

## Los derechos en el sistema tributario mexicano

*Rights in the mexican tax system*

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### Resumen

El presente estudio pretende analizar la contribución fiscal denominada Derechos y su incompatibilidad con los principios que establece la Constitución Política de los Estados Unidos Mexicanos y el Derecho Tributario. Veremos su origen, definición y la forma como opera en las leyes mexicanas. Dicha contribución ha sido impuesta por el Estado, en un acto que puede calificarse de lesivo a los intereses del contribuyente.

**Palabras clave:** impuestos, derechos, incompatibilidad, falacia, principios económicos y Constitución.

### Abstract

This study aims to analyze the fiscal contribution called rights and its incompatibility with the principles stated by the Political Constitution of the Mexican United States and Tax law. We will see its origin, definition and shape as operates in Mexican laws. This contribution has been imposed by the State, in an act that can be described as harmful to the interests of the taxpayer.

**Keywords:** taxes, duties, incompatibility, fallacy, economic principles and Constitution.

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## Introduction

Tax law is a branch of public law which is responsible for studying the origin, transmission, modification and extinction of the tax legal relations between individuals and the State. Its purpose is to raise government revenue, while the citizen or taxpayer obligation is to divest a part of their heritage to meet collective needs.

In our country, the Fiscal Code of the Federation in its article 2 classified the contributions in: Taxes, Social Security Contributions, Improvements and Rights Contributions.(1) This article aims to analyze the figure "Rights", which throughout history has been implemented in almost all the tax systems of the planet, and demonstrate its legal inconsistency with arguments to violate the General principles of taxation.

Before reaching this conclusion, we will discuss concepts and definitions that various scholars, doctrinaire and scientists have about the matter: how they have spoken and what has been his stance regarding temperament, nature and essence of this contribution? To do this, reviewed the legal, constitutional and universal principles on which any imposition of assessment must hold, as has been mentioned in all international conventions of Tax law. Finally, confronted the tax figure with the primordial principles of taxation, in order to determine whether this meets them or not; if not, we could be facing a damaging to the taxpayer Bill. In the conclusions we will set the boundaries of the argumentative lines of the Legal Rights fallacy.

## **DESCRIPTION OF THE METHOD**

The methodology used was based on technical literature, documentary and field research. The useful bibliography was different authors, Internet, brochures, archival records; also for fieldwork interviews and questionnaires were applied, with the exploratory-descriptive, with quantitative and qualitative methodological approach, based on observation, review and analysis of content related to the current tax system, allowed precise facts and describe the phenomenon.

## **DEVELOPMENT**

Many times we wondered why the state, using the tax figure, monopolize certain activities that only this, in exercise of its sovereignty is concerned carry out, thus committing various atrocities the assets of the particular.

### 1. What makes the doctrine concerning the Rights.

But what are the rights? (Taxa or charges as known in other legislation). According to some Mexican and foreign doctrine, are the following:

The fees and taxes are estatuidas by law, that individuals and corporations must pay the state for benefit directly with the public services provided in the cases and conditions set by the legislation contributions. The provision prescribed by law and demanded by the labor administration, in payment of administrative services or use land on which the State exercises monopoly power.

The teacher Achille Donato Giannini, in his Institutions of tax law defines as "the rate is the money to be paid to a public body". It is a law, and to the extent that this is established, due to the performance of an activity of the entity itself which particularly affects the forced mode.

Carlos M. Giuliani Fonrouge, in his Financial Law, states that the rate is "the cash benefit compulsively required by the State under the law, by performing an activity that particularly affects the obligor". Therefore, we can affirm that rights are contributions set a standard that must pay the state all individuals and / or entities that benefit directly by the public services they receive, to enjoy or dispose of property, public domain.

### 1. *Features*

- The service must be provided because the governed has asked the government and this should lend in the field of government that applies.
- must be adhered to the principle "Nullum tributum Sine Legue", ie, their collection should be based on a law and payment, therefore, is required.
- The provision must be proportionate and equitable, according to constitutional principles of contributions.

2. *Classification of Rights under Mexican law.*

According to its characteristics can be:

- a) To receive the services provided by the State acting under public law.
- b) use or utilize public property.
- c) By providing exclusive state utilities in some decentralized agencies in the enforcement of federal legislation.

These characteristics are taken from Mexican law and basically why has distinguished collection of this contribution in our country. The federal government, in order to control public administration in the Federal Law, established in detail a number of concepts.

3. The constitutional principles of contributions in our Constitution.

The rights, being a kind of contributions, should keep the same constitutional principles of Article 31, section IV of the Constitution of the United States of Mexico, principles, of course, apply differently from other contributions, for eg taxes.

The exercise of the taxing power and performance of the authorities in this matter must follow certain guidelines that the constitution and the laws. It is conceivable that the authority can act at its discretion, without observing legislative and administrative rules in the exercise of their functions.

The constitutional principles of taxation concern:

1. Principle of legality.
2. Principle of proportionality
3. Principle of equity.

**5.- Rights under Mexican law**

The Federation Tax Code, Article 3 1938, defined the rights and the consideration required by the government in payment of administrative services rendered.

The Tax Code of the Federation of 1967, defined them as "the consideration required by the Public Authority under the Act, as payment for a service."

Let us see the definition given our current Tax Code of the Federation, which is defined in Section IV:

*Rights are contributions required under law for the use or exploitation of public property of the Nation as well as receive services provided by the State in its functions under public law, except when supplied by decentralized agencies or decentralized bodies, when in the latter case of considerations that are not provided for in the Federal Law. Rights are also contributions by decentralized public bodies by providing exclusive services of the State.*

*The preamble to the Federal Law explains that have been excluded from it "various fees that have been gaining rights to the character without the other, and they really are products, not correspond to the functions public law but by private law. In Article 1, the Federal Law provides that the rights established by this law for the provision of public services or the use or enjoyment of public property will be charged.*

DE LA GARZA Sergio Francisco, "Financial Law Mexicano", Porrúa, Mexico, 1986.

*Moreover, Article 3 of the Tax Code of the Federation 1981, defines products as consideration for services provided by the State in its functions of Private Law, as well as the use, enjoyment or disposal of assets of the private domain.*

The model of the Tax Code for Latin America says the rate is the tribute whose duty is to actually rendered operative event or potential public service an individual taxpayer. Your product should not have a destination outside the service constitutes the budget of the obligation. Not rate the consideration received in payment user not inherent in the state services. "

The Uruguayan Tax Code (Article 12) says that the tax rate is state to the taxpayer; your product must not have a foreign correspondent for the public service and keep a reasonable equivalent thereof needs. "

Rights, are second in importance after income taxes, these usually denominárseles in other countries (Spain, Italy, and South America) rate or taxa.

This legal definition, we highlight several basic elements:

The first element is that it has an obligation to pay this contribution, when a particular make or use of public property of the Nation.

Are public property of the nation those contemplated in Article 2 of the General Law of National Assets (LGBN):

1. The common use;
2. The stated in Articles 27, paragraphs fourth, fifth and eighth, and 42, section IV, the CPEUM;

3. listed in Section II of Article 27 CPEUM, except those included in Section II, Article 3 of this Act;
4. The seabed and subsoil of the territorial sea and inland marine waters;
5. buildings used by the Federation to a public service that actually own use for this purpose and matched these, according to law;
6. The historical and artistic monuments, movable and immovable, of Federal property;
7. movable and immovable archaeological monuments;
8. vacant land and other property held by the inalienable and imprescriptible law;
9. land reclaimed naturally or artificially sea, rivers, streams, lakes, lagoons or estuaries of national property;
10. Easements, when the dominant tenement is any of the above;
11. The furniture of federal property which by their nature are normally not substitutable, as documents and records offices; manuscripts, incunabula, editions, books, documents, periodicals, maps, plans, brochures and important or rare prints and collections of such property; ethnological and paleontological pieces; the type of wildlife specimens; scientific or technical collections, weapons, numismatic and philatelic; files, fonograbaciones, movies, photo files, tapes and any other object containing images and sounds, and artistic or historical museum pieces; and
12. The wall paintings, sculptures and any artistic work incorporated or permanently adhered to the property of the federation or assets of the satellite bodies whose conservation is of national interest.
13. meteorites or meteorites and all minerals, metal, stone or mixed nature objects from outer space, recovered in Mexico under the terms of the respective regulations.

But what has established the judiciary from our analysis ?:

**RIGHTS. ARTICLE 5 °, SECTION I, CONCERNING FEDERAL LAW TO ESTABLISH THE FEE TO PAY FOR THE ISSUANCE OF CERTIFIED COPIES OF DOCUMENTS, THE PRINCIPLES OF PROPORTION VIOLA AND TAX EQUITY (APPLICABLE LAW UNTIL 31 DECEMBER 2006).**

In the case of fees for services, tax principles of proportionality and fairness are met when the amount of the fee keeps reasonable consistency with the cost to the state having the realization of service, plus the cost should be equal to that receive the same service. This is because the real object of public activity translates into performing acts that require a uniform administration effort; hence the fee must look at the type of service already provided its cost, ie, there must be a correlation between the cost of public service provided and the amount of the fee. In that sense, it is concluded that article 5, section I of the Federal Law, in force until December 31, 2006, to provide that in the case of the issuance of certified copies of documents, per letter size sheet or eleven dollars craft national currency are payable violates the principles of proportionality and tax equity contained in Article 31, Section IV of the Constitution of the Mexican United States. This is so because if taken into account, first, that the application for certified copies implies for the authority specific obligation to issue them and certify them and, on the other, that service is an instantaneous act as it is depleted in the same act that is performed without last longer, it is clear that the price charged to the governed is inconsistent with the cost to the state having the provision of that service; especially the correspondence between this and the fee should not be construed as in private law, whereas the purpose of issuing certified copies should not imply obtaining any profit.

Amparo under review 153/2007. Maria de Lourdes Torres Chimal. April 11, 2007. Unanimity of votes. Absent: José de Jesús Gudiño Pelayo. Speaker: Olga Sánchez Cordero Garcia Villegas. Secretary: Mariana Mureddu Gilabert.

Amparo under review 230/2007. Ramón Gómez Pérez. April 25, 2007. Unanimity of votes. Absent: José de Jesús Gudiño Pelayo. Speaker: Sergio A. Valls Hernández. Secretary: Joaquín Sánchez Cisneros.

Amparo under review 434/2007. Omar TecalcoAlquicira. August 8, 2007. Five votes. Speaker: José de Jesús Gudiño Pelayo. Secretary Rogelio Rodríguez Alberto Montoya.

Amparo in Review 37/2008. Elias Ramos Ortega. February 20, 2008. Five votes. Speaker: Sergio A. Valls Hernández. Secretary: Rafael Vazquez-Mellado Mier y Teran.

Amparo under review 176/2011. María del Rosario Salazar Moon. May 11, 2011. Five votes. Speaker: Guillermo I. Ortiz Mayagoita. Secretary: Lourdes Margarita García Galicia.

Thesis law 132/2011 (9a.). Adopted by the First Chamber of the High Court, in a private meeting of October 19, two thousand eleven.

[TA]; 9A. Time; 2a. Sala; S.J.F. and Gazette; XXIX, May 2009, p. 270.

**RIGHTS. ARTICLE 29-B, SECTION I, POINT a), POINT 1 CONCERNING FEDERAL LAW, REFURBISHED BY DECREE PUBLISHED IN THE OFFICIAL GAZETTE OF THE FEDERATION ON 24 DECEMBER 2007, VIOLA TAX PRINCIPLES OF PROPORTION AND EQUITY.**

The indicated precept, by requiring taxpayers required to pay the fees for the initial registration or extension of the shares issued by Public Listed Companies in the National Securities Registry, with a share of 1.4191 per thousand for the first \$ 520'376,695.00 of equity of the issuer, and 0.7096 per thousand for the surplus without the rights to pay for this item are greater than \$ 6'122,079.00 violate the taxation principles of proportionality and fairness contained in Section IV of Article 31 of the Constitution the United States of Mexico, by virtue of their calculation is not attended to the type of service provided or at cost, but oblivious to these elements, which causes or service for the same initial -Registration enlargement on taxpayers pay more or less depending on the equity of the issuer, also receiving different treatment for the same service, because although it will be the same for all users, the amount payable varies depending not an additional element to its cost but oblivious to the latter, as is said equity.

Amparo under review 126/2009. Ekco, S.A.B. May 6, 2009. Five votes. Speaker: Mariano Azuela Güitrón. Secretary: Ricardo Manuel Martínez Estrada.

**CONCLUSIONS**

In our view, this contribution is merely a pretext for an economic charge that damages the economy of person requesting the service and shall cleave resources. This fee is often inappropriate and disguises "good law" legal system called Federal Law, disregarding any legal ethics in public finances.



The taxpayer has no choice but to request the service to the state because of legislative provision is the only one who can provide it. Furthermore, it is required to perform certain necessary for our daily work activities, making it compulsory purchase; for example, when processing your passport, driver's license or birth certificate.

As any contribution borne by the governed, it must comply with the fundamental principles of our Constitution, which are proportionality, fairness, legality and for the public spending.

The State must not have a lucrative rights to collect end, however, are doubtful prices established in the Federal Rights Act by failing to justify its relation to the cost of the service provided to the amount of the collection, leaving uncertainty legal the taxpayer of the tax relationship and often violating the principles of proportionality and fairness.

It should be clear that the recovery of Rights is not a function of profit, but spending to do the State to provide the service. In our country there is another contribution that was created based on the benefit to the taxpayer, called "Contributions Improvement" another tax figure of dubious reputation, and is not in our interest to analyze here.

But what happens when this figure is perverted in practice? Consider some examples:

When a passport is requested, the cost of paying law varies according to the years that this is effective, but does the Mexican state it is harder to invest in materials such as paper, ink or human resources for capturing therein within 3, 6 or 10 years? The answer is that the cost to the State to issue the document itself is the same but the terms vary.

Another example: when we requested a driver's license in the states, charging that varies depending on the term of its validity, not the actual cost that the state has to disburse who requests it.

The above examples suggest violations of proportionality and equity, because they make distinctions between those applying exactly the same service, disproportionately charging taxpayers for strictly necessary document. Although we assume that the rate of recovery is fixed in proportion to what it costs the state to provide the service, the fact is that we are not legally insurance so.

The dangerous thing about this figure is that the state can happen any number of mandatory activities for citizens and why this would have to pay a cost that matches are not sure what it costs to public administration provide it. As mentioned before, the payment of taxes is a resource that serves to operate the governmental apparatus, and rights are an extra payment for services provided by the government, making it possible arbitrariness of fiscal power.

Therefore we can then think that for Rights not become a fallacy or legal fiction must meet the following:

The service must be provided at the request of the user, but should be analyzed carefully the activities subject to such payment so that it does not become a compelling excuse by those who have the power to collect.

The collection should establish a law, but also must be based on economic studies to determine charges, the governed that way you can be certain that what you pay for making such contribution is what really costs the state.

Provision should be proportionate and equitable in relation to the type of service rendered and its cost, ie, there must be a correlation between the cost of public service provided and the amount of the fee.

Hopefully legislators aware of how difficult it is to make payments and disbursements ruled that affect their heritage and also violate their human right to subsistence.

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