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DEFENSE IN ADMINISTRATIVE PROCEEDINGS UKRAINE RIGHTS OF TAXPAYERS FROM THE ACTIONS OF THE STATE TAX SERVICE

ЗАХИСТ В АДМІНІСТРАТИВНОМУ СУДОЧИНСТВІ УКРАЇНИ ПРАВ ПЛАТНИКІВ ПОДАТКІВ ВІД ДІЙ ОРГАНІВ ДЕРЖАВНОЇ ПОДАТКОВОЇ СЛУЖБИ

Bevzenko Vladimir,
Ph.D., Associate Professor,
Professor of Administrative Law
Kyiv National Taras Shevchenko University

This article examines some of the features of public law relations with taxpayers and state tax authorities. In particular, attention is given to the rights of taxpayers who may be disrupted as a result of audits of the tax administration. Ways and content protection taxpayers.

Key words: administrative justice, rule of law, security, administrative court, the legal position, the taxpayer, the Tax Authorities, check, act.

У статті досліджуються деякі особливості публічно-правових відносин за участю платників податків та органів державної податкової служби. Зокрема, увага приділена правам платників податків, які можуть порушуватися внаслідок перевірок органів державної податкової служби. Аналізуються способи й зміст захисту прав платників податків.

Ключові слова: адміністративна юстиція, адміністративне судочинство, верховенство права, захист, адміністративний суд, правова позиція, платник податку, органи державної податкової служби, перевірка, акт.

В статье исследуются некоторые особенности публично-правовых отношений с участием плательщиков налогов и органов государственной налоговой службы. В частности, внимание уделено правам плательщиков налогов, которые могут нарушаться вследствие проверок органов государственной налоговой службы. Анализируются способы и содержание защиты прав плательщиков налогов.

Ключевые слова: административная юстиция, административное судопроизводство, верховенство права, защита, административный суд, правовая позиция, плательщик налогов, органы государственной налоговой службы, проверка, акт.

These activities Administrative Court as protecting the rights, freedoms and interests of (legal) persons checking the legality and validity of the results of public of public administration, termination and prevention of illegal demonstrations (inaction) of the Public Administration public, ensuring the legality of public administration public, especially and motivate, define, direct judicial process of this court, relying on the basis of his decisions, justifying the perception and assessment of the facts of the administrative proceedings.

The legal position

1) *Can violate the rights of taxpayers with the tax authorities audit and / or inspection or assembly acts reflected in the act of checking some conclusions in which cases? Are the actions legally significant, and do they affect the status and responsibilities of the taxpayer?*

In answering on this question, first, we turn to litigation. Thus, from 03 December 2008 to 28 December 2008 in the company of «Liftservis» State Inspection for Price Control in the Dnipropetrovsk region was performed routine checkup for the IV quarter of 2008. The audit by the State Inspection for Price Control in the Dnipropetrovsk region was made an inspection, based on which the decision was made on December 24, 2008 № 14 «On the use of economic sanctions for violation of financial discipline of state prices.» In that decision stated that the irregularities of «Liftservis» requirements of the Cabinet of Ministers of Ukraine «On approval of tariffs maintenance services of buildings and structures and adjacent areas and a model contract for services», Ministry of Housing and Communal Services of Ukraine on November 9, 2006 number 369 and the decision of City Council and accrued penalties in the amount of USD 101,239.98 and 202,479.96 USD.

Article. 78.1 of the Tax Code of Ukraine provides for the possibility of unscheduled documentary, which is possible if at least one of the specified code under the circumstances. [7]

In particular, according to Art. 78.1.12 of the Tax Code of Ukraine the state tax authority higher order of control over the actions or inaction of officials of the State Tax Service of the lower level by checking documents for mandatory reporting taxpayer or documentary inspection carried out by the supervisory authority of the lower level and inconsistency findings of the inspection requirements of the legislation or incomplete ascertainment when checking questions to be clarified for making an objective opinion on taxpayer compliance with the law, enforcement of which is assigned to the tax authorities. [7]

In addition, under Part 1 of Art. 79 of the Code of Administrative Procedure of Ukraine dated 6 July 20005, the written evidence are documents (including electronic documents), certificates, letters, telegrams, and any other written records that contain information about the circumstances relevant to the case. [8]

Thus, under any circumstances, acts and help the tax authorities in the first place, are prejudicial in nature, that may create adverse consequences for the person against whom such acts and reference compound, and secondly, these documents may be evidence as confirming specific factual circumstances.

Therefore I can say that the actions of the tax authorities audit and / or inspection or assembly acts reflected in the act of checking some conclusions are legally significant, that affect the status and obligations of the taxpayer.

That is a violation of the rights of taxpayers, we can say when the action of the tax authorities audit and / or inspection or assembly acts reflected in the act of checking some conclusions do not meet the following requirements (Part 3. 2 of the Code Administrative Procedure of Ukraine):

1) they are taken (committed) on the basis and within the limits and in the manner envisaged by the Constitution and laws of Ukraine;

2) they are accepted (committed) using the power of the purpose for which the authority is granted;

3) they are taken (committed) justified, taking into account all circumstances relevant to the decision (an action);

4) they are taken (committed) impartial (unbiased);

5) they are taken (committed) in good faith;

6) they are taken (committed) reasonably;

7) they are accepted (committed) with the principle of equality before the law, preventing unfair discrimination;

8) they are accepted (committed) in proportion, in particular with the necessary balance between any adverse effects on the rights, freedoms and interests of the individual and objectives to achieve the aims of this decision (action);

9) they are accepted (committed) with regard to an individual's right to participate in decision-making;

10) they are taken (committed) in time, ie within a reasonable time.

Thus, the fact of taxpayers' rights, the content and extent of violations in each case is judged by the court in which an action is brought.

2) Does the taxpayer may appeal a claim for recognition of tax illegal actions committed during the audit, on display in the act of checking some conclusions? What should be the procedure of the court in quoting the taxpayer such a claim? Does the law in this case, the court refused to initiate proceedings or to close the proceedings?

We consider that the Constitution of Ukraine provides that an appeal to the court for the protection of constitutional rights and freedoms of person and citizen directly under the Constitution of Ukraine guarantees. Everyone has the right to appeal against decisions, actions or inaction of state authorities, local self-government officials (Articles 8, 55 of the Basic Law of Ukraine).

The constitutional right to judicial protection is one of the inalienable and inviolable. [9]

First part of art. 55 of the Constitution of Ukraine provides the general rule, which means everyone's right to go to court if their rights or freedoms infringed or violated established or created obstacles to their implementation or there are other infringements of rights and freedoms. The said provision requires courts to accept the application for consideration, even in the absence of an express provision in the law for judicial protection. Failure of the court to accept the claim and other claims or complaints that meet the statutory requirements is a violation of the right to judicial protection, which in accordance with Article 64 of the Constitution of Ukraine shall not be limited. Thus, the position of the first part of art. 55 of the Constitution of Ukraine provides for one of the most important safeguards implementation as constitutional as other rights and freedoms of man and citizen. [10]

Everyone is a citizen of Ukraine, foreigners or stateless person, the State has guaranteed the right of appeal to a court of law decision, act or omission of any public authority, local government officials, if a citizen of Ukraine, foreigners, stateless Citizenship consider their decision, action or inaction violate or infringe the rights and freedoms of citizens of Ukraine, foreigners and stateless persons or hinder their implementation, and therefore need legal protection in court. [11]

Article 55 of the Constitution of Ukraine each person is guaranteed the right to appeal against decisions, actions or omissions of public authorities, local government officials and officers, and therefore the court has no right to refuse to accept a person or a complaint on the grounds provided by law, which this right is limited [12].

Making under Article 55 of the Constitution of Ukraine the right to judicial protection, addressing the court, the person indicates in the lawsuit own subjective understanding of the infringed right or interest protected and how to protect it. Resolving the dispute, the court must provide an objective assessment of the presence of the infringed right or interest at the time of going to court, and determine whether the method chosen by

the plaintiff to protect rights that under the law, and whether this will provide a way to protect the remedy plaintiff. [13]

No violations of law or discrepancy method chosen by the plaintiff to protect a manner determined by law, is established when considering the merits of the case and the basis for judicial decision to deny the claim. [13]

A taxpayer may apply with a claim for recognition of tax illegal actions committed during the audit, on display in the act of checking some conclusions can also be based on the Code of Administrative Procedure of Ukraine. Thus, the objective of administrative proceedings is to protect the rights, freedoms and interests of individuals and the rights and interests of legal persons in public relations from violations by state authorities, local self-government, their officials and other actors in the implementation their power management functions on the basis of legislation, including delegated powers by a fair, impartial and timely consideration of Administrative Law (Part 1 of Art. 2 of the Code of Administrative Procedure of Ukraine). [14]

The administrative courts may be appealed any decision, action or inaction of the authorities (Part 2 of Art. 2 of the Code of Administrative Procedure of Ukraine).

The jurisdiction of the administrative courts apply to legal relations arising in connection with the exercise of power subject to the power management functions, as well as the formation of a public government entity by election or referendum. The jurisdiction of the administrative courts apply to public law disputes, including disputes over natural or legal persons with authority on the subject of the appeal of its decisions (normative legal acts or legal acts of individual actions), actions or omissions (Part 1, Section 1, h. 2 tbsp. 17 of the Code of Administrative Procedure of Ukraine).

If a defendant in a lawsuit for which no reason for the return, leaving without considering whether or not to initiate proceedings in the case, indicated an individual who does not have the status of an entrepreneur, the judge no later than two days after receipt of the claim in court appeals to the relevant registration location and place of residence of a person to provide information on registered residence (stay) such individual.

On leaving the claim without consideration, the opening of proceedings or refusal to initiate proceedings the judge decides. The decision to open the proceedings will include:

1) the name of the administrative court, name of the judge who opened the proceedings in the administrative case, the case number;

2) by whom and to whom filed an administrative claim;

3) The content of the claim;

4) The date, time and place of the preliminary hearing, if the court considers it necessary to conduct;

5) Offer defendant to submit within a specified period written objections to the claim and the evidence that it is (for the subject of authority - defendant indicated his duty to the court within a specified period in case of objection to claim all the materials that were either it should be taken into account when making a decision, action, inaction assumption, on which the claim);

6) that the composition of the court considered the case;

7) on the grounds - a conclusion the court to recognize the causes of missed deadline appeal to the Administrative Court respected.

Copy of the decision to open proceedings in the administrative case will be sent immediately after the enactment of the persons involved in the case, together with an extract of their procedural rights and obligations under Articles 49, 51 of the Code of Administrative Procedure of Ukraine.

The defendants and third parties who do not claim independent requirements on the subject of the dispute, sent copies claim and the enclosed documents.

Copy of the decision to leave the claim without consideration immediately sent to the person who filed the petition, together with the statement of claim and all enclosed materials.

Judge refuses to initiate proceedings in the administrative case only if (Art. 109 of the Code of Administrative Procedure of Ukraine):

- Statement would be seen not by administrative procedures;

- The dispute between the same parties on the same subject and for the same reason there are those who come into force: court order, court order refusing to initiate proceedings in the administrative case; decision to close the proceedings in the administrative case; decision to leave the claim without consideration due to missed deadline appeal to the administrative court (except where such a decision made by the opening of the proceedings in the administrative case);

- the death of an individual legal entity or terminated who submitted a claim filed or to which an administrative appeal if legal disputes do not allow succession.

The court closes proceedings (Article 157 of the Code of Administrative Procedure of Ukraine):

- If the case cannot be considered in the administrative proceedings;

- If the plaintiff refused to administrative action and refusal to accept the court;

- If the parties reached reconciliation;

- If there are those who come into force, the decision of the court of the same dispute between the same parties;

- In the event of death or the ad in accordance with the law of a deceased person who was a party in the case, if contentious relationship not allow the succession, or liquidation of the company, institution or organization that has been a party to the case.

The trial in modern procedural literature [15] rightly called main (central) stage of the process, within which the objective set all the circumstances of the case, the actual mutual rights of the plaintiff and the defendant. Accordingly, outside the trial cannot set all the details of a specific public legal dispute, namely, it is impossible to determine whether the violated rights of public relations or influence the status of the rights and obligations of individual administrative acts of public administration and so on.

In order to definitively establish the truth in the case, the administrative court must hold a hearing, having considered all the circumstances of proceedings by examining all the evidence in the case, having heard the explanations of the parties.

And you can see, the legislator explicitly declared available and the grounds for refusal in opening and closing the proceedings in the administrative case proceedings. Obviously, for these reasons only and is not exhaustive.

3) Can you think violated the rights of the taxpayer in the event that the act of the check carried out on such a taxpayer, impose certain negative conclusions, but the tax notice decision on this matter is not taken?

For violation of the rights of taxpayers if the act of the check carried out on such a taxpayer, impose certain negative conclusions, but the tax notice decision on this matter is not taken, we have to consider this.

Making under Article 55 of the Constitution of Ukraine the right to judicial protection, addressing the court, the person indicates in the lawsuit own subjective understanding of the infringed right or interest protected and how to protect it. Resolving the dispute, the court must provide an objective assessment of the presence of the infringed right or interest at the time of going to court, and determine whether the method chosen by the plaintiff to protect rights that under the law, and whether this will provide a way to protect the remedy plaintiff. [13]

No violations of law or discrepancy method chosen by the plaintiff to protect a manner determined by law, is established when considering the merits of the case and the basis for judicial decision to deny the claim. [13]

4) Which is the best way to protect taxpayers' rights in the case set out in the report on inspection findings were the basis for the mapping of certain data in electronic databases

tax statements tax authorities? Could it be the subject of a court claim for wrongful act of recognition of tax audit?

The jurisdiction of the administrative courts apply to legal relations arising in connection with the exercise of power subject to the power management functions, as well as the formation of a public government entity by election or referendum (Part 1 of Art. 17 of the Code Administrative Procedure of Ukraine).

The jurisdiction of the administrative courts apply to public law disputes, including disputes over natural or legal persons with authority on the subject of the appeal of its decisions (normative legal acts or legal acts of individual actions), actions or omissions (Part 2 of Art. 17 of the Code Administrative Procedure of Ukraine).

Everyone has the right to go to court to protect your personal non-property and property rights and interests (Part 1 of Art. 16th Civil Code of Ukraine). [17]

The ways to protecting civil rights and interests may be (Part 2 of Art. 16th Civil Code of Ukraine):

- 1) recognition of the right;
- 2) recognition of the transaction null and void;
- 3) termination in violation of law;
- 4) restore the situation that existed before the violation;
- 5) the enforcement of the obligation in kind;
- 6) change in legal relations;
- 7) termination of legal relations;
- 8) compensation and other methods of compensation for property damage;
- 9) compensation for moral (non-property) damage;
- 10) Recognition unlawful decisions, actions or omissions of public authorities, authorities of the Autonomous Republic of Crimea or local governments, their officials.

The court may protect civil right or interest otherwise that is set by contract or law.

In addressing the merits of the administrative court may satisfy the administrative claim in full or in part, or deny his satisfaction in full or in part (Part 1, Art. 162 of the Code of Administrative Procedure of Ukraine).

If you meet the administrative claim court may adopt a resolution on (Part 2 of Art. 162 of the Code of Administrative Procedure of Ukraine):

- 1) declare unlawful the decision government entity or individual provisions, acts or omissions and the cancellation or invalidation decision or some of its provisions on restitution of the decision or some of its provisions specifying how its implementation;
- 2) requiring the defendant to perform certain actions;
- 3) the obligation to refrain from taking certain actions;
- 4) recovery of money from the defendant;
- 5) temporary ban (suspension) of certain or all of the activities of the association;
- 6) forced dissolution (liquidation) of the association;
- 7) the forced expulsion of a foreigner or a stateless person from Ukraine;
- 8) recognizing the presence or absence of jurisdiction (authority) of the authority.

Thus, the proper way to protect the rights of the taxpayer in any case would be:

- Administrative way - submitted a complaint to a superior tax authority or the prosecutor's office;
- Legal way - to appeal to the court.

Given some provisions of the Constitution of Ukraine (Articles 8, 55) and the Code of Administrative Procedure of Ukraine (Sections 1, 2 Tbsp. 2, Part 1, Part 2, Section 1, Art. 17, § 4; . 105), and implicitly clear that the requirement to recognize the wrongful act of a tax audit may be subject to review only the administrative court.

This requirement is always embodied in the form of administrative action.

Thus, the subject of the claim as a matter of adjudication - are: 1) the substantive requirement of the plaintiff to the de-

defendant, 2) something that aims administrative action, 3) the fact about which a claim is filed.

Thus, the subject of administrative action is always associated with a public legal relations arising between the plaintiff and the defendant and is expressed in the request, the request due to an administrative court. In turn, the substantive requirement of the dispute is the result of public law.

The subject of the claim is the part that describes the substantive requirements the plaintiff to the defendant, against whom he asked to pronounce a judgment. It is mediated by legal disputes - a subjective right and duty of the plaintiff and the defendant. [19]

In particular, administrative action may include the re-

quirement (§ § 1-6 § 4. 105 of the Code of Administrative Procedure of Ukraine):

- Cancellation or invalidation decision defendant - government entity wholly or some of its provisions;
- The obligation of the defendant - the subject of authority to make a decision or take some action;
- The obligation of the defendant - the subject of authority to refrain from taking certain actions;
- Recovery from the defendant - the subject of authority funds for damages caused its illegal decision, action or inaction;
- Execution stopped or not committed action;
- Establish the presence or absence of jurisdiction (authority) of the authority.

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УЧАСТЬ ПЕРЕКЛАДАЧА В АДМІНІСТРАТИВНО-ДЕЛІКТНОМУ ПРОВАДЖЕННІ ЗА ЗАКОНОДАВСТВОМ УКРАЇНИ: ОСОБЛИВОСТІ СТАДІЙНОЇ РЕГЛАМЕНТАЦІЇ

PARTICIPATION OF A TRANSLATOR IN THE ADMINISTRATIVE TORT PRODUCTION ACCORDING TO THE LEGISLATION OF UKRAINE: PECULIARITIES OF REGULATION OF THE STAGE

Бережна І.А.,

здобувач кафедри адміністративного та господарського права
Запорізького національного університету

Статтю присвячено визначенню особливостей участі перекладача на окремих стадіях адміністративно-деліктного провадження. Проведено ґрунтовний аналіз наукових досліджень, присвячених вивченню питань стадій адміністративно-деліктного провадження. На-