



Revenue and Transportation Interim Committee

60th Montana Legislature

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December 6, 2007

To: Chair and Members, Revenue and Transportation Interim Committee

From: Lee Heiman, Staff Attorney

RE: Levying Different Property Tax Mills Against Different Classes of Property

Question

Whether the state may establish a statewide school equalization district to levy taxes in a nonuniform manner on property subject to taxation within the district.

Conclusion

It is a violation of equal protection provisions of the Montana Constitution to levy different mill levy rates on different classes of property within a jurisdiction.

Background

Sections 61 through 63 of Senate Bill No. 554, 2007 Regular Session, provided for the establishment of a statewide school equalization district. The district concept was directly incorporated into Senate Joint Resolution No. 31. The district proposed in SB 554 would levy 233 mills against property in only classes one, two, five, seven, eight, nine, twelve, thirteen, and fourteen. Local school levies could be made only against the other three classes: class three--agricultural property, class four--residential and commercial, and class ten--forest lands. The statewide levy would be deposited in a statewide school adequacy and equalization fund to be used to provide state funding for schools.

The statewide levy against "industrial" property was prompted by a property tax study of the 2004-2005 Quality Schools Interim Committee. Property in the "industrial" category was very unevenly distributed among school districts. "Disparities in School Mill Levies" prepared by the Office of Budget and Program Planning for the Quality Schools Interim Committee, July 21, 2005, provided:

The large differences in taxable value per student and non-levy revenue per student found in Montana create significant differences in mill levies between school districts. This creates significant inequities and distorts individuals' and businesses' decisions.

Thus the statewide school equalization district would eliminate localized advantages of property tax mill levies against "industrial" property and property tax revenue would instead go into a common fund for statewide funding as well as reduce any property tax disincentives for the location of new "industrial" property.

In the preamble to Senate Joint Resolution No. 31, reference was made to the advisability of a constitutional amendment to ensure that if existing statewide property tax mill levies are to be eliminated by a sales tax, then the levies would be prohibited in the future.

Discussion

State taxation policy is given great deference by federal courts. Typical is the statement by the U.S. Supreme Court in Kahn v. Shevin, 416 U.S. 351 (1974), at pages 355, 356:

We have long held that "[w]here taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 359. A state tax law is not arbitrary although it "discriminate[s] in favor of a certain class . . . if the discrimination is founded upon a reasonable distinction, or difference in state policy," not in conflict with the Federal Constitution. Allied Stores v. Bowers, 358 U.S. 522, 528 . This principle has weathered nearly a century of Supreme Court adjudication, and it applies here as well.

State courts, however, interpret their tax provisions independently according to the state's constitution and precedent. The 1889 Montana Constitution, in Article XII, section 1, required that property taxes be levied under "a uniform rate of assessment and taxation", and Article XII, section 11, required that taxes be levied and collected by general laws and in a manner that was "uniform upon the same class of subjects within the territorial limits of the authority levying the tax". These two provisions became known as the "uniformity" provisions. In Hilger v. Moore, 56 Mont. 146, 182 P. 477 (1919), the Montana Supreme Court held that the uniformity of assessment was by class of property based upon the proportion of the property's "use, its productivity, its utility, its general setting in the economic organization of society" (56 Mont. at 173) . Property may be valued differently in different classes to recognize the different characteristics of the property. Other states with uniformity provisions have interpreted their provisions to disallow classes and require that all property be uniformly taxed based upon its market

value and then taxed uniformly by each taxing jurisdiction with the same mill levy.

The revenue provisions in the Montana Constitution adopted in 1972 did not contain any uniformity language. The delegates excluded uniformity clauses and specifically recognized that the uniformity of taxation was required by the equal protection clause of the U.S. Constitution. See Verbatim Transcript Vol. II, pp. 579, 580, 582.

In Powder River County v. State, 2002 Mont. 259, 312 M 198, 60 P.3d 357 (2002), the Montana Supreme Court specifically discussed the uniformity clauses of the 1889 Montana Constitution and how uniformity was to be applied under the 1972 Montana Constitution. At issue was a challenge to the legality of the Legislature's changes to the way oil, gas, and coal were taxed as enacted in the 1989 and 1995 Sessions. The new form of taxation was no longer property tax based. Oil, gas, and coal were separately taxed, and the revenue was distributed to the state, local governments, and schools based upon formulas. The Court specifically stated that the uniformity principle established in Hilger was still the law in Montana:

¶52 In other words, in order to secure a just valuation of all property, the method of assessing value must be uniform, and subsequently, after the property has been justly valued via a uniform method, property within the same class must be uniformly taxed, that is, taxed at the same percentage. (citing Hilger.)

Uniformity allows classification to reflect the character of the property and thus allows different taxes per dollar of value of the taxed property. Uniformity does not allow different levies against different classes of property. The number of mills levied is based upon a political decision of the taxing entity with regard to all taxable property within the entity's jurisdiction.

Under a statewide school equalization district-local school district levy split, the taxable property within the jurisdiction would be taxed at two different mill levies. All classes of property are *subject* to taxation by the state equalization district, but the specified taxable classes are actually taxed at 233 mills by the state, and in essence 0 mills would be levied against classes three, four, and ten. The reverse would be true from the viewpoint of the local school district.

In Schladweiler v. State Board of Equalization, 131 Mont. 13, 206 P.2d 673 (1957), the Montana Supreme Court struck down a statute that authorized a levy upon real property and thereby exempted all personal property from the levy. The Court noted that in order to impose a levy upon only one class of property, livestock, a constitutional amendment had been required. Even though the 1972 Constitution authorizes the Legislature to exempt from taxation property not enumerated in the Constitution, different levels of levies for the same purpose within a jurisdiction would appear to violate equal protection. The removal of the express constitutional requirement for the taxation of all property not otherwise exempt from taxation was reinstated for all taxable property

under the "general law" requirement in Article VIII, section 1, of the 1972 Montana Constitution as construed in Woodahl v. Straub, 164 Mont. 141, 520 P.2d 776 (1974). It is also important to note that the framers of the 1972 Montana Constitution retained the provision authorizing the levy of a tax upon only livestock in Article XII, section 1(2), of the Montana Constitution. See Verbatim Transcript, Vol. V, Delegate Gysler's comments at 1367.

Decisions from other jurisdictions also appear to support the determination that levying of different rates of taxation within a jurisdiction violates equal protection. In Kenai Peninsula Borough v. Alaska, 751 P.2d 14 (Alaska 1988), the Borough levied 1.75 mills on the assessed value of real property and 2.5 mills on the assessed value of personal property. The court relied on Idaho Telephone Company v. Baird, 423 P.2d 337 (Id. 1967) (overruled relating to uniform assessment), to strike the levies. Baird cited Cooley on Taxation for the proposition that all property not exempt from taxation must be assessed at a uniform percentage of actual cash value and that a single fixed rate of taxation must apply against all taxable property. Baird at 341.

A constitutional amendment, similar to the livestock levy authorization, would be required to levy different mills against different classes of property within the jurisdiction of a taxing entity.