

The Influence of the Theory of Behavior Crime, Dangerous Crime, Consequential Crime and Purpose Crime on the False Issuance of Special VAT Invoices.

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ABSTRACT

In the traditional theory of falsely making out special VAT invoices, it is undoubtedly the crime of falsely making out special VAT invoices by changing votes, but different conclusions will be drawn after introducing new intentional crimes and consequential crimes. In this paper, a more reasonable conclusion is drawn by substituting the method of changing tickets into the new theory of intentional crime and consequential crime.

KEYWORDS

Falsely Issuing VAT Invoices by Changing Tickets; Behavior Crime; Intentional Crime; Consequential Offense.

1. INTRODUCTION

In order to make clear the conviction of falsely issuing VAT invoices by changing tickets, we need to make clear four theoretical theories of the crime of falsely issuing VAT, that is, to decide when the crime is completed, which constitutes a behavioral crime, a dangerous crime or a consequential crime, or a purpose crime to fill the loopholes in the law. This has a great influence on the final conviction of the act of falsely issuing votes by changing votes.

2. TAKE THE CRIME OF FALSELY ISSUING SPECIAL INVOICES FOR VALUE-ADDED TAX AS A CRIME.

This view has been recognized and applied in general theory and practice for a long time in the past. What is particularly prominent is that before 2017, a large number of documents can be found in trial practice to support the view that this kind of behavior is recognized. China implemented the tax-sharing reform in 1994, which laid the foundation for the rapid development of our economy and society. In the initial stage of VAT implementation, a small VAT invoice is filled with the amount, and through deduction, you can get real huge economic benefits and get back the state tax that has been paid as public property, but the difficulty and cost of falsely issuing VAT invoices are very low. It only needs to be completed in the form of "simple and convenient" including fake VAT invoices purchased on the roadside. If you write the amount on the purchased fake special VAT invoice according to your own needs, you can realize the function of deduction, thus obtaining illegal, huge and excessive economic benefits. This may be related to the urgent need to further improve and strengthen the invoice management system at that time. As a result, a few unscrupulous enterprises can't stand the temptation of huge economic benefits, don't do physical business, take risks at all, and only engage in specialized false business. At first, the amount of falsely issuing VAT invoices was

millions, tens of millions and hundreds of millions. Combined with the economic and social development and price level at that time, the amount was extremely huge, which posed a serious threat to the implementation of the national tax system and even to the national economic stability and tax protection. In order to ensure the standardized and orderly operation of the socialist market economy and the effective implementation of the national tax system, when the state first formulated the crime of falsely issuing VAT invoices, it was in line with the needs of social and economic development at that time and was quite reasonable. In order to better protect the national tax revenue, the so-called "punishing the country and using the heavy code"[1] as a whole, as long as there is a false act of issuing invoices that are inconsistent with business activities[2], it constitutes the crime of falsely issuing VAT invoices. This understanding of behavioral crime has largely curbed the proliferation of crimes of falsely making out value-added tax. A similar conclusion can be drawn from the analysis of article 205 of the specific provisions of the criminal law before the eighth amendment. Before the Eighth Amendment of the Criminal Law, if the second paragraph of Sub-provision 205 of the Criminal Law involves fraudulently issuing VAT invoices and then defrauding the state tax, a separate aggravating circumstance shall be stipulated and the death penalty shall be imposed.

Through this article, it can be concluded that the false opening stipulated in this law belongs to compound behavioral crime: that is, when the false opening reaches a certain amount, it not only constitutes this crime; After falsely issuing a VAT invoice, it defrauded the state tax, which was an aggravated constitution of the crime of falsely issuing a VAT invoice, and the death penalty was set. This is in line with the expression of behavior crime, which is used to implement the constitution that public property is sacred and inviolable. Behavior crime can deter the crime of falsely issuing value-added tax invoices to the greatest extent and protect the national tax security, which is a component of public property.

This is very close to the crime of robbery in Article 263, Chapter 5 of the Specific Provisions of the Criminal Law. Robbery seems to have caused great threat or substantial damage to personal health, but the ultimate goal of robbery is property. Whether or not the property is finally seized, when the victim is slightly injured, it can constitute a crime. If you rob the property while hurting the victim's body, the act of hurting the victim in front will be included in the robbery and will not be evaluated separately.

There is a similar situation in the crime of kidnapping in Article 239 of Chapter IV of the Specific Provisions of the Criminal Law. The criminal act is also a repeated act, which detains the victim and obtains illegal property through his relatives' concern for the victim. Moreover, the crime of kidnapping is also considered to be a shortened two-line crime. As long as the kidnapping is carried out, even if the next act of blackmailing others is not carried out, it is also considered to be a crime accomplished. According to the understanding of behavior crime, the crime of falsely issuing VAT invoices has similar characteristics. As long as the amount of falsely issuing invoices reaches a certain amount, according to the current regulations, it will reach more than 100,000 yuan[3]. When it is falsely opened and deducted, it infringes on the value-added tax that has been paid to the state. However, falsely issuing special invoices for value-added tax seems to have seriously damaged the tax management order represented by value-added tax in the country, implying a deep viciousness against the country and the people, while its essence is to deduct and defraud the state's taxes by means of falsely issuing invoices, and the ultimate goal of essence is to obtain illegal economic benefits behind it.

It seems that the theory of recidivism can be drawn from the setting of the law. When only the act of falsely making out constitutes a crime, and then falsely making out the tax that has been paid to the state by using the deduction function of the capital increase tax, the second paragraph of Article 205 of the Specific Provisions of the Criminal Law shall be used. However, due to the change of criminal policy to temper justice with mercy, China has greatly reduced the death penalty for non-violent crimes, and the second paragraph of Article 205 of the Criminal Law was deleted when the Eighth

Amendment of the Criminal Law was revised. It has been proved by practice and time that the establishment of falsely issuing special invoices for value-added tax conforms to the requirements of economic and social development at that time, and ensures the settlement of the value-added tax system and its smooth and effective operation. Under the theory of behavior crime, the value-added tax of changing tickets is also a kind of false opening.

Undoubtedly, there is no real transaction of goods, and it is not necessary to examine whether there is a purpose of evading state taxes, nor to judge whether it is dangerous to state taxes. Of course, it is impossible for the way of changing tickets to falsely open up does not meet the standards of third-rate consistency. Under the theoretical framework of behavioral crime, falsely issuing VAT invoices by changing votes is the first part of the crime of falsely issuing VAT invoices in accordance with Article 205 of the Criminal Law, and it has carried out the act of falsely issuing VAT invoices, but it has not carried out the second part of the act involved in the law, that is, through deduction, to achieve the purpose of illegal possession of VAT. Of course, it is undeniable that even if there is no second act, that is, defrauding the paid national tax through deduction, it does not affect that falsely issuing VAT invoices by changing votes should be convicted and punished according to the crime of falsely issuing special VAT invoices. Under the theory that Article 205 of the Specific Provisions of the Criminal Law is a crime of behavior, it is indisputable that the act of falsely issuing VAT invoices by changing votes should follow the guidance of Article 205 of the Criminal Law.

3. THE CRIME OF FALSELY ISSUING VAT INVOICES IS COMMITTED FOR THE PURPOSE.

According to Mr. Chen Xingliang, falsely issuing VAT invoices should belong to the crime of purpose and have the purpose of defrauding the state tax[4]. With the continuous development of economy, the vitality brought by market economy is constantly emerging in generate, and enterprises have to face all kinds of new opportunities and challenges in the complicated market. Paying taxes according to law is originally an obligation stipulated in the Constitution. When citizens and enterprises pay related taxes, the tax authorities also need to give citizens and enterprises a certificate of payment, that is, a tax payment certificate and an invoice. In the field of value-added tax, the tax payment certificate is a special invoice for value-added tax. Because the VAT is deducted at different levels, and the tax base is determined by deducting the output from the input, this VAT invoice not only represents the tax payment certificate, but also has the function of tax deduction, that is, the function of getting back the tax that has been paid to the state. This is a unique function of VAT invoice. Of course, the special VAT invoice can not only prove the tax payment and tax deduction of citizen enterprises, but also have other functions, such as financial management, which can prove the company's performance to a certain extent. Because our country is responsible for investors, it has implemented a strict listing approval system for a long time in the past. Before the implementation of the registration system, listed companies need to meet the basic conditions of profitability for three consecutive years if they want to go public. In order to quickly realize the conditions of listing financing, individual enterprises inflated their performance by means of false invoicing in order to meet the standards. There are also enterprises to obtain bank loans, or to increase the performance after listing, to boost the value of stocks, and to achieve the purpose of listing financing. By issuing VAT invoices, the performance is more outstanding, and it is easier to achieve their illegal purposes. For example, Quanzhou Songyuan Jindi Industrial Co., Ltd. in Fujian Province falsely issued special VAT invoices. This kind of false opening has no purpose of evading taxes, and relevant taxes have been paid in accordance with the relevant provisions on the payment of value-added tax.

This kind of falsely issuing VAT invoices conforms to the behavioral requirements of falsely issuing "three-stream inconsistency", but it has no purpose of illegally occupying state taxes, and has also paid relevant VAT in accordance with the provisions of the Provisional Regulations on VAT. This kind of false opening has brought new problems and challenges to the previous theory of behavior

crime: it does not evade the purpose of national value-added tax, but it conforms to the identification that there is no actual transaction of goods and services. According to the traditional false identification, this is undoubtedly in line with the false identification of VAT invoices. However, with the continuous improvement of the business environment in the form of service economy, in the field of falsely issuing VAT invoices, enterprises with actual business activities falsely issue special VAT invoices for non-tax fraud purposes such as inflated performance, financing and loans, and make a decision not to prosecute according to law and transfer them to the tax authorities for administrative punishment.

4. MAKE OUT SPECIAL VAT INVOICES FALSELY FOR CONSEQUENTIAL OFFENSE.

In Zhang Mingkai's latest book "The Sixth Edition of Criminal Law" and the book published in 2021, which is praised as "too yellow and too thick", the previous view that falsely issuing VAT invoices is a dangerous crime has been changed, and this crime is regarded as a consequential crime[5]. Teacher Zhang Mingkai gave a concrete explanation from the literal expression of the second paragraph of Article 205 of the Criminal Law; Compared with the crime of fraudulently issuing VAT invoices in Article 205 of the Criminal Law, the crime of fraudulently issuing VAT invoices in Article 204 of the Criminal Law, which is also the third chapter, will lead to the same legal punishment as falsely issuing VAT invoices and defrauding national taxes. I have demonstrated my new viewpoint from the above three angles. According to the viewpoint of consequential offense, it is undoubtedly not a crime of falsely issuing VAT invoices in Article 205 of the Criminal Law, and there is no violation of the tax paid behind VAT invoices through deduction. However, it is undeniable that the false issuance of VAT invoices by changing the ticket is to help the upstream petrochemical enterprises change from refined oil production enterprises that should pay consumption tax to refined oil sales enterprises that should pay VAT, and unveil the whole link. It is not difficult for us to find that behind the false issuance by changing the ticket, it is still the national tax, but it is different from the object corresponding to the traditional false issuance. The traditional false issuance is to recover the value-added tax paid to the state through the deduction of the value-added tax invoice. The way of changing tickets is to help enterprises pay less difference between consumption tax and value-added tax. What is more special is that the method of changing tickets is falsely opened. Not only did it fail to deduct the value-added tax through the deduction function of the special VAT invoice, but it also paid the value-added tax in accordance with the provisions of the Provisional Regulations on Value-added Tax. From the point of view of consequential offense, it is undoubtedly impossible to constitute the crime of falsely issuing special invoices for value-added tax in the form of table tickets in Article 205 of the Criminal Law. However, it is not difficult to find that it is still in line with the means of deception and concealment to pay less taxes. After reaching the amount of Article 201 of the Criminal Law, we should be convicted and punished for tax evasion.

5. CONCLUSION

Through the theory of the crime of falsely issuing special invoices for value-added tax by changing votes, the crime of acting as a substitute for the purpose and the crime of consequence, it is concluded that this crime belongs to the crime of tax evasion, which can better reflect the criminal law principle of adapting a legally prescribed punishment for a crime to a legally prescribed punishment for a crime.

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