

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF MAINE

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CORE TERMS: personal property, taxation, uniformity, machinery, corresponding, burden of taxation, municipal, classes of property, legislative intent, ambiguity, assessors, annual, class of property, taxability, exemption, taxed, subject matter, taxing state, tax year, non-exempt, designated, migratory, presumed, favoring, evident, utilize, inhere, exempt, stock, rules of statutory construction

SYLLABUS:

[*1]

*36 M.R.S.A. Sec. 611***REQUESTBY:**

Norman P. Ledew, Director, Property Tax Division

OPINIONBY:

Stephen C. Clarkin, Asst. Atty. Gen., Bureau of Taxation

OPINION:**FACTS:**

In your opinion request, you have stated that the Property Tax Division has received numerous inquiries from municipal assessors concerning the scope and constitutionality of *36 M.R.S.A. Sec. 611*. You have indicated, however, that your office has been reluctant to advise municipal assessors to utilize this section because of uncertainty with respect to the following questions.

QUESTIONS:

1. What classes of personal property are covered by Section 611?
2. Does the taxability of personal property brought into the State depend upon whether the owner thereof has been assessed for any other personal property as of April 1st of the year in question?
3. Is Section 611, standing alone, constitutional?
4. Is Section 611 rendered unconstitutional by the absence of any corresponding provision for the taxation of personal property acquired within the State after April 1st?

ANSWERS:

1. Section 611 extends to all types of personal property.
2. Under Sec.

[*2] 611, the taxability of property brought into the State does not depend upon whether the owner thereof has been assessed for any other personal property as of April 1st; it depends solely upon whether the owner has been assessed, as of April 1st, for the property so brought in.

3. Section 611 is constitutional.

4. Section 611 is not rendered unconstitutional by the absence of any corresponding provision for the taxation of personal property acquired within the State after April 1st.

REASONING:

36 M.R.S.A. Sec. 611 provides, in pertinent part, as follows:

Sec. 611 Equipment Tax

"Machinery and other personal property brought into this State, after April 1st and prior to December 31st by any person upon whom no personal property tax was assessed on April 1st in the State of Maine, shall be taxed as other personal property in the town in which it is used for the first time in this State."

With respect to your first inquiry concerning the types or classes of personal property within the purview of this section, it initially appears that the statutory language is susceptible to two conflicting interpretations. On the one hand, the [*3] statute could arguably be construed as applicable to only a limited class of property, i.e., machinery, equipment and other personal property of the same genre. On the other hand, it could also be reasonably construed as applicable to all classes of personal property despite the specific references to machinery and equipment.

It does not appear, however, that the designated title "Equipment Tax" can be properly construed to circumscribe the operative effect of the general language "other personal property" contained in the body of the statute. Statute titles ". . . are not legal provisions." and, as such, have no legal significance per se. 1 M.R.S.A. Sec. 71(10) Moreover, although the title of an act may be considered, in the case of ambiguity, as an aid in the ascertainment of legislative intent, the title of a statute may not be used to create an ambiguity. 82 C.J.S. Statutes Sec. 350. In the absence of any reference to the title of Section 611 for guidance as to the import of the statutory language itself, no ambiguity exists.

Thus, a narrow construction of the statute is unwarranted.

More importantly, however, were Section 611 construed [*4] as applicable to only machinery, equipment and similar items of personal property, serious constitutional problems would inhere in such a classification. In this regard, it should be noted that the status of personal property generally is determined and fixed, for purposes of taxation, as of April 1st of each tax year. 36 M.R.S.A. Sec. 502. In other words, the liability of property to taxation depends upon its status or situs as of that date. Narrowly construed, however, Section 611 would create an exception by providing for the taxation, in any given year, of items belonging to a particular class of property which were brought into the State after that date. Conversely, all other types of personal property which were similarly brought into the State would be exonerated from the burden of taxation for the tax year in question.

Within this context, Article IX, Section 8 of the Maine Constitution provides, in pertinent part, as follows:

"All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally, according to the just value thereof, but the Legislature shall have power to [*5] levy a tax upon intangible personal property at such rate as it deems wise and equitable without regard to the rate applied to other classes of property."

A review of the decisions interpreting this section indicates that its purpose and function is to ensure not only equality in taxation but also uniformity in its application. While the prerogative of the legislature to exempt particular classes of property has been explicitly recognized, *Opinion of the Justices*, 155 Me. 30 (1959); *Opinion of the Justices*, 141 Me. 442 (1945), the constitutional provision has also been consistently construed as requiring equality in the burden of taxation among all non-exempt class of property. *Opinion of the Justices*, 155 Me. 30 (1959); *Opinion of the Justices*, 102 Me. 525 (1907). As stated in *Kittery Electric Light Co. v. Assessors of the Town of Kittery*, Me. 219 A.2d 728, 734 (1966).

"Uniformity in taxing implies equality in the burden of taxation, and this equality cannot exist without uniformity in the basis of the assessment as well [*6] as in the rate of taxation." (Citations omitted)

Stated succinctly, therefore, while Article IX Section 8 does not proscribe the exemption of particular classes of property, it nonetheless mandates, for all non-exempt classes of property, that no one class may be subjected to a greater burden of taxation than any other class.

"Subject to the right to levy taxes for municipal and county purposes and to exceptions . . . permitting the assessment of special local taxes for special local purposes based upon local benefits, any and all taxes assessed upon real and personal property by the State must be assessed on all of the property in the State on an equal basis. . ." *Opinion of the Justices*, 146 Me. 239 248 (1951) (Emphasis added)

"To have uniformity of taxation, the imposition of, and the exemption from taxation, must be by one and the same authority --- that of the legislature. It is for the legislature to determine upon what subject matter taxation shall be imposed . . . but the subject matter once fixed, the rule is general, and applies to all property within its provisions. So it may relieve certain species of property from taxation [*7] . . . but upon the non-exempted estate the taxation must be uniform as the exemptions are uniform." *Brewer Brick Co. v. Brewer*, 62 Me. 62, 74 (1871) (Emphasis added)

Accordingly, if Section 611 were construed as applicable only to the aforementioned class of personal property, it could be unconstitutional.

Although few recent cases have dealt with the precise constitutional issue presented here, several older decisions which considered the constitutionality of the "migratory stock laws" are particularly relevant. In effect, these laws provided that whenever livestock was brought into the taxing state for the purposes of grazing therein, subsequent to the annual assessment date and prior to a certain fixed date, it would be liable for all property taxes in the same manner as though it had been in the state at the time of the annual assessment. While some decisions found no constitutional infirmity in such a provision, these were entirely predicated upon the existence of corresponding statutory provisions which similarly taxed all other personal property brought into the taxing state after the annual assessment date. See for example, *Kelley v. Rhoads*, Wyo., 51 P. 593 (1898); [*8] *Frontier Land and Cattle Co. v. Baldwin*, Wyo. 31 P. 403 (1892). More significantly, however, in the absence of such corresponding provisions, the migratory stock laws were uniformly regarded as repugnant to the requirements of equality and uniformity contained in the respective constitutions of the states in which the question was presented. *Carbon County Sheep and Cattle Co. v. Board of Commissioners*, Colo. 152 P. 903 (1915); *Board of County Commissioners v. Wilson*, Colo. 24 P. 560 (1890); *Graham v. Chataqua Co.*, Kan. 2 P. 549 (1884).

In view of the forgoing, therefore, Section 611 must be construed, if possible, as applicable to all personal property brought into the State after April 1st in order to satisfy the requirements of Article IX, Section 8 of the Maine Constitution. In this regard, Section 611, construed in accordance with settled rules of statutory construction, appears neither to suggest, nor, a fortiori, to establish that the legislature contemplated the taxation of only a limited class of property under this provision. To the contrary, the legislative [*9] history of Section 611 is strongly indicative of a legislative intent to tax all classes of personal property brought into the State after April 1st.

As originally proposed, the statute was designated as the "Highway Equipment Tax" and purported to tax only "machinery and other personal property used in the construction or repair of highways, bridges, buildings or other structures . . ." which was brought into the State after April 1st. After serious reservations were expressed concerning the act's constitutionality, however, the matter was referred to the Attorney General for an opinion with respect to its validity. The opinion, as submitted, indicated that the bill, if enacted, would contravene not only Article IX, Section 8 of the Maine Constitution but also the Fourteenth Amendment to the United States Constitution. Consequently, in a deliberate effort to obviate any potential constitutional transgression, the original bill was amended by deleting the objectionable qualifying language and submitted for enactment in its present form. As amended, therefore, the bill was enacted shortly thereafter. See, Legislative Record (1959), pp. 991, 1120, 1241, 1600-1602 and 1636. [*10]

It is evident, therefore, that the legislature, in defining the ambit of Section 611, was fully apprised of the contours and strictures of the constitutional requirement of equality and uniformity. While, in considering the constitutionality of any legislative act, it should ordinarily be presumed that the legislature possessed full knowledge of all relevant constitutional restrictions and acted in conformity therewith, *Martin v. Maine Savings Bank*, 154 Me. 259 (1959); *Crommet v.*

City of Portland, 150 Me. 217 (1954) the foregoing legislative history serves to render the presumption inordinately strong in this instance.

In addition, ". . . all acts of the Legislature are presumed to be constitutional and this is a presumption of great strength.: *Look v. State*, Me. 267 A.2d 907, 909. As a corollary to this principle, the courts have consistently observed that if a statute is susceptible to two possible interpretations, one which would render it unconstitutional and the other which would not, the latter interpretation must be adopted in order to implement the presumption favoring constitutionality. [*11] *Portland Pipe Line Corp. v. Environmental Improvement Commission, et al.*, Me. 307 A.2d 1 (1973); *In Re Stubbs*, 141 Me. 143 (1944); *Hamilton v. District*, 120 Me. 15 (1921).

Accordingly, it is evident that a construction of Section 611 to comprehend within its terms all personal property brought into the State is more consonant with the manifestations of legislative intent previously discussed, the established rules of statutory construction and the presumption in favor of constitutionality.

Similarly, with respect to the other questions you have raised, it appears that no constitutional transgression exists. In this regard, you have intimated that inequality and discrimination may inhere in the application of the tax to property brought into the State after April 1st and the absence of any corresponding provision for the taxation of property acquired within the State after that date. It should be noted, however, that personal property in the latter category, unless otherwise exempt, would be subject to taxation as of April 1st as personal property located within the State and, [*12] presumably, taxed to its former owner for the year in question. Consequently, as suggested above, no discrimination would exist in this situation.

Finally, you have expressed concern that, under Section 611, the taxability of personal property brought into the State may depend upon whether the owner thereof had been assessed for taxes with respect to any other personal property as of April 1st of the year in question. In this connection, the statute provides for the taxation of personal property brought into the State ". . . by any person upon whom no personal property tax was assessed on April 1st . . ." It appears, however, that a literal construction of that language is neither reasonable nor required. Viewing it in the context of the statute as a whole, it is far more reasonable to infer that the legislature merely intended to avert any potential for double taxation and, to that end, excluded any property which may have been assessed as of April 1st from the operation of Section 611. Stated more precisely, therefore, the statute should be construed as subjecting to taxation all personal property brought in by any person upon whom no tax was assessed with respect to the property [*13] so brought in. In any event, moreover, such a construction seems to be mandated by the presumption favoring constitutionality and the correlative rule, discussed previously, requiring, where reasonable interpretations conflict, the adoption of that interpretation which would render the statute constitutional.

In conclusion, therefore, as Section 611, construed to extend to all classes of personal property, is constitutional, the Property Tax Division should entertain no reservations in advising municipal assessors to utilize its provisions.

Legal Topics:

For related research and practice materials, see the following legal topics:
 Constitutional Law
 State Constitutional Operation
 Tax Law
 State & Local Taxes
 Administration & Proceedings
 Assessments
 Tax Law
 State & Local Taxes
 Personal Property Tax
 Exempt Property
 General Overview