
Coates' Canons Blog: The N.C. Constitution's Uniformity Clause

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Given the dire economic news of late, it's no surprise that the General Assembly and local governments are trying to get creative with local property taxes. Consider the suggestion from one county to levy a more progressive property tax, with one rate for real property valued less than \$1,000,000 and a much higher rate for more valuable properties. How about a property tax exclusion available only in larger counties that might more easily absorb the reduction in tax revenues?

While innovative tax schemes such as these might carry some merit, they also carry some constitutional concerns. All property tax laws must satisfy the "uniformity clause" in **Article V, Section 2(2) of the North Carolina Constitution**. In a nutshell, this clause creates two requirements for property taxes, one concerning rates and one concerning classifications, the fancy name for exclusions and exemptions.

Here's what the provision says: "Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government."

Courts have interpreted this language to require two things: uniform property tax *rates* on all property throughout a particular taxing unit and uniform property tax *classifications* (meaning exemptions and exclusions) throughout the entire state. Let's analyze each of these requirements in detail . . .

Uniform Property Tax Rates:

Wait, you say—the uniformity clause quoted above doesn't mention tax rates at all. That's true, but courts still read into the current clause a uniform rate requirement that was explicitly set out in the predecessor to the current provision.

Prior to the complete re-writing of the N.C. Constitution in 1969, a similar provision required that "all taxes levied by any county, city, town or township shall be uniform and ad valorem upon all property in the same." (Article VII, Section 9 of the 1868 N.C. Constitution, as last amended in 1962). Courts interpreted that language as requiring a single property tax rate for all property within a taxing unit. For example, the pre-1969 uniformity provision was the basis for striking down Asheville's attempt to create different tax rates for different areas of the city. *Anderson v. City of Asheville*, 194 N.C. 117 (1927).

Although the explicit constitutional reference to uniform local property tax rates disappeared after the 1969 revisions, state courts have interpreted the current language similarly. "Uniformity of taxation is accomplished when the tax is levied equally and uniformly on all subjects in the same class." *Smith v. State*, 349 N.C. 332 (1998)(internal citations omitted). Because local governments cannot classify property differently (see below), it must tax all property within its jurisdiction uniformly—that is, with a single rate.

Further proof that the single-rate requirement survived the 1969 constitutional revisions is found in the fact that a constitutional amendment was needed to authorize special service tax districts. (See Kara Millonzi's excellent blog post on these districts here.) Absent the addition of Article V, Section 2(4), special service districts would have violated the uniformity provision because they permit higher tax rates within a portion of a local government's jurisdiction.

As a result, it's pretty clear that the uniformity provision would prevent a local government from levying different property tax rates on different types of property (land versus motor vehicles, for example). Nor could a local government vary its property tax rates based on the value of the property being taxed, as was suggested by the county interested in a more progressive property tax system.

Keep in mind that the uniformity provision does not prohibit a property within a city from being subjected to two different tax rates, one for the county and one for the city. *Jamison v. City of Charlotte*, 239 N.C. 682 (1954). Nor does the uniformity provision prohibit a local government from levying different tax rates for different public purposes, so long as those rates apply to all property within the local government's jurisdiction. For example, instead of a single tax rate of 25 cents, a county could levy three different property taxes on all property within its borders: 15 cents tax for education, 7 cents for law enforcement and 3 cents for libraries. (See Kara Millonzi's explanation of varied purpose-specific tax rates [here](#).)

Uniform Property Classifications:

The second requirement of the uniformity provision is more explicit: only the General Assembly, not local governments, can classify property for exemptions and exclusions. And when making those classifications, the General Assembly may do so only through laws of statewide application, meaning no local exemption/exclusion bills that affect only certain counties.

In practice, this means that local governments cannot create their own property tax exemptions nor can the General Assembly do it for them. If Blue Devil City really wants to give a property tax break to its growing roster of gourmet food trucks, it needs the General Assembly to create such a classification for the entire state. (And if that means more fried-green-tomato specials from OnlyBurger, I'm all for it.) The Blue Devil City council could not classify food trucks for a local exclusion, nor could the General Assembly pass a local bill creating such an exclusion only for Blue Devil City.

Courts have yet to opine on just how strict the ban on local classifications really is. Could the General Assembly enact a statewide exclusion for gourmet food trucks that applies only in counties with populations of 200,000 or greater? Probably not, says SOG sage David Lawrence. How about an exclusion for food trucks that is based on the tax base of each county—the larger the tax base, the larger the exclusion for food trucks in that county? David thinks this approach is on more solid constitutional ground but he's still not certain it would pass muster. Both approaches seem to violate the spirit if not the letter of the law, because they would result in the same property (food trucks) being classified differently in different counties.

We already have on the books one property tax law that differentiates between counties based on population: G.S. 105-286(a)(2), which concerns the timing of real property reappraisals. But that provision doesn't deal directly with classification. And because no county has yet triggered its requirements nobody has yet had the motivation to challenge the statute in court. As a result, nobody really knows where the constitutional boundaries for property taxes lie.

Links

- www.ncga.state.nc.us/Legislation/constitution/article5.html
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