

**THE 'UNIFORMITY CLAUSE' - REQUIRES THAT SIMILARLY
SITUATED PROPERTY BE TAXED THE SAME**

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1. *The Uniformity Clause--Article IX, Section 1, Arizona Constitution:*

§1. Surrender of power of taxation; uniformity of taxes.

Section 1. The power of taxation shall never be surrendered, suspended, or contracted away. ***All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax,*** and shall be levied and collected for public purposes only. (Emphasis added.)

2. *Taxes Covered-Only Ad Valorem.*

Only ad valorem taxes, real and personal property taxes, are subject to and covered by the uniformity clause. The uniformity clause does not apply to the sales and use tax, income tax, etc. See *Tilton v. Board of Supervisors of Yavapai County*, 55 Ariz. 503, 103 P.2d 960 (1940); *City of Douglas v. Powell*, 55 Ariz. 367, 101 P.2d 465 (1940).

(a) *Luxury Taxes Not Covered by Uniformity Clause.* Luxury taxes imposed on the sale of cigarettes and alcohol are excise taxes and not property taxes, and therefore not covered by the uniformity clause. See *Stults Eagle Drug Company v. Luke*, 48 Ariz. 467, 62 P.2d 1126 (1936).

(b) *License Fee is Not Covered.* A license fee for slaughtering animals for sale was an excise tax rather than a property tax and therefore not subject to the uniformity requirement. See *Morris v. State*, 40 Ariz. 32, 9 P.2d 404 (1932).

3. *Uniformity Requirement.*

The provision of the uniformity clause requiring that all taxes be uniform on the same "class" of property does not require that the legislature classify like items of property in the same class. Rather, the legislature may classify similar items in different classes based on the user or the use to which the property is put. *See Apache County v. Atchison, T&SF Ry. Co.*, 106 Ariz. 356, 476 P.2d 657 (1970).

4. *Violations of the Uniformity Clause.*

(a) *Smith v. Mahoney*, 22 Ariz. 342, 197 P. 704 (1921). An old 1919 law requiring nonresidents bringing cattle into the state to graze pay a fee of 25 cents each for sheep or goats and 50 cents each for cattle or horses, but not imposing the tax on residents, violated the uniformity clause.

(b) *State Tax Commission v. Shattuck*, 44 Ariz. 379, 38 P.2d 631 (1934). Old Intangible Property Tax Act (1933), now repealed, which taxed intangibles but excluded assets of insurance companies violated the uniformity clause. Likewise, the taxation of intangibles bearing more than 8% interest at a higher tax rate than for intangibles with a smaller interest rate violated the uniformity clause.

(c) *Maricopa County v. North Central Development Company*, 115 Ariz. 540, 556 P.2d 688 (App. 1977). Valuing only large commercial structures that were partially complete but not the majority of other partially completed residential and commercial structures violated the uniformity clause.

(d) *In re America West Airlines, Inc. v. Department of Revenue*, 179 Ariz. 528, 880 P.2d 1074 (1994). The uniformity clause of the Arizona constitution, article IX, section 1, requires that all property in the same class be taxed uniformly. The Arizona Supreme Court was called on to determine whether the uniformity clause was violated by Arizona's statutory structure which taxed commuter aircraft owned by America West at a higher rate than the aircraft owned by commuter airlines. This issue was initially brought by America West in its bankruptcy proceedings, with the U.S. District Court certifying the question to the Arizona Supreme Court.

The Arizona Department of Revenue values the flight property of airlines, following the statutory structure of A.R.S. §§ 42-701 through 707. Section 42-705(C) imposes a 1% rate cap on the aircraft of airlines with either a system-wide average passenger capacity below 56 seats or a system-wide average payload capacity below 18,000 lbs. If an airline company falls under this small aircraft rate cap, all of its airplanes, whether large or the smaller commuter aircraft, benefit from the cap. On the other hand, an airline whose system-wide average passenger capacity or payload capacity exceeded the limits will not benefit from the 1% rate cap even for its small aircraft.

The effect of this statutory structure was that the small, commuter airlines in Arizona benefit from the 1% cap but America West did not, even though its commuter aircraft flew the same routes and were in direct competition with the in-state commuter airlines.

The Arizona Supreme Court concluded that this was a violation of the uniformity clause, since the virtually identical property of competitors in the same industry was being taxed differently. The Court, in reaching that conclusion, stated that it neither overruled nor disapproved *Apache County v. Atchison, Topeka & Santa Fe Railway Company*, 106 Ariz. 356, 476 P.2d 657 (1970) (classification based upon industries is permissible) and *Department of Revenue v. Trico Electric Co-op, Inc.*, 151 Ariz. 544, 729 P.2d 898 (1986) (classification based upon different uses is permissible), in which the Court previously upheld classifications based on differences between the industries in which the property was employed and the uses to which the property was put.

(e) *Citizens Telecommunications Co. of White Mountain v. Arizona Department of Revenue*, 206 Ariz. 33, 75 P.3d 123 (App. 2003). The court concluded that telecommunications companies providing local service and its competitors (long distance carriers) were using functionally identical property for functionally identical uses and thus the application of the statutory “market value” method for valuing local telecommunications companies violated the uniformity clause when long distance companies were valued based on a cost approach. The court also held that to determine whether a property tax classification violates the Uniformity Clause, the court must consider whether the taxpayer (local telecommunications companies) and the comparison taxpayers (long distance telecommunications companies) are (1) direct competitors, (2) using the same equipment types, (3) providing identical services, (4) to the same customer base; additional factors include the property’s physical attributes, productivity, use and purpose. Based on these factors, the court concluded that local telecommunications companies were in the same class as long distance telecommunications companies and it was a violation of the uniformity clause for the statutory valuation structure to value local companies based on the market approach and long distance companies based on a cost approach. See *U.S. West Communications Inc. v. Arizona Department of Revenue*, *infra.*, which five years previously arrived at the opposite result based on the court’s conclusion that local telecommunications companies were a separate class from long distance companies and they could be treated and valued differently. NOTE: The *Citizens* case involved years after deregulation of the telecommunications industry. Also, effective in 1999, the telecommunications statute was changed to include local telecommunications companies within the statutory valuation formula. The *Citizens* case involved years prior to 1999 and after the years involved with the *U.S. West* case.

(f) *Aileen H. Char Life Interest v. Maricopa County*, 208 Ariz. 286, 93 P.3d 486 (2004). The court held that the deliberate and systematic undervaluation of a taxpayer’s property at a figure greatly in excess of the undervaluation of other like properties amount to a violation of the uniformity clause. Evidence at trial showing that properties taxed under the rollover method were valued at 60.6% of the full cash value while the taxpayers’ properties were valued at 100% of full cash value under the standard method, establish elements of their claim of greatly disproportionate valuation and provided a sufficient basis to support the tax court’s finding that the taxpayers were subject to disproportionate valuation and violation of the uniformity clause.

The court also held that the proper class of property to use in evaluating claims of discriminatory tax valuation consists of those similarly situated properties possessing common attributes based on the nature of the property or on some other real difference in its use, utility or productivity. The court further concluded that under the uniformity clause, it is the tax paid, not the numerical values assigned to property, that must be uniform and in order to prevail in a valuation discrimination case, a taxpayer must show tax treatment greatly unequal to that afforded others in the same class and must do so by reference to full cash value.

5. *No Violations of the Uniformity Clause.*

(a) *Apache County v. Atchison, T&SF Ry. Co.*, 106 Ariz. 356, 476 P.2d 657 (1970). Putting railroads into a class with an assessment ratio of 60%, and with telephone and telegraph companies in a class with an assessment rate of 40%, and commercial property in a class with an assessment rate of 25% did not violate the uniformity clause. The Arizona Legislature in 1967, after a four-year study of all property within the state, revised the property tax laws, and placed all real and personal property into four classes: (1) class one included flight property, private car companies, railroad companies, producing mines and standing timber; (2) class two included telephone and telegraph companies and gas, water and electric utility companies; (3) class three contained commercial property; and (4) class four contained agricultural and residential property (owner occupied). Class one was assessed at 60%, class two at 40%, class three at 25%, and class four at 18%. The railroad argued that placing it in a class with an assessment rate of 60%, the highest, violated the uniformity clause. The Arizona Supreme Court concluded it did not because railroads differ in so many respects from other industries that they may, as a class, be taxed differently or additionally.

(b) *Mountain States Legal Foundation v. Apache County*, 146 Ariz.479, 706 P.2d 1246 (App. 1985). The county free library system tax did not violate the uniformity clause. The county free library system tax was collected along with other property taxes, and was collected only from property located within cities or towns that were a part of the free library system. It was not collected from property in areas that were not participating in the library system. The court concluded this did not violate the uniformity clause.

(c) *Arizona Department of Revenue v. Trico Electric Coop*, 151 Ariz. 544, 729 P.2d 898 (1986). The utility valuation statute of A.R.S. § 42-124.01 does not violate the uniformity clause. Trico argued that it did because § 42-124.01 imposed higher taxes on cooperative electric utilities, such as itself, than on investor-owned electric utilities, with which cooperative electric utilities are statutorily classified. (The major reason was that investor-owned electric utilities were provided a greater depreciation deduction in computing its property value, while coops were not.)

Trico also argued that the property classification of A.R.S. §42-136.A.2 violated the uniformity clause because it lumps investor-owned utilities and coops into the same statutory class, even though the former is valued under §42-124.01 and the latter is valued under 42-201. The court concluded that there was no uniformity clause violation.

(d) *Business Realty of Arizona, Inc. v. Maricopa County*, 181 Ariz. 555, 892 P.2d 1340 (1995). The shopping center valuation statute of A.R.S. §42-147 does not violate the uniformity clause. In this case the Court concluded that the shopping center valuation statute, which established a cost method, and upon election by the taxpayer, an income method commonly known as the straight line building residual method, did not violate the uniformity clause, because it was a valuation statute and not a classification statute. In other words, it did not classify property but instructed the county assessors on how to value property.

(e) *Cutter Aviation Inc. v. Arizona Dep't of Revenue*, consolidated with *Southwest Airlines Co. v. Maricopa County*, 191 Ariz. 485, 958 P.2d (App. 1997); review denied (1998). As background, Arizona's possessory interest tax provisions were repealed in 1995. This case arose prior to that repeal. Improvements on a leasehold interest with a governmental entity, including a city, where the improvements were owned by the lessee, would qualify for a 1% assessment rate, as "Class 12 Property." The issue in this case was whether the hangers and other facilities were owned by Cutter Aviation and Southwest Airlines, or whether they were owned by the City of Phoenix, which owned the underlying land. The court concluded that the hangers were owned by the city, and therefore did not qualify for the special 1% assessment ratio. The court noted that the leases mandated that the improvements be built and delineated the uses to which they could be put, requiring the city's approval of all building specifications. Neither of the taxpayers were allowed to transfer any interest in the leasehold, including the buildings, without the city's approval. The leases also required the taxpayers to maintain insurance on the improvements which designated the city as the named insured. And, perhaps most importantly, upon termination, the court noted that the improvements became the property of the city and could not be removed by the taxpayers.

The county, of all parties, raised a uniformity clause argument contending that Class 12 and Class 13, which set 1% assessment rates for possessory interest property, violated the uniformity clause. The county contended that the separate classification and taxation of possessory interest under Class 12 and Class 13, using the 1% assessment ratio, rather than the 25% assessment ratio for other commercial and industrial property, resulted in dissimilar tax treatment for similarly situated property. It argued that the statutes violated the uniformity clause in two ways: (1) by treating properties in the same industry with the same use differently based upon whether they are held as a possessory interest or a fee interest; and (2) within the possessory interest class, treating them differently based upon the use of the property. The Court of Appeals held that these classifications did not violate the uniformity clause, distinguishing the *America West* case, which the county relied upon.

(f) *U.S. West Communications, Inc. v. Arizona Dep't. of Revenue*, 193 Ariz. 319, 972 P.2d (App. 1998); review denied. A.R.S. § 42-793(A) provided a procedure for valuing the property of telecommunication companies and permitted two different valuation methods: one for local telecommunication companies providing local service and another for telecommunication companies that do not provide local service. The valuation of formula for long distance telecommunication companies is more favorable than the valuation mechanism for local telephone companies. The issue presented in this case by U.S. West was whether that different valuation structure violated Arizona's uniformity clause. The Court of Appeals held that the statutory procedure of A.R.S. § 42-793(A) does distinguish between telecommunication

companies providing local service and those that do not. However, the court concluded that, based on the record, the statutory approach does not violate Arizona's uniformity clause. But see *Citizens Telecommunications Co. of White Mountains v. Arizona Department of Revenue*, supra.

Post Script: In 1997, the Arizona Legislature changed the statute to include local telephone companies within the valuation formula that had been previously used only for long distance companies. So, while U.S. West lost the case, it obtained the result it was looking for through legislation.

(g) *The Constitutional Attack on Validity of Class 8, Foreign Trade Zone Property – the Bahr Case*. The issue presented in *Bahr v. State of Arizona*, 195 Ariz. 79, 985 P.2d 564 (App.); (Review denied 1999) was the constitutionality of the classification of foreign trade zone property as class 8 property, with a 5% assessment ratio (commercial and industrial property is in class 3 with a 25% ratio). The issue is whether foreign trade zone treatment violated the uniformity clause because two properties identical in function could be taxed quite differently because one is located in a foreign trade zone and the other is not. The Court of Appeals held that the classification was constitutional because foreign trade zone property subject to comprehensive federal regulation where other similar property was not, justifying different classifications.

(h) *Aida Renta Trust v. Department of Revenue and Maricopa County*, 197 Ariz. 222, 3 P.3d 1142 (App. 2000), review denied. This case involved the issue of whether the equal protection clause and the uniformity clause required Maricopa County to extend the same settlement terms involving apartment valuation cases that it had offered to one set of taxpayers (the county and the taxpayers settled on that basis) to another set of taxpayers. The court concluded no, thereby permitting Maricopa County to settle one set of property tax cases with one group of taxpayers but litigate the same issue and the same legal theory with the second set of taxpayers, which were the plaintiffs in this case.

(i) *University Medical Center v. Department of Revenue*, 201 Ariz. 447 36 P.3d 1217 (App. 2001). Off-campus properties owned by a nonprofit corporation that operated the University Medical Center that were not used or held for profit were by definition not taxable and, thus, the uniformity clause did not apply to them. To the extent the application of a tax exemption to a charitable institution authorized by the state constitution might produce effects inconsistent with the uniformity clause, the constitutional provision authorizing legislative exemptions from taxation for property of charitable institutions that is not used or held for profit controls.

(j) *Circle K Stores, Inc. v. Apache County*, 199 Ariz. 402 P.3d 713 (App. 2001). The Court concluded that assuming the constitutional provision allowing the legislature to exempt from taxation a maximum of \$50,000 of the full cash value of personal property of a taxpayer that is used for agricultural, trade or business purposes allowed the counties to tax property differently within the same class, the constitutionally authorized exemption was a specific exception to the uniformity clause. Similarly, see *University Medical Center v. Department of Revenue*, supra.

6. *The Key to Not Violating the Uniformity Clause--Proper Classification.*

Property may be classified by the legislature for the purpose of taxation if the ground of classification is reasonable and its results do not violate constitutional provisions. *Brophy v. Powell*, 58 Ariz. 543, 121 P.2d 647 (1942).

As long as property is properly classified, and all property in that class is taxed the same, then there is no uniformity clause violation, although similar or the same property, which may be in another class, is taxed differently because of the lower assessment rate. Thus, classification based upon differences between the industry in which the property is employed or the use to which the property is put are proper. See *Apache County v. Atchison, T&SF Ry. Co.*, *supra* (classification based upon industries is permissible), and *Department of Revenue v. Trico Electric Coop*, *supra* (classification based on differences in use is permissible).

7. *The QTR Case--Raised Uniformity Clause Argument But Decided On "Special Legislation" Issue .*

In *Tucson Electric Power Company v. Arizona Dep't of Revenue*, 185 Ariz. 5, 912 p2d (App. 1995), the taxpayers, consisting of various utility companies, sued Apache County and various other Arizona tax authorities (collectively, the "defendants") alleging that the defendants illegally collected property taxes and voluntary contributions pursuant to A.R.S. § 15-992.B (1990). The taxpayers own properties used for the generation of electrical energy (legislative class two) in various defendant counties. More specifically, these properties are located within school districts not eligible for school equalization assistance (commonly called QTR districts). A.R.S. § 15-992.B authorizes the defendants to collect tax revenue from the taxpayers in such school districts (commonly called the "QTR tax").

The taxpayers challenged the constitutionality of the 1990 legislation alleging that A.R.S. § 15-992.B (1990): (1) is a special law prohibited by the Arizona Constitution; (2) violates the equal protection clause of the United States and Arizona Constitutions; (3) violates the uniformity clause of the Arizona Constitution; (4) violates the exemption clause of the Arizona Constitution.

While the tax was struck down, it was not done on uniformity grounds. Rather, the Arizona Court of Appeals held that the 1990 legislation violated Arizona Constitution, article 4, part II, section 19(9), which prohibits the enactment of special laws that affect the assessment and collection of taxes. In other words, excluding all other classes of property from the QTR tax was special legislation benefiting non-class 1 and 2 properties.