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SOME PROBLEMS OF QUALIFICATION OF CONCEALMENT OF FUNDS OR PROPERTY FROM COLLECTION OF TAX ARREARS

***Abstract**: the article deals with the problems of determining the end of the concealment of funds or property of an organization or individual entrepreneur from the collection of tax arrears. The authors explore various positions of doctrine and law enforcement practice.*

***Keywords**: crime, concealment, money, property, tax arrears, recovery.*

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НЕКОТОРЫЕ ПРОБЛЕМЫ КВАЛИФИКАЦИИ СОКРЫТИЯ ДЕНЕЖНЫХ СРЕДСТВ ИЛИ ИМУЩЕСТВА ОТ ВЗЫСКАНИЯ НАЛОГОВОЙ НЕДОИМКИ

***Аннотация**: в статье рассматривается проблема сокрытия средств или собственности организации или индивидуального предпринимателя от задолженностей по уплате налогов. Авторами были исследованы различные положения принципов и правоприменительной практики.*

Ключевые слова: *преступление, сокрытие, средства, собственность, задолженность по налогам, восстановление.*

Among practitioners and in scientific publications, several points of view are expressed about the time of the commission of the crime provided for in Article 199.2 of the Criminal Code. The first of them is based on the fact that this act can be discussed only if the actions to conceal funds and property are committed by the guilty person during the period when the state authorities have fulfilled all possible measures of enforcement provided for by the Tax Code of the Russian Federation. In particular, it is noted that in case of violation of the recovery procedure, the property does not acquire the status of the subject of a crime, and therefore its concealment is not criminal [1, p. 16]. The second part of practitioners is inclined to consider criminal those actions that were committed at the moment when the tax authorities had the right to forcibly recover the existing arrears, regardless of whether all the measures provided for by this procedure were carried out. The third group of practitioners also criminalizes those acts of concealment of money and property that were committed before the tax authorities had the right to forcibly receive the amount of tax debt, provided that these actions were aimed at ignoring the taxpayer's tax obligations.

Let's try to figure out the first position. If you look at the above scheme of compulsory collection of arrears, it becomes clear that the procedure, which includes an exhaustive list of measures, can last up to a year or more. It is also clear that if the taxpayer has enough money and property to pay off the tax debt, the amount of arrears, taking into account penalties and fines, will certainly be collected. There is a reasonable question about what kind of concealment after the adoption of an exhaustive list of measures can be discussed if all the property and money in the accounts have already been seized and the taxpayer has no real possibility of using them, except in cases of crimes committed by him or other persons (for example, crimes under Article 312 of the Criminal Code). The adoption of a set of compulsory measures provided for by tax legislation guarantees the recovery of arrears in full (except in cases of bankruptcy of taxpayers).

Quite close to this position is the opinion that criminal concealment can take place if the tax authorities have issued collection orders for the compulsory collection of tax debt on all taxpayer accounts. In the same case, if the taxpayer had free settlement accounts, then this circumstance should be considered as improper performance of duties by employees of tax inspections. We cannot agree with such a decision and its motivation for several reasons [2, p. 45].

Firstly, in the list of duties of tax authorities provided for in Article 32 of the Tax Code of the Russian Federation, there are no measures to carry out the procedure of compulsory collection, and Articles 45–48 and 76 of the Tax Code of the Russian Federation interpret the enforcement of measures of compulsory collection as the right of the tax authority in respect of taxpayers who have not fulfilled the obligation to pay taxes independently. Secondly, the case under consideration indicates that certain measures for recovery by the tax authority can still be taken, and the fact that the company had a free settlement account is sometimes laid in support of the taxpayer's innocence. But if the law enforcement officer was talking about non-compliance with the full list of measures, then why does the reasoning of the decision not contain a reference to non-compliance with measures of compulsory recovery of property? Following this logic, it can be concluded that the absence of a decision on the seizure of the taxpayer's property will also be a circumstance excluding the taxpayer's guilt.

Thirdly, the existing collection procedure does not allow to simultaneously send collection orders to all the taxpayer's accounts, since the tax authority needs to make as many decisions as the taxpayer has settlement accounts, and after the expiration of the payment period for a certain tax, only one decision can be made. If there are several accounts, the procedure of sending orders to all these accounts can be delayed for many years, removing from the criminal all actions of the taxpayer aimed at concealing property. Returning to our example, it is worth noting that even if there were one free and two blocked settlement accounts, the head of the enterprise could perform actions to conceal funds from compulsory collection, and it was they who had to be considered by the law enforcement officer. Such actions, for example, could be expressed in giving instructions to the cashier to hand over cash proceeds only to a free account or sending

letters to debtors asking them to transfer money only to a specific account, if there are other account details in business contracts with these creditors, as well as other actions.

The position of the second group of practitioners regarding the period of concealment is based on the fact that only such actions that are committed after the tax authorities have the right to forcibly collect arrears can be classified as criminal. There is a similar opinion that only such concealment, which is committed after the formation of tax arrears, will be criminal. At the same time, it does not matter whether the fiscal authorities have taken all the recovery measures provided for by law or carried out only part of these measures, for example, sent payment orders to collect arrears to the bank [3, p. 67]. The main argument of the representatives of this opinion is based on the fact that it is possible to hide (hide, conceal) only what someone is looking for. And if the authorized body has received the right to withdraw the taxpayer's money or property, only then the taxpayer's deliberate actions to conceal property in order to avoid its seizure can be qualified under Article 1992 of the Criminal Code. The opinion that concealment can be committed after the adoption of coercive measures seems quite convincing, and this point of view is currently held by most practitioners. But we cannot fully agree with this position.

Let's try to argue the opinion of a third group of people, whose supporters we are. Its essence lies in the fact that for the qualification of an act under Article 1992 of the Criminal Code, it does not matter in what period the acts of concealment are committed, provided that their purpose is to create obstacles to the compulsory collection of tax arrears. Concealment itself can be of two types. The first of them is the concealment of money and property, which leads to the creation of irremediable obstacles for the guilty to exercise the powers of the state to forcibly collect tax debt and the inability to receive the accrued tax amounts in the future. In the second case, concealment is a set of actions of the perpetrator, by which he pursues the goal of using funds not transferred to the payment of taxes for various economic needs for as long as possible, while the taxpayer's solvency remains.

The established procedure for the compulsory collection of taxes is not a sealed secret for the taxpayer, and fiscal authorities currently, as a rule, timely exercise their

powers to send the accrued amounts of taxes and fees to the budget [5, c. 87]. Accordingly, when it comes to bringing a taxpayer to a state of actual insolvency, it is much easier and easier to evade the obligation to pay accrued taxes during the pre-tax period. Under such circumstances, it is fair to state the argument of the supporters of the previous opinion in the following form: «it is easier to hide what someone will be looking for before the search has begun». An example of this kind may be a criminal case against the director of the enterprise «X» citizen B. As a result of transactions for the purchase and sale of petroleum products, «X» had a cash balance in the amount of 900 million rubles on the settlement account and there was an obligation to pay taxes to the budget totaling 800 million rubles. Before the deadline for paying taxes, B. transferred all funds to the account of another organization without fulfilling the obligation to pay taxes. At the time set for the payment of taxes, the «X» no longer had funds in bank accounts, and the organization was re-registered as a front person [4, p. 112].

It is quite clear that under such circumstances it will not be possible to recover the amount of the tax debt. In B.'s actions, in our opinion, there are all signs of a crime under Article 199.2 of the Criminal Code of the Russian Federation, since he was aware that as a result of the transaction, the «X» would have an obligation to pay taxes, by the time the transactions were completed, there were sufficient funds on the settlement accounts of the organization to execute it in full. B. he was aware that in case of non-fulfillment of his obligation to pay tax independently within the time period established by law, the tax authorities will take measures to forcibly collect tax in accordance with Articles 46–48, 76 and 77 of the Tax Code of the Russian Federation. To this end, he wrote off the funds from the settlement account in advance for fictitious transactions, i.e., he concealed the funds at the expense of which the collection of tax arrears should be made [4, p. 112].

In our opinion, regardless of the period in which actions were committed to conceal funds and property, if their purpose was to create obstacles to the collection of arrears in taxes and fees, such actions, in the presence of other signs indicated in the disposition of the article, constitute a crime under Article 199.2 of the Criminal Code.

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