ISSN: 2047 - 0398
SPECIAL ISSUE – V|4|N|3|, December | 2014

TAX ACCOUNTING: A Discourse Analysis of Improper Tribute

Mariano Yoshitake, Dr. (PhD) (*Corresponding author***)**
Faculdades Alves Faria- ALFA, Goiânia, Goiás, Brasil
E-mail: *kimimarinamariano@gmail.com*

Joao Eduardo Prudencio Tinoco, Dr. (PhD)
Faculdade Campo Limpo Paulista-FACCAMP, Campo Limpo, São Paulo, Brasil
E-mail: *tinocojoao@uol.com.br*

Rui Americo Mathiasi Hora, Dr. (PhD)
Universidade Federal de Juiz de Fora, Juiz de Fora, Minas Gerais, Brasil
E-mail: *rui.horta@ufjf.edu.br*

Marinette Santana Fraga, MsC.
Universidade Federal de Juiz de Fora, Juiz de Fora, Minas Gerais, Brasil
E-mail: *marinettefraga@gmail.com*

ABSTRACT

The purpose of this article is to apply discourse analysis to the problems of improper tribute, and the solution through the legal figure of the refund of overpayment. The answers found in this analysis were applied in the elucidation of accounting procedures. We used descriptive research, legal dialectics and discourse analysis, along with aspects of tax accounting to address the identification of relevant aspects of the improper tax. The main base is discourse analysis to identify the problem of improper tax. The results show that, from the analysis of speech into five categories presented at the National Tax Code, it was possible to analyze the different discourses of the authors and researchers of the tax law. Face to Accounting Procedures Committee 25, it can be stated that the duly recognized and paid by the taxpayer undue tax regardless of its source for this payment does not constitute a contingent asset.

Keywords: *Tribute overpayments. Discourse Analysis. Refund of overpayment. Contingent asset*

1 INTRODUCTION

The term improper tribute is in Article 165, clause I of the National Tax Code (CTN), to establish that the taxpayer is entitled, regardless of previous protest, the total or partial refund of the tax, whatever the mode of payment in the case of "I - spontaneous recovery or payment of improper or greater tribute due in face of the applicable tax laws, or the nature or circumstances of materials triggering event actually occurred."

The reasons for the present study are the growing refund of payment that can be checked more frequently in micro, small and medium-sized Brazilian companies. Brazilian companies are faced with a complex tax legislation that increases daily in order to better suit the mechanisms for the collection of taxes, contributions.

The ensuing problems, among others, by the taxpayer, may be classified as error, ignorance, inexperience, lack of control. The side of the tax, the legislation itself recognizes called abuse of power to tax, where the legislature aims to maximize the collection of taxes and the taxpayer, to minimize. This conflict determines the main consequences of relationship-tax contributors, beyond accounting to highlight the need for tax information.

In the opinion of Giambiagi and Além (2011), little is known in Brazil on taxation, especially in aspects of tax planning. The cited authors mention that the large-sized Brazilian companies only 41% modernize their financial systems and can better visualize its tax expenses. So the 59% that do not modernize their financial systems have great difficulty in perceiving where there could be a savings of taxes.

A study by FISCOSoft (2012) with 570 companies from various sectors, 33% in industry, 32% in services, 25% in trade, 9% and 1% other segments in finance, reveals that 41.1% of companies operate with their outdated systems forward to changing the law. Ie, the data collected do not reflect the correct status of social contributions.

The study also indicated that due to the complexity of the legislation, 61.8% of companies said they had already collected the contributions incorrectly. Added to this, companies are still difficulties in the interpretation of the legal standard. About 65% of respondents said they no longer take advantage of credits allowed, due to the complexity. On the other hand, the Brazilian tax burden in 2010 totaled R $ 1.233 trillion, compared with R $ 1.000 trillion collected in less than nine months in 2011.

In business activities, regardless of size or line of business, generally dysfunctions, consisting of errors of law or fact occur. Carvalho (1999) makes the distinction between mistake of fact and mistake of law. In short, for this writer: (a) the error actually is a problem of normative problem, an internal imbalance in the structure of the utterance, for lack of informative linguistic data or the improper use of language constructs that are used as evidence; (b) the error of law is also a semantic problem, but involving utterances of different legal rules, is characterized as a mismatch external feature, normative problem.

Thus, the overpayment may arise both from the fact of error as the error of law. For example to clarify, Souza (2002) states that if a taxpayer to provide the tax credit through their activity - imagine a taxpayer's sales tax for example - take a manufactured product for which it has a tax benefit of exemption and, judging it primary product, issue tax documents, perform the bookkeeping and collecting the tax because he thinks, we get an error when recording tax legal fact, internal nature.

Indeed, the fact that the antecedent consists of individual and specific standard developed by the taxpayer (sale of goods subject to tax) does not match the event selling merchandise lined by the exemption. The author concludes that this is typical internal dysfunction in standard thus produced, inducer of mistake of the fact.

Continuing, Souza (2002), on the other hand, imagine a circumstance in which the same taxpayer, in order to rule matrix of the service tax, imagine this being levied on services rendered by providing meals at their restaurant tax. So, make the issue of the appropriate tax documents and collecting tribute to the municipality in which it is located, coming later to be fined by the state tax authorities, on the grounds that in those circumstances the total operation he has as an active subject, State .

Thus, the author concludes that this is typical mismatch normative problem nature, characterizing the so-called error of law. In any case, these considerations opportunity came in stating that the standard has brought casuistry one possible conclusion: whatever dysfunction, whatever the error occurred, whether in fact - normative problem - whether of law - whenever give rise to undue payment of tax or any other sum, entail ipso facto, the right to repeat, in relation to the total of that overpayment, plus interest and indexation from the improper performance of the obligation (SOUSA, 2002).

Moreover, it is clear that it is for the author, in the action of refund of overpayment, to prove that subsumption defect, the initial penalty ineptitude, if absent any evidence to that effect - imagine the absurd hypothesis application for refund of overpayment without any proof payment, or without any evidence of error - or dismissal at the end of the request, in the face of this defect in language which takes test (SOUSA, 2002). The *probandi burden* or onus of proof is on the plaintiff, in action for refund of overpayment, the production of timely evidence to demonstrate such a misconception, that the structuring individual and specific standard, either by internal derangement in its entirety, or by disharmony between these elements and the criteria selected by the rule-incidence matrix, which becomes, in this endeavor, the complete standard, instituting tribute.

1.1 Problems

Apparently the issue of undue tribute seems to be a simple solution, since the National Tax Code (CTN) provides that the taxpayer is entitled to full or partial refund of the tax in the case of spontaneous recovery or improper payment of tribute or higher because in the face of the applicable tax laws of nature or material circumstances or the triggering event actually occurred (Article 165 of the CTN). However, in tax matters nothing is as simple as it seems, especially with a view to analyzing the speeches of several authors that are presented in this article.

A simple mistake of contributors can be taken as tax evasion. An act of enforcement agent may also be confused with the illegal exercise of taxing power. Gomes and Bianchini (2009) show that according to the Binding Precedent 24, the Supreme Court approved on December 02, 2009, the following types of errors can occur: 1. type error; 2. error ban; 3. simple mistake taxpayer. 4. Ignorance of the law or conduct simple ignorance. There is type error when the agent is unaware of or does not have the full knowledge of the descriptive objective requirements of the offense.

The error of banning the agent knows what he does is aware of the goals and requirements of the type believed the lawfulness of the conduct. Thinks he is allowed what is actually prohibited. If the taxpayer by simple mistake, acting in good faith, takes a certain conduct described in the criminal law (eg, sends an invoice with inexact value, the belief that it was the correct one), we should not speak in the presence the deception and no deception there is no tax crime.

He may be tax-liable but not criminally. Ignorance of the law or conduct simple ignorance is to ignore the consolidation of tax laws, depending on the weather art. 212 of the National Tax Code (CTN), in the business context that ignorance of the law hardly becomes the error ban because the entrepreneur has information duties typical of their activity.

1.2 Objectives

The aim of this paper is to apply discourse analysis to the problems of improper tribute, as conceptualized in the National Tax Code and the solution through the legal form of refund of overpayment. The answers found in this analysis were applied to elucidate the accounting procedures according to Commission's Accounting Procedures no. 25.

1.3 Methodology

The paper used is descriptive research, qualitative in nature and applies to legal dialectic, along with aspects of tax accounting to address the identification of relevant aspects of the improper tax. The main base is discourse analysis to identify the problem of improper tribute, as conceptualized by the National Tax Code. Commenting basic concepts in discourse analysis, Pedrosa (2012), states that the word discourse more or less corresponds to the textual dimensions that have traditionally been treated as "content", "ideational meanings", "topic", "subject "etc

Furthermore, Fairclough (2001) asserts that there is a good reason to use "discourse" instead of those traditional terms: a discourse is a particular way of constructing a subject, and the concept differs from its predecessors by emphasizing that these contents or topics - areas of expertise - just enter the text in the particular constructions mediated the same way.

Due to the legal nature of the work, coupled with the Tax Accounting, Discourse Analysis was conducted in five categories presented at the National Tax Code, namely: (1) the right of the taxpayer to the total or partial refund of the tax; (2) a refund of taxes they behave, by their nature, transfer the related finance charge; (3) the total or partial refund of the tax gives rise to a refund in the same proportion, of such interest and monetary penalties; (4) the right to claim the refund with the lapse of five years; (5) prescribe in two years to an action for annulment of the administrative decision denying the refund.

2 - LITERATURE REVIEW

2.1 Classification of taxes as the rebound

The doctrine, for didactic purposes, usually classify taxes according to their impact, differentiating them in direct and indirect taxes (HABLE, 2008).

2.1.1 Indirect Tax

According Hable (2008), in indirect taxes, such as the Sales tax (ICMS) and excise tax (IPI), among others, it is said that the taxpayers of law and fact are different persons, that is, the person that the law tax elected as subject of obligation, is not that effectively supports the financial burden of the tax.

Thus, for example, the claim that it is the merchant who pays and bears the burden of state tax is not true, because he only gets the consumer and the public treasury collects the tax due, which is already built into the price of the commodity.

Thus, the indirect taxes, the burden of the tax can be "passed on", so are the economic consequences, by its very nature. Direct Tax: To Hable (2008) in so-called direct taxes, such as the property tax and property taxes, among others, the taxpayers of law and fact are the same person, ie the person who chose the tax law as subject to the obligation is the same that effectively supports the financial burden of the tax. In this case, the burden of the tax cannot be "passed on".

2.2 Direct tax refund

It is common before the Treasury submission of applications for refund of taxes like the property tax or property taxes, claiming to have made the payment, by mistake, on behalf of others, for breach or coincidence address, names of owners, etc, without, however, there have been duplicate payment or greater than the result.

It may be argued initially that there is, in the official records of the Treasury, duplicate payment or greater than due, the amount paid would not be improper, since it was made spontaneously, and refers to a specific tax obligation exists then expiring tax credit. Thus, there would, in principle, cool for a refund of that tax base. There are those who still want to utilize the popular saying or proverb, saying: "Who pays poorly paid twice" (HABLE, 2008).

Under private law, so that the payer has ensured their right to repeat it paid improperly it becomes necessary to prove that the error made by (Civil Code art. 877). In tax law, however, does not require, as a rule, the proof of the error, because as stated Aliomar Baleeiros "Art. 165 cut the discussion, ensuring repeat 'regardless of the previous protest' without requiring proof error ", because it does not admit the presumption of willingness of the taxpayer to collect tribute for simple liberality because mandatory is an essential characteristic of tax obligations. Just thus underlined the lack of tax liability.

However, as the doctrine itself Luciano Amaro, "that does not mean that in any situation, never having to prove matters of fact within the repetition of tax overpayments."

In fact, the absence of the tax, it is unnecessary obligation proof of deception or mistake in making the payment, because the tax obligation in being an obligation ex lege, in which the hypothesis of incidence is linked strictly to the principle of legality, no person may be compelled to pay a tribute, not a law that has previously created such a tribute and set their chances of incidence. But what if you have a tax liability existed, or been hypothesized tax incidence? And then made a payment, which retrospectively if the come-claim is improper, because there has been some mistake, so will require up-your proof?

It should be initially put off, not every payment made by way of tribute, and later alleged improper, is liable to refund. Because, there are situations where conventions or agreements concerning the liability for payment of taxes, and that, pursuant to article 123 of CTN, cannot be opposed to the Treasury, and later come to be broken for any reason, it is alleged, then it is an overpayment.

In such cases, we understand that, beyond the existence of payment and there is no legal reason justifying the payment must Interested prove the occurrence of error or mistake in payment, as well as having occurred hypothesis tax incidence may be Tax Administration stepping into assignments are not entitled to, interfering and deciding on the relationships between individuals.

In this sense, for example, if a party were to claim the fulfillment of an agreement as to the payment of tribute, later scrapped, the Administration cannot dispense with proof of error or mistake in the payment, because it is not up to form a judgment about the relationship formed between individuals, under penalty of being extrapolating their skills. It must be emphasized that it is of fundamental importance to the Internal Revenue Service (IRS), review the claims for refund, case by case, seeking evidence that it considers necessary, as well as tribute only be due if the law, he should excel in the pursuit of truth from facts, in honor of the administrative principle of substantive truth.

Thus, based on the higher principle of legality, if a taxpayer were to pay a parcel tax credit or claiming improper later, he will always have the right to request, within the statutory period, its revision, while the Treasury preliminarily analyze the request, using all available means, to verify that the tax obligation truly existed, and exists, if the payment was due or not done, regardless of having been "confessed" to tax debt, or have been extinguished by payment, under penalty of being the taxman appropriating something that does not belong in clairvoyant violation of the principle of legality.

In the hypothetical example, if the Interested John "A" comes through accosted the file documents, to demonstrate and prove that it was he who has borne and paid the property tax, related to property "y", owned by John "B", the result of misunderstandings caused by the coincidence of the first names of the owners and condominiums where the buildings are located, and not being raised, any indication that there was any agreement between the parties involved, is due a refund under regent law (HABLE, 2008).

2.3 Liabilities Subject to the Law of Total or Partial Refund of Tax

According to Gallant (2012), the overpayment is called extinction of the tax credit when the overpayment or no obligation or credit. The author cited assumes that there may have been a practice to irregular administrative release, followed by payment by the debtor alleged, or payment without prior release, the sole initiative of the alleged taxable.

In the latter circumstance, act or practice of administrative authority have existed and therefore not fit to reference the tax credit even towards entity formed by launch, with abstraction of the tax liability. The right to a refund of the overpayment basis in the principle that prohibits the gain without cause, similar to what occurs in private law. Article 165 of the CTN firm the right to recover sums paid tribute, ruling that the taxpayer is entitled, regardless of prior protest, full or partial refund of the tax whatever mode of payment, except as provided in paragraph 4 of Article 162, listing the following is a list of cases where restitution is not duel. Restitution, says CTN, may be total or partial. But we agree that the refund of the overpayment is to be always full.

What may have happened is that a payment, for example, from R $ 1,000.00 only R$ 800.00 were due, and therefore would have been an undue payment of US $ 200.00. The overpayment is $ 200.00 and that this value is fully refunded. Even here, therefore, is entitled to full and not partial refund of the overpayment.

The portion of wax amount paid is not refundable tribute is due, and therefore, is not refundable. What we need to make it clear, too, is that no matter the mode of release, which has collected the tax due for release letter or statement, which has been paying tribute subject to approval by launch their right to restitution. Brandão (1994) proves to be in public law, and more precisely the Tax Law, the relationship between the state and the lender repeat the overpayment.

The author states that if the tax is not due, then the gathering of his value to the state coffers could not mean the payment of a tax debt.

Thus concludes Santiago (2011) would only gathering of money, whose return could be pleaded by whom he had, based on a relationship of civil law. Indeed, the legal nature of the claim of who repeats improper tax is tax because ontologically linked to debt ratio tribute. This spring from its occurrence in concrete assumption and from there is that you perform the payment of its quantum.

To Santiago (2011) the act of paying assumes an obligation that the State or the lender of repayment, or both, imagine existing and therefore created by the occurrence of their assumption. The claim by the creditor is born, so in the abstract, at the same time the tax obligation, albeit anomalous (...) arises. Santiago concludes (2011) that the collection, or longer then the overpayment of legal obligation, realizes the intention of paying to recover what it has paid for the tribute.

Are therefore assumptions of Claim, preexistence of a tax obligation, obviously illegal, and our payment? Machado (1994) points out that against the criticism that it is not improper tribute, which would result from the inadequacy of treatment repeat the overpayment within the National Tax Code (not to be subject to tax law, but the public law in general or Private Law), also noted that the administrative act is nonexistent treaty between the administrative acts. So much so that the causes and effects of its own invalidity are governed by administrative law, and not by any other branch.

2.4 The refund of taxes they behave, by their nature, transfer the related finance charge

In the sequel, the CTN speaks refund of taxes entailing transfer of financial burden, according to article 166, as if the overpayment, if you care for taxes or taxes with such and such characteristics. He says even though the refund of taxes gives rise to a refund of interest and monetary penalties.

"Article 166 - The refund of taxes they behave, by their nature, transfer the related finance charge will only be made to prove who said charge be taken or, in the case of having it transferred to a third party for this being expressly authorized to receive it . "If the taxpayer has paid the tax due when a state to another, is entitled to restitution of any improperly collected, made proof of payment or the beginning of the state where actually due.

Behold the need to ask the consignee of the goods a Bill authorizing the sender to be credited the most outstanding taxes on your tax document originating from the fact that the finance charge was not supported by the recipient not to simply fitting into your tax records the reversal of that most release. Clearly the CTC wants to refer to payments in respect of such and such a tribute, as interest etc. And when talking about taxpayer wants refer to the person wrongfully put in that situation. So, too, in speaking of extinction of the tax credit, the act aimed to mention that with such an appearance is presented.

Article 166 undergirded on the theory that divides taxes into direct and indiret, according to Santiago (2011). The latter are economically and legally supported by said taxpayers in fact and not by taxpayers de jure. Indeed, from an economic perspective, any and all taxes reflected in the price of goods and services, for the simple fact of being

considered cost in its composition. Such economic statement - a full obviousness - is the current doctrine of the Tax Law paternal currency, as you can see the testimonials that follow. For Derzi (2003):

> "To say that taxes such as import tax (II), the state tax (ICMS), the excise tax (IPI) and service tax (ISS) or contribution to the financing of social security (COFINS) are passed on to final consumers and may not be supported by the company because the results depend on the person and part of the cost of the activity, it is an economic fact, which can only be judged according to laws economic."

Continuing says Derzi (2003) that "the legal system, which does not conflict with economic reality, authorizes such taxes are transferred through the mechanism of prices of goods and services to consumers. If there were transfer, then the debt and insolvency jeopardize the financial health of all economic activity. But this statement, which is simply economical for most of the taxes levied person regardless of the outcome of the activity, in the case of the ICMS and IPI instead finds legal support of the Brazilian Constitution. "

Similarly, attests Morschsbacker (1976): "The economic impact, and are unanimous in particular all the great master in financial economics, as Pantaleoni, Seligman, Jeze, Hugon, Allix, Lindholm, Cosciani, Laufenburger, Recktenwald and others is common property, but to everyone, almost all taxes, which, in one way or another, and within the various mechanisms offered by market laws impacting economically.

2.5 The total or partial refund of the tax gives rise to a refund in the same proportion, of such interest and monetary penalties

According to Santiago (2011) the first part of Article 167, the CTN broadens the overly restrictive than article 165, which referred only to refund the tax. Indeed, the cited author clarifies that the return of improper tax that was paid late, or spontaneously in the wake of assessment, covers the legal effects collected along with that (indexation, interest and penalties for late payment or an ex-officio).

To Santiago (2011), the rule is an unassailable logic: if the tax was recognized as improper, your non-payment can no longer be considered unlawful, unreasonable and sanctions. Similar reasoning applies to the restatement does not make sense to speak of the need to preserve the real value of a nonexistent debt. Various are the positions taken by Santiago (2011), namely: (a) the extent, however, is still insufficient, as it leaves the penalty of restitution of overpaid without connection to any overpayment of tax (payment of fines spontaneous termination or separate fine due to formal infringement on unchecked) truth; (b) the omission is, nevertheless, calmly overcome by the case, admits that the repetition in these cases, with stanchion on the principles of legality and the typicality of the infractions; (c.) to avoid all these questions - and make it unnecessary to rule entered in the chapeau of art. 167 - suffice to complement legislature have said, in art. 165, the taxpayer is entitled to a refund of overpaid tax credit because, as you know, the tax credit has the same nature of the principal obligation (CTN, art. 139), and this includes tax and effects (CTN, article 113, § 3). (d) the only exception to the rule of repeatability of effects is the second part of the heading of art. 167, which puts saved the penalty for breach of ancillary obligations not affected by the issue of restitution. Is that how it is musty, for the ancillary tax liability is not worth the aphorism that *acessorium sequitur principale*.

Two examples help understand:

- Example 1: a citizen receives in base year 2003 taxable income of R$12,000.00 (below, therefore, the exemption limit of R $ 12,696.00). Still receives R$30,000.00 for adherence to voluntary severance program. Ignoring that such amount is non-taxable, a tax the IRS in 2004 apply a penalty due to a nonpayment of physical income tax applying it still fine for non-submission of the declaration. Incurring the same mistake, the person pays the debt in full required. In this case, the cause that determines the tax refund (damages for joining) also carries a formal characterization of the offense, since it is only required to file income tax return in 2003 who had exempt income, taxable or non-taxable exclusively in excess of R$40,000.00 source.
- Example 2: A company omits part of their income in order to evade, among others, the corporate income tax. Discovery suffers requirement for assessment of tax, interest and penalties on late payments, calculated based on the omitted income, considered separately (in the form of the now repealed Art. 43, § 2, of Law No. 8,541 / 9233), as well as fine the breach of ancillary obligations to maintain reliable accounting.

Pays all the requirements, but then realizes that the tax was not due, as in that year had losses can absorb all the omitted income, and that this tax separately (i.e., without recalculation of the tax base by its addition to taxable income) is not legal, since tax is not sanction tort (CTN, art. 3). In that case, is entitled to a refund of tax, interest

and late payment penalty, but not that imposed by formal notice, which endures even the lack of tax payable (because of the omission generates revenue evasion of other taxes, such as PIS and COFINS).

The single paragraph determines the interest charges between the final and unappealable decision to impose restitution and their effective implementation. Assumes that are arrears, and that before the final judgment of conviction there is no mention in default state. The inflation adjustment when there is law that the institute is levied from the date of overpayment, the content of Abstract No. 162 of the Supreme Court of Justice. It was considered to simplify the example, the person in question did not incur any other cases of mandatory submission of tax returns, such as participation in companies, acquiring resident status in Brazil last year, etc.

Here is his text: "Art. 43. Verified omission of income, the tax authority will release the Income Tax at the rate of 25%, *ex officio*, with the additions and penalties of the law, considering as the basis for calculating the value of the omitted income. (Article repealed by Law No. 9249 of 12.26.1995). § 1. The amount determined under this article will constitutes calculation base for launching, when appropriate, contributions to social security. § 2. The value of the omitted income not composes the determination of taxable income and the tax on the omission shall be final."

2.6 The right to request a refund with the lapse of five years

SOUSA (2002) shows that Article 168 of the National Tax Code (CTN) takes care of the statutory period for which the taxpayer plead refund of tax overpayments. The time will vary depending vary the event that causes the improper due performance.

So, being the foundation of the refund overpayment had spontaneous as that made in error as to the identity of the taxpayer, in determining the applicable rate, or the calculation of the amount of the debt or in the preparation of any document or conference concerning the payment the initial term of the deadline shall be the date of termination of the tax credit.

According to Carvalho (1999), who has paid tribute improperly, have a period of five years to apply for its return. It's a period of decadence, who fulminates the right to request the return. Manifested inertia of the administered Souza (2002) explains that during that period happens, inescapably, the legal fact of decay and obsolescence extinguishing their right. The five years to request the return at the administrative level, is counted as follows:

a) From the time they gave a spontaneous tribute payment of improper or greater, in the face of the applicable tax laws, or the nature material circumstances or the legal fact actually occurred;
b) Also from the date of payment, when there is an error in the identification of the taxpayer, in determining the applicable rate, in calculating the amount of the debt or the preparation or conference of any document relating to the payment;
c) The date on which it becomes final administrative decision or pass judgment on the judicial decision that has retired, terminated or voided the conviction.

Certain is that this point has been diametrically opposite conclusion brought on settled case law of the Supreme Court. This clear divergence of understanding occurs in relation to the taxes to which the law attaches to the taxpayer's activities calculation and payment. These activities are carried out under further condition subsequent - or resolutory, under Article 150, § 1 of the tax code - for approval by the administrative authority legally responsible of this task (SOUSA (2002).

Thus, in repeated trial, dealing mostly on refund of overpayment on the forced loans levied on fuels, established by Decree 2288/86, it was decided, vg the judgment in R.Esp. 209374-BA in the following sense:

> The limitation for two years to an action for annulment of the administrative decision denying the refund: Article 169, the CTN provides that expires in two years to an action for annulment of the administrative decision denying the refund. The limitation period is interrupted by the beginning of the lawsuit, resuming its course, by half, from the date of the subpoena validly made to the judicial representative of the Treasury concerned (paragraph 2 from the article 169 of the CTN).

Santiago (2011) shows that "choosing the person directly through the courts, it is clear that do not speak of an administrative proceeding". Continuing, Santiago (2011) states that "deciding, however, try to refund the first official channels, and not succeeding, may reiterate their claim in court (Federal Constitution, art. 5, XXXV) 47". This author concludes that "now you must do so within two years of the final denial of the administrative claim, subject to preclusion."

The unconstitutionality of the same single paragraph is clear, for interference with the right of access to the courts (which includes the proposed deal to see resolved) and the principle of reasonableness (it is not reasonable to punish the taxpayer for the natural delay of court proceedings). Can also give the administrative process before its closure and propose immediately lawsuit provided it is done within five years of the termination of the credit. Otherwise, your refund request will be prevented by prescribing the article 168, and not have him open the possibility of an action for annulment of article 169 (SANTIAGO, 2011).

2.7 Accounting improper tribute

The accounting pronouncement CPC 26, converted to Brazilian accounting standard NBC T19.7 comes to Provisions, Contingent Liabilities and Contingent Assets. Under this standard, all provisions are contingent because they are uncertain about its value or term. Also advises that the term "contingent" is used for liabilities and assets that are not recognized because their existence will be confirmed only by the occurrence or nonoccurrence of one or more uncertain future events not wholly within the control of the entity.

The statement on Contingent Assets requires that an entity shall not recognize a contingent asset; Contingent assets usually arise from unplanned event or other unexpected events that give rise to the possibility of an inflow of economic benefits to entity.

One example is a claim that an entity is claiming through legal processes, where the outcome is uncertain; Contingent assets are not recognized in financial statements since they can deal with a result that will never be realized.

However, when the realization of income is virtually certain, then the related asset is not a contingent asset and its recognition is appropriate; the contingent asset is disclosed when it is probable the inflow of economic benefits; contingent assets are assessed periodically to ensure that developments are appropriately reflected in the financial statements. If it is virtually certain that an inflow of economic benefits, the asset and the corresponding gain will occur are recognized in the financial statements of the period in which the change in estimate occurs. If an inflow of economic benefits has become probable, an entity discloses the contingent asset.

3 DISCUSSION OF RESULTS

The results of this discussion is based on discourse analysis, as previously identified by the segregation of the various positions taken by legal researchers, as well as the decisions contained in Precedents 282 and 356 of the Supreme Court dealing with review of factual, evidentiary matters.

3.1 Legal aspects

3.1.1 Admittedly, the improper collection of taxes implies the obligation of the Treasury to return the overpayment to the taxpayer holding the subjective right to demand it.
3.1.2 In the case of so-called "indirect taxes" (those who behave, by their nature, transfer the related finance charge), the tax law (Article 166 of the CTN) requires the refund of overpayment only if the taxpayer to make proof of having coped with the said charge or otherwise, that has been expressly authorized by the party to whom the burden was transferred.
3.1.3 The exegesis of this device indicates that: "... the art. 166, the CTN, although contained in the body of a typical introductory vehicle tax rules, conveys, in this part, specific standard of private law, which attaches to the right third of the tax return the taxpayer, only in cases where the transfer is authorized normatively, corresponding to the improperly collected tax installments: it is autonomous private standard, not to be confused with the standard built in the literal interpretation of article 166, the CTN.
3.1.4 It is unnecessary to permit the taxpayer in fact to the right of this or that. By his own account, the taxpayer may actually posit the overpayment since been recouped by the taxpayer with the tax authorities of law. However, note that the taxpayer actually cannot directly sue the state for not having any legal relationship with this. In short: the subjective right to repeat the magpie belongs exclusively to the named taxpayer rights.
3.1.5 However, once recovered the overpayment through this with the IRS, the taxpayer may in fact based on private law norm, pleading with the tax refund to the taxpayer of those values.
3.1.6 The standard conveyed by art. 166 cannot be applied in isolation, is to be confronted with all the rules of the system, especially with the spread by the arts. 165, 121 and 123, the CTN. In neither is it recorded that the third archetypal with the financial burden of the tax can be contributors. Therefore, only the tax taxpayer is entitled to a repetition of the overpayment.
3.1.7 The ultimate basis of the standard that establishes the right to repeat the magpie is the Constitution itself, especially the rule of strict legality. Indeed the norm conveyed by art. 166 collides with the Federal Constitution, colliding head on with the principle of strict legality, reason is to be considered as a rule not recepcionada by the current tax system.

3.1.8 And even before the previous law was manifestly incompatible opposite the then current Constitutional Tax System "(Strong Marcelo Cerqueira, in" Course of Specialization in Tax Law. - Analytical Studies in Tribute to Paul de Barros Carvalho "coordination Marcos Diniz Eurico de Santi, Ed. Forensic, Rio de Janeiro, 2007, pp. 390/393).
3.1.9 Indeed, conditioning the exercise of subjective right of the taxpayer who paid tribute improper (Contributor of law) to prove that it carried the economic impact of the tax or permit the presentation of the "taxpayer's suit" (a person who has suffered economic incidence of the tax), in the light of Article 166, the CTN, lacks the power to transform others' legal relationship subject to tax on legitimate part in the action for refund of overpayment.
3.1.10 In light of the historical interpretation of Article 166, the CTN itself if dessume that only the taxpayer is entitled in law to join the plaintiff's lawsuit aims to refund the "indirect tax" wrongfully collected.
3.1.11 In the event that the economic impact stems from the nature of the exaction, "the third with supporting the economic burden of the tax is not participating in the tax legal relationship, that is enough to make the impossibility of such third reason to come to integrate the relationship embodied the prerogative of the undue repetition, therefore not having legal standing"(Paulo de Barros Carvalho, in" Tax Law. - Language and Method ", 2nd ed, São Paulo, in 2008, Ed Noeses, 583 p..).

3.2 Some jurisprudence
3.2.1 How musty, when it comes to manufacturing of products, the basis for calculating the IPI is the transaction value of the good leaves the industrial establishment (Article 47, II, "a" course, the CTN), or, failing that amount, the current price of the goods or their similar wholesale market in the square of the sender (Article 47, II, "b", the CTN).

3.2.2 The Law 7,798 / 89, however, amended Article 14 of Law 4.502 / 65, which went into effect as follows:
"Art. 14. Unless otherwise specified, constitutes taxable value: (...) II - as domestic products, the total transaction value of the industrial output of the industrial establishment or equivalent course.
§ 1. The transaction value includes the price of the product plus the cost of freight and other incidental expenses charged or debited by the taxpayer to the buyer or recipient.
§ 2. Cannot be deducted from the value of the transaction discounts, rebates or differences, granted under any title, although unconditionally. (...)

"Despite the 3.2.3 Classes of Public Law will becoming the incompatibility between the provisions of Article 14, § 2, of Law 4,502 / 65, and Article 47, II," a ", the CTN (undue expansion of concept of transaction value, the basis of calculation of the IPI, which generates the right to restitution of the overpayment), the industrial establishment (in case, the beverage manufacturer) remains the only taxable in the tax legal relationship established with the occurrence of enforceable in fact consistent operation industrialization of products (Articles 46, II and 51 II, the CTN), given that the presumption of the economic impact of the IPI can be rebutted by evidence to the contrary, or, if verified the transfer for approval expresses the taxpayer actually (distributor of beverages), under Article 166, the CTN, which, however, no matter the procedural legitimacy of the third.

3.2.4 Analogy, it is certain that:
1. Consumers of electricity, telecommunication services are not active standing to litigate the repetition of any tax overpayment of VAT levied on these transactions.
2. The characterization of the named taxpayer actually lends itself only to impose a condition for refund of overpayment by the taxpayer pled law, which transfers the financial burden of the tax triggering event which has done (art. 166 of the CTN), but does not grant ad legitimate cause for consumers entering into judgment with a view to discussing particular legal relationship which does not form part.
3. The taxpayers of the exaction are those who put the product into circulation or provide the service, thus cementing the case of incidence required by law.
4. In accordance with the Constitution and the LC 86/97, consumption is not a taxable event ICMS. 5. Declared active illegitimacy consumers to request the repetition of ICMS. "(RMS 24 532 / AM, Rel. Minister Castro Meira, Second Class, judged on 26.08.2008, 25.09.2008 DJE).

3.2.5 Consequently, it is revealed correct understanding recorded by regional judgment to the effect that "the distribution of beverage companies, posing as taxpayers actually IPI holds no legitimacy to postulate active in court concerning the crediting paid to IPI by manufacturers, given that only industrial producers, as taxpayers of the tax law, have active legitimacy. "15. Special feature lacking. Judgment submitted to the provisions of Article 543-C, CPC, and STJ Resolution 08/2008. (Answer 903 394 / Minister Luis Fux, first section, judged on march 24, 2010, april 26)

3.3 Improper accounting tribute:

CPC presents the following table illustrating contingent on Assets:

Are characterized in situations where, as a result of past events, there is a possible asset whose existence will be confirmed only by the occurrence or nonoccurrence of one or more uncertain future events not wholly within the control of the entity.		
The inflow of economic benefits is virtually certain.	The inflow of economic benefits is probable, but not virtually certain.	The entrance is not likely.
The asset is not contingent (item 33).	No asset is recognized (item 31).	No asset is recognized (item 31).
	Disclosure (item 89) is required.	No disclosure (item 89) is required.

Table 1 - Contingent Assets.
Source: Accounting Procedures Committee no. 25 – CPC 25

In light of the accounting pronouncement CPC 25, it can be stated that the duly recognized and paid by the taxpayer undue tax regardless of its source for this payment does not constitute a contingent asset. The reasons why this reasoning is found in Table 1, illustrated in the aforementioned book of pronouncements. Thus, the reasons for the provisioning of improper tribute as contingent asset are as follows:
a) the inflow of economic benefits is virtually certain;
b) The gain is virtually certain, then the related asset is not a contingent asset and its recognition is appropriate;
c) No disclosure is required;
d) In the event that an inflow of economic benefits, the asset and the corresponding gain will occur are recognized in the financial statements of the period in which the change in estimate occurs.

4. CONCLUSIONS

Regarding the methodology, the data were analyzed according to the technique of discourse analysis. In short, discourse analysis is the analysis of speech in context, it helps to understand how people think and act in the real world. The history, context and social position contribute to the discursive productions.

The utterer of the discourse, therefore, is not only an empirical subject, a subject of experience and individualized existence in the world, but a discursive subject, whose personal history is part social history, ideologically marked. Such a subject is crossed by the heterogeneity and polyphony that constitute, as it participates in various discursive productions that intersect (Fernandes, 2008).

From the analysis of the five categories presented at the National Tax Code, it was possible to analyze the different discourses of the authors and researchers of the tax law, as follows:
(1) Recognition of the right of the taxpayer to the total or partial refund of the tax;
(2) The repayment of taxes they behave, by their nature, transfer the related finance charge;
(3) The right to full or partial refund of the tax gives rise to a refund in the same proportion, of such interest and monetary penalties;
(4) The right to claim the refund with the lapse of five years;
(5) Controlling the act of prescribing in two years to an action for annulment of the administrative decision denying the refund.

Face to CPC 25, it can be stated that the duly recognized and paid by the taxpayer undue tax regardless of its source for this payment does not constitute a contingent asset. The reasons are the following:
a) The inflow of economic benefits is virtually certain;
b) The gain is virtually certain, then the related asset is not a contingent asset and its recognition is appropriate;
c) No disclosure is required;
d) In the event that an inflow of economic benefits, the asset and the corresponding gain will occur are recognized in the financial statements of the period in which the change in estimate occurs.

Given the limitations of this study, suggest new future investigations into other causes and consequences of paths not yet delineated by the tax law and its jurisprudence. Concomitantly, verify the correct interpretation of these accounting matters for the purpose of identifying, measuring and accounting records of facts relating to undue taxes. The ultimate purpose is to expand knowledge on the subject in Tax Accounting.

REFERENCES

Amaral, Luiz Gilberto; et al. 1988. Quantity of rules issued in Brazil: 18 and the Federal Constitution of 1988 BIPT. Available in: http://www.ibpt.com.br/estudos/estudos.viw.php?estudo_id=9a1158154dfa42caddbd0694a4e9bdc8, accessed 28/04/2011

Amaral, Luiz Gilberto & Olenike, Joao Eloi - 2006. Brazilian tax burden (revised). BIPT. Available in http://www.ibpt.com.br/arquivos/estudos/2006_-_C_T_B_(REVISADA).pdf, accessed 20/04/2011.

Bandeira de Melo, R .; Cunha, C. Grounded Theory. In: Godoi, C .; São Paulo: Saraiva Ed., 2004.

Bertolucci, A. V. How much pay taxes. São Paulo: Editora Atlas, 2003.

Brazil. Federal Revenue of Brazil. Tax burden in Brazil in 2010, September 2011. Available at: http://www.receita.fazenda.gov.br/Publico/estudoTributarios/estatisticas/CTB2010.pdf. Accessed on: 23/02/2012.

Brazil Resolution CFC. 1,180 / 09. Approves NBC T 19.7 - Provisions, Contingent Liabilities and Contingent Assets. IAS 37 the IASB approved Technical Pronouncement CPC 25 - Provisions, Contingent Liabilities and Contingent Assets;

HART, L. Amado and Bervian, Peter A. (1983) Research Methodology for use of college students. 3.ed. New York: McGraw-Hill's Brazil.

Chagas, Matheus de Abreu (2008). Incidence of income tax and social recovery of taxes erroneously or due to the higher paid. Available in: http://jus.com.br/revista/texto/11468/incidencia-de-irpj-e-csll-na-recuperacao-de-tributos-pagos-indevidamente-ou-a-maior-que-o-devido . Accessed on: 11/02/2012.

DATA ANALYTICS (DA). Available in: http://searchdatamanagement.techtarget.com/definition/data-analytics. Accessed on: 20/02/2012.

Crivelaro, Lucia. Judicial Tax Procedure. Available at: http://www.faccamp.br/apoio/luciacrivelaro/apostila-processo_judicial_tributario.doc. Accessed on: 28/02/2012.

FAYYAD, U., G. Piatetsky-Shapiro, P. & Smyth (1996). From data mining to knowledge discovery: an overview. In Advances in Knowledge Discovery & Data Mining, pp. 1-34.

FISCOSOFT.Mais 40% of companies do not follow changes in tax law. Available in: http://www.escopo.com.br/noticias_ler.php?codigo=2102. Accessed on: 18/02/2012.

Frezatti, Fabio; BIRTH, Artur Roberto's; Junqueira, Emanuel Junqueira; Grass, Tania Regina Sordi. MAGAZINE O & S - Salvador, v.18 - n.58, p. 445-466 - July / September - 2011 Budget Process: an application of substantive analysis using the grounded theory. Available at: www.revistaoes.ufba.br. Accessed on: 24/02/2012.

Giambiagi, Fabio. Além, Ana Cláudia Duarte. Public Finance, 4th edition. Rio de Janeiro: Ed. Campus, 2011. Apollo Group. Recovery of taxes. Available at: http://www.grupoapolo.com.br/juridico/recuperacao-de-tributos.Acesso on: 10/02/2012.

Kerlinger, Fred N. (1980) Research methodology in social sciences; a conceptual treatment. São Paulo: EPU / EDUSP.

Machado, Hugo de Brito. Course in Tax Law. 28. ed. São Paulo: Malheiros, 2007.

Moral, Roberto Rodrigues de. STF Defines Recovery of Taxes Improperly Paid in the last 10 years. Available in: http://www.noticiasfiscais.com.br/2011/08/07/stf-define-recuperacao-de-tributos-pagos-indevidamente-nos-ultimos-10-anos. Accessed on: 07/08/2011.

Oliveira, L.M .; et al. 2003. Manual of Tax Accounting. 2nd ed. São Paulo: Atlas.

Ralcontabilidde. Defining place to collect ISS still generates questions. Available at: http://ralcontabilidade.com.br/Noticias.aspx?id=805. Accessed on: 18/02/2012.

Rezende, Luciano. Repeat Misuse. Available in: http://www.abcapixaba.net/index_arquivos/direito7.htm. Accessed on: 28/02/2012.

Sandford, C .; Godwin, M .; Hardwick P. Administrative and Compliance CosTaxation. Bath: Fiscal Publications, 1989.

Souza, Rubens Gomes. Compendium of tax legislation. São Paulo: Ed Tax Review, 1975. p.. 92

Straus, A. & Corbin, J. (2008). Basics of qualitative research (3rd Ed.). Los Angeles, CA: Sage.