

J. Y. Interpretation No.289 (December 27, 1991) *

ISSUE: Does the procedure on tax sanctions imposed by the courts, based upon the Regulation Governing the Handling of Financial Penalties, violate the constitution?

RELEVANT LAWS:

Article 19 of the Constitution (憲法第十九條); Regulation Governing the Handling of Financial Penalties Cases (財務案件處理辦法).

KEYWORDS:

administrative rule (行政規則), legislation (立法), individual rights (人民權利).**

HOLDING: The procedure on tax sanctions imposed by the courts shall be provided by law for the purpose of the constitutional guarantee of individual rights. The Interpretations Yuan-je tze Nos. 3685 and 4006, and Regulation Governing the Handling of Financial Penalties Cases, amended and promulgated on October 11, 1972, were temporary arrangements made prior to the enactment of legislation and shall become void

解釋文：稅法規定由法院裁定之罰鍰，其處理程序應以法律定之，以符合憲法保障人民權利之意旨。本院院解字第三六八五號、第四〇〇六號解釋及行政院於中華民國六十一年十月十二日修正發布之財務案件處理辦法，係法制未備前之措施，均應自本解釋公布之日起，至遲於屆滿二年時失其效力。

* Translated by Professor J. P. Fa.

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

within two years from the date of this Interpretation.

REASONING: The procedure on tax sanctions imposed by the courts shall be provided by law for the purpose of the constitutional guarantee of individual rights. The Interpretations Yuan-je tze Nos. 3685 and 4006, and Regulation Governing the Handling of Financial Penalties Cases, amended and promulgated on October 11, 1972, were temporary arrangements made prior to the enactment of legislation and shall become void within two years from the date of this Interpretation. In view of legislative policy, it is permissible to provide a judicial procedure dealing with tax violations even if these sanctions are by nature administrative acts for all purposes. This judicial procedure differs from civil and criminal procedure, but in practice has always been regarded as a part of criminal procedure. Furthermore, the Executive Yuan has promulgated the Regulation Governing the Handling of Financial Penalties Cases on October 2, 1954, to serve as the necessary legal basis. These arrangements were

解釋理由書：國家因人民違反稅法而課處罰鍰，雖屬行政處分性質之行政秩序罰，惟基於立法政策之考量，亦非不可於稅法規定由法院以裁定為之。法院依此規定所應處理之罰鍰裁定案件，乃為民事、刑事訴訟案件以外之其他訴訟案件，而由於法院組織法修正前，普通法院管轄之訴訟案件，僅有民事與刑事兩種，實務上依本院以往解釋將之歸於刑事訴訟程序處理，並由行政院於中華民國四十三年十月二日發布財務案件處理辦法為處理之準據，實為法制未完備前之不得已措施，此種情形不宜任其長久繼續存在。上述稅法規定由法院裁定之罰鍰，其處罰及救濟程序自應以法律定之，以符憲法保障人民權利之意旨。惟為顧及有關法律之制定尚需相當時間，本院院解字第三六八五號及第四〇〇六號解釋謂：「法院罰鍰裁定確定後，不得以發現新證據聲請更正原裁定」、「抗告法院所為違反稅法之裁定，縱有錯誤，在現行法上尚無補救之途」，暨六十一年十月十二日修正發布之上述財務案件處理辦法，均應自本解釋公布之日起，至遲於屆滿二年時失其

intended to be transitional and thus shall not be operative over a long period of time. The judicial procedure on tax sanctions and remedies shall be provided by legislation only in order to meet the constitutional guarantee of individual rights. In view of the fact that the enactment of legislation takes time, the Interpretations Yuan-je tze Nos. 3685 and 4000, which state that "After the tax sanctions imposed by the courts have become irrevocable, the party concerned can not petition for correcting the original ruling" and that "Even if there are errors in the ruling of violating the tax Act, made by the court of appeal, there are no measures to amend in the exiting laws," and the abovementioned Regulation, amended and promulgated on October 12, 1972, shall become void within two years from the date of this Interpretation. Based on the differences which exist between civil, criminal and administrative litigations and the progress of the reform of administrative procedure, as well as tax enforcement procedures, the government departments concerned shall amend the legislation comprehensively without further delay.

效力。在此期間，主管機關應本民事、刑事及行政訴訟程序各有不同之意旨，並參酌行政訴訟制度及財務案件執行程序之改革，就有關法律通盤檢討修正，併此說明。

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Justice Chung-Sheng Lee filed dissenting opinion.

Justice Zu-Zan Yang filed dissenting opinion in part.

Justice Chien-Hua Yang filed dissenting opinion in part.

本號解釋李大法官鐘聲提出不同意見書；楊大法官日然、楊大法官建華分別提出一部不同意見書。