Uniformity Clause Limitations on State Taxes

By Steve R. Johnson*

To be valid, state and local taxes must satisfy the requirements of both the federal Constitution and the state's own constitution. State Uniformity Clauses are among the most important of such constitutional provisions. The great majority of state constitutions contain Uniformity Clauses although their contents vary in important ways.

Uniformity Clauses often have been the basis of successful attacks against particular features of state taxes. Below, we first consider some examples of invalidation of state and local tax measures on uniformity grounds. Then, we describe an approach to understanding Uniformity Clauses built around five key questions pinpointing variation in uniformity law among the states.

Examples

Uniformity Clause challenges have succeeded in hundreds of cases around the country. Here are three examples. First, Arizona used to apply different valuation methods to the property of in-state telecommunications companies on the one hand and out-of-state telecommunications companies on the other hand. This practice was invalidated under Arizona's Uniformity Clause. *Citizens Telecomm. Co. v. Arizona Dep't of Revenue*, 75 P.3d 123 (Ariz. Ct. App. 2003).

Second, in New Hampshire, residential homeowners were granted a property tax exemption but only if the remaining value of their properties exceeded a stated dollar amount after taking the exemption into account. This arrangement was invalidated under the state's Uniformity Clause because it disproportionately benefited wealthy homeowners. *Felder v. City of Portsmouth*, 324 A.2d 708 (N.H. 1974).

Third, a Nebraska statute exempted certain agricultural properties from taxation despite the fact that no such exemption appeared in the state's constitution. Since the exemption prevented the imposition of taxes "uniformly and proportionately upon all tangible property," it was invalidated as contrary to the constitution's Uniformity Clause. *MAPCO Ammonia Pipeline, Inc. v. State Bd. of Equalization & Assessment*, 471 N.W.2d 734, 747 (Neb. 1991) (quoting Neb. Const. art. VIII, § 1).

Key Questions

The reach and rigor of state Uniformity Clause provisions vary greatly from state to state. The attorney representing a taxpayer cannot uncritically rely on precedents from different jurisdictions. The attorney must carefully analyze how a particular Uniformity Clause is worded and how it has been interpreted by that state's courts.

Here are five questions to probe in determining the extent to which a given state's Uniformity Clause may be helpful to the taxpayer: (1) To which types of taxes does the Uniformity Clause apply? (2) Has the Uniformity Clause been interpreted as essentially congruent to federal and/or state Equal Protection Clauses, or has it been interpreted as being broader than them? (3) Does the Uniformity Clause permit classification of property, and, if so, to what extent? (4) Does the tradition of interpretation of the Uniformity Clause in the state emphasize form or substance? and (5) What degree of deviation from absolute equality have the state courts permitted? These questions are amplified below.

Type of Tax Covered

All Uniformity Clauses cover real property taxes while many reach personal property taxes and some apply also to other types of taxes or to all taxes levied in the state. *See, e.g.*, Me. Const. art IX, § 8; W. Va. Const. art. X, § 1; Kan. Const. art. 11, § 1; Nev. Const. art. 10, § 1.

The ambit of the Uniformity Clause at issue may lead to issues of categorization. For example, a frequently litigated issue is whether the given exaction is a fee (not covered by uniformity requirements) or a covered tax. *Compare City of Fairmont v. Pitrolo Pontiac-Cadillac Co.*, 308 S.E.2d 527 (W. Va. 1983) (holding that a so-called fire service fee was really an ad valorem property tax subject to the Uniformity Clause), *cert denied*, 466 U.S. 958 (1984), *with Wetzel County Solid Waste Auth. v. West Va. Div. of Natural Res.*, 462 S.E.2d 349 (W. Va. 1995) (holding that a solid waste assessment was a regulatory fee, not a tax). Similarly, there are fairly extensive lines of cases as to the categorizations of property tax versus excise tax, *e.g., City of Huntington Beach v. Superior Court*, 144 Cal. Rptr. 236 (Cal. Ct. App. 1978), and property tax versus income tax, *e.g., Featherstone v. Norman*, 153 S.E. 58 (Ga. 1930).

Same as or Broader than Equal Protection Clauses

The Equal Protection Clause of the Fourteenth Amendment to the federal Constitution applies to state and local taxes, and similar state constitutional Equal Protection Clauses are common. Except when suspect classifications, infringement on fundamental interests, or gender classifications trigger strict or intermediate scrutiny, equal protection challenges to state or local taxes are analyzed under the highly deferential "rational basis" standard of review. *See, e.g., Nordlinger v. Hahn*, 505 U.S. 1 (1992).

In some states, Uniformity Clause protections are essentially congruent

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with Equal Protection Clause safeguards. *E.g., Matter of McCannel*, 301 N.W.2d 910, 916 n.4 (Minn. 1980). In these states, a Uniformity Clause challenge would be largely duplicative of an Equal Protection Clause challenge.

However, in other states, the Uniformity Clause is construed as imposing "more stringent limitations than the equal protection clause on the legislature's authority to classify the subjects and objects of taxation ...." *Sun Life Assurance Co. of Can. v. Manna*, 858 N.E.2d 503, 512 (Ill. App. Ct. 2006). In these states, the Uniformity Clause can be the difference between winning and losing. *E.g., State ex rel. LaFollette v. Torphy*, 270 N.W.2d 187, 192-93 (Wis. 1978) (rejecting an equal protection challenge, but upholding a uniformity challenge to a state tax credit).

Degree of Permitted Classification

Some state constitutions declare, with few or no exceptions, that "taxation shall be equal and uniform throughout the State." WASH. CONST. art. VII, § 1. In many other states, however, classification is permitted to a greater or lesser degree. Sometimes, permitted classifications are set out in the constitution itself; other times the legislature is given classification authority. Legislative classifications typically are accorded considerable deference and are upheld as long as some rational basis for them can be discerned or even imagined. *See, e.g., Miller Brewing Co. v. State*, 284 N.W.2d 353, 356 (Minn. 1979) (setting out elements of constitutionally permissible classifications).

For example, a Minnesota statute separated residential rental properties of three or fewer units into one class for property tax purposes and residential rental properties of four or more units into a different class. The two classes were taxed at different rates. The Minnesota Supreme Court rejected a uniformity challenge to this scheme. It found a rational basis for the classification because of the "differences in size, management, ownership, markets, and appraisal approaches" between the classes. *Hegenes v. State*, 328 N.W.2d 719, 721 (Minn. 1983).

The federal Railroad Revitalization and Regulatory Reform Act of 1976 ("the Act"), Pub. L. No. 94-210, 90 Stat. 31 (codified as amended at 49 U.S.C. § 11501), limits state and local taxation of railroads and airlines. One line of classification cases involves state responses to the Act. Some states have honored the federal requirements as to railroads and airlines but have taxed other types of transportation and related property less favorably. Nebraska's Uniformity Clause does not permit such classification, so the Nebraska courts invalidated the differential. *Northern Natural Gas Co. v. State Bd. of Equalization & Assessment*, 443 N.W.2d 249 (Neb. 1989), *cert denied*, 493 U.S. 1078 (1990), *overruled on other grounds, MAPCO Ammonia Pipeline, Inc. v. State Bd. of Equalization*, 471 N.W.2d 734 (Neb. 1991). In states permitting classification, however, such disparate treatment has been sustained, with the force of the Act providing the rational basis for the disparity. *E.g., Williams Natural Gas Co. v. State Bd. of Equalization*, 891 P.2d 1219 (Okla. 1994) (citing cases from Alabama, Kansas, and Tennessee), *cert. denied sub nom. ANR Pipeline Co. v. Oklahoma Bd. of Equalization*, 516 U.S. 816 (1995).

Substance Versus Form

The familiar rule that substance controls over form usually applies in uniformity litigation. However, interpretational differences exist among the states in this regard. One area in which such differences have emerged involves credits. For example, in South Carolina, proceeds of a local option sales tax funded a property tax credit in some areas of the state. The Uniformity Clause was held not to apply because the feature was viewed as the distribution of state revenue through spending rather than the raising of state revenue through taxation. *Westvaco Corp. v. South Carolina Dep't of Revenue*, 467 S.E.2d 739, 741 (S.C. 1995).

In contrast, a Wisconsin statute provided tax credits to certain property owners. The credits were paid from general state revenues. The state defended the arrangement on the same ground that succeeded in the South Carolina case above. The Wisconsin Supreme Court, however, rejected the argument and invalidated the provision. The court observed: "It is the effect of the statute, not the form, which determines whether it is a tax statute subject to the uniformity clause. . . . The fact that a rebate credit is paid to certain property owners and not to others leads to the indisputable conclusion that taxpayers owning equally valuable property will ultimately be paying disproportionate amounts of real estate taxes. This is not uniformity." *Torphy*, 270 N.W.2d at 192-93.

Permitted Degree of Deviation

"[P]erfect uniformity is not possible since property values fluctuate continuously, and far more frequently than taxing authorities could conceivably perform county-wide reassessments." *Hromisin v. Board of Assessment Appeals*, 719 A.2d 815, 818 (Pa. Commw. Ct. 1998), *appeal denied*, 737 A.2d 1227 (Pa. 1999).

Courts in the various states differ in the degree to which they view disparities as inevitable and, therefore, constitutionally acceptable. In general, temporary discrepancies in treatment are permitted when the state or locality has a program of revaluation which is carried out "in an orderly manner and pursuant to a regular plan, and . . . not done in an arbitrary, capricious or intentionally discriminatory manner ...." *Sator v. State Dep't of Revenue*, 572 P.2d 1094, 1097 (Wash. 1977). *See also Recanzone v. Nevada Tax Comm'n*, 550 P.2d 401 (Nev. 1976). ■