

Difficulties and Thoughts on Tax Late Payment System in Judicial Practice

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Abstract: Late payment fee is a certain percentage of late payment tax charged according to the number of days of late payment for taxpayers who do not pay tax according to the tax deadline. The provisions of the Tax Administration Law on the tax late payment system are slightly superficial, resulting in tax cases in which there is confusion in the enforcement of tax authorities and differences in the judiciary's decisions. With the implementation of the new Administrative Compulsory Law, the nature of late payment and the upper limit of tax collection have been hotly debated. Based on the author's own tax work experience and legal knowledge, this paper aims to clarify the legal basis for the collection of late payment fee and the upper limit of collection, in order to facilitate the grassroots tax enforcement.

Keywords: Late Payment; Administrative Litigation; Tax Administration Law; Administrative Compulsory Law

A tax subject's failure to pay taxes beyond the legal tax deadline constitutes late payment, a very concise definition that has generated many controversies in concrete practice. In the judicial practice, the tax authority's "sky-high late payment fee" is basically rejected by the court, but the tax authority still acquiesces to the existence of super principal late payment fee according to the caliber of the State Administration of Taxation (SAT), which is that "tax late payment fee is not an additional fine". The law enforcement authorities are still acquiescing to the existence of overdue fines according to the caliber of the State Administration of Taxation that "tax late payment is not an additional fine". With the implementation of the Administrative Compulsory Law in 2012, the different provisions of the two laws on late payment have intensified the debate on the issue of tax late payment in theory and practice. The limitations of the legislation and the disputes in practice show that China's tax late payment system needs to be improved.

1. A Brief Overview of the Legal Provisions on Tax Late Payment System

In 1993, the newly adopted Tax Administration Law made it clear that taxpayers who failed to pay tax within the specified period would be charged a late fee of two thousandths of a cent per day and enforced together with the tax, and the late tax has a legal basis from now on. However, the legislation does not provide for the nature of tax late payment.

After the revision of the Tax Administration Law in 2001, the rate of tax late payment was adjusted to five ten-thousandths of the tax, and at the same time, the tax late payment was separated from the article that the taxpaying body should pay the tax on time, and became an independent article. However, the nature of late tax payment is still not explained in the legislation.

In 2012, the Administrative Compulsory Law came into force, in which it is clear that the late payment fee added to the fine belongs to the administrative compulsory enforcement, and the late payment fee cannot exceed the principal amount of the fine, so as to regulate the "sky-high late payment fee" which has been criticized in the administrative law enforcement. However, the Administrative Compulsory Law also stipulates that the late payment of tax shall be charged in accordance with the Tax Administration Law, i.e., the late payment of tax shall be dealt with in accordance with the principle that the special law is superior to the general law. In this way, the nature of the tax late payment and the collection of the upper limit of the problem, still stays in the old "tax collection and management law" on the basis of the unresolved.

2. Controversies in the Current Late Payment System

2.1. Disputes over the Nature of Late Payment of Taxes in Administrative Litigation

In administrative litigation, the plaintiff is often in accordance with the Administrative Compulsory Law will be recognized as an indirect way of administrative enforcement, the reason is that the late payment fee in accordance with the daily levy of five ten thousandths, from the quantitative point of view of the nature of punishment. However, the tax authorities are generally in accordance with the relevant inter-

pretation of the State Administration of Taxation, that the late payment of tax arrears belongs to the nature of “making up for the tax”, is the taxpayer’s delay in the fulfillment of their tax obligations and the interest generated, does not belong to the administrative coercion provided for in the Administrative Coercion Law. From the point of view of jurisprudence, the former belongs to the implementation of penalties, while the latter belongs to the unpaid state taxes and damages. The interpretation of late payment “administrative compulsory law” does not specify, but the same term in different laws between the inconsistency is not conducive to grass-roots law enforcement.

2.2. Whether the subjective intention of the taxpayer should be distinguished in the collection of late payment charges

Another controversy in judicial practice is on the issue of whether late payment should be charged. In this regard, the “tax administration law” also exists in the obvious gaps. The current law enforcement of the relevant tax authorities in the collection of late fees, mainly based on the “Tax Collection and Management Law”, “Tax Collection and Management Law Enforcement Rules” as the basis.

From the provisions of the Tax Collection and Administration Law, China’s current legal system of tax collection and administration does not distinguish between the subjective level of taxpayers who fail to pay taxes in accordance with the prescribed deadlines and the practice of charging late payment fees. That is, as long as the taxpayer exists the behavior of late payment of tax, even if subjectively there is no intent or gross negligence, also add the same tax late fee, which is contrary to the principle of fairness of the tax law? The author believes that this kind of regulations and our tax collection and management system has long been practicing “treasury centralism” position is inseparable, too much emphasis on the realization of the national tax rights and ignored the rights of the administrative counterparts. In fact, from the domestic administrative law of other administrative violations of the subjective nature of the distinction.

2.3. Whether the upper limit of late payment charge exists or not

In the process of real law enforcement, whether the upper limit of late payment of tax exists is also the focus of the debate between tax authorities and administrative counterparts. Taxpayers usually claim that the late payment fee cannot exceed the principal amount of the tax, in fact, the legal premise of the administrative relative’s claim is erroneous, and the Law on Tax Administration does not stipulate the upper limit of the late payment fee for the tax. Therefore, the amount of late payment fee exceeding the amount of tax principal does not violate the law.

However, it is questionable whether the existence of a tax late fee without a cap is consistent with the legislative objectives. The original design of the tax penalty system itself is to urge taxpayers to fulfill their tax obligations in time, and to reflect the principle of tax fairness through the time value of tax. However, the tax late payment far exceeds the tax itself, the reason for the existence of the taxpayer’s ignorance or the tax authorities do not act, but the consequences need to be borne by the taxpayer, which in itself can not talk about the fairness of the tax. In addition, the existence of sky-high late payment is not in line with the principle of reasonableness in administrative law, nor is it in line with the principle of protection of administrative relative legislation in administrative law. In the specific judicial practice, the court will seldom support the tax authorities to exceed the tax itself, and it also shows that the court does not support the administrative behavior of the tax authorities to exceed the limit to collect late payment.

3. some ideas about the reform of tax late payment fee

3.1. Clarify the Nature of Late Payment Fee

The different meanings of the name of late payment in different laws have formed an obstacle even for professional lawyers, not to mention the hundreds of millions of taxpayers in the country with different legal levels. The clarity of the Administrative Compulsory Law on the system of late payment is worthy of reference, and the Tax Collection and Administration Law should also converge in this direction. The 2015 Revision Draft of the Tax Collection and Administration Law breaks down the system of tax late payment in the current Tax Collection and Administration Law into two parts, tax interest and late payment, and provides for them separately, which is a clearer signal and the basic direction of the reform of tax late payment in China. Under the legislative mode of coexistence of tax interest and late payment fee, a lower

rate of tax interest is added to the taxpaying subject who pays tax late during the period of occupying state tax money. At the same time, according to the subjective fault of the tax subject to distinguish, the subjective malicious taxpayers to introduce administrative law in the late payment system, not only to achieve the unity of the law, to protect the realization of the state's tax rights, but also to take into account the protection of the rights and interests of taxpayers.

3.2. Clearly setting the upper limit of late payment.

The original design of the late payment system is to urge the taxpayers to fulfill their tax obligations in time, and the high late payment fee is detrimental to the rights and interests of the taxpayers and conflicts with the purpose of the legislation, and even reduces the willingness of the taxpayers to make up for the tax payment to a certain extent. In particular, the current Tax Administration Law does not specify the upper limit, and some tax authorities believe that since the law does not set the upper limit of late payment fee, that is to say, the legislator allows the tax authorities to levy late payment fee in excess of the principal amount of the tax, and the author can't agree with such a point of view at all. As an administrative law, the Tax Administration Law exists to regulate the law enforcement and limit the abuse of public power, which can never be interpreted according to the principle of "nothing prohibited by law" of the civil law system, but should be standardized in accordance with the principles of reasonableness, proportionality, and instruction of the administrative law.

Conclusion

In recent years, with the improvement of citizens' legal awareness, administrative litigation, many cases of failure to expose the inadequacy of the tax late payment system is also more and more eye-catching. The Tax Administration Law was enacted earlier, and its over-emphasis on the realization of the national tax rights has a strong color of the planned economy era, which has produced a lot of discomfort in the new tax law enforcement environment under the socialist market economy. The State Administration of Taxation (SAT) has also caused confusion in grassroots law enforcement and unfavorable situation in administrative litigation due to its variable and hesitant interpretation of late payment fees. In the long run, it is easy to breed tax-enterprise conflicts and undermine the credibility of the tax authorities. The Tax Administration Law should be revised as soon as possible to implement the principle of tax law and standardize the law enforcement of the tax authorities, so as to protect the taxpayers' legitimate rights and interests more effectively while safeguarding the tax rights of the country.

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