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The City That Cannot Be Taxed: An Essay on the Constitutional Limits of Municipal Taxation, the Nature of Indivisible Services, and the Civilizing Role of Fiscal Legality.

The City That Cannot Be Taxed: An Essay on the Constitutional Limits of Municipal Taxation, the Nature of Indivisible Public Services and the Civilizing Role of Tax Legality

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Summary

This article examines the legal impossibility of municipalities establishing a fee for the maintenance of public roads, a service whose nature is manifestly indivisible and enjoyed collectively. The analysis begins with a constitutional understanding of tax types, especially the criteria of specificity and divisibility required for the valid characterization of a fee. A qualitative approach is used, with a deductive method, based on the Federal Constitution, the National Tax Code, and classical tax doctrine, which emphasizes the need for direct referability between state action and the taxpayer. It is demonstrated that road maintenance constitutes a typical ** uti universi ** service, incompatible with the collection of a fee because it does not allow for individual measurement of the benefit. The inadequacy of the calculation bases used by some municipalities is also examined, often linked to the characteristics of vehicles, a practice that unduly approximates the levy to taxes such as the IPVA (Vehicle Property Tax). The study also highlights the human and social impact of unconstitutional charges, which can hinder vehicle licensing and generate disproportionate consequences for the taxpayer. It is concluded that the attempt to tax indivisible services through a fee violates the internal coherence of the tax system, disrespects the federal pact, and compromises legal certainty. Tax legality, in this context, assumes a civilizing function by establishing limits to the power to tax and preserving the integrity of relations between the State and the citizen.

Keywords: Tax; Taxing power; Indivisible services; *uti universi*; Unconstitutionality.

Abstract

This article examines the legal impossibility for municipalities to impose fees intended to finance the maintenance of public roads, a service that is inherently indivisible and collectively enjoyed. The analysis begins with the constitutional framework of tax categories, particularly the requirements of specificity and divisibility necessary for the lawful characterization of a fee. A qualitative approach and deductive method were adopted, grounded in the Federal Constitution, the National Tax Code, and classical tax doctrine, which emphasizes the need for a direct connection between state action and taxpayers. The study demonstrates that road maintenance constitutes a typical *uti universi* service, incompatible with fee-based charging because it does not allow individual measurement of the benefit received. It also addresses the inadequacy of certain municipal bases of calculation, often linked to vehicle characteristics, a practice that improperly approximates the fee to taxes such as the IPVA.

The article highlights the human and social impacts of unconstitutional charges, which may hinder vehicle licensing and impose disproportionate burdens on taxpayers. It concludes that attempts to tax indivisible services through fees violate the internal coherence of the tax system, disregard the federal compact, and undermine legal certainty. In this context, tax legality plays a civilizing role by establishing limits on the power to tax and safeguarding the integrity of the relationship between the State and its citizens.

Keywords: Fee; Tax authority; Indivisible services; *uti universi*; Unconstitutionality.



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1. Introduction – When Tax Law Reveals Itself as an Ancient Map

There are topics in Tax Law that, when revisited, evoke the same feeling of flipping through old maps: those that mixed concrete geography with sea monsters in Borders, like symbols of the unknown. These maps represented not only the territory, but the fears, limitations and uncertainties of navigators.

Municipal taxation — especially in the area of fees — occupies a similar territory. There are clear and insurmountable boundaries, such as the requirement for specificity and divisibility of service, and there are vague areas where, not infrequently, the drive to raise revenue attempts to stretch the framework constitutional beyond what is permitted.

It is within this sensitive area that the discussion about the supposed "Conservation Tax" takes place. "Public Roads." The more one examines the nature of these services, the more evident it becomes that there is a structural impossibility: these are indivisible activities, enjoyed by the entire community. simultaneously — as universal as the sunrise, which could never be Priced individually.

The aim of this article is to navigate this map with conceptual precision, avoiding both Cold, purely technical language, avoiding rhetorical exaggerations. This is a legal analysis with... a human tone, since taxes are not levied on abstractions, but on concrete people — Workers, families, drivers, citizens. The violation of constitutional limits does not produce merely theoretical inconsistencies; it produces real effects on dignity, mobility, and legal security.

Rather than discussing an isolated tax, we are investigating here the constitutional pact that limits it. The question is not just whether the fee is "small" or "administratively convenient," but whether it... It respects the boundaries that keep the State within the safe territory of legality. Just like the Navigators relied on their instruments to avoid getting lost in uncertain seas. Public administration must trust — and submit to — the clear limits imposed by the Constitution.

2. Methodology – The approach taken to understand the problem.

The construction of this study followed a simple, yet deliberate path. Before analyzing To determine the validity of the public road maintenance fee, it was necessary to understand the context in which it operates. support. To this end, I adopted a qualitative approach, based on the deductive method, starting with Structural concepts of the tax system, progressing to practical consequences.

The theoretical approach was based on three pillars: (a) the Federal Constitution, which delimits (a) tax types and municipal jurisdiction; (b) the National Tax Code, especially its definitions regarding rates and divisibility; and (c) the classical doctrine of Tax Law, represented by authors such as Hugo de Brito Machado, Paulo de Barros Carvalho, Roque Antonio Carrazza, Luciano Amaro, Sacha Calmon Navarro Coêlho and Ricardo Lobo Torres.



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This is not empirical or statistical research. The goal is to understand the internal logic of the disputed tax and test its compatibility with the constitutional model. By choice Methodologically, case law is not used, focusing the analysis on conceptual coherence and doctrinal.

3. What is a fee? A simple question that reveals profound complexities.

To understand why the maintenance of public roads cannot be financed by a fee, it is necessary to carefully examine the very nature of this type of tax. At first glance, the The definition is simple; upon closer examination, we realize that it requires a conceptual precision that few... Taxes are required.

The fee arises only in two scenarios: (1) exercise of police power; or (2) provision of a specific and divisible public service, made available to the taxpayer or effectively used by him. This connection is not a detail. As Hugo de Brito Machado observes, the rate This presupposes a concrete, identifiable, and referable state service provided to the taxpayer. If this There is no connection, there is no possible triggering event.

Paulo de Barros Carvalho adds the notion of direct referability: it is essential that the State action must be clearly directed at the taxpayer, in an individualized way. The fee requires Three fundamental elements are needed: individualization of the service, divisibility of the activity, and measurement of the benefit. Without these requirements, any attempt to establish it loses legal basis. It is It is precisely at this point that the idea of maintaining public roads begins to crumble as a valid hypothesis.

4. The point where everything breaks down: the nature of *universal public* services

Public roads have a characteristic that prevents them from being linked to fees: they are used by the entire community at the same time. There is no possibility of "not using" the street. from the city itself; nor is it possible to determine "how much" each person used. Therefore, such Services are classified as *uti universi* — indivisible, nonspecific, and incapable of being divided. fractionation.

Roque Antonio Carrazza teaches that general and indivisible services — such as security Public works, lighting, and road maintenance—these cannot be financed by fees, but only by... Taxes. Trying to individualize the use of a public road is as unfeasible as separating the wind into... Equal shares to be distributed among the residents. The very nature of the service prevents this division. Thus, when a municipality attempts to transform a universal service into a specific one, it forces the framework. constitutional up to the point where it breaks down.



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5. The temptation of simplified accounting: inadequate calculation basis.

A recurring strategy used by municipalities is to link the fee to vehicle characteristics: weight, Power, category, or year of manufacture. At first glance, these parameters seem technical; in In practice, these are accounting shortcuts unrelated to the individualized cost of the service — because the service It is indivisible.

The National Tax Code prohibits fees from adopting a calculation basis that is the same as that of taxes. Luciano Amaro emphasizes that the basis for calculating the fee should reflect the cost of the state activity that It is the taxable event that constitutes the tax, not the taxpayer's ability to pay. When one uses Regarding vehicle attributes, the tax becomes similar to the IPVA (Vehicle Property Tax), losing its legal identity and highlighting... structural flaw.

6. The human aspect: the tribute that creates invisible barriers

The creation of an unconstitutional tax not only produces conceptual disarray; it creates concrete obstacles in people's lives. When improper charges prevent licensing of With a vehicle, the problem becomes social. The worker who depends on a car loses opportunities; A mother who needs him for the family routine faces insecurity; the elderly person who needs Traveling for appointments faces yet another obstacle.

Poorly designed taxes transform technical failures into human losses, resulting in... especially on those who have the least means to bear them. The irregularity of the tax becomes, therefore... silent mode, existential irregularity.

7. Municipal autonomy and federalism: freedom is not arbitrariness.

The Constitution grants municipalities autonomy to establish taxes, but this freedom is not absolute. It is a freedom limited by constitutional boundaries. (Sacha Calmon) Navarro Coêlho observes that tax jurisdiction is a prerogative rigidly defined by Constitution, forming a cohesive and harmonious system.

When a municipality creates a tax that is incompatible with the divisibility criteria, it does not violate... It's not just the tax technique, but the federal pact. The problem isn't the amount charged; it's the principle. Disrespected. Without clear limits, taxation ceases to be a republican instrument and becomes... coercion mechanism.

8. Tortuous paths: why do so many municipalities persist in this mistake?

If the unconstitutionality is so evident, why do so many municipalities insist? The reasons are... They repeat: revenue pressure in cities with tight budgets; lack of technical knowledge in



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local legislative process; confusion between the overall cost of the service and the supposed individual share; and the
The false idea that small amounts don't cause significant harm.

These reasons do not justify the tax, but they explain the persistence of the error and reveal a
The biggest problem: the gap between constitutional theory and administrative practice.

9. An economic analysis of (in)divisibility

The use of the roads is diffuse: pedestrians, cyclists, drivers, public transport, commerce and
Services depend on the same urban floor. There is no way to identify what portion of the cost corresponds to...
to each individual. Indivisibility, therefore, is not merely a legal concept; it is a given.
economic.

Charging only vehicle owners is arbitrary, as if only one neighborhood were responsible.
responsible for the cost of the entire city. The Constitution requires that the funding follow the real logic of
service, not administrative conveniences.

10. The philosophy of fair taxation: why does the Constitution insist so much on it?

Behind the tax regulations lies a historical lesson: modern constitutionalism was born
In response to tax abuse, Ricardo Lobo Torres emphasizes that modern taxation is legitimate when...
aligned with fundamental rights, functioning as an instrument of social justice and predictability.
and rationality.

Therefore, the Constitution conditions fees on specificity and divisibility. This is not nitpicking.
Technical, but also protective against arbitrary actions. Taxing outside constitutional limits erodes the
Trust that underpins the relationship between the State and the citizen.

11. The paradox of small rates

A common argument is that "the rate is small." But a low value doesn't correct the error.
Structural. Small violations accumulate to create large distortions.

The lack of divisibility, the inadequate calculation basis, and the disregard for limits.
Constitutional rights remain. And when insignificant values condition essential rights, they become...
disproportionate instruments of coercion.

12. If it's not a tax, what is it? The challenge of correct tax classification.

If the service is indivisible, there is no possible fee. The charge becomes a figure without...
Constitutional identity. Public services (*uti universi*) can only be financed by general taxes or
Budgetary transfers, never through earmarked taxes.

Creating a "fee" to fund universal activities is a way of disguising a tax and violating the existing structure.



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The logic of the tax system.

13. The civilizing role of tax legality

Tax legality is more than a formal rule: it's a civilizational pact. It prevents the power
The act of taxing should not become arbitrary. Torres emphasizes that legality is legitimate when it protects rights.
fundamental rights and the dignity of the taxpayer.

Whenever a tax rate arises outside its natural limits, legal certainty becomes destabilized.
And social trust is eroded. Taxing outside the Constitution is like navigating without guidance.

14. Final Considerations – When Law Reconnects with Common Sense

Road maintenance is essential, but indispensability does not justify deviation.
conceptual. If the service is indivisible, it cannot be financed by a fee. Attempting to do so violates the
Internal coherence of the tax system, disrespect for the federal pact, and compromises security.
legal.

The Constitution demands consistency, responsibility, and limits. Fees on indivisible services.
They are not only invalid; they are out of harmony with the very idea of fiscal justice. The taxpayer does not
He is not merely a payer, but a recipient of dignity.

Ethical Statements

Author's statement of responsibility: I declare that this article is the result of my own research.
developed exclusively by the author, without the participation of third parties. The ideas, arguments and
My conclusions represent my academic understanding of the topic.

Declaration of originality: I affirm that the present manuscript is unpublished and has not been...
submitted simultaneously to another journal, and that all sources used were duly verified.
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Declaration of conflict of interest: I declare that there are no conflicts of interest of any nature.
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