International Journal of Humanities and Social Science Invention
ISSN (Online): 2319 – 7722, ISSN (Print): 2319 – 7714
www.ijhssi.org ||Volume 5 Issue 9||September. 2016 || PP.01-07

"Liberatory prescription of local taxes in the civil and commercial code of the nation and the importance of codification of tax law"

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SUMMARY: *The aim of this paper is to analyze the impact of the rules set forth by the Civil and Commercial Code of the Nation regarding statute of limitations on local tribunes, in the taxes which are the responsibility of the provinces and municipalities under our tax regime. We leave the study of the Constitution as powers of different levels with tax competition that coexist in our country and the very simplified our court jurisprudence in this matter study. The concept of taxing power , provincial autonomy and its limits will also be addressed.*
Keywords*: Tributes, autonomy, limits, federalism.*

I. INTRODUCTION

We begin by saying that the public need is the cause that legitimizes the taxing power of a state. Under the taxing power or power to rule all citizens are required or contribute their support, by taxation (art. 4th C.N.), which allow the State to achieve or accomplish its mission. Within the regime of powers assigned by the Constitution (as a result of the adoption of Article 1 Federal regime CN) and especially after the reform made in our Constitution in 1994, is power not delegated by the provinces to the National Government to establish, regulate and collect taxes, with the limits imposed by the constitution itself, under the provisions of arts. 75, inc. 12, 121, 122, 126 of the Constitution. Still regarding the federal regime, poured into our constitution the thought of Juan Bautista Alberdi and materialized in federal clauses such as those defining the autonomy of the provinces (Art. 5, 122, 123) and unit clauses as established by the Article 75, paragraph 12. This tax power grows out of the national constitution itself, in that sense, Alberdi argued in his book "rentier and economic system of the Argentina Confederation," which after a government is organized (add either National, Provincial and Municipal), it is necessary to provide it means to exist, form him a national treasure, and distinguishes between the powers originating from the provinces to raise domestic indirect taxes, limiting federal revenue to foreign trade rights[1].

However, in several precedents our cimero Court held that the regulation is invalid made by the provinces on limitation under art. 75 inc. 12 provincial laws lack the power to set standards that import departing from the basic legislation, that is, of the provisions of the Civil Code, even when it comes to regulations concerning matters of local public law.

The sanction of the new Civil Code and Commercial Procedure approved by Act of Congress No. 26,994 established a substantial amendment concerning taxation of local competition (provincial and municipal), and consequently of the reform operated, realizes powers local tax, reinforcing them, because he has established expressly and specifically the local tax authority to establish deadlines statute of limitations on taxes also local in nature.

As regulated by Article 75, paragraph 12 of the Constitution, the Supreme Court of Justice of the Nation and a part of the doctrine (especially privatista) considered that the provinces lack the power to regulate on prescription tributes, as it was understood that relations between creditor and debtor are governed by the civil Code, ie, by a law on the merits issued by the congress of the Nation, power delegated by the provinces to the central government. Ultimately it is regarded as a general prescription institute of law, delegate to the national congress.

II. CODE CIVIL THE LIBERATORY PRESCRICION ON LOCAL TAXES.

We will anticipate the issue to be discussed in the following lines saying that the sanction of the Civil and Commercial Code of the Nation came to establish the correct interpretation of art. 75 inc. 12 of the CN, as it recognizes local taxation powers to eregular on the limitation period.

Commercial Civil Code and determines the rules on statute of limitations in the sixth book, entitled "Common to property and personal rights provisions".

Title I of Book Six is two institutes: the prescription and limitation, with the common aspect of the influence of time on legal relations.

[1] ÁBALOS, María Gabriela "La prescripción de tributos locales y el CCCN", obra colectiva Incidencias del Código Civil y Comercial, Pablo Manili (Dir.) Nº 19, 2015, Hammurabi, Bs. As. Pág. 185 y ss.

Title I consists of four chapters. Chapter I includes five sections, rules apply to both the statute of limitations as acquisitive prescription.
The Civil and Commercial Code, includes only common to both institutions, which are related to the mode of computation of time periods and the causes that can alter the course of the prescription rules. Instead, the standards of acquisitive prescription are included in the Fourth Book, which determines the rules of regulation of property rights.
Chapter II of Title I contains the characteristics of the statute of limitations rules.
In this regard Article 2532 states regarding the scope of the provisions of the prescription. "In the absence of specific provisions, the provisions of this Chapter apply to the acquisitive prescription and liberatoria Local laws may regulate the latter in as for the term of taxes. "
Furthermore, Article 2560 of the same Code stipulates: ". Generic Term The term of prescription is five years, unless a different one is provided by local law."

Thus, the new code is iuspublicista receptor thesis on limitation of tax credits, leaving aside the established case law of the Supreme Court of Justice of the Nation from the case "Filcrosa" and respecting local taxation powers.

However, the provision of the Civil and Commercial Code concerning the calculation of the limitation period has not receptado the iuspublicista thesis, but rather the privatista stance by saying in the 2554 article that: "General Rule. The course of the limitation period begins on the day the benefit is payable. "In other words, it seems that at this point local laws to determine the mode of calculating prescription.

III. CONCEPT AND TYPES OF PRESCRIPTION.

The prescription is as code Velez, an institute that allows free the debtor of an obligation; or acquire a law over time and inaction acreencia or who shall have that right.
The definition gives us the elements of the statute of limitations, and according to Professor Carlos Maria Folco are:
- The existence of a right.
- Inaction of the holder.
- During a predetermined time period law.

Moisset of Espanes, states that "... If there is no prescription we would live in a state of permanent anxiety, uncertainty, instability and no one would know if longer debtor, if the ancestors of each stopped being debtors and should keep all receipts and documentation sometimes for centuries ... Then the law for reasons of public order or social interest, give a categorical solution to this state of affairs: he wants firmness, certainty, security, stability ... ".

The author further states that over time turns out to be a common element to all prescriptions, but its duration varies depending on the cases covered by the law.
Civil law as can be seen, regulates two types or classes of prescription: the escape and purchasing, importing the subject under study only the statute of limitations.

The statute of limitations is defined in Article 3949 of the repealed Civil Code as follows: "the statute of limitations is an exception to repel an action by the mere fact that the filed, has left for a period of time to initiate or to exercise the right to which it refers. " It should be noted that the Civil and Commercial Code has not defined this institute, so that our view is valid the above definition.

IV. ARGENTINE TAX SYSTEM.

The Argentina Nation adopts for its government representative, republican and federal form (Art. 1 CN).
The provinces retain all powers not delegated to the federal government and expressly reserved by special agreement at the time of incorporation (Preamble and Art. 121, CN).
A relationship of subordination, participation and coordination must exist.
Then, there are three different status levels (national, provincial and municipal).
The provinces and municipalities are not sovereign, but are autonomous (Arts. 5, 121, 122 and 123, CN).
Division of powers

- Exclusive federal state.
- Exclusive provinces.
- Concurrent federal government and the provinces.
- Exceptional the federal state and the provinces.

The tax authority also recognizes three levels:

- Federal State
- Provincial
- Municipal.

The National Government has exclusive competence for external indirect taxes (Arts. 9 and 75, inc. 1 C.N.). They are not coparticipables.

The National State and Provincial States have concurrent jurisdiction over domestic indirect taxes (Art. 75, para. 2, CN). They are coparticipables.

Provincial States have exclusive competence in relation to direct taxes (Art. 75, para. 2 C.N.).

The National exceptionally State has jurisdiction over direct taxes (Art. 75, para. 2 CN). They are coparticipables.

* Taxes are not earmarked coparticipables (Art. 75, para. 2 CN) and in the case of import duties, statistics rate, etc.

Now, sitting the above concepts, we analyze the term autonomy and its scope in relation to the power to levy taxes and whether or not local authorities have competence to legislate on prescription.

V. AUTONOMY. CONCEPT

Provincial autonomy.

"It is a relative sovereignty , as organized its branches of government , of conformity to the national constitution exert UN branch itself , absolute and exclusive Legislation and jurisdiction over UN indefinite number of subjects without limitation that does not destroy the Precepts That , or acquit the powers granted to the federal government. " And the whole idea of saying the Que is right for Member States to take their own institutions under its state constitution and recognizing in all cases natural legal fastening the obli against the central government .

Provincial autonomy is the esta expressly enshrined in the national constitution Articles 5 and 122 by 12, say:

Article 5º. "*Each province shall enact its own constitution under the republican representative system , in accordance with the principles, declarations and guarantees of the national constitution and ensuring its administration of justice, municipal regime and primary education. Under these conditions, the federal government guarantees each province the full exercise of its institutions*".

Article 122º. "Their own local institutions and are governed by them. They elect their governors, legislators and other provincial officers, without intervention of the federal government while.

Artícle 123º. Each province enacts its own constitution in accordance with Article 5 , ensuring municipal autonomy and regulating its scope and content in political, administrative, economic and financial institutional order.

This new article in the 1994 reform and clarifies full well what is meant by municipal system is, it is equivalent to autonomy.

Meanwhile Zuccherino municipal autonomy characterized as follows:

The autonomous municipalities contain the following elements:

1) Institutional Autonomy (exercise of the constituent power of 3rd grade)
2) Autonomy Policy (organization and development of their own public life)
3) economic and financial autonomy (self-sufficiency in terms of resources and its own management in handling costs).
4) functional administrative autonomy (ability to produce and manage their organizational competence in the municipal sphere).

Extension and Limits:

Deslinde Rule: Article 121 C.N.

Rule subject: art.5, and 123 of the C.N.

Buenos Aires: art.129 and law Nro.24588

In short, in our Federal system the provinces retain all powers not delegated by the Constitution to the Federal Government, therefore enjoy autonomy in first order, involving political decentralization, legislation, self-organization and self-government, while not affecting other federated, or the general common good communities.

Therefore the provinces retain broad tax powers, with the exception of the delegated powers.

But the power to tax is not absolute but is limited in the rule of law, ie, the tax authority can only be exercised by the law (art. 19, 4, 17, 75 incs. 1 to 3 ° CN)

For this study as prescribed in the CCCN and special laws such as the Law 11,683, as well as the doctrinal positions and the precedents broadly and its impact on the Local Tax Law to determine the extent of so-called autonomy.

VI. SITUATION BEFORE THE CIVIL CODE AND COMMERCIAL NATION.

Our highest court interpreted the provinces have delegated regulation codes, including the Civil, the delegation included regular form of extinguishing obligations, including tax, despite being cut net publicist.

So if Filcrosa SA s / Bankruptcy s / incident verification in the Municipality of Avellaneda 2003, the Court held that: "the prescription is not a proper institute the local public law, but a general institute of law", in another paragraph stated that "the text of article 75 paragraph 12 arises if implicit, the provincial limitation and prescription to regulate all aspects that relate to actions to enforce the rights generated by the obligations of any nature"

In that sense the precedent cited was clear in arguing: "That as a result of such delegation, the regulation of the substance of the relationship between creditors and debtors does not correspond to local legislation, which does not fit the provinces- or municipalities- dictate the laws incompatible with the codes background set about it because, having attributed to the Nation the power to dictate, have had to admit the prevalence of the laws of Congress and the necessary limitation of not dictate rules the contradiction ... "

So part of the doctrine that had been severed understood that local tax authority .

The Supreme Court of Justice of the Nation reiterated its position in several pronouncements , so for example in the case "Casa Casma SRL " , " City of Resistance c / Lubricom SRL, Bruno Juan Carlos c / Province of Buenos Aires , and a failure current RMAs reiterated its position in the case " DGR c / Pickelados Mendoza SA (2014) where it was understood that the Court not only restricted the local authority to establish the limitation period but also restricted other powers such as the ability of local governments regulate aspects concerning the calculation of the period (case "Fisco Province c/ Ullate Alicia Inés (2011)" , interruption and suspension , as well as the terms of prescription demand repetition, among others.

Thus it was consolidated the criterion of iusprivatista thesis and unifying trend in the interpretation of art. 75 inc.12 of the CN concerning local taxation powers.

The jurisprudence of the Supreme Court of Justice of the Nation confirms the application of art. 4027, inc. 3), with regard to the limitation period of five years for everything to be paid periodically or in installments. If given institute a system applicable, it must be in full. Consequently, it must be referred not only to the term, but also to the grounds for suspension and interruption instituted by the Civil Code (arts. 3986 and 3989). Therefore local laws are invalid, we insist, for the class of taxes referred to throughout this work, which enshrine not only within, but grounds for suspension and interruption contrary to the Civil Code. All in accordance with existing jurisprudence of the Supreme Court of Justice of the Nation "[2]

VII. THESIS IUSPRIVATISTA PRESCRIPTION LOCAL TAXES.

Posture or criterion being held by the Supreme Court of Justice of the Nation , we refer to the reasons explained above in order not to be repetitive But as a synthesis we will say that this criterion of the interpretation of Article 75, paragraph 12 of the Constitution and as a result understand that all private property regime is contained in the Civil and Commercial Code , and that includes with regard to and especially the tax debts of the institute of statute of limitations.

It is interesting at this point transcribe the opinion of Professor Spisso quoted by Ma. Gabriela Ábalos, who states that the prescription should be regulated by a single law, otherwise, would create incompatibility between the two situations that impede its implementation. It also understands that the power of local governments to establish the limitation prescription, create legal uncertainty, since different limitation prescriptions coexist.

VIII. PUBLICISTA THESIS ON PRESCRIPTION OF LOCAL TAXES.

The iuspublicista thesis argues that the local tax liability should be governed by rules and principles of local public law.

The provinces retain taxation powers not delegated and under them may set time limits for prescribing local taxes , even beyond the rules set forth by the Civil Code , since this only applies to obligations between individuals, while in the case of tax obligations regulation falls within the scope of public law.

In that sense they understand that prescribing provincial and municipal taxes must be regulated by local laws respetivas under the powers reserved by the Provinces (art . 121 and 126 C.N.) . This was understood by Professor Dino Jarach, saying: "Provinces when delegated to the Nation the authority to issue the Civil and Commercial Codes , have been unwilling to delegate to legislate in matters of taxation powers , since it was

[2] Vidal Quera, Gastón. "A cinco años de "Filcrosa S.A.": doctrina aplicable a los tributos locales en materia de prescripción". Publicado en: PET 2008. Disponible en: http://www.jusonline.gov.ar/

reserved for Provinces . They have delegated only as expressly established. There is at no time an express delegation to the Civil and Commercial Codes legislate on the creation of tax legal relations and any of these element.

At this point it seems important to highlight the vote of Dr. Argibay in the case "Casa Casma SRL " who held: " ... can not help but be borne in mind , especially as regards not seen in the civil code limitations that prevent local jurisdictions to exercise its original power in tax matters covering all aspects configurantes tax obligations ..."

This position of the autonomy of tax law , and understands that relations between the Treasury and taxpayers are public law , principles of tax law governed only by the purpose of raising the state to meet its goals or objectives is to satisfy public needs.

Tax law does not comply with the concepts of private law , tax laws may try the same way different situations according to the Civil and Commercial Code .

The rules of civil law and tax law act in different areas have different effects and different objectives.

IX. CONCLUSION

To temporarily conclude our work, we state our position from the doctrinal and jurisprudential positions expressed in the present.

First we will say that the sanction of the Civil and Commercial Code of the Nation came to establish uniformity in the interpretation and scope of art. 75 inc. 12 of the CN, as it recognizes local taxing powers to establish on the limitation period.

However in the way of calculating the prescription seems that the Civil and Commercial Code has not done delegation to local authorities so that, in addition to the term determined by calculating the period of limitation, suspension and interruption of the limitation of the local tax obligations, so we'll stick to the law that takes shape at this point.

Following the controversy described in this paper, we adopt a different position on the taxing power prescribing local and national taxes.

We advocate the theory of autonomy of tax law and the need for its codification , ie , to have a national level with a true Tax Code to inform and guide the provincial legislation .

However the term autonomy, in the words of Professor Giuliani Fonrouge , does not mean the creation of watertight compartments , as no branch of legal science can be self-sufficient , because between them there is a material link , the autonomy of a field of law you can not destroy or even damage the unitary concept of law.

We characterize autonomy following the thesis of master Giuliani Fonrouge that says, " a branch of law that has its own general principles and act coordinately in permanent interconnection and interdependence with other disciplines, as part of an organic whole , we face a autonomous discipline .[3]

Are two fundamentally scientific budgets to achieve autonomy and scientific independence of a legal branch and are " a set of social relations that demand own own legal system and legal principles that inform the rules of the legal branch in question.[4]

Therefore being autonomous Tax Law[5] with the notes mentioned above, we advocate the coding of the legal branch.

The defended coding, is in the words of Giuliani Fonrouge, a proven reality, in which many countries have followed the guidelines of the model Tax Code prepared by OAS / IDB to systematize the prevailing general principles in the tax law and tending to the unification of scattered rules, both substantive and procedural and administrative order (within the limits of the powers reserved by the provinces) regardless of taxes in particular.

We share the view of uniformity of limitation period but supported by the fundamentals of Iuspublicista thesis, based on the autonomy of tax law, as has its own nature which derives from the power of empire, relations governing are different from those civil law, the source of the obligation is also different (will of the parties or coercive power of the state), and the intended purpose is also different. We also believe that this would be printed legal certainty to the tax legal relations.

But we do not share the view that uniformity in the dubious analysis and interpretation certain part of the doctrine and jurisprudence of Article 75, paragraph 12 of the C.N.

Nor do we consider as valid foundation that believes it can not coexist different periods statute of limitations , which set the provinces , municipalities and established by the Civil Code and that the relationship

[3] Giuliani Fonrouge, Carlos M. Derecho Financiero, actualizada por Susana Navarrine y Ruben Asorey, 10° edición, La Ley, 2011,Buenos Aires, pág. 28 y ss.

[4] Calvo Ortega, Rafael citado por Giuliani Fonrouge, Carlos M. Derecho Financiero, La Ley 2011, pág. 32.

[5] In Argentina it is called Derecho Tributario.

between creditor and debtor is governed by the Civil and Commercial Code , because with the same basis we could also argue that the question referred to the Liability of the State corresponds to regulate the civil and Commercial Code by the fact that it deals institute Responsibility (on the other hand is also a general institute of law and public) order and the coexistence of different regimes would cause uncertainty to citizens.

We confirm our criticism with Amparo is an institute that provided for in the Constitution and yet each province it legislates in a different way .

In the words of Professor García Belsunce , who said in his speech under the First Latin American Conference on Tax Law, that the autonomy of conditional tax law to maintain and respect for the unity of law it is declared, without which it can not conceive the legal order.

But recognizing that the right is not made up of separate parcels but represents a fully formed by parts which are interconnected .

However, the fact remains that in legal science and its object, it should be certain differentiations in branches or specialties, for teaching, jurisdiction or certain special processes.

One argument in favor of our position and demonstrates the importance of common tax code is on the deadline provided by art. 56 and 57 of Law 11,683, as a ten-year deadline set for the case of unregistered taxpayers and for the case of dereliction of duty by taxpayers.

In short, we share the view of uniformity of the limitation period of iusprivatista thesis, but on the basis of the autonomy of tax law therefore disagree with the explanations of civilian criteria.

Instead, we share the explanations given by the iuspublicista stance, but disagree as to the autonomy of the provinces and municipalities to establish a uniform term would be restricted, we are convinced otherwise, that is, defend the position that considers important and convenient to have the codification of tax law, as it would resolve many issues that today are objects of controversy and discussions.

We share the thinking of some authors, who consider, that should have legislated on limitation provisions in the law 11,683 in the Civil and Commercial Code , as a measure to provide legal certainty and security to citizens

Furthermore, and until it is working on the alleged National Tax Code , we participate in the opinion of performing a harmonizing interpretation of the regulatory plexus.

Harmonization and coordination of the sphere of action of the central federal state and the provinces and municipalities is essential for the proper running of the state.

It is the Constitution which determines and sets limits to the various levels of government not only in tax matters, and which correspond to the holding rule established by the federal constituent and are determined by Art. 5 of the CN.

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