

JUN 24 1994

STATE OF WISCONSIN

CIRCUIT COURT

WAUKESHA COUNTY

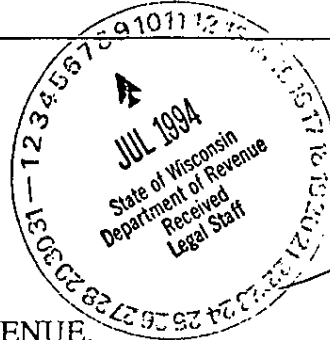
LOVE, VOSS & MURRAY,

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondents.



DECISION

Case No.: 94-CV-0372

Petitioner, Love, Voss & Murray ("taxpayer"), petitions for judicial review of a Wisconsin Tax Appeals Commission Decision and Order pursuant to sec. 227.53, Stats.

In seeking review, taxpayer claims that the Wisconsin temporary recycling surcharge tax, subch. VII of ch. 77, Stats., is unconstitutional in that it gives different treatment to noncorporate farmers and all other noncorporate businesses. Taxpayer consequently argues that the surcharge tax is a violation of the equal protection clause of the Fourteenth Amendment of the U.S. Constitution and Article I, Section 1 of the Wisconsin Constitution.

In determining if the surcharge tax is unconstitutional, the court must determine if the difference in treatment of noncorporate farmers and businesses, in regards to the payment of the surcharge tax, rationally furthers a legitimate state interest. In consideration of this issue, the court finds that the surcharge tax does rationally further a legitimate state interest and consequently, is constitutional.

A challenge of the constitutionality of a statute is not a matter to be taken lightly. Respondent, The Wisconsin Department of Revenue ("department"), is correct in asserting that the taxpayer has an enormous burden of proof in this matter. In regards to challenges of a statute under the Equal Protection Clause, "[t]he general rule is that legislation is presumed to

be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 440 (1985). Further, in equal protection challenges, the petitioner has the burden of proving that there is an abuse of legislative discretion beyond a reasonable doubt. Racine Steel Castings v. Hardy, 144 Wis. 2d 553, 560 (1988). The court finds that the taxpayer has failed to meet this burden.

The surcharge tax involved here is designed to deal with the recycling of solid waste. Taxpayer argue that the surcharge rate should not be reduced for farmers as they significantly contribute to the pollution addressed by the surcharge tax in the form of toxic agricultural products. The taxpayer's argument is not related to the solid waste problem addressed by the surcharge tax but to hazardous waste. The appropriations from the surcharge tax are to be used for solid waste recycling problems, not the non-source point pollution problems brought up by the taxpayer in arguments. The two problems are unrelated, and only the problem of solid waste is dealt with in the surcharge tax. The taxpayer's attack in this respect is denied.

The department also submits that the difference in the surcharge tax is in furtherance of a legitimate state interest in that it aids the protection and preservation of the family farm, which historically has been a recognized legitimate interest of the State of Wisconsin. There have been such measures to protect and preserve the farm in past legislative actions. See Farmland Preservation Credit (sec. 71.57 through 71.61, Stats.), Farmland Tax Relief Credit (sec. 71.07(3m), Stats.), and the Farmland Drought Property Tax Credit (sec. 71.07(2fd), Stats.). The court agrees and finds that the Wisconsin temporary recycling surcharge tax is in furtherance of such an established, legitimate state interest.

Additionally, the court finds that the partial exemption for noncorporate farmers is sufficiently rationalized in the farmer's inability to pass on the surcharge in the price of their product as their prices are set by standards.

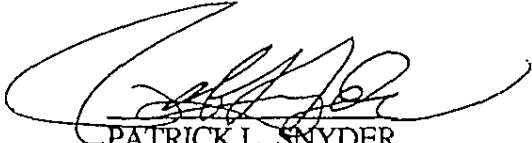
The court finds that the Wisconsin temporary recycling surcharge tax, provided by subch. VII of ch. 77, Stats., is constitutional as it rationally furthers a legitimate state interest.

The decision of the Commissioner is affirmed.

The attorney for the Wisconsin Department of Revenue shall prepare an order in conformity with this decision within 20 days.

DATED at Waukesha, Wisconsin this 12 day of May, 1994.

BY THE COURT



PATRICK L. SNYDER
Circuit Court Judge
Branch 4