

J. Y. Interpretation No.208 (August 15, 1986) \*

**ISSUE:** What does the lessee of tillage mean under the Equalization of Land Rights Act?

**RELEVANT LAWS:**

Articles 11, 76, and 77 of the Equalization of Land Rights Act  
(平均地權條例第十一條、第七十六條、第七十七條) .

**KEYWORDS:**

taking (徵收), tillage (耕地), cause for retrial (再審理由) .\*\*

**HOLDING:** For the thorough fulfillment of the fundamental state policy that assists self-employed farmers and self-managing land users and protects farmers' right to seek compensation from the state, Article 11 of the Equalization of Land Rights Act states that if the land taken and allotted by law is leased tillage, the related persons or authorities shall compensate the lessee 1/3 of the remainder of the price of the land after subtracting the land value increment tax. The

**解釋文：**為貫徹扶植自耕農與自行使用土地人及保障農民生活，以謀國計民生均足之基本國策，平均地權條例第十一條規定，依法徵收及撥用之土地為出租耕地時，應就扣除土地增值稅後，補償地價餘款之三分之一補償耕地承租人，其所稱耕地承租人指承租耕地實際自任耕作之自然人及合作農場而言。惟在本解釋公布前，法院就該法條文義所持裁判上之見解，尚難認係適用法規顯有錯誤，不得據為再審理由，併予說明。

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\* Translated by Ching P. Shih.

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

lessee of the tillage mentioned above means a person or a cooperative farm leasing the tillage and engaged in the cultivation in fact. However, before the promulgation of this Interpretation, the opinion relating to the meaning of the above provision made by the court in judgments will not be deemed an application of regulations in error. It cannot be claimed as a cause for retrial.

**REASONING:** For the thorough fulfillment of the fundamental state policy that assists self-employed farmers and self-managing land users and protects farmers' right to seek compensation from the state, Articles 11, 76, and 77 of the Equalization of Land Rights Act state that when taking leased private-owned tillage, allotting public-owned tillage, or terminating a leasing agreement and recovering leased tillage for the uses of buildings, the owners of privately-owned lands, the original supervising authorities of the publicly-owned tillage, or the authorities which need lands shall compensate the lessee at 1/3 of the remainder of the price of the land after subtracting the land value

**解釋理由書：**為貫徹憲法上扶植自耕農與自行使用土地人及保障農民生活，以謀國計民生均足之基本國策，平均地權條例第十一條、第七十六條及第七十七條規定，徵收私有出租耕地，撥用公有出租耕地，或終止租約收回出租耕地作為建築使用時，私有土地所有權人、公有耕地原管理機關或需地機關應就扣除土地增值稅後補償地價餘款之三分之一，補償耕地承租人，以避免佃農因耕地喪失不能從事農作物之種植而生活失據，並使合作經營農場者之權益同受保障。故上開平均地權條例第十一條所稱應受地價補償之耕地承租人，係指承租耕地，實際自任耕作之自然人及合作農場而言，不包括非耕地租用而從事耕作，或耕地租用而未自任耕作者在

increment tax. The purposes of this provision are to prevent the tenant farmer from losing his or her means of living incurred by the inability to engage in the cultivation of crops because of his or her loss of tillage and to protect the rights and interests of persons who cooperatively manage farms as well. The lessee of the tillage who should receive compensation as mentioned in Article 11 of the above Equalization of Land Rights Act means a person or a cooperative farm leasing the tillage and engaged in the cultivation in fact. Those who engage in cultivation on non-leased tillage or lease tillage but do not engage in the cultivation in fact shall not be included.

Based on its duty, the Executive Yuan petitioned this uniform Interpretation case. According to the legislative intent of Article 11 of the Equalization of Land Rights Act, this Yuan, on the basis of the above reasoning, recognizes that the so-called lessee means a person or a cooperative farm leasing the tillage and engaging in the cultivation in fact. However, before the promulgation of this

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本件行政院依職權聲請統一解釋，本院雖據前開理由，依平均地權條例第十一條之立法意旨，認其所稱承租人，係指實際自任耕作之自然人及合作農場而言，惟在本解釋公布前，法院就該法條文義所持裁判上之見解，尚難認係適用法規顯有錯誤，不得據為再審理由，併予說明。

Interpretation, the opinion relating to the meaning of the above provision made by the court in judgments will not be deemed an application of regulations in error. It cannot be claimed as a cause for retrial.