

PROPERTY TAX CLASSIFICATION AND EXEMPTION AUTHORITY UNDER THE CONSTITUTION OF NORTH DAKOTA

This memorandum was requested to address questions of legislative authority to classify and exempt property under constitutional provisions. The issue is governed by a single section of the Constitution of North Dakota, designated as Article X, Section 5, which provides as follows:

Section 5. Taxes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying the tax. The legislative assembly may by law exempt any or all classes of personal property from taxation and within the meaning of this section, fixtures, buildings and improvements of every character, whatsoever, upon land shall be deemed personal property. The property of the United States, to the extent immunity from taxation has not been waived by an act of Congress, property of the state, county, and municipal corporations, to the extent immunity from taxation has not been waived by an act of the legislative assembly, and property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation. Real property used for conservation or wildlife purposes is not exempt from taxation unless an exemption is provided by the legislative assembly. Except as restricted by this article, the legislative assembly may provide for raising revenue and fixing the situs of all property for the purpose of taxation. Provided that all taxes and exemptions in force when this amendment is adopted shall remain in force until otherwise provided by statute.

This section as enacted in the 1889 Constitution of North Dakota was Article XI, Section 176, and the initial clause stated:

Laws shall be passed taxing by uniform rule all property according to its true value in money, . . .

In 1914 the voters of the state approved an amendment that changed the first clause of the section to read as follows:

Taxes shall be uniform upon the same class of property, including franchises within the territorial limits of the authority levying the tax, . . .

The objective of the 1914 amendment was to replace the requirement that all property be uniformly taxed with a grant of authority to the Legislative Assembly to recognize different classifications of property and apply uniform taxation within each classification created.

Despite the 1914 constitutional authority, the Legislative Assembly did not provide for statutory classification of property, which created a problem that was addressed by the North Dakota Supreme Court in the 1979 decision *Soo Line Railroad Co. v. State*, 286 N.W.2d 459. The Soo Line Railroad challenged the assessments of its property in North Dakota for the years 1974, 1975, and 1976 on the grounds that the valuations were grossly excessive. The court concluded that the use of a higher percentage of assessed value for centrally assessed property than that which is used for locally assessed property is impermissible, absent legislation permitting such classification under Section 176 of the Constitution of North Dakota. The court stated "We will no longer countenance de facto classification of property in North Dakota for purposes of taxation." The holding of the court was that "[a]ll tax assessments, beginning with the 1980 computations, must be uniform in North Dakota until such time as the legislature provides for classification of different levels of property for purposes of taxation." This decision was the catalyst for the substantial restructuring and classification of the property tax system by the 1981 Legislative Assembly.

The North Dakota Supreme Court has on several occasions discussed legislative authority to classify property for taxation purposes. In the 1979 decision *In re the North Dakota Tax Appeals Board*, 279 N.W.2d 665, the court reviewed the history of its rulings on classification of property for tax purposes and said:

The Legislature is vested with broad power to classify property for ad valorem tax purposes under § 176 of the North Dakota Constitution, *Signal Oil and Gas Company v. Williams County*, 206 N.W.2d 75, 81 (N.D. 1973). The only material restriction placed upon this legislative power is one of reasonableness. In order to constitute a valid classification for taxation, the subjects within the class must be segregated based upon a legitimate distinction in tax treatment. "A basis for classification must be such as naturally inheres in the subject matter." *Souris River Telephone Mutual Aid Corp. v. State*, 162 N.W.2d 685, 689, (N.D. 1968). There must be some consideration given to differences in the type, character, or use of the property to justify disparate tax treatment. *Gamble-Robinson Fruit Co. v. Thoresen*, 53 N.D. 28, 204 N.W. 861, 864 (1925).

Ordinarily, a statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. *State v. Gamble Skogmo, Inc.*, 144 N.W.2d 749, 758 (N.D. 1966). To avoid a violation of the equal protection clause, the classification made by a challenged statute must bear some rational relationship to a conceivable legislative purpose, and the classification must apply uniformly to those similarly situated within the class. *Signal Oil and Gas Company v. Williams County*, supra, 206 N.W.2d at 81; *Ferch v. Housing Authority of Cass County*, 79 N.D. 764, 59 N.W.2d 849, 864 (1953). Although there is nothing in the Fourteenth Amendment which requires tax burdens to be just or equal in all respects, the aim of taxation should be to produce, as nearly as possible, equality in the burdens imposed. This does not require the adoption of an iron rule of equal taxation nor does it prevent legislative discretion in the selection of subjects for classification. *Signal Oil and Gas Company v. Williams County*, supra, 206 N.W.2d at 81, 82. Generally, every presumption is applied in favor of upholding laws which deal with regulation of the economy, the public health, or the collection and disbursement of taxes. *Romero v. Hodgson*, 319 F.Supp. 1201, 1202 (N.D.Cal. 1970), affirmed, 403 U.S. 901 (1971).

In the 1968 decision *Souris River Telephone Mutual Aid Corp. v. State*, 162 N.W.2d 685, the court said:

The 1914 amendment to § 176 of the North Dakota Constitution changed the State's method of taxation from one of uniform rule upon property according to its true value to one of legislative discretion to classify subjects, including property and persons, for tax purposes. This legislative authority is subject only to the limitation precluding arbitrary classification as prohibited by the Fourteenth Amendment to the United States Constitution. *State ex rel. Fargo v. Wetz*, 40 N.D. 299, 168 N.W. 835, 5 A.L.R. 731 (1918). It is apparent that under the rules enunciated in *State ex rel. Fargo v. Wetz*, supra, the Constitution of this State confers upon the Legislature the widest discretion in classifying property for purposes of taxation that might be conferred upon it.

In the 1972 decision *Signal Oil and Gas Co. v. Williams County*, 206 N.W.2d 75, the court said:

The question of classification of property for tax purposes is one that has caused much difficulty in many jurisdictions, and the courts have not always agreed as to what constitutes an unlawful classification. A careful study of the long line of decisions by the United States Supreme Court in which it has traced the effect of the Fourteenth Amendment on the power of the States to classify property for purposes of taxation, however, indicates that the Court has adopted a position of judicial restraint by investing tax legislation of the States with a presumption of constitutionality and requiring merely that the classification made by a challenged statute bear some rational relationship to a conceivable legislative purpose. *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed.2d 480 (1959) and cases cited.

From the court rulings on the topic, it appears the Legislative Assembly has the widest discretion in classifying property for tax purposes that might be conferred upon it. Simply stated, this means a classification must bear a rational relationship to a legitimate legislative purpose under the United States Constitution and property within a classification made by statute must be uniformly taxed under the Constitution of North Dakota.