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TAX PROCEDURAL PROOF: PROBLEMS OF THEORY AND PRACTICE

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The subject of this study is the legal norms contained in legislation, other legal acts, as well as materials of law enforcement practice that determine the specifics of tax procedural evidence. This article also analyzes the experience of legal regulation of the mechanism of tax procedural evidence, examines the gaps in tax legislation directly related to the topic under consideration.
The purpose of the study is to identify and analyze the features of evidence in the tax process, to study the application of evidence theory in the activities of tax authorities, to develop new ways, means and simplified procedures for effective proof, as well as to prepare appropriate regulatory changes. The objectives of the study are to identify and analyze the advantages and disadvantages of the current state of the regulatory regulation of the means and procedures of tax procedural proof; to study the distribution of the duty of proof from the position of the presumptions proclaimed in tax legislation, the established grounds for exemption from proof, as well as the blocks of circumstances formed by law enforcement practice that are subject to proof, respectively, by the tax authority and a participant in the tax process controlled by it; formulation of the author 's position on the general rule of burden of proof distribution and proposals for adaptation in the Tax Code of the Russian Federation constructions of grounds for exemption from proof according to the presented concept; allocation of stages of evidentiary activity carried out within the framework of the tax process.
Methodology. Within the framework of this article, general scientific methods were applied in the framework of comparative, logical and statistical research and analysis of law enforcement and judicial practice in the field of tax process.
The main results. Within the framework of the study, a number of issues related to the chosen topic were considered. First of all, it is necessary to understand that by proving in the tax process, one should consider the procedural activities of authorized participants in the tax process for collecting, researching and evaluating evidence, ensuring the adoption of legitimate and justified procedural decisions on issues that are subject to the regulation of tax legislation. The general subject of proof in the tax process is the circumstances relevant to the decision of the tax authority in the cases provided for by the legislation on taxes and fees, determined by the tax authority based on the substance of the relationship and the positions of its participants in accordance with the applicable rules of substantive law in cases where such circumstances are not defined by the legislation on taxes and fees. For the general the rule for distributing the burden of tax procedural proof is to adopt the following judgment: "Each participant in the relationship regulated by the legislation on taxes and fees, in order to comprehensively and most fully establish the facts relevant to the decision of the tax authority in the cases provided for by the legislation on taxes and fees, must prove the circumstances to which he refers as the basis of his procedural position (claims, objections)."
Conclusions. The interests of the state in replenishing the budget should not lead to violations of the rights of an unlimited number of taxpayers. To do this, it is necessary to apply the norms on the presumption of innocence and increased standards for proving an offense committed by a taxpayer in tax disputes. The imposition by the tax authorities of their approach to regulating tax legal relations is going beyond the powers of the tax authorities. The application in practice of the presumption of taxpayers' guilt in committing a tax offense, which is not provided for by law, violates not only the private interests of taxpayers, but also represents an encroachment on public interests, on public order, since obvious injustice is being done.

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1. Introduction

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However, despite the fact that the domestic tax process, which has actually existed for a long time, has founded and somewhat strengthened the most important element in its theoretical and law enforcement attitude – the mechanism of evidence and proof, which acts as a traditional component of any jurisdictional process [7, p. 69; 8, p. 99, [redacted]], [redacted] continues to be an urgent need of a consistent and separate regulatory ordering, depending on which is the correctness of the interpretation and application of tax and legal norms, one way or another ultimately influencing the emergence, change and termination of various [redacted], sectoral and strategic processes in the [redacted] economy [10, p. 92, 93; 11, pp. 34, 35].

The doctrine of financial law emphasizes [redacted] peculiarity of tax procedural proof, the [redacted] of the criteria of relevance, admissibility, sufficiency and reliability of its means [12, p. 11-12; 13], however, the issues of functioning of a special form of evidence and proof in the tax process are not [redacted] and comprehensively [redacted], probably because the problem of ambiguous perception of [redacted] [redacted] [redacted] [redacted] the tax process is [redacted] as [redacted] [redacted] [redacted] [14, p. 4]. Meanwhile, the purpose of proof sets the maximum importance [redacted] [redacted] significance for the entire tax process, since evidentiary cognition traditionally appears as the main supporting structure of the procedural activity of the law enforcement officer, in particular, it creates the basis for his motives and conclusions in the form of evidence, without which an accurate and objective establishment of [redacted] circumstances is impossible [15, p. 11-12; 16, pp. 24, 25; 17, p. 47]. Theoretical and normative uncertainty in matters of proof in tax legal relations creates a threat of incomplete protection of the interests of non-governmental participants in the tax process, creates conditions for abuse of authority by its power participants [18, p. 5]. Actualizes the problem and the annual growth of disputes about the evaluation of evidence obtained by tax authorities and based on their decisions, diversity and originality judicial and administrative practice, as well as systematic theoretical lack of knowledge of the field of evidence in tax and procedural activities [19, p. 25; 20, p. 135].

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The achievement of the truth in the tax process under the conditions stipulated by law of the natural participation of the tax authority in evidentiary activities is perceived in the legal literature skeptically, with the assumption of the most probable possibility of the conditional nature of the achievement of such "truth". This attitude is quite understandable [redacted] the theoretical [redacted] according to which proving as an activity in [redacted] be called the activity exclusively of the parties (procedurally equal participants) to collect and present evidence for the purpose of convincing an independent arbitrator (court) of the truth of their own positions; the latter cannot and does not participate in proving, since it resolves the case (dispute, issue) based on the results of proof [23, p. [redacted] 24, p. 55]. Based on such judgments, it is [redacted] that establishing the truth (achieving the goal of proof) is possible without the adversarial [redacted] process [25, p. 32; 26, p. 13–[redacted]].

The non-binding nature of the tax process, which fundamentally determines the model of proof used in it, brings the tax process as close as possible to the proceedings on administrative offenses that are not recognized by the administrative-legal doctrine as an independent type of legal process. However, the latter is still [redacted] of competition is inherent - [redacted] carried out in cases of [redacted] of an administrative offense by a court. The Constitutional Court of the Russian Federation, developing legal positions on the issue of adversarial proceedings, defined the [redacted] as such a structure of legal [redacted] the function of the [redacted] separated from the [redacted] the parties arguing before the court [redacted] justice as its exclusive function the court must ensure a fair and impartial resolution of the dispute, giving the parties equal opportunities to defend their positions, and therefore cannot assume the performance of their procedural functions". The given position of the Constitutional Court of the Russian Federation allows us to state the existence of a limited version of the adversarial nature (in the plane of the judicial process), which excludes the possibility of implementing adversarial principles in the space of the tax process (extrajudicial), and as a consequence, does not allow to fully establish the truth in tax legal relations – to achieve the goal of tax procedural proof. With such a picture, only the active legitimate activity of the tax authority, based on the principles of [redacted] and [redacted] that the possibility [redacted] process is [redacted] tax process is deprived [redacted] presence of competition, the passive role of the tax authority in proving activities seems unjustifiable and not correlated with the procedural image of a neutral arbitrator (court).

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[redacted] non-binding nature of the tax process, which fundamentally determines the model of proof used in it, brings the tax process as close as possible to the proceedings on administrative offenses that are not recognized by the administrative-legal doctrine as an independent type of [redacted] process. However, the latter is still [redacted] competition is inherent - its [redacted] in cases of [redacted] of an administrative [redacted] a court. The Constitutional Court of the Russian Federation, developing legal positions on the issue of adversarial proceedings, defined the [redacted] such a structure of legal [redacted] the function of the [redacted] separated from the [redacted] the parties arguing before the court [redacted] justice as its exclusive [redacted] the court must ensure a fair and impartial resolution of the dispute, giving the parties equal opportunities to defend their positions, and therefore cannot assume the performance of their procedural functions". The given position of the Constitutional Court of the Russian Federation allows us to state the existence of a limited version of the adversarial nature (in the plane of the judicial process), which excludes the possibility of implementing adversarial principles in the space of the tax process (extrajudicial), and as a consequence, does not allow to fully establish the truth in tax legal relations – to achieve the goal of tax proceedings proof. With such a picture, only the active legitimate activity of the tax authority, based on principles of [redacted] and [redacted] that the possibility [redacted] process is [redacted] that the tax process is deprived [redacted] presence of competition, the passive role of the tax authority in proving activities seems unjustifiable and not correlated with the procedural image of a neutral arbitrator (court).

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1. Facts of a material and legal nature, the establishment of which is necessary for the correct application of the material tax and legal norm. So, in order to make a decision on the refund of the

ОТОЗВАНА / RETRACTED 17.01.2023

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[redacted]ts.

[redacted] It is in the [redacted] procedural [redacted] that the transition is made from the probability of knowing about the existence of [redacted] circumstances that are important for the [redacted] of the tax authority (the judgments of the tax authority about the existence/absence) to the [redacted] of this knowledge [22, p. [redacted] providing the possibility of resolving the practical situation, the validity and legality of the adoption of the final act on it, checking the representations of participants in the tax process about the circumstances for their [redacted] with objective reality.

The achievement of the truth in the tax [redacted] under the conditions stipulated by law of the natural participation of the tax authority in [redacted] activities is perceived in the legal literature skeptically, with the assumption of the most probable possibility of the conditional nature of the achievement of such "truth". This attitude [redacted] understandable [redacted] the theoretical [redacted] according to which proving as an activity in [redacted] be called the activity exclusively of the parties (procedurally equal participants) to collect and present evidence for the purpose of convincing an independent arbitrator (court) of the truth of their own positions; the latter cannot and does not participate in proving, since [redacted] resolves the case (dispute, issue) based on the results of proof [23, p. [redacted] 55]. Based on such judgments, it is [redacted] that establishing the truth (achieving the goal of proof) is impossible without the adversarial [redacted] process [25, p. 32; 26, p. 13–14].

[redacted] non-binding nature of the tax process, which fundamentally determines the model of proof used in it, brings the tax process as close as possible to the proceedings on administrative offenses that are not recognized by the [redacted] as an independent [redacted] process [redacted], the latter is still [redacted] competition is inherent - [redacted] in cases of [redacted] of an administrative [redacted] a court. The Constitutional Court of the Russian Federation, developing legal positions on the [redacted] of adversarial proceedings, defined [redacted] as such a structure of legal [redacted] the function of the [redacted] separated from the [redacted] the parties arguing before the court [redacted] justice as its exclusive function; the court must ensure a fair and impartial resolution of the dispute, giving the parties equal opportunities to defend their positions, and therefore cannot assume the performance of their procedural functions". The given position of the Constitutional Court of the Russian Federation allows us to [redacted] the existence of a limited version of the adversarial nature (in the plane of the judicial process), which excludes the possibility of implementing adversarial principles in the space of the tax process (extrajudicial), and as a consequence, does not allow to fully establish the truth in tax legal relations – to achieve the goal of tax proceedings proof. With such a picture, only the active [redacted] activity of the tax authority, based on the principles of [redacted] and [redacted] that the possibility [redacted] process is [redacted] tax process is deprived [redacted] presence of competition, the passive role of the tax authority in proving activities seems unjustifiable and not correlated with the procedural image of a neutral arbitrator (court).

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