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**THE PRINCIPLE OF MATERIAL TRUTH IN TAX LAW*****O PRINCÍPIO DA VERDADE MATERIAL NA LEI TRIBUTÁRIA*****DEMETRIUS NICHELE MACEI**

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**ABSTRACT**

This article intends to analyze whether there is a sustainable basis for the maintenance of the Formal Truth Institute in Brazilian procedural law, assuming that social peace requires verification of the truth in its substance, otherwise the entire judicial apparatus will be rendered useless, becoming a mere means of conflict without a just solution. From a bibliographical research, it was possible to conclude that in the Tax Law, the greater the reason why the principle of Material Truth must prevail. First, because tax disputes are resolved in both the administrative and judicial spheres, and because the former is governed by substantial truth, there is no reason for what it should not be. Secondly, because the Tax Law involves fundamental values of the citizen, such as property rights. Thirdly, because the tax is well protected by Criminal Law, whose procedural rules, in turn, are governed by the Material Truth.

**KEYWORDS:** Tax Law; Truth Material; Tax Law.

**RESUMO**

O presente artigo pretende analisar se há, ou não, base sustentável para a manutenção do instituto de Verdade Formal no direito processual brasileiro, pressupondo que a paz social exige a verificação da verdade em sua substância, caso contrário, todo o aparelho judicial será tornado inútil, tornando-se um mero meio de conflito sem uma solução justa. A partir de uma pesquisa bibliográfica, foi possível concluir que na Lei Tributária, maior é a razão pela qual o princípio da Verdade Material deve prevalecer. Em primeiro lugar, porque as disputas fiscais são resolvidas tanto nas esferas administrativa e judicial, quanto porque o primeiro é governado por uma verdade substancial, não há razão para o que não deveria ser. Em segundo lugar, porque a Lei Tributária envolve valores fundamentais do cidadão, como os direitos de propriedade. Em terceiro lugar, porque o imposto está bem protegido pelo Direito Penal, cujas regras processuais, por sua vez, são regidas pela Verdade Material.

**PALAVRAS-CHAVE:** Direito Tributário; Verdade Material; Lei Tributária.

**INTRODUCTION**

There is a common sense of what is true and false, real and nonexistent, etc., which allows us to recognize that there are no "half-true" or "half-real" facts. In other words: truth is conceptualized in an absolute way; it does not depend on extrinsic factors. In popular parlance: "The truth is one."

In this regard, De Plácido e Silva<sup>1</sup> defines as true everything that is real, authentic, legitimate, faithful, exact, thus opposing the sense of nonexistent, false, illegitimate, unfaithful. However, judicially, more specifically concerning Procedural Law, it can be said that the absolute character of truth is amenable to relativization. This is because, usually, in all juridical orders that have in their structure of State a Judicial Branch, the idea that the process seeks to know whether the facts actually occurred or not is present. At this point, the verification of the Truth of Facts in the process is a highly problematic task, because it depends on how the role of the

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<sup>1</sup> *Vocabulário Jurídico*, 11ª ed., Rio de Janeiro, Forense, 1989, vol. IV.

evidence is accepted, considering that this attempt to define it produces several uncertainties in this context.

Trying to settle this issue, the General Theory of Procedure recognizes two modalities of truth, both of them classified based on a principiological basis: the Formal Truth and the Material Truth.

Formal Truth is one of the governing principles of Civil Procedural Law. This principle will be complied with when the judge ignores anything that is not recorded in the case-file. It manifests in the process by means of evidences and other probative procedures admitted by law. It is one more of the many fictions of law, one of "classifying" the truths in order to provide them different effects.

The various rules in the Civil Procedure Code formulated to regulate formalities about the taking of evidences, the numerous presumptions conceived *a priori* by the legislator and the ever present fear that the object reconstructed in the process is not fully identified with the events verified *in concreto*, induce the doctrine to seek to be satisfied with another "category of Truth," one less demanding than the Material Truth.

Material Truth, in turn, is guideline of the Criminal Procedure. Based on this principle, the judge may consider facts that have not necessarily been communicated by the parties in the case-file.

Dejalma de Campos (2008, p.691) affirms that by the Principle of Material Truth, the magistrate must find the objective truth of the facts, independently of what is alleged and proven by the parties, and by the Principle of Formal Truth, the judge must admit as authentic or certain, all the facts that are not controversial.

From what has been said so far, it can be concluded, preliminarily, that the meaning of truth is diametrically opposed to the type of procedure. Curious conclusion, to say the least. Then, one might question: what so important difference is this, which justifies such antagonistic situations? How does the civil procedural norm differ from the criminal, in this point?

Jurisdiction, understood as the power of the State "to speak the law," is executed differently for civil matters and for criminal matters. With regard to civil matters, the State is restricted to guaranteeing the right of action, through narrow access to justice and fulminating preclusive deadlines. In the criminal sphere, the State

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apparatus clearly stands between the State and the defendant, between the punitive power and the right to freedom.

Thus, the Criminal Procedure protects while the Civil presides. It should not be so, since the judicial protection of the State ultimately seeks social peace, which is only fully attained when is given to each one exactly what he/she is entitled to.

However, the Material Truth is not restricted only to the civil sphere; it is possible to verify its radiance in other branches of Law. The basic principle of Labor Law is the so-called Primacy of Reality<sup>2</sup>. In Administrative Law, the principle of Material Truth is already enshrined as imperative<sup>3</sup>.

Luiz Guilherme Marinoni and Sérgio Cruz Arenhart underpin that nowadays the distinction between formal and substantial truth has lost its force. And they justify this statement by saying that the modern doctrine of procedural law has been rejecting this differentiation, by considering that the interests that are the object of the legal-procedural criminal relationship have no particularity whatsoever that permits the inference that one must apply to these methods of reconstruction of the facts different from the one adopted by the Civil Procedure. The authors also state that the notion of Formal Truth is absolutely inconsistent and, for this very reason, was (and tends to be more and more), gradually losing its prestige within Civil Procedure. Both of them complement this idea saying that the most modern doctrine no longer refers to the Formal Truth, because it does not have practical utility at all, being used only as a merely rhetorical argument to support the comfortable position of the judge of inertia in the reconstruction of facts and the frequent dissonance of the product obtained in the process with the factual reality (MARINONI, 2000, p.37).

While the Criminal Procedure deals with the freedom of the individual, it should not be forgotten that the Civil Procedure also works with fundamental interests of the

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<sup>2</sup> "O significado que atribuímos a este princípio é o da primazia dos fatos sobre as formas, as formalidades ou as aparências, isto significa que em matéria de trabalho importa o que ocorre na prática, mais do que aquilo que as partes hajam pactuado de forma mais ou menos solene, ou expressa, ou aquilo que conste em documentos, formulários e instrumentos de controle" (RODRIGUEZ, 1994, p.227).

Free Translation: "The meaning attached to this principle is the primacy of facts upon the forms, formalities or appearances, this means that according to Labor Law what happens in practice is more important, rather than what the parties have agreed more or less solemnly, or that which is registered in documents, forms and instruments of control "

<sup>3</sup> In this sense: FERRAZ; DALLARI, 2001, p.86.

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human person, so that the distinction of cognition between the areas is totally unreasonable.

At the same time, the adoption of the Formal Truth has been criticized by Brazilian doctrine, especially with respect to the Civil Procedure. A good part of the jurists of this movement understands that since the end of the nineteenth century it is no longer possible to see the judge as a mere spectator of the judicial battle, due to his eminently publicist placement in the process (Civil Procedure inserted in Public Law), which is also characterized by the power on their on to consider the circumstances that used to depend on the allegations of the parties, to dialogue with them and suppress irregular conduct.

The idea that the only Truth that matters is the one dictated by the judge in the sentence, since outside the process there is no truth that interest to the State, to the Administration or to the parties - is another aspect that makes it even more difficult to solve the problem exposed here. Such positioning assumes that the truth in its broader content is excluded from the objectives of the process, mainly with regard to the Civil Procedure.

Jose Manoel de Arruda Alvim Netto (2011, p.932) points out that the judge should always seek the truth, but the legislator did not put it as an absolute end in the Civil Procedure. What is sufficient for the validity of the efficacy of the sentence becomes the verisimilitude of the facts. The jurist recognizes the Formal Truth in the Civil Procedure, but emphasizes that when the demand deals with unavailable legal assets, "... we seek, in a more pronounced way, to ensure that, as much as possible, the result obtained in the process (Formal Truth) to be the closest of the Material Truth ... "

In spite of the rejection of the distinction between the Material Truth and the Formal Truth, it is from it that it can be verified that in certain areas of the process, Material Truth is sought more earnestly than in others. In those areas where the Material Truth is considered essential for the solution of the controversy, it is said that the Principle of Material Truth governs the cause. The Principle of Formal Truth, on the other hand, governs the Process in which the search for the Material Truth is not considered essential, and is therefore content with verisimilitude or probability.

To this extent, the expression "Material Truth", or other synonymous expressions (Real Truth, Empirical Truth, etc.) are meaningless labels if they are not linked to the general problem of Truth.

## **2 THE PRINCIPLE OF LEGAL CERTAINTY**

Cândido Rangel Dinamarco, studying what he calls the social scope of the process, concludes that social relationships often cause in the individual dissatisfaction, psychic feelings that usually accompany the perception or the threat of a lack. This dissatisfaction is what the State intends to eliminate in its jurisdictional activity (DINAMARCO, 2000).

The State then seeks to create a favorable climate among people, a climate of social peace. This occurs even if there is a losing party, because the parties accept the decision as final and sovereign. Obviously, in order to be recognized as definitive and sovereign, and especially to be respected by the parties and third parties, it must be obtained by means of fair criteria.<sup>4</sup>

This is where the principle of Legal Certainty arises, because before the impossibility of making the decision absolutely just, either because of lack of factual elements or because of lack of time, this principle originates rules and other principles (or subprinciples) focused on the most just end for the dispute. Hence, come extremely strong rules based on the search for justice, or rather the truth. An example are the trials "in absentia", or even the decadence in its broadest aspects (decadence stricto sensu, prescription, estoppel, etc.).

What else is more unjust than losing your right because of a lapse of time?

Legal Certainty therefore privileges the solution of the dissatisfaction generated by the mere existence of a process rather than its perfect result. In other words, it is better to close the case at once, than to eternalize its existence without a just solution.

If we could photograph the situation, we would have Justice on one side, and Legal Certainty on the other. What happens is that institutes derived from Legal

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<sup>4</sup> In this sense: FERRAZ JR, 2003, p.313.

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Certainty have, from time to time, been relativized. This occurs with trials "in absentia" and even with the *res judicata*.<sup>5</sup>

In this context, the Formal Truth arises. If it is not possible, or very difficult and exhausting for the parties, for the State and for society to discover the real truth, then, based on the principle of legal certainty, the law creates fictitious truths, so that the magistrate judges based on verisimilitude.

The justification for doing so in the civil rather than in the criminal sphere is that the protected legal good is different. In Criminal Law, the protected legal assets are of public order, they are more important (life, honor, etc.), while in the civil sphere, the values involved are of private interest.

For the labor relation, the justification is the hyposufficiency of the employee, which requires special protection from the State.

The procedural doctrine has long questioned such a dichotomy between the truths in the process. Ada Pellegrini Grinover states that "(...) the 'formal-material' antithesis is objectionable both from a terminological point of view and from a substantial point of view.

The ulterior correlation is equally simplistic: Criminal Procedure - Material Truth; Civil Procedure - Formal Truth. It presupposes the image of a civil process, unchanged in the dogma of the absolute availability of the object of the process and the means of proof, which is inaccurate from the positive law point of view as well as from the historical point of view (GRINOVER, 1982).

### **3 IN TAX LAW**

The legal tax relationship, according to James Marins (2005), can take place in three dimensions: the static, the dynamic and the critic. Static is that one in which there is no State participation. The hypothesis of tax incidence occurs in the world of facts<sup>6</sup> and automatically the tax obligation becomes chargeable. The dynamic is that

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<sup>5</sup> In this sense: WAMBIER; MEDINA, 2003.

<sup>6</sup> "Hipótese de Incidência Realizada" (BECKER, 1972), "Fato Jurídico Tributário", (CARVALHO, 2003).

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in which the acting of the agent of the State already exists in the formalization of the tax credit through the tax assessment.

Disputes between the IRS and taxpayers can arise especially from the completion of the dynamic dimension of the legal relationship. If the taxpayer does not accept the tax assessment, they can contest it and sue the IRS, what consubstantiates the so-called critical dimension of the legal tax relationship.

The specialized doctrine flourishes for the study of the tax procedure insofar as the controversial relationship between the Tax Revenue and the taxpayer becomes more and more refined<sup>7</sup>. Experts of the Tax Procedural Law peacefully admit the intertwining between Tax Law, Administrative Law and Civil Procedural Law for the emergence of this new science.

Such litigation - currently - can be resolved in two spheres: administrative and / or judicial. In the administrative sphere, the tax entities (Union, States, Federal District and Municipalities) act independently, according to the constitutional limits of the process and their taxing power. In this sphere the solution of the controversy is privileged by means of judgments that occur within the reach of the Executive Power present in each one of these entities.

As a rule, there are two instances: one monocratic and one collegiate, similar to what occurs in the judicial sphere. It is common also the presence of the special instance. Its subordination to the structure of the Executive Branch means that this sphere is guided by the principles of Administrative Law, a structure in which the public administration is a party and also as a judicial organ insofar as it establishes organs of judgment capable of nullifying its own tax assessment, in favor of the claim of the taxpayer. Here we see the application of the principle of Material Truth applied to the administrative tax procedure, coming from the Administrative Law.

According to James Marins (2003, p.179), the search for Material Truth is a principle of indeclinable observance of the tax administration in the scope of its procedural activities. The tax administration must audit for the truth; must calculate and assess based on the truth.

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<sup>7</sup> For instance: MARINS; XAVIER, 2005 and CAMPOS, 2004, among others.

The principle of Material Truth, before being a right of the taxpayer, is a duty of the State. Thus, the search for substantial truth must be sought by the administration regardless of provocation of the taxpayer and, obviously, if the initiative does not start from the judge, it can start from the taxpayer and even from the IRS.

From the point of view of the procedure, disputes submitted to the Judiciary are governed by the civil procedural law, except for situations in which there is a specific law, as is the case of tax precautionary action and tax execution action, both of them proposed by the Tax Revenue.

Even so, both the tax precautionary action and the tax execution action approve the subsidiary application of the Civil Procedure Code.

But here an inexplicable fact occurs. That procedural relationship, governed by Material Truth, immediately passed to be governed by the Formal Truth as soon as it assumed the aspects of a civil procedural relationship.

Not only this transubstantiation of material into formal find no plausible basis from the point of view of the sudden change of sphere, but the juridical tax relationship cannot admit the Formal Truth as its corollary, as well.

Just as the Federal Constitution establishes the limitations on the power to tax for the tax-legislator State, and the Tax Code establishes the limits for the collecting State, the principles of the administrative procedure recognize the proper protection given to the taxpayers against the State.

In addition, it is not only because of the taxpayer. The principle of the unavailability of public goods imposes that verisimilitude is not enough to define the final outcome of the tax demand. The greatest possible certainty is needed for the tax controversy to be pacified.

But it is especially for the protection of the taxpayer that Material Truth must prevail. In fact, the article 139, item I, of the Civil Procedure Code establishes that to assure the parties equal treatment is one of the duties of a judge. It occurs that the equality of the parties in the process does not occur when it comes to the procedural relationship between the IRS and the taxpayer. Under the pretext of the prerogatives held by the IRS, this one is surrounded by privileges that increasingly distance the equality proclaimed in the Civil Procedure Code.

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There is a specific title in the National Tax Code dedicated to "tax credit privileges", which contains material and procedural rules. The IRS is protected by extended deadlines, its prosecutors must be personally summoned about the procedural acts etc.

And yet: tax evasion is a crime<sup>8</sup>. It is true that the simple fact of not paying tribute is not a criminal offense, but on the other hand, the payment of the tribute evaded before the receipt of the charge rebuts punishment. This demonstrates the importance of the tribute not only as the object of the tax obligation (giving money to the State) but also as a pecuniary duty worthy of the Criminal Law protection. So great is its importance that omitting it from the State can cause the bringing of unconditional public prosecution, and its payment until the receipt of the charge produces the effects of effective repentance.

Thus, not only by the influence of administrative law that the principle of Material Truth should reign even in the judicial tax procedure, but also by the strong appeal of Criminal Law.

#### 4 MATERIAL TRUTH: LIMITS OF APPLICATION

About the predominance of the search for Material Truth in the scope of administrative law Celso Antonio Bandeira de Mello states that the party concept of what is true or false is not important, because in the Administrative Procedure, regardless of what has been brought to the case-file by the party or the parties, the administration should always seek the Substantial Truth (2009, p.497).

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<sup>8</sup> Lei nº 8.137/90: "Art. 1º Constitui crime contra a ordem tributária suprimir ou reduzir tributo, ou contribuição social e qualquer acessório, mediante as seguintes condutas: (...)."

Art. 2º (...)

I – fazer declaração falsa ou omitir declaração sobre rendas, bens ou fatos, ou empregar outra fraude, para eximir-se, total ou parcialmente, de pagamento de tributo; (...)."

Free Translation: Law nº. 8.137/90: "Art. 1 It is a crime against the tax order to suppress or reduce taxes, or social contribution and any accessory, through the following conducts: (...)."

Art. 2º (...)

I – to make a false report or omit an income, goods or facts tax report, or employ another fraud, to exonerate yourself, totally or partially, from payment of tribute; (...)."

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Paulo Celso Bergston Bonilha points out that the administrative judge is not bound to the evidence and the Formal Truth in the process and the evidence presented by the taxpayer. According to him, other evidence and elements of public knowledge or that are in the possession of the Administration can be taken into account for the discovery of the Truth (BONILHA, 1997, p.76).

There is a broad application of the Principle of Material Truth, whose denomination may vary. Hely Lopes Meirelles (1989, p.584), for example, names it the Principle of Freedom of Evidence in which the administration has the power to accept all possible evidence related to the case, even if not presented by the disputing parties. He also says that in the judicial procedure, the judge is limited by the presented evidences and must respect the legal terms to accept them, while in the administrative procedure the authority may accept the evidence, even if it is produced out of the process, but only if it is discovered and brought to the case-file before the final judgment.

Still considering the Administrative Law sphere, the Lei Geral do Processo Administrativo Federal – LGPAF (General Law of the Federal Administrative Procedure), Law nº 9.784, of January 29, 1999<sup>9</sup> – that regulates the administrative procedure in the scope of the Federal Public Administration – consecrated the Principle of Material Truth by displaying about its exercise in the article 38, *in verbis*:

*Art. 38. O interessado poderá, na fase instrutória e antes da tomada de decisão, juntar documentos e pareceres, requerer diligências e perícias, bem como aduzir alegações referentes à matéria objeto do processo.<sup>10</sup>*

Regardless of its application restricted to the federal scope, the article translates the concept of the principle as defined by doctrine. The concept, therefore, is applicable to the States and Municipalities.

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<sup>9</sup> Lei Geral do Processo Administrativo Federal nº 9.784/1999. Disponível em: <<[http://www.planalto.gov.br/ccivil\\_03/leis/L9784.htm](http://www.planalto.gov.br/ccivil_03/leis/L9784.htm)>>. Acesso em: 06 ago.2017.

<sup>10</sup> Free Translation: "Art. 38. The interested party may, at the preliminary stage and prior to the decision-making, attach documents and opinions, request diligence and expertise, and adduce new allegations related to the main subject of the procedure. "

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As the freedom of proof is widely accepted and does not generate much controversy, the question is to know exactly how far the taxpayer can exercise this right, since, as a rule, tax legislation imposes - as in the case of Civil Procedure - a certain term for the exercise of procedural rights under penalty of estoppel.

I understand that if what characterizes the search for Material Truth is the possibility of the (administrative, in the case) judge, at any time, to seek out elements - in fact and in law - that persuade him to judge correctly, regardless of what was brought by the parties in the course of the proceedings, then more reason for either party also to bring to the proceedings, elements of fact and of law, at any procedural moment. After all, the principle governs the procedure, not the parties or the judge separately.

In this sense, I have already manifested myself previously in published academic work. (A Verdade Material no Direito Tributário, São Paulo: Ed. Malheiros, 2013)

It is worth remembering that the estoppel, as a modality of decadence broad senses, that is, loss of a right through the course of time (right to manifest itself in the process) is a purely procedural, infra-constitutional rule. By this I mean that one cannot, for example, mitigate constitutional institutes, such as decadence (*stricto sensu*), prescription, res judicata, perfected legal act, etc. But when it comes to rules of ordinary law, it must prevail, as the name itself already says: the PRINCIPLE (of the Material Truth, in the case).

There is no other conclusion than that the limit of the exercise of the right to present new evidence and allegations must find its end only before the final judgment of the administrative procedure. If the purpose of the Administrative Procedure is admittedly the pursuit of Material Truth, the temporal limitation considered only by itself reveals defense restraint.

This position reinforces the content of Article 145 of the CTN (Código Tributário Nacional)<sup>11</sup>:

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<sup>11</sup> Free Translation: "The tax assessment regularly notified to the taxable person can only be modified by virtue of: I – appeal filed by the taxable person; II – appeal from the tax authority; III - initiative of the administrative authority, in the cases envisaged by article 149."

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*Art. 145. O lançamento regularmente notificado ao sujeito passivo só pode ser alterado em virtude de: I - impugnação do sujeito passivo; II - recurso de ofício; III - iniciativa de ofício da autoridade administrativa, nos casos previstos no artigo 149.*

It follows that the tax assessment does not end in the tax verification procedure, but when the final judgment is consolidated in the tax administrative procedure and therefore, until this final moment, it is the duty of the judge, based on the Material Truth, to manifest by his/her own initiative when necessary.

In addition, the Lei Geral do Processo Administrativo Federal – LGPAF (General Law of the Federal Administrative Procedure)<sup>12</sup>, already mentioned in this work, implicitly recognizes the principle of Material Truth in more than one passage of its text. For instance:

*Art. 63. O recurso não será conhecido quando interposto: I - fora do prazo; II - perante órgão incompetente; III - por quem não seja legitimado; IV - após exaurida a esfera administrativa. § 1o Na hipótese do inciso II, será indicada ao recorrente a autoridade competente, sendo-lhe devolvido o prazo para recurso. § 2o O não conhecimento do recurso não impede a Administração de rever de ofício o ato ilegal, desde que não ocorrida preclusão administrativa.*<sup>13</sup>

I highlight the second paragraph above. Note that “preclusão administrativa” or “administrative estoppel” must be understood as “administrative *res judicata*”, i.e., exception applicable only in case of item IV, since, if the process is no more existent, the judging authority has no more competence to judge the matter in any way. Also note that the first paragraph gives another solution to item II, privileging another principle, known as Fungibility and Informalism.

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<sup>12</sup> Lei Geral do Processo Administrativo Federal nº 9.784/1999. Disponível em: <<[http://www.planalto.gov.br/ccivil\\_03/leis/L9784.htm](http://www.planalto.gov.br/ccivil_03/leis/L9784.htm)>>. Acesso em: 06 ago.2017.

<sup>13</sup> Free Translation: "Art. 63. The appeal will not be accepted when it is served:

I – outside the time limits;

II - before an incompetent organ;

III - by whom is not legitimized;

IV - after the administrative sphere has been exhausted.

Paragraph 1 In the hypothesis of item II, the competent authority will be indicated to the appellant, and the deadline for appeal will be returned to the party.

Paragraph 2. The lack of acceptance of the appeal does not prevent the Administration from reviewing the legal act *ex officio*, provided that no administrative estoppel has occurred. "

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If, hypothetically, the paragraph were not applicable in cases of loss of procedural terms, only the "ex officio examination" would remain for the case of illegitimate party (item III) which would make the paragraph completely lose its meaning.

There is a clear antinomy in relation to the displayed in article 17 of Decree-Law 70.235/72<sup>14</sup>, since in article 63, mentioned above, the lack of inclusion (of new evidences, opinions, expertise or facts) in the appeal does not count as a cause of estoppel against the taxpayer. In my opinion, the LGPAF should be applicable because of its innovation, but even for those who understand that the "Decree" prevails because it is a special rule, there is no antinomy in relation to the second paragraph.

By this I mean that, even assuming that the appeal lodged by the taxpayer could not be adjudicated, the administrative judge is not in any way prevented from freely analyzing the subject, coincidental or not with the argument brought in the appeal.

Another passage from the LGPAF makes clear the scope of the principle of the search for Material Truth, whether for the probative instruction or for the elements of interpretation of the current law, *in verbis*:

*Art. 65. Os processos administrativos de que resultem sanções poderão ser revistos, a qualquer tempo, a pedido ou de ofício, quando surgirem fatos novos ou circunstâncias relevantes suscetíveis de justificar a inadequação da sanção aplicada.* <sup>15</sup>

This article is applicable in favor of the taxpayer, as it must not result in aggravation of the sanction and, at the same time, it must respect the constitutional institutes of decadence, prescription etc., undoubtedly evidencing the search for Material Truth. From the point of view of Legal Certainty, such conclusion are

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<sup>14</sup> *Artigo 17. Considerar-se-á não impugnada uma matéria que não tenha sido expressamente contestada pelo impugnante.*

Free Translation: Article 17. The subject that is not expressly challenged by the appellant will be considered uncontested.

<sup>15</sup> Free Translation: "Art. 65. Administrative cases leading to penalties may be reviewed at any time, by means of request or *ex officio*, when new facts or relevant circumstances arise that may justify the inadequacy of the sanction applied. "

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reprehensible, however as broad as the the assertion may appear, there are no objective limits to the exercise of Material Truth, under penalty of - in order to establish limits - reinstitute the Formal Truth.

## CONCLUSION

In conclusion, there is no sustainable basis for the maintenance of the institute of Formal Truth in Brazilian procedural law. In addition, it is not possible to consider currently accelerating the process through the creation of more legal fictions capable of further accentuating the formalization of truth. The social peace demands the verification of the truth in its substance, otherwise the entire judicial apparatus will be rendered useless, making it a mere means of conflict without a just solution.

In the Tax Law, greater is the reason why the principle of Material Truth must prevail. In the first place, because tax disputes are solved both in the administrative and judicial spheres, and because the former is governed by substantial truth, there is no reason why the latter should not be. Secondly, because the Tax Law involves fundamental values of the citizen, such as property rights. Thirdly, because the tax is well protected by Criminal Law, whose procedural rules, in turn, are governed by the Material Truth.

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