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## ADVERTISING FEE AS A SOURCE OF THE COMMUNE'S OWN REVENUES

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The advertising fee was introduced on the list of commune's own revenues in 2015, and it has been practically collected since 2016. The commune council itself, by means of a resolution, decides to introduce this local public levy. The main elements of the legal structure of the advertising fee are specified in the Act on Local Taxes and Fees, i.e. the object of the fee, entities liable to pay the fee, the maximum fee rate for each day, the exemptions from payment. The commune council is entitled to determine the advertising fee rates for the commune, however not higher than those set out in the Act, and also to introduce additional exemptions and the conditions of its collection by the collectors. The advertising fee consists of a fixed part, which is the lump-sum amount regardless of the surface area of the advertising board or device serving for the advertisement display, and a variable component depending on the surface area of the advertising board or device serving for the advertisement display.

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**JEL Classification Codes:** K34, H71.

**Keywords:** local fee, advertisement, advertising boards, advertising devices, landscaping.

### Introduction

Spatial governance with emphasis on environmental planning, taking into account the landscape value, is one of the tasks of a commune. Pursuant to Article 2 point 1 Spatial Planning and Land Development Act (2003), „spatial governance” means land development resulting in creation of a harmonious space with regulated relations, taking into account all conditions and requirements: functional, socio-economic, environmental and cultural, as well as the aesthetics and composition. One of the instruments supporting spatial

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governance is a public fee charged on advertisement located in public space. The aim of this paper is to present the legislator's motivation for introducing advertising fee on the list of the commune's own revenues and conduct the analysis of the applicable legislation regulating the subject of this fee and regarding charging and collection of this fee. The basic research method shall be the method of legal dogmatics, supplemented with analytical and empirical methods. The scope of the survey included the current legislation, legal academics and the decisions of the regional accounting chambers regarding the resolution-making activity of the commune councils with reference to introduction of advertising fees.

## Reasons for introducing the advertising fee

Advertising fee was included on the list of the commune's own revenues in 2015. In the first place, the Act of January 12, 1991 on taxes and local fees (Act of April 24, 2015) was duly amended (Consolidated text: Dz.U. of 2016 item 716 as amended, hereinafter referred to as TLFA) by setting out the legal construct of the advertising fee. Amendments to the Act on Local Government Revenues of November 13, 2003 (Consolidated text Dz.U. of 2016, item 198 as amended) were made only on November 7, 2015, listing advertising fee among the commune's own revenues (Act of 25 September 2015).

The origin of advertising fee can be sought in the tax on posters and markers valid in 1923–1945<sup>2</sup>. At that time, the municipalities were entitled to collect the tax on brand signatures and advertisements – also the ones placed on buildings, posts, kiosks and similar facilities, as well as the ones handed out – in a similar manner (the so-called tax on posters and markers)<sup>3</sup>. Moreover, the municipalities had the right to collect the tax on advertisements copied by print, mechanically or in any other similar manner (the so-called

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<sup>2</sup> The structure of this tax is set out in Article 17 Act on temporary regulation of the communal finances of August 11, 1923 (consolidated text Dz.U. of 1936 No. 62 item 454 as amended).

<sup>3</sup> The tax on posters was charged on: inscriptions, advertisements, posters and markers of industrial and commercial enterprises and institutions of commercial nature, all personal commercial activity (e.g. doctors, lawyers, engineers), artisan and handicraft shops. The tax on markers was levied on: markers, company emblems (e.g. An artificial shoe hung in front of the shoestore, glasses or binoculars in front of an optician's, cigar or cigarette in front of a tobacconist, etc.), all advertising display cases with objects inside (shoes, furs, metal products, textiles, etc.), lanterns and lamps, provided that they bear advertising labels.

tax on advertisements)<sup>4</sup>. The rural communes could collect the tax on posters and markers and tax on advertisements outside the municipality boundaries. The advertisements published in magazines issued no less frequently than once a month, official announcements, election announcements for public representation, announcements on public hearings and assemblies and advertisements made by persons seeking jobs were exempted from the tax.

Introduction of advertising fee was connected with the obligations of the Republic of Poland regarding the more efficient landscape protection. The member states of the Council of Europe acknowledged the need to protect the landscape and executed The European Landscape Convention on October 20, 2000 in Florence, ratified by Polish President on June 24, 2004 (Government Statement of 21 September 2005). The provisions of the Convention have remained valid since January 1, 2005 (The European Landscape Convention, 2005). The signatories of the Convention undertook to implement the solutions serving landscape protection, including the application of special measures. The provisions of the Convention stipulate that the „landscape” is an area whose character is the result of actions and interactions of human or natural factors. „Landscape protection” means actions taken in order to maintain and preserve significant or characteristic features of landscape so as to direct and harmonize the transformations resulting from the social, economic and environmental processes.

Statutory definition of landscape reflects on the values expressed in the European Landscape Convention. Pursuant to Article 2 point 16e „Landscape” is a space subject to human perception, containing natural formations or the creations of civilisation, shaped as a result of an impact of natural forces or anthropogenic activity. Article 2 point 16f SPLGA also defines „landscape priority”, which is the landscape particularly valuable to society due to its natural, cultural, historical, architectural, urban, or rural or aesthetic and scenic values, and as such demands preservation or specification of the terms and conditions of its development.

The objects placed in public space having impact on the landscape are, among others, the following: street furniture, advertising boards and devices and fencing. In order to ensure the effectiveness of the rules established by means of local law for such facilities, the supporting instruments were introduced, including an advertising fee. This fee should provide the communes

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<sup>4</sup>Tax on announcements was levied on all advertisements that were printed, copied mechanically or in a similar manner.

with a source of additional revenues necessary to finance the actions undertaken to organize public space. Moreover, it was assumed that the obligation to pay advertising fee should be independent of any prospective property tax on advertisement carrier. Protection of the landscape should also benefit from the more strict rules for locating advertisements (Justification of the bill on amendments to some acts in connection with the reinforcement of the landscape protection tools – print 1525 Sejm seventh term).

In the period before the introduction of the advertising fee the boards and devices were the subject of real estate tax. Free-standing advertising device physically attached to the ground in a permanent manner qualified as a building (Dudar, 2012, p. 20), even if it had only been built for temporary use. Advertising boards were subject to real estate tax, regardless of whether they were part of the land, and thus permanently affixed (Dowgier, 2013, p. 37–41). If the boards were permanently attached to the ground within the meaning of the Civil Code, the tax was charged to the land owner. If they were temporary building structures, the tax was borne by the owner of the advertising boards and the owner of the land paid land tax. If the boards were located on the grounds of the State Treasury or the local government units, the land tax and the tax on the advertising boards were charged to the holder of the land (Etel, 2008, p. 71; Etel & Popławski 2008, p. 11).

## **Advertising boards and devices as a subject of advertising fee**

Pursuant to Article 17a paragraph 1 TLFA, the commune council may introduce the advertising fee on the placed advertising boards or devices. The quoted tax law does not define the object of advertising fee, but in this respect refers to the provisions of the Law on Spatial Planning and Development. Pursuant to Article 2 point 16b SPLGA „advertising board” is a material object designed or used for display of the advertisement, together with its structural elements and fixings, with a flat surface serving for display of the advertisement, specifically advertising banner, the advertisement stuck to the windows of the buildings, the advertisement placed on a scaffold, fence or the equipment of the construction site, excluding small items of everyday use utilized for their intended purpose.

The statutory definition of the „advertising device” is constructed similarly to the definition of the „advertising board”. Pursuant to Article 2 point 16c SPLGA, „advertising device” is a material object designed or used for advertisement display together with its structural elements and fixings, different from advertising board, with the exception of small everyday items used for

their intended purpose. The difference between an advertising board and advertising device is actually reduced to a single term, namely the board has a flat surface to display advertising. Advertising devices, however, have surfaces other than flat used for advertisement display. The legislator specifies, however, that there are two types of advertising media falling into one common category, which is a „marker.” According to Article 2 point 16d SPLGA, the marker is the advertising board or the advertising device providing information on the activities carried out on the property the board is located on. Thus, a marker is a qualified form of advertising board (Nowak, 2015, p. 4).

Adoption of the statutory definitions of an advertising board, an advertising device and a marker means that municipalities cannot repeat the provisions of statutes, ratified international agreements and regulations in the local legal instruments. This prohibition stems from § 118 in connection with § 143 of the Annex to the Regulation on „Principles of Legislative Technique”. Violation of this prohibition and introduction of the statutory relations to the resolution invalidates these provisions. Moreover, making changes to the statutory provision and regulating of certain issues in a way different than in the Act is the violation of law. This means that the generally applicable law violates the relevant extent, not only the municipal council regulates once again what has already been regulated in the source of universally binding law, but also modify the statutory provision by the executive act of a lower order, which is possible only within clearly provided statutory authorization (Supervising authority resolution by the Westpomeranian Voivode, 2016).

A board or a device might be considered „advertising” only if they are designed for or serve the purpose of advertising display. The Act on Local Taxes and Fees contains a reference to the definition of advertising adopted in Article 2 Section 16a SPLGA. According to this provision, advertising is dissemination of information, in any visual form, to promote a person, company, products, services, enterprises or social movements. The adoption of such a wide scope of the definition of advertising in order to establish that a particular board or device is used for its display resulted in need to amend the existing definition of advertising formulated in the Act on Public Roads (Act of March 21, 1985).

Before the amendment of the Act on Public Roads, the advertisement, within the meaning of its provisions, was a carrier of visual information in any material form, together with the structural elements and fixings, placed in the field of view of the road users and not a road sign under the provisions regarding signs and signals, nor a sign informing about the public utilities set by the commune. Since the amendment to the Act, i.e. September 11, 2015,

pursuant to the provisions of Article 4 Section 23 Act on Public Roads, the advertisement has been considered to be an advertising board or device placed in the user's field of view, within the meaning of the Act on Spatial Planning and Development, as well as any other medium of visual information, together with its structural elements and fixings, not a road sign (Specified in the provisions of the Minister of Infrastructure and Internal Affairs and Administration Regulation on road signs and signals: Dz.U. No. 170, item 1393 as amended) set by the commune informing about the facilities located along the road, including public utilities, nor a sign informing about the form of monuments protection or information board naming the forms of nature conservation<sup>5</sup>.

Free-standing boards permanently affixed to the ground and the advertising devices are non-building structures, pursuant to the Building Law Act of July 7, 1994 (Consolidated text Dz.U. of 2016, item 290 as amended). The works directly related to „permanent” elements of a building, e.g. permanent installation of advertising boards, are the construction works (Szostak 2010, p. 8). The advertisement is permanently affixed to the ground, despite the fact that the foundation on which it was placed is not even partially located below the ground level. The feature of a permanent fixture to the ground means setting the foundation of the object permanently enough to provide its stability and the ability to counteract external factors which could destroy it or cause a shift or displacement to other position. Whether or not the advertising device is permanently affixed to the ground does not depend on the method of binding with the ground, but whether the size of a specific device, its design, purpose and safety considerations require such permanent binding with the ground (Decision by Voivodship Administrative Court in Gdańsk, 2014).

Pursuant to Article 17a paragraph 5 TLFA, the exemptions from the obligation to pay advertising fee have been introduced. The fee shall not be charged if the boards or advertising devices:

- are not visible from public space (i.e. do not fulfil its basic function, namely transmission of specific information);
- are markers (as long as the marker complies with the terms and conditions of setting street furniture, advertising boards and devices and fences); in practice, this provision may be a source of many interpretative doubts, as – according to the definition formulated in the Act on Spatial Planning and Development – „a marker” is an advertising board or device providing

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<sup>5</sup>They are placed on the edge or in the vicinity of the forms of nature protection, e.g. national parks, nature reserves, landscape parks – cf. Article 115 of the Act of April 16, 2004 on Environmental Protection (consolidated text Dz.U. of 2016 item 2134 as amended).

information on the activities carried out on the property which the board or the device is located on. However, it may be assumed that the exemption from payment of the advertising fee does not cover the advertising boards or other advertising devices, thus jointly meeting two criteria, i.e. not informing about the activities carried out on the property and not located on the property where such activity is carried out;

- are the realization of the obligation imposed by the law;
- serve solely the purpose of dissemination of information (permanently commemorate a person, institutions or events as well as provide information of religious nature, connected with the activity of churches or other religious associations, provided that the board or the advertising device are located within the areas utilized as places of worship and religious activities or cemeteries).

## **Terms and conditions of fixing advertising boards and devices**

The provisions of Article 17a paragraph 1 and 2 TLFA stipulate that introduction of the advertising fee is only the right and not an obligation of the commune council. In this sense, it is a public levy whose introduction is subject to decision of the commune council who uses the constitutionally and statutorily guaranteed power to levy. Therefore, it is necessary to take an appropriate resolution by the commune council to introduce advertising fee. However, it is not necessary to adopt a resolution in which the commune council is to abandon the intention to introduce the advertising fee in the area of the commune. However, such unnecessary items may be found in the content of resolutions adopted by the commune councils (E.g. § 3 Resolution of Wisła Town Council, 2016).

The advertising fee may refer only to the already fixed advertising boards or devices, i.e. those that were actually located in certain places (areas), to which the terms and conditions of fixing street furniture, advertising boards and devices and fencing apply.

The entity authorized to establish such terms and conditions, pursuant to Article 37a SPLGA, is the Commune Council, which shall adopt a resolution in the form of the act of local law for that purpose (Decision by Voivodship Administrative Court in Szczecin, 2016). The resolution establishes the terms and conditions of situating the street furniture, advertising boards and devices and fences, their size, quality standards and the types of building materials used for manufacturing them. This resolution (the so-called advertising resolution) should be separate from the resolution on the local spatial



management plan having a different scope defined by Article 15 paragraph 2–3 SPLGA (Supervising authority resolution by the Silesian Voivode, 2016; Supervising authority resolution by the Westpomeranian Voivode, 2016). As far as markers are concerned, the advertising resolution refers to the terms and conditions of their location, size and number of signs that can be placed on the property by the entity conducting business activity on its premises. In addition, the commune council may, by means of this resolution, prohibit situating the fences and advertising devices, except for the markers.

The advertising resolution applies to the entire area of the commune excluding the closed areas established by bodies other than the minister responsible for transport. The resolution discussed may, however, provide different regulations for different areas of the commune, clearly defining the boundaries of these areas. In this case, the advertising resolution may include a graphic appendix with a description, clearly specifying their boundaries. The resolution should establish the terms and conditions and the term for the adjustment of the street furniture, fences and advertising boards and devices existing on the date of the resolution's entry into force to the prohibitions, terms and conditions set out therein, not less than 12 months from the date of its entry into force.

Advertising resolution can be taken by the municipal council only following conducting consultation in a manner specified in Article 37b SPLGA (Supervising authority resolution by the Pomeranian Voivode, 2017; Supervising authority resolution by the Pomeranian Voivode, 2016). Due to the potentially significant impact of the advertising resolution on the rights of the proprietors, the established procedure of its adoption is referring to the manner of adopting the local spatial management plan. Before adopting the advertising resolution the municipal council adopts a resolution on the preparation of the draft advertising resolution by the commune head (mayor, city president). The commune head (mayor, city president) shall immediately:

- announce the information about adopting the resolution on the preparation of the advertising resolution by the municipal council,
- draw up a draft advertising resolution,
- consult the regional director for environmental protection, the competent authority of the National Fire Service and the province marshal of the draft advertising resolution (if no opinion is made within one month from the date of receipt of the draft resolution, the requirement to consult is deemed to be fulfilled),
- agree upon a draft advertising resolution with the provincial conservation officer (in terms of infrastructure and land development) and with the



minister responsible for the matters of health (in terms of management of the health resort protection areas); the absence of statement within one month from the date of receipt of the draft resolution shall be deemed as the agreement on the wording of the submitted draft,

- announce in the local press and by the means of announcement, and as is customary in the given area, the exposure of the draft advertising resolution for the public review at least 7 days prior to the exposure and expose this project to the public for the period of at least 21 days (collect the comments on the draft resolution at the time of the exposure and for the period of 14 days following the end of the exposure period).

The commune head (mayor, city president) shall immediately consider the remarks submitted by the aforementioned entities and establish a list of remarks that have been declined. The municipal council adopting the advertising resolution simultaneously decides how to respond to comments declined by the commune head (mayor, city president).

Pursuant to Article 37c SPLGA provisions of this Act relating to advertising do not apply to dissemination of information solely serving the purpose of permanently commemorating a person, institutions or events as well as the information of religious nature, connected with the activity of churches or other religious associations, provided that the board or the advertising device are located within the areas utilized as places of worship and religious activities or cemeteries).

The municipal council, by means of a resolution specifying the terms and conditions of situating advertising boards and devices is obliged to observe the provisions of separate laws regulating the placing or prohibitions on placing such boards or devices in specific locations. In this context, the provisions of the Old Monuments Law can be indicated (Act of July 23, 2003). Pursuant to the Article 17 section 1 point 3 OML, prohibitions and restrictions may apply to the cultural park<sup>6</sup> or parts thereof, with regards to the placement of boards, captions, advertisements, and other characters not related to the protection of the cultural park, with the exception of road signs and signs related to the protection of public order and security. The commune council cannot therefore encumber e.g. the managers of the properties located

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<sup>6</sup> Cultural park is a form of cultural heritage protection and pursuant to Article 16 Old Monuments Act it can be created on the grounds of a resolution of the municipal council, following consulting the provincial conservator, in order to protect the cultural landscape and preserve the outstanding landscape areas with historical monuments characteristic for the local building and settlement tradition.

within the cultural park's boundaries with the obligation to ensure that the signs or advertising media located on the wall of the building, occupied no more than a certain part of this wall. The prohibition or restriction regarding the placement of boards, captions or advertisements shall not be understood as an obligation to provide its proper volume (area) (Decision by Voivodship Administrative Court in Wrocław, 2006).

Pursuant to Article 19 section 1b Old Monuments Act, the resolution specifying the terms and conditions of locating the street furniture, advertising boards and devices and fences the following are taken into account in particular: protection of immovable monuments entered in the register and their environment; protection of other historical monuments located in the municipal register of monuments; conclusions and recommendations of the audits as well as the landscape parks conservation plans. Pursuant to Article 36 section 1 point 10 Old Monuments Act, it is required to obtain a permit to place advertising boards or devices on the monument entered in the register from the provincial conservator. Such permit is also required to place advertisements within the boundaries of the city entered into the register of monuments within certain limits (Decision by Voivodship Administrative Court in Kielce, 2013). The decisions regarding such permit are issued within the framework of the so-called administrative discretion. The evaluation within the discretion of the authority whether the investor's intention can obtain the consent should be made taking into account the realities of the particular case, including the condition of the monument and the manner of current use and utilization (Decision by Voivodship Administrative Court in Szczecin, 2008).

## **Entities obliged to pay advertising fee**

The limits for advertising fees were specified in Article 17a section 3 and 4 TLFA. The advertising fee is charged on:

- the owners of real estate or buildings;
- perpetual usufructaries of land;
- spontaneous holders of the real estate or buildings (the assessment whether the legal entity is a spontaneous holder should be based on establishing physical power over the object and establishing the will to exercise the governance for own benefit corresponding to the right to property, regardless of the legal title) (Bieniek & Pahl, 2011, p. 32);
- holders of real estate or parts thereof, or of building structures or parts thereof owned by the State Treasury or local government units, if the tenure results from an agreement with the owner, the Agricultural Proper-

ty Agency or from another legal title, or is without legal title, if there are advertising boards or devices on those properties or building structures, regardless of the fact if the advertisement is displayed on this board or device;

- co-owners or co-holders of real estate or buildings where an advertising board or device is located (in such case the obligation to pay advertising fee is borne jointly and severally by all co-owners or co-holders).

The personal scope of the obligation to pay the advertising fee is determined similarly as in the case of the objective limits of the property tax. This solution is not accidental solution as there are certain relationships between those public levies. Pursuant to Article 17a section 6 TLFA, the amount of the property tax paid on the advertising board or device shall be credited to the advertising fee due on that advertising board or device. The property tax paid will be credited partially (in a situation where the tax amount is lower than the amount of the advertising fee) or in full (if the amount of public levies are equal). The mode of the reimbursement of the specified amount of property tax, shall the tax amount be higher than the amount of the advertising fee, was not introduced. Neither was introduced the settlement of a positive difference in subsequent tax years, due to the fact the property tax is charged in a given calendar year and only for the months the tax liability existed for.

The legislator does not introduce a condition pursuant to which the property tax paid towards the payment of the advertising fee could be credited only in the case of the same entity being obliged to pay each of the aforementioned public levies. They may be, therefore, different entities obliged to pay those public levies. No provision has been made to credit the other tax paid which encumbers the property holding special status (e.g. agricultural or forestry tax) towards the payment of advertising fee. Therefore, it can be concluded that the legislator significantly differentiated the rights of the owners (holders) of different real estates (agricultural, forestry, other).

## **The structure of advertising fee**

Pursuant to Article 17b advertising fee consists of a fixed part and a variable part. The use of the conjunction „and” in the quoted provision of the Act indicates that in the event of introduction of the advertising charge by the commune council, it must be composed of two parts. The commune council therefore cannot accept the structure of advertising fee limited to only one part of the said Act. The fixed part of the fee is a flat rate regardless of the surface area of the advertising board or device serving as display for the

advertisement. The variable part of advertising fee depends on the size of the surface of the board or device serving the purpose of advertising display. Shall the shape of the advertising device prevent the determination of the surface area for advertising display, the fee amount shall depend on the surface area of the side of a cuboid circumscribed around the device.

Each part of the advertising fee is calculated according to the daily rate applicable in a given municipality. The fixed part is calculated taking into account the lapse of days during which the board or the device will be placed in a specified public space. The variable part of the advertising fee is calculated taking into account not only the number of days the board or advertising device is located in the public space, but also considering the surface area intended for advertising display (Nowak, 2016, p. 274).

### **The scope of power of the communecouncil regarding the advertising fee**

In addition to the powers of the municipal council to introduce the advertising fee on its territory already discussed above, and thus a fundamental competence in terms of supplementing the directory of the local public levies, the municipal council also holds other rights directly related to the advertising fee. In general, these rights can be divided into two categories. The first refers to the possibility of shaping the amount of the encumbrance due to advertising fee, while the second deals with the different technical and registration conditions related to the dimension of advertising fee.

The list of these powers of the municipal council was adopted in Article 19 TLFA, and their implementation requires the adoption of a resolution having the status of a local act of law. The commune council specifies the rules regarding charging and collection as well as the payment dates and amount of advertising fee rates, whereas the rate of the fixed part of the advertising fee in 2017 shall not exceed PLN 2.45 per day, while the rate of the variable part of the advertising fee may not exceed PLN 0.20 per 1 m<sup>2</sup> surface area of the advertising board or device serving as the advertisement display daily. These are the maximum rates and the commune council may by means of a resolution set the rates at the same level or in the amount lower than the statutory limit. The content analysis of the selected resolutions adopted by the commune councils shows that in 2017 both the maximum advertising fee (E.g. resolution of Kobylnica Commune Council, 2016; Resolution of Baranów Commune Council, 2016), as well as at fee in the amount significantly lower than the statutory limit (e.g. a fixed part in the amount of

PLN 1.50 per day, and a variable part of PLN 0.15 per 1 m<sup>2</sup>) were set for 2017 (Resolution of Ciechanów Municipality Council; 2016).

Pursuant to Article 19 point 4 TLFA the commune council is entitled to differentiate the advertising fees rates taking into account the location and the size or type of the advertising board and device. The legislator does not, however, enumerate this power of the commune council in Article 20b or Article 20c TLFA regulating the necessity to comply with the regulatory standards for granting public assistance. The advertising fee is associated with the conducted business activity and the differentiation of the amount of the rates on the basis of criteria such as location or type of advertising board or device may possibly result in differentiation of the situation of different entities in a comparable factual and legal situation (Dzięgiel–Matras, Kmiecik & Zenc, 2015, chapter VIII). The absence of proper regulation in this regard is a significant error of the legislator.

Similarly, as in the case of the other local fees (e.g. fair fee, local fee), the commune council may, by means of a resolution, order the collection of the advertising fee and specify the collectors and the remuneration for the collection. Using the powers vested in this regard, the commune council should individualize tax collectors, by specifying (identifying) their name or the business name directly in the resolution. Specifying the collectors by the resolution of the commune council does not need to be preceded by the agreement of the entity to accept the associated duties (Decision by Voivodship Administrative Court in Olsztyn, 2015). Adopting a resolution, pursuant to Article 19 paragraph 2 of TLFA, the commune council is not authorized to determine how to establish a civil law relationship with the collectors, the manner of collecting and recording the fees, the indication of the place of payment of the charged fees or the date of payment of the remuneration (Resolution of the RAC in Szczecin, 2016). The legislator authorizes the municipal council to determine, by a resolution, solely the amount of remuneration for the collection, thus the commune council may not set the conditions for the payment of remuneration, including making it contingent on the collected fees being made on time, settlement of the collected fee handed in, invoice or bill issued. Neither has the commune council the power to determine the date of payment of the remuneration for the collection (Resolution of the RAC in Lublin, 2016).

Pursuant to Article 19 point 3 TLFA the commune council, by means of a resolution, may make other subjective exemptions from the payment of the advertising fee than those mentioned in the Act. Thus, the exemption may only include the subject of taxation (Decision by Voivodship Administrative

Court in Gdańsk, 2014). It is necessary to determine the exemption criterion through identification of the object, and not the subject of this exemption. In any case, if the established standards allows to establish who is subject to the exemption, this exemption is not of subjective nature present, which implies exceeding the statutory delegation resulting from the provisions of Article 19 point 3 TLFA (Decision by Voivodship Administrative Court in Gliwice, 2013).

The commune council may introduce the obligation to provide the tax authority having jurisdiction over the place of location of the advertising boards or devices with a declaration for advertising fee, as well as to specify the date, conditions and procedure for submitting these declarations. In such case, the commune council specifies the template of the advertising fee declaration form which shall include the data of the subject and object of taxation necessary to calculate and collect the advertising fee. The declaration form should contain the field in which the full amount of daily charge of advertising fee may be entered. Separate indication of each part (fixed and variable) of the fee is not enough (Resolution of the RAC in Lublin, 2016).

The power of the commune council also includes the possibility of introducing the method of filing the advertising fee by means of electronic communication. In particular, the commune council shall in such case specify by a resolution:

- the format of the electronic declarations and layout of the information and relations between them pursuant to the provisions on computerization of the entities performing public tasks (Act of February 17, 2005);
- the manner of declarations transmission by means of electronic communication;
- the types of electronic signatures the declarations should bear.

The local government tax authority's confirmation of filing the declaration for the advertising fee by means of electronic communication is executed in accordance pursuant to the provisions on computerization of entities performing public tasks. The official confirmation of receipt should provide for recognition of subsequent changes in the data included in the declaration concerning: the full name of a public entity, which was served with the electronic document; the date and time of entering or transferring the electronic document to the data ICT system of the public entity; the date and time of signing the official confirmation of the receipt by the addressee; the date and time of generating the official receipt confirmation.

## **Final conclusions**

The relatively short duration of the provisions on advertising fee makes local councils very careful in considering the possibility of introducing the public levy on its territory. Their main concern is the negative reaction of entrepreneurs and the real estate owners and other holders who can see introduction of the advertising fee as another tax burden on the business activity or the immovable property owned. It should be noted, however, that the legislator has introduced a special type of partial financial compensation, as the amount of the property tax paid on advertising board or device shall be credited towards the fee due on that advertising board or device. Thus, double encumbrance on the same subject covered by the real estate tax and advertising fee is avoided.

The current legal structure of the advertising fee, which is a type of a local public levy, as well as the powers of the municipal council constituting the power to levy allow to use this fee for the purpose of landscaping in accordance with the standards laid down in the European Landscape Convention. According to this act of international law, landscape plays an important role in public interest in the fields of culture, ecology and social issues and is a resource facilitating the economic activity. A properly planned, guarded and managed landscape can contribute to the civilization progress and the economic growth. The landscape contributes to the formation of local cultures and is an important element of the quality of life of the people inhabiting the urban and rural areas.

The fiscal features of the advertising fee should not therefore dominate other (non-fiscal) functions of this public levy. Determining, by resolution of the municipal council, the terms and conditions of locating street furniture, advertising boards, and devices and fences, their size, quality standards and types of building materials they can be made of can significantly contribute to minimizing the risks for landscape values and limiting the location of various advertising boards and devices in the public space in a virtually uncontrolled manner. The advertising fee should be solely an instrument for the enhancement of the effectiveness of such standards. Establishing such standards in a separate act of the local law is a prerequisite for the subsequent introduction of the advertising fee. For these reasons, it can be assumed that the advertising fee is of secondary nature in relation to the standards of landscaping at the local level.

This statement is confirmed by the analyses of the selected budgetary resolutions of the municipalities showing that the revenues from advertis-



ing fees represent a small share of the municipalities revenues in the total of their budget revenues. The budget of Duszniki–Zdrój Commune, the revenues from the advertising in 2016 (Resolution of the City Council in Duszniki–Zdrój, 2015) had been planned in the amount of PLN 12,000 and their share in total income of the budget (PLN 36.906.587) was only 0.03%. The planned revenues from advertising in the budget of Złotniki Kujawskie Commune (Resolution of the Commune Council in Złotniki Kujawskie, 2015) in 2016 amounted to PLN 30.000, while the total revenues of this budget amounted to PLN 27.163.819, which means the share of revenues from advertising fees amounted to 0.11%. The planned revenues from advertising in the budget of Świdnica Municipality (Resolution of the Commune Council in Świdnica, 2015) for 2016 had been planned in the amount of PLN 100.000, while the total revenue of the budget totalled PLN 62.291.743. The revenues from the levy thus constituted 0.16% of total revenue. The planned revenues from advertising in the budget of Szczawno–Zdrój Commune (Resolution of the City Council in Szczawno–Zdrój, 2015) in 2016 was PLN 110.000, while all budget revenues totalled PLN 27.597.560, thus the share of the proceeds from the fee in the total income was 0.40%. This share significantly increases in the budgets of municipalities with a relatively low amount of total income, e.g. the planned revenues from advertising in the budget of in the Municipality of Gogolin (Resolution of the City Council in Gogolin, 2016) in 2016. The revenue had been planned at PLN 16.300, while the total income of the municipal budget amounted to PLN 1.348.066. The revenues from the levy accounted for 1.21% of total revenues of the budget of the municipality.

In conclusion, the efficiency of this source of the commune's own revenues is relatively low. The commune governing body may, however, shape the spatial order primarily through the instruments of planning and spatial development, establishing by means of a resolution the standards for locating the advertising boards and devices, their size, quality standards and types of building materials they can be made of. The amount of advertising fees and possible exemptions may be no more than the supporting instruments for the applicable standards of planning.

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