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서 울 행 정 법 원

제 5 부

판 결

사 건 2017구합80691 취득세부과처분취소청구등

원 고 [redacted] 주식회사

피 고 1. [redacted]시 [redacted]구청장

2. [redacted]시 [redacted]구청장

변 론 종 결 2018. 4. 26.

판 결 선 고 2018. 5. 31.

주 문

1. 원고의 피고들에 대한 소를 모두 각하한다.

2. 소송비용은 피고들이 부담한다.

청 구 취 지

피고 [redacted]시 [redacted]구청장이 2017. 7. 10. 원고에게 한 별지 1 기재 취득세 및 가산세 합계 424,290,780원의 부과처분을 각 취소한다.

피고 [redacted]시 [redacted]구청장이 2017. 7. 8. 원고에게 한 별지 2 기재 취득세 및 가산세 합계 549,326,500원의 부과처분을 각 취소한다.

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이 유

1. 이 사건 소의 적법 여부

행정처분이 취소되면 그 처분은 효력을 상실하여 더 이상 존재하지 않으며, 존재하지 않는 행정처분을 대상으로 한 취소소송은 소의 이익이 없어 부적법하다(대법원 2017. 6. 29. 선고 2017두38621 판결 등 참조).

직권으로 살피건대, 변론 전체의 취지에 의하면 피고들이 이 법원에 소송 계속 중이던 2017. 12. 8. 청구취지 기재 각 부과처분을 모두 직권으로 취소한 사실을 인정할 수 있으므로, 원고의 피고들에 대한 이 사건 소는 이미 소멸하고 없는 처분의 취소를 구하는 것으로서 소의 이익이 없어 부적법하게 되었다.

2. 결론

그렇다면 원고의 피고들에 대한 소는 부적법하므로 이를 모두 각하하고, 다만 행정소송법 제32조에 따라 소송비용은 피고들이 부담하도록 하여, 주문과 같이 판결한다.

재판장 판사 박양준

판사 김선아

판사 최선재

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[별지 1]

취득세 납세고지 내역(피고 [redacted]구청장)

(단위:원)

처분일	취득일자	과세표준	산출세액	가산세	고지세액
20170710	20130116	23,764,547	1,663,510	1,119,200	2,782,710
20170710	20130117	32,067,273	2,244,700	1,509,560	3,754,260
20170710	20130118	42,636,364	2,984,540	2,006,190	4,990,730
20170710	20130118	23,272,727	1,629,090	1,095,060	2,724,150
20170710	20130122	34,272,727	2,399,090	1,609,780	4,008,870
20170710	20130124	28,305,455	1,981,380	1,328,310	3,309,690
20170710	20130125	60,727,273	4,250,900	2,848,520	7,099,420
20170710	20130129	59,272,727	4,149,090	2,775,310	6,924,400
20170710	20130130	23,368,547	1,635,790	1,093,680	2,729,470
20170710	20130131	33,997,273	2,379,800	1,590,420	3,970,220
20170710	20130131	54,636,360	3,824,540	2,555,930	6,380,470
20170710	20130131	32,090,909	2,246,360	1,501,240	3,747,600
20170710	20130131	22,690,909	1,588,360	1,061,490	2,649,850
20170710	20130201	26,841,819	1,878,920	1,255,110	3,134,030
20170710	20130204	30,641,819	2,144,920	1,430,870	3,575,790
20170710	20130214	31,728,184	2,220,970	1,474,940	3,695,910
20170710	20130218	31,290,091	2,190,300	1,451,940	3,642,240
20170710	20130220	25,491,864	1,784,430	1,181,820	2,966,250
20170710	20130220	24,654,545	1,725,810	1,143,000	2,868,810
20170710	20130220	19,316,363	1,352,140	895,510	2,247,650

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20170710	20130221	30,636,363	2,144,540	1,419,670	3,564,210
20170710	20130226	22,467,273	1,572,700	1,038,760	2,611,460
20170710	20130227	20,235,182	1,416,460	935,140	2,351,600
20170710	20130227	30,636,363	2,144,540	1,415,810	3,560,350
20170710	20130227	30,636,363	2,144,540	1,415,810	3,560,350
20170710	20130227	30,636,363	2,144,540	1,415,810	3,560,350
20170710	20130227	47,636,364	3,334,540	2,201,450	5,535,990
20170710	20130228	46,636,364	3,264,540	2,154,260	5,418,800
20170710	20130228	47,227,273	3,305,900	2,181,560	5,487,460
20170710	20130228	47,854,550	3,349,810	2,210,530	5,560,340
20170710	20130228	23,272,727	1,629,090	1,075,020	2,704,110
20170710	20130306	29,727,273	2,080,900	1,369,440	3,450,340
20170710	20130307	30,636,363	2,144,540	1,410,670	3,555,210
20170710	20130308	57,727,273	4,040,900	2,656,890	6,697,790
20170710	20130308	57,727,273	4,040,900	2,656,890	6,697,790
20170710	20130308	53,727,273	3,760,900	2,472,790	6,233,690
20170710	20130308	39,454,550	2,761,810	1,815,880	4,577,690
20170710	20130308	39,454,550	2,761,810	1,815,880	4,577,690
20170710	20130312	54,381,818	3,806,720	2,498,340	6,305,060
20170710	20130312	33,090,909	2,316,360	1,520,220	3,836,580
20170710	20130313	60,454,545	4,231,810	2,776,060	7,007,870
20170710	20130314	20,104,083	1,407,280	922,740	2,330,020

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20170710	20130315	57,363,640	4,015,450	2,631,720	6,647,170
20170710	20130319	24,001,819	1,680,120	1,099,130	2,779,250
20170710	20130321	16,015,182	1,121,060	732,720	1,853,780
20170710	20130321	23,272,727	1,629,090	1,064,760	2,693,850
20170710	20130322	28,363,636	1,985,450	1,297,090	3,282,540
20170710	20130322	91,363,636	6,395,450	4,178,140	10,573,590
20170710	20130325	33,363,636	2,335,450	1,523,640	3,859,090
20170710	20130326	16,864,728	1,180,530	769,810	1,950,340
20170710	20130326	63,109,090	4,417,630	2,880,730	7,298,360
20170710	20130328	57,363,630	4,015,450	2,616,060	6,631,510
20170710	20130329	33,254,545	2,327,810	1,515,860	3,843,670
20170710	20130329	22,181,818	1,552,720	1,011,120	2,563,840
20170710	20130329	52,909,090	3,703,630	2,411,790	6,115,420
20170710	20130329	35,254,545	2,467,810	1,607,030	4,074,840
20170710	20130401	29,760,000	2,083,200	1,354,700	3,437,900
20170710	20130401	36,330,910	2,543,160	1,653,810	4,196,970
20170710	20130405	19,316,363	1,352,140	877,660	2,229,800
20170710	20130409	52,818,180	3,697,270	2,395,450	6,092,720
20170710	20130412	24,070,182	1,684,910	1,090,130	2,775,040
20170710	20130416	15,267,273	1,068,700	690,160	1,758,860
20170710	20130418	23,272,727	1,629,090	1,051,080	2,680,170
20170710	20130418	39,454,550	2,761,810	1,781,910	4,543,720

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20170710	20130422	25,664,182	1,796,490	1,156,930	2,953,420
20170710	20130423	52,545,455	3,678,180	2,367,630	6,045,810
20170710	20130424	52,818,180	3,697,270	2,378,810	6,076,080
20170710	20130425	20,545,454	1,438,180	924,880	2,363,060
20170710	20130425	47,545,455	3,328,180	2,140,340	5,468,520
20170710	20130430	63,818,180	4,467,270	2,866,190	7,333,460
20170710	20130430	47,909,090	3,353,630	2,151,680	5,505,310
20170710	20130430	30,636,363	2,144,540	1,375,920	3,520,460
20170710	20130430	51,054,550	3,573,810	2,292,950	5,866,760
20170710	20130430	37,181,818	2,602,720	1,669,900	4,272,620
20170710	20130430	50,090,909	3,506,360	2,249,670	5,756,030
20170710	20130503	20,545,454	1,438,180	921,430	2,359,610
20170710	20130507	19,518,319	1,366,280	873,730	2,240,010
20170710	20130507	23,272,727	1,629,090	1,041,790	2,670,880
20170710	20130509	52,545,455	3,678,180	2,349,980	6,028,160
20170710	20130513	28,157,273	1,971,000	1,256,900	3,227,900
20170710	20130513	32,318,000	2,262,260	1,442,640	3,704,900
20170710	20130514	86,818,182	6,077,270	3,873,640	9,950,910
20170710	20130516	25,116,000	1,758,120	1,119,560	2,877,680
20170710	20130516	34,272,727	2,399,090	1,527,730	3,926,820
20170710	20130516	20,545,454	1,438,180	915,820	2,354,000
20170710	20130521	26,551,455	1,858,600	1,180,760	3,039,360

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20170710	20130527	59,541,810	4,167,920	2,640,370	6,808,290
20170710	20130530	19,090,909	1,336,360	845,370	2,181,730
20170710	20130531	24,043,182	1,683,020	1,064,160	2,747,180
20170710	20130531	23,045,455	1,613,180	1,020,000	2,633,180
20170710	20130531	24,198,182	1,693,870	1,071,030	2,764,900
20170710	20130531	34,272,727	2,399,090	1,516,930	3,916,020
20170710	20130531	54,727,273	3,830,900	2,422,270	6,253,170
20170710	20130531	15,267,273	1,068,700	675,730	1,744,430
20170710	20130605	19,581,818	1,370,720	864,640	2,235,360
20170710	20130612	52,909,090	3,703,630	2,328,460	6,032,090
20170710	20130614	18,126,573	1,268,860	796,960	2,065,820
20170710	20130618	33,467,455	2,342,720	1,468,640	3,811,360
20170710	20130618	27,406,910	1,918,480	1,202,680	3,121,160
20170710	20130621	28,672,727	2,007,090	1,256,430	3,263,520
20170710	20130628	27,292,728	1,910,490	1,191,940	3,102,430
20170710	20130628	20,095,910	1,406,710	877,640	2,284,350
20170710	20130628	30,916,364	2,164,140	1,350,190	3,514,330
합계	_	3,672,527,846	257,076,460	167,214,320	424,290,780

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[별지 2]

취득세 납세고지 내역(피고 중구청장)

(단위:원)

처분일	취득일자	과세표준	산출세액	가산세	고지세액
20170708	20120702	35,203,183	2,464,220	1,804,290	4,268,510
20170708	20120702	22,563,728	1,579,460	1,156,470	2,735,930
20170708	20120702	34,275,455	2,399,280	1,756,740	4,156,020
20170708	20120703	30,483,274	2,133,820	1,561,730	3,695,550
20170708	20120703	30,548,001	2,138,360	1,565,060	3,703,420
20170708	20120703	33,816,183	2,367,130	1,732,490	4,099,620
20170708	20120703	14,694,546	1,028,610	752,830	1,781,440
20170708	20120705	32,602,092	2,282,140	1,668,920	3,951,060
20170708	20120706	31,512,455	2,205,870	1,612,480	3,818,350
20170708	20120706	30,837,455	2,158,620	1,577,940	3,736,560
20170708	20120710	72,454,550	5,071,810	3,701,400	8,773,210
20170708	20120710	46,909,091	3,283,630	2,396,380	5,680,010
20170708	20120711	22,800,728	1,596,050	1,164,310	2,760,360
20170708	20120711	22,845,819	1,599,200	1,166,610	2,765,810
20170708	20120711	31,647,455	2,215,320	1,616,070	3,831,390
20170708	20120711	23,844,728	1,669,130	1,217,620	2,886,750
20170708	20120712	26,938,882	1,885,720	1,375,060	3,260,780
20170708	20120712	27,404,000	1,918,280	1,398,800	3,317,080
20170708	20120712	31,809,455	2,226,660	1,623,670	3,850,330
20170708	20120713	33,545,000	2,348,150	1,711,560	4,059,710

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20170708	20120713	19,460,455	1,362,230	992,920	2,355,150
20170708	20120713	22,591,910	1,581,430	1,152,690	2,734,120
20170708	20120713	14,820,910	1,037,460	756,200	1,793,660
20170708	20120716	29,629,546	2,074,060	1,509,910	3,583,970
20170708	20120716	23,851,537	1,669,600	1,215,460	2,885,060
20170708	20120716	15,950,001	1,116,500	812,810	1,929,310
20170708	20120717	29,375,546	2,056,280	1,496,340	3,552,620
20170708	20120717	32,327,728	2,262,940	1,646,730	3,909,670
20170708	20120717	24,348,700	1,704,400	1,240,290	2,944,690
20170708	20120718	23,045,891	1,613,210	1,173,440	2,786,650
20170708	20120720	31,655,364	2,215,870	1,610,490	3,826,360
20170708	20120724	15,169,091	1,061,830	770,450	1,832,280
20170708	20120724	51,454,540	3,601,810	2,613,470	6,215,280
20170708	20120725	20,463,183	1,432,420	1,038,930	2,471,350
20170708	20120725	16,302,274	1,141,150	827,670	1,968,820
20170708	20120730	28,199,365	1,973,950	1,428,740	3,402,690
20170708	20120731	36,727,273	2,570,900	1,860,040	4,430,940
20170708	20120731	26,307,510	1,841,520	1,332,330	3,173,850
20170708	20120731	23,272,728	1,629,090	1,178,630	2,807,720
20170708	20120731	19,634,092	1,374,380	994,350	2,368,730
20170708	20120802	31,477,364	2,203,410	1,592,840	3,796,250
20170708	20120807	28,347,546	1,984,320	1,431,480	3,415,800

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20170708	20120808	39,000,000	2,730,000	1,968,600	4,698,600
20170708	20120810	27,404,000	1,918,280	1,382,110	3,300,390
20170708	20120814	28,452,365	1,991,660	1,432,590	3,424,250
20170708	20120816	34,275,182	2,399,260	1,724,340	4,123,600
20170708	20120817	30,875,455	2,161,280	1,552,650	3,713,930
20170708	20120817	20,876,364	1,461,340	1,049,810	2,511,150
20170708	20120820	27,147,183	1,900,300	1,363,460	3,263,760
20170708	20120821	14,694,546	1,028,610	737,710	1,766,320
20170708	20120821	35,636,364	2,494,540	1,789,070	4,283,610
20170708	20120821	46,327,269	3,242,900	2,325,800	5,568,700
20170708	20120827	23,821,910	1,667,530	1,192,940	2,860,470
20170708	20120830	62,727,273	4,390,900	3,137,290	7,528,190
20170708	20120831	15,218,183	1,065,270	760,810	1,826,080
20170708	20120831	48,181,810	3,372,720	2,408,790	5,781,510
20170708	20120903	23,140,455	1,619,830	1,155,410	2,775,240
20170708	20120905	19,005,910	1,330,410	948,180	2,278,590
20170708	20120905	28,133,000	1,969,310	1,403,520	3,372,830
20170708	20120906	19,474,546	1,363,210	971,140	2,334,350
20170708	20120907	25,241,910	1,766,930	1,258,220	3,025,150
20170708	20120911	56,000,000	3,920,000	2,786,720	6,706,720
20170708	20120914	27,147,183	1,900,300	1,349,210	3,249,510
20170708	20120914	23,000,000	1,610,000	1,143,100	2,753,100

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영리목적으로 이용하거나 무단 배포를 금합니다.게시일자 : 2018-07-03

20170708	20120918	22,873,365	1,601,130	1,134,870	2,736,000
20170708	20120920	28,359,091	1,985,130	1,405,860	3,390,990
20170708	20120921	29,938,183	2,095,670	1,483,520	3,579,190
20170708	20120921	28,359,091	1,985,130	1,405,260	3,390,390
20170708	20120921	37,545,454	2,628,180	1,860,480	4,488,660
20170708	20120925	53,454,545	3,741,810	2,644,330	6,386,140
20170708	20120926	57,090,910	3,996,360	2,823,020	6,819,380
20170708	20120927	28,570,183	1,999,910	1,412,130	3,412,040
20170708	20120927	20,363,637	1,425,450	1,006,510	2,431,960
20170708	20120928	29,057,092	2,033,990	1,435,580	3,469,570
20170708	20120928	55,949,090	3,916,430	2,764,210	6,680,640
20170708	20120928	28,042,410	1,962,960	1,385,450	3,348,410
20170708	20120928	17,870,910	1,250,960	882,920	2,133,880
20170708	20120928	15,390,546	1,077,330	760,370	1,837,700
20170708	20121005	32,214,092	2,254,980	1,586,820	3,841,800
20170708	20121005	30,853,000	2,159,710	1,519,780	3,679,490
20170708	20121009	33,672,455	2,357,070	1,655,830	4,012,900
20170708	20121011	26,049,364	1,823,450	1,279,870	3,103,320
20170708	20121015	31,283,638	2,189,850	1,534,420	3,724,270
20170708	20121017	23,279,910	1,629,590	1,140,860	2,770,450
20170708	20121017	18,978,183	1,328,470	930,050	2,258,520
20170708	20121018	23,472,355	1,643,060	1,149,810	2,792,870

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20170708	20121019	31,094,820	2,176,630	1,522,540	3,699,170
20170708	20121019	63,272,727	4,429,090	3,098,140	7,527,230
20170708	20121019	27,800,819	1,946,050	1,361,260	3,307,310
20170708	20121023	24,509,090	1,715,630	1,198,010	2,913,640
20170708	20121023	24,509,090	1,715,630	1,198,010	2,913,640
20170708	20121025	30,293,819	2,120,560	1,479,510	3,600,070
20170708	20121025	34,272,727	2,399,090	1,673,830	4,072,920
20170708	20121026	34,090,909	2,386,360	1,664,240	4,050,600
20170708	20121029	16,158,182	1,131,070	787,780	1,918,850
20170708	20121030	30,156,410	2,110,940	1,469,620	3,580,560
20170708	20121031	16,001,819	1,120,120	779,480	1,899,600
20170708	20121031	27,161,000	1,901,270	1,323,080	3,224,350
20170708	20121031	46,090,909	3,226,360	2,245,220	5,471,580
20170708	20121108	46,350,909	3,244,560	2,250,100	5,494,660
20170708	20121108	55,181,818	3,862,720	2,678,790	6,541,510
20170708	20121109	48,636,360	3,404,540	2,360,010	5,764,550
20170708	20121109	55,272,720	3,869,090	2,682,040	6,551,130
20170708	20121109	41,386,363	2,897,040	2,008,220	4,905,260
20170708	20121114	14,010,001	980,700	678,350	1,659,050
20170708	20121120	23,895,455	1,672,680	1,153,970	2,826,650
20170708	20121120	47,454,545	3,321,810	2,291,710	5,613,520
20170708	20121121	29,547,001	2,068,290	1,426,280	3,494,570

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영리목적으로 이용하거나 무단 배포를 금합니다.게시일자 : 2018-07-03

20170708	20121121	47,454,545	3,321,810	2,290,710	5,612,520
20170708	20121122	52,272,720	3,659,090	2,522,200	6,181,290
20170708	20121122	34,090,909	2,386,360	1,644,910	4,031,270
20170708	20121123	29,464,273	2,062,490	1,421,040	3,483,530
20170708	20121126	30,454,545	2,131,810	1,466,890	3,598,700
20170708	20121128	26,081,001	1,825,670	1,255,140	3,080,810
20170708	20121128	23,000,000	1,610,000	1,106,870	2,716,870
20170708	20121129	32,441,323	2,270,890	1,560,540	3,831,430
20170708	20121130	30,454,545	2,131,810	1,464,330	3,596,140
20170708	20121203	24,005,455	1,680,380	1,152,730	2,833,110
20170708	20121203	25,071,819	1,755,020	1,203,930	2,958,950
20170708	20121203	23,801,819	1,666,120	1,142,950	2,809,070
20170708	20121205	22,669,091	1,586,830	1,087,600	2,674,430
20170708	20121207	48,636,364	3,404,540	2,331,420	5,735,960
20170708	20121207	33,454,545	2,341,810	1,603,660	3,945,470
20170708	20121214	48,909,090	3,423,630	2,337,300	5,760,930
20170708	20121214	52,545,450	3,678,180	2,511,080	6,189,260
20170708	20121214	49,090,909	3,436,360	2,346,000	5,782,360
20170708	20121220	29,464,273	2,062,490	1,404,340	3,466,830
20170708	20121224	23,000,000	1,610,000	1,094,310	2,704,310
20170708	20121224	24,750,910	1,732,560	1,177,610	2,910,170
20170708	20121227	34,090,909	2,386,360	1,619,850	4,006,210

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20170708	20121228	60,636,360	4,244,540	2,879,910	7,124,450
20170708	20121231	19,090,000	1,336,300	905,470	2,241,770
20170708	20121231	44,616,200	3,123,130	2,116,220	5,239,350
20170708	20121231	30,454,545	2,131,810	1,444,510	3,576,320
20170708	20121231	19,090,000	1,336,300	905,470	2,241,770
20170708	20121231	50,181,818	3,512,720	2,380,210	5,892,930
20170708	20121231	51,181,818	3,582,720	2,427,640	6,010,360
20170708	20130102	22,646,546	1,585,250	1,073,210	2,658,460
20170708	20130102	25,192,000	1,763,440	1,193,840	2,957,280
20170708	20130102	26,245,455	1,837,180	1,243,760	3,080,940
20170708	20130103	21,823,637	1,527,650	1,033,760	2,561,410
20170708	20130103	30,454,545	2,131,810	1,442,590	3,574,400
20170708	20130104	20,097,819	1,406,840	951,570	2,358,410
20170708	20130107	51,909,090	3,633,630	2,454,510	6,088,140
20170708	20130109	34,000,000	2,380,000	1,606,260	3,986,260
20170708	20130110	35,426,365	2,479,840	1,672,890	4,152,730
합계	_	4,604,995,232	322,349,020	227,087,480	549,436,500

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