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The Constitution and the Legislature

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Taxation and Equal Protection

Both the United States and Minnesota Constitutions prohibit the legislature and state government generally from denying persons the equal protection of the law. The 14th amendment of the United States Constitution provides:

> No state shall * * * deny to any person within its jurisdiction the equal protection of the laws. Art. XIV, § 1.

The Minnesota Constitution contains both a general equal protection clause and a clause requiring uniformity of taxation. Minn. Const. art. I, § 2 (general); art. X, § 1 (uniformity clause).

Most tax laws are subject to "rational basis" review under the Equal Protection Clause; to be constitutional they must simply have a rational relationship to a legitimate legislative purpose.

The Equal Protection Clause was initially adopted primarily to limit or prohibit racial discrimination by the states. The courts have also applied it to proscribe other forms of invidious discrimination (e.g., based on religion, ethnicity, etc.). However, legislation often necessarily involves "discrimination" in the broader sense that groups of individuals or businesses are treated differently based on particular characteristics (e.g., amounts of income, type of business, uses of property, etc.) that in the abstract are unobjectionable. The clause was not intended to restrict legislation that imposed different tax or regulatory rules, for example, on retailers than on manufacturers. Thus, the U.S. Supreme Court has developed a stricter standard of review for laws that create "suspect classifications" or deprive someone of a "fundamental right" as a compared with more benign legislative classifications. The lines between the two categories (perhaps inevitably) blur at the edges. At times the Court has explicitly talked about a middle level of review.

- **Strict scrutiny** applies to "suspect classifications" (such as race or religion) or to denial of fundamental rights (such as the right to vote). The classification is constitutional only if there is a compelling reason for using the classification. If strict scrutiny applies, in most circumstances the classification will be unconstitutional.

- A **rational basis test** applies to economic regulation not involving suspect classifications and, thus, to most of the classifications involved in the tax laws. In general, a classification has a rational basis and is constitutional, if it is reasonably related to or has some rational relationship to the objective the legislature sought to achieve. The rational basis test gives the legislature considerable flexibility in creating classifications.

Very few tax statutes have been struck down under the Equal Protection Clause. The U.S. Supreme Court has generally given states wide latitude to fashion tax classifications, perhaps more than in any other area of law. *See San Antonio Independent School District v. Rodriquez*, 411 U.S. 1, 41 (1973), where the Court noted: "[T]hat in taxation, even more than in other fields, legislatures possess the greatest freedom in classification."

Nevertheless, the U.S. Supreme Court has struck down a number of state tax statutes on equal protection grounds. Many (probably most) of these statutes have involved laws that discriminated against nonresidents or out-of-state businesses.

Some examples include:

- Imposing a higher state insurance premium tax on out-of-state insurance companies, *Metropolitan Life Insurance Co. v. Ward*, 470 U.S. 869 (1985);
- Paying graduated rebates to residents, based on how many years they had lived in-state, *Zobel v. Williams*, 457 U.S. 55 (1982);
- Local assessment practice that raised tax valuations to the amount of the sales price but otherwise assessed properties at a fraction of market value, *Allegheny Pittsburgh Coal Co v. County Commission of Webster County*, 488 U.S. 336 (1989). *Compare Nordlinger v. Hahn*, 505 U.S. 1 (1992) (statute that applied a similar rule did not violate equal protection).

The Minnesota Supreme Court has held that the Uniformity Clause of the Minnesota Constitution is no more restrictive than the Equal Protection Clause.

Although the Minnesota Constitution contains a specific clause that requires taxes to be "uniform upon the same class of subject[,]" the Minnesota courts have held repeatedly that this clause is no more restrictive than the Equal Protection Clause. *Reed v. Bjornson*, 253 N.W.2d 102, 105 (Minn. 1934) (upholding the graduated individual income tax) appears to be the first case to establish this rule. The meaning of the Uniformity Clause remains a matter of state law and, thus, a change in the interpretation of the Equal Protection Clause by the U.S. Supreme Court should not be thought to "automatically" change the meaning of the Uniformity Clause. However, the Minnesota courts have fairly consistently followed federal interpretations of the Equal Protection Clause, since *Reed v. Bjornson*.

The Minnesota Supreme Court has set out a three-part test to determine if a tax classification satisfies the Uniformity Clause. *Miller Brewing Co. v. State*, 284 N.W.2d 353, 356 (1979). Under this test:

- The classification must not be "manifestly arbitrary or fanciful but must be genuine and substantial";
- The classification must be "genuine or relevant to the purpose of the law"; and
- The purpose of the statute must be one that the state can legitimately attempt to achieve.

The Minnesota courts have generally been very deferential to legislative tax classifications. The Minnesota Supreme Court has not struck down a tax statute for violating the Uniformity Clause in the last three decades. Some examples of laws upheld include:

- The limited market value law that taxes otherwise identical properties at different rates based upon how rapidly their values are increasing, *Matter of McCannel*, 301 N.W.2d 190 (Minn. 1980);
- Combined gross receipts gambling tax that imposes a higher tax rate on organizations with more total gross receipts from gambling activities, *Brainerd Area Civic Center v. Commissioner of Revenue*, 499 N.W.2d 468 (Minn. 1993);
- Sales tax imposed on food sold through vending machines, while sales of similar food by convenience stores exempt, *Minnesota Automatic Merchandising Council v. Salomone*, 682 N.W.2d 557 (Minn. 2004);
- Fee (35 cents/pack) imposed only on cigarettes manufactured by companies that had not agreed to participate in settlement agreement with the state, *Council of Independent Tobacco Manufacturers of America v. State*, 713 N.W.2d 300 (Minn. 2006).

For more information: See the House Research publication *Constitutional Restrictions on Taxation of Nonresidents*, September 2018.