

1992

Kennecott Corporation v. Salt Lake County and The Utah State Tax Commission of Utah : Brief of Appellee

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

David E. Yocum; Salt Lake County Attorney; Karl Hendrickson; Deputy Salt Lake County Attorney; Bill Thomas Peters; Special Deputy County Attorney; Paul Van Dam; Utah State Attorney General; Joseph T. Dunbeck, Jr.; Assistant Attorney General; Attorneys for Appellees.

James B. Lee; Kent W. Winterholler; Maxwell A. Miller; Parsons, Behle & Latimer; Attorneys for Appellant.

Recommended Citation

Brief of Appellee, *Kennecott Corporation v. Salt Lake County and The Utah State Tax Commission of Utah*, No. 920144.00 (Utah Supreme Court, 1992).

https://digitalcommons.law.byu.edu/byu_sc1/4093

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
KFII
45.9
.S9

UTAH SUPREME COURT,
BRIEF

DOCKET NO. 920144

IN THE SUPREME COURT

STATE OF UTAH

KENNECOTT CORPORATION,)	
)	
Petitioner and)	
Appellant,	)	CASE No. 920144
	)	85801C
v.)	
)	
SALT LAKE COUNTY and THE STATE)	
TAX COMMISSION,	)	Priority 15
)	
Respondent and)	
Appellees.)	

BRIEF OF STATE TAX COMMISSION OF UTAH

APPEAL FROM THE ORDER OF THE UTAH STATE TAX COMMISSION
DATED MARCH 3, 1992

James B. Lee - 1919
Kent W. Winterholler - 3525
Maxwell A. Miller - 2264
PARSONS BEHLE & LATIMER
201 South Main Street,
Suite 1800
P.O. Box 11898
Salt Lake City, Utah 84147
Telephone: (801) 532-1234
Attorneys for Appellant

Paul Van Dam - 3312
Utah State Attorney General
Joseph T. Dunbeck, Jr. - 3645
Assistant Attorney General
36 South State Street,
11th Floor
Salt Lake City, Utah 84111
Telephone: (801) 533-3200
Attorneys for the State Tax
Commission of Utah

David E. Yocom - 3581
Salt Lake County Attorney
Karl Hendrickson - 1464
Deputy County Attorney
Bill Thomas Peters - 2574
9 Exchange Place, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 364-8644
Attorneys for Salt Lake County

FILED

AUG 21 1992

CLERK SUPREME COURT
UTAH

IN THE SUPREME COURT

STATE OF UTAH

KENNECOTT CORPORATION,)	
)	
Petitioner and)	
Appellant,	)	CASE No. 920144
	)	85801C
v.)	
)	
SALT LAKE COUNTY and THE STATE)	
TAX COMMISSION,	)	Priority 15
)	
Respondent and)	
Appellees.)	

BRIEF OF STATE TAX COMMISSION OF UTAH

APPEAL FROM THE ORDER OF THE UTAH STATE TAX COMMISSION
DATED MARCH 3, 1992

James B. Lee - 1919
Kent W. Winterholler - 3525
Maxwell A. Miller - 2264
PARSONS BEHLE & LATIMER
201 South Main Street,
Suite 1800
P.O. Box 11898
Salt Lake City, Utah 84147
Telephone: (801) 532-1234
Attorneys for Appellant

Paul Van Dam - 3312
Utah State Attorney General
Joseph T. Dunbeck, Jr. - 3645
Assistant Attorney General
36 South State Street,
11th Floor
Salt Lake City, Utah 84111
Telephone: (801) 533-3200
Attorneys for the State Tax
Commission of Utah

David E. Yocom - 3581
Salt Lake County Attorney
Karl Hendrickson - 1464
Deputy County Attorney
Bill Thomas Peters - 2574
9 Exchange Place, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 364-8644
Attorneys for Salt Lake County

TABLE OF CONTENTS

JURISDICTION	1
ISSUES PRESENTED FOR REVIEW AND STANDARD OF APPELLATE REVIEW	1
CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS	3
STATEMENT OF ARGUMENT	3
ARGUMENT	5
I. KENNECOTT HAS THE BURDEN OF AFFIRMATIVELY PROVING THE TAX COMMISSION'S ACTIONS UNCONSTITUTIONAL. . . .	5
II. KENNECOTT HAS NOT ESTABLISHED THAT § 304 WAS UNCONSTITUTIONALLY APPLIED.	6
A. Kennecott Has Not Established What Assessment Method the County Would Use In This Case. . . .	8
B. The County's Methods of Assessing Commercial Property Generally Are Significantly Different From the Tax Commission's Method of Assessing Kennecott's Property.	8
1. Utah statutes and regulations restrict the Tax Commission's assessment of mines.	9
2. The Tax Commission's capitalized net revenue method for assessing mines is different from the County's income method.	10
3. The Tax Commission's summation method is different from the County's assessment methods.	12
III. UTAH'S COMPLIANCE WITH OF THE 4R ACT DOES NOT VIOLATE KENNECOTT'S EQUAL PROTECTION RIGHTS	13
A. The 4R Act, the <u>Union Pacific</u> case, and Utah's Treatment of Railroads.	14

B.	Kennecott Has Failed to Prove That Utah's Compliance With the 4R Act Violates Kennecott's Equal Protection Rights	17
1.	The 4R Act makes railroads a special taxpayer classification.	18
2.	Congress' purpose in enacting the 4R Act is a legitimate government purpose. . .	18
3.	The 4R Act's classification of railroads is reasonably related to the Congressional purpose of furthering railroad financial stability.	19
C.	Kennecott Has Not Proven What Relief Is Appropriate to Remedy Any Equal Protection Violation	26
CONCLUSION	. . . . .	27

TABLE OF AUTHORITIES

Cases:

<u>Allegheny Pittsburgh Coal Co. v.</u> <u>County Commissioner of Weber County,</u> 488 U.S. 336 (1989)	22, 25
<u>Amax Magnesium Corp. v. Tax Commission,</u> 796 P.2d 1256 (Utah 1990)	6, 7
<u>Arizona v. Atchison, Topeka & Santa Fe,</u> 656 F.2d 398, 407 (9th Cir. 1981).	18
<u>Blue Cross & Blue Shield v. State,</u> 779 P.2d 634, 637 (Utah 1989)	5, 25
<u>United States Railroad Retirement Board v. Fritz,</u> 449 U.S. 166 (1980)	13
<u>Federal Express Corp. v.</u> <u>Tenn. State Board of Equalization,</u> 717 S.W. 2d 873, 876 (Tenn. 1986)	15
<u>First Nat'l Bank v.</u> <u>County Bd. of Equalization,</u> 799 P.2d 1163 (1990)	1
<u>Nordlinger v. Hahn,</u> S.Ct. Bull. (CCH) B2831, B2840-41 (June 18, 1992)	13, 17, 25
<u>Northern Natural Gas v. Board of Equalization,</u> 443 N.W.2d 249 (Neb. 1989)	25
<u>Ogilvie v. State Board of Equalization,</u> 657 F.2d 204, 206 (8th Cir. 1981)	14
<u>Rio Algom Corp. v. San Juan County,</u> 681 P.2d 184, 190 (Utah 1984)	5
<u>San Antonio School District v. Rodriguez,</u> 411 U.S. 1 (1973)	5
<u>Savage Industries, Inc. v. Utah State Tax Comm'n,</u> 811 P.2d 664 (Utah 1991)	2

Southern Railway v. State Board of Equalization,
715 F.2d 522, 528 (11th Cir. 1983) 20

Union Pacific Railroad Company v.
State Tax Commission of Utah,
716 F.Supp. 543, 545 (D.Utah 1988) 14

Statutes:

49 U.S.C. § 11503(b)(1) 15
Utah Code Ann. § 59-2-201 (1987) 3, 9
Utah Code Ann. § 59-2-304 (1987) 1, 3, 6, 8, 18
Utah Code Ann. § 78-2-2 1

Rules:

Utah Admin. Rule R884-24-7P 3, 9, 10

Other Authority:

Article VIII, Section 3 of the Utah Constitution 1
14th Amendment, United States Constitution 13
Article VI, United States Constitution 14

JURISDICTION

This court has jurisdiction of this Petition for Review pursuant to, Utah Code Ann. §§ 78-2-2-(3)(e)(ii) and 63-46b-16 and Rule 14 of the Utah Rules of Appellate Procedure.

ISSUES PRESENTED FOR REVIEW AND STANDARD OF APPELLATE REVIEW

ISSUE I

A. Issues: Whether Kennecott proved that the Tax Commission's method of assessing Kennecott's property was the same as Salt Lake County's method of assessing similar property.

B. Standard of Review: The Tax Commission finding¹ that the assessment methods were the same will only be reversed if Kennecott shows that the finding is not supported by substantial evidence in the record as a whole. First Nat'l Bank v. County Bd. of Equalization, 799 P.2d 1163 (1990).

ISSUE II

A. Issue: Whether the Tax Commission properly refused to apply the 20% reduction found in § 59-2-304(1) under the facts found by the Tax Commission.

B. Standard of Review: The Tax Commission ruling will only be set aside if erroneous. Savage Industries, Inc. v. Utah State Tax Comm'n, 811 P.2d 664 (Utah 1991).

¹ A copy of the Tax Commission finding is attached as Addendum A.

ISSUE III

A. Issue: Whether Kennecott proved that Utah's compliance with the 4R Act violates Kennecott's equal protection rights because the classification created by the Act is reasonably related to a legitimate governmental purpose.

B. Standard of Review: The Tax Commission's finding that railroads and Kennecott are not similarly situated will only be reversed if Kennecott shows that the finding is not supported by substantial evidence in the record as a whole. First Nat'l Bank, supra.

ISSUE IV

A. Issue: Whether the Tax Commission properly held that Utah's compliance with the 4R Act did not violate Kennecott's equal protection rights, under the facts found by the Tax Commissions.

B. Standard of Review: The Tax Commission ruling will only be set aside if erroneous. Savage Industries, supra.

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS

The pertinent constitutional, statutory, and regulatory provisions are:

1. United States Constitution 14th Amendment.
2. United States Constitution Art. IV
3. Utah Constitution Art. I § 24.
4. Utah Constitution Art. XIII § 2.
5. Utah Constitution Art. XIII § 3.
6. Utah Code Ann. § 59-2-201 (1987).
7. Utah Code Ann. § 59-2-304 (1987).
8. Utah Admin. Rule R884-24-7P.

Copies of these provisions are attached as Addendum B.

STATEMENT OF ARGUMENT

I. KENNECOTT HAS NOT ESTABLISHED THAT § 304 WAS UNCONSTITUTIONALLY APPLIED.

In order to obtain relief under Amax Magnesium Corp. Utah State Tax Comm'n, 796 P.2d 1256 (Utah 1990), Kennecott had the burden of proving that the County and Tax Commission's methods of assessing Kennecott's property were the same. The Tax Commission found that Kennecott had not satisfied this burden. Conclusions of Law ¶ 15 (Rec. 36). This factual finding will not be set aside unless Kennecott shows, after marshalling all the evidence, that this finding is erroneous. First Nat'l Bank, supra, 799 P.2d at 1165.

Kennecott has not met its burden in this case. First, it cannot show that the assessment methods are the same because it has not established what method County would have used. Second, the evidence shows that the assessment methods used by the County generally are not the same as the method used by the Tax Commission to assess Kennecott's property. For these reasons, the Court should affirm the Tax Commission's refusal to give Kennecott Amax relief.

II. UTAH'S COMPLIANCE WITH OF THE 4R ACT DOES NOT VIOLATE KENNECOTT'S EQUAL PROTECTION RIGHTS

Kennecott has the burden of proving that Utah's compliance with the 4R Act violated Kennecott's equal protection rights. Kennecott's burden is particularly difficult in this case because of the strong presumption of constitutionality given to tax laws. The Tax Commission found that Kennecott was not similar to railroad properties which receive 4R act protection and that Kennecott had failed to show an equal protection violation. Conclusion of Law, ¶ 18 (Rec. 18).

Kennecott has failed to establish that Utah's compliance with the 4R Act violates the equal protection law. The 4R Acts treatment of railroads is rationally related to the legitimate governmental interest of protecting the financial stability of railroads. The Tax Commission's ruling should therefore be affirmed.

ARGUMENT

I. KENNECOTT HAS THE BURDEN OF AFFIRMATIVELY PROVING THE TAX COMMISSION'S ACTIONS UNCONSTITUTIONAL.

It is axiomatic "that acts of the Legislature are presumed constitutional, especially when dealing with economic matters based on factual assumptions." Rio Algom Corp. v. San Juan County, 681 P.2d 184, 190 (Utah 1984) (emphasis supplied).

The presumption of constitutionality applies with particular force to tax statutes

No scheme of taxation . . . has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism

Id. at 191 quoting San Antonio School District v. Rodriguez, 411 U.S. 1 (1973). Similarly, in Blue Cross & Blue Shield v. State, 779 P.2d 634, 637 (Utah 1989) the Court held:

In the tax area, as in other areas of purely economical regulation, we give broad deference to the legislature when scrutinizing the reasonableness of its classifications and their relationship to legitimate legislative purposes. . . . That broad deference leads us to sustain a classification if "facts can reasonably be conceived which would justify the distinctions or differences in state policy [expressed by the challenged legislation] as between different persons". . . .

The Court therefore sustains legislative tax enactments, unless "[the] party attacking the constitutionality of a statute . . .

affirmatively demonstrate[s] its unconstitutionality." Rio Algom, supra, 681 P.2d at 191 (emphasis supplied).

On this appeal, Kennecott also faces the burden of defeating adverse factual findings of the Tax Commission. The Court will only set aside such factual findings if they are not supported by substantial evidence in the record considered as a whole. Kennecott, as the appellant, has the burden of marshalling the evidence which supports these findings and then persuading the Court that the findings are erroneous. Kennecott has not marshalled the evidence or shown how the evidence is insufficient to support the Tax Commission's findings. First Nat'l Bank, supra 799 P.2d at 1165.

II. KENNECOTT HAS NOT ESTABLISHED THAT § 304 WAS UNCONSTITUTIONALLY APPLIED.

Kennecott has the burden of affirmatively proving § 304 unconstitutional. Rio Algom, supra, 681 P.2d at 191. To satisfy this burden, Kennecott must prove that the Tax Commission's method of assessing Kennecott's property was the same as the County's method of assessing similar property. See generally Amax Magnesium Corp. v. Tax Comm'n, 796 P.2d 1256 (Utah 1990).

Kennecott however has failed to satisfy its burden of proof and the Tax Commission's ruling should be affirmed.²

Kennecott's evidence is insufficient for two reasons. First, the record does not show how the County would have assessed commercial property similar to Kennecott's. Without such evidence, Kennecott cannot prove that the County's method is the same as the Tax Commission's method. Second, although the record does not show what method the County would have used, the record does show that the various assessment methods generally used by the County are different from those used by the Tax Commission to assess Kennecott's property. These differences, in part, arise because of the legal restrictions on the Tax Commission's assessment methods, restrictions which do not apply to the County. For these reasons, the Court should sustain the Tax Commission's finding that Kennecott has failed to establish that the Tax Commission's assessment methods and the County's assessment methods are the same.

² Kennecott relies heavily on this Court's decision in Amax Magnesium Corp. v. Tax Commission, 796 P.2d 1256 (Utah 1990). There, the Court found that § 304 was unconstitutional, as applied to Amax, because the parties had stipulated that the Tax Commission's assessment methods and the County assessment methods were the same. Id. at 1260. Because of the parties' stipulation, the Amax Court did not have to determine whether the Tax Commission's finding of dissimilarity should be reversed or whether the taxpayer had established that the assessment methods were the same. These issues, which Amax did not address, are the central issues in this appeal.

A. Kennecott Has Not Established What Assessment Method the County Would Use In This Case.

The record before the Tax Commission does not show which appraisal method the County would have used to assess commercial property similar to Kennecott's. The Salt Lake County Chief Appraiser, who testified at the hearing and by deposition, did not identify what method or methods Salt Lake County would have used to assess property such as Kennecott's. Rather, he merely identifies the various methodologies that the County generally uses to assess commercial real estate and states that the County has no primary method. Butterfield Deposition, p. 20-24; Tr. 110. He was not asked nor did he testify whether or how these methods would be applied to Kennecott's property. Without such proof of how the County would assess Kennecott, Kennecott cannot prove that the County's method is the same as the Tax Commission's and that § 304 has been unconstitutionally applied.

B. The County's Methods of Assessing Commercial Property Generally Are Significantly Different From the Tax Commission's Method of Assessing Kennecott's Property.

Although the record does not reveal which method the County would have used to assess property similar to Kennecott's, it does refer to various methods used by the County to assess commercial property generally. A comparison of the County's methods for assessing commercial property generally and the Tax Commission's methods for assessing mines reveals substantial,

significant differences in nominally similar assessment methods. These differences are, in part, due to statutes and regulations which limit the Tax Commission's assessment methods but which do not apply to the County. Other differences are the result of fundamentally different applications of nominally similar assessment methods. Whatever the source of the differences, the record supports the Tax Commission's finding that Kennecott failed to establish that the Tax Commission's and County's methods were the same.

1. Utah statutes and regulations restrict the Tax Commission's assessment of mines.

The Utah Code sections and Tax Commission regulations govern the methods used by the Tax Commission in assessing mines such as Kennecott's. Hearing Tr. p. 45. Under this law, the Tax Commission assesses mines using what is called the "capitalized net revenue method." Utah Code Ann. § 59-2-201(2); Utah Admin. Rule R884-24-7P. As discussed more fully below, the Tax Commission's regulations describe in detail the specific formula for assessing property using this method.

The Utah Code provision governing the assessment of mines further provides: "In no event may the fair market value of the mining property be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property." This statute requires the

assessment of the individual items of property with the value being the sum of the individual assessments. (This is sometimes called the "summation method.") Thus, the Tax Commission values mining property under the capitalized net revenue method and the summation method but uses the higher of the two methods for assessment purposes. Hearing Tr. p. 35, 50-51.

These statutes and regulations only apply to the Tax Commission, they do not apply to the County. As a result, in some cases, Utah law requires the Tax Commission to use an assessment method different from the method that the County could use in a similar situation. Hearing Tr. p. 45, 52, 55.

2. The Tax Commission's capitalized net revenue method for assessing mines is different from the County's income method.

The Tax Commission regulations contain a specific formula for computing value under the capitalized net revenue method. Utah Admin. Rule R884-24-7P; Hearing Tr. p. 59. These regulations do not apply to the County which is free to choose other income methods for valuing property. A comparison of the Tax Commission's capitalized net revenue method and the County's income method reveals substantial differences in methodology.

The Tax Commission valued Kennecott's property under capitalized net revenue method following the formula found in the Tax Commission's Rule. Under this rule, the Tax Commission

values mines by determining the mine's net income for the prior five years. Net income equals gross income less expenses including capital expenditures. Unused capital expenditures can be carried forward to reduce net income for future years. As a result, large capital expenditures in a year can reduce or eliminate net income for that year or subsequent years. Hearing Tr. p. 50-51.

Once the Commission computes net income for the prior five years, it averages the five year net income and discounts the average by an appropriate capitalization rate. This method assumes that the average net income for the prior five years will not increase or decrease for the indefinite future. Hearing Tr. p. 66. This method also assumes that the mine owner will not get a return on his capital investment other than his cost of capital. Hearing Tr. p. 67. In other words, he will recover nothing for the risk of investment. This discounted five year income average was Kennecott's assessed value under the capitalized net revenue approach.³ Hearing Tr. p. 32, 35, 77; Eyre Deposition, p. 18-19.

The County would not apply the capitalized net revenue method as defined by Tax Commission regulations. Specifically,

³ This capitalized net revenue method is a "very primitive discounted cash flow" method. Hearing Tr. p. 62.

the County would not use the rolling five year income average or loss carry forward used by the state. Hearing Tr. p. 99. Thus, to the extent that the County would use an income approach, it would not use the method used by the Tax Commission.

3. The Tax Commission's summation method is different from the County's assessment methods.

Under the summation method, the Tax Commission individually assesses Kennecott's real property, improvements and tangible personal property. The assessed value is the sum of these individual values. The Tax Commission's method of valuing the real property component of the summation method is different from the County's method.

On the surface, the Tax Commission's method of valuing real property appears to be the same as the County's. Both use what may be called the sales or market method. Using this method, the Tax Commission and the County assessors determine value by using the sales price of comparable properties. Hearing Tr. p. 30.

Although using nominally similar methods, the Tax Commission and the County apply them in dramatically different ways. The Tax Commission uses as comparables commercial property which does not have minerals. As a result, the Tax Commission's summation method does not give a value to minerals located under

Kennecott's property.⁴ Hearing Tr. pp. 34-35, 40, 51, 67, 74.

The County, on the other hand, would value the minerals located under Kennecott's property by using mining property as comparables or by making adjustments to the non-mining comparables to reflect the value of Kennecott's minerals. Hearing Tr. p. 101-102.

Thus, the Tax Commission's and the County's summation methods are different because the Tax Commission does not include a value for minerals whereas the County does.⁵

III. UTAH'S COMPLIANCE WITH OF THE 4R ACT DOES NOT VIOLATE KENNECOTT'S EQUAL PROTECTION RIGHTS

Kennecott claims that Utah's compliance with the Railroad Revitalization and Regulatory Reform Act of 1976 ("4R Act") violates its equal protection rights under the 14th Amendment of United States Constitution⁶ and the uniform laws

⁴ The Tax Commission does not value minerals separately under the summation method because the capitalized net revenue approach indicated that those minerals had negligible economic value.

⁵ In 1988, Kennecott had gross income of \$600-800 million from the sale of minerals mined from this property. Tr. p. 38, 40.

⁶ Arguably, the equal protection component of the 5th Amendment of the U.S. Constitution should govern the constitutionality of a federal statute such as the 4R Act, since the 14th Amendment only applies to the states. The Court, however, need not address this issue since the equal protection analysis under the 5th Amendment and 14th Amendment are the same. Compare United States Railroad Retirement Board v. Fritz, 449

provision of the Utah Constitution.⁷ State in other words, Kennecott claims an equal protection right to be treated the same as railroads are treated under the 4R Act. Kennecott however has failed to prove that Utah's compliance with the 4R Act violates Kennecott's equal protection rights or to prove what relief the Court should grant if an equal protection violation has occurred.

A. The 4R Act, the Union Pacific case, and Utah's Treatment of Railroads.

The Congress enacted the Railroad Revitalization and Regulatory Reform Act of 1976 ("4R Act") in an effort to restore the financial stability of the railway systems of the United States. Union Pacific Railroad Company v. State Tax Commission of Utah, 716 F.Supp. 543, 545 (D.Utah 1988). In order to accomplish this purpose, the 4R Act prohibits various types of State taxes which discriminate against railroads. Ogilvie v. State Board of Equalization, 657 F.2d 204, 206 (8th Cir. 1981). (The Act's goal was "to eliminate the long - standing burden on

U.S. 166 (1980) (5th Amendment analysis) with Nordlinger v. Hahn, S.Ct. Bull. (CCH) B2831 (June 18, 1992) (Attached hereto as Exhibit C) (14th Amendment analysis).

⁷ Under the Supremacy Clause, a federal enactment is supreme over conflicting state statutes or constitutional provisions. U.S. Const. Art. VI. Thus, Utah's compliance with the 4 R Act cannot violate Utah Constitutional provisions, since the federal enactment supersedes these state provisions. However, since the Tax Commission's compliance with the 4R Act is constitutional under both the federal and state constitutions, the Court need not address this issue.

interstate commerce . . . from discriminating . . . taxation. . .
."). Specifically, the Act prohibits a State from

assess[ing] rail transportation property at a
value that has a higher ratio to the true
market value of the rail transportation
property than the ratio that the assessed
value of other commercial and industrial
property in the same assessment jurisdiction
has to the true market value of the other
commercial and industrial property.

49 U.S.C. § 11503(b)(1).⁸ Stated in hopefully simpler terms,
Congress made railroads a special classification of taxpayer and
required that the State assess railroads at the same ratio to
true market value as it assesses all other commercial or
industrial property in the State. Under the Supremacy Clause of
the United States Constitution, this Act supersedes conflicting
State constitutional or statutory taxing provisions but leaves
unaffected State tax laws which do not impact railroads. Federal
Express Corp. v. Tenn. State Board of Equalization, 717 S.W. 2d
873, 876 (Tenn. 1986). (Attached hereto as Exhibit D.)

The Act provides that railroads, injured by taxes
prohibited by the Act, may obtain relief in federal court. In
such a case, the Court must determine whether the State assessed
the railroad property at a higher ratio to true market value than

⁸ The Act's other provisions create other types of
prohibited discrimination. These other provisions however are not
relevant to this appeal.

the State assessed all other commercial and industrial property in the State. If the State assesses the railroad at a higher ratio, the court will order the railroad's assessment reduced to make the railroad's ratio of assessed value to true market value equal to the ratio of assessed value to true market value for all other commercial and industrial property in the State.

This provision of the 4R Act was at issue in Union Pacific v. State Tax Comm'n of Utah, supra. There, several Utah railroads brought an action in federal court alleging that Utah's treatment of railroads violated the 4R Act. The railroads claimed that the ratio of assessed value to fair market value for commercial and industrial properties was less than the ratio assessed value to fair market value for railroads. In ruling for the railroads, the Court compared the ratio for railroads and for all other commercial property and found that the ratio for railroads was higher. It therefore ordered the assessed value of the railroads' property reduced so that the railroads' ratio of assessed value to true market value equaled the ratio for all other commercial and industrial property.

The Union Pacific ruling only adjusted the railroads' assessments for 1984 and 1985 tax years. In subsequent tax years, the Tax Commission has adjusted the railroads' assessment pursuant to the formula followed by the court in the Union

Pacific case and mandated by the 4R Act. Specifically, the Tax Commission determines for each year the ratio of assessed value to true market value for all commercial and industrial property in Utah. This computation includes both locally assessed and centrally assessed property and includes Kennecott's property. This ratio is then compared to the ratio for railroads' and the railroads' assessments are adjusted to equalize railroads' assessment ratio with the assessment ratio for all other industrial and commercial property in Utah. For the tax year in question on this appeal, the 4R Act required an adjustment of 14% to the railroads' assessed value. Eyre deposition p.29-34.

B. Kennecott Has Failed to Prove That Utah's Compliance With the 4R Act Violates Kennecott's Equal Protection Rights

Kennecott has not proven that Utah's compliance with the 4R Act violates Kennecott's equal protection rights. To prevail on its equal protection claim, Kennecott must establish that the difference in treatment between the railroads and other taxpayers including Kennecott is not reasonably related to a legitimate governmental purpose. Nordlinger v. Hahn, S.Ct. Bull. (CCH) B2831, B2840-41 (June 18, 1992). Blue Cross, supra, 779 P.2d at 637. Under this test, the Court must consider three interrelated, but separate factors: (1) the classifications created; (2) the governmental purposes involved; (3) the

relationship between the classification and the governmental interest. Each of these is considered in turn below.

1. The 4R Act makes railroads a special taxpayer classification.

The 4R Act makes railroads a special classification of taxpayer and restricts how states may tax them. Since Kennecott is not a railroad, it does not fall within the 4R Act's protections. To prevail on its equal protection claim, Kennecott must prove that this classification and resulting difference in treatment is not reasonably related to a legitimate governmental interest.

2. Congress' purpose in enacting the 4R Act is a legitimate government purpose.

The 4R Act's purpose is to "restore the financial stability of the railroad system of the United States." Union Pacific, supra, 716 F.Supp at 545. Kennecott does not contest the legitimacy of this governmental purpose.⁹ Rather, it seeks to incorporate the purpose of § 304 of the Utah Code into its analysis of the constitutionality of the 4R Act of the United States Code. Kennecott Brief at p.37. Section 304 of the Utah

⁹ The United States Courts of Appeals for the Ninth Circuit, in analyzing the constitutionality of the Act under the Commerce Clause has held: "[T]he legitimate end of Congress [in enacting the Act] is to revitalize the nation's railroads to improve the flow of interstate commerce." Arizona v. Atchison, Topeka & Santa Fe, 656 F.2d 398, 407 (9th Cir. 1981).

Code however does not create the classification at issue here and cannot provide the purpose for a classification it did not create. Since Congress by enacting the 4R Act created the classification at issue here, the Congressional purpose is found in that Act, not in some unrelated Utah statute.

It is important to recognize that neither the Utah Legislature nor the Tax Commission created the railroad classification at issue here. Rather, the 4R Act, as interpreted by the United States District Court, required the Tax Commission to treat railroads as a special classification. As a result the Tax Commission's treatment of railroads is to further a federal governmental objective, not a Utah one. The constitutionality of the Tax Commission's actions must therefore be based upon these federal objectives rather than Utah objectives.

3. The 4R Act's classification of railroads is reasonably related to the Congressional purpose of furthering railroad financial stability.

The relationship between the 4R Act's treatment of railroads and a legitimate governmental purpose cannot be seriously challenged.

Without doubt the well-being of the nation's railroads is essential to its economic health. In passing section 11503 Congress acted "to eliminate the long-standing burden on interstate commerce resulting from discriminatory State and local taxation of common and contract carrier transportation property."

Southern Railway v. State Board of Equalization, 715 F.2d 522, 528 (11th Cir. 1983). Protecting railroads from discriminatory taxes improves their financial health and thereby furthers the legitimate governmental purposes. Cf. Atchison, Topeka, supra, 656 F.2d at 407 (Analyzing the constitutionality of the Act under the Commerce Clause, the Court held: "The means that Congress has adopted, prohibiting state from assessing railroad property at higher ratios than other commercial property, is 'plainly adapted to that end [revitalizing railroads],' by having the effect of diminishing the proportionate tax burden in railroads . . ."). The Act's classification is their constitutional.

A case factually similar to the instant case is Federal Express v. Tennessee State Bd. of Equalization, supra. There the Tennessee Supreme Court upheld the constitutionality of a state tax law partially preempted by the 4R Act. The Tennessee tax law in question provided that the property of public utilities, including railroads, be taxed at 55% of its value, and that commercial and industrial property be assessed at 30% of its value. The 4R Act however required that railroads be assessed at the same percentage as commercial property, notwithstanding Tennessee's law classifying railroad as utilities. Federal Express, a utilities under Tennessee's scheme, but not a railroad, challenged Tennessee's treatment of railroads under the

4R Act and claimed that Tennessee had violated the taxpayer's equal protection rights by assessing the railroads as commercial property.

The Tennessee Supreme Court summarily rejected this challenge and held:

The legislature classified railroads as public utilities and assessed them for ad valorem tax purposes at 55% of the value of their properties. However, the Congress of the United States, by . . . [the 4R Act] . . . preempted the state classification of railroads and provided that they should be taxed as industrial and commercial property are taxed. The Act, having as its purpose the revitalization of railroads, affected only that business. Thus leaving in effect the state classification of other businesses as public utilities. The assessment of each of the businesses classed as public utilities is at the same ratio to value as the assessment of Federal Express property; consequently, we find no violation of . . . the Tennessee Constitution or the Equal Protection Clause of the Federal Constitution.

Id. at 876.

Kennecott is in the same position as the taxpayer in Federal Express. The 4R Act has preempted Utah's tax law and requires that railroads be treated in a manner different from Kennecott and other centrally assessed taxpayers. Although the 4R Act alters the treatment of railroads, it leaves unchanged Utah's taxing scheme as it applies to other businesses. Kennecott cannot complain of the treatment of railroads because

the 4R Act furthers a legitimate governmental purpose and Kennecott cannot challenge the Commission's treatment of its own, property because Kennecott is treated the same as other centrally assessed property. This Court should therefore find, as the Tennessee Supreme Court did, that Utah's compliance with the 4R Act does not violate the equal protection rights of the other taxpayers.

Kennecott cites Allegheny Pittsburgh Coal Co. v. County Commissioner of Weber County, 488 U.S. 336 (1989) to support its claim that Utah's compliance with the 4R Act violates the Equal Protection Clause of the 14th Amendment. In Allegheny Pittsburgh, the county assessor for one county in West Virginia started assessing property at its acquisition value. As a result, more recently transferred property had dramatically higher assessed values than other similarly situated property.

In analyzing the constitutionality of the assessor's acts, the Supreme Court held that a state may properly create tax classifications rationally related to legitimate governmental purposes. Id. at 344. West Virginia, however, had not created such a classification, but had required taxation at a uniform rate based on market value. Id. at 345. Instead of a formally recognized governmental objective, a county assessor, apparently acting on her own initiative, had simply adopted an "aberrational

enforcement policy" based on acquisition value and resulting in wide disparities. Id. at 345. The Supreme Court therefore declared the assessor's practice unconstitutional because the practice did not further any legitimate governmental interest.¹⁰

Allegheny Pittsburgh provides little guidelines here. The classification created by the unilateral actions of a county assessor are distinguishable from a classification created by Congress' enactment of the 4R Act.¹¹ More relevant to the instant case is Nordlinger wherein the Court determined the constitutionality Proposition 13, a formal legislative enactment.

Nordlinger is the United States Supreme Court's long waited decision on the constitutionality of California's Proposition 13 tax initiative. Proposition 13, among other things, adopts an "acquisition value" taxation system in which property is assessed at its value when acquired by the taxpayer rather than is assessed at its value when assessed. This system "created dramatic disparities in the taxes paid by persons owning

¹⁰ The county asserted that the assessor's practice was rationally related to the purpose of obtaining true value. Id. at 344. It did not assert that any legitimate policy was furthered by treating those who had purchased their property some time ago less favorably than those who purchased more recently.

¹¹ "Allegheny Pittsburgh was the rare case where the facts precluded any plausible inference that the reason for the unequal assessment practice was to achieve the benefits of an acquisition-value tax scheme." Id. at B2841.

similar pieces of property Indeed, in dollar terms, the difference in tax burdens are staggering." Id. at B2835.

Because of this disparate treatment, a California taxpayer, who had recently acquired her home, challenged Proposition 13 on equal protection grounds.

The Court analyzed the taxpayer's equal protection claim under the minimum scrutiny analysis applied to economic legislation.¹² It framed the constitutional issue as "whether the difference in treatment between newer and older owners rationally furthers a legitimate state interest." Id. at B2840. Stated in other words, the issue was whether the equal protection clause prohibited California from denying a new owner "the benefits of the same assessment value that her neighbors -- old owners -- enjoy." Id. at B2841. Notwithstanding the staggering differences in assessed values, the Court had "no difficulty" in identifying at least two reasonable grounds for denying newer owners the benefits of the lower assessed values given to older owners.¹³ Id. at B2841.

¹² The Court found that the taxpayer lacked standing to raise the constitutional right of travel as a basis for more stringent review of Proposition 13. Id. at B2840.

¹³ The Court described the scope of its review of the relationship between the classification and the governmental purposes as follows:

The equal protection analysis found in Nordlinger and Blue Cross compels a finding that Utah's compliance with the 4R Act is constitutional.¹⁴ Congress in enacting the 4R Act could have reasonably believed that preventing certain types of taxation of railroads would promote its legitimate governmental

[T]he Equal Protection Clause is satisfied so long as there is a plausible reason for the classification . . . the legislative facts, on which the classification is apparently based, rationally may be considered to be true by the governmental decision maker. . . and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational This standard is especially deferential in the context of classification made by complex tax laws. "[I]n structuring internal taxation schemes 'the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation'"

Id. at B2841 (emphasis supplied). The Utah Supreme Court applies a similar standard in assessing the constitutionality of tax laws under the equal protection component of the Utah Constitution. Blue Cross, supra, 779 P.2d at 637.

¹⁴ Kennecott cites Northern Natural Gas v. Board of Equalization, 443 N.W.2d 249 (Neb. 1989) which held that Nebraska's compliance with the 4R Act violated the equal protection clause of the 14th Amendment. The Court's opinion, relies on outdated United States Supreme Court decisions and does not cite Allegheny Pittsburgh. More importantly, it does not attempt to analyze whether the classifications under the 4R Act further a legitimate governmental interest as required in Allegheny Pittsburgh and reaffirmed in Nordlinger. Thus, the decision is of little value in assessing the constitutionality of the 4R Act under the equal protection clause of the 14th Amendment.

purposes of fostering the financial stability of railroads. This is all the equal protection clause requires. The fact that Kennecott and other taxpayers thereby bear a larger tax burden does not make the Act unconstitutional so long as the difference in treatment is related to a legitimate governmental interest. Since the 4R Act treatment of railroads furthers a legitimate governmental purpose, Utah's compliance with the act does not violate the Equal Protection Clause.

**C. Kennecott Has Not Proven What Relief Is
Appropriate to Remedy Any Equal Protection
Violation**

Kennecott has not established what relief it would be entitled to if the Court finds that Utah's compliance with the Act violates its rights equal protection rights. The 4R Act does not require that railroads obtain any specific reduction in assessed value. Instead, the 4R Act requires that a state not assess railroads at a higher ratio to their fair market value than it assesses all other industrial and commercial property in the state. The Tax Commission and the railroads compute this ratio on a yearly basis and have determined that the percent reduction for 1988 should be 14%. In computing this ratio, the assessed value of Kennecott's property was included with commercial property to determine the assessment ratio.

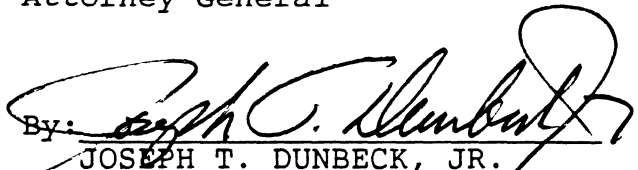
The record does not reflect that Kennecott is entitled to a 14% reduction even if it is assumed that it is entitled to same treatment as railroads. If Kennecott is to receive the same treatment as railroads under the 4R Act, Kennecott is only entitled not to be assessed at a higher ratio to fair market value than other commercial and industrial property in the state. The record, however, contains no evidence of what these ratios would be or the extent to which Kennecott would be entitled to a reduction to equalize its assessment with other commercial and industrial property in the state. For this reason, Kennecott has failed to establish its entitlement to relief.

CONCLUSION

For these reasons, the Court should affirm the Tax Commission's ruling.

DATED this 19th day of August, 1992.

PAUL VAN DAM
Attorney General

By: 
JOSEPH T. DUNBECK, JR.
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of August, 1992,
I caused four (4) true and correct copies of the foregoing BRIEF
OF THE UTAH STATE TAX COMMISSION to be mailed, first class,
postage prepaid, to the following:

James B. Lee
Kent W. Winterholler
Maxwell A. Miller
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
P. O. Box 11898
Salt Lake City, Utah 84147

David E. Yocom
Salt Lake County Attorney
Karl Hendrickson
Deputy County Attorney
Bill Thomas Peters
Special Deputy County Attorney
9 Exchange Place, Suite 400
Salt Lake City, Utah 84111

A handwritten signature in black ink, appearing to read "Joseph K. Hendrickson", is written over a horizontal line.

ADDENDUM A

BEFORE THE UTAH STATE TAX COMMISSION

KENNECOTT CORPORATION,)	
	:	
Petitioner,	)	FINDINGS OF FACT,
	:	CONCLUSIONS OF LAW,
v.	)	AND FINAL DECISION
	:	
PROPERTY TAX DIVISION OF THE	)	Appeal No. 88-1347
UTAH STATE TAX COMMISSION	:	
)	
	:	
Respondent.)	

STATEMENT OF CASE

This matter came before the Utah State Tax Commission for a formal hearing on May 10, 1990. G. Blaine Davis, Commissioner, served as the Presiding Officer. In addition, Joe B. Pacheco, Commissioner, and Joseph G. Linford, Administrative Law Judge, heard the matter for and on behalf of the Commission. Present and representing the Petitioner were Maxwell A. Miller and Kent W. Winterholler, Attorneys at law, of Parsons, Behle and Latimer. Present and representing the Respondent was Lee A. Dever, Assistant Utah Attorney General. Present and representing Salt Lake County were Bill Thomas Peters, Special Deputy County Attorney, of Kinghorn, Peters, Styler and Probst, and Karl Hendrickson, Deputy Salt Lake County Attorney.

The Property Tax Division of the Utah State Tax Commission originally mailed its Notice of Assessment to the Petitioner, Kennecott Corporation (Kennecott) on April 28, 1988. The total assessed value as initially determined by the

00000024

Property Tax Division for all of the Centrally assessed property of Kennecott located in Utah on January 1, 1988, was \$635,570,036. Kennecott timely appealed that assessment by a Request for Agency Action filed May 31, 1988, and a later Revised Request for Agency Action filed September 9, 1988.

Kennecott and the Property Tax Division entered into a Stipulation on December 9, 1988 in which they stipulated that the assessed value should be reduced to \$617,771,020 as a preliminary assessment, but they agreed that the final valuation could be higher or lower following either further negotiations or litigation.

The affected counties were given notice of the proposed reduction to Kennecott's valuation, and Salt Lake County (the county) objected and filed a Petition for Commencement of Adjudicative Proceedings on January 10, 1989. Salt Lake County also filed a Motion to Consolidate on January 20, 1989. Kennecott objected to the Motion and Petition on February 6, 1989.

On March 3, 1989, the Tax Commission executed and issued an Order of Approval in which they approved the preliminary determination of value at the stipulated amount of \$617,771,020, but the Order of Approval specifically provided that "the acceptance of the assessed value in no way limits any other issues relating to the appeal, and such issues shall be left to further resolution."

On August 7, 1989, Petitioner filed Petitioner's Amended Request for Agency Action. In that Amended Request, Kennecott raised the issues of economic and functional

obsolescence, imputed interest on construction work in progress, and equalization or equal protection of the laws.

On February 14, 1990, the Petitioner entered into a Stipulation with Salt Lake County wherein the parties stipulated to issues relating to this case and other pending cases between the parties. In that stipulation, Kennecott agreed to "withdraw, and dismiss, with prejudice, its Amended Request for Agency Action, as that request for agency action relates to the Property Tax Division's failure to allow for functional obsolescence in its valuation of Kennecott's property, and as a result of the inclusion by the Property Tax Division of imputed interest in the valuation by the Property Tax Division of Kennecott's construction work in progress in 1988." Kennecott did not withdraw the equal protection issues. In that stipulation, Salt Lake County agreed that it would "not contest the valuation of Kennecott's property by the Utah State Tax Commission, or by the Property Tax Division of the Utah State Tax Commission except to the extent that Kennecott seeks a reduction on that valuation as a result of the 4-R case, or related legal theories."

The hearing was held May 10, 1990. At the hearing, Kennecott took the positions that:

- a. The assessed values of its real property should be reduced by 20% to extend to it "the same 20% reduction that county assessed commercial and industrial property owners received" because of the provisions of Utah Code Ann. §59-2-304; or
- b. The assessed values of all of Kennecott's property

should be reduced by 14% to grant to them "the same percentage reduction of 14% that the state assessed railroads received for their taxable property" pursuant to the decision of the United States District Court in Union Pacific v. Utah State Tax Commission, 716 F. Supp. 543 (D. Utah 1988).

No testimony or evidence was presented at the hearing to indicate that the value of Kennecott's property was any amount other than the amount of \$617,771,020 to which Kennecott and the Property Tax Division stipulated. Therefore, the only issues before the Commission at the time of the hearing were the two issues raised by Kennecott.

At the time of the hearing there were at least two pending motions which had not been ruled upon by the Commission. Kennecott had filed a Motion to Strike, and Salt Lake County had filed a Motion for Consolidation.

Subsequent to the date of the formal hearing, but prior to the issuance of a final decision on this case, the Utah Supreme Court issued its decision in the case of Amax Magnesium Corporation v. Utah State Tax Commission, 796 P2d 1256 (Utah 1990) which held that Amax Magnesium was entitled to the 20% discount in the valuation of its taxable property which is extended to some county assessed property pursuant to Utah Code Ann. §59-2-304. That case was decided by the Utah Supreme Court on July 18, 1990, and on July 20, 1990, the Petitioner filed with the Tax Commission in this proceeding a copy of the Amax decision with a Submission of Decision in a Related Case in which they requested that the principles of the Amax case be

applied to this case and that Kennecott's property assessment be immediately reduced.

On October 4, 1990, Kennecott filed Petitioner's Second Amended Request for Agency Action in which they raised substantially the same issues as in their first Amended Petition, but they added further elaboration on the 20% issue because of the Amax decision.

Therefore, to clarify the current positions of each of the parties and to review the issues that must be decided, the Commission entered an order on October 28, 1991, requiring the parties to submit memoranda indicating what effect, if any, the Amax decision had on the present case. Each of the parties timely filed the requested memoranda.

Based upon the evidence and testimony presented at the hearing, as well as post hearing memoranda submitted by the parties, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is property tax.
2. The period in question is the lien date January 1, 1988.
3. For the lien date January 1, 1988, the Respondent, pursuant to stipulation and the Order of Approval entered by the Commission, has assessed the Petitioner's taxable centrally assessed property, exclusive of any property which may have been assessed by Salt Lake County, at \$617,771,020.00, including all real property, improvements and personal property. That value has been approved by the

Commission, subject to any changes that might be made through this proceeding.

4. During the period in question, locally assessed commercial and industrial real property located in Salt Lake County was assessed by the county using a combination of the comparable sales method, the cost appraisal method, and the income approach. The value so determined for such real property was then reduced 20% pursuant to the provisions of Utah Code Ann. §59-2-304. The 20% reduction does not apply to personal property and was not applied to personal property by the county.

5. As of January 1, 1988, the fair market value of all real and personal property of Union Pacific Railroad, Denver and Rio Grande Railroad, and Southern Pacific Railroad in Utah was valued by a combination of the cost appraisal method, the income approach, and the stock and debt approach. The values determined by each of those approaches were then correlated based upon the judgment of the appraiser, and the final correlated value so determined by the appraiser was then reduced by 14%, pursuant to a decision of the U.S. District Court for the District of Utah entered December 29, 1988. This reduction was applied to the railroads' state assessed unitary property which includes both real and personal property.

6. The correlation process is not a precise mathematical process, but depends strongly upon the judgment of the appraiser. Different appraisers can begin with the same estimates of value based upon the three different approaches or methods of valuation, and if they have different opinions of

the relative importance of the different approaches to value, then the final determination of value of each appraiser could be significantly different. Nevertheless, each of those determinations of value may still be a fair and reasonable determination of the fair market value of the property.

7. Although the methods and/or approaches for determining value for railroads assessed by the Property Tax Division of the State Tax Commission are similar in name to those used by the counties in determining the values of commercial and industrial properties, the actual methodology is very dissimilar. For example, the cost method for the railroads uses historical cost from the accounting records, whereas the cost method for commercial and industrial properties uses estimated replacement cost² as estimated by an appraisal service such as Marshall and Swift. Thus, while the cost method is not normally given substantial weight in the final valuation of a railroad, if replacement cost is used in a railroad valuation, the total value under the cost method will be much greater than it is if the historical cost is used from the accounting records. Similar distinctions exist in the utilization of the income approach, the comparable sales approach, and the stock and debt approach which is utilized for railroad valuation instead of the comparable sales method because there are very few, if any, sales of railroad properties to use as comparables.

8. The value of Petitioner's state assessed property was not reduced below its estimated fair market value for 1988.

9. Mining properties, such as those owned by Petitioner, are not in the same category of properties as railroad properties or most commercial and industrial properties. They have different characteristics and under Utah law they are assessed by different methodologies. Mining properties in Utah are valued using only one method, the "capitalized net revenue method" as set forth in Utah Code Ann. §59-2-201, which method is more fully set forth by the Rules of the Tax Commission in Rule R884-24-7P. Under Utah law, that methodology is exclusive to the assessment of mines.

10. Kennecott was valued pursuant to the same methodology and on a uniform and equal basis with all other mines in the State of Utah.

11. Kennecott is not valued by the unit approach, and does not operate as a unit across state lines.

12. The assessment of Kennecott was not made by the county assessor, but was made by the Property Tax Division of the State Tax Commission.

13. The assessment of Kennecott was not made by using either the comparable sales method or the cost appraisal method, but was made by using the capitalized net revenue method.

14. The capitalized net revenue method calculates fair market value without any consideration to transactional costs, i.e., it assumes that the fair market value is available to the owner without incurring transactional costs.

15. The ratio of real property to personal property for Petitioner is substantially different than the ratio of

real property to personal property for either the railroads or for commercial and industrial properties assessed by the county.

16. Petitioner has not submitted any evidence to establish that its property is not assessed at its fair and just value. In fact, they have stipulated that it is assessed at its fair market value.

17. Petitioner has not submitted any evidence to establish that the tax burden it will pay is disproportionate to the amount of property it owns.

CONCLUSIONS OF LAW

1. The Utah State Constitution Article XIII, Section 2(1) provides as follows:

Section 2

(1) All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law.

2. The Utah State Constitution, Article XIII, Section 3(1) provides as follows:

Section 3

(1) The Legislature shall provide by law a uniform and equal rate of assessment on all tangible property in the state, according to its value in money, except as otherwise provided in Section 2 of this Article. The Legislature shall prescribe by law such provisions as shall secure a just valuation for taxation of such property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its tangible property, provided that the Legislature may determine the manner and extent of taxing livestock.

3. Utah Code Ann § 59-2-201(1) provides in pertinent part as follows:

By May 1 the following property shall be assessed by the commission at 100% of fair market value, as valued on January 1, in accordance with this chapter:

(a) All property which operates as a unit across county lines, if the values must be apportioned among more than one county or state;

(e) All mines and mining claims except in cases as determined by the commission, where the mining claims are used for other than mining purposes, in which case the value of mining claims used for other than mining purposes shall be assessed by the assessor of the county in which the mining claims are located: and. . .

(f) All machinery used in mining, all property or surface improvements upon or appurtenant to mines or mining claims. For the purposes of assessment and taxation, all processing plants, mills, reduction works, and smelters which are primarily used by the owner of a mine or mining claim for processing, reducing, or smelting minerals taken from a mine or mining claim shall be considered appurtenant to that mine or mining claim, regardless of actual location.
. . .

4. Utah Code Ann. §59-2-201(2) provides as follows:

The method for determining the fair market value of productive mining property is the capitalized net revenue method or any other valuation method the commission believes, or the taxpayer demonstrates to the commission's satisfaction, to be reasonably determinative of the fair market value of the mining property. The rate of capitalization applicable to mines shall be determined by the commission, consistent with a fair rate of return expected by an investor in light of that industry's current market, financial, and economic conditions. In no event may the fair market value of the mining property be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property.
(Emphasis added)

5. Utah Code Ann. §59-2-304(1) provides as follows:

If the county assessor uses the comparable sales or the cost appraisal method in determining the fair market value of taxable property for assessment purposes, the assessor is required to recognize that various fees, services, closing costs, and other expenses related to the transaction lessen the actual amount that may be received in the transaction. The county assessor shall, therefore, take 80% of the value based on comparable sales or cost appraisal of the property as its fair market value.

6. Utah Code Ann. §59-2-304(2), as of January 1, 1988, provided that the Commission would develop and implement methods of appraisal which would not include as part of the fair market value the "intangible values" as outlined in Subsection (1) and that thereafter Subsection (1) would no longer apply. Instead, the methods developed by the Commission were to then be fully implemented.

7. Under the above provisions the Legislature has been given the authority to provide a "uniform and equal rate of assessment on all tangible property in the state" and to "secure a just valuation for taxation of such property" in order for every entity to pay taxes in proportion to the value of that entity's property. Pursuant to that authority granted under the constitution, the Legislature has enacted §§59-2-201 and 59-2-304.

8. The Legislature has made a determination that when fair market value is calculated by using either the comparable sales method or the cost appraisal method there are transaction costs which have been included as part of the determined value. The Legislature has also made the

determination that when fair market value is calculated by any other method, such as the capitalized net revenue method, there are no transaction costs which have been included as part of the determined value. There is a reasonable relationship between that legislatively determined classification and the purpose of §59-2-304(1), the purpose of which is to equalize the tax burdens imposed upon the various properties.

9. The Legislature found no basis for intangible values or transaction costs for centrally assessed properties as is indicated by the exclusion of centrally assessed properties from the provisions of §59-2-304, and also by the express provisions of §59-2-201. The Legislature has determined that centrally assessed properties, including mine properties such as Petitioner's, are to be assessed by the Commission using methods other than the comparable sales method or the cost appraisal method. Those centrally assessed property valuation methods, including the capitalized net revenue method, have been determined to not include transaction costs in the calculation of fair market value. The Legislature has, therefore, specifically excluded properties such as that which is owned by the Petitioner from the operation of §59-2-304 because of the difference in methodology.

10. The 20% reduction provided by Utah Code Ann. §59-2-304 applies only to real property valued by either the comparable sales method or the cost appraisal method. It does not apply to personal property.

11. The federal "4-R" Act does not apply to mining properties such as the property of Petitioner.

12. If the property of Petitioner had been valued by the county pursuant to the capitalized net revenue method, the values so determined would not have been reduced 20% because of the provisions of Utah Code Ann. §59-2-304.

13. Utah Code Ann. §§59-2-1007 and 59-1-210(7) provide that the Tax Commission may equalize an assessment with other similarly assessed property, and ensure that assessments are just, equal and their burden is distributed without favor or discrimination.

14. It is Petitioner's position that the Commission should equalize the assessment of Petitioner's property with property which is similarly assessed. However, the Petitioner's property has not been deemed by the Legislature to be similarly assessed with properties which do receive the 20% or 14% reductions. The subject property as a mine property is centrally assessed under the above provisions and also under section 4 of Article XIII of the Utah State Constitution and the relevant statutes and rules of the Commission. It is therefore in the same category as other property which is centrally assessed and all centrally assessed property is taxed at 100% of fair market value.

15. The Petitioner has not shown that the appraisal methods used by the Petitioner and those used by Salt Lake County were the same. Therefore, the decision of the Utah Supreme Court in Amax Magnesium Corporation v. Utah State Tax Commission, 796 P.2d 1256 (Utah 1990) does not control or govern these proceedings. In the present case, although the methods used by the Respondent and the county may be referred

to by the same names (i.e. income approach, cost approach, and market approach) the techniques and methodologies used within each of those separate methods are quite different with respect to the subject property.

16. In the alternative, Petitioner asserts that it should be accorded the 14% reduction allowed to railroads. The controlling case to this issue is Union Pacific vs. Utah State Tax Commission, 716 F.Supp. 543 (D. Utah 1988). As a result of that case, railroads under the federal "4-R" Act have a 14% reduction in the assessed values of their property. The subject property, however, is not a railroad property and is also not governed by the federal "4-R" Act. It is therefore, not similar to railroad properties that receive the 14% reduction. The subject property is required by law to be assessed at 100% of its full market value.

17. The Commission finds further that the case Rio Algom Corp. vs. San Juan County, 681 P.2d 184 (Utah 1984) states the rationale and principles which are controlling in this case. The Rio Algom Court found that a "certain degree of de facto classification is unavoidable" and the Legislature has a proper amount of discretion in meeting the requirements of uniformity mandated under the Utah Constitution. The court stated:

Under Article XIII, §3, the property taxes paid on each property are required to be uniform and in proportion to the value of the property. Although the objective is easily stated, its attainment is more difficult. Because of the many different kinds of property and the various factors that affect their value, the determination of what constitutes equal "in proportion to the value of his, her, or its tangible

property," under Article XIII, §3, cannot be made by application of any single property formula.

Of primary importance is the determination of what valuation method should be utilized, and that depends on the nature of the properties to be taxed. Residential, commercial, transportation, mining and public utilities, etc., must be treated differently because of the economic conditions that give value to such properties. Rio Algom at 188.

18. Petitioner claims that the Equal Protection Clause of the United States Constitution does not allow Petitioner to be treated differently than those properties which are accorded the 20% and 14% reductions. However, Petitioner does not fall within the classifications of these other properties, so Petitioner has not shown that it is unlawfully treated differently than other mines or others within its classification. Therefore, the equal protection clause does not mandate a reduction of the value of Petitioner's property.

19. The distinctions between property such as that owned by Petitioner and other properties in the state is a reasonable one which has been made by the Legislature in the exercise of its proper discretion and is neither arbitrary nor capricious. The distinctions and classifications established by the Legislature do not result in an intentional or systematic overvaluation of the Petitioner's property from the valuation of the property of other taxpayers within the same class. See Allegheny Pittsburgh Coal Company vs. Webster County West Virginia, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989).

20. Valuations of different types of properties cannot be determined by the application of a single or uniform formula. The value of a mine is not determined by the application of the same formula or methodology as is used to determine the value of a home. Likewise neither a mine nor a home can be determined by the application of the same formula or methodology as is used to determine the value of a railroad.

21. The valuation of property is not subject to mathematical precision. Different appraisers can use the same general methodology such as the income approach, but by making slightly different assumptions, such as capitalization rate, they may arrive at substantially diverse conclusions of fair market value. However, each of those determinations of value may still be a fair and reasonable determination of the fair market value of the property.

22. "Market Value" is a term that cannot be applied in an overly rigid fashion, and is not subject to mathematical precision. It cannot be determined to the nearest dollar. It is a term which is at best a reasonable approximation based upon the best evidence available and the judgment and experience of the person making the determination of value. While the term has a precise meaning, an appraisal is not a wholly fixed, precise, or exact number.

23. The factual premise of the Legislature was that properties valued by either the comparable sales method or the cost appraisal method had elements of transaction costs included in those values, and that since those costs were not included in values determined pursuant to other methods, those

transaction costs should not be required to bear a portion of the tax burdens. It was the Legislature's way of equalizing taxes as required by the constitution. There was no evidence presented at the hearing that the premise assumed by the Legislature was not correct.

24. In Amax, supra, the valuation methods of the Property Tax Division of the Utah State Tax Commission were identical in all respects to the valuation methods of the county. In this proceeding, the property of Petitioner is valued using a different method than was used for residences or railroads.

25. The Utah Supreme Court in Amax, supra, did not hold Utah Code Ann. §59-2-304(1), unconstitutional, but it held that the 20% reduction required by the statute must be applied to the property of AMAX because it had been valued by exactly the same methodology used by the county in valuing county assessed property.

26. Based on the above, the Commission determines that the relief sought by Petitioner cannot be granted. The assessment of Petitioner's property at 100% of its fair market value pursuant to the capitalized net revenue method is proper, fair, reasonable, and required by the constitution and laws of the state of Utah, and does not contravene any provision of

federal law or violate any provisions or requirements of the United States Constitution.

DECISION AND ORDER


Based upon the foregoing, it is the decision and order of the Utah State Tax Commission that:


1. The Motion to Consolidate filed by the County, and the Motion to Strike filed by Petitioner are hereby denied. Any other pending motions are also denied.


2. The request for a reduction in the value of Petitioner's property is hereby denied, and the value of Petitioner's property for the lien date of January 1, 1988, is affirmed at \$617,771,020. It is so ordered.

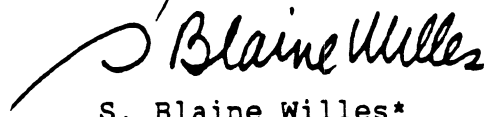
DATED this 3rd day of March, 1992.

BY ORDER OF THE UTAH STATE TAX COMMISSION.


R. H. Hansen
Chairman


Joe B. Pacheco
Commissioner

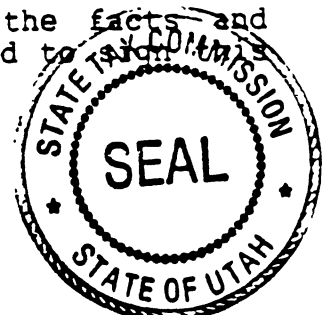

Roger O. Tew
Commissioner


S. Blaine Willes*
Commissioner

NOTICE: You have twenty (20) days after the date of the final order to file a request for reconsideration or thirty (30) days after the date of final order to file in Supreme Court a petition for judicial review. Utah Code Ann. §§63-46b-13(1), 63-46b-14(2)(a).

*Since the hearing on this case, Commissioner G. Blaine Davis has been replaced by Commissioner S. Blaine Willes. Commissioner Willes has been duly advised of the facts and circumstances regarding this case and is qualified to render the decision.

GBD/sj/9416w



00000041

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing
Decision to the following:

Kennecott Corporation - Utah Copper
c/o Kent Winterholler
185 South State Street, Suite 700
P.O. Box 11898
Salt Lake City, UT 84147

Robert L. Yates
Salt Lake County Assessor
2001 South State #N2323
Salt Lake City, UT 84190

Mike Reed
Salt Lake County Auditor
2001 South State Street, #N2200
Salt Lake City, UT 84190

Karl Hendrickson
Salt Lake County Attorney
2001 South State Street, S3600
Salt Lake City, UT 84108

Anne R. Dunyon
Tooele County Assessor
County Courthouse
Tooele,, UT 84074

Glenn W. Caldwell
Tooele County Auditor
County Courthouse
Tooele,, UT 84074

J. Mike Monson
Director, Property Tax
Heber M. Wells Bldg.
Salt Lake City, UT 84134

Brent Eyre
Assistant Director
Heber M. Wells Building
Salt Lake City, UT 84134

L. Brent Gardner
Utah Association of Counties
55 South State Street, Suite 300
Salt Lake City, UT 84111

Bill Thomas Peters
Deputy County Attorney
9 Exchange Place #1000
Salt Lake City, UT 84111

Lee Dever
Assistant Attorney General
State Capitol Building
Salt Lake City, UT 84114

DATED this 3rd day of March, 1992.

Sara Jensen
Secretary

ADDENDUM B

Art. I, § 23

CONSTITUTION OF UTAH

COLLATERAL REFERENCES

Utah Law Review. — The Condemnor's Liability for Damages Arising Through Instituting, Litigating, or Abandoning Eminent Domain Proceedings, 1967 Utah L. Rev. 548
 Comment, Highway Noise Damage and Utah Eminent Domain Law, 1972 Utah L. Rev. 116

City of Oakland v. Oakland Raiders Defining the Parameters of Limitless Power, 1983 Utah L. Rev. 397.

Eminent Domain Compensation in Western States A Critique of the Fair Market Value Model, 1984 Utah L. Rev. 429

The Failure of Subdivision Control in the Western United States A Blueprint for Local Government Action, 1988 Utah L. Rev. 569

Journal of Energy Law and Policy. Comment, The Only Way to Manage a Desert, Utah's Liability Immunity for Flood Control, 8 J. Energy L. & Pol'y 95 (1987)

Harvard Law Review. — Constitutionality of Zoning, 37 Harv L. Rev. 834

Am. Jur. 2d. — 26 Am. Jur. 2d Eminent Domain §§ 7, 13 et seq.

C.J.S. — 29A C.J.S. Eminent Domain § 3
A.L.R. — Building restrictions, as property rights for taking of which compensation must be made, 4 A.L.R. 3d 1137

Restrictive covenant, right to enforcement thereof as compensable property right, 4 A.L.R. 3d 1147

Deduction of benefits in determining compensation or damages in proceeding involving

opening, widening, or otherwise altering highway, 13 A.L.R. 3d 1149

Property for exchange for other property required for public use, condemning, 20 A.L.R. 3d 862

Restrictive covenant, existence of, as element in fixing price of property condemned, 22 A.L.R. 3d 961

Eminent domain — right to enter land for preliminary survey or examination, 29 A.L.R. 3d 1104

Entry upon or exploration of land before condemnation, 29 A.L.R. 3d 1104

Schools — liability of public schools and institutions of higher learning for taking or damaging private property for public use, 33 A.L.R. 3d 703

Seizure of property as evidence in criminal prosecution or investigation as compensable taking, 44 A.L.R. 4th 366

Validity, construction, and application of state relocation assistance laws, 49 A.L.R. 4th 491

Inverse condemnation state court class actions, 49 A.L.R. 4th 618

Court appointment of attorney to represent, without compensation, indigent in civil action, 52 A.L.R. 4th 1063

Eminent domain — industrial park or similar development as public use justifying condemnation of private property, 62 A.L.R. 4th 1183

Key Numbers. Eminent Domain ⇨ 3

Sec. 23. [Irrevocable franchises forbidden.]

No law shall be passed granting irrevocably any franchise, privilege or immunity.

History: Const. 1896.

NOTES TO DECISIONS

ANALYSIS

Alcoholic beverages
Pioneer Memorial Building
Public purpose

Alcoholic beverages.

Former Liquor Control Act held not unconstitutional as violative of this section. *Utah Mfrs' Ass'n v. Stewart*, 82 Utah 198, 23 P.2d 229 (1933)

State legislature was acting within its power in enacting former Liquor Control Act, which in effect revoked previously granted license authorizing the sale of light beer. *Riggins v. District Court*, 89 Utah 183, 51 P.2d 645 (1935)

Pioneer Memorial Building.

Act pertaining to leasing of portion of state capitol grounds to Daughters of Utah Pioneers for erection and maintenance of Pioneer Memorial Building, and amendments thereto making appropriations therefor, as well as appropriation of \$150,000 for that building, did not violate this section. *Thomas v. Daughters of Utah Pioneers*, 114 Utah 108, 197 P.2d 477 (1948), appeal dismissed for want of a properly presented substantial federal question, 336 U.S. 930, 69 S.Ct. 739, 93 L.Ed. 1090 (1949)

Public purpose.

Construction and operation of parking facility by city agency as part of a slum clearance

DECLARATION OF RIGHTS

Art. I, § 24

project did not unconstitutionally grant benefits to private individuals, any benefits were strictly incidental to the public purpose of ter-

mination of urban blight. *Tribe v. Salt Lake City Corp.*, 540 P.2d 499 (Utah 1975)

COLLATERAL REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d Franchises §§ 9 to 23

C.J.S. 37 C.J.S. Franchises § 26
Key Numbers. Franchises ⇨ 11

Sec. 24. [Uniform operation of laws.]

All laws of a general nature shall have uniform operation

History: Const. 1896.

Cross-References. — Prohibition on pri-

vate or special laws, Utah Const., Art. VI, Sec. 26

NOTES TO DECISIONS

ANALYSIS

In general

Age of majority

Agent for service of process

Automobile license law

Construction with Art. VI, § 26

Contract carrier permit

Cosmetologists' license law

Criminal actions

— Investigations

Prosecution

Sentence

Criminal sentence

Disparate tax assessments

Excess revenue refunds

Guest statutes

Inheritance Tax Law

Insurance premium tax exemption

Intoxicating liquor

Licenses

Massage parlor ordinance

Municipal employment prerequisites

Notice requirements

Property

— Responsibility for water service

Public employees' retirement system

Public officers' bonds

Public officers' salaries

Road poll tax

School activities

Search warrants

Sunday closing laws

Tax sales

Unfair Practices Act

In general.

All laws shall operate uniformly wherever uniform laws can be enacted. *State v. Holtgreve*, 58 Utah 563, 200 P. 894, 26 A.L.R. 696 (1921)

Objects and purposes of law present touchstone for determining proper and improper

classifications. *State v. Mason*, 94 Utah 501, 78 P.2d 920, 117 A.L.R. 330 (1938); *State v. J.B. & R.E. Walker, Inc.*, 100 Utah 523, 116 P.2d 766 (1941)

One who assails legislative classification as arbitrary has burden of proving it to be such. *State v. J.B. & R.E. Walker, Inc.*, 100 Utah 523, 116 P.2d 766 (1941)

Classification is never unreasonable or arbitrary in its inclusion or exclusion features so long as there is some basis for differentiation between classes or subject matters included, as compared to those excluded, provided differentiation bears reasonable relation to purposes of act. *State v. J.B. & R.E. Walker, Inc.*, 100 Utah 523, 116 P.2d 766 (1941)

Before legislative enactment can be interfered with, court must be able to say that there is no fair reason for the law that would not require equally its extension to those which it leaves untouched. *State v. J.B. & R.E. Walker, Inc.*, 100 Utah 523, 116 P.2d 766 (1941)

Only where some persons or transactions excluded from operation of law are, as to the subject matter of the law, in no differentiable class from those included in its operation, is the law discriminatory in the sense of being arbitrary and unconstitutional, and if reasonable basis to differentiate can be found, law must be held constitutional. *State v. J.B. & R.E. Walker, Inc.*, 100 Utah 523, 116 P.2d 766 (1941)

Inability of legislature to make perfect classification does not render statute unconstitutional. *State v. J.B. & R.E. Walker, Inc.*, 100 Utah 523, 116 P.2d 766 (1941)

In determining whether classification made by legislature is unconstitutional, discrimination is very essence of classification and is not objectionable unless founded upon unreasonable distinctions. *Gronlund v. Salt Lake City*, 113 Utah 284, 194 P.2d 464 (1948)

An act is never unconstitutional because of

COLLATERAL REFERENCES

Utah Law Review. — An Intermediate Appellate Court — Does Utah Need One?, 1979 Utah L. Rev. 107

Am. Jur. 2d. — 16A Am. Jur. 2d Constitutional Law §§ 306 to 310; 20 Am. Jur. 2d Courts § 1 et seq.

C.J.S. — 16 C.J.S. Constitutional Law §§ 169 to 214

A.L.R. — Judicial power to order discontinuance of life-sustaining treatment, 48 A.L.R. 4th 67

Key Numbers. — Constitutional Law — 67 to 75, Courts — 147 1/2, 206(12 1/2), States — 52

Sec. 2. [Supreme court — Chief justice — Declaring law unconstitutional — Justice unable to participate.]

The Supreme Court shall be the highest court and shall consist of at least five justices. The number of justices may be changed by statute, but no change shall have the effect of removing a justice from office. A chief justice shall be selected from among the justices of the Supreme Court as provided by statute. The chief justice may resign as chief justice without resigning from the Supreme Court. The Supreme Court by rule may sit and render final judgment either en banc or in divisions. The court shall not declare any law unconstitutional under this constitution or the Constitution of the United States, except on the concurrence of a majority of all justices of the Supreme Court. If a justice of the Supreme Court is disqualified or otherwise unable to participate in a cause before the court, the chief justice, or in the event the chief justice is disqualified or unable to participate, the remaining justices, shall call an active judge from an appellate court or the district court to participate in the cause.

History: Const. 1896; L. 1943, S.J.R. 2; 1944 (2nd S.S.), S.J.R. 1.

Cross-References. — Election following appointment to judicial office, § 20 1 7 7
Statutory provisions, § 78 2 1 et seq.

NOTES TO DECISIONS

ANALYSIS

"Disqualification" construed
Effect of syllabus of case
Powers of district judge sitting in place of deceased justice

"Disqualification" construed.

The term "disqualified" as used in this article is used in its natural and ordinary sense, and thus includes illness or a physical disability or other condition incapacitating a member of the court, and may even include the death of such member. In re Thompson's Estate, 72 Utah 17, 269 P. 103 (1928).

This section negates the idea that if a justice is temporarily disqualified, there should be an appointment by the governor. The term "disqualified" used therein has been interpreted to mean not only personal interest in the particular case on the part of a justice, or that he was counsel during the trial or prior proceedings, or

that he was otherwise disqualified to hear the case. Since statehood it has been the practice to call in a district judge when a member of the Supreme Court is ill "or otherwise unable to be present at hearing of a cause." Accordingly, where justice enters armed forces of nation as a reserve officer, a district judge may be called in. Critchlow v. Monson, 102 Utah 378, 131 P.2d 794 (1942). For sequel to this case, see State ex rel. Jugler v. Grover, 102 Utah 459, 132 P.2d 125 (1942).

Effect of syllabus of case.

Where it is not clear from separate opinions of the court exactly what the holding is, the decision of the court should be ascertainable by reading the syllabus. Shields v. Utah Light & Traction Co., 99 Utah 307, 105 P.2d 347 (1940).

Powers of district judge sitting in place of deceased justice.

Under this section, when a justice dies, a va-

cancy in his office occurs, and the remaining justices have authority to call in or permit a district judge to sit with them in a particular case which is argued before the governor and is filled by appointment of the governor and the appointee qualifies. Such district judge is at

least a judge de facto, and he may participate in the case and in the court's decision and the rehearing therein even after vacancy has been filled by appointment. In re Thompson's Estate, 72 Utah 17, 269 P. 103 (1928).

COLLATERAL REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d Courts § 87 et seq.

C.J.S. — 21 C.J.S. Courts §§ 291, 464 to 466

A.L.R. — Disqualification of judge for having decided different case against litigant, 21 A.L.R. 3d 1369

Power of successor or substituted judge, in civil case, to render decision or enter judgment

on testimony heard by predecessor, 22 A.L.R. 3d 922

Disqualification of judge on ground of being a witness in the case, 22 A.L.R. 3d 1198

Disqualification of judge for bias against counsel for litigant, 23 A.L.R. 3d 1416

Disqualification of judge because of his or another's holding or owning stock in corporation involved in litigation, 25 A.L.R. 3d 1331

Key Numbers. — Courts — 248

Sec. 3. [Jurisdiction of Supreme Court.]

The Supreme Court shall have original jurisdiction to issue all extraordinary writs and to answer questions of state law certified by a court of the United States. The Supreme Court shall have appellate jurisdiction over all other matters to be exercised as provided by statute, and power to issue all writs and orders necessary for the exercise of the Supreme Court's jurisdiction or the complete determination of any cause.

History: Const. 1896; 1943, S.J.R. 2; 1944 (2nd S.S.), S.J.R. 1.

Compiler's Notes. — Provisions similar to those in this section were formerly found in Art. VIII, Sec. 4.

Cross-References. — Original and appellate jurisdiction, § 78 2 2

NOTES TO DECISIONS

ANALYSIS

Appellate jurisdiction

Certiorari

Habeas corpus

Legislative enlargement or abridgement of powers

Appellate jurisdiction.

Appellate jurisdiction connotes review of the action of an inferior court. Federal courts are not inferior courts to the Utah Supreme Court and supreme court's answer to certified questions in a case that originated in or is to be adjudicated in a federal court is not an exercise of appellate jurisdiction within the meaning of this section. Holden v. N.L. Indus., Inc., 629 P.2d 428 (Utah 1981).

Certiorari.

Under this section the Supreme Court, and not a justice thereof, is authorized to issue a writ of certiorari, and a statute conferring such power on a Supreme Court justice must give

way to the Constitution. Carter v. West, 38 Utah 381, 113 P. 1025 (1911).

Where, due to untimeliness, a criminal conviction was no longer subject to review by the statutory remedy of appeal, and a habeas corpus proceeding, which was properly before the Supreme Court on appeal, held that defendant had been deprived of his constitutional right to an appeal, and the alleged error could not have been corrected on appeal and the defendant had taken the initiative to seek an appeal before the time for appeal had passed, Supreme Court exercised its discretion to issue the common law writ of certiorari to allow defendant a direct review in the Supreme Court of the alleged errors in his trial. Boggess v. Morris, 635 P.2d 39 (Utah 1981).

Habeas corpus.

Matters which have been or could have been raised on appeal cannot be brought before the court by habeas corpus. Habeas corpus is a civil matter and the findings of the trial court

Art XIII, § 1

CONSTITUTION OF UTAH

does not prevent the state from going into the liquor business. *Riggins v. District Court*, 89 Utah 183, 51 P 2d 645 (1935).

COLLATERAL REFERENCES

Utah Law Review. Antitrust Symposium, 1969 Utah L. Rev. 617.

The Utah Antitrust Act of 1979: Getting into the State Antitrust Business, 1980 Utah L. Rev. 73.

Journal of Energy Law and Policy. An Economic Analysis of Utility Coal Company Relationships, 8 J. Energy L. & Pol'y 27 (1987).

A L.R. — Divestiture as available relief under § 16 of Clayton Act (15 USC § 26) in action by private parties, 77 A.L.R. Fed. 509.

Standing of private party under § 16 of Clayton Act (15 USC § 26) to seek injunction to prevent merger or acquisition allegedly prohibited under § 7 of the Act (15 USC § 18), 78 A.L.R. Fed. 159.

Am. Jur. 2d. 54 Am. Jur. 2d Monopolies, Restraints of Trade, and Unfair Trade Practices § 443 et seq.

C.J.S. — 58 C.J.S. Monopolies § 27. Key Numbers. Monopolies — 310.

ARTICLE XIII

REVENUE AND TAXATION

Section

- 1 [Fiscal year.]
- 2 [Tangible property to be taxed. Value ascertained. Exemptions. Remittance or abatement of taxes of poor — Intangible property — Legislature to provide annual tax for state.]
- 3 [Assessment and taxation of tangible property — Livestock — Land used for agricultural purposes.]
- 4 [Mines and claims to be assessed. Basis and multiple. What to be assessed as tangible property.]
- 5 [Local authorities to levy local taxes — Sharing tax and revenues by political subdivisions.]
- 6 [Annual statement to be published.]
- 7 [Repealed.]
- 8 [Officer not to make profit out of public moneys.]

Section

- 9 [State expenditure to be kept within revenues.]
- 10 [All property taxable where situated.]
- 11 [Creation of State Tax Commission — Membership. Governor to appoint. Terms. Duties. County boards. Duties.]
- 12 [Stamp, income, occupation, license or franchise tax permissible — Reference to United States laws in imposition of income taxes. Income or intangible property taxes allocated to public school system.]
- 13 [Revenue from highway user and motor fuel taxes to be used for highway purposes.]
- 14 [Tangible personal property tax exemption.]

Section 1. [Fiscal year.]

The fiscal year shall begin on the first day of January, unless changed by the Legislature.

History: Const. 1896.

Compiler's Notes. — Laws 1980, Senate Joint Resolution No. 6, proposed to amend Article XIII. The proposed amendment was submitted to the electors at the general election in

1980 and failed to pass because it did not receive the necessary majority.

Cross-References. Fiscal year of state to commence on first of July, § 63.1.1.

REVENUE AND TAXATION

Art. XIII, § 2

NOTES TO DECISIONS

Bond issue

City ordinance authorizing bond issue for improvement of waterworks and specifying that for purpose of servicing bonds fiscal year should continue same as calendar year was not

invalid as attempting to fix fiscal year other than that provided by this section. *Fjeldsted v. Ogden City*, 83 Utah 278, 28 P 2d 144 (1933); *Wadsworth v. Santaquin City*, 83 Utah 321, 28 P 2d 161 (1933).

COLLATERAL REFERENCES

C.J.S. — 84 C.J.S. Taxation § 357. Key Numbers. Taxation — 318.

Sec. 2. [Tangible property to be taxed — Value ascertained — Exemptions — Remittance or abatement of taxes of poor — Intangible property — Legislature to provide annual tax for state.]

(1) All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law.

(2) The following are property tax exemptions:

- (a) The property of the state, school districts, and public libraries,
- (b) The property of counties, cities, towns, special districts, and all other political subdivisions of the state, except that to the extent and in the manner provided by the Legislature the property of a county, city, town, special district or other political subdivision of the state located outside of its geographic boundaries as defined by law may be subject to the ad valorem property tax,

(c) Property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes,

(d) Places of burial not held or used for private or corporate benefit, and

(e) Farm equipment and farm machinery as defined by statute. This exemption shall be implemented over a period of time as provided by statute.

(3) Tangible personal property present in Utah on January 1, m, which is held for sale or processing and which is shipped to final destination outside this state within twelve months may be deemed by law to have acquired no situs in Utah for purposes of ad valorem property taxation and may be exempted by law from such taxation, whether manufactured, processed or produced or otherwise originating within or without the state.

(4) Tangible personal property present in Utah on January 1, m, held for sale in the ordinary course of business and which constitutes the inventory of any retailer, or wholesaler or manufacturer or farmer, or livestock raiser may be deemed for purposes of ad valorem property taxation to be exempted.

(5) Water rights, ditches, canals, reservoirs, power plants, pumping plants, transmission lines, pipes and flumes owned and used by individuals or corporations for irrigating land within the state owned by such individuals or corporations, or the individual members thereof, shall be exempted from taxation to the extent that they shall be owned and used for such purposes.

(6) Power plants, power transmission lines and other property used for generating and delivering electrical power, a portion of which is used for

furnishing power for pumping water for irrigation purposes on lands in the state of Utah, may be exempted from taxation to the extent that such property is used for such purposes. These exemptions shall accrue to the benefit of the users of water so pumped under such regulations as the Legislature may prescribe.

(7) The taxes of the poor may be remitted or abated at such times and in such manner as may be provided by law.

(8) The Legislature may provide by law for the exemption from taxation of not to exceed 45% of the fair market value of residential property as defined by law; and all household furnishings, furniture, and equipment used exclusively by the owner thereof at his place of abode in maintaining a home for himself and family.

(9) Property owned by disabled persons who served in any war in the military service of the United States or of the state of Utah and by the unmarried widows and minor orphans of such disabled persons or of persons who while serving in the military service of the United States or the state of Utah were killed in action or died as a result of such service may be exempted as the Legislature may provide.

(10) Intangible property may be exempted from taxation as property or it may be taxed as property in such manner and to such extent as the Legislature may provide, but if taxed as property the income therefrom shall not also be taxed. Provided that if intangible property is taxed as property the rate thereof shall not exceed five mills on each dollar of valuation.

(11) The Legislature shall provide by law for an annual tax sufficient, with other sources of revenue, to defray the estimated ordinary expenses of the state for each fiscal year. For the purpose of paying the state debt, if any there be, the Legislature shall provide for levying a tax annually, sufficient to pay the annual interest and to pay the principal of such debt, within twenty years from the final passage of the law creating the debt.

History: Const. 1896; L. 1930 (Spec. Sess.), S.J.R. 2; 1946, H.J.R. 3; 1957, H.J.R. 7; 1961, S.J.R. 6; 1963, S.J.R. 5; 1967, S.J.R. 1; 1982, S.J.R. 3; 1986, H.J.R. 18.

Compiler's Notes. — Laws 1959, Senate Joint Resolution No. 5 proposed a constitutional amendment to be voted on by the electors at the general election in 1960. The proposed amendment failed to pass because it did not receive the necessary majority.

The 1979 proposed amendments to this section by House Joint Resolutions Nos. 23 and 25 were repealed and withdrawn by Senate Joint Resolution No. 6, Laws 1980.

Laws 1986, Senate Joint Resolution No. 4, proposed to amend Subsection (2) of this section. The proposed amendment was submitted to the electors at the general election in 1986 and failed to pass because it did not receive the necessary majority.

Cross-References. — Armories exempt from taxation, § 39-2-1.

Civil Air Patrol equipment exempt, § 2-1-41.

County service area property exempt, § 17A-2-429.

Disabled veteran's exemption, §§ 59-2-1104, 59-2-1105.

Exemptions generally, § 59-2-1101 et seq., Chapter 23 of Title 78.

Indigent persons, abatement or deferral of taxes, §§ 59-2-1107 to 59-2-1109.

Industrial facilities development property exempt, § 11-17-10.

Mine and mining claim improvements, machinery or structures not exempt, § 59-5-64.

Privilege tax on possession and use of tax-exempt properties, § 51-4-101.

Property of higher education institutions exempt, § 53B-20-106.

Property tax relief, § 59-2-1201 et seq.

Rate of assessment of property, § 59-2-103.

School property exempt from taxation, § 53A-3-408.

Tangible personal property held for sale on January 1 exempt, § 59-2-1114.

ANALYSIS

In general

Banks

Boundaries of taxing districts

Charitable organization's property

Charitable purpose

Charitable use exemption

Government subsidies

Hospital under construction

Material reciprocity test

Operating expenses

Church property

City property

Co-operative corporation property

Corporations for irrigating land

County improvement district contingent tax

Disparity in state and county assessment

Excess revenue refunds

Labor union property

Mining claims

Property of United States or its instrumentalities

Remission of taxes of indigent or insane persons

Roll back of assessed value

Scientific research institute

Sewer charges against city school board property

Special assessments

State colleges

State property

Transfer of property to tax exempt corporation

True market value

Intentional discrimination

Utah State Retirement Fund property

Value determination by classification

Cited

In general.

State's power of taxation is not within application of, and is not limited by, Art. I, Sec. 22, providing that private property shall not be taken or damaged for public use without just compensation. *Kimball v. Grantsville City*, 19 Utah 368, 57 P. 1, 45 L.R.A. 628 (1899).

Unless tax laws conflict with some constitutional provision, either expressly or by implication, courts have no authority to prevent their execution. *Kimball v. Grantsville City*, 19 Utah 368, 57 P. 1, 45 L.R.A. 628 (1899).

Banks.

All nonexempt local property of national bank located in state is within state's power of taxation. *Commercial Nat'l Bank v. Chambers*, 21 Utah 324, 61 P. 560, 56 L.R.A. 746 (1900), aff'd 182 U.S. 556, 21 S.Ct. 861, 45 L.Ed. 1227 (1901).

Boundaries of taxing districts

Fixing of boundaries of taxing district and

its area is wholly matter of legislative discretion, and exercise of such discretion is not subject of judicial investigation or revision. *Kimball v. Grantsville City*, 19 Utah 368, 57 P. 1, 45 L.R.A. 628 (1899).

Charitable organization's property.

Housing facility operated by nonprofit corporation was not exempt from taxation as a charity where senior citizen residents were paying for all the services they received and rental of apartments was determined not by need but by what was required to pay mortgage and operational expenses. *Friendship Manor Corp. v. Tax Comm'n*, 26 Utah 2d 227, 487 P.2d 1272 (1971).

If charitable organization does not use its real property and building thereon exclusively for charitable purposes such property is not exempt. Fact that organization is exempt from federal taxation is not determinative, nonprofit character of organization is essential but not determinative. *Friendship Manor Corp. v. Tax Comm'n*, 26 Utah 2d 227, 487 P.2d 1272 (1971).

Where plaintiff applied for exemption from ad valorem taxation as a nonprofit organization with charitable purpose, and where plaintiff carried on various charitable activities both in building and away from premises for which exemption was sought "exclusive use" of lot with building thereon did not require all charitable activity take place in that building, and Tax Commission's refusal of exemption was reversed. *Benevolent & Protective Order of Elks No. 85 v. Tax Comm'n*, 536 P.2d 1214 (Utah 1975).

Fraternal organization's lot, and the lodge building thereon, were not entitled to a tax exemption on the basis of charitable use where the activities conducted in the lodge consisted chiefly of drinking, card playing, dancing, and other social rather than fraternal functions, and the organization's expenditures on charitable objects amounted to only slightly more than 2% of total expenditures. *Baker v. One Piece of Improved Real Property*, 570 P.2d 1021 (Utah 1977).

It is the use to which the real property is put, not the nature of the owning organization, which is determinative of whether or not the property is exempt as being used exclusively for charitable purposes. *Yorgason v. County Bd. of Equalization*, 714 P.2d 651 (Utah 1986).

An apartment building for needy elderly and handicapped families and individuals is exempt from real property tax where it is used exclusively for charitable purposes. *Yorgason v. County Bd. of Equalization*, 714 P.2d 653 (Utah 1986).

Scientific research institute.

Exemption is the exception to the rule, and property owner has burden of demonstrating clearly and unequivocally that he falls within the exemption. Scientific research institute failed to meet this burden where evidence was that almost half of its efforts were expended for the U.S. Defense Department, its efforts were circumscribed by individual employment contracts, and it occasionally restricted disclosure of its findings at request of a non governmental client, all of which combined to indicate that the institute was benefiting the public only incidentally and was therefore not a charitable institution. *Eyring Research Inst., Inc. v. Tax Comm'n*, 598 P.2d 1348 (Utah 1979).

Sewer charges against city school board property.

Charges by city levied against board of education for connections to city sewer system and services thereof were mere payments for services enjoyed by the board and were not "taxes" or "assessments" from which board of education was exempt and a resulting lien from delinquent payment of such charges was not an exercise of the city taxing power. *Murray City v. Board of Educ.*, 16 Utah 2d 115, 396 P.2d 628 (1964).

Special assessments.

Provision of this section that all property not exempt under laws of United States or under state Constitution shall be taxed refers to general taxes and not to special assessments, and hence does not invalidate a statutory provision, which provides that property held by board of education shall be exempt from local assessments. *Wey v. Salt Lake City*, 35 Utah 504, 101 P. 381 (1909).

This section does not apply to special assessments. *State ex rel. Lundberg v. Green River Irrigation Dist.*, 40 Utah 83, 119 P. 1039 (1911).

State colleges.

A bond issue by board of trustees of state agricultural college in accordance with legislative enactment for purpose of financing construction of student union building would not violate this section by creating debt against state, where bonds showed on their face that they were special obligations payable solely from revenue to be derived from operation of union, including proceeds of student fee, and not obligations of the state. *Spence v. Utah State Agril. College*, 119 Utah 104, 225 P.2d 18 (1950).

"Property of" a state university means property owned by it, where university possessed equipment leased from corporation which retained title to it, the equipment was not exempt from county property taxation, and under the terms of the lease, university was bound to

pay taxes due. *University of Utah v. Salt Lake County*, 547 P.2d 207 (Utah 1976).

State property.

Where the state holds title to land in its governmental capacity, the property is exempt from taxation under the constitutional mandate. *Duchesne County v. State Tax Comm'n*, 104 Utah 365, 140 P.2d 335 (1943).

Under this section lands, title to which is acquired by the state by foreclosure of mortgage or conveyance for the extinguishment of a debt for money loaned from the state school fund, are exempt from taxation. This is partly due to the reason that the property is owned by the state in its governmental capacity, but according to some of the judges is due solely to the fact that such lands come within the meaning of the term "property" in constitutional provision. *Duchesne County v. State Tax Comm'n*, 104 Utah 365, 140 P.2d 335 (1943).

Transfer of property to tax-exempt corporation.

Where a private corporation conveyed property to a tax exempt municipal corporation prior to assessment and levy of taxes, the ad valorem tax on the property was erroneously and illegally levied and collected by the county even though the corporation owned the property on January 1 when the lien for tax attached, and the corporation's application for a refund was proper. *Utah Parks Co. v. Iron County*, 14 Utah 2d 178, 380 P.2d 924 (1963).

True market value.**—Intentional discrimination.**

A federal district court is precluded from probing into the assessment process to determine whether the state has accurately determined the "true market value" of a railroad's property absent a strong showing by the railroad that the state has purposefully overvalued its property with discriminatory intent. *Union Pac. R.R. v. State Tax Comm'n*, 635 F. Supp. 1060 (D. Utah 1986).

To the extent that railroads allege that the state has intentionally discriminated against them, they may introduce evidence of their true market value, as well as other probative evidence, to establish their prima facie case of intentional discrimination. *Union Pac. R.R. v. State Tax Comm'n*, 635 F. Supp. 1060 (D. Utah 1986).

Utah State Retirement Fund property.

Real property of the Utah State Retirement Fund was "property of the state" within the meaning of this section, and was therefore tax exempt. *Utah State Retirement Office v. Salt Lake County*, 780 P.2d 813 (Utah 1989).

Value determination by classification.

County board of equalization was not authorized to determine value by classification of

property, and assessment based thereon was in violation of this section. *Harmer v. State Tax Comm'n*, 22 Utah 2d 324, 452 P.2d 876 (1969).

Cited in *Salt Lake County v. Tax Comm'n ex rel. Utah Transit Auth.*, 780 P.2d 1231

(Utah 1989), *Salt Lake County ex rel. County Bd. of Equalization v. State Tax Comm'n ex rel. Kennecott Corp.*, 779 P.2d 1131 (Utah 1989).

COLLATERAL REFERENCES

Utah Law Review. — Note, Financing Modernized and Unmodernized Local Government in the Age of Aquarius, 1971 Utah L. Rev. 30.

Housing in Salt Lake County — A Place to Live for the Poor?, 1972 Utah L. Rev. 193.

Brigham Young Law Review. — A Municipality's Interest in an Electrical Power Generating Facility. Some Tax Considerations, 1979 BYU L. Rev. 125.

Am. Jur. 2d — 71 Am. Jur. 2d State and Local Taxation §§ 194 et seq., 307 et seq.

C.J.S. — 84 C.J.S. Taxation §§ 52, 57 et seq., 215 et seq.

A.L.R. — Oil and gas royalty as real or personal property, 56 A.L.R. 4th 539.

Property tax effect of tax exempt lessor's reversionary interest on valuation of nonexempt lessee's interest, 57 A.L.R. 4th 950.

Exemption from real property taxation of residential facilities maintained by hospital for patients, staff, or others, 61 A.L.R. 4th 1105.

Priority of federal court's ordering state or local tax increase to effectuate civil rights decree, 76 A.L.R. Fed. 504.

Key Numbers. Taxation — 49, 57 et seq., 191 et seq.

Sec. 3. [Assessment and taxation of tangible property — Livestock — Land used for agricultural purposes.]

(1) The Legislature shall provide by law a uniform and equal rate of assessment on all tangible property in the state, according to its value in money, except as otherwise provided in Section 2 of this Article. The Legislature shall prescribe by law such provisions as shall secure a just valuation for taxation of such property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its tangible property, provided that the Legislature may determine the manner and extent of taxing livestock.

(2) Land used for agricultural purposes may, as the Legislature prescribes, be assessed according to its value for agricultural use without regard to the value it may have for other purposes.

History: Const. 1896; Nov. 6, 1900; Nov. 6, 1906; L. 1930 (S.S.), S.J.R. 2; 1946 (1st S.S.), H.J.R. 2; 1967, S.J.R. 2; 1982, S.J.R. 3.

Compiler's Notes. — The 1979 proposed amendment of this section by House Joint Res

olution No. 23 was repealed and withdrawn by Senate Joint Resolution No. 6, Laws 1980.

Cross-References. — Uniform School Fund, taxes allocated to, § 53A 16 101.

NOTES TO DECISIONS

ANALYSIS

In general
"According to value in money" construed
Charitable association
Co-operative corporation property
County clerk's probate fees
County improvement district contingent tax
Disparity in state and county assessment
Double taxation
Drainage assessments

Occupation and license taxes
Remission of taxes of indigent or insane persons
Road poll taxes
Roll back of assessed value
Special assessments
State property
Telephone license tax
Uniformity and equality
Utility rates
Utility

Sec. 4. [Mines and claims to be assessed — Basis and multiple — What to be assessed as tangible property.]

All metalliferous mines or mining claims, both placer and rock in place, shall be assessed as the Legislature shall provide, but the basis and multiple now used in determining the value of metalliferous mines for taxation purposes and the additional assessed value of \$5 00 per acre thereof shall not be changed before January 1, 1935, nor thereafter until otherwise provided by law. All other mines or mining claims and other valuable mineral deposits, including lands containing coal or hydrocarbons and all machinery used in mining and all property or surface improvements upon or appurtenant to mines or mining claims, and the value of any surface use made of mining claims, or mining property for other than mining purposes, shall be assessed as other tangible property.

History: Const. 1896; Nov. 8, 1904; L. 1930 (S.S.), S.J.R. 5, 1962, S.J.R. 3.

Cross-References. — Statutory provisions, § 59-2-201.

NOTES TO DECISIONS

ANALYSIS

Construction and operation of section.
Drain tunnels.
Notice.
Unpatented mining claims.
Water rights.

Construction and operation of section.

Classification under this section as it formerly read was not intended to limit phrase or other valuable mineral deposits, but embraced all mineral deposits including gypsum and net annual profits from products manufactured therefrom were taxable. *Nephi Plaster & Mfg. Co. v. Juab County*, 11 Utah 114, 93 P. 51, 14 L.R.A. (n.s.) 1041 (1901).

Under this section as it once read a blanket assessment of all coal lands in county could not be made at a flat or uniform rate. *Ririe v. Randolph*, 51 Utah 274, 169 P. 941 (1917).

Under this section as it formerly read, it was held that for purpose of taxing net proceeds of mines, the cost of mining incurred in any one year must be considered independently from the cost incurred in any other year, and only such costs as were incurred during year in which net proceeds were obtained could be considered. *Mammoth Mining Co. v. Juab County*, 51 Utah 316, 170 P. 78 (1918).

Drain tunnels.

Under this section, drain tunnels used to drain a mine, may not be separately taxed where it appears that they have no separate and independent value, but are inseparably connected with the operation of the mine. *Ontario Silver Mining Co. v. Hixon*, 49 Utah 359, 164 P. 498 (1917).

Notice.

Assessment of mines was not defective where notice described property with reasonable certainty as to locality and identity. *Consolidated Uranium Mines, Inc. v. Moffitt*, 257 F.2d 396 (10th Cir. 1958).

Unpatented mining claims.

A tax imposed under state law upon the possessory right to explore and develop mines located upon unpatented claims located upon land belonging to the unappropriated public domain of the United States is not open to challenge upon the ground that it constitutes a tax against property belonging to the United States. *Consolidated Uranium Mines, Inc. v. Moffitt*, 257 F.2d 396 (10th Cir. 1958).

Water rights.

Water rights are taxable whether considered appurtenant to mine or independent property. *Utah Metal & Tunnel Co. v. Groesbeck*, 62 Utah 251, 219 P. 248 (1923).

COLLATERAL REFERENCES

Am. Jur. 2d 71; Am. Jur. 2d State and Local Taxation § 218. C.J.S. 84 C.J.S. Taxation §§ 68, 73, 170. Key Numbers Taxation 40-61-158.

Sec. 5. [Local authorities to levy local taxes — Sharing tax and revenues by political subdivisions.]

The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by law, vest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation. Notwithstanding anything to the contrary contained in this Constitution, political subdivisions may share their tax and other revenues with other political subdivisions as provided by statute.

History: Const. 1896; L. 1962, S.J.R. 3.
Cross-References. Appropriations and tax limitation, § 59-17a-101 et seq.
City taxing power, Utah Const. Art. XI, sec. 5.

County taxing power, § 17-4-3.
Revenue sharing between political subdivisions, § 11-13-16.5.

NOTES TO DECISIONS

ANALYSIS

Agricultural extension work.
Allocation of future tax.
"Corporate authorities" construed.
Court fees.
Dependent mothers.
Discriminatory tax.
Excess revenue refunds.
License fees.
Purpose of taxation.
Utah Neighborhood Development Act.
Water district.

Agricultural extension work.

Statute (Comp. Laws 1917, § 5292) authorizing contracts between trustees of state agricultural college and county commissioners with respect to agricultural extension work and authorizing commissioners to provide funds necessary for the work in their respective counties, was not invalid as imposing a tax for county purposes by the legislature. *Bailey v. Van Dyke*, 66 Utah 184, 240 P. 454 (1925).

Allocation of future tax.

The law is well settled that in exercising the powers of the state, the legislature may require the revenue of a municipality to be applied to uses other than that for which the taxes were levied; thus there was no constitutional transgression in the allocation of certain expected tax increments (generated by new construction in an area of urban blight) for repayment of Redevelopment Agency bonds. *Tribe v. Salt Lake City Corp.*, 540 P.2d 499 (Utah 1975).

"Corporate authorities" construed.

"Corporate authorities," as used in this section, are those municipal officers who either are directly elected by municipality's inhabitants or are appointed in some mode to which such inhabitants have given their assent. *State ex rel. Wright v. Standford*, 24 Utah 148, 66 P. 1061 (1901).

Court fees.

The provisions of this section were contravened by statute which attempted to fix schedule of county clerks' fees for services in probate matters based on sliding scale where fees increased as values of estates increased, since such attempt was an imposition of taxes without uniformity for counties' use and benefit. *Smith v. Carbon County*, 90 Utah 560, 61 P.2d 259, 108 A.L.R. 513 (1946).

Dependent mothers.

The phrase, for all purposes of such corporation, is synonymous with the phrase, public purposes, and Chapter 13 of Title 17 (Public Aid for Dependent Mothers) would be upheld as public purpose. *Denver & R.G.R.R. v. Grand County*, 51 Utah 294, 170 P. 74, 1 A.L.R. 1221 (1917).

Discriminatory tax.

A city licensing ordinance which was a revenue-raising measure and put some of the business affected on a flat fee basis with only about one-twelfth as much tax as other businesses which paid on a sales tax basis was unconstitutional as discriminatory. *Orion City v. Pyno*, 16 Utah 2d 455, 401 P.2d 181 (1965).

History: C. 1953, 59-2-104, enacted by L. 1987, ch. 4, § 51.

Compiler's Notes. — Former § 59-4-1, as last amended by Laws 1935, ch. 81, § 1, contained provisions similar to this section.

Effective Dates. — Laws 1987, ch. 4, § 308 makes the act effective on February 6, 1987.

Retrospective Operation. — Laws 1987, ch. 4, § 307 provides: "This act has retrospective operation to January 1, 1987, except for Sections 59-2-201, 59-2-205, and 59-2-207, which take effect January 1, 1988."

Cross References. — Property taxable where situated: Utah Const. Art. XIII, § 10.

NOTES TO DECISIONS

ANALYSIS

Boundaries of taxing district
Location of property
Property of foreign corporations
Rolling stock of railroads
Unity of use doctrine
Water rights

Boundaries of taxing district.

Fixing of boundaries of taxing district and its area is wholly matter of legislative discretion, and exercise of such discretion is not subject of judicial investigation or revision. *Kimball v. Grantsville City*, 19 Utah 368, 57 P. 1, 45 L.R.A. 628 (1899).

Location of property.

Term "owned," as used in Utah Const. Art. XIII, § 10, which provides that all persons in state shall be subject to taxation on real and personal property "owned" or used by them within territorial limits of authority levying tax, has reference to place where property is, and not to where owner may reside; therefore, sheep were not assessable in certain city where none of them had been within territorial limits of city at any time during period for which taxes were assessed. *Murdock v. Murdock*, 38 Utah 373, 113 P. 330 (1910).

With respect to personal property of a tangible and corporeal nature and capable of having a situs of its own, residence of owner is generally immaterial, and property is taxable where it is found. *Hamilton & Gleason Co. v. Emery County*, 75 Utah 406, 285 P. 1006 (1930). See *Union Refrigerator Transit Co. v. Lynch*, 18 Utah 378, 55 P. 639, 48 L.R.A. 790 (1898), *aff'd*, 177 U.S. 149, 20 S. Ct. 631, 44 L. Ed. 708 (1900).

Property of foreign corporations.

Neither tangible nor intangible property owned and used by foreign corporation in states other than Utah was taxable in Utah county in which corporation's principal office was situated. *Utah Idaho Sugar Co. v. Salt Lake County*, 60 Utah 491, 210 P. 106, 27 A.L.R. 871 (1922).

Rolling stock of railroads.

As against contention of foreign corporation that taxation of its refrigerator cars in Utah was forbidden by U.S. Constitution because such cars had no situs in Utah for purpose of taxation and tax on them would impose burden on interstate commerce, held that cars were taxable in Utah on basis of average number thereof used and employed by their owner in Utah during year for which assessment was made. *Union Refrigerator Transit Co. v. Lynch*, 177 U.S. 149, 20 S. Ct. 631, 44 L. Ed. 708 (1900).

Unity of use doctrine.

The doctrine of unity of use for purpose of determining assessment for taxation cannot be applied to manufacturing or other similar plants or industries which may be under common ownership but used or operated in different states. *Utah Idaho Sugar Co. v. Salt Lake County*, 60 Utah 491, 210 P. 106, 27 A.L.R. 874 (1922).

Water rights.

Where flow of percolating waters was developed in process of mining operations, which water was piped and sold to another company which took such water in another county and through its own pipes conducted it to its own mine, water rights were properly assessed against mining company selling such water in county in which its operations were conducted and in county where water was transferred and tax apportioned between such counties. *Utah Metal & Tunnel Co. v. Groesbeck*, 62 Utah 251, 219 P. 248 (1924).

COLLATERAL REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d State and Local Taxation §§ 648 to 651.

C.J.S. — 84 C.J.S. Taxation §§ 113, 115.

A.L.R. — Validity of municipal ordinance.

imposing income tax or license upon nonresidents employed in taxing jurisdiction (commuter tax), 48 A.L.R.3d 343.

Key Numbers. — Taxation — 98.

59-2-105. Situs of public utilities, bridges, ferries, and canals.

Public utilities, and bridges and ferries not public utilities, when operated wholly in one county, and electric light lines and similar improvements, canals, ditches, and flumes when separately taxable, shall be listed and assessed in the county in which the property is located.

History: C. 1953, 59-2-105, enacted by L. 1987, ch. 4, § 52.

Compiler's Notes. — Former § 59-4-2, as last amended by Laws 1931, ch. 53, § 1, contained provisions similar to this section.

Effective Dates. — Laws 1987, ch. 4, § 308 makes the act effective on February 6, 1987.

Retrospective Operation. — Laws 1987, ch. 4, § 307 provides: "This act has retrospective operation to January 1, 1987, except for Sections 59-2-201, 59-2-205, and 59-2-207, which take effect January 1, 1988."

Cross References. — Property taxable where situated: Utah Const. Art. XIII, § 10.

NOTES TO DECISIONS

Railroad rolling stock.

As against contention of foreign corporation that taxation of its refrigerator cars in Utah was forbidden by U.S. Constitution because such cars had no situs in Utah for purpose of taxation and tax on them would impose burden on interstate commerce, held that cars were

taxable in Utah on basis of average number thereof used and employed by their owner in Utah during year for which assessment was made. *Union Refrigerator Transit Co. v. Lynch*, 177 U.S. 149, 20 S. Ct. 631, 44 L. Ed. 708 (1900).

COLLATERAL REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d State and Local Taxation § 652.

C.J.S. — 84 C.J.S. Taxation §§ 339 to 348.
Key Numbers. — Taxation — 98.

PART 2

ASSESSMENT OF PROPERTY

59-2-201. Assessment by commission — Determination of value of mining property — Notification of assessment — Property assessed by the unitary method which is locally assessed.

(1) By May 1 the following property shall be assessed by the commission at 100% of fair market value, as valued on January 1, in accordance with this chapter:

- (a) all property which operates as a unit across county lines, if the values must be apportioned among more than one county or state,
- (b) all property of public utilities,

(c) all mines and mining claims and other valuable mineral deposits,
 (d) all machinery used in mining, all property or surface improvements upon or appurtenant to mines or mining claims and the value of any surface use made of mining claims or mining property for other than mining purposes. For the purposes of assessment and taxation, all processing plants, mills, reduction works, and smelters which are primarily used by the owner of a mine or mining claim for processing, reducing, or smelting minerals taken from a mine or mining claim, shall be considered appurtenant to that mine or mining claim, regardless of actual location, and

(e) in all cases where the surface of lands is owned by one person and the mineral underlying those lands is owned by another, the property rights shall be separately assessed to the respective owners. If the surface is used for other than mining purposes, the value of the surface shall be assessed by the assessor of the county in which the property is located.

(2) The method for determining the fair market value of productive mining property is the capitalized net revenue method or any other valuation method the commission believes, or the taxpayer demonstrates to the commission's satisfaction, to be reasonably determinative of the fair market value of the mining property. The rate of capitalization applicable to mines shall be determined by the commission, consistent with a fair rate of return expected by an investor in light of that industry's current market, financial, and economic conditions. In no event may the fair market value of the mining property be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property.

(3) Immediately following the assessment, the owner or operator of the assessed property shall be notified of the assessment. The assessor of the county in which the property is located shall also be immediately notified of the assessment.

(4) Property assessed by the unitary method, which is not necessary to the conduct and does not contribute to the income of the business as determined by the commission, shall be assessed separately by the local county assessor.

History — 1963, 59 2 201, enacted by L. 1967, ch. 4 § 63.

Compiler's Notes — Former § 59 2 52 as amended by Laws 1983 ch. 76 § 1 contained provisions similar to this section.

Effective Dates — Laws 1987 ch. 4 § 308 makes the act effective on February 6, 1987.

Retrospective Operation — Laws 1987 ch. 4 § 307 provides: "This act has retrospective operation to January 1, 1987, except for Sections 59 2 201, 59 2 205, and 59 2 207 which take effect January 1, 1988."

Cross References — Taxation of mines Utah Const. Art. XIII § 4.

NOTES TO DECISIONS

ANALYSIS

Challenging assessment
 By county
 Intentional discrimination
 Coal lands
 Date of assessment
 Life tenant and remainderman
 Location of property
 Mineral land
 Mines

Notice of assessment
 Public utilities
 Separate assessment

Challenging assessment

—By county

Since underassessment of mining property can cause a distinct and palpable injury to a county by limiting its tax base, a county has standing to sue the tax commission on the ground that such property was underassessed. *Kennerott Corp. v. Salt Lake County*, 702 P.2d 451 (Utah 1985).

—Intentional discrimination

A federal district court is precluded from probing into the assessment process to determine whether the state has accurately determined the true market value of a railroad's property absent a strong showing by the railroad that the state has purposefully overvalued its property with discriminatory intent. *Union Pac. R.R. v. State Tax Comm'n*, 635 F. Supp. 1060 (D. Utah 1986).

Coal lands

A blanket assessment of all coal lands in county could not be made at a flat or uniform rate. *Ririe v. Randolph*, 51 Utah 274, 169 P. 941 (1917).

Date of assessment

Property not within city on January 1st is not liable for payment of city taxes for those years. *Plutus Mining Co. v. Orme*, 76 Utah 286, 289 P. 112 (1910).

Life tenant and remainderman

A life tenant should be assessed as owner during the continuance of the life estate. *Shuppick v. Shuppick*, 41 Utah 131, 118 P. 1169 (1914).

Location of property

Property of electric company operating in only one county was assessable in county in which property was located although electric company was owned by company operating in several counties. *Telluride Power Co. v. Gates*, 61 Utah 317, 213 P. 175 (1921).

Mineral land

Until there is proof that land has lost its character as mineral or mining property, it is assessable by State Tax Commission. *Crystal Lime & Cement Co. v. Robbins*, 116 Utah 314, 209 P.2d 739 (1949).

Where title to land is derived from federal government through issuance of a patent, is mining property, there is a presumption that it is property of that character until it is proved otherwise. *Crystal Lime & Cement Co. v. Robbins*, 116 Utah 314, 209 P.2d 739 (1949).

"Mines"

The terms "mines" and "mineral" are not

limited to mere subterranean excavations or workings or to the metals or metalliferous deposits, whether contained in veins that have well defined walls or in beds or deposits that are irregular and are found at or near the surface or otherwise. *Nephi Plaster & Mfg. Co. v. Juab County*, 33 Utah 114, 91 P. 51, 141 R.A. (n.s.) 1041 (1907).

Notice of assessment

Assessment of mines was not defective where notice described property with reasonable certainty as to locality and identity. *Consolidated Uranium Mines, Inc. v. Moffitt*, 257 F.2d 396 (10th Cir. 1958).

Public utilities

This section confers no authority upon tax commission to assess car companies which are not public utilities. *Crystal Car Line v. State Tax Comm'n*, 110 Utah 426, 174 P.2d 984 (1946).

Separate assessment

A person in adverse possession of the surface ground of a mining claim, who has been assessed with such surface area and has paid taxes thereon, may claim adverse possession to such surface, although owner of mining claim has paid the taxes thereon. *Utah Copper Co. v. Eckman*, 47 Utah 165, 152 P. 178 (1915).

Where there is common ownership of both the surface and mineral rights in land used for mining purposes, and no request is made that the surface be taxed on its valuation separately from the mineral and mineral rights, it is proper for the county officials to aggregate the valuations of both surface and mineral rights in applying the tax levy and in all proceedings subsequent thereto. *Edonis v. State*, 104 Utah 517, 144 P.2d 513 (1943).

When the surface and mineral estates of a mining claim are owned by the same person, only one tax is assessed on the claim. This is because the statute provides for separate assessment of the surface only when the surface and mineral estates are owned by different owners. The statute makes no other provision for separate assessment of the two estates. Therefore, separate taxation of surface and mineral interest does not constitute double taxation because the separate taxes would be on different property interests. *United Park City Mines Co. v. Estate of Chappin*, 737 F.2d 173 (Utah 1987).

The assessment of the value of the surface used for property used for mining is in addition to the per acre assessment of the mining claim, and the additional assessment is required whether the surface is owned by the same

NOTES TO DECISIONS

ANALYSIS

Constitutionality

Duties of assessor and taxpayers
Effect of erroneous assessment
Nature of tax debt
Nonresident's property
Owner's obligation to pay tax
Transfer of property to tax exempt corporation

Constitutionality.

Section is not so vague and uncertain as to be unconstitutional. *Norville v. State Tax Comm.*, 98 Utah 170, 97 P 2d 937, 126 A.L.R. 1318 (1940).

Duties of assessor and taxpayers.

It is duty of assessor to assess all property at its value, and it is likewise duty of every person and corporation having taxable property to list same for taxation. *Utah Idaho Sugar Co. v. Salt Lake County*, 60 Utah 491, 210 P 106, 27 A.L.R. 874 (1922).

Effect of erroneous assessment.

Failure to assess taxes to owner did not invalidate assessment. *Jones v. Box Elder County*, 52 P 2d 140 (10th Cir. 1931), cert den 285 U.S. 555, 52 S. Ct. 456, 76 L. Ed. 944 (1932).

Where property is not assessed to the real owner, and it is sold under such assessment a tax deed issued in pursuance thereof has no binding effect as against real owner. *Salt Lake Inv. Co. v. Oregon Short Line R.R.*, 46 Utah 201, 148 P. 439 (1915), aff'd 246 U.S. 446, 38 S. Ct. 348, 62 L. Ed. 823 (1918).

Nature of tax debt.

This section seems to make the tax a debt against the individual owning the property and a lien on his property, rather than a

charge against the property alone. *Hayes v. Gibbs*, 110 Utah 54, 169 P 2d 781, 168 A.L.R. 513 (1946).

Nonresident's property.

Property brought into this state by a nonresident company and used in construction work for an indefinite period is subject to taxation in county where used, under Utah Const. Art. XIII, § 10. *Hamilton & Gleason Co. v. Emery County*, 75 Utah 406, 285 P 1006 (1930).

Owner's obligation to pay tax.

Record owners of real property on January 1, 1964, were obligated to pay the 1964 property tax, if January 1 record owner transfers his interest in the property and does not want to be held liable for the tax, it is his obligation to make arrangements for payment by his transferee. *Dillman v. Foster*, 656 P 2d 974 (Utah 1982).

Transfer of property to tax-exempt corporation.

Where a private corporation conveyed property to a tax exempt municipal corporation prior to assessment and levy of taxes under this section, the ad valorem tax on the property was erroneously and illegally levied and collected by the county. *Utah Parks Co. v. Iron County*, 14 Utah 2d 178, 380 P 2d 924 (1963).

COLLATERAL REFERENCES

Utah Law Review. Personal Obligation to Pay Real Property Taxes in Utah. *Dillman v. Foster*, 1983 Utah L. Rev. 845.

C.J.S. 84 C.J.S. Taxation § 376
Key Numbers. Taxation 4-110 (C seq)

59-2-304. Recognition of expenses in using comparable sales or cost appraisal method — Implementation of new program.

(1) If the county assessor uses the comparable sales or cost appraisal method in valuing taxable property for assessment purposes, the assessor is required to recognize that various fees, services, closing costs, and other expenses related to the transaction lessen the actual amount that may be received in the transaction. The county assessor shall, therefore, take 80% of the

value based on comparable sales or cost appraisal of the property for purposes of assessment under Subsection 59-2-103(1).

(2) (a) Prior to January 1, 1989, the commission shall develop and implement comparable sales or cost appraisal methods in valuing taxable property for assessment purposes which provide that the various fees, services, closing costs, and other expenses related to the sales transaction and other intangible values are not included as part of the fair market value for purposes of taxation.

(b) Beginning January 1, 1989, the provisions of Subsection (1) do not apply. Beginning January 1, 1989, the commission shall, by rule, order county assessors to use the comparable sales or cost appraisal methods which are required to be developed and implemented in Subsection (2)(a) in place of the requirement of Subsection (1).

History: C 1963, 59-2-304, enacted by L. 1987, ch. 4, § 72; 1987, ch. 160, § 1.

Amendment Notes. — The 1987 amendment by Chapter 150, effective April 27, 1987, substituted "1989" for "1988" in Subsections (2)(a) and (2)(b).

Compiler's Notes. Former § 59-5-5, as amended by Laws 1986, ch. 115, § 1, contained provisions similar to this section.

Effective Dates. Laws 1987, ch. 4, § 308 makes the act effective on February 6, 1987.

Retrospective Operation. — Laws 1987, ch. 4, § 307 provides "This act has retrospective operation to January 1, 1987, except for Sections 59-2-201, 59-2-205, and 59-2-207, which take effect January 1, 1988."

NOTES TO DECISIONS

Constitutionality.

The provision that reduces by 20% the value of county assessed property by comparable sales or cost materials is constitutional under Article XIII of the Utah Constitution and does

not violate the equal protection provisions of the Utah or United States Constitutions. *Rio Algom Corp. v. San Juan County*, 681 P 2d 184 (Utah 1984).

COLLATERAL REFERENCES

Utah Law Review. — Recent Developments in Utah Law, 1985 Utah L. Rev. 131, 207.

59-2-305. Listing property in taxing districts.

The county assessor shall list all property in each taxing district in the county by identifier and value. The commission may prescribe procedures and formats, after consultation with affected state agencies and county assessors, which will provide reasonable uniformity and reduced costs in listing property.

History: C 1963, 59-2-305, enacted by L. 1987, ch. 4, § 73.

Compiler's Notes. Former § 59-5-5, as amended by Laws 1982, ch. 71, § 23, contained provisions similar to this section.

Effective Dates. Laws 1987, ch. 4, § 308 makes the act effective on February 6, 1987.

Retrospective Operation. Laws 1987, ch. 4, § 307 provides "This act has retrospective operation to January 1, 1987, except for Sections 59-2-201, 59-2-205, and 59-2-207, which take effect January 1, 1988."

(b) The Utah Rules of Evidence apply in judicial proceedings under this section.

History: C. 1953, 63-46b-15, enacted by L. 1987, ch. 161, § 271; 1988, ch. 72, § 25.

Amendment Notes. The 1988 amendment, effective April 25, 1988, deleted "except that final agency action from informal adjudicative proceedings based on a record shall be reviewed by the district courts on the record

according to the standards of Subsection 63-46b-16(4)" at the end in Subsection (1)(a) and made minor stylistic changes.

Effective Dates. Laws 1987, ch. 161, § 315 makes the act effective on January 1, 1988.

NOTES TO DECISIONS

Function of district court.

Section 63-46b-16(1) provides that all final agency decisions through formal adjudicative proceedings will be reviewed by the Utah Supreme Court or Court of Appeals. Therefore,

the district court will no longer function as an intermediate appellate court except to review informal adjudicative proceedings de novo pursuant to Subsection (1)(a) of this section. In re Topik, 761 P.2d 32 (Utah Ct. App. 1988).

63-46b-16. Judicial review — Formal adjudicative proceedings.

(1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings.

(2) (a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court.

(b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court.

(3) The contents, format, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except that:

(a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;

(b) the appellate court may tax the cost of preparing transcripts and copies for the record:

(i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(ii) according to any other provision of law.

(4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:

(a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;

(b) the agency has acted beyond the jurisdiction conferred by any statute;

(c) the agency has not decided all of the issues requiring resolution;

(d) the agency has erroneously interpreted or applied the law;

(e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure,

(f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;

(g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;

(h) the agency action is:

(i) an abuse of the discretion delegated to the agency by statute;

(ii) contrary to a rule of the agency;

(iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or

(iv) otherwise arbitrary or capricious.

History: C. 1953, 63-46b-16, enacted by L. 1987, ch. 161, § 272; 1988, ch. 72, § 26.

Amendment Notes. - The 1988 amendment, effective April 25, 1988, substituted "As provided by statute, the Supreme Court or the Court of Appeals" for "The Supreme Court or other appellate court designated by statute" in Subsection (1), inserted "with the appropriate

appellate court" in Subsection (2)(a), and substituted "appellate rules of the appropriate appellate court" for "Utah Rules of Appellate Procedure" in Subsections (2)(a) and (2)(b).

Effective Dates. Laws 1987, ch. 161, § 315 makes the act effective on January 1, 1988.

NOTES TO DECISIONS

Function of district court.

Subsection (1) provides that all final agency decisions through formal adjudicative proceedings will be reviewed by the Utah Supreme Court or Court of Appeals. Therefore, the dis-

trict court will no longer function as intermediate appellate court except to review informal adjudicative proceedings de novo pursuant to § 63-46b-15(1)(a). In re Topik, 761 P.2d 32 (Utah Ct. App. 1988).

63-46b-17. Judicial review — Type of relief.

(1) (a) In either the review of informal adjudicative proceedings by the district court or the review of formal adjudicative proceedings by an appellate court, the court may award damages or compensation only to the extent expressly authorized by statute.

(b) In granting relief, the court may:

(i) order agency action required by law;

(ii) order the agency to exercise its discretion as required by law;

(iii) set aside or modify agency action,

(iv) enjoin or stay the effective date of agency action, or

(v) remand the matter to the agency for further proceedings.

(2) Decisions on petitions for judicial review of final agency action are reviewable by a higher court, if authorized by statute.

History: C. 1953, 63-46b-17, enacted by L. 1987, ch. 161, § 273.

Effective Dates. Laws 1987, ch. 161,

§ 315 makes the act effective on January 1, 1988.

History: L. 1951, ch. 66, § 1; C. 1943, Supp., 104 2-1; L. 1969, ch. 247, § 1; 1986, ch. 47, § 40; 1988, ch. 248, § 4; 1990, ch. 80, § 4.

Amendment Notes. The 1988 amendment, effective April 25, 1988, in Subsection (2), rewrote the second sentence which read "Thereafter, the term of office of a justice of the Supreme Court is ten years and until his successor is appointed and approved in accordance with Section 20 1 7 1" and, in Subsection (6), substituted "determines" for "decides" at the end of the fourth sentence.

The 1990 amendment, effective April 23, 1990, deleted "next" after "January" and made punctuation changes in Subsection (2), deleted "not following "chief justice may" in the third sentence of Subsection (3), deleted "additional" before "duties" in Subsection (5), deleted

"where not inconsistent with the law" following "chief justice" and added "as consistent with the law" at the end of Subsection (6).

Cross-References. — Chief justice, Utah Const., Art. VIII, Sec. 2

Disqualification in particular case, Utah Const., Art. VIII, Sec. 2

Judicial nomination and selection, § 20-1-7 1 et seq.

Membership on state law library board, § 37-1 1

Proceedings unaffected by vacancy, § 78-7-21

Qualifications of justices, Utah Const., Art. VIII, Sec. 7

Retirement, Utah Const., Art. VIII, Sec. 15, § 49-6-101 et seq., §§ 78 7 29, 78 7-30

Salary, Utah Const., Art. VIII, Sec. 14

COLLATERAL REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d Courts §§ 67, 68

C.J.S. — 21 C.J.S. Courts § 111 et seq.; 48A C.J.S. Judges §§ 3, 7, 8, 21 to 25, 85

Key Numbers. — Courts — 101, 248, Judges — 1, 7 to 12

78-2-1.5, 78-2-1.6. Repealed.

Repeals. — Section 78 2 1 5 (L. 1969, ch. 225 § 2), relating to salaries of Supreme Court justices, was repealed by Laws 1971, ch. 182, § 4

Section 78 2-1 6 (L. 1979, ch. 134, § 1, 1981, ch. 156, § 1), relating to salaries of justices, was repealed by Laws 1981, ch. 267, § 2, effective July 1, 1982

78-2-2. Supreme Court jurisdiction.

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) a judgment of the Court of Appeals;
- (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;
- (c) discipline of lawyers;
- (d) final orders of the Judicial Conduct Commission;
- (e) final orders and decrees in formal adjudicative proceedings originating with:
 - (i) the Public Service Commission;
 - (ii) the State Tax Commission;
 - (iii) the Board of State Lands and Forestry;
 - (iv) the Board of Oil, Gas, and Mining; or
 - (v) the state engineer;
- (f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (e),

(g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;

(h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony,

(i) appeals from the district court involving a conviction of a first degree or capital felony, and

(j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except

(a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;

(b) election and voting contests;

(c) reapportionment of election districts,

(d) retention or removal of public officers,

(e) general water adjudication,

(f) taxation and revenue; and

(g) those matters described in Subsection (3)(a) through (f)

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b)

(6) The Supreme Court shall comply with the requirements of Title 63, Chapter 46b, in its review of agency adjudicative proceedings

History: C. 1953, 78 2 2, enacted by L. 1986, ch. 47, § 41; 1987, ch. 161, § 303; 1988, ch. 248, § 5, 1989, ch. 67, § 1

Repeals and Reenactments. Laws 1986, ch. 47, § 41 repeals former § 78 2 2 as enacted by Laws 1951, ch. 58, § 1, relating to original appellate jurisdiction of Supreme Court, and enacts the above section

Amendment Notes. — The 1988 amendment, effective April 25, 1988, substituted "for mal adjudicative proceedings" for "cases" in Subsection (3)(e), added Subsection (3)(f), redesignated former Subsections (3)(d) to (3)(i) accordingly, substituted "(i)" for "(h)" at the end of Subsection (4)(g), and made minor stylistic changes

The 1989 amendment, effective April 24, 1989, added "and Forestry" at the end of Subsection (3)(e)(iii), rewrote Subsection (4)(a) which read "first degree and capital felony con-

victions", substituted "(f)" for "(h)" at the end of Subsection (4)(g), and made minor stylistic changes

Cross References. Appeals from juvenile courts, § 78 3a 51

Appeals in criminal cases, U.R.C.P. 26

Chief justice to preside over impeachment of governor, § 77 5 2

Election contest appeals, §§ 20 3 35, 20 15 14

Extraordinary writs, Utah Const. Art. VIII, Sec. 3 U.R.C.P. 65B

Industrial commission orders, review of § 35 1 36

Jurisdiction Utah Const. Art. VIII, Sec. 1

State bar promulgation of rules, review of disciplinary orders, §§ 78 51 14, 78 51 19

Unemployment compensation decisions, review of, § 35 4 10

of an order of occupancy or the execution of a right of entry agreement, bears to the taxable year 1967

Article 2. Assessment by County Assessor

- 59-5-4 General duties of county assessor - Assessing interstate carriers.
- 59-5-4.5 Recognition of expenses in using comparable sales or cost appraisal method
- 59-5-5 Listing property in cities, towns, school districts and special taxing districts
- 59-5-6 Report of valuation of property to county auditor - Transmittal by auditor to governing bodies - Certified tax rate
- 59-5-7 Listing property brought into county after January 1 - Duties of assessor
- 59-5-7.1 Transitory personal property brought from outside state - Assessment - Proration of tax - Property tax in another state - Claims for rebates and adjustments
- 59-5-8 Statements by taxpayers.
- 59-5-9 Power of assessors respecting statements - Defect of taxpayer - Penalty
- 59-5-10 Assessor to estimate value where taxpayer refuses to give statement
- 59-5-11 Assessor to report information gained to other counties.
- 59-5-12 In name of owner, mandatory, if known - If unknown.
- 59-5-13 Assessment in name of representative - Designation.
- 59-5-14 Assessment of property of decedents.
- 59-5-15 Assessment of property in litigation.
- 59-5-16 Assessment of concealed property - Penalty
- 59-5-17 Property escaping assessment - Five-year limitation period on assessment - Duties of assessor
- 59-5-18 Assessment in name of claimant as well as owner.

59-5-4. General duties of county assessor - Assessing interstate carriers.

The county assessor shall, before May 15 of each year ascertain the names of all taxable inhabitants and all property in the county subject to taxation except that assessed by the State Tax Commission and shall assess the property to the person by whom it was owned or claimed, or in whose possession or control it was, at 12 o'clock m of January 1 next preceding, and at its value on that date, unless a subsequent conveyance of ownership of the real property has been duly recorded in the office of the county recorder more than 14 calendar days before the date of mailing of the tax notice, in which case the tax notice may be mailed to the new owner. No mistake in the name of the owner or supposed owner of property renders the assessment invalid. Assessors shall become fully acquainted with all property in their respective counties, and, either in person or by deputy, shall annually visit each separate district and establish the values of the property they are required to assess. When assessing contract, private, and exempt carriers covering interstate routes, the county assessor shall apportion the assessment for the rolling stock used in interstate commerce at the same percentage ratio that has been filed with the Prorate Department of the Motor Vehicle Division of the tax commission for determining the proration of registration fees 1966

59-5-4.5. Recognition of expenses in using comparable sales or cost appraisal method.

(1) When the county assessor uses the comparable sales or cost appraisal method in valuing taxable property for assessment purposes, the assessor is required to recognize that various fees, services, closing costs, and other expenses related to the transaction lessen the actual amount that may be rec-

eived in the transaction. The county assessor shall, therefore take 80% of the value based on comparable sales or cost appraisal of the property as its reasonable fair cash value for purposes of assessment.

(2)(a) Prior to January 1 1988 the State Tax Commission shall develop and implement comparable sales or cost appraisal methods in valuing taxable property for assessment purposes which provide that the various fees, services, closing costs, and other expenses related to the sales transaction and other intangible values are not included as part of the reasonable fair cash value for purposes of assessment.

(b) Beginning January 1 1988 the provisions of Subsection (1) do not apply to county assessors using the sales or cost appraisal method in valuing taxable property for assessment purposes. For assessments beginning January 1, 1988, the State Tax Commission shall by rule order county assessors to use the comparable sales or cost appraisal methods which are required to be developed and implemented in Subsection (2)(a) in place of the requirement of Subsection (1) 1986

59-5-5. Listing property in cities, towns, school districts and special taxing districts

The list of the property in each city, town, school district and special taxing district in his county, and the valuation thereof, shall be so made by the county assessor that the property in each and the valuation thereof can be separately shown 1982

59-5-6. Report of valuation of property to county auditor - Transmittal by auditor to governing bodies - Certified tax rate.

(1) Before June 1 of each year, the county assessor of each county shall deliver to the county auditor a statement showing the aggregate valuation of all taxable property in each taxing district, together with a statement showing the assessed valuation of any additional personal property estimated by the county assessor to be subject to taxation in the current tax year. The county auditor shall, on or before June 1 transmit this statement together with the certified tax rate and all forms necessary to submit a tax levy request, to the governing body of each taxing district.

(2)(a) The "certified tax rate" means a tax rate that will provide the same ad valorem property tax revenue for each taxing district as was charged for the prior year by that taxing entity, except in the case of the minimum school levy established under Section 53-7-18 and any debt service voted on by the public under Section 53-7-8.1, in which case the certified tax rate shall be the actual levy imposed by those sections. The certified tax rate shall be established in accordance with Section 59-9-8. For new taxing districts, the certified tax rate shall be zero.

(b) For the purpose of calculating the certified tax rate the county auditor shall use the taxable roll exclusive of new growth. New growth is the increase in value of the taxing district from the previous calendar year to the current year less the amount of increase to locally assessed real property values resulting from factoring, reappraisal, or any other adjustments.

(c) As used in this chapter, "taxing district" means any county, city, town, school district, special taxing district, or any other political subdivision of the state with the authority to levy a tax on property.

chapter" are omitted as unnecessary in view of the restatement. The words "in the enforcement or administration of any provision of this chapter" in 49:305(f) are omitted as unnecessary in view of the restatement. The words "and safety" in 49:305(f) are omitted as being transferred to the Secretary of Transportation.

In subsection (b), the words "When an investigation under this subtitle" are substituted for "Whenever in any investigation under the provisions of this chapter, or in any investigation instituted upon petition of" for clarity. The words "providing transportation or service subject to the jurisdiction of the Commission under subchapter I or IV of chapter 105 of this title" are inserted for clarity. The words "is about a" are substituted for

"shall be brought in issue" for clarity. The words "made or imposed by" are omitted as surplus. The words "disposing of" are substituted for "proceeding to hear and dispose of" for clarity and as being more inclusive.

In subsection (c), the words "subchapter III of chapter 105" are used to make the subsection apply to water carriers since the words "under the provisions of this section" require that result in view of 49:13(3). The words "in cases pending before the Commission" are omitted as unnecessary in view of the restatement. The words "may be given" are substituted for "shall receive" for clarity. The words "may determine" are substituted for "shall provide" for clarity.

§ 11503. Tax discrimination against rail transportation property

(a) In this section—

(1) "assessment" means valuation for a property tax levied by a taxing district.

(2) "assessment jurisdiction" means a geographical area in a State used in determining the assessed value of property for ad valorem taxation.

(3) "rail transportation property" means property, as defined by the Interstate Commerce Commission, owned or used by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

(4) "commercial and industrial property" means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) levy or collect a tax on an assessment that may not be made under clause (1) of this subsection.

(3) levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction. The burden of proof in determining assessed value and true market value is governed by State law. If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section—

(1) an assessment of the rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the assessed value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all other commercial and industrial property; and

(2) the collection of an ad valorem property tax on the rail transportation property at a tax rate that exceeds the tax rate applicable to taxable property in the taxing district.

(Pub L. 95-473, Oct. 17, 1978, 92 Stat. 1445)

Historical and Statutory Notes

Revised Section	Source (U.S.Code)	Source (Statutes at Large)
11503	49.26c	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 28, added Feb. 5, 1976, Pub. L. 94-210, § 306, 90 Stat. 54; Oct. 19, 1976, Pub. L. 94-555, § 220(o), 90 Stat. 2630

7. Motor vehicle salesman:
 - (a) application for license;
 - (b) salesman bond as prescribed in Utah Code Ann. Section 41-3-17;
 - (c) picture of the applicant; and
 - (d) the fee required by law.
8. Distributor factory branch, distributor branch representative:
 - (a) application for license; and
 - (b) the fee required by law.
9. New applicants may also be required to attend an orientation class on motor vehicle laws and motor vehicle business laws before their license is issued.
 - 1987: 41-1-4, 41-3-5, 41-3-12, 41-3-27, 41-3-28, 41-3-33, 41-3-4, 41-3-6, 41-3-12

R884. Property Tax

R884-24. Property Tax

R884-24. Property Tax

- R884-24-5P. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109**
- R884-24-7P. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201**
- R884-24-8P. Property Tax Withholding For Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-210 and 59-2-211**
- R884-24-10P. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201, 59-2-210, and 59-2-211**
- R884-24-14P. Historic Preservation Easements Pursuant to Utah Code Ann. Sections 63-18A-1 through 6**
- R884-24-16P. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-25(4)**
- R884-24-17P. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsections 2 and 11, and Utah Code Ann. Sections 59-2-103, 59-2-302, and 59-2-704.**
- R884-24-19P. Appraiser Certification Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702**
- R884-24-20P. Construction Work in Progress Pursuant to Utah Const. Art. XIII, Section 2; Utah Code Ann. Section 59-1-1; and Utah Code Ann. Section 59-5-1.**
- R884-24-24P. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Section 59-2-919**
- R884-24-25P. Procedure for Abeyance of 1986 Property Tax Exemption Hearings For Nonprofit Hospitals and Nursing Homes Pursuant to Utah Code Ann. Section 59-1-210**
- R884-24-26P. Requirements of the Farmland Assessment Act of 1969 Pursuant to Utah Code Ann. Sections 59-2-301 through 59-2-515**
- R884-24-27P. Standards for Assessment Level Performance Pursuant to Utah Code Ann. Section 59-2-704**
- R884-24-28P. Reporting Requirements For Leased or Rented Personal Property, Pursuant to Utah Code Ann. Section 59-1-210**
- R884-24-29P. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-103**
- R884-24-32P. Leasehold (Tenant) Improvements Pursuant to Utah Code Ann. Section 59-2-102**
- R884-24-33P. Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-1-210**
- R884-24-34P. Use of Appraisal Information Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704**

R884-24-5P. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109

A. All sources of cash income shall be included in arriving at annual gross income, including net rents, interest, retirement income, welfare, social security, etc.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the time requirement of ten-month's residency.

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24-7P. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201

A. Definitions.

1. "Mining property" means all taxable interests in real property, improvements, and tangible personal property owned or used in mining, processing, or transportation of the product to the customary point of sale or to the implied point of sale in the case of a self-consumed mineral for both metalliferous and nonmetalliferous mines.

2. "Gross income" means actual receipts, plus the fair value of self-consumed minerals.

a. The fair value of self-consumed minerals is determined annually by the Property Tax Division to be either:

(1) allowable costs, plus an amount equal to allowable costs times the capitalization rate. Where the taxpayer has outside sales and self-consumed minerals, the allowable costs shall be allocated between the two on the basis of the respective units of measure in each category; or

(2) value based upon representative sales price per ton or other standard unit of measure of a like mineral.

b. The method approved cannot be changed from year to year unless approved by the Tax Commission.

3. "Allowable costs" means costs deductible in the respective year, limited to the following:

- a. management salaries;
- b. labor;
- c. payroll taxes and benefits;
- d. workers' compensation insurance;
- e. general insurance;
- f. taxes;
- g. supplies and tools;
- h. power;
- i. maintenance and repairs;
- j. office and accounting;
- k. engineering;
- l. sampling and assaying;
- m. treatment;
- n. legal fees;
- o. royalties;
- p. development expense;
- q. transportation;
- r. miscellaneous; and
- s. capital expenditures.

(1) No deduction is allowed for interest or mine exploration costs.

4. "Net revenue" means gross income minus allowable costs.

5. "Capital expenditure" means the total cost of purchasing an asset used in the mining operation and includes:

- a. purchase price,
- b. transportation costs.

- c. transportation costs,
- d. installation charges, and
- e. sales tax

6. "Nonproducing mine" means a mine that has been closed for a continuous 12-month period, or land held in reserve under a mineral lease not reasonably necessary, indispensable, or needed in the actual mining and extraction process in the current tax year.

B. The capitalization rate shall be determined by the Tax Commission using methods such as:

- 1. the summation method;
- 2. the weighted cost of capital

a. The cost of debt should consider current market yields.

b. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow, or a combination thereof or any other accepted methodology.

C. The income indicator of value shall be computed as follows:

1. annual net revenue, both net losses and net gains, from the mining property for each of the immediate past five years (or years in operation if less than five years), shall be adjusted by an appropriate index of inflation;

2. average annual net revenue is the sum of the values obtained above divided by the number of years; i.e., five or less;

3. the average annual net revenue is divided by the capitalization rate.

D. Reporting shall be on a calendar or fiscal year basis consistently followed, with Tax Commission approval.

R884-24-8P. Property Tax Withholding For Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-210 and 59-2-211

A. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah.

B. If not on the Tax Commission's original, or subsequently updated list, the security deposit shall be obtained through withholding as provided below:

1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent (or such higher amount as determined by the Tax Commission) of the gross proceeds due to the mine operators or owners.

2. All amounts withheld shall be remitted to the Tax Commission by the last days of April, July, October, and January for the immediately preceding calendar quarter, on forms and in a manner as set forth by the Tax Commission.

3. Not later than the last day of February, the owners or operators of each uranium and vanadium mine shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.

4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium producers who have had security deposit amounts withheld. The county treasurers shall then forward to the Tax Commission an accounting of the amount of taxes due from each taxpayer on the Tax Commission's list.

5. Once all county treasurers have responded, the

Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent said taxes have been withheld and remitted to the Tax Commission.

a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate producer by the Tax Commission.

b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of said taxes directly from the producers.

R884-24-10P. Taxation of Underground Rights In Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201, 59-2-210, and 59-2-211

A. Definitions.

1. "Person" as defined in Utah Code Ann. Section 68-3-12.

2. "Unit" as defined in Utah Code Ann. Section 59-2-210(3)(F).

3. "Working interest owner" as defined in Utah Code Ann. Section 59-2-210.

4. "Unit operator" means a person who operates all of the producing wells in a unit.

5. "Independent operator" means a person operating an oil or gas producing property not in a unit.

6. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon his status in the various situations.

B. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and tangible property used in the operation of such rights, are subject to assessment by the Tax Commission.

2. These rights and the tangible property used therewith shall be assessed in the name of the unit operator, the independent operator or other person as the facts may warrant.

3. The taxable value of the underground oil rights shall be 400 percent of the proceeds from the sale of oil production from each such property during the calendar year prior to the date of assessment, less applicable exempt federal, state, Indian royalties, and windfall profits tax.

4. The taxable value of the underground gas rights shall be 400 percent of the proceeds from the sale of gas production from each such property during the calendar year prior to the date of assessment, less applicable exempt federal, state, and Indian royalties.

5. The reasonable taxable value of productive underground oil and gas rights shall be determined by the method described in Subsections B.1. or B.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

6. All other tangible property shall be valued at fair market value as determined by the Tax Commission.

C. Assessment Credits Greater Altamont/Bluebell Field

1. Oil properties in the Greater Altamont/Bluebell field shall receive a credit of 20 percent. All qualified property shall therefore be valued at 80 percent of the taxable value. This credit does not apply to gas production.

2. The Greater Altamont/Bluebell field is actually comprised of three separate fields. These include Altamont field, Bluebell field, and Cedar Run field as recorded by the Utah Division of Oil, Gas and

ARTICLE VI

[MISCELLANEOUS PROVISIONS]

[Assumption of public debt — Supreme Law — Oath of office — Religious tests prohibited.]

[1.] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[2.] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the constitution or Laws of any State to the Contrary notwithstanding.

[3.] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation to support this Constitution; but no religious Test shall ever be required as a qualification to any Office or public Trust under the United States.

ARTICLE VII

[ADOPTION]

[Ratification — Attestation.]

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the same. Done in Convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty seven, and of the independence of the United States of America the twelfth. In Witness Whereof we have hereunto subscribed our names,

Attest:
WILLIAM JACKSON, Secretary

GO. WASHINGTON — Presidt.
and deputy from Virginia

New Hampshire

JOHN LANGDON,
NICHOLAS GILMAN.

Massachusetts

NATHANIEL GORHAM,
RUFUS KING.

Connecticut

WM. SAML. JOHNSON,
ROGER SHERMAN.

New York

ALEXANDER HAMILTON.

New Jersey

WIL: LIVINGSTON,
DAVID BREARLEY,
WM. PATERSON,
JONA: DAYTON.

AMENDMENT XIV**Section**

1. [Citizenship — Due process of law — Equal protection.]
2. [Representatives — Power to reduce appointment.]
3. [Disqualification to hold office.]

Section

4. [Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.]
5. [Power to enforce amendment.]

Section 1. [Citizenship — Due process of law — Equal protection.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. [Representatives — Power to reduce appointment.]

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial Officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. [Disqualification to hold office.]

No person shall be a Senator or Representative in Congress, or Elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Sec. 4. [Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.]

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Sec. 5. [Power to enforce amendment.]

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

History: Proposed by Congress on June 16, 1866, declared to have been ratified by three-fourths of all the states on July 28, 1868

AMENDMENT XV

Section	Section
1. [Right of citizens to vote — Race or color not to disqualify.]	2 [Power to enforce amendment]

Section 1. [Right of citizens to vote — Race or color not to disqualify.]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Sec. 2. [Power to enforce amendment.]

The Congress shall have power to enforce this article by appropriate legislation.

History: Proposed by Congress on February 27, 1869, declared to have been ratified by more than three-fourths of all the states on March 30, 1870

AMENDMENT XVI

[Income tax.]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

ADDENDUM C

NOTE Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NORDLINGER *v.* HAHN, IN HIS CAPACITY AS TAX ASSESSOR FOR LOS ANGELES COUNTY, ET AL.

CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA,
SECOND APPELLATE DISTRICT

No. 90–1912. Argued February 25, 1992—Decided June 18, 1992

In response to rapidly rising real property taxes, California voters approved a statewide ballot initiative, Proposition 13, which added Article XIII A to the State Constitution. Among other things, Article XIII A embodies an “acquisition value” system of taxation, whereby property is reassessed up to current appraised value upon new construction or a change in ownership. Exemptions from this reassessment provision exist for two types of transfers: exchanges of principal residences by persons over the age of 55 and transfers between parents and children. Over time, the acquisition-value system has created dramatic disparities in the taxes paid by persons owning similar pieces of property. Longer-term owners pay lower taxes reflecting historic property values, while newer owners pay higher taxes reflecting more recent values. Faced with such a disparity, petitioner, a former Los Angeles apartment renter who had recently purchased a house in Los Angeles County, filed suit against respondents, the county and its tax assessor, claiming that Article XIII A’s reassessment scheme violates the Equal Protection Clause of the Fourteenth Amendment. The County Superior Court dismissed the complaint without leave to amend, and the State Court of Appeal affirmed.

Held: Article XIII A’s acquisition-value assessment scheme does not violate the Equal Protection Clause. Pp. 7–15.

(a) Unless a state-imposed classification warrants some form of heightened review because it jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate state interest. Pp. 7–8.

NORDLINGER v. HAHN

Syllabus

(b) Petitioner may not assert the constitutional right to travel as a basis for heightened review of Article XIII A. Her complaint does not allege that she herself has been impeded from traveling or from settling in California because, before purchasing her home, she already lived in Los Angeles. Prudential standing principles prohibiting a litigant's raising another person's legal rights may not be overlooked in this case, since petitioner has not identified any obstacle preventing others who wish to travel or settle in California from asserting claims on their own, nor shown any special relationship with those whose rights she seeks to assert. P. 8.

(c) In permitting longer-term owners to pay less in taxes than newer owners of comparable property, Article XIII A's assessment scheme rationally furthers at least two legitimate state interests. First, because the State has a legitimate interest in local neighborhood preservation, continuity, and stability, it legitimately can decide to structure its tax system to discourage rapid turnover in ownership of homes and businesses. Second, the State legitimately can conclude that a new owner, at the point of purchasing his property, does not have the same reliance interest warranting protection against higher taxes as does an existing owner, who is already saddled with his purchase and does not have the option of deciding not to buy his home if taxes become prohibitively high. Pp. 8–12.

(d) *Allegheny Pittsburgh Coal Co. v. Webster*, 488 U. S. 336, is not controlling here, since the facts of that case precluded any plausible inference that the purpose of the tax assessment practice there invalidated was to achieve the benefits of an acquisition-value tax scheme. Pp. 12–14.

(e) Article XIII A's two reassessment exemptions rationally further legitimate purposes. The people of California reasonably could have concluded that older persons in general should not be discouraged from exchanging their residences for ones more suitable to their changing family sizes or incomes, and that the interests of family and neighborhood continuity and stability are furthered by and warrant an exemption for transfers between parents and children. Pp. 14–15.

(f) Because Article XIII A is not palpably arbitrary, this Court must decline petitioner's request to invalidate it, even if it may appear to be improvident and unwise yet unlikely ever to be reconsidered or repealed by ordinary democratic processes. P. 15.

225 Cal. App. 3d 1259, 275 Cal. Rptr. 684, affirmed.

BLACKMUN, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, O'CONNOR, SCALIA, KENNEDY, and SOUTER, JJ., joined, and in which THOMAS, J., joined as to Part II–A. THOMAS, J., filed an opinion concurring in part and concurring in the judgment. STEVENS, J., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

No. 90-1912

STEPHANIE NORDLINGER, PETITIONER *v.*
KENNETH HAHN, IN HIS CAPACITY AS TAX
ASSESSOR FOR LOS ANGELES COUNTY, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF
CALIFORNIA, SECOND APPELLATE DISTRICT

[June 18, 1992]

JUSTICE BLACKMUN delivered the opinion of the Court.

In 1978, California voters staged what has been described as a property tax revolt¹ by approving a statewide ballot initiative known as Proposition 13. The adoption of Proposition 13 served to amend the California Constitution to impose strict limits on the rate at which real property is taxed and on the rate at which real property assessments are increased from year to year. In this litigation, we consider a challenge under the Equal Protection Clause of the Fourteenth Amendment to the manner in which real property now is assessed under the California Constitution.

I

A

Proposition 13 followed many years of rapidly rising real property taxes in California. From fiscal years 1967-1968 to 1971-1972, revenues from these taxes increased on an average of 11.5 percent per year. See Report of the Senate Commission on Property Tax Equity and Revenue to the California State Senate 23 (1991). In response, the Califor-

¹See N.Y. Times, June 8, 1978, p. 23, col. 1; Washington Post, June 11, 1978, p. H1.

NORDLINGER v. HAHN

nia Legislature enacted several property tax relief measures, including a cap on tax rates in 1972. *Id.*, at 23–24. The boom in the State's real estate market persevered, however, and the median price of an existing home doubled from \$31,530 in 1973 to \$62,430 in 1977. As a result, tax levies continued to rise because of sharply increasing assessment values. *Id.*, at 23. Some homeowners saw their tax bills double or triple during this period, well outpacing any growth in their income and ability to pay. *Id.*, at 25. See also Oakland, Proposition 13—Genesis and Consequences, 32 Nat. Tax J. 387, 392 (Supp. June 1979).

By 1978, property tax relief had emerged as a major political issue in California. In only one month's time, tax relief advocates collected over 1.2 million signatures to qualify Proposition 13 for the June 1978 ballot. See Lefcoe & Allison, The Legal Aspects of Proposition 13: The *Amador Valley* Case, 53 S. Cal. L. Rev. 173, 174 (1978). On election day, Proposition 13 received a favorable vote of 64.8 percent and carried 55 of the State's 58 counties. California Secretary of State, Statement of Vote and Supplement, Primary Election, June 6, 1978, p. 39. California thus had a novel constitutional amendment that led to a property tax cut of approximately \$7 billion in the first year. Senate Commission Report, at 28. A California homeowner with a \$50,000 home enjoyed an immediate reduction of about \$750 per year in property taxes. *Id.*, at 26.

As enacted by Proposition 13, Article XIII A of the California Constitution caps real property taxes at 1% of a property's "full cash value." § 1(a). "Full cash value" is defined as the assessed valuation as of the 1975–1976 tax year or, "thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." § 2(a). The assessment "may reflect from year to year the inflationary rate not to exceed 2 percent for any given year." § 2(b).

Article XIII A also contains several exemptions from this reassessment provision. One exemption authorizes the

NORDLINGER *v.* HAHN

legislature to allow homeowners over the age of 55 who sell their principal residences to carry their previous base-year assessments with them to replacement residences of equal or lesser value. §2(a). A second exemption applies to transfers of a principal residence (and up to \$1 million of other real property) between parents and children. §2(h).

In short, Article XIII A combines a 1% ceiling on the property tax rate with a 2% cap on annual increases in assessed valuations. The assessment limitation, however, is subject to the exception that new construction or a change of ownership triggers a reassessment up to current appraised value. Thus, the assessment provisions of Article XIII A essentially embody an “acquisition value” system of taxation rather than the more commonplace “current value” taxation. Real property is assessed at values related to the value of the property at the time it is acquired by the taxpayer rather than to the value it has in the current real estate market.

Over time, this acquisition-value system has created dramatic disparities in the taxes paid by persons owning similar pieces of property. Property values in California have inflated far in excess of the allowed 2% cap on increases in assessments for property that is not newly constructed or that has not changed hands. See Senate Commission Report, at 31–32. As a result, longer-term property owners pay lower property taxes reflecting historic property values, while newer owners pay higher property taxes reflecting more recent values. For that reason, Proposition 13 has been labeled by some as a “welcome stranger” system—the newcomer to an established community is “welcome” in anticipation that he will contribute a larger percentage of support for local government than his settled neighbor who owns a comparable home. Indeed, in dollar terms, the differences in tax burdens are staggering. By 1989, the 44% of California home owners who have owned their homes since enactment of Proposition 13 in 1978 shouldered only 25% of the more than \$4 billion in

NORDLINGER v. HAHN

residential property taxes paid by homeowners statewide. *Id.*, at 33. If property values continue to rise more than the annual 2% inflationary cap, this disparity will continue to grow.

B

According to her amended complaint, petitioner Stephanie Nordlinger in November 1988 purchased a house in the Baldwin Hills neighborhood of Los Angeles County for \$170,000. App. 5. The prior owners bought the home just two years before for \$121,500. *Id.*, at 6. Before her purchase, petitioner had lived in a rented apartment in Los Angeles and had not owned any real property in California. *Id.*, at 5; Tr. of Oral Arg. 12.

In early 1989, petitioner received a notice from the Los Angeles County Tax Assessor, who is a respondent here, informing her that her home had been reassessed upward to \$170,100 on account of its change in ownership. App. 7. She learned that the reassessment resulted in a property tax increase of \$453.60, up 36% to \$1,701, for the 1988–1989 fiscal year. *Ibid.*

Petitioner later discovered she was paying about five times more in taxes than some of her neighbors who owned comparable homes since 1975 within the same residential development. For example, one block away, a house of identical size on a lot slightly larger than petitioner's was subject to a general tax levy of only \$358.20 (based on an assessed valuation of \$35,820, which reflected the home's value in 1975 plus the up-to-2% per year inflation factor). *Id.*, at 9–10.² According to petitioner, her total property

²Petitioner proffered to the trial court additional evidence suggesting that the disparities in residential tax burdens were greater in other Los Angeles County neighborhoods. For example, a small 2-bedroom house in Santa Monica that was previously assessed at \$27,000 and that was sold for \$465,000 in 1989 would be subject to a tax levy of \$4,650, a bill 17 times more than the \$270 paid the year before by the previous owner.

NORDLINGER v. HAHN

taxes over the first 10 years in her home will approach \$19,000, while any neighbor who bought a comparable home in 1975 stands to pay just \$4,100. Brief for Petitioner 3. The general tax levied against her modest home is only a few dollars short of that paid by a pre-1976 owner of a \$2.1 million Malibu beachfront home. App. 24.

After exhausting administrative remedies, petitioner brought suit against respondents in Los Angeles County Superior Court. She sought a tax refund and a declaration that her tax was unconstitutional.³ In her amended complaint, she alleged: "Article XIII A has created an arbitrary system which assigns disparate real property tax burdens on owners of generally comparable and similarly situated properties without regard to the use of the real property taxed, the burden the property places on government, the actual value of the property or the financial capability of the property owner." *Id.*, at 12. Respondents demurred. *Id.*, at 14. By minute order, the Superior Court sustained the demurrer and dismissed the complaint without leave to amend. App. to Pet. for Cert. D2.

The California Court of Appeal affirmed. *Nordlinger v. Lynch*, 225 Cal.App.3d 1259, 275 Cal. Rptr. 684 (1990). It

App. 76-77. Petitioner also proffered evidence suggesting that similar disparities obtained with respect to apartment buildings and commercial and industrial income-producing properties. *Id.*, at 68-69, 82-85.

³California by statute grants a cause of action to a taxpayer "where the alleged illegal or unconstitutional assessment or collection occurs as the direct result of a change in administrative regulations or statutory or constitutional law that became effective not more than 12 months prior to the date the action is initiated by the taxpayer." Cal. Rev. & Tax. Code Ann. § 4808 (West 1987). Although Proposition 13 was enacted 11 years before she filed her complaint, petitioner contended that the relevant change in law was this Court's decision in *Allegheny Pittsburgh Coal Co. v. Webster County*, 488 U. S. 336 (1989), decided 9 months before petitioner filed her amended complaint. Because the California courts did not discuss whether petitioner's action was timely under § 4808, we do not do so.

NORDLINGER v. HAHN

noted that the Supreme Court of California already had rejected a constitutional challenge to the disparities in taxation resulting from Article XIII A. See *Amador Valley Joint Union High School Dist. v. State Bd. of Equalization*, 22 Cal.3d 208, 583 P.2d 1281 (1978). Characterizing Article XIII A as an “acquisition value” system, the Court of Appeal found it survived equal protection review, because it was supported by at least two rational bases: first, it prevented property taxes from reflecting unduly inflated and unforeseen current values, and, second, it allowed property owners to estimate future liability with substantial certainty. 225 Cal.App.3d, at 1273, 275 Cal. Rptr., at 691–692 (citing *Amador*, 22 Cal.3d, at 235, 583 P.2d, at 1293).

The Court of Appeal also concluded that this Court’s more recent decision in *Allegheny Pittsburgh Coal Co. v. Webster County*, 488 U. S. 336 (1989), did not warrant a different result. At issue in *Allegheny Pittsburgh* was the practice of a West Virginia county tax assessor of assessing recently purchased property on the basis of its purchase price, while making only minor modifications in the assessments of property that had not recently been sold. Properties that had been sold recently were reassessed and taxed at values between 8 and 35 times that of properties that had not been sold. *Id.*, at 341. This Court determined that the unequal assessment practice violated the Equal Protection Clause.

The Court of Appeal distinguished *Allegheny Pittsburgh* on grounds that “California has opted for an assessment method based on each individual owner’s *acquisition cost*,” while, “[i]n marked contrast, the West Virginia Constitution requires property to be taxed at a uniform rate statewide according to its estimated *current market value*” (emphasis in original). 225 Cal.App.3d, at 1277–1278, 275 Cal. Rptr., at 695. Thus, the Court of Appeal found: “*Allegheny* does not prohibit the states from adopting an acquisition value assessment method. That decision merely prohibits the arbitrary enforcement of a current value assessment

NORDLINGER v. HAHN

method" (emphasis omitted). *Id.*, at 1265, 275 Cal. Rptr., at 686.

The Court of Appeal also rejected petitioner's argument that the effect of Article XIII A on the constitutional right to travel warranted heightened equal protection review. The court determined that the right to travel was not infringed, because Article XIII A "bases each property owner's assessment on acquisition value, irrespective of the owner's status as a California resident or the owner's length of residence in the state." *Id.*, at 1281, 275 Cal. Rptr., at 697. Any benefit to longtime California residents was deemed "incidental" to an acquisition-value approach. Finally, the Court of Appeal found its conclusion was unchanged by the exemptions in Article XIII A. *Ibid.*, 275 Cal. Rptr., at 697.

The Supreme Court of California denied review. App. to Pet. for Cert. B1. We granted certiorari. ___ U. S. ___ (1991).

II

The Equal Protection Clause of the Fourteenth Amendment, § 1, commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws." Of course, most laws differentiate in some fashion between classes of persons. The Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike. *F.S. Royster Guano Co. v. Virginia*, 253 U. S. 412, 415 (1920).

As a general rule, "legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality." *McGowan v. Maryland*, 366 U. S. 420, 425-426 (1961). Accordingly, this Court's cases are clear that, unless a classification warrants some form of heightened review because it jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only that the

NORDLINGER v. HAHN

classification rationally further a legitimate state interest. See, e. g., *Cleburne v. Cleburne Living Center, Inc.*, 473 U. S. 432, 439–441 (1985); *New Orleans v. Dukes*, 427 U. S. 297, 303 (1976).

A

At the outset, petitioner suggests that her challenge to Article XIII A qualifies for heightened scrutiny because it infringes upon the constitutional right to travel. See, e. g., *Zobel v. Williams*, 457 U. S. 55, 60, n. 6 (1982); *Memorial Hospital v. Maricopa County*, 415 U. S. 250, 254–256 (1976). In particular, petitioner alleges that the exemptions to reassessment for transfers by owners over 55 and for transfers between parents and children run afoul of the right to travel, because they classify directly on the basis of California residency. But the complaint does not allege that petitioner herself has been impeded from traveling or from settling in California because, as has been noted, prior to purchasing her home, petitioner lived in an apartment in Los Angeles. This Court's prudential standing principles impose a "general prohibition on a litigant's raising another person's legal rights." *Allen v. Wright*, 468 U. S. 737, 751 (1984). See also *Moose Lodge No. 107 v. Irvis*, 407 U. S. 163, 166 (1972). Petitioner has not identified any obstacle preventing others who wish to travel or settle in California from asserting claims on their own behalf, nor has she shown any special relationship with those whose rights she seeks to assert, such that we might overlook this prudential limitation. *Caplin & Drysdale v. United States*, 491 U.S. 617, 623, n. 3 (1989). Accordingly, petitioner may not assert the constitutional right to travel as a basis for heightened review.

B

The appropriate standard of review is whether the difference in treatment between newer and older owners rationally furthers a legitimate state interest. In general,

NORDLINGER v. HAHN

the Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification, see *United States Railroad Retirement Bd. v. Fritz*, 449 U. S. 166, 174, 179 (1980), the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, see *Minnesota v. Clover Leaf Creamery Co.*, 449 U. S. 456, 464 (1981), and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational, see *Cleburne v. Cleburne Living Center, Inc.*, 473 U. S., at 446. This standard is especially deferential in the context of classifications made by complex tax laws. “[I]n structuring internal taxation schemes ‘the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.’” *Williams v. Vermont*, 472 U. S. 14, 22 (1985), quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U. S. 356, 359 (1973). See also *Regan v. Taxation with Representation of Washington*, 461 U. S. 540, 547 (1983) (“Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes”).

As between newer and older owners, Article XIII A does not discriminate with respect to either the tax rate or the annual rate of adjustment in assessments. Newer and older owners alike benefit in both the short and long run from the protections of a 1% tax rate ceiling and no more than a 2% increase in assessment value per year. New owners and old owners are treated differently with respect to one factor only—the basis on which their property is initially assessed. Petitioner’s true complaint is that the State has denied her—a new owner—the benefit of the same assessment value that her neighbors—older owners—enjoy.

We have no difficulty in ascertaining at least two rational or reasonable considerations of difference or policy that justify denying petitioner the benefits of her neighbors’ lower assessments. First, the State has a legitimate interest in local neighborhood preservation, continuity, and

NORDLINGER v. HAHN

stability. *Euclid v. Ambler Realty Co.*, 272 U. S. 365 (1926). The State therefore legitimately can decide to structure its tax system to discourage rapid turnover in ownership of homes and businesses, for example, in order to inhibit displacement of lower income families by the forces of gentrification or of established, “mom-and-pop” businesses by newer chain operations. By permitting older owners to pay progressively less in taxes than new owners of comparable property, the Article XIII A assessment scheme rationally furthers this interest.

Second, the State legitimately can conclude that a new owner at the time of acquiring his property does not have the same reliance interest warranting protection against higher taxes as does an existing owner. The State may deny a new owner at the point of purchase the right to “lock in” to the same assessed value as is enjoyed by an existing owner of comparable property, because an existing owner rationally may be thought to have vested expectations in his property or home that are more deserving of protection than the anticipatory expectations of a new owner at the point of purchase. A new owner has full information about the scope of future tax liability before acquiring the property, and if he thinks the future tax burden is too demanding, he can decide not to complete the purchase at all. By contrast, the existing owner, already saddled with his purchase, does not have the option of deciding not to buy his home if taxes become prohibitively high. To meet his tax obligations, he might be forced to sell his home or to divert his income away from the purchase of food, clothing, and other necessities. In short, the State may decide that it is worse to have owned and lost, than never to have owned at all.

This Court previously has acknowledged that classifications serving to protect legitimate expectation and reliance

NORDLINGER v. HAHN

interests do not deny equal protection of the laws.⁴ “The protection of reasonable reliance interests is not only a legitimate governmental objective: it provides an exceedingly persuasive justification. . . .” (internal quotations omitted). *Heckler v. Mathews*, 465 U. S. 728, 746 (1984). For example, in *Kadrmas v. Dickinson Public Schools*, 487 U. S. 450 (1988), the Court determined that a prohibition on user fees for bus service in “reorganized” school districts but not in “nonreorganized” school districts does not violate the Equal Protection Clause, because “the legislature could conceivably have believed that such a policy would serve the legitimate purpose of fulfilling the reasonable expectations of those residing in districts with free busing arrangements imposed by reorganization plans.” *Id.*, at 465. Similarly, in *United States Railroad Retirement Bd. v. Fritz*, *supra*, the Court determined that a denial of dual “windfall” retirement benefits to some railroad workers but not others did not violate the Equal Protection Clause, because “Congress could properly conclude that persons who had actually acquired statutory entitlement to windfall benefits while still employed in the railroad industry had a greater equitable claim to those benefits than the members of appellee’s class who were no longer in railroad employment when they became eligible for dual benefits.” 449 U. S., at

⁴Outside the context of the Equal Protection Clause, the Court has not hesitated to recognize the legitimacy of protecting reliance and expectational interests. See, e.g., *Rakas v. Illinois*, 439 U. S. 128, 143 (1978) (“protection of the Fourth Amendment depends . . . upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place”); *Penn Central Transportation Co. v. New York City*, 438 U. S. 104, 124 (1978) (whether regulation of property constitutes a “taking” depends in part on “the extent to which the regulation has interfered with distinct investment-backed expectations”); *Perry v. Sindermann*, 408 U. S. 593, 601 (1972) (state law “property” interest for purpose of federal due process denotes “interests that are secured by existing rules or understandings”) (internal quotations omitted).

NORDLINGER v. HAHN

178. Finally, in *New Orleans v. Dukes*, *supra*, the Court determined that an ordinance banning certain street-vendor operations, but grandfathering existing vendors who had been in operation for more than eight years, did not violate the Equal Protection Clause because the “city could reasonably decide that newer businesses were less likely to have built up substantial reliance interests in continued operation.” 427 U. S., at 305.⁵

Petitioner argues that Article XIII A cannot be distinguished from the tax assessment practice found to violate the Equal Protection Clause in *Allegheny Pittsburgh*. Like Article XIII A, the practice at issue in *Allegheny Pittsburgh* resulted in dramatic disparities in taxation of properties of comparable value. But an obvious and critical factual difference between this case and *Allegheny Pittsburgh* is the absence of any indication in *Allegheny Pittsburgh* that the policies underlying an acquisition-value taxation scheme could conceivably have been the purpose for the Webster County tax assessor’s unequal assessment scheme. In the first place, Webster County argued that “its assessment scheme is rationally related to its purpose of assessing properties at *true current value*” (emphasis added). *Id.*, at 488 U. S., at 343.⁶ Moreover, the West Virginia “Constitu-

⁵Because we conclude that Article XIII A rationally furthers the State’s interests in neighborhood stability and the protection of property owners’ reliance interests, we need not consider whether it permissibly serves other interests discussed by the parties, including whether it taxes real property according to the taxpayers’ ability to pay or whether it taxes real property in such a way as to promote stability of local tax revenues.

⁶Webster County argued that the outdated assessments it used were consistent with current-value taxation, because periodic upward adjustments were made for inflation and it was not feasible to reassess individually each piece of property every year. Although the county obliquely referred in a footnote to the advantages of historical cost accounting, Brief for Respondent in *Allegheny Pittsburgh Coal Co. v. Webster County*, O.T. 1988, No. 87–1303, p. 30, n. 23, this was not an assertion of the general policies supporting acquisition-value taxation.

NORDLINGER v. HAHN

tion and laws provide that all property of the kind held by petitioners shall be taxed at a rate uniform throughout the State according to its estimated market value," and the Court found "no suggestion" that "the State may have adopted a different system in practice from that specified by statute." *Id.*, at 345.

To be sure, the Equal Protection Clause does not demand for purposes of rational-basis review that a legislature or governing decisionmaker actually articulate at any time the purpose or rationale supporting its classification. *United States Railroad Retirement Bd. v. Fritz*, 449 U. S., at 179. See also *McDonald v. Board of Election Comm'rs of Chicago*, 394 U. S. 802, 809 (1969) (legitimate state purpose may be ascertained even when the legislative or administrative history is silent). Nevertheless, this Court's review does require that a purpose may conceivably or "may reasonably have been the purpose and policy" of the relevant governmental decisionmaker. *Allied Stores of Ohio, Inc. v. Bowers*, 358 U. S. 522, 528-529 (1959). See also *Schweiker v. Wilson*, 450 U. S. 221, 235 (1981) (classificatory scheme must "rationally advanc[e] a reasonable and identifiable governmental objective" (emphasis added)). *Allegheny Pittsburgh* was the rare case where the facts precluded any plausible inference that the reason for the unequal assessment practice was to achieve the benefits of an acquisition-value tax scheme.⁷ By contrast, Article XIII A was enacted

Even if acquisition-value policies had been asserted, the assertion would have been nonsensical given its inherent inconsistency with the county's principal argument that it was in fact trying to promote current-value taxation.

⁷In *Allied Stores of Ohio, Inc. v. Bowers*, 358 U. S. 522 (1959), the Court distinguished on similar grounds its decision in *Wheeling Steel Corp. v. Glander*, 337 U. S. 562 (1949), which invalidated a state statutory scheme exempting from taxation certain notes and accounts receivable owned by residents of the State but not notes and accounts receivable owned by nonresidents. 358 U. S., at 529. After the Court in *Wheeling Steel* determined that the statutory scheme's stated purpose

NORDLINGER v. HAHN

precisely to achieve the benefits of an acquisition-value system. *Allegheny Pittsburgh* is not controlling here.⁸

Finally, petitioner contends that the unfairness of Article XIII A is made worse by its exemptions from reassessment for two special classes of new owners: persons aged 55 and older, who exchange principal residences, and children who acquire property from their parents. This Court previously has declined to hold that narrow exemptions from a general scheme of taxation necessarily render the overall scheme invidiously discriminatory. See, e.g., *Regan v. Taxation with Representation of Washington*, 461 U. S. at 550–551 (denial of tax exemption to nonprofit lobbying organizations, but with an exception for veterans' groups, does not violate equal protection). For purposes of rational-basis review, the "latitude of discretion is notably wide in . . . the granting of partial or total exemptions upon grounds of policy." *F.S. Royster Guano Co. v. Virginia*, 253 U. S., at 415.

The two exemptions at issue here rationally further legitimate purposes. The people of California reasonably could have concluded that older persons in general should not be discouraged from moving to a residence more suitable to their changing family size or income. Similarly,

was not legitimate, the other purposes did not need to be considered because "[h]aving themselves specifically declared their purpose, the Ohio statutes left no room to conceive of any other purpose for their existence." *Id.*, at 530.

⁸In finding *Allegheny Pittsburgh* distinguishable, we do not suggest that the protections of the Equal Protection Clause are any less when the classification is drawn by legislative mandate, as in this case, than by administrative action as in *Allegheny Pittsburgh*. See *Sunday Lake Iron Co. v. Wakefield*, 247 U. S. 350, 352 (1918). Nor do we suggest that the Equal Protection Clause constrains administrators, as in *Allegheny Pittsburgh*, from violating state law requiring uniformity of taxation of property. See *Nashville, C. & St. L. R. Co. v. Browning*, 310 U. S. 362, 368–370 (1940); *Puget Sound Power & Light Co. v. King County*, 264 U. S. 22, 27–28 (1924). See generally *Snowden v. Hughes*, 321 U. S. 1, 8–11 (1944).

NORDLINGER *v.* HAHN

the people of California reasonably could have concluded that the interests of family and neighborhood continuity and stability are furthered by and warrant an exemption for transfers between parents and children. Petitioner has not demonstrated that no rational bases lie for either of these exemptions.

III

Petitioner and *amici* argue with some appeal that Article XIII A frustrates the “American dream” of home ownership for many younger and poorer California families. They argue that Article XIII A places start-up businesses that depend on ownership of property at a severe disadvantage in competing with established businesses. They argue that Article XIII A dampens demand for and construction of new housing and buildings. And they argue that Article XIII A constricts local tax revenues at the expense of public education and vital services.

Time and again, however, this Court has made clear in the rational-basis context that the “Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted” (footnote omitted). *Vance v. Bradley*, 440 U. S. 93, 97 (1979). Certainly, California’s grand experiment appears to vest benefits in a broad, powerful, and entrenched segment of society, and, as the Court of Appeal surmised, ordinary democratic processes may be unlikely to prompt its reconsideration or repeal. See 225 Cal. App. 3d, at 1282, n. 11, 275 Cal. Rptr., at 698, n. 11. Yet many wise and well-intentioned laws suffer from the same malady. Article XIII A is not palpably arbitrary, and we must decline petitioner’s request to upset the will of the people of California.

The judgment of the Court of Appeal is affirmed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 90-1912

STEPHANIE NORDLINGER, PETITIONER *v.*
KENNETH HAHN, IN HIS CAPACITY AS TAX
ASSESSOR FOR LOS ANGELES COUNTY, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF
CALIFORNIA, SECOND APPELLATE DISTRICT

[June 18, 1992]

JUSTICE THOMAS, concurring in part and concurring in the judgment.

In *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, 488 U. S. 336 (1989), this Court struck down an assessment method used in Webster County, West Virginia, that operated precisely the same way as the California scheme being challenged today. I agree with the Court that Proposition 13 is constitutional. But I also agree with JUSTICE STEVENS that *Allegheny Pittsburgh* cannot be distinguished, see *post*, at 5. To me *Allegheny Pittsburgh* represents a “needlessly intrusive judicial infringement on the State’s legislative powers,” *New Orleans v. Dukes*, 427 U. S. 297, 306 (1976) (*per curiam*), and I write separately because I see no benefit, and much risk, in refusing to confront it directly.

I

Allegheny Pittsburgh involved a county assessment scheme indistinguishable in relevant respects from Proposition 13. As the Court explains, California taxes real property at 1% of “full cash value,” which means the “assessed value” as of 1975 (under the previous method) and after 1975–1976 the “appraised value of real property when purchased, newly constructed, or a change in value

NORDLINGER v. HAHN

has occurred after the 1975 assessment.” The assessed value may be increased for inflation, but only at a maximum rate of 2% each year. See California Const., Art. XIII A, §§ 1(a), 2(a); *ante*, at 2. The property tax system worked much the same way in Webster County, West Virginia. The tax assessor assigned real property an “appraised value,” set the “assessed value” at half of the appraised value, then collected taxes by multiplying the assessed value by the relevant tax rate. For property that had been sold recently, the assessor set the appraised value at the most recent price of purchase. For property that had not been sold recently, she increased the appraised price by 10%, first in 1976, then again in 1981 and 1983.

The assessor’s methods resulted in “dramatic differences in valuation between . . . recently transferred property and otherwise comparable surrounding land.” 488 U. S., at 341; cf. Glennon, *Taxation and Equal Protection*, 58 Geo. Wash. L. Rev. 261, 269–270 (1990) (discussing the effects of Proposition 13); Cohen, *State Law in Equality Clothing: A Comment on Allegheny Pittsburgh Coal Company v. County Commission*, 38 UCLA L. Rev. 87, 91, and n. 29 (1990); Hellerstein & Peters, *Recent Supreme Court Decisions Have Far-Reaching Implications*, 70 J. Taxation 306, 308–310 (1989). Several coal companies that owned property in Webster County sued the county assessor, alleging violations of both the West Virginia and the United States Constitutions. The Supreme Court of Appeals of West Virginia upheld the assessment against the companies, but this Court reversed.

The *Allegheny Pittsburgh* Court asserted that with respect to taxation, the Equal Protection Clause constrains the States as follows. Although “[t]he use of a general adjustment as a transitional substitute for an individual reappraisal violates no constitutional command,” the Clause requires that “general adjustments [be] accurate enough over a short period of time to equalize the differences in proportion between the assessments of a class of property

NORDLINGER v. HAHN

holders.” 488 U. S., at 343. “[T]he constitutional requirement is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners.” *Ibid.* (citing *Allied Stores of Ohio, Inc. v. Bowers*, 358 U. S. 522, 526–527 (1959)). Moreover, the Court stated, the Constitution and laws of West Virginia “provide that all property of the kind held by petitioners shall be taxed at a rate uniform throughout the State according to its estimated market value,” and “[t]here [was] no suggestion . . . that the State may have adopted a different system in practice from that specified by statute.” 488 U. S., at 345. “Indeed, [the assessor’s] practice seems contrary to that of the guide published by the West Virginia Tax Commission as an aid to local assessors in the assessment of real property.” *Ibid.*; see also *ibid.* (“We are not advised of any West Virginia statute or practice which authorizes individual counties of the State to fashion their own substantive assessment policies independently of state statute”). The Court refused to decide “whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be.” *Id.*, at 344, n. 4. Finally, the Court declared, “[I]ntentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property.” *Id.*, at 345 (quoting *Sunday Lake Iron Co. v. Wakefield*, 247 U. S. 350, 352–353 (1918), and citing *Sioux City Bridge Co. v. Dakota County*, 260 U. S. 441 (1923), and *Cumberland Coal Co. v. Board of Revision of Tax Assessments in Green County, Pa.*, 284 U. S. 23 (1931)). The Court concluded that the assessments for the coal companies’ properties had failed these requisites of the Equal Protection Clause.

II

As the Court accurately states today, “this Court’s cases”—*Allegheny Pittsburgh* aside—are clear that, unless a

NORDLINGER v. HAHN

classification warrants some form of heightened review because it jeopardizes [the] exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate state interest." *Ante*, at 7; see also *Burlington N. R. Co. v. Ford*, 504 U. S. ___, ___ (1992); *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U. S. 356, 359 (1973). The California tax system, like most, does not involve either suspect classes or fundamental rights, and the Court properly reviews California's classification for a rational basis. Today's review, however, differs from the review in *Allegheny Pittsburgh*.

The Court's analysis in *Allegheny Pittsburgh* is susceptible, I think, to at least three interpretations. The first is the one offered by petitioner. Under her reading of the case, properties are "similarly situated" or within the same "class" for the purposes of the Equal Protection Clause when they are located in roughly the same types of neighborhoods, for example, are roughly the same size, and are roughly the same in other, unspecified ways. According to petitioner, the Webster County assessor's plan violated the Equal Protection Clause because she had failed to achieve a "seasonable attainment of a rough equality in tax treatment" of all the objectively comparable properties in Webster County, presumably those with about the same acreage and about the same amount of coal. Petitioner contends that Proposition 13 suffers from similar flaws. In 1989, she points out, "the long-time owner of a stately 7,800-square-foot, seven-bedroom mansion on a huge lot in Beverly Hills (among the most luxurious homes in one of the most expensive neighborhoods in Los Angeles County) . . . paid less property tax annually than the new homeowner of a tiny 980-square-foot home on a small lot in an extremely modest Venice neighborhood." Brief for Petitioner 5; see also *id.*, at 7 (Petitioner's "1988 property tax assessment on her unpretentious Baldwin Hills tract home is almost identical to that of a pre-1976 owner of a fabulous

NORDLINGER v. HAHN

beach-front Malibu residential property worth \$2.1 million, even though her property is worth only 1/12th as much as his"). Because California not only has not tried to repair this systematic, intentional, and gross disparity in taxation, but has enacted it into positive law, petitioner argues, Proposition 13 violates the Equal Protection Clause.

This argument rests, in my view, on a basic misunderstanding of *Allegheny Pittsburgh*. The Court there proceeded on the assumption of law (assumed because the parties did not contest it) that the initial classification, by the State, was constitutional, and the assumption of fact (assumed because the parties had so stipulated) that the properties were comparable under the State's classification. But cf. Glennon, 58 Geo. Wash. L. Rev., at 271-272 (noting that some of the properties contained coal and others did not). In referring to the tax treatment of a "class of property holders," or "similarly situated property owners," 488 U. S., at 343, the Court did not purport to review the constitutionality of the initial classification, by market value, drawn by the State, as opposed to the further subclassification within the initial class, by acquisition value, drawn by the assessor. Instead, *Allegheny Pittsburgh* assumed that whether properties or persons are similarly situated depended on state law, and not, as petitioner argues, on some neutral criteria such as size or location that serve as proxies for market value. Under that theory, market value would be the *only* rational basis for classifying property. But the Equal Protection Clause does not prescribe a single method of taxation. We have consistently rejected petitioner's theory, see, e. g., *Ohio Oil Co. v. Conway*, 281 U. S. 146 (1930); *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S. 232 (1890), and the Court properly rejects it today.

Allegheny Pittsburgh, then, does not prevent the State of California from classifying properties on the basis of their value at acquisition, so long as the classification is supported by a rational basis. I agree with the Court that it is,

NORDLINGER v. HAHN

both for the reasons given by this Court, see *ante*, at 9–12, and for the reasons given by the Supreme Court of California in *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d 208, 583 P. 2d 1281 (1978). But the classification employed by the Webster County assessor, indistinguishable from California's, was rational for all those reasons as well. In answering petitioner's argument that *Allegheny Pittsburgh* controls here, respondents offer a second explanation for that case. JUSTICE STEVENS gives much the same explanation, see *post*, at 4–5, though he concludes in the end that Proposition 13, after *Allegheny Pittsburgh*, is unconstitutional.

According to respondents, the Equal Protection Clause permits a State itself to determine which properties are similarly situated, as the State of California did here (classifying properties by acquisition value) and as the State of West Virginia did in *Allegheny Pittsburgh* (classifying properties by market value). But once a state does so, respondents suggest, the Equal Protection Clause requires after *Allegheny Pittsburgh* that properties in the same class be accorded seasonably equal treatment and not be intentionally and systematically undervalued. Proposition 13 provides for the assessment of properties in the same state-determined class regularly and at roughly full value; this contrasts with the tax scheme in Webster County, where by dividing property in the same class (by market value) into a subclass (by acquisition value), the assessor regularly undervalued the property similarly situated. This, according to respondents, made the Webster County scheme unconstitutional, and distinguishes Proposition 13.

Respondents' reading of *Allegheny Pittsburgh* is, in my view, as misplaced as petitioner's; their test, for starters, comes with a dubious pedigree. In one of the cases cited in *Allegheny Pittsburgh*, *Allied Stores*, we upheld against an equal protection challenge a statute that exempted some corporations from ad valorem taxes imposed on others. Not only does *Allied Stores* not even hint that the Constitution

NORDLINGER v. HAHN

“require[s] . . . the seasonable attainment of a rough equality in tax treatment of similarly situated property owners,” 488 U. S., at 343, we took pains there to stress a very different proposition:

“The States have very wide discretion in the laying of their taxes. . . . Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The State . . . is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value.” *Allied Stores*, 358 U. S., at 526–527.

Two of the other cases cited in *Allegheny Pittsburgh*, *Sunday Lake Iron* and *Sioux City Bridge*, also rejected equal protection challenges, see also *Charleston Fed. Savings & Loan Assn. v. Alderson*, 324 U. S. 182 (1945), and the case in which the words intentional, systematic, and undervaluation first appeared, *Coulter v. Louisville & Nashville R. Co.*, 196 U. S. 599, 609 (1905), did not explain where the test came from or why.

It is true that we applied the rule of *Coulter* to strike down a tax system in *Cumberland Coal*, also cited in *Allegheny Pittsburgh*. *Cumberland Coal*, however, reflects the most serious of the problems with respondents’ reading of *Allegheny Pittsburgh*. As respondents understand these two cases, their rule is categorical: A tax scheme violates the Equal Protection Clause unless it provides for “the seasonable attainment of a rough equality in tax treatment” or if it results in “‘intentional systematic undervaluation’” of properties similarly situated by state law, 488 U. S., at 343, 345. This would be so regardless of whether the inequality or the undervaluation, which may result (as in Webster County) from further classifications of properties

NORDLINGER v. HAHN

within a class, is supported by a rational basis. But not since the coming of modern equal protection jurisprudence has this Court supplanted the rational judgments of state representatives with its own notions of “rough equality,” “undervaluation,” or “fairness.” *Cumberland Coal*, which fails even to mention rational-basis review, conflicts with our current caselaw. *Allegheny Pittsburgh* did not, in my view, mean to return us to the era when this Court sometimes second-guessed state tax officials. In rejecting today respondents’ reading of *Allegheny Pittsburgh*, the Court, as I understand it, agrees.

This brings me to the third explanation for *Allegheny Pittsburgh*, the one offered today by the Court. The Court proceeds in what purports to be our standard equal protection framework, though it reapplies an old, and to my mind discredited, gloss to rational-basis review. The Court concedes that the “Equal Protection Clause does not demand for purposes of rational-basis review that a legislature or governing decisionmaker actually articulate at any time the purpose or rationale supporting its classification.” *Ante*, at 13 (citing *United States Railroad Retirement Bd. v. Fritz*, 449 U. S. 166, 179 (1980)). This principle applies, the Court acknowledges, not only to an initial classification but to all further classifications within a class. “Nevertheless, this Court’s review does require that a purpose may conceivably or ‘may reasonably have been the purpose and policy’ of the relevant governmental decisionmaker,” the Court says, *ante*, at 13 (quoting *Allied Stores, supra*, at 528–529), and “*Allegheny Pittsburgh* was the rare case where the facts precluded any plausible inference that the reason for the unequal assessment practice was to achieve the benefits of an acquisition-value tax scheme,” *ante*, at 13. Rather than obeying the “law of a State, generally applied,” the county assessor had administered an “aberrational enforcement policy,” 488 U. S., at 344, n. 4. See *ante*, at 13. According to the Court, therefore, the problem in *Allegheny Pittsburgh* was that the Webster

NORDLINGER v. HAHN

County scheme, though otherwise rational, was irrational because it was contrary to state law. Any rational bases underlying the acquisition-value scheme were "implausible" (or "unreasonable") because they were made so by the Constitution and laws of the State of West Virginia.

That explanation, like petitioner's and respondents', is in tension with settled case law. Even if the assessor did violate West Virginia law (and that she did is open to question, see *In re 1975 Tax Assessments Against Oneida Coal Co.*, — W. Va. —, —, 360 S. E. 2d 560, 564 (1987)), she would not have violated the Equal Protection Clause. A violation of state law does not by itself constitute a violation of the Federal Constitution. We made that clear in *Snowden v. Hughes*, 321 U. S. 1 (1944), for instance, where a candidate for state office complained that members of the local canvassing board had refused to certify his name as a nominee to the Secretary of State, thus violating an Illinois statute. Because the plaintiff had not alleged, say, that the defendants had meant to discriminate against him on racial grounds, but merely that they had failed to comply with a statute, we rejected the argument that the defendants had thereby violated the Equal Protection Clause.

"[N]ot every denial of a right conferred by state law involves a denial of the equal protection of the laws, even though the denial of the right to one person may operate to confer it on another. . . . [W]here the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws." *Id.*, at 8.

See also *Nashville, C. & St. L. R. Co. v. Browning*, 310 U. S. 362 (1940).

The Court today promises not to have overruled *Snowden*, see *ante*, at 14, n. 8, but its disclaimer, I think, is in vain.

NORDLINGER v. HAHN

For if, as the Court suggests, what made the assessor's method unreasonable was her supposed violation of state law, the Court's interpretation of *Allegheny Pittsburgh* recasts in this case the proposition that we had earlier rejected. See Glennon, 58 Geo. Wash. L. Rev., at 268–269; Cohen, 38 UCLA L. Rev., at 93–94; Ely, Another Spin on *Allegheny Pittsburgh*, 38 UCLA L. Rev. 107, 108–109 (1990). In repudiating *Snowden*, moreover, the Court threatens settled principles not only of the Fourteenth Amendment but of the Eleventh. We have held that the Eleventh Amendment bars federal courts from ordering state actors to conform to the dictates of state law. *Pennhurst State School and Hospital v. Halderman*, 465 U. S. 89 (1984). After today, however, a plaintiff might be able invoke federal jurisdiction to have state actors obey state law, for a claim that the state actor has violated state law appears to have become a claim that he has violated the Constitution. See Cohen, *supra*, at 103; Ely, *supra*, at 109–110 (“[B]y the Court’s logic, all violations of state law—at least those violations that end (as most do) in the treatment of some people better than others—are theoretically convertible into violations of the Equal Protection Clause”).

I understand that the Court prefers to distinguish *Allegheny Pittsburgh*, but in doing so, I think, the Court has left our equal protection jurisprudence in disarray. The analysis appropriate to this case is straightforward. Unless a classification involves suspect classes or fundamental rights, judicial scrutiny under the Equal Protection Clause demands only a conceivable rational basis for the challenged state distinction. See *Fritz, supra*; *Kassel v. Consolidated Freightways Corp. of Delaware*, 450 U. S. 662, 702–706, and n. 13 (1981) (REHNQUIST, J., dissenting). This basis need not be one identified by the State itself; in fact, States need not articulate any reasons at all for their actions. See *ibid.* Proposition 13, I believe, satisfies this standard—but so, for the same reasons, did the scheme

NORDLINGER *v.* HAHN

employed in Webster County. See Brief for Pacific Legal Foundation et al. as *Amici Curiae* 7, 9–10, Brief for National Association of Counties et al. as *Amici Curiae* 9–13, Brief for Respondent 31–32, in *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County*, O. T. 1988, Nos. 87–1303, 87–1310; *ante*, at 9–12. *Allegheny Pittsburgh* appears to have survived today's decision. I wonder, though, about its legacy.

* * *

I concur in the judgment of the Court and join Part II-A of its opinion.

SUPREME COURT OF THE UNITED STATES

No. 90-1912

STEPHANIE NORDLINGER, PETITIONER *v.*
KENNETH HAHN, IN HIS CAPACITY AS TAX
ASSESSOR FOR LOS ANGELES COUNTY, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF
CALIFORNIA, SECOND APPELLATE DISTRICT

[June 18, 1992]

JUSTICE STEVENS, dissenting.

During the two past decades, California property owners have enjoyed extraordinary prosperity. As the State's population has mushroomed, so has the value of its real estate. Between 1976 and 1986 alone, the total assessed value of California property subject to property taxation increased tenfold.¹ Simply put, those who invested in California real estate in the 1970s are among the most fortunate capitalists in the world.

Proposition 13 has provided these successful investors with a tremendous windfall and, in doing so, has created severe inequities in California's property tax scheme.² These property owners (hereinafter "the Squires") are guaranteed that, so long as they retain their property and

¹Glennon, *Taxation and Equal Protection*, 58 Geo. Wash. L. Rev. 261, 270, n. 49 (1990). "For the same period, [property values in] Hawaii rose approximately 450%; Washington, D.C. approximately 350%; and New York approximately 125%." *Ibid.* (citing 2 U. S. Dept. of Commerce, Bureau of Census, *Taxable Property Values* 86-111, Table 12 (1987); 2 U. S. Dept. of Commerce, Bureau of Census, *Taxable Property Values and Assessment/Sales Price Ratios* 42, Table 2 (1977)).

²Proposition 13 was codified as Article XIII A of the California Constitution; for convenience sake, however, I refer to it by its colloquial name.

NORDLINGER v. HAHN

do not improve it, their taxes will not increase more than 2% in any given year. As a direct result of this windfall for the Squires, later purchasers must pay far more than their fair share of property taxes.

The specific disparity that prompted petitioner to challenge the constitutionality of Proposition 13 is the fact that her annual property tax bill is almost 5 times as large as that of her neighbors who own comparable homes: While her neighbors' 1989 taxes averaged less than \$400, petitioner was taxed \$1,700. App. 18–20. This disparity is not unusual under Proposition 13. Indeed, some homeowners pay 17 times as much in taxes as their neighbors with comparable property. See *id.*, at 76–77. For vacant land, the disparities may be as great as 500 to 1. App. to Pet. for Cert. A7. Moreover, as Proposition 13 controls the taxation of commercial property as well as residential property, the regime greatly favors the commercial enterprises of the Squires, placing new businesses at a substantial disadvantage.

As a result of Proposition 13, the Squires, who own 44% of the owner-occupied residences, paid only 25% of the total taxes collected from homeowners in 1989. Report of Senate Commission on Property Tax Equity and Revenue to the California State Senate 33 (1991) (Commission Report). These disparities are aggravated by § 2 of Proposition 13, which exempts from reappraisal a property owner's home and up to \$1 million of other real property when that property is transferred to a child of the owner. This exemption can be invoked repeatedly and indefinitely, allowing the Proposition 13 windfall to be passed from generation to generation. As the California Senate Commission on Property Tax Equity and Revenue observed:

"The inequity is clear. One young family buys a new home and is assessed at full market value. Another young family inherits its home, but pays taxes based on their parents' date of acquisition even though both homes are of identical value. Not only does this

NORDLINGER v. HAHN

constitutional provision offend a policy of equal tax treatment for taxpayers in similar situations, it appears to favor the housing needs of children with homeowner-parents over children with non-homeowner-parents. With the repeal of the state's gift and inheritance tax in 1982, the rationale for this exemption is negligible." Commission Report, at 9-10.

The Commission was too generous. To my mind, the rationale for such disparity is not merely "negligible," it is nonexistent. Such a law establishes a privilege of a medieval character: Two families with equal needs and equal resources are treated differently solely because of their different heritage.

In my opinion, such disparate treatment of similarly situated taxpayers is arbitrary and unreasonable. Although the Court today recognizes these gross inequities, see *ante*, at 4, n. 2, its analysis of the justification for those inequities consists largely of a restatement of the benefits that accrue to long-time property owners. That a law benefits those it benefits cannot be an adequate justification for severe inequalities such as those created by Proposition 13.

I

The standard by which we review equal protection challenges to state tax regimes is well-established and properly deferential. "Where 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 (1973). Thus, as the Court today notes, the issue in this case is "whether the

NORDLINGER v. HAHN

difference in treatment between newer and older owners rationally furthers a legitimate state interest." *Ante*, at 8.³

But deference is not abdication and "rational basis scrutiny" is still scrutiny. Thus we have, on several recent occasions, invalidated tax schemes under such a standard of review. See *e.g.*, *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County*, 488 U. S. 336 (1989); *Hooper v. Bernalillo County Assessor*, 472 U. S. 612, 618 (1985); *Williams v. Vermont*, 472 U. S. 14 (1985); *Metropolitan Life Ins. Co. v. Ward*, 470 U. S. 869 (1985); cf. *Zobel v. Williams*, 457 U. S. 55, 60–61 (1982).

Just three Terms ago, this Court unanimously invalidated Webster County, West Virginia's assessment scheme under rational-basis scrutiny. Webster County employed a *de facto* Proposition 13 assessment system: The County assessed recently purchased property on the basis of its purchase price but made only occasional adjustments (averaging 3–4% per year) to the assessments of other properties. Just as in this case, "[t]his approach systematically produced dramatic differences in valuation between . . . recently transferred property and otherwise comparable surrounding land." *Allegheny Pittsburgh*, 488 U. S., at 341.

The "[i]ntentional systematic undervaluation," *id.*, at 345, found constitutionally infirm in *Allegheny Pittsburgh* has been codified in California by Proposition 13. That the discrimination in *Allegheny Pittsburgh* was *de facto* and the discrimination in this case *de jure* makes little difference. "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the

³As the Court notes, *ante*, at 8, petitioner contends that Proposition 13 infringes on the constitutional right to travel and that, accordingly, a more searching standard of review is appropriate. There is no need to address that issue because the gross disparities created by Proposition 13 do not pass even the most deferential standard of review. Cf. *Hooper v. Bernalillo County Assessor*, 472 U. S. 612, 618 (1985); *Zobel v. Williams*, 457 U. S. 55, 60–61 (1982).

NORDLINGER v. HAHN

State's jurisdiction against intentional and arbitrary discrimination, *whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.*" *Sunday Lake Iron Co. v. Wakefield*, 247 U. S. 350, 352-353 (1918) (emphasis added). If anything, the inequality created by Proposition 13 is constitutionally more problematic because it is the product of a state-wide policy rather than the result of an individual assessor's maladministration.

Nor can *Allegheny Pittsburgh* be distinguished because West Virginia law established a market-value assessment regime. Webster County's scheme was constitutionally invalid not because it was a departure from *state law*, but because it involved the relative "systematic undervaluation . . . [of] property in the same class" (as that class was defined by state law). *Allegheny Pittsburgh*, 488 U. S., at 345 (emphasis added). Our decisions have established that the Equal Protection Clause is offended as much by the arbitrary delineation of classes of property (as in this case) as by the arbitrary treatment of properties within the same class (as in *Allegheny Pittsburgh*). See *Brown-Forman Co. v. Kentucky*, 217 U. S. 563, 573 (1910); *Cumberland Coal Co. v. Board of Revision*, 284 U. S. 23, 28-30 (1931). Thus, if our unanimous holding in *Allegheny Pittsburgh* was sound—and I remain convinced that it was—it follows inexorably that Proposition 13, like Webster County's assessment scheme, violates the Equal Protection Clause. Indeed, in my opinion, state-wide discrimination is far more invidious than a local aberration that creates a tax disparity.

The States, of course, have broad power to classify property in their taxing schemes and if the "classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law." *Brown-Forman Co. v. Kentucky*, 217 U. S., at 573. As we stated in *Allegheny Pittsburgh*, a "State may divide different kinds of

NORDLINGER v. HAHN

property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable.” 488 U. S., at 344.

Consistent with this standard, the Court has long upheld tax classes based on the taxpayer’s ability to pay, see, e.g., *Fox v. Standard Oil Co. of New Jersey*, 294 U. S. 87, 101 (1935); the nature (tangible or intangible) of the property, see, e.g., *Klein v. Jefferson County Board of Tax Supervisors*, 282 U. S. 19, 23–24 (1930); the use of the property, see, e.g., *Clark v. Kansas City*, 176 U. S. 114 (1900); and the status (corporate or individual) of the property owner, see, e.g., *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U. S. 356 (1973). Proposition 13 employs none of these familiar classifications. Instead it classifies property based on its nominal purchase price: All property purchased for the same price is taxed the same amount (leaving aside the 2% annual adjustment). That this scheme can be named (an “acquisition value” system) does not render it any less arbitrary or unreasonable. Under Proposition 13, a majestic estate purchased for \$150,000 in 1975 (and now worth more than \$2 million) is placed in the same tax class as a humble cottage purchased today for \$150,000. The only feature those two properties have in common is that somewhere, sometime a sale contract for each was executed that contained the price “\$150,000.” Particularly in an environment of phenomenal real property appreciation, to classify property based on its purchase price is “palpably arbitrary.” *Allied Stores of Ohio, Inc. v. Bowers*, 358 U. S. 522, 530 (1959).

II

Under contemporary equal protection doctrine, the test of whether a classification is arbitrary is “whether the difference in treatment between [earlier and later purchasers] rationally furthers a legitimate state interest.” *Ante*, at 8. The adjectives and adverbs in this standard are more important than the nouns and verbs.

NORDLINGER v. HAHN

A *legitimate* state interest must encompass the interests of members of the disadvantaged class and the community at large as well as the direct interests of the members of the favored class. It must have a purpose or goal independent of the direct effect of the legislation and one “that we may reasonably presume to have motivated an impartial legislature.” *Cleburne v. Cleburne Living Center, Inc.*, 473 U. S. 432, 452, n. 4 (1985) (STEVENS, J., concurring) (quoting *United States Railroad Retirement Board v. Fritz*, 449 U. S. 166, 180–181 (1980) (STEVENS, J., concurring in judgment)). That a classification must find justification outside itself saves judicial review of such classifications from becoming an exercise in tautological reasoning.

“A State cannot deflect an equal protection challenge by observing that in light of the statutory classification all those within the burdened class are similarly situated. The classification must reflect pre-existing differences; it cannot create new ones that are supported by only their own bootstraps. ‘The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes.’ *Rinaldi v. Yeager*, 384 U. S. 305, 308 (1966).” *Williams v. Vermont*, 472 U. S. 14, 27 (1985).

If the goal of the discriminatory classification is not independent from the policy itself, “each choice [of classification] will import its own goal, each goal will count as acceptable, and the requirement of a ‘rational’ choice-goal relation will be satisfied by the very making of the choice.” Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 Yale L. J. 1205, 1247 (1970).

A classification *rationaly* furthers a state interest when there is some fit between the disparate treatment and the legislative purpose. As noted above, in the review of tax statutes we have allowed such fit to be generous and approximate, recognizing that “rational distinctions may be made with substantially less than mathematical exacti-

NORDLINGER v. HAHN

tude.” *New Orleans v. Dukes*, 427 U. S. 297, 303 (1976). Nonetheless, in some cases the underinclusiveness or the overinclusiveness of a classification will be so severe that it cannot be said that the legislative distinction “rationally furthers” the posited state interest.⁴ See, e.g., *Jimenez v. Weinberger*, 417 U. S. 628, 636–638 (1974).

The Court’s cursory analysis of Proposition 13 pays little attention to either of these aspects of the controlling standard of review. The first state interest identified by the Court is California’s “interest in local neighborhood preservation, continuity, and stability.” *Ante*, at 9 (citing *Euclid v. Ambler Realty Co.*, 272 U. S. 365 (1926)). It is beyond question that “inhibit[ing the] displacement of lower income families by the forces of gentrification,” *ante*, at 9–10, is a legitimate state interest; the central issue is whether the disparate treatment of earlier and later purchasers *rationally furthers* this goal. Here the Court offers not an analysis, but only a conclusion: “By permitting older owners to pay progressively less in taxes than new owners of comparable property, [Proposition 13] rationally furthers this interest.” *Ante*, at 10.

I disagree. In my opinion, Proposition 13 sweeps too broadly and operates too indiscriminately to “rationally further” the State’s interest in neighborhood preservation. No doubt there are some early purchasers living on fixed or limited incomes who could not afford to pay higher taxes and still maintain their homes. California has enacted special legislation to respond to their plight.⁵ Those

⁴ “Herod, ordering the death of all male children born on a particular day because one of them would some day bring about his downfall, employed such a[n overinclusive] classification[, as did t]he wartime treatment of American citizens of Japanese ancestry [which imposed] burdens upon a large class of individuals because some of them were believed to be disloyal.” Tussman & tenBroek, *The Equal Protection of the Laws*, 37 Calif. L. Rev. 341, 351 (1949).

⁵ As pointed out in the Commission Report, California has addressed this specific problem with specific legislation. The State has established

NORDLINGER v. HAHN

concerns cannot provide an adequate justification for Proposition 13. A state-wide, across-the-board tax windfall for *all* property owners and their descendants is no more a “rational” means for protecting this small subgroup than a blanket tax exemption for all taxpayers named Smith would be a rational means to protect a particular taxpayer named Smith who demonstrated difficulty paying her tax bill.

Even within densely populated Los Angeles County, residential property comprises less than half of the market value of the property tax roll. App. 45. It cannot be said that the legitimate state interest in preserving neighborhood character is “rationally furthered” by tax benefits for owners of commercial, industrial, vacant, and other nonresidential properties.⁶ It is just short of absurd to conclude that the legitimate state interest in protecting a relatively small number of economically vulnerable families is “rationally furthered” by a tax windfall for all 9,787,887 property owners⁷ in California.

two programs:

“Senior Citizens Property Tax Assistance.” Provides refunds of up to ninety-six percent of property taxes to low income homeowners over age 62.

“Senior Citizens Property Tax Postponement.” Allows senior citizens with incomes under \$20,000 to postpone all or part of the taxes on their homes until an ownership change occurs.” Commission Report 23.

⁶The Court’s rationale for upholding Proposition 13 does not even arguably apply to vacant property. That, as the Court recognizes, Proposition 13 discourages changes of ownership means that the law creates an impediment to the transfer and development of such property no matter how socially desirable its improvement might be. It is equally plain that the competitive advantage enjoyed by the Squires who own commercial property is wholly unjustified. There is no rational state interest in providing those entrepreneurs with a special privilege that tends to discourage otherwise desirable transfers of income-producing property. In a free economy, the entry of new competitors should be encouraged, not arbitrarily hampered by unfavorable tax treatment.

⁷Brief for California Assessors’ Association as *Amicus Curiae* 2.

NORDLINGER v. HAHN

The Court's conclusion is unsound not only because of the lack of numerical fit between the posited state interest and Proposition 13's inequities but also because of the lack of logical fit between ends and means. Although the State may have a valid interest in preserving some neighborhoods,⁸ Proposition 13 not only "inhibit[s the] displacement" of settled families, it also inhibits the transfer of unimproved land, abandoned buildings, and substandard uses. Thus, contrary to the Court's suggestion, Proposition 13 is not like a zoning system. A zoning system functions by recognizing different uses of property and treating those different uses differently. See *Euclid v. Ambler Realty Co.*, 272 U. S., at 388–390. Proposition 13 treats all property alike, giving *all* owners tax breaks, and discouraging the transfer or improvement of *all* property—the developed and the dilapidated, the neighborly and the nuisance.

In short, although I agree with the Court that "neighborhood preservation" is a legitimate state interest, I cannot agree that a tax windfall for all persons who purchased property before 1978 *rationaly* furthers that interest. To my mind, Proposition 13 is too blunt a tool to accomplish such a specialized goal. The severe inequalities created by Proposition 13 cannot be justified by such an interest.⁹

⁸The ambiguous character of this interest is illustrated by the options faced by a married couple that owns a three- or four-bedroom home that suited their family needs while their children lived at home. After the children have moved out, increased taxes and maintenance expenses would—absent Proposition 13—tend to motivate the sale of the home to a younger family needing a home of that size, or perhaps the rental of a room or two to generate the income necessary to pay taxes. Proposition 13, however, subsidizes the wasteful retention of unused housing capacity, making the sale of the home unwise and the rental of the extra space unnecessary.

⁹Respondent contends that the inequities created by Proposition 13 are justified by the State's interest in protecting property owners from taxation on unrealized appreciation. The California Supreme Court relied on a similar state interest. See *Amador Valley Joint Union High*

NORDLINGER v. HAHN

The second state interest identified by the Court is the “reliance interests” of the earlier purchasers. Here I find the Court’s reasoning difficult to follow. Although the protection of reasonable reliance interests is a legitimate governmental purpose, see *Heckler v. Mathews*, 465 U. S. 728, 746 (1984), this case does not implicate such interests. A reliance interest is created when an individual justifiably acts under the assumption that an existing legal condition will persist; thus reliance interests are most often implicated when the government provides some benefit and then acts to eliminate the benefit. See, e.g., *New Orleans v. Dukes*, 427 U. S. 297 (1976). In this case, those who purchased property before Proposition 13 was enacted received no assurances that assessments would only increase at a limited rate; indeed, to the contrary, many purchased property in the hope that property values (and assessments) would appreciate substantially and quickly. It cannot be said, therefore, that the earlier purchasers of property somehow have a reliance interest in limited tax increases.

Perhaps what the Court means is that post-Proposition 13 purchasers have less reliance interests than pre-Proposition 13 purchasers. The Court reasons that the State may tax earlier and later purchasers differently because

“an existing owner rationally may be thought to have vested expectations in his property or home that are

School Dist. v. State Bd. of Equalization, 22 Cal.3d 208, 236–238, 583 P. 2d 1281, 1309–1311 (1978). This argument is closely related to the Court’s reasoning concerning “neighborhood preservation”; respondent claims the State has an interest in preventing the situation in which “skyrocketing real estate prices . . . driv[e] property taxes beyond some taxpayers’ ability to pay.” Brief for Respondent 19. As demonstrated above, whatever the connection between acquisition price and “ability to pay,” a blanket tax windfall for all early purchasers of property (and their descendants) is simply too overinclusive to “rationally further” the State’s posited interest in protecting vulnerable taxpayers.

NORDLINGER v. HAHN

more deserving of protection than the anticipatory expectations of a new owner at the point of purchase. A new owner has full information about the scope of future tax liability before acquiring the property, and if he thinks the future tax burden is too demanding, he can decide not to complete the purchase at all. By contrast, the existing owner, already saddled with his purchase, does not have the option of deciding not to buy his home if taxes become prohibitively high." *Ante*, at 10.¹⁰

This simply restates the effects of Proposition 13. A pre-Proposition 13 owner has "vested expectations" in reduced taxes *only* because Proposition 13 gave her such expectations; a later purchaser has no such expectations because Proposition 13 does not provide her such expectations. But the same can be said of any arbitrary protection for an existing class of taxpayers. Consider a law that establishes that homes with even street numbers would be taxed at twice the rate of homes with odd street numbers. It is certainly true that the even-numbered homeowners could not decide to "unpurchase" their homes and that those considering buying an even-numbered home would know that it came with an extra tax burden, but certainly that would not justify the arbitrary imposition of disparate tax burdens based on house numbers. So it is in this case. Proposition 13 provides a benefit for earlier purchasers and imposes a burden on later purchasers. To say that the later purchasers know what they are getting into does not answer the critical question: Is it reasonable and constitutional to tax early purchasers less than late purchasers

¹⁰The Court's sympathetic reference to "existing owner[s] already saddled" with their property should not obscure the fact that these early purchasers have already seen their property increase in value more than tenfold.

NORDLINGER v. HAHN

when at the time of taxation their properties are comparable? This question the Court does not answer.

Distilled to its essence, the Court seems to be saying that earlier purchasers can benefit under Proposition 13 because earlier purchasers benefit under Proposition 13. If, however, a law creates a disparity, the State's interest preserving that disparity cannot be a "*legitimate* state interest" justifying that inequity. As noted above, a statute's disparate treatment must be justified by a purpose *distinct* from the very effects created by that statute. Thus, I disagree with the Court that the severe inequities wrought by Proposition 13 can be justified by what the Court calls the "reliance interests" of those who benefit from that scheme.¹¹

In my opinion, it is irrational to treat similarly situated persons differently on the basis of the date they joined the class of property owners. Until today, I would have thought this proposition far from controversial. In *Zobel v. Williams*, 457 U. S. 55 (1982), we ruled that Alaska's program of distributing cash dividends on the basis of the recipient's years of residency in the State violated the Equal Protection Clause. The Court wrote:

"If the states can make the amount of a cash dividend depend on length of residence, what would preclude varying university tuition on a sliding scale based on years of residence—or even limiting access of

¹¹Respondent, drawing on the analysis of the California Supreme Court, contends that the inequities created by Proposition 13 are also justified by the State's interest in "permitting the taxpayer to make more careful and accurate predictions of future tax liability." *Amador Valley*, 22 Cal.3d, at 239, 583 P.2d, at 1312. This analysis suffers from the same infirmity as the Court's "reliance" analysis. I agree that Proposition 13 permits greater predictability of tax liability; the relevant question, however, is whether the inequities between earlier and later purchasers created by Proposition 13 can be justified by something other than the benefit to the early purchasers. I do not believe that they can.

NORDLINGER v. HAHN

finite public facilities, eligibility for student loans, for civil service jobs, or for government contracts by length of domicile? *Could states impose different taxes based on length of residence?* Alaska's reasoning could open the door to state apportionment of other rights, benefits, and services according to length of residency. It would permit the states to divide citizens into expanding numbers of permanent classes. Such a result would be clearly impermissible." *Id.*, at 64 (emphasis added) (footnotes omitted).

Similarly, the Court invalidated on equal protection grounds New Mexico's policy of providing a permanent tax exemption for Vietnam veterans who had been state residents before May 8, 1976, but not to more recent arrivals. *Hooper v. Bernalillo County Assessor*, 472 U. S. 612 (1985). The Court expressly rejected the State's claim that it had a legitimate interest in providing special rewards to veterans who lived in the State before 1976 and concluded that "[n]either the Equal Protection Clause, nor this Court's precedents, permit the State to prefer established resident veterans over newcomers in the retroactive apportionment of an economic benefit." *Id.*, at 623.

As these decisions demonstrate, the selective provision of benefits based on the timing of one's membership in a class (whether that class be the class of residents or the class of property owners) is rarely a "legitimate state interest." Similarly situated neighbors have an equal right to share in the benefits of local government. It would obviously be unconstitutional to provide one with more or better fire or police protection than the other; it is just as plainly unconstitutional to require one to pay five times as much in property taxes as the other for the same government services. In my opinion, the severe inequalities created by Proposition 13 are arbitrary and unreasonable and do not rationally further a legitimate state interest.

Accordingly, I respectfully dissent.

ADDENDUM D

FEDERAL EXPRESS CORP., Appellee,

v.

TENNESSEE STATE BOARD OF
EQUALIZATION and Tennessee As-
sessment Appeals Commission, Appel-
lants.Supreme Court of Tennessee,
at Nashville.

Oct. 6, 1986.

Operator of interstate door-to-door package delivery service challenged ad valorem taxation of its personal property. The Equity Court, Davidson County, Irvin H. Kilcrease, Jr., Chancellor, dismissed, and Court of Appeals reversed. The Supreme Court, Cooper, J., held that: (1) operator of interstate door-to-door package delivery service, which used its own integrated air-ground transportation system of aircraft and delivery vans, was an "express company" subject to ad valorem taxation under statute based on an assessment of 55% of value of its personal property, and (2) assessing property of operator of package facility service at 55% of its value, while assessing property of railroads at industrial and commercial rate of 30% of value, did not violate equal protection clause or State Constitution, where original state assessment of railroads at 55% of value of their properties had been preempted by Federal Railroad Revitalization and Regulatory Reform Act.

Court of Appeals reversed.

1. Taxation ⇐142

Operator of interstate door-to-door package delivery service, which used its own integrated air-ground transportation system of aircraft and delivery vans, was an "express company" within classification of "public utility" subject to ad valorem taxation under statute based on an assess-

ment of 55% of value of its personal property. T.C.A. § 67-5-501(8)(F).

See publication Words and Phrases for other judicial constructions and definitions.

2. Constitutional Law ⇐229(3)**Taxation ⇐42(2)**

Assessing property of operator of interstate door-to-door package facility service at 55% of its value for ad valorem taxation purposes, while assessing property of railroads at industrial and commercial rate of 30% of value, did not violate equal protection clause or State Constitution, where original state assessment of railroads at 55% of value of their properties had been preempted by Federal Railroad Revitalization and Regulatory Reform Act. T.C.A. § 67-5-501; Revised Interstate Commerce Act, 49 U.S.C.A. § 11503; Const. Art. 2, § 28; U.S.C.A. Const.Amend. 14.

Joe C. Peel, Ass't Atty. Gen., W.J. Michael Cody, Atty. Gen., Nashville, for appellants.

Waring Cox, Saul C. Belz and Earl J. Achwarz, Memphis, for appellee.

OPINION

COOPER, Justice.

The application for permission to appeal was granted to review the holding of the Court of Appeals that Federal Express Corporation was not a "public utility" within the definition set forth in T.C.A. § 67-5-501(8), and the concomittant holding that personal property of Federal Express was to be assessed at the 30% commercial and industrial rate rather than the 55% public utility rate.

In 1979, the tax period in question, Federal operated an interstate door-to-door package delivery service, mainly using its own integrated air-ground transportation system of some 80 to 90 aircraft and approximately 1,500 delivery vans. Federal's aircraft were operated over a hub-and-spoke pattern with its facilities at the Memphis International Airport as the hub. Fed-

eral would pick up documents and packages, weighing no more than 70 pounds, from customers in various cities and transport them by air to Memphis. In Memphis, the documents and packages were sorted by destination, reloaded into the aircraft, flown to their destination cities by early morning, and were delivered by Federal's couriers if the consignee was within the air terminal zone. Under regulations in effect at the time, Federal could not pickup or deliver outside the air terminal zone. If package pickups and deliveries were required beyond the zone, the packages were either received from or tendered to an ICC certificated motor carrier.

Beginning in 1974, the Shelby County Tax Assessor assessed Federal Express's personal property as public utility property. In challenging the 1979 tax assessment, Federal initially questioned only the rate of depreciation applied to its fleet of 727 aircraft. The public utility classification issue evolved as the case progressed through the administrative review process and the lower courts. Most of the controversy centered on whether Federal Express, operating its aircraft under an All Cargo Certificate, could be considered to be a "commercial air carrier holding a certificate of convenience and necessity," which would bring it within the definition of a public utility. See § 67-5-501(8)(M). The assessor also argued that Federal is an "express company" and thus is within the classification of a public utility set forth in T.C.A. § 67-5-501(8)(F).

The Court of Appeals concluded that Federal's operation did not come within either classification, and that its property was not subject to being assessed at the public utility rate. We disagree. As we view the record, Federal Express's operation was that of an "express company" and, as such, was subject to an ad valorem tax based on an assessment of 55% of the value of its personal property.

Article II, Section 28 of the Tennessee Constitution, as amended in 1973, specifically authorized classification of property for ad valorem tax purposes according to

use. *General American Transportation Corporation v. Tennessee State Board of Equalization*, 536 S.W.2d 212 (Tenn.1976). It expressly authorized the classification of tangible personal property into three classifications: (1) public utility property to be assessed at 55% of its value; (2) industrial and commercial property to be assessed at 30% of its value and (3) all other tangible personal property to be assessed at 5% of its value. Article II, Section 28 of the Constitution of Tennessee. The definition of property in each class was left to be determined by the legislature.

For the tax year 1979, T.C.A. § 67-601, now § 67-5-501, provided, in pertinent part, that:

Definitions—For purposes of classification of property:

.

(8) "Public utility property" is hereby defined to include all property of every kind, whether owned or leased, and use or held for use, directly or indirectly in the operation of a public utility, which shall include but not necessarily be limited to the following business entities, whether corporate or otherwise:

.

(F) Express companies:

"The primary purpose of statutory construction is to ascertain and give effect, if possible, to the intention of purpose of the legislature as expressed in the statute." *Westinghouse Electric Corp. v. King*, 678 S.W.2d 19 (Tenn.1984). Legislative intent is derived from construing the statute in its entirety, and it should be assumed the legislature used each word purposefully and that those words convey some intent and have a meaning and a purpose. *Tennessee Growers, Inc. v. King*, 682 S.W.2d 203, 205 (Tenn.1984). "While it is well settled that revenue statutes are to be liberally construed in favor of the taxpayer and strictly construed against the taxing authority [citation omitted], it is equally clear that the plain import of the language of the act is to be given effect [citation omitted], and that the legislative intent to tax must not be

thwarted by the strict construction rule." *International Harvester Company v. Carr*, 225 Tenn. 244, 259-260, 466 S.W.2d 207, 214 (1971) quoted with approval in *Oliver v. King*, 612 S.W.2d 152, 154 (Tenn. 1981).

The legislature's purpose in promulgating T.C.A. § 67-5-501(8) was to define "public utility property" by its use. The precise issue is whether Federal Express's use of its property is that of an "express company," a term which is not specifically defined in the statute.

Federal Express asserted in the Court of Appeals that it was not an "express company" because it collects and ships packages from the public via modes of transportation which it owns. According to Federal Express "[t]he term 'express company' is a term of art which dates to the latter part of the 19th Century. It was typically applied to a shipper who collected packages from the public and shipped those packages to the destination city via modes of transportation which it did not own." The cases relied upon in support of this contention do not define the term "express company;" they merely describe the operations of the particular express company that was involved in that litigation.

In *American Railway Express Co. v. Wright*, 128 Miss. 593, 91 So. 342 (1922) the Mississippi Supreme Court determined that the following was "a very good definition of an express company:"

A firm or corporation (usually a corporation) engaged in the business of transporting parcels or other moveable property, in the capacity of common carriers, and especially undertaking the safe carriage and speedy delivery of small but valuable packages of goods and money. 91 So. at pp. 343-344 See *Alsop v. Southern Express Co.*, 104 N.C. 278, 10 S.E. 297 (1899).

"An express company is a common carrier." *Express Company v. Johnson*, 92 Tenn. 326, 21 S.W. 666 (1893); *Railway Express Company v. Kessler*, 189 Va. 301, 52 S.E.2d 102 (1949). "A common carrier is one who, by virtue of his calling under-

takes for compensation to transport personal property from one place to another for all such as may choose to employ him; and everyone who undertakes to carry for compensation the goods of all people indifferently, is as to liability, to be deemed a common carrier." *Jackson Architectural Iron Works v. Hurlbut*, 158 N.Y. 34, 52 N.E. 665 (1899) quoted with approval by *Greyhound Corporation v. Michigan Public Service Commission*, 360 Mich. 578, 104 N.W.2d 395 (Mich.1960). "It is well known and understood that its, [an express company's], business is the transmission and delivery of packages, for which it receives a compensation." *American Railway Express Co. v. Wright*, *supra*, 91 So. at 343-344.

[1] In our opinion the activities of Federal Express comes within the ordinary and plain meaning of the term "express company." While it is true that 19th century express companies transported packages via railroads and steamships owned by others, see *Memphis & Little Rock Railway Co. v. Southern Express Co.*, 117 U.S. 1, 6 S.Ct. 542, 628, 29 L.Ed. 791 (1886), we have been unable to find any case which has defined express companies in such terms. There seems to be no policy reason to differentiate between companies which pick up, transport, and deliver small packages via modes of transportation owned by others and companies which perform this service primarily using modes of transportation which that company owns. Both types of companies are common carriers owing similar duties to the general public. "All common carriers are public utilities, but all public utilities are not common carriers." *Aberdeen Cable TV Service, Inc. v. City of Aberdeen*, 176 N.W. 738 (S.D.1970). Thus a company transporting packages on an expedited basis as a common carrier must be deemed to be an express company which falls within the definition of a "public utility" for purposes of T.C.A. § 67-5-501.

[2] Federal Express also argues that to assess its property for ad valorem tax purposes at 55% of its value, while assessing the property of railroads at the industrial

and commercial rate of 30% of value, violates the Equal Protection Clause of the United States Constitution and Article II, Section 28 of the Tennessee Constitution, which requires "the ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the state. The legislature classified railroads as public utilities and assessed them for ad valorem tax purposes at 55% of the value of their properties. However, the Congress of the United States, by Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 11503 ("4-R Act"), preempted the state classification of railroads and provided that they should be taxed as industrial and commercial property are taxed. The Act, having as its purpose the revitalization of railroads, affected only that business. Thus leaving in effect the state classification of other businesses as public utilities. The assessment of each of the businesses classed as public utilities is at the same ratio to value as the assessment of Federal Express property; consequently, we find no violation of either Article II, Section 28 of the Tennessee Constitution or the Equal Protection Clause of the Federal Constitution.

The judgment of the Court of Appeals is reversed. The judgment of the Chancery Court dismissing the cause is affirmed. Costs are adjudged against Federal Express Corporation and its surety.

BROCK, C.J., and FONES, HARBISON, and DROWOTA, JJ., concur.

Teresa Ann LENTZ, Appellee,

v.

Gary Benton LENTZ, Appellant.

Supreme Court of Tennessee,
at Knoxville.

Oct. 6, 1986.

Rehearing Denied Nov. 10, 1986.

In divorce and custody action, the Chancery Court, Anderson County, Allen Kidwell, Chancellor, granted custody of two oldest children to former husband and of youngest child to former wife. Former husband appealed. The Supreme Court, Cooper, J., held that: (1) grant of custody of youngest child to former wife was in that child's best interest, and (2) order that former wife pay \$25 per week in support was reasonable under circumstances.

Affirmed.

1. Parent and Child ⇐2(3.1)

While parentage of child is major, and often determinative, factor in deciding who shall have custody of that child, overriding issue is what is in child's best interest.

2. Divorce ⇐298(4)

Grant of custody in divorce action to former wife, who was natural mother and had had custody since birth, was in child's best interests, where former husband had demanded blood-grouping test to determine if he were father of child, despite former wife's admission that child was product of adulterous affair with her pastor.

3. Divorce ⇐308

Determination that former wife should contribute \$25 per week toward support of two children in former husband's custody was reasonable under circumstances, in view of parties' relative earning capacity and fact that former wife had responsibility of supporting third child.

A. Thomas Monceret, William C. Cremins, Knoxville, for appellant.

UTAH STATE
LAW LIBRARY

