The Establishment of Constitutional Protection System of Chinese Taxpayer Rights
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Abstract. The current constitution in china lacks of a system arrangement to protect taxpayers and the deficiency of constitution system is the root that causes the appearance of “the taxation legislation gives priority to the administrative institution; the rights and obligations between the rich and the poor are out of balance; the taxation administrative institution is offside and powerful and other realistic problems”. Therefore, by constitution, china should establish the constitutional protection system of taxpayers basic rights to embody the dominant position of taxpayers rights and rule the basic taxation system, make legalism of taxation and taxation fairness be the fundamental principles of the taxation system, separate and allocate taxation’s three powers, regulate and restrict the taxation administrative power much more strongly the legislative power and the judicature power in order to provide the basic system guarantee for Chinese taxpayers rights.

Introduction
The taxation relationship is the basic relationship between citizens and state, however, in fact, the tax collection implies the danger of killing personal freedom. Based on the cognition of theory, for taxpayers in modern society ruled by law, tax collection has been turned into the concept of rights from that of obligations [1]. Besides, it also becomes the basic obligation of a legal state to protect taxpayer’s rights by constitution. The so-called taxpayers basic rights is that the citizens own the basic rights to rule tax collection and use taxes in accordance with constitution when they take on paying taxes[2].

Under the profound influence of tradition of by-man rule, New China has pursued that taxpayers obligations are the main part for a long time in the theory and practice of tax collection. Along with the great progress continually china has made in the process of constructing modern state ruled by law. The subject concept of taxpayer’s rights becomes the subject concept of rights gradually. After the legislation and practice over 20 years, Chinese laws have made a great progress on the protection of taxpayer’s rights with the enhancement of the awareness of taxpayer’s rights [3]. But so far, in china, the protection of taxpayer’s basic rights has not reached the height of constitution, and there is no people to go out of their ways to study the theoretical results that china protects taxpayer’s basic rights by constitution. This paper will discuss about the methods and experience how constitutional countries establish constitution system to protect taxpayers basic rights and analyze the existing problems in the process of legislation of protection of taxpayers basic rights and the reasons why this system was formed, then give the suggestions how to construct a constitutional system to protect taxpayers basic rights.

The Experience That Constitutional States Protect Taxpayers Basic Rights by the Constitution
In essence, the constitutional countries are taxation states [4], the constitutional practice from which provides china with referential experience about how china establishes a perfect constitution system to protect taxpayer’s basic rights.
In The Ways of Democratic Legislation and Taxation Constitution to Protect Taxpayers Rights

Democratic legislation, on condition of protecting the subject and systems of legislation, makes citizens join in the process of legislation, and gives citizens’ rights to take part in and supervise the whole process, establish the system of legislation—widely absorb the wisdom of people, reflect the suggestions from people.

These constitutional countries, such as America, England, France, Germany, always protect taxpayer’s basic rights in the way of democratic legislation while establishing and modifying the constitutions and tax laws. They cover the representative system in all social classes to make sure that profits from more social classes can be embodied and heard in the process of legislation. Besides, it is necessary to protect the taxpayer’s right to know information and carry out the legislative hearing system to hear suggestions from different citizens.

Taxation constitution is that the system of tax collection should be listed into the terms of constitution. In constitution, it is ruled that the basic thing of tax collection is to form a system and protect taxpayer’s basic rights. The taxation constitution makes the government and the taxpayers come to an agreement of tax collection and tax payment by constitution. Then the government obtains the tax collection rights and takes on the obligation to serve the taxpayers when the taxpayers undertake the obligations of paying taxes and own the chance to enjoy relevant rights. As a result, persevering in taxation constitution can restrict the government tax collection rights and then protect taxpayer’s basic rights.

Identify the Law-Oriented Taxation and the Taxation Fairness as the Principles of the Taxation System to Protect the Taxpayers Basic Rights

The law-oriented taxation is an embodiment of the principles of democracy and legality in tax laws, that is, the enactment rights of taxes, the tax collection rights of government and the tax payment rights and obligations of citizens must reference the relevant terms from the laws which are established by social members. When doing specific taxation legislation, everyone must connect the basic things of tax collection with the height of legal hierarchy, and those administrative laws and regulations below the legal hierarchy can’t set the basic terms. The law-oriented taxation forbids the subject of tax collection enforcement to have the legislative rights to set the basic terms of taxation, and keeps the government from abusing the powers of tax collection. Radically, it protects the taxpayer’s basic rights [5].

Since “Bill of Rights” from English identified the principles of the law-oriented taxation in the modern sense in 1689, this principle has become one of constitutional terms in many countries. For example, “Federal Constitution ”rules: all the bills about taxation should be put forward in House of Representative at first, but the Senate should put forward or agree the amendments like other bills; “the Constitution of Finland ”says: taxes includes costumes duty, and no matter whether they set a deadline or not, they should obey the laws. So do canceling and changing the original taxes or the obligations of tax payment [6].

Taxation fairness means taxpayers have the rights to pay taxes according to their personal ability, “the principle of taxation fairness is a specific embodiment of fairness of modern political and constitutional principles in tax laws” [7], and it is effective to protect the weak taxpayers.

To protect the weak taxpayers, prevent polarization between the rich and the poor, achieve the regulating functions of tax revenue, the taxation fairness has already been written in the constitution by many countries in the world. For example, “Declaration of Rights of Man and of the Citizen” from France rules: taxes should be allocated among all the citizens according to their ability; Italian constitution in 1848 rules: all the citizens should afford public consumption according to their economic ability; the taxation system should be established according to the progressive tax rates [8].
On The Principles of the Separation and Balances of Three Taxation Powers to Protect the Taxpayers Basic Rights

The principle of power balances makes state legislation, laws enforcement, and judicature mutually independent and restrictive. It is a basic principle ruled by law, which has become the most important way to restrain state powers in modern society. On the basis of this principle, the constitutional states overseas adopted balancing the powers to protect the basic rights of taxpayers. They empowered the state taxation legislation, administrative powers, and judicial powers to different national organs which perform, allocate taxation powers alone, and make them restricted mutually. For example, American Constitution regulates the taxation legislation is taken charge of by Parliament. Taxation administrative institution performs taxation enforcement according to constitution and laws. It is not allowed to set up rights privately. Taxation judicial powers are performed by taxation court. In Japan, the congress has the powers of taxation legislation. The subject of taxation enforcement must enforce the law based on the existing laws. The taxation jurisdiction is a general court, which can investigate the legality of taxation enforcement and executive orders according to “unconstitutional inspection”.

The Deficiency of the System That China Protects the Basic Rights of Taxpayers and Problems It Caused

Except that the 56th term of constitution (the citizens of people’s Republic of China) rules the basic obligation of Chinese citizens, Chinese constitution not only has no normal regulations about state taxation system but no the relevant rules about the power of taxation. It has no relevant regulations about the authority of taxation legislation, legislation procedure, legislation principles, the rights and obligations of taxpayers. In other words, the taxation system is not the important part of national economic system [9].

The Deficiency of Legal Principles of Taxation and System That Protects the Democracy of Taxation Legislation Causes This Problem—The Administrative Institution Is the Top Priority in the Taxation Legislation

The administrative institution is the top priority in taxation legislation. Although the 8th term in “legislation laws “rules that the basic system of taxation must be set by National People’s congress, but, so far, NPC only established “corporate income tax”, “individual income tax”, “transport tax of the people’s Republic of china”, “tax collection and management”, “the environmental protection tax “and a few laws, as well as other taxation legislation or administrative regulations set by the State Council or enacted by Ministry of finance and State Administration of Taxation.

The main reason why the administrative institution is the top priority in the taxation legislation is that china didn’t confirm the taxation legislation as the basic principles of taxation system. The deficiency of the democratic system is the other reason why the administrative legislation is the top priority in taxation legislation. Constitution protects the democratic system arrangement of taxation legislation, and it not only emphasizes the democracy of taxation legislation, but also denies that legislation institution empowers the power of taxation legislation to administrative institutions.

The Deficiency Of System Of Taxation Fair Principles Leads To The Serious Unbalance Of Rights And Obligations Between The Rich And The Poor

Chinese current tax laws doesn’t think about the fairness about taxation comprehensively causes the serious unbalance of rights and obligations between the rich and the poor. For example, although according to individual income tax to set excess progressive tax rates, it didn’t take the difference from the consumption of different taxpayers into consideration when the income of taxpayers are on the basis of tax assessment. Therefore, it comes to that the taxpayers with different burden have the same obligations of paying taxes. It is obvious to damage the rights of those people with more burden and weak capacity. It is not advantageous to achieve the function that is to prevent the polarization between the rich and the poor by using taxes to adjust incomes.
The Deficiency of System of Separation and Allocation of “The Three Taxation Powers” Causes the Offside and the Strength of Taxation Administrative Institutions

On the positioning of taxation legislation, administration, judicature, the offside and the strength of Chinese taxation administrative institutions become increasingly highlighted. The power of taxation legislation and judicial power cannot effectively restrict and regulate the power of taxation administrative enforcement. This situation brings serious damages to the protection of the rights of taxpayers.

Firstly, taxation executive institutions offside performs the power of taxation legislation. As it was expressed before, administrative institutions which are the subject of taxation enforcement become the main taxation legislation institutions, which not only damages the constitution in the functional division and positioning of national institutions, and has a great influence on the authority and stability of taxation legislation, but also it seriously damages the legal rights and interests of taxpayers because taxation legislation mingles with the profits of taxation administrative department.

Secondly, the power of taxation administrative departments strongly interferes the taxation judicial power. the financial budget of the general courts performing taxation jurisdiction is from the local government(the local taxation administrative institution), and for taxation judicial institutions, the taxation administrative institution is in a strong and powerful position, which causes that the strong interference of taxation administrative power to taxation jurisdiction is often seen in china.

The Suggestions About The constitutional Protection System That Chinese People Establish the Basic Rights of Taxpayers

The study shows that compared with the main constitutional countries in the world, Chinese constitution has no the terms of protecting the basic rights of the taxpayers. The deficiency of constitutional system is the root of the main problems that the existing legislation to protect the rights of the taxpayers is negative. As a result, we should borrow the successful experience from constitutional countries overseas in accordance with the existing problems in Chinese taxation legislation, and build a basic system about the taxation, and then set a constitutional system that can protect the basic rights of taxpayers on the basis of constitution.

Embody the Subject Position of the Taxpayers On The Basis Of Constitution and Rule the Basic Taxation System

In a society under the rule of law, the powers of national institutions are from the rights of citizens. The taxpayers should be the subject of rights. So it is a must to change the traditional concept that our country regards tax payment as the obligations instead of the rights of citizens. In order to embody the subject position of taxpayers, there is a learner suggesting changing the 56th term of constitution into “the citizens of people’s Republic of China has the rights and obligations to pay taxes on the basis of laws”[10].

As a primary law to regulate the state power and protect the individual rights of citizens, Chinese constitution should add the basic taxation system about the power of state tax collection and property rights of citizens. Only after the powers of legislation, the procedure of legislation and the principles of legislation and some basic taxation system are specifically regulated, it can lay a foundation for the basic rights of the taxpayers. Otherwise, the deficiency of the restriction of constitution to the state powers of tax collection, the phenomenon of unscrupulously damaging the property rights of citizens will gradually be normal and constitutional.

Identify Law-Oriented Taxation and Taxation Fairness as the Basic Principles of Taxation System On The Basis Of Constitution

“Only is law-oriented taxation settled as a constitutional principle, it can lead the regulations and laws of other taxation, develop its function to protect the property rights of taxpayers, and provide a firm foundation for ruling the tax by law”[11]. NPC is the only legal institution that china replaces of people’s wills to perform the power of state tax collection. China should definitely regulate and
intensify the special power of the taxation legislation of NPC. Only like this, the overflow of the taxation legislation mandate can be stopped fundamentally, and the democratic participation of taxation legislation can be enhanced, and the rights of taxpayers can be also fully protected.

Social people have rich and poor divide. If the standard of tax collection is set according to the poor’s ability, it won’t narrow the gap between the rich and the poor. But if according to the rich’s ability, the poor won’t have no ability to take on the obligation of tax payment. It is a certain to cause the social unrest. The principle of taxation fairness not only mentions that all the taxpayers should be treated equally, but also requires that the taxpayers with equal ability take on the equal tax payment and the ones with different ability take on the tax payment which is adjusted with their own conditions. In order to avoid its serious social problems, china should list the taxation fairness as a basic principle of taxation system into the constitution.

Separate and Allocate the Three Taxation Powers by Constitution and Intensify the Restriction of Taxation Legislation and Jurisdiction to the Taxation Administrative Power

The successful experience overseas tells us that only separating and allocating the three powers can make the taxation legislation and jurisdiction limit and regulate the taxation enforcement power effectively. On account of the offside and strength of Chinese administrative subject, china should allocate separately the three powers to legislation institution, administrative institution and judicial institution, and intensify the regulation and limitations of the legislation and judicial institutions to the administrative institution to provide the system protection for the basic rights of taxpayers.

To prevent taxation administrative institution from being the legislation institution in a offside way, it is necessary to confirm the scope of basic terms of taxation and empower taxation jurisdiction to the special taxation judicial institution, in order to forbid legislation institution empowering it to the administrative institution.

To change the strong position of taxation administrative institution, it is a must to strengthen the ability of restriction of jurisdiction. Therefore, it is feasible to separate the taxation cases from the scope of administrative litigation. On the basis of constitution, first, to empower the taxation jurisdiction to the special taxation judicial institution; second, change the established ways of taxation judicial institution; third, remove the possibility that the administrative institution interferes the jurisdiction; then, eliminate the taxpayers’ fears from taxation administrative institution; last, make sure the judicial institution can provide effective legal remedies for the rights of the taxpayers. It can achieve the most effective restrictions about the operation of the taxation enforcement power.

Conclusion

The taxation system of constitution is the basic system that constitutional states protect the basic rights of taxpayers, however, Chinese existing constitution has no relevant terms. This deficiency of system not only mirrors historical inertia that china looks down on the taxpayers rights, but also it has become the system root of realistic problems that can damage the rights and interests of taxpayers, which has already hindered the modernization of Chinese political system and the processing of democratization. For this reason, learning the successful experience from the main constitutional states and establishing an impeccable constitutional system to protect the basic rights of the taxpayers are the only way that china continuously optimizes the democratic political system and deepen the revolution of finance and taxation system.

References
