

J. Y. Interpretation No.339 (February 25, 1994) *

ISSUE: Is Article 18, Paragraph 1, Subparagraph 12 of the Commodity Tax Act excessive and contradictory to the Constitution?

RELEVANT LAWS:

Article 18, Paragraph 1, Subparagraph 12 of the Commodity Tax Act (貨物稅條例第十八條第一項第十二款); Ministry of Finance dated December 20, 1977 (Tai-Tzai-Sue-Zu No. 38572) (財政部六十六年十二月二十日臺財稅字第三八五七二號函).

KEYWORDS:

tax evasion (漏稅).**

HOLDING: Article 18, Paragraph 1, Subparagraph 12 of the Commodity Tax Act, as amended and promulgated on January 9, 1971, provides that a fine equal to two to ten times the amount of tax evaded shall be imposed on a taxpayer for failure to affix tax-paid or tax-free certificates on packages or containers for commodities in accordance with the law, regardless of whether there actually

解釋文：中華民國六十年一月九日修正公布之貨物稅條例第十八條第一項，關於同條項第十二款，應貼於包件上或容器上之完稅或免稅照證，不遵規定實貼者，不問有無漏稅事實，概處比照所漏稅額二倍至十倍之罰鍰之規定（現已修正），顯已逾越處罰之必要程度，不符憲法保障人民權利之意旨；財政部六十六年十二月二十日臺財稅字第三八五七二號函釋「凡未按規定貼查驗

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

was any tax evasion (this provision has been amended). Such sanction exceeds the necessary degree of punishment and contradicts the purpose of the Constitution, i.e., to protect the rights of the people. The directive of the Ministry of Finance dated December 20, 1977 (Tai-Tzai-Sue-Zu No. 38572), that any failure to affix examination certificates in accordance with the law shall be treated as an evasion of tax and subject to fines under the same provision regardless of whether there actually was any tax evasion, shall be disregarded.

REASONING: Article 18, Paragraph 1, Subparagraph 12 of the Commodity Tax Act, as amended and promulgated on January 9, 1971, provides that a monetary fine equal to from two to ten times the tax amount evaded shall be imposed on a tax payer for failure to affix tax-paid or tax-free certificates on packages or containers for commodities in accordance with the law, regardless of whether there actually was any tax evasion (this provision has been amended). Such provision is for tax assessment pur-

證者，不再問其有無漏稅，均應按該條文規定以漏稅論處」，均應不予援用。

解釋理由書：中華民國六十年一月九日修正公布之貨物稅條例第十八條第一項，關於同條項第十二款，應貼於包件上或容器上之完稅或免稅照證，不遵規定實貼者，沒入其貨物，並處比照所漏稅額二倍至十倍罰鍰之規定（現已修正），固為防止逃漏稅款，以達核實課徵之目的，惟租稅秩序罰，有行為罰與漏稅罰之分，如無漏稅之事實，而對單純違反租稅法上作為或不作為之義務者，亦比照所漏稅額處罰，顯已逾越處罰之必要程度，不符憲法保障人民權利之意旨。財政部六十六年十二月二十

poses and to provide a deterrent to any tax evasion. The sanctions under the tax laws can be divided into sanctions against the commitment of law-violating acts and the evasion of assessable tax. If there is only a violation of the obligations to act or not to act under the tax laws without any tax evasion, the sanction against such violation, being regarded as the same as tax evasion, exceeds the degree of punishment necessary and contradicts the purpose of the Constitution, i.e., to protect the rights of the people. The directive of the Ministry of Finance dated December 20, 1977 (Tai-Tzai-Sue-Zu No. 38572), which stated, pursuant to the above provision of law, that any failure to affix examination certificates in accordance with the law shall be treated as an evasion of tax and be subject to fines under the same provision regardless of whether there actually was any tax evasion, shall therefore be disregarded.

日臺財稅字第三八五七二號函，本於上開規定釋示：「凡未按規定貼查驗證者，不再問其有無漏稅，均應按該條文規定以漏稅論處」，均應不予援用。