READING THE CONSTITUTION

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The Uniformity Clause

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The Uniformity Clause

Wisconsin Constitution, Article VIII, Section 1

The rule of taxation shall be uniform…

Article VIII, section 1, of the Wisconsin Constitution requires, in part, the uniform taxation of property. The section is commonly called the "uniformity clause" and was adopted as part of the original state constitution crafted by the 1848 constitutional convention, but arose from language debated during the first attempt at creating a constitution in 1846.[1] The language ultimately adopted read as follows: "The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe."[2]

Origins and Intent

The Wisconsin courts have determined that the uniformity clause was intended to prevent the legislature and local officials from granting preferential tax treatment to influential property owners and "to protect the citizen against unequal, and consequently unjust taxation."[3] Wisconsin is not the first state to include a uniformity clause in its constitution. When the 1848 convention convened, ten state constitutions had uniformity provisions.[4]

The exact origin of these uniformity requirements is unknown, but seem to be based on general notions of equality and universality, coupled with a fundamental distrust of legislative power.[5] They are unique to federalism and the American system of state and local government. Although English and European systems of taxation in the early 19th century contained no true precedent for uniformity requirements, the concept is consistent with the 19th century notion, expounded by Adam Smith, that "the subjects of every state ought to contribute towards the support of government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state."[6]

In late 18th and early 19th century America, the economy was changing from one based on agriculture to one based more and more on commerce and industry. This economic expansion necessitated an increase in state government spending for infrastructure, which, in turn, necessitated an expansion of the tax base so that governments could levy taxes on *all* property as opposed to only select types of property. These necessities, however, had to be balanced with increasing pressure to grant preferential tax treatment to business entities in order to spur economic development. As one author has noted, the "inequalities which naturally resulted from these…events seem to

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1. See, Milo M. Quaife, ed. *The Convention of 1846* (Madison WI: State Historical Society of Wisconsin, 1919), 90 and *The Attainment of Statehood* (Madison WI: State Historical Society of Wisconsin, 1928), 222, 402-404, 413, and 727.

2. Today, the uniformity clause, which is no longer just a clause after having been amended five times since 1848, reads:

   The rule of taxation shall be uniform but the legislature may empower cities, villages or towns to collect and return taxes on real estate located therein by optional methods. Taxes shall be levied upon such property with such classifications as to forests and minerals including or separate or severed from the land, as the legislature shall prescribe. Taxation of agricultural land and undeveloped land, both as defined by law, need not be uniform with the taxation of each other nor with the taxation of other real property. Taxation of merchants' stock-in-trade, manufacturers' materials and finished products, and livestock need not be uniform with the taxation of real property and other personal property, but the taxation of all such merchants' stock-in-trade, manufacturers' materials and finished products and livestock shall be uniform, except that the legislature may provide that the value thereof shall be determined on an average basis. Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided.

3. Weeks v. City of Milwaukee, 10 Wis. 242, 257 (1860).

4. Wisconsin Central Railroad Co. v. Taylor County, 52 Wis. 37, 62, 8 N.W. 833, 839 (1881).

5. William L. Matthews, Jr., "The Function of Constitutional Provisions Requiring Uniformity in Taxation," Kentucky Law Journal, 38 (1949-50): 31, 35-38, 42, and 44.

6. Adam Smith, Wealth of Nations (1828), 368.

have led to the first expressions in the constitutions that taxes should be uniform."[7]

Tennessee adopted what is considered the first true uniformity provision in its 1796 constitution: "All lands liable to taxation shall be taxed equal and uniform in such manner that no one hundred acres shall be taxed higher than another except town lots which shall not be taxed higher than 200 acres of land each."[8] Several other states adopted uniformity provisions from 1800 to 1840 and many more adopted such provisions from 1840 to 1860. The Illinois constitution of 1818 provided that "the mode of levying a tax shall be by valuation so that every person shall pay a tax in proportion to the value of the property he or she has in his or her possession."[9] Missouri's constitution in 1820 simply provided that "all property subject to taxation be taxed in proportion to its value."[10] In 1857, Minnesota's first constitution required that "all taxes to be raised in this state shall be as nearly equal as may be and all property on which taxes are to be levied shall have a cash valuation and be equalized and uniform throughout the state."[11]

Today all but two state constitutions have uniformity provisions, although the interpretation, scope, and wording of such provisions vary considerably among the states. For example, prior to 1906, Minnesota courts interpreted their state's uniformity clause to impose a strict limitation on *all* taxes.[12] In 1906, however, Minnesota adopted the "Wide Open Tax Amendment" which provided, in part, that taxes shall be uniform upon the "same class of subjects."[13] Although the clause still applies to all taxes, the Minnesota legislature now has considerably more flexibility to create reasonable classifications for tax purposes and to impose rates within a class that are not uniform with rates imposed on other classes.

Michigan's constitution actually has two provisions concerning the uniformity of taxation. The first provision allows the legislature to "provide by law a uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law."[14] Michigan's second uniformity provision, which builds upon the first, provides that the "legislature may by law impose specific taxes upon the classes upon which they operate."[15] In Michigan, the first provision applies to property taxes based on property value.[16] The second provision applies to taxes imposed on something other than property and on property taxes that have something besides property value as the base.[17] The second provision also gives the legislature flexibility to create distinct classes for taxation and to impose taxes uniformly within each class. The rules for uniformity in Michigan, therefore, are determined by both the object of taxation and the base for computing the tax.

Early Cases

Although it is now clear that Wisconsin's uniformity clause applies only to the imposition of property taxes, the jurisprudence supporting that conclusion took years to develop. The early case law is a confusing mix of reported and unreported cases taking varying positions on what taxes are or are not subject to the uniformity clause.

As it turns out, the Wisconsin Supreme Court's first reported case on the issue in 1859, not the first one decided, would become the seminal case. In *Knowlton v. Supervisors of Rock County*,[18] the City of Janesville imposed a tax on agricultural property within the city limits at a rate that was one-half of the rate of the tax it imposed on other property in the city. The court rejected the contention that the uniformity clause allows such "partial exemptions." The court also rejected the argument that the legislature may classify property to be taxed at different rates as long as uniformity exists

7. Matthews, *Uniformity in Taxation*, 41.

8. Wade J. Newhouse, Jr., *Constitutional Uniformity and Equality in State Taxation* (Ann Arbor: University of Michigan Law School, 1959), 612, http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1013&context=michigan_legal_studies.

9. Matthews, *Uniformity in Taxation*, 41.

10. Id., 42.

11. Id., 43.

12. Newhouse, *Constitutional Uniformity*, 391-416.

13. Newhouse, *Constitutional Uniformity*, 391-416.

14. Id., 197.

15. Id., 198.

16. Id., 198–211.

17. Id.

18. 9 Wis. 378 (1859).

within the class. The court held that the uniformity clause allows the legislature to select some property for taxation and to completely exempt other property. In addition, the court held that property selected for taxation must be taxed in its entirety and at the same rate as all other property in the same taxation district. In other words: "There cannot be any medium ground between absolute exemption and uniform taxation."[19]

Knowlton would have settled the question as to the scope and applicability of the uniformity clause had it not been for the dissent insisting that a previously decided but unreported Wisconsin Supreme Court case should be followed. The question presented in that case, *Milwaukee & Mississippi Railroad v. Waukesha*,[20] was whether a gross receipts tax imposed on a railroad, under which the railroad would receive a property tax exemption, violated the uniformity clause. The gross receipts tax was calculated using a percentage of the railroad's earnings and not based at all on the value of its property. The court held in *Mississippi Railroad* that uniformity within a specifically designated class was sufficient to comply with the uniformity clause. That unreported case, and the court's subsequent inconsistent reliance on it, added two confusing elements into the early uniformity clause jurisprudence. First, the uniformity clause could apply to taxes other than property taxes.[21] Second, there could be more than one class of property for uniformity clause purposes.[22] Neither element was consistent with *Knowlton*.

Knowlton and *Mississippi Railroad* represent the competing policy concerns before the legislature and the courts in the mid to late 1800s: tax equality on one hand and economic development on the other. The courts struggled with these competing values until 1906, when the Wisconsin Supreme Court decided two more railroad cases.

State v. Chicago & North Western Railway,[23] much like *Mississippi Railroad*, involved a gross earnings tax on a railroad's income. The court, this time, made the distinction between those taxes which are subject to uniformity requirements and those that are not. The court held that imposing a gross earnings tax on a railroad for the privilege of operating in this state is a method that "involves the contractual element, while taxation in the ordinary sense: taxation on property, which is regulated by sec. 1, art. VIII, of the constitution, does not involve such element at all."[24]

When the court heard the separate case of *Chicago & North Western Railway v. State*[25] later that same year, the legislature had changed the tax on railroads to an ad valorem tax, a tax based on the value of the railroad's property. That change gave the court an opportunity to return to the holding in *Knowlton* and decide that for the purpose of taxing property "the constitution puts all property chosen therefore into one class, leaving all other property outside thereof, and contemplates one rule, and so far as practicable, one rate of taxation."[26] The challenge in *Chicago & North Western Railway v. State* involved variances in how railroad property was taxed as compared to other property, including variations in the rate. The court invalidated the tax.

A Standard Emerges

The Wisconsin Supreme Court's reliance on *Knowlton* solidified with its holdings in the railroad cases of 1906. In 1952, the court held that the City of Evansville could not assess a manufacturer's personal property at a higher percentage of full value than its real property, finding that the city could not satisfy the uniformity clause by creating two classes of property and applying uniform treatment within each class.[27] The court determined in 1965 that the City of Racine could not re-

19. Id., 392.

20. A description of this case was attached to the Knowlton decision as an appendix.

21. See, for example, State ex rel. Attorney General v. Winnebago Lake & Fox River Plankroad Co., 11 Wis. 34 (1860), where the court determined that the uniformity clause applied to a gross receipts tax and invalidated the tax because it created classes of property and applied different rates to each class.

22. See, for example, Wisconsin Central Railroad v. Taylor County, 52 Wis. 37, 8 N.W. 833 (1881), where the court approved a ten-year property tax exemption for a railroad based on the rationale that uniformity within a class was sufficient, even though the class consisted solely of one railroad and the court could have upheld the tax benefit as a reasonable exemption allowed under Wis. Const. art. VIII, s. 1.

23. 128 Wis. 449, 108 N.W. 594 (1906).

24. Id., 484-85, 108 N.W. 602.

25. 128 Wis. 553, 108 N.W. 557 (1906).

26. Id., 604, 108 N.W. 567.

27. State ex rel. Baker Manufacturing Co. v. City of Evansville, 261 Wis. 599, 53 N.W.2d 795 (1952).

duce a property owner's property taxes over a ten-year period in exchange for an easement because such an agreement would result in granting a partial property tax exemption in violation of the uniformity clause.[28]

In 1967, over 100 years after *Knowlton*, the court finally established a clear standard for complying with the uniformity clause. *Gottlieb v. Milwaukee*[29] involved a challenge to the Urban Redevelopment Law. The law allowed a municipality to freeze the property tax assessments of property owned by a redevelopment corporation for a 30-year period. The court held that such a freeze on property taxes resulted in a partial exemption, as opposed to an absolute exemption, and, therefore, consistent with *Knowlton*, violated the uniformity clause:

> While it may be conceded, as contended by respondent, that, if the law accomplishes its purpose, new building may be stimulated and the tax base broadened to the extent that at some time in the future other taxpayers not covered by the freeze might be benefited, nevertheless, the fact remains undisputed and undisputable that, if redevelopment corporations are assessed at a figure less than that which would be assigned to other taxpayers holding equally valuable property, other taxpayers will be paying a disproportionately higher share of local property taxes. This is not uniformity.[30]

In Gottlieb, the court set forth the following standards for tax uniformity required by article VIII, section 1:

1. For direct taxation of property under the uniformity rule, there can be but one constitutional class.
2. All within that class must be taxed on a basis of equality so far as practicable and all property taxed must bear its burden equally on an ad valorem basis.
3. All property not included in that class must be absolutely exempt from property taxation.
4. Privilege taxes are not direct taxes on property and are not subject to the uniformity rule.
5. While there can be no classification of property for different rules or rates of property taxation, the legislature can classify as between property that is to be taxed and that which is to be wholly exempt, and the test of such classification is reasonableness.
6. There can be variations in the mechanics of property assessment or tax imposition so long as the resulting taxation is borne with as nearly as practicable equality on an ad valorem basis with other taxable property.[31]

Applicability to Tax Credits

The court has also determined that granting certain tax credits to property owners violates article VIII, section 1. In *State ex rel. La Follette v. Torphy*,[32] the court had to determine if the newly enacted Improvements Tax Relief Law was a tax statute subject to the uniformity clause. The law provided tax credits to certain property owners to compensate the owners for increased assessments resulting from improvements to residential property. The legislature made the following findings with regard to the law:

1. That residential property owners are often discouraged from making improvements to their property by the increases in property taxes which would result.
2. That this problem is particularly acute in relationship to older structures which do not exceed $50,000 in valuation, in the case of homes, or $75,000 in valuation, in the case of rental units.[33]

Under the law, eligible property owners were required to pay their property taxes in full before receiving the credit from the state. Although the court found the legislature's findings to be reasonable, and although property owners first had to pay their taxes before claiming the credit, the court found that the law was essentially a tax statute granting a partial exemption

28. Ehrlich. v. City of Racine, 26 Wis. 2d 352, 132 N.W.2d 489 (1965).
29. 33 Wis. 2d 408, 147 N.W.2d 633 (1967).
30. Id., 429.
31. Id., 424.
32. 85 Wis. 2d 94, 270 N.W.2d 187 (1978).
33. Id., 101.

to a very specific class of property owners. The court looked to the function of the law rather than its form to determine that it violated 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.[34]

In 1996, the Dane County Circuit Court found, consistent with the holding in *Torphy*, that property tax credits funded by lottery proceeds violated the uniformity clause because the state distributed the credits only to owners of primary residences in Wisconsin, thereby granting partial property tax exemptions to such owners.[35] Subsequently, article IV, section 24 of the Wisconsin Constitution dealing with the lottery and gambling was amended to exempt lottery proceeds from the requirements of the uniformity clause so that lottery proceeds could be distributed as property tax credits only to an individual who has his or her primary residence in this state.

Attorney General Opinions

In addition to the case law, the Wisconsin attorney general, responding to inquiries from the legislature, has opined several times that proposed legislation would violate the uniformity clause. The proposed legislation included requiring an assessor to reduce the value of lots in a recorded subdivision by the cost of marketing the lots,[36] to exempt the portion of property taxes levied for school purposes from the assessed value of homesteads from the property tax,[37] to assess as unimproved land all land that was the site of a new building,[38] to provide a partial exemption for land conveyed to the National Audubon Society,[39] to exclude temporarily the value of improvements to land from assessments in a conservation area,[40] and to assess improvements to real property as of the date of completion as opposed to assessing all property according to its value on January 1.[41]

Statutory Exemptions

Although the uniformity clause prevents the legislature from creating partial property tax exemptions, the uniformity clause does allow the legislature to completely exempt certain types of property from taxation. State statutes currently provide a number of exemptions to the property tax,[42] including exemptions for:

1. Property owned by a benevolent association and used for low-income housing or as a retirement home for the aged.[43]
2. Property owned and used exclusively by any state or county agricultural society.[44]
3. Land owned by military organizations and used for armories, public parks, or monument grounds.[45]
4. Property owned by certain charitable organizations, including the Salvation Army, Goodwill Industries, the YMCA, the YWCA, and the Jewish Community Centers of North America.[46]
5. Treatment plant and pollution abatement equipment.[47]
6. Camps for persons with disabilities.[48]
7. Manufacturing machinery and specific processing equipment.[49]
8. Property of a nonprofit youth hockey association.[50]
9. Trail groomers owned by a snowmobile club, an

34. Id., 108.

35. Out-of-State Landowners Association, Inc. v. Wisconsin Dept. of Revenue, Decision and Order on Summary Judgment, 96-CV-166.

36. OAG 28-88, 1988 Wisc.AG LEXIS 28.

37. OAG 106-77, 1977 Wisc.AG LEXIS 3; Op. Atty. Gen. Wis. 337.

38. OAG 29-79, 1979 Wisc.AG LEXIS 80; Op. Atty. Gen. Wis. 76.

39. 61 Op. Atty. Gen. Wis. 173.

40. OAG 101-77, 1977 Wisc.AG LEXIS 8; 66 Op. Atty. Gen. Wis. 326.

41. OAG 15-93, 1993 Wis.AG LEXIS 12; 81 Op. Atty. Gen. Wis. 94.

42. See, generally, Wis. Stat. ss. 70.11 and 70.111 (2015).

43. Wis. Stat. s. 70.11 (4a) and (4d) (2015).

44. Wis. Stat. s. 70.11 (5) (2015).

45. Wis. Stat. s. 70.11 (7) (2015).

46. Wis. Stat. s. 70.11 (12) (2015).

47. Wis. Stat. s. 70.11 (21) (2015).

48. Wis. Stat. s. 70.11 (22) (2015).

49. Wis. Stat. s. 70.11 (27) (2015).

50. Wis. Stat. s. 70.11 (32) (2015).

all-terrain vehicle club, or a utility terrain vehicle club.[51]

10. Jewelry, household furnishings, and apparel.[52]
11. Farm machinery and equipment.[53]
12. Biogas or synthetic gas energy systems, solar energy systems, and wind energy systems.[54]

Summary and Conclusion

A law requiring that a government levy taxes on property in a uniform manner is a unique feature of state constitutions. At the beginning of the 19th century, just two decades removed from their struggle for independence from a government willing to tax its subjects without representation, state citizens were not convinced that their own newly formed governments would resist the urge to provide tax benefits to some property owners at the expense of others. With property taxes, the government body determines how much money it needs and then levies that amount upon the property within its jurisdiction. If some taxpayers are allowed to pay less, others will pay more. Either way, the government gets its levy.

Economic expansion of commerce and industry also had its beginnings in the early 1800s. Consequently, legislatures had to find the balance between bestowing tax benefits on some taxpayers in the name of economic development and ensuring tax equality for all. Legislatures also needed to raise revenue to sustain economic expansion, but keep the average taxpayer from feeling put-upon. The uniformity clauses contained in some state constitutions give the legislature some flexibility to determine that balance. Some state constitutions allow the legislature to create many different classes of property or taxpayers and then tax all those in the same class uniformly. Wisconsin courts have determined that we do not have one of those constitutions.

As a result, Wisconsin's uniformity clause presents a substantial obstacle to crafting creative tax policy. The Wisconsin legislature may create reasonable classifications for property owners in order to promote economic development, provide tax relief, or support some other laudable goal, but those classifications may violate the uniformity clause. When it comes to legal battles involving economic development on one side and tax uniformity on the other, the Wisconsin courts have, at least since 1906, consistently ruled in favor of tax uniformity. That consistency explains, in part, why the legislature has adopted so many property tax exemptions (over 75 as of July 2016): it has few other viable options for lowering the taxes imposed on certain types of property. Under the current jurisprudence, the legislature cannot authorize the taxation of personal property at a different rate than that of real property or allow each municipality to decide for itself what property to tax or not tax within the municipality. The legislature cannot exclude a portion of a property's value from the assessment of that property or allow assessors to use different assessment dates for different kinds of property in order to determine a property's value. Since the last amendment to the uniformity clause in 1974 to allow for the nonuniform taxation of agricultural land and undeveloped land, legislators have proposed amending article VIII, section 1 to give the legislature more flexibility in the formation of its tax policy.[55] Those proposals, however, have not yet been successfully advocated. Perhaps, someday, the Wisconsin Supreme Court will repudiate *Knowlton* and return to the reasoning of *Mississippi Railroad*, allowing the legislature to create separate classes of property and tax all property within each class uniformly. A person's wealth is no longer measured solely by the value of his or her property and individuals and corporations are now subject to a variety of taxes and fees that are not related to property wealth. Perhaps a more pliable interpretation of the uniformity clause would not only comport with contemporary methods of taxation, but also result in greater equality, not less. Perhaps. But

51. Wis. Stat. s. 70.11 (45m) (2015).
52. Wis. Stat. s. 70.111 (1) (2015).
53. Wis. Stat. s. 70.111 (10) (2015).
54. Wis. Stat. s. 70.111 (18) (2015).

55. See, for example, 1999 Assembly Joint Resolution 112 (limiting the annual percentage increase in property taxes assessed on real property); 2007 Assembly Joint Resolution 39 (allowing different property tax rates for parts of cities, villages, towns, counties, and school districts added by attachments to school districts, consolidations, and boundary changes under cooperative agreements); and 2009 Assembly Joint Resolution 8 (allowing the legislature to tax the principal homestead of individuals differently than other property).

until the constitution is again amended or the court abandons its reliance on *Knowlton*, the legislature will most likely have to work *around* the uniformity clause rather than using it as a tool for shaping a flexible, creative property tax policy. ■