

J. Y. Interpretation No.163 (June 20, 1980) *

ISSUE: Shall income tax be levied on the compensation left, if any, acquired by the lessee of a farmland for the termination of the lease contract after the deduction of necessary expenses and actual losses?

RELEVANT LAWS:

Category 9 of Paragraph 1 of Article 14 of the Income Tax Act (所得稅法第十四條第一項第九類) ; Paragraph 1 of Article 77 of the Equalization of Land Rights Act (平均地權條例第七十七條第一項) ; Paragraph 2 of Article 56 of the Enforcement of the Equalization of the Urban Land Rights Act (實施都市平均地權條例第五十六條第二項) .

KEYWORDS :

to terminate the lease contract of leased farmland (出租耕作終止租約) , compensation (補償金) , income tax (所得稅) .**

HOLDING: When leased farmland, according to the laws, has been designated for the purpose of construction, and then the lessor terminates the lease contract in order to take the land back to

解釋文：出租耕地經依法編為建築用地者，出租人為收回自行建築或出售作為建築使用，而終止租約時，依法給與承租人該土地地價三分之一之補償金，於依具體事實，扣除必要費用及

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use for the purpose of construction or to sell it for the purpose of construction, according to the laws, the lessor shall compensate the lessee with the amount equivalent to one third of the land value, and after the deduction, according to specific facts, of necessary expenses and actual losses, if there is any compensation left, income tax shall be levied according to Category 9 of Paragraph 1 of Article 14 of the Income Tax Act.

REASONING: When leased farmland, according to the laws, has been designated for the purpose of construction, and then the lessor terminates the lease contract in order to take the land back to use for the purpose of construction or to sell it for the purpose of construction, Paragraph 2 of Article 56 of the Act Governing Enforcement of the Equalization of Urban Land Rights, as amended and promulgated on February 12, 1968, provides that the lessor “shall compensate the lessee with the amount equivalent to one third of the declared value of the land, besides compensating the lessee for the expenses he has incurred

實際所受損失後，如仍有所得，應依所得稅法第十四條第一項第九類課徵所得稅。

解釋理由書：出租耕地經依法編為建築用地，出租人為收回自行建築或出售作為建築使用，而終止租約時，非出於承租人之自由意思，為兼顧其生活，減少租佃糾紛，以利都市建設，因於民國五十七年二月十二日修正公布之實施都市平均地權條例第五十六條第二項規定，出租人「除應補償承租人為改良土地所支付之費用，及尚未收穫之農作改良物外，並應給與該土地申報地價三分之一之補償。」該條例於民國六十六年二月二日修正為平均地權條例，並於第七十七條第一項將上開規定修正為：「耕地出租人依前條規定終止租約收回耕地時，除應補償承租人為改良土地所支付之費用及尚未收穫之農作改良

in making land improvements as well as for any crops not yet harvested,” for this termination is not executed by the lessee voluntarily, and the lessee’s living expenses need to be taken into account as well in order to reduce the disputes between the lessor and lessee and to facilitate the urban development. The aforesaid Act was reenacted as the Equalization of Land Rights Act on February 1, 1977, and the provision of Paragraph 1 of Article 77 of this Act has revised the above-mentioned provision as “In terminating the lease contract and taking the land back according to the provisions of the preceding Article, the lessor shall compensate the lessee for the expenses he has incurred in making land improvements as well as for any crops not yet harvested. In addition, if the termination is to take the land back for the lessor himself to use for the purpose of construction, the lessor shall calculate the land value increment tax beforehand by the announced current land value at the time of the termination of lease contract, and compensate the lessee with the amount equivalent to one third of the difference between the announced

物外，其為自行建築者，應就終止租約當期之公告土地現值，預計土地增值稅，並按該公告土地現值，減除預計土地增值稅後餘額三分之一給予補償；其為出售供他人建築者，給與該土地繳納土地增值稅後餘額三分之一之補償」，以補償租約終止後，承租人如有遷徙、轉業或其他支出之必要費用及其租約預期存續期間實際所受損失；此等金額，自非對承租人應課徵所得稅之所得。故上項補償金，於依具體事實，扣除必要費用及實際所受損失後，如仍有所得，應依所得稅法第十四條第一項第九類課徵所得稅。

current land value and the anticipated land value increment tax; if the termination is to sell the land out for others to do the construction, the lessor shall compensate the lessee with the amount equivalent to one third of the difference between the current land value and the land value increment tax.” This provision is in order to compensate the lessee, after the termination of the lease contract, for the costs of moving, changing jobs or other paid necessary expenses, and the actual loss derived from the expectation of the continuance of the lease contract, if any; this amount of money does not belong to the income upon which the income tax shall be levied. However, after the deduction, according to specific facts, of necessary expenses and actual losses, if there is any compensation left, income tax shall be levied on it according to Category 9 of Paragraph 1 of Article 14 of the Income Tax Act.

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。