

J. Y. Interpretation No.151 (December 23, 1977) *

ISSUE: Is the tax authority permitted to levy tax for any lost inspection certificate in accordance with Article 128 of the Regulation Governing the Levy of Taxes on Commodity?

RELEVANT LAWS:

Article 19 of the Constitution (憲法第十九條) ; Article 125 and 128 of the Regulation Governing the Levy of Taxes on Commodity (貨物稅稽徵規則第一百二十五條及第一百二十八條) .

KEYWORDS:

blank tax-payment certificate (空白完稅照) , inspection certificate (查驗證) .**

HOLDING: The blank tax-paying certificate stamped with the remark "Substitute for Account Inspection and Tax Levy" received by the motorcycle manufacturer subject to account inspection and tax levy may be temporarily used as a substitute for the factory release certificate. If the blank tax-payment certificate is lost, unless evasion of tax is in-

解釋文：查帳徵稅之產製機車廠商所領蓋有「查帳徵稅代用」戳記之空白完稅照，既係暫代出廠證使用，如有遺失，除有漏稅情事者，仍應依法處理外，依租稅法律主義，稅務機關自不得比照貨物稅稽徵規則第一百二十八條關於遺失查驗證之規定補徵稅款。

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volved, which shall be handled according to law, the tax authority shall not levy tax for the lost inspection certificate in accordance with Article 128 of the Regulation Governing the Levy of Taxes on Commodity (the “Regulation”) under the principle of taxation by law.

REASONING: When an ordinary manufacturer/company subject to account inspection and tax levy loses a certificate of inspection, the “case should be concluded by imposing a tax equal to the amount payable for the goods onto which such certificate should be affixed” under Article 128 of the Regulation Governing the Levy of Taxes on Commodity. However, the blank tax-paying certificate stamped with the remark “Substitute for Account Inspection and Tax Levy” by the tax authority may be temporarily used as a substitute for the factory release certificate. If such a blank tax-paying certificate is lost, the Regulation do not expressly provide that the tax applicable to a lost inspection certificate should be levied. Article 125 of the Regulation separately provides for the procedure for the han-

解釋理由書：按查帳徵稅之一般廠商遺失查驗證時，貨物稅稽徵規則第一百二十八條固有「應按該項查驗證應貼貨件之稅價計補稅款結案」之規定，惟稅務機關加蓋「查帳徵稅代用」戳記之空白完稅照，係暫代出廠證使用，遺失時，同規則並無按遺失查驗證補稅之明文，其第一百二十五條復另有處理之規定；從而查帳徵稅之產製機車廠商所領蓋有「查帳徵稅代用」戳記之空白完稅照，如有遺失，除有漏稅情事者，仍應依法處理外，依租稅法律主義，稅務機關自不得比照貨物稅稽徵規則第一百二十八條關於遺失查驗證之規定補徵稅款。

dling of such a situation. It follows that if the blank tax-paying certificate stamped with the remark “Substitute for Account Inspection and Tax Levy” received by the motorcycle manufacturer subject to account inspection and tax levy is lost, unless evasion of tax is involved, which shall be handled according to law, the tax authority shall not levy tax for the lost inspection certificate in accordance with Article 128 of the Regulation under the principle of taxation by law.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。