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Property Tax Exemption for Religious Entities in Brazil

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Summary

This article will discuss the structural norms of the IPTU (Property Tax) built upon the 1988 Federal Constitution and the National Tax Code, as well as the tax's incidence matrix rule. To this end, it will address the process of positivizing legal norms from the perspective of Logical-Semantic Constructivism, a method that also adopts communication theory and the philosophy of language as philosophical presuppositions. Based on this theoretical framework, the norm of incompetence of the aforementioned municipal tax in relation to religious entities will be constructed, and the general and abstract, as well as the individual and concrete norms constructed by the STF (Supreme Federal Court) regarding this issue of IPTU immunity will be analyzed, concluding that Constitutional Amendment No. 132/2023, concerning this matter, is the result of strong jurisprudential influence.

Keywords: Structural norms. Matrix rule. Property tax. Religious entities. Logical-semantic constructivism.

Abstract

This article will discuss the structural norms of the IPTU (Property Tax) built upon the 1988 Federal Constitution and the National Tax Code, as well as the tax's incidence matrix rule. To this end, it will address the process of positivizing legal norms from the perspective of Logical-Semantic Constructivism, a method that also adopts communication theory and the philosophy of language as philosophical presuppositions. Based on this theoretical framework, the norm of incompetence of the aforementioned municipal tax in relation to religious entities will be constructed, and the general and abstract, as well as the individual and concrete norms constructed by the STF (Supreme Federal Court) regarding this issue of IPTU immunity will be analyzed, concluding that Constitutional Amendment No. 132/2023, concerning this matter, is the result of strong jurisprudential influence.

Keywords: Structural norms. Matrix rules. Property tax. Religious entities. Logical-semantic constructivism.

1. Introduction

The exemption from IPTU¹ (property tax) for properties owned by religious entities is a topic that is not widely discussed. explored by the Science of Law, despite possessing enormous relevance that justifies its analysis², including by virtue of the amendment to the constitutional text by Constitutional Amendment No. 132/2023.

Understanding the issue discussed above will be achieved through studying the regulations. legal matters. Thus, Logical-Semantic Constructivism, a method that has its own perspective on Law, born in the 20th century, emerges as an instrument that allows for this understanding.

Indeed, the object of study of this article is precisely to verify whether tax immunity as provided for in article 150, item VI, subparagraph "b", of the Federal Constitution of 1988, regarding the IPTU (Property Tax), It applies to the person or the real estate. Therefore, the matter will be analyzed before and after the Amendment. Constitutional Amendment No. 132/2023.

As an objective, this article will analyze structural norms³ and precedents of the STF⁴ according to



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with the premises of Logical-Semantic Constructivism, so that it is possible to address the

The problem posed by the article: Did Constitutional Amendment No. 132/2023 modify, or not, the rule in particular?

For the development of the article, the first chapter will be dedicated to the construction of the RMIT of Property tax (IPTU) is governed by regulations derived from the constitutional text and general legal norms. Tax law. The second chapter will delve into the rule of incompetence regarding the tax in question. The third chapter will focus on... This article will address general and abstract norms established by the Supreme Federal Court (STF) regarding the subject matter.

This article, in short, represents, as will be observed throughout its course, a A study, in light of Logical-Semantic Constructivism, of the IPTU (Property Tax) incompetence norm. with regard to real estate owned by religious entities. And this study will examine the constitutional text beforehand. and after Constitutional Amendment No. 132/2023 and precedents of the Supreme Federal Court.

2. The IPTU (Property Tax) incidence matrix rule

As mentioned in the introduction to this article, this first chapter is dedicated to demonstrating the RMIT5 of the IPTU, a rule that, in general terms, constitutes a an instrument through which the "raw text of positive law" can be organized, proposing the understanding the legislated message in a well-conceived and rationally structured communicational context"6 .

In this sense, it is important to initially identify the structural standard with which It will be possible to construct this RMIT of the IPTU (general and abstract norm). Thus, with the process of The codification of norms will be permitted, in this article, to identify the contours established by the norm. (or by the rules) that will allow the creation of the general and abstract rule in question (RMIT).

2.1. Structural Standards

In fact, there are three established structural standards that must be observed in The process of enactment in question: the first two constructed from the Federal Constitution of 1988 and the third of the National Tax Code (CTN)9 .

The first rule established by the 1988 Federal Constitution is the one that grants municipalities the power to institute the IPTU (Property Tax). This rule of competence is constructed from the constitutional text, specifically from article 156, item I, through which the original constituent...

It assigned to the municipalities, in particular, the tax authority to establish this tax.

The second rule contained in the 1988 Federal Constitution concerns the granting of competence to establish general rules of tax law, through which one can weave "the



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structure of other rules, enshrined in law”¹². Moreover, regarding this function of general norms of

In tax law, PAULO DE BARROS CARVALHO makes the following observation:

...concerned with maintaining the federal system and the autonomy of the municipalities, the constituent assembly assigned to the supplementary law, with its ontological-formal nature, the responsibility of serving as a vehicle for introducing norms intended to prevent conflicts and, consequently, encroachments on competence (art. 146, I, of the Constitution).¹³

Specifically, the 1988 Federal Constitution assigned to supplementary law the power to...

to establish general rules of tax law and, among them, rules regarding the taxable event and tax base.

calculation and taxpayer of the taxes specified by the constitutional text. This can be observed in article 146, item III, subparagraph 'a'¹⁴, of the Federal Constitution of 1988.

Thus, there are two established norms in the 1988 Federal Constitution: the first

Regarding the granting of authority to municipalities to establish property taxes.

urban territorial law and the second in relation to granting competence to the complementary law to provide

on general rules of tax law, especially regarding taxable events, tax base and

taxpayers of the taxes specified by the Federal Constitution of 1988, including the IPTU (Property Tax).

The supplementary law to be observed in this particular case, within a relationship of subordination, is precisely the CTN (Brazilian Tax Code), which, in its articles 32 to 3415, establishes rules on taxable events and the tax base. and property tax payers.

In particular, there are three rules to be observed in the process of enactment: two built upon the Federal Constitution of 1988 and the third of the CTN.

2.2. Normative hypothesis of RMIT

The construction of a tax's RMIT (Reference Tax Method) involves analyzing its respective criteria. How

A type of legal norm, that is, a hypothetical conditional judgment, the matrix rule provides a minimum.

irreducible manifestation of the deontic¹⁶ as follows: Normative hypothesis (material criteria,

Spatial and temporal) and normative consequence (personal and quantitative criteria).

The material criterion represents human behavior, that is, the performance of an action by a person. It is the hypothesis of conduct within a permission, in other words, the possible performance of

The verb is always accompanied by a complement. Thus, this material criterion in the IPTU RMIT,

According to article 32 of the CTN, it consists of: (i) owning real estate; (ii) having dominion.

useful property; and (iii) having possession of real property by nature or by physical accession. This criterion

This material will be discussed again later.

The event described in the rule-matrix hypothesis will hypothetically occur (if realized) in

Somewhere and at a specific time: the spatial and temporal aspects determine location.

and the time of occurrence of the hypothetically described legal fact. Indeed, paragraphs 1 and 2, both of

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Article 32 of the CTN (Brazilian Tax Code) defines properties located in urban areas as those over which one can... the IPTU (Property Tax) will apply, however, it will be up to municipal legislation to define when the fact described in The tax hypothesis should hypothetically be observed (municipal legislation, in a way).

In absolute terms, they define the "calendar year" as the temporal criterion.

The IPTU RMIT hypothesis is constructed as follows: [(i) being the owner; (ii) having beneficial ownership; or (iii) have possession by nature or by physical accession] of [property located in an urban area] and in [a specific year].

2.3. Normative consequence of RMIT

RMIT not only presents a hypothesis, but also anticipates a normative consequence. conditional upon the eventual materialization of the fact (in truth, conditional upon competent language so that the legal fact can be constituted). This is how the normative consequence brings about...

Two criteria related to the normative hypothesis: the personal criterion - established as a relationship.

Legal-tax relationship between two parties, one holding a subjective right and the other a duty.

legal aspects of paying the tax - and the quantitative aspect (tax base and rate).

Part of the quantitative criterion is set out in general rules: the tax base (the rate will be established by each municipal legislation, observing the option contained in article 182, § 4º17 of the Federal Constitution of 1988). Specifically, article 33 of the CTN (National Tax Code) establishes the market value of the property as calculation basis.

Regarding the personal criterion contained in the consequent of the RMIT of the IPTU, it (as well as the (quantitative criterion) must be related to the fact described by the hypothesis. Therefore, without either Even when "reading" the structural supplementary law, it is possible to detect the existence of two subjects in the relationship. legal-tax focus: the active subject holding the "subjective right to pecuniary performance"¹⁸, in If the Municipality is the taxpayer and has the "legal duty to fulfill the obligation arising from this legal relationship"¹⁹, who can perform the verb(s) described in the case?

And why was it previously considered that the material criterion would be addressed again? Precisely because it is worth noting that the rule of competence, which allowed the Municipalities that instituted the IPTU (Property Tax) chose property ownership as the determining factor, which is why the events... hypothetical situations related to the hypothetical conduct of "having beneficial ownership" and "having possession of real estate by "by nature or by physical accession" claim the status of property. That is to say, even under the condition From the position of dominator or possessor, the passive subject of this legal-tax relationship must be using owning the property as if one were the owner (*animus domini*), under penalty of a "legal fact" constituted through competent language, and which does not include such a characteristic, cannot be considered This constitutes the obligation to pay IPTU (Property Tax). Proof of this? The tenant of urban property is not subject to IPTU.



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passive of the legal relationship²⁰.

The consequence of the IPTU RMIT is thus constructed in the following terms: [(i) owner of urban real estate; (ii) beneficial owner of urban real estate; or (iii) possessor of urban real estate by [by nature or by physical accession] and [market value of the property x 21 + tax rate established by the Municipality].

2.4. The IPTU (Property Tax) incidence matrix rule

The hypothetical conditional judgment is constructed, in accordance with the process of positivation and the Based on the structural norms built upon the 1988 Federal Constitution and the National Tax Code (CTN), the RMIT is achieved. Property Tax (IPTU): **Regulatory hypothesis** [holding ownership, beneficial ownership, or possession by nature or by accession] [Physical assessment of real estate located in an urban area in a given calendar year] ought to be **Consequent normative** [a legal-tax relationship has been established between the Municipality and the owner, beneficial owner] or possessor by nature or by physical accession of that property, that person has the subjective right to receive property tax credits and the legal obligation to pay the tax according to a specific tax rate applied to the market value of the property.

3. Property Tax Exemption

Once the IPTU RMIT (general and abstract rule) has been constructed, this chapter will address the... The immunity from this tax applies to religious entities, and thus, it will be possible to then delve into... The objective of this article is to verify whether the tax immunity provided for in article 150, item VI, Paragraph “b” of the 1988 Federal Constitution, regarding IPTU (Property Tax), applies to the person or the property.

3.1. Structural norm as an over-norm

In general, various legal scholars and case law have been defining immunity. as a constitutional limitation of competence, a limitation on the power to tax, and a measure that prevents tax incidence. All these definitions, as PAULO DE BARROS CARVALHO points out, do not find logical congruence²²

Immunity is not merely a structural norm. The norm that governs immunity is... A higher-level norm that also provides for the creation of other norms. Precisely for that reason. which PAULO DE BARROS CARVALHO points out that such a structural norm consists of a overnorm:

The normative manifestations that express tax immunities are included in the subdomain of supernorms, prescriptive metapropositions that contribute, positively or negatively, to defining the area of competence of those holding power.



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politician, mentioning to them the material and formal limits of legislative activity.²³

As pointed out in the previous chapter, the original constituent assembly assigned tax jurisdiction.

so that legal entities under domestic public law can establish certain taxes. Furthermore,

It also established the incompetence of these same individuals to institute taxes in certain areas.

situations. Immunity is, in short, a super-norm of incompetence that doesn't even allow for

construction of a general and abstract rule for the incidence of a tax.

However, PAULO DE BARROS CARVALHO warns that the topic of immunity deserves further study.

study, thereby avoiding certain approaches, such as the economic one, which is often...

This relates to the subject matter discussed in this article:

I hold the conviction that the scientific study of legal-tax immunities has not yet found a theoretical elaboration methodologically adequate to the understanding of its phenomenology. Even the least impertinent observer of the coherence inherent in doctrinal assertions will discover logical deviations of marked gravity in the description of the institute, alongside abundant statements of an economic, sociological, ethical, historical, and, in great profusion, political nature.²⁴

In this regard, the next chapter will show how the Supreme Federal Court has been ruling, up to this point.

So, regarding the IPTU (Property Tax) exemption for religious entities.

3.2. Property Tax exemption: temples of any religion

Prior to Constitutional Amendment No. 13225, of December 20, 2023, the Constitution

The 1988 Federal Constitution foresaw the incompetence of the Union, States, Federal District, and Municipalities to establish taxes on temples of any cult, that is, on buildings where rituals take place, *however outlandish, extravagant or exotic they may be*²⁶. This rule was expressly provided for in article 150, paragraph VI, subparagraph "b", of the constitutional text²⁷.

Specifically, municipalities were prohibited, by virtue of this rule, from levying property tax on...

Temples of any religion. It was, therefore, a strong prohibition contained in the Federal Constitution of 1988.

That being said, it is certain that there was no way to construct a matrix rule, precisely because

There was not the slightest possibility of material, spatial, temporal, personal and criteria existing.

quantitative in the face of incompetence in establishing the tax itself on temples of any kind.

worship. There was no possibility, insofar as the structural rule prohibited the Municipality from establishing it.

the tax.

And regarding the reason why the Constituent Assembly adopted this rule of incompetence, PAULO DE BARROS CARVALHO reveals this in the *reaffirmation of the principle of freedom of belief and religious practice*²⁸ provided for in article 5, items VI to VIII, of the Constitution²⁹.

ROQUE ANTÔNIO CARRAZZA is still considering:

It is indeed true that the Brazilian Constitution establishes the separation between State and Church. However, it does not prohibit them from combining efforts in a climate of cooperation, with a view to the superior public interest and the achievement of objectives.



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fundamental principles of our Republic, enshrined in Article 3 of the Federal Constitution.³⁰ Similarly, OSWALDO OTHON DE PONTES SARAIVA FILHO points out:

Although the Federative Republic of Brazil is a secular state (CF/1988, art. 19, I), that is, it does not impose an official religion on its people, respects and does not discriminate between believers and non-believers, and establishes the separation between the State and the Churches, without prejudice to mutual collaboration, nevertheless, being also a Democratic State of Law (CF, art. 1, *caput*) and it being undeniable that almost the entire Brazilian people believe in God and adopt the teachings of religions, it is indisputable that religious values, among them love of God and of one's fellow man, solidarity, freedom, family, the right to life and of the unborn child from conception, the empowerment and autonomy of women, the right to information, to work, to privacy, to property, etc., must be able to be proposed to state political authorities and must be able to be taken into consideration in legislative drafting and in the interpretation and application of law by the Judiciary.³¹

From the positive text highlighted, then, in light of the constitutional right to religious freedom, it was possible to construct, in principle³², the following hypothetical conditional judgment of the norm of Incompetence: being a temple of any religion, municipalities should be prohibited from instituting property tax about these (temples).

3.3. IPTU exemption: religious entities and temples of any faith, including their charitable and welfare organizations

With Constitutional Amendment No. 132/2023, the rule of incompetence provided for in article 150, Paragraph VI, subparagraph "b", of the 1988 Federal Constitution no longer simply points to the temples of any faith, but also for the religious entities themselves and their organizations. welfare and charitable organizations. It cannot be denied, therefore, that this alteration of the constitutional text is a A clear indication that this immunity extends to the person and not just the property. More than that:

...it seems correct to state that immunity is not limited to the building where the worship takes place, but encompasses all aspects of religion, everything that is indispensable to its liturgy, so that religious conduct – whatever it may be – cannot be considered by the legislator as potentially taxable, as it falls outside their area of competence.

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Immunity therefore applies, as ROBSON MAIA LINS notes, to religious conduct. and not just the building of the temple. *The objects are not immune per se, they need to be linked to a religious entity*³⁴.

Indeed, before the entry into force of Constitutional Amendment No. 132, ROQUE ANTÔNIO CARRAZZA had already considered that this rule of incompetence should be broadly interpreted. reaching the sponsoring entity itself.

And let it not be said that the constitutional text uses the term "temples" (buildings where religious worship is practiced) – and therefore, anything that deviates from this is pure speculation by those interested in expanding the scope of the immunity now under discussion. Such an understanding is unsustainable, given the systematic interpretation of the aforementioned provisions and the *preamble* of the Supreme Charter itself, which enshrine the idea of tax immunity for religion (a spiritual concept) and not merely for real estate (a concept of...

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material) where it is practiced. Therefore, it is necessary to exempt from taxes not only the building where the worship takes place, but everything related to religious activities.³⁵

Moreover, paragraph 4 of article 150 seems to reinforce this understanding according to which the rule of incompetence extends not only to the property, but also to the person themselves (if the property is related to the *essential purposes of the entities mentioned therein*³⁶). Although paragraph 4 provides a delimitation of In terms of scope, everything that is in some way related to spreading the faith - such as the *practice of worship, the training of religious people, the exercise of philanthropic activities and moral and spiritual assistance to the faithful*³⁷ - should be included in this immunity³⁸.

Constitutional Amendment No. 132/2023, in this sense, made the constitutional text more...

Of course, since the Federal Constitution now expressly provides for immunity regarding...

religious entities themselves, that is, also addressing the person.

With the tax reform established by Constitutional Amendment No. 132/2023, the scope of immunities for religious institutions in relation to the previous Constitution (CF/88) was broadened, for a better interpretation of the constitutional provision...³⁹

Therefore, even under the terms of the previous wording of article 150, item VI, subparagraph "b", it was already

It is possible, yes, to construct the following hypothetical conditional judgment of the rule of incompetence in

Question: Given that it is a religious institution, should municipalities be prohibited from levying property tax on it?

real estate belonging to such institution, provided that these assets are in some way related to its purposes.

of the entity. And Constitutional Amendment No. 132/2023, as pointed out, reinforces this understanding with

a better drafting attributed to the constitutional text.

4. Precedents established by the STF

The first chapter of this article was dedicated to the construction of the IPTU RMIT through the

Structural norms built upon the constitutional text and the National Tax Code. In turn, the second

The chapter delved into the rule of incompetence regarding the tax in question.

This third chapter will address general and abstract norms (as well as individual norms and

concrete) rulings made by the Supreme Federal Court (STF) on the matter discussed in this article, in other words, whether the

The tax immunity discussed here applies to either the person or the property.

4.1. Immunity of political parties, including their foundations, and of trade union entities of workers from non-profit educational and social assistance institutions

Before delving into the immunity of religious entities, it is important to...

to transcribe Summary No. 724 resulting from the process of producing legal norms carried out by

Supreme Court Plenary:



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Even when rented to third parties, property belonging to any of the entities referred to in Article 150, VI, c, of the Constitution remains exempt from IPTU (Property Tax), provided that the rental income is applied to the essential activities of such entities.

It is clear from the above-transcribed summary that the Supreme Federal Court, regarding the immunity of political parties, including their foundations, workers' trade unions, educational institutions and social assistance, a non-profit organization, established the following general and abstract norm: being an entity The prohibition on municipalities instituting property tax (IPTU) should be based on union, education, or social assistance regulations. regarding their respective real estate properties, even if those properties are leased to third parties, provided that *the rental income should be applied to the essential activities of such entities.*

Approximately two years later, the Supreme Federal Court ratified the understanding of Precedent No. 724 with the approval from Binding Precedent No. 5240:

Even when rented to third parties, property belonging to any of the entities referred to in Article 150, VI, "c", of the Federal Constitution remains exempt from IPTU (Property Tax), provided that the rental income is applied to the activities for which such entities were established.

In both statements, it is observed that the STF (Supreme Federal Court) established the understanding that the Immunity is linked to individuals and the essential activity carried out by the entity, which is what matters most. once again, it reinforces the argument that the immunity discussed here, especially in light of the extent to which as provided for in paragraph 4 of article 150 of the Federal Constitution, relates to the person and not to the property in Yes.

In this regard, see the following passage extracted from the leading opinion of Minister Dias. Toffoli during the judgment of Extraordinary Appeal with Aggravation No. 760.87641:

The court of origin did not diverge from this Court's orientation that the immunity rule contained in article 150, VI, c, of the Federal Constitution excludes the application of IPTU (Property Tax) to properties owned by non-profit social assistance institutions, even if rented to third parties, provided that the rental income is applied to their essential activities (Summary No. 724/STF).

The passage transcribed above reveals how the Supreme Federal Court (STF), as a basis for the validity of the norm, built upon the aforementioned § 4, it links immunity to the essential purposes developed by The entity, and not simply the property itself.

Regarding this connection, it is worth highlighting, once again, the statement by ROBSON MAIA. LINS42 in the sense that immunity, with respect to the matter under discussion, is not related only to the building.

Therefore: [political parties, including their foundations, trade union organizations, non-profit educational and social assistance institutions that own property located in [urban area in a given calendar year] there is a [prohibition on municipalities from levying property tax on said properties, even if these assets are leased to third parties, provided that *the rental income be applied to the essential activities of such entities*].



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4.2. Religious entities and temples of any faith, including their charitable organizations and charitable

The understanding regarding the immunity of political parties, including their foundations, of trade union entities of workers, educational institutions and social assistance organizations, without profit motive. For-profit entities, this has also been adopted by the Supreme Federal Court (STF) to validate immunity for such entities. religious, even before the enactment of Constitutional Amendment No. 132/2023.

It is true that this understanding, now in relation to religious entities, is being adopted. with the construction of individual and concrete norms, there is still no general and abstract norm on the subject. the subject matter.

A recent judgment that deserves highlighting, incidentally, concerns Extraordinary Appeal with Aggravation No. 121296343. In the leading opinion for the statement, the Minister reaffirmed the understanding of

The Brazilian Supreme Court (STF) regarding the link between immunity and the allocation of assets (or their respective revenues) to the intended purposes. Essential elements of the entity:

Upon reviewing the case file, I was able to ascertain that the appealed judgment did not diverge from the Court's jurisprudence, which has been established to the effect that the tax immunity provided for in Article 150, VI, "b" and "c", of the Federal Constitution covers assets, income, and services linked to its essential purposes, as very well highlighted by Minister GILMAR MENDES, when reaffirming jurisprudence in the judgment of the general repercussion recognized in RE 767.332, which stated as follows:

Numerous other pronouncements issued by the Supreme Federal Court, in a similar vein, have allowed for the construction of individual and concrete norms that follow the general and abstract norms constructed from the Summary No. 724 and Binding Summary No. 52. And these general and abstract rules are constructed from these. Two precedents find their basis of validity in the structural norm built upon... Article 150, § 4, of the 1988 Federal Constitution, thus making it possible to conclude that immunity as provided for in article 150, item VI, subparagraph "b", of the constitutional text, covers both the person and the intended purpose. of the property (or respective income), regardless of whether the property is being used as a temple. religious.

5. Conclusion

Through the journey undertaken in this article, it was observed that the STF, analyzing cases involving discussions about the tax exemption of properties owned by political parties, including their foundations, trade unions, educational and welfare institutions Social, non-profit organizations have been producing statements and constructing legal norms with the aim of... basis for the validity of a rule of incompetence.

And these legal norms constructed from pronouncements issued by the Supreme Federal Court also



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They allowed for the construction of individual and concrete rules regarding the tax immunity provided for in Article 150, item VI, subparagraph "b", of the Federal Constitution of 1988, from which it can be concluded, as It has been demonstrated that immunity extends to the person and not just the good itself; in other words, immunity as provided in subparagraph "b" applies to the person, regardless of whether the property is being used as religious temple.

Thus, with regard to the problem proposed by the article, that is, whether Constitutional Amendment No. Whether or not Law 132/2023 modified the immunity rule allows us to draw the following conclusion: a interpretation of the rules set forth in article 150, item VI, subparagraph "b", of the Federal Constitution of 1988, and its respective § 4, prior to the aforementioned Constitutional Amendment, involves values and principles, such as The right to religious freedom and the dignity of the human person, and on this basis, the Supreme Federal Court (STF) had already been... adopting the understanding that this immunity applies to people and not just the property in

Yes.

Therefore, it can also be concluded that, although it is not a source of law, the The Supreme Federal Court's jurisprudence strongly influenced the legislator to improve the wording of article 150, item... VI, paragraph "b", of the Federal Constitution of 1988. And that is precisely what happened with the amendment. from the text promoted by Constitutional Amendment No. 132/2023.

Therefore, Constitutional Amendment No. 132/2023 ratified the interpretation of article 150, item VI, paragraph "b", of the Federal Constitution of 1988, which had been given by the STF.

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