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Opinion No. 13-11

Constitutionality of Proposed Property Tax Relief for Businesses' Capital Improvements

QUESTION

Would a statute violate Article II, Section 28, of the Tennessee Constitution if it allowed for a four-year period in which to phase in the increase in assessment value on commercial property resulting from capital improvements undertaken by a business owner that substantially increase the property's value?

OPINION

Yes, such a statute would violate Article II, Section 28, of the Tennessee Constitution because it would constitute an impermissible tax exemption or abatement.

ANALYSIS

The Tennessee Constitution subjects "[a]ll property, real, personal or mixed" to taxation and provides that "[t]he ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the State, the value and definition of property in each class or subclass to be ascertained in such manner as the Legislature shall direct." Tenn. Const. art. II, § 28. The only exceptions to this constitutional requirement of uniform taxation are contained in Article II, Section 28, and are limited to property owned by state and local governments, property held and used for purely religious, charitable, scientific, literary, or educational purposes, and residential property owned by elderly and disabled taxpayers. As the Tennessee Supreme Court has explained, "[i]t is a fundamental rule that all property shall be taxed and bear its just share of the cost of government, and no property shall escape this common burden, unless it has been duly exempted by organic or statute law." *City of Nashville v. State Bd. of Equalization*, 360 S.W.2d 458, 461 (Tenn. 1962).

While the General Assembly has significant discretion in creating tax incentives for businesses in Tennessee, the General Assembly's ability to do so in the area of property taxes is greatly circumscribed by the limiting language of Article II, Section 28. Citing Article II, Section 28, this Office previously opined that proposed legislation that provided for an exemption from or abatement of taxes for property owners within a certain geographical area of the City of Jackson would violate the Tennessee Constitution. *See* Tenn. Att'y Gen. Op. 98-031

(Feb. 9, 1998). The purpose of that proposal was to promote economic development in the downtown area of Jackson. The opinion explained that

> [s]uch an exemption would be in effect a *per se* exemption for property lying in areas which are simply deemed to be in need of economic development and renovation. As such, the proposed exemption . . . would exceed the areas of exemption reserved to the Legislature in Article II, § 28. The Constitution will not permit this.

Id. See also Jones v. City of Memphis, 101 Tenn. 188, 193-94, 47 S.W. 138, 139 (Tenn. 1898) (holding that legislation that annexed additional territory but exempted it from property taxation for a specified period of time violated the uniform taxation provision of the Tennessee Constitution).

The proposed statute in question, like the proposal pertaining to the City of Jackson, appears designed to stimulate economic development. Such a goal, however, constitutionally cannot be achieved by enacting legislation that effectively grants business owners a partial property tax exemption for a specified period of time to reward them for undertaking capital improvements to their property. Instead, the Tennessee Constitution requires that such property be assessed in the same manner as other business properties across the state.

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