

THE SELECTED DECISIONS
In the Name of the Russian Federation
RULING
OF THE CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

**On the Constitutionality of Clauses 2 and 3
of Article 11(1) of the Law of the Russian
Federation of June 24, 1993 "On Federal
Tax Police Bodies"**

Moscow

December 17, 1996

The Russian Federation represented by E. M. Ametistov, the Presiding Justice, and Justices N. T. Vedernikov, Y. M. Danilov, V. D. Zorkin, V. G. Strekozov, V. A. Tumanov and O. S. Khokhryakova, with the participation of A. M. Makarenko, the general director of MKM Ltd., a limited liability company, who filed a complaint with the Constitutional Court of the Russian Federation; and I. N. Shumskiy, representing the Federation Council of the Federal Assembly, guided by Article 125(4) of the Constitution of the Russian Federation, Clause 3 of Part 1, Parts 2 and 3 of Article 3 and Clause 3 of Article 22(2), and Articles 26, 96, 97 and 99 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", reviewed, in an open session, the constitutionality of Clauses 2 and 3 of Part 1 of Article 11 of the Law of the Russian Federation "On Federal Tax Police Bodies", dated June 24, 1993.

The review was occasioned by complaints by the founding owners of MKM Ltd. and 5M Ltd., limited liability companies, who claimed that Clauses 2 and 3 of Article 11(1) of the Law of the Russian Federation "On Federal Tax Police Bodies", when applied in specific cases, violated constitutional rights and freedoms.

The case was reviewed due to lack of clarity as to whether the contested provisions of said Law comply with the Constitution of the Russian Federation.

Inasmuch as all these petitions relate to the same subject, the Constitutional Court of the Russian Federation, in accordance with Article 48 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", combined the cases into one proceeding.

Having heard a report by V. D. Zorkin, the Reporting Justice, the presentations of the representatives of the parties, the opinion of an expert, and representatives of the Ministry of Finance of the Russian Federation, the State Customs Service of the Russian Federation, and the Federal Tax Police Service of the Russian Federation who were invited to attend the court session and having studied submitted materials, the Constitutional Court of the Russian Federation

FOUND:

1. That in accordance with Article 11(1) of the Law of the Russian Federation "On Federal Tax Police Bodies", dated June 24, 1993 (as amended on December 17, 1995), federal tax police bodies have rights which are granted by legislation to officials of tax bodies and to currency control agents (Clause 2) and may, provided there is sufficient information, inspect taxpayers (including to 'carry out oversight inspections in the wake of inspections carried out by tax bodies) to the full extent, including to draw reports on the results of such inspections; and that decisions shall be taken and corresponding sanctions shall be applied, on the basis of inspection reports, by the chief of a tax police body or his deputy (Clause 3).

Clauses 2 and 3 of Article 11(1) of the Law with regard to sanctions applied by tax police bodies are reference clauses and must be reviewed in systematic association with Article 13 of the Law of the Russian Federation "On the Fundamentals of the Tax System in the Russian Federation", dated December 27, 1991, and Articles 7 (clauses 8 and 9) and 8 of the Law of the RSFSR "On the State Tax Service of the RSFSR", dated March 21, 1991. It follows from the literal meaning of said acts and from the meaning ascribed by official interpretation (including the interpretation of the Supreme Arbitration Court of the Russian Federation) and from existing law-application practice, as well as from their place in the system of legal acts which define the powers of officials of tax bodies, that tax police bodies collect overdue tax payments, as well as penalties and other sanctions stipulated by legislation, from legal entities on demand. It is this provision, as applied in specific cases, that is contested by the petitioners and is subject to review by the Constitutional Court of the Russian Federation.

2. That according to the petitioners, collection by tax police bodies of corresponding payments

from legal entities on demand, rather than by judicial procedure (as stipulated for natural persons) violates the constitutional right to private ownership and contravenes Article 35 of the Constitution of the Russian Federation.

Pursuant to Article 35 of the Constitution of the Russian Federation, the right to private ownership is protected by law (Article 35(1)); everyone has the right to own property, possess, use and dispose of such property both individually or jointly with other persons (Article 35(2)); no one may be deprived of his property other than by judicial decision. Property may be taken forcibly for public use only on condition of prior adequate compensation (Article 35(3)).

At the same time, the right to private ownership is not absolute and is not among those rights which, in accordance with Article 56(3) of the Constitution of the Russian Federation, may not be restricted under any circumstances. Therefore, in accordance with the meaning of Article 55(3) of the Constitution of the Russian Federation it [Article 35] may be restricted by federal law, but only to the extent this is necessary to protect the fundamentals of the constitutional system, morality, health, and the rights and lawful interests of other persons, and in order to defend the country and ensure the security of the state. This is in compliance with generally accepted principles and rules of international law, particularly with the Universal Declaration of Human rights, dated December 10, 1948, in accordance with which everyone has duties to the community through which the free and full development of his personality is possible (Article 29(1)); in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society (Article 29(2)). A similar provision on the permissibility of restricting the rights of man and citizen is also stipulated by the International Pact on Economic, Social and Cultural Rights, dated December 19, 1966 (Article 4).

3. That in accordance with Article 57 of the Constitution of the Russian Federation, each must pay lawfully established taxes and charges. This constitutional obligation has a special, i.e. public law, rather than private law (civil law), nature, which is due to the public law nature of the state and state power, pursuant to the meaning of Articles 1(1), 3, 4 and 7 of the Constitution of the Russian Federation.

A tax is a necessary condition for the existence of a state, and, therefore, the duty to pay taxes stipulated in Article 57 of the Constitution of the Russian Federation extends to all taxpayers as the unconditional requirement of the state. The taxpayer is not entitled to dispose at his own discretion that portion of his property which must be contributed into the treasury in the form of a certain amount of money, and is obligated regularly to transfer this amount for the benefit of the state because otherwise the rights and interests of other persons and the state that are protected by law would be violated. Tax collection cannot be regarded as arbitrary taking of a portion of an owner's property; it is a lawful taking of a portion of property which ensues from a constitutional, public law duty.

This duty of taxpayers (including of citizens pursuing entrepreneurial activities with the creation of a legal entity) epitomizes the public interest of all members of society. Therefore, the state may and must take measures in order to regulate tax law relations for the purpose of protecting the rights and lawful interests of both taxpayers and other members of society.

Tax law relations are based on one party's authority over the other. Such relations envisage that the parties are subordinated, with one party, a tax body acting on behalf of the state, having authoritative powers, and the other party, the taxpayer, the duty of obedience. The demands of the tax body and the taxpayer's tax duties are based on statute, rather than contract. The fact that taxes are imposed by statute, that they are mandatory and may be collected forcibly, and that a tax obligation is a unilateral obligation is associated with the public law nature of taxes and the state treasury and with the fiscal sovereignty of the state. Therefore, a dispute involving failure to perform a tax obligation lies within public (in this case tax) law, rather than civil law.

When collecting tax payments on demand, a tax body may be lawfully empowered to act in an authoritative-committing manner to the extent that its actions, first, remain within the framework of tax property relations and do not become civil law, administrative law or criminal law sanctions, and, second, do not cancel or infringe upon the rights and freedoms of man and citizen. In connection with the fulfillment of a tax obligation, as well as of corresponding requirements of a tax body to pay tax, if the taxpayer disagrees therewith, tax obligation cannot be temporarily terminated or suspended, unless this is provided by law.

In any case, the taxpayer enjoys the guaranteed right ensuing from Article 46 of the Constitution of the Russian Federation, to appeal in courts the decisions and actions (inaction) of tax bodies and their officials. The petitioners exercised this right and an arbitration court

considered the facts of the case (including the amounts of payments levied).

Pursuant to Article 8(2) of the Constitution of the Russian Federation, private, state, municipal and other forms of ownership enjoy recognition and equal protection in the Russian Federation. According to the contested provision, one and the same tax collection procedure is applied to legal entities regardless of their ownership (private or state-owned) - payment on demand ~ and if the taxpayer disagrees, he may resort to one and the same remedy, that is he may turn to higher tax authorities and/or to the court to have the dispute considered. Therefore, legal entities enjoy guaranteed protection of their ownership rights. The difference in the operation of the mechanisms of such protection with regard to legal entities (subsequent judicial control) and to natural persons (prior judicial control) is explained in this case not by the form of ownership but rather by the specific qualities of legal entities as subjects of tax obligations. The differences apply to one and the same form of ownership, i.e. to private ownership, since both natural persons and legal entities can be the holders of private ownership.

Thus, the procedure where taxes are collected on demand where subsequent judicial control serves as a remedy for protecting the rights of a legal entity does not contravene the requirements of the Constitution of the Russian Federation.

4. That the constitutional right of man and citizen stipulated in Article 35(2) and (3) of the Constitution of the Russian Federation applies to legal entities to the extent this right is, by nature, applicable thereto.

As follows from the materials of the case, the limited liability companies which turned to the Constitutional Court of the Russian Federation are organizations governed by rules applicable to the activities of legal entities which are commercial organizations. They were established by citizens specifically for joint exercise of such constitutional rights as the right to freely use their abilities and property to pursue entrepreneurial and other economic activities that are not prohibited by law (Article 34(1), Constitution of the Russian Federation) and the right to own, possess, use and dispose of property either individually or jointly with other persons (Article 34(2), Constitution of the Russian Federation).

A legal entity, in contrast to a citizen who is a natural person, has its own property and is liable for its obligations to the extent of such property. A citizen (in the event he is an individual entrepreneur and has not established a legal entity) uses his property both for entrepreneurial activities and as his personal property required for the exercise of inalienable rights and freedoms. In this case, the citizen's property is not separated legally.

The different procedures for collecting tax payments from natural persons and legal entities is designed not to put them in an unequal position in the sphere of tax relations (the obligation to pay taxes) but to prevent administrative intervention in the rights of a natural person where the question may be resolved only by judicial procedure. Collecting tax payments from natural persons on demand would go beyond tax public law relations and would invade other relations, including civil law relations, where parties are not in a subordinated position; and therefore one party cannot act in an authoritative- committing manner against the other. The combination of on-demand and judicial procedures in tax collection ensures personal rights and the rights of the state in general, meets the interests of society, and does not contravene the principles of a democratic law based social state stipulated in the Constitution of the Russian Federation.

5. That according to the meaning of Article 57 of the Constitution of the Russian Federation the tax obligation consists of the taxpayer's duty to pay a certain tax stipulated by law. Failure to pay tax in due time must be compensated by the repayment of debts owed under the tax obligation and by full reimbursement of damages incurred by the state as a result of the untimely payment of tax. Therefore, the lawmaker may add to the amount of tax which was not paid in due time (tax arrears) an additional amount — a penalty - in order to compensate losses incurred by the state treasury as the result of non-receipt of tax amounts in due time if tax payments have been delayed. These payments are collected from taxpayers who are legal entities on demand due to the mandatory and forcible nature of tax, pursuant to law.

Thus, the collection of tax arrears, and penalties, on demand carried out by tax police bodies and other bodies in accordance with Article 13 of the Law of the Russian Federation "On the Fundamentals of the Tax System in the Russian Federation" and Articles 7 (Clauses 8 and 9) and 8 of the RSFSR Law "On the State Tax Service of the RSFSR" does not contravene the Constitution of the Russian Federation.

Other sanctions stipulated by these articles, that is the collection of the entire amount of concealed or underreported income (profit), and other fines go by nature beyond the framework of tax obligations as such. They are punitive, rather than compensatory, by nature and constitute a punishment for tax offenses, that is for an unlawful culpable act stipulated by law which was committed intentionally or due to negligence. Proceedings in a case involving a tax offense must prove both the fact of the commission of such offense and the extent of the

taxpayer's fault. In the event of a tax offense a tax police body is entitled to take the decision to collect a fine from a legal entity. This decision, in accordance with the meaning of Articles 45 and 46(1 and 2) of the Constitution of the Russian Federation, may be appealed by the legal entity in accordance with established procedure with a higher tax authority and/or in court. In the event of an appeal the fine may not be collected on demand, but must be suspended until the court's decision on the taxpayer's complaint.

Thus, the procedure stipulated by the contested provision whereby fines are collected on demand in the event the taxpayer disagrees with the decision of the tax police body exceeds the constitutionally permissible (Article 55(3); Article 57) restriction on the right stipulated in Article 35(3) of the Constitution of the Russian Federation, pursuant to which no one can be deprived of his property other than by judicial decision.

Pursuant to the above and guided by Article 71(1) and (2) and Articles 72, 74, 75 and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation

RULED:

1. To declare the provisions of Clauses 2 and 3 of Article 11(1) of the Law of the Russian Federation "On Federal Tax Police Bodies", dated June 24, 1993, which grant federal tax police bodies the right, pursuant to Article 7 (Clauses 8 and 9) and Article 8 of the RSFSR Law "On the State Tax Service of the RSFSR", dated March 21, 1991, and Article 13 of the Law of the Russian Federation "On the Fundamentals of the Tax System in the Russian Federation", dated December 27, 1991, to collect on demand tax arrears from legal entities as well as penalties for late payment of taxes to be not in contravention of the Constitution of the Russian Federation.

A legal entity from which such tax payments have been collected on demand is entitled, in accordance with Article 46 of the Constitution of the Russian Federation, to appeal the decision of tax police bodies in court.

2. To declare the provisions of Clauses 2 and 3 of Part 1 of Article 11 of the Law of the Russian Federation "On Federal Tax Police Bodies", dated June 24, 1993, which grant federal tax police bodies the right, pursuant to Article 7 (Clauses 8 and 9) and Article 8 of the RSFSR Law "On the State Tax Service of the RSFSR", dated March 21, 1991, and Article 13 of the Law of the Russian Federation "On the Fundamentals of the Tax System in the Russian Federation", dated December 27, 1991, to collect on demand fines and the full amount of concealed or underreported income (profit) from legal entities without their consent to be in contravention of the Constitution of the Russian Federation, Articles 35(3), 45 and 46(1) and (2).

3. Pursuant to Article 79(1) and (2) of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" this Ruling shall be final, it shall not be appealed and shall enter into force immediately upon its declaration, and shall have direct effect.

4. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" this Ruling shall be published forthwith in *The Collected Legislation of the Russian Federation* and *The Russian Gazette*, This Ruling must also be published in *The Bulletin of the Constitutional Court of the Russian Federation*.

The Constitutional Court

of the Russian Federation

Unofficial translation by the Constitutional Court