

The Difference Between Taxation and Administrative Fees From the Perspective of Administrative Law

LIU Xi^{[a],*}

^[a]Ph.D. candidate. School of Law, China University of Political Science and Law, Beijing, China.

*Corresponding author.

Received 16 November 2018; accepted 29 January 2019
Published online 26 February 2019

Abstract

What is tax? What is administrative fee? It is the first question to be proposed in the study on administrative fee. Connotations and denotations of administrative fee could be only determined based on the comparison of administrative fee and tax. The prime difference between tax and fee could be seen from the following three points. First of all, the purpose of collection is different. The purpose or attached purpose for the government to collect tax is to increase fiscal revenues, and offer general and ordinary government services to the public. While the purpose to collect fee is to make up the cost spent in specific services for sake of individuals. Secondly, tax refers to public debts without reciprocal payment, while fee refers to reciprocal payment of specific public services. Thirdly, tax compliant with “capability payment principle” determines tax rate according to “taxation on capability principle” in measuring taxation liability. While by contrast, fee compliant with “user payment principle” or “beneficiary payment principle” determines rate according to “cost or fee compensation principle” or “fee coverage principle” in measuring payment liability.

Key words: Tax administrative fee; Cost compensation; User payment principle

Liu, X. (2019). The Difference Between Taxation and Administrative Fees From the Perspective of Administrative Law. *Canadian Social Science*, 15(2), 65-72. Available from: <http://www.cscanada.net/index.php/css/article/view/10941>
DOI: <http://dx.doi.org/10.3968/10941>

INTRODUCTION

As for the difference between tax and fee, some scholars draw a conclusion in three aspects. Firstly, from the perspective of public goods theory, tax is based on pure public goods, while fee is based on quasi public goods. Secondly, from the perspective of civil society theory, tax is collected forcibly and voluntarily, while fee is collected as per civil autonomy and reciprocal transaction rules. Thirdly, from the perspective of debt model, there exist numerous differences between tax debt and specific fee debt with regard to formation, property composition, content, efficiency and execution. (Liu & Xiong, 2017)

Some scholars hold that the fundamental difference between administrative fee and tax consists in the congruity between administrative fee payer and administrative fee beneficiary. In this sense, administrative fee is non-gratuitous. However, such congruity between taxation liability and benefit is not so oblivious or explicit. (Jiang, 2012)

As pointed out by some scholars, although both administrative fee and tax are administrative collection actions imposed by the state to raise fiscal revenues from the society, the difference between the two remains rather significant. In terms of collection subject, the collection subject of administrative fee is scattered in shortage of exclusive agency, while administrative tax is in the charge of exclusive agency. In terms of collection purpose, administrative fee is collected by the government as special expenditure for administrative intervention in the market, while administrative tax is raised by the government as universal administrative expenditure to enrich fiscal revenues. In terms of function, administrative fee is appropriated for particular purposes or particular interests of individuals, while administrative tax benefits the general public by uniform fiscal budget.

Despite the controversy as stated above, scholars have reached a consensus over the difference between tax and fee in terms of collection purpose, reciprocal payment, collection principle, coerciveness, and public goods. The following sections will respectively analyze these aspects in detail.

1. DIFFERENCE IN COLLECTION PURPOSE

1.1 Increasing Fiscal Revenues and Compensating the Cost of Specific Activities

There is no doubt that the purpose of tax is to increase fiscal revenues. From the perspective of safeguarding state fiscal revenues, Public Finance insists that the purpose of government tax collection should be the increase of fiscal revenues. This is up to the coercive, non-gratuitous and fixed properties of tax. In the field of Tax Law, tax is also collected for fiscal revenues. If tax departs from fiscal revenues to exist as a pure prohibitive means, or is banned in practice, it will run counter to the tenet of tax. (Xiong & Liu, 2004) Public Finance illustrates the fiscal significance of tax as the major criterion in the analysis on tax and non-tax. At the same time, it indicates that if an action totally separates itself from fiscal purposes, but executes pure economic imposition in the form of tax for prohibitive effects, such tax will not be the tax in traditional sense. (Xiong & Liu, 2004) According to Taiwan scholar Prof. Ge Kechang, "tax as the payment obligation prescribed by law must serve for fiscal revenues, or at least be collected for fiscal revenues as a subordinate consideration. Tax not collected for sake of fiscal revenues does not exist at all. As for the prohibition of tax, it is neither for revenues nor consistent with the work right and property right defended by Constitution. In a manner of speaking, it already becomes extinct in modern law-based states." (Ge, 1997)

Comparing with tax, government fee is not collected to increase fiscal revenues. Different from tax which primarily solves the funding source problems in state expenditure, fee is particular expenditure in administrative activities oriented towards specific individuals. Now that the insufficiency of fiscal fund is not attributed to specific individuals, tax should not be compensated by administrative fee." (Liu, 2000) Administrative fee constitutes the regular source of government fiscal revenues. Undeniably, administrative fee indeed compensates government fund at present, but it does not mean that such function has any relation to collection purpose. In other words, although administrative fee objectively makes up government fund, it is still inappropriate to claim that administrative fee is collected to increase fiscal revenues. This should be attributable to its non-conformity with the legitimacy basis of administrative fee.

In 2013, American Tax Foundation issued the report

How Is the Money Used? Federal and State Cases Distinguishing Taxes and Fees written by Joseph Bishop-Henchman. According to this report, the most critical difference between tax and fee should be the purpose of government collection. If the collection purpose is to increase government fiscal revenues, and offer common and ordinary government services to the public, it must be tax. By contrast, if the purpose is to compensate the cost of specific services for sake of individuals, it must be fee. (Joseph, 2013) This criterion of differentiation also has reflection in the judicial precedents of America. This report analyzes the precedents of all states concerning tax and fee, only to find that most state courts have followed this criterion. For instance, in 1992, in case *San Juan Cellular Telephone Co. v. Public Service Commission of Puerto Rico*, San Juan Cellular requested Federal District Court to judge the illegality of Public Service Commission's claim for 3% "regular fee". The pursuit was supported by the court. Afterwards, Public Service Commission lodged an appeal, by defending that the "regular fee" was tax. Moreover, it pointed out that Federal District Court did not have the right of jurisdiction by reference to *Butler* case. Rejected by the Circuit Court of Appeal, it judged that Public Service Commission aimed to compensate its supervision cost by collecting 3% "regular fee" rather than increase government fiscal revenues. In this sense, it was fee instead of tax.

In *Bellsouth Telecommunications, Inc. v. Cobb County* case, Bellsouth needed to install circuit on the public roads of Cobb County, and Cobb County Government collected license fee in accordance with relevant laws and regulations. However, Bellsouth viewed it as tax, and insisted the county government did not have any right to collect tax against Constitution. The court judged that local government had right to rationally collect supervision fee covered by the police power. On the contrary, the tax collection right for sake of revenues must be conferred by the law. The county government had been endowed with the supervision right over the circuit to be installed on the public roads of Cobb County. Therefore, the county government had the right to charge license fee from Bellsouth. It should be noted here that the license fee is used to compensate administrative cost related to the supervision activity, but not to create government revenues. As clearly shown by the record, the county government collects license fee for compensating the actual cost in licensing process. Therefore, it is fee instead of tax.

To sum up, the difference between tax and fee lies first in collection purpose. The action that aims to increase fiscal revenues is tax, while the action that aims to compensate government cost in particular activities for individuals is fee, such as all sorts of license fee, real estate registration fee, etc. The purpose for the government to collect such fee is not to increase fiscal revenues, but to compensate supervision cost instead.

1.2 How to Determine Collection Purpose

Now that the collection purpose is so important, how should people determine the collection purpose of government? This question becomes more urgent especially after the emergence of purpose tax. This paper considers that the first step to determine collection purpose is to check how the revenue will be used. If the revenue is used for the public interests of whole society, then the purpose of collection is to increase fiscal revenues from tax. Whereas, if the revenue is used for compensating the cost of particular government services or interests, then it is administrative fee. Secondly, supposing the purpose for the government to operate a department is to offer service to benefited individuals, and it requires 100 thousand RMB for operation, if the fee collected from benefited individuals approaches the cost, then government collection purpose is not to increase general fiscal revenues, but is to compensate expenditure. If the cost is 10 thousand RMB and the collected revenue totals 50 thousand RMB, then government purpose is to create revenues for state general expenditure but not to merely operate the service supply department.

In *San Juan Cellular Telephone Co. v. Public Service Commission of Puerto Rico* case, Judge Stephen Breyer proposed that the court tended to emphasize the final use of collected revenues while dealing cases related to the debate over tax and fee, by inquiring whether the fiscal revenues were used for general public interests or particular interests of supervised companies or supervision cost of agency. Such principle is proper for numerous cases in history. For instance, in *Schneider Transport, Inc. v. Cattanach* case, the Seventh Circuit Court judged the revenue collected by Wisconsin transport agency from trucks as tax, by claiming that the collected revenue to be used for expressway construction was in the category of general public expenditure. In *Keleher v. New England* case, the Second Circuit Court judged “franchise fee” in public institution as tax, for the reason that collected charge was part of the general fiscal revenues of the city.

While on the other hand, in *Head Money Cases*, the Supreme Judicial Court judged that the \$ 0.5 revenue collected from every passenger was not tax since it was used to compensate immigrant management expenditure; In *Mississippi Power & Light Co. v. U.S. Nuclear Regulatory Commission* case, the Fifth Circuit Court judged that the revenue collected by nuclear regulatory commission was fee instead of tax because it was used to compensate charge in licensing procedures such as “environmental review”, “hearing”, “administrative and technical support”; In *Wisconsin v. Yellow Freight System* case, the Seventh Circuit Court judged the revenue collected by Wisconsin transport agency from trucks as fee rather than tax because the collection purpose was primarily to compensate supervision expenditure and appraise the qualification of trucks.

2. RELATION BETWEEN GOVERNMENT COLLECTED CHARGE AND SUPPLIED SERVICES OR VESTED INTERESTS

Another vital difference between tax and administrative fee rests in the relation between government collected charge and supplied services or vested interests. As a general rule, tax is public debts without reciprocal payment, while fee is reciprocal payment of specific public services. (Xiong & Liu, 2004) Tax is not collected to compensate specific interests. In principle, tax revenue is not bound up with specific management or use purposes, but is generally incorporated into public budget. (Chen Qingxiu, 1997) In another word, because tax is based on the common remuneration for public sacrifice, the government does not directly pay for the public for taxation and spends tax revenues in general payment like national defense, diplomacy, and public security. Such type of payment is non-related to specific individuals, which implies that state payment for sake of public interests does not aim to satisfy or increase personal interests. Comparatively speaking, administrative fee is the consideration payment of specific administrative services or vested interests as the premise. On account of individual remuneration principle, the government collects corresponding consideration from service or interest beneficiary so as to compensate cost. There exists consideration relation characteristic of direct remuneration between collection and payment.

In Finance, tax possesses three prominent properties, including non-gratuitous property. The non-gratuitous property of tax indicates that the state does not have to pay tax revenues back nor compensate taxpayers in any form. (Lu, 2013) In Law Theory, tax is defined to be certain payment shortage of consideration. State fiscal payment for the public, or supply of public goods can not be quantified in legal terms, or act as any certain and executable relief legal right by now. As a result, tax just means sacrifice or obligation or money payment without consideration on the part of tax payers. (Xiong & Li, 2004) In another word, tax has nothing to do with payment. The fundamental difference between administration fee and tax is its gratuitous property. (Zhang, 2014) The gratuitous property of administrative fee suggests interest “reciprocal payment” among subjects in specific relation. It highlights that administrative counterparts are able to earn interests from administrative agencies more or less after paying fee. (Zhang, 2014) To put it simply, there exists reciprocal payment in administrative fee. Accordingly, it is inappropriate for some scholars to equal administrative fee to after tax in non-gratuitous property. (Ying, 1998)

Consideration collected by the government from specific individuals for services or invested interests is actually fee with reciprocal payment. In reality, there

exists a close connection between interests or services favored by individuals and their paid charge. Taking garbage fee for example, garbage processing service is closely related to garbage fee. Such connection is not applicable between national defense, diplomacy, public security and tax. From this view, it can be fitly concluded that determining the existence of reciprocal payment is determining whether there is a close connection between interests or services and paid charge.

It is easy to differentiate tax and fee in some typical cases. However, the boundary between the two turns increasingly obscure especially after the rise of some purpose taxes and special charges in recent years. City maintenance and construction tax is a typical example. Capital of city maintenance and construction tax is exclusively appropriated for the maintenance and construction of city public utilities and facilities. This is totally different from general tax. The purpose of general tax is uncertain as it may be applied in national defense, diplomacy or public security. Why is city maintenance and construction tax a purpose tax instead of fee? In the first place, city maintenance and construction tax aims to provide long-term interests for the city and overall citizens as the source of public improvement capital. Therefore, it does not merely benefit tax payers. All city residents become the beneficiaries of public utilities and facilities, and nearly every person in the city acts as the user of public improvement. However, it should be noted that fee in real sense is not to create benefits for the public, but just in the service of few “payers”, such as city infrastructure supporting fee oriented towards units or individuals involved in newly built or expansion buildings. The government constructs water supply, fuel gas, sewage treatment facilities for the convenience of newly built or expansion building owners. Probably the government ignores whether people really benefit from city infrastructure supporting fees and weakens the intimacy between public paid charge and public interests. As a matter of fact, it is just public improvement cost used to compensate specific real estate interests.

In summary, there are three criteria in defining whether there exists any close connection between public charge and interests or services, including (a) whether government activities increase and meet the interests of specific individuals; (b) whether government merely collects charge from interests beneficiaries; (c) whether collected charge simply compensate activity cost.

3. TAXATION ON CAPABILITY PRINCIPLE AND COST OR FEE COMPENSATION PRINCIPLE

As stated by the second point above, one of the major differences between tax and fee is that tax lacks the property of reciprocal payment and fee is the reciprocal

payment of specific administrative payment. (Chen, 1997) Since tax lacks individual reciprocal payment, it cannot measure the value of reciprocal payment, but can only determine the tax liability of tax payers according to their economic affordability in line with “capability payment principle”. Under this principle, the government needs to evaluate tax payers’ affordability for specific types of tax. (Ge, 2005) On this basis, tax rate is determined by “taxation on capability principle” in measuring taxation liability. As fee includes individual reciprocal payment, it is directly bound up with individual interests. In case of limited state resources, if resource use right is exclusive to specific individuals, the fee generated by individuals or groups should be paid by benefited individuals or groups in accordance with “user payment principle” or “beneficiary payment principle”. The payment liability should be measured with “cost or fee compensation principle” or “fee coverage principle” in principle. (Chen, 1997)

As stated by the first point above, because the main purpose of administrative fee is to compensate the cost of specific activities for sake of individuals, the collection criterion should be determined as per practical cost expenditure. If there is a surplus above the cost, it is suspicious whether the fee is collected to increase fiscal revenues. Hence, “cost or fee compensation principle” demands the match of collected fee with specific activity cost. In above *BOLT v. CITY OF LANSING* case, the Supreme Judicial Court in Michigan judged that the storm water service charge levied by the defendant Lansing Municipal Government was not to simply compensate supervision cost, but to provide long-term beneficiary public improvement for the city and all citizens. Moreover, government revenues exceeded the direct and indirect civil use cost of the storm water service charge in future thirty years. Obviously, because government charge was disproportionate to supplied services and vested interests, it was tax. Taiwan scholar Chen Qingxiu puts forward that “under the condition where revenues above charge or benefit charge consideration are used as general budget, benefit burden may be converted to tax.” (Chen, 1997)

Nevertheless, not all charges should adhere to the “cost or fee compensation principle”. Regulatory franchise charge is an exception. Since it partially belongs to economic regulation inducement subjected to charge, it is free from the restriction of “cost compensation principle”. It is certain that regulatory charge should rigorously abide by legal reservation principle. In addition to its regulatory inductivity functions, such regulatory franchise charge could also build market orders for finite environment resources (Ge, 1997)

4. COERCIVENESS

Tax possesses the property of coerciveness either in Finance or Law. However, it remains controversial about

whether fee is coercive in nature. Some scholars sum up the coercive, non-gratuitous and fixed properties of tax. Comparatively speaking, except fixed property, fee does not possess the other two properties exclusive to tax. (Zhang, 2014) In the opinion of some scholars, “the premise of fee is specific service offered by related department and unit to the society. Although fee is exchangeable, it lacks coversiveness, fixity, gratuitousness. Moreover, owing to its poor organization functions, fee can never be the mainstream source of state fiscal revenues. To the opposite, it only performs the complementary role.”(Li & Xiao, 2002) Some scholars directly point out that “fee is voluntary, but tax is coercive”.³⁵ Some scholars emphasize that “the coerciveness of charge should not be denied just because people can autonomously decide whether to apply for certain service from the government as required. Charge is not generated based on private law contract, but public law liability instead. The formation condition, limit, procedure, duration of charge all take into effect at the sole discretion of state agency. Therefore, charge is coercive with no doubt” (Liu & Xiong, 2017).

4.1 Loophole in the “Voluntary” View of Administrative Fee

Among above opinions, some scholars come up with the thinking that fee is voluntary and tax is coercive. But no reason has been given yet. In American judicial precedents, the court also used to list “voluntariness” as the criterion to different tax and fee. In 1995, in *BOLT v. CITY OF LANSING* case, the defendant Lansing Municipal Government intended to build a new storm water sewage system to separate it from sanitary water sewage water for fear that the storm led to the paralysis of city sewage system and discharged untreated sewage into the river. Accordingly, Lansing City founded a foundation to help establish, operate and maintain the sewage system, and raised 50% capital from residents under the pretext of storm water service charge. The plaintiff BOLT deemed the charge as government taxation in nature which should be decided by public referendum. While the practice for Lansing City to directly collect the charge violated the Constitution. Therefore, the charge was invalid legally. Eventually, the Supreme Judicial Court in Michigan agreed the claim of the plaintiff and judged the charge as tax rather than fee. At the same time, it also indicated three criteria used to differentiate tax and fee, including voluntariness. Since tax is coercively levied by the law, but charge is legally binding on service users who can decide the use of service, storm water service charge in this case does not comply with the “voluntariness” criterion. To be specific, this is because the charge is levied coercively and owners are not allowed to independently determine whether to use the service (storm water sewage system) or control the use of the service.

In *Stewart v. Verde River Irrigation & Power Dist*

case, the plaintiff submitted a permission application to irrigate land and generate power with Verde river water, and paid \$3 permission fee for this. Afterwards, the water commissioner charged \$10970.4 from the plaintiff for final permission. However, the plaintiff demanded refund for many times after payment, wondering whether the charge was or tax. The Supreme Judicial Court of Arizona viewed it as fee and discussed the difference between fee and tax. Tax was coercively levied by the government from offeree without any need to solicit consent, but fee was voluntary all the time because fee payer paid to civil servants to enjoy services and interests non-accessible to other social members. First of all, unless individuals claims the government to afford certain service, they will not be charged anyway. This shows that individuals do not need to pay if they do not ask for service. Secondly, if the payer proposes concrete requirement of service, the government must offer particular interests to the payer different from general public.

In addition to above two precedents, such view could be also found from precedents in other states. For instance, in *Executive Aircraft Consulting, Inc. v. City of Newto* case, The Supreme Judicial Court of Maryland approved that fee was voluntary as individuals had the right to refuse to pay by the non-use of service, interests or privilege. In *Butler v. Supreme Judicial Court* case, the Supreme Judicial Court of Maine presented that voluntariness was an additional property of fee, and fee was the consideration paid by the general public for exclusive interests. More importantly, considering the voluntariness of fee, individuals could avoid payment by refusing the service. In *Eastern Diversified Properties, Inc. v. Montgomery County* case, the court in Maryland ascertained four characteristics of fee, including voluntariness. Therefore, the court judged the “development impact fee” levied by MONTGOMERY COUNTY, MARYLAND as tax, for the reason that the plaintiff did not pay the fee voluntarily. In *Silva v. City of Attleboro* case, the Supreme Judicial Court of Massachusetts supplemented another two conventional characteristics of fee. One of the characteristic was selectivity. Now that payers were able to refuse the use of government services, they could avoid such fee.

Thus it can be seen that the voluntariness of fee enables individuals to independently decide whether to apply for certain service from the government as required, or avoid payment by choosing free government service. It follows that despite the “benefits” of service, individuals have the right of decision. If individuals voluntarily refuse the benefits, they naturally do not have to undertake the liability of payment. But pursuant to this logic, people may also avoid tax as long as they want. For instance, people may avoid consumption tax by refusing consumption, avoid property tax by refusing revenues, and avoid act tax by refusing specific actions.

American Prof. Laurie Reynolds also notice the limitation of such logic because many tax categories may be inferred to be voluntary. For avoiding income tax, tax payers only need to stop earning revenues. (Laurie, 2004) As indicated by American Tax Foundation report *How Is the Money Used? Federal and State Cases Distinguishing Taxes and Fees* written by Joseph Bishop-Henchman, it is partial to differentiate tax and fee by reference to the criterion “voluntariness” because it mixes charge payment and basic service payment. People can voluntarily buy products, but they do not voluntarily pay consumption tax in transaction. It is a voluntary choice to use tollway, but it is not related to the differentiation of fee and tax. Fee is used to compensate the cost of service for payers, but not to increase general government revenues. (Joseph, 2013)

On the other hand, in some cases, individuals do not have any freedom to voluntarily choose service, such as special assessments. As a fee levied for specific real estate, special assessments is used in public improvement that directly benefits specific real estate, such as street, illumination, irrigation system, sewer, sewerage system or flood control facility. Its coerciveness lies in the fact that tax payers cannot freely determine whether to accept the service, and the quantity and degree of service. Especially, the rationality of special assessments is that assessed property obtains specific interests more than general public. The general public should not be required to pay for the specific interests exclusive to the minority, and by the same token, the few beneficiaries should not obtain general public sponsorship. In reality, it is a cost spent in public improvement to compensate specific real estate interests. It is also a coercive charge fundamentally. In *BOLT v. CITY OF LANSING* case, although the Supreme Judicial Court of Michigan proposed the voluntariness of fee, it also admitted difficulties in the application of voluntariness criterion because it forced “9-1-1 emergency fee”, “sewer use fee” and “garbage collection fee” to be questioned. In consequence, the Supreme Judicial Court of Michigan recognized that fee was coercive in some cases. From this point of view, a conclusion may be drawn that the voluntary property of administrative fee was defective.

For this reason, courts in other states of America also gradually deny the voluntariness of fee. In *Sinclair Paint Co. v. State Board of Equalization* case, the government charged a fee from the plaintiff Sinclair lead-based material manufacturer for offering medical service to latent lead poisoning children. Concerning the differentiation of tax and fee in this case, the Supreme Judicial Court of California deemed it as a typical regulatory fee because collection purpose was to compensate government cost in assessing and screening latent lead poisoning children and follow-up service, rather than to pay to Sinclair and other lead manufacturers. Regulatory fee levied by the government with police power did not give interests to payers nor endow payers with privilege. In summary, regulatory fee is not voluntary, but is coercively levied

from payers according to government regulatory planning. In above case, the Supreme Judicial Court of California also refuses to list “voluntariness” as the characteristic of fee owing to the possible legitimacy of coercive fee. In *City of Ocean Springs v. Homebuilders Ass’n* case, the court also implied that the regulatory fee was used to compensate the cost of government in executing regulatory right, and such cost was allotted to subjects who voluntarily or non-voluntarily accepted specific government supervision. The fee covered public expenditures related to inspection, recording and approval. More importantly, the rate was precisely determined by the cost paid by payers for specific regulation.

In *Kootenai County Property Ass’n v. Kootenai County* case, the Supreme Judicial Court of Idaho briefly stated that “the appellor thought fee as the consideration voluntarily paid by payers for specific service, and tax as non-voluntary charge collected for general public interests. But the legislative agency might demand citizens to accept its specific service and levy the charge as per its police power.” This showed the disapproval attitudes of the Supreme Judicial Court of Idaho against voluntariness criterion and its acknowledgement of coercive charge. The Supreme Judicial Court of Colorado also explicitly refuted the voluntary property of fee, claiming that no service fee was voluntary legally. The key to differentiate tax and fee was not the voluntariness of fee. What counted was whether the fee was rationally charged to counteract the general cost of service.

4.2 Coerciveness of Administrative Fee

Since some scholars demonstrate that fee is non-coercive comparing with tax, the paper will firstly analyze the implications of tax coerciveness. As a general rule, tax coerciveness falls into two stages. The first stage is the formation stage where tax is generated coercively and predetermined in legal terms. Tax payers ought to pay tax in response to the regulations in Tax Law. Therefore, tax is coercively levied by the government from counterparts without consent, and counterparts do not have any other choice. The second stage is the implementation stage where the state has the right of intervention if tax payers refuse to pay tax. If tax authority is vested with coercive executive right, it does not have to report to the court. If tax authority does not have coercive executive right, it must file application to the court and request the court to coercively levy tax with civil enforcement. In brief, the coerciveness of tax could be manifested by the two stages. At this point, it is also the case for administrative fee. In the formation stage of administrative fee, the force of formation condition, limit, procedure and duration of administrative fee are all solely decided by state agency, and counterparts do not have any choice for payment. Following the formation of administrative fee, if payers refuse payment, administrative agency also has the right of coercive enforcement or applies to People’s Court for

coercive enforcement. Therefore, under the framework of legal theories, coerciveness of tax also exists in administrative fee. Therefore, the paper considers that it is inappropriate to conclude that fee is not coercive by comparing it with the coercive, fixed and non-gratuitous property of tax.

In summary, it is wrong to differentiate tax and fee by coerciveness. First of all, fee is voluntary. The premise of non-coerciveness is whether people can determine to accept government service at their will. However, regulatory fee, such as bank regulatory fee, security and futures regulatory fee, insurance regulatory fee, does not take the voluntary or non-voluntary acceptance of payer as the premise. Instead, it is coercively levied by the government according to its regulatory responsibilities. Likewise, city infrastructure supporting fee pertains to special assessments or benefit charge from the perspective of Comparative Law. Its coerciveness lies in the fact that the payer cannot freely determine whether to accept the service, as well as the quantity and degree of service. Secondly, under the framework of legal theories, the coerciveness of charge should not be denied because people have the right to independently decide whether to apply for certain service as required. Charge does not generate based on private law contract, but public law obligation instead. The formation condition, limit, procedure, duration of charge all take into effect at the sole discretion of state agency. Therefore, charge is coercive with no doubt" (Xiong & Liu, 2004)

CONCLUSION

Above all, the main differences between tax and fee should be investigated from three aspects. The first one is the difference in collection purpose. The purpose or attached purpose of government tax collection is to increase fiscal revenues, and offer general and ordinary government services to the public. While the purpose to collect fee is to make up the cost in specific services for sake of individuals. Secondly, tax refers to public debts without reciprocal payment, while fee refers to reciprocal payment of specific public services. Thirdly, tax compliant with "capability payment principle" determines tax rate according to "taxation on capability principle" in measuring taxation liability. While by contrast, fee compliant with "user payment principle" or "beneficiary payment principle" determines rate according to "cost or fee compensation principle" or "fee coverage principle" in measuring payment liability.

From the perspective of Comparative Law, Taiwan divides fee into three categories, namely charge, benefit charge and special common tax, and compares it with tax. In view of the insignificant difference between charge and benefit charge, the two are collaboratively referred to as benefit burden. The prime difference between benefit

burden and tax can be proved by two points. Firstly, tax is public debts without reciprocal payment, while charge is reciprocal payment of specific public services. Secondly, since the state should not invest tax in profit-earning activities, it also has no right to charge extra revenues for specific services. This is in strict accordance with the "cost or fee compensation principle" where beneficiaries undertake the cost. It is essentially different from the "user payment principle" and "taxation on capability principle". (Ge Kechang, 1997) special common tax is an evolving fiscal form which has not been defined yet. Whereas, the difference between special common tax and tax is that the former does not support general state fiscal revenues (non-overall planning) nor charge general tax payers. In another word, special common tax should be treated as special state task oriented towards specific groups, and it should not be incorporated into specific fund in government budget. Regardless of the slight difference between benefit burden and special common tax, the difference between tax and fee is similar to above-mentioned three points in this section.

In America, differentiation of tax and fee is a perpetual issue in precedent. However, throughout development for many years, a set of criteria have been formed in this regard: (a). the purpose for the government to collect tax is to increase fiscal revenues, while the purpose to collect fee is to make up the cost in specific services for individuals. (b). whether collected charge is rationally related to government service cost or payers' practical interests. (c). whether government collected charge is only used to satisfy payers' requirements or increase their interests. Although the criterion is expressed in another way, it is consistent with above-mentioned three points in this section in nature.

REFERENCES

- Bloom v. City of Fort Collins, 784 P.2d 304, 310-11 (Colo. 1989).
- Bolt v. City of Lansing, 587 N.W.2d 264, 269 (Mich. 1998).
- Bolt v. City of Lansing, 587 N.W.2d 264, 269 (Mich. 1998).
- Butler v. Supreme Judicial Court, 611 A.2d 987, 990 (Me. 1992)
- Chen, Q. X. (1997). Tax, fee, benefit charge and special common tax. *Lawyer Communication*, December (171).
- City of Ocean Springs v. Homebuilders Ass'n, 932 So.2d 44, 55-56, 61 (Miss. 2006).
- Eastern Diversified Properties, Inc. v. Montgomery County, 570 A.2d 854-855 (Md. 1990).
- Executive Aircraft Consulting, Inc. v. City of Newton, 845 P.2d 57, 62 (Kan. 1993).
- Ge, K. C. (1997). *Discussion on the legal property of money payment liability*. Tai wan, Yuetan Publishing House Co., Ltd.
- Ge, K. C. (2005). *Basic issues in tax law - Finance and constitution*. Taiwan: Angle Press.

- Head Money Cases, 112 U.S. 580, 590 (1884).
- Jiang, L. H. (2012). On the definition of the scope of administrative fees. *Faw*, (7).
- Joseph, B-H. (2013). *How is the money used? Federal and state cases distinguishing taxes and fees*. Tax Foundation.
- Keleher v. New England Tel. & Tel. Co., 947 F.2d 547, 549 (2d Cir. 1991).
- Kootenai County Property Ass'n v. Kootenai County, 769 P.2d 556-57 (Idaho 1989).
- Laurie, R. (2004). *Taxes, fees, assessments, dues, and the "Get What You Pay For" model of local government*. 56 Fla. L. Rev.
- Li, K. M., & Xiao, Z. C. (2002). Discussion on the relation between fee and tax and the legislation of administrative fee. *Zhejiang Social Sciences*, (3).
- Liu, J. W., & Xiong, W. (2017). *Fiscal tax act*. Beijing: Law Press.
- Liu, S. (2000). Discussion on the setting and supervision of administrative fee. *Political and Legal Forum Journal of China University of Political Science and Law*, (3).
- Lu, J. H. (2013). *Finance and tax* (2nd ed.). Beijing: Fudan University Press.
- Mississippi Power & Light Co. v. U.S. Nuclear Regulatory Commission, 601 F.2d 223, 228, 231-32 (5th Cir. 1979), cert. denied, 444 U.S. 1102, 100 S. Ct. 1066, 62 L. Ed. 2d 787 (1980).
- San Juan Cellular, 967 F.2d at 685.
- Schneider Transport, Inc. v. Cattanach, 657 F.2d 128, 132 (7th Cir. 1981), cert. denied, 455 U.S. 909, 102 S. Ct. 1257, 71 L. Ed. 2d 448 (1982).
- Silva v. City of Attleboro, 908 N.E.2d 722, 725 (Mass. 2009)
- Sinclair Paint Co. v. State Bd. of Equalization, 937 P.2d at 1354-55
- Stewart v. Verde River Irrigation & Power Dist., 68 P.2d 335 (Ariz. 1937).
- Wisconsin v. Yellow Freight System, Inc., 96 Wis.2d 484, 292 N.W.2d 361(1980), aff'd, 101 Wis.2d 142, 303 N.W.2d 834(1981).
- Xiong, W., & Liu, J. W. (2004). *Basic theory of tax law*. Beijing: Peking University Press.
- Ying, S. N. (1998). *New theory of administrative law*. Beijing: China Fangzheng Press.
- Zhang, J. S. (2014). *Reason, basis and supervision of administrative fee*. *Administrative Law Review*, (2).