

Office of Legislative Services
Background Report
THE UNIFORMITY CLAUSE AND REAL
PROPERTY ASSESSMENT

OLS Background Report No. 25

Prepared By:
Local Government

Date Prepared:
January 10, 2000

New Jersey State Legislature
Office of Legislative Services
State House Annex, P.O. Box 68
Trenton, NJ 08625-0068
<http://www.njleg.state.nj.us>

OLS Background Report On THE UNIFORMITY CLAUSE AND REAL PROPERTY ASSESSMENT

INTRODUCTION

The power to impose a tax on real property is inherent in the concept of state sovereignty and does not require constitutional authorization. In New Jersey the property tax power is regulated by Article VIII, Section 1, paragraph 1(a) of the State Constitution, commonly known as the Uniformity Clause. When revenue is raised through a tax on real property, the Uniformity Clause ensures that all taxable real property within a taxing district is assessed for taxation according to the same standard of value and then taxed at the general tax rate of the unit of government imposing the tax.

Preferential property tax treatment for certain classes of property or taxpayers is a useful State tool to encourage investment in targeted areas or to give tax relief to certain taxpayers. The Uniformity Clause functions as a limit on the use of that tool in order to assure equality of treatment of property taxpayers in the interests of fundamental fairness. Therefore, it has been held by the courts that an amendment to the State Constitution is required whenever the Legislature determines to give a property tax benefit based on the personal status, including factors such as age, wealth or military service, of the real property owner.

HISTORY OF THE UNIFORMITY CLAUSE

Political subdivisions in New Jersey have been assessing and collecting a real property tax since the declaration of statehood. A uniformity or tax clause did not appear in the constitution until an 1875 amendment to the Constitution of 1844. That amendment read: "Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value." The sufficiency of this language was debated at the constitutional convention of 1942 due to issues concerning the valuation of personal property and railroad property. Historically, the large cities had been assessing class II railroad property at true value and other non-railroad property at a fraction of true value, class II railroad property being any railroad property not used for main stem roadbed. To address this inequity of assessment, special railroad tax laws were enacted in 1941 and 1942 to tax all class II railroad property within the State at a specific and uniform Statewide rate. The mayors of certain larger cities felt that this special tax treatment for class II railroad property was unfair and resulted in a heavier tax burden for their municipal residents. It was in this context that some of the delegates to the 1947 Constitutional Convention proposed a new tax clause that removed the words, "true value" from the Uniformity Clause. It was noted at the Constitutional Convention of 1947 that if the proposed tax clause was to be adopted, then it would be necessary to revise the 1941 and 1942 railroad tax laws that taxed second-class railroad property at a special rate lower than the general local tax rates. However, following the ratification of the 1947 Constitution which removed the "true value" language, the Legislature never took the recommended action to accomplish that revision of the law, and the railroads maintained their special property tax treatment.

STRUCTURE OF THE UNIFORMITY CLAUSE

The language of the current Uniformity Clause reads:

1. (a) Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value, except as otherwise permitted herein, and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.

The first sentence of the Uniformity Clause, concerning assessment under general laws and by uniform rules, is applicable to both real and personal property. The second sentence, however, concerning the standard of value to be used for assessment purposes is only applicable to real property. Furthermore, this "same standard of value" requirement seems applicable only when the revenues raised are to be allotted and paid to "taxing districts." That would imply that assessment for a State property tax, the proceeds of which are not allotted back to the taxing districts, need not be according to the "same standard of value." Since a Statewide tax on real property has not been imposed following the Constitution of 1947, that assumption has never been tested.

Another oddity with the "same standard of value" requirement is the use of the phrase "taxing district," which is not defined in the Constitution. The first statutory definition of that term was in an 1884 law (P.L.1884, c.51) taxing canal and railroad property. It was used "to designate any municipality, city, township, borough, incorporated town or village having power to assess and levy taxes, through which any road or canal may run[.]" The only other statutory definition is found in N.J.S.A. 1:1-2, which is from the statutory revision of 1937. That paragraph reads:

Taxing district. The words "taxing district," when used in a law relating to the assessment or collection of taxes, assessments or water rates or water rents, include every political division of the State, less than a county, whose inhabitants, governing body or officers have the power to levy taxes, assessments or rates.

The 1884 definition did not include counties and the 1937 definition specifically excluded counties. The delegates to the 1947 Constitutional Convention were aware of these laws and the "taxing district" language was not part of the initially proposed tax clause text. It was not until the tenth proposed amendment to the tax clause provision that the phrase was incorporated into the text. A reading of the convention proceedings, along with other proposed amendments to the tax clause section, makes it clear that the delegates were very focused on the issue of the treatment of class II railroad and canal property. Specifically, the delegates debated the issue of municipal taxation of

THE UNIFORMITY CLAUSE AND REAL PROPERTY ASSESSMENT

January 20, 2000

Page 3

railroad property and how to make the municipalities whole for the loss of tax revenues from class II railroad property receiving preferential tax treatment. There is no indication in the proceedings that county property tax issues were ever discussed. In that context, the evolution of the term "taxing district," as used in the tax clause, seems to have been intended to apply only to political subdivisions less than a county, consistent with the 1937 statutory definition, since, under the then existing laws, only the municipalities were seeking to be reimbursed for loss of revenues due to the special taxation of railroad and canal property brought about by the 1941 and 1942 railroad taxation laws. The court has indicated a broader application of the "taxing district" phrase to include counties. In Switz v. Kingsley, 37 N.J. 566, 572 (1962), the court said:

The term 'the same standard of value' was designed to permit flexibility in the approach to the valuation of property. At the same time, to avoid discriminatory treatment, the Constitution of 1947 requires that whatever 'standard of value' is legislated, that 'same' standard shall be applied to all real property taxable for local government (i.e., municipal, county, or regional school districts).

One of the delegates to the convention, who opposed the wording of the tax clause as finally adopted, even went so far as to assert that, when boiled down, the tax clause amounted to nothing more than an attempt by the Constitutional Convention to amend the 1941 railroad tax law with respect to the taxation of class II railroad property. The delegates from Hudson County had submitted an earlier proposal regarding the reimbursement to municipalities of revenues from class II railroad and canal property. Their proposal would have specifically stated that class II railroad and canal property be taxed at the local rate of each municipality in which the property is located and the proceeds from the tax paid to that municipality. Although these delegates agreed to support the tax clause that was finally adopted, one of them stated that the adopted clause did not achieve the purposes of the Hudson County delegation. His view seems justified in light of the fact that the 1941 and 1942 railroad tax laws were never repealed. It should be noted that the same delegates approved paragraph 9(6) of Article IV, Section VII of the 1947 Constitution, which prohibits the Legislature from passing any private, special or local laws relating to taxation or exemption from taxation, and so it is unlikely that the Legislature could now constitutionally pass similar laws to benefit a particular industry.

The phrase, "except as otherwise permitted herein" refers to several provisions in the Constitution, now numbering nine, that grant preferential treatment to certain taxpayers or properties in violation of the concept of uniform treatment and equality in the distribution of the burdens of government among the owners of taxable real property. Those constitutional exceptions to uniformity are: the tax exemption granted to property owned by nonprofit entities and used for charitable or public purposes; tax relief paid to seniors and disabled residents from the Casino Revenue Fund; farmland assessment; the veterans' property tax deduction; the 100% disabled veterans' total property tax exemption; the senior and disabled property tax deduction; the homestead

THE UNIFORMITY CLAUSE AND REAL PROPERTY ASSESSMENT

January 20, 2000

Page 4

rebate program; the five-year exemptions or abatements for properties located in areas in need of rehabilitation; and the long-term exemptions for redevelopment of blighted areas.

CLASSIFICATION OF PROPERTY

Classification of real property for taxation purposes is the ability to assess different tax rates based on legislatively created classes of property that are related to the use of the property. The issue of whether property could be classified for the purposes of taxation was debated at the 1947 Constitutional Convention; however, only the seventh and twelfth proposed amendments to the tax clause specifically sought to incorporate the term "classification" in order to directly authorize the Legislature to classify property. Although these amendments were defeated, there was a discussion as to whether the remaining language in the tax clause would prohibit classification of property by the Legislature in the future.

That direct question concerning the Legislature's ability to classify was asked of one of the influential delegates who was very involved in the classification issue. That delegate expressed his belief that classification would be prohibited under the language of our current Uniformity Clause, but also acknowledged that other delegates disagreed with him on that point. There is no record in the proceedings of any debate in which the matter was either settled or a consensus reached among the delegates on the classification issue. The matter was resolved by the court in Switz v. Kingsley, 37 N.J. 566 (1962). That case concerned a section of a 1960 law granting preferential tax treatment to farmland. The court ruled the special treatment for farmland unconstitutional under the Uniformity Clause. That specific ruling, as applied to farmland, was subsequently made moot by a 1963 amendment to the Constitution specifically permitting special assessment for farmland. Since the ruling in Switz v. Kingsley, the Legislature has generally avoided the creation of statutory law which classifies property. Two notable exceptions were laws giving preferential tax treatment for improvements related to national security interests, such as fallout shelters, enacted during the cold war era, and certified solar energy systems, enacted in 1977, with a five-year duration, as a response to the oil embargo of the early 1970's. These statutes were never challenged in court as violations of the Uniformity Clause, and although the pre-1947 railroad tax laws are a classification of property for tax purposes, that issue is no longer relevant due to the ownership of virtually all railroad property by tax exempt entities.

STANDARDS FOR ASSESSMENT

The document "Summary and Address To The People of New Jersey" which was mailed to every voter, along with the sample ballot containing the 1947 revised constitution pointed out that the old "true value" standard for assessment was dropped because it had been criticized due to the "variability in its interpretation by the local assessor." The delegates at the 1947 Constitutional

THE UNIFORMITY CLAUSE AND REAL PROPERTY ASSESSMENT

January 20, 2000

Page 5

Convention were clear in their belief that assessors routinely assessed property at values well below "true value" or "full and fair value." Therefore, there was a great deal of support for the elimination of the "true value" language from the constitution so that the Legislature would be free in the future to establish any standard of value it desires to meet unforeseen conditions and needs.

The Uniformity Clause has been implemented through a variety of statutes which are as follows:

N.J.S.A. 54:4-1 Property subject to tax:

All property real and personal . . . not expressly exempted from taxation or expressly excluded from the operation of this chapter shall be subject to taxation annually . . . Such property shall be valued and assessed at the taxable value prescribed by law.

N.J.S.A. 54:4-2.25 Same standard of value -- true value:

All real property subject to assessment and taxation for local use shall be assessed according to the same standard of value, which shall be the true value of such real property and the assessment shall be expressed in terms of the taxable value of such property, which taxable value shall be that percentage of true value as shall be established by each county board of taxation as the level of taxable value to be applied uniformly throughout the county.

N.J.S.A. 54:4-23 Date of assessment: duty of assessor:

All real property shall be assessed to the person owning the same on October 1 in each year. The assessor shall ascertain the names of the owners of all real property . . . determine the full and fair value of each parcel of real property . . . at such price as, in his judgment, it would sell for at a fair and bona fide sale by private contract on October 1 . . .

N.J.S.A. 54:4-1 states the requirement that property be assessed and taxed annually at its "taxable value." N.J.S.A. 54:4-2.25 states that the "true value" standard is to be used in the assessment of taxable property. N.J.S.A. 54:4-23 specifically directs the assessor annually to determine the "full and fair value" of real property by making an informed estimate of the price at which a particular parcel would sell for at a "fair and bona fide sale." That phrase, "full and bona fide sale," is commonly understood as "market value."

Historically, assessors in 1947 had no recorded real estate sales data readily available in a usable form with which to track the prices paid for property. It was not until 1955 that local assessors started to explicitly perform equalization studies for the purpose of facilitating a new State

THE UNIFORMITY CLAUSE AND REAL PROPERTY ASSESSMENT

January 20, 2000

Page 6

school equalization program. Under that program the State established procedures to have deed abstracts forwarded to local assessors so that they could, in conjunction with the State, create annual reports of usable real estate transactions. Local assessors were then able to monitor deed transactions consisting of usable sales that they could use to track market prices for assessment purposes as well as to assist the State in preparing its annual table of equalized valuation for the apportionment of State school aid. After these school equalization studies became annual events, local assessors then had the raw material from which to better track real estate prices and with which to establish market values for assessment purposes. The advent of the computerization of the assessment process has also gone a long way to address the problem of gross variability in assessments that so concerned the delegates to the 1947 Constitutional Convention.

The equalization statutes for State school aid, enacted in 1954, specifically mandate the use of the "market value" standard. N.J.S.A. 54:1-35.3, a technical statute concerning the determination of the ratio of aggregate assessed to aggregate true valuation of real estate within a taxing district, states in part: "True value for the purposes of this act [P.L.1954, c.86, the equalization act] shall be deemed to be valuation at current market prices or values, determined in such manner as the director may, in his discretion, select." The Legislature has set forth "market value" as the standard for uniformity because "market value" is independently verifiable, through market analysis, while other standards are not. Given that the courts have consistently indicated that the dominant principle of New Jersey's uniformity standard in the State's Constitution is equality of treatment and burden, the use of the market value standard seems best suited to assure the realization of that goal.

DUAL TAX RATES

The concept of a general uniform tax rate within a taxing district was recently challenged by a concurrent resolution, based on the work of nineteenth-century economist Henry George, that proposed an amendment to the Constitution that would have created an exception to the general tax rate requirement by permitting certain municipalities to utilize a dual tax rate, one rate for land and a lower rate for buildings and improvements. The intent of this unsuccessful legislation was to permit the older cities to encourage redevelopment through the use of their property tax power to make it financially disadvantageous to hold vacant land without developing it.

CONCLUSION

The Uniformity Clause was born of the controversy surrounding the special tax treatment afforded to class II railroad and canal property. Although that issue is no longer relevant to the tax policy of the State, the Uniformity Clause remains as a limit on a taxing district's power to tax in order to assure equality of treatment and burden among property taxpayers within a taxing district. The Legislature has generally respected this notion of uniformity in granting preferential property tax

THE UNIFORMITY CLAUSE AND REAL PROPERTY ASSESSMENT

January 20, 2000

Page 7

treatment for certain taxpayers, such as veterans, the elderly and disabled, by adopting specific amendments to the Constitution. The "true value" standard, which was removed from the tax clause as a constitutional requirement in 1947, remains as the statutory standard of value in use today, although the Legislature has improved upon pre-1947 law by defining "true value" to be the independently verifiable "market value" of a property.

Prepared by:

Robert H. Levin

Office of Legislative Services