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SPA AND LOCAL TOURIST FEES AS A TRIBUTES OF A CONSUMPTION NATURE*

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Abstract. With the date of liquidation of the Polish local government and the reform of the state budget system, financial supply system of parishes is based on completely different assumptions and the principle of legal and organic unity of the system of public revenues. The different types of income which influence the budgets of national councils and their design are determined uniformly for the whole country by the supreme bodies of state power. Under this system, introduced among other taxes collected for the central budget, and so central taxes and taxes levied for local budgets, which are spontaneous taxes terrain. The disputed interpretation issues arise in the subject of adopting the collection of the spa fee and the tourist (called "local") fee, due to similarities in the construction of these fees and the optional nature of recovery. The interpretation problems arise in the matter of principles, way and purposefulness of destination of the spa fee by the resort communes for the realization of their own public tasks.

Keywords: local tax, resort fee, public levies, local levy collector, tax authority, tax obligation

INTRODUCTION

Local taxes and fees assumed their current name in the statutory record in 1985. Earlier they were referred to as taxes and local fees introduced to the legal system in 1951. The taxes and fees were either obligatory (e.g. real estate tax, tax on premises, market tax) or optional (municipal tax – collected in the form of an addition to the tax on premises, tax on the disposal of housing – on premises deemed redundant due to e.g. a small number of residents,

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tax on dog ownership, tax on hunting and fishing, as well as administrative and market fees). A significant change in taxes and area fees was introduced in 1975. The law passed in that year covered with its scope such revenues of the budgets of the basic level national councils as: real estate tax, premises tax, dog ownership tax, market tax, transport means tax, climate tax and administrative fee for official actions not subject to stamp duty. In real estate and premises taxes the structure of these taxes and the rules of calculation have been significantly changed [Wołowiec and Reśko 2011, 5–7].

In the law and economic literature, the term "local government taxes" is used to encompass all tax benefits which are characterised by the fact that they constitute revenue for the municipal budget and may be to a certain extent shaped by the municipal council or the mayor. These include, apart from "local taxes and fees" provided for in the Local Taxes and Fees Act, also agricultural tax, forestry tax, income tax paid in the form of tax card, inheritance and donation tax, tax on civil law transactions and stamp duty. At the same time, the "local tax system" may include mining fee, adiacenckie fees, planning rents (fees), etc. This is a quasi-tax system, as it does not meet the basic criteria of a tax system. Nowadays, any tax system should take into account a number of tax principles, which have an economic and legal dimension. Due to the dependence of tax systems on specific socio-economic conditions and the lack of a universal system, tax principles have a historical character [Golba 2020].

1. PURPOSE OF ARTICLE, CRITERIA OF ANALYSIS AND RESEARCH METHODOLOGY

Legal sciences use typical methods encountered in social sciences and humanities, i.e.: examination of documents (legal acts and administrative court decisions), comparative methods (expert opinions, legal opinions, analyses resulting from linguistic, grammatical and historical interpretation) and case studies. The results of cognitive research are new theorems or theories. On the other hand, the result of research for the needs of law and economic practice is to determine how to evaluate the current construction of tourist local fees from the perspective of fiscal efficiency and the role in the system of local taxes and fees. The main objective of the article is to analyze the legal regulations that normalize the principles of collection and payment of tourism fees and their importance in the revenues of spa municipalities. Induction was used as the main research method. It consists in drawing general conclusions or establishing regularities on the basis of analysis of empirically stated phenomena and processes. It is a type of inference based on details about the general properties of a phenomenon or object. The use of this method requires the assumption that only facts can form the basis of scientific inference. These facts

are real existing situations (economic and legal). Inductive methods include various types of legal acts, analyses, expert reports and scientific documents used in social research.

2. SPA FEE, ITS ROLE AND IMPORTANCE FOR SPA GOVERNMENT UNITS

The separate constitutional position of the health resort commune in relation to other communes is determined primarily by the specific nature of the public tasks that such a commune performs and by certain distinctness in the financing of public tasks. This applies in particular to the financing of the tasks assigned to the health resort commune by the Health Resorts Act and its entitlement to an increased participation in the State Budget revenues via the health resort subsidy. Also granting to the resort district, pursuant to Article 48 of the Act of 28 July 2005 on Health Resort Medical Care, Health Resorts and Areas of Health Resort Protection and on Health Resort Municipalities[1] the entitled to charge a spa fee for the realization of own tasks related to maintaining the health resort's therapeutic functions is a solution that deserves attention in the context of filling the financial gap that is related to performing additional tasks by the municipality [Wołowiec and Duszyński 2003, 317–20; Wołowiec 2003a, 57–59; Golba 2001]. It should be emphasized, however, that a similar right is vested in the local government units that have tourist attractions with respect to the tourist (local) fee, which, however, does not play such a role as the health resort fee because it is not earmarked for financing additional tasks. Health resort units, despite many years of efforts, have not seen such solutions in the Health Resort Act that would create for them separate financial regulations designated for execution of additional tasks, despite the fact that such solutions were already known in the past. One can mention here, for example, the solutions contained in the Act on health resorts of 1922, or entitlements to additional revenues ascribed to mining government units in the Act of 26 November 1998 on the adjustment of hard coal mining to functioning in market economy conditions and special rights and tasks of mining government units.[2]

Currently in Europe, tourist destinations very often use their powers in relation to collecting local tax, which is based on tourist or spa values, and sometimes even environmental values. This tax functions under different names and is collected for different reasons. For example, Swiss, Germans, Austrians in health resorts collect so called "kurtax" or tourist tax

[1] Journal of Laws of 2021, item 1301.
[2] Journal of Laws No. 162, item 1112 as amended.

having names: *Ortstaxe*, *Gästetaxe*, *Aufenthaltsabgabe*, *Beherbergungstaxe*, *Nächtigungtaxe*, *Kurabgabe* or *Kurbeitrag* [Hammerl 2012].

The French have a so-called residence tax called *taxe de sejour*, the Italians collect a tax called *tassa di soggiorno*, Russia collects a tax under the name *курортный сбор* [Golba 2020, 130–32], Spain collects a tourist tax under the name *habitatge d'us turistic*, and other countries – Hungary, Slovakia, the Czech Republic, Portugal – collect either a local fee or a tourist tax. There are also other names for this tax, such as hotel tax, room tax, "sun tax" (Balearic Islands), "sun tax" (Balearic Islands), "barbecue tax" (Belgium), service tax (Belgium). (Belgium), service tax (India), tax on hotels and guesthouses popularly known as plaster tax (Austria), or restaurant tax. These taxes are imposed either on natural persons or legal entities conducting tourist activities, and the revenues are usually earmarked for public tasks related to tourist services.

The tasks paid for by tourism taxes include maintenance of parks, public greenery, promenades, beaches, graduation towers, recreational areas, fountains, free recreational and sports facilities, gazebos, ponds, historic buildings, and many others. The funds obtained from tourism taxes are also used for organization of free concerts, sports and recreational events, maintenance of orchestras or music bands giving free concerts or shows. Most often the amount of the fee depends on the standard of the hotel facility, and less often it is determined on the basis of other attributes. In many places in Europe, proof of payment of a tax or tourist fee entitles one to free services or even discounts on purchases [Wołowiec 2002, 63–67; Idem 2014, 213–20]. In Poland, a tourist tax does not formally exist, which does not mean that some types of taxes or fees do not have such a character. It should be noted that the colloquial definition of some local taxes (e.g., climate fee, air tax, breathing tax) causes the idea of introduction and essence of such tax to be completely lost. The institution of a resort fee has been known in Poland and in European spas for a long time [Cienkowski and Wołowiec 2015]. For example, in Baden-Baden such a tax has been in force since 1507. In Austria, in the Bad Ischl spa it was introduced in 1842. In France, the tax was first introduced in 1910. The prototype of the health resort fee (spa fee) collected in Polish health resorts was a health resort tax established on the basis of the so-called Galician Health Resorts Act of 4 November 1891.[3] As the sources indicate, such a fee was collected primarily for the purposes of maintaining the health resort [Lewy 2019]. The solutions of the Galician Spa Act were used in the construction of the 1922 Spa Act, where, by the provisions of Article 40 of the Act, a so-called curage fund was introduced in public spas, which consisted, among other things, of curage tax and other fees established by the Spa Commission. The right to temporarily establish a health resort fund and charge fees was later extended

[3] See: *Dziennik Ustaw i Rozporządzeń Krajowych dla Królestwa Galicyi i Lodomeryi oraz w Wielkim Księstwie Krakowskim*, No. 17.

to health resorts that had conditions for obtaining the status of a public utility health resort and "accepted summer visitors for treatment and recreation."

The fee was spent on the maintenance of the spa's public facilities such as: pump rooms, parks, promenades, health paths, fountains, park gazebos, park ponds, lighting. These funds were also used to pay for: the spa orchestra, sport and recreation events, public games, unticketed artistic performances, etc. In 1951, the Act of 26 February 1951 on Territorial Taxes[4] came into force. This tax act not only did not change the legal basis for the collection of the spa tax, but omitted this fee from the specified types of taxes and local fees. At that time, it was considered that the right to collect it functioned on the basis of the Spa Act of 1922, and the municipal councils were authorized to adopt its amount and rules of collection. However, already in 1955 this act was repealed by the decree of 20 May 1955 on certain taxes and area fees,[5] which introduced new nomenclature in respect of the local tax collected in the health resorts. In Article 1(1) of the decree, among other taxes and fees collected for the budgets of the local councils, the spa fee was mentioned, establishing in Article 1(3) the right to collect it only in the health resorts. Article 33 of the decree specified the fiscal purpose of collecting the spa fee. This provision specified that the resort fee was to be collected for purposes related to the needs of the health resorts in terms of "extra-mural investments and their ongoing maintenance." Article 33 of the decree specified that current maintenance was to be understood in particular as financial outlays for health facilities, raising the sanitary condition of the health resorts, flowerbed and greenery facilities, as well as for cultural and educational purposes. This was an open catalog of tasks, since the use of the phrase "in particular" opened the possibility for the communes to spend these funds also for other spa purposes. In Article 34 of the decree it was specified that health resort fee payers would be persons coming to the health resort for rest and recreation purposes and persons providing goods or services in the health resort who are obliged to pay turnover tax, pursuant to the regulations on the unsocialised economy.

The power to set the amount of the health resort fee was granted, pursuant to Article 36 of the decree, to the competent national council. However, the council could not set higher rates than the upper limits specified in Article 35 of the decree. The upper rates of the health resort fee were differentiated with respect to employees' holiday-makers, students and children up to the age of 14. The spa fee rates for persons who paid income or turnover tax and who provided services or trade, in accordance with Article 35(1)(2) of the decree, were set at 5–10% of the set flat amount of income and turnover tax, and for persons not paying income tax the fee rate was set at 10–20% of turnover tax. By virtue of the act of 21 December 1962 on amending the decree on certain

[4] Journal of Laws No.14, item 110.
[5] Journal of Laws No. 13, item 87.

taxes and area fees[6] the provisions of the decree were amended extending the right to charge the health resort fee to climatic stations, thermal springs and sea bathing establishments. The health resort fee was also mentioned in Article 13 of the Act, in the context of the tasks that could be realised in health resorts from this fee. The provision of Article 13 specified that revenues from the resort fee were to be used for shaping environmental factors having a favourable impact on the results of preventive and curative services, and in particular for ensuring order, hygiene, aesthetics and other conditions necessary for satisfying cultural needs. In the provisions of the Spa Act of 17 June 1966,[7] however, a new solution was introduced in Article 13(2), which created the possibility for the health resort fee to cover health resort treatment facilities and other institutions that carry out holiday or tourist activities in the health resort. This power was given to the Council of Ministers, which could decide to introduce a fee for establishments and institutions in consultation with the Central Council of Trade Unions. In practice, such a fee was never established. The 1955 decree was repealed by the Act of 19 December 1975 on Certain Taxes and Territorial Fees.[8] This act fundamentally changed the legal construction of the resort fee with respect to its name, purpose of stay, localities entitled to charge the fee, statutory exemptions from the fee, the manner of determining localities in which the fee is charged, and the powers of the basic level national councils in shaping the amount of the fee and introducing exemptions from the fee. By the provision of Article 30 the legislator changed the name of the resort fee to the climatic fee. According to Article 26 of the Act, the right to charge a climate fee was given to the towns recognized as health resorts and other towns "with particularly favourable climatic and landscape properties and environmental conditions conducive to permanent and seasonal tourist traffic." The act did not specify, however, what was meant by particularly beneficial climate or landscape properties and environmental conditions. However, the use of the term "climate fee" in the law for many years associated this concept with the obligation of the resort collecting the fee to have a therapeutic climate. The colloquial understanding of the term "curative" climate was very broad and had nothing to do with the actual properties of the climate. The rationale for paying the climate fee was defined by the law in Article 26 as a leisure and health purpose, instead of the previous leisure and resort purpose [Czarnecki 2017a]. For the first time in history, under Article 26(2), persons staying in spa hospitals and other hospital-type establishments were statutorily exempted from the climate fee [Wołowiec 2013, 20–25; Idem 2016a, 64–73]. Legal solutions relating to the climate fee

[6] Journal of Laws No. 66, item 326.
[7] Journal of Laws No. 23, item 150.
[8] Journal of Laws No. 45, item 229.

survived until 1985, when the existing law was repealed by the provisions of the Local Taxes and Fees Act of 14 March 1985.[9]

The new legal regulation on local taxes and fees changed the name of the climate fee, defining it in Article 15 as a local fee. In relation to the previous regulation on the local climate fee, in Article 15 of the Act, in relation to the places authorized to charge a local fee, the word "spa" no longer appears, but the place having favorable climatic characteristics, landscape values and conditions for stay for recreation, health or tourism purposes. Another amendment to the provisions of the Local Taxes and Fees Act occurred as a result of the enactment of the new Act of 12 January 1991 on Local Taxes and Fees.[10] Among the local fees, Article 17 of the Local Taxes and Fees Act mentions the local fee, specifying that it is levied on individuals temporarily staying for recreational, health or tourist purposes in localities with favourable climatic properties, landscape values and conditions enabling people to stay for these purposes [Wołowiec 2015, 120–26].

3. FISCAL IMPORTANCE OF THE TOURISM (LOCAL) AND SPA FEE

Revenues of municipal budgets from the resort and local fees reach the value of PLN 85 million (data from 2019) annually.[11] Theoretically, these amounts are small in relation to the total budget revenues of municipalities (or related to total tax revenues), but it is a source of municipal revenues characterized by very strong growth dynamics. In the past 17 years these revenues have increased about fivefold, and only in the last decade – twice. It should also be remembered that they are collected in a relatively small group of municipalities, so a low total amount of revenues does not exclude a high significance for the budget of individual units. The local and spa fees, despite the fact that they constitute a very small percentage of the total revenue of local government budgets, sometimes arouse controversy. They are collected in localities with the status of a health resort or – in the case of the local fee – entered in the relevant list. In recent years there have been loud protests against collecting the fee in localities characterized by exceeding air pollution standards. Evidently, these disputes reflect a clash between two ways of thinking about the meaning of these fees. In one (resulting from the wording of the regulations in force in Poland), the fee is connected with some exceptional qualities of the place where the visitor stays in the municipality. But it is also possible to adopt a different approach, found in similar solutions used in systems of financing local governments of many other European countries.

[9] Journal of Laws No. 12, item 50.
[10] Journal of Laws of 2019, item 1170 as amended.
[11] Own elaboration.

In this case we are talking about a kind of tourist tax, collected, among others, because the visitors generate not only potential developmental impulses for the commune, but also real costs connected with municipal services provided in tourist destinations (waste management, street maintenance etc.). "Tourist tax" is therefore a form of fee involving additional costs borne by the local government With this reasoning, limiting the possibility of collecting the fee to only certain localities (and in particular linking it to the state of environmental protection) is not justified [Etel 2011a, 5–19; Idem 2011b, 5–18]. It seems that the following direction of transformation of the fee would be desirable: its introduction would be possible (although not obligatory, there is no reason to limit the autonomy of local authorities in this respect) in every municipality, and not only in the localities included in a special list. The opponents of such reasoning point out that the tourists or patients coming to the commune have anyway a positive influence on the development of local economy, and this translates indirectly into the increase of budget revenues. This is not necessarily a convincing argument [Swianiewicz and Łukomska 2018, 3–5]. The total revenues of spa municipalities in 2020 amounted to PLN 11.2 billion and were nominally higher by about 9% compared to 2019. The total amount of own revenues of spa gin amounted to about PLN 6.3 billion and were nominally higher than in 2019 by 2.7%. In 2020 compared to 2019, revenue from both fees was more than 35% lower.[12]

In total, these fees are collected in only 233 municipalities (less than 10 percent, see also the table). As regards per capita income, the coastal gminas are the leaders – Rewal (PLN 774) and Mielno (PLN 678). Among the 10 gminas with income exceeding PLN 300 per capita, six are coastal gminas, three are mountain gminas (all in the Sudety Mountains – Karpacz, Świeradów–Zdrój and Szklarska Poręba) and one health resort (Ciechocinek) located outside these two areas. It is interesting that much lower income is recorded by the Carpathian communes: Zakopane (just over PLN 150 per capita), Krynica–Zdrój (over PLN 250) and Solina (PLN 195). The table comparing the revenue from local and spa fees to the total own revenue is slightly different. The leader here is Ciechocinek (15% of own income). Iwonicz–Zdrój (11 percent) and Kołobrzeg, Karpacz and Horyniec–Zdrój follow with slightly more than 10 percent. In only 22 gminas, these revenues account for more than 5 percent of own income. Thus, both fees discussed here are significant for the budgets of local governments in a very narrow group of municipalities, even though the list of places for which tourism is the dominant branch of the economy is much longer. It seems that there are potential reserves here, which could be used to the benefit of satisfying the needs of local communities.

[12] Own elaboration.

4. THE STRUCTURE OF THE TOURISTIC (LOCAL) AND SPA FEES

From the point of view of the tax system, the local and health resort fees are the municipalities' own revenue. There is an interesting principle of indicating the entities authorized to charge fees – it is a list drawn up by a provincial governor in agreement with the minister of the environment. In the systematics of taxes and public fees the place of the mentioned fees is also exceptional. The very structure refers to the lump-sum tax on natural persons of a consumption nature, collected from personal income at the stage of its spending. The manner of collection indicates the indirect nature of such a levy and a certain similarity with the group of so-called tourist taxes, especially "hotel," "restaurant," "room," etc. Finally, referring directly to the provisions of the Act on local taxes and fees, the local fee can be seen as – in a sense – a concession fee imposed for the use of natural resources (treated as a special case of fees for granting rights). In principle, the introduction of this type of fees must be supported by important substantive reasons other than purely fiscal, e.g. protection of limited, partly non-renewable water and forest resources, etc. [Krupa and Wołowiec 2010, 7–35; Czarnecki 2017d, 118–20].

In the classical approach, a public charge should be considered a monetary benefit collected by a public-law entity for the benefit of the budget economy in connection with its mutual benefit (counter benefit). The public charge is a payable and individual benefit, which means that the entity paying the charge may claim a reciprocal state benefit in its favour [Gliniecka 2007, 12–13]. The fee is equivalent in nature, i.e. the consideration received by the fee payer is worth as much as the fee. If the benefit and the fee are not equivalent in this way, the fee becomes a tax. Therefore a fee, unlike a tax which is a gratuitous benefit, gives the right, or entitles to a certain benefit to its payer. In the case of the spa fee there is no place for mutual benefit. Despite the misleading name, the health resort fee is in fact a tax, because it meets all the criteria to be classified as a local tax in the nature of a public levy, the establishment, calculation and collection of which is the responsibility of the local authorities [Wołowiec 2007, 75–84; Wołowiec and Kaganek 2007, 109–20].

By virtue of the Act on health resorts, health resorts and health resort protection areas as well as health resort districts and the Act of 29 July 2005 on the amendment of certain acts in connection with changes in the division of tasks and competencies of territorial administration,[13] changes were introduced in the construction of fees charged in the resorts with favourable climatic, health and landscape conditions. Since the beginning of 2006 the local fee has been collected from natural persons staying for more than twenty-four hours for rest, training or tourist purposes, for each day of their stay in the

[13] Journal of Laws No. 175, item 1462.

resorts with beneficial climatic conditions, landscape values and conditions suitable for such purposes, as well as in the resorts located in the areas which have been granted the status of health resort protection areas under the terms defined in the Act on Health Resort Medical Care, Health Resorts and Health Resort Areas and on Health Resort Municipalities. As of 1 January 2006, as a result of the amendment to Article 17(1) of the Act, "health-care purposes" were deleted as the purpose of the stay of natural persons in the resorts entitled to charge the local fee. This narrows the circle of entities obliged to pay the fee. If a person stays in a given town for more than 24 hours only for health reasons, there are no grounds for charging a local fee.

In the resorts with favourable climatic conditions, landscape values and conditions enabling natural persons to stay for recreation, training or tourism purposes, in order to charge a local fee, the minimum conditions set out in the Regulation of the Council of Ministers of 18 December 2007[14] issued pursuant to Article 17(3) and (4) of the Act on Health Resorts and Health Resort Communities should be met. A gmina council wishing to introduce a local charge must refer the conditions laid down in the Regulation of the Council of Ministers to the specific towns in its area to determine where the local charge may be collected. Then, the municipal council, by way of a resolution, should establish a list of localities where these conditions are met [Dudar 2017; Etel, Presnarowicz, and Dudar 2008].

It should be noted that the above mentioned Ordinance came into force on 15 January 2008, and therefore the minimum conditions that the local fees must meet in order for a locality to be permitted to charge a locality fee may only apply to the resolutions on the locality fee adopted by the municipal councils after 15 January 2008. Pursuant to the Regulation of the Council of Ministers, in order to charge a local fee, a specific place must meet minimum climatic and landscape conditions and have accommodation facilities that enable natural persons to stay there for recreational, training or tourist purposes. The Ordinance indicates that the minimum climatic conditions for a place situated in the area of the zone referred to in the Act of 27 April 2001, the Environmental Protection Law (Article 87(2)),[15] in an agglomeration with a population exceeding 250,000 or in the area of one or more poviats of the same voivodeship which are not part of the agglomeration, are met if the permissible levels of certain substances in the air due to human health protection, as specified in environmental protection regulations, are maintained in the area, while for the remaining locations – if the permissible levels of electromagnetic fields, as specified in environmental protection regulations, are not exceeded. The regulation defines the minimum landscape conditions as the presence of one of the elements of the natural environment that are important

[14] Journal of Laws No. 249, item 1851.
[15] Journal of Laws No. 25, item 150.

for recreation (forests and farmland, if they cover more than 80% of the municipality, waters – sea, inland or in bathing areas, or varied relief – uplands or mountains) or one of the sightseeing qualities (e.g. peculiarities of the fauna and flora, the environment, the landscape, the landscape and the countryside). In towns and villages that meet the above criteria, the area can be defined as a place of recreational activity (e.g. peculiarities of fauna and flora, rocks, gorges, waterfalls, caves, national parks, zoological gardens, museums or even cultural events). In towns that meet the above conditions, which additionally have accommodation in hotels and other facilities where hotel services can be provided within the meaning of the provisions on tourist services, it is possible to charge a local tax [Wołowiec 2003a, 56–63; Idem 2003b, 5–29].

The spa fee may also be collected in the localities located in the areas which have been granted the status of the health resort protection area. Such status may be granted to an area that jointly meets the conditions set out in Article 34(1)(1, 2, 4 and 5) of the Act on health resort treatment, health resorts and health resort protection areas and on health resort communes. These conditions are, among others: possession of deposits of natural therapeutic raw materials with confirmed therapeutic properties, possession of a climate with therapeutic properties, possession of technical infrastructure in the field of water and sewage management, energy, in the field of collective transport, and fulfillment of certain requirements in relation to the environment specified in environmental protection regulations [Czarnecki 2017c].

A resort fee is collected from individuals staying for more than 24 hours for health, tourism, recreation or training purposes in resorts located in areas that have been granted the status of a resort, for each day of stay in such resorts. The rules for granting the status of a health resort to specific localities are regulated in the aforementioned Act on Health Resort Medical Care, Health Resorts and Health Resort Areas and Health Resort Units. A health resort is an area where health resort treatment is provided, which has been granted the status of a health resort in order to utilize and protect the natural curative resources located in its area. Such an area should have deposits of natural curative raw materials and a climate with confirmed curative properties, appropriate establishments and equipment for curative treatment, meet the requirements set out in environmental protection regulations and have technical infrastructure in the area of water and sewage management, energy management, in the area of mass transport, as well as waste management. The difference between the area recognized as a health resort (right to collect the spa fee) and the area of health resort protection (right to collect the touristic – local – fee) is the presence in the former of health resort treatment facilities and equipment [Wołowiec 2005, 165–91].

5. EXEMPTION FROM TOURISTIC (LOCAL) AND SPA FEES

The procedure for the municipality to obtain the status of a health resort is long and complicated. In order to obtain the status of a health resort for a particular area, the municipality must obtain a certificate confirming the curative properties of natural curative raw materials and the curative properties of the climate. The condition for obtaining such a certificate is that such an entity conducts scientific research on the medicinal raw materials and climate in the area of a specific municipality, which entails financial costs as well as a considerable amount of time. After obtaining the certificate, the Minister of Health applies to the Council of Ministers for granting a given area the status of a health resort. Then, by way of a regulation, the Council of Ministers grants the status of a health resort to an area, defining its name, area, borders and directions for treatment and possible contraindications to treatment in a given health resort. Moreover, the commune that intends to apply for the status of a particular area as a health resort is obliged to prepare a health resort operation and to send it to the Minister of Health in order to confirm the fulfilment of conditions that are necessary to grant the status of a health resort to a particular area. On the basis of the submitted health certificate the Minister of Health issues a decision confirming the possibility of carrying out health resort treatment in a defined area. Such decision is the basis for the adoption of the health resort statute by the commune council, defining the rules of its operation. It follows from the above regulations that obtaining the status of a health resort by the commune in the current legal state is not only time-consuming but also costly. Since 1 January 2006 health resorts have been the areas recognised as such only on the basis of the previous regulations and therefore only in the "old" health resorts it is possible, in the nearest future, to collect the health resort fee as only these areas meet the conditions to be recognised as health resorts within the meaning of the new law [Wołowiec 2004, 55–62].

The local and spa fees are not charged to the members of diplomatic representations, consular offices and other persons equal to them under the acts, agreements or international customs. The condition to apply the exemption with regard to the above mentioned persons is the principle of reciprocity allowing the members of Polish diplomatic representations and consular offices to benefit from analogous exemptions from similar fees outside Poland. Pursuant to this provision, the exemption is not applicable if the persons mentioned herein are Polish citizens and have their permanent residence in the territory of the Republic of Poland. The presented fees are also not charged to persons staying in hospitals. The local and health resort fees are not collected from blind persons and their guides. It should be assumed that every blind person is a disabled person and therefore should have an appropriate certificate

of disability or degree of disability. Legitimations documenting disability and the degree of disability are issued by competent heads of counties (para. 35 of the Regulation of the Minister of Economy, Labour and Social Policy of 15 July 2003 on disability identification and the degree of disability[16]).

Also the touristic (local) and spa fee payers are exempt from the local and spa fee in respect of the ownership of holiday homes located in towns where the toiristic (local) or spa (health resort) fee is collected. The legislator assumed that since certain persons pay property tax on holiday homes located in towns where the touristic and spa fee is collected, it is unreasonable to tax those persons again with additional fees. The municipality from the property tax on holiday houses gains much higher income than it would get from the local or spa tax from the owners of such buildings. The touristic and spa fees are not charged to organized groups of children and school children. It should be assumed that the above exemption will be enjoyed first and foremost by students of elementary school, junior high schools and high schools. The notion of schoolchildren certainly does not include students and students of higher education. It should be remembered that persons from whom the spa (resort) fee is collected are not charged a touristic (local) fee. Thus, the legislator indicated that in the case of overlapping the scope of subject matter of the resolutions on the spa (health resort) fee and the touristic (local) fee, the spa fee has priority – probably due to the amount of the rate. There is no doubt that the area being a health resort has at the same time favourable climatic properties, landscape values and conditions that enable the stay of persons for this purpose. However, an individual cannot be charged both fees at the same time, the resort fee will always take precedence [Czarnecki 2017b].

6. THE LOCAL AND SPA FEE AS AN EMANATION OF THE GUARANTEE OF FINANCIAL INDEPENDENCE OF THE MUNICIPALITY AND THE PRINCIPLE OF ADEQUACY IN ARTICLE 9 OF THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

Establishing the constitutive features of the European standards securing financial independence of the commune is possible only through interpretation of the provisions arising mainly from Article 9 of the Act of the European Charter of Local Self-Government,[17] which was devoted to financial resources of local communities. As far as the issues of local finance are concerned, the ECST essentially contains eight principles formulated in the above-mentioned Article 9. They form the legal framework for the national financial legislation.

[16] Journal of Laws No. 139, item 1328.
[17] Journal of Laws No. 124, item 607 [hereinafter: ECST].

These principles emphasize the independence of local self-government, which is expressed in the right to possess the necessary financial means, adjusted to statutory tasks and competences, the use of which should be decided by local communities themselves. The system of local finance should be sufficiently flexible and diversified so that it can be adapted to the tasks and costs. The first of these principles states that local communities have the right, within the framework of national economic policy, to have their own sufficient financial resources that they can freely dispose of in the exercise of their powers [Miemiec 2005, 62–63]. Municipalities should therefore be equipped with their own financial resources. Own income best suits the nature of the local government unit. This is because the essential feature of local government is its independence which, according to the provisions of the ECST, consists in giving local communities full freedom of action in any matter that has not been excluded from their competence. The basic feature of the sources of own revenues is the freedom to dispose of the funds flowing from them. Own revenues should therefore include revenues from taxes and fees, the amount of which is set by local communities within the scope defined by law. It should be stressed that own financial resources are not only the issue of own income. Undoubtedly, it is also about financial resources which are to guarantee the implementation of expenditures made by municipalities. Thus, it follows from this first principle that municipalities have a claim to be endowed with their own financial resources, which constitute both their revenues and their expenditures. Secondly, these own financial resources of the local community must be sufficient. Again, the criteria for determining the ceiling of "adequate, sufficient" endowment of a municipality are not specified. It should only be presumed that each state should be able to measure and establish both the revenue power of a municipality, measured by its revenues obtained from specific sources, and the amount of its financial needs by establishing criteria which would make it possible to calculate the costs of tasks performed by municipalities. It appears that the basic criterion that should be taken into account is (similarly as in the case of the aforementioned provisions of the Constitution) the scope of tasks performed by the local government. It may therefore be assumed that the financial resources that local communities should possess should be sufficient to finance all their tasks. It is therefore reasonable to formulate, on the basis of this rule, a claim to be provided with financial resources enabling the execution of tasks. Third, local communities may freely dispose of these resources in the exercise of their powers. However, the freedom to dispose of resources is not absolute. It is clearly limited by the law, which defines the scope of powers. Therefore, it should be assumed that the free (independent) disposal of financial resources will always be determined by law, in all aspects of this independence, i.e. with respect to revenues, expenditures, as well as budget management.

The ECST recognises the aforementioned principles as the basic European standard with regard to local government, stating that the amount of financial resources of local communities should be adapted to the scope of powers granted to them by the Constitution or by law. The Charter's statements on the need for local governments to have sufficient financial resources and for them to be sufficiently diversified and flexible (Article 9(1–3) ECST) develop and detail the principle of the adequacy of resources to the tasks. This principle is formulated in Article 167 of the Constitution with reference to territorial self-government units that are endowed with competences serving the execution of tasks assigned to them by law (particularly, sections 1 and 4, as well as in Article 15(1–2), and Article 16(2). It also follows from the aforementioned legal acts that the financial system, on which the budgetary resources of local government units are based, should be sufficiently diversified and flexible, i.e. adjusted to changes in the level of costs of performed public tasks (Article 9(4) ECST) and ensuring revenues adequate to the delegated public tasks (Article 9(2) ECST and Article 167(1) and (4) of the Constitution). The principle of adequacy, as set out by the regulations contained in the European Charter of Local Self-Government and the Constitution, is interpreted as the necessity to dispose of such resources as will suffice to perform the tasks of the municipality [Miemiec 2005, 65].

7. THE PROBLEM OF LIABILITY OF SPA AND TOURISTIC FEE'S COLLECTORS

The role of a tax collector is to facilitate taxpayers in meeting their tax obligations. The applicable tax laws provide for the possibility to use a tax collector to collect taxes constituting the revenue of local government units, but the decision on the ordering of tax collection by a collection agency, the specification of collectors and the amount of remuneration for the collection agency are entrusted to municipal councils by way of acts of local law (resolutions). The entities on which the municipal councils impose the obligation to collect the tax by way of collection are obliged to perform this obligation. Significantly, establishing collection of the spa fee by way of a collection agency is the Municipal Council's right, resulting directly from Article 19(2) of the Act on Health Resorts and Health Resort Communities. The order of collection facilitates the collection of the spa fee but does not exclude the right of the taxpayer to pay the fee in another manner provided for in the Act of 29 August 1997, the Tax Ordinance Act,[18] i.e. in cash or in a non-cash form [Dowgier, Pietrasz, Popławski, et al. 2017]. It should be emphasized that failure to pay the locality fee into the hands of the collector does not cause any

[18] Journal of Laws of 2020, item 1325.

negative consequences for the person obliged to pay it. A person obliged to pay the resort fee may refuse to pay it to the collector, who should notify the local government tax authority about this fact, which may initiate tax proceedings against such a person. It should be remembered that the rights of a given person in respect of the obligation to pay the resort fee and the determination of the amount of the fee are protected by the provisions of the Polish Public Procurement Law and the Act on Public Procurement.[19] The taxpayer has the right to question the obligation to pay the resort fee with respect to the grounds for being subject to that obligation as well as the amount of the fee. Her rights are in this case protected by ensuring her participation in the tax proceedings in the scope of this fee before the tax authority, as well as the possibility to appeal against the decision determining this fee.

It follows from the definition of a "debt collector" that it is the provisions of the tax law that determine whether a given natural person, legal person or organisational unit without legal personality will have the status of a "debt collector" and therefore whether it performs the duties of a debt collector, whereby the provisions will indicate (define) the duties imposed on the debt collector.[20] Thus, the tax collector is not liable for the taxpayer's obligation, and his liability is limited exclusively to liability for his own actions or omissions, which arise from the provisions of the law. On the other hand, a debt collector's failure to fulfill its obligation does not abrogate the taxpayer's tax obligation. If, despite the liability of the tax collector, the tax liability of the taxpayer is settled by the taxpayer, the tax liability is extinguished. In such a case, the tax creditor will not be able to legally claim payment of the same benefit from the collector.

In practice, the tax authorities of the spa municipalities have difficulties with enforcing their obligation to collect the spa fee from the collectors. This problem results from the fact that the collectors are not liable for not collecting the fee. In view of the above, many collectors deliberately and consciously fail to collect the fee due to the municipality. In addition, it should be noted that the collectors of the spa fee are not obliged to keep a register of registrations of people using accommodation services, which would significantly both improve the organization of work for tax authorities in terms of carrying out verification and control activities on the correctness of the collection of fees, as well as provide an extensive source of statistical information on the number of tourists coming to the resorts, which could be included in the promotional material of the area [Wołowiec 2016b, 24–27].

[19] Judgment of the Provincial Administrative Court in Szczecin of 12 April 2018, ref. no. I SA/Sz 129/18, Legalis no. 1754928.

[20] Judgment of the Provincial Administrative Court in Szczecin of 18 October 2017, ref. no. I SA/Sz 754/17, Legalis no. 1691175.

The provisions of the Tax Ordinance do not impose on a tax collector the obligation to calculate the amount of tax. Moreover, a tax collector, unlike a payer, has no economic control over the taxable payment and therefore cannot reduce the payment by the amount of the tax collected. As a consequence, the tax collector is not liable for failure to collect the tax. However, if the tax is collected by a tax collector and not paid to the account of the appropriate tax authority, the tax collector is liable under Article 30(2) and Article 30(4) of the Income Tax Code. The tax collector is also liable under Article 77 of the Act of 10 September 1999, the Fiscal Penal Code[21] for failure to pay the collected tax to the tax authority by the due date. So can the liability of the tax collector for the uncollected fee be extended? This seems troublesome, because such an extension of the debt collector's liability would lead to equating his liability with the liability that under Article 30(1) of the Tax Ordinance, the payer bears. Thus, the scopes of responsibility of the debt collector and the remitter should not overlap. Application of the "withholding" tax collection technique to the payer enables him to fulfill his duties in reality. The payer has the ability to collect tax regardless of the will of the taxpayer. The tax collector has no such power. The duty to collect tax can be fulfilled by the tax collector only if the taxpayer wants to pay the tax. It would therefore be unreasonable to hold a tax collector liable for uncollected taxes. On the other hand, possible difficulties in enforcing the obligation to collect local fees from the collectors could be solved by proper organization of collection in the municipality (selection of appropriate entities as collectors, determination of appropriate remuneration for collection) [Idem 2018, 25–29].

In spa municipalities, the failure of collectors to fulfill their collection obligation is a major problem, especially with regard to the spa fee. The collectors of the fee are most often the owners of guesthouses, holiday homes, hotels, hostels, etc., who are understandably unwilling to collect them from their guests. The only solution to the inactivity of the 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 duties not directly related to tax collection (keeping records, settling payment receipts, etc., providing information on the amounts collected), where contractual penalties are provided for failure to perform these activities. These agreements may not relate to the collector's statutory duties, i.e. collecting and paying taxes.

[21] Journal of Laws of 2021, item 408.

CONCLUSIONS

In view of the fact that the health resort commune performs the tasks related to the functioning of the health resort (as a commune) and its entire infrastructure on general principles from its own revenues, but it is also entitled to collect for their realization a health resort fee and to receive a health resort subsidy in the amount equal to the revenues from the health resort fee collected in the spa in the year preceding the base year, within the meaning of the Act on revenues of territorial self-government units.[22] In accordance with the general directive resulting from the principle of distribution of public resources in accordance with the tasks, the legislator, imposing on the health resort communes the indicated tasks, also assigned to them an additional source of their own income in the form of the health resort fee [Niezgoda 2012]. Undoubtedly, revenue from the spa fee would not be sufficient to perform all the tasks listed in Article 46 of the Spa Act, but also the revenue from the fee does not have to be used exclusively for the implementation of the tasks set out in this provision, because the spa fee is indisputably the commune's own income, which may be spent on any (arbitrary) purpose [Wołowiec 2002, 89–106].

The introduction of the health resort fee was connected with the entry into force of the Act of 28 July 2005 on health resort treatment, health resorts and health resort protection areas and on health resort communes. As it resulted from the justification of the bill, the purpose of the amendment was to ensure that the communes in the area of which health resorts would be located would receive income balancing the costs connected with obtaining by the commune the confirmation of the health resort properties. Additionally, the construction of the local fee was modified in such a way that its amount was diversified, allowing for application of a higher fee rate in the localities located in the areas which were granted the status of health resort protection areas under the principles specified in the act. Moreover, it should be stressed that in case of the local charge there was a situation, incomprehensible from the legislative point of view, where the provisions regulating this benefit were amended by two different legal acts and on two different dates. Part of the amendments to the Act on Local Taxes and Fees was introduced by the Act of 28 July 2005 on health resort treatment, health resorts and health resort protection areas and health resort districts, which entered into force on 2 October 2005, and part by the Act of 29 July 2005 on amendments to certain acts in connection with changes in the division of tasks and competences of territorial administration [Etel and Dowgier 2013, 63–70].

[22] Journal of Laws No. 203, item 1996.

REFERENCES

Cienkowski, Mirosław, and Tomasz Wołowiec. 2015. *Opłata uzdrowiskowa w systemie danin publicznych w Polsce*. Warszawa: Uczelnia Warszawska im. Marii Skłodowskiej-Curie.

Czarnecki, Sławomir. 2017a. "Niekorzystne warunki klimatyczne a dopuszczalność pobierania opłaty miejscowej – glosa do wyroku WSA w Krakowie z dnia 10 lipca 2017 r. (III SA/Kr 535/15)." *Przegląd Podatków Lokalnych i Finansów Samorządowych* 12:35–44.

Czarnecki, Sławomir. 2017b. "Opłata uzdrowiskowa w prawie polskim – rys historyczny." *Przegląd Podatków Lokalnych i Finansów Samorządowych* 8:15–20.

Czarnecki, Sławomir. 2017c. "Glosa do wyroku Naczelnego Sądu Administracyjnego z dnia z 25 lutego 2016 r. (II FSK 3866/13)." *Biuletyn Uzdrowiskowy SGU RP* 3:65–72.

Czarnecki, Sławomir. 2017d. "Opłaty uzdrowiskowa i miejscowa – podobieństwa i różnice." *Zeszyty Naukowe WSEI* seria: *Ekonomia* 1–2:118–20.

Dowgier, Rafał, Piotr Pietrasz, Mariusz Popławski, et al. 2017. *Ordynacja podatkowa. Komentarz*. Warszawa: Wolters Kluwer.

Dudar, Grzegorz. 2017. "Komentarz do art. 17 ustawy o podatkach i opłatach lokalnych." Lex el.

Etel, Leonard. 2011a. "O potrzebie zmian w lokalnym prawie podatkowym – cz. 1." *Finanse Komunalne* 11:5–19.

Etel, Leonard. 2011b. "O potrzebie zmian w lokalnym prawie podatkowym – cz. 2." *Finanse Komunalne* 12:5–18.

Etel, Leonard, and Rafał Dowgier. 2013. *Podatki i opłaty lokalne – czas na zmiany.* Białystok: Temida 2.

Etel, Leonard, Sławomir Presnarowicz, and Grzegorz Dudar. 2008. *Podatki i opłaty lokalne. Podatek rolny. Podatek leśny. Komentarz.* Warszawa: Dom Wydawniczy ABC.

Gliniecka, Jolanta. 2007. *Opłaty publiczne w Polsce. Analiza prawna i funkcjonalna.* Bydgoszcz–Gdańsk: Oficyna Wydawnicza Branta.

Golba, Jan. 2001. "Analiza aktualnej sytuacji prawnej uzdrowisk polskich. Referat wygłoszony na Kongresie Uzdrowisk Polskich w Polanicy." *Biuletyn Informacyjny SGU RP. Jedziemy do wód w...* 3:23–30.

Golba, Jan. 2020. *Historyczne i prawne aspekty funkcjonowania uzdrowisk w Polsce.* Warszawa: C.H. Beck.

Hammerl. Robert. 2012. *Systematik der österreichischen Tourismusabgaben und ihre finanzverfassungsrechtlichen*. Grundlagen. Wien. Master thesis.

Krupa, Jan, and Tomasz Wołowiec. 2010. "Uzdrowiska Polski Wschodniej wobec wyzwań rozwojowych – turystyka zrównoważona." In *Współczesne trendy funkcjonowania uzdrowisk – klastering*, edited by Jan Krupa, and Jan Hermaniuk, 7–35. Rzeszów: Wyższa Szkoła Informatyki i Zarządzania.

Lewy, Raimond. 2019. "La taxe de séjour." https://www.paris.fr/pages/taxe-de-sejour-modalites-pour-declarer-en-ligne-7210 [accessed: 22.04.2022].

Miemiec, Wiesława. 2005. *Prawne gwarancje samodzielności finansowej gminy w zakresie dochodów publicznoprawnych.* Warszawa: Kolonia Limited.

Niezgoda, Andrzej. 2012. *Modyfikacja zakresu działania gmin uzdrowiskowych oraz posiadających status obszaru ochrony uzdrowiskowej a podział zasobów.* Warszawa: Lex Wolters Kluwer.

Swianiewicz, Paweł, and Julita Łukomska. 2018. "Wpływy z opłaty miejscowej i uzdrowiskowej. Ranking." *Wspólnota* 6:1–12.

Wołowiec, Tomasz. 2002. "Taksa kuracyjna – źródeł dochodów gmin uzdrowiskowych (rozwiązania niemiecki i austriackie)." *Biuletyn Informacyjny Stowarzyszenia Gmin Uzdrowiskowych RP* 1:89–106.

Wołowiec, Tomasz. 2003a. "Finansowe ograniczenia rozwoju polskich uzdrowisk." *Ekonomika i Organizacja Przedsiębiorstwa* 3:56–63.

Wołowiec, Tomasz. 2003b. "Sposoby rewitalizacji polskich uzdrowisk – ustawa o gminach uzdrowiskowych i inne formy aktywizacji społeczno-gospodarczej." *Folia Turistica* 14:5–29.

Wołowiec, Tomasz, and Marcin Duszyński. 2003. "Development limitations of Polish spas (legal and financial barriers)." In *Issues of tourism and health resort management*, edited by Witold Kurek, 317–26. Kraków: Uniwersytet Jagielloński.

Wołowiec, Tomasz. 2004. "Metody stymulowania konkurencyjności gospodarczej polskich gmin uzdrowiskowych." *Samorząd Terytorialny* 10:55–62.

Wołowiec, Tomasz. 2005. "Konkurencyjność polskich gmin uzdrowiskowych w warunkach integracji z Unią Europejską." *Roczniki Nauk Społecznych – Ekonomia i Zarządzanie*, vol. XXXIII, 165–91.

Wołowiec, Tomasz. 2007. "Wpływ ograniczeń administracyjno-prawnych na rozwój polskich gmin uzdrowiskowych." *Samorząd Terytorialny* 1–2:75–84.

Wołowiec, Tomasz, and Krzysztof Kaganek. 2007. "Administracyjno-prawne uwarunkowania funkcjonowania gmin uzdrowiskowych w Polsce i reaktywowania koncepcji uzdrowisk." *Folia Turistica* 18:109–20.

Wołowiec, Tomasz. 2013. "Zasadność poboru opłaty uzdrowiskowej za pobyt w szpitalach uzdrowiskowych (artykuł polemiczny)." *Przegląd Podatków Lokalnych i Finansów Samorządowych* 9:20–25.

Wołowiec, Tomasz. 2014. "Kwestie formalno-prawne poboru opłaty uzdrowiskowej w szpitalach uzdrowiskowych." In *Obrót powszechny i gospodarczy-problemy publicznoprawne i ekonomiczne*, edited by Iwona Ramus, 213–20. Kielce: Wyższa Szkoła Ekonomii, Prawa i Nauk Medycznych.

Wołowiec, Tomasz. 2015. "Pobór opłaty uzdrowiskowej – glosa do wyroku Wojewódzkiego Sądu Administracyjnego w Bydgoszczy z 27.04.2011 (I SA/Bd 76/11)." *GLOSA – Prawo Gospodarcze w orzeczeniach i komentarzach* 2:120–26.

Wołowiec, Tomasz. 2016a. "Pobyt w szpitalu uzdrowiskowym a obowiązek poboru opłaty uzdrowiskowej." *Przegląd Prawa Publicznego* 1:64–73.

Wołowiec, Tomasz. 2016b. "Zakres i specyfika odpowiedzialności inkasenta opłaty miejscowej i uzdrowiskowej." *Prawo Finansów Publicznych* 11:24–27.

Wołowiec, Tomasz, and Dariusz Reśko. 2011. *Opłata miejscowa i uzdrowiskowa. Aspekty teoretyczne i praktyczne*. Rzeszów: Wyższa Szkoła Biznesu – National-Louis University & Instytut Badań i Analiz Finansowych Wyższej Szkoły Informatyki i Zarządzania z siedzibą w Rzeszowie.

Wołowiec, Tomasz. 2018. "Zakres i specyfika odpowiedzialności inkasenta opłaty miejscowej i uzdrowiskowej." *Procedury Administracyjne i Prawne* 1:25–29.