

J. Y. Interpretation No.327 (October 8, 1993) *

ISSUE: Does the first sentence of Subparagraph 2, Article 114 of the Income Tax Act provide for excessive fines and thus contradict the Constitution?

RELEVANT LAWS:

Articles 92 and 114, Subparagraph 2, the first sentence of the Income Tax Act (所得稅法第九十二條及第一百十四條第二款前段) .

KEYWORDS:

tax withholder (扣繳義務人) .**

HOLDING: The first sentence of Subparagraph 2, Article 114, of the Income Tax Act provides that, for a tax withholder who has withheld and paid taxes in accordance with this Act but failed to submit or issue the tax-withholding certificates within the time limit prescribed in Article 92, the tax withholder shall, in addition to being requested to submit or issue the same within the time limit ordered by the authority, be

解釋文：所得稅法第一百十四條第二款前段：「扣繳義務人已依本法扣繳稅款，而未依第九十二條規定之期限按實填報或填發扣繳憑單者，除限期責令補報或填發外，應按扣繳稅額處百分之二十之罰鍰，但最低不得少於一千五百元；逾期自動申報或填發者，減半處罰」，旨在掌握稅源資料，維護租稅公平，就違反此項法律上作為義務應予制裁部分，為增進公共利益所必要，與憲法尚無牴觸。惟對於扣繳義務人已將

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fined at the rate of twenty per cent of the tax amount to be withheld. The amount of the fine, however, shall not be less than NT\$ 1,500. If the certificate is submitted or issued after the deadline as a result of the tax withholder's own initiative, the fine shall be reduced by fifty per cent. The purposes of the aforesaid provision are to obtain the relevant tax source information and to preserve fair taxation. The imposition of a fine upon the tax withholder for his/her noncompliance with the duties is necessary to protect the public interest, and such provision does not contradict the Constitution. However, the authority-in-charge shall review and revise the provision under which the tax withholder would be fined at a fixed rate of the tax amount to be withheld without reasonable ceiling even though the tax withholder has paid the withholding tax within the prescribed time limit but only failed to submit or issue the tax-withholding certificates within the prescribed time limit.

REASONING: The first sentence of Subparagraph 2, Article 114, of the Income Tax Act provides that, for a

所扣稅款依限向國庫繳清，僅逾期申報或填發扣繳憑單者，仍依應扣繳稅額固定之比例處以罰鍰，又無合理最高額之限制，應由有關機關檢討修正。

解釋理由書：中華民國七十八年十二月三十日修正公布之所得稅法第一百十四條第二款前段：「扣繳義務人

tax withholder who has withheld and paid taxes in accordance with this Act but failed to submit or issue the tax-withholding certificates within the time limit prescribed in Article 92, the tax withholder shall, in addition to being requested to submit or issue the same within the time limits ordered by the authority, be fined at the rate of twenty per cent of the tax amount to be withheld. The amount of the fine, however, shall not be less than NT\$ 1,500. If the certificate is submitted or issued after the deadline as a result of the tax withholder's own initiative, the fine shall be reduced by fifty per cent. The provision is to punish the tax withholder for his/her noncompliance with the submitting or issuing requirements within the prescribed time limit. The purpose of imposing sanctions upon the non-compliant is to maintain the tax withholding system by compelling the tax withholder to perform his/her obligations. Such provision is necessary for the authority-in-charge to obtain the relevant tax source information, to preserve fair taxation, and to ensure revenue for the Treasury, rather than to place unnecessary bur-

已依本法扣繳稅款，而未依第九十二條規定之期限按實填報或填發扣繳憑單者，除限期責令補報或填發外，應按扣繳稅額處百分之二十之罰鍰，但最低不得少於一千五百元；逾期自動申報或填發者，減半處罰。」乃對扣繳義務人未於法定期限填報或填發之制裁規定。其就違反義務者，課以一定之制裁，係為貫徹扣繳制度，督促扣繳義務人善盡其應盡之作為義務，俾稽徵機關得以掌握稅源資料，達成維護租稅公平並確保國庫收入之必要手段，並非徒然增加扣繳義務人之負擔，就違反此項法律上作為義務應予制裁部分而言，為增進公共利益所必要，與憲法尚無牴觸。惟對於扣繳義務人已將所扣繳稅款依限向國庫繳清，僅逾期申報或填發扣繳憑單者，仍依應扣繳稅額固定之比例處以罰鍰，又無合理最高額之限制，有導致處罰過重之情形，應由有關機關檢討修正。

den upon the tax withholder. In this regard, the imposition of fine upon the tax withholder for his/her noncompliance with the duties is necessary to protect the public interest, and such provision does not contradict the Constitution. However, the authority-in-charge shall, in order to prevent the imposition of excessive punishment, review and revise the provision under which the tax withholder should be fined at a fixed rate of the tax amount to be withheld without reasonable ceiling even though the tax withholder has paid the withholding tax within the prescribed time limit but only failed to submit or issue the tax-withholding certificates within the prescribed time limit.

Justice Chien-Hua Yang g filed dissenting opinion in part.

Justice Zu-Zan Yang filed dissenting opinion in part, in which Justice Teh-Sheng Chang joined.

Justice Chien-Tsai Cheng filed dissenting opinion in part.

本號解釋楊大法官建華提出一部不同意見書；楊大法官日然與張大法官特生共同提出一部不同意見書；鄭大法官健才提出一部不同意見書。