

J. Y. Interpretation No.317 (May 21, 1993) *

ISSUE: Is Article 111 of the Income Tax Act constitutional in stipulating a sanction against tax withholders for violating their legal obligations?

RELEVANT LAWS:

Article 7, Paragraph 5, Article 88, Article 89, Paragraph 3, Article 92 and Article 111, Paragraph 2 of the Income Tax Act (所得稅法第七條第五項、第八十八條、第八十九條第三項、第九十二條、第一百十一條第二項) .

KEYWORDS:

tax withholder (扣繳義務人) , tax withholding (扣繳) .**

HOLDING : Paragraph 2 of Article 111 of the Income Tax Act, which was amended and promulgated on December 30, 1987, stipulates that any private entity or enterprise that fails to prepare and file a report within the prescribed time limit or fails to make a truthful report as required by the provision of Paragraph 3 of Article 89 of this Act shall be subject to a fine of NT\$ 500. This stipulation is a

解釋文：中華民國七十六年十二月三十日修正公布之所得稅法第一百十一條第二項，關於私人團體或事業，違反第八十九條第三項之規定，未依限填報或未據實申報者，處該團體或事業五百元罰鍰之規定，係對稅款扣繳義務人違反法律上作為義務所為之制裁，以確實掌握課稅資料，為增進公共利益所必要，與憲法並無牴觸。

* Translated by John C. Chen, Attorney at Law.

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

sanction against tax withholders for violating their legal obligations. The purpose of this stipulation is to obtain precise and relevant tax information and is necessary to increase the public interest. Therefore, such stipulation does not contradict the Constitution.

REASONING: Under the Income Tax Act, the term “tax withholder” refers to a person who is required to withhold income tax from his payment to be made to a taxpayer. For a taxpayer having any income, the tax withholder involved is required to withhold tax payable at the time of payment as per the prescribed tax rates or withholding procedures, pay the tax withheld to the national treasury, and complete withholding certificates and submit them to the tax collection authority. If tax is not withheld because the amount paid does not reach the minimum amount of income that is subject to tax withholding, the tax withholder is required to file the name and relevant information of the recipients to the tax collection authority before the prescribed time limit expires. These have been exp-

解釋理由書：依所得稅法規定，應自付與納稅義務人之給付中扣繳所得稅款之人，為扣繳義務人。扣繳義務人應就納稅義務人之所得，於給付時依規定之扣繳率或扣繳辦法扣取稅款，在法定之期限內，向國庫繳清，並開具扣繳憑單彙報該管稽徵機關，其未達起扣點者，並應依限將受領人之姓名及相關資料向該管稽徵機關申報，中華民國七十六年十二月三十日修正公布之所得稅法第七條第五項、第八十八條、第九十二條、第八十九條第三項規定甚明。

licitly provided for in Paragraph 5 of Article 7, Articles 88 and 92, and Paragraph 3 of Article 89 of the Income Tax Act, which were amended and promulgated on December 30, 1987.

The stipulation of Paragraph 2 of Article 111 of the Income Tax Act, which provides that any private entity or enterprise that fails to prepare and file a report within the prescribed time limit or fails to make a truthful report as required by the provisions of Paragraph 3 of Article 89 of this Act shall be subject to a fine of NT\$ 500, is a sanction against tax withholders who do not perform their legal obligations. Such withholding and filing obligations are prescribed by law to ensure the acquisition of relevant tax information by the government and are necessary to increase the public interest and do not contradict the Constitution.

同法第一百十一條第二項，關於私人團體或事業，違反第八十九條第三項之規定，未依限填報或未據實申報者，處該團體或事業五百元罰鍰之規定，係對扣繳義務人未盡其法律上應盡之義務時所為之制裁。此項扣繳或申報義務，乃法律規定之作為義務，其目的在使國家得以確實掌握課稅資料，為增進公共利益所必要，與憲法並無牴觸。