Teka Komisji Prawniczej PAN Oddział w Lublinie, vol. XVII, 2024, no. 2, pp. 281-294
https://doi.org/10.32084/tkp.9026

DOG OWNERSHIP FEE AND THE ISSUE OF LEVY COLLECTION, TAX EXEMPTIONS AND RATE DIFFERENTIATION. A TAX-LEGAL ANALYSIS*

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Abstract. Until the end of 2007, there was a dog ownership tax in the tax law system. The dog ownership tax was an obligatory benefit, i.e. municipal councils were obliged to establish and collect this tax (even if the costs of its collection exceeded the proceeds from the dog ownership tax). Consequently, there were calls for the dog ownership tax to be replaced by a tribute collected by municipalities on an optional basis. As of 1 January 2008, the dog ownership tax was replaced by a dog ownership levy. Unlike the dog ownership tax, the dog ownership fee is an optional levy – municipalities may, but are not required to, specify the obligation to pay the dog ownership fee. The municipal council is only empowered to introduce tax relief if the term relief is used in the relevant statutory provision. The power to enact tax reliefs cannot be derived from a provision authorising the municipal council to enact exemptions in local taxes and charges.

* The article is the result of the own statutory research of the WSB-NLU in Nowy Sącz and the WSEI University of Lublin on public investment efficiency processes in the context of New Public Management.

ISSN 1899-7694
e-ISSN 2719-7379

Keywords: tax law; local taxes and fees; tax ordinance; tax allowances and exemptions; tax proceedings; tax liabilities; local tax resolutions.

INTRODUCTION

Until the end of 2007, there was a tax on dog ownership in the tax system. The dog ownership tax was a compulsory benefit, i.e. councils were obliged to establish and collect this tax (even if the cost of collecting it exceeded the income from the dog ownership tax). As a result, there have been calls to replace the dog ownership tax with a levy levied by municipalities on an optional basis. From 1 January 2008, the dog ownership tax was replaced by the dog ownership tax.[1] Unlike the dog ownership tax, the dog ownership fee is an optional fee – municipalities can, but do not have to, determine the obligation to pay the dog ownership fee (Article 18a(1) LTF). According to Article 18a(1), the fee for owning dogs is collected from natural persons owning dogs (such was the subject scope of owning dogs). Consequently, dog owners who are legal persons or non-legal entities (e.g. police, military, companies) are not obliged to pay this fee. As we read in the judgment of the Supreme Administrative Court of 20 August 2002 (III SA 3153/01), "the aim of the legislator was to tax the ownership of dogs exclusively on individuals. The legislator therefore allows the situation that a dog owned, for example, by a legal person or another legal entity, is not subject to taxation, even though it is cared for by a specific natural person. For example, natural persons employed in other organisational units which do not have legal personality, e.g. police bodies, which are individuals, as is well known, in many cases are dog owners."

1. STRUCTURE OF THE FEE AND STATUTORY EXEMPTIONS

It is important to note that the fee for owning dogs falls on individuals owning dogs, not on dog owners. Possession is a term of civil law. According to Article 336 of the Civil Code,[2] the owner of the thing is both the one who actually owns it as the owner (independent owner) and the one who actually owns it as a user, pledger, tenant, tenant or having another right, with whom there is a definite authority over the thing (dependent owner). Consequently, natural persons who own dogs who are not their owners (e.g. people who "borrowed" a dog from another person) are obliged to pay the fee adopted by the municipality. The provisions of Article 18a(2) LTF lists natural persons

[1] Act of 12 January 1991 on Local Taxes and Fees, Journal of Laws No. 9, item 31 as amended [hereinafter: LTF], Article 1(7).

[2] Act of 23 April 1964, the Civil Code, Journal of Laws No. 16, item 93 as amended.

from whom a fee is not charged for the possession of dogs. This fee is not collected from: 1) members of staff of diplomatic missions and consular offices and other persons equal to them on the basis of laws, agreements or international customs, if they are not Polish citizens and do not have a place of permanent residence in the territory of the Republic of Poland – subject to reciprocity; 2) persons classified to a significant degree of disability within the meaning of the provisions on occupational and social rehabilitation and employment of persons with disabilities (i.e. the provisions of the act of 27 August 1997 on vocational and social rehabilitation and employment of disabled persons – by virtue of having an assistance dog; 3) persons over 65 years of age owning a household – by virtue of owning one dog. In this case The Ministry of Finance, in the letter of 4 September 2001, LK-1594/LP/01/KM, stated that a linguistic and purposive interpretation of the provision of the above article leads to the conclusion that running a household on one's own means running that household without financial assistance from other persons. Thus, the exemption can apply to elderly single persons as well as to persons with other 'dependent' persons as dependants - provided that these persons do not have their own source of livelihood'; consequently, as the Ministry explained later in the letter, 'the exemption in question cannot generally apply to married couples if both spouses have their own sources of livelihood, even if they are both over the required age of 70.

The rules for determining collection and the payment dates and rates of the dog ownership fee are determined by the municipal councils by way of a resolution. When determining the amount of the dog ownership fee rates, municipalities are limited by the maximum rate set out in Article 19(1)(f) LTF. The maximum rate of the dog ownership fee in 2024 is 173.57 PLN per annum. When adopting a dog ownership fee, the municipal council (in addition to setting out the rules for its establishment and collection as well as the payment dates and rates) may order the collection of the dog ownership fee by way of a collection service and specify the collectors and the amount of remuneration for the collection service (Article 19(2)). A collector is a natural person, a legal person or an organisational unit without legal personality obliged to collect tax from a taxpayer and pay it in due time to the tax authority (Article 9 of the Tax Ordinance[3]). The role of the collector is limited to the execution of an already existing obligatory legal relationship in which the debtor is the entity charged with the obligation to pay the dog ownership fee. The debt collector collects this fee, but cannot perform enforcement activities. The function of the collector is therefore limited to acting as an intermediary between the debtor (the natural person owning the dog) and the creditor (the public authority).

[3] Act of 29 August 1997, the Tax Ordinance, Journal of Laws No. 2012, item 749 as amended [hereinafter: TO].

It should be noted that the collection of the dog fee by collectors constitutes a service subject to VAT, the service is taxed at the basic rate of 23%. The municipal councils should take this fact into account when adopting the fee for collection (the resolutions of the municipal councils should clearly state whether the adopted fee is net or gross). When adopting a dog fee, municipal councils may also introduce exemptions from the fee on dog ownership other than those listed in the Article 19(3) LTF. It should be expected that exemptions from the dog ownership fee adopted by municipal councils will be analogous to exemptions from the dog ownership tax.

2. SUBJECTIVE EXEMPTIONS

As in the case of the resort, spa and advertising fees, the phrase 'the fee shall not be collected' is also used in the case of the fee in question. It should be assumed, however, that the provision in question does not regulate the institution of tax exemption or non-collection, but contains statutory subjective exemptions. Two of the subjective exemptions in question concern persons with disabilities referred to in the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities. Pursuant to Article 1 of that Act, a disabled person is a person whose disability has been confirmed by a certificate: of qualification by the assessment bodies to one of three degrees of disability, or of total or partial inability to work under separate regulations, or of disability, issued before the age of 16. Thus, the tax authorities do not have the right (let alone the obligation) to make their own determinations as to whether the taxpayer of the dog ownership fee meets the conditions for exemption (whether he is a disabled person). Only those persons who hold a relevant certificate issued by a competent authority can benefit from the exemption. A certificate issued by a Social Insurance Institution's certifying physician on total inability to work and inability to lead an independent life will be treated by the legislator on an equal footing with a certificate on a significant degree of disability – such a certificate will therefore also entitle to the exemption.

The fee exemption applies only to one dog, but – as a rule – only to an assistance dog, i.e. an appropriately trained and specially marked dog, in particular a guide dog for a blind or partially sighted person and an assistance dog for a person with motor disabilities, which facilitates the disabled person's active participation in social life. As a special category of disabled persons are those classified as severely disabled, the exemption for these persons applies to the ownership of one dog, and this regardless of whether it is a so-called assistance dog [Wołowiec 2016, 6-10].

The Act does not provide for cumulation of exemptions. Thus, if a person with a severe disability (who is also a 'disabled person' within the meaning of the provisions of the Act on Vocational and Social Rehabilitation and

Employment of Persons with Disabilities) owns two dogs, including one assistance dog, the exemption covers only one dog. In the case of agricultural taxpayers, the Act provides two restrictions on the possibility of using the exemption. The first is that the exemption covers no more than two dogs, and this is regardless of how many municipalities the taxpayer has land that constitutes an agricultural holding. The second restriction relates to the subject matter of the agricultural tax levied on persons wishing to benefit from the exemption: it is not sufficient that they own agricultural land subject to agricultural tax; this land must constitute an agricultural farm.

It is true that the legislator has not clarified what kind of agricultural farm it is referring to, but – given that it is 'agricultural tax on an agricultural farm' – it must be considered that the provision in question refers to an agricultural farm within the meaning of the provisions regulating agricultural tax. These provisions are contained in the Agricultural Tax Act. Pursuant to Article 2(1) of the Act on Agricultural Tax, an agricultural holding is considered to be an area of agricultural land with a total area exceeding 1 ha or 1 ha of calculation, owned or held by a natural person, a legal person or an organisational unit, including a company, without legal personality.

The analysis of the construction of the exemption concerning agricultural taxpayers raises a certain doubt. The exemption applies to no more than two dogs. If a taxpayer owns e.g. three plots of land (forming one agricultural holding) and keeps e.g. two dogs on each of those plots, it is practically impossible to ensure that he pays the fee on four dogs. It may turn out, for example, that he indicates two dogs in each municipality as exempt from the fee. Verifying the reliability of such a declaration would require collecting information in all municipalities where he could potentially have dogs.

3. CONSEQUENCES OF THE LACK OF STATUTORY INDICATIONS AS TO THE MODE OF PAYMENT

As in the case of all other fees regulated in the Act on Local Taxes and Fees, the legislator did not include any provisions on the rules of establishing and collecting, as well as payment dates and rates of the dog ownership fee. This matter has been entrusted to municipal councils. However, it should be presumed that the obligation to pay the dog ownership fee arises at the moment of taking possession of the dog. The municipal council should in turn indicate in a resolution how this obligation is to be transformed into a tax liability. The most convenient (cheapest from the point of view of collection costs) solution would be to state in the resolution that the fee is payable without a call: this would mean that the obligation arises by operation of law and it would not be necessary to serve the taxpayers with a decision establishing the dog ownership fee.

Unfortunately, there is also no provision in the Act to regulate the proportionality of the fee based on the duration of the fee obligation. The absence of such a regulation means that the entire annual fee has to be paid even if an individual ceases to be a dog owner in the course of the year. The municipal council should therefore introduce a provision providing for the possibility to terminate the obligation to pay the fee, e.g. at the end of the month in which the taxpayer ceases to be the dog owner. Such termination of the obligation should in turn be the basis for calculating the levy due only for the months in which the obligation existed [Wołowiec 2021a, 125-30].

Pursuant to Article 19(1)(f) LTF, the rate of the dog ownership fee is annual. On this basis, it may be concluded that the levy itself is also of an annual nature (similarly to real estate tax or tax on means of transport). This assumption makes it possible to apply Article 18 TO in the case of a change in the place of residence of a dog ownership fee taxpayer during the tax year. This provision stipulates that if in the course of the tax year an event occurs which causes a change in the local jurisdiction of the tax authority (in the case of the levy in question, it will be a change in the place of residence), the tax authority with local jurisdiction for this settlement period (i.e. for the whole year) remains the tax authority which was competent on the first day of the tax year or settlement period [Idem 2021a; 121-29].

Unfortunately, this regulation does not fit the specifics of the dog ownership fee, as it implies the necessity to settle the fee with one tax authority for the entire year – even if the taxpayer no longer resided in the territory of that authority for most of that year. It also means that the authority from the municipality where the taxpayer has settled during the year (changing residence) does not have the competence to assess the fee for the period from the month of the move to the end of the given year.

Although the law does not mention the local jurisdiction of the tax authorities, the issue was addressed by the Minister of Finance in the regulation of 22 August 2005 on the jurisdiction of tax authorities. Pursuant to para. 8(4) of that act, the local jurisdiction in dog ownership tax matters is determined according to the place of residence of the person owning the dog. This solution has a serious drawback. Firstly, if a person owns several dogs in different municipalities, all the fees payable in respect of the ownership of those dogs should be paid in the municipality in which he resides. Secondly, even if no dog ownership fee has been enacted in some municipalities (where the person owns dogs), such fees should be paid in the municipality of residence (if there is a dog ownership fee resolution in place there [Idem 2022, 349-68].

4. POWERS OF MUNICIPAL AUTHORITIES REGARDING THE DESIGN OF THE DOG OWNERSHIP FEE

Article 19(3) LTF provides for the possibility of the municipal council to apply tax exemptions, and only those of an objective nature. The above provision corresponds to Article 217 of the Constitution of the Republic of Poland, which prohibits subjective exemptions. In practice, the nature of tax exemptions means that it is often difficult to separate them into purely subjective or subjective exemptions. In accordance with the jurisprudence of administrative courts, in order to correctly fulfil the prerequisites of Article 19(3) LTF, it is necessary to determine the criterion of the exemption by identifying the subject, and not the entity, of the exemption.[4] Whenever it is not possible to derive who is subject to the exemption, the exemption is of a non-objective nature and consequently means exceeding the statutory delegation indicated in the aforementioned provision. The Constitutional Tribunal has repeatedly pointed out in its judgments that the financial independence of a municipality and the right to determine the amount of local taxes and fees constitute an important element of its subjectivity, but cannot be understood as the freedom to determine and dispose of revenues. On the contrary, municipalities are only allowed to do what the provisions of the law allow them to do.[5]

Pursuant to Article 19(3) LTF the municipal council, by way of a resolution, may introduce subjective exemptions from local fees other than those listed in the Act. Thus, the legislation clearly delineates the possibility of applying tax exemptions of an object-related nature only. The wording 'other than the exemptions listed in the Act' determines that the exemption may relate only to the subject of taxation.[6] The local authority council has the power to introduce tax reductions only if the term relief is used in the relevant statutory provision. It is not possible to derive from a provision authorising the municipal council to adopt exemptions in local taxes and charges the power to adopt tax reductions. It is therefore unacceptable to conclude that, since the municipal council has the power to introduce exemptions, it can also introduce tax reliefs, as this is nothing more than a 'partial exemption'.[7] The economic effects

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[4] Judgment of the Regional Administrative Court, in Gliwice of 19 March 2013, ref. no. I SA/Gl 1335/12; judgment of the Supreme Administrative Court in Gdańsk of 9 April 2014, ref. no. I SA/Gd 168/14 and judgment of the Supreme Administrative Court in Olsztyn of 23 March 2016, ref. no. I SA/Ol 98/16.

[5] Judgments of the Constitutional Tribunal of 23 October 1996, ref. no. K 1/96, OTK No 5, item. 38; of 4 May 1998, ref. no. K38/97 OTK No 3, item. 3; of 9 April 2002, ref. no. K 21/01, OTK-A No 2, item 17.

[6] Judgment of the Supreme Administrative Court in Gliwice of 19 March 2013, ref. no. I SA/Gl 1335/12.

[7] Judgment of the Supreme Administrative Court in Olsztyn of 25 February 2016, ref. no. I SA/Ol 824/15.

themselves of applying an exemption or relief in practice may even be identical, but on a legal level they are entirely separate institutions. Tax exemptions concern different elements of the tax structure than tax reliefs. In the doctrine of Polish tax law and in the well-established jurisprudence of administrative courts, it is unanimously accepted that it is unacceptable to identify the category of tax exemption with the category of tax relief. The legislator does not use these terms interchangeably, on the contrary, they serve to define legal constructions with easily noticeable differences [Etel 2001, 237].

The provision of Article 217 of the Constitution of the Republic of Poland distinguishes subjective exemption from relief. Admittedly, in Article 3(6) TO assumes that a tax relief is understood as exemptions, deductions, reductions or abatements provided for in the provisions of the tax law, the application of which results in a reduction of the tax base or the amount of tax, but at the same time this law unambiguously indicates that this definition is exclusively for the purpose of this law and thus cannot be used when determining the meaning of particular phrases from other laws. No tax law, other than the Tax Ordinance, contains a definition of tax exemption and tax credit. It is assumed in doctrine that a tax exemption is the exclusion from the subjective scope of a given tax of a certain category of entities (subjective exemption) or from the subject of a given tax of a certain category of actual or legal situations (subjective exemptions); there are also exemptions of a mixed nature: subjective and objective [Brzeziński 1996, 31]. In tax law, on the other hand, they amount to a reduction in the tax base, tax rate or tax amount. Exemption means the exclusion of a certain category of entities or objects from taxation, while relief means a reduction in the amount of tax paid. The distinction between these two concepts leads to the conclusion that the municipal council is authorised to introduce tax reliefs only if the term relief is used in the relevant statutory provision. The power to enact tax reductions cannot be derived from a provision authorising the municipal council to enact exemptions in local taxes and fees [Wołowiec 2022b, 146-56].

5. THE POSITION OF THE COLLECTOR OF THE FEE FOR OWNING A DOG IN THE CASE OF THE PROVISIONS OF THE TAX ORDINANCE ACT

The role of the tax collector is to facilitate the fulfilment of tax obligations by taxpayers. The applicable tax laws provide for the possibility to use it for the collection of taxes constituting the income of local government units, while the decision-making on the ordering of tax collection by means of collection, the determination of collectors and the amount of remuneration for collection is entrusted to municipal councils by means of acts of local law (resolutions). The entities on which the municipal councils impose

the obligation to collect tax by means of collection are obliged to perform it. Such a regulation can be found in Article 6(12) and Article 19(2) LTF with regard to the collection of real estate tax from natural persons and local fees, as well as with regard to agricultural and forestry tax collected from natural persons [Brzeziński and Olesińska 2010, 21].

The obligation of the collector to collect the tax and pay it in due time to the tax authority, arises from the regulations on particular types of taxes, which provide for such a possibility to collect a given tax by way of collection and the procedure for appointing entities as collectors. If the resolution of the municipal council does not provide for collection by way of collection, then the conclusion of agreements by the municipal management board (head of the municipality) with the entity that is to collect the levy is an act contrary to the adopted resolution, i.e. contrary to the applicable legal provision, and above all, this entity does not become an 'arm' of the authority that is authorised and obliged to collect the levy'.[8]

It should be borne in mind that the Municipal Council has not been authorised to enact additional regulations on collection with regard to the issuance of a receipt. The duties of collectors with regard to collected taxes and fees result directly from the law, i.e. from Article 9 and Article 47(4a) TO, and the principles of liability for non-performance or improper performance of these duties by collectors, as well as the principles of conduct of the tax authority, are established by the norms of Article 30(2) and (3) TO.[9] Thus, the collector is not liable for the taxpayer's obligation and its liability is limited only to that of its own acts or omissions, which arise under the law. On the other hand, the failure of the payer or collector to fulfil its obligation does not abrogate the taxpayer's tax liability. If, despite the liability of the payer or collector, the tax debt owed to it has been paid by the taxpayer, the tax liability has been extinguished. In such a case, a tax creditor will not legally be able to claim payment of the same benefit from the taxpayer [Wołowiec and Podolchak 2022, 371-90].

6. DESIGNATION OF THE FEE COLLECTOR BY A RESOLUTION OF THE LOCAL AUTHORITY

The appointment of a legal person or an organisational unit without legal personality as a collector by a resolution of the local municipal council raises the issue of who will perform the duties of a collector. Such a person, who is obliged to collect the fees and pay them to the tax authority on time,

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[8] Judgment of the Supreme Administrative Court in Warsaw of 16 April 2008, ref. no. I FSK 622/07.

[9] Resolution of the Regional Chamber of Audit in Olsztyn of 9 December 2015, No. 0102-469.15.

must be appointed by the head of the organisational unit concerned (this is a technical act) [Nykiel 1998, 178]. This may be several persons (e.g. all the employees at the reception desk of a hotel) whose duties will include performing the activities assigned to the collector. The designation of these persons may take the form of an increase in their job responsibilities (employment contract) or a contractual obligation on them to perform these activities. Designated persons should be notified by the head of the organisational unit to the competent tax authority before the first payment of collected tax is made. A change of these persons also requires notification within 14 days [Kosikowski, Etel, Dowgier, et al. 2011, 290-91). Failure to designate such persons and notify the tax authority of this is a fiscal penal offence, as pursuant to Article 79 of the Fiscal Penal Code,[10] a debt collector who fails to appoint, within the required time limit, a person whose duties include, inter alia, the collection of fees and the timely payment to the tax authority of the amounts collected, or who fails to notify the locally competent tax authority of the required details of such persons, is subject to a fine for a fiscal offence. Of course, failure to appoint a person responsible for collecting the spa fee cannot be interpreted as the absence of a collector or a person responsible for performing their duties, and thus incurring fiscal penal liability.[11] It should be clearly stated that a person (an employee of a hotel, guesthouse, sanatorium, etc.) appointed to perform activities related to collecting the spa fee is not a payer or collector.[12] Public law liability for the correct collection of these fees is borne, on general principles, by the collector, who is a specific legal person and organizational units without legal personality (an entity providing hotel services). A person appointed by the facility management to collect the spa fee shall be subject to employee liability or liability arising from an employment contract in the event of failure to properly fulfill these obligations [Wołowiec 2018a, 15-19].

The collector is obliged to store documents until the limitation period for their obligation expires (Article 33 TO). The collector is obliged to fulfil the obligations consisting in collecting the local (spa) fee from the taxpayer and paying it to the tax authority in due time (Article 9). The collector is liable for failure to perform or improper performance of these obligations. Therefore, throughout the period in which a decision on his liability may be issued, he is obliged to store documents related to the collection of the local and spa fee. This allows the tax authorities to determine the collector's liability or to charge the taxpayer with this liability. The limitation period for the obligations of collectors should be determined taking into account the periods of

[10] Act of 10 September 1999, the Fiscal Penal Code, Journal of Laws of 2007, No. 111, item 765 as amended [hereinafter: FPC].

[11] Judgment of the Supreme Court of 2 July 2002, ref. no. IV KK 164/02.

[12] Judgment of the Supreme Administrative Court of 5 October 1994, ref. no. SA/Gd 1726/94.

suspension and interruptions in its course. In most cases, it will be 5 years, counted from the end of the year in which the deadline for collecting or transferring the tax by the collector expired [Wołowiec 2018b, 16-19].

The collector is obliged to notify the tax authority in writing about the place where documents related to the collection of local and spa fees are stored. 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 stored until the collector's obligation expires. After this period, the documents should be destroyed.

7. LIABILITY OF THE COLLECTOR FOR FAILURE TO COLLECT FEES.

The Fiscal Penal Code does not provide for the liability of a collector for failure to collect fees. Only the collector who collected the fee but did not pay it on time to the account of the competent authority is subject to the penalty (Article 77 FPC). As a result, the lack of "sanctions" for failure to fulfill statutory obligations by collectors leads to the fact that they may not take any action to collect the fees. This is harmful not only for the interests of the commune, but also for the legal situation of the taxpayer. Failure to collect the fees by the collector means that the taxpayer must pay the fee themselves in a specified manner and within the specified deadlines. If a tourist (taxpayer), accustomed to paying through a collector, does not pay the due fee by the last day of the payment deadline (stay), tax arrears and default interest accrue to the taxpayer. In communes, collectors' failure to fulfill their obligation to collect the fees is a big problem, especially in relation to the local fee and spa. The collectors of these fees are appointed owners of guesthouses, summer houses, hotels, hostels, etc., who do not want, which is understandable, to collect these fees from their guests. The only solution to the lack of activity 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 agreements are also effective, concerning the performance of additional obligations not directly related to tax collection (keeping registers, settling proofs of payment of the fee, etc., providing information on the amounts collected), where contractual penalties are provided for failure to perform these activities. These agreements cannot concern the statutory obligations of the collector, i.e. collecting and paying taxes [Kosikowski, Etel, Dowgier, et al. 2011, 284]. The collector is liable for non-payment of the collected fees with all his assets. This liability is personal and unlimited. It also covers all joint property of collectors and their spouses.

8. TAX PROCEDURE IN THE CASE OF NON-PAYMENT OF FEES

If, during tax proceedings, the tax authority finds that the collector has collected a local or spa fee but has not paid it, the authority issues a decision on the tax liability of the collector, specifying the amount due for the collected but unpaid fee [Olesińska 2010, 15-16]. The above decision may also be issued by the tax control authority. In one of its judgments, the Voivodship Administrative Court in Warsaw indicated that the liability of a collector is formally similar to a tax obligation in taxes that are the subject of tax liabilities arising from the delivery of a decision establishing a tax liability (Article 21(1)(1) TO). In a situation where the collector fails to perform his obligations on time, but pays the collected fees to the tax authority's account before the authority issues a decision on his tax liability, there is no basis for claiming that the payer has performed the obligations arising from the Tax Ordinance (Article 30(2) TO).[13] In the decision on the liability of the collector, the tax authority determines the amount due for the collected but unpaid local (spa) fee, despite such an obligation resulting from the law. This authority confirms a specific conduct (or rather the lack of conduct required by law) of the collector. The decision referred to in the Tax Ordinance (Article 30(4) TO) is therefore of a declaratory nature [Kosikowski, Etel, Dowgier, et al. 2011, 286; Mączyński 2001, 27]. It seems that in the case of payment of a local (spa) fee by a taxpayer (tourist), the proceedings initiated to establish the collector's liability should be discontinued as moot (Article 208 TO). "When the proceedings have become ineffective for any reason irrelevant, in particular in the event of the statute of limitations of the tax liability, the tax authority shall issue a decision to discontinue the proceedings. [...] The tax authority may discontinue the proceedings if the party at whose request the proceedings were initiated requests it, and if no other parties object and it does not threaten the public interest".[14] In a situation where the collector paid the amount specified in the decision on liability from his own funds, the taxpayer will avoid having to pay the tax. The tax will be paid by the collector. The collector, if the taxpayer does not return the amount paid by him, may demand a refund of the amount paid in the manner specified in the Civil Code (Article 405).[15] The taxpayer obtained a financial benefit (the amount of tax paid) without a legal basis. The taxpayer's unjust enrichment is a premise for the refund of tax to the collector who paid the tax on his behalf [Wołowiec 2018c, 56-87].

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[13] Judgment Supreme Administrative Court of 11 September 2007, ref. no. II FSK 957/06.

[14] Judgment of the Supreme Administrative Court of 20 December 2004, ref. no. III SA/Wa 557/04.

[15] Act of 23 April 1964, the Civil Code, Journal of Laws No. 16, item 93 as amended.

CONCLUSIONS

The appointment of a person responsible for performing activities related to collecting a dog ownership fee does not result in this person obtaining the status of a collector, and consequently, they are not liable for failure to perform the obligations specified in Article 8 and 9 TO. The collector is always the legal person or organizational unit on which the provisions of tax law impose the obligations to collect and pay the tax due. It does not follow from Article 31 TO that a person who, within an organizational unit (hotel facilities), is obliged to appoint a person whose duties will include calculating, collecting and timely paying the tax amounts – is liable as a tax payer in a situation where they fail to perform this obligation.

Therefore, a person appointed by the collector to perform the duties consisting in collecting and paying the collected tax amounts to the tax authority, in the event of a breach of these obligations may be subject to employee liability or civil liability. A person designated to perform activities related to tax collection may also be liable under fiscal and penal law. According to Article 9(3) FPC, a person who, based on a provision of law, a decision of a competent authority, an agreement or actual performance, deals with the economic affairs of a natural person, a legal person or an organizational unit without legal personality is also liable for fiscal offences or misdemeanors, as the perpetrator. Therefore, the collection and payment of tax is included in the concept of dealing with the economic (economic) affairs of a given entity, referred to in Article 9(3) FPC.

In the event that a natural person responsible for performing activities related to the collection of the spa fee is not designated, fiscal and penal law liability under Article 77 or 78 FPC may be attributed to the person responsible for collecting the local fee. Therefore, both when the regulations do not require the appointment of a person responsible for performing the activities of a collector, and when the obligation to appoint such a person has not been fulfilled.

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