

[DE] Ruling by the Higher Administrative Court (OVG) in Berlin on Whether It Was Possible to Levy a Film Tax on Takings in Video Hire Shops

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On 17 January 1995 the OVG in Berlin turned down an appeal made by a video rental shop owner against the levy of a film tax on him by the Berlin film support institution (Filmförderungsanstalt).

The court found the appeal to be unfounded.

The ruling against the petitioner, thus forcing him to pay a film tax on the takings in both his rental shops, was based on article 66a of the German Act on film support (Filmförderungsgesetz - FFG) of 18 November 1986.

The court considered that conditions under constitutional law which allow the levying of special taxes on the video business for film support, had been met in this case. The court made a special study of the pertinent criteria, such as similarity to other groups, relevance and group use and concluded that: under the FFG, video rental shops could be considered as being similar to cinema owners, already taxable under Article 66 of film promotion legislation, since both groups have a vested interest in the preservation and improvement of the German film. The judges' main argument was that all those who make money from films should also make a reasonable and fair contribution to the promotion of German films. Even the close link between the video business and the aim of this film support work (to increase quality and improve structure) was accepted since it was considered that both the services offered and the audience were fundamentally the same in each case. According to the court, the film support levy benefits the group of film levy payers as a hole, video shop owners included, since its effects could be felt directly by the video business. Laws governing film rental and sales under Article 53 of the film promotion legislation and measures for film projection contained in article 56 of the same legislation promoted publicity and advertising for the films. Since the amendments to the film promotion legislation on 1 January 1993, film levies from the video industry have been paid by the programme suppliers (licence holders) and no longer by the individual video shops as was the case before. As clearly-defined legal regulations have been lifted and there is now a subsequent lack of any basic understanding, it was decided not to allow any revisions.

Urteil des OVG Berlin vom 17. Januar 1995, Az: OVG 8 B 65.91/ VG 22 A 59.90.

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