

## J. Y. Interpretation No.346 ( May 6, 1994 ) \*

**ISSUE:** Is it constitutionally permissible for a statute to establish a statutory authorization on taxation obligation for particular purpose, if the obligation is established in statutory provisions clearly defined and within the application scope specifically set out?

**RELEVANT LAWS:**

Article 19 of the Constitution (憲法第十九條) ; Article 16, Paragraph 1, Subparagraph 3, of the Civil Education Act (國民教育法第十六條第一項第三款) ; Article 18, Paragraph 1, of the Act Governing the Allocation of Government Revenues and Expenditures (財政收支劃分法第十八條第一項) .

**KEYWORDS:**

taxation obligation (納稅義務) , statutory authorization (法律授權) , local tax (地方稅) , tax rate (稅率) , a constitution violation ; a violation of the Constitution (違憲) , compulsory education (國民教育) , special tax for education (教育捐) . \*\*

**HOLDING:** Article 19 of the Constitution provides: “The people shall bear a taxation obligation in accordance

**解釋文：**憲法第十九條規定人民有依法律納稅之義務，係指有關納稅之義務應以法律定之，並未限制其應規

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

with law. In this provision, the Constitution mandates that, should any taxation obligation be imposed upon the people, it shall be specified by a statute. The Constitution does not require, however, in which statute or in what title of statute such an obligation should be set forth. It is constitutionally permissible to have a statute whose provisions establish an authorization on taxation obligation for a particular purpose, but only if the obligation is established in statutory provisions clearly defined and within the application scope specifically set out. There is no constitutional violation in the provisions authorizing the imposition of the special tax for education in Article 16, Paragraph 1, Subparagraph 3, of the Civil Education Act and Article 18, Paragraph 1, of the Act Governing the Allocation of Government Revenues and Expenditures, pursuant to the reasoning given above.

**REASONING:** Article 19 of the Constitution imposes upon the people a taxation obligation which is set out by law. The implication of this Article was manifested in J.Y. Interpretation No. 217.

定於何種法律。法律基於特定目的，而以內容具體、範圍明確之方式，就徵收稅捐所為之授權規定，並非憲法所不許。國民教育法第十六條第一項第三款及財政收支劃分法第十八條第一項關於徵收教育捐之授權規定，依上開說明，與憲法尚無牴觸。

**解釋理由書：**憲法第十九條規定人民有依法律納稅之義務，前經本院釋字第二一七號解釋釋明其意旨。有關納稅義務之事項，固宜於名為稅法之法律中規定之，惟憲法並未限制其應規定

It is more appropriate for the taxation provisions to be set forth in a statute in a title of act regulating certain categories of taxes. Yet the Constitution does not require that there be a specific type of statute for setting forth such an obligation. The Legislative Yuan is constitutionally permitted to authorize the administrative agency in charge of taxation affairs to decide the issue of imposing certain types of tax through statutory provisions which are clearly defined and specifically orientated. To cope with the financial needs of compulsory education, the Civil Education Act provides in Article 16, Paragraph 1, Subparagraph 3: "The provincial (special city) government may collect necessary funds within the limited amount framed by tax statutes and the Act Governing the Allocation of Government Revenues and Expenditures in respect to provincial (special city) or prefecture (municipal) local tax, by permission of the Executive Yuan. Those measures will not be subject to the restrictions indicated in the proviso clause of Article 18, Paragraph 1, of the Act Governing the Allocation of Government Revenues and Expenditures. The

於何種法律，而立法機關就某種稅捐是否課徵，認為宜授權主管機關裁量，因而以目的特定、內容具體及範圍明確之方式，所為之授權規定，亦非憲法所不許。國民教育法為支應辦理國民教育所需經費，於其第十六條第一項第三款規定：「省（市）政府就省（市）、縣（市）地方稅部分，在稅法及財政收支劃分法規定限額內籌措財源，逕報行政院核定實施，不受財政收支劃分法第十八條第一項但書之限制。」財政收支劃分法第十八條第一項但書規定：「但直轄市、縣（市）（局）為籌措教育科學文化支出財源，得報經行政院核准，在第十六條所列縣（市）（局）稅課中不超過原稅捐率百分之三十徵收地方教育捐。」依其立法意旨，係因法律所定有關地方稅之稅捐率，有其伸縮彈性，本已由地方民意機關通過決定，無須於徵收不超過原稅捐率百分之三十地方教育捐時，再經地方民意機關同意，以免發生困難。並非謂行政機關可提高其經地方民意機關通過決定之原稅捐率；而祇係授權主管機關在法律所定不超過原稅捐率百分之三十之範圍內，得逕行核定實施而已。其情形合於上述目的特定、內容具體及範圍明確之授權要件，與憲法尚無牴觸。至為籌措國民教育經費來

said proviso clause provides: "However, the provincial (special city) or prefecture (municipal)(bureau) government may, with the permission of the Executive Yuan, impose a special tax for education not exceeding 30 percent against the original rate for the tax imposed by the prefecture (municipal)(bureau) under this Article. The rationale is based on the flexibility of the local tax rate manifested by law: since the local tax rate has been reviewed and passed by local councils, to save time and effort, the imposition of a special tax for education need not be reviewed again by the councils. Nevertheless, this does not mean that the local administrations may raise the tax rate which has been reviewed and passed by local councils. It only means that the local administrations may authorize the agencies-in-charge to decide upon and execute the imposition of the special tax for education within the scope of 30 percent against the original tax rate. Since the measures are consistent with the authorization requirements in general, i.e., specification in purpose, concreteness in contents and clarity in scope, they are by no means contrary to

源，是否祇對多種地方稅中之某種稅加徵一定比率之教育捐，則屬行政機關在法律授權範圍內依法裁量之問題，應由行政機關通盤斟酌並隨時檢討改進之，乃屬當然，合併指明。

the constitutional requirements. As to whether the fund collection in the name of the special tax for education is aimed at only one of the various local taxes by percentage, this is a question of administrative discretion within the range of legal authorization. To be noted accordingly, the discretion should be subject to an overall consideration, constant review and necessary improvement.