



IPTU Social, as a tool for Provisional Possession in the Legal System in Communities and in Risk areas, in the mitigation of Tragedies and other Natural Disasters

Social IPTU, as a Provisional Possession tool in the Legal System in Communities and in Risk areas, in the mitigation of Tragedies and other Natural Catastrophes

Fidelino Cordeiro Dias

Submitted on: 04/05/2023

Approved on: 04/06/2023

Published on: 04/16/2023 DOI:

10.51473/ed.al.v3i1.507

SUMMARY

This Study or Offered Proposal aims, in a simple way and with a Legal, Legal and Social basis, to call for reflection on possible solutions at the Municipal, State and Federal Level that provisionally grant Possession, as a result of the Legal Protection of Housing in Communities and Risk Areas, so that, in a transitional manner, the Social Assistance of the Granting Public Power, makes the transition, with Total or Partial Funding, from the collection of Social IPTU, on a scheduled or immediate basis in the event of a calamity in order to mitigate the Context Social Property and Housing in Risk Areas.

Key words:Social IPTU, Tragedies, Housing in Risk areas, Communities.

ABSTRACT

This Study or Proposal Offered, aims in a simple way and with Legal, Legal and Social basis, calls for reflection on possible solutions at Municipal, State and Federal Level that provisionally grant Possession, as a result of the Legal protection of Housing in Communities and Risk Areas, so that, on a temporary basis, the Social Assistance of the Granting Public Authority, makes the transition, with Total or Partial Funding, from the collection of the Social IPTU, on a scheduled basis or immediately in case of calamity in order to mitigate the Context Property and Housing in Risk areas.

Keywords:IPTU Social, Tragedies, Housing in Risk Areas, Communities.

1. INTRODUCTION

It is the duty of the municipal authorities to compensate for possible damages caused by natural events in certain areas and the IPTU exemption for properties affected by natural catastrophes involves the use of the tax instrument, distorting its collection function.

There is a doctrine contrary to IPTU exemption, highlighting that in most cases the damage caused to the taxpayer due to the omission of the Public Administration cannot be classified objectively, removing the responsibility for compensation.

It is up to taxpayers affected by natural disasters to request a Civil Defense visit to assess liation of the affected property so that the technical report can be issued and can be presented to the city hall.

Therefore, we did not dare to have an unprecedented idea, especially because the late Governor, Leonel de Moura Brizola, already spoke about Deeds and Property for residents of needy communities in the State of Rio de Janeiro.

However, taking advantage of the recent Theories of Real Civil Law, or Law of Things of the Civil Code (Law 10.406/2002), in Brazil, we come across the maxim that Property must fulfill its Function Social Security within the Legal System and must receive adequate legal protection from the State.

For this to occur in a programmed, supported way, and above all with social programming, in order to minimize and provide a social response to human or natural tragedies. This author proposes the creation of the Social Territorial and Urban Tax (Social IPTU), which in a sustainable way would have as its goal the protection and improvement of housing conditions that worries him so much as an Engineer, Firefighter and now a Legal Student.

The proposal, if taken forward, could address the difficulty of having a specific social fund to serve the communities, which once installed, the State has no control over who inhabits them, in the way they were



built, urgent needs, and medium and long term to reduce risks, urbanization or even displacement to other areas programmed in advance.

This control facilitates the entry of public power into all its spheres, as it opens up the citizen's interest in having legal possession of their property, normally built with great difficulty, even if provisionally, but in a way that guarantees Rights and above all Duties in an orderly manner and supported by specific legislation at the Municipal level with participation from the State and the Federal Sphere, when applicable.

Imagine in the social context of the community the Citizen, always forgotten and without access to information and essential services, being able to count on support, since it offers the State in return, having the "Pride" of possessing the "Good" that was so important to him. expensive, and even if in a risky location, counting on better and effective support from the public authorities to solve and in a partnership way be present in the Community, knowing and recording the main difficulties, potentialities, values and risks.

The Structuring of the Community based on the Structuring of Individual, Collective and Commercial Property, brings not only legal security to the Citizen, but above all to the State, which, in an organized way based on the Social IPTU, which in the best way, paves the way for the strengthening of the State and the Community, not only in the Legal Sphere, but in social opportunities for housing, employment, community agents from different areas such as education, health, social services, justice, engineering; all mostly from the Community with support from all spheres of the State, as it would be self-sustainable.

We thus create a social network of our own in each community, in which the State, in the presence of the Municipality, will be responsible for the full and present organization of the Right to property, so forgotten and lacking in possibilities for Citizens without Rights, normally forgotten since the abolition of slavery, starting point for our communities in Rio de Janeiro (Morro da Providência) and others in Bahia.

With this tool, the control and prevention of tragedies will certainly occur in a legal manner and on a legal basis. Especially for scheduled trips, with compensation supported by the financial fund created and also with resolution and broader training, such as those already offered to communities by Civil Defense, such as Rain Warning, Sirens and Meeting Point and others more than due to proximity may be created.

The methodology was initially carried out through bibliographical research, seeking works with academic support to carry out the theory on the proposed topic, in an integrated manner with dialectical analysis.

A bibliographical research is carried out with the purpose of "improving the understanding of the data and deepening the interpretations" (SAMPIERI; COLLADO; LUCIO; 2013).

2 THEORETICAL FRAMEWORK

2.1 MUNICIPAL TAXES

It can be said that taxes accompany the development of man in an organized society. Initially, taxes were charged intensely from the people who were defeated in war, they became subordinate to the victors, and in order to avoid new conflicts they continued to pay taxes, demonstrating their submission.

Each time there was a development in the formation of organized societies, social relations became more complex, as a result of which the dominant classes that were formed sought to support themselves with the work of people with less privileges.

In this way, taxes were applied using numerous arguments and often force. Tributes were determined by the ruler endowed with great powers, making it impossible for there was control over the collection of taxes, as a result, heavy taxes were levied that ended up ruining the less favored (BALEEIRO, 1997).

Social relations continued to evolve, and the less favored masses began to become awareness of the abuses committed by its leaders, this fact occurred at the time of the so-called Enlightenment, based on its anthropocentric ideas.

At that time, people who were part of less favored communities began to protest in search of written and fairer laws, which would prevent the abuse they had been suffering, however, a large part of the population with a good cultural level made tax rules easy to manipulate. Numerous norms were launched,



so much so that even the government workers themselves were lost, as a result taxes were collected irregularly.

The history of taxes in Brazil is divided into three basic models: Colony, Empire and Republic. In the colonial period, taxes were determined by Portugal, with Brazilians being exploited indiscriminately by Crown officials.

Taxes were charged in three ways: the fifth, which consisted of the fifth part of gold production; the Royal Rights which consisted of an import tax and the Royal Tithe and the work of the farmer. The fifth was responsible for many of the luxuries of the Portuguese court. (CELESTINO, 1984).

Even with Brazil's independence, tax collection did not improve significantly. With the new Brazilian government, the provinces began to define their own taxes. Over time, attempts were made to regulate this tax collection through constitutional amendments that aimed to delimit the taxes of the Union and the provinces, however, unconstitutional taxes continued to be charged.

With the arrival of the Republic, a government system adopted by Brazil to this day, and with the Constitutional Charter, of 1891, the taxes that were applicable to each level of public power were strictly discriminated.

Over time, many changes were made to taxes and the way they were collected, however, one change that deserves to be highlighted is in the Brazilian Constitution of 1946, which established that the National Congress was the only competent body to legislate on taxes. .

However, the efficient tax system only became possible through Constitutional Amendment No. 18 of 1965, which sought a new order for the tax system in Brazil, this being the result of the work of several jurists.

The National Tax Code was proposed in 1953 when the Brazilian Federal Constitution of 1946 was in force, however, its approval only occurred on October 25, 1966 through an ordinary law, shortly after its approval it was considered unconstitutional, as the The current constitution determined which tax matters should be dealt with by complementary law.

With this fact, Complementary Act No. 36 emerged, which established the acceptance of the aforementioned code by the Constitution then in force, but this could only be modified by complementary law.

The Constitution of the Federative Republic of Brazil of 1988, in force to this day, contains provisions on "Taxation and the Budget". According to the National Tax Code, art. 3rd, tax: "It is any compulsory pecuniary payment, in currency or whose value can be expressed therein, that does not constitute a sanction for an illicit act, established by law and charged through fully linked administrative activity".

In recent years, a broad process has been taking place to reorganize tax collection, the so-called Tax Reform, seeking, through provisional measures and constitutional amendments, considerable improvements to the National Tax Code.

2.2 IPTU

The CTN was created by Law no. 5,172 of 1996, based on Constitutional Amendment no. 18 of 1965 governing taxes. It was established by the CF of 1988, in art. 156 the private competence of municipalities in collecting taxes on property and urban territorial property.

Souza (2008, p. 1) explains that:

The function of IPTU since the beginning of its creation has always been, unquestionably, a fiscal function, and it still is as a rule, however with the entry into force of the City Statute[i] and the possibility of a progressive rate over time for urban properties that are not fulfilling their social function, now have an extra-fiscal function as an exception.

3

With the advent of the City Statute, the IPTU had its function expanded, being able to be used for extra-fiscal purposes, becoming a cogent mechanism, compelling the owner of urban property through its progressive rate, to exercise the social function of property, under It's a shame there will be a future expropriation.

The taxable event of IPTU is the ownership of urban property, useful domain or possession of a property by nature that is located in an urban area (SOUZA, 2008). The art. 32 of the CTN the following:

§ 1 For the purposes of this tax, an urban area is defined as that defined in municipal law; observed the minimum requirement of the existence of improvements indicated in



at least 2 (two) of the following items, built or maintained by the Public Authorities: I – curbs or sidewalks, with rainwater pipes; II – water supply; III – sanitary sewage system; IV – public lighting network, with or without poles for home distribution; V – primary school or health center at a maximum distance of 3 (three) kilometers from the property considered.

Urban property is considered when located in areas approved for housing, commerce and industry. The built areas of properties are those that are externally surrounded by walls and pillars, as well as balconies, basements, garages and others (AVERBECK, 2003).

The collection of IPTU according to the 1988 CF is the responsibility of the Union, States, Federal District and Municipalities, regardless of private property, non-profit or temples of any cult.

The Municipalities and the Federal District are responsible for monitoring and regulating the property located in the urban area or urban extension of the property that has the domain of use, possession or ownership, these being considered taxpayers, individuals or legal entities. Below is a brief approach to the historical milestone of IPTU. This is how Barbon (1994, p.29) explains:

The Urban Property and Territorial Tax has long been within the jurisdiction of Brazilian municipalities. It was called urban tenth and its collection began in the last century precisely in 1808. Its origin is very remote and found in several countries. It should be noted that the tenth, also used in the sense of tithe, designates, according to De Plácido e Silva, the taxes or decreed taxes, which are levied and charged on the basis of one tenth of the income earned or the wealth produced.

Said tax is used as a municipal tax. It had its first appearance in the last century in mid-1808, with its origin being remote and rare in several countries. Morais states, (apud BARBON, 1994, p.23). In Rome there was already the *Tributum Soli*".

Morais (apud BARBON, 1994, p.23) also highlights its historical evolution: "That the tax in question arose with the arrival of the Portuguese Royal Family to Brazil, as, in a document granted at the Palace of Rio de Janeiro, the Prince Regent established the Tenth Urban".

Over the years, the tax appeared in the Federal Constitution of 1891, it did not prevent "The redistribution of such competence to the municipalities." Later, the 1934 Constitution stated that the IPTU would belong to the States, being incorporated into the Private jurisdiction of the Municipalities.

Subsequently come the Constitutions of 1937 and 1946 that maintained competence. And finally, after three Constitutions, they unified the tax and named it IPTU and subsequently inserted it into the Municipal Tax System.

Currently, the Federal Constitution of 1988 provides in its article 156, I, the competence of municipalities to impose taxes on property and urban territorial property: "Art. 156. Municipalities are responsible for imposing taxes on: I - urban property and territorial property".

The IPTU is supplemented by the National Tax Code in its articles 32 to 34. In this way, the Generating Fact (Useful domain property and possession of real estate located in the urban area) is determined as the calculation basis (market value of the property). Its rate is fixed by the taxing authority, achieving proportionality or progressiveness, depending on the case. The rule creating a tax may establish exemptions.

The State establishes rules with the aim of guaranteeing coexistence and keeping society in harmony, however, to achieve this, the State needs financial resources. One of the main characteristics of the State's conception consists of the supreme authority characterized by sovereignty, characteristic of the State being a supreme order that is not subject to any other higher order. Regarding state sovereignty, Carrazza (2017, p. 26) teaches that:

4

Sovereignty is the faculty that, in a given legal system, appears as supreme. Those who possess supreme, absolute and indisputable power, who do not recognize any other power above themselves, have sovereignty. For this reason, he surpasses any and all authority (hence: *supra*, *supramus*, *sovereign*, *sovereignty*). It is an attribute of sovereignty to "impose oneself on everyone without compensation" (Laferrière).

Machado (2017, p. 29), in relation to the State's power to tax, states that “[...] the State demands that individuals provide you with the resources you need. Institute the tax.” Although the State has this sovereignty in relation to individuals, it cannot be forgotten that Tax Law exists to regulate this power, with the aim of preventing the State from acting arbitrarily.

It is reasonable to state that every obligation is relational, so that talking about an obligation in Tax Law is the same as understanding it as a legal relationship of an obligatory nature.

It is, however, in the Federal Constitution that tax entities authenticate themselves to constitute taxes, with the objective of providing the State with financial resources to meet the basic needs of its citizens, to achieve the common good.

It is in this context that Denari (2008, p. 25) states that “tax power – understood as the State's ability to impose taxes – is an attribute of state sovereignty, and therefore, inherent to political power. Wherever there is political power there is taxing power.” Gasparini (2012, p. 273) explains that:

[...] the State imposes limits and prescribes rules, aiming to hinder, or even impede, any anti-social behavior of those administered and satisfy the demands of the community [...] if necessary to satisfy the public interest, the State can intervene in private property and in the economic domain.

Tax exemption arises from law, where the person who has the power to exempt is the public authority responsible for requesting the tax. Exemption becomes a case of exclusion, or rather stating; an exemption from tax credit, in accordance with article 175 of the National Tax Code (CTN).

Following the same line of thought, Carrazza (2012, p. 981) states that “in fact, the idea of 'legal exemption from paying the tax due' does not apply to tax exemption, but to tax remission”.

In addition, Coelho (2012, p. 759) states that “it is a gross error to consider exemption as a legal exemption from paying taxes due”. And later concludes that: “the exemption does not exclude any credit, as it is a factor preventing the emergence of the tax obligation, removing a fact, act or person from the hypothesis of incidence of the tax norm”. (COELHO, 2012, p.759).

Thus, in the author's view, the standard creates an exemption and deduces the incidence standard in some of its criteria, reducing its scope.

In view of the eyes of most scholars, they understand that the exemption does not obstruct the birth of the tax obligation, but it also vetoes the appearance of the tax credit that corresponds to an obligation that has arisen. It can be stated that the exemption is something unusual and is situated in the tax incidence, thus having a triggering event.

Based on the bibliographic survey on IPTU, it can be seen that this is a clearly real tax, where it is not linked to the reality of the taxpayer, but rather to the thing owned by the taxpayer.

In this way, the description of the real tax follows for Amaro (2013, p. 165): “Real taxes (which objectively consider the material situation, without taking into account the conditions of the individual linked to that situation) must also be informed by the principle of contributory capacity, which is a universal postulate of tax justice”.

The importance of the problem imposed on the unconstitutionality of the law that exempts municipal public servants from Fortaleza is important, without there being any form of reasonable and symmetrical assessment that justifies such exemption.

As the current Brazilian Federal Constitution is the basis of the legal system, any form of abuse of its structures fatally interferes with the prescriptive order of the country as a type of widespread inequality. The State, with its taxes, has a collection nature, and purposes to return in activities, pursuing the achievement of the common good.

5

It is worth mentioning that even though they have the Power to Tax, federative entities and public persons with taxing capacity cannot exercise such power freely, taxpayers are protected by tax principles, which limit this power on the part of the active subject, not letting them commit arbitrariness.

Thus, tax exemption is a result of law, with its hypotheses provided for in the Brazilian Legal System, however, its application must comply with tax principles, with a view to not causing any harm to taxpayers' rights.

2.3 IPTU and the principle of ability to pay

Contributory capacity, also known as the principle of economic capacity, is a fragmentation of the principle of equality in Tax Law, which represents its materialization, in favor of social justice. The aforementioned principle can be understood in the objective sense (wealth subject to taxation) and in the subjective sense (which portion of wealth may be taxed due to individual conditions).

Thus, the State becomes obliged to collect this tax, not due to the citizens' possible income, but rather the income it actually has. The intention of the principle of capacity in the Legal Tax System is to seek a fairer society, where greater taxation is imposed on those with greater wealth (Carrazza, 2013).

According to the contributory capacity of individuals, the distribution of the tax burden gives us the idea that taxes, whose main purpose is the common good, must adapt to individual conditions, in order to provide an equal position to taxpayers.

Alexandre (2013, p.96) states that "the main inequality parameter to be taken into consideration when attributing different treatment to people is, exactly, their contributory capacity".

It is worth highlighting that the principle of contributory capacity is one of the most important in Tax Law and it is through it that one of the basic principles of democracy is put into practice, that of equality, established in the caput of article 5 of the Federal Constitution.

Thus, it is stated that the principle of contributory capacity comes from the principle of equality, as well as being linked to the principle of freedom. Therefore, this principle cannot excessively restrict the individual freedom of taxpayers, discouraging them from growing and developing, which could cause damage to the economic and social development of a country. Alexandre (2013) clearly explains that contributory capacity is strongly related to assets, income, sacrifice and need, as well as their concepts.

In this way, doctrine and jurisprudence agreed that the concept of contributory capacity consists of a set of economic forces based on partial indications that represent a direct manifestation of a certain imitated and indirect economic availability of complex economic availability.

It is worth highlighting, based on Amaro (2011), that even though contributory capacity implies economic capacity, it does not completely coincide with this, as the concept of contributory capacity implies an element of judgment, an assessment of the ability to compete for expenses. public.

Therefore, it can be said that contributory capacity is a variable between the need for savings and expenditure. And it can also be seen that the ability to contribute has evolved over time in an attempt to get closer and closer to the much-desired tax justice.

The relationship between taxes and the principle of contributory capacity is complex, taking into account that IPTU is a real tax, which makes up a transfer of tax burden, called indirect tax.

Regarding taxes that burden assets, such as IPTU, there is a question, regarding a possible application of progressivity, with the objective of achieving the contributory capacity of the taxpayer, the owner of the asset.

For Barbon (1994), the doctrine, without hesitation, recognizes that the tax on property and urban territorial property is one of the types of tax on heritage, because it serves as a material presupposition of the hypothesis of incidence of the tax obligation.

In relation to tax exemptions, the principle of ability to pay is of great importance, and this must always be taken into consideration by the legislator before granting tax exemptions.

The principle of ability to pay also works to declare the unconstitutionality of a tax exemption that does not comply with the criteria of tax justice. It is worth highlighting that tax exemptions are not granted with the intention of exclusively meeting the principle of economic capacity, this principle functions as a means of verifying compliance with the principle of equality, with exemption generally being granted based on other values (WEICHERT, 2000).

6

Revoking a tax exemption means extending the possibility of tax being imposed, so, in this case, attention must be paid to the principle of tax precedence if the benefit is revoked.

It is worth highlighting, finally, that at the moment an exemption is revoked, the legislator is, in the exercise of his powers, increasing the area covered by a given tax (WEICHERT, 2000).

In view of the above, it appears that the principles of Tax Law need to be observed in the incidence of taxes, especially when there are tax exemptions, emphasizing equality and contributory capacity



2.4 SOCIAL IPTU AND THE RULE OF LAW

The application of IPTU resources by the 1988 CF is carried out through the action of tax justice, through taxation or extra-fiscality and is also mandatory (FERNANDES, 2005).

It is explained that taxation as an instrument of support for the State cannot be implemented democratically without considering immunity and equality, and therefore, taxation in Brazil must be based on the principles of progressiveness and not proportionality (FERNANDES, 2005).

IPTU is aligned with the concept of tax justice, with equality, proportionality and progressivity as its principles. The art. 1228 of the Civil Code states that the right to property is the right to use, enjoy and dispose of one's assets (DOMINICES; MOREIRA, 2008).

In this way, the social function of property is an element of social transformation that achieves social justice with the adoption of IPTU, aiming at the taxpayer's ability to contribute, based on the principle of distributive justice and tax equality.

The progressiveness of IPTU determines that any urban private property that is not fulfilling its social function in a proven manner must be gradually taxed more (DOMINICES; MOREIRA, 2008).

The principle of contributory capacity in IPTU is manifested through the application of progressive rates for fiscal and extra-fiscal purposes. The owner of a luxurious property should be taxed proportionally more than the owner of a simpler property.

A tourist city should establish higher IPTU rates for establishments such as wholesale trade and reducing the tax rate for stores and hotels to increase tourism in the region (DOMINICES; MOREIRA, 2008).

In the above, it is emphasized that the social function of property is carried out through a wealth redistribution policy with the duty to pay taxes in an equal manner to maintain a freer, fairer and more supportive society.

2.5 IMPROVEMENT CONTRIBUTION

The improvement contribution is set out in art. 145, III, of the Brazilian Federal Constitution of 1988, and in art. 81 of the CTN, as a tribute, being tax, fee, improvement contribution, compulsory loans and special contributions (ROSSI, 2017).

Its purpose is to reimburse part of the society that contributed to the public coffers, without having directly benefited from the work, inferring the appreciation of the taxpayer's property when works are carried out by the city hall in a certain region, such as, for example, squares, asphaltting, public lighting and others.

In this case, the money used in public works comes from all taxpayers, however, only the region in which the work was contemplated has the profit from the growth in its property value. Thus, the improvement contribution reimbursed the public coffers so that another region can also benefit from public works (ROSSI, 2017).

In the improvement contribution, the triggering event for the tax obligation is the increase in value of the property as a result of public work and not a public service.

To charge the improvement contribution, the taxpayer must observe the two limits set out in art. 81 of the CTN, which is the total limit, when you can only collect the amount spent on the work that led to the value of the property; and individual limit in which the public entity can only collect from each property owner who benefited from public work, the value of the property's appreciation (ROSSI, 2017).

At the state or federal level, if the collection is not carried out in a timely manner, the amount spent will not be recovered, as property tax cannot be imposed, regardless of whether immunity is given.

by the CF of 88 to public entities.

7

The improvement contribution will be made by an Ordinary Law, of the Municipality, Member State or Union, being responsible for the institution of this tax as common (ROSSI, 2017).

It is mentioned that the STJ endorses that the triggering event is not a public work but rather the appreciation in its as a result, and the valuation cannot be presumed, with the obligation to present the calculations that will support the charge.

The improvement contribution is considered a dead tax, as it is hardly remembered by the federation entities due to its difficulty in application and collection.

CONCLUSION

This study initially dealt with taxes that have accompanied the development of man in society. It was demonstrated that the history of taxes in Brazil was divided into Colony, Empire and Republic.

The tax exemption arises from the Law and is an exemption from tax credit. Contributory capacity represents the wealth subject to taxation and, in a subjective sense, the portion of wealth that can be taxed due to individual conditions.

It was seen that the relationship between taxes and the principle of contributory capacity is complex considering that IPTU is a real tax, comprising the transfer of a tax burden.

It was also found that the social function of property leads to social justice being achieved through the adoption of IPTU. The improvement contribution was approached as a tax, and the taxpayer must observe the total and individual limits.

Finally, it was clarified that there is a low level of IPTU collection in municipalities with a small number of inhabitants, which could generate negative situations, as the city hall spent a considerable amount to pay for services, generating discontent on the part of the population.

REFERENCES

ALEXANDRE, Ricardo. Schematic tax law. 7. ed. São Paulo: Forense, 2013.

BARBON, Sandra A. Lopes. From IPTU. Belo Horizonte: Saraiva, 1994.

CARRAZZA, Roque Antônio. Constitutional Tax Law Course. 26. ed. São Paulo: Malheiros, 2012.

DENARI, Zelmo. Tax Law Course. 9 ed. São Paulo: Atlas, 2008.

DOMINICES, Charles Cunha; MOREIRA, Clebeomar Everton. The importance of applying IPTU resources in São Luis – MA. Monography. Specialization in Tax Planning, Management, Tax Auditing and Higher Education. Tuiuti University of Paraná. São Luis, 2008.

FERNANDES, Cintia Estefania. IPTU – Text and Context. São Paulo: Quartier Latin, 2005.

ROSSI, Pedro. Contribution to improvement, brief study. JusBrasil, 2017.