

J. Y. Interpretation No.330 (December 24, 1993) \*

**ISSUE:** Where the decedent was declared dead by court judgment, is it constitutional to specify in the Enforcement Rules of the Estate and Gift Taxes Act that the six-month statutory period for filing estate tax declaration begins to run from the date of declaration of such judgment?

**RELEVANT LAWS:**

Article 19 of the Constitution (憲法第十九條); Article 6 of the Civil Code (民法第六條); Articles 1, Paragraph 1, and 10, 23, Paragraph 1, the first sentence of the Estate and Gift Taxes Act (遺產及贈與稅法第一條第一項、第十條、第二十三第一項前段); Article 21 of the Enforcement Rules of the Estate and Gift Taxes Act (遺產及贈與稅法施行細則第二十一條); J. Y. Interpretation No. 311 (司法院釋字第三一一號解釋).

**KEYWORDS:**

declared death (宣告死亡), natural death (自然死亡), competent taxing authority (主管稽徵機關), place of household registration (戶籍所在地), nature of the thing (事件之本質), missing person (失蹤人), presumed to be dead (推定死亡), taxing power (核課權). \*\*

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\* Translated by Raymond T. Chu.

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

**HOLDING:** The Estate and Gift Taxes Act provides in Article 23, Paragraph 1, the first sentence, that where a decedent has left an estate upon his death, the person liable for payment of estate tax shall make a declaration of estate tax to the competent taxing authority at the place of his household registration within six months from the date of death of the decedent. In the case where the decedent was declared to be dead by a court judgment, Article 21 of the Enforcement Rules of the Estate and Gift Taxes Act sets out that the period specified for declaring the estate tax shall run from the date such judgment was declared, as the taxpayer was not in a position to make the estate tax declaration before the date on which the death was declared by the court. The provision is consistent with the legislative intent of the law and the nature of the thing (Natur der Sache) regarding the declaration of estate tax in case of judicial declaration of death of the decedent, and is therefore consistent with the essence of Article 19 of the Constitution.

**REASONING:** That the legal

**解釋文：**遺產及贈與稅法第二十三條第一項前段規定，被繼承人死亡遺有財產者，納稅義務人應於被繼承人死亡之日起六個月內，向戶籍所在地主管稽徵機關辦理遺產稅申報。其受死亡之宣告者，在判決宣告死亡前，納稅義務人無從申報，故同法施行細則第二十一條就被繼承人為受死亡之宣告者，規定其遺產稅申報期間應自判決宣告之日起算，符合立法目的及宣告死亡者遺產稅申報事件之本質，與憲法第十九條意旨，並無牴觸。

**解釋理由書：**人之權利能力，

capacity of a person begins from the moment of birth and terminates at the moment of death and that, in case a deceased person has left property, the competent taxing authority is legally entitled to levy estate tax upon such property, are respectively prescribed by Article 6 of the Civil Code and Article 1, Paragraph 1, of the Estate and Gift Taxes Act. While judicial declaration of death is different from natural death, both are causes by which the legal capacity of a person terminates. Where a decedent has left property, the Estate and Gift Taxes Act provides in Article 23, Paragraph 1, the first sentence, that the person liable to payment of estate tax shall make a declaration of estate tax to the competent taxing authority at the place of his household registration within six months from the date of death of the decedent. In the case of a missing person declared to be dead, he is presumed to have been dead from the date determined in the judgment, and this presumed time of death must have been earlier than the time the court declares its judgment. Before the court makes such declaration, however, it is not yet certain whether the

始於出生，終於死亡，其死亡遺有財產者，主管稽徵機關應依法對之課徵遺產稅，為民法第六條、遺產及贈與稅法第一條第一項所明定。死亡宣告固與自然死亡有別，然其亦為人之權利能力消滅之原因，則無不同。遺產及贈與稅法第二十三條第一項前段規定，被繼承人死亡遺有財產者，納稅義務人應於被繼承人死亡之日起六個月內，向戶籍所在地主管稽徵機關辦理遺產稅申報，而失蹤人受死亡之宣告，係以判決內所確定死亡之時，推定其為死亡，其時間必在法院判決宣示之前。在判決宣示前，失蹤人之財產是否遺產猶未確定，其遺產稅納稅義務人無從辦理遺產稅申報，稽徵機關之核課權，亦不能開始行使。故遺產及贈與稅法施行細則第二十一條規定：「本法第二十三條規定之遺產稅申報期間，如被繼承人為受死亡之宣告者，應自判決宣告之日起計算」，以便徵納雙方遵循，符合立法之目的及宣告死亡者遺產稅申報事件之本質（事物之本質 *Natura Rerum*，*Natur der Sache*，*Nature of things*），與憲法第十九條意旨，並無牴觸。惟被繼承人受死亡之宣告者，其繼承人申報遺產稅期間之起算日，以及遺產估價之基準，既均與人民依法納稅之義務有關，宜以法律定之，

property of the missing person is an estate. Thus, the person liable to payment of estate tax is not yet in a position to proceed with the declaration of the estate tax, nor can the taxing authority begin to exercise its taxing power. For this reason, Article 21 of the Enforcement Rules of the Estate and Gift Taxes Act states: "Where the decedent was declared to be dead by court judgment, the period specified in Article 23 of the Estate and Gift Taxes Act for filing the estate tax declaration shall run from the date such judgment was declared." The provision, being intended to be applicable to both the taxpayer and the taxing authority, is consistent with the legislative intent of the law and the nature of the thing (*Natur der Sache*) regarding the declaration of estate tax in case of judicial declaration of death of the decedent by court judgment, and is therefore consistent with the essence of Article 19 of the Constitution. Nevertheless, where the decedent was declared to be dead, matters regarding the date from which the period of estate tax declaration begins to run and the basis on which the estate is evaluated, having to do with the people's duty to pay

以杜爭議。至關於遺產及贈與稅法第十條第一項但書牴觸憲法疑義部分，本院釋字第三一一號解釋已有釋示，併予說明。

tax under law, would be more appropriately prescribed by law to avoid possible controversies. As regards the doubt of whether the proviso to Paragraph 1 of Article 10 of the Estate and Gift Taxes Act may be in conflict with the Constitution, we have given our opinions in Interpretation No. 311. No further interpretation is needed here.

Justice Chien-Hua Yang filed dissenting opinion in part.

本號解釋楊大法官建華提出一部不同意見書。