CASE TRANSLATION: MEXICO

CASE CITATION:
***Jurisprudencia* 24/2008. Criteria Contradiction Proceedings *(Contradicción de Tesis)* 261/2007 SS between the Third Collegiate Court for Administrative Matters and the Second Civil Court for Civil Matters in the Seventh Circuit**

NAME AND LEVEL OF COURT:
Second Chamber of the Mexican Supreme Court

DATE OF DECISION:
February 13, 2008

MEMBERS OF THE COURT:
Justices Mariano Azuela Güitrón (reporter), José Fernando Franco González-Salas, Genaro David Góngora Pimentel, Margarita Beatriz Luna Ramos and Salvador Aguirre Anguiano (absent) members of the Second Chamber of the Supreme Court

REGISTRY NUMBER: **20867**

LOCATION: **Ninth Period**

INSTANCE: **Second Chamber**

SOURCE: **Weekly Judicial Report of the Federation and Gazette, Volume XXVII, March 2008, page 363**

SUBJECT: **(Tax) Declaration submitted through electronic means and the acknowledgment of receipt bearing a digital stamp. The printed record or its ordinary copy are both sufficient to prove the application of the legal provisions on which such declaration is based**

Criteria Contradiction 261/2007-SS between the Third Collegiate Court for Administrative Matters in the First Circuit and the Second Collegiate Court for Civil Matters in the Seventh Circuit

REPORTER JUSTICE: **Mariano Azuela Güitrón**

CLERK OF THE COURT:
Oscar F. Hernandez Bautista

Considering:

FIRST. The Second Chamber of the Supreme Court of Justice of the Nation is competent to hear this Contradiction Thesis Proceedings, in accordance with Articles 107, paragraph XIII of the Constitution of Mexico, 197-A of the Amparo Act and 21, section VIII, of the Organizational Law of the Federal Judiciary in conjunction with the second and fourth paragraphs of the General Agreement 5/2001, approved by the Court acting in plenary session the twenty-first of June of two thousand and one, due to the fact that the matter on which the complaint relates corresponds to administrative matters, the specialty of this Second Chamber.

SECOND. The report of the Criteria Contradiction Proceedings comes from a legitimate party, in terms of the provisions of Article 197-A of the Amparo Act, to the extent that it was undertaken by the President of the Third Collegiate Court for Administrative Matters in the First Circuit.

THIRD. The matters for consideration, which served as grounds for the Third Collegiate Court for Administrative Matters in the First Circuit, to resolve the Federal Appeal *(Recurso de Revisión)* 395/2006, in essence, are the following:

"Fifth.- The allegations raised are groundless.

"Indeed, the petitioner contests the judgment rendered by the Fourteenth District Court for Administrative Matters in the Federal District dated 8 August 2006, which dismissed the Amparo Proceedings based upon Article 74, Section III of the Amparo Act, in relation to the alleged application of Articles 29, paragraph II, in conjunction with Article 3 sections IV, V and IX of the transitional provisions of the Income Tax Law, in force for the year 2005. The judge found that even though the legal provisions were applied to claimant, the Amparo Proceedings had to be dismissed based upon Article 73, paragraph VI of the Amparo Act, due to the fact that petitioner had not proved the application of the (allegedly unconstitutional) articles, the evidence

submitted was a mere indication or presumption, such evidence had to be strengthened with evidence from an expert witness in accounting matters.
"The petitioner basically indicates that it was not essential to demonstrate the application of articles that are alleged to be unconstitutional with evidence from an expert witness in accounting matters, but the documentary evidence provided was sufficient. Under Article 202 of the Federal Code of Civil Procedure such documents have full value, as they are considered as public documents. Basically, the necessary evidence was the annual (tax) declaration in respect of income tax caused to be paid in the fiscal year 2005 and its exhibits, which were submitted through electronic means and have an electronic acknowledgement of receipt and a digital stamp.

"The allegations are groundless given that although it is true that an annual declaration can be a means whereby the application of the allegedly unconstitutional articles can be evidenced unless there is no doubt of its application as it is required in the binding case *(jurisprudencia)* of the Second Chamber of the Supreme Court of Justice of the Nation, which is cited below:

"Registry Number: 191786. *"Jurisprudencia"* [binding precedent]. Matter (s): Constitutional-Administrative. Ninth Period. Instance: Second Chamber. Source: Weekly Judicial Report of the Federation and its Gazette, Volume XI, May 2000, Precedent Number: 2a. /J.43/2000; Page 112. 'TAX LAWS. THE FIRST ACT OF APPLICATION OF ITS ARTICLES AND THE CONSECUTIVE AFFECTION OF THE LEGAL INTEREST, CAN BE EVIDENCED WITH THE RELATED PAYMENT DECLARATION, IF THE CONSEQUENCES ARE CLEARLY DERIVED THEREFROM.' (unnecessary to transcribe).
"It is clear that petitioner did not submit either an original nor a certified copy of the annual declaration of the fiscal year of 2005 and the acknowledgement of receipt, so that it could adequately justified the first act of application of the rules claimed to be unconstitutional, that is Article 29, paragraph II, in conjunction with Article 3, sections IV, V and IX of the transitional provisions of the Income Tax Law, in force by the year 2005. The petitioner filed mere photocopies of such documents (pages 37 to 55).

"In this sense, as founded by Federal Judge, [Xeroxed] photocopies are a mere indication, so according to *"Jurisprudencia"* 2a./J.32/2000 of the Second Chamber of the Supreme Court of the Nation, the Amparo judge must analyze the facts that that meant to be proved with the copies and the other evidence that appear in the court's file, in order to establish the true scope that evidence which should be given.

"In this vein, the petitioner submitted the following documents as evidence:

"a) Articles of Incorporation of the petitioner artificial person, number 14041, 4 March 191 (pages 20-29).
"b) The Second Notary Deed of the Ordinary General Meeting of the Shareholders of the petitioner company, number 33,600, 10 October 2001 (pages 30-36).
"c) Acknowledgement of receipt and annual declaration of the fiscal year of 2005, submitted 31 July 2006 (pages 37-55).
"d) Certified copy of the Federal Taxpayers Registry of 19 October 2004, in the name of the petitioner (page 56).

"The above documentation only evidences that the petitioner is an artificial or legal person, for having submitted certified copies of the documents referred to in subparagraphs a) and b), and the presumption that is registered in the Federal Taxpayers Registry and that on the 31 August of 2006 it submitted the annual declaration of the fiscal year 2005, for having submitted the documents referred to in subparagraphs c) and d) in an ordinary [Xeroxed] copy.

"In this vein, if the petitioner did not submit an original or certified copy of the annual declaration of the fiscal year of 2005 and their acknowledgement or receipt, so that it could be adequately justified with such documents the first act of application of the articles that claimed to be unconstitutional, but only an ordinary copy, the petitioner had to strengthen such documents with other means of assurance, including the expert witness evidence in accounting matters so as to relate the latter with those documents.

"In this regard, the following *"jurisprudencia"* of the Second Chamber of the Supreme Court of Justice of the Nation is applicable:

"Registry Number: 192109. *"Jurisprudencia"*. Matter (s): Common (Civil-Commercial). Ninth Period.

Instance: Second Chamber. Source: Weekly Judicial Report of the Federation and its Gazette. Volume XI. April 2000. Page 127.

" 'PHOTOCOPIES WITHOUT BEING CERTIFIED. ITS EVIDENTIARY WEIGHT AS A PRESUMPTION IS FOR JUDICIAL DISCRETION.' (unnecessary to transcribe).

"It also applies the following "jurisprudencia" [binding precedent] of the Second Chamber of the Supreme Court of Justice of the Nation:

" 'Registry Number: 196457. "Jurisprudencia" [binding precedent]. Matter (s): Common (Civil-Commercial). Ninth Period. Instance: Second Chamber. Source: Weekly Judicial Report of the Federation and its Gazette. Volume VII. April 1998. Precedent 2a./J. 21/98. Page 213.

" 'LEGAL INTEREST IN THE AMPARO. ORDINARY PHOTOCOPIES, BY THEMSELVES, ARE NOT SUFFICIENT EVIDENCE.' (unnecessary to transcribe)."

FOURTH. On the other hand, the arguments raised by the Second Collegiate Court in Civil Matters of the Seventh Circuit, when resolving the Federal Appeal 673/2003, in essence are the following:

"Fifth. The allegations raised by the petitioner are groundless.

"For a better understanding, is important to mention specific facts and legal principles law from the Amparo Proceedings 283/2003, to which this case refers.

"The artificial person (petitioner) alleged the unconstitutionality of the decree published in the Federal Official Gazette of 30 December 2002, through which some provisions of the Income Tax Law and Credit Replacement Tax to the Salary Law where amended, added and abrogated, specifically, the first article that the amending article 115, penultimate and last paragraph of the Income Tax Law and third article that amends Article 3 of the transitional regulations, effective from the 1st of January 2003, specifically, in the third, fifth, seventh and eighth paragraphs.

"At the time of the constitutional hearing, the District Judge rendered the contested decision in this instance, and decided the dismissal of the Amparo Proceedings. The judge considered that Article 73 sections V and XVIII along with 114, Section I, both from the Amparo Act applied because the petitioner failed to prove the act of applications of the article contested.

"Now, with the aim of establishing the substance of arguments alleged, fifth and sixth paragraphs of Article 3 of the transitional contested regulations should be transcribed:

" 'Article third.' (unnecessary to reproduce).

"The appellant alleges that the allegedly unconstitutional articles were automatically having chosen the option to pay the credit replacement tax to the salary, in terms of the article above transcribed. The appellant tried to evidence the latter with the documents (pages 175-181 of the court's file) consisting of photocopies of the formats of the tax declarations made via the 'Internet'.

"Now, certainly, the second paragraph of Article 31 of the Tax Code of the Federation, in declaration via the Internet provides as follows:

"'31. '(unnecessary to reproduce).

"Such general rules whereby it is recognized the mechanisms to fulfill with the declarations and the related payment, via electronic means and it is set forth the requirements to meet to obtain the stamp of the print of the payment evidence in relation to the Fiscal Regulations for 2002, published in the Federal Official Gazette on 30 May of the same year for the period (January) paid by petitioner, which in point 2.14.1. relates:

"'2 .14.1. '(unnecessary to reproduce).
"Thus, if we start from the argument of being able to submit declarations by electronic means, it is understood that the petitioner taxpayer was consistent with the referred provisions. In other words, petitioner submitted its declaration via the Internet and was issued an acknowledging of receipt, which specifies the name of the taxpayer Materials Aceros Tucan, S.A. de C.V., the period to pay for the month of January 2003, the date of payment of 17 February of the same year, taxes to pay, among others, the credit replacement tax to the salary and the digital stamp. The above contravenes what the Federal Judge found, in other words the legal interest

to commence a proceedings was evidenced. Due to the nature of the issuance of the acknowledgment of receipt, the related document had to be submitted as photocopies. In this sense, not even the first printing of such documents can be considered as original but only a reproduction of the information received by the taxpayer in the electronic address of the related banks, in this case *Banco Santander Mexicano, institución de Banca Múltiple Grupo Financiero Santander Serfin*, and an identification of the transactions made under such methods. Such documents are the only evidence that the taxpayer can obtain when making a payment over the Internet. Contents of such documents are of principal interest unless not contested or objected by the tax authorities. It is not acceptable to allege security reasons so as to put in doubt the authenticity and contents of such documents.

"In these circumstances, we conclude that in cases like this, due to the fact that there are specific regulations on the manner to make tax payments, it is not valid to apply provisions on matters of a diverse nature, in which the photocopies are granted the status of mere indication or presumption. In this case, the main issue was to demonstrate that the declaration was submitted and payment was made for the credit replacement tax to the salary, which is accomplished when submitting such documents, which, as mentioned before, contain sufficient data to identify whether the allegedly unconstitutional articles were applied.

"I support the following precedent applies by analogy:

" 'Ninth Period. Instance: Supreme Court acting in Plenary Session. Source: Weekly Judicial Report of the Federation and its Gazette, Volume XIV. October 2001. Precedent: P. XVI / 2001. Page 20.

" 'FISCAL CONSOLIDATION. THE ACKNOWLEDGMENT OF RECEIPT OF PROVISIONAL PAYMENT OF INCOME TAX IN RELATION TO THE CONSOLIDATED STATEMENTS OF THE HOLDING COMPANIES, OBTAINED FROM THE INTERNET, EVIDENCES THE APPLICATION OF ARTICLES 57-E, 57-K, 57-N AND 57-Ñ OF THE RELATED LAW, EFFECTIVE FROM 1ST JANUARY 1999, FOR THE PURPOSES OF AMPARO PROCEEDINGS. '(unnecessary to reproduce).

"Likewise the following precedent:

" 'Ninth Period. Instance: Seventh Collegiate Court on Administrative Matters of the First Circuit. Source: Weekly Judicial Report of the Federation and its Gazette. Volume XVI. September 2002. Precedent 1.70A183 A. Page 1351.

" 'TAX DECLARATIONS FILED BY ELECTRONIC MEANS (VIA INTERNET). THE FIRST ACT OF APPLICATION IS EVIDENCED WITH THE ACKNOWLEDGEMENT OF RECEIPT CONTAINING THE DATA CONCERNING THE TIME, DATE, REGISTRY NUMBER AND TYPE OF TRANSACTION, TRANSMITTED BY THE APPROPRIATE AUTHORITY.' (unnecessary to transcribe).

"The article itself provides that it is not mandatory for taxpayers filing a declaration according to the formats approved by the Ministry of Finance and Public Credit.

"To strengthen the earlier conclusion, it is relevant to indicate that when using electronic means for a tax observance, the information can only be sent through digital documents. Digital documents are understood as those data messages containing information or a writing generated, sent, received or stored by such means, optical or any other technology. In this light, the only means to authenticate and evidence that these documents were received by the authority is through the acknowledgement of receipt sent by the same method with the digital stamp, as provided by rule 2.14.1 of Fiscal Regulations for year 2002. The above mentioned seal identifies the authority receiving the document, therefore replacing the manuscript signature and producing the same effect that the laws give to those documents, having the same evidentiary value (sic), as established by the general rule 2.16 of Fiscal Regulations. Such stamp is materialized through the string of symbols (set of letters numbers and signs) given by the bank or the Tax Administration Service when filing the declarations or payments through a digital document.

"Therefore, since such string of symbols materialize the digital stamp which authenticates the transaction and the payment made by the taxpayer, it is irrelevant that the acknowledgement of receipt is submitted through the printing of the original obtained by electronic means (used for the filing of the declaration) or through the photocopy of it. In both cases there would be sufficient data to determine whether the taxpayer was under the scope

of the application of the allegedly unconstitutional articles. In this sense, the first act of application of such articles has arisen and the petitioner has a legitimate reason to commence amparo proceedings by evidencing its legal interest. Thus, the authority bears the burden of proof where the authenticity of the data contained in the acknowledgement is contested.

"In this light and founding the arguments grounded, according to Article 91, paragraph III of the Amparo Act, the judgment has to be revoked and an in-depth analysis has to be carried out in accordance with the arguments raised and because this court has jurisdiction derived thereto, in terms of the article 5, section I, subsection D), the General Agreement 5 / 2001 of the Supreme Court of Justice of the Nation acting in plenary session and because there is a binding precedent on this issue as will be analyzed as follows."

The previous criteria led to a precedent register under the number VII.20.C.5 A, published in the Ninth Period of the Weekly Judicial Report of the Federation and its Gazette, Volume XX, September 2004. Page 1790, the heading and text read as follows: "LEGAL INTEREST OF THE TAXPAYERS. FOR ITS RECOGNITION IN THE AMPARO PROCEEDINGS IS SUFFICIENT PHOTOCOPIES OF THE ACKNOWLEDGEMENT OF RECEIPT OBTAINED FROM THE INTERNET, IN CASE THE TAX OBLIGATIONS ARE BEING COMPLIED THROUGH THAT VIA. From Article 31 of Tax Code of the Federation, and Rule 2.14.1 of Fiscal Regulations for year 2002 it is concluded that the taxpayer has the possibility to file tax declarations via the Internet. The photocopy of the acknowledgement of receipt obtained through this means is sufficient to prove his legal interest in the amparo proceedings commenced against the unconstitutionality of the legal provisions that govern such matters, since such reference is the only document that can be obtain when making such payment. It is the content of such document that matters. When using electronic means for the compliance of tax obligations, the related information can only be sent through digital documents. Digital documents are understood as those data messages containing information or a writing generated, sent, received or stored by such means, optical or any other technology. In this light, the only means to authenticate and evidence that these documents were received by the authority is through the acknowledgement of receipt sent by the same means with the digital stamp, as provided by rule 2.14.1 of Fiscal Regulations for year 2002. The above mentioned seal identifies the authority receiving the document, therefore replacing the manuscript signature and producing the same effect that the laws give to those documents, having the same evidentiary value (sic), as established by the general rule 2.16 of Fiscal Regulations. Such stamp is materialized through the string of symbols (set of letters numbers and signs) given by the bank or the Tax Administration Service when filing the declarations or payments through a digital document. Therefore, not even its first printing is considered as original but only a reproduction of the information submitted by the taxpayer to the electronic address of the authorized credit institutions and the reproduction of the data of the transaction performed through the use of such electronic means unless it is not contested or objected by the tax authorities. It is not acceptable to allege security reasons so as to put in doubt the authenticity and contents of such documents. Consequently, since there are specific regulations on the manner to comply with the tax obligations, it is not valid to apply provisions on matters of a diverse nature, in which the photocopies are granted the status of a mere indication or presumption. In this case, the main issue was to demonstrate that the declaration was submitted and tax payment was made which is accomplished when submitting such documents where sufficient date appear to identify whether the allegedly unconstitutional articles were applied."

FIFTH. To determine whether there is a contradiction of criteria, it is necessary to bear in mind articles 107, section XIII, first paragraph of the Mexican Constitution and 197-A of the Amparo Act, which regulate the issue on the divergence of criterion that may arise between Collegiate Circuit Courts:

"Article 107. All disputes referred in Article 103 will be subject to the procedures and forms determined by law, according to the following:

"...

"XIII. When the Collegiate Circuit Courts hold contradictory criterion in amparo proceedings, justices of the Supreme Court, the Attorney General, involved courts or the parties involved in such

proceedings may report the contradiction of criteria to the Supreme Court, so that the Court acting in plenary session or the competent Chamber, as appropriate, may determine the criteria that should prevail as mandatory precedent *(jurisprudencia)* ..."

"Article 197-A. When the Collegiate Circuit Courts hold contradictory criterion in amparo proceedings, justices of the Supreme Court, the Attorney General, involved courts, Magistrates of such Courts or the parties involved in such proceedings may report the contradiction of criteria to the Supreme Court, so that the Court determines the criteria that should prevail...

"The resolution to be rendered will not affect the specific legal situations arising from proceedings in which contradictory judgments were rendered..."

In connection with such articles, the Supreme Court of Justice of the Nation acting in plenary session has established that there is a contradiction of criteria when the following conditions are met: when examining same legal issues, the collegiate courts take differing positions or contradictory legal criteria; the difference between criterion are reflected in the arguments or legal interpretations of the related judgments; finally, the divergent approaches must originate from the analysis of the same elements. In this regard, the following precedent is cited, *"jurisprudencia"* P. / J. 26/2001 consulted on the Weekly Judicial Report of the Federation and its Gazette. Ninth Period. Volume XIII. April 2001. Page 76, which reads as follows:

"CONTRADICTION OF CRITERIA OF COLLEGIATE CIRCUIT COURTS. REQUIREMENTS FOR ITS EXISTENCE. In accordance with Articles 107, section XIII, first paragraph of the Federal Constitution and 197-A of the Amparo Act, when the Collegiate Circuit Court hold contradictory criterion in amparo proceedings the Supreme Court acting in plenary session or the competent Chamber, as appropriate, must determine the criteria that should prevail. It is understood that there are contradictory criterion when the following requirements are met: a) when examining the same legal issues, the collegiate courts take differing positions or contradictory legal criteria; b) the difference between criterion are reflected in the arguments or legal interpretations of the related judgments; c) finally, the divergent approaches must originate from the analysis of the same elements."

Under the above assumptions, it can be concluded that the criteria are contradictory.

To demonstrate the above statement is necessary to clarify the following coincidence:

1. In both proceedings where the judgments were rendered, the petitioners contested some articles as a consequence of a concrete act of application. The specific act of application was the filing of a declaration through electronic means. It is not relevant for the case that one declaration was provisional and on the other case was a definitive declaration for the fiscal year.
2. In both cases, in order to demonstrate the application of the provisions whose constitutionality was questioned, ordinary copies of the declaration were provided and the acknowledgement of receipt, generated from the Internet.

Now, notwithstanding that judgments denounced as contradictory were based on examining the same evidence, the Collegiate Circuit Courts arrived at different conclusions.

Indeed, the Third Collegiate Court on Administrative Matters for the First Circuit held that although the annual declaration can serve to demonstrate the application of the rules claimed (as unconstitutional) provided that there is no doubt that the relevant regulatory assumptions founded the results contained therein. In this case, the petitioner did not submit the original or certified copy of the annual declaration filed through electronic means or the acknowledging of receipt so that it could justify the act of application of the articles challenged. The petitioner only filed an ordinary copy. Under these conditions, the court held that copies are a mere indication, and that such documents should have been strengthened with other evidence.

By contrast, the Second Collegiate Court in Civil Matters for the Seventh Circuit held that the acknowledgment of receipt from the filing of the declaration bearing a digital stamp is sufficient to evidence the legal interest to commence the amparo proceedings and challenge the supporting articles. Therefore, not even its first printing is considered as original but only a reproduction of the information submitted by the taxpayer by electronic means. The Court added that is not valid to apply articles that rule for different matters and that consider the ordinary copies a mere indication or presumption.

In addition, the Court affirmed that the information

can only be sent through digital means, thus the only way to authenticate and certify that these documents were received by the authority is the acknowledgement of receipt sent by the same means, with the digital stamp, which identifies the office that received the document.

To conclude, there is a contradiction between the judgments. The Collegiate Circuit Courts, when resolving the appeals within the amparo proceedings review issues essentially equal but reached to differing legal approaches, as a consequence of different a legal interpretation of the same elements of knowledge.

Under these conditions, the contradiction is focused on determining whether the ordinary copy of the declaration submitted by the taxpayer through electronic means and the acknowledgement of receipt obtained by the same means and which holds the digital stamp of the receiving authority, is sufficient to prove the application of articles supporting such declarations at the amparo proceedings.

It is irrelevant for the case that such criteria are based upon Article 31 of the Tax Code of the Federation, as well as on general rules issued by the administrative authority but with different temporary validity, which do not exactly match the literal content.

In this regard, the petitioner in the case resolved by the Second Collegiate Court in Civil Matters of the Seventh Circuit to prove his legal interest, submitted an ordinary copy of the declaration concerning payment of the credit replacement tax to the salary of January 2003, filed on 17 February of that year through electronic means, and attached thereto an ordinary copy of the acknowledgement of receipt that the receiving authority sent him in the same way.

In this vein, article 31 of the Federation of Tax Code, in force at that time, reads:

> "Article 31. People under the tax provisions are required to submit requests of a federal taxpayers registry, declarations or notices, before the tax authorities, will do so in the formats approved by the Ministry of Finance and Public Credit. Such people must provide the number of copies, data and reports and attach documents such formats require.
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> "Taxpayers who are required to submit monthly interim payments in accordance with the respective tax laws, rather than using formats referred to in the preceding paragraph shall submit, through electronic means, declarations or notices set forth in tax regulations of the Ministry of Finance and Public Credit and meet the requirements established in these rules to this effect. In addition, taxpayers may submit declarations or notices in the relevant formats approved by the aforementioned authority, to obtain the stamp or printing of the cash register of the authorized office to receive the concerning document when the requirements set forth by such ministry are met. Taxpayers other than those cited may file through electronic means declarations and notices in cases and when meeting requirements set forth by the Ministry of Finance and Public Credit through general rules ..."

In addition, the Fiscal Regulations for 2002, published in the Federal Official Gazette on 30 May 2002, which was the support of the Court when solving this contradiction, states the following:

> "2.14.1. For the purposes of the seventh paragraph of Article 20 and the second paragraph of Article 31 of the Code, taxpayers required to submit declarations of monthly payments either provisional or definitive or through electronic means the ISR, IMPAC, VAT, IEPS, tax for the sale of luxury goods and services or credit replacement tax to the salary, from July 2002 and subsequently, should be made via the Internet for each of their tax obligations arising from these taxes, including the withholding and they must provide data that are contained in the electronic address of the authorized credit institutions referred to in Annex 4, section D of this resolution. Such filing should be made through the related electronic developments and they must also make payment by electronic funds transfer. Credit institutions will send to taxpayers acknowledgement of receipt in the same manner, which shall contain the digital stamp generated by them to enable authentication the transaction performed and, where applicable, the payment.
>
> "The data that should be provided at the electronic address of credit institutions referred are: identification of the taxpayer; concept of the tax to be paid; period to be paid; fiscal year; type of payment; tax to be paid or the balance in favour; interests, credit against the salary, compensations, incentives or applied certificates, where applicable and the amount to pay. In the case of complementary declarations or a fiscal correction, taxpayers must also indicate the amount previously paid and the date thereof.
>
> "It is understood by electronic funds transfer, for the

purposes of this chapter, the payment of taxes done by credit institutions in electronic form by the instruction of the taxpayers and through the allocation of funds from their bank account in favour of the Treasury of the Federation."

On the other hand, in the amparo proceedings resolved by the Third Collegiate Court of Administrative Matters in the First Circuit, the petitioner requesting the amparo protection submitted an ordinary copy of the declaration of income tax for the year 2005 and the acknowledging of receipt obtained through electronic means of 31 July 2006 to demonstrate the application of the articles contested. Article 31 of the of Tax Code of the Federation effective at that time, reads as follows

"Article 31. People must filed petitions in digital documents with an advanced electronic signature through the electronic means and formats provided by the Tax Administration Service through general rules when requesting federal taxpayers registry, filing declarations or notices. Such petitions or filing should be addressed to the competent authorities of authorized offices and having fulfilled the requirements set forth for such transactions. When applicable, they must make the relevant payment through electronic transfer of funds. When tax articles require the attachment of a document different from a notary deeds or a power of attorney and such documents are not in a digital format, the request or notice shall be filed by printed means. "Taxpayers shall fulfill with the above obligation at the offices of the Tax Administration Service by disclosing sufficient information to have its declaration or notice sent by electronic means to the related electronic addresses and if applicable, ordering the electronic transfer of funds.

"...

"The electronic formats referred to the first paragraph of this article will be posted on the website of the Tax Administration Service, which will comply with the applicable tax provisions. Their use shall be binding as long as the publishing in the page mentioned is carried out at least one month prior to the date on which the taxpayer is required to use them.

"...

"At the request of the taxpayer, the Tax Administration Service will issue an acknowledgement of receipt in which the declarations submitted by the taxpayer including the date are referred. This record will only be informative and it does not presuppose the proper observance of his obligations. To this end, the Tax Administration Service will have a period of 20 days after the sending of the request in a digital document with an advanced electronic signature to the e-mail provided thereto provided that payment was duly made when applicable."

To complement the regulation applicable by the court when resolving the case, reference is made to the Fiscal Regulations for 2005, published in the Federal Official Gazette of 30 May 2005:

"2.17.1. For the purposes of the seventh paragraph of Article 20 and first paragraph of Article 31 of the Code, taxpayers referred to in Rule 2.14.1 of this regulation, must submit via the Internet their annual declarations for the year of 2004 of the income tax and IMPAC, including the complementary or late declarations or fiscal correction, before the credit institutions that are authorized in Annex 4, line C of the present regulation. Taxpayers should follow this procedure:

"I. They should obtain, as appropriate, the 2004 Program for the Filing of Annual Declarations regarding legal persons or the 2004 Program for the Filing of Annual Declarations of individuals (Declara SAT), at the email address of the SAT (www.sat.gob.mx) or through magnetic devices at local offices for the assistance to the taxpayer.

"II. They should type the requested data in the programs mentioned, related to the applicable tax obligations and stating under oath that the data provided thereto are true.

"...

"III. Once the typing has been concluded they will send via Internet to the SAT to e-mail address (www.sat.gob.mx) the information requested. Such office will send to taxpayers in the same manner an electronic acknowledgement of receipt, which must include the transaction number, filing date and digital stamp generated by such authority.

"...

"The credit institutions will send to taxpayers, by the same manner, the receipt of the payment of federal taxes with the digital stamp generated thereto so as to enable the authentication of the transaction performed and its payment."

As is clear from the transcripts above, the existing provisions in either case literally are different. Despite the above, as mentioned in preceding paragraphs, this is not an obstacle to argue that there is a contradiction of criteria. Although the applicable provisions are different, both collegiate courts discussed the same problem and the regulation is similar in substance. In addition, applicable provision for assessing such evidence in both cases had to be the same, as will be determined when deciding which criteria should prevail.

First, its important to identify that the contents of the article, in essence, is reiterated in both statutes and they even persists in the existing regulations. In addition, existing provisions with regard to declarations filed through electronic means, retain the same trend, which will be analyzed when deciding the criteria in determining the correct position in respect of the contradictory findings as the result of the proceedings. To demonstrate the above statement, the contents of article 31 of Tax Code of the Federation, whose first paragraph was last reformed by Decree published in the Federal Official Gazette of 28 June 2006, is reproduced:

" Article 31. Persons must file federal taxpayer registration requests, returns, notices or reports in digital documents with advanced electronic signatures, using the electronic media and forms and with the information indicated by the Tax Administration Service in general rules, forwarding them to the corresponding authorities or to the authorized offices, as applicable, fulfilling the requirements established in such rules and as applicable paying by electronic funds transfer. When the tax provisions establish that the document other than deeds or notarized powers of attorney be filed, and such document is not digitized, the request or notice may be filed in print.

"...

" The electronic forms to which the first paragraph of this article refers shall be published on the electronic page of the Tax Administration Service, which shall adhere to the applicable tax provisions, and the use thereof shall be mandatory provided that the release on the aforesaid page is done at least one month before the taxpayer is required to use them.

"...

" At the taxpayer's request, the Tax Administration Service shall issue a certificate indicating the returns submitted by such taxpayer in the tax year in question, and the filing date thereof. The said certificate shall be informational only and shall not rule on due compliance with the taxpayer's obligations. For this purpose, the Tax Administration Service shall have a period of 20 days from the receipt of the corresponding request in a digital document with an advanced electronic signature, at the electronic address indicated by said Service in general rules, provided that the fees established in the respective law have been paid.

The comparative analysis between the applicable article on the date on which the judgment was rendered by the Third Collegiate Court on Administrative Matters for the First Circuit and the existing text, shows that in the latter it only added the phrase "... with the information provided thereto ...", in connection with the requirements that must be met the documents to be filed through electronic means. Thus the provision was not substantially modified.

Additionally, the Fiscal Regulations for 2007, published in the Federal Official Gazette of 25 April 2007, reads as follows:

"2.17.1. For the purposes of the seventh paragraph of Article 20 and first paragraph of Article 31 of the CFF, taxpayers referred to in Rule 2.14.1 must submit via the Internet their annual declarations for the year of 2006 of the income tax and IMPAC, including the complementary or late declarations or fiscal correction, before the credit institutions that are authorized in Annex 4, line B of the present regulation. Taxpayers should follow this procedure:

"I. They should obtain, as appropriate, the 2006 Program for the Filing of Annual Declarations regarding legal persons (DEM) or the 2006 Program for the Filing of Annual Declarations of individuals (Declara SAT), at SAT's web page or through optic devices (CD) at the ALAC.

"II. They should type the requested data in the programs mentioned, related to the applicable tax obligations and stating under oath that data provided thereto are true.

"...

"III. Once the typing has been concluded they will send the information requested to the SAT through the SAT's web page. Such office will send to taxpayers, in the same manner, an electronic acknowledgement of receipt, which must include the transaction number, filing date and digital stamp generated by such authority.

"...

From the above, it can be concluded that even though the collegiate court holding the criteria, considered the existing provisions in different periods, whose literal text does not match, the contents of such provision essentially remains, given that:

1. According to all tax provisions there is an obligation for taxpayers to submit declarations via the Internet, regardless that in one case this was an interim declaration and, on the other, an annual declaration. Such difference is not relevant to the matter of contradiction.
2. In similar conditions, the Tax Administration Service must send to the taxpayer an acknowledgement of receipt by the same means, in short, through electronic means.
3. With slight differences, there is a possibility that taxpayers obtain a printed acknowledgement of receipt of its declaration. In the first case: the provisions provide that in addition to the requirement to submit the declaration through the electronic means, there is the option of submitting the declaration through the formats approved by the Tax Administration Service, in order to get the stamp or cash register printing of the office authorized to receive such documentation. In the second case: according to applicable regulation, as well as Article 31 of the Tax Code of Federation there is a possibility that taxpayers may request from the Tax Administration Service a record indicating the declarations submitted by the taxpayer and its filing date.

Thus, since it was demonstrated that such regulations are similar a contradiction of criteria therefore arises.

In addition, another significant reason for reaching such a conclusion, is the fact that the applicable provision to assess the evidence provided, in both cases was the same, as will be seen in the analysis. Thus, it is not relevant for this analysis that both Courts did not apply such provision because the High Court will decide which criteria should prevail and the prevailing criteria could also be different from the criterion supported by both collegiate courts. In support of the above the following "JURISPRUDENCIA" is applicable, 4a./J. 2/94, Fourth Chamber. Eighth Period. Weekly Judicial Report of the Federation and its Gazette. Number 74, February 1994. Page 19. The heading and text read as follows:

"CRITERIA CONTRADICTION PROCEEDINGS. IT DOES NOT HAVE TO BE RESOLVED BY DECLARAING, WHICH CRITERIA SHOULD PREVIAL, AS THE CORRECT INTERPRETATION OF THE LEGAL PROBLEM CAN LEAD TO THE ESTABLISHMENT OF ANOTHER. The aim pursued by Articles 107, paragraph XIII of the Federal Constitution and 197-A of the Amparo Act, when giving jurisdiction to the Chambers of the Supreme Court of Justice of the Nation to resolve the contradictions that may arise between criterion of Collegiate Circuit Courts, defining which criteria must prevail, is to preserve the uniformity in the interpretation of rules that structure the national legal system, by bringing its real meaning and scope, which, in turn, tends to ensure legal certainty. Such a fundamental and very important purpose would become impossible if it could be concluded that the Supreme Court of Justice of the Nation is inexorably required to decide in relation to the criteria set forth in one of the contradictory thesis, despite considering that both are incorrect or legally untenable. Therefore, the Supreme Court can validly recognize a third criterion, which seems correct in accordance with the logical and legal examination of the problem. This is also consistent with the text of those provisions in the sense that the Chamber must decide '...which criteria must prevail, not which of the two criteria should prevail."

SIXTH. This Second Chamber of the Supreme Court of Justice of the Nation estimates that the criteria that will be referred below must prevail as a *"jurisprudencia"* (binding precedent).

As previously stated, the criteria contradiction focuses on whether the ordinary copy of the declaration submitted by the taxpayer through electronic means and the related acknowledgement of receipt, obtained by the same means and that bears the digital stamp of the receiving authority, is sufficient to demonstrate at the amparo proceedings the application of legal articles supporting such declaration.

To resolve the issue we must bear in mind that in terms of Article 6 Fiscal Code of the Federation,

taxpayers have the burden to determine the tax amounts to be paid, unless provided otherwise.

Such article, in force from 1 January 2004, provides that when making the payment of the taxes, the taxpayer must obtain from the collecting office the official acknowledgement of receipt or the valuating format, issued and controlled exclusively by the Ministry of Finance and Public Credit or the documentation where, according to applicable statutes, should bear the original printing of the cash register. Specifically, such provision states that in the case of payments made at the credit institutions (banks), the printing of the cash register, the stamp, the record or acknowledgement of receipt with the digital stamp.

In terms of Article 31 of the above-mentioned statute, taxpayers are required to submit declarations through electronic means.

In other words, in terms of Article 31 of the tax code, the taxpayers, by law, are required to submit their provisional monthly payments and annual declaration of the fiscal year through electronic means.

The manner to comply with such obligation is detailed in the related general rules. On this issue, it is important to emphasize that the taxpayer can only fulfill the obligation to make such payments and submit the relevant declarations in such manner that is to say through electronic means.

Indeed, Article 31 of the Tax Code of the Federation, both in its current text and its text of 2005 in which Third Collegiate Court in the Administrative Matters of the First Circuit based its judgment, provides that offices authorized to receive from taxpayers the declarations may dismiss such declarations when such declarations had to be filed through electronic means. To corroborate the foregoing the related paragraph of the existing rule reads:

> "Article 31. ...
>
> " The offices to which this article refers shall receive the returns, notices, requests and other documents as submitted, without observation or objection. It may reject such filing only when it is to be made electronically or when it does not contain the taxpayer's name, trade name or company name, Federal Taxpayer Registry number, tax domicile, or the signature of the taxpayer or its legal representative, or when the forms do not state the Federal Taxpayer Registry number of the taxpayer or its legal representative, or contain alterations or erasures, or in the case of returns, when they contain arithmetical errors. In this last case, the offices may collect the contributions that result from correcting the arithmetical errors, and accessories thereon."

Furthermore, Article 17-D of the code, amended by decree published in the Federal Official Gazette on 5 January 2004, clearly specifies the obligation:

> "Article 17-D. When the tax provisions require the filing of documents, they must be digital and contain the author's advanced electronic signature, unless a different rule is established. The tax authorities may authorize the use of other electronic signatures in general rules.
>
> "...
>
> " In digital documents, an advanced electronic signature supported by a current certificate shall replace the manuscript signature of the signer, guarantee the integrity of the document, and produce the same effects under law afforded to hand-signed documents, with the same evidentiary value.
>
> " A digital document is understood to be any data message containing information or writing generated, sent, received or filed electronically, optically or with any other technology..."

In connection with the foregoing, it is irrelevant to mention that the above transcribed provisions were not in effect when the Second Collegiate Court in Civil Matters of the Seventh Circuit rendered the judgment alleged to be contradictory. However, from the second paragraph of Article 31 of the Tax Code of Federation, provisions applicable at that moment, the obligations of taxpayers are provided when filing the provisional monthly payments to submit the related declarations through electronic means.

Therefore, there is no option but to conclude that, by express statutory provision, taxpayers must submit declarations for the fulfillment of their tax obligations through electronic means in accordance with the general rules approved the Tax Administration Service. Taxpayers cannot use any other means as could be in print to comply with this obligation.

The above do not clash with the fact that in regulations effective for 2003, article 31 provided the possibility that, in addition to the filing of the declarations through electronic means, the taxpayer could file it in the formats approved by the Tax Administration Service, in order to obtain the stamp or the printing of the cash register from the office

authorized to receive such document. In terms of the regulation in force, the taxpayer may request the Tax Administration Service to issue a transcript of setting out the declarations submitted in the year in question and its filing date.

In connection with the foregoing, it should be noted that according to the first mentioned provision, it does not appear that taxpayers should comply with the requirement to submit their declarations through print formats, nor that they can replace to declarations made by electronic means, rather such manner was mentioned only as an option for taxpayers to get a printed record, however, in no way modifies the manner in which the obligation must be fulfilled.

Besides, we should specify the manner through which the Tax Administration Service shall record the receipt of the declaration made through electronic means.

In this regard, it is necessary to transcribe articles 17-E and 17-I of the of Tax Code of the Federation, amended by decree published in the Federal Official Gazette of 5 January 2004:

> "Article 17-E. When the taxpayers send a digital document to the tax authorities, they shall receive a receipt containing the digital stamp. The digital stamp is an electronic message accrediting that a digital document was received by the corresponding authority, and shall be subject to the same rules applicable to the use of advanced electronic signatures. In this case, the digital stamp shall identify the authority that received the document and, absent proof to the contrary, the digital document shall be presumed to be received at the time and date stated on the aforesaid confirmation receipt. The Tax Administration Service may verify the authenticity of confirmation receipts with digital stamps."
>
> "Article 17-I. The integrity and authorship of a digital document with an advanced electronic signature or digital stamp shall be verifiable through the remission of the original document with the author's public key."

Moreover, in Resolution Miscellany Prosecutor force in 2005 and 2007, respectively, stated:

> "2.17.1. For the purposes of the seventh paragraph of Article 20 and first paragraph of Article 31 of the Code, taxpayers referred to in Rule 2.14.1. of this regulation, must submit via the Internet their annual declarations for the year of 2004 of the income tax and IMPAC, including the complementary or late declarations or fiscal correction, before the credit institutions that are authorized in Annex 4, line C of the present regulation. Taxpayers should follow this procedure:
>
> "I. They should obtain, as appropriate, the 2004 Program for the Filing of Annual Declarations regarding legal persons or the 2004 Program for the Filing of Annual Declarations of individuals (Declara SAT), at the email address of the SAT (www.sat.gob.mx) or through magnetic devices at local offices for the assistance to the taxpayer.
>
> "II. They should type the requested data in the programs mentioned, related to the applicable tax obligations and stating under oath that the data provided thereto are true.
>
> "...
>
> "III. Once the typing has been concluded they will send via the Internet to the SAT to e-mail address (www.sat.gob.mx) the information requested. Such office will send to taxpayers in the same manner an electronic acknowledgement of receipt, which must include the transaction number, filing date and digital stamp generated by such authority.
>
> "...
>
> " The credit institutions will send to taxpayers, by the same manner, the receipt of the payment of federal taxes with the digital stamp generated thereto so as to enable the authentication of the transaction performed and its payment."
>
> "2.17.1. For the purposes of the seventh paragraph of Article 20 and first paragraph of Article 31 of the CFF, taxpayers referred to in Rule 2.14.1. must submit via the Internet their annual declarations for the year of 2006 of the income tax and IMPAC, including the complementary or late declarations or fiscal correction, before the credit institutions that are authorized in Annex 4, line B of the present regulation. Taxpayers should follow this procedure:
>
> "I. They should obtain, as appropriate, the 2006 Program for the Filing of Annual Declarations regarding legal persons (DEM) or the 2006 Program for the Filing of Annual Declarations of individuals (Declara SAT), at SAT's web page or through optic

devices (CD) at the ALAC.

"II. They should type the requested data in the programs mentioned, related to the applicable tax obligations and stating under oath that the data provided thereto are true.
"...

"III. Once the typing has been concluded they will send the information requested to the SAT through the SAT's web page. Such office will send to taxpayers, in the same manner, an electronic acknowledgement of receipt, which must include the transaction number, filing date and digital stamp generated by such authority.

Under the provisions transcribed it is possible to conclude that the Tax Administration Service, through its offices, shall record the receipt of the declarations filed by taxpayers through electronic means by the same means, in other works through electronic means. For this purpose the authority will send to the taxpayer an acknowledgement of receipt containing the digital stamp, the transaction number and the date on which the filing was made.

Of particular importance is to be precise as to what is understood by a digital stamp in terms of Article 17-E before transcribed, the electronic message accrediting that a digital document was received by the corresponding authority. Further, such digital stamp will identify the office that received the document and it is presumed, unless proved otherwise, that the digital document was received at the time and date mentioned in the acknowledgement of receipt.

In other words, it is through the acknowledgement of receipt sent by the Tax Administration Service through electronic means to the taxpayer that such authority sends the record of such reception of the declaration. Moreover, to authenticate such acknowledgement, the related document contains a digital stamp that identifies the receiving unit.

In this light, it should be pointed out that the provision subject to analysis expressly states that such acknowledgement of receipt with the digital stamp is sufficient to assume, unless proved otherwise, that the digital document submitted by the taxpayer was received at the time and date mentioned in that acknowledgement.

In this regard, it can not be denied that the regulations that existed in the financial year 2003 when the declaration was filed, and which gave rise to conflict resolved that the Second Collegiate Court in Civil Matters of the Seventh Circuit, the above-transcribe articles were not in force. However, as mentioned before, Article 31 of the Tax Code of the Federation in force for that year provided that taxpayers were required to make provisional payments through electronic means. In addition, credit institutions authorized to receive such provisional payments were required to issue an acknowledgement of receipt in the same way, in other words through the Internet. Such acknowledgement should be authenticated with the digital stamp. This leads to the conclusion that the regulation is substantially the same.

In these conditions, it is estimated that the acknowledgement of receipt containing the digital stamp of the issuing authority is sufficient to prove that taxpayer filed the related declaration.

In particular, due to the fact that at the proceedings where the criteria contradictions was challenged, the petitioner attached an ordinary copy of the declarations and the acknowledgement of receipt both obtained through electronic means, it should be determined whether such document are sufficient evidence to prove the applications of the provisions supporting such declaration.

To respond to the above, above all, the nature of the evidence subject to analysis must be addressed, in order to be able to establish the applicable rules when assessing such evidence.

In this vein, regarding the manner in which taxpayers transmit the declarations in compliance with the tax obligations and the acknowledgement of receipt that the Tax Administration Service refers to, by law, such acts must be carried out through electronic means.

In this sense, it is of relevance to determine what these electronic means represent. In particular, it should be specific that it is a form of communication that technology provides, through which the interconnection of computer networks is possible that allows computers to communicate directly to each other, in other words, a computer in a network can connect to another.

In this case, taxpayers send from their computer, across the Internet, to the office of the Tax Administration Service their tax declaration, and such office, using the same network, acknowledges receipt of the information sent, to which the taxpayer has access from an item of computer equipment.

To this end, the procedure through which taxpayers filed the required declarations, as well as the manner in which the Tax Administration Service acknowledges receipt, takes place through a network of interconnected series of computers, in the using of technological developments on electronic means.

Therefore, the use of such methods means there is a lack of printed records, which is the reason why, strictly speaking, there is no document that may be regarded as the original.

Having defined the manner in which the information is generated, it is now viable to determine the provision that sets the rules in connection with evidentiary weight. Under these circumstances, we must refer to article 210-A of the Federal Code of Civil Proceedings, added by publication in the Official Journal of the Federation the twenty-ninth day of May, two thousand, that is, that was in force to solve all the contending issues, supplementary application to the Act de Amparo, set out in Article 2:

> "Article 210-A. It is recognized as evidence information generated or communicated by electronic means, optical or any other technology.
>
> " In assessing the probative value of the information referred to in the preceding paragraph, primary account will be taken of the credibility of the method through which it was created, communicated, received or retrieved and whether it is possible to identify or attribute to the persons so bound by the content of the related information and that it is capable of being viewed for subsequent consultation.
>
> "When the law requires that a document be preserved and submitted in its original form, this requirement will be met if it is proved that the information generated, communicated, received or retrieved by optical, electronic means or any other form of technology has remained unaltered from the moment it was generated for the first time in its definitive form and that if it is capable of being revised for subsequent search."

This civil procedural rule recognized the evidential nature of information generated or communicated in electronic format, optical or any other technology. From the provisions of this article, it appears that regarding the evidentiary weight of the information obtained through such technological means, the legislature branch provided specific rules, thus such documents can not be assessed in accordance with the provisions applicable in case of ordinary copies of public or private documents.

Thus, in terms of the provisions, in order to determine the evidentiary weight that corresponds to information obtained through electronic means, the reliability of the method in which the information has been created, communicated, received or stored must be primarily addressed, and, where appropriate, whether it is possible to link specific people with the contents of such and whether such information can be available for a further search.

In this light, it is of particular relevance in order to resolve this criteria contradiction, the digital stamp that according to applicable administrative rules consists of a string of symbols generated by the authority to authenticate the contents of a digital document. Under this perspective, it can be argued that the acknowledgement of receipt sent through electronic means that contains a digital stamp, is the means through which the taxpayer can demonstrate that the authority received the related declaration.

In this vein, the printing of such digital document does not contain more features than what the digital stamp authenticates, which, as previously stated, consists of a string of symbols generated by the receiving authorities. Thus, it is irrelevant, when trying to prove within the amparo proceedings the filing of the declaration over electronic mean, that the printing of the acknowledgement of receipt or an ordinary copy of it is attached thereto. The feature that provides evidentiary weight to such a document is the digital stamp, which leads us to assume, unless proved otherwise, the transaction that seeks to be demonstrated.

Under such presumption the amparo proceedings judge should give evidentiary weight to the printing of an acknowledgement receipt or to the ordinary copy. At any moment, the fiscal authority has the ability to verify whether or not such digital stamp is of its authorship in accordance with Article 17-I of Tax Code of the Federation and, where needed, such authority can provide appropriate evidence to contest such a presumption.

In other words, if the digital stamp is the element that permits the confirmation of both the tax declarations filed via the Internet and the acknowledging of receipt of such declarations it must be concluded, in connection with the reliability of the method by which digital documents are generated, that as they are prescribed by law and that the legislature and the administrative authority have developed regulations through general rules, it can be sustained that those type of documents have a high degree of certainty as to its authenticity, subsisting the possibility that the authority can contest this presumption of certainty that the Tax Code of the Federation provides thereto.

Therefore, it must be concluded that the printing of the tax declaration transmitted through electronic means and the acknowledging of receipt, or its ordinary

copy bearing the digital stamp both obtained through the Internet, are sufficient to demonstrate that the taxpayer filed such a declaration, provided that during the amparo proceedings such presumption is not contested.

Such declaration and the acknowledgment of receipt, having the characteristics mentioned, are the proper evidence to demonstrate the application of legal provisions, which serve as a basis for the calculation that such declaration reflects. The later, provided that there is no doubt that the relevant regulatory assumptions sustain the results contained in it.

Therefore, this Second Chamber of the Supreme Court of Justice of the Nation considers that as a matter of *"jurisprudencia"* (binding precedent) the following criteria must prevail:

> DECLARATION SUBMITTED THROUGH ELECTRONIC MEANS AND ITS ACNOWLEDGMENT OF RECEIPT BEARING A DIGITAL STAMP. THE PRINTING RECORD OR ITS ORDINARY COPY ARE BOTH SUFFICIENT TO PROVE THE APPLICATION OF THE ARTICLES SUPPORTING SUCH DECLARATION. In accordance with Article 31 of the Tax Code of the Federation, taxpayers must make payments and submit the related tax declarations in digital documents through electronic means identified through general rules by the Tax Administration Service. In addition, due to the fact that under Article 17-E such authority shall send in the same manner the acknowledgement of receipt that contains the digital stamp, which consists in a string of symbols created by such authority to authenticate its contents. In this light, if by law in order to comply with tax obligations, it must use the interconnection of computer networks, through which the taxpayer and the tax authorities transmit to each other information directly from computers without any printed records, when assessing the information obtained from such network, or the ordinary copies, the rules regarding the evidentiary weight of printed documents are not applicable. Consequently, Article 210-A of the Federal Code of Civil Proceedings is applicable. According to the article, primary account will be taken of the credibility of the method through which such information was created, communicated, received or retrieved and whether it is possible to identify or attribute to the persons so bound by the content of the related information and that if is capable of being accessed for subsequent search. Thus, in the case of the fulfillment of tax obligations through electronic means, the method by which digital documents are generated is prescribed by law and, that the legislature and the administrative authority, through general rules, have developed regulation that permits the authenticating of its authorship, the printing or its ordinary copy are sufficient to demonstrate the application of legal provisions that are used for the calculation reflected in the declaration, provided that there is no doubt that the related regulatory assumptions sustain the results contained therein.

For these reasons, is resolved:

> FIRST.- There is contradiction between the criterion sustained by the Third Collegiate Court on Administrative Matters for the First Circuit and the Second Collegiate Court in Civil Matters for the Seventh Circuit.
>
> SECOND.- It should prevail as a matter of binding precedent *(jurisprudencia)* the criteria addressed by this Second Chamber of the Supreme Court of Justice of the Nation, under the wording set forth in the last paragraph of this resolution.

To be notified. Immediately send the precedent derived from this resolution to the General Office of Coordination of the Compilation and Systematization of Criterion for its publication in the Weekly Judicial Report of the Federation and its Gazette, as well for its distribution to the Supreme Court of Justice of the Nation acting the plenary session, the First Chamber of the Supreme Court, the Collegiate Circuit Courts and Federal District Courts, in compliance with Article 195 of the Amparo Act.

This was resolved by the Second Chamber of the Supreme Court of Justice of the Nation, by unanimous votes of the four justices: Mariano Azuela Güitrón, Genaro Góngora David Pimentel, Beatriz Luna Margarita Ramos and President Jose Fernando Gonzalez Franco Chambers. Absent: Sergio Salvador Aguirre Anguiano.

Binding Precedent:

Registration Number: 1/170349

Title: DECLARATION SUBMITTED THROUGH ELECTRONIC MEANS AND THE ACNOWLEDGMENT OF RECEIPT BEARING A DIGITAL STAMP. THE PRINTING RECORD OR ITS ORDINARY COPY ARE BOTH SUFFICIENT TO PROVE THE APPLICATION OF THE LEGAL PROVISIONS ON WHICH SUCH DECLARATION IS BASED.

Localization: Ninth Period. Second Chamber; Weekly Judicial Report of the Federation and its Gazette. Number XXVII. February 2008. Page 530.

Précis

The printing of the acknowledgment of receipt containing a digital stamp is sufficient to proof the application of the allegedly unconstitutional law.[1]

On February 2008, the Mexican Supreme Court published a binding precedent[2] derived from the 261/2007 SS Criteria Contradiction Proceedings *(Contradicción de Tesis)*[3] between the Third Collegiate Court for Administrative Matters in the First Circuit and the Second Civil Court for Civil Matters in the Seventh Circuit, in that the printing or the copy of the acknowledgment of receipt received electronically once a tax payment has been made via the internet is valid to commence a judicial review of the unconstitutionality of the legal basis for the calculation of a tax payment.

The issue concerned whether the copy of the tax declaration submitted by the taxpayer electronically, together with the related acknowledgement of receipt obtained through the same means and bearing the digital stamp of the receiving authority, are efficient to prove the application of the alleged unconstitutional laws within judicial review proceedings.

The Third Collegiate Court for Administrative Matters decided[4] that because the claimant did not submit the original or a certified copy of the tax declaration or of the acknowledgement of receipt of the act authority (the application of the alleged unconstitutional legal provision),[5] the judicial review against the application of an unconstitutional provision had to be dismissed. It was determined that the Xeroxed copies submitted by the claimant are solely an indication or presumption of an act, but such copies do not have full evidential weight. By way of contrast, the Second Collegiate Court for Civil Matters held[6] that the claimant correctly evidenced the application of the alleged unconstitutional legal provision when submitting the Xeroxed copies of the acknowledgement of receipt (bearing the digital stamp) of the tax declarations filed through electronic means.

The Supreme Court found that the judgment of the Second Collegiate Court for Civil Matters was correct. The Supreme Court found that since: (i) the Federal Tax Code *(Article 31 of the Código Fiscal de la Federación)* compels taxpayers to submit a tax declaration through electronic means; and (ii) tax authorities recognized both the tax declarations submitted through electronic means and the electronic acknowledgement of receipt received by taxpayers thereto; and (iii) tax authorities give full evidentiary weight to the advanced electronic signature[7] and the digital stamp[8] used, and that (iv) tax authorities received payments made by wire transfer, it is valid to prove the application of an alleged unconstitutional legal provision with the copy of the acknowledgement of receipt.

The Supreme Court reached the conclusion that the tax law compels the taxpayer to submit their tax declarations through electronic means, and it contemplates the issuance of an electronic acknowledgment of receipt bearing a digital stamp. As a result, the courts should refrain from analyzing the

[1] *The principal reasoning is published on the Supreme Court website at http://www2.scjn.gob.mx/ius2006/UnaEj.asp?nEjecutoria=20867&Tpo=2.*

[2] *Under the Mexican legal system, a binding precedent is called jurisprudencia. This precedent arises out of the constitutional proceedings (judicial review) called amparo. The amparo is a constitutional challenge by which an affected individual has the right to contest acts of authority. Thus, it is possible for an individual to challenge that a certain legal provision is unconstitutional, but requires the court to determine whether the provision can be applied for first time in detriment of the rights of the individual. In the alternative, that the sole entry into force of the law, caused a prejudicial application. This is a technical challenge where a timely filing can make the difference. If the Federal Court declares the unconstitutionality of the legal provision, it would not have a general effect, but rather it will only favour the person who made the proper challenge. Constitutional challenges are handled by Federal Courts.*

[3] *A Criteria Contradiction Proceedings is the procedure resolving two or more contradictory judgments (therefore the reasoning) rendered either by Chambers of the Supreme Court or among Collegiate Circuit Courts. The Supreme Court, acting in Plenary Session or in Chambers, settles what precedent should prevail.*

[4] *Case 395/2006 Revocation Recourse (Federal Appeal).*

[5] *A certified copy is a document entrusted to public officers in the performance of their duties or those created by public notaries or certified commercial broker or the like.*

[6] *Case 673/2003 Revocation Recourse (Federal Appeal).*

[7] *An advance electronic signature is an electronic signature certified by an authorized service provider or an electronic signature having reliable security features. See articles 89, 89bis, and 96 to 114 of the Electronic Commerce section of the Código de Comercio (Mexican Commerce Code).*

[8] *The digital stamp is the electronic message certifying that the tax authority received the digital document see article 17-E of the Federal Tax Code (Código Fiscal de la Federación): 'Artículo 17-E. Cuando los contribuyentes remitan un documento digital a las autoridades fiscales, recibirán el acuse de recibo que contenga el sello digital. El sello digital es el mensaje electrónico que acredita que un documento digital fue recibido por la autoridad correspondiente y estará sujeto a la misma regulación aplicable al uso de una firma electrónica avanzada. En este caso, el sello digital identificará a la dependencia que recibió el documento y se presumirá, salvo prueba en contrario, que el documento digital fue recibido en la hora y fecha que se consignen en el acuse de recibo mencionado. El Servicio de Administración Tributaria establecerá los medios para que los contribuyentes puedan verificar la autenticidad de los acuses de recibo con sello digital.' 'Article 17-E. When taxpayers submit a digital document to the tax authorities, they will receive an acknowledgement of receipt containing the digital stamp. The stamp is the digital electronic message confirming that a digital document was received by the appropriate authority and is subject to the same regulation that applies to the use of an advanced electronic signature. In this case, the digital stamp identifies the unit that received the document and is presumed, unless proven otherwise, that the document was received at the digital time and date entered in the acknowledgement mentioned. The Service of Tax Administration will establish the means by which taxpayers can verify the authenticity of acknowledgements with a digital stamp.'*

evidentiary weight of the documents submitted along with the judicial review petition under the traditional and ordinary evidence rules that provide that a copy is a mere indication or presumption of a transaction. The courts have to carry out a careful analysis of the documents, taking into consideration the nature of the transaction, thus if the payment was made through electronic means there was no other effective evidence to prove that payment was made but the electronic acknowledgment of receipt.

The Supreme Court addressed the issue that the transactions were performed by electronic means, and that there is no physically printed documents derived from such transactions. In a strict sense, there is no original document, and the printing or copy of the acknowledgement of receipt is the only effective evidence to prove the application of the legal provision to enable the constitutionality of the provision to be renewed.

Commentary

In these proceedings, the Mexican Supreme Court recognized that when dealing with transactions carried out by electronic means, the traditional evidence rules have to be adjusted so as to include the electronic evidence rules. Although Mexican courts have been circumspect in recognizing full evidential weight to (Xeroxed) copies, when relying on the concept that in transactions through electronic means there is no original and physical document, it seems that the strict approach of weakening the evidential weight of a copy has been loosened.

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