

RFB regulates and restricts fine exclusions in cases judged by CARF through a tie-breaking vote

JULY, 2024

OVERVIEW

On July 24, 2024, the Brazilian Federal Revenue Service ("RFB") published Normative Ruling ("IN") No. 2,205/2024, regulating the effects of Articles 25, §9-A and 25-A of Decree No. 70,235/1972 – introduced by Law No. 14,689/2023 – to address **the exclusion of fines, the cancellation of tax representation for criminal purposes and the regularization of tax debts** in cases judged by the Administrative Tax Appeals Tribunal ("CARF") in favor of the Brazilian National Treasury by a **tie-breaking vote**.



The IN RFB No. 2,205/2024 restricted the possibility of suspending isolated fines, customs fines, and default fines in case of a tie-breaking vote in favor of the tax authorities.

IMPORTANT ASPECTS OF IN RFB No. 2,205/2024

The effects of the IN RFB No. 2,205/2024 do not apply to matters decided through a majority or consensus by the Higher Chamber of Tax Appeals ("CSRF"), even if the ordinary regular panel's decision was handled by a tie-breaking vote. In addition, the effects of this IN are restricted to matters that are effectively decided by a tie-breaking vote.

Eligible matters: the **exclusion of fines** in tax assessments maintained by a tie-breaking vote; **the cancellation of tax representation for criminal purposes**; and the **installment** of tax debts judged in favor of the Brazilian National Treasury by a tie-breaking vote.

Non-eligible matters: **isolated penalties** (except those provided for in Article 44 of Law 9,430/96), **fines on late payment, customs fines, tax liability, taxpayer's credit rights, and tax debts affected by the statute of limitations**.

IN RFB No. 2,205/2024 **also does not** apply to decisions handled by CARF by a tie-breaking vote, which became final **before January 12, 2023**.

The taxpayer's declaration of intent to **pay** the debts mentioned in Article 25-A of Decree No. 70,235/1972 must be submitted **via application form** within **90 days** from the final administrative decision – **implying a 100% reduction of interests**. During this time, enforcement of such tax liability will be **suspended**.

In case of filing an appeal or motion for clarification against decisions handled before 2023, which have been subject to withdrawal, the deadline of 90 days will be calculated from the withdrawal date.

The submission of the application form implies **irrevocable and irreversible extrajudicial confession** of the tax debt and express acceptance by the taxpayers that all communications and notices regarding to the regularization of the tax debts will be submitted to them through **e-CAC** system.

Accepting the application form **depends on the payment of the full debt amount or the first quota of the installment plan** (which may be divided into up to 12 monthly installments). In case of denial, taxpayers may file an administrative appeal.

Concerning the payment mentioned in the previous items, credits arising from **tax losses, negative CSLL calculation basis, and writ of payment** are also acceptable.

Taxpayers on default for more than 30 days concerning any quota will be excluded from the installment plan. Regarding this exclusion, it is possible to present an administrative appeal with a suspensive effect within ten days.

Termination of the installment plan will result in the total amount of the debt becoming immediately due. In this case, the reduction of the interests will no longer be applicable, and the installments already settled will be considered in the calculation of the due amount.

IN RFB No. 2,205/2024 revoked the IN RFB No. 2,167/2023.



HIGHLIGHTED TOPICS

IN RFB No. 2,205/2024 introduced a range of restrictions to the benefits originally established by "CARF's Law" (Law No. 14,689/2023).

Among them, we highlight:

1. Restrictions on the types of fine that will be excluded;
2. Restriction on benefits in cases still pending assessment by the Federal Regional Court ("TRF") on the date of publication of CARF's Law (September 21, 2023);
3. Restrictions on benefits in cases in which CARF, by a tie-breaking vote, upholds the tax liability, taxpayer's credit right, and tax debts affected by the statute of limitations; and
4. Restriction on benefits regarding final decisions handled by a tie-breaking vote after January 12, 2023.

Demarest's Tax team is available to provide any additional clarifications that may be necessary on these matters, seeking to define the best strategy for each case.

QUESTIONS? CONTACT US!



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