

J. Y. Interpretation No.369 (December 23, 1994) *

ISSUE: Are the House Tax Act provisions with respect to the legal basis on which house tax may be collected, tax rates, the procedure authorizing local governments to determine the tax rates, and house tax exemption and reduction constitutional?

RELEVANT LAWS:

Article 19 of the Constitution (憲法第十九條); Articles 1, 5, 6 and 15 of the House Tax Act (房屋稅條例第一條、第五條、第六條、第十五條); Articles 5, 147, and 187 of the Land Act (土地法第五條、第一百四十七條、第一百八十七條); House Dues Act (房捐條例); J. Y. Interpretations Nos. 217, 315 and 367 (司法院釋字第二一七號、第三一五號、第三六七號解釋).

KEYWORDS:

legislative discretion (立法裁量), right of equality (平等權), house tax (房屋稅), current value (現值), constructional improvement (建築改良物), land improvement (土地改良物), house dues (房捐), property tax (財產稅), revenue tax (收益稅), rental (租金), general law (普通法), special law (特別法), agricultural improvement (農作改良物). **

* Translated by Raymond T. Chu.

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

HOLDING: Article 19 of the Constitution providing that “the people shall have the duty to pay tax as prescribed by law” means that the people shall have the duty to pay tax or the privilege to enjoy the benefit of tax exemption or reduction in pursuance of the requirements of law. The substance of the law is, to a reasonable extent, a matter of legislative discretion. Thus, we have found nothing in Articles 1, 5, 6 and 15 of the House Tax Act that is in conflict with the Constitution. Furthermore, the house tax is assessed at a statutory rate of the current value of the house and is a type of property tax. While no distinction is made under Article 15, Paragraph 1, Subparagraph 9, of said Act between houses for owners’ residences and other residences for the purpose of determining the amount of house tax exemption, it is nonetheless a matter within the power of legislative discretion and is not contrary to the purpose of the Constitution in safeguarding the right of equality and the property right of the people. However, the Land Act provides in Article 187 that “a constructional improvement used as part of the owner’s

解釋文：憲法第十九條規定「人民有依法律納稅之義務」，係指人民有依法律所定要件負繳納稅捐之義務或享減免繳納之優惠而言。至法律所定之內容於合理範圍內，本屬立法裁量事項，是房屋稅條例第一條、第五條、第六條及第十五條之規定與憲法並無牴觸。又房屋稅係依房屋現值按法定稅率課徵，為財產稅之一種；同條例第十五條第一項第九款就房屋稅之免稅額雖未分別就自住房屋與其他住家用房屋而為不同之規定，仍屬立法機關裁量之範疇，與憲法保障人民平等權及財產權之本旨，亦無牴觸。惟土地法第一百八十七條規定：「建築改良物為自住房屋時，免予徵稅」，而房屋稅條例第一條則規定：「各直轄市及各縣（市）（局）未依土地法徵收土地改良物稅之地區，均依本條例之規定徵收房屋稅」，對自住房屋並無免予課徵房屋稅之規定，二者互有出入，適用時易滋誤解，應由相關主管機關檢討房屋租稅之徵收政策修正之。

residence shall be exempt from tax,” whereas Article 1 of the House Tax Act provides: “House tax shall be levied under this Act in all areas where no land improvement tax is collected by the governments of a municipality under direct jurisdiction of the Executive Yuan or of another county (city or bureau),” whereby no exemption from house tax is allowed for a house for the owner’s residence. The discrepancy between the two statutes is apt to cause misinterpretation in their application, and the competent authority must therefore review the policy in connection with the assessment of the house tax and make amendments thereto.

REASONING: Article 19 of the Constitution providing that “the people shall have the duty to pay tax as prescribed by law” means that the people shall have the duty to pay tax or the privilege to enjoy the benefit of tax exemption or reduction in pursuance of the requirements of law. That the substance of law is, to a reasonable extent, a matter of legislative discretion has been repeatedly made clear by this Yuan in our Interpretations

解釋理由書：憲法第十九條規定「人民有依法律納稅之義務」，係指人民有依法律所定要件負繳納稅捐之義務或享減免繳納之優惠而言。至法律所定之內容於合理範圍內，為立法裁量事項，前經本院釋字第二一七號、第三一五號及第三六七號解釋說明其意旨。房屋稅條例就納稅主體、稅目、稅率、納稅方法及納稅期間等項既分別定有明文，則其第一條關於徵收房屋稅之依據、第五條關於稅率、第六條關於授權

Nos. 217, 315 and 367. The taxpaying bodies, tax denominations, tax rates, tax paying methods, and tax payment period being expressly defined in the House Tax Act, the provisions of Article 1 thereof with respect to the legal basis on which house tax may be collected, Article 5 on tax rates, Article 5 with respect to the procedure to authorize local governments to determine the tax rates, and Article 15 with respect to house tax exemption and reduction are not in conflict with Article 19 of the Constitution. Furthermore, because all residences of a current value not over a certain amount are exempt from house tax under the House Tax Act, Article 15, Paragraph 1, Subparagraph 9, with no distinction between houses for the owners' residences and other residences, all leasehold residences of a current value not over a certain amount are allowed the same tax benefit. It must be pointed out, however, that the tax levied on houses is a type of property tax. Under the previous House Dues Act, houses were categorized into those for residence purposes and for business purposes, each of which was further classified into houses for personal use

地方政府規定稅率之程序，及第十五條關於減免房屋稅之規定，與憲法第十九條規定並未牴觸。又房屋稅條例第十五條第一項第九款規定住家房屋現值在一定金額以下者免徵房屋稅，雖未分別就自住房屋與其他住家用房屋而為不同之規定，致出租之住家用房屋現值在一定金額範圍內者亦同邀免徵房屋稅之優惠。第對房屋課稅係屬財產稅之一種，原房捐條例分房屋為住家用、營業用兩種，每種又分為自用、出租兩類，課徵房捐標準，對自用者依房屋價值計徵，對出租者依租金收益計徵，是房捐具財產稅兼收益稅之性質。現行房屋稅條例概按房屋現值計徵房屋稅，則不論住家用或營業用房屋，不再區分自用與出租兩類，各依同一稅率課稅；住家房屋並於同一現值金額範圍內免徵房屋稅，與憲法保障人民平等權及財產權之本旨，亦無牴觸。惟土地法與房屋稅條例就房屋租稅之徵收言，雖存有普通法與特別法之關係，其稅率之高低，固應依據房屋稅條例予以優先適用；然土地法第五條就「土地改良物」分為建築改良物及農作改良物二種，同法第一百八十七條復規定：「建築改良物為自住房屋時，免予徵稅」，而房屋稅條例第一條規定：「各直轄市及各縣（市局）未依土

and for lease, the former being subject to assessment of house dues based on the respective value of the house and the latter being subject to payment of dues based on the rental earned. The house dues were therefore of the nature of both property tax and revenue tax. Under the current House Tax Act, however, house tax is levied at the same rate based on the value of the house, irrespective of whether it is for residence or for business purpose and with no distinction between houses for personal use and for lease, and all residences of the same current value are exempt from house tax. Such statute is hence not in conflict with the purpose of the Constitution in guaranteeing the people the right of equality and their property right. While there exists a relationship of general law and special law between the Land Act and the House Tax Act insofar as the assessment of house tax is concerned, and the tax rate specified by the House Tax Act must prevail, there is a discrepancy between the Land Act, which classifies "land improvements" into constructional improvements and agricultural improvements under Article 5 and pro-

地法徵收土地改良物稅之地區，均依本條例之規定徵收房屋稅」，對自住房屋並無免予課徵房屋稅之規定，二者互有出入，適用時易滋誤解；且土地法第一百四十七條上段規定：「土地及其改良物，除依本法規定外，不得用任何名目徵收或附加稅款」，其與房屋稅條例亦不能謂無出入。類此土地法及房屋稅條例相關規定不一之情形，應檢討修正，俾資兼顧法律條文相互間之協調。

vides under Article 187 that “a constructional improvement used as the owner’s residence shall be exempt from tax,” and the House Tax Act, which provides under Article 1: “House tax shall be levied under this Act in all areas where no land improvement tax is collected by the government of a municipality under direct jurisdiction of the Executive Yuan or of another county (city or bureau),” whereby no exemption from house tax is allowed for a house used as the owner’s residence. The discrepancy between the two statutes is apt to cause misinterpretation in application. Furthermore, the Land Act provision under the first sentence of Article 147 that “no tax or surtax in whatever denomination may be imposed on land or improvement thereon except as herein specified” can hardly be deemed to be in accord with the House Tax Act. The conflicts between the Land Act and the House Tax Act such as those we have pointed out above must be reviewed and revised to bring the texts of such statutes in harmony with each other.