

J. Y. Interpretation No.361 ( July 29, 1994 ) \*

**ISSUE:** Where a Ministry of Finance directive established a standard tax rate for income from the sale of houses in Taipei for the year 1987 pursuant to the Enforcement Rules of the Income Tax Act, is such a directive consistent with the Constitution?

**RELEVANT LAWS:**

Article 9 of the Income Tax Act ( 所得稅法第九條 ) ; Articles 17-2 of the Enforcement Rules of the Income Tax Act ( 所得稅法施行細則第十七條之二 ) ; J. Y. Interpretation No. 218 ( 司法院釋字第二一八號解釋 ) ; Ministry of Finance Directive Tai-Tsai-Shui-Tze No. 770553105 ( June 27, 1988 ) ( 財政部七十七年六月二十七日臺財稅字第七七〇五五三一〇五號函 ) .

**KEYWORDS:**

house tax ( 房屋稅 ) , taxing authority ( 稅捐稽徵機關 ) , principle of taxation per legislation ( 租稅法定主義 ) , National Tax Administration Taipei Bureau ( 臺北市國稅局 ) , assessed value of house ( 房屋評定價格 ) , estimated income ( 估計所得額 ) , assessment by imputation ( 推計核定 ) , principle of equality in taxation ( 租稅公平原則 ) . \*\*

**HOLDING:** The income from

**解釋文：**個人出售房屋交易所

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\* Translated by Raymond T. Chu.

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

the sale of a house owned by an individual is a kind of income from transaction in property under Article 9 of the Income Tax Act. Thus, the provision of Article 17-2 of the Enforcement Rules of the Income Tax Act as amended and promulgated by the Executive Yuan on May 30, 1988, with respect to the method to determine the amounts of income from the sale of houses owned by individuals is not contrary to the principle of taxation per legislation. Under said Article, where an individual having sold a house fails to file a tax return or to present documentary evidence, the competent taxing authority shall propose a standard of such income in light of the actual economic conditions and the housing market situation in that year and submit such proposed standard to the Ministry of Finance for approval, and shall, upon approval by the Ministry, determine the income in line with such standard. Accordingly, upon the standard proposed by the Taipei Bureau of the National Tax Administration on the basis of the results of a survey obtained by taking multiple samples of cases where income was earned from the sale of houses during

得，係所得稅法第九條財產交易所得之一種。行政院於中華民國七十七年五月三十日修正發布之所得稅法施行細則第十七條之二，關於個人出售房屋所得額核定方法之規定，與租稅法定主義並無違背。依該條規定，個人出售房屋未申報或未能提出證明文件者，其所得額由主管稽徵機關參照當年度實際經濟情況及房屋市場交易情形擬訂，報請財政部核定其標準，依該標準核定之。嗣財政部依據臺北市國稅局就七十六年度臺北市個人出售房屋所得額多數個案取樣調查結果擬訂之標準，於七十七年六月二十七日以臺財稅字第七七〇五五三一〇五號函，核定七十六年度臺北市個人出售房屋交易所得，按房屋稅課稅現值百分之二十計算，係經斟酌年度、地區、經濟情況所核定，並非依固定之百分比訂定，符合本院釋字第二一八號解釋之意旨，與憲法並無牴觸。

1987 by individuals residing in the city of Taipei, the Ministry of Finance on June 27, 1988, issued its Directive Tai-Tsai-Shui-Tze No. 770553105, whereby the income from transactions on houses sold by individuals residing in the city of Taipei in the year 1987 was established at twenty percent of the then current value of the particular house as assessed for the purpose of levying the housing tax. The decision of the Ministry of Finance was made by taking into consideration the factors involving year, location, and economic conditions rather than a fixed percentage, and is consistent with the essence of our Interpretation No. 218. We do not find it to be in conflict with the Constitution.

**REASONING:** Where a taxpayer fails to file a tax return or to present documentary evidence, the taxing authority may determine his income on the basis of the information obtained upon investigation or the standard profits made by others in the same trade. This method of assessment by imputation is not contrary to the Constitution. Nevertheless, when

**解釋理由書：**所得稅納稅義務人未自行申報或提示證明文件，稽徵機關得依查得之資料或同業利潤標準，核定其所得額。此項推計核定方法，與憲法並不牴觸，惟依此項推計核定方法估計所得額時，應力求客觀、合理，使與納稅義務人之實際所得相當，以維租稅公平原則，至於個人出售房屋，未能提出交易時實際成交價格及原始取得之實

working on an estimate of the income by the method of imputation, the taxing authority must exert all possible efforts to make an objective and reasonable estimation closely corresponding to the actual income of the taxpayer so as to maintain the principle of fair taxation. As to the situation where an individual having sold a house fails to produce documents to prove the actual price of the deal at the time of conclusion of the transaction and the actual cost of the original acquisition thereof, if the amount of the taxpayer's income is imputed at a fixed and invariable percentage of the assessed value of the house regardless of any variation due to year, location, and economic conditions, the resulting figure can hardly be expected to come close to the actual price and is unfair as well as unreasonable. Such method is also inconsistent with the meaning of assessment by imputation as contemplated by the Income Tax Act. This has been made clear in our J.Y. Interpretation No. 218 delivered by this Yuan on August 14, 1987.

際成本之證明文件者，如不問年度、地區、經濟情況如何不同，概按房屋評定價格，以固定不變之百分比，推計納稅義務人之所得額，自難切近實際，有失公平合理，且與所得稅法所定推計核定之意旨未盡相符。業經本院大法官於七十六年八月十四日以釋字第二一八號解釋示在案。

The income from the sale of a house

個人出售房屋交易所得，係所得

owned by an individual is a kind of income from transaction in property under Article 9 of the Income Tax Act. Thus, Article 17-2 of the Enforcement Rules of the Income Tax Act as amended and promulgated by the Executive Yuan on May 30, 1988, is not contrary to the principle of taxation by law in providing: "Where an individual sells his house, his income from dealing in such property shall be assessed and determined in pursuance of Article 14, Paragraph 1, Category 7, of the Income Tax Act to the extent as actual earned income if he can produce documentary evidence to prove the price of the deal at the time of conclusion of the transaction and his cost and expenses. If he fails to file a tax return or to present documentary evidence, the income shall be determined by the competent taxing authority pursuant to the standard approved by the Ministry of Finance. The aforesaid standard shall be developed by the competent taxing authority of the province (or municipality under direct jurisdiction of the Executive Yuan) by taking into account the actual economic conditions and the housing market situa-

稅法第九條財產交易所得之一種，行政院於七十七年五月三十日修正發布之所得稅法施行細則第十七條之二規定：

「個人出售房屋，如能提出交易時之成交價額及成本費用之證明文件者，其財產交易所得之計算，依本法第十四條第一項第七類規定核實認定；其未申報或未能提出證明文件者，稽徵機關依財政部核定標準核定之。前項標準，由省（直轄市）主管稽徵機關參照當年度實際經濟情況及房屋市場交易情形擬訂，報請財政部核定。」與租稅法定主義並無違背。

tion in that year and submitting the standard to the Ministry of Finance for approval.

“Upon the standard proposed by the National Tax Administration of Taipei in light of the results of a survey obtained by taking multiple samples of cases where income was earned from the sale of houses during 1987 by individuals residing in the city of Taipei (the average income from the sale of houses being 22.02%, with 73% of the total number of transactions realizing 20% or more revenue), the Ministry of Finance on June 27, 1988, issued its Directive Tai-Tsai-Shui-Tze No. 770553105, whereby the income from transactions of houses sold by individuals residing in the city of Taipei in the year 1987 was established at twenty percent of the then current value of the particular house as assessed for the purpose of levying the housing tax. The decision of the Ministry of Finance was made by taking into consideration the factors involving year, location, and economic conditions rather than a fixed percentage, and is consistent with the essence of our Inter-

財政部依據臺北市國稅局就七十六年度臺北市個人出售房屋所得額多數個案取樣調查結果（平均售屋所得標準為百分之二二・〇二，所得標準在百分之二十以上者，占總件數之百分之七十三）擬訂之標準，於七十七年六月二十七日以臺財稅字第七七〇五五三一〇五號函，核定七十六年度臺北市個人出售房屋交易所得，按房屋稅課稅現值百分之二十計算，係經斟酌年度、地區、經濟情況所核定，並非依固定之百分比訂定，符合本院釋字第二一八號解釋之意旨，與憲法並無牴觸。

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