

J. Y. Interpretation No.142 (February 7, 1975) *

ISSUE: Where a matter of tax evasion occurred prior to the amendment and implementation of the Business Tax Act on December 30, 1965, may the tax be levied according to the new law?

RELEVANT LAWS:

Article 41 of Business Tax Act (營業稅法第四十一條) .

KEYWORDS:

Business Tax (營業稅), tax evasion (逃漏稅), pursuit of tax obligations pursuing (追徵) .**

HOLDING: If a business entity concealed business amount and evaded tax before December 30, 1965, the date on which the amendment of the whole Business Tax Act came into force, the tax evaded may not be pursued five years after the coming into force of the amendment if the evasion is not discovered within that period.

REASONING: Article 41 of Business Tax Act provides that if a busi-

解釋文：營利事業匿報營業額逃漏營業稅之事實發生在民國五十四年十二月三十日修正營業稅法全文公布施行生效之日以前者，自該日起五年以內未經發現，以後即不得再行課徵。

解釋理由書：查營業稅法第四十一條：「營利事業匿報營業額逃漏營

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ness entity evades business tax but such evasion is not discovered within five years, the tax evaded shall not be pursued thereafter. This provision was added to the Business Tax Act when the whole Act was amended on December 30, 1965. Therefore, if the act of evasion took place before the new provision came into force, no matter how much time has elapsed, the tax evaded shall be pursued because under the old Act there was no limitation period for the pursuit of tax obligations. On the other hand, if the evasion took place after the new law came into force, but was not found within five years, no tax evaded may be pursued thereafter. The result would be unfair and is against the rationale of the enactment of Article 41. Consequently, taking fairness into consideration, if a business entity evaded tax before December 30, 1965, the date on which the amendment of the whole Business Tax Act came into force, but such evasion was not discovered five years from that date, the tax evaded shall be waived.

Justice Shi-Ding Chin filed dissenting opinion.

業稅，於事實發生之日起五年內未經發現者，以後不得再行課徵」之規定，係民國五十四年十二月三十日修正舊營業稅法全文時所增訂，從而逃稅事實發生在該法條增訂以前者，因行為當時施行之營業稅法無課徵期間之限制，故無論經過時間之久暫均得課徵，而逃稅事實發生在該法條增訂以後者，則依該法條規定於事實發生之日起五年內未經發現者，以後即不得再行課徵，是在該法修正公布施行之日以前雖逃漏多年未經發現之營業額仍須課徵，而在該法修正公布施行之日以後，雖逃漏僅五年未經發現之營業額反不得課徵，既屬有失公平，與增訂該第四十一條之立法精神亦有未符，因此營利事業匿報營業額逃漏營業稅之事實發生在民國五十四年十二月三十日修正全文公布施行之營業稅法生效日以前者，乃宜自該日起算，五年以內未經發現者，以後即不得再行課徵，以期平允。

本號解釋金大法官世鼎提出不同意見書。