

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4133/1dn

MES:bjk:md

January 22, 2010

Representative Davis:

This drafter's note is meant to alert you to the possibility that the tax credit created in this bill could be challenged as a violation of the uniformity clause of the Wisconsin Constitution, article VIII, section 1. Basically, the uniformity clause requires that the taxation of real property be uniform. The uniformity clause does not apply to income taxes. See *Gottlieb v. Milwaukee*, 33 Wis. 2d 408, 427-428 (1967). A 1974 amendment to the uniformity clause exempted agricultural land from the uniformity requirement.

The tax credit for property taxes paid that is created in this bill, however, essentially provides a refund to some taxpayers based on the fact that their principal residence was destroyed by a natural or man-made disaster. One could argue that such a refund provides a partial exemption for the property taxes of some taxpayers. The Wisconsin Supreme Court has held that reducing the taxes on some property but not exempting the property is a partial exemption that violates the uniformity clause. See *Knowlton v. Supervisors of Rock County*, 9 Wis. 410 (1859), *Gottlieb*, and *Ehrlich v. Racine*, 26 Wis. 2d 352 (1964). It could be argued that the economic effect of this credit is a reduction of property tax liability, which is a partial exemption, and that the credit therefore violates the uniformity clause.

A court could, however, decide that the credit created in this bill is a relief measure that benefits individuals whose homes were destroyed and is not a tax provision. The uniformity clause does not apply to relief measures. It was on this basis that the Wisconsin Supreme Court held that the homestead tax credit was not a violation of the uniformity clause. See *Harvey v. Morgan*, 30 Wis. 2d 1 (1966).

While I am not certain how a court would rule on a constitutional challenge to this bill, should it become law, I believe that you should be aware of possible challenges to the bill. If you have any further questions about this issue, please don't hesitate to contact me.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov