



How Pennsylvania's Uniformity Clause Affects Property and Wage Taxes in Philadelphia

148-year-old language in the state constitution limits the city's options for reform

Overview

In recent months, Philadelphia Mayor Jim Kenney and the City Council have been reviewing the city's taxes, engaging in a conversation that arises every few years. But efforts to change Philadelphia's local tax system—whether to encourage economic growth, promote social equity, or simply raise needed revenue—often run up against a 19th-century section of the Pennsylvania Constitution known as the uniformity clause.

The clause, as consistently interpreted by the state courts, requires that all local and state taxes be flat, with the same percentage applied to all taxpayers or properties. That long-established interpretation limits city officials' policy options and helps explain several distinctive features of Philadelphia's tax system:

- An office building worth \$50 million has the same 1.3998% property tax rate as a home worth \$50,000. Different rates for various types of property, though commonplace elsewhere, are prohibited.
- Residents making \$100 an hour have the same 3.8398% wage tax rate as those making the \$7.25 minimum wage.
- And that flat rate on the wage tax, as well as the 3.07% state income tax, helps give Philadelphia one of the nation's highest state and local tax burdens on low-income households, according to an annual study by the District of Columbia.¹

In the U.S. political system, municipalities are creations of the states, which set the rules for local taxation. And most state constitutions contain uniformity clauses. But in deciding that uniformity means that each revenue source, such as income or property, must be subject to a single tax rate, the Pennsylvania Supreme Court has diverged from 44 of the 47 other states with uniformity clauses.²

As a result, no income or wage levy in Pennsylvania, whether statewide or local, may be graduated. (Most municipalities in the U.S. do not have local income or wage taxes, and most that do have flat rates—the result of state mandates or local policy decisions.)³

That said, Pennsylvania’s constitution does allow some specific exceptions to uniformity, which have permitted Philadelphia—with the state Legislature’s additional approval—to create several programs that bring relief to some groups of property- and wage-tax payers in the city, most with limited incomes. To reap the benefits, though, taxpayers must be aware of the programs and fill out often complex applications and eligibility forms.⁴

Even so, many city officials, including City Council members, say the clause has had a chilling effect on local tax reform efforts, discouraging the consideration of proposals that might invite a uniformity challenge.

Several high court rulings have reinforced the clause’s power in recent years, primarily in cases involving property assessments. In a 2017 opinion, then-Chief Justice Thomas Saylor, writing for a unanimous Pennsylvania Supreme Court, cited a 1967 opinion that called the clause central to the “fundamental principle” that each citizen “is only required to bear his proportionate share” of the cost of government.⁵

What tax uniformity means in Pennsylvania, and thus in Philadelphia

Pennsylvania’s version of the uniformity clause was adopted in 1874, long before the state or the city taxed income or wages. It says: “All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax and shall be levied and collected under general laws.” The language applies to state government and every municipality.⁶

Historically, the general idea behind such language in state constitutions—and in the U.S. Constitution as well—has been to prevent officials from granting special tax treatment to influential individuals, regions, or corporations.⁷ In Pennsylvania and elsewhere, property owners have used uniformity clauses to argue that their holdings have been singled out for higher reassessment and/or are not being taxed fairly vis-à-vis similar holdings.

One way to make a flat tax less burdensome for low-income taxpayers would be to exclude a portion of everyone’s wages from the tax, but neither the state nor the city may do so as a result of the uniformity clause. When the Philadelphia wage tax was created more than 80 years ago, the high court, citing the clause, threw out a plan to exclude the first \$15 of annual wages from taxation.⁸

On the other hand, since 2016, Philadelphia has exempted the first \$100,000 of every firm’s gross receipts from the city’s business income and receipts tax.⁹ No one has yet challenged it in court.

In its judgments, Pennsylvania’s Supreme Court has explicitly barred the establishment of various categories of property—such as residential, commercial, and industrial—with different tax rates for each. But such arrangements are common elsewhere. The District of Columbia, for example, has six different property tax rates. The lowest is for residential (0.85% of assessed value), and the highest are for vacant (5%) and blighted (10%) tracts, with three different rates for commercial properties (1.65%, 1.77%, and 1.89%, with the higher rates applied to more valuable tracts).¹⁰

Not having such categories makes it impossible for Philadelphia to raise property tax rates on big office buildings without also raising them on modest homes occupied by owners with fixed incomes—or to cut those homeowners' rates without also cutting them for office buildings.

Recent litigation tied to Pennsylvania's uniformity clause has focused on how municipalities assess commercial properties.

In a 2017 case, the owners of a Montgomery County apartment complex sued the Upper Merion School District, claiming the district violated the clause by challenging the assessments of large commercial properties such as the complex while leaving residential assessments unchallenged. The state Supreme Court agreed.¹¹

In a 2021 case, *Duffield House Associates L.P. v. City of Philadelphia*, the Commonwealth Court found that the city ran afoul of uniformity when it reassessed all commercial properties for the 2018 tax year but no residential or industrial properties. Philadelphia is appealing the ruling.¹²

Uniformity arguments do not always prevail. In a challenge to Philadelphia's tax on sugary beverages filed by industry groups and others, the state Supreme Court decided in 2018 that singling out the beverages for additional taxation did not violate the clause.¹³

Exceptions

The uniformity clause is not all-encompassing. Section 2 of the state constitution's Article VIII, adopted in 1968 and modified since, empowers the Legislature to authorize exceptions to the overall policy.¹⁴ Here are some examples of when the Legislature has used this power and how the exceptions apply to Philadelphia.¹⁵

Homestead Exemption: In Philadelphia, the exemption, which was part of the sweeping 2013 property tax overhaul known as the Actual Value Initiative, makes untaxable the first \$45,000 of valuation for all owner-occupied homes. The resulting tax reduction is particularly important for owners of relatively low-priced residences.

Longtime Owner Occupants Program: Section 2 allows relief for homeowners "in areas where real property values have risen markedly." In Philadelphia, this has produced the Longtime Owner Occupants Program, or LOOP, which was also part of the 2013 changes. LOOP provides tax savings for owners who have lived in their homes for 10 years or more and who meet certain income qualifications.

Senior Citizen Real Estate Tax Freeze: Under this program, low-income Philadelphians age 65 and over get a guarantee that their property tax bills will not rise above current levels.

Disabled Veterans Tax Exemption: Philadelphia homeowners who are 100% disabled as a result of military service are exempt from paying property taxes.

Real Estate Tax Abatement: The state constitution allows abatements "to encourage improvement of deteriorating property or areas."¹⁶ This is the basis of Philadelphia's long-standing 10-year abatement on new construction and building rehabilitation. But the uniformity clause makes it hard to tailor the abatement by location or dollar amount.

Wage Tax Credit: Section 2 also allows tax systems to take poverty into account. That language is the basis of a city wage tax credit for low-income Philadelphians as well as nonresidents working in the city, adopted in 2018 and increased in 2021.¹⁷ The courts have ruled that the credit, which piggybacks on a similar credit against the state income tax, is constitutional as a rebate. To get it, qualified taxpayers must file a rather lengthy application; only about 3% of those eligible applied in 2019.¹⁸

Use and Occupancy Tax: Not specifically authorized by Section 2, this is a court-approved way to work around the prohibition on creating a separate class of commercial properties for real estate tax purposes. The Philadelphia Use and Occupancy Tax raises money for the school district by taxing the commercial use of properties rather than the properties themselves.

Conclusion

More than a decade ago, the Pennsylvania Bar Association created a commission to review the state constitution. It proposed exempting income taxes from uniformity—thereby allowing higher rates for higher-income individuals—and allowing separate classes of real estate for property taxation.¹⁹ The proposals were never taken up by the Legislature.

The most serious recent attempt to change the clause, in a limited way and only for Philadelphia, was a proposed constitutional amendment to allow the city to create a separate, higher tax rate for commercial property, with the additional revenue being used to reduce wage and business taxes. Years in the making, the effort—backed by Center City District President Paul Levy and Brandywine Realty Trust CEO Gerard Sweeney—died in 2018 in the face of opposition from the Chamber of Commerce for Greater Philadelphia and City Council President Darrell Clarke, who objected to the requirement that the new property tax revenue be used to reduce the other taxes.²⁰

Meanwhile, Pennsylvania's appellate courts continue to reconfirm the clause's historical interpretation, primarily as it relates to property taxes. Whether the state Supreme Court, given the right case, would take a different tack remains to be seen. Unless the interpretation changes or the constitution is amended, the uniformity clause will continue to limit Philadelphia policymakers' options to change who gets taxed and how.

Endnotes

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- 2 Pennsylvania Bar Association, "Report of the Pennsylvania Bar Association Constitutional Review Commission" (2011), 117, <http://www.pabar.org/pdf/crc%20report.pdf>.
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- 4 Pennsylvania Constitution, Article VIII, Section 2, <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=00&div=0&chpt=8&sctn=2&subsctn=0>.
- 5 Valley Forge Towers v. Upper Merion Area School District, 163 A.3d 962 (Supreme Court of Pennsylvania, 2017), <https://caselaw.findlaw.com/pa-supreme-court/1866909.html>.
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- 7 U.S. Constitution, Article I, Section 8, begins: "The Congress shall have power to lay and collect taxes, duties, imposts and Excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and Excises shall be uniform throughout the United States."
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- 11 Supreme Court of Pennsylvania, 163 A.3d 962.
- 12 Duffield House Associates L.P. v. City of Philadelphia, 1516 C.D. 2019 (Commonwealth Court of Pennsylvania, July 29, 2021), <https://casetext.com/case/duffield-house-associates-lp-v-city-of-philadelphia>.
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- 14 Pennsylvania Constitution, Article VIII, Section 2.
- 15 For a more detailed explanation of the programs, see City of Philadelphia, "Payments, Assistance & Taxes," <https://www.phila.gov/services/payments-assistance-taxes/income-based-assistance-programs/longtime-owner-occupants-program>.
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- 20 *The Philadelphia Inquirer*, "The Quiet Death of a Bill That Could Have Helped Philly," editorial, Oct. 15, 2018, <https://www.inquirer.com/philly/opinion/editorials/uniformity-clause-philadelphia-tax-reform-uniformity-clauseeditorial-20181015.html>.

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