

J. Y. Interpretation No.224 (April 22, 1988) *

ISSUE: Are the relevant provisions of the Tax Levy Act, in requiring that a person who wishes to petition for a tax review pay a proportional amount of tax so defaulted or post adequate security as a condition for submission of such a petition, in violation of the Constitution?

RELEVANT LAWS:

Articles 7, 16 and 19 of the Constitution (憲法第七條、第十六條及第十九條) ; Articles 35 to 38, Paragraph 1 and 3, and 39 of the Tax Levy Act (稅捐稽徵法第三十五條至第三十八條第一項及第三項、第三十九條) .

KEYWORDS:

petition for review (申請復查) , security (擔保) , administrative relief (行政救濟) , compulsory enforcement (強制執行) .**

HOLDING: The provisions of the Tax Levy Act, which require a petitioner to pay a portion of the tax or post adequate security as a condition for a petition for review and thus deprive a party who cannot pay or post security of his

解釋文：稅捐稽徵法關於申請復查，以繳納一定比例之稅款或提供相當擔保為條件之規定，使未能繳納或提供相當擔保之人，喪失行政救濟之機會，係對人民訴願及訴訟權所為不必要之限制，且同法又因而規定，始予強制

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opportunity of seeking administrative relief, constitute an unnecessary restriction on the people's rights to administrative appeal and litigation. The same Act further provides that once a petition for review is filed, the compulsory enforcement thereof shall be suspended until such procedure of administrative relief is finally concluded. This is also unfair to those who have not commenced such procedure of administrative relief. These provisions are inconsistent with the intention behind Articles 7, 16, and 19 of the Constitution and shall become void within two years from the date of this Interpretation. During the interim period, the foregoing provisions shall, along with the issues of securing the payment of tax and priority in payment of tax, be reviewed and revised from an overall perspective, so that both the constitutional provisions for protecting the rights of administrative appeal and litigation and the principle of equality in assessing tax will be effectively advanced.

REASONING: Articles 35 to 37 and Article 38, Paragraph 1, of the Tax Levy Act, which require a petitioner to

申請復查者，須於行政救濟程序確定後執行，對於未經行政救濟程序者，亦有欠公平，與憲法第七條、第十六條、第十九條之意旨有所不符，均應自本解釋公布之日起，至遲於屆滿二年時失其效力。在此期間，上開規定應連同稅捐之保全與優先受償等問題，通盤檢討修正，以貫徹憲法保障人民訴願、訴訟權及課稅公平之原則。

解釋理由書：稅捐稽徵法第三十五條至第三十八條第一項關於申請復查，以繳納一定比例之稅款或提供相當

pay a portion of the tax or post adequate security as a condition for a petition for review, thus requiring a petitioner to go through the review process before seeking administrative appeal or litigation, despite their benefit of procuring the speedy recovery or security for part of the tax, could produce the result that only those who can afford the required payment have the remedy of administrative relief and that those who can not post adequate security may lose such remedy. Moreover, Article 38, Paragraph 3, and Article 39 provide that once an application for review is instituted, the compulsory enforcement of the tax shall be deferred until the final conclusion of the review, administrative appeal or litigation. Those who apply for review may, after paying only one half or one third of the tax assessed or providing security there for, use the administrative relief procedure to significantly delay the payment of the remaining portion to conceal assets and thus evade the remaining tax. Not only do these provisions fail to accomplish their purpose of correcting problems, they constitute unnecessary restrictions on the

擔保為條件，及不服復查決定始得提起訴願、行政訴訟之規定，雖使部分稅款迅獲清償或擔保，但僅有資力之人，得享行政救濟之利益，而未能繳納一定比例之稅款或提供相當擔保者則喪失行政救濟機會。且同法又因而於第三十八條第三項及第三十九條規定，申請復查者，須於復查、訴願或行政訴訟確定後，始予強制執行，致申請復查者反可於繳納應繳稅款之半數或三分之一或提供相當擔保後，利用行政救濟程序，長期拖欠未繳部分或趁機隱匿財產，以逃漏其餘稅款，亦難達防止流弊之目的，係對人民訴願及訴訟權所為不必要之限制，其中第三十九條之規定，對於未經行政救濟程序者，亦有欠公平，且與我國行政救濟制度不因提起救濟程序而停止原處分執行之原則不合，是上述規定有關解釋文所示部分與憲法第七條、第十六條、第十九條之意旨有所不符，均應自本解釋公布之日起，至遲於屆滿二年時失其效力。在此期間，上開規定，應連同稅捐之保全與優先受償等問題，通盤檢討修正，以貫徹憲法保障人民訴願、訴訟權及課稅公平之原則。

right of administrative appeal or litigation. Article 39 is unfair to those who choose not to go through the administrative relief procedure and contradicts the principle of administrative relief which requires that enforcement of an administrative order shall not be affected by the commencement of an administrative relief procedure. Therefore the foregoing provisions as mentioned in this text are inconsistent with the intention behind Articles 7, 16, and 19 of the Constitution and shall become void within two years from the date of this Interpretation. During the interim period, the foregoing provisions shall be, along with the issues of security for and priority in payment of taxes, reviewed and revised in a comprehensive manner, so that the constitutional principles of protecting the rights of administrative appeal and litigation as well as the principle of fair taxation may be completely effectuated.

Justice Chung-Sheng Lee filed dissenting opinion.

Justice Chien-Hua Yang filed dissenting opinion in part.

本號解釋李大法官鐘聲提出不同意見書；楊大法官建華提出理由不同意見書。