Tax Enforcement: Detailed Analysis of the Active Debt Collection Procedure

A Tax Enforcement: Detailed Analysis of the Active Debt Collection Procedure

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Summary

Tax Enforcement is the Public Treasury's main legal instrument for the judicial collection of outstanding debt. It is a specialized and expedited enforcement procedure, vital for state financing and the implementation of public policies. Unlike acknowledgment proceedings, it is based on a liquid, certain, and enforceable debt, embodied in the Certificate of Exemption (CDA).
The procedure is governed by Law No. 6,830/80 (LEF), a procedural microsystem supplemented by the Code of Civil Procedure (CPC). Its objective is the compulsory satisfaction of unfulfilled obligations through the expropriation of the defendant's assets. The parties are the Public Treasury (plaintiff) and the debtor/liable party (defendant). The relevance of this mechanism is undeniable for the economic order and taxpayers' assets, being a pillar of the State's financial sustainability. However, the pursuit of effectiveness must always be harmonized with the constitutional principles of due process, adversarial proceedings, full defense, and reduced burden, ensuring fair and legal collection.
Keywords: Tax Enforcement. Procedure. Main incidents.

Abstract

Tax Enforcement is the main legal instrument of the Public Treasury for the judicial collection of Outstanding Debt. It is a specialized and swift enforcement procedure, vital for state financing and the implementation of public policies. Unlike declaratory proceedings, it is based on a liquid, certain, and enforceable credit, embodied in the Certificate of Outstanding Debt (CDA). The procedure is governed by Law No. 6,830/80 (LEF), a microsystem procedurally complemented by the Code of Civil Procedure (CPC). Its purpose is the compulsory satisfaction of unfulfilled obli-gations through the expropriation of the debtor's assets. The parties involved are the Public Treasury (claimant) and the debtor/responsible party (defendant). The relevance of this mechanism is undeniable for the economic order and taxpayers' assets, being a pillar of the State's financial sustainability. However, the pursuit of effectiveness must always harmonize with the constitutional principles of due process of law, adversarial proceedings, broad defense, and least onerous execution, ensuring a fair and lawful collection.
Keywords: Tax Enforcement. Procedure. Main incidents.

1. Introduction: The Nature and Purpose of Tax Enforcement Action

Tax Enforcement constitutes the main legal instrument available to the Treasury Public for the judicial collection of its credits, called Active Debt. This is a specialized and expeditious judicial procedure of an executive nature, designed to grant maximum effectiveness in raising funds that are essential to financing the State and

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implementation of public policies.

Unlike knowledge processes, in which the declaration of a right, tax enforcement is based on the assumption of the existence of a liquid, certain and enforceable, materialized in a specific extrajudicial executive title: the Active Debt Certificate (CDA). This procedural rite is governed by its own legislation, Law No. 6,830 of 22 September 1980, known as the Tax Enforcement Law (LEF), which establishes a procedural microsystem that dialogues and complements itself, in a subsidiary way, with the norms of the Code of Civil Procedure (CPC).

The primary objective of the action is, therefore, the compulsory satisfaction of an obligation not voluntarily fulfilled by the debtor, whether an individual or legal entity, using the coercive power of the Judiciary to enter the defendant's assets and expropriate assets sufficient to settle the debt. The parties in this process are clearly defined: on the one hand active, the claimant appears, which is the Public Treasury, comprising the Union, the States, the District Federal, Municipalities and their respective public agencies and foundations; in the passive pole, the defendant is found, who is the debtor or the person responsible for the credit registered as active debt.

A thorough understanding of this mechanism is fundamental not only for legal operators, but for all citizens and companies, given their relevance to the order economic and its capacity to significantly affect the taxpayers' assets.

The effectiveness of tax enforcement is a pillar for the financial sustainability of the State, allowing the implementation of public policies and the maintenance of essential services collectivity. However, this search for effectiveness must always be in harmony with the principles constitutional principles of due process, adversarial system, full defense and minimum burden to the debtor, ensuring that collection takes place within the limits of legality and reasonableness.

2. The Pre-Judicial Phase: From the Establishment of Credit to the Formation of the Executive Title

Before the judicial machinery is activated, a meticulous procedure administrative must be observed by the Public Treasury, culminating in the formation of the title that will support the execution. This pre-judicial phase is of vital importance, as it is in this phase that the credit is formally constituted, verified and made suitable for forced collection.

The validity and effectiveness of all tax enforcement depends directly on the regularity of the acts carried out at this stage, especially with regard to the registration of the debt in Active Debt and the issuance of the respective certificate. Any defect or irregularity at this stage may irremediably compromise the Public Treasury's enforcement claim, resulting in nullity of the title and, consequently, termination of the process.

3. Public Treasury Credit and Registration in Active Debt

The starting point for tax enforcement is the existence of a Treasury credit Public debt that was not paid when due. This credit may or may not be of a tax nature. tax.

The tax credit, as outlined by the National Tax Code (CTN), arises with the occurrence of the generating fact and is formally constituted by the administrative act of launch, which verifies the occurrence of the event generating the corresponding obligation, determines the taxable matter, calculates the amount of tax due, identifies the taxpayer and, being the case, proposes the application of the applicable penalty.

The launch may be ex officio, by declaration or by approval, each with its particularities and statutory periods.

On the other hand, non-tax credits are those that arise from other legal relationships with public authorities, such as administrative fines (environmental, traffic, sanitary, etc.), forums, laudêmios, rents of public properties, compensation, refunds, public prices, among others, the collection of which is also subject to the LEF procedure.

Once the deadline for voluntary payment of any of these credits has expired, and the administrative avenues of appeal have been exhausted, the competent administrative authority has the duty to promote its registration in Active Debt.

This administrative act, of legality control, formalizes the default and transforms the credit into a valid document to be collected in court. Registration in Active Debt, therefore, it is the procedure by which the debt is recorded in a specific book, giving it the presumption of certainty and liquidity and the effect of pre-constituted evidence.

This presumption, although relative *(juris tantum),* reverses the burden of proof, leaving it to the

executed to demonstrate the non-existence or irregularity of the credit. It is from this moment that the Public Administration is authorized to extract the Active Debt Certificate and, consequently, to file the tax enforcement action, interrupting, with the judge's order ordering the citation, the course of the prescriptive term for the collection of the credit, according to article 174, sole paragraph, item I, of the CTN, as amended by Complementary Law No. 118/2005.

4. The Active Debt Certificate (CDA) and its Formal Requirements

The Active Debt Certificate (CDA) is the document that reflects the registration term in Active Debt and serves as the extrajudicial executive title that supports the initial petition of the tax enforcement.

Given its central importance, the law establishes strict formal requirements for its validity, which aim to guarantee the defendant full knowledge of the origin and nature of the debt that is being charged to you, allowing you to effectively exercise your right to full defense and adversarial proceedings.

According to article 2, § 5, of Law No. 6,830/80, and article 202 of the Tax Code National, the Active Debt Registration Term, and consequently the CDA, must contain, mandatory: the name of the debtor, of those jointly responsible and, whenever known, the domicile or residence of one and the other; the original value of the debt, as well as the initial term and form to calculate interest on arrears and other charges provided for by law or contract; the origin, nature and the legal or contractual basis of the debt; an indication, if applicable, of whether the debt is subject to monetary update, as well as the respective legal basis and the initial term for the calculation; the date and number of the registration in the Active Debt Registry; and the number of the administrative process or the infraction report, if the amount of the debt is determined therein.

The absence of any of these requirements or the presence of errors that compromise the precise identification of the debt may result in the nullity of the registration and, consequently, of the execution process, since the CDA is the foundation of the enforcement claim.

However, the legislation allows the Public Treasury the possibility of amending or replace the CDA until the first instance judgment is handed down, in opposition to execution, ensuring that the defendant receives the return of the deadline for defense on the modified part.

This prerogative aims to promote the principles of procedural economy and

instrumentality of forms, avoiding the extinction of processes due to merely formal defects that can be remedied, as long as they do not imply a change in the launch itself or the subject liability of the obligation.

5. The Procedural Ritual of Tax Enforcement

Once the Public Treasury has the Active Debt Certificate, it can begin the judicial process, which will follow a specific and simplified procedure, designed to provide speed collect.

The Tax Enforcement Law establishes a sequence of procedural acts that differs in several points from the common executive procedure provided for in the Code of Procedure Civil, prioritizing the satisfaction of public credit and granting procedural prerogatives to the executor.

6. Filing of the Action, Initial Order and Citation of the Defendant

The tax enforcement action is proposed through an initial petition which, in many cases, cases, is quite simplified and may be limited to a request for citation of the defendant, accompanied by the Active Debt Certificate itself and the statement of debt.

The law even allows the CDA to be valid as an initial petition, as long as it contains the necessary elements, which demonstrates the legislator's intention to reduce bureaucracy in access to justice for the Public Treasury.

The jurisdiction to process and judge tax enforcement, as a rule, lies with the court of domicile of the debtor, the place of his residence or, even, the place where the assets are located which the debt falls, and the Public Treasury may choose any of them.

Upon receiving the initial complaint, the judge will issue the initial ruling, in which he will order the citation of the executed so that, within 5 (five) days, the debt is paid with interest and late payment fines and charges indicated in the Active Debt Certificate, or guarantee execution.

In this same act, the judge already sets, in advance, the attorney's fees that will be due in case of prompt payment, generally at a reduced percentage, encouraging speedy settlement of the debt.

The citation is the act by which the debtor is called to court so that he may be informed of the action and can defend itself. The LEF provides specific modalities for its implementation, establishing a preferential order.

Firstly, the citation must be attempted by mail, with return receipt requested. (AR), a modality that provides greater speed and economy. If this modality is frustrated, or if the Public Treasury expressly waives it, the citation will be made by a court officer, who has public faith and can carry out due diligence to locate the debtor.

Only as a last resort, when the defendant is not found or is in uncertain and unknown location, citation by public notice will be admitted, published only once in the body official, after certification that all means of locating the person have been exhausted. debtor.

The execution of the citation is an extremely important procedural milestone, as it is from from there the deadlines for the defendant to act begin to flow and, in many cases, the prescription.

7. Possible Conduct of the Defendant: Payment, Court Guarantee and Omission

Once cited, the defendant is faced with a limited range of options to be exercised within the short period of five days, under penalty of continuation of the execution with acts of asset constriction.

The first and most direct course of action is full payment of the debt, plus all the legal consequences, such as interest, fines and attorney's fees (which are reduced by half in case of payment within this period, as per article 6 of the LEF).

The effective payment leads to the extinction of the tax execution, with the satisfaction of the the creditor's credit and the release of the debtor from any judicial burden. The second possibility is the guarantee of the judgment, which consists of offering goods or values to ensure future payment of the debt, if the defendant's defense is not accepted.

The guarantee of judgment is a condition of admissibility for the opposition of embargoes to execution, the main form of defense in the LEF procedure, according to article 16, § 1, of the LEF.

Article 11 of the Tax Enforcement Law establishes an order of preference for

goods to be offered as collateral, starting with money, bank guarantee or insurance guarantee, followed by precious stones and metals, government bonds, and so on, until reaching movable and immovable property.

Although this order is preferential for the Public Treasury, it must be weighed with the principle of least burden for the debtor, provided for in the CPC and applicable subsidiarily, allowing the defendant, in some cases, to offer goods in a different order, as long as it is justified and accepted by the court.

Finally, the third possible conduct is omission. If the defendant, after being summoned, fails to pay nor guarantees execution within the legal term, the process will proceed to the forced constriction phase, in which the bailiff will proceed to seize as many assets as are sufficient to pay the principal, interest, fine, costs and fees, without the need for new notification of the debtor to indicate goods, given the presumption of their inertia.

8. The Defendant's Means of Defense

Although tax enforcement is based on a title with a presumption of legitimacy, the legal system guarantees the debtor the right to adversarial proceedings and full defense, pillars of Democratic State of Law.

These rights are exercised through specific procedural instruments, each which has its own assumptions, deadlines and subject matter.

Choosing the appropriate defense route is crucial to the success of the procedural strategy of the defendant, considering the particularities of each case and the nature of the allegations.

9. Objections to Tax Enforcement

The objections to tax enforcement represent the defense method par excellence in the procedure of LEF.

This is an autonomous action of knowledge, incidental to the execution process, through which the defendant can oppose the collection and discuss broadly all matters of defense that it has against the Public Treasury, from formal issues of the CDA to the merits of the credit. For the embargoes to be admitted, it is essential that the court is fully

guaranteed, whether by cash deposit, bank guarantee, surety insurance or by attachment carried out on the debtor's assets, as expressly provided for in article 16, § 1, of the LEF.

The deadline for filing an objection is 30 (thirty) days, counting from the date of notification of the seizure, deposit or submission of proof of bank guarantee or insurance guarantee.

In the embargoes, the defendant may allege any and all material useful to his defense, such as the non-existence of the obligation, the nullity of the CDA due to a formal defect (absence of essential requirements, error in calculation, etc.), payment of the debt, prescription or expiration of the credit, the illegitimacy of the party (whether active or passive), excessive execution (charging of value higher than due), the non-attachability of the seized property, among others.

The initial petition for the embargo must be accompanied by documentary evidence that the appellant possesses, and the production of other evidence may be required, such as expert evidence and testimonials, as long as they are relevant and necessary to elucidate the facts.

Embargoes, as a rule, do not have an automatic suspensive effect on execution, which means that expropriatory acts can, in theory, continue.

However, the judge may grant the suspensive effect if the following are present: requirements for provisional relief, that is, the probability of the alleged right *(fumus boni iuris)* and the danger of damage or the risk to the useful result of the process *(periculum in mora),* such as the imminence auction of an essential asset to the debtor.

10. The Pre-Enforcement Exception

In parallel with the embargoes, another means of defense, of a more restricted nature, known as the pre-execution exception.

This is a doctrinal and jurisprudential construction, widely accepted by higher courts, which allows the defendant to argue certain matters without the need for guarantee the judgment, which makes it a very valuable tool for debtors who do not have assets to be offered as pledge. STJ Summary 393 states:

> Summary 393: *"The pre-execution exception is admissible in the execution tax in relation to matters that can be known ex officio and do not require "probationary delay"*

Thus, since the pre-execution exception is a restricted procedural means, admissible only in cases where the allegation is demonstrable and capable of being known ex officio by the judge, the opposition expressed is evidently unreasonable and unduly intends to discuss issues that require evidentiary delay.

Its admissibility, therefore, is exceptional and conditioned on the presence of two cumulative requirements: the alleged matter must be of public order, that is, knowable ex officio by the judge at any time and level of jurisdiction (such as prescription, forfeiture, illegitimacy of part, nullity of the title); and its proof cannot demand complex evidentiary delay, must be demonstrated in advance, by means of pre-constituted evidence, that is, documents that have already been accompany the petition or are easily accessible.

These are examples of matters that may be broadcast in the event of a pre-emptive exception: enforceability the manifest nullity of the executive title (CDA) due to the absence of requirements essential, the prescription of the credit already consummated and evident in the records, the flagrant illegitimacy of the executed party (for example, a partner who was not an administrator at the time of the generating fact) and the payment of the debt, provided it is proven by an unequivocal document.

The great advantage of this procedural incident is the lack of need to guarantee the judgment, which makes it a valuable tool for debtors who do not have assets to offer under warranty, but they have a robust and easily verifiable defense.

If the pre-execution exception is upheld, the execution may be extinguished in full or partially, with the Public Treasury being ordered to pay attorney's fees; if rejected, the enforcement proceedings continue normally, without prejudice to the same matter being, eventually, re-discussed in the context of an objection to execution, provided that the judgment is guaranteed and the the matter has not been subject to res judicata.

11. The Constriction and Expropriation Phase

If the debtor does not pay the debt voluntarily and his defense is not accepted or even if it is not presented, the process advances to its most drastic phase: the invasion of the property of the executed for the forced satisfaction of the credit.

This stage unfolds into two main moments: the seizure, which is the act of

individualization and legal seizure of assets, and expropriation, which is the transfer of these assets for the Public Treasury or its conversion into cash for the payment of the debt, always under the judicial supervision.

12. Attachment and Legal Order of Preference

The attachment is the executive act that binds one or more assets of the debtor's estate to the execution process, making them unavailable and preparing them for future expropriation.

As already mentioned, if the defendant does not pay or guarantee the judgment within five days, the seizure will be carried out compulsorily, by indication of the Public Treasury or by judicial determination.

The LEF, in its article 11, establishes an order of preference for the goods to be seized, which aims to reconcile the effectiveness of the execution with the lowest burden for the debtor, although jurisprudence tends to privilege the legal order in favor of the public creditor.

The order is as follows: I - money; II - public debt title, as well as title of credit, which are listed on the stock exchange; III - precious stones and metals; IV - real estate; V - ships and aircraft; VI - vehicles; VII - furniture or livestock; and VIII - rights and actions.

Currently, the most common and effective form of attachment is the attachment of money by electronic means, carried out through the SisbaJud system (formerly BacenJud), which allows the blocking of amounts directly in the defendant's bank accounts and financial investments, giving great speed and effectiveness to the constriction.

Other electronic systems, such as Renajud (for vehicles) and InfoJud (for tax information), are also widely used to locate assets and rights.

The seizure of properties is also quite common, requiring their evaluation and registration in the real estate registry office so that it produces effects on third parties, guaranteeing the advertising and legal certainty.

A more complex type of constraint is the seizure of the company's revenue. company, an exceptional measure that is only granted when there are no other assets that can be seized and since that does not make business activity unviable, and a percentage should be set that does not compromise your livelihood.

13. Non-attachability of Assets and Protection of the Existential Minimum

The State's power to seize the debtor's assets is not absolute.

The legal system establishes a series of restrictions, protecting certain assets from seizure in the name of greater values, such as the dignity of the human person and the preservation of existential minimum and the instruments necessary for work.

The rules of non-attachability are provided, for the most part, in article 833 of the Code of Civil Procedure, applicable subsidiarily to tax enforcement, and in Law No. 8,009/90.

Among the assets considered unattachable, the family asset stands out, defined by Law No. 8,009/90 as the couple's or family entity's own residential property, provided that be the only one used for permanent housing, with few exceptions (such as property tax debts own property or rental guarantee); salaries, subsidies, retirement benefits and pensions, except for the possibility of attachment of a percentage for payment of alimony or of amounts exceeding 50 monthly minimum wages, as understood by the Superior Court of Justice; books, machines, tools, utensils, instruments or other movable property necessary or useful for the exercise of the defendant's profession, essential for his subsistence; and small rural properties, as long as they are worked by the family and the debt is not comes from its productive activity.

The claim of non-attachability may be made at any time in the process, by simple petition, and its analysis is of utmost importance to ensure that the search for satisfaction of the public credit does not result in the annihilation of the subsistence of the debtor and his family, preserving the essential core of their fundamental rights.

The non-attachability for an amount less than 40 (forty) minimum wages must be proven by the defendant himself, obviously, otherwise it would become a dead letter in the vast majority in most cases the possibility of online seizure – only the debtor is able to say about it the meaning or repercussion of the seizure within its entire patrimonial context, which does not may be presumed by the judge, ex officio.

Furthermore, the provision of non-attachability of items IV and X aims to eliminate risk to the maintenance of the debtor and his family, in protection of human dignity.

Furthermore, the STJ, interpreting this provision, stated that it is possible to seize

the debtor's salary to pay other debts, in addition to alimony payments, provided that this attachment preserves a value that is sufficient for the debtor and his family to continue living with dignity.

In the words of the STJ: the general rule of the non-attachability of wages, salaries, proceeds etc. of the debtor (art. 833, IV, of the CPC/2015), may also be an exception when it is preserved percentage of such funds capable of providing shelter to the dignity of the debtor and his family.

The Superior Court of Justice concluded that attachment to satisfy a debt of a non-recurring nature is permitted. food, provided that the amount blocked is reasonable in relation to the remuneration received by the defendant, without violating the dignity or subsistence of the debtor and his family. STJ. Special Court.EREsp 1.874.222-DF, Rel. Min. João Otávio de Noronha, tried on 4/19/2023 (Info 771).

14. Acts of Expropriation: Adjudication, Sale and Judicial Auction

Once the seizure has been carried out and not revoked, the seized assets are sent to the expropriation, which is the final act of transferring assets to the satisfaction of the creditor.

The legislation provides, fundamentally, for three types of expropriation, seeking to the most advantageous way for the Public Treasury and, when possible, the least onerous for the debtor.

The first is the *adjudication,* in which the claimant itself, in this case the Public Treasury, requests that the seized assets be transferred to him in payment of the debt, for the value of assessment. If the value of the assets is higher than the debt, the Treasury must deposit the difference in court; if it is lower, the execution will continue for the remaining balance.

Awarding is an interesting option for the Treasury when the asset can be useful for their activities or when there are no interested parties in the auction.

The second modality is *alienation by private initiative,* in which the sale of the asset is carried out by an accredited broker or public auctioneer, directly, under supervision judicial, with the judge setting a minimum price and payment conditions.

This modality seeks greater flexibility and can achieve a fairer value for the well, avoiding the depreciation that sometimes occurs at auctions.

The third and most traditional form of expropriation is the *judicial auction,* which can be

electronic or in person.

At auction, the asset is publicly offered for purchase by the highest bidder.
bid, observing a minimum value, which in the first auction cannot be lower than the assessment
and, in the second, it cannot be less than a percentage defined by the judge, usually 50% of the
evaluation (low price), to avoid selling at a ridiculous price.

The amount raised from the auction is used to pay the Treasury's credit
Public, the legal costs and fees, and any balance is returned to the defendant.

The choice of the expropriation method is, in principle, the responsibility of the Public Treasury,
but the judge may intervene to ensure compliance with procedural principles and the effectiveness of the
execution.

15. Relevant Incidental Issues in Tax Enforcement

The tax enforcement process can be permeated by several incidental issues that
significantly affect its course and outcome.

These often complex issues require in-depth analysis of the
legislation and jurisprudence for its correct application, being crucial for the defense of the defendant
and for the effectiveness of the collection.

Among the most recurrent and important, the intercurrent prescription stands out,
redirection of the charge to third parties and the configuration of execution fraud.

16. Intercurrent Prescription as a Cause of Extinction

Intercurrent prescription is the loss of the right of the Public Treasury to continue with the
judicial collection of the credit due to its inertia for a prolonged period during the course of the
process.

This institute, provided for in article 40 of the LEF and consolidated by Summary 314 of the STJ and
by Theme 566 of the STJ (REsp 1,340,553/RS), aims to prevent the indefinite perpetuation of executions
tax authorities, providing legal security to relationships and preventing the debtor from remaining
indefinitely under threat of asset seizure.

In the judgment of Repetitive Special Appeal No. 1,340,553, the STJ defined the thesis on intervening prescription in the tax enforcement process, the summary of which we transcribe:

> REPETITIVE SPECIAL APPEAL. ARTICLES 1,036 AND FOLLOWING OF THE CPC/2015 (ART. 543-C, OF THE CPC/1973). CIVIL PROCEDURE. TAX. SYSTEMATICS FOR COUNTING THE INTERCURRENT PRESCRIPTION PERIOD (PRESCRIPTION PERIOD AFTER THE FILING OF THE ACTION) PROVIDED FOR IN ARTICLE 40 AND PARAGRAPHS OF THE FISCAL EXECUTION LAW (LAW NO. 6,830/80).
>
> 1. The spirit of art. 40 of Law No. 6,830/80 is that no tax execution already filed may remain forever in the recesses of the Judiciary or the Attorney General's Office Tax Authority responsible for executing the respective tax debts. 2. If there is no citation of any debtor by any valid means and/or if no assets are found on which the seizure may fall (which would allow the end of procedural inertia), initiated automatically the procedure provided for in art. 40 of Law No. 6,830/80, and respective term, at the end of which the tax credit will expire. This is the content of Summary No. 314/STJ: "In tax enforcement proceedings, if no seizable assets are found, the proceedings are suspended for a period of time. year, after which the period of the intervening five-year prescription begins". 3. Neither the Judge and neither the Public Treasury Attorney's Office are the masters of the initial term of the 1 (one) year of suspension provided for in the caput of art. 40 of the LEF, only the law is (orders the art. 40: "[...] the judge shall suspend [...]"). It is not up to the Judge or the Prosecutor's Office to choose the best time to start. The first time it is found that there is no location of the debtor and/or absence of assets by the bailiff and notified to the Treasury Public, the suspension period begins automatically, in accordance with art. 40, caput, of the LEF. Therefore, the fact that there is a petition from the Public Treasury requesting the suspension of the case for 30, 60, 90 or 120 days in order to carry out due diligence, without requesting suspension of the case by art. 40 of the LEF. These requests are not supported outside of art. 40 of the LEF which limits the suspension to 1 (one) year. Also irrelevant is the fact that the Judge, when summoning the Public Treasury, did not expressly mention the suspension of art. 40, of the LEF. What matters for the application of the law is that the Public Treasury has taken knowledge of the non-existence of seizable assets at the address provided and/or the non-location of the debtor. This is enough to start the term, ex lege. 4. Theses judged for effect of arts. 1,036 et seq. of the CPC/2015 (art. 543-C, of the CPC/1973): 4.1.) The term of 1 (one) year of suspension of the process and the respective prescriptive period provided for in art. 40, §§ 1º and 2º of Law 6.830/80 - LEF begins automatically on the date of notification of the Public Treasury regarding the non-location of the debtor or the non-existence of assets attachable at the address provided, without prejudice to this automatic counting, the duty of the magistrate to declare that the suspension of execution has occurred; 4.1.1.) Without prejudice to the provisions of item 4.1., in cases of tax enforcement for debt collection

active of a tax nature (whose summons order has been issued before
the validity of Complementary Law No. 118/2005), after valid citation, even if
notice, immediately after the first unsuccessful attempt to locate seizable assets, the
Judge will declare the execution suspended. 4.1.2.) Without prejudice to the provisions of item 4.1., in case
dealing with tax enforcement for the collection of active debt of a tax nature (whose
the order ordering the citation was issued during the validity of Complementary Law No.
118/2005) and any active debt of a non-tax nature, immediately after the first
failed attempt to summon the debtor or locate seizable assets, the Judge
will declare the execution suspended. 4.2.) Whether or not there is a petition from the Public Treasury and
whether or not there is a judicial ruling to that effect, after the period of 1 (one) year of
suspension, the applicable prescriptive period automatically begins (according to the
nature of the credit being executed) during which the process should be archived without
discharge in distribution, in accordance with art. 40, §§ 2nd, 3rd and 4th of Law No. 6,830/80 - LEF, ended
which the Judge, after hearing the Public Treasury, may, ex officio, recognize the
intervening prescription and decree it immediately; 4.3.) The effective patrimonial constraint and
the effective citation (even by public notice) are capable of interrupting the course of the prescription
intercurrent, and the mere petition in court is not sufficient for this purpose, requesting, for example, the
execution of the seizure on financial assets or other property. The requests made
by the claimant, within the sum of the maximum period of 1 (one) year of suspension plus the
applicable limitation period (according to the nature of the credit being executed) must
be processed, even beyond the sum of these two deadlines, since, cited (even if
by edict) debtors and seized assets, at any time - even after
once the aforementioned deadlines have elapsed, the intervening prescription is considered to be interrupted,
retroactively, on the date of filing of the petition that requested the successful measure.
4.4.) The Public Treasury, in its first opportunity to speak in the proceedings (art. 245 of the
CPC/73, corresponding to art. 278 of CPC/2015), when alleging nullity due to lack of
any summons within the procedure of art. 40 of the LEF, must demonstrate the
damage suffered (except for the lack of notice which constitutes the initial term - 4.1., where
the damage is presumed), for example, it must demonstrate the occurrence of any cause
interrupting or suspending the prescription. 4.5.) The judge, upon recognizing the prescription
intervening, must substantiate the judicial act by means of the delimitation of the milestones
legal rules that were applied in the counting of the respective term, including the period
in which the execution was suspended. 5. Special appeal dismissed. Judgment submitted
to the regime of arts. 1,036 et seq. of the CPC/2015 (art. 543-C, of the CPC/1973). (REsp 1340553/RS,
Rapporteur Justice MAURO CAMPBELL MARQUES, FIRST SECTION,
tried on 09/12/2018, DJe 10/16/2018).

The Repetitive Special Appeal became final and binding on 05/14/2019, applying to

ongoing proceedings. Thus, considering the prescription thesis defined in the precedent above reproduced and the legal frameworks existing in these proceedings, the manifestation of this judgment is appropriate on the continuation of the process.

Finally, it should be noted that under no circumstances can a judgment be made in court fees. If the matter alleged in the context of a pre-execution exception or in objections to tax enforcement is of "intercurrent prescription", there will be no attorney's fees, even if there is resistance from the Farm Public.

STJ. Special Court. EAREsp No. 1,854,589/PR, rapporteur Justice Raul Araújo, Special Court, tried on 11/9/2023, DJe of 11/24/2023.

CIVIL PROCEDURE. BURDEN OF SUCCUMBENCY IN EXECUTION EXTINCT DUE TO INTERCURRENT PRESCRIPTION. DISCLOSURE MOTION IN APPEAL IN SPECIAL APPEAL. COSTS. ATTORNEY FEES.

RECOGNITION OF INTERCURRENT PRESCRIPTION, PRECEDENTED BY RESISTANCE FROM THE PLAINTIFF. LIABILITY FOR THE BURDEN OF SUCCUMBENTIAL. PREVALENCE OF THE PRINCIPLE OF CAUSALITY.

DISCRIMINATION EMBARGOES GRANTED. 1. The controversy is limited to whether the plaintiff's resistance to the recognition of intervening prescription is capable of reject the principle of causality in determining the burden of success, even after the extinction of execution by prescription. 2. According to extensive case law of this Court of Justice, in case of termination of execution, due to the recognition of prescription intercurrent, especially when this occurs due to the debtor's inability to be located or their assets, it is the principle of causality that must guide the judge for verification purposes responsibility for the payment of the costs of the losing party. 3. Even in the event of resistance of the claimant - by means of challenging the pre-execution exception or of the defendant's objections, or of filing an appeal against the decision that decrees the said prescription -, it is improper to attribute to the creditor, in addition to the frustration in the claim of redemption of executed credits, also the succumbency burdens based on the principle of defeat, under penalty of unduly benefiting the party twice debtor, who did not fulfill his obligation in a timely manner, nor will he fulfill it. 4. The determining cause for the determination of the succumbency burdens, in case of extinction of the execution by intervening prescription, is not the existence, or not, of understandable resistance of the claimant to the application of said prescription. It is, above all, the default of the debtor, responsible for initiating the enforcement action and, in the sequence, by the extinction of the action, given the non-location of the defendant or his assets. 5. The plaintiff's resistance to the recognition of intervening prescription does not invalidate nor does it overcome the causality arising from the existence of the premises that authorized the

> filing of the execution, supported by the presumption of certainty, liquidity and enforceability of the executive title and in the event of default by the debtor. 6. Divergence appeals granted to deny the special appeal of the defendant. (EAREsp No. 1,854,589/PR, rapporteur Minister Raul Araújo, Special Court, tried on 11/9/2023, DJe of 11/24/2023.)

The procedure for its occurrence is specific: if, after filing, the debtor is not located or no seizable assets are found, the judge will suspend the course of the execution for a period of 1 (one) year.

During this period, the Public Treasury must make every effort to locate the debtor or goods.

If this suspension period ends without any effective response from the Public Treasury which results in the location of assets or debtors, the term countdown automatically begins prescriptive period of 5 (five) years.

If, during these five years, the Treasury remains inactive, not carrying out acts concrete and useful for locating the debtor or assets, the judge, after hearing it previously (contradictory), may declare the intervening prescription ex officio and extinguish the execution.

It is essential to note that mere requests for due diligence already carried out and fruitless, or generic requests to search for assets, are not capable of interrupting the course of this prescriptive term, requiring effectively useful and diligent action on the part of the claimant, that demonstrates real interest in promoting the achievement.

17. Redirecting Execution to Partners and Administrators

In many situations, the executed company does not have sufficient assets to pay off the debt. your debts, whether due to insolvency, irregular closure of activities or other reasons.

In these cases, tax legislation allows tax enforcement to be redirected for the personal assets of managing partners, directors, administrators or legal representatives of the legal entity.

This measure, however, is not automatic and depends on proof of requirements. specific, established in article 135 of the National Tax Code, which deals with personal liability for violations.

Redirection is only applicable when the legal guardian has acted excessively.
of powers or violation of law, articles of association or statutes, or in the event of irregular dissolution
of society.

One of the most common hypotheses that authorizes redirection is dissolution
irregularity of the company, which occurs when the company actually ceases its activities without proceeding
to formal discharge in the competent records, leaving pending tax debts, as per
understanding consolidated in Summary 435 of the STJ.

> *"A company shall be presumed to have been dissolved irregularly if it ceases to operate from your home without communicating with the competent authorities, legitimizing the redirection of tax enforcement to the managing partner."*

If the executed company has stopped operating at the address registered in its
tax and commercial records, without any communication to the competent bodies, remains
fully characterized hypothesis for the application of Summary 435/STJ, which advocates the presumption
of irregular dissolution in the event that the company ceases to operate at its domicile without
communication to the competent bodies, authorizing redirection to the managing partner.

It should be noted that prior citation of the defendant is not a requirement for the application
of the aforementioned statement, it being sufficient that the certificate from the Court Officer states that the company left
to operate at the location indicated as being their domicile, as is the case in the present case.

This is what can be inferred from the analysis of the precedents that led to the understanding
expressed by the Superior Court in the summary statement, considering that, among them, there are
express mention of specific cases in which it was decided to consider the possibility of redirection
of execution, based on the irregular dissolution of a company that was not found in its
address for the citation (in the case of EREsp 716412-PR and REsp 738.502-SC).

In the same sense, the Court of Justice/RS has already expressed itself, through its
First Civil Chamber[2] , in a case that declared the intervening prescription based on the

[2] APPEAL. TAX LAW. TAX EXECUTION. INTERCURRENT STATUTE OF LIMITATIONS. Intercurrent statute of limitations occurs when a tax execution remains inactive, without any useful manifestation from the creditor for more than 5 years. Precedents of this court and the Superior Court of Justice. Specific case in which the creditor's inertia was evident. Intercurrent statute of limitations characterized. APPEAL DISMISSED. JUDGMENT CONFIRMED IN NECESSARY REFERRAL (Appeal, Necessary Referral No. 70075593855)

inertia of the creditor-claimant in tax enforcement proceedings in which the
redirection as soon as the hypothesis of liability for irregular dissolution is characterized,
as stated in Summary 435/STJ.

Below is a partial transcript of the decision, which confirms the understanding of the TJRS that prior citation of the defendant is not a requirement for the application of STJ Summary 435:

> *On 12/06/2009 the municipality filed a tax enforcement action for the collection of ISS tax credits for the periods 2002 to 2005, which were paid in installments in 2005.*
>
> *The citation was ordered on 07/06/2009, the AR letter returned negative on 08/18/2009, informing that the defendant has moved.*
>
> *Aware, the municipality requests the issuance of a summons on behalf of legal representative of the defendant company, a request that was accepted by the judge in 10/02/2009, resulting in failure on 12/23/2009.*
>
> *The Municipality, on 01/29/2010, requests a new attempt at citation via a civil servant. justice for the partner, this time at a new address, which was granted on 02/08/2010, but was unsuccessful (31/03/2011).*
>
> *The diligence (summons to the address of the legal representative) is repeated once more (2011/2012), on 15/07/2011, a request was made for the issuance of a warrant for certification of the company's operation in its respective tax domicile, for purposes of finding of possible irregular dissolution of the company.*
>
> *The judge fails to analyze the request and orders the online seizure to be carried out. line in the company's accounts, which remained unsuccessful and of which the Municipality was notified on 10/29/2012. (The diligence was carried out by mistake, as there was no citation, as confirms the next transcribed paragraph)*
>
> *From then on, the case continues with successive requests for suspensive effects. and carrying out due diligence to find the updated address of the property (2012 to 2014),* ***since there was not even a citation in the records.*** *(Emphasis added)*
>
> *In 2014, the Court Officer certifies that the company is no longer established at your tax domicile (fl. 62-v).*
>
> *From then on, the Political Entity continues to seek the citation of the legal representative. of the company, without even having been characterized as a hypothesis of liability tax, until the recognition of the intervening prescription in 2017.*

...

> ***In this case, the municipality, even aware of the impossibility of locating the company demanded in its tax domicile, instead of seeking to characterize the hypothesis of liability for irregular dissolution (Summary 435 of the STJ), simply passed trying to cite the company's legal representative, as if he could search for the latter's assets without asking for the redirection of demand.*** *(Emphasis added)*

Simple non-payment of tax, in itself, is not considered a violation of the law capable of to justify the redirection, being necessary to demonstrate an unlawful act or management practice fraudulent.

Therefore, the Public Treasury has the burden of proving that the administrator committed one of the unlawful acts provided for by law for which personal financial liability is triggered, the mere absence of assets of the legal entity is not sufficient. The redirection implies the change of the passive side of the execution, with the summons of the partner or administrator to defend himself, being able to claim, for example, that he was not exercising the administration at the time of the generating facts or that there was no irregular dissolution.

18. Tax Enforcement Fraud and its Consequences

Tax enforcement fraud is an institution that aims to protect public credit against debtor's maneuvers to empty his assets and frustrate collection.

Its configuration in the tax sphere has a stricter discipline than in the common civil procedure, reflecting the public nature of the credit. According to article 185 of the CTN, the alienation or encumbrance of assets or income, or its beginning, is presumed to be fraudulent. taxpayer in debt to the Public Treasury, for regularly registered tax credit as active debt. Unlike the general rule of the CPC, which requires valid citation in the process executive to configure fraud, in tax enforcement it is enough that the debt is already registered in Active Debt at the time of sale of the asset so that the presumption of fraud is established.

This presumption of fraud is relative *(juris tantum),* admitting evidence to the contrary, but the burden falls on the debtor or third party purchaser, who must demonstrate that, despite the alienation, there were sufficient assets left in the debtor's estate to fully settle the debt. If the purchaser proves his good faith and that he took the necessary precautions (such as researching

negative certificates), fraud can be ruled out. Once fraud is recognized, the legal transaction of alienation is considered ineffective before the Public Treasury, which means that the asset, even being in the name of a third party, it may be seized and taken to expropriation to pay the debt tax, as if it had never left the defendant's estate. The declaration of ineffectiveness of the alienation does not nullify the legal transaction between the debtor and the third party, but prevents it from producing effects in relation to the Public Treasury, allowing the seizure of the asset.

19. Conclusion: Challenges and Perspectives of Executive Collection

Tax enforcement, as explained in detail, is a complex procedure, multifaceted and with a profound impact on both public administration and citizens. It represents the most energetic manifestation of the State's imperial power in the search for resources necessary for its maintenance and fulfillment of its constitutional purposes, such as provision of health, education and security.

Its rite, established by Law No. 6,830/80, seeks a balance, sometimes tenuous, between the need for speed and efficiency in collection and the indispensable observance of fundamental guarantees of the debtor, such as due process, adversarial proceedings and broad defense, which are pillars of the Democratic Rule of Law.

Throughout its various phases, from the establishment of credit in the sphere administrative until the final acts of judicial expropriation, numerous questions arise highly complex legal matters, requiring in-depth knowledge from legal professionals and a constant update.

Despite its importance, the Brazilian tax enforcement system faces challenges chronic, such as the immense volume of cases that overload the Judiciary, the low effective credit recovery rates and high operating costs, which often exceed the amount of the debt to be collected.

In light of this scenario, alternatives have been sought to improve the collection of active debt, such as the CDA's extrajudicial protest, which gives greater publicity to default and encourages payment; the pre-execution registration of the debtor's assets, which aims to prevent execution fraud; and the encouragement of debt transaction and installment mechanisms, which allow tax regularization in a more flexible and less burdensome way for the taxpayer.

The continuous evolution of legislation and technology, with the increasing digitalization of processes and the implementation of electronic asset constriction tools (such as SisbaJud, Renajud, InfoJud), points to a future in which greater efficiency and rationality are expected in collection, always with the duty to protect the rights and guarantees of those executed, ensuring that the search for public revenue is carried out within the strict limits imposed by the State Democratic of Law and the principles of proportionality and reasonableness.

REFERENCES

Alexandre, Ricardo. Tax law outlined / Ricardo Alexandre. – 10th ed. rev., updated. and expanded. – Rio de Janeiro: Forense; São Paulo: MÉTODO, 2016.

PAULSEN, Leandro. Complete Tax Law Course. 9th ed., rev. and updated. São Paulo: Saraiva Jur, 2018.

SABBAG, Eduardo. Tax Law Handbook. São Paulo: Saraiva Jur, 2024.