the basis of the remainder of the total amount of the increased land value by subtracting all of the expenses for land improvement already paid by the landowner, and the land value increment tax shall be thus levied. Though this remainder might include the value which has increased because of the improvement on the land, this calculation of the automatically increased land value is still not in conflict with the intent of Article 15 and Paragraph 3 of Article 143 of the Constitution, for this value which has increased because of the improvement on the land is not easily recognized and calculated, is hard to clearly distinguish

from the value which has automatically increased, and the interests of the landowner have to be taken into account because the land value increment tax is not levied on the full amount of the increased land value. As to how to actually set the standard for the subtraction of expenses for land improvement during the calculation of the amount of the automatically increased land value, it could be set strictly or leniently, and it should be closely related to the adjustment of the value increment tax rate and the question of whether another income tax should be levied. We hereby additionally point out that it shall be comprehensively reviewed and improved in time by the authority concerned, accompanied with improvements in the tax levying procedure and be within the range of delegation of the statute.

Justice Yu-Ling Yang filed dissenting opinion.

本號解釋楊大法官與齡提出不同意見書。