

J. Y. Interpretation No.356 (July 8, 1994) *

ISSUE: Is Article 49 of the Value-Added and Non-Value-Added Business Tax Act excessive and does it thus contradict the Constitution?

RELEVANT LAWS:

Articles 35 and 49 of the Value-Added and Non-Value-Added Business Tax Act (加值型及非加值型營業稅法第三十五條及第四十九條) .

KEYWORDS:

surcharge for late filing (滯報金) , surcharge for non-filing (怠報金) , tax evasion (逃漏稅捐) .**

HOLDING: Article 49 of the Value-Added and Non-Value-Added Business Tax Act provides that a business entity shall be liable to a surcharge for late filing and/or non-filing in the event that the business entity fails to file the sales amount or a detailed list of issued uniform invoices within the time limit as prescribed in the Act. The purposes of the aforesaid provision are to compel business

解釋文：營業稅法第四十九條就營業人未依該法規定期限申報銷售額或統一發票明細表者，應加徵滯報金、怠報金之規定，旨在促使營業人履行其依法申報之義務，俾能確實掌握稅源資料，建立合理之查核制度。加徵滯報金、怠報金，係對營業人違反作為義務所為之制裁，其性質為行為罰，此與逃漏稅捐之漏稅罰乃屬兩事。上開規定，為增進公共利益所必要，與憲法並無牴

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

entities to comply with obligations of filing so that the supervising authority can obtain the relevant tax source information, and to establish a reasonable tax audit system. The surcharges for late filing and non-filing are imposed upon the business entity for its noncompliance and their intent is to act as a kind of “punishment for misconduct.” “Punishment for misconduct” is different from “punishment for tax evasion,” which is imposed only when tax-evading acts have been committed. Such provision is necessary to protect the public interest, and does not contradict the Constitution. However, the authority-in-charge should, according to J.Y. Interpretation No. 327, review and revise this provision under which a business entity would be punished by surcharges for late filing and/or non-filing at a fixed rate of the tax payable without reasonable ceiling even though the tax has been paid.

REASONING: With respect to the punishment for breach of tax laws, “punishment for tax evasion” is imposed when a taxpayer evades tax and “punishment for misconduct” is imposed when a

觸。惟在營業人已繳納其應納稅款之情形下，行為罰仍依應納稅額固定之比例加徵滯報金與怠報金，又無合理最高額之限制，依本院大法官釋字第三二七號解釋意旨，主管機關應注意檢討修正，併此說明。

解釋理由書：違反稅法之處罰，有因納稅義務人逃漏稅捐而予處罰者，此為漏稅罰；有因納稅義務人違反稅法上之作為或不作為義務而予處罰者，此為行為罰。營業稅法第三十五條

taxpayer violates the duty to act or not to act under tax laws. Article 35, Paragraph 1, of the Value-Added and Non-Value-Added Business Tax Act provides that, except as otherwise prescribed by the Act, a business entity, whether or not it has conducted sales, shall file with the collection authority-in-charge a bimonthly tax return on a prescribed form for its sales amount and tax payable or refundable for the preceding two months, together with refund or off-set amount and other related documents prior to the fifteenth day of the following filing period. The business tax payable, if any, shall be paid to the Treasury in advance. The receipt for the tax paid shall be enclosed with the tax return. Article 49 thereof stipulates that in the event that a business entity fails to file the sales amount or a detailed list of issued uniform invoices within the time limit as prescribed in the Act, the business entity shall be liable to a surcharge for late filing. The surcharge shall be equivalent to 1% of the tax payable for every two days' overdue, provided that the filing is made within 30 days after the deadline. The fine shall not be less than NT \$400. If the fil-

第一項規定：「營業人除本法另有規定外，不論有無銷售額，應以每二月為一期，於次期開始十五日內，填具規定格式之申報書，檢附退抵稅款及其他有關文件，向主管稽徵機關申報銷售額、應納或溢付營業稅額。其有應納營業稅額者，應先向公庫繳納後，檢同繳納收據一併申報。」同法第四十九條規定：「營業人未依本法規定期限申報銷售額或統一發票明細表，其未逾三十日者，每逾二日按應納稅額加徵百分之一滯報金，金額不得少於四百元；其逾三十日者，按核定應納稅額加徵百分之三十怠報金，金額不得少於一千元。其無應納稅額者，滯報金為四百元，怠報金為一千元。」旨在促使營業人履行其依法申報之義務，俾能確實掌握稅源資料，建立合理之查核制度。加徵滯報金、怠報金，係對營業人違反作為義務所為之制裁，其性質為行為罰，此與逃漏稅捐之漏稅罰乃屬兩事。上開營業稅法第四十九條之規定，為增進公共利益所必要，與憲法並無牴觸。惟在營業人已繳納其應納稅款之情形下，行為罰仍依應納稅額固定之比例加徵滯報金與怠報金，又無合理最高額之限制，依本院大法官釋字第三二七號解釋意旨，主管機關應注意檢討修正。至行政罰之責任要件，本

ing is made more than 30 days after the deadline, the business entity shall be liable to a non-filing surcharge equivalent to 30% of the tax payable as determined by the relevant authority. The amount of this surcharge shall not be less than NT \$1,000. Where there is no tax payable, the surcharge for late filing and non-filing shall be NT\$ 400 and NT \$1,000, respectively. The purposes of the aforesaid provision are to compel business entities to comply with the obligations of filing so that the supervising authority can obtain relevant tax source information, and to establish a reasonable tax audit system. The surcharges for late filing and non-filing are imposed upon the business entity for its noncompliance with duty and such surcharges act as a kind of “punishment for misconduct.” “Punishment for misconduct” is different from “punishment for tax evasion,” which is imposed only when tax-evading acts have been committed. Such provision is necessary to protect the public interest and does not contradict the Constitution. However, the authority-in-charge should, according to J.Y. Interpretation No. 327, review and

院釋字第二七五號解釋已有釋示，均併指明。

revise this provision under which a business entity would be punished by surcharges for late filing and/or non-filing at a fixed rate of tax payable without reasonable ceiling even though the tax has been paid. As to the conditions for “punishment for misconduct,” they have been elaborated in J. Y. Interpretation No. 275.