

Constitutional Highlights

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Wisconsin Constitution Article VIII, Section 1 THE UNIFORMITY CLAUSE

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... as the legislature shall prescribe [with certain exceptions].

History and purposes of this section

This section of the Wisconsin Constitution, which requires the uniform taxation of property, was adopted as part of the original state constitution. It is called “the uniformity clause” in reference to the words with which it begins: “The rule of taxation shall be uniform.” The uniformity clause has been amended five times. In 1908 the section was amended to authorize income taxes, privilege taxes, and occupational taxes. An amendment in 1927 allowed classification of forests and minerals for tax purposes. An amendment in 1941 allowed municipalities to collect taxes by methods that are not uniform. A 1961 amendment exempts livestock, merchants’ inventory, and manufacturers’ materials and finished products from the uniformity requirement. A 1974 amendment exempts agricultural land and undeveloped land from the uniformity requirement.

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.” *Weeks v. Milwaukee*, 10 Wis. 186, 201 (1860). Wisconsin is neither the first nor the only state to include a uniformity clause in its constitution. At the time that the convention that drafted the Wisconsin Constitution met, ten states had uniformity clauses in their constitutions. Today all but two state constitutions have uniformity clauses, although the interpretation and the wording of such clauses vary among the states.

How courts interpret the section

The Wisconsin Supreme Court has decided numerous cases involving uniformity clause issues. Two of the most important cases are *Knowlton v. Supervisors of Rock County*, 9 Wis. 378 (1859) and *Gottlieb v. Milwaukee*, 33 Wis. 2d. 408 (1967).

In *Knowlton*, 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 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 from taxation. 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.” *Knowlton* at 392.

Over 100 years after *Knowlton*, in another decision involving a partial property tax exemption, the court established standards for complying with the uniformity clause. *Gottlieb* 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 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.

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* [according to value] 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 shall be borne with as nearly as practicable equality on an *ad valorem* basis with other taxable property.

The uniformity clause substantially limits the legislature's ability to tax property and provide property tax relief. Specifically, the court's interpretation that the uniformity clause prohibits partial property tax exemptions presents a considerable obstacle for innovative property tax policy. Not only has the court consistently held that partial property tax exemptions violate the uniformity clause, the Wisconsin Attorney General, responding to inquiries from the legislature, has opined several times from 1931 to 1979 that proposed legislation would violate the uniformity clause. The proposed legislation included measures to reduce property tax on liquor by the amount of excise taxes paid on the liquor, to exempt the first \$3,750 of the assessed value of homesteads from the property tax, to assess as unimproved land all land that was the site of a new, and to exclude temporarily the value of improvements to land from assessments in a conservation area.

In some cases the legislature must attempt to amend the constitution in order to implement a property tax relief measure. In 1996, the Dane County Circuit Court found 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 a partial property tax exemption to such owners. See *Wisconsin Out-of-State Landowners Association, Inc. v. Wisconsin Dept. of Revenue*, Decision and Order on Summary Judgment, 96-CV-166. The court's finding was consistent with the Wisconsin Supreme Court's holding that offering tax credits to a certain class of property owners to offset increased property taxes creates a partial exemption which violates the uniformity clause. See *State ex rel. LaFollette v. Torphy*, 85 Wis. 2d 94, 108 (1978). In 1999, Article IV, section 24 of the Wisconsin Constitution was amended to exempt lottery proceeds from the requirements of the uniformity clause so that lottery proceeds might be distributed as property tax credits only to owners of primary residences in this state.

In short, the uniformity clause prohibits granting preferential property tax treatment to specific property owners. However, the uniformity clause allows the legislature to entirely exempt specific, reasonably defined classes of property from taxation. If there is any question as to whether proposed legislation would create a partial property tax exemption or otherwise violate the uniformity clause, it may be advisable to draft the legislation as an exemption that exempts, in its entirety, the property that is the subject of the legislation.

The Legislative Reference Bureau attorneys would be happy to help you reconcile your proposal with article VIII, section 1.



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