

J. Y. Interpretation No.221 (January 27, 1988) *

ISSUE: Where the heir fails to account for the use of the money borrowed or the proceeds from the sale of property by the decedent during the time when the decedent was incapable of managing his business due to serious illness, is Article 13 of the Enforcement Rules of the Estate and Gift Taxes Act, providing to the effect that such money or proceeds shall be included in the estate for tax purposes, contrary to the Constitution by imposing an extra taxation on the people?

RELEVANT LAWS:

Article 19 of the Constitution (憲法第十九條) ; Article 1 and Article 17, Paragraph 1, Subparagraph 8 of the Estate and Gift Taxes Act (遺產及贈與稅法第一條、第十七條第一項第八款) ; Article 13 of the Enforcement Rules of the Estate and Gift Taxes Act (遺產及贈與稅法施行細則第十三條) .

KEYWORDS:

estate tax (遺產稅) , evasion of tax (逃漏稅) , equality in taxation (課稅公平) .**

HOLDING: The Enforcement Rules of the Estate and Gift Taxes Act provide in Article 13: "Where a decedent

解釋文：遺產及贈與稅法施行細則第十三條規定：「被繼承人死亡前因重病無法處理事務期間舉債或出售

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contracted any debt or sold any of his property before his death and during the period in which he was incapable of managing his business because of serious illness, and his heir is unable to prove the usage of the money borrowed or the proceeds obtained, such money shall be included in the estate for tax purposes.” The purpose of this article is to give full effect to Article 1 and Article 17, Paragraph 1, Subparagraph 8, of the Estate and Gift Taxes Act so as to insure correct accounting of the taxable estate, and is essential to the prevention of possible evasion of estate tax and the maintenance of equality in taxation. It does not add any taxation to what is legally imposed on the people and is hence not inconsistent with Article 19 of the Constitution. As to whether there is any taxable estate in a particular case, either the taxing authority or the taxpayer must be required to assume the burden of proof, as the case may be, under the doctrine of distribution of the burden of proof.

REASONING: Article 19 of the Constitution provides: “The people shall

財產，而其繼承人對該項借款或價金不能證明其用途者，該項借款或價金，仍應列入遺產課稅。」旨在貫徹遺產及贈與稅法第一條及第十七條第一項第八款之規定，以求認定課稅遺產之正確，為防止遺產稅之逃漏及維持課稅之公平所必要，並未增加法律所定人民之納稅義務，與憲法第十九條並無抵觸。至具體案件應稅遺產之有無，仍應依舉證責任分配之法則，分由稅捐稽徵機關或納稅義務人盡舉證責任，併予指明。

解釋理由書：按憲法第十九條規定：「人民有依法律納稅之義務。」

have the duty to pay tax under law.” Article 1 of the Estate and Gift Taxes Act provides: “Where a national of the Republic of China who regularly resided in the territory of the Republic of China left property at the time of his death, an estate tax shall be levied under this Act upon all estates owned by him in and outside the Republic of China; where a national of the Republic of China who regularly resided outside the territory of the Republic of China or a person who was not a national of the Republic of China left property in the territory of the Republic of China at the time of his death, an estate tax shall be levied under this Act upon all estates owned by him in the Republic of China.” And, under the same Act, the heir has the duty to declare and pay tax pursuant to the levying procedure set forth therein. Furthermore, the Act provides in Article 17, Paragraph 1, Subparagraph 8, that debts of the decedent not repaid prior to his death and verifiable by substantial proof are deductible from the gross amount of the estate. However, granted that debts were contracted or property was sold by the decedent during the time when he was

遺產及贈與稅法第一條規定：「凡經常居住中華民國境內之中華民國國民死亡時遺有財產者，應就其在中華民國境內境外全部遺產，依本法規定，課徵遺產稅。經常居住中華民國境外之中華民國國民，及非中華民國國民，死亡時在中華民國境內遺有財產者，應就其在中華民國境內之遺產，依本法規定，課徵遺產稅。」遺產繼承人並負有依同法所定稽徵程序申報繳納之義務。同法第十七條第一項第八款復規定，被繼承人死亡前，未償之債務，具有確實證明者，應自遺產總額中扣除。惟被繼承人在重病無法處理事務期間，對外舉債或出售財產，縱屬真實，依一般情形，亦難自行處理其因舉債所得之借款，或因出售財產所得之價金，該項借款或價金，自應由繼承人證明其用途，以防止繼承人用被繼承人名義舉債或出售財產為手段，隱匿遺產。因此為貫徹該第一條及第十七條第一項第八款之規定，同法施行細則第十三條乃規定：「被繼承人死亡前因重病無法處理事務期間舉債或出售財產，而其繼承人對該項借款或價金不能證明其用途者，該項借款或價金，仍應列入遺產課稅。」此項規定，旨在兼顧繼承人之利益及認定課稅遺產之正確，為防止遺產稅之逃漏及維持課稅之公平

incapable of managing his business because of serious illness, it would, generally speaking, be difficult for him to personally manage the use of the money so borrowed or the proceeds of the sale of his property. Thus, the heir must of course be required to prove the usage of such money or proceeds to prevent the heir from mismanaging the estate through the accumulation of debts or sale of property in the name of the decedent. To give full effect to Article 1 and Article 17, Paragraph 1, Subparagraph 8, of the Estate and Gift Taxes Act, the Enforcement Rules provide in Article 13: "Where a decedent contracted any debt or sold any of his property before his death and during the period in which he was incapable of managing his business because of serious illness, and his heir is unable to prove the usage of the money so borrowed or the proceeds obtained, such money shall be included in the estate for tax purposes." The purpose of this article is to insure correct accounting of the taxable estate as well as to protect the interest of the heir, and is essential to the prevention of possible evasion of estate tax and the mainte-

所必要，並未增加法律所定人民之納稅義務，與憲法第十九條並無牴觸。至具體案件應稅遺產之有無，仍應依舉證責任分配之法則，分由稅捐稽徵機關或納稅義務人盡舉證責任，併予指明。

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nance of equality in taxation. It does not add any taxation to what is legally imposed on the people and is hence not inconsistent with Article 19 of the Constitution. As to whether there is any taxable estate in a particular case, either the taxing authority or the taxpayer must be required to assume the burden of proof, as the case may be, under the doctrine of distribution of the burden of proof.