

STATE CONSTITUTIONAL LIMITATIONS ON THE TAX POWER

REVENUE STABILIZATION AND TAX POLICY COMMITTEE TAX SUMMIT

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I. The State Constitution limits the Legislature’s tax power.

The Legislature’s inherent authority and discretion to exercise the State’s power of taxation is plenary except in so far as limited by the Constitution.

Zhao v. Montoya, 2014-NMSC-025, ¶ 14; *Asplund v. Alarid*, 1923-NMSC-079, ¶ 19 (same).

Takeaway: The state Constitution does not enumerate the Legislature’s powers; rather, it recognizes the Legislature has inherent powers, including the tax power. In several sections—both within and outside of Article VIII—the Constitution limits the Legislature’s tax power.

See N.M. Const. art. IV, § 2 (recognizing the Legislature has “has all powers necessary to the legislature of a free state”); art. IV, §§ 24, 26, 32 (imposing certain limits on the tax power); art. VIII, §§ 1–16 (controlling taxation and revenue).

II. Limitations on the Legislature’s taxation power

A. Equal protection

No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws.

N.M. Const., art. II, § 18.

[T]axes shall be equal and uniform upon subjects of taxation of the same class.

N.M. Const., art. VIII, § 8(A).

Takeaway: Equal protection limits what tax classifications the Legislature may create. Traditionally, under rational basis review, classifications drawn by economic legislation must be based on real distinctions and rationally related to any conceivable legislative goal. Simply put, tax classifications cannot be capricious. Traditionally, rational basis review is the most permissive form of constitutional scrutiny. The New Mexico Supreme Court, however, has applied a more searching review—*i.e.*, something beyond traditional rational basis review—to economic legislation where a classification harms a discrete, disadvantaged group of New Mexicans. Thus, a tax classification that is particularly regressive might not survive an equal protection challenge.

The New Mexico Supreme Court also applies rational basis review to evaluate challenges to tax statutes brought under Article VIII, Section 1(A)'s requirement that “taxes shall be equal and uniform upon subjects of taxation of the same class.” For example, the New Mexico Supreme Court rejected an “equal and uniform” challenge to the acquisition-value tax statute for residential property—also known as “tax lightening”—because the Court concluded it rationally furthered the state interest in neighborhood stability by permitting older owners to pay progressively less in taxes than new owners.

See Conoco, Inc. v N.M. Tax. & Revenue Dep't, 1997-NMSC-005, ¶ 22 n. 1 (noting traditional minimum scrutiny test); *Rodriguez v. Brand West Dairy*, 2016-NMSC-029, ¶ 27 (applying beyond-rational-basis review to invalidate exclusion for farm and ranch laborers from Worker's Compensation Act); *Zhao v. Montoya*, 2014-NMSC-025, ¶¶ 46–47 (rejecting an Article VIII, Section 1(A) challenge because acquisition-value statute “satisfied equal protection”).

B. Special laws

The legislature shall not pass local or special laws in any of the following cases: . . . the assessment or collection of taxes or extending the time of collection thereof In every other case where a general law can be made applicable, no special law shall be enacted.

N.M. Const., art. IV, § 24.

Takeaway: If the Legislature enacts a law that, in substance and effect, applies to individual persons or fewer than all persons in a class, then the law is a “special law.” In that case, Article IV, Section 24 requires a showing that (1) the law could

not be made general, for example, because the issue to be addressed necessarily is specific to the individual persons to whom the statute applies; *or* (2) the Legislature's choice to limit the law's application is rationally related to the Legislature's goal. This second inquiry is closely aligned with rational basis review in the context of an equal protection challenge.

See Thompson, et al. v. McKinley County, 1991-NMSC-076 (upholding special legislation because rationally related to a specific problem of especially pronounced rates of DWI in McKinley County); *Albuquerque Metro. Arroyo Flood Control Auth. v. Swinburne*, 1964-NMSC-206 (upholding special legislation because statute, considering the problems it addresses, could not be made generally applicable).

C. Remission of debts

No obligation or liability of any person, association or corporation held or owned by or owing to the state, or any municipal corporation therein, shall ever be . . . remitted, released, postponed or in any way diminished by the legislature, nor shall any such obligation or liability be extinguished except by the payment thereof into the proper treasury, or by proper proceeding in court.

N.M. Const., art. IV, § 32.

Takeaway: Article IV, Section 32 prohibits the Legislature—but not other state agencies—from remitting debts owed to the state or municipality. Under well-established case law, this prohibition means that the Legislature cannot enact tax relief that applies retroactively to tax liabilities that have already accrued. For example, the Legislature cannot either create a tax exemption that applies retroactively or, by repealing a tax law, remit or postpone a tax obligation that has already become due. While the Legislature cannot forgive a tax liability, other state agencies may compromise and settle a debt owed to the state, so long as there is a court proceeding to approve the settlement.

See State v. Montoya, 1927-NMSC-033 (statutory presumption that accrued taxes had been paid invalid to the extent it prevented the State from collecting previously assessed taxes); *Asplund v. Alarid*, 1923-NMSC-079, ¶ 20 (invalidating a retroactive exemption from a per capita road tax); *Board of Educ. of City of Albuquerque v. McRae*, 1923-NMSC-074 (concluding that Legislature cannot

remit or postpone an accrued tax obligation by repealing the statute mandating the tax); *see also Hem v. Toyota Motor Corp.*, 2015-NMSC-074, ¶¶ 13–14 (holding that state agencies other than the Legislature may extinguish a debt owed to the State under a proper court proceeding).

D. Anti-Donation

Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad except as provided in Subsections A through G of this section.

N.M. Const., art. IX, § 14.

Takeaway: The Anti-Donation Clause likely does not constrain the Legislature’s power to enact exemptions or deductions. Credits, however, are more complicated. In a 1983 case, *Chronis v. State ex rel. Rodriguez*, the New Mexico Supreme Court held a non-refundable tax credit unconstitutional; however, the reasoning of *Chronis* is questionable and could be overruled in a future challenge to a non-refundable tax credit. In contrast to non-refundable credits, the Anti-Donation Clause likely limits the Legislature’s power to enact *refundable* tax credits—particularly refundable, transferable tax credits.

See Chronis v. State ex rel. Rodriguez, 1983-NMSC-081 (holding a non-refundable tax credit to liquor licensees was an “unconstitutional subsidy” in violation of Article IX, Section 14”); *City of Gallup v. N.M. State Park & Recreation Comm’n*, 1974-NMSC-084, ¶ 9 (concluding the Anti-Donation Clause is not implicated where the State receives value as a consequence of the transfer); *see also* N.M. Const., art. IX, § 14(A) (the Anti-Donation Clause does not limit the Legislature’s power to make “provision for the care and maintenance of . . . indigent persons”).