

Scientific Journal of Applied Social and Clinical Science

FINES FOR NON-COMPLIANCE IN FORTUOUS EVENT AND FORCE MAJEURE ON TAX OBLIGATIONS IN MEXICO

Rosa Hilda Hernández Sandoval

Autonomous University of Coahuila,
School of Accounting and Administration,
Monclova, Coahuila
ORCID: 0000-0002-0563-5705

Laura Leticia Gaona Tamez

Autonomous University of Coahuila,
Faculty of Accounting and Administration,
Monclova, Coahuila
ORCID: 0000-0002-8411-830X

Gabriel Aguilera Mancilla

Autonomous University of Coahuila,
Faculty of Accounting and Administration,
Monclova, Coahuila
ORCID: 0000-0002-0128-9155

Eric Arturo Torres Hernández

Autonomous University of Coahuila,
School of Accounting and Administration,
Monclova, Coahuila
ORCID: 0000-0002-3264-298

All content in this magazine is licensed under a Creative Commons Attribution License. Attribution-Non-Commercial-Non-Derivatives 4.0 International (CC BY-NC-ND 4.0).



Abstract: The objective of this investigation is to identify the obligation before the Tax Authority to issue receipts to the general public for the origin of a fine for non-compliance. According to Rule 2.7.1.24, now it is 2.7.1.21, this must have been issued and stamped within 72, today 24 hours, obligations that the taxpayer has when issuing the CFDI. The question arises thus: is the authority's fine legal? The authority establishes that taxpayers can use this SAT tool to comply with the obligations of people who do not have their own system. The problem arises when the platform is not in operation, which is very common, especially in the months of the pandemic, which means that the taxpayer is in a state of insecurity when partially fulfilling their obligations. Article 73 CFF: no fine will be imposed when tax obligations are spontaneously fulfilled outside the deadlines indicated by the tax provisions or when an infraction has been incurred due to force majeure or fortuitous event. In literature, it is demonstrated with procedures that lack harmony in articles 83 and 84 CFF, by establishing a fine for complying late with the issuance of the receipt. In methodology, the procedure for the legality of the fine is presented. As a result, it is considered that the authority does not justify in a harmonious manner the articles that gave rise to the infraction. Conclusion that the fine is inappropriate because the fiscal procedure is considered imprecise.

Keywords: fortuitous event, force majeure, fiscal obligations

INTRODUCTION

This investigation is focused on identifying the obligation before the Tax Authority to issue receipts to the general public in order to know the origin of a fine for non-compliance, in accordance with the provisions of Rule 2.7.1.24, currently Rule 2.7.1.21, which consists of the issuance of receipts in operations with the general public, and that the authority through a Miscellaneous Tax Resolution, this receipt must be issued and stamped within 72, today at the latest within 24 hours following the closing of operations carried out on a daily, weekly, monthly or bi-monthly basis and that it is the taxpayer's obligation to issue the CFDI when it is a global receipt (RMF, 2024).

This research was carried out with the idea that the taxpayer knows the legality of the fines so that he is able to comply in form and time according to the tax laws, knowing that these must be as established in article 5 CFF: Federal Tax Code: "the tax provisions that establish charges to individuals and those that indicate exceptions to them, as well as those that establish infractions and sanctions, are of strict application" (Calvo & Montes, 2024).

It was identified that the fine lacks harmony; because there is no congruence in article 83 when it refers to article 84 of the Federal Tax Code in which it establishes the value of the fine. In article 83 of the CFF it mentions: that they are infractions related to the obligation and then in section VII of the same article it mentions in specific part that applies to this cause: "not to issue digital tax receipts over the Internet that cover operations carried out with the general public." Following section IV of article 84, it mentions the assumption of section VII that establishes the value of the fine in subsection a): it establishes the value of the fine from \$15,280.00 to 87,350.00 and mentions that in case of recidivism the tax authorities may.... This is where there are no elements of harmony with the fine in a specific way (Calvo & Montes, 2024).

The authority is charging the fine based on subsection a) of article 84 of the CFF. Which has no relation to the real cause. This cause is that the taxpayer failed to comply with the omission of the digital tax receipt as established by rule 2.7.1.24. Although what the aforementioned article 5 of the CFF establishes is true: they are of strict application. According to the development, a fine must be charged for omitting the requirement of issuing the receipt and specifically establishing it in the tax provisions (Calvo & Montes, 2024).

In addition to the above, it causes harm to the taxpayer because it is the general public and if it were a third party, the law itself establishes that the receipt must be had within the corresponding period, that is, within the year, as established in the first paragraph of section XVIII of article 27 of the income tax law (LISR, 2024).

GOAL OF THE INVESTIGATION

The objective is to demonstrate to the authorities the illegality of the fine for issuing digital receipts outside the established period due to a lack of harmony in the articles of tax laws and the Federal Tax Code.

GENERAL GOAL

Identify the origin of the authority when imposing a fine on a taxpayer for issuing tax receipts outside the established deadline to demonstrate the inadmissibility.

SPECIFIC GOALS

Identify the origin of the fine for not issuing receipts (global receipt). stamped to the general public. Describe the elements that gave rise to the fine to demonstrate its inadmissibility.

JUSTIFICATION

The taxpayer failed to submit the CFDI and the stamp, but did declare the general public's income in due form and on time and paid their respective taxes, justifying that there is no grievance for the authority for failing to comply with the requirement to issue stamps in due form and on time, in the same way there is no grievance for a third party since the CFDI was issued to the general public. Now, the authority may issue a fine for failing to comply with the requirement of omission and stamping, this is not as established in subsection a) section IV of article 84, which is imprecise (LISR, 2024).

DELIMITATION

This research is limited to global digital tax receipts, which correspond to the general public and the respective stamping and knowing what legal requirements it must contain to avoid being the object of an infraction before the Tax Authority.

REVIEW OF LITERATURE

The content of this section presents the conceptualization of Force Majeure, the Federal Tax Code, Income Tax, the Federal Tax Code, the Tax Miscellaneous Resolution, and the Consumer Protection Agency.

CONCEPTUALIZATION

Concept of force majeure

Finally, it is worth highlighting the possible antinomy between force majeure and fortuitous event. Part of the doctrine maintains that force majeure is the event foreign to the debtor (force of nature, act of the prince, act of a third party, etc.). Whereas fortuitous event occurs within the sphere of responsibility of the debtor and consequently would not be liberating. Others believe that

force majeure indicates the insurmountability of the obstacle while fortuitous event refers to extreme origin (UNAM, 1999).

Concept of Taxativity

The legal principle that requires the legislator that the penal laws describe the criminal laws in a precise and strict manner. The principle of legality in the field of state sanctioning law implies that the law describes a strictly determined factual assumption (*lex certa*) (STC 133/1987). The right to penal legality. It includes a guarantee regarding the need for a sufficient normative predetermination of the conducts and their penalties, through a precise classification provided through adequate specification (Juridica, 2014).

Principle of Taxativity

In this criterion it can be concluded that no sanction can be established that is not decreed as an infraction in the law. The taxpayer receives the fine by tax mailbox and the day after the visit, which means that the authority did not even take into account the three days to observe the arguments that the taxpayer presented. And even so, the authority mentions that the taxpayer did not present arguments within the established period, this way the vices that the authority counts on when issuing an unfounded document are observed.

As of March 23, 2020, the federal government has not issued any administrative resolution, decree or other mandatory provision that limits or prevents the development of economic activities that may constitute a force majeure event and has only issued general and non-mandatory recommendations through the Diario technical communication (Catala, 2020).

FEDERAL TAX CODE

Fines will not be imposed, as established by the Federal Tax Code in article 73 CFF, when tax obligations are fulfilled spontaneously, outside the deadlines indicated by the tax provisions, or when an infraction has been incurred due to force majeure or fortuitous event. Compliance will be considered not to be spontaneous in the event that:

I. The omission was discovered by the tax authorities.

Likewise, it establishes, in accordance with section VII of article 83 CFF: Not issuing, not delivering or not making available to clients the digital tax receipts on the Internet for their activities when the tax provisions establish it, or not issuing them without complying with the requirements indicated in this code, in its regulations or in the general rules issued for this purpose by the tax administration service, not delivering or not making available the printed representation of said receipts, as well as not issuing digital tax receipts on the Internet that cover operations carried out with the general public or not making them available to the tax authorities when they require it (Calvo & Montes, 2024).

For the case of subsection a), section IV of the CFF, in its article 84, the following as appropriate:

a). From \$15,280.00 to \$87,350.00, in case of recidivism, the tax authorities may additionally close the taxpayer's establishment preventively for a period of three to fifteen days, to determine said period, the provisions of article 75 of this code will be taken into consideration (Calvo & Montes, 2024).

Here, the procedure is mentioned when the taxpayer is a creditor of a fine for not issuing tax receipts, and mentions the value of the fine when it is presented late, and then in a not at all clear way, establishes section a) in case of recidivism only, this analysis is found in the introduction section.

Now, it is worth mentioning as background that the taxpayer failed to present the CFDI as well as the stamp, but did declare the general public's income in form and time and paid their respective tax, justifying that there is no grievance for the authority for failing to comply with the requirement to issue stamps in form and time.

CONSUMER PROSECUTOR'S OFFICE (PRODECOM).

Now, in article 5. Tax provisions that establish charges for individuals and those that indicate exceptions to them, as well as those that establish infractions and sanctions, are strictly applicable. The rules that refer to the subject, object, base, rate or tariff are considered to establish charges for individuals (CFF, 2024).

The other tax provisions will be interpreted by applying any method of legal interpretation. In the absence of an express tax rule, the provisions of common federal law will be applied supplementarily when their application is not contrary to the nature of tax law.

To justify this fine, it must be specified in the law as established by the concept of taxativity, which is contrary. The rule must be clear and precise to avoid falling into illegal sanctions.

Defends the criteria of article 5 CFF. This figure, the Taxpayer's Defense Office published the criteria on its internet portal. He stressed that the court's determination of illegality is due to the fact that the authority's consideration contravenes article 5 of the CFF. This provision provides that the tax regulations that establish charges for individuals and those that determine infractions and sanctions are strictly applicable (Jurisdictional, 2020).

INCOME TAX LAW

It is observed that there is no symmetry in article 27 for the receipt recipient since the authority allows deductions in the year regardless of when the receipt is received.

According to section XVIII of article 27 of ISR, that when carrying out the corresponding operations or no later than the last day of the fiscal year, the requirements established for each particular deduction by this Law are met. In the case of the tax receipt referred to in the first paragraph of section III of this article, it must be obtained no later than the day on which the taxpayer must file his declaration. Regarding the supporting documentation for the withholdings and payments referred to in sections V and VI of this article, respectively, these must be made within the time periods established for this purpose by the tax provisions, and the supporting documentation must be obtained on said date. corresponding. In addition, the date of issue of the tax receipts for a deductible expense must correspond to the fiscal year for which the deduction is made (Calvo & Montes, 2024).

Deductible fine when it is a case of unforeseen circumstances and force majeure

According to section V, article 148 LISR; for the purposes of this chapter, they will not be deductible. Penalties, compensation for damages or conventional penalties. Compensation for damages and conventional penalties may be deducted when the Law imposes the obligation to pay them due to risks created, objective liability, unforeseen circumstances, force majeure or acts of third parties, unless the damages or the cause that gave rise to the conventional penalty was caused by fault attributable to the taxpayer (Calvo & Montes, 2024)

MISCELLANEOUS TAX RESOLUTION

The rule 2.7.1.24: currently in force 2.7.1.21, issuance of receipts for transactions with the general public. For the purposes of articles 29 and 29-A, section IV, second paragraph of the CFF and 39 of the CFF Regulations, taxpayers may prepare a daily, weekly or monthly CFDI containing the amounts corresponding to each of the transactions carried out with the general public for the corresponding period and the folio or operation number of the receipts for transactions with the general public that have been issued, using for this purpose the generic code in the RFC referred to in rule 2.7.1.26. Taxpayers who pay taxes in the RIF may prepare the reference CFDI on a bi-monthly basis through the electronic application "My Accounts", including only the total amount of the transactions for the two-month period and the corresponding period (Camacho, 2020). For the purposes of the CFDI where the operations carried out with the general public are recorded, taxpayers may send the CFDI to the SAT or to the CFDI certification provider, as the case may be, no later than within 72 hours following the closing of the operations carried out on a daily, weekly, monthly or bi-monthly basis.

The authority mentions as support the RMF of the year 2023, which is annual, and must be in the year 2020 since it is valid annually, it is worth mentioning that the taxpayer responds within the period of three days to justify his defense that the authority mentions that the taxpayer did not respond within the following three days, however (Camacho, 2020).

JURISDICTIONAL CRITERIA FOR FINE WHEN PAYING SPONTANEOUSLY

Jurisdictional Criterion 41/220 approved
4th Ordinary Session 04/29/2020

GLOBAL CFDI FINE. ITS IMPOSITION IS NOT APPLICABLE IF IT IS PROVEN THAT ITS ISSUANCE WAS SPONTANEOUS IN TERMS OF ARTICLE 73 OF THE CFF

Article 29 of the Federal Tax Code (CFF) establishes the obligation of taxpayers to issue digital tax receipts over the internet (CFDI) for the acts or activities they carry out, which must comply with the requirements set forth in said precept, as well as in the various article 29-A of the same ordinance; Likewise, it indicates that through general rules the Tax Administration Service may establish requirements for the receipts that cover operations carried out with the general public, such as that provided for in Rule 2.7.1.24 and the Resolution for 2019, which establishes that for the purposes of the aforementioned articles, the taxpayer may prepare the CFDI on a daily, weekly, monthly or bimonthly basis and that to do so they will have a period of 72 hours following the closing of the operations.

In this regard, the Jurisdictional Body considered that although the taxpayer issued the global receipts outside the period available to do so, that is, outside the 72 hours established by the aforementioned Rule and, therefore, late, but spontaneously, since when the home visit was made to verify compliance with the tax obligations regarding the issuance of CFDI, the taxpayer had already complied with such obligation, without there being prior notification of any action by the authority, consequently, the imposition of fines was not appropriate, since in terms of article 73 of the CFF, compliance, although carried out late, was spontaneous. (Contentious, 2020).

Summary Administrative Litigation. First North-East Regional Chamber of the State of Mexico of the Federal Administrative Court of Justice. 2020. Judgment, related to jurisdictional criterion 56/2017. Jurisdictional criterion 41/2019, -JURISDICTIONAL-CRITERION-2019). http://www.prodecon.gob.mx/buscador_c/buscarcrit/917.

CONCLUSION

It was found that the authority lacks methodological procedures when issuing a fine, because it lacks fiscal support such as: infractions and sanctions are of strict application and the authority is confused when justifying the amount of the fine because it relies on rule 2.7.1.24 of the Miscellaneous Resolution that verbatim specifies the irregularity but when justifying the amount of the infraction it looks at another in this case the Federal Tax Code in its article 83 and 84, that is, it relies on the resolution and justifies the fine with the Federal Tax Code, likewise the jurisprudence is presented that supports the inadmissibility of the fine in case it is presented late even if it is presented on the day of the visit, since it takes effect the next business day.

Likewise, during the monthly period in which the receipt was issued and stamped late, the authority's platform was paused or not

functioning for long periods and the taxpayer remained in a state of insecurity to comply with his tax obligations, thus considering that it was breached due to unforeseen circumstances and force majeure.

It was argued that there is no harm to the authority by issuing it late because the corresponding taxes were filed, declared and paid, therefore a fine is charged for the omission of the tax requirement not being due to income evasion. Now, the receipt does not harm the taxpayer or the third party when deducting because the law itself allows the receipt to be used until the end of the fiscal year.

This is contrary to the principle of taxativity, that is, a requirement of the normative predetermination that must be clear and precise to avoid illicit conduct and therefore avoid sanctions. It is clear that the authority issues infractions without respecting the deadlines, methods and above all tax provisions.

REFERENCES

- Camacho, R. (2020, Marzo 23). TIEMPO PARA ELABORAR CFDI. *RMF, 1 (1) , 1*, INDET. (TEGRACONSULTORES, Ed., & ESPAÑOL, Trans.) GUADALAJARA, JALISCO, MEXICO: TEGRA ED & R.D. FISCAL.
- Catala, A. (2020, Marzo 23). *COVID Producer*. (BASHAM) Retrieved Noviembre 11, 2020, from basham.com.mx: <http://www.basham.com.mx/casofortuito o fuerza mayor>
- CFE. (2024). *SUJETO, OBJETO, BASE, TASA O TARIFA* (Vol. 1). (THEMIS, Ed., & ESPAÑOL, Trans.) MEXICO, MEXICO, MEXICO: EDITORIAL THEMIS, SA DE CV.
- Contencioso, J. (2020, 01 01). *PRODECOM*. (SENTENCIA, Producer, & TFJA) Retrieved 08 10, 2024, from Tribunal Federal de Justicia Administrativa : <http://www.prodecom.gob.mx//buscador C/buscacrit917>
- Juridica. (2014, Mayo 27). *DEJ PANHISPANICO*. Retrieved agosto 12, 2024, from TAXATIVIDAD: <https://dpej.rae.es temaprincipal de taxatividad>
- Jurisdiccional, C. (2020, 04 29). *Prodecom*. (C. P. 2019), Editor, M. C. espontanea, Producer, & Juicio contencioso) Retrieved Agosto 10, 2024, from PRODECOM.GOB.MX: <https://portal.prodecon.gob.mx>
- LISR. (2024). *Plazo para reunir los requisitos* (Vol. 1). (THEMIS, Ed., & Español, Trans.) Mexico, México, México: EDITORIAL THEMIS, SA DE CV.
- LISR, Calvo, E., & Montes, E. (2024). *Aplicacion estricta* (Vol. 1). (THEMIS, Ed., & Español, Trans.) Mexico, Mexico: EDITORIAL THEMIS, S.A. DE C.V.
- RMF. (2024, 08 08). *SAT*. (P. EJECUTIVO, Editor, SHCP, Producer, & Diputados) Retrieved 08 12, 2024, from Normatividad: www.sat.gob.mx/normatividad.RMF RGCE PAGINAS DOCUMENTOS 2023
- UNAM. (1999). *DICCIONARIO JURIDICO* (Vol. 4). (E. PORRUA, Ed., & ESPAÑOL, Trans.) MEXICO, MEXICO, MEXICO: ESPAÑOL.