Universal Decimal
Classification 347.5

Kizilov V. V.

MATERIAL LIABILITY OF TAX AUTHORITIES FOR UNLAWFUL ACTIONS WHEN IMPLEMENTING TAX ADMINISTRATION

Kizilov Viacheslav Vladimirovich,

c.j.s, Associate Professor, Department of Administrative and financial law of the Non-State educational institution of Higher vocational education «Omsk Institute of law», Omsk.

Examines the norms of current Russian legislation with a view of consolidating in them some provisions, which in practice let to implement its mechanism of bringing of tax authorities to material liability for unlawful actions of theirs officials that have been performed during the tax administration and which have caused material damage to the subject of tax administration.

Here are considered legally meaningful actions of officials of the tax authorities, which are committed during the period of tax administration and contain potential delinquency.

Keywords: tax authorities, tax administration, unlawful actions of tax authorities, material liability of tax authorities.

E. A. Fedina, considering in 2006 the responsibility of tax authorities and their officials, under the Tax Code of the Russian Federation, noted the presence of reference norms on the liability of tax authorities for causing loss by unlawful acts (omissions) of tax authorities' officials [18]. The conclusion of this author in an article on the subject of the study is logical – "the current Tax Code of the RF does not answer the question, what action and (or) decisions will be unlawful. It can be assumed that illegal actions or inactions are such acts, which violate the norms of law, including the rules governing tax legal relations, i.e. illicit actions of tax authorities – is failure to comply with the tasks imposed to them by law" [18, 57].

It would be strange to expect that in the Tax Code, the purpose of which is to establish a system of taxes and fees, as well as the general principles of taxation and charges in the Russian Federation, could be norms governing the tort relations in tax area. For these purposes there are Criminal Code, Code on Administrative Offences and Civil Code of the RF stipulating, respectively, criminal, administrative and material (civil law) responsibility. Fundamentals of disciplinary responsibility of officials of tax authorities are laid down in the legislation governing the public civil service.

Article "On legal liability of tax authorities" of another author, although published in the 2011 year, contains, unfortunately, only well-known provisions on types of legal responsibility and does not represent practical value [12].

Only in the works of I. V. Usachev (including in co-authorship with I. V. Kokurina) is available to review practical aspects of use material liability of tax authorities for violation the procedures of tax control and fulfillment of torts by officials of the tax authorities (lists the various types of taxpayers' loss) [15: 17]. The main difference of I. V. Usachev's works from previously outlined by us legal grounds of material responsibility of tax authorities [13, 68-72] consists in offering to collect from a tax authority moral harm, from which we had refused at the time.

On the examples of our own arbitration practice we have devoted a full monograph to the analysis of specific unlawful actions of officials of tax authorities. We can only regret that some authors, taking up a research on issues of legal responsibility of tax authorities and their officials, do not notice published in this area works of their colleagues and their studies do not add anything to scientific knowledge.

Having long-standing practice of representing the interests of business entities in legal relations with tax authorities, we cannot accept the assertion of Ju. A. Artem'eva (in the article published in 2011) with reference to Paholenko A. I. (the article published in 2003) that the institution of civil law liability of tax authorities to natural persons "is relatively new to the Russian legislation, and in recent years – in the light of the major changes of the very foundations of the State, which have taken place in our country, and in its legislation – had been filled with completely other content and became more than relevant" [12, 51-52]. The statement of the author is rather strange due to the fact that issues of material liability of tax authorities are not innovation in the legislation of the Russian Federation, as in respect of any public body exist unified rules on material responsibility established by the Civil Code of the RF – tort obligations.

The provisions of article 16 of the Civil Code of the RF, establishing basics for material liability of public bodies and consequently tax authorities, are unchanged since the adoption of part one of the Civil Code of the Russian Federation. And the provisions concerning material liability of tax authorities in tax law had already taken place in part 1 of the Tax Code of the RF, which has come into legal force since January 1, 1999.

Considering the above we believe it is necessary to return to the topic of material liability of tax authorities envisaged for illicit actions in the process of the tax administration of management subjects.

The right to compensation for damage caused by the illegal actions (or inactions) of bodies of state power or their officials, comes from the provisions of article 53 of the Constitution of the Russian Federation. The above is confirmed by the Constitutional Court

in the ruling No. 22-O from February 20, 2002 – "civil legislation establishes additional guarantees for protection the rights of citizens and legal entities from unlawful actions (inaction) of bodies of state power, which are aimed at realization the provisions of articles 52 and 53 of the Constitution of the Russian Federation, according to which everyone has the right to compensation by the State of damage caused by the illegal action (or inaction) of bodies of state power or their officials, including abuse of authority" [7].

In the Tax Code of the RF is reflected the constitutional norm concerning the material liability of a state body – tax authority. Part 1 of article 35 of the Tax Code establishes that tax authorities shall be responsible for damages caused to the taxpayers, payers of fees and tax agents as a result of their unlawful actions (decisions) or omissions, as well as the unlawful actions (decisions) or omission of officials of tax authorities in the performance of their duties (i.e. when implementing tax administration).

It should be noted not a coincidence of distinction as delinquents of collective entity (tax authority) and individual entity – officials of tax authorities. The fact is that, from officials only Head and Deputy Head of the tax authority have the right to speak on behalf of the tax authority. However, during the activities of tax control, other officials of the tax authority are empowered to carry out on their behalf certain actions and make decisions, which under the current law do not require the sanction of the Head or Deputy Head of the tax authority.

This provision of the Tax Code is not an innovation to the Russian legislation, and, in its absence, the tax authorities should be materially liable for damages in accordance with the provisions of the Civil Code of RF, which stipulate material liability of any state bodies. In its essence the norm of part 1 of article 35 of the Tax Code of the RF is a "backup" to norms of articles 16 and 1069 of the Civil Code of the RF, with a few exceptions.

Article 16 of the Civil Code of the RF established that "The losses, inflicted upon a citizen or upon a legal entity as a result of illegal actions (the inaction) on the part of the state bodies, of the local self-government bodies or of theirs officials, including the adoption by the state body or by the local self-government body of an act, which is not in correspondence with the law or with other legal act, shall be compensated by the Russian Federation, by the corresponding subject of the Russian Federation, or by the municipal formation. The norm of article 35 of the Tax Code also established that the losses caused are compensated from the federal budget.

Article 1069 of the Civil Code of the RF almost repeats the rule enshrined in article 16 of the Civil Code of the RF, but with the legal category of harm, rather than losses – "The harm inflicted to a citizen or a legal entity as a result of unlawful actions (inaction) of state and local self-government bodies or of their officials, including as a result of the adoption

of an act of a state or self-government body inconsistent with the law or any other legal act, shall be compensated. The harm shall be compensated at the expense of the state treasury of the Russian Federation, the respective subject of the Russian Federation or the respective municipal formation".

It should be noted that the concept of loss is disclosed in paragraph 2 of article 15 of the Civil Code of the RF. Losses mean costs which a person has or is about to be made to restore his violated right, as well as loss of or damage to its property (actual damage) and the lost revenue that the person would have received under normal conditions of civil turnover, if his right has not been violated (loss of profit).

Chapter 59 of the Civil Code of the RF which outlines the obligations of the debtor (the person who has caused harm), in the case of harm, does not establish normative definition of the concept of harm. However, an analysis of the articles of that chapter allows making a conclusion that harm is broader the notion of losses and losses are an integral part of the harm which has been inflicted to the property of citizens and legal entities (in this case, it would be illogical to exclude loss of profit from the definition of harm).

Provisions limiting material liability of tax authorities (state bodies, in the context of the Civil Code of the RF) under the Tax Code and Civil Code of the RF are identical. Losses caused by lawful (legal) actions of officials of tax authorities, are not refundable, except in the cases stipulated by federal laws (the wrongfulness, illegality of actions or inactions is prerequisite for the onset of liability, see article 35, paragraph 4, article 103 of the Tax Code of the RF and paragraph 3 article 1064, article 1069 of the Civil Code RF).

Unlike article 35 of the Tax Code, laying down general provisions on the material liability of tax authorities for the whole period of implementation of the service activity of its officials, norms on the liability of the tax body, in article 103 of the Tax Code, are clearly limited in time and place. The rules of the said article determine material liability only for damage (losses) in the time of implementation of tax control. So you need to have a clear idea of what activities are of tax control and which are not.

According to part 1 article 82 of the Tax Code of the RF, tax control is activities of the competent bodies to monitor compliance with legislation on taxes and fees by taxpayers, tax agents and payers of fees in accordance with the Tax Code of the RF. Moreover with regard to the types of monitoring activities the legislator went to the establishment of an open list of tax authority's powers. Tax control is carried out by means of tax checks, obtaining explanations of tax payers, tax agents and fees payers, validation of accounting and reporting, inspection of premises and territories used to generate income (profit), as well as by other means stipulated in the Tax Code of the RF. For example, features of tax control during implementation of production-sharing agreements are determined by chapter 26.4 of the Tax Code of the RF.

Chapter 14 of the Tax Code of the RF provides certain specification of the forms and methods of tax control:

- cameral tax check,
- field tax check,
- interrogation of witnesses,
- access of officials of tax authorities to the territory or in premises to conduct tax check,
- inspection,
- discovery of documents (information) about tax payer, fees payer and tax agent or information about specific transactions,
- seizure of documents and things,
- examination,
- engagement specialist to assist in the implementation of tax control,
- engagement interpreter,
- involvement of attesting witnesses,
- summoning by written notice to the tax authorities taxpayers, payers of fees or tax agents to give explanations in connection with payment (retention and transfer) of theirs taxes and fees,
- drafting of a protocol during implementation of tax control,
- documenting the results of tax control (drafting a note, act)

All actions that are not covered by the list, are not the subject of tax control, but are subject to the tax administration. In our view tax administration includes:

- tax registration and deregistration,
- registration procedures related to the keeping by a tax authority register of subjects of entrepreneurial activity,
- changing the timing of the payment of taxes and fees,
- exaction of taxes, fees, penalties and fines,
- recognition of the arrears and debt of penalties and fines as uncollectible and their cancellation,
- return or set-off of excessively paid (exacted) taxes, fees, penalties and fines,
- suspension of operations on the bank accounts of the taxpayer, fees payer or tax agent,
- seizure of property of the taxpayer, fees payer or tax agent,
- determination of the amounts of taxes to be paid by taxpayers in the budgetary system of the Russian Federation, calculated on the basis of available information on the taxpayer,
- filing to courts of general jurisdiction or arbitration courts claims (statements),

- filing the motions of the revocation or suspension of license given to legal entities and natural persons for the right to carry out certain activities.

It seems to us that the border of tax control activities, carried out in the form of tax checks, is outlined by a court's judgment based on the results of tax inspections.

Thus, the material liability of tax authorities under article 103 of the Tax Code of the RF could take place in the event of misconduct by officials of tax authorities and in causing harm in connection with:

- opening of the premises (where are stored documents on the tax payer's income, tax calculations, etc.), with breaking the doors (stall of locks, hinges, breakdown of the door leaf, breaking from the wall of the door block) or latches (locks), penetration with destruction of walls, windows, floor rather than wait till the taxpayer will bring to the place of inspection the keys, will deactivate the alarm;
- violation of alarm, engineering telecommunication networks when the illicit penetration into protected by technical means territory of the audited subjects;
- burglary safe, closets, cabinets with documents or property, in cases where there are the keys and is not denial of their granting to reviewer;
- destruction, damage (disablement), loss of seized documents and objects, as well as the destruction and/or damage of documents and objects reviewed in on-site tax check;
- destruction, damage (disablement), the loss of the original documents obtained during cameral tax check;
- retention of items (seized from the taxpayer as a result of the withdrawal) needed to the taxpayer for the daily ongoing work (as a rule, it is hardware-software means to ensure accounting, tax accounting, technical programmes for management designing and technological developments, planning);
- transmission of documents, containing trade secrets (confidential information) to the expert, who has not made a commitment to preserve the tax, commercial and other secrets protected by the State.

It should be noted that the mere fact of appointment of tax checks outside the stipulated by law time limits can lead to harm, responsibility for which is provided in article 103 of the Tax Code of the RF. The taxpayer (tax agent) has the right to appeal against an unlawful decision on conduct of tax inspection, refraining tax authority officials from its implementation (it refers to the appointment of on-site tax check). The fact of the cameral tax check outside statutory time limits and, consequently, issue of illicit decision does not entail for the taxpayer (tax agent) legal consequences.

Such activities undertaken in the framework of tax control as interrogation of witnesses; discovery of documents; engagement specialist, translator, attesting witnesses;

invocation to the tax authority; drawing up of a protocol; processing the results of tax check, in our view, do not contain malicious potential which in case of illegal (unlawful), implementation of these actions could cause the audited subjects and their representatives loss or harm.

Losses indicated by article 103 of the Tax Code of the RF can be determined as an actual damage, i.e. expenses that the victim had made or will need to make in order to restore the infringed right, loss of or damage to its property. And loss of profit is a lost income, which would have been received by the victim of the actions of a tax authority's official under normal conditions of civil turnover if his rights had not been violated by officials of the tax authority.

Article 103 of the Tax Code of the RF also contains the term "illegal harm", the concept of which is not defined in the Code. Following the norm of article 11 of the Tax Code of the RF concepts and terminology of civil, family and other branches of the legislation of the Russian Federation, used in the Tax Code of the RF are applied in the sense in which they are used in these areas of legislation, unless otherwise provided by the Tax Code of the RF. The concept of harm is used in civil legislation, therefore, in addition to the harm caused to the property of a taxpayer, should be taken into account:

- moral harm (physical or moral suffering under article 151 of the Civil Code of the RF) of a natural person-taxpayer (or having the status of a tax agent, representative);
- harm to business reputation as of a natural person and the organization.

Rules of paragraph 3 article 103 of the Tax Code of the RF prescribe to apply measures of responsibility provided not only by the Tax Code of the RF but also by other federal laws. Therefore, in our view, in respect of the tax authorities may apply the rules on the liability of the Civil Code of the RF.

Unlike measures of tax control other actions of tax authorities and their officials implemented within the competence and powers of tax authorities in connection with the tax administration can have the character of the forcing in mind of ensuring unconditional fulfillment of tax obligations by managed entities. Fiscal objectives facing the tax authority objectively come in conflict with the interests of managed entities, which can cause tort infliction of loss to these entities.

Analysis of the current legislation and practice of resolving tax disputes allows us to emphasize three main types of losses occurring as a result of tort actions (inaction) of tax authorities and their officials in the implementation of the tax administration. This Is:

- costs associated with restriction of rights of managed entities to manage available funds (articles 76, 78, 79 of the Tax Code of the RF), compensated by interest payments;

- costs associated with restoring of breached rights of managed entities in judicial bodies, compensated in the form of court costs.
- losses compensated in contentious proceeding.

Each of these types of loss shall be compensated by its own rules, i.e. the mechanisms of the implementation of a managed entity right for compensation these costs have significant differences. For example, losses, compensated by payment of interest shall be compensated extrajudicially under instructive documents of the tax authority. The procedure of reimbursement of court costs is easier than contentious proceeding.

Consider first the legal regulation of compensation of costs through interest payment.

Tax code establishes peculiarities of losses compensation to taxpayer (tax agent) in a number of specific cases. For example, according to article 78 of the Tax Code of the RF refund of excessively paid tax is made in a month from the day of filing by a taxpayer of an application for refund upon conditions of absence of taxpayer's debt before the same budget in which there is an overpayment. If there is a violating term for returning of the amount of excessively paid tax which has not been returned by the due date, ***interests are charged at the rate of refinancing of CBR for each day of violation of repayment period.*** The rules established by article 78 of the Tax Code of the RF also applies to the offsetting or return of excessively paid amounts of advance payments, fees, penalties and fines, and applicable to tax agents, payers of fees and responsible participant of the consolidated group of taxpayers. Thus, the legislator actually restricts the size of the losses repayment from the late return of taxpayer funds by means of paying the interest at the rate of refinancing of CBR.

According to article 79 of the Tax Code of the RF establishing the order of refund of excessively exacted tax, fee or penalty the decision on refund of excessively exacted tax is taken by tax authority in 10 days from filing by a taxpayer of a written application for refund the amount of excessively exacted tax. The amount of overpaid tax is to be refunded with charged interest within one month from the date of receipt of a taxpayer's written request for refund of excessively exacted tax. Interest on the amount of excessively exacted tax is accrued from the day following the day of exaction up to the day of actual return. The interest rate is equal to these days' rate of refinancing of the Central Bank of the Russian Federation. In contrast to article 78 of the Tax Code of the RF, the legislator has equated the loss of a taxpayer in the case of excessive exaction of tax, fee and penalty to the amount of interest calculated at the rate of refinancing of CBR ***for the whole period of exaction the taxpayer funds*** to the appropriate budget in the form of tax, fee, penalty.

Considering the norms of articles 78 and 79 of the Tax Code, you can determine their analogy with material liability provided in the Civil Code of the RF in cases of non-performance of contractual obligations (for tax legal relations we can speak of quasi-contractual material liability). In the first case (article 78 of the Tax Code of the RF)

restriction on the calculation of interest corresponds with the delay of the creditor that has some significance – the taxpayer himself had made excessive tax payment. In the second case, the restriction on calculation of interest is absent due to forced exaction from the taxpayer of monetary means in payment of missing tax liabilities.

Material liability of a tax authority as seen from the norms' analysis of articles 78 and 79 of the Tax Code of the RF is not tortious. Also would not constitute tortious liability material responsibility of a tax authority for non-compliance with (violation of) terms of agreement on granting investment tax credit concluded with a taxpayer [11] (granting taxpayer investment tax credit is provided by articles' norms of chapter 9 of the Tax Code of the RF).

Innovation in tax legislation is the provision of paragraph 9.2 article 76 of the Tax Code of the RF, which establishes tax authority's material liability for violation of term of cancellation of the decision on suspension of transactions on accounts in a bank or of the period of delivery to the representative of the bank (submission to the bank) decision for cancelling, as well as for wrongful suspension of account movements in the bank:

"9.2. Where a tax authority fails to comply with the time limit for the cancellation of a decision on the suspension of operations on a taxpayer – organization's bank accounts or the time limit for the delivery to a bank representative (submission to the bank) of a decision on the cancellation of the suspension of operations on a taxpayer – organization's bank account, interest payable to the taxpayer shall accrue on the amount of monetary resources covered by the suspension for each calendar day of violation of term.

In the event that a tax authority unlawfully issues a decision ordering the suspension of operations on a taxpayer – organization's bank account, interest payable to that taxpayer – organization shall accrue on the amount of monetary resources covered by that decision of the tax authority for each calendar day commencing from the day on which the bank received the decision ordering the suspension of operations on the taxpayer's accounts up to the day on which the bank receives a decision cancelling the suspension of operations on the taxpayer – organization's accounts.

The interest rate shall be taken to be equal to the refinancing rate of the Central Bank of the Russian Federation which was in effect on days on which operations on a taxpayer – organization's accounts were unlawfully suspended or the tax authority was not in compliance with the time limit for the cancellation of a decision on the suspension of operations on a taxpayer –organization's bank accounts or the time limit for the delivery to a bank representative (submission to the bank) of a decision on the cancellation of the suspension of operations on a taxpayer – organization's bank account".

The mentioned rule has been introduced to the Tax Code of the RF by two laws – Federal Law No. 224-FL of November 26, 2008 [5] (the first and third paragraph of article)

and by Federal Law No. 229-FL of July 27, 2008 [6] (the second paragraph of article). Norms of articles 76, 78, 79 of the Tax Code of the RF on out-of-court calculation and repayment of interest are justified because otherwise a taxpayer, calling for protection of his violated right in court, will be additionally recover court costs from a tax authority.

Possibility to recover court costs from a tax authority is granted to a taxpayer (tax agent) by the current legislation only in case of full or partial satisfaction of his requirements in a tax or administrative dispute. The relevant provisions of articles 110 of the Code on Administrative Offences of the RF, article 91 of the Code of Civil Procedure of the RF and part 2 article 15 of the Civil Code of the RF, which determine losses as the costs which have been made or will be made by a persons for restoration of his violated right, are normative grounds for exaction of losses in the form of court costs.

Major questions in the part of exaction of court costs from tax authorities are about determining the price of services provided by representative of a taxpayer (a tax agent). However, in presence of the given legal position of The Constitutional Court of the Russian Federation in this issue [7], we need not fear judicial bodies' discretionary powers implemented in specific cases.

By regulating the grounds, conditions and procedure for compensation of losses, including by means of ensuring compensation of costs incurred to restore the right violated, the mentioned by us articles of federal laws implement enshrined in the Constitution of the Russian Federation the principle of protection by law of private property rights (article 35, part 1).

The considered articles of the Civil Code of the RF aimed at the realization of the right to compensation for harm caused by unlawful actions (or inaction) of bodies of state power cannot be applied in contradiction with their constitutional sense.

It should be noted that the costs of a taxpayer at restoring his infringed rights can take place in extra-judicial appeal against unlawful actions and decisions of tax authorities and their officials. This procedure is provided by chapter 19, 20 of the Tax Code of the RF, when a taxpayer implements the right to appeal to a higher tax authority (higher official). In this case, the cancellation by the higher tax authority (higher official) of appealed acts of tax authorities, actions or inaction of their officials in terms of their wrongfulness allows the taxpayer (tax agent) later to file a statement of a claim for reimbursement of losses (the costs incurred in connection with appealed acts, actions or inactions).

Reimbursement of losses in contentious proceeding is not limited by exaction of costs associated with the costs of restoration of the violated right of a taxpayer (a tax agent). All again depends on the circumstances of the infliction of harm (losses). If illegal actions of a tax authority and its officers were committed not in the period and not in connection with a tax check, then it would be legal to refund only the property damage inflicted to a

taxpayer (tax agent). If these actions were committed by a tax authority and its officials during tax check, the structure of refundable damage may be wider – reimbursement would also include inflicted non-property harm (if a taxpayer is a natural person or an individual entrepreneur). This conclusion is based on the analysis of the provisions of article 103 of the Tax Code of the RF and chapter 59 of the Civil Code of the RF.

Article 103 of the Tax Code of the RF provides liability of a tax authority for losses in the form of loss of profits (non-derived income), unlawful harm to inspected persons, their representatives or property in their possession, use, or at their disposal. Reference rule of part 3 article 103 of the Tax Code of the RF upon another legislation, according to which the tax authority may be responsible for causing harm, causes, as it seems to us, material liability depending on the aggrieved person under articles 1069, 1070, 1099-1101 of the Civil Code of the RF.

Article 1069 of the Civil Code of the RF "Liability for the Harm Inflicted by State and Local Self-government Bodies, and Also by Their Officials" envisage responsibility for the harm inflicted to a citizen or a legal entity as a result of unlawful actions (inaction) of tax authorities or their officials, including as a result of the adoption of an act that is inconsistent with the law or any other legal act of a tax authority. Compensation for damage caused by illegal actions of the tax authority or its officials is only possible in cash.

Considering the case on compensation of harm the court is obliged to be guided by the provisions of article 1083 of the Civil Code of the RF. Which means that the Court will examine all the circumstances of the harm inflicted by the tax authority (its officials), including possibility for the presence of victim's fault.

When filling a claim for compensation of losses to substantiate his claims a taxpayer (tax agent) must prove:

- existence of losses;

- causal connection between the losses caused to the taxpayer and illegal actions (inactivity) of tax authorities and officials of these bodies.

Matter-of-course is a preliminary resolving of a tax (administrative) dispute in judicial or extrajudicial procedure, which establishes the illegality of actions (inaction) of tax authorities and their officials.

Motivation part of a judicial act (or act of a higher tax authority) in respect of the tax dispute that has been resolved in favor of a taxpayer must reflect established legal fact – unlawfulness of actions (inactions) of a tax authority (its officials).

By the causal connection is recognized such a concatenation of events, where one of the events – reason (the wrongful actions of tax authorities and officials of the tax authority) not only predates the second event – consequence (infliction of losses), but also raises it (leads to its onset).

Plaintiff-taxpayer (tax agent) must prove not only the presence of loss (such as lost or damaged property), but also to prove the economic justification of expenditures that were necessary to prevent an even larger loss, as well as the costs of restoration of the infringed right (which do not belong to the judicial costs). The necessity of proving reasonableness of costs to prevent losses corresponds with the obligation of the plaintiff to prove that he has taken measures to prevent or to reduce the amount of damages.

Available practice of exaction loss of profit from the tax authority shows the multiplicity of conditions necessary to meet the stated requirements on compensation of loss of profits (non-derived income). Ju. M. Lermontov who is an author of a practical commentary to part one of the Tax Code of the RF draws attention to the ruling of the Federal Antimonopoly Service of the Moscow District No. KA-A40/7694-08 of 25.08.2008 indicating the need of proving in court proceedings the wrongfulness of tax body's actions, the amount of losses, the causal connection between the size of losses and the unlawful actions of a tax authority. By the way a taxpayer must take measures to reduce losses and documentary prove to the Court that he has taken these measures [16].

Ju. M. Lermontov notes that proving of already inflicted losses is more difficult. For example in the considered case the Court didn't accept as an evidence submitted by the taxpayer calculation of loss of profit on the basis that the calculation has the character of assumption [16].

According to the author, with whom cannot but agree, it is also difficult to prove a causal connection between the incurred losses and the decision of a tax authority, as the Court requires to submit evidences of which clearly follows the existence of a causal relation.

As proof of his findings Ju. M. Lermontov gives examples of the following court decisions: resolution of the Federal Antimonopoly Service of the Northwest District No. A26-6409/2006 of 28.11.2007; resolution of the Federal Antimonopoly Service of the North Caucasus District No. F08-939/08-333A of 11.03.2008; resolution of the Federal Antimonopoly Service of the Ural District No.F09-4487/07-S3 of 14.06.2007. However this does not mean that exaction of loss of profit is not possible in practice.

On the basis of legal provisions of the Constitutional Court of the RF set out in the decision No. 14-P of 16.07.2004 on the inadmissibility of causing unlawful harm when conducting tax control (articles 35 and 103) it can be argued about the inadmissibility of a leadership if it is being implemented by the goals and motives which are contrary to the existing legal order. "Excess of power by tax authorities (or by their officials) or use it contrary to the legitimate purpose and protected rights and interests of citizens, organizations, State and society is incompatible with the principles of a law-bound State, in which the exercise of the rights and freedoms of man and citizen shall not

violate the rights and freedoms of other people (article 1, part 1; article 17, part 3, of the Constitution)" [8].

Thus, it can be concluded that taxpayers (tax agents) in exercise of their right to compensation of harm caused by the actions (inactions) of a tax authority can reckon upon meeting the stated requirements in the cases where a court will install wrongfulness of actions (inactions) of tax authorities (officials of tax authorities), causal connection between these actions (inactions) and onset adverse consequences for a taxpayer (tax agent) [10].

The Tax Code of the RF does not contain rules of law providing ormtains9ese actions 9inactions) tax authorities), for reimbursement for taxpayer's moral harm caused by the illegal (unlawful) actions (inactions) of tax authorities and their officials. However, bearing in mind the provisions of paragraph 3 article 35, paragraph 3 of article 103 of the Tax Code of the RF and the provisions of the Civil Code of the RF on compensation for moral harm, it is possible to ascertain the existence of the liability of a tax authority for causing moral harm in the case of wrongful actions or inactions of officials and other employees of tax authorities (but only committed when implementing tax control).

The exaction of moral harm is settled by article 151 and chapter 59 of the Civil Code of the RF. In the resolution of the Plenary Session of the Supreme Court of the Russian Federation No. 10 of 20.12.1994 [9] and in its comments of legal scholars are quite in detail considered the main problems related with use of the legislation on compensation for moral harm. Therefore we do not put to this article details how to recover moral damage by seeing it not the prevalence in the tax administration, and presence only in the form of disclosure of information constituting tax secret. Therefore we do not make it a point of this article detailed description of the procedure of exaction moral harm due to its no prevalence in tax administration, and presence only in the form of disclosure of information constituting tax secret.

It should be noted that the execution of court decisions on compensation for harm by a tax authority, as well as exaction of judicial costs from a tax authority under executive writ is carried out for account of the Treasury of the Russian Federation. Statutory basis for this provision is laid down in article 1069 of the Civil Code of the RF as well as in part 1 of article 35 of the Tax Code of the RF, which establishes that "the losses inflicted to taxpayers, fees payers and tax agents shall be compensated at the expense of the Federal Budget in order stipulated by the current Code and other federal laws".

Mechanism for the execution of judicial acts at the expense of the Treasury (Federal Budget) on the tort obligations of a tax authority is provided by articles 242.1 and 242.2 of the Budget Code of the Russian Federation [2] and today is completely worked-out [19].

Due to the fact that the debtor in the obligation to compensate for the harm caused by unlawful actions (inactions) of state bodies, bodies of local government or their officials,

including the adoption by the state body or by the local self-government body of an act, which is not in correspondence with the law or with other legal act, is a public-law institution but not his bodies or officials of these bodies, we can call material responsibility of a tax authority conditional. And perhaps, because of that, tax authorities allow significant mistakes in their work – more than 60% of adopted decisions cancelled by arbitration courts in the 2008-2011 period (see briefing paper on consideration by arbitration courts of the RF cases involving tax authorities in 2008-2011) [20].

Summing up the study of material liability of tax authorities, deem it necessary to list really occurring types of material liability arising as a result of tortious deeds of tax authorities and their officials during tax administration. This is:

- interest for using other people's money which were paid at the request of a tax authority,
- court costs (judicial costs) exacted from a tax body on the base of a tax dispute resolved in favor of a taxpayer (tax agent),
- losses (compensation for harm), determined in the judicial act on the claim presented to a tax authority for compensation of losses (harm inflicted),
- compensation of moral harm.

BRIEFING PAPER

On consideration by arbitration courts of the RF cases with involvement of tax authorities in 2008-2011.

	2008	**2009**	**+/– to 2008**	**2010**	**+/– to 2009**	**2011**	**+/– to 2010**
The total number of considered cases	**970 152**	**1409503**	***439 351***	**1197103**	***-212 400***	**1078383**	***-118 720***
			45,3%		*-15,1%*		*-9,9%*
of which:							
arise from administrative and other public legal relations	**472 359**	**567 699**	***95 340***	**341 453**	***-226 246***	**383 107**	***41 654***
			20,2%		*-39,9%*		*12,2%*
% to the total number of considered cases	*48,7*	*40,3*		*28,5*		*35,5*	
which include cases:							
connected with use of tax legislation	**99 681**	**87 872**	***-11 809***	**92 438**	***4 566***	**98 313**	***5 875***
			-11,8%		*5,2%*		*6,4%*
% to the number of cases arising from administrative legal relation	*21,1*	*15,5*		*27,1*		*25,7*	

	2008	2009	+/– to 2008	2010	+/– to 2009	2011	+/– to 2010
of which:							
on disputing normative legal acts in the field of tax and fees	**115**	**119**		**107**		**82**	
(% to the number of cases connected with use of tax legislation)	*0,12*	*0,14*		*0,12*		*0,08*	
met requirements	74	69		38		42	
	64,3%	*58,0%*		*35,5%*		*51,2%*	
on disputing non-normative legal acts of tax authorities, actions (inactions) of officials	**50 685**	**35 368**		**31 514**		**26 358**	
(% to the number of cases connected with use of tax legislation)	*50,8*	*40,2*		*34,1*		*26,8*	
met requirements	35 463	23 448		20 169		16 559	
	70,0%	*66,3%*		*64,0%*		*62,8%*	
on exaction of mandatory payments and sanctions from organizations and citizens.	**43 565**	**49 400**		**58 366**		**69 795**	
(% to the number of cases connected with use of tax legislation)	*43,7*	*56,2*		*63,1*		*71,0*	
met requirements	24 426	29 071		36 321		29 251	
	56,1%	*58,8%*		*62,2%*		*41,9%*	
requirements requested in the amount of (million RUR)	**19 658**	**15 530**		**13 380**		**32 757**	
requirements satisfied in the amount of (million RUR)	**4 683**	**4 971**		**3 678**		**3 581**	
on return from the budgetary funds the taxes which were excessively deducted by tax authorities or overpaid by taxpayers	**4 225**	**2 326**		**1 923**		**1 571**	
(% to the number of cases connected with use of tax legislation)	*4,2*	*2,6*		*2,1*		1,6	
met requirements	3 240	1 536		1 286		925	
	76,7%	*66,0%*		*66,9%*		*58,9%*	
on the elimination of organizations under claims of tax authorities	**1 745**	**2 734**	***989***	**1 896**	***-838***	**1 041**	***-855***
			56,7%		*-30,7%*		*-45,1%*
met requirements	632	999		712		362	
	36,2%	*36,5%*		*37,6%*		*34,8%*	
on disputing decisions of tax authorities on bringing to administrative responsibility	10 551	7 179	- 3 372	3 003	-4 176	2 292	-711
			- 32,0%		*-58,2%*		*-23,7%*
met requirements	6 041	4 839		2 099		1 423	
	57,3%	*67,4%*		*69,9%*		*62,1%*	
***							
Cases connected with use of tax legislation which were considered in appeals instance	**19 768**	**16 875**	***-2 893***	**17 611**	***736***	**14 645**	***-2 966***
			-14,6%		*4,4%*		*-16,8%*

	2008	2009	+/– to 2008	2010	+/– to 2009	2011	+/– to 2010
% to the number of cases connected with use of tax legislation which were considered in first instance	*19,8*	*19,2*		*19,1*		*14,9*	
canceled, changed judicial acts (the number of cases)	**3 652**	**3 060**		**2 780**		**2 330**	
% to the number of cases connected with use of tax legislation which were considered in first instance	*3,7*	*3,5*		*3,0*		*2,4*	
***							
Cases connected with use of tax legislation which were considered in cassation instance	**19 838**	**15 602**	***-4 236*** *- 21,4 %*	**12 793**	***-2 809*** *-18,0%*	**10 074**	***-2 719*** *-21,3%*
% to the number of cases connected with use of tax legislation which were considered in first instance	*19,9*	*17,8*		*13,8*		*10,2*	
canceled, changed judicial acts (the number of cases)	**3 183**	**2 325**		**1 673**		**1 237**	
% to the number of cases connected with use of tax legislation which were considered in first instance	*3,2*	*2,6*		*1,8*		*1,3*	

References:

1. Arbitration and Procedural Code of the RF No. 95- FL (Federal Law) of July 24, 2002 [Arbitrazhnyj processual'nyj kodeks Rossijskoj Federatsii ot 24 ijulja 2002 g. № 95-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.

2. Budget Code of the RF, No. 145-FL of July 31, 1998 [Bjudzhetnyj kodeks Rossijskoj Federatsii ot 31 ijulja 1998 g. № 145-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.

3. Civil Code of the RF, No 51-FZ part one of November 30, 1994, No. 14-FZ part two of January 26, 1996. [Grazhdanskij kodeks Rossijskoj Federatsii. Chast' pervaja ot 30 nojabrja 1994 g. № 51-FZ, chast' vtoraja ot 26 janvarja 1996 g. № 14-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.

4. Tax Code of the RF, No. 146-FZ part one of July 31, 1998 [Nalogovyj kodeks Rossijskoj Federatsii. Chast' pervaja ot 31 ijulja 1998 g. № 146-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.

5. Federal Law No. 224-FZ of November 26, 2008 On making amendments to part one and two of the Tax Code of the RF, and to separate legislative acts of the RF [Federal'nyj zakon ot 26 nojabrja 2008 g. № 224-FZ «O vnesenii izmenenij v chast' pervuju, chast' vtoruju Nalogovogo kodeksa Rossijskoj Federacii i otdel'nye zakonodatel'nye akty Rossijskoj Federatsii»]. *System GARANT* [Electronic resource], Moscow: 2012.

6. Federal Law No. 229-FL of July 27, 2010 on making amendments to part one and two of the Tax Code of the RF and some another legislative acts of the RF, and also about recognizing as stale of separate legislative acts (provisions of legislative acts) of the RF in connection with the settlement of debt on payment of taxes, fees, penalty interests and fines, and another issues of tax administration [Federal'nyj zakon ot 27 ijulja 2010 g. № 229-FZ «O vnesenii izmenenij v chast' pervuju i chast' vtoruju Nalogovogo kodeksa Rossijskoj Federatsii i nekotorye drugie zakonodatel'nye akty Rossijskoj Federatsii, a takzhe o priznanii utrativshimi silu otdel'nyh zakonodatel'nyh aktov (polozhenij zakonodatel'nyh aktov) Rossijskoj Federatsii v svjazi s uregulirovaniem zadolzhennosti po uplate nalogov, sborov, penej i shtrafov i nekotoryh inyh voprosov nalogovogo administrirovanija»]. *System GARANT* [Electronic resource], Moscow: 2012.

7. The ruling of the Constitutional Court of the RF No. 22-O of February 20, 2002 under the claim of JSC "Bol'shevik" on violation of constitutional rights and freedoms by the provisions of articles 15, 16 and 1069 of the Civil Code of the RF [Opredelenie Konstitucionnogo Suda RF ot 20 fevralja 2002 g. № 22-O «Po zhalobe otkrytogo aktsionernogo obwestva «Bol'shevik» na narushenie konstitutsionnyh prav i svobod polozhenijami statej 15, 16 i 1069 Grazhdanskogo kodeksa Rossijskoj Federatsii»]. *System GARANT* [Electronic resource], Moscow: 2012.

8. Resolution of the Constitutional Court of the RF No. 14-P of July 16, 2004 under the case on verification of the constitutionality of separate provisions of part two of the article 89 of the Tax Code of the RF in connection to claims of citizens Egorov A.D. and Chuev N.V. [Postanovlenie Konstitutsionnogo Suda RF ot 16 ijulja 2004 g. № 14-P «Po delu o proverke konstitutsionnosti otdel'nyh polozhenij chasti vtoroj stat'i 89 Nalogovogo kodeksa Rossijskoj Federatsii v svjazi s zhalobami grazhdan A. D. Egorova i N. V. Chueva»]. *System GARANT* [Electronic resource], Moscow: 2012.

9. Resolution of the Plenum of the Higher Court of the RF No. 10 of December 20, 1994 «Some issues of use of the legislation on compensation of moral damage» [Postanovlenie Plenuma Verhovnogo Suda RF ot 20 dekabrja 1994 g. № 10 «Nekotorye voprosy primenenija zakonodatel'stva o kompensatsii moral'nogo vreda»]. *System GARANT* [Electronic resource], Moscow: 2012.

10. Decision of Federal Antimonopoly Service (FAS) of the Far East district No. F03-A37/08-2/1457 of June 12, 2008 [Postanovlenie FAS Dal'nevostochnogo okruga ot 12.06.2008 № F03-A37/08-2/1457]. *System GARANT* [Electronic resource], Moscow: 2012.

11. Order of the Federal Tax Service No. № SAE'-3-19/622@ of November 29, 2005 on Endorsement the Forms of Agreements on Investment Tax Credit

[Prikaz Federal'noj nalogovoj sluzhby ot 29 nojabrja 2005 g. № SAJe-3-19/622@ «Ob utverzhdenii form dogovorov ob investitsionnom nalogovom kredite»]. *System GARANT* [Electronic resource], Moscow: 2012.

12. Artem'eva Ju. A. On legal liability of tax authorities [O juridicheskoj otvetstvennosti nalogovyh organov]. *Voprosy rossijskogo i mezhdunarodnogo prava – Issues of Russian and International Law*, 2011, no.4, pp. 44-60.

13. *Kizilov V. V. Duties and responsibilities of the officials of tax authorities: an analysis of the curent legislation of Russia* [Objazannosti i otvetstvennost' dolzhnostnyh lic nalogovyh organov: analiz dejstvujuwego zakonodatel'stva Rossii]. Saratov: Saratov University Publishing House, 2006, 116 p.

14. Kizilov V. V. *Unlawful actions by officials of tax authorities* [Nepravomernye dejstvija dolzhnostnyh licts nalogovyh organov]. Saratov: Saratov University Publishing House, 2008, 376 p.

15. Kokurina I. V., Usachev I. V. Unlawfulness of actions as condition for bringing to civil and legal responsibility of tax authorities for violation of tort obligations [Protivopravnost' dejstvij, kak uslovie nastuplenija grazhdansko-pravovoj otvetstvennosti nalogovyh organov za narushenie deliktnyh objazatel'stv]. *Biznes v zakone – Business in Law*, 2011, no.3, pp. 52-54.

16. Lermontov Ju. M. Practical comments to part one of the Tax Code of the RF [Prakticheskij kommentarij k chasti pervoj Nalogovogo kodeksa Rossijskoj Federatsii]. *Prosto o slozhnom – Simply about Complex* (taking into account amendments which were made by the Federal Law No. 224-FL of November 26 , 2008 and came into force on January 01, 2009).

17. Usachev I. V. Pecularities of theoretic and legal enshrining of civil and legal responsibility of tax authorities [Osobennosti teoretiko-pravovogo zakreplenija grazhdansko-pravovoj otvetstvennosti nalogovyh organov]. *Biznes v zakone – Business in Law*, 2011, no. 3. pp. 49-51.

18. Fedina E. A. Juridical responsibility of tax authorities and theirs officials [Juridicheskaja otvetstvennost' nalogovyh organov i ih dolzhnostnyh lits]. *Vestnik Rossijskoj pravovoj akademii – Messenger of Russian Legal Academy*, 2006, no. 2, pp. 56-60.

19. Suvorova I. M., Mirza L. S. Legal development of execution of court's judgments under request of exaction by funds of the Budget system of the RF (1981-2011) [Pravovoe razvitie ispolnenija sudebnyh aktov po obrashheniju vzyskanija na sredstva bjudzhetnoj sistemy Rossijskoj Federatsii (1981-2011)]. *Juridicheskij mir – Legal World*, 2012, no. 2, pp. 28-32.

20. *Summary on consideration in Arbitration courts of the RF of cases with participation of tax authorities in 2008-2011* [Spravka o rassmotrenii arbitrazhnymi sudami RF del s uchastiem nalogovyh organov v 2008 - 2011 gg]. Available at: http://arbitr.ru/press-centr/news/totals/ (accessed: 11.03.2012).