



Resolution No. 547 of February 22, 2024 of the National Council of Justice: analysis of the impacts on small-value tax executions on Municipalities

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Vinicius Lima Duarte¹

Summary

Resolution 547 of the National Council of Justice (CNJ), which establishes rules for the extinction and prevention of the filing of tax executions considered to be of small value, has been the target of criticism due to its impact on the collection of active debts of Brazilian municipalities, which in large part can be considered of small value, according to the terms of the Resolution.

Keywords: Tax Enforcement. Small value. Termination due to lack of procedural interest. Financial impact on municipalities.

Abstract

Resolution 547 of the National Council of Justice (CNJ), which establishes rules for the termination and prohibition of the filing of tax executions considered to be of small value, has been the target of criticism due to its impact on the collection of outstanding debts of Brazilian municipalities, which, in large part, can be considered small value, according to the Resolution.

Keywords: Tax Enforcement. Small Value. Termination due to lack of procedural interest. Financial impact on municipalities.

1. Introduction

On February 22, 2024, during the 1st Ordinary Session of the National Council of Justice (CNJ) this year, the Board unanimously approved rules for the extinction of tax executions with a value of up to R\$ 10 thousand without useful movement for more than a year, since that no seizable assets have been found, whether or not the defendant has been summoned.

This is because, according to the Council, these processes account for 34% of the collection pending in the Judiciary, which, according to the Justice in Numbers Report 2023 (year-base 2022), are indicated as the main factor in the slowness of justice.

It turns out that the parameters defined by the CNJ threaten the revenue of the Municipalities in view of a very high minimum value (10 thousand reais) for immediate extinction (and filing) of tax executions, the subject of analysis in this article.

¹ Attorney for the Municipality of Porto Alegre/RS. E-mail: viniciusl.duarte@portoalegre.rs.gov.br



2. Mass extinction: definition of “small value” and the reality of tax executions of the Municipalities

Initially, and even before we get into CNJ resolution 547, the Supreme Court Federal Court, in RE 1,355,208/SC, Rel. Min. Cármen Lúcia, decided on 12/19/2023 (General Repercussion – Theme 1184) (Info 1121), dealt with the possibility of extinguishing execution low-value tax due to lack of interest in acting, taking into account the principle constitutional principle of administrative efficiency.

At the time, the STF defined that the Judiciary can extinguish the action when it verifies that more efficient and less costly extrajudicial and administrative measures have not been exhausted burdensome to enable debt collection. The Supreme Federal Court (STF) established the thesis that the extinction of the tax execution depends on the prior adoption of measures, such as an attempt of conciliation or administrative solution, and protest of the title, except for reasons of efficiency administrative. The processing of tax enforcement actions does not prevent federated entities from request the suspension of the process to adopt these measures. The STF decision considered that the extinction of low-value tax executions is legitimate, respecting the jurisdiction constitutional of each federated entity and the principle of administrative efficiency.

Then, the CNJ issued Resolution No. 547 of 2/22/2024, which instituted measures of rational and efficient treatment in the processing of tax executions pending in the Power Judiciary, based on the judgment of topic 1184 of general repercussion by the STF:

Art. 1º The extinction of low-value tax execution is legitimate due to the absence of interest in acting, in view of the constitutional principle of administrative efficiency, respecting the constitutional competence of each federated entity.

§ 1 Tax executions worth less than R\$10,000.00 (ten thousand reais) must be extinguished. thousand reais) when filing, in which there has been no useful movement for more than one year without citation of the defendant or, even if cited, no assets were found attachable.

§ 2º To determine the value provided for in § 1º, in each specific case, the following must be added the values of executions that are attached and proposed in the face of the even executed.

§ 3 The provisions of § 1 do not prevent the filing of new tax enforcement proceedings if they are found assets of the defendant, provided that the statute of limitations has not expired.

§ 4 In the case of § 3, the prescriptive period for a new proposal will end initial one year after the date of the Public Treasury's knowledge regarding the non-location of the debtor or the non-existence of seizable assets in the first lawsuit.

§ 5º The Public Treasury may request in the proceedings the non-application, for up to 90 (ninety) days, of § 1 of this article, if he demonstrates that, within this period, he will be able to locate debtor's assets.

Art. 2 The filing of tax enforcement proceedings will depend on a prior attempt at conciliation. or adoption of an administrative solution.

§ 1º The attempt at conciliation can be satisfied, for example, by existence of a general law on installments or offering some type of advantage through administrative channels, such as reduction or extinction of interest or fines, or opportunity concrete transaction in which the defendant, in theory, fits.

§ 2º Notification of the defendant for payment before the initiation of the execution fiscal configures adoption of administrative solution.

§ 3 The provisions of §§ 1 and 2 are presumed to have been complied with when the measure is provided for in a normative act of the executing entity.

Art. 3 The initiation of tax enforcement proceedings will also depend on prior protest of the title, except for reasons of administrative efficiency, proving the inadequacy of the measure.

Sole paragraph. The protest requirement may be waived in the following cases: without prejudice to others, as analyzed by the judge in the specific case:

I – communication of registration in active debt to the bodies that operate databases and records relating to consumers and credit protection services and similar (Law No. 10,522/2002, art. 20-B, § 3, I);

II – existence of the endorsement, including by electronic means, of the active debt certificate in the registration bodies of assets and rights subject to seizure or attachment (Law No. 10,522/2002, art. 20-B, § 3, II); or

III – indication, when filing a tax enforcement action, of assets or rights attachable items owned by the defendant.

Art. 4 Notary and property registry offices must notify their respective city halls, with a frequency not exceeding 60 (sixty) days, all changes in ownership of properties carried out during the period, in order to allow cadastral updating of taxpayers of the Municipal Treasury.

Art. 5 This Resolution shall come into force on the date of its publication.

Well then. The Resolution in question has been criticized . One of them is that it violates the separation of powers, as it would invade the sphere of competence of the legislator, being unconstitutional. The CNJ would not have the normative function to rule on tax enforcement governed by specific law, Law 6,830/80 with subsidiary application of the CPC.

Another point of concern, which is the subject of analysis in this study, concerns the impact of rule on municipal tax executions2 .



In principle, as it stands, the Resolution, despite being legitimate in having the purpose to reduce the volume of lawsuits to speed up the procedural process, may impact seriously affect the collection and enforcement of taxes and regulatory activities of municipalities, especially IPTU and administrative fines, with concrete effects equivalent to remission and amnesty (for the past) and encouragement of deliberate non-compliance of legal requirements (for the future) regarding debts of more modest amounts.

Although there are no national studies, it is known that, for the most part, executions tax lawsuits currently filed in the Municipalities charge amounts less than 10 thousand reais. Belém/PA, for example, there are more than 88% of tax executions with a value lower than that. And this is repeated also in large and small Brazilian cities.

Thus, as it stands, CNJ Resolution 547 threatens a large part of the collection of tax executions already filed, creates obstacles to the use of tax execution for new charges and imposes conditions for which the vast majority of Municipalities are not structurally prepared to meet. It is clear that the paralysis of tax executions cannot be attributed exclusively or mainly to the inertia of the Municipalities, as it arises mainly from lack of structure in the Judiciary to move and carry out forced execution against debtors, since the claimant cannot, by himself, satisfy his credit³.

Furthermore, the Resolution in this format may have effects on the behavior of taxpayers, becoming a disincentive to collection and immediate regularization. For example, knowing that they would only be executed when the IPTU debt for their property exceeds 10 thousand reais, which could take a few years, they would no longer fear execution short-term fiscal⁴.

Finally, the prior requirement for protests against negative entries in restrictive credit records (SPC/SERASA) would not prove to be very effective, since more than 67 million Brazilians are in debt in the country, and that high default rates still persist. It can be assumed, therefore, the measure in question has little impact on debt recovery.

Final Considerations

After analyzing the above regulations and the criticisms they already face, mainly originating from of associations of Municipalities, we can conclude that CNJ Resolution 547 needs adjustments, despite the laudable intention of decongesting the Judiciary, where executions tax authorities account for 31% of all cases still pending in court and 59% of the total executions in progress.

There is, therefore, a need for improvement in order to preserve the capacity collection of Municipalities, whose tax executions are mostly of lower values to the cut-off value of 10 thousand reais proposed by the CNJ.

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