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THE "INDIVIDUAL" EXEMPTION FROM THE ILLINOIS PERSONAL PROPERTY TAX

INTRODUCTION

Under pre-1971 Illinois law an ad valorem personal property tax was levied against all personal property located within the state.\(^1\) On November 3, 1970, the Illinois electorate voted on an amendment to the 1870 Illinois Constitution, which would limit the broad application of the tax if approved. The referendum stated that “the taxation of personal property by valuation is prohibited as to individuals.”\(^2\)

The phrase “as to individuals” seemed straightforward and each voter undoubtedly understood that he was determining whether or not he would continue to incur personal property taxes by casting his ballot. It was less likely, however, that the voter possessed an understanding of the amendment’s scope and effect beyond an expectation of his personal relief from the burden of the tax.\(^3\) The local officials responsible for collecting the tax faced a more formidable task in their interpretation of the phrase in the wake of overwhelming voter approval of the amendment.\(^4\) They were charged with the duty to determine who were “individuals” exempt from taxation, and who were “non-individuals” still liable for the tax. The distinction between these classes was not readily apparent, and the collectors understandably sought outside assistance. As a result, the language of the amendment to the 1870 Constitution was the subject of an Attor-

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1. ILL. REV. STAT. ch. 120, § 499 (1971):
The property named in this section shall be assessed and taxed except so much thereof as may be, in this act, exempted:
First: All real and personal property in this state.
Second: All moneys, credits, bonds or stocks and other investments, the shares of stock of incorporated companies and associations, and all other personal property used, held, owned or controlled by persons residing in this state.

2. ILL. CONST. art. IX-A (1870) (emphasis in the original). Although the amendment was voted on in November, 1970, it was not to take effect until January 1, 1971, some six months before the new, 1970 Constitution was to become law. See also S.J. RES. 30, Ill. S. Jour., 76th Gen. Assem., 1969 Sess., vol. II at 3476.

3. See, e.g., the statement of Mr. Strunck during the constitutional debates to the effect that much confusion existed about the meaning of the phrase “as to individuals” in the referendum, but that the “voter is entitled to vote as he sees fit on his interpretation of the word ‘individual.’” Mr. Strunck did not direct himself to the question of how the voter should see fit to decide the interpretation, since the delegates were themselves unable to agree. RECORD OF PROCEEDINGS, SIXTH ILL. CONSTITUTIONAL CONVENTION, VERBATIM TRANSCRIPTS, vol. III at 2055 (1969-70) [hereinafter cited as Verbatim Transcripts].

4. The amendment passed by a majority of in excess of 7 to 1. Chicago Tribune, November 5, 1970, § 1, at 14, col. 3.
ney General’s Opinion, an opinion by the Cook County State’s Attorney, a further clarification by the General Assembly, and numerous lawsuits.

To confuse matters further, the language of the amendment proved to be of great concern to the delegates of the 1970 Constitutional Convention, who had convened to draft a new Illinois Constitution prior to the referendum vote. This concern was felt and expressed by those delegates who were closely concerned with the proposed changes in the personal property taxation section of the new Revenue Article. Throughout the constitutional debates the delegates were confronted with uncertainty both as to the eventual outcome of the referendum vote and as to the definition of the word “individual.” If the amendment passed, they most certainly did not want the new constitution to reimpose the personal property tax on “individuals.” To do so would place the Revenue Article of the 1970 Constitution in jeopardy of not gaining voter approval. Moreover, if the delegates

8. RECORD OF PROCEEDINGS, SIXTH ILL. CONSTITUTIONAL CONVENTION, COMM. PROPOSALS, VOL. VII AT 2129-42, 2170-83 (1969-70) [HEREINAFTER CITED AS COMM. PROPOSALS].
9. The majority of the delegates felt that the referendum would be voted into law. However, due to the remote possibility that it might not be, attempts were made throughout the convention to insert language which would remain viable regardless of the outcome of the November 3rd referendum vote. See, e.g., Verbatim Transcripts, vol. III at 2068 (statement of Mr. Tomei); id., vol. V at 3888 (statement of Mr. McCracken). See also the statement of Mr. Scott during the convention: [I]f the people [vote for the amendment to the 1870 Constitution] on November 3, and then if they come on December 8 or in January to vote for our proposal and it puts that tax back on them, do you think they are going to vote for [the 1970 Constitution]? No, they are not. Id., vol. III at 2040.
10. “[T]here is a proposition on the ballot this fall. It is one of those weird and wonderful products of the General Assembly that nobody is quite sure what it means.” Verbatim Transcripts, vol. III at 2039 (statement of Mr. Elward). “[T]he amendment in November is clouded with so much uncertainty as to its application that we will be years, we fear, trying to figure out what it really means.” Id. at 2038 (statement of Mr. S. Johnson).
11. See, e.g., the statement of Mr. S. Johnson during the constitutional
inserted language exempting "individuals" from the tax, and the referendum was later defeated, the 1970 Constitution would serve to decrease local tax revenues and again serve to frustrate the voters' desires.

These problems were solved by the new Revenue Article which provided that "[a]ny ad valorem personal property tax abolished on or before the effective date of [the 1970] Constitution shall not be reinstated." This language insured that the result of the referendum vote would be retained under the new constitution. It also relieved the delegates from making a determination of precisely to whom the phrase "as to individuals" referred. This determination would have to await the courts.

Another difficult problem confronting the delegates was a suggestion made by certain members of the revenue committee to abolish all personal property taxes and not simply those levied upon "individuals." It was widely recognized that the ad valorem personal property tax was unfair, unworkable, and impossible to administer equitably. Despite these evils, a

convention:

[I]f the voters believe that the language of the [1970] constitution is so vague as to have invalidated [the 1870 constitutional amendment], we will be in deep trouble as far as getting the revenue article passed.

Verbatim Transcripts, vol. III at 2038. See also id. at 2039, 2040, and 2153.

12. ILL. CONST. art. 9, § 5(b) (1970).

13. "[T]he first sentence of our amendment takes into account [the amendment to article IX of the 1870 Constitution] and puts our stamp of approval on [it]." Verbatim Transcripts, vol. III at 2038 (statement of Mr. S. Johnson). The 1970 Constitution was to take effect on July 1, 1971. The amendment to the 1870 Constitution, if approved, would take effect on January 1, 1971. Therefore, since the personal property tax would be abolished "as to individuals" before the effective date of the 1970 Constitution, it could not later be reinstated on "individuals" as a class.

14. See note 10 supra.

15. See Comm. Proposals, vol. VII at 2133-37. This desire to eliminate the personal property tax was originally opposed by many of the committee drafting the new Revenue Article. This opposition resulted in the provision for the replacement revenue:

Several members of this Committee believe that the new constitution should entirely prohibit the ad valorem taxation of personal property. Other members of the Committee believe that the loss of all personal property tax revenue would create such a serious problem for local government that it is out of the question to mandate exemption of all personal property.

Id. at 2134-35.

16. "[T]he experts . . . do not criticize the philosophy that personal property should not be taxed, but rather criticize the administration of the tax . . . ." Verbatim Transcripts, vol. III at 1909 (statement of Mr. Karns). See also id. at 1912 (concerning the amounts and percentages actually collected from the personal property tax). "[T]he personal property tax in Illinois—as elsewhere—is a scandal." Simeon E. Leland, MEMORANDUM ON THE IMPROVEMENT OF THE PROPERTY TAX, Report of Governor's Revenue Study Committee 1968-69, 175 (1969). "Although it has been estimated that from one-half to two-thirds of all property in the state is in the form of personal property of various kinds, only 20 per-
majority of the committee knew that the State of Illinois could not afford to eliminate the tax unless the legislature replaced the revenue which would be lost to local governments. In order to solve these problems, the delegates reached a compromise.

The compromise language contained in section 5(c) of Article IX of the new constitution provides that all personal property taxes are to be abolished by January 1, 1979, and that replacement taxes must be imposed which fall solely on those classes relieved of paying personal property taxes after January 2, 1971. This provision raises the question of whether an exploration of who comprises the class of "individuals" is necessary. Since it is apparent that the tax will be completely eliminated in 1979, it would seem that all classes will be relieved of the personal property tax in that year.

The elimination of the tax, however, may never occur, and the personal property tax could remain in Illinois indefinitely. This argument has been made by a delegate to the 1970 Constitutional Convention, who believes that section 5(c) of Article IX of the 1970 Constitution creates a mandate to the General Assembly rather than a limitation. If the section is a mandate of property tax revenue is produced by personal property taxes . . . . " BRADEN & COHN, THE ILLINOIS CONSTITUTION: AN ANNOTATED AND COMPARATIVE ANALYSIS 416 (1969). "[The personal property tax is] a nefarious, vicious, unenforceable tax. . . ." Verbatim Transcripts, vol. V at 3834 (statement of Mr. Connor).

There was little debate on simply ending the personal property tax altogether unless the resulting loss of revenue could be made up in some other way. It was stated during the debates that 20 percent of state revenue was derived from the personal property tax, but that some local districts received as much as 50 percent of its revenue from the tax. Verbatim Transcripts, vol. III at 1908 (statement of Mr. Karns). Some of these local districts had up to 80 percent of its tax base in the form of personal property. Id., vol. V at 3829 (statement of Mr. Garrison).

The personal property tax, like the real property tax, is a strictly local revenue source. The delegates, therefore, did not want to see the local taxing districts lose the personal property tax revenue, and thereby lose the control over the school system which inevitably accompanies fiscal control.

18. ILL. CONST. art. IX, § 5(c) (1970): On or before January 1, 1979, the General Assembly by law shall abolish all ad valorem personal property taxes and concurrently therewith and thereafter shall replace all revenues lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes subsequent to January 2, 1971. Such revenue shall be replaced by imposing statewide taxes, other than ad valorem taxes on real estate, solely on those classes relieved of the burden of paying ad valorem personal property taxes because of the abolition of such taxes subsequent to January 2, 1971. . . .

19. This distinction is vital. A mandate to the General Assembly is generally not enforceable in a court of law. A limitation, however, as the name implies, is a restriction on the legislative power and is, therefore, legally enforceable. The position that merely a mandate was created is argued in Kamin, Constitutional Abolition of Ad Valorem Personal Property Taxes: A Looking-Glass Book, 60 ILL. B.J. 432. Com-
date, the legislature will have no affirmative duty to eliminate the tax and cannot be forced to do so in a court of law. In this case, the tax will remain in force and only those "individuals" relieved of the tax due to the amendment to the 1870 Constitution will remain exempt from personal property taxation. A determination, then, of whom comprises the class of "individuals" will be of continuing relevance and importance.

There is of course the possibility that the legislature will either follow the constitutional mandate or treat the section as if it were a limitation, and thereby abolish the ad valorem personal property tax in its entirety. In such a case the definition of who is in the class of "individuals" will remain crucial because of the requirement for the replacement revenue. Since the replacement tax can be imposed "solely on those classes relieved of the burden of paying ad valorem personal property taxes because of the abolition of such taxes subsequent to January 2, 1971," "individuals" will not be liable for replacement taxes because their burden of personal property taxation was eliminated on January 1, 1971.

Given the concern expressed over the meaning of the word "individuals" in the constitutional convention, and the obvious tax ramifications depending upon whether an entity was an "individual," it is clear why there has been litigation on the issue. The judicial definition of the phrase has proven to be elusive, however, and the question has been before the Illinois Supreme Court on three separate occasions. Even the most recent decision leaves the serious question of whether the legislature's intent has been frustrated.

The court's greatest difficulty has centered around the trust relationship and determining the circumstances under which per-

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20. ILL. CONST. art. IX, § 5 (c) (1970). See note 18 supra. While the decision of the legislature to abolish the personal property tax is generally deemed a mandate (see note 19 supra), it has been argued that if the General Assembly chooses to follow the mandate and abolishes the personal property tax, it will then be faced with a limitation. This judicially enforceable requirement would force the legislature to provide replacement revenue for all revenue lost by reason of the abolition of the personal property tax. Kamin, Constitutional Abolition of Ad Valorem Personal Property Taxes: A Looking-Glass Book, 60 Ill. B.J. 432.


22. See note 2 supra.

23. Verbatim Transcripts, vol. III at 1910-11 (statements of Mr. Scott and Mr. Karns).


personal property held in trust is exempt from taxation. When the electorate voted on the amendment to the 1870 Constitution they voted to relieve themselves from the tax in their personal capacity. A vast majority of them, however, had never acted as an executor of a decedent’s estate, or as a trustee or custodian of a minor’s or incompetent’s trust. While prior to the amendment’s passage such a trustee would have been liable for the personal property tax, a question of whether he remained so liable arose after passage.

Although the court has easily defined “individual” as an ordinary person owning non-business, non-income producing property, thereby excluding corporations from the personal property tax, a large gray area remains. In this area is the trust, wherein either a corporate or non-corporate trustee holds personal property for an “individual” beneficiary.

Through an examination of recent cases, it will be determined whether the courts have succeeded in reaching logically supported conclusions with respect to the issues posed by the use of the word “individual” in the amendment. Prior to assessing the outcome, however, the legislative history must be examined to determine if the courts have carried out the legislative intent.

**Legislative Attempts at Definition**

The phrase “as to individuals” or the word “individuals” is neither used nor defined in the Revenue Article of the 1870 Constitution, except in the amendment itself. Even the provisions of the Revenue Act of 1939, which implement the tax provided for in the revenue article, do not employ the word. Without prior usage and interpretation upon which to rely, the ambiguities in the phrase “as to individuals” require an examination of legislative intent.

Several purposes existed for adding the amendment to the 1870 Constitution. The personal property tax was inequi-
and it was widely recognized that all personal property tax returns omitted or understated the value of property. Rarely, if ever, were these inaccuracies prosecuted. Furthermore, the legislature thought that the public's displeasure over the newly enacted state income tax would be subdued somewhat by abolishing the personal property tax.

A purpose also existed for restricting the relief solely to "individuals." The legislature was concerned about the revenue which would be lost if the personal property tax was totally abolished. Corporations had historically paid between sixty and eighty percent of the personal property tax, and the elimination of that revenue, even with the income tax, would have been fiscally irresponsible.

An examination of the purposes of the amendment, therefore, yields only two broad generalizations. The tax was not abolished as to corporations, and the tax was abolished for an ordinary person owning non-business property. Obviously many forms of ownership do not fit into these classifications, but the amendment's purpose does not furnish any further indication of legislative intent.

Although it would seem reasonable to use judicial interpretations of the word "individual" to resolve questions left unanswered by the legislative history, no pre-1971 cases in Illinois had adequately defined the phrase. While cases in other jurisdictions had dealt with the word "individual," there were no authoritative interpretations.

30. See note 16 supra.
32. When originally introduced upon the floor of the legislature, the amendment would have eliminated all personal property taxes. This explains the use of italics for the phrase "as to individuals." See note 42 infra.
33. See note 17 supra.
34. Verbatim Transcripts, vol. III at 1912 (statement of Mr. Scott). Ten corporations paid 50 percent of the personal property tax, while one alone, Illinois Bell, paid 10 percent of the tax. Id. vol. III at 2052 (statement of Mr. Garrison).
35. Despite numerous judicial interpretations of the word "individual" which included corporations (see note 37 infra), a legislative intent to exclude them from the tax relief is evident from the amendment.
36. The explanation, which was prepared by the legislature and which accompanied the text of the amendment on the ballot, stated that the amendment "would not affect the [personal property] tax levied against corporations and other entities not considered in law to be individuals." Ill. S. Jour., 76th Gen. Assem., 1970 Sess. at 4203 (emphasis added).
37. Lupia's Estate v. Marcelle, 214 F.2d 942 (2d Cir. 1954) (a federal statute exempted "individuals" who died in World War I from income taxation in the year of death; a serviceman's share of partnership proceeds earned between the time of his death and the end of the year were held to have been earned by an "individual," and were not, therefore, taxable); Rusk v. Comm'r, 53 F.2d 428, 430 (7th Cir. 1931) ("[w]e see no reason why the word 'individual', . . . should not be construed to refer to the executors as well as the decedent; for, while they are acting in
In order to answer the growing problem caused by the lack of any acceptable definition of the phrase "as to individuals," the Senate adopted a resolution with which the House of Representatives concurred. The resolution stated "that by the use of the phrase 'as to individuals', this General Assembly intended to mean a natural person. . . ."38 By limiting the class of "individuals" to "natural persons," the legislature succeeded in adding another factor to the issue. While the General Assembly probably thought that its intent was made more clear by the resolution, the courts have struggled equally as hard with the phrase "natural persons."39

THE JUDICIAL DEFINITION OF "INDIVIDUAL"

The constitutionality of the amendment to the 1870 Constitution was tested shortly after it was approved. Lake Shore Auto Parts Co. brought a class action on behalf of all corporations and "non-individuals" subject to personal property taxation,40 and alleged that the amendment violated the equal protection clause of the United States Constitution. Lake Shore felt that Illinois was discriminating against the corporate form of business ownership by limiting the personal property tax relief to "individuals." The Illinois Supreme Court agreed with the plaintiffs' allegations and accordingly held the amendment to be unconstitutional.41

their official capacity as executors, they are nevertheless individuals. . . ."; In re Button Co., 137 F. 668, 672 (D. Del. 1904) ("'individual' [is] equivalent to 'person,' and as such include[s] a corporation . . . ."); Nat'l Acct'g Co. v. Dorman, 11 F. Supp. 872, 873 (E.D. Ky. 1935) ("[t]he word 'individual' . . . is broad enough to embrace not only single natural persons, but partnerships and corporations as well, unless the context of the statute repeals this broader meaning."); Nelson v. United States Fire Ins. Co., 259 Cal. App. 2d 248, 250, 86 Cal. Rptr. 115, 118 (1968) ("the word 'individual' is broad enough to embrace corporations and partnerships, and . . . where the context does not indicate otherwise, the word includes corporations, partnerships and associations. . . ."); Forrester v. Trust Co., 15 S.E.2d 559 (Ct. of App., Ga. 1941) ("it is clear that fiduciaries and individuals are governed in effect alike by the provisions relating to individuals . . . ."). But see Hadden v. South Carolina Tax Comm., 190 S.E. 249 (Sup. Ct. S.C. 1973) (legislative intent expressly showed a desire to eliminate fiduciaries, partnerships, and corporations from the term "individual"); Primm v. Fort, 23 Tex. Civ. A. 605, 57 S.W. 972 (1900).


39. Even the delegates to the convention realized that defining "individuals" as "natural persons" would not solve the problem. During the convention Mrs. Leahy stated that "even the resolution . . . didn't clear up all the ambiguity. . . ." Verbatim Transcripts, vol. III at 2055.


41. Id. at 151, 273 N.E.2d at 599.
The United States Supreme Court reversed the decision, and reinstated the constitutional amendment which abolished personal property taxes "as to individuals." Although arriving at different results, the major holding of both courts on the issue of equal protection suffers from serious defects. In both Lake Shore I and Lehnhausen, Lake Shore Co. alleged invidious state discrimination against its class of "non-individuals" and in favor of the class of "individuals" exempted from the personal property tax by the amendment to the 1870 Constitution. Since the essence of equal protection is that a governmental classification must be reasonable, it would seem mandatory for a sound

42. The usual effect when a tax is held unconstitutional is to enjoin the collector from further collections. In Lake Shore I, however, the Illinois Supreme Court reinstated the personal property tax on all classes, rather than eliminating collections altogether. Lake Shore Co. contended before the United States Supreme Court that this action deprived it of its victory. Lake Shore Co., therefore, urged the Court to affirm the decision of the Illinois Supreme Court, but in so doing to eliminate the tax as to all classes liable for it.

43. Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356 (1973) [hereinafter referred to as Lehnhausen].

44. A secondary issue presented to and rejected by the Illinois Supreme Court raised the difficulties and complexities which the legislature created by its reference to "individuals." The non-corporate plaintiffs established that two personal property tax forms were then used in Illinois for non-corporate taxpayers. One was filed by "individuals, partnerships, and unincorporated associations owning or controlling personal property used in agriculture, and all individuals owning or controlling any personal property which is not owned or used in connection with any business (other than agriculture) * * *" Lake Shore Auto Parts Co. v. Korzen, 49 Ill. 2d 137, 146-47, 273 N.E.2d 592, 597 (1971).

The plaintiffs argued that the legislature had intended a technical meaning of the phrase "as to individuals" by placing it in italics, and had desired that all those persons or organizations required to fill out the first of the two forms be exempted from the personal property tax. Had this argument been successful, the personal property tax would have been abolished only as to "natural persons owning personal property not used in business." Id. at 147, 273 N.E.2d at 597. Any natural person owning property for a business purpose would remain liable for the tax. The court rejected this contention, however, since the italicization was caused by the addition of the phrase "as to individuals" after the introduction of the original amendment on the floor of the legislature. As originally proposed, the personal property tax would have been totally abolished, so the italicization emphasized that the amendment restricted relief solely "as to individuals."

45. In Lake Shore I the Illinois Supreme Court found the amendment to the 1870 Constitution in contravention of the equal protection clause, relying upon Quaker City Cab Co. v. Pennsylvania, 277 U.S. 389 (1928). In this case the United States Supreme Court held that a gross receipts tax, which was levied upon taxicabs owned by corporations, but not those owned by individuals, was unconstitutional on equal protection grounds.

Unable to distinguish Quaker City from the facts before them, the Court in Lehnhausen held that Quaker City was "only a relic of a bygone era." Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 365 (1973), and held that "making corporations and like entities liable for ad valorem taxes on personal property but not individuals does not transcend the requirements of equal protection." Id. at 364.

46. "[T]he classification must be reasonable, not arbitrary, and must
holding that both classes be identified specifically. The Illinois Supreme Court and the United States Supreme Court, however, did not extend their opinions to such a determination.

The most specific statement by the Illinois Supreme Court was that "ad valorem taxation of personal property owned by a natural person . . . is prohibited." Unfortunately, the term "natural person," as used in the Senate Resolution, raised as many ambiguities as did the term "individuals." Therefore, the Lake Shore I decision added nothing to previously announced legislative intent, and, like the legislative definition, it was insufficient to satisfy the reasonableness test.

While the language of the Supreme Court indicated that the Court would reverse based on its own construction of the word "individual," the opinion abounds in broad generalizations and fails to provide sufficient support to satisfy the equal protection test. So, although the amendment to the 1870 Constitution was held constitutional by the Supreme Court, both the United States Supreme Court and the Illinois Supreme Court rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).


48. See notes 38, 39, and accompanying text supra.

49. The Supreme Court stated in its opinion that the Illinois Supreme Court construed personal property taxes on individuals to mean "'ad valorem taxation of personal property owned by a natural person . . .', As so construed, the Illinois Supreme Court held that the tax violated the Equal Protection Clause of the Fourteenth Amendment." Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 358 (1973) (emphasis added).

The Court proceeded no further in its interpretation of the word "individual," and in fact may have been prevented from doing so. In the amicus curiae brief of Richard B. Ogilvie, then Governor of Illinois, it was contended that the Supreme Court was bound by the Illinois Supreme Court's determination of the word "individual" in Lake Shore I. Erie R. Co. v. Tompkins, 304 U.S. 64 (1938) and Madden v. Commonwealth of Kentucky, 309 U.S. 83 (1940) were cited as support for this contention. Amicus Curiae Brief in Support of Petition for Writ of Certiorari, Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356 (1973). The brief of other amici curiae, however, proceeded on the assumption that the U.S. Supreme Court was free to determine the definition of "individual," as used in article IX of the 1870 Constitution. Amici Curiae Brief of the Corporate Fiduciaries Assoc. of Ill. at 4, id.

50. "When it comes to taxes on corporations and taxes on individuals, great leeway is permissible so far as equal protection is concerned." Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 360 (1973).

51. The Court did not attempt a definition and concluded that "making corporations and like entities liable for ad valorem taxes on personal property but not individuals does not transcend the requirements of equal protection." Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 364 (1973). The failure of the United States Supreme Court to undertake the necessary definition is more excusable than is the failure of the Illinois court. The U.S. Supreme Court found the amendment constitutional, and could justify its holding on Lindsey v. Natural Carbonic, 220 U.S. 61 (1911), which held that classifications are generally presumed reasonable.
failed to define who the "individuals" were that enjoyed the relief from the personal property tax.

Following reversal by the United States Supreme Court, the consolidated actions were remanded to the state court in order to interpret the word "individuals" in light of the prior two opinions. The parties were invited to submit memoranda setting forth their interpretations of "individuals," and the state supreme court issued its supplemental opinion based upon those briefs. Although this opinion did not provide an actual definition of the word "individual" beyond that expressed in Lake Shore I, it did mention actual taxable entities for the first time. Thus, the court held that partnerships, limited partnerships, joint ventures, professional associations, and professional service corporations were still subject to taxation.

The most surprising development in the opinion was the court's mention of the trust relationship, and the most startling statement was that "[t]rustees and other fiduciaries, whether corporate or not, do not own property as natural persons, and they were not exempted from taxation by article IX-A." The opinion provides no authority for this definition and no mention of this issue can be obtained from a search of the two opinions which the court was interpreting. The court simply overlooked the legislative history which established that "individual" trust beneficiaries were intended to be included in the benefits of personal property tax relief. By holding as it did, the Illinois Supreme Court succeeded in opening an entirely new problem.

"INDIVIDUAL" TRUST BENEFICIARIES AS "NON-INDIVIDUALS"

The opinion of the court in Lake Shore II included a dissent which raised the unfairness inherent in refusing to extend the personal property tax relief to "individual" trust beneficiaries. The dissent noted that the majority holding would operate to tax property of a decedent while held by the administrator or executor, but that such property would not be taxed before the decedent's death or after its distribution to that individual's heirs or legatees. Also, the dissent argued that the majority opinion would serve to diminish the public's use of trust relationships to shelter property from taxation...

52. Lake Shore Auto Parts Co. v. Korzen, 54 Ill. 2d 237, 296 N.E.2d 342 (1973) [hereinafter referred to as Lake Shore II].
53. Id. at 239, 296 N.E.2d at 343.
54. Id.
55. 54 Ill. 2d 237, 296 N.E.2d 342 (1973).
56. "As a result of this holding, personal property which would be exempt from taxation if the legal ownership were vested in individuals would lose its exempt status if held by a fiduciary, individual or corporate, while the beneficial ownership is vested in these same individuals." Id. at 239, 296 N.E.2d at 343.
57. Id. at 240, 296 N.E.2d at 343.
of trusts, especially those established under the Illinois Uniform Gifts to Minors Act.\(^\text{58}\) Whereas property held by an "individual" would be exempt from personal property taxation, if that same property ever constituted the corpus of a trust or custodianship, it would be assessed and taxed. The character of the beneficiary in such a situation would not determine the taxability. The solution suggested by the dissent was that "individual" beneficiaries are "natural persons" and are thereby exempt from personal property taxation.\(^\text{59}\)

Although the dissent argued that the majority opinion failed to achieve the intent of the personal property exemption amendment,\(^\text{60}\) it did not undertake an examination of the legislative events which formed the basis of this conclusion. Such an examination would have shown that the general legislative intent was to exempt "individual" beneficiaries from personal property taxation.

Illinois law provides that a proposed amendment to the state constitution must be accompanied by an argument supporting the provision and informing the voters of why it would be beneficial for them to approve the measure.\(^\text{61}\) The same law also authorizes a minority report. Accordingly, special legislative committees representing both the majority and the minority viewpoints were appointed and directed to prepare their respective arguments.

As originally drafted the minority's opposition argument stated that "[personal property] owned by natural persons is exempted from taxes; that . . . owned by corporations, trusts, etc., is subject to taxes."\(^\text{62}\) The final amended version of the minority report, which was presented to and approved by the General Assembly, was changed to read "[personal property] owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that . . . owned by corporations, etc., is subject to taxes."\(^\text{63}\) Every Illinois voter had the opportunity to read and consider this argument before he voted, so it is difficult to imagine that it was not the voter's intent that "natural person" beneficiaries be excluded from the personal property tax, as provided for in the minority argument. It seems even more difficult to argue that it was not the legislature's intent to exclude such beneficiaries from taxation. The majority would not have acquiesced and allowed the minority report to

\(^{58}\) *Id.*, 296 N.E.2d at 343-44.
\(^{59}\) *Id.*, 296 N.E.2d at 344.
\(^{60}\) *Id.*


include a misstatement of the effect of the new constitutional amendment.

Finally, Illinois officials responsible for collecting the personal property tax after the amendment’s passage sought interpretative assistance to determine who was included in the term “individuals.” In December of 1970 the Cook County State’s Attorney issued an opinion on the amendment which said “that personal property held in a fiduciary capacity for the benefit of natural persons shall not be subject to the personal property tax.” Shortly thereafter, the Illinois Attorney General issued an opinion letter which stated that “since the effect of the tax would be directly upon an individual beneficiary, such personal property would be exempt.”

Following passage of the amendment, it seemed that the amendment’s phrase “as to individuals” would exempt trust and custodianship beneficiaries who were “natural persons.” It appeared that the characterization of the trustee would have no bearing on the imposition of the tax.

The majority opinion in Lake Shore II, however, raised the issue of trusts and custodianships, and decided the issue in a totally unexpected manner, but failed to provide any support for its holding. While the dissent presented what had been the anticipated result, it also failed to present the support which existed for its position. This dual omission resulted in further judicial action.

The Illinois Supreme Court was afforded the opportunity to re-examine its treatment of trusts and custodianships in Hanley v. Kusper. By consolidating a beneficiary class action and an action by a corporate trustee, the court was able to consider nearly every conceivable type of trust and fiduciary relationship. The court undertook an examination of the history of the amendment to the 1870 Constitution, but emerged with a holding identical to that of Lake Shore II. The court for the second time “rejected the claim that all personal property held in trust for natural persons is exempt from taxation.” In a result which can only be described as mystifying, however, the court then found a legislative intent to exempt personal property from taxation in “situations . . . in which the natural person

66. 61 Ill. 2d 452, 337 N.E.2d 1 (1975).
67. In one of the two consolidated actions the court was asked to pass upon “‘all trusts, estates, guardianships, conservatorships or custodianships administered by plaintiff [bank] . . . for the benefit of natural persons.’” Id. at 456, 337 N.E.2d at 3.
68. Id. at 463, 337 N.E.2d at 7.
[beneficiary] who owns the property is prevented by law from dealing with it as a natural person."

Thus, the court found a legislative intent to exempt personal property from taxation where an "involuntary fiduciary relationship" is imposed upon a natural person. The court's interpretation thereby exempted three types of "involuntary fiduciary relationships": 1) the period during which an estate is administered; 2) when an incompetent is assigned a conservator; and 3) when a guardian or custodian is in charge of a minor's property. The court's rationale was that in those enumerated classes of natural persons, the particular persons were prevented by law from exercising property rights available generally to other natural persons.

The history of the amendment to the 1870 Constitution lacks any legislative intent to separate various types of trust or fiduciary relationships. The court nevertheless claims that its holding is based on a "review of the interpretive materials," but the court does not deny that it was persuaded by "underlying policy considerations." Since a review of the legislative materials fails to uncover any instances where the legislature differentiated among various types of trust, custodial, or conservator relationships, the opinion must be based solely upon those unspecified "policy considerations" in this area.

The court's opinion in Hanley suffers from serious omissions. In the two years intervening between Lake Shore II and Hanley, the legislature dealt with the unique problem created by trusts in the context of the personal property tax. In 1974 the General Assembly approved a bill which exempted all trustees from personal property taxation when the trust beneficiary is a natural person. The Governor of Illinois allowed the bill to become law without his signature on September 7, 1974. He stated in a message to the General Assembly that his intent in not signing the bill was to express to the Supreme Court the general disapproval of the court's decision in Lake Shore II, which denied an exemption when a trust beneficiary was a "natural person."

Although this Act exempting trustees from the personal property tax when held for a natural person was enacted after the passage of the amendment to the 1870 Constitution, the

69. Id., 337 N.E.2d at 7.
70. Id.
71. Id.
72. "All personal property held by a trustee, guardian, conservator, executor, administrator or other fiduciary to the extent held for the exclusive benefit of a natural person" is exempt from the personal property tax. Ill. Ann. Stat. ch. 120, § 500.21b (Smith-Hurd 1974).
73. Ill. S.B.A. NEWSLETTER, PROBATE AND TRUST, December, 1974, no. 2 at 1.
The legislature could not possibly have foreseen the trust issue. Therefore, despite the passage of this Act after the amendment, its represents the most valid expression of legislative intent. The supreme court in Hanley, however, concluded "that [the Act] contributes nothing of significance to a determination of the meaning of the ambiguous phrase." The failure of Hanley to supply reasons for not relying on or discussing the Act clearly establishes that the court most certainly relied on "policy considerations," rather than a review of the "interpretive materials."

The supreme court also summarily dismissed the legislature's minority argument opposing the amendment. The court's basis for ignoring this direct source of legislative intent was the fear that future minorities might intentionally insert language in their arguments to frustrate the purpose of the General Assembly and the voters. While in some circumstances the court's fear could be justified, there were no facts surrounding the attachment of the minority report to the amendment to establish that the majority did not agree with the minority's interpretation of the amendment's effect. Indeed, the very fact that the minority report was corrected could be taken to imply that objections to the original interpretation were raised by concerned members of the legislature.

CONCLUSION

The decision in Hanley represents the final resolution of the interpretive problems inherent in the word "individuals" in the amendment to the 1870 Constitution. Since the legislature chose in 1974 to exempt from the personal property tax "[a]ll personal property held by a trustee, guardian, conservator, executor, administrator or other fiduciary to the extent held for the exclusive benefit of a natural person," the issue raised and decided in Hanley will not arise again. The supreme court, therefore, will not be able to correct its misinterpretation of legislative intent, and the decision in Hanley will represent the state of the law in Illinois prior to 1974. This situation raises a difficulty which will arise if the legislature abolishes the personal property tax in 1979.

When the personal property tax is abolished, the replacement revenue must be derived solely from "those classes relieved of the burden of the [personal property] tax because of the abolition

74. 61 Ill. 2d 452, 459, 337 N.E.2d 1, 5 (1975).
75. See text accompanying notes 62 and 63 supra.
76. 61 Ill. 2d 452, 460, 337 N.E.2d 1, 5 (1975).
77. See text accompanying notes 62 and 63 supra.
78. ILL. ANN. STAT. ch. 120, § 500.21b (Smith-Hurd 1974).
79. See text accompanying notes 18-22 supra.
of such tax subsequent to January 2, 1971.80 The Hanley decision said that the only trust and fiduciary relationships exempted under the amendment to the 1870 Constitution were those in which the natural person is prevented by law from dealing with his property. These relationships, therefore, are the only ones which were effectively abolished before January 2, 1971, and are the only ones which will be exempted from the replacement revenue tax. The net result of Hanley is that a trust, other than those exempted in Hanley, would have been liable for the personal property tax until 1974, exempt from the tax until the personal property tax is abolished, and then liable for any tax enacted to provide the replacement revenue.

The Hanley decision raises the additional question of whether the amendment to the 1870 Constitution, as interpreted in Hanley, has created equal protection considerations. The decision of the United States Supreme Court in Lehnhausen resolved the equal protection problem inherent in exempting natural persons from a tax, but not exempting corporations. The Supreme Court's decision did not, however, reach the problem of exempting a natural person from a personal property tax for property owned individually, and not exempting a natural person's property when held for him by a trustee.

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80. ILL. CONST. art. IX, § 5(c) (1970).