

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment

of 30 January 2001 No. 2-II

in the case concerning the review of the constitutionality of the provisions of Subsection “e”, Section 1, and Section 3, Article 20 of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation” as amended by the Federal Law “On Amendments to Article 20 of the Law ‘On Fundamental Principles of the Taxation System in the Russian Federation’”, and the provisions of the Law of the Chuvash Republic “On the Sales Tax”, the Law of the Kirov Region “On the Sales Tax” and the Law of the Chelyabinsk Region “On the Sales Tax” in connection with request of the Arbitration Court of the Chelyabinsk Region and complaints of Russkaya Troyka LLC and certain citizens.

Moscow, 30 January 2001

The Constitutional Court of the Russian Federation composed of Presiding Judge B. S. Ebzeev and Judges N. S. Bondar, G. A. Gadzhiev, A. L. Kononov, T. G. Morshchakova, Yu. D. Rudkin, A. Ya. Sliva, O. I. Tiunov, V. G. Yaroslavtsev,

in the attendance of Judge T. V. Popova of the Arbitration Court of Chelyabinsk Region; the citizens L. V. Katkova, L. N. Ledneva, I. L. Sumina, and A. B. Mikhaylova who is at the same time the representative of Russkaya Troyka LLC, and the citizens A. M. Gubin, A. A. Lagunov, S. A. Malyshev, S. V. Mordovchenko, V. V. Osobenko, S. E. Semakin, O. E. Solovey, S. A. Sozontov, S. A. Tarakanov, S. A. Cheremiskin, S. L. Shilova; and D. N. Safullin, PhD in Law, as A. I. Menzhulin’s representative; Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation V. V. Lazarev, Representative of the Council of the Federation A. V. Popov; representatives of the bodies of state power of the Kirov Region: P. I. Dmitriev, Deputy Governor of the Kirov Region, and L. V. Ternova, PhD in Law; representative of the bodies of state power of the Chelyabinsk Region Y. S. Chetvertakova, PhD in Law,

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 3, Section 1, Sections 2 and 3, Article 3, Subsection 3, Section 2, Article 22, Articles 36, 74, 96, 97, 99, 101, 102, 104 and 86 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of the provisions of Subsection “e”, Section 1, and Section 3, Article 20 of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation” as amended by the Federal Law “On Amendments to Article 20 of the Law ‘On Fundamental Principles of the Taxation System in the Russian Federation’” of 31 July 1998, and the provisions of the Law of the Chuvash Republic “On the Sales Tax”, the Law of the Kirov Region “On the Sales Tax” and the Law of the Chelyabinsk Region “On the Sales Tax”.

The reason for the consideration of the case is a request of the Arbitration Court of the Chelyabinsk Region and complaints of Russkaya Troyka LLC (Kirov Region) and individual entrepreneurs I. L. Sumina (Chuvash Republic), A. M. Gubin, S. V. Mordovchenko, L. O. Kalinina, M. A. Shurkin, S. A. Malyshev, A. B. Mikhaylova, A. V. Novozhenov, S. A. Cheremiskin, L. V. Katkova, A. A. Lagunova, V. V. Osobenko, S. N. Perevoshikova, D. V. Pimenova, S. E. Semakin, S. A. Sozontov, O. E. Solovey, S. A. Tarakanov, S. L. Shilova, G. N. Shekotova (Kirov Region), L. N. Ledneva, G. I. Alekseyeva, Y. Y. Malutina, and A. I. Menzhulin (Chelyabinsk Region).

Insofar as the request and the complaints concern essentially the same subject matter, namely the provisions of Subsection “e”, Section 1, and Section 3, Article 20 of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation” as amended by the Federal Law “On Amendments to Article 20 of the Law ‘On Fundamental Principles of the Taxation System in the Russian Federation’” of 31 July 1998, and the provisions of the Law of the Chuvash Republic “On the Sales Tax” of 6 November 1998 (as amended on 15 May 2000), the Law of the Kirov Region “On the Sales Tax” of 18 January 1999 (as amended on 23 April 1999) and the Law of the Chelyabinsk Region “On the Sales Tax” of 5 September 1998 (as amended on 1 March 2000), pursuant to Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation is permitted to consider all these applications together.

Having heard the report of Judge-Rapporteur A. Ya. Sliva; statements by the parties and their representatives; the expert opinion of M. F. Ivliyeva, PhD in Law and Y. N. Shiriayev, PhD in Linguistics, interventions by S. D. Shatalov for the Government of the Russian Federation, A. I. Babkin for the Supreme Arbitration Court of the Russian Federation, N. A. Komova for the Ministry of Finance of the Russian Federation, A. A. Ustinova for the Ministry of Taxes and Duties of the Russian Federation, Ye. V. Kalmykova for the Ministry of Antimonopoly Policy and Support of Entrepreneurship, L. K. Zaudalsky for the Ministry of Justice of the Russian

Federation; and having considered written submissions and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d :

1. According to Article 1 of the Federal Law “On Amendments to Article 20 of the Law “On Fundamental Principles of the Taxation System in the Russian Federation”” of 31 July 1998, Section 1, Article 20 of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation” was supplemented by Subsection “e”, which added, to the list of regional taxes, the sales tax that has to be transferred to the budgets of subjects of the Russian Federation and to local budgets in the shares of 40 and 60 percent respectively provided that the funds shall be spent for the needs of lower-income people; and Article 20 itself was supplemented by Section 3 where the payers of the sales tax and certain essential elements of this tax were defined, in particular the object of taxation and the tax base, as well as the right of subjects of the Russian Federation to establish a sales tax and to introduce it in their territories.

In the applicants’ opinion, these provisions and the provisions of the Law of the Chuvash Republic “On the Sales Tax”, the Law of the Kirov Region “On the Sales Tax” and the Law of the Chelyabinsk Region “On the Sales Tax”, which are based on them and reproduce them, do not meet the constitutional requirements for legally established taxes, violate the principle of everyone’s equality before the law and court, violate the constitutional guarantees for the right of property and the right to use freely abilities and property for entrepreneurial and other economic activity not prohibited by law, the requirement to pay legally established taxes on a compulsory basis, the integrity of the economic space, the supremacy of the federal law and thereby do not conform to the Constitution of the Russian Federation, its Articles 1 (Section 1), 7, 8, 18, 19 (Section 1), 34 (Section 1), 35 (Section 2), 57 and 76 (Sections 2 and 5).

In addition, the applicants from the Kirov Region challenge the constitutionality of the Law of the Kirov Region “On the Sales Tax” as regards the procedure of its entry into force to the extent concerning the tax rate.

2. The general principles of imposing taxes and duties and forming the taxation system that includes *inter alia* an exhaustive list of regional taxes which serve as sources of revenue for the budgets of the subjects of the Russian Federation and municipal budgets, shall be established by federal law and pursuant to the Constitution of the Russian Federation (Section 1 (“i”), Article 72; Section 3, Article 75; Article 76).

According to the legal opinion of the Constitutional Court of the Russian Federation, taxes of the subjects of the Russian Federation (i.e. regional taxes) may be considered “legally

established” only if they are established by the legislative bodies of the subjects of the Russian Federation in accordance with the general principles of imposing taxes and duties determined by federal law. These general principles are the basic guarantees established by federal law in order to ensure implementation and observance of the fundamentals of the constitutional order, basic rights and freedoms of man and citizen, and the principles of federalism in the Russian Federation (Judgment of 21 March 1997 in the case concerning the review of the constitutionality of Paragraph 2, Section 2, Article 18, and Article 20 of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation”).

The federal law (the Tax Code of the Russian Federation and the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation” remaining in force) divides the taxation powers of the federal legislator and legislators of the subjects of the Russian Federation.

The list of regional taxes, amendments and additions to this list, the scope of taxpayers and essential elements of each regional tax (including the object of taxation, tax base, maximum tax rate) shall be regulated by the federal law in order to preclude (a) an excessive tax burden from being imposed by regional laws on taxation, which are enacted by subjects of the Russian Federation, (b) aggregation of budget revenues of a subject of the Russian Federation at the expense of others, (c) violation of the constitutional provisions concerning the integrity of economic space, (d) equality of the rights of man and citizen, (e) free movement of goods, services and financial resources (Section 1, Article 8; Section 1, Article 19; Article 74 of the Constitution of the Russian Federation).

As soon as a federal law on a regional tax is enacted, the subject of the Russian Federation acquires the right to enact its own regional law to establish this tax and to introduce it irrespective of whether this tax has been introduced by other subjects of the Russian Federation in their territories. At the same time, the legislator of the subject of the Russian Federation may provide for legal regulation of the regional tax on the condition that such regulation does not impose a heavier tax burden and does not put the taxpayer into a less favorable position than the one prescribed by the federal law.

Therefore, the mere fact that Subsection “e” is included in Section 1, Article 20 of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation”, and thereby adds a sales tax to the list of regional taxes, in itself does not contradict the Constitution of the Russian Federation and the principles of separation of powers and division of competence of the bodies of state power of the Russian Federation and of its subjects. The issue of whether it is economically reasonable to establish this tax does not fall within the competence of the Constitutional Court of the Russian Federation.

3. As the Constitutional Court of the Russian Federation pointed out in its Judgment of 8 October 1997 in the case concerning the review of the constitutionality of the Law of Saint Petersburg “On Land Tax Rates in Saint Petersburg for the Year 1995”, in order to ensure performance of the individual’s constitutional duty to pay legally established taxes and duties (Article 57 of the Constitution of the Russian Federation) it is necessary that the laws on taxes should be precise and understandable. The uncertainty of tax legislation norms may result in arbitrary treatment of the taxpayers by the bodies of state power and their officials, which contradicts the principles of the rule of law state (Section 1, Article 1 of the Constitution of the Russian Federation) and violates equality of the citizens before the law (Section 1, Article 19 of the Constitution of the Russian Federation).

Legislative acts on taxes and duties shall be formulated in such a manner that everyone should precisely know which taxes (duties) he has to pay, when and using what procedure; moreover, all irremediable doubts, contradictions and vagueness of these acts shall be interpreted in favour of the payer of the tax or duty (Sections 6 and 7, Article 3 of the Tax Code of the Russian Federation). The uncertainty of taxation norms may result both in violation of the citizen’s rights and evasion from the constitutional duty to pay taxes.

When introducing amendments and additions to Article 20 of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation”, the federal legislator was to consider the general principles of taxation and their further development and interpretation in Judgments of the Constitutional Court of the Russian Federation (later formalized in Title I of the Tax Code of the Russian Federation). Since the federal legislator enacted Title I of the Tax Code of the Russian Federation simultaneously with the Federal Law “On Amendments to Article 20 of the Law of the Russian Federation ‘On Fundamental Principles of the Taxation System in the Russian Federation’”, i.e. on 31 July 1998, and brought it into force as of 1 January 1999, it was obliged to follow its own clear legislative requirement on conformity of the legislative acts on taxation with Title I of the Tax Code of the Russian Federation (Article 7 of the Federal Law “On Entry into Force of Title I of the Tax Code of the Russian Federation”).

However, in the present case the abovementioned requirement was not respected. Moreover, the federal legislator, contrary to the existing practice, did not adopt a separate statute on all the essential elements of a newly established tax, but established a sales tax and exercised its regulation within the scope of a general act, i.e. the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation”.

4. As follows from the Tax Code of the Russian Federation (Section 1, Article 17, Section 1, Article 38, and Section 1, Article 53), any tax shall meet a mandatory requirement, i.e.

it shall have its own object of taxation whose value, physical parameters or other characteristics determine the tax base. Under these general provisions, the object of taxation for sales tax purposes is the sale of goods (works, services).

However, Section 3, Article 20 of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation” also defines the object of taxation as the cost of wholesale or retail goods (works, services) sold for cash (Sections 2 and 3); at the same time, the federal legislator has not clarified in what spheres (consumption, production) the respective sales take place and extended the abovementioned tax to excisable goods without regard to the specificity of sale of certain goods (Section 5).

In addition, the very notion “retail or wholesale sales of goods (works, services) for cash” is legally uncertain. The Civil Code of the Russian Federation distinguishes the sale of goods in the form of retail “sale and purchase” when the buyer receives goods for personal, family, domestic or other use not related to entrepreneurial activities (Article 492) and in the form of “delivery” when the seller transfers goods that he produces or purchases to the buyer for the use in his entrepreneurial activity (Article 506).

When establishing the regional sales tax, the federal legislator was obliged to determine its object of taxation in a certain and unambiguous manner. Instead, they introduced a range of its additional characteristics, using uncertain notions which have no legal content and which are interpreted differently in applying the challenged norms of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation”, namely: “wholesale sales of goods (works, services)”, “high-priced goods”, “non-essential goods and services”, “essential goods” (Subsections 2 and 3, Section 3 of Article 20), while no criteria were provided to define these notions. Moreover, only certain goods (works, services) taxable by sales tax were arbitrarily listed. Therefore, no precise parameters of the object of taxation were established.

Consequently, the federal legislator did not ensure respect of the requirement for the object of taxation to be established only by federal law and in a proper manner, and since this essential element of taxation was not defined for the sales tax it may not be regarded as definitively established.

Since, for the purposes of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation”, sales settled by cash were equated with sales settled by credit and other payment cards, checks and direct debits by individuals (Subsection 4, Section 3, Article 20), while the object of taxation (sales of goods, sale transactions) was confused with the tax base, i.e. the cost of goods, the object of taxation was interpreted in the law-enforcement practice as cash flow, which does not conform to the nature of the sales tax.

5. One of the constitutional requirements to be met in order for the tax, including regional tax, to be considered legally established is a range of payers of this tax, which is determined by the federal legislator in an exhaustive and indiscriminative manner.

According to the legal opinion of the Constitutional Court of the Russian Federation, the principle of an equal tax burden that follows from Articles 8 (Section 2), 19 (Section 1) and 57 of the Constitution of the Russian Federation in the sphere of tax relations means that it is inadmissible to establish discriminative rules of taxation, in particular depending on the organizational form and the character (the content) of the taxpayers' entrepreneurial activity (Judgment of the Constitutional Court of the Russian Federation of 21 March 1997).

The payers of the sales tax are legal persons (including foreign legal persons) and individual entrepreneurs who carry out their activities without forming a legal person, selling their goods (works, services) on their own in the Russian Federation (Subsection 1, Section 3, Article 20 of the Law of the Russian Federation "On Fundamental Principles of the Taxation System in the Russian Federation").

The content of this norm, however, does not give a clear answer to the question of whether the formula "selling their goods (works, services) on their own" relates to individual entrepreneurs only or to all sales tax payers. This formula is also uncertain per se: there is no need to specify in law that a business entity is independent in disposing of its possessions; it is unclear whether persons who, for example, sell goods (works, services) on the instructions of the proprietor, can be regarded as payers of the sales tax. The inconsistency of this formula in respect of sales tax payers leads to its ambiguous interpretation in the law-enforcement practice.

Moreover, the provision of Section 3, Article 20 of the Law of the Russian Federation "On Fundamental Principles of the Taxation System in the Russian Federation" does not prevent from imposing the sales tax within relations between two business entities (who are both payers of this tax) – either legal persons or individual entrepreneurs, which fact does not ensure that the object of taxation is independent and contradicts the essence of the sales tax as a consumption tax.

Subsection 4, Section 3, Article 20 of the Law of the Russian Federation "On Fundamental Principles of the Taxation System in the Russian Federation" considers sales settled by credit and other payment cards, bank checks and direct debits by individuals as sales settled by cash. According to the Tax Code of the Russian Federation, 'individuals' means not only citizens of the Russian Federation, but foreign citizens and stateless persons, and individual entrepreneurs. Therefore, this norm equalizes payments by bank checks of individual entrepreneurs with sales settled by cash.

Payments between legal persons and payments by individuals related to their entrepreneurial activities may be made both by bank transfers or by cash, unless otherwise is prescribed by law (Section 2, Article 861 of the Civil Code of the Russian Federation). Therefore, the same seller (legal person or individual entrepreneur), who sells the same goods which he produced or purchased may be either regarded as the payer of the sales tax or not.

When the scope of taxpayers is determined on the basis of the form of payments, and non-cash payments are equalized with cash payments in an arbitrary and unreasonable manner, legal persons purchasing goods by clearing settlement and individual entrepreneurs (whose non-cash payments are equalized with cash payments) are put in an unequal positions predetermined by the difference of the organizational forms of their business activity. The uncertain nature of classification of the sales tax payers contrary to Article 19 of the Tax Code of the Russian Federation results in ambiguous understanding of this tax by regional legislators, law-enforcement bodies and taxpayers and, therefore, allows to impose it arbitrarily.

Therefore, this tax cannot be considered as legally established, in particular comprehensively and certainly established to a sufficient degree, due to inconsistency with the Constitution of the Russian Federation, its Articles 19 (Section 1), 55 (Section 3) and 57.

6. According to the legal opinion of the Constitutional Court of the Russian Federation, expressed in Judgment of 21 March 1997, it is impermissible to introduce regional taxes that allow to form the budget of any territory at the expense of the tax revenues of another territory or to shift the tax burden on the taxpayers of other regions.

At the same time, the challenged provisions of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation”, while vesting subjects of the Russian Federation with the right to introduce the sales tax, did not state this tax as territorial, i.e. taxation jurisdiction of the regions was not settled.

If the taxation jurisdiction is not defined by the federal legislator, nothing precludes repeated taxation of transactions concerning the cash sales of goods, works and services, including international transactions. Determining the taxation jurisdiction of the subjects of the Russian Federation by laws of the subjects of the Russian Federation themselves may violate the rights and interests of other subjects of the Russian Federation.

7. The Constitutional Court of the Russian Federation, pursuant to Section 2, Article 74 of the Federal Constitutional Law “On Constitutional Court of the Russian Federation”, reviews the constitutionality of the challenged act on the basis of its place within the hierarchy of legal acts. That is why the conformity of a regional tax with the constitutional requirement of a “legally established tax” depends not only on the federal statute of this tax, but also on the respective statute of subjects of the Russian Federation.

The uncertainty of the provisions of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation” that define sales tax payers and the essential elements of taxation was reflected in the Law of the Chuvash Republic “On the Sales Tax”, the Law of the Kirov Region “On the Sales Tax” and the Law of the Chelyabinsk Region “On the Sales Tax”, as well as in their law-enforcement practice. Moreover, these provisions of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation” are arbitrarily interpreted in the abovementioned regional statutes.

The powers of the subjects of the Russian Federation to establish the sales tax and introduce it in their territories are expressly stipulated in the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation”. These powers include the determination of the tax rate, the procedure and periods for tax payments, tax reliefs and tax reporting forms (Subsection 9, Section 3, Article 20).

At the same time, subjects of the Russian Federation are permitted to make additions to the established list of goods (works, services) taxable by the sales tax (Subsection 2, Section 3, Article 20). This power of subjects of the Russian Federation, to the extent that it allows to increase the tax obligations on a regional level, does not conform to the Constitution of the Russian Federation.

Due to the uncertainty of the challenged provisions of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation” and substitution of the object of taxation by the tax base permitted by the federal legislator, subjects of the Russian Federation in their statutes interpret differently the taxpayers’ obligations to calculate the sales tax, in particular when the taxpayers have no separate accounting of taxable and non-taxable goods (works, services). This violates the constitutional principle of equality.

The challenged statutes of the subjects of the Russian Federation reproduce the uncertain norms of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation”, and therefore arbitrarily increase the taxpayers’ obligations. According to the legal opinion of the Constitutional Court of the Russian Federation, this violates the general principles of taxation stipulated in the Constitution of the Russian Federation and federal laws (Judgment of the Constitutional Court of the Russian Federation of 4 April 1996 in the case concerning the review of the constitutionality of certain normative acts of the city of Moscow and Moscow Region, Stavropol Territory, Voronezh Region and the city of Voronezh concerning registration of individuals arriving to these subjects of the federation for permanent residence).

Therefore, pursuant to Section 2, Article 87 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the provisions of the Law of the Chuvash

Republic “On the Sales Tax”, the Law of the Kirov Region “On the Sales Tax” and the Law of the Chelyabinsk Region “On the Sales Tax”, based on the abovementioned provisions of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation” or reproducing them or increasing the taxpayers’ obligations, do not conform to the Constitution of the Russian Federation, its Articles 19 (Section 1), 55 (Section 3) and 57.

8. The applicants from the Kirov Region challenge the constitutionality of the Law of the Kirov Region “On the Sales Tax” to the extent that it establishes a tax rate of five percent (Article 2). They believe that the federal legislator establishing the five percent upper limit of the tax rate (Subsection 6, Section 3, Article 20 of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation”) considered that the tax rate determined by a legislative (representative) body of a subject of the Russian Federation may only be lower than five percent. Therefore, the Law of the Kirov Region does not conform to the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation” and the Tax Code of the Russian Federation, and the sales tax rate established in the Kirov Region, pursuant to Article 76 (Section 5) of the Constitution of the Russian Federation, may not be regarded as duly established.

Therefore, they *de facto* request review of conformity of the statute of a subject of the Russian Federation to the federal law, while this matter does not fall within the scope of competence of the Constitutional Court of the Russian Federation. Consequently, to this extent the proceedings on the complaint shall be discontinued.

At the same time, the Constitutional Court of the Russian Federation finds it necessary to draw the federal legislator’s attention to the fact that the wording “the sales tax rate shall be within the limit of five percent”, used in Subsection 6, Section 3, Article 20 of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation”, is improper since it affords diverging interpretations (either as ‘five percent, but not more’, or as ‘less than five percent’) and thus needs to be amended.

The applicants from the Kirov Region, who were requested by the tax authorities to pay the sales tax as of February 1999, also challenge Article 7 of the Law of the Kirov Region “On the Sales Tax”, pursuant to which this Law enters into force on the date of official publication, i.e. 21 January 1999 (*Vyatsky Kray*, No. 13 (1981), and is introduced on 1 February 1999.

Within the meaning of Article 57 of the Constitution of the Russian Federation concerning acts on taxes and duties adopted by the bodies of state power and local self-government, the requirement of “legally established tax and duty” applies not only to the form of the act, adoption procedure and its content, but also to the procedure for entry into force. The abovementioned constitutional provision requires the respective authorities to determine a

reasonable period during which the duty to pay taxes and duties arises, in order not to violate the constitutional regime of stability of the business environment guaranteed in particular by Articles 8 (Section 1) and 34 (Section 1) of the Constitution of the Russian Federation.

By the moment the Law of the Kirov Region “On the Sales Tax” was adopted, this period was determined by Article 5 (Section 1) of the Tax Code of the Russian Federation, Title I of which entered into force on 1 January 1999. Thus the Kirov Regional Duma was obliged to prescribe the date of entry into force no earlier than one month after the official publication of the Law.

Therefore, the Law of the Kirov Region “On the Sales Tax” does not conform to the Constitution of the Russian Federation and its Article 57, as regards its procedure of entry into force.

Consequently, before expiry of the minimum permissible period for entry into force of the Law of the Kirov Region “On the Sales Tax”, this tax was not to be paid and therefore there were no grounds for recovery of arrears and penalty interest or for imposing sanctions and other measures of liability. However, it does not mean that the taxpayers have the right to a refund of the sales tax transferred to regional and municipal budgets or its credit for the future payments of this tax, since the tax was included in the price of the goods (works, services) and was collected not from the taxpayers’ profit (results of their business activity), but from the buyers (clients), i.e. from *de facto*, not *de jure* taxpayers.

9. Reviewing the challenged provisions of the Law of the Russian Federation “On Fundamental Principles of the Taxation System in the Russian Federation” and provisions of the Law of the Chuvash Republic “On the Sales Tax”, the Law of the Kirov Region “On the Sales Tax” and the Law of the Chelyabinsk Region “On the Sales Tax”, the Constitutional Court of the Russian Federation may not fail to consider that the sales tax introduced by statutes of the subjects of the Russian Federation under the federal statute is a source of budget revenues of the respective subjects of the Russian Federation and municipalities. Immediate annulment of the challenged provisions may result in their failure to execute the budgets and violation of the rights and freedoms of citizens. Therefore under Subsection 12, Section 1, Article 75 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, it is necessary to determine the procedure, conditions and specificity of enforcement of the present Judgment.

Concluding from the above and pursuant to Article 68, Sections 1 and 2, Article 71, Articles 72, 74, 75, 79, 87, 100 and 104 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d :

1. To recognize Subsection “e”, Section 1, Article 20 of the Law “On Fundamental Principles of the Taxation System in the Russian Federation” (as amended by the Federal Law of 31 July 1998) to the extent that it concerns the addition of the sales tax to the list of regional taxes, as conforming to the Constitution of the Russian Federation.

2. To recognize the provisions of Subsections 1, 2, 3 and 4, Section 3, Article 20 of the Law “On Fundamental Principles of the Taxation System in the Russian Federation” (as amended by the Federal Law of 31 July 1998) and the provisions of the Law of the Chuvash Republic “On the Sales Tax”, the Law of the Kirov Region “On the Sales Tax” and the Law of the Chelyabinsk Region “On the Sales Tax” based on and reproducing the provisions of the federal law, as non-conforming to the Constitution of the Russian Federation, its Articles 19 (Section 1), 55 (Section 3) and 57, since they do not provide comprehensive and certain regulation necessary for the sales tax and thus cause arbitrary interpretation by the legislators of the subjects of the Russian Federation and in the law-enforcement practice.

The abovementioned provisions shall be amended to comply with the Constitution of the Russian Federation and in any event shall lose their legal force no later than on 1 January 2002.

3. To recognize the Law of the Kirov Region “On the Sales Tax” as non-conforming to the Constitution of the Russian Federation and its Article 57, regarding its procedure of entry into force, since it must have entered into force no earlier than one month after its publication. The failure to pay the sales tax during the abovementioned period may not be considered as a ground for holding the taxpayers of the Kirov Region liable.

4. The proceedings to the extent that they concern the review of the constitutionality of Article 2 of the Law of the Kirov Region “On the Sales Tax”, establishing the sales tax rate, shall be discontinued, since the determination of a tax rate on the basis of federal law and review of conformity of a statute of a subject of the Russian Federation to the federal law, do not fall within the scope of competence of the Constitutional Court of the Russian Federation.

5. The law-enforcement decisions in the applicants’ cases, to the extent that they concern the taxpayers’ liability for tax offences, shall be reconsidered by the competent law-enforcement authorities relying on the meaning of the norms revealed by the Constitutional Court of the Russian Federation in the present Judgment. Pursuant to the requirements of federal tax law (Section 7, Article 3 of the Tax Code of the Russian Federation), all irremediable doubts, contradictions and ambiguities in these acts shall be interpreted in favour of the taxpayers.

6. According to Section 2, Article 87 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the provisions of the normative acts in the Russian Federation which reproduce or are identical to the provisions recognized as non-

conforming to the Constitution of the Russian Federation in the present Judgment shall be amended to comply with the Constitution of the Russian Federation with consideration of Subsection 2 of the holding in the present Judgment.

7. Pursuant to Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, shall be directly applicable and shall not require confirmation by any other authorities or state officials.

8. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be published in the Collection of Laws of the Russian Federation and *Rossiyskaya Gazeta*, official publications of the bodies of state power of the Chuvash Republic, Kirov Region and Chelyabinsk Region. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court
of the Russian Federation

No. 2-II