

# LEGAL REGULATION OF LAND TAX PAYMENT IN CITIES BY THE CITIZENS OF THE REPUBLIC OF BELARUS

## Abstract

Purpose: analysis of the legislation in force in the Republic of Belarus, regulating the procedure for land tax payment in cities by the citizens of the Republic of Belarus in order to develop recommendations for improving the legislation in this area. The scientific novelty of the article is that it constitutes a comprehensive analysis of the state of legislative regulation of the order of land tax payment in the cities by the citizens of the Republic of Belarus and proposes improvement directions of the legislation regulating the area of legal relations. Field of application: the results of the research can be used in law enforcement by specialists of organizations engaged in the management of real estate, students of law and land management, scientists and teachers researching tax and land law. In the introduction, the Author reviews normative legal acts regulating the procedure of payment of land tax in cities by the citizens of the Republic of Belarus, draws attention to the special status of urban lands for legislative regulation. In the main part of the article the Author presents the content of the main elements of the land tax in the cities paid by the citizens of the Republic of Belarus, special emphasis is placed on the legislative consolidation of benefits for the payment of land tax in the cities for the citizens of the Republic of Belarus. In conclusion are given the main conclusions made by the Author based on the results of the research. The Author suggests ways to further improve the legislative regulation in the field of law.

**Keywords:** real estate, land tax, land plot, land user, cadastral value of land plot, land ownership

## Introduction

Land resources in cities have their own specifics which determines the features of mechanism managing these lands and the realization of citizens' rights to this category of land.

Candidate of legal sciences, Bakinovskaya O.A. notes that urban lands are included in the category of lands of settlements, which occupies the second place in importance in the composition of the land fund of the Republic of Belarus after agricultural lands, and differ in the specifics of the legal regime, which requires understanding and detailed analysis in modern conditions [Bakinovskaya 2006, p. 1].

The specificity of urban land is that they are used for various purposes — residential, administrative, cultural, industrial, environmental, recreational, agricultural and other required for the normal functioning of the city, urban economy, ensuring favorable living. However, the city is a complex socio-economic ecological system and a variety of options for the use of its land at the same time pursue one common goal — to ensure the sustainable development of the city [[www.elibrary.miu.by/journals/item.uj/issue.4/article.13.html](http://www.elibrary.miu.by/journals/item.uj/issue.4/article.13.html) (access 7.08.2018)].

These factors determine the importance of legislative regulation of the order of payment of land tax in cities by the citizens of the Republic of Belarus.

Citizens of the Republic of Belarus can acquire land plots in cities in private ownership, receive them on other real rights, bequeath or inherit, enter into civil transactions with them. However, as the candidate of legal sciences Khotko O.A. emphasizes in his research, the Belarusian legislation establishes restrictions on the emergence of rights to land plots in cities. In particular, the use of land in certain cases depends not only on the land legal capacity, but also on the fulfillment by the subject of certain

conditions – actions to join the members of a country cooperative [Khotko 2017, p. 12], a garage-building cooperative or a horticultural partnership, etc.

The candidate of legal sciences Shahray I.S., conducting research on legal support of access of citizens to land plots, notes that limitation of land resources, their public and social value, increasing demand for the land cause the need for detailed legal regulation to ensure the access to land resources of various subjects [www.elib.bsu.by/bit-stream (access 7.08.2018)].

The analysis of scientific research on the considered subject showed that the principle of effective use of lands fixed in the Code of the Republic of Belarus on Land (that is the principle of effective use bringing economic, ecological or other useful result), was reasonably criticized in the works of O.N. Khomenko [www.law.edu.ru (access 7.08.2018)], Shakhrai I.S. [www.elib.bsu.by (access 7.08.2018)], Shingel N.A. [www.elib.bsu.by (access 7.08.2018)], as not corresponding to the provisions of international legislation and policy documents establishing the basis of sustainable development, the approaches of other sectors of natural resource legislation based on the principle of rational (sustainable) use of natural resources [www.elib.bsu.by (access as of 7.08.2018)].

In accordance with paragraph 1 of Art. 3 of the Tax Code of the Republic of Belarus, the legislative base establishing the order of calculation and payment of the land tax is made by the Tax Code of the Republic of Belarus (Chapter 20) and other regulatory legal acts [Tax Code of the Republic of Belarus of 29 December 2009 N 71-Z (amended as of 30 December 2018)], (the Resolution of the Ministry of taxes and fees of the Republic of Belarus of 31.01.2017 N 2 “About interaction electronically with the payer of taxes, fees (duties)” (together with “the Instruction on the order of maintaining the personal account of the payer”), the decisions of Local Council of Deputies approving the increasing (lowering) coefficients to the rates of the land tax, the order of the Ministry of Taxes and Tax Collection of the Republic of Belarus dated 29.03.2012 N 50 “About some questions of transmission of information about the land and about the decisions that formed the basis for the emergence or transition of the right to land plot, provided for temporary use and not promptly returned to the land, squatted, used not for its intended purpose,” the decree of the Council of Ministers of the Republic of Belarus dated 22.12.2012 N 1194 “On approval of lists of material historical and cultural values, included in the State List of Historical and Cultural Values of the Republic of Belarus, shall be exempt from tax on real estate, and land occupied by what are exempt from land tax and rent for the land owned by the state”, the order of the Ministry of Taxes and

Tax Collection of the Republic of Belarus dated 26.12.2012 N 142 “About establishment of some forms of documents related to the calculation of the tax authorities the income tax from physical persons, the uniform tax from individual entrepreneurs and other physical persons for physical persons, approval of the Instruction on the procedure for filling in the calculation of the single tax from individual entrepreneurs and other individuals for an individual and the procedure for organizing the work of tax authorities to ensure the accounting of individuals - payers of the real estate tax and the land tax”, the resolution of the Property State Committee of the Republic of Belarus of 03.06.2010 N 37 “About the approval of the Instruction on the order of maintaining the register of cost of lands, the parcels of land of the state land cadaster”, the resolution of the Ministry of Taxes and Duties of the Republic of Belarus of 31 December 2010 N 100 “About some questions connected with calculation and payment of taxes from physical persons”, etc.

## Main Part

The use of land in the Republic of Belarus is paid. According to h. 1 Art. 32 of Code of Republic of Belarus on Land of 23.07.2008 N 425-Z the land tax is one of the forms of payment for the use of land plots [Code of the Republic of Belarus on Land of 23 July 2008 N 425-Z (amended as of 24.10.2016)].

Land tax payers are citizens of the Republic of Belarus whose land plots in the cities are on the right of private property, on the right of lifetime inheritable possession, on the right of temporary use, and also accepted by inheritance.

In accordance with Art. 238 of the Tax Code the objects of taxation of land tax are the land plots located in the city and shares in the right to them:

- belonging to citizens of the Republic of Belarus on the right of private property, lifetime inheritable possession or temporary use;
- adopted by them by inheritance;
- other land plots in respect of which, in accordance with the legislation, payers have the right to use;
- loaned and not returned in a timely manner in accordance with the law, willfully engaged in [Tax Code of the Republic of Belarus of 29 December 2009 N 71-Z (amended as of 30.12.2018)].

The right, restriction (encumbrance) of the right to real estate subject to state registration arise, pass, stop from the moment of state registration according to their emergence, transition, termination and are certified by the certificate (certificate) about state registration if other is not provided by the Law of Republic of Belarus of 22.07.2002 N 133-Z State registration of immovable property, rights,

restrictions (encumbrances) of rights to immovable property about state registration of real estate, the rights to it and transactions with it [State registration of immovable property, rights, restrictions (encumbrances) of rights to immovable property about state registration of real estate, the rights to it and transactions with it: Law of the Republic of Belarus of 22 July 2002, N 133-Z (amended as of 8.01.2018)].

In accordance with the Civil Code of the Republic of Belarus (hereinafter-Civil Code), citizens are those who have accepted the inheritance since the opening of the inheritance, regardless of the moment of state registration of the right of the heir to this property, if the right is subject to registration. It is important that a citizen will be a payer of land tax in respect of land located in the city, which he actually uses, even in the absence of state registration of rights to land and documents or information that confirm the right of ownership, possession or temporary use of land.

According to Art. 21(3.1) of the Tax Code payers have the right to use tax benefits if there are grounds and in the manner prescribed by the Tax Code and other acts of tax legislation [Code of the Republic of Belarus on Land of 23 July 2008 N 425-Z (amended as of 24.10.2016)].

Tax benefits are provided for those categories of individuals who need social support.

Currently, all the benefits of land tax for citizens of the Republic of Belarus are in two groups:

- full exemption from tax payment;
- lower than normal tax rates.

In accordance with Art. 239 of the Tax Code there are benefits for the payment of land tax. The following categories of citizens of the Republic of Belarus have the right to receive exemption from land tax in the cities:

- soldiers of urgent military service;
- the citizens performing alternative service;
- participants of the Great Patriotic War [Bakinovskaya 2005, p. 17-20]
- invalids of the Great Patriotic War and invalids of military operations in the territory of other States [Bakinovskaya 2005, p. 17-20];
- participants of the Great Patriotic War [Bakinovskaya 2005, p. 17-20];
- persons awarded orders or medals of the USSR for selfless work and impeccable military service at the rear during the Great Patriotic War [Bakinovskaya 2005, p. 17-20];
- persons who worked at the objects of air defense, local air defense, the construction of fortifications, naval bases, airfields and other military facilities

within the rear borders of the operating fronts, on the front sections of Railways and roads, crew members of the transport fleet, interned at the beginning of the Great Patriotic War in the ports of other States [Bakinovskaya 2005, p. 17-20];

- persons who worked at enterprises, institutions and organizations of the city of Leningrad during the blockade from 8 September 1941 to 27 January 1944 and awarded the medal “For the Defense of Leningrad”, and persons awarded the sign “Resident of the Siege of Leningrad” [Bakinovskaya 2005, p. 17-20];
- the military personnel, including dismissed in a stock (resignation), the military service liable, called on military collecting, persons of the commanding and ordinary structure of law-enforcement bodies and bodies of state security, employees of the specified bodies (including experts and advisers of the Ministry of Defense of the USSR, Committee of State Security and the Ministry of Internal Affairs of the USSR and BSSR), sent by public authorities of the USSR to Afghanistan or other States and taking part in military operations at execution of official duties in these States [Bakinovskaya 2005, p. 17-20];
- servicemen of automobile battalions going to Afghanistan to deliver goods in the period of warfare [Bakinovskaya 2005, p. 17-20];
- military personnel of the flight crew, who made sorties on combat missions to Afghanistan from the territory of the USSR during the fighting [Bakinovskaya 2005, p. 17-20];
- parents, spouse (spouse), not entered (not entered) into a new marriage, military personnel, guerrillas and underground workers, dead or deceased as a result of injuries, contusions, diseases received during the fighting during the Great Patriotic War, as well as military personnel, persons of the commanding and rank and file of the Internal Affairs bodies, the Investigative Committee of the Republic of Belarus, the State Committee of Forensic Examinations of the Republic of Belarus, bodies and units for emergency situations, those killed (dead) in the performance of military or official duty in Afghanistan or in other States where fighting was conducted (as well as missing persons in the areas of warfare), or in the performance of military duties (official duties) [Bakinovskaya 2005, p. 17-20];
- former prisoners of Nazi concentration camps, prisons, ghettos and former juvenile prisoners of other places of detention created by the Nazis and

their allies during the second world war [Bakinovskaya 2005, p. 17-20];

- disabled since childhood due to injury, concussion, injury associated with the fighting during the Great Patriotic War or the consequences of hostilities [Bakinovskaya 2005, p. 17-20];
- pensioners by age.

The order and conditions of appointment of pensions are defined by the Law of Republic of Belarus of April 17, 1992 N 1596-XII "About pension provision" (further - the Law N 1596-XII) according to which citizens achieving generally established retirement age have the right to pension (Art. 11 of the Law N 1596-XII) [Bakinovskaya 2006, p. 13].

- group I and II disabled;

Recognition of a person with a disability is carried out by the Medical and Rehabilitation Expert Commission. The regulations on Medical and Rehabilitation Expert Commissions, as well as the procedure and criteria for determining the group and cause of disability, and for persons under 18 years of age - the degree of loss of health, are approved by the Council of Ministers of the Republic of Belarus or its authorized body.

A disabled person is issued a certificate in the form approved by the Council of Ministers of the Republic of Belarus. The procedure for issuing a disabled person's certificate is determined by legislative acts.

Analysis of the tax legislation showed that the benefits for the payment of land tax for persons with disabilities of group III are not provided.

- other incapacitated citizens of the Republic of Belarus (minor children, as well as natural persons recognized as incapacitated in accordance with the established procedure).

It should be noted that in accordance with Article 29 of the Civil Code, the recognition of a citizen as incapable is carried out by the court in the manner prescribed by civil procedural law. Over the citizen recognized incapacitated guardianship in connection with representation of their interests, including transactions, is established, and decisions are made by his Trustee on behalf of such a citizen [Shakhrai 2015, p. 10].

In cases when pensioners by age, invalids of I and II groups, other disabled physical persons carry out (continue to carry out) labor activity, the specified fact does not entail restriction in granting them privileges on payment of the land tax.

The exemption is granted by:

- land plots located at the place of residence of citizens - in the absence of registration at the place of residence of able-bodied persons.

- parcels of land located not in the residence of citizens and provided with the following purpose: for gardening, collective gardening, country and garage construction - are exempted irrespective of registration in the residence of payers being able-bodied persons; for construction and (or) service of the apartment house - are exempted in the absence of registration in the residential house belonging to payers and located on such parcel of land, able-bodied persons.

It should be noted that able-bodied persons are not considered physical persons temporarily residing at the place of residence of the payers of the military personnel of conscription to the military service, the citizens performing alternative service, and (or) persons serving sentences in places of detention.

- the category of beneficiaries also includes evacuated, resettled, independently leaving the territory of radioactive contamination from the evacuation zone (alienation), the zone of priority resettlement and the zone of subsequent resettlement (including children who were in utero), except for those who arrived in these zones after 1 January 1990, who moved to rural settlements, in the first three years after the decision to grant them land plots;

The settlements located in zones of the subsequent resettlement and zones with the right to resettlement are given in the list of the settlements and objects which are in zones of radioactive pollution approved by the resolution of the Council of Ministers of the Republic of Belarus of 11 January 2016 N 9 "About the approval of the list of the settlements and objects which are in zones of radioactive pollution and recognition become invalid for some resolutions of the Council of Ministers of the Republic of Belarus". In accordance with the Civil Code citizens are those who have accepted the inheritance since the opening of the inheritance, regardless of the moment of the state registration of the right of the heir to this property if the right is subjected to registration. It is important that the citizen will be a payer of land tax in respect of land located in the city, which he actually uses, even in the absence of state registration of rights to land and documents or information that confirm the right of ownership, possession or temporary use of land.

1. Exemption from payment of land tax on such land plots is granted only to the owner (owners) by the legislation on the protection of historical and cultural heritage. In particular, the owner (owners) of historical and cultural value is obliged to ensure its safety and integrity, to prevent destruction and change, not to perform work on this historical and



cultural value without the permission of the Ministry of Culture of the Republic of Belarus, and also to perform other duties established by the legislation [About pension provision: Law of Republic of Belarus of 17 April 1992, N 1596-XII (amended as of 9 January 2017), p. 26].

As a result of the analysis of the current legislation, it is established that the land tax benefits in the form of a reduction in the generally established tax rates are not currently provided for by the Tax Code. These types of benefits are provided by local Councils of Deputies.

2. In accordance with paragraph 2 of Article 230 and paragraph 10 of Article 241 of the Tax Code regional Councils of Deputies or on their behalf local Councils of Deputies of the basic territorial level and the Minsk City Council of Deputies (hereinafter referred to as local Councils of Deputies) have the right to increase (decrease) property tax rates to certain categories of taxpayers: for 2019 - no more than two and a half times; for 2020 and subsequent years - no more than two times. As noted by E.N. Zaretskaya, Chief State Tax Inspector of the Department of taxation of income and property of individuals of the main Department of taxation of individuals of the Ministry of Taxes and Duties of the Republic of Belarus, citizens of the Republic of Belarus, not belonging to the category of persons entitled to exemption from land tax, have the right to apply for tax relief on an individual basis. [Tax Code of the Republic of Belarus of 29 December 2009 N 71-Z (amended as of 30.12.2018), p. 34].

Provision of benefits for payment of real estate tax and land tax to individuals is possible if:

- the object of taxation is not related to the implementation of an individual entrepreneurial activity;
- the natural person - the payer of taxes is in difficult property situation [About pension provision: Law of Republic of Belarus of 17 April 1992, N 1596-XII (amended as of 9.01.2017)].

Period of granting exemption from land tax:

- from the 1st day of the month in which the right to benefit arose.
- on the last day of the month in which the right to benefit is lost.

Exemption from payment of land tax is provided on the basis of documents and (or) information submitted or available to the tax authority.

P. 2.2. Article 239 of the Tax Code establishes that a citizen is not exempt from payment of land tax in the following cases:

- the land plot provided in temporary use and in due time not returned according to the legislation;
- illegally occupied land;
- land used for other purposes [Tax Code of the Republic of Belarus of 29 December 2009 N 71-Z (amended as of 30.12.2018)].

The facts of violation of the order of land use are established by land management services of Executive Committees and then data on the established facts are provided to tax authorities in the location of the parcels of land in ten-day time from the date of entry into force of the resolution of authorized state body in the case of the corresponding offense [Zaretskaya 2018, p. 36].

The tax base of the land plot is established by Art. 240 of the Tax Code and is determined in the amount of the cadastral value of the land plot, except for the cases provided by the Tax Code.

The cadastral value of the land plot is determined in accordance with the legislation on the protection and use of land and depends on its functional use (type of evaluation zone).

Functional use of the land plot (type of evaluation zone) is determined on the basis of the purpose of this site, established by the local Executive Committee [Tax Code of the Republic of Belarus of 29 December 2009 N 71-Z (amended as of 30.12.2018)].

According to Article 240(5) of the Tax Code, the tax base of the land tax is determined in Belarusian rubles as of 1<sup>st</sup> January of the calendar year for which the land tax is calculated. Therefore, for citizens of the Republic of Belarus, to whom the land plot in the city is provided with one purpose, the tax base is determined in the amount of its cadastral value [Tax Code of the Republic of Belarus of 29 December 2009 N 71-Z (amended as of 30.12.2018)].

Cadastral value of the land is determined in accordance with the legislation on the protection and use of land. Information on the cadastral value and area of land plots is provided annually to the tax authorities by the land management departments of the Executive Committees in the prescribed manner.

Data on cadastral cost of the parcels of land are in the register of cost of land parcels of the state land cadastre. Citizens may find information about the cadastral value of land by self-search on the website of "National Cadastre Agency" [www.vl.nca.by (access 7.08.2018)].

To calculate tax base, the area of the parcel of land and its purpose are important, this data according to the decree of the President of the Republic of Belarus of 27.12.2007 N 667 "About withdrawal and providing the parcels of land" (further - the Decree N 667) is specified in the decision of

local Executive and Administrative body about withdrawal and providing the parcel of land.

Payment of land tax by individuals is made on the basis of the notification of the tax authority annually no later than November 15.

In case:

- delivery of a notice by the tax authorities upon expiry of the payment term, the land tax shall be paid by individuals not later than thirty days from the date of delivery of the notice;
- for the parcels of land provided for temporary use and in due time not returned according to the legislation, illegally occupied, used not for the intended purpose - no later than thirty days from the date of delivery of the notice to them.

Citizens of the Republic of Belarus pay land tax on the basis of notification of the tax authority.

The notice is given to the land tax payer (his representative):

- personally;
- by sending it by mail;
- through the personal account of the payer or otherwise electronically (with the consent of the land tax payer).

Payment of the land tax may be done by a citizen of the Republic of Belarus on the territory of the Republic of Belarus by bank transfer or by depositing the due amount of tax in cash in a bank, the tax authority, settlement, rural executive and administrative body or to the postal communication operator.

Payment of the land tax to the budget of the Republic of Belarus by a citizen of the Republic of Belarus who is abroad may be made by international bank transfer.

## Conclusions

The results of the study allow us to conclude that in order to eliminate gaps and conflicts in the current legislation, it is necessary to bring into compliance the norms of civil, land and tax legislation in terms of a unified approach to the moment of emergence and transfer of rights to real estate (in particular, land) in the order of inheritance.

The study shows that the tax legislation of the Republic of Belarus regulating the procedure of payment of land tax in cities is constantly developing. The procedure for calculating the cadastral value of land plots has been improved and, accordingly, the procedure for calculating land tax has been simplified.

There is a trend towards improved electronic inter-Agency information exchange. The consequence of this is that

tax authorities receive promptly information necessary to calculate land tax.

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