

## J. Y. Interpretation No.345 ( May 6, 1994 ) \*

**ISSUE:** Are the relevant provisions of the Regulation Governing the Restriction on the Persons or Representatives of Profit-Making-Enterprise Defaulting on Tax Payments to Apply for Exit Permit, which impose various exit restrictions, unconstitutional?

**RELEVANT LAWS:**

Article 10 or Article 23 of the Constitution ( 憲法第十條、第二十三條 ) ; Article 24, Paragraph 3 of the Tax Levy Act ( 稅捐稽徵法第二十四條第三項 ) ; Article 25-1, Paragraph 3 of the Customs Act ( 關稅法第二十五條之一第三項 ) ; Articles 2, Paragraph 1, and 5 of the Regulation Governing the Restriction on the Persons or Representatives of Profit-Making-Enterprise Defaulting on Tax Payments to Apply for Exit Permit ( 限制欠稅人或欠稅營利事業負責人出境實施辦法第二條第一項、第五條 ) .

**KEYWORDS:**

delinquency in tax payment ( 欠繳稅款 ) , exit restrictions ( 出境限制 ) . \*\*

**HOLDING:** Enabled by Article 24, Paragraph 3, of the Tax Levy Act and

**解釋文：**行政院於中華民國七十三年七月十日修正發布之「限制欠稅

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\* Translated by Vincent C. Kuan.

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

Article 25-1-III of the Customs Act, the Regulation Governing the Restriction on the Persons or Representatives of Profit-Making-Enterprise Defaulting on Tax Payments to Apply for Exit Permit were amended and promulgated by the Executive Yuan on July 10, 1984. The provisions of Article 2, Paragraph 1, thereof do not go beyond the objective and scope of the aforesaid laws and, pursuant to Article 5 thereof, the exit restrictions imposed on a taxpayer shall be lifted if one of the six situations set forth therein occurs, which also consider the rights and interests of the taxpayer. The aforesaid measures are necessary to ensure tax revenues and promote public interest and thus do not contradict the Constitution.

**REASONING:** Article 24, Paragraph 3, of the Tax Levy Act provides, “If a taxpayer’s delinquency in tax payment involves a certain amount, the judicial authorities or the Ministry of Finance may request in writing that the Entry and Exit Service Bureau of the Ministry of the Interior prohibits the taxpayer or, in the case of a profit-seeking enterprise, the respon-

人或欠稅營利事業負責人出境實施辦法」，係依稅捐稽徵法第二十四條第三項及關稅法第二十五條之一第三項之授權所訂定，其第二條第一項之規定，並未逾越上開法律授權之目的及範圍，且依同辦法第五條規定，有該條所定六款情形之一時，應即解除其出境限制，已兼顧納稅義務人之權益。上開辦法為確保稅收，增進公共利益所必要，與憲法尚無牴觸。

**解釋理由書：**稅捐稽徵法第二十四條第三項規定：「納稅義務人欠繳應納稅捐達一定金額者，得由司法機關或財政部，函請內政部入出境管理局，限制其出境；其為營利事業者，得限制其負責人出境，但其已提供相當擔保者，應解除其限制。其實施辦法，由行政院定之。」關稅法第二十五條之一第三項亦有相同意旨之規定，行政院於中

sible person thereof, from leaving the country, provided that such restriction shall be lifted if adequate guaranty is furnished by such taxpayer. The implementing rules in respect thereof shall be prescribed by the Executive Yuan.” Article 25-1, Paragraph 3, of the Customs Act also provides to the same effect. The Regulation Governing the Restriction on the Persons or Representatives of Profit-Making-Enterprise Defaulting on Tax Payments to Apply for Exit Permit was amended and promulgated by the Executive Yuan on July 10, 1984, under the express delegation of the aforesaid laws. Article 2, Paragraph 1, thereof provides, “Where an individual residing in the ROC or a profit-seeking enterprise located within the ROC defaults on tax payments or customs duties whose amount is determined within the time limit prescribed by applicable laws, and the aggregate amount of such overdue tax payments and the determined fine imposed thereon, if any, reaches five hundred thousand New Taiwan dollars (NT\$500,000) in the case of an individual, or one million New Taiwan Dollars (NT\$1,000,000) in the case of a

華民國七十三年七月十日修正發布之「限制欠稅人或欠稅營利事業負責人出境實施辦法」，即係依上開法律明文授權所訂定。其第二條第一項規定：「在中華民國境內居住之個人或在中華民國境內之營利事業，其已確定之應納稅捐或關稅，逾法定繳納期限尚未繳納，其欠繳稅款及已確定之罰鍰單計或合計，個人在新臺幣五十萬元以上，營利事業在新台幣一百萬元以上者，由稅捐稽徵機關或海關報請財政部，函請內政部入出境管理局，限制該欠稅人或欠稅營利事業負責人出境」，並未逾越上開法律授權之目的及範圍，且依同辦法第五條規定，有該條所定六款情形之一時，應即解除其出境限制，已兼顧納稅義務人之權益。上開辦法限制出境之規定，為確保稅收，增進公共利益所必要，與憲法第十條、第二十三條規定，均無牴觸。

profit-seeking enterprise, the tax collection authorities or the customs concerned shall report to the Ministry of Finance, which shall, in turn, request the Entry and Exit Service Bureau of the Ministry of the Interior in writing to prohibit the tax-delinquent individual or responsible person of a profit-seeking enterprise from leaving the country.” The foregoing provisions do not go beyond the objective and scope of the aforesaid laws and, pursuant to Article 5 of the same Regulation, the exit restrictions imposed on a taxpayer shall be lifted if one of the six situations set forth therein occurs, which also consider the rights and interests of the taxpayer. The aforesaid regulations are necessary to ensure tax revenues and promote public interest and thus do not contradict either Article 10 or Article 23 of the Constitution.