THE CITY OF PROVIDENCE

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RESOLUTION OF THE CITY COUNCIL

No. 143

Effective: ~~XXXXXXX~~ *Approved* March 19, 1981

RESOLVED, That the City Solicitor is hereby requested to prepare, cause to be introduced and to urge passage at the 1981 Session of the General Assembly of the State of Rhode Island for immediate consideration for enactment of enabling legislation to implement a municipal user tax in the City of Providence, State of Rhode Island, in accordance with the accompanying draft Act.

IN CITY COUNCIL
MAR 5 1981
READ AND PASSED
Ralph Tempesti PRES.
Rose M Mendonca CLERK

Effective without the Mayor's signature March 19, 1981.

Rose M Mendonca

RESOLUTION RELATING TO THE IMPOSITION OF A MUNICIPAL USER TAX.

IN CITY COUNCIL
JAN 15 1981
FIRST READING
REFERRED TO COMMITTEE ON FINANCE
Rose M. Mendoza CLERK

THE COMMITTEE ON
FINANCE
Approves Passage of
The Within Resolution
Rose M. Mendoza
Chairman
Feb. 24, 1981

Council President Fagnuli

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 1980

AN ACT

Introduced By:

Date Introduced:

Referred To:

It is enacted by the General Assembly as follows:

WHEREAS, The City Council of the City of Providence, State of Rhode Island, is desirous of developing an alternative source of revenue as support for the city government; and

WHEREAS, The City of Providence, State of Rhode Island, is required by law to provide fire, police, sewer, water supply, street maintenance, garage collection and other services to all of its residents and to business' located within its corporate limits on a daily basis; and

WHEREAS, The services rendered by the city government that directly or indirectly inure to the benefit of non-residents are currently being funded solely by the city's resident taxpayers; and

WHEREAS, The City Council of the City of Providence, State of Rhode Island is desirous of creating a fair and equitable method of taxation of the persons who derive an income within the boundaries of the city and of those persons who receive the beneficial product of the services enumerated herein;

THEREFORE, BE IT RESOLVED:

SECTION 1. Authority to levy, assess and collect tax

The City of Providence, State of Rhode Island is hereby authorized to levy, assess and collect a tax for general revenue purposes on earned income of its residents and or any income earned within the city by persons not residing within such city, but engaged in or employed in any business, profession or occupation within such city.

SECTION 2. Deduction by employers

Any employer whose business is located outside the corporate limits of a city, but who employs persons who are residents of the city shall deduct from such employee's total income the assessed municipal user tax employed by said city.

SECTION 3. Tax imposed

The municipal user tax as herein authorized shall be equal to an assessment of one percent of a person's net income.

SECTION 4. Definition; income.

The City of Providence, State of Rhode Island, is hereby authorized to levy, assess and collect a tax for general revenue purposes on earned income of its residents and on any incomes earned within the city by persons not residing within such city, but engaged in or employed in any business, profession or occupation within such city.

SECTION 5. Regulations

The City Council of the City of Providence, State of Rhode Island, is authorized to promulgate and enforce such regulations as it deems necessary for the assessment, collection and enforcement of such tax.

SECTION 6. Suit in Superior Court

The City of Providence, upon its adoption of the municipal user tax, in addition to all other means of enforcement available, is authorized to bring suit in the Superior Court of the State of Rhode Island

SECTION 7. Severability

The sections of this Act and each provision and part thereof are hereby declared to be severable and independent of each other, and the holding of a section, or part thereof, or the application thereof to any person or circumstance, to be invalid, ineffective, or unconstitutional shall not affect any other section, provision or part thereof, or the application of any section, provision or part thereof, to any other person and circumstance.

SECTION 8. Time to take effect

This Act shall take effect upon its passage.

#2599
Councilman
McLaughlin

AN ORDINANCE PROVIDING FOR THE TAXATION OF EARNED INCOME.

WHEREAS, this revenue measure is necessary to balance the budget of the City of Wilmington and to provide its essential municipal functions.

THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. The following provisions, hereafter to be known as the Earned Income Tax Code, are hereby adopted:

§1. Definitions.

(a) Business. An enterprise, activity, profession, or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, co-partnership, association, governmental body or unit or agency, or any other entity;

(b) Employee. Any person who renders services to another for a consideration or its equivalent, under an express or implied contract, and who is under the control and direction of the latter, including temporary, provisional, casual, or part-time employment;

(c) Employer. An individual, co-partnership, association, corporation, governmental body or unit or agency, or any other entity, who or that employs one or more persons on a salary, wage, commission, or other compensation basis;

(d) Net Profits. The net gain from the operation of a business, profession, or enterprise, after provision

for all allowable costs and expenses incurred in the conduct thereof, either paid or accrued in accordance with the accounting system used, without deduction of taxes based on income;

(e) Non-resident. An individual, co-partnership, association, or any other non-corporate entity domiciled outside the City;

(f) Person. Every individual, co-partnership, fiduciary, association, or other non-corporate entity;

(g) Resident. An individual, co-partnership, association, or any other non-corporate entity domiciled in the City;

(h) Salaries, Wages, Commissions, and Other Compensation. All salaries, wages, commissions, bonuses, incentive payments, fees and tips that may accrue, whether directly or through an agent and whether in cash or in property, for services rendered; but excluding

(1) periodical payments for sick or disability benefits and those commonly recognized as old age benefits;

(2) retirement pay or pensions paid to persons retired from service after reaching a specific age or after a stated period of employment;

(3) any wage or compensation paid by the United States to any person for active service in the Armed Services of the United States;

(4) any bonus paid by the United States, this State, or any other State for such service;

(i) Department. The Department of Finance.

(j) Taxpayer. Any persons required by this Code to file a return or to pay a tax.

§2. Imposition of tax.

(a) An annual tax for general revenue purposes is hereby imposed on the following:

(1) on salaries, wages, commissions and other compensation earned by residents of the City of Wilmington; and

(2) on salaries, wages, commissions and other compensation earned by non-residents of the City of Wilmington for work done or services performed or rendered in the City of Wilmington; and

(3) on the net profits in businesses, professions, and other activities conducted by residents of the City of Wilmington; and

(4) on the net profits earned in businesses, professions, and other activities conducted in the City of Wilmington by non-residents.

§3. Tax rate.

(a) If the gross income, as it appears on the appropriate federal income tax form, shall not exceed $5,000, there shall be no tax;

(b) If the gross income, as it appears on the appropriate federal income tax form, shall be at least $5,000.01, the tax rate shall be 1 1/2% on all amounts subject to tax under §2.

(c) The tax levied under §2 (a) (1) and (2) shall relate to and be imposed upon salaries, wages, commissions, and other compensation paid by an employer or on his behalf to any person who is employed or renders services to him.

(d) The tax levied under §2 (a) (3) and (4) shall relate to be and be imposed on the net profits of any business, profession or enterprise carried on by any person as owner or proprietor, either individually or in association with some other person or persons.

§4. Returns, payment of tax, refunds.

Each person whose net profits are subject to the tax imposed by this Code shall on or before April 15 of each year make and file with the Department a return on a form furnished by or obtainable from the Department setting forth the amount of such net profits earned during the preceding year and subject to the

said tax, together with such other pertinent information as the Department may require.

(a) Where a return is made for a fiscal year or for any other period different from a calendar year, the said return shall be made by the 15th day of the fourth month following the end of the said fiscal year or other period.

(b) Each person who is employed on a salaried, wage, commission or other compensation basis, which is subject to a tax imposed by this Code and which tax is not withheld by his employer and paid to the City as provided in §5 shall on or before the last day of January, April, July, and October make and file with the Department a return on a form furnished by the Department, setting forth the aggregate amount of salaries, wages, commissions, and other compensation subject to the said tax earned by him for the three months ending on the last day of the month preceding together with such other pertinent information as the Department may require.

(c) Whenever any person files a return required by this section, he shall at the time of filing pay to the Department the amount of tax due thereon.

(d) Between January 1 and December 31 of each year, persons may apply to the Department in person or in writing for a refund on excess taxes,

(1) withheld from wages during the previous calendar year, or

(2) paid by the persons in complaince with §4 (b).

Application for a return of excess taxes under this section must be filed on forms provided by the Department and must be submitted with appropriate W-2 forms.

§5. Collection at source.

(a) Each employer within the City who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct monthly or more often than monthly, at the time of payment thereof, the full tax rate of 1 1/2% imposed by this Code on the salaries, wages, commissions, and other compensation due from the said employer to the said employee, except that due to employees engaged as domestic servants, and shall, on or before the last day of April, July, October and January of each year, make a return and pay to the Department the amount of tax so deducted for the three months ending on the last day of the month preceding.

(1) The return shall be on a form or forms furnished by the Department, and shall set forth the names and residences of each employee of said

employer during all or any part of the period covered by the said return, the amounts of salaries, wages, commissions, or other compensation earned during such period by each of such employees, together with such other information as the Department may require.

(2) The employer making the return shall, at the time of filing, pay to the Department the amount of tax due thereon.

(3) The failure of any employer, residing either within or outside of the City, to make such return and/or to pay such tax shall not relieve the employee from the responsibility for making the returns, paying the tax, and complying with the regulations with respect to making the returns and paying the tax.

(b) When any employer, required to make deductions or returns under §5 (a), deducts an aggregate amount of such tax in excess of $50.00 during any calendar month (except the months of March, June, September and December) he shall, within 25 days after the last day of such calendar month, deposit such deduction with the Department.

(c) Employees incurring no income tax liability -- Notwithstanding any other provision of this section,

an employer shall not be required to deduct and withhold any tax under this ordinance upon a payment of salary, wages, commission or other compensation to an employee if there is in effect with respect to such payment a withholding exemption certificate (in such form and containing such other information as the Director of Finance or his delegate may prescribe) furnished to the employer by the employee certifying that the employee --

(1) incurred no liability for tax imposed under this ordinance for his preceding taxable year;

(2) anticipates that he will incur no liability for income tax imposed under this ordinance for his current taxable year; and

(3) anticipates that he will be employed in the City of Wilmington for no longer than four (4) months during the taxable year.

§6. Extension of payment.

(a) If the due date for the payment of the taxes imposed by this Code falls on a Sunday or holiday, or any day during which the agency collecting such tax is not open for a full business day, the Department may postpone such due date to the next following business day.

§7. Allocation of delinquent payment.

(a) Unless otherwise provided, when a partial pay-

ment is made on account of any deliquent tax, such payment shall be pro-rated between the principal of such tax and the penalties and interest accumulated on it.

§8. Records of taxpayer.

(a) Every person who has paid, or from whom there is due or alleged to be due, any moneys collectible by the Department, and any person upon whom there is imposed any other obligation to collect and remit to the City and such moneys shall;

(1) preserve and retain his books, records, accounts, copies of tax returns filed with other taxing authorities, and other data relating thereto, for a period of six years after such moneys become collectible or have been collected by the Department, whichever is later;

(2) when requested by the Department produce the books, records, accounts, copies of tax returns, filed with other taxing authorities, and other data relating thereto, and give to the Department the opportunity to make examination of such books, records, accounts, copies, data and any property owned or controlled by such person in order to verify the accuracy of any report or return made, or if

no report or return has been made to ascertain the amount of tax due.

§9. Limitation of actions.

(a) Any suit to recover any tax imposed by this Code shall be begun within six years after such tax is due or within six years after a return or report has been filed whichever date is later; but this limitation shall not apply in the following cases:

(1) where the taxpayer has failed to have filed the return or report required under the provisions of this Code;

(2) in any case where a return is shown to represent a fraudulent evasion of taxes, including, but not limited to substantial under-statement of gross income, moneys or funds in any such return or report;

(3) where the taxpayer has collected or withheld funds or moneys of any nature or description under this Code as agent or trustee for the City and has failed, neglected or refused to pay the amount so collected or so withheld to the City.

§10. Construction.

(a) Each tax imposed in this Code shall bein addition to any other taxes imposed by the City of Wilmington.

(b) Nothing contained in this Code shall be construed to empower the City to levy or collect any tax not within the taxing power of the City under the Constitution of the United States or the Constitution or laws of the State of Delaware.

(c) If any sentence, clause, or section or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses or sections or part of this Code. It is hereby declared as the intent of the Council that the Code would have been adopted had such unconstitutional, illegal or invalid sentence or part thereof not been included.

§11. Interest, penalties and costs.

(a) If any tax imposed under this Code is not paid when due, interest at the rate of 1% of the amount of the unpaid tax and a penalty at the rate of 1% of the amount of the unpaid tax shall be added for each month or fraction thereof during which the tax shall remain unpaid and shall be collected together with the amount of the tax.

(b) If any person shall fail or refuse to file any report or return, a penalty at the rate of 5% of the amount of the unpaid tax shall be added for each month or fraction thereof during which the report or return shall remain unfiled and shall be collected together with the amount of the tax.

(c) Where suit is brought for the recovery of any such tax, the person liable therefor shall, in addition, be liable for the costs of collection together with the interest and penalties herein imposed.

(d) In addition to any other sanction or remedial procedure provided, any person who shall:

(1) make any false or untrue statement on his report or return;

(2) fail or refuse to file any report or return or for any reason fails to withhold any sum due the City when required to do so by this Code;

(3) fail to pay over to the Department any moneys which he may hold as agent for the City;

(4) violate any provision of this Code or any regulation adopted hereunder;

shall be subject to a fine of not more than $300.00 for each offense, and shall be subject to imprisonment of not more than 90 days if the fine and costs are not paid within ten days of imposition.

(e) Any person who shall have paid, or from whom there is due or alleged to be due any moneys collectible by the Department, and who fails and refuses to produce or permit the examination of his books, records, accounts, and related data, or to afford to authorized representatives of the Department an opportunity for such examination, shall be subject to a fine of not more than $300.00 for each such offense, with imprisonment for not more than 90 days if the fine and costs are not paid within ten days.

(f) Any tax, penalty, interest, or other sum of money due under any prior earned income tax code for the City of Wilmington shall not abate by the enactment of this Code and shall be deemed an obligation and owing the City of Wilmington.

§12. Regulations.

The Director of Finance is authorized to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this tax code pursuant to Sec. 8-407 of the Wilmington Home Rule Charter.

§13. Credit.

Any resident who is required to file a return or pay a tax by this Code shall be entitled to reduce the amount of tax to be paid by an amount he is required to pay any other municipality on account of earned income tax or net profits tax paid to such City of the same fiscal period.

SECTION 2. This Ordinance shall become effective upon its passage by Council and approval by the Mayor.

First Reading . . .
Second Reading. . .
Third Reading . . .

Passed by City Council,

_____
President of City Council

ATTEST: _____
City Clerk

Approved as to form
May 23, 1973

Approved: _____

_____
Assistant City Solicitor

_____
Mayor

corporation. The charter commission candidates who receive the most votes shall constitute the commission. On the death, resignation or inability of any member of a charter commission to serve, the remaining members shall elect a successor. The commission shall have authority to propose the amendment of the charter as specified in the petition, to hold public hearings thereon and to arrange for putting the proposed amendment on the ballot or voting machine to be used at the next referendum election.

The legislative body of the municipal corporation in which the amendment of a charter is proposed by a charter commission may provide by ordinance or resolution for that procedure which it deems necessary to conduct the election of a charter commission and for enabling the charter commission to exercise the functions specified above. The legislative body of the municipal corporation may, if it defaults in the exercise of this authority, be compelled by judicial mandate and at the instance of at least 10 signers of a petition filed under this section to exercise such authority.

In addition to the procedure hereinbefore set forth, a charter may be amended by act of the General Assembly, passed with the concurrence of two thirds of all the members elected to each House thereof. (22 Del. C. 1953, § 811; 53 Del. Laws, c. 260; 60 Del. Laws, c. 166, § 1.)

Effect of amendment. — 60 Del. Laws, c. 166, effective July 2, 1975, added the third paragraph.

CHAPTER 9. MUNICIPAL USER TAX

Sec.

§ 901. Authority to levy, assess and collect tax; deduction by employers.

Any municipality of this State with a population in excess of 50,000 persons is hereby authorized to levy, assess and collect a tax for general revenue purposes on earned income of its residents and on any income earned within the city by persons not residing within such city but engaged or employed in any business, profession or occupation within such city. Any employer whose business is located outside the corporate limits of a city but who employs persons who are residents of the city shall deduct from such employees' total income the assessed municipal user tax imposed by said city. (22 Del. C. 1953, § 901; 57 Del. Laws, c. 11; 58 Del. Laws, c. 14; 59 Del. Laws, c. 121, § 3; 59 Del. Laws, c. 122, § 1; 60 Del. Laws, c. 621, § 1.)

Effect of amendment. — 60 Del. Laws, c. 621, effective July 22, 1976, added the last sentence.

Chapter not exempted from 1974 Code reenactment. — This chapter was brought into the 1974 Code reenactment and may not be said

to have been exempted therefrom under 1 Del. C. § 105. Roy v. Williams, Del. Supr., 382 A.2d 1351 (1978).

Insurance agents and brokers. — The receipt of commission income by an insurance agent or broker is not a part of the "business of insurance" within the meaning of 18 Del. C. § 712(a) and insurance agents and brokers are not thereby exempted from the tax levied under this section. Kumpf v. City of Wilmington, Del. Supr., 383 A.2d 292 (1978).

CHAPTER 13. MUNICIPAL ELECTRIC COMPANIES

Revisor's note. — This chapter became effective upon the signature of the Governor on July 11, 1978.

§ 1301. Findings and declaration of policy.

It is determined and declared as a matter of legislative finding that:

(1) Operation of electric utility systems by municipalities and the improvement of the systems through joint action in the fields of the generation, transmission and distribution of electric power and energy is in the public interest;

(2) There is a need in order to ensure the stability and continued viability of the municipal systems to provide for a means by which municipalities which operate the systems may act jointly in all ways possible, including development of coordinate bulk power and fuel supply programs;

(3) The establishment by municipalities which own or operate electric utilities of municipal electric companies will facilitate such joint action and will thereby aid in the stability and continued viability of such municipally owned or operated electric utilities.

Therefore, it is declared to be the policy of this State to promote the welfare of the inhabitants thereof by authorizing municipally owned or operated electric utilities to establish bodies corporate and politic to be known as "municipal electric companies" which shall exist and operate for the purposes contained in this chapter. Such purposes are declared to be public purposes for which public money may be spent and private property may be acquired by the exercise of the power of eminent domain. (61 Del. Laws, c. 496, § 1.)

CHAPTER 9. MUNICIPAL USER TAX

§ 901. Authority to levy, assess and collect tax.

Any municipality of this State with a population in excess of 50,000 persons is hereby authorized to levy, assess and collect a tax for general revenue purposes on earned income of its residents and on any income earned within the city by persons not residing within such city but engaged or employed in any business, profession or occupation within such city. (22 Del. C. 1953, § 901; 57 Del. Laws, c. 11; 58 Del. Laws, c. 14; 59 Del. Laws, c. 121, § 3; 59 Del. Laws, c. 122, § 1.)

This section imposes an annual tax on specified categories of earned income: (1) all compensation earned by residents of a city; (2) all compensation earned by nonresidents of the city for work done or services rendered within the city; and (3) all net profits of businesses, professions and "other activities" conducted by residents of the city anywhere and by nonresidents within the city. Betts v. Zeller, 263 A.2d 290 (Del. Sup. Ct. 1970).

These classifications by income are reasonable: the section acts alike upon all persons similarly situated within each classification and it is not violative of the equal protection of the laws. Betts v. Zeller, 263 A.2d 290 (Del. Sup. Ct. 1970).

The classifications made under this section were not clearly unreasonable or clearly arbitrary. Betts v. Zeller, 263 A.2d 290 (Del. Sup. Ct. 1970).

City delegated general and unrestricted power to tax. — By this chapter, the General Assembly delegated to the legislative body of the City of Wilmington a general and unrestricted power to tax. Betts v. Zeller, 263 A.2d 290 (Del. Sup. Ct. 1970).

Including power to determine amount of taxes. — Necessarily implied in the broad delegation of taxing power to the City of Wilmington was the power to determine, within the 1 percent limitation of the Enabling Act, the amount of taxes to be raised, the rate of taxation and all other necessary and essential elements of the power to tax, including the power to carve out reasonable and proper exemptions as "will best promote the public welfare." Betts v. Zeller, 263 A.2d 290 (Del. Sup. Ct. 1970).

§ 902. Limitations.

Any tax assessed within the provisions of this tax shall not exceed 1.25 percent of the income of residents of such city per annum and 1.25 percent of the income of nonresidents earned within the city per annum. (22 Del. C. 1953, § 902; 57 Del. Laws, c. 11; 58 Del. Laws, c. 14; 59 Del. Laws, c. 121, § 2.)

§ 903. Income; definition.

"Income" means the total income from whatever source earned by any resident of such city and the total income earned within such city by any nonresident of the city. (22 Del. C. 1953, § 903; 57 Del. Laws, c. 11; 58 Del. Laws, c. 14.)

§ 904. Regulations.

Each such municipality is authorized to promulgate and enforce such regulations as it deems necessary for the assessment, collection and enforcement of such tax. (22 Del. C. 1953, § 904; 57 Del. Laws, c. 11; 58 Del. Laws, c. 14.)

§ 905. Suit in Superior Court.

Any such municipality which adopts this chapter is, in addition to all other means of enforcement available, authorized to bring suit in the Superior Court of the county in which such city is located. (22 Del. C. 1953, § 905; 57 Del. Laws, c. 11; 58 Del. Laws, c. 14.)

§ 906. Collection and enforcement.

Taxes due under any municipal user tax adopted prior to March 30, 1971 shall continue to be collected and enforced and shall not be abated. (22 Del. C. 1953, § 906; 58 Del. Laws, c. 14.)

Bradford contends that the limitation upon the zoning authority of a County, concededly within the power and authority of the General Assembly as a general rule, was unlawful here. The argument is that the proviso, withdrawing non-profit general hospital facilities from the zoning control of New Castle County, is an arbitrary and unreasonable exercise of the police power as to New Castle County in that the same limitation was not imposed upon the zoning powers vested in the governments of Kent and Sussex Counties.

We find no merit in this contention. The General Assembly is empowered by *Del. Const.*, Art. II, § 25 "to enact laws under which * * * the County of Sussex and the County of Kent and the County of New Castle may adopt zoning ordinances, laws or rules * * *". There is no requirement that such laws be similar or uniform among the 3 Counties.

[13] Those challenging the validity of a zoning change have the burden of showing clearly that the change is not reasonably related to the public health, safety, and welfare; and where the reasonableness of the change is "fairly debatable", the duty of the Court is to sustain the change, even though there may be disagreement as to the wisdom of the change. *Willdel Realty, Inc. v. New Castle County*, Del.Supr., 281 A.2d 612 (1971); *McQuail v. Shell Oil Company*, Del.Supr., 40 Del.Ch. 396, 183 A.2d 572 (1962).

[14] We find no basis for labeling § 2601 an unreasonable and arbitrary exercise of police power. Bradford cites no direct authority for this challenge. His sole argument is that populous New Castle County needs zoning regulation more than either of the other Counties and, therefore, it was arbitrary and unreasonable to make the proviso, added to § 2601 by the amendment, applicable to New Castle County alone. This challenge falls far short of what it takes to overcome the presumption of constitutionality of § 2601. Again, here, Bradford fails to sustain his burden of establishing, clearly and convincingly and beyond doubt, the unconstitutionality of the Statute he seeks to question.

We hold 9 *Del.C.* § 2601 not unconstitutional for violation of the police powers of the State.

XI.

Upon the bases of the foregoing, all questions certified are answered in the negative.

Roger P. ROY, Christopher Moffett, James Ricchiuti and Edward R. Peletski, Plaintiffs,

v.

Maurice F. WILLIAMS and Jerold S. Gold, Defendants.

Supreme Court of Delaware.

Submitted Nov. 16, 1977.

Decided Jan. 23, 1978.

A question was certified by the Court of Chancery in a class action for declaratory judgment as to constitutionality of a wage tax levied by city. The Supreme Court, Hermann, C. J., held that the 1974 Revised Delaware Code enacted by a three-fourths vote of the General Assembly was not a simple revision, but was a reenactment of the entire body of law of the state and, hence, wage tax provision of Municipal User Tax incorporated therein, though originally adopted by only a majority vote of the General Assembly, was not unconstitutional for failure to comply with the two-thirds vote requirement of the Constitution for special acts of incorporation.

Question answered.

1. Statutes ⇐21

The 1974 Revised Delaware Code enacted by a three-fourths vote of the General

Assembly was not a simple revision, but was a reenactment of the entire body of law of the state and, hence, wage tax provision of Municipal User Tax Act incorporated therein, though originally adopted by only a majority vote of the General Assembly, was not unconstitutional for failure to comply with the two-thirds vote requirement of the Constitution for special acts of incorporation. 22 Del.C. § 901 et seq., Del. C.Ann.Const. art. 9, § 1.

2. Municipal Corporations ⇐967(1)

Statute providing that "No private act, or act of local application, or portion of any prior Code or other statute pertaining to the City of Wilmington, or special act of incorporation, in effect on the date of enactment of this Code, and not revised and brought into this Code, shall be effected by any provision hereof" did not operate to exempt the City of Wilmington from the effect of the Code and the wage tax provision of the Municipal User Tax Act incorporated therein. 1 Del.C. § 105; 22 Del.C. § 901 et seq.

Upon certification from Court of Chancery.

Richard Allen Paul, of Paul, Lukoff & Hurley, Wilmington, for plaintiffs.

Jeffrey S. Goddess, City Sol., and Robert D. Goldberg, First Asst. City Sol., Wilmington, for defendants.

Before HERRMANN, C. J., and DUFFY and McNEILLY, JJ.

HERRMANN, Chief Justice:

This certification questions the constitutionality of the Municipal User Tax Act, 22 *Del.C.* Ch. 9,[1] authorizing any municipality in this State with a population in excess of 50,000 persons to levy a wage tax.

I.

The certification arises from a declaratory judgment action in the Court of Chancery. Under the Municipal User Tax Act, the City of Wilmington adopted an ordinance providing for a wage tax. The plaintiffs, nonresidents of the City who work in Wilmington, brought a class action on behalf of themselves and others similarly situated to have the tax declared unconstitutional. The defendants are officials of the City of Wilmington.

The Trial Court certified,[2] and this Court accepted, the following three questions:

"I. Is Chapter 9, Title 22, Del.Code unconstitutional if the General Assembly did not comply with Article IX, Sec. 1[3] of the Constitution of this State in its enactment?

"II. Do Chapter 8, Title 22, Del.Code and Section 1-101 of the Charter of the City of Wilmington authorize the city of Wilmington to adopt an ordinance providing for a wage tax?

1. 22 *Del.C.* Ch. 9 provides in part:

"§ 901. Authority to levy, assess and collect tax.

"Any municipality of this State with a population in excess of 50,000 persons is hereby authorized to levy, assess and collect a tax for general revenue purposes on earned income of its residents and on any income earned within the city by persons not residing within such city but engaged or employed in any business, profession or occupation within such city."

"§ 902. Limitations.

"Any tax assessed within the provisions of this tax shall not exceed 1.25 percent of the income of residents of such city per annum and 1.25 percent of the income of nonresidents earned within the city per annum."

"§ 903. Income; definition.

"'Income' means the total income from whatever source earned by any resident of such city and the total income earned within such city by any nonresident of the city."

2. Supreme Court Rule 20(1) provides:

"The Court of Chancery or the Superior Court may, on petition or on its own motion, certify to this Court for its decision a question or questions of law arising in any cause before it prior to the entry of final judgment therein whenever there are important and urgent reasons for an immediate determination of such question or questions by this Court."

3. *Del.Const.* Art. IX, § 1 provides in pertinent part:

"No general incorporation law, nor any special act of incorporation, shall be enacted without the concurrence of two-thirds of all the members elected to each House of the General Assembly."

"III. If the ordinance adopting the Wilmington wage tax is held to be invalid, should the city of Wilmington be compelled to refund the money which it has collected from the tax?"

II.

Question No. 1 arises from the plaintiffs' contention that 22 *Del.C.* Ch. 9 (hereinafter "The Act") is a special act of incorporation because it amends the Charter of the City of Wilmington and, therefore, required a two-thirds vote of the General Assembly under *Del.Const.* Art. IX, § 1 which, it is asserted, the Act did not receive. The City of Wilmington argues in response: (1) the Act is general law that could be validly enacted by a simple majority vote; but, in any event, (2) the Act meets the requirements of Art. IX, § 1 in that the 1974 Delaware Code, of which the Act is a component, was enacted by a three-fourths vote of the General Assembly.

Question No. 2 arises from the alternate contention of the City that, should the Act be found to be a special act of incorporation which did not receive a two-thirds vote of the Legislature, the City's wage tax is valid, nevertheless, because the Home Rule Act, 22 *Del.C.* Ch. 8, and the Wilmington City Charter provide authority for the tax, independent of the Act. As will be seen, we do not reach this Question.

A.

The solution to the problem requires a tracing of the legislative history of the Act.

The Act was originally adopted in 1969 by a majority vote of the General Assembly, and was expressly limited to the fiscal years 1969-70 and 1970-71. 57 *Del.L.* Ch. 11. In 1971 and again in 1973, renewals of the Act, also adopted by only a majority vote, each extended the effective period of the Act for an additional 2 year period—i. e., until June 30, 1975. 58 *Del.L.* Ch. 14; 59 *Del.L.* Ch. 121.

Effective May 13, 1975, the 1974 Revised Delaware Code was enacted by a three-fourths vote of the General Assembly. 60 *Del.L.* Ch. 56. The Act, as set forth in the 1974 Code (Title 22, Ch. 9), contains substantially the same provisions as were included in the 1969, 1971, and 1973 Statutes regarding: authority to levy, assess, and collect the tax, § 901; limitations on rate, § 902; the definition of income, § 903; promulgation and enforcement of regulations, § 904; suit to collect the tax, § 905; and collection and enforcement, § 906. However, the Statute enacted as part of the 1974 Code did not include earlier provisions concerning severability and, for the first time, the Statute omitted any reference to an effective period or termination date, thereby extending the life of the Act indefinitely.

Notwithstanding that the 1974 Code was enacted and approved in May, 1975, the General Assembly, by majority vote, enacted 60 *Del.L.* Ch. 116, effective June 23, 1975, providing in its entirety:

> "Section 908 of Chapter 14, Volume 58, Laws of Delaware, as amended by Chapter 121, Volume 59, Laws of Delaware, is hereby repealed."

Section 908, as amended, had carried the effective period of the Act to June 30, 1975.

B.

Upon the basis of the foregoing, it is contended by the City that since May 1975, when the 1974 Code was enacted, the Act which was a part of the Code has had the approval of three-fourths of each House of the General Assembly; that, therefore, the Act is immune to any constitutional attack under the two-thirds vote provision of Art. IX, § 1.

The plaintiffs make three arguments against this contention: First, they say that the 1974 Code is not "really a re-enactment of the entire body of law but rather a simple revision" so that the two-thirds vote requirement of Art. IX, § 1 for special acts of incorporation has not been met. In support of this position, they point to 1 *Del.C.* § 102 ("This Code became effective February 12, 1953") which, they assert, "tells the entire story". Secondly, plaintiffs contend

that 1 *Del.C.* § 105[4] expressly exempted special legislation affecting the City of Wilmington from the coverage of the new Code. Finally, they argue that the June 1975 Statute (60 *Del.L.* Ch. 116), being the latest Statute, was the controlling legislation which could not be effected by the earlier 1974 Code enactment; that because 60 *Del.L.* Ch. 116 was a special act of incorporation and only passed by a majority vote, it is invalid under Art. IX, § 1.

C.

In view of the foregoing legislative history of the Act, we find the plaintiffs' arguments to be without merit.

[1] By express provision of the Code Enactment Statute (60 *Del.L.* Ch. 56, § 1), concededly adopted by three-fourths vote,[5] "[a]ll laws of the State of Delaware enacted by the General Assembly appearing in the Delaware Code Annotated, Revised 1974, attached hereto and by this reference incorporated herein, are hereby adopted and enacted as the general and permanent law of the State of Delaware." The purpose and effect of that language could not be clearer: the 1974 Code became the positive law of this State, as had the 1953 Code before it. *Monacelli v. Grimes*, Del.Supr., 99 A.2d 255 (1953). As this Court said in *Monacelli*, in rejecting the argument that the 1953 Code was not a re-enactment and thus not the law of this State:

> "To accept this contention would be to reduce the Code to a mere compilation of prior statutes, having no force as law except as each section might conform to the substance of its predecessor. The principal legislative purpose would thus be defeated, since the intent to enact the Code as positive law is beyond question." 99 A.2d at 264.

Accordingly, we find no merit in the contention that the Title 22, Ch. 9 provisions of the 1974 Code were merely revision and not re-enactment of the Act.

Nor are the plaintiffs helped by the obviously inadvertent reference in 1 *Del.C.* § 102 of the bound volume of the Code stating that "[t]his Code became effective February 12, 1953". As indicated in the pocket part, 1 *Del.C.* § 102 was amended by the Code Enactment Statute to read: "This Code shall become effective upon enactment".

As a result of the incorporation of the Act into the 1974 Code by approval of three-fourths of the General Assembly, it is manifest that 60 *Del.L.* Ch. 115, the crux of the plaintiffs' position under Art. IX, § 1, was mere surplusage and a nullity, its sole purpose—indefinite extension of the Act—having been accomplished 41 days earlier by the enactment of the 1974 Code. It follows that the manner of the passage of 60 *Del.L.* Ch. 115 is of no consequence in this scrutiny of the validity of the Act.

As a consequence of the conclusion that the governing Act was "adopted and enacted as [part of] the general and permanent law" of the State with the concurrence of three-fourths of the General Assembly, the argument that the Act is a special act of incorporation, requiring a two-thirds vote of the Legislature, becomes irrelevant. Assuming the correctness of the label that plaintiffs seek to place upon it, the Act had the requisite vote under Art. IX, § 1.

[2] Finally, we find the plaintiffs' argument that 1 *Del.C.* § 105 exempted the City of Wilmington from the effect of the 1974 Code to be without merit. Section 105 provides:

> "No private act, or act of local application, or portion of any prior Code or other statute pertaining to the City of Wilmington, or special act of incorporation, in effect on the date of enactment of this Code, and not revised and brought into this Code, shall be affected by any provision hereof."

4. 1 *Del.C.* § 105 provides:

"§ 105. Effect on private or local acts.

"No private act, or act of local application, or portion of any prior Code or other statute pertaining to the City of Wilmington, or special act of incorporation, in effect on the date of enactment of this Code, and not revised and brought into this Code, shall be affected by any provision hereof."

5. 60 *Del.L.* Ch. 56 commences:

"BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fourths of all members elected to each house thereof concurring therein):"

gron, or special act of incorporation, in effect on the date of enactment of this Code, and not revised and brought into this Code, shall be effected by any provision hereof."

Manifestly, the Act was "brought into this Code" and may not be said to have been exempted therefrom.

Accordingly, in response to Question No. 1, we hold that 22 *Del.C.* Ch. 9 is not invalid under *Del.Const.*, Art. IX, § 1. Therefore, the answer to Question No. 1 is in the negative.

In view of our answer to Question No. 1, we do not reach Question No. 2. The argument that the Home Rule Act and the Charter of the City of Wilmington authorize the City to adopt a wage tax was presented as an alternative argument in the event the Act was found constitutionally defective. In view of our conclusion that the Act is valid, we do not reach the City's alternative position.

Obviously, in view of the foregoing, we do not reach Question No. 3.

David E. PETERSON, Appellant,

v.

Clifford E. HALL, Secretary of the Department of Highways and Transportation of the State of Delaware, Appellee.

Supreme Court of Delaware.

Submitted Dec. 19, 1977.

Decided Jan. 24, 1978.

Employee of State Department of Highways and Transportation who was discharged for failure to join union appealed from finding by State Personnel Commission that it was without jurisdiction to consider his claim that he was exempt from compulsory membership in union. The Superior Court affirmed, and employee appealed. The Supreme Court, Duffy, J., held that dismissal by Commission of appeal filed by employee, who held associate degree in civil engineering from community college, and who refused to join union following entry by Department into contract providing that all employees, except employees having professional classification or equivalent of bachelor's degree, were to join union as condition of continued employment, on theory that jurisdiction of Commission had been superseded by union contract and statute giving precedence to terms of union contract, was error, since Commission had jurisdiction to hear such appeal even if it might as matter of law have to apply terms of union contract and affirm dismissal, and since critical question of whether employee was within exception as having equivalent of bachelor's degree was unresolved.

Reversed and remanded.

1. Officers ⇐11

Purpose of legislation creating merit system of personnel was to professionalize both administration and policy making within state merit system by utilizing experts in the field. 29 Del.C. §§ 5901 et seq., 5902, 5906(b), 5910.

2. Officers ⇐72(2)

Dismissal by State Personnel Commission of appeal filed by employee discharged by State Department of Highways and Transportation, who held associate degree in civil engineering, and who refused to join union following entry by Department into contract providing that all employees, except those having equivalent of bachelor's degree, were to join union as condition of continued employment, was error, since Commission had jurisdiction to hear such appeal even if it might have to apply terms of contract and affirm dismissal, and since critical question of whether employee was within exception as having equivalent of bachelor's degree was unresolved. 29 Del.C. §§ 5906, 5910(c), 5949(a, c).

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EVELYN W. BETTS,	§	
	§	
Plaintiff Below,	§	
Appellant,	§	
	§	
vs.	§	No. 177, 1969
	§	
JAMES R. ZELLER, Director of Finance, Department of Finance, City of Wilmington, MAURICE F. WILLIAMS, City Treasurer, City of Wilmington, and THE CITY OF WILMINGTON, a municipal corporation of the State of Delaware,	§	
	§	
Defendants Below,	§	
Appellees.	§	

(January 26, 1970)

WOLCOTT, Chief Justice; CAREY and HERRMANN, JJ., sitting.

Upon certification from the Chancery Court.

William J. Alsentzer, Jr., Wilmington, for plaintiff below, appellant.

Clement C. Wood and Carl Goldstein, Assistant City Solicitors, Wilmington, for defendants below, appellees.

HERRMANN, Justice:

This Court accepted certification* by the Court of Chancery of certain questions regarding the constitutionality of the Earned Income Tax Code of Wilmington, enacted in June 1969. The certification arises in an action by which the plaintiff, a taxpayer having an income in excess of $6,000. per annum subject to the tax, seeks on behalf of herself and all others similarly situated to enjoin collection of the tax on constitutional grounds.

I.

The Code was enacted by the Mayor and Council of Wilmington under an Enabling Act (22 Del. C. Ch. 9, amended March 31, 1969) by which the General Assembly authorized any municipality of the State, with a population in excess of 50,000, to tax for general revenue purposes the total "earned income of its residents" from any source, and "any income earned within the city by persons not residing within such city." The Enabling Act limits the tax to one percent of such income per annum.

The Code imposes an annual tax on specified categories of earned income: (1) all compensation earned by residents of Wilmington; (2) all compensation earned by non-residents of Wilmington for work done or services

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* Rule 20 of this Court provides that, within the discretion of this Court, the Court of Chancery, inter alia, may certify questions of law arising in any cause before it where the questions relate to the constitutionality of a statute which has not been, but should be, settled by this Court.

rendered within the City; and (3) all net profits of businesses, professions, and "other activities" conducted by residents of the City anywhere, and by non-residents within the City.

The crux of the questions presented centers upon the tax rates specified by the Code upon such earned income:

> "(1) if the same shall not exceed $4,000.00, there shall be no tax,
>
> "(2) if the same shall be at least $4,000.01 but not more than $6,000.00, the tax shall be 1/4 of 1% on all between 0 and $6,000.00.
>
> "(3) if the same shall be at least $6,000.01, the tax shall be 1/2 of 1% on all between 0 and $6,000.01 and on all over $6,000.01."

The questions certified, referring to the Code as "the Ordinance", are as follows:

> "1. Does the Ordinance deny to Plaintiff and those similarly situated equal protection of the laws as guaranteed by the 14th Amendment to the Constitution of the United States by arbitrarily and/or unreasonably discriminating against them in the levy of a tax of 1/2 of 1% upon the first $4,000 of their annual earned compensation while the compensation and net profits of those persons earning $4,000 or less annually are exempt from said tax?
>
> "2. Does the Ordinance deny to Plaintiff and to those similarly situated equal protection of the laws as guaranteed by the 14th Amendment to the Constitution of the United States by arbitrarily and unreasonably discriminating against them in the levy of a tax of 1/2 of 1% upon the first $6,000 of their annual earned compensation while the compensation and net profits of those persons earning $6,000 or less annually is subject to a tax of only 1/4 of 1%?"

"3. Does the Ordinance violate Article VIII, Section 1 of the Constitution of the State of Delaware in that the exemptions and partial exemptions and/or immunities described in Questions (1) and (2) create a tax which is not uniform upon the same class of subjects within the territorial limits of the authority levying the tax?

"4. Does the Ordinance violate Article VIII, Section 1 of the Constitution of the State of Delaware in that the exemptions and partial exemptions and/or immunities described in Questions (1) and (2) are not established or authorized by act of the General Assembly of the State of Delaware?".

The answer to each question is in the negative.

II.

The Equal Protection Clause of the Fourteenth Amendment, as applied to tax laws, is the theme of Questions 1 and 2. We consider both questions together.

The plaintiff points to the feature of the Code which subjects one taxpayer to a levy on a certain portion of his annual compensation at one rate, while subjecting another taxpayer to a levy at a lower rate on the same amount of income. It is argued that there is an arbitrary and unreasonable discrimination against the plaintiff, and others similarly situated earning in excess of $6,000. annually, in that they are taxed at the rate of 1/2 of 1% upon the whole of the first $6,000., whereas those earning between $4,000. and $6,000. are taxed at the lower rate of 1/4 of 1%, and those earning less than $4,000. are not taxed at all. The plaintiff complains that the Code arbitrarily and unreasonably classifies taxables by total income levels rather

than classifying levels of income, as in the graduated rate schedules of the Federal and State income tax. Specifically, the plaintiff argues that it is unfair discrimination and a violation of the equal protection of the laws to tax her $20. upon the first $4,000.01 of her earnings while permitting others earning up to $4,000. to be tax free; and, similarly, she claims that it is arbitrary and unreasonable to tax her $30. upon the first $6,000.01 of her earned income when others earning exactly $6,000. are taxed $15.

At the outset, it must be understood that courts do not test the constitutionality of taxing statutes by subjective standards. The issue before us is the constitutionality of the tax measure - not whether the rate structure is the most fair, or the most practical, or the most wise. There probably has never been a revenue statute which, by design or oversight, has not favored some group and laid the basis for a claim of unfairness to others. See Stephan v. State Tax Commissioner, Del. Supr., 245 A. (2d) 552 (1968).

In examining the Code for conformity with the Equal Protection Clause, there is but one test: Is there a reasonable basis for the classifications made as between taxables? If there is, and if it cannot be said that the classifications as between taxables are clearly arbitrary and capricious, the test of equal protection of the laws is met. There is no "iron rule of equality" imposed by the Fourteenth Amendment. Allied Stores of Ohio, Inc. v. Bowers, Tax Commissioner, 358 U. S. 522, 79 S. Ct. 437 (1959).

Judge Rodney admirably stated in Conrad v. State, 2 Terry 107, 16 A.(2d) 121 (1940), the controlling guidelines to be applied here:

> "It is generally agreed that a classification for the purpose of taxation, not purely arbitrary but based on reason, is entirely proper; and that uniformity as applied to occupation taxation simply means taxation that acts alike on all persons similarly situated. The differences upon which the classification is based need not be great or conspicuous; nor is it necessary that the court perceive the precise legislative reason for the classification, for if any state of facts can reasonably be conceived that would sustain the classification, the existence of that state of facts at the time of the enactment of the law must be assumed. There is, of course, no fixed standard by which the reasonableness of the classification can be measured, and each case must stand upon its own particular facts. The Legislature has a broad discretion in the matter of classification, and the courts will not assume to review the classification unless it is clearly arbitrary. The courts will not assume to substitute their judgment as to what is reasonable and proper, or whether the classification is the wisest or best that could be made, and the classification will be held valid if the court is able to see that the Legislature could regard it as reasonable and proper without doing violence to common sense.
>
> "The constitutionality of the act is, of course, presumed; and it follows that the reasonableness of the classification is also presumed, and that the burden rests upon the objector to show that it is unreasonable. See 1 Cooley Taxation, 334."

These guidelines have been stated and reiterated in various forms and wi varying degrees of emphasis by the United States Supreme Court. A good summary of the applicable principles appears in Madden v. Commonwealt of Kentucky, 309 U. S. 83, 88, 60 S. Ct. 406, 408 (1940) as follows:

> "The broad discretion as to classification possessed by a Legislature in the field of taxation has long been recognized. This court fifty years ago concluded that the Fourteenth Amendment was not intended to compel the states to accept an iron

> rule of equal taxation, and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a Legislature in formulating sound tax policies. Traditionally, classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, Legislatures possess the greatest freedom in classification. Since the member of a Legislature necessarily enjoys a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and aggressive discrimination against particular persons and classes. The burden is on the one attacking the Legislative arrangement to negate every conceivable basis which might support it."

See Allied Stores of Ohio, Inc. v. Bowers, Tax Commissioner, 358 U. S. 522, 79 S. Ct. 437 (1959).

Having in mind the rules thus stated, governing the judicial review of classifications in revenue measures, we are not persuaded that the Code classifications before us are clearly without reasonable and proper bases or are clearly arbitrary. It is manifest, we think, that the classifications were based upon the City Council's conception of a wage earner's ability to pay this new and additional tax. We take judicial notice that a wage level below $4,000. per annum for an urban family of four has been generally recognized as the poverty level; and that the range between $4,000. and $6,000. for such family unit is marginal. We take judicial notice that the Federal Government's poverty index at the end of 1968 allowed a non-farm family of four $3,553. per year, or $2.43 per person per day, to meet basic, essential living expenses; that in contrast to the poverty index, a United States Department of

Labor study in 1969 found that an urban American family of four needed at least $4.05 per person per day, or more than $5,900. per year, to meet its basic needs.*

It is conceivable that the Mayor and Council of Wilmington were aware of statistics such as these, and that the legislative intent was to give a "tax break" to wage earners in those marginal income areas so close to the recognized borders of economic hardship. By the classifications adopted, the City Council commenced the tax obligation at the $4,000. level; it could have reasonably concluded, we think, that the taxable earning less than that amount was economically unable to contribute to this new levy. The Council imposed a reduced tax burden upon the taxable earning between $4,000. and $6,000.; it could have reasonably concluded, we think, that wage earners in this marginal range could be called upon for only a partial contribution without undue economic hardship. And, obviously, the legislators concluded that wage earners making more than $6,000. could afford the new tax of $30. per year on that amount without economic hardship.

Under the circumstances, we cannot say that the Code classifications were clearly unreasonable or clearly arbitrary. The plaintiff has failed to sustain her burden of negating every conceivable basis which might support

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* Report of the President's Commission on Income Maintenance Programs. N. Y. Times, November 13, 1969, p. 34.

the classifications as reasonable and proper "without doing violence to common sense." The broad discretion vested in the legislative branch of government for the creation of tax classifications was not abused in this case.

We conclude, therefore, that the requirements of equal protection of the laws have not been violated by the Code, as asserted by the plaintiff here.

In reaching this decision, we are mindful of various other arguments tendered by the plaintiff: She says that it is arbitrary and unreasonable to attempt to classify on the basis of ability to pay the tax where gross income rather than net income is used as the base. The argument is attractive for its practicality; true it is that some have less left out of $6,000. gross income than others have out of $4,000. But, again, the test is overall reasonableness, not practical application in individual cases. We are not persuaded that it is unreasonable to conclude as a broad, general rule, in the light of known basic minimum needs for an urban family, that a taxable earning more than $6,000. per year will be able to meet the new $30. per annum tax burden without undue economic hardship; that a taxable earning less than $6,000. but more than $4,000. per year will have a lesser capability for economic reasons, but may bear a reduced share of the burden; and that a taxable earning less than $4,000. will not be able to meet any part of the new tax load without undue economic hardship. We think that this was undoubtedly the rationale of the legislators; and we think it quite reasonable.

Another feature of the Code labeled arbitrary and capricious by the plaintiff is the change of tax rate which occurs when one cent more than $4000., and one cent more than $6,000., is earned. The answer to this seemingly arbitrary classification is simply the necessity of the law in the creation of tax classifications. That necessity was well stated by Justice Holmes in Louisville Gas & Electric Co. v. Coleman, 277 U. S. 32, 41, 48 S. Ct. 423, 426 (1928):

> "When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark."

Judicial approval of tax classifications differentiated by small amounts is not unusual: In Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 18 S. Ct. 594 (1897), for example, the legatee of $10,000. was subject to a three percent tax giving him a net of $9,700., whereas the legatee of $10,001. was subject to a four percent tax and would receive only $9,600.96. The United States Supreme Court held the classification reasonable. And in Clark v. Titusville, 184 U. S. 329, 22 S. Ct. 382 (1901), the Court sustained as reasonable a $5.00 tax upon merchants having gross sales of $1,000. or

less, and a $10. tax upon those similarly situated having sales of $1,001. or more. Similarly, in Metropolis Theater Co. v. Chicago, 228 U. S. 61, 33 S. Ct. 441 (1912), the Court approved as reasonable a tax of $1,000. upon theaters charging admissions of $1.00 or more, but only $400. upon theaters similarly situated charging admissions of less than $1.00 and more than 50 cents.

We have concluded, therefore, that the classifications were not rendered clearly improper or unreasonable by reason of the minimal amounts which were made the bases of changes in the tax rates.

Finally, on this point, the plaintiff relies heavily upon Kalian v. Langton, ___ R. I. ___, 192 A. (2d) 12 (1963). There, the Court held violative of the Equal Protection Clause, and arbitrarily discriminatory in favor of small businesses, the immunity from a tax on businesses the gross receipts of which were less than $30,000., while subjecting businesses the gross receipts of which were in excess of $30,000. to a tax on all but $5,000. of the total receipts. As we have noted, there is no fixed standard by which the reasonableness of a classification can be measured. Each case must be considered on its own facts. We decline to adopt to this case the rationale of the Kalian case.

For the reasons stated, we hold that the Code classifications are reasonable; that the Code acts alike upon all persons similarly situated within each classification; that, therefore, it is not violative of the equal protection

of the laws.

Accordingly, Questions 1 and 2 are answered in the negative.

III.

Question No. 3 raises the question of whether the Code violates Article 8, § 1 of the Delaware Constitution which provides that "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax * * *."

The standards and guidelines for this guaranty of uniformity are substantially the same as those used for testing compliance with the equal protection guaranty. Under either guaranty, the constitutionality of the measure is to be determined by the reasonableness of the classification attempted. Conrad v. State, 2 Terry 107, 16 A.(2d) 121 (1940).

We have found the classifications reasonable. It follows, in our opinion, that the Code is in compliance with the uniformity requirement of the Delaware Constitution.

In this connection, we have considered In re Zoller's Estate, 3 Storey 448, 171 A.(2d) 375 (1961), certain language of which is relied upon by the plaintiff for the proposition that a graduated tax, the graduations of which depend entirely upon the total amount or value held, would violate the uniformity guaranty of the Delaware Constitution if the subject of the tax is property. The Zoller case involved a Statute imposing fees for the services

of the Register of Wills, the amount of the fee being a varying percentage of the value of the estate. The cited case is not in point.

Question No. 3 is answered in the negative.

IV.

Finally, the plaintiff contends that the Code violates the provision of Article 8, § 1 of the Delaware Constitution that "the General Assembly may by general laws exempt from taxation such property as in the opinion of the General Assembly will best promote the general welfare." The argument is that the City Council's exemption of taxables earning less than $4,000. constitutes a fatal violation of that provision. We disagree.

By the Enabling Act referred to above, the General Assembly delegated to the legislative body of the City of Wilmington a general and unrestricted power to tax. Necessarily implied in the broad delegation of taxing power was the power to determine, within the one percent limitation of the Enabling Act, the amount of taxes to be raised, the rate of taxation, and all other necessary and essential elements of the power to tax, including the power to carve out reasonable and proper exemptions as "will best promote the public welfare." See Brennan v. Black, 34 Del. Ch. 380, 104 A. (2d) 777 (1954). The power to grant such exemptions was not specifically withheld or limited by the Enabling Act. Inherent in a delegation of the power to tax, in our opinion, must be the power to create reasonable and proper exemptions, unless that power

is expressly withheld by the General Assembly. The sound implementation of a delegated taxing power requires such a rule and infringes no constitutional limitation. See Carmichael v. Southern Coal & Coke Co., 301 U. S. 495, 57 S. Ct. 868 (1937).

We hold, therefore, that by necessary implication, the power to grant reasonable and proper exemptions, as "will best promote the public welfare", must be deemed to have been delegated by the General Assembly to the City Council in this case.

The plaintiff relies upon cases holding that a delegation of legislative power to an administrative body is unlawful unless proper standards and guidelines are established in the act of delegation, citing State ex rel Morford v. Tatnall, 41 Del. 273, 21 A. (2d) 185 (1941); Darling Apartment Company v. Springer, 25 Del. Ch. 98, 15 A. (2d) 670 (1940); In re Opinion of the Justices, 54 Del. 366, 177 A. (2d) 205 (1962); In re Opinion of the Justices, Del. Supr., 246 A. (2d) 90 (1968). These cases and the rule for which they stand are not in conflict with our conclusion that, in the instant case, the General Assembly is deemed to have passed on to the legislative body of the City the power of exemption, subject however to the constitutional standard and guideline, also necessarily implied, that any such exemption must "best promote the general welfare." We think that, although general, the guideline is sufficient to sustain the validity of the delegation of power to a municipal

legislative body. See New York Central Securities Corp. v. United States, 287 U. S. 12, 53 S. Ct. 45 (1932) where "the public interest" was held a sufficient standard. See also Crawford on Statutory Construction, § 15, p. 26; 1 Davis, Administrative Law Treatise, § 2.03.

For the reasons stated, we answer Question No. 4 in the negative.