

J. Y. Interpretation No.311 (December 23, 1992) *

ISSUE: Where an heir is late in declaring and paying the estate tax and as a result the market price of the estate inherited by him has become higher than the value of the property at the date of death of the decedent, is it constitutional for the Estate and Gift Taxes Act to require that estate tax be levied on the basis of such increased value?

RELEVANT LAWS:

Article 13 of the Constitution (憲法第十三條); Article 10, Paragraph 1, first sentence and Article 44 of the Estate and Gift Taxes Act (遺產及贈與稅法第十條第一項前段、第四十四條); Article 48-1, Paragraph 1, proviso of the Tax Levy Act (稅捐稽徵法第四十八條之一第一項但書); Article 31, Paragraph 2 of the Land Tax Act (土地稅法第三十一條第二項); Article 38, Paragraph 2, second sentence of the Equalization of Land Rights Act (平均地權條例第三十八條第二項後段) .

KEYWORDS:

estate tax (遺產稅), value of the estate (遺產價值), market price (時價), late declaration (逾期申報), double punishment (重複處罰), passive interest (消極利益), land value increment tax (土地增值稅), government-declared value of land (土地公告現值), Directorate General of Postal Remittances and Saving Bank (郵政儲金匯業局) .**

* Translated by Raymond T. Chu.

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HOLDING: The Estate and Gift Taxes Act provides, in Article 10, Paragraph 1, first sentence, that for the purpose of imposition of estate tax, the value of the estate is determined according to its market price prevailing at the time of death of the decedent. In the case of late declaration of the estate tax, however, the proviso to the same paragraph makes the market price at the date of overdue declaration the value of the estate if it is higher than the market price at the date of death of the decedent. While the legislative purpose of this provision is to prevent the taxpayer from adopting tricky wait-and-see tactics, the fact that this provision, requiring that the market price subsequent to increase of the value of the estate be taken as the basis for assessment of the value of the estate, is incorporated in the same Act in parallel with the penal provisions laid down in Article 44 thereof, gives rise to the doubt of double punishment, and must therefore be reviewed and amended promptly. As regards the proviso to Paragraph 1, Article 48-1, of the Tax Levy Act, whereby interest is made accruable and collectible together with the

解釋文：遺產稅之徵收，其遺產價值之計算，以被繼承人死亡時之時價為準，遺產及贈與稅法第十條第一項前段定有明文。對逾期申報遺產稅者，同項但書所為：如逾期申報日之時價，較死亡日之時價為高者，以較高者為準之規定，固以杜絕納稅義務人取巧觀望為立法理由，惟其以遺產漲價後之時價為遺產估價之標準，與同法第四十四條之處罰規定並列，易滋重複處罰之疑慮，應從速檢討修正。至稅捐稽徵法第四十八條之一第一項但書規定加計利息，一併徵收，乃因納稅義務人遲繳稅款獲有消極利益之故，與憲法尚無牴觸。

tax, we hold it is not contrary to the Constitution as the taxpayer, by late payment of the tax, has earned passive interest therefrom.

REASONING: Inheritance commences upon death of the decedent, and the heir thereupon begins to assume all obligations and rights with respect to the property of the decedent. This is also the time the obligation of the heir to pay estate tax occurs, and it explains the reason that the Estate and Gift Taxes Act provides in Article 10, Paragraph 1, first sentence, that for the purpose of imposition of estate tax, the value of the estate is determined according to its market price prevailing at the time of death of the decedent. In the case of late declaration of the estate tax, however, the proviso to the same paragraph makes the market price at the date of overdue declaration the value of the estate if it is higher than the market price at the date of death of the decedent. While the legislative purpose of this provision is to prevent the taxpayer from adopting tricky wait-and-see tactics, the fact that this provision, requiring that the

解釋理由書：繼承因被繼承人死亡而開始，被繼承人死亡，繼承人即承受被繼承人財產上之一切權利義務，繼承人繳納遺產稅之義務亦應自此時發生，遺產及贈與稅法第十條第一項前段規定：遺產價值之計算，以被繼承人死亡時之時價為準，即係本此意旨。對逾期申報遺產稅者，同項但書所為：如逾期申報日之時價，較死亡日之時價為高者，以較高者為準之規定，固以杜絕納稅義務人取巧觀望為其立法理由。惟其將繼承人已取得遺產權利後所增加之財產價值，亦列入遺產範圍，從高估價，與同法第四十四條另規定納稅義務人未依限辦理遺產稅申報者，按核定應納稅額加處一倍至二倍之罰鍰，兩者並列，又未設擇一適用之規定，易滋重複處罰之疑慮。而因繼承取得之土地，再行移轉者，就其土地漲價之部分徵收土地增值稅，依土地稅法第三十一條第二項及平均地權條例第三十八條第二項後段，則又以繼承開始時公告現值為計算之基準，相關法令應如何配合，均應從速檢

value of the property increased after the heir acquired the right to the estate be included in the estate for higher assessment, is incorporated in the same Act in parallel with Article 44, which imposes on the taxpayer who fails to declare the estate tax within the specified time limit a penalty in sum equal to or twice the amount of the tax payable, without allowing any choice of application between them, gives rise to the doubt of double punishment. In contrast, in the case of re-transfer of land acquired by inheritance, a land value increment tax is levied on the amount of increase in the land value. Under Article 31, Paragraph 2, of the Land Tax Act and Article 38, Paragraph 2, second sentence, of the Equalization of Land Rights Act, however, land value increment tax is computed on the basis of the government-declared value of the land at the time of commencement of the inheritance. Thus, the relevant laws must be reviewed and amended for the purpose of reconciliation promptly. As regards the proviso to Paragraph 1, Article 48-1, of the Tax Levy Act, which states: "An interest shall be paid together with the tax amount made

討修正。至稅捐稽徵法第四十八條之一第一項但書規定：「其補繳之稅款，應自該項稅捐原繳納期限截止之次日起，至補繳之日止，就補繳之應納稅捐，依原應繳納稅款期間屆滿之日郵政儲金匯業局之一年期定期存款利率，按日加計利息，一併徵收」，乃因納稅義務人遲繳稅款獲有消極利益之故，與憲法尚無牴觸。

up by the taxpayer, for each day in arrears from the date following the last day of the initial time limit for the payment of such tax until the date of such make-up payment, at the interest rate paid by the Directorate General of Postal Remittances and Savings Bank for one-year time deposit and prevailing at the date of expiration of the initial time limit for payment of such tax,” we hold it is not contrary to the Constitution as the taxpayer, by late payment of the tax, has earned passive interest therefrom.

Justice Chien-Tsai Cheng filed dissenting opinion in part.

Justice Rui-Tang Chen filed dissenting opinion.

本號解釋鄭大法官健才提出一部及理由不同意見書；陳大法官瑞堂提出不同意見書。