

TAXATION

SUPREME COURT REVIEW

PERSONAL PROPERTY TAX EXEMPTIONS

In the area of taxation, the Nebraska Supreme Court first considered *Stahmer v. State*.¹ This action sought a declaratory judgment that the Nebraska statute² which exempted from the personal property tax a portion of the actual value of agricultural income-producing machinery and equipment, business inventories, livestock and feed was unconstitutional. The supreme court held the legislation in question constitutional because of a recent constitutional amendment³ permitting the legislature to classify personal property in such a manner as it sees fit, and to exempt any of such classes or all personal property from taxation.

The Nebraska statute⁴ provided that beginning with the 1972 tax levies, 12½% of the actual value of agricultural income-producing machinery and equipment would be exempt from taxation. The exemption would increase by 12½% for each of the subsequent four years until it reached 62½% for the 1976 tax levies and thereafter. The state treasury was directed to place sufficient revenue from sales and income taxes each year in a personal property tax relief fund to reimburse tax agencies in all counties for tax revenue loss due to these exemptions.⁵

The plaintiff initially urged three constitutional transgressions. The first was that this exemption violated article III, section 22, of the Nebraska Constitution as worded prior to its 1972 amendment in that the appropriations extended beyond the end of the first fiscal year after the adjournment of the next regular legislative session.⁶ Second, the plaintiff urged that the statute in question vio-

1. *Stahmer v. State*, 192 Neb. 63, 218 N.W.2d 893 (1974). It should be noted that the headnote in the Northwest Reporter is incorrect. It states that the legislation was held unconstitutional, when in fact it was held constitutional.

2. NEB. REV. STAT. §§ 77-202.25 to -202.33 (Cum. Supp. 1974).

3. NEB. CONST. art. VIII, § 2 (Cum. Supp. 1974).

4. NEB. REV. STAT. §§ 77-202.25 to -202.33 (Cum. Supp. 1974).

5. *Id.* § 77-202.30.

6. NEB. CONST. art. III, § 22 provides:

Each Legislature shall make appropriations for the expenses of the Government until the expiration of the first fiscal quarter after the adjournment of the next regular session, and all appropriations

lated article III, section 25 of the Nebraska Constitution in that it permitted the withdrawal of state funds without a specific appropriation.⁷ Third, it was contended that the act delegated the legislative power to appropriate state funds to county officers. The supreme court summarily dismissed this final contention in holding that the ascertainment of the amount of revenue loss by the taxing agency was a ministerial duty involving no discretion.⁸

The court began its opinion by reiterating well-worn principles of statutory construction. In construing a legislative act, the court held, it is its duty to give the statute an interpretation which meets constitutional requirements if it can be reasonably done.⁹ The legislative construction of a statutory or constitutional provision, although not conclusive on the court, is given great weight.¹⁰

The controlling law was the 1970 amendment of article VIII, section 2, which provided in part:

. . . The Legislature by general law may exempt property owned by and use exclusively for agricultural and horticultural societies, . . . the Legislature may classify personal property in such manner as it sees fit, and may exempt any of such classes, or may exempt all personal property from taxation. No property shall be exempt from taxation except as provided in the Constitution. The Legislature may by general law provide that a portion of the value of any residence actually occupied as a homestead by any classification of owners as determined by the Legislature shall be exempt from taxation. NEB. CONST. art. 8, §2 (Cum. Supp. 1974).

The 1970 amendment represented a special constitutional provision adopted later than, and with full knowledge of, the constitu-

end with such fiscal quarter. And whenever it is deemed necessary to make further appropriations for deficiencies, the same shall require a two-thirds vote of all the members elected to each House, and shall not exceed the amount of revenue authorized by law to be raised in such time period. Bills making such appropriations for the pay of members and officers of the Legislature and for the salaries of the officers of the Government shall contain no provision on any other subject.

7. NEB. CONST. art. III, § 25 provides in part:

No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law, and on the presentation of a warrant issued as the Legislature may direct, and no money shall be diverted from any appropriation made for any purpose or taken from any fund whatever by resolution.

8. 192 Neb. at 65, 218 N.W.2d at 895.

9. *Id.* at 66, 218 N.W.2d at 895; *Haywood v. Brainard*, 181 Neb. 294, 295-96, 147 N.W.2d 772, 774 (1967).

10. 192 Neb. at 66, 218 N.W.2d at 895; *Dwyer v. Omaha-Douglas Pub. Bldg. Comm'n*, 188 Neb. 30, 36, 195 N.W.2d 236, 241 (1972).

tional provisions relied on by the plaintiff in his argument.¹¹ When general and special provisions of the state constitution are in conflict, the special provisions should be given effect to the extent of their scope, leaving the general provisions to control when the special provisions do not.¹²

Plaintiff also urged that the statutes were violative of article III, section 18 and article VIII, sections 1, 2, and 4 in that the classifications exempted were unreasonable.¹³ Under the traditional equal protection "reasonableness" test, the statute in question easily met the minimum requirements. Taxation classifications which do not fall within suspect classes are usually upheld. Classifications may be based on the manner of conducting business. Business conducted in one manner may be taxed differently than business conducted in another manner. In Nebraska, with its strong agricultural base, the court held that the legislature had an obvious public policy in mind in passing these personal property exemptions.¹⁴ The court stated that it was generally recognized that persons engaged in agricultural pursuits and in business with large inventories are, in proportion to their ability to pay, heavily taxed. Hence the taxation scheme encouraged a basic industry of the state.¹⁵

APPORTIONMENT OF TAXES

In *Reller v. Hays*,¹⁶ the executrix of a will, also the life beneficiary of a trust created by the will, brought an action to recover estate and inheritance taxes from the remaindermen.¹⁷ The dis-

11. 192 Neb. at 67, 218 N.W.2d at 896.

12. *Id.* at 68, 218 N.W.2d at 896; *Elmen v. State Bd. of Equalization and Assessment*, 120 Neb. 141, 156, 231 N.W. 772, 779; *Swanson v. State*, 132 Neb. 82, 94, 271 N.W. 264, 271 (1937).

13. 192 Neb. at 67, 218 N.W.2d at 896.

14. *Id.* at 69, 218 N.W.2d at 897.

15. *Id.* The court did state that prior to the amendment of article VIII, section 2, the statute would have been found unconstitutional. *Id.* at 70, 218 N.W.2d at 897.

16. *Reller v. Hays*, 192 Neb. 354, 220 N.W.2d 228 (1974).

17. NEB. REV. STAT. § 77-2110 (Reissue 1971) provides:

In all cases in which any property required to be included in the gross estate referred to in section 77-2108 does not come into possession of the executor or administrator as such he shall, in the case of a trust involving temporary interest described in section 2108, be entitled to recover from the fiduciary in possession of the corpus of such trust, and in all other cases from the persons interested in the estate, the proportionate amount of such tax payable by such fiduciary or persons with which they are chargeable under the provisions of section 77-2108.

strict court had entered judgment against the remaindermen for the full amount of the taxes plus interest.

The court noted that the income beneficiary had enjoyed the use of money which would subsequently cover the additional assessments of tax. The court concluded this was an unintended benefit. Between the receipt of the estate property and the subsequent assessment and payment of the taxes the income beneficiary had derived a substantial use of the property which she would not normally have had if the taxes were originally calculated correctly.¹⁸ Before the income beneficiary would be allowed to recover the additional taxes from the interested parties, a set-off would be required. Accordingly, the supreme court stated:

. . . As a matter of equity, however, interest falling due upon an estate tax during a delay in a payment of a deficiency ought to be borne by the life beneficiary, at least so far as he has during the delay actually received income, which he would not have received had the correct tax been ascertained and paid at once.¹⁹

To allow the income beneficiary to recover the interest on the deficient taxes would be to allow her to receive income twice from the same property at the expense of the residuary beneficiary.²⁰ Following the rule of equitable apportionment in the absence of statutory rules or testator intention, the case was remanded for equitable adjustment.²¹

ADDITION OF PROPERTY

In *Sealtest Cent. Div.-Omaha, Kraftco Corp. v. Douglas County Bd. Equal.*,²² the county alleged that Sealtest had failed to list part of its personal property for three years. The property in question was not itemized, but listed in a lump sum.²³ The court affirmed the summary judgment for Sealtest, holding that in order to sustain an addition of property by the tax assessor, it must appear in the return that the specific items were not assessed in the original assessment.²⁴ Douglas County could not meet this burden since the property was listed in bulk.

18. 192 Neb. at 358, 220 N.W.2d at 230.

19. *Id.* at 357, 220 N.W.2d at 230, quoting *Commissioner v. Wade*, 155 F.2d 918 (2d Cir. 1946).

20. *Id.*

21. *Id.*

22. 193 Neb. 809, 229 N.W.2d 545 (1975).

23. *Id.* at 810, 229 N.W.2d at 546.

24. *Id.* at 810-11, 229 N.W.2d at 546.

LEGISLATION

NEBRASKA INDIVIDUAL INCOME TAX, CORPORATE INCOME TAX, AND SALES TAX

L.B. 430 increases the food sales tax credit from thirteen dollars to sixteen dollars per exemption (exclusive of extra exemptions),¹ and provides that all credits to minors must be claimed by their parents or guardians.²

L.B. 589 provides that "[f]or the taxable year commencing January 1, 1975, the individual income tax rate shall not exceed twelve per cent."³ It also provides that the formula to be used by the State Board of Equalization in setting the state's sales and use taxes shall be as nearly equal to the total individual income tax levied as is possible.⁴ New duties imposed on the Board of Equalization include the requirement that it meet within fifteen days of adjournment of every regular session of the legislature to consider the necessity of rate changes.⁵ The corporate income tax was modified by L.B. 589, and a step rate was provided. The rate is now twenty five per cent of the rate imposed on individual incomes (3%) for the first twenty five thousand dollars of taxable income, and twenty seven and one half per cent of the individual income rate (3.3%) for income in excess of twenty five thousand dollars.⁶

PROPERTY TAX

L.B. 312 requires that any protest to a county board of equalization that relies on the "earning capacity of the property factor as referred to in section 77-112" must be accompanied by an independently certified written statement, or a written statement executed under oath, that demonstrates in detail that the earning capacity is less than that determined by the county assessor.⁷

1. L.B. 430, [1975] Laws of Neb. 883, *amending* NEB. REV. STAT. § 77-2715 (Cum. Supp. 1974).

2. *Id.*

3. L.B. 589, § 1, [1975] Laws of Neb. 1163-65, *amending* NEB. REV. STAT. § 77-2715.01 (Cum. Supp. 1974).

4. *Id.*

5. *Id.*

6. *Id.* § 2, at 1165-68, *amending* NEB. REV. STAT. § 77-2734 (Cum. Supp. 1974) *as amended by* L.B. 123, [1975] Laws of Neb. 259.

7. L.B. 312, [1975] Laws of Neb. 635, *amending* NEB. REV. STAT. § 77-1502 (Cum. Supp. 1974).

L.B. 468 provides a method of appeal from special assessments in cities of the first and second class and in villages.⁸ The appeal is de novo to the district court.⁹

L.B. 309¹⁰ provides new requirements for notification to taxpayers when illegal real estate or personal property taxes have been exacted. L.B. 308,¹¹ now repealed, had required that notice be by first class mail, and eliminated the requirement of published notice when the refund or registered claim is unclaimed, provisions now incorporated into L.B. 309. L.B. 309 also clarifies the time at which an unclaimed refund is canceled.¹² L.B. 309 relieves county treasurers from responsibility for seeking out taxpayers entitled to refunds when the amount of the refund is two dollars or less, and also provides other procedural requirements for taxpayer claims.¹³

L.B. 378 increases the maximum mill levy and maximum total tax levy which may be assessed by county agricultural societies in counties containing a city of the primary class, and having a population of more than sixty thousand but less than two hundred thousand.¹⁴

L.B. 78 reduced the period in which a tax deed may be obtained to "any time within ninety days after the expiration of three years from the date of sale."¹⁵ It also reduced the period during which an action for foreclosure of the lien of a tax sale may be brought; such actions must now be brought within ninety days after the expiration of the time for redemption from the tax sale.¹⁶ Those persons holding a certificate or deed issued prior to the effective date of L.B. 78 were given a minimum of ninety days in which to act.¹⁷

8. L.B. 468, [1975] Laws of Neb. 959.

9. *Id.* § 1, at 959.

10. L.B. 309, [1975] Laws of Neb. 631, *amending* NEB. REV. STAT. § 77-1736.04 (Cum. Supp. 1974), and *repealing* L.B. 308, § 1, [1975] Laws of Neb. 629-30.

11. L.B. 308, [1975] Laws of Neb. 629, *repealed by* L.B. 309, [1975] Laws of Neb. 631.

12. L.B. 309, [1975] Laws of Neb. 631.

13. *Id.*

14. L.B. 378, [1975] Laws of Neb. 763, *amending* NEB. REV. STAT. §§ 2-201, 2-203.01, 23-932 (Reissue 1974).

15. L.B. 78, § 1, [1975] Laws of Neb. 165, *amending* NEB. REV. STAT. § 77-1837 (Reissue 1971).

16. *Id.* § 2, at 165-66 *amending* NEB. REV. STAT. § 77-1902 (Reissue 1971).

17. *Id.*