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# Local Fees as an Example of Visitor and Health Resort Taxes

**Abstract.** A health resort is an area where treatment of patients is conducted, dedicated to the use and protection of natural medicinal materials, which have given the place the status of a health resort. Local fees called visitor and resort taxes supply local budgets. Their collection is dependent on the existence of certain factual circumstances. The article discusses issues related to the legal status of spa and health resort areas, and the fees related to them (adopting and collecting). Toll rates shall be adopted by the municipal council and charged by clearly defined tax collectors. The presentation of tax obligations related to the health resorts was made based on the dogmatic method, an analysis of suitable regulations and selected case law.

**Keywords:** spa, local fees, resort taxes

## 1. Introduction

As part of the income of municipal budgets from fees, we can distinguish the fee regulated by the Act on taxes and local fees [Act of 12 January 1991 on taxes and local fees] (hereinafter: upol) and fees governed by other laws. These fees fully represent the own revenue of municipalities. The obligation to pay the fee is regulated by factual circumstances and there is no need of participation of the tax authority. Besides the visitor's and resort taxes, the local fees include:

- trade fee,
- fee from the ownership of dogs,
- advertising fee.

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These fees are regulated by the above-mentioned Act on taxes and local fees. Trade fee is collected from individuals, legal entities and legal entities without legal personality that make sales on marketplaces.

According to the regulations, marketplaces are all places where trading is carried out. Trade fee is not subject to sales made in the buildings or parts of buildings, with the exception of markets under the roof and halls used for trade fairs, auctions and exhibitions. Taxpayers who pay property taxes are exempt from the trade fee.

The municipal council may introduce, by resolution, a fee of owning a dog. The fee is collected from individuals with dogs. Fee from the ownership of a dog is not collected from:

– staff members of diplomatic missions and consular offices and other persons equalized with them on the basis of acts, agreements or international customs, if they are not Polish citizens and do not have their permanent residence on Polish territory – the condition of reciprocity;

– persons admitted to a significant degree of disability within the meaning of the regulations on occupational and social rehabilitation and employment of persons with disabilities -due to ownership of one dog;

– persons disabled within the meaning of the Act of 27 August 1997. Vocational Rehabilitation and Employment of Persons with Disabilities due to ownership an assistance dog;

– people aged over 65 years running a household alone - due to ownership of one dog;

– agricultural tax payers of farms – due to ownership of no more than two dogs.

The quantification and collection and payment dates and amount of fee rates are determined by resolution made by the municipal council. Maximum rate is announced by the Minister of Finance. The municipal council may order a fee collection and determine collectors and the amount of remuneration for the collection. In addition, the municipal council may make other than the above mentioned exemptions from the levy on dog ownership.

Advertising fee may be introduced by the municipal council in a resolution. Fee applies to billboards or advertising devices. Advertising fee may be collected only in the areas, where municipal council adopted the terms and conditions of locating objects of small architecture, billboards and advertising devices. Advertising fee is collected from:

– owners of real estate or buildings, excluding land cast in perpetual usufruct,
– perpetual users of land,
– owner-like possessors of real estate or buildings,
– holders of real estate or parts thereof or of building structures or parts thereof owned by the State Treasury or local government if they have an agree-

ment with the owner, the Agricultural Property Agency or another legal title or there is no legal title.

If the property or construction facility, where a billboard or advertising device is located is subject of co-ownership or remains in the possession of two or more people, the obligation to pay the fee is equally on all the appropriate co-owners or co-possessors. Advertising fees shall not be collected if the billboards or advertising equipment:

– are not visible from the space accessible to the public;
– constitute a signboard, as long as it complies with the terms and conditions of positioning objects of small architecture, billboards and advertising devices;
– are implemented by the obligation imposed by law;
– are solely for the dissemination of information:
– are permanently commemorating individuals, institutions or events.
– are of religious nature, related to activities of churches and other religious associations; if the billboard or the advertising affluent are within areas utilized as places of worship and religious activities, and cemeteries.

The amount of paid property tax on billboard advertising or advertising device shall be credited to the fee due from that advertising billboard or advertising device.

The advertising fee includes:

– fixed and a variable part,
– a fixed part is a flat rate independent of the surface area of the billboard or advertising devices,
– the variable part depends on the size of the billboard or advertising device,
– if the shape of the advertising device prevents the determination of the surface area, the amount of the fee depends on the surface area of the side of a cuboids described on the device advertising.

The quantification and collection and payment dates and amount of fee rates is determined by resolution made by the municipal council. Maximum rate of fee is announced by the Minister of Finance. The municipal council may order a collection of the fee in the way of collection and determine collectors and amount of remuneration for the collection. In addition, the municipal council may make other than the above objective exemptions from the advert fee.

## 2. Status of spas

Health resort business was regulated by the Act of 28 July 2005 on health resort treatment, spas and health resort conservation areas and municipalities resorts. The Act sets out the principles and conditions for conducting and funding health

resort treatment, treatment directions, rules for supervision and treatment, the principles of transmission and disposal of the spa or health resort status and the tasks of municipalities resorts.

According to the act's provisions, there are three areas where activity may be conducted, i.e. health resort, spa and municipal conservation area and health resort protection area and protection zones.

The health resort is an area where health resort treatment is conducted, dedicated to the use and protection of natural medicinal materials, which has been given the status of a health resort. Status of the health resort can be attributed to the area which:

– has deposits of natural ingredients with proven medicinal healing properties under the terms of the Act;

– has a climate with medicinal properties confirmed by the principles defined in the Act;

– contains in its area facilities and treatment equipment prepared to conduct health resort treatment;

– adheres to the regulations of environmental protection requirements in relation to the environment;

– has the technical infrastructure in the field of water and wastewater, energy, in terms of public transport, as well as it runs waste management.

Health resort area status is assigned to an area where there are no health resort institutions nor health resort equipment ready to execute treatment but other conditions for obtaining the status of the health resort are accomplished. Spatial boundaries of the spa and health resort area have been designated within the administrative boundaries of municipalities, cities or municipalities auxiliary units. Municipality resort is in turn a municipality, whose area or part thereof has been given the status of a resort in the manner specified in the Act. Therefore, it is only this municipality on whose territory the health resort is located. The municipality resort is not within the municipality that encloses health resort area status [Gwoździcka-Piotrowska 2014: 22-23].

Municipalities resort status entitles the municipality to use the terms "spa" or "hot springs" or "thermal treatment." In addition, the municipality undertakes tasks associated with maintaining the function of medicinal spas.

The municipality, which intends to request a health resort status to its area, in order to determine the possibilities for health resort treatment, draws up a resort sampling. Sampling Resort presents the characteristics of the isolated area in terms of its likelihood to be recognized as a health resort area, with particular emphasis on the available natural resources in the area and the climate. After preparing the sampling, the minister competent for health matters shall verify compliance with the requirements necessary to confer the status of the spa or health resort status. The statement that the conditions are met is followed by a decision

of the confirmation of opportunities for health resort treatment area, for which the sampling had been done. Then the municipal council, on the basis of the approved sampling, issues health resort status or a conservation area status.

Resolution on the spa statute or health resort area statute should be made within 30 days from the date of entry into force of the Council of Ministers resolution that confers the status of a given area to health resort area. Obtaining the status of municipal spa or health resort area involves the confirmation of its attractive nature and therefore the increased interest in the area by tourists. Spa status or health resort area is a very good promotion of the region, it also allows for the efficient recovery of investors in the hotel industry, health and recreation. In these areas hotels arise, sanatoriums, spa & wellness facilities, senior housing. Development of Investment spas also follows from the constant presence of beneficiaries of the National Health Fund and the Social Insurance Institution. On the basis of the Act of 27 August 2004 on health care services financed from public funds, beneficiaries are entitled to benefits guaranteed in the range of spa treatment; The health resort spas are conducted in treatment facility located in the zone "A." Such a zone is the area in which they are located or planned facilities and equipment for health resort treatment and other facilities for the treatment for a patient or a tourist use, in particular, guesthouses, restaurants or cafes, for which the percentage of green areas is not less than 75%. In connection with the stay of beneficiaries, spa areas are independent from the seasonality typical of holiday resorts and holiday homes [Gwoździcka-Piotrowska 2014: 26].

## 3. Visitor's and resort taxes

Visitor's tax is obtained from the individuals staying longer than a day for tourism, leisure or training in the localities of the advantageous properties of climate or natural beauty, and in the villages located in areas which have been given the status of conservation area spa on terms of the Act of 28 July 2005. on health spa, health spas and spa protection areas and the municipalities spa. The fee is collected for each day of stay in such places.

Travel tax is collected from individuals staying longer than a day for health, travel, holiday or training in the villages located in areas, which were given the status of a spa on the principles specified in the above-mentioned Act on health spa, health spas and spa protection areas and the municipalities spa. The quantification and collection and payment dates and amount of fee rates is determined by resolution made by the municipal council. Maximum rate of fee is announced by the Minister of Finance. The municipal council may order a collection of the fee in and determine collectors and amount of remuneration for the collection.

In addition, the municipal council may make other than the above mentioned exemptions from the travel tax.

The municipality, which has favorable climatic conditions, health conditions and landscape may charge a climate fee. This concept includes two taxes – Visitor's and resort tax. First tax can be charged only by municipalities which have been given the status of a spa. The second only by entities included in the list maintained by the relevant provincial governor in consultation with the Minister of the Environment.

The Tax is not collected from more than one title. According to art. 17 par. 2a of the Act of 12 January 1991 on local taxes and charges, the person who paid travel tax does not have to pay visitor's tax. The quantification and collection and payment terms and level of rates of these levies are determined by the resolution of the municipal council. The provisions of this act shall be in accordance with the provisions of art. 17 and art. 19 upol. The problem lies in the fact that these regulations are not clear.

## 4. Meeting the requirements in terms of charging taxes

To charge visitor's tax, the town must meet minimum conditions including climate, landscape, and also have a range of accommodation to enable accommodation of individuals for recreational, educational or leisure purposes. The municipal authorities, in order to introduce this fee, must meet the conditions for specific localities within its territory in order to determine where it can be collected. Then the municipal council should establish, by resolution, a list of the places where these requirements are met. Tax can also be charged in the villages located in areas, which have been given the status of conservation area spa. It shall be granted in accordance with the rules laid down in the Act of 28 July 2005 on health spa, health spas and spa protection areas and the municipalities spa. Travel tax may be collected in the villages which have the status of a health resort. This is also suitable for the conditions specified in the above regulations.

Taxes are collected from individuals staying longer than a day for tourism, leisure or training purposes for each day of stay in such places. In practice, this regulation raises many problems, mainly, how to interpret the term "day" and "for each day."

According to the Administrative Court in Bydgoszcz, expressed in the judgment of 27 April 2011, tax should be collected for each full day of stay of a natural person. The term "day" means a calendar day, or the day counted from midnight to midnight. It begins at 0.00h and ends at 24.00h. According to R. Dowgier

[Gloss 2015] "day" is counted consecutive 24 hours, regardless of the starting point, from which the following calculation begins. The author points out that, by adopting the arguments of the court, a person who resides in the spa, eg. 26 hours (from Monday 23.00h to Wednesday 1.00h), would be required to pay the tax because her residence exceeds the day calculated from hours – 0.00h to 24.00h. But the one who is staying 46 consecutive hours, but not a full day of hours – 0.00h till 24.00h, would not have to pay such a fee. For example, a person arrives to a spa on Monday at. 1.00h and leaves on Tuesday at 23.00h. According to the court, because neither Monday nor Tuesday's visit included a full day of calculated hours - 0.00h to 24.00h, the tax should not be imposed.

A similar view was also presented by T. Wołowiec [Municipal Finance 2011]. In his opinion, a person residing in the village, where the fee is collected, is required to pay for each day for the next 24 hours from the moment of the start of the stay. There is no reason to conclude that the fee should be paid only for full days understood as 24 hours counted from the hour 0.00h to 24.00h.

The obligation to pay the tax becomes a tax liability with the passing of each day. It is not possible to collect tax in advance, the first day for the number of days of stay [RIO resolution in Olsztyn 2007]. Collecting tax in advance for the period, which has not yet passed, means to retrieve the tax debt, despite the fact that the tax did not arise [RIO resolution in Zielona Gora 2005]. For example, we indicate the classical situation which occurs at the cancellation of the resolution of the municipal council in connection with incorrect identification of the issue of levy tax. Pursuant to the Resolution No. 37/2012 of the College of the Regional Audit Chamber in Lublin of 24 April 2012 they annulled the resolution of the Municipal Council Urszulin No. VII/84/2012 of 21 March 2012 on determining the rate of local fees, payment dates and method of its collection by collection, determination of collectors and amount of remuneration for the collection, because it is inconsistent with the provisions of art. 17 par. 1 and art. 19 Section 1 of the upol and Tax Law. College acted as supervisor and adopted resolution No. 33/2012 of 11 April 2012 on the supervisory proceedings against this resolution, considering that it was adopted with a significant violation of the law.

In par. 1 of the resolution, the Council has established local tax collected from individuals residing in the community for more than a day for health reasons- it has been assessed as violating art. 17 par. 1 of upol. Health reasons can be applied for the spa when it concerns the village located in areas where the public was given the status of a spa. According to par. 1 of the resolution tax was established from individuals residing "in the commune Urszulin." According to Resolution No. XI/59/2011 Urszulin Municipal Council of 27 October 2011 on the establishment of the list of towns in the municipality Urszulin, where you can download local tax, this fee may be collected only in certain localities.

Thus, the duty establishing and collecting local tax should be associated with being in the village on the list given in the specified resolution of the Council and not generally throughout the community; This is because it includes other, not mentioned on the list quoted, villages. In addition, in par. 2.1 of the resolution established that the obligation to charge arises on the day of arrival in the village with the fee. In determining the time at which payment of the local Council went beyond the statutory delegation in art. 19 par. 1 of the upol, authorizing the municipal council only to determine the rules for determining and collection and the date of payment and the rate of tax. Moreover, such a definition of the obligation to charge is contrary to the provisions indicated earlier – art. 17 section 1 of the Act, according to which it is collected from individuals residing – in a certain order and towns there – more than a day, and not on the date of arrival.

According to RIO, incompatible with that provision are also the provisions of par. 3.3 of the resolution, according to which the local tax persons referred to in par. 1 shall pay the amount determined on the basis of written or oral declaration of the number of days of stay. Indicated art. 17 par. 1 sets collecting local fees for each day of stay in the indicated places, which means that the amount of that fee shall be determined by the actual rather than the declared period of stay in these destinations. Also, the provisions of par. 4.2 of the resolution were taken in violation of the provisions of the Act – Tax Code, as it was decided that the collector will be accountable to the local tax collected by 10th of the following month with the fees collected in the previous month. That provision of the Tax Code defines the term of payment for tax collectors (the day following the last day on which, according to the provisions of tax law, tax payment should be made, unless the body of the relevant local government bodies appointed later). The provisions of the resolution does not fill disposal that provision, setting instead of later payment deadline for the tax collectors, the maturity of the collector of the collected tax.[1]

## 5. Charging fees

The municipal council may order in resolution conditions for charging the fee through the collection and determine collectors and amount of remuneration for the collection. This is the result of art. 19 point 2 upol. As pointed RIO Wroclaw in the resolution of 21 December 2011 [Sign. 105/2011], the implementation of the powers of the municipal council under art. 19 point 2 impairments should be done by identifying the collectors in the form of a resolution, which marks the

[1] www.lublin.rio.gov.pl/?p=document&action=save&id=1972&bar_id=1827 [access: 1.09.2016].

features individualizing collectors in a sufficiently precise manner, so as not to pose a problem, on whom the duty was imposed.

The case-law emphasizes the need to define the characteristics of individualizing entities. It can be recall here the resolution of RIO in Gdansk, September 8, 2011 [Sign. 241/G322/P/11], which assumes that the action of determining the tax collectors by the council may take place through the appointment of specific entities, for example by mentioning their names, description performed by the individual functions or their positions.

In the case of climate fees it is difficult to indicate collectors by name. As indicated by the Administrative Court in Olsztyn in its judgment of 25 February 2015 [Sign. I SA/Ol 38/15] most effective way of collecting this fee is to establish a tax collector anyone who enables the individual to stay longer than a day by providing accommodation. The court found that in the case of local tax sufficient feature of individualizing collectors may be an indication in the resolution, that these are entities which, for example have or manage resorts, hotels, guesthouses, apartments, farmhouses, camping, campsites. Given the fact that the municipal authority is also the governing authority records of operators, fixing collectors will not cause difficulties. At the same time court stated that according to art. 19 point 2 upol the resolution of the municipal council may indicate collectors by their name without agreement of the entity. Any entity described in the resolution of the municipal council as a collector is required to perform the duties of toll. Indication of collectors by the municipal council does not exclude the application of the law of 29 August 1997 Tax Code. According to this act, a legal person or an organizational unit without legal personality, which is the tax collector is required to determine and report the tax authority a specific person to whom responsibilities will include charging and timely depositing taxes to tax authority.

For example, in Sopot city on the basis of a resolution [Resolution No. XXXVI/499/2014 Sopot City Council] clarified the issue of toll collection by collectors and their remuneration: "4. Toll charges are made on printed paper used to receive cash in collectors units or on printed paper made by City of Sopot. The fee collectors should make a payment of the fee to the account of Sopot City Hall No. 84 1160 2202 0000 0000 6194 7954 for the fifth day of the month following the month to which the fee applies and in the month of December to 31 of this month. Collectors salary is 10% of charges and is paid by the City of Sopot within 14 days after issued a bill or invoice. The payment date is the day of debiting the payer."[2]

The municipal council determine by resolution collection and payment dates and amount of fees specified in the Act.

[2] http://g.ekspert.infor.pl/p/_dane/akty_pdf/U79/2014/37/985.pdf#zoom=90 [access: 1.09.2016].

## 6. Exemption from the levy

According to the art. 17 par. 2 upol visitor's and resort taxes are not collected:

– on condition of reciprocity - from members of the staff of diplomatic missions and consular offices and other persons equalized with them on the basis of acts, agreements or international customs, if they are not Polish citizens and have permanent residence in the Republic of Polish,

– from people staying in hospitals,

– from blind people and their guides,

– from the taxpayers of property tax from ownership of holiday homes located in the village,

– from organized groups of children and teenagers.

In practice, a lot of doubt has arisen in connection with the people staying in the hospital spa. The basic problem is the question of whether it is a hospital within the meaning of art. 17 par. 2 point 2 upol.[3] The issued during the term of the Act of 30 August 1991 On health care, it was considered that any plant spa treatment is a health care facility, with the difference that the operating area of the spa and using their natural condition when granting health benefits. Spa treatment plants include sanatoriums and spa hospitals, which must consequently be assumed that the legal status of sanatoriums and spa hospitals is aligned with the status of a healthcare facility. This view has not changed with the repeal of the abovementioned Act by the Act of 15 April 2011 On medical activity (hereafter: UDL). As pointed out by the Administrative Court in Szczecin of 14 March 2013 [Sign. I SA/Sz 921/12], there is no basis for differentiation in the light of impairments hospitals in the general concept of other hospitals of a specialist in the spa. In the opinion of the court in Szczecin, if lawmakers wanted to eliminate spa hospitals with the exemption provided for in art. 17 par. 2 point 2 upol, it is done so expressly in that provision. Meanwhile, the control uses the general term "hospital," without differentiating in any recipe types of hospitals that are or are not exempted [The judgment of the Administrative Court in Krakow on July 7, 2013].

Ministry of Finance commented the case in a letter dated 3 October 2014 [Sign. PL/LS/838/9/SIA/14/RD88286]. According to the Ministry, the Law on local taxes and charges does not differentiate people staying in hospitals because of the purpose of the stay and the type of services. Therefore, pursuant to art. 17 par. 2 point 2 upol, persons residing in the spa hospitals are not obligated to pay fee [The judgment of the Administrative Court in Szczecin on July 4, 2014].

[3] http://samorzad.pap.pl/depesze/rio/131873/Nielegalna-naleznosc--Oplata-uzdrowiskowa-pobierana-w-szpitalach-jest-niezgodna-z-prawem [access: 1.09.2016].

The Act of 14 May 2014 on local taxes and fees in the art. 17 par. 2 point 2 uses the general term hospital without differentiating in any recipe types of hospitals that are or are not exempted. Hospital stays notion of collective, broader, which includes its various types. Should be regarded as unfounded argument to exclude from the notion of the hospital – hospital spa, due to the type of service. spa municipalities have an obligation to their own tasks associated with maintaining therapeutic function. Municipality spa in order to accomplish the above tasks, have the right to charge a fee by the rules specified in separate regulations. The legislator decides on the collection of such fees, and separate regulations here are the provisions of the Act on local taxes and charges, which in the art. 17 par. 2 point 2 provide relief from these charges people staying in hospitals, making no exception for spa hospitals.

As pointed out by Administrative Court in Szczecin in its judgment of 14 March 2013. I SA/Sz 921/12, the use of the phrase "hospital", whether in art. 2 par. 1 point 1 of the Act of 30 August 1991 on health care, whether art. 2 point 10 of the Act of 15 April 2011 on medical activity or art. 8 of the Act on the spa, or in the most important for the present case of art. 17 par. 2 point 2 of the Act of 12 January 1991 on taxes and local fees, offers no reason to differentiate hospitals because of the type of services services or the place of their provision. It should also be pointed out that in accordance with the provisions of the Constitution (articles 167, 168, 217) the municipal council may make other exemptions, but no individual exemptions or mixed exemptions. It should also be noted that the exemptions specified in upol are a closed list.

## 7. Summary

Local fees supply local budgets. Among them can be distinguished visitor's and resort tax. Their collection is dependent on the existence of certain factual circumstances. The problem poses the question of resort tax of people staying in hospitals in spas – however jurisdiction, clearly indicates that such a facility is a hospital in the strict sense, and therefore of its patients, on the basis of the Act on fees and local taxes the tax should not be collected. Fees visitor's tax spa and cannot be combined. Toll rates shall be adopted by the municipal council and charged by clearly defined tax collectors.

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## Opłaty lokalne na przykładzie opłaty miejscowej i uzdrowiskowej

**Streszczenie.** Uzdrowisko jest miejscem, gdzie prowadzi się leczenie kuracjuszy, przy założeniu z korzystania i zachowania naturalnych produktów medycznych, dzięki którym dane miejsce uzyskało status uzdrowiska. Opłaty lokalne: miejscowa i uzdrowiskowa zasilają lokalne (gminne) budżety. Niniejszy artykuł prezentuje kwestie związane z prawnym statusem uzdrowisk w odniesieniu do opłat z nim związanych, nakładów na kuracjuszy (ich uchwalaniem czy pobieraniem). Powinny one być przyjmowane przez radę miasta/gminy i pobierane przez wyraźnie wskazane podmioty, tzw. inkasentów. Przedstawienie zobowiązań związanych z opłatami lokalnymi zostało dokonane na podstawie metody dogmatycznej, analizy przepisów prawnych i wybranego orzecznictwa.

**Słowa kluczowe:** uzdrowisko, opłaty lokalne, opłaty uzdrowiskowe