

Taxes, Tax Levies and Tax Exemptions

The primary jurisdictional statute setting forth the powers of the Board of Supervisors is Miss. Code Ann. §19-3-41 (Supp. 1990), which makes the following provision with regard to taxation:

The Board of Supervisors...shall have power to levy such taxes as may be necessary to meet the demands of their respective counties, upon such persons and property as are subject to state taxes for the time being, not exceeding the limits that may be prescribed by law.

Section 112 of the Mississippi Constitution of 1890 as amended by House Concurrent Resolution No. 41, was ratified by the electorate on June 3, 1986, and was the subject of litigation in both federal and state court, including *Eddie Burrell, et al. v. William A. Allain, Governor of Mississippi, et al.*, Civil Action No. J86-0373(L), United States District Court for the Southern District of Mississippi, and *Burrell v. Mississippi State Tax Commission*, 536 So. 2d 848 (Miss. 1988).

Section 112 provides in part as follows:

Taxation shall be uniform and equal throughout the state. All property not exempt from ad valorem taxation shall be taxed at its assessed value. Property shall be assessed for taxes under general laws, and by uniform rules, and in proportion to its true value according to the classes defined herein. The legislature may, by general laws, exempt particular species of property from taxation, in whole or in part.

The legislature shall provide, by general laws, the method by which the true value of taxable property shall be ascertained; provided, however, in arriving at the true value of Class I and Class II property, the appraisal shall be made according to its current use, regardless of location....

The assessed value of property shall be a percentage of its true value, which shall be known as its assessment ratio. The assessment ratio on each class of property as defined herein shall be uniform throughout the state upon the same class of property, provided that the assessment ratio of any one (1) class of property shall not be more than three (3) times the assessment ratio on any other class of property. For purposes of assessment for ad valorem taxes, taxable property shall be divided into five (5) classes and shall be assessed at a percentage of its true value as follows:

Class I. Single-family, owner-occupied residential real property, at ten (10%) percent of true value.

Class II. All other real property, except for real property included in Class I or IV, at fifteen

(15%) percent of true value.

Class III. Personal property, except for motor vehicles and for personal property included in Class IV, at fifteen (15%) percent of true value.

Class IV. Public utility property, which is property owned or used by public service corporations required by general laws to be appraised and assessed by the state or the County, excluding railroad and airline property and motor vehicles, at thirty (30%) percent of true value.

Class V. Motor vehicles, at thirty (30%) percent of true value.

The Legislature may, by general law, establish acreage limitations on Class I property.³⁴

Assessment Rates

The rates of assessment established by the Legislature for the above classes of property are set forth in Miss. Code Ann. §27-35-4 (Supp. 1986), providing as follows:

- (1) All Class I property, as defined in Section 112, Mississippi Constitution of 1890, shall be assessed at the rate of ten (10%) percent of true value.
- (2) All Class II property and Class III property, as defined in Section 112, Mississippi Constitution of 1890, shall be assessed at the rate of fifteen (15%) percent of true value.
- (3) All Class IV property and Class V property, as defined in Section 112, Mississippi Constitution of 1890, shall be assessed at the rate of thirty (30%) percent of true value.

Goal of §112

The Mississippi Supreme Court has observed that the goal of the constitutional mandate of §112 “is a fair and equitable distribution of the tax burden.” The Court also noted that there are two types of assessment discrimination which may thwart this goal of fair and equitable distribution of the tax burden: first, widely varying assessment ratios for properties of like kind, quality and value, and second, discrimination in the assignment of true value even before the assessment value is applied. As the Court noted in *Rebelwood, Ltd. v. Hinds County*, 544 So. 2d 1356, 1366 (Miss. 1989):

Where properties, superficially similar, but in fact having widely varying true values, are assigned the same true value, this form of discrimination occurs. A familiar example is the assessment of all cultivatable agricultural acreage at the same dollars per acre value.

³⁴Section 112 has been the underpinning for a number of cases involving county ad valorem taxation, valuation, exemptions and assessments. See generally *Riley v. Jefferson Davis County*, 669 So. 2d 748 (Miss. 1996); *Rebelwood, Ltd. v. Hinds County*, 544 So. 2d 1356 (Miss. 1989); and *Calhoun County Board of Supervisors v. Grenada Bank*, 543 So. 2d 138 (Miss. 1988)

Conversely, such discrimination occurs when properties of like kind, quality and value are assigned widely varying true values.

Discriminatory Assessment Ratios Prohibited

It was on the above basis that the Mississippi Supreme Court held in *Washington County Board of Supervisors v. Greenville Mill*, 437 So. 2d 401 (Miss. 1983), that §112 had been violated by reason of the County's use of discriminatory assessment ratios:

The interpretation of constitutional provisions of other states similar to or analogous to ours has been so universal and consistent that it may fairly be said to be settled throughout the United States that such constitutional provisions forbid and prohibit discriminatory assessment ratios between real and personal property. *Id.* at 403.... There can be little or no question about the authority of taxing officials to classify property for tax-related purposes. However, the classification must have as its ultimate goals inclusion of all taxable property on the assessment rolls and arriving at the true value of each and every item of property, regardless of its classification. Once the true value is determined, a uniform and equal ratio of assessment must be applied thereto so as to arrive at the assessed value for the purpose of taxation.

We are therefore of the opinion that the Circuit Judge was eminently correct in holding that the utilization of different ratios of assessed value to true value in regard to personal property as opposed to real property by the Washington County Tax Assessor and the Board of Supervisors in 1980 was unconstitutional and in violation of §112, as amended, of the Mississippi Constitution. *Id.* at 404.

Ad Valorem Tax Levies and Exemptions

The primary provisions for County ad valorem tax levies include the following:

- Miss. Code Ann. §27-39-303 (Supp. 1987), which empowers the Board of Supervisors to levy ad valorem taxes on taxable property as shown by the property assessment roll and the motor vehicle assessment roll for all general County purposes, exclusive only of levies for roads and bridges and schools at the rate necessary to fund such purposes, and to expend the proceeds of this levy for any purpose authorized for any other levy which the Board is authorized to make, excluding the levy for roads and bridges;

- Miss. Code Ann. §27-39-305 (Supp. 1990), which provides authority for the Board annually to impose a Countywide ad valorem tax levy for the maintenance and/or construction of roads and bridges subject to a ten (10%) percent increase limitation;

- Miss. Code Ann. §27-39-317 (Supp. 1990), prescribing the procedure as to when and how County taxes are to be levied;

- Miss. Code Ann. §§19-9-93, et seq., providing for special tax levy authority with reference to

erection, remodeling, enlargement or repair of County buildings, funding the operation of a youth court division, funding for certain matters of public health, eradication of fire ants, maintenance of fair associations, advertisement of economic opportunities and other specific objectives;

- Miss. Code Ann. §27-31-1 (Supp. 1990), providing tax exemptions for certain types or classifications of property;

- Miss. Code Ann. §§27-31-51, et seq. (Supp. 1982), providing free port warehouse exemptions; and

- Miss. Code Ann. §§27-31-101, et seq. (Supp. 1990), providing exemptions for new, additional or expanded enterprises.

Exemptions Narrowly Construed

With regard to exemptions from County ad valorem taxation, the Court in *Better Living Services, Inc. v. Bolivar County, Mississippi, and the City of Cleveland, Mississippi*, 587 So. 2d 914 (Miss. 1991), denied a non-profit corporation an exemption from County and city ad valorem taxes for its federally subsidized Section 8 Apartments, holding that the corporation was not a “charitable society” within the meaning of Miss. Code Ann. §27-31-1(d) (Supp. 1990)³⁵ and reaffirming the general rule that tax exemption statutes must be strictly construed against the exemption and all reasonable doubt must be resolved against it, and following the majority rule that tax exemptions are disfavored generally “perhaps because they seem to conflict with principles of fairness--equality and uniformity--in bearing the burden of government.”

Better Living Services was followed in *Hattiesburg Area Senior Services v. Lamar County*, 633 So. 2d 440 (Miss. 1994), in which the Court again confronted the question of whether residential rental property owned by a non-profit corporation was tax exempt as belonging to a “charitable society...used exclusively for such society” as provided in §27-31-1(d) (Supp. 1993). Finding that it was unable to distinguish the property in question from that found taxable in *Better Living Services*, the Court affirmed the lower court’s judgment holding that the property was subject to taxation, reasoning that the funds of the corporate taxpayer were not derived mainly or substantially from private or public charity, but from rental receipts which the corporations relied on to meet all their expenses, including repayment of principal and interest on quite substantial loans procured to improve the properties, the distinction being between corporations meeting a need through charity and corporations meeting a need through a non-charitable, though laudable, economic activity.

³⁵This statute was amended by Laws of 1993, Ch. 604, Section 1, effective from and after October 1, 1993, by adding a subsection (dd) which now provides:

All property, real or personal, used exclusively for the housing of and provision of services to elderly persons, disabled persons, mentally impaired persons or as a nursing home, which is owned, operated and managed by a not-for-profit corporation, qualified under Section 501(c)(3) of the Internal Revenue Code, whose membership or governing body is appointed or confirmed by a “religious society or ecclesiastical body or any congregation thereof” shall be exempt from ad valorem taxation.