

**MAIN PROBLEMS WITH THE TAXATION OF CIVIL SOCIETY  
ORGANIZATIONS IN BRAZIL: CERTIFICATIONS AND IMPACT ON PAYROLL**

***PRINCIPAIS PROBLEMAS COM A TRIBUTAÇÃO DAS ORGANIZAÇÕES DA  
SOCIEDADE CIVIL NO BRASIL: CERTIFICAÇÕES E IMPACTO NA FOLHA DE  
PAGAMENTO***

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**RESUMO:** O objetivo deste artigo é identificar e analisar os principais problemas na tributação -tanto com relação aos tributos quanto aos custos de conformidade à tributação- das organizações da sociedade civil no Brasil. Trata-se de um estudo qualitativo de natureza descritiva. Foi realizado um estudo de casos em que foram coletadas informações de 26 organizações. Os resultados indicam que os problemas afetam principalmente as organizações com menor receita e que não atuam nas áreas de educação, saúde e assistência social. Os principais problemas são a tributação da folha de pagamentos e dificuldades relacionadas à obtenção e manutenção das certificações. O estudo conclui com sugestões para o aprimoramento do arcabouço regulatório.

**PALAVRAS-CHAVE:** Tributação das Organizações da Sociedade Civil. Custos de Conformidade à Tributação. Certificações. Imunidades. Tributação da folha de pagamento.

**ABSTRACT:** The objective of this paper is to identify and analyze the main problems in the taxation—regarding both taxes themselves and compliance costs of taxation—of civil society organizations in Brazil. This study is qualitative descriptive research. A case study with 26 organizations was performed. The results show that the problems mainly affect organizations with lower revenue and that do not work in the areas of education, health or social care. The main problems involve the taxation of the payroll and the difficulties related to obtaining and maintaining certifications. The study concludes with suggestions for the improvement of the regulatory framework.

**KEYWORDS:** Taxation of civil society organizations. Compliance costs of taxation. Certifications. Tax Exemption. Payroll taxes.

**SUMÁRIO:** Introdução. 1 A Literatura sobre Tributação das Organizações da Sociedade Civil. 1.1. Tributação das Organizações da Sociedade Civil no Brasil. 1.2. Tributação no Brasil de acordo com Relatórios Internacionais. 2 Metodologia. 3 Apresentação dos Resultados. 3.1 Tributação da Folha de Pagamentos. 3.2. Certificações. 4 Discussão dos Resultados. Conclusão. Referências.

## INTRODUCTION

Civil society organizations—CSOs—play an important role in society by provisioning public services, advocating for rights and social mobilization, and gathering people around common interest activities. As shown by Salamon and Toepler (2000), the activities of these organizations depend on a regulatory framework that encourages their creation and development, including the tax issues. In Brazil, however, the regulatory framework of these entities is outdated and has been widely criticized over the past several decades. Its final major change was the enactment of the Law of Civil Society Organizations of Public Interest (OSCIP) 15 years ago. With respect to taxation, there have been no improvements for many years.

Various public policies to better regulate the taxation of (for-profit) businesses in Brazil have been established in recent years. Examples of these programs include the Acts that created special tax regimes for small businesses—the “Simples Federal” and the “Simples Nacional”—and the Act that created the figure of the small individual entrepreneur (“Microempreendedor Individual”). These Acts reduce the tax burden and significantly reduce

the compliance costs of taxation, thereby simplifying the process of paying taxes and fulfilling other obligations.

No efforts were made, however, to improve the tax regulation of CSOs. Although these organizations do not have profit as their purpose and most act to serve the public interest, they are unable to choose the favorable tax regime designed for small businesses. When providing services or selling goods, they must submit to the same rules established for for-profit enterprises, which cannot opt for the simplified tax regime. Therefore, in some cases, CSOs must pay more taxes than small for-profit businesses.

On the other hand, it is known that in Brazil, many organizations do not in fact enjoy the benefit of tax exemption. Nevertheless, tax exemption is a right granted to these entities due to their role in defending the public interest. Moreover, if there are rules that are preventing these organizations from enjoying tax exemption, the reasonableness of these rules must be identified and analyzed.

What are in fact the main tax issues for the activities of civil society organizations in Brazil? This paper intends to answer this research question. Its goal is to identify and analyze the main tax problems—related to both the taxes themselves and the costs of compliance—of CSOs in Brazil.

This paper is divided into five sections, in addition to this introduction. The second section provides a brief literature review on the tax treatment of nonprofits and describes the main features of the tax system for civil society organizations in Brazil. The third section presents the methodology to be used. The fourth section describes the results, which are discussed in the fifth section. Finally, the sixth section presents the conclusions.

## **1 THE LITERATURE ON THE TAXATION OF NONPROFITS**

According to Salamon and Toepler, systematic empirical study of nonprofit law and nonprofit taxation is still in its infancy, with the exception being economic analyses of the effects of changes in tax law on private donations. Because the marginal tax rate affects the relative prices of different choices, many studies have examined the effects of increases and decreases in the marginal tax rate on individual and corporate behaviors, such as tax avoidance and charitable giving (Salamon and Toepler 2000).

There is, however, literature in economics and law, especially in the United States, that analyzes the taxation of CSOs, from the grounds for exemption to the latest tax issues. Books and articles by Hansmann, Weisbrod and Rushton, for example, analyze the rationale

for tax exemption (Hansmann 1981; Rushton 2007; Weisbrod 1988). Some of the most recent issues on nonprofit taxation are analyzed by Hines Jr., among other authors. He examines trials to extend some of the benefits enjoyed by nonprofits to for-profit companies that make social investments and the creation of a new hybrid nonprofit/for-profit company known as low-profit limited (Hines Jr. *et al.* 2010).

The Brazilian literature contains several legal books and articles on nonprofit taxation; however, these works are limited to describing the rules and taxes to which CSOs are subject (Paes 2009) and, sometimes, noting inconsistencies in specific aspects of the system (Souza 2004). In Brazil, there are no studies that address the tax problems of civil society organizations.

With respect to international comparisons, there are some general studies. The Johns Hopkins Comparative Nonprofit Sector Project studied the scope, size, structure, and funding base of the nonprofit sector in twenty-two countries in North America, South America (including Brazil), Europe, Asia, and the Middle East. (Salamon 1999) In the book organized by Estelle, there are studies that compare the operations of CSOs in certain areas and countries. The study areas include, for example, the provision of public services, the provision of education, hospitals and the use of governmental funds, and the comparison includes countries such as Japan, Holland, Sweden, England, Chile, West Africa and Sri Lanka (Estelle 1989). However, these studies did not consider the tax systems.

With respect to the comparison of taxation or tax systems at the international level, the number of studies is very limited (Dehne *et al.* 2008; Weisbrod 1991). One of the few studies discussing the subject of taxation is Weisbrod's 1991 survey, which was designed to identify differences and similarities among countries in their tax policies toward CSOs. The survey was sent to academics and government officials from sixteen countries and was completed by eleven of them. The survey included questions such as "What is the administrative mechanism by which a decision is made as to whether an organization qualifies for the special status?", "If an organization qualifies for the special status, what specific subsidies or other favourable treatment does it receive as an organization, either through the tax system or in other ways? That is, are there any tax or subsidy advantages that it has over a private sector firm?", and "Are private individuals or firms that donate to non-profit organizations encouraged, through the tax system or in other ways, to contribute to non-profit-type organizations?" (Weisbrod 1991).

The results of the survey showed that nonprofits are typically regulated by the tax collection agency but that in some countries the agency responsible for the particular realm of

activity is also responsible for the control. Nevertheless, according to the results, in all countries, there are exemptions from various taxes on businesses, especially the corporate income tax. However, in many countries, there are also exemptions from other taxes, such as the value-added tax, property taxes, mail tax and vehicle taxes. The results also show that donations of money to at least some types of nonprofits are generally deductible on individual and corporate income tax returns (Weisbrod 1991).

In a 2008 study, Dehne *et al.* compared three aspects of tax regulations on nonprofit organizations in Japan, the United States and the European Union countries. The study compared the taxation of current profits, inheritance and gift taxes and the tax treatment of contributions and membership fees (Dehne *et al.* 2008). The results show that groups of countries with similar regulations can be formed. According to the study, for example, “Association Law of an Anglo-Saxon background is to be found in the United Kingdom, Ireland, Malta and Cyprus” [...] “The German legal tradition has influenced regulations in Austria, Luxembourg, and the Netherlands. Associations Law is similar in Scandinavian countries” [...].

Ole Gjems-Onstad also compares legal frameworks and taxation but only of the Scandinavian countries of Sweden, Denmark and Norway. Because Finland and Iceland are always referred to as part of the Nordic legal tradition, he also discusses some aspects of their respective tax systems. The results show differences between the associations and foundations law in these countries. While there are no written statutes on nonprofit associations, and associations law is flexible and easy to comply with, the law on foundations is more formalized. The CSOs in these countries are usually exempt from income tax but do not benefit to a great extent from deductibility for donations. The results also show that the policies of these countries make the CSOs economically dependent upon government. None of these comparative tax studies on nonprofits included Brazil or any Latin American country.

The present study will discuss the Brazilian tax system for nonprofits. To identify the main tax problems for nonprofits in Brazil, the first task is to describe the Brazilian tax legislation regarding CSOs.

### 1.1 Taxation of civil society organizations in Brazil

The concepts in Brazilian tax law are very similar to those of continental Europe. In Brazil, there are five types of “tributos” (taxes). The main three types are: “impostos” (taxes), “taxas” (fees) and “contribuições” (contributions).<sup>1</sup>

The tax (imposto) is a charge that is intended to fund the public costs independent of any particular state activity related to the taxpayer. It is the most important tax (tributo) and is required to perform services that are not divisible.

The fee (taxa), meanwhile, must be paid on the basis of a public service provided to the taxpayer or the regular exercise of police power. It is financial compensation for individuals’ use of certain public goods.

The contribution (contribuição) is a tax that implies a state action that indirectly serves the taxpayer, i.e., it is used for the development of an activity that serves the public interest but creates a special benefit for a group of people. The contribution has a specific destination. There are contributions of various types, including contributions that are intended to finance Social Security.<sup>2</sup>

In Brazil, as in the other countries, there are also taxes on different tax bases: ITR – properties outside of the city, IPTU – properties inside the city, IPI/ICMS/ISS – taxation on industry, trade and services, ITBI – the transmission of property, IR – income taxation, IOF – financial operations, IPVA – vehicles, INSS and other payroll taxes – payroll taxes, and COFINS – invoice taxation (Table I).

Table I  
Taxes on CSOs

	<b>Properties</b>	<b>Income</b>	<b>Service</b>	<b>Social Contributions</b>
<b>Federal</b>	ITR, II, IPI	IR, IOF		INSS, PIS and other payroll taxes, Cofins, CSLL
<b>State</b>	ITCMD, IPVA		ICMS	
<b>Local</b>	IPTU, ITBI		ISS	

<sup>11</sup> In Italian, “tributos” are “tributi”, “impostos” are “imposte”, “taxas” are “tasse” and “contribuições” are “contributi parafiscali”. In Germany, “taxas” are “Gebühren”, “contribuições” are “Sonderabgaben” and the word “Steuer” is used both for “tributos” and “taxas”.

<sup>2</sup> In Italy, for example, “contributi parafiscali” are not considered taxes.

The payroll taxes are: the employer's share contribution to Social Security at a rate of 20.00%, contribution to the SAT/RAT—environmental risk of work—at a rate of 2.00%, PIS at a rate of 1%, and third party taxes at a rate of 4.5%. The third party taxes are subdivided into: “contribution salário-educação” at a rate of 2.5%, INCRA at a rate of 0.2%, “contribution to the SESC” at a rate of 1.5% and “contribution to SEBRAE” at a rate of 0.3%. Additionally, the payroll is also the base for the “FGTS”, which is not truly a tax, at a rate of 8%. With all of these costs, hiring an employee, then, has a cost on the payroll of 35.5%.

CSOs may not need to pay part or any of these taxes and charges. They are divided into two groups and are therefore under the regime of “imunidade” or “isenção”. In the “imunidade” regime, the Constitution prohibits the government to tax. In the “isenção” regime, the taxing power has the right to impose taxes but expressly gives up this tax revenue through statutes. That is, the activities may be taxed; however, the legislature excludes the specific situations involving nonprofits. Organizations operating in the areas of health, education and social care are subject to the “imunidade” regime. All other organizations are subject to the “isenção” regime. (Amaro 2008; Souza 2004)

With respect to certain taxes, entities may enjoy “imunidade” immediately, i.e., cases in which the “imunidade” is self-reported. To enjoy the “imunidade” of the Income Tax (IR) and of the Social Contribution on Profits (CSLL), an entity need only declare itself “imune” (tax-exempt). The entity must fulfill certain conditions; however, it is the taxpayer itself that declares that it is fulfilling the conditions, with no requirement for any prior recognition to that effect by the “Receita Federal” (the Brazilian government tax agency).

In the case of the other taxes, however, the situation is very different. “Imunidade” (exemption) to Social Contributions, for example, is granted only to entities that meet the requirements of Law n° 12.101/2009, among which the most important is obtaining a certification called CEBAS (BRASIL 2009).

However, in addition to the taxes, the tax system also includes the compliance costs of taxation. In this regard, the diagnosis by the international organizations of the Brazilian tax system for for-profit entities is especially negative.

## 1.2 Taxation in Brazil according to international reports

For over three decades, the World Economic Forum has published the *Global Competitiveness Report*, which aims to provide detailed assessments of the productive potential of the countries of the world. In the 2011 through 2014 editions, the report is

followed by the World Economic Forum's Executive Opinion Survey. In this survey, executives were asked to select five among 15 conditions that, in their opinion, would be the worst in their particular operating environments. According to this report (2011), in the view of the executives, tax rates and tax regulations are Brazil's two main problems.

This research confirms the findings of the *Doing Business World Bank Research*, which, in 2014, published the 11th edition of its annual report analyzing regulations that favor and restrict business activity and ranks countries in this regard. In the 2014 Ranking, Brazil was ranked 116th among 189 economies analyzed (immediately behind Paraguay, Pakistan, Lebanon, Ukraine, Papua New Guinea, the Marshall Islands and Guyana). This result means that 115 among the 189 analyzed economies provide more favorable conditions for business development than the Brazilian economy.

Paying taxes is one of the worst indicators for Brazil in this report: the time required to pay taxes is 2,600 hours per year, which makes the country occupy the 159th position with respect to the cost and difficulty of paying taxes. These two studies address only the problems of for-profits; however, the difficulties of CSOs with respect to compliance costs are even greater. What, then, are the problems with the taxation of CSOs in Brazil?

## 2 METHODOLOGY

In view of the objective of identifying and analyzing the main taxation problems for civil society organizations, qualitative descriptive research was conducted (Cooper and Schindler 2003; Yin 2005). A multiple-case study was performed with 26 organizations. The case study is a research strategy that focuses on contemporary events and does not require control over behavioral events, as would be the case in an experiment. It aims to answer questions such as "how" and "why" (Yin 2005 p. 24).

The case study proposed to identify the main problems in the taxation of civil society organizations and explain why and how these problems negatively affect the development of CSOs' activities. The study provided what Stern (1995) calls a "theoretical sample". Although it is not representative of all the cases occurring, it enables understanding the phenomenon analyzed.

In this sense, the selection of the organizations to be interviewed sought to include the most diversity among them. We used data from the Brazilian Institute of Geography and Statistics (IBGE) survey on private foundations and nonprofit associations—FASFIL—which classifies organizations according to their geographical distribution, areas of expertise, and



ages and numbers of employees. Furthermore, organizations with very different revenue were selected (IBGE 2012).

With respect to the area of expertise, FASFIL classified the organizations into the following areas: housing (group 01), health (group 02), culture and recreation (group 03), education and research (group 04), social care (group 05), religion (group 06), employers' and professional associations (group 07), environment and protection of animals (group 08), development and defense of rights (group 09), and other (group 10). In defining the organizations that would be the subject of the work, groups 06, 07 and 10 of FASFIL were excluded, i.e., religious organizations, employers' and professional associations, and other organizations that do not act in the defense of public interest. The sample therefore included organizations in the areas of housing, health, culture, education and research, social care, environment and defense of rights. The second difference in the sample was the difference in the ages of the CSOs. According to FASFIL, most organizations were created between 2001 and 2010 (40.8%), while only 3.3% were created before 1970 and 9.4% were created between 1971 and 1980. The sample sought to include both newer and older organizations. In this sense, organizations created in the 1910s, 1950s, 1960s, 1980s, 1990s, 2000s and even an organization created in 2011 were interviewed.

A third criterion for choosing the organizations was the number of employees. According to FASFIL, 72% of organizations, i.e., 210,000, do not have even one employee, and 87.3%, i.e., 253,900, organizations have fewer than five employees.

It is known that these data can be distorted due to the existence of informality. Nevertheless, the sample sought to take into account the different numbers of employees so that potential differences were covered. Thus, we interviewed small organizations with zero to five employees; organizations with little more than 12 employees; medium organizations with a few dozen employees: 43, 53 and 85; and, finally, larger organizations with more than 100 employees and even one with 1,964 employees.

Another criterion for differentiation was the revenue of the civil society organizations. In this sense, we interviewed organizations with revenue lower than R\$ 1,000, a few hundred thousand (R\$ 400,000 and R\$ 500,000), between one and three million (R\$ 1.8 million, R\$ 2 million, R\$ 2.4 million, R\$ 2.26 million), and tens of millions (R\$ 31 million, R\$ 32 million and R\$ 46 million). We also interviewed an organization with 2012 revenue of R\$ 130 million and with estimated 2014 revenue of approximately R\$ 250 million.

Finally, organizations from the five regions of the country were interviewed. Almost all of the organizations interviewed were located in the capital; however, three CSOs from the countryside of the respective states were also interviewed.

The FASFIL indicates that CSOs in the country are distributed as follows: 44.2% are in the Southeast, 22.9% in the Northeast, 21.5% in the South, 6.5% in the Midwest and 4.9% in the North. Based on these rates, we established a minimum number of three organizations by region and tried to interview more organizations from the Northeast and, in particular, from the Southeast.

In the multiple-cases study, the data collection occurred from various sources of evidence: interviews, organization document and accounting spreadsheet analysis as well as law, doctrine and court decisions. In this respect, we followed the recommendation of Yin (2005, p. 126), who notes the importance of using more than one source so that any discovery or conclusion is more "convincing and accurate". The fundamental instruments, however, were the interviews with representatives of CSOs distributed according to the above criteria. In many cases, organizations asked that the interviews be conducted with two people, with either the accountant or the other person responsible for the financial area present in addition to the CSO leader. In addition to representatives of the organizations, four accountants who provide services to various organizations and have worked in this area for many years were interviewed.

In the interviews, the data collection instrument was an interview questionnaire with guidelines previously sent to the CSO leaders and used as a guide for the interview. The "open report" was adopted to allow the interviewer, when necessary, to explore a subject more deeply through new questions. According to Eisenhardt (1989), the analysis of the results is particularly important for the case study method because it involves more complex procedures as categories of analysis. In this research, the analysis of the results was performed using content analysis. Procedures and techniques developed in Strauss and Corbin (2008) were used.

### 3 PRESENTATION OF RESULTS

#### 3.1 Taxation of the payroll

As shown in the previous section, organizations with different characteristics in terms of geographic location, revenue, area of expertise and number of employees were interviewed. Their difficulties vary according to these criteria.

Two main problems were found. With regard to taxes, the first problem for organizations is to pay the employer's share of Social Security and other payroll taxes. Additional problematic situations were identified with respect to the ISS, ICMS and ITCMD; however, these taxes will not be analyzed. The second major problem is the compliance costs of taxation, among which stand out the problems related to obtaining and maintaining the certifications.

For very small organizations with revenue of less than R\$ 1,000 per month, the problem of the incidence of taxes in general, and of taxes on the payroll in particular, is not especially significant. Although, strictly speaking, the revenue of the small organizations interviewed—which comes, for example, from the sale of recycled computers and other objects received as donations—would be taxable, the amounts are sufficiently small not to cause anxiety.

Moreover, because these organizations have no employees, they also have no payroll costs. A representative of one of these organizations stated that she would like to have employees due to the turnover of volunteers, who leave the organization when they find new jobs. However, that company's main obstacle is the revenue needed to pay the employees' wages.

For most of the larger organizations that enjoy constitutional “imunidade”, the issue of the taxes to be paid is also less significant. One of the organizations interviewed, for example, which is in the social care category, has considerable revenue—exceeding R\$ 30 million per year—and can fully enjoy constitutional “imunidade”. It pays almost no taxes—not even property taxes, vehicle taxes or financial taxes, even on the insurance performed. It pays only the property tax on land that it owns in another city where it does not pursue its core activity; therefore, “imunidade” is not justified.

There are other social care organizations that pay some taxes; however, these taxes are negligible from the point of view of the organizations' budgets. One of the organizations, for example, pays vehicle taxes because of the requirements of the statute of the State of São Paulo for it to enjoy the “imunidade”, which will be discussed later.

Difficulties will arise in two situations. One such situation involves organizations that do not have such large revenue and an organized management structure and that have failed to obtain certification or are still awaiting the end of the long application process. The representative of an organization with approximately 40 employees and revenues of approximately R\$ 2 million, for example, stated that she requested the CEBAS in 2009 but has not yet received a response from the public authorities.

However, the organizations that will face the most difficulty are those that do not operate in the areas of education, health and social care and cannot enjoy the rules of “imunidade” established in the Constitution or those that, although subject to the rules of “imunidade”, cannot obtain certification as social care entities (CEBAS). These organizations are the hardest hit because of all the taxes on organizations, those that are particularly burdensome and that make the activities of the organizations more difficult to pursue are the payroll taxes for Social Security. Organizations from all regions of Brazil indicated this tax as their main problem when discussing the taxes themselves. The ISS (tax on the provision of services) is also a problem for some organizations’ activities but to a much lesser degree.

The payroll taxes are especially problematic when the organizations’ activities are funded by projects, as is often the case, for example, with organizations whose main activity is the defense of rights. However, these taxes also affect organizations working in other areas that cannot enjoy constitutional “imunidade”, such as culture and the environment. According to the organizations, it is difficult—even “absolutely impossible”, as one individual stated—to formally hire employees, although some emphasize that they always tried to achieve this goal. This difficulty occurs in part because an important source of revenue is the projects—which begin and end—and very few projects’ stakeholders give money for the charges on payroll and eventual dismissal costs.

### **3.2 The certifications**

With respect to certifications, three groups of problems were noted in the interviews: multiple titles, requirements for obtaining and maintaining certifications and the time necessary to obtain them. In Brazil, the effects of immunity are automatic and self-reported only in the cases of the Income Tax and Social Contribution on Income. For other taxes, however, to enjoy the “imunidade” or “isenção”, the organizations must submit to a preliminary procedure that recognizes their status as “isentas” or “imunes”, which often requires some certification.

Therefore, organizations complain in the first place about the plurality of certifications: it is not enough for an organization to obtain one certification—often several are needed.

Even if the federal character of Brazil in principle justifies the existence of certifications at the Federal, state and local levels, there are multiple certifications in each of these spheres alone.

At the Federal level, as observed, obtaining CEBAS is a prerequisite for “imunidade” with respect to the employer's contribution to Social Security. However, Federal titles are also important because they are sometimes conditions for the recognition of an organization’s “imunidade” to other taxes.

In the State of São Paulo, CEBAS is a condition for the recognition of “imunidade” with respect to ITCMD. In the states of Piauí and Acre, certification as a Federal public utility is a requirement for the recognition of “imunidade” with respect to vehicle property taxes. Thus, organizations in general indicate the bureaucracy, the time-consuming processes and the costs that derive from the need to obtain multiple certifications as significant problems.

Another problem noted by organizations is the requirements to obtain the certifications. First, each certification requires a large number of similar or identical documents, which therefore must be presented (and so updated) several times. This problem is exacerbated in the case of municipalities lacking a computer system for creating the documents. One organization notes that, in its city, many documents that are conditions for obtaining certifications are still created manually and therefore often take too long to obtain.

Many of the same documents may be necessary for a single organization to enjoy “imunidade” with respect to the same tax. For “imunidade” to the IOF (the tax on financial transactions), one of the entities explained that it had to submit the same set of documents for each of its accounts every year. The representative of another organization complained about the bureaucracy involved in the OSCIP certification and the difficulties of the accountability, especially when the certification was created. She stated that when she tried to perform the first “rendering of accounts”, she telephoned the Ministry of Justice several times and “they themselves had difficulty informing [her] what to do”. Moreover, in relation to OSCIP certification, another organization reported that it had given up the certification because its benefits were not worth the work needed to maintain it.

Additionally, organizations complain that some titles require that a request be made by the Legislative Power and thus depend on the initiative of a state or city representative. Given this requirement, one organization, for example, did not even try to obtain the certification of the State public utility and appealed to the courts for exemption from the vehicle property tax on its automobiles. The directors of the organization considered speaking to a deputy; however, the organization has always been independent and decided that involving a deputy could compromise this principle.

The third problem noted by the organizations is the time to obtain the certifications and the need for frequent renewals. The process for obtaining several certifications is very time consuming and may take several years. One of the entities, for example, took approximately three years to obtain the CEBAS. Another entity has the certifications of a Federal, State and Local public utility but could not obtain the CEBAS, despite having applied for it in 2009. The representative of the entity stated that she had taken a class with the representatives of approximately 40 organizations and that almost none had the CEBAS. She reported that, according to the representatives of the other entities, obtaining the CEBAS “would take 20 years”.

These delays are reflected in the system as a whole. Because, in the State of São Paulo, the CEBAS is a condition for social care entities to obtain recognition of “imunidade” for exemption from ITCMD, the delay in processing the CEBAS means that an entity cannot also enjoy “imunidade” with respect to ITCMD. Therefore, when, for example, receiving a large donation from abroad, one of the entities interviewed considered filing a lawsuit and requesting judicial recognition of its tax exemption (“imune”). However, that solution would also generate uncertainty because the entity would be subject to the inefficiency of the Brazilian Judiciary.

Once obtained, the certifications must be periodically renewed. According to one organization, renewing the CEBAS is also extremely complicated. Until the certificate is obtained, the entity must operate with a protocol; however, the security offered by the protocol is not the same as that offered by the certificate itself. In São Paulo, the "Declaration of Recognition Immunity for not paying the ITCMD" is valid for two years.

#### **4 DISCUSSION OF THE RESULTS**

Regarding taxes, two fundamental issues for civil society organizations’ activities were identified: the taxation of the payroll and the compliance costs of taxation, particularly the costs of the certifications.

The taxation of the payroll is a problem for organizations of varying sizes and areas of expertise. Organizations in the areas of education, health and social care can address bureaucracy without major injustice; however, such organizations still complain about lengthy procedures and repetitive requirements for the presentation of documents. Nevertheless, the difficulties increase for smaller organizations and especially those that cannot be certified as “imunes”. This situation is the case with organizations focusing on the defense of rights,

culture and the environment. As was observed, an important source of funding for these organizations is specific projects—which begin and end—which makes it difficult to hire employees.

Therefore, these organizations look for alternatives. The three solutions most often used to overcome this problem are: first, hiring employees via legal entities—“MEI—Microempreendedor Individual”; second, paying the person as a service provider; and third, hiring them through a cooperative by joining the service provider to the cooperative. Cooperatives emit the receipt to the organization, and the provider pays 10% of the amount that goes to the cooperative.

However, these alternatives generate uncertainty and fragility because these procedures are not regular, and organizations are exposed to government surveillance.

Moreover, organizations have complained about losing employees to other entities that are able to pay the labor charges. This situation also creates a problem for the employee because not contributing to Social Security will affect his future retirement. For example, the person who was interviewed in one of the organizations stated that she had worked in the area of the human rights of children and adolescents since 1997 but had her first formal contract in 2012, approximately 15 years after starting work in this area.

On the other hand, the excessive number of certifications, the need for their periodic renewal, the duplication of the documents required to obtain the certifications at the various federative levels and the time-consuming process make it extremely difficult to obtain the certifications and make the enjoyment of immunity—stated by law—much more difficult to achieve in practice. All of these problems could be minimized, for example, with the creation of a single certification that could guarantee immunity with respect to all taxes.

It could be argued that the Federal character of Brazil itself is an obstacle to this single certification. Because the Federal entity that has the power to exempt is the same entity that has the power to tax, for tax-exemption at different levels, the taxpayer depends on the decisions of the people responsible for the taxes at each level.

However, this obstacle can be overcome. In the United States, for example, which is also constituted as a federation, the non-payment of State and Local taxes also depends on the certifications issued by state and local governments. In the United States, however, if an organization has a Federal certification, obtaining state and local certifications is almost automatic.

In Brazil, many states and municipalities require certifications awarded at other federative levels for immunity or exemption. These states and municipalities recognize, then,

the effects and validity of certifications from other jurisdictions. Thus, although there are still certifications in three distinct spheres, it would be desirable to simplify the procedures at the state and local levels, such as requiring only the Federal certification.

## CONCLUSION

Taxes and the compliance costs of taxation are noted obstacles to the pursuit of the activities of both for-profit companies and CSOs. These organizations, in turn, play key roles in society in both the provision of public services and the struggle for rights and social mobilization.

This paper sought to identify and analyze the main problems in the development of the activities of these entities. Two key issues were identified: the taxation of the payroll and the certifications. It was also found that organizations are affected differently depending mainly on their area of expertise, number of employees and revenue. The CSOs most affected by these problems are those with lower revenue and those that do not operate in health, education and social care.

It was observed with respect to certifications that the multiple titles and the requirements for obtaining and renewing them are not reasonable and have high costs for the organizations.

One entity must apply for many certifications, and the time needed to obtain them is too long. In conclusion, the law should be revised to simplify certification procedures.

The other major problem noted was the excessive burden that payroll taxation represents for organizations that do not enjoy constitutional “imunidade”, especially smaller ones. It was also observed that in recent years, there have been several initiatives to improve the regulatory framework of for-profit small businesses by creating differentiated tax regimes but that no efforts were made to simplify the tax regulatory framework of CSOs.

In conclusion, with respect to this second problem, the legislation should also be revised so that CSOs that act exclusively in the public interest can enjoy benefits at least equivalent to those enjoyed by the small businesses that can take advantage of differentiated tax regimes.

In his 1991 article, Weisbrod established an agenda for tax research on nonprofits. Our paper, which describes the Brazilian tax system for nonprofits and notes its main problems, is part of the first stage of this agenda. As Weisbrod wrote, “In so far as our research discloses large differences among countries in their encouragement of the non-profit sector, three



questions will remain. Why do the differences exist? What are the consequences? Which policies are preferable in terms of the efficient resource allocation and equity?" (Weisbrod 1991, p. 04). Studies that seek to answer these questions may have great importance in reshaping the laws of Brazil and other countries.

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