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SCOPE OF RESPONSIBILITY OF THE LOCAL AND HEALTH RESORT TAX COLLECTOR

ZAKRES ODPOWIEDZIALNOŚCI INKASENTA OPŁATY MIEJSCOWEJ I UZDROWISKOWEJ

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Abstract:

The collector is obliged to collect and transfer the local or health resort tax to the competent tax authority. His liability is limited only to the amounts of fees he collected and not which he paid to the account of the body. He is not responsible for unpaid fees, although he is obliged to collect them. This scope of responsibility of the collector limits the effectiveness of collecting fees and may expose the taxpayer to negative consequences. The collector, who does not perform his duties and does not charge any fees, cannot be held responsible under this law regulations nor with fiscal penal liability.


Keywords: local taxes and charges, administrative execution, collector, the scope of responsibility

Streszczenie:

Inkasent jest zobowiązany do pobrania oraz przekazania opłaty miejscowej i uzdrowiskowej na rzecz właściwego organu podatkowego. Jego odpowiedzialność ograniczona jest tylko do kwot opłat, które pobrał, a nie wpłacił na rachunek organu. Nie odpowiada za opłaty niepobrażone, chociaż do ich poboru jest zobowiązany. Taki zakres odpowiedzialności inkasenta ogranicza skuteczność poboru opłat w drodze inkasa i może narażać podatnika na negatywne następstwa. Inkasent, który nie realizuje swoich obowiązków i nie pobiera opłat, nie może być po-

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ciągnięty do odpowiedzialności ani na gruncie analizowanego przepisu, ani też do odpowiedzialności karnej skarbowej.


Słowa kluczowe: podatki i opłaty lokalne, egzekucja administracyjna, inkasent, zakres odpowiedzialności.

Statement of the problem in general outlook and its connection with important scientific and practical tasks.

The collector's role is to help taxpayers pay their tax obligations by allowing them to pay the tax at their place of residence or performing a professional activity. The tax acts in force provide for the possibility of using it to collect taxes constituting the income of local government units, however, decisions regarding the collection of tax by means of collection, determination of collectors and amount of remuneration for the collection were entrusted to municipal councils by way of local law (resolutions). Entities for which municipal councils impose the obligation to collect the tax by means of collection are obliged to perform it. One can find such regulation in art. 6 par. 12 and art. 19 points 2 of the Act on Taxes and Local Charges with reference to the collection of property tax on natural persons and local fees (market and local fees) as well as agricultural and forest tax levied on natural persons. The duty of the tax collector to collect the tax and pay it to the competent tax authority in due time results from the regulations concerning particular types of taxes, which provide for such a possibility of collection of a given tax by means of collection and the procedure of setting up cash register entities. If the resolution of the municipal council does not provide for collection, then the conclusion of contracts by the commune's board (commune head) with the entity having to collect the fee is an action contrary to the adopted resolution, that is against the applicable law, and above all this entity does not become an "arm" the authority that is entitled and obliged to collect the tribute. The Penal Fiscal Code does not provide for the responsibility of the collector for not charging fees. Only the collector who collects the fee is punished, but he did not pay it on time to the account of the competent authority. As a result, the lack of "sanctions" for collectors' non-compliance with statutory obligations means that they may not take any action to collect fees (Art. 77 Kodeks Karny Skarbowy). This is harmful not only because of the interest of the commune, but also the legal situation of the taxpayer. Non-collection by the collector means that the taxpayer must pay this fee in a specific manner and time limits. If a tourist (taxpayer), accustomed to paying through a collector, fails to pay the due fee until the last day of the payment (stay), tax arrears arise and interest for late payment incriminating the taxpayer. In municipi-

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palities, the non-collection of collectors from the collection obligation is a big problem, especially with regard to the local and health resort tax. The collectors of these fees are designated owners of boarding houses, holiday homes, hotels, hostels, etc. who do not want, understandably, to charge these fees to their guests. The only solution to the inactivity of collectors is to deprive them of this function by amending the resolution of the council and appointing new collectors. In some cases, civil law contracts are also effective, concerning the performance of additional obligations, not directly related to the collection of taxes (keeping registers, settlement of payment fees, etc., transfer of information about amounts collected), where contractual penalties for failing to perform these activities are provided. These agreements may not concern the statutory obligations of the collector, i.e. collection and payment of taxes. The collector is responsible for non-payment of the collected fees with all his assets. This responsibility is of an unlimited personal nature. It also covers all joint property of collectors and their spouses (Kosikowski C., Etel L., Dowgier R., Pietrasz P., Popławski M., Presnarowicz S., 2011, s. 286). From the point of view of the tax system, the local and spa tax is entirely the own income of municipalities. In the tax and public tax system, the place of these fees is also exceptional. The construction itself refers to the lump-sum tax on consumption of natural persons, collected from personal income in the phase of their spending. The collection method indicates the indirect nature of such a tribute and some kind of similarity with the so-called tourist tax, especially "hotel", "restaurant", "peace", etc. Finally, referring directly to the provisions of the Act on local taxes and charges, the local tax can be seen as - in a sense - a concession tax levied on the use of natural resources (treated as a special case of fees for granting rights). In principle, for the introduction of such fees, there must be important substantive reasons, other than purely fiscal, for example, protection of limited, partly non-renewable water, forest resources, etc. The act on a spa treatment, health resorts and areas of spa protection as well as health resort communes and the law on amending certain acts in connection with changes in the division of tasks and competences of the field administration introduced changes in the construction of fees charged in towns with favorable climatic, health and landscape conditions. The local tax, since the beginning of 2006, is collected from natural persons staying longer than 24 hours for recreational, training or tourist purposes, for each day of stay in towns with favorable climatic features, landscape values and conditions enabling people to stay in these purposes, as well as in towns located in areas that have been granted the status of a spa protection area under the rules laid down in the Act on spa treatment, health resorts and spa protection areas, and on spa

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communities (hereinafter: uld). On January 1, 2006, as a result of the amendment to art. 17 sec. 1 p.p.o.l., "health goals" were deleted as the purpose of physical persons staying in localities authorized to collect a local tax. It is a narrowing of the number of entities obliged to pay this fee. If a person stays longer than a day in a given village only for health purposes, there is no basis for charging a local tax.

Analysis of latest research where the solution of the problem was initiated.

During the tax proceedings, the tax authority determines that the collector collected the local or spa fee, but did not pay it, this body issues a decision on the tax liability of the collector, in which he determines the amount due for the collected and unpaid fee (Olesińska A., 2009). The above-mentioned decision may also be issued by the fiscal control authority. In one of the judgments, the Voivodship Administrative Court in Warsaw indicated that the responsibility of the collector is formally similar to the tax obligation in taxes being the subject of tax liabilities arising as a result of the delivery of a decision setting a tax liability. In a situation where the collector does not perform his duties on time, but before the authority issues his tax liability, he will pay the collected fees to the account of the tax authority, there is no basis to claim that the payer has performed obligations under the Tax Code (Art. 21 § 1 pkt. 2 ustawy Ordynacja podatkowa). In the decision on the liability of the tax examiner, the tax authority determines the amount due for the collected (and not paid) local (health resort) fee, despite the fact that such obligation is imposed by law (30 § 2 ustawy Ordynacja podatkowa). This authority confirms certain behavior (or rather the lack of legally required behavior) of a collector. The decision referred to in the Tax Code is therefore declaratory. It seems that if the local (spa) fee is paid by the taxpayer (tourist), the proceedings initiated in order to determine the responsibility of the tax collector should be discontinued as irrelevant (Art. 30 § 4 ustawy Ordynacja podatkowa). In a situation where the collector paid the amount specified in the liability decision from his own resources, the taxpayer will avoid the need to pay the tax. The tax will be paid by the collector. Collector, if the taxpayer does not return the amount paid by him, may demand reimbursement of the sum paid in the manner specified in the Civil Code (Art. 405 ustawy Kodeks cywilny). The taxpayer obtained a financial advantage (the amount of tax paid) without a legal basis. Unjust enrichment of the taxpayer is the premise of the tax refund to the tax collector who paid the tax for him (Kosikowski C., Etel L., Dowgier R., Pietrasz D., Popławski M., Presnarowicz S., 2011, s. 286; Mączyński D., 2001).

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Aims of paper. Methods.


Social sciences use typical methods encountered in the social sciences and humanities, i.e.: an examination of documents (legal acts and judgments of administrative courts), comparative methods (expert opinions, judgments of administrative courts, tax interpretations, legal opinions or analyzes resulting from a linguistic interpretation, grammatical and historical) and case studies. The results of cognitive research are new theorems or theories. On the other hand, the results of research for the needs of business practice are to determine whether and if the existing theorems and theories regarding the tax obligation arising from actual use, the building is useful for solving specific problems that arise in the taxpayers' everyday business. In other words, they serve to refine and fragmentary verification of existing theorems and theories. Induction was used as the main research method. It consists in deriving general conclusions or establishing regularity based on the analysis of empirically identified phenomena and processes. This is a type of inference based on details about the general properties of the phenomenon or object. The use of this method requires the assumption that only facts can form the basis for scientific inference. These facts are real situations (economic and legal). Inductive methods include various types of legal acts, analyzes, expert opinions and scientific documents used in social research.

Exposition of main material of research with complete substantiation of obtained scientific results. Discussion.

The appointment by the resolution of the commune council as a collector of a legal person or an organizational unit without legal personality raises a problem related to who will perform the duties of a collector. Such a person, obliged to collect fees and pay them in time to the tax authority, must be appointed by the manager of a given organizational unit (this is a technical activity). It can be several people (for example all employees at the hotel reception), whose duties will include the activities assigned to the collector. The appointment of these persons may take the form of increasing the scope of their employee duties (contract of employment) or their contractual obligation to perform these activities (Kosikowski C., Etel L., Dowgier R., Pietrasz D., Popławski M., Presnarowicz S., 2011, s. 286; Mączyński D., 2001). Designated persons should be reported by the head of the organizational unit to the competent tax authority prior to the first payment of the collected tax. Changing these people also requires notification within 14 days. Not marking these people and notifying the tax authority about it is a fiscal penal offense(art. 79 ustawy Kodeks karny

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skarbowy). Of course, the failure to appoint a person responsible for the collection of a local and health resort fee cannot be interpreted as a lack of a collector or a person responsible for the performance of their duties, and thus bearing fiscal penal liability. It should be clearly stated that a person (employee of a hotel, guest house, sanatorium, etc.) assigned to perform activities related to the collection of a local and health resort fee is not a payer or collector (wyrok SN z dnia 2 lipca 2002 r., sygn. akt. IV KK 164/02). Public and legal liability for the proper collection of these fees is borne by the general principles of tax collectors, which is a specific legal person and organizational units without legal personality (a provider of hotel services). A person appointed by the management of the facility to perform the collection of a local and health resort fee, in case of improper performance of these obligations, is subject to employee liability or resulting from the employment contract (wyrok NSA z dnia 5 października 1994 r., SA/Gd 1726/ 94). It is up to the incumbency to keep the documents until their obligations are time-barred. The collector is obliged to perform duties consisting in collecting a local (health resort) fee from the taxpayer and paying it in due time to the tax authority. The collector is liable for non-performance or improper performance of these duties. Therefore, throughout the period in which a decision about his liability may be issued, he is obliged to keep documents related to the collection of local and health resort fees. This allows the tax authorities to determine the responsibility of the collector, or to burden the taxpayer with this liability. The period of limitation for collector liabilities should be determined to take into account the periods of suspension and breaks in its course. In most cases, it will be 5 years, counting from the end of the year in which the deadline for collection or transfer of tax by the collector expired. The collector is obliged to notify in writing the tax authority about the place of storage of documents related to the collection of local and health resort fees. This obligation applies only to legal persons and organizational units without legal personality and does not apply to natural persons. In the event of liquidation or dissolution of a legal person or an entity without legal personality, the entity performing these activities is obliged to indicate the place where the documents are stored. They should be kept until the collector's obligations have expired. After this deadline, the documents should be destroyed. The regulations do not prohibit the commune council from being appointed council collector, who also acts as a village administrator. Restrictions on the exercise of the councilor function contained in art. 25b of the Act on municipal self-government does not apply to the situation presented. Similarly, the restrictions placed in art. 24d of the Local Government Act, according to which the head may not entrust to the councilor in which he obtained a

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mandate, to perform work on the basis of a civil law contract. The basis for the duties of a collector is the resolution of the commune council appointing collectors, which has the character of a local law act. The duties performed by the collector do not result from the provisions of civil law, and the relationship between the municipality and the collector is of an administrative nature. In relation to the above, this Article does not apply. 24d of the Local Government Act. Therefore, the provisions of the applicable law do not prohibit combining the functions of a municipal councilor, who is also the mayor, fulfilling the duties of a collector (Art. 33 § 1a § 2 ustawa Ordynacja podatkowa & Pismo RIO w Opolu nr NA.III-0221-2/2011).

Conclusions.


Tax authorities carry out tax inspection of taxpayers, payers, collectors and legal successors. The purpose of the tax audit is to check whether the controlled persons fulfill their obligations under the provisions of tax law. With regard to payers or collectors, the scope of control will concern the obligations indicated in art. 8 and 9 o.p. In turn, the provision of art. 291c o.p. It provides that the provisions of Chapter 5 of the Act of 2 July 2004 on the freedom of economic activity shall apply to the control of the economic activity of a taxpayer who is an entrepreneur. Therefore, there is a doubt as to whether the control of the payer, collector and legal successor being an entrepreneur:

- a) by way of a contrary interpretation of Article 291c o.p., as of March 7, 2009, is excluded from the scope of the Act on the freedom of economic activity, or
- b) is still subject to the Act on freedom of economic activity pursuant to art. 77 paragraph 1 of this Act.

Analysis of the definition of payer and collector included in art. 8 and 9 o.p., as well as the expression "successor in law being an entrepreneur", indicates that each of these entities may also be a taxpayer who is an entrepreneur. According to art. 7 § 1 o.p. the taxpayer is a natural person, a legal person or an organizational unit without legal personality, subject to tax obligations under the tax laws. Therefore, the payer, collector or legal successor who is an entrepreneur who is a natural person, legal person or organizational unit that is not legal entity, whose separate law grants legal capacity, performs economic activity on a commercial basis in an organized and continuous manner, will be an entrepreneur in the meaning of the Act on economic freedom and to control the economic activity of this entity, the provisions of Chapter 5 of this Act will apply (Pismo Ministerstwa Finansów, nr PK4/8012/46/AAN/09/274). If, in the tax proceedings, the tax authority determines

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that the collector collected the local or health resort fee, but did not pay it, the authority issues a decision on the tax liability of the collector in which he determines the amount due on the collected and unpaid fee. The above-mentioned decision may also be issued by the fiscal control authority. In one of the judgments, the Voivodship Administrative Court in Warsaw indicated that the responsibility of the collector is formally similar to the tax obligation in taxes being the subject of tax liabilities arising as a result of the delivery of a decision setting a tax liability. In a situation where the collector does not perform his duties on time, but before the authority issues his tax liability, he will pay the collected fees to the account of the tax authority, there is no basis to claim that the payer has performed obligations under the Tax Code. In the decision on the responsibility of the tax examiner, the tax authority determines the number of receivables due to the collected (and not paid) local (health resort) fee, despite such an obligation arising from the law. The tax authority confirms certain behavior (or rather the lack of legally required behavior) of the collector. The decision referred to in the Tax Code is therefore declaratory. It seems that if the local (health resort) fee is paid by the taxpayer (tourist), the proceedings initiated in order to determine the responsibility of the tax collector should be discontinued as irrelevant. In a situation where the collector paid the amount specified in the liability decision from his own resources, the taxpayer will avoid the need to pay the tax. The tax will be paid by the collector. Collector, if the taxpayer does not return the amount paid by him, may demand reimbursement of the sum paid in the manner specified in the Civil Code. The taxpayer obtained a financial advantage (the amount of tax paid) without a legal basis. Unjust enrichment of the taxpayer is the premise of the tax refund to the tax collector who paid the tax for him. It is up to the incumbency to keep the documents until their obligations are time-barred. The collector is obliged to perform duties consisting of collecting a local (health resort) fee from the taxpayer and paying it in due time to the tax authority. The collector is liable for non-performance or improper performance of these duties. Therefore, throughout the period in which a decision about his liability may be issued, he is obliged to keep documents related to the collection of local and health resort fees. This allows the tax authorities to determine the responsibility of the collector, or to burden the taxpayer with this liability. The period of limitation for collector liabilities should be determined to take into account the periods of suspension and breaks in its course. In most cases, it will be 5 years, counting from the end of the year in which the deadline for collection or transfer of tax by the collector expired. The appointment by the resolution of the commune council as a collector of a legal person or an organizational unit

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without legal personality raises a problem related to who will perform the duties of a collector. Such a person, obliged to collect fees and pay them in time to the tax authority, must be appointed by the manager of a given organizational unit (this is a technical activity). It can be several people (e.g. all employees at the hotel reception), whose duties will include the activities assigned to the collector. The appointment of these persons may take the form of increasing the scope of their employment duties (contract of employment) or their contractual obligation to perform these activities. Designated persons should be reported by the head of the organizational unit to the competent tax authority prior to the first payment of the collected tax. Changing these people also requires notification within 14 days. Not marking these people and notifying the tax authority about it is a fiscal penal offense. Of course, the failure to appoint a person responsible for the collection of a local and health resort fee cannot be interpreted as a lack of a collector or person responsible for the performance of their duties, and thus bearing fiscal penal liability. It should be clearly stated that a person (an employee of a hotel, guest house, sanatorium, etc.) assigned to perform activities related to the collection of a local and health resort fee is not a payer or collector. Public and legal liability for the proper collection of these fees is borne by the general principles of tax collectors, which is a specific legal person and organizational units without legal personality (a provider of hotel services). A person appointed by the management of the facility to perform the collection of a local and health resort fee, in case of improper performance of these obligations, is subject to employee liability or resulting from the employment contract. The collector is obliged to notify in writing the tax authority about the place of storage of documents related to the collection of local and health resort fees. This obligation applies only to legal persons and organizational units without legal personality and does not apply to natural persons. In the event of liquidation or dissolution of a legal person or an entity without legal personality, the entity performing these activities is obliged to indicate the place where the documents are stored. They should be kept until the collector's obligations have expired. After this deadline, the documents should be destroyed. The appointment by the resolution of the commune council as a collector of a legal person or an organizational unit without legal personality raises a problem related to who will perform the duties of a collector. Such a person, obliged to collect fees and pay them in time to the tax authority, must be appointed by the manager of a given organizational unit (this is a technical activity). It can be several people (e.g. all employees at the hotel reception), whose duties will include the activities assigned to the collector. The appointment of these persons may take the form of increasing the

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scope of their employment duties (contract of employment) or their contractual obligation to perform these activities. Designated persons should be reported by the head of the organizational unit to the competent tax authority prior to the first payment of the collected tax. Changing these people also requires notification within 14 days. Not marking these people and notifying the tax authority about it is a fiscal penal offense. Of course, the failure to appoint a person responsible for the collection of a local and health resort fee cannot be interpreted as a lack of a collector or person responsible for the performance of their duties, and thus bearing fiscal penal liability. It should be clearly stated that a person (an employee of a hotel, guest house, sanatorium, etc.) assigned to perform activities related to the collection of a local and health resort fee is not a payer or collector. Public and legal liability for the proper collection of these fees is borne by the general principles of tax collectors, which is a specific legal person and organizational units without legal personality (a provider of hotel services). A person appointed by the management of the facility to perform the collection of a local and health resort fee, in case of improper performance of these obligations, is subject to employee liability or resulting from the employment contract. It is up to the incumbency to keep the documents until their obligations are time-barred. The collector is obliged to perform duties consisting of collecting a local (health resort) fee from the taxpayer and paying it in due time to the tax authority. The collector is liable for non-performance or improper performance of these duties. Therefore, throughout the period in which a decision about his liability may be issued, he is obliged to keep documents related to the collection of local and health resort fees. This allows the tax authorities to determine the responsibility of the collector, or to burden the taxpayer with this liability. The period of limitation for collector liabilities should be determined to take into account the periods of suspension and breaks in its course. In most cases, it will be 5 years, counting from the end of the year in which the deadline for collection or transfer of tax by the collector expired. The collector is obliged to notify in writing the tax authority about the place of storage of documents related to the collection of local and health resort fees. This obligation applies only to legal persons and organizational units without legal personality and does not apply to natural persons. In the event of liquidation or dissolution of a legal person or an entity without legal personality, the entity performing these activities is obliged to indicate the place where the documents are stored. They should be kept until the collector's obligations have expired. After this deadline, the documents should be destroyed. The regulations do not prohibit the commune council from being appointed council collector, who also acts as a village administrator.

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Restrictions on the exercise of the councilor function contained in art. 25b of the Act on municipal self-government does not apply to the situation presented. Similarly, the restrictions placed in art. 24d of the Local Government Act, according to which the head may not entrust to the councilor in which he obtained a mandate, to perform work on the basis of a civil law contract. The basis for the duties of a collector is the resolution of the commune council appointing collectors, which has the character of a local law act. The duties performed by the collector do not result from the provisions of civil law, and the relationship between the municipality and the collector is of an administrative nature. In relation to the above, this Article does not apply. 24d of the Local Government Act. Therefore, the provisions of applicable law do not prohibit combining the functions of a municipal councilor, who is also the mayor, while fulfilling the duties of a collector. Tax authorities carry out tax inspection of taxpayers, payers, collectors and legal successors. The purpose of the tax audit is to check whether the controlled persons fulfill their obligations under the provisions of tax law. With regard to payers or collectors, the scope of control will concern the obligations indicated in art. 8 and 9 o.p. In turn, the provision of art. 291c o.p. It provides that the provisions of Chapter 5 of the Act of 2 July 2004 on the freedom of economic activity shall apply to the control of the economic activity of a taxpayer who is an entrepreneur. Therefore, there is a doubt as to whether the control of the payer, collector and legal successor being an entrepreneur:

- a) by way of a contrary interpretation of Article 291c o.p., as of March 7, 2009, is excluded from the scope of the Act on the freedom of economic activity, or;
- b) is still subject to the Act on freedom of economic activity pursuant to art. 77 paragraph 1 of this Act.

Analysis of the definition of payer and collector included in art. 8 and 9 o.p., as well as the expression "successor in law being an entrepreneur", indicates that each of these entities may also be a taxpayer who is an entrepreneur. According to art. 7 § 1 o.p. the taxpayer is a natural person, a legal person or an organizational unit without legal personality, subject to tax obligations under the tax laws. Therefore, the payer, collector or legal successor who is an entrepreneur who is a natural person, legal person or organizational unit that is not legal entity, whose separate law grants legal capacity, performs economic activity on a commercial basis in an organized and continuous manner, will be an entrepreneur in the meaning of the Act on economic freedom and to control the economic activity of this entity, the provisions of Chapter 5 of this Act will apply.

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