

J. Y. Interpretation No.124 (August 23, 1968) *

ISSUE: May the tenant farmer under the Act Governing the Reduction of Farm Rent to 37.5 Percent waive his right of first refusal in advance?

RELEVANT LAWS:

Article 15 of the Act Governing Reduction of Farm Rent to 37.5 Percent (耕地三七五減租條例第十五條).

KEYWORDS:

sale and *dien* (出賣及出典), tenant farmer (農地承租人). **

HOLDING: According to Article 15, Paragraph 1, of the Act Governing Reduction of Farm Rent to 37.5 Percent, when cultivated land is going to be sold or diened¹, the tenant has the right of first refusal, which he may decide to exercise or not, only if the landowner has informed the tenant the purchase terms in written form. Such provision shall not be set aside even though the tenant has expressed in

解釋文：依耕地三七五減租條例第十五條第一項之規定，承租人於耕地出賣或出典時，有優先承受之權。必須出租人將賣典條件以書面通知承租人後，始有表示承受或放棄承受之可言。此項規定，自不因承租人事先有拋棄優先承受權之意思表示而排除其適用。

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

¹ See Articles 911 thru 927 of the Civil Code.

advance the intention of giving up the right.

REASONING: Article 15, Paragraph 1, of the Act Governing Reduction of Farm Rent to 37.5 Percent reads: "When cultivated land is going to be sold or diened, the tenant has the right of first refusal. The landowner should inform the tenant in written form of the purchase or pawn terms. If the tenant does not reply in writing within 15 days, he or she will be deemed to have relinquished the right." The purpose of this provision is founded on a basic national policy that supports self-tilling tenants by granting them the purchase right under the same terms when the land is subject to sale or pawn. The tenant's right is further protected by way of requiring the landowner to inform him of the terms in written form. Such right of first refusal does not prevail until the land is subject to sale or pawn, nor can the tenant expresses the intention to buy or not until the landowner informs him of the terms in writing. Such provision shall not be set aside even though the tenant has expressed in advance the intention of giving up the right.

解釋理由書：查耕地三七五減租條例第十五條第一項規定：「耕地出賣或出典時，承租人有優先承受之權。出租人應將賣典條件以書面通知承租人。承租人在十五日內未以書面表示承受者，視為放棄。」其立法意旨乃本於憲法所定扶植自耕農之基本國策，使承租人於耕地出賣或出典時，依當時之賣典條件，有優先承受之權；並就賣典條件通知承租人，限定以書面為之，以確保承租人之權益。其優先承受之權，係於耕地出賣或出典時始行發生，且必須出租人將賣典條件以書面通知承租人後，始得表示承受或放棄承受，此項規定，自不因承租人事先拋棄優先承受權之意思表示而排除其適用。無論其意思表示係向出租人或向其他承租人為之，其時既無賣典之情事與條件，則法定之優先承受權尚未發生，自無所謂消滅或喪失之問題。嗣後如遇耕地出賣或出典時，出租人仍應依上開條項之規定，將賣典條件以書面通知承租人。承租人未於十五日內以書面表示承受者，始發生視為放棄之效果。

ing up the right. Whether such intention was expressed to the landowner or other tenants, in fact no sale or pawn occurred at that time. Since the right of first refusal did not prevail, nothing concerning the issue of termination or forfeit occurred. Thereafter, when the cultivated land is subject to sale or pawn, the landowner, according to the above provision, still has to inform the tenant of the terms in written form. If the tenant does not express the intention of purchasing in writing within 15 days, he will be deemed as having given up the right.