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EXCISE TAXES AND THE UNIFORMITY CLAUSE OF THE CONSTITUTION OF KENTUCKY

E. G. TRIMBLE*

The pending litigation involving the ice cream tax and other features of the omnibus tax law emphasizes the difficulties into which the legislature is likely to run in levying excise taxes because of the restrictive features of the state constitution. Some of these difficulties may be avoided by a study of the decisions of the Court of Appeals in which it has defined the term "excise", explained the scope of legislative authority, and interpreted the clauses of the constitution which have the greatest bearing on the constitutionality of such taxes.

The sections of the constitution most concerned are Sections 171 and 181. Section 171 reads in part as follows:

"Taxes shall be levied and collected for public purposes only and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws."

Section 181 reads:

"The general assembly may, by general laws only, provide for the payment of license fees on franchises, stock used for breeding purposes, the various trades, occupations and professions, or a special or excise tax; and may by laws delegate the power to counties, towns, cities, and other municipal corporations, to impose and collect license fees on stock sold for breeding purposes, on franchises, trades, occupations and professions."

It will be observed that the uniformity clause occurs in Section 171 and obviously was intended to apply to property taxes, as the Court of Appeals said in an early¹ case. That the clause applies to the great body of excise taxes also is not so clear.

The term "excise" has a rather broad meaning today. The

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¹Strater Bros. Tobacco Co. v. Commonwealth, 117 Ky. 604, 78 S. W. 871 (1904).

Court of Appeals, in one case,² quoted Ruling Case Law defining it thus:

"Excises, in their original sense, were something cut off from the price paid on a sale of goods, as a contribution to the support of the government. The word has come to have a broader meaning and includes every form of taxation which is not a burden laid directly upon persons or property; in other words, excises include every form of charge imposed upon the performance of an act, the enjoyment of a privilege, or the engaging in an occupation."

Judge T. H. Cooley defines it as a tax levied "on the manufacture, sale, or consumption of commodities within the country, on licenses to pursue certain occupations, and on corporate privileges."³

The use made of the term in Section 181 of the constitution would seem to indicate that it meant to the framers of that document something different from the various license taxes on trades, occupations, professions, and franchises, for, after mentioning these, the phrase "or special or excise tax" occurs. The Court of Appeals has indicated that there is a difference between pure excises, and license and occupation taxes.⁴ But from the standpoint of the rules of law laid down in applying the uniformity clause it is not important whether the term is used in the narrow or broad sense. Nor is it necessary to attempt to classify the various license taxes coming under the term in its broad sense into trade, occupation, and profession taxes. The same legal principles apply and most of these types of taxes are license taxes levied for revenue and regulatory purposes, and are variously classed as occupation, trade, or franchise taxes.

The present constitution containing the uniformity clause was adopted in 1891, but it was not until 1908 in the case of *Hager v. Walker*⁵ that the court gave consideration to the question of whether the uniformity clause applied to excise taxes. It had, before that time, applied the clause in passing upon license taxes,⁶ but without writing elaborate or full opinions. In fact, the principle that taxes must be uniform seems always

² *State Tax Commission v. Hughes*, 219 Ky. 432, 293 S. W. 944, 945 (1927).

³ *Constitutional Limitations*, 7 ed. (1903), p. 680.

⁴ *Shanks v. Ky. Independent Oil Co.*, 225 Ky. 303, 8 S. W. (2d) 333 (1928).

⁵ 128 Ky. 1, 107 S. W. 254 (1918).

⁶ *Strater Bros. Tob. Co. v. Commonwealth*, 117 Ky. 604, 78 S. W. 871 (1904).

to have been applied by Kentucky courts even though the previous constitutions had no provision on the matter.⁷

The case of *Hager v. Walker* involved the constitutionality of a state law of 1906 imposing a license tax of twenty-five dollars on real estate agents doing business in cities of the first, second, and third classes and ten dollars on those doing business in cities of the fourth, fifth, and sixth classes. The law was challenged on the ground that it was not uniform because of the classification according to cities and also because agents in the rural sections were not taxed at all.

At the outset the court said it did not agree with counsel for the appellee that the uniformity clause "applies directly or specifically to the license fees that may be levied on franchises . . . trades, occupations, and professions mentioned in Section 181". Yet the contention was entitled to serious consideration as "indicating a purpose that all laws imposing taxes shall operate in a uniform manner".⁸

The court then pointed out that the legislature could authorize the cities of the various classes to classify the trades, occupations, and professions, and tax them separately. Cities of the different classes did not have to tax the same trade at the same rate. Nor did a particular city have to tax different trades at the same rate. "But the license fees imposed upon any particular trade, occupation or profession in any class of cities" said the court, "must be uniform in the sense that the same fee must be charged every person engaged in the particular trade, occupation or profession that is taxed."⁹ The legislature itself had the power, by general law, it continued, "to divide trades, occupations, and professions into classes, and to impose a different license fee upon each class that the trade, occupation, or profession may fairly and reasonably be divided into. To illustrate: Dealers in hardware might be divided into wholesale and retail dealers".¹⁰

Returning then to the law under consideration the court took up the question whether the tax must be uniform on all in

⁷ *City of Lexington v. McQuillan*, 9 Dana 513 (1839); *Bullitt v. City of Paducah*, 8 Ky. L. Rep. 810, 3 S. W. 802 (1887); *Rankin v. City of Henderson*, 8 Ky. L. Rep. 861, 7 S. W. 174 (1888); *Simrall v. City of Covington*, 90 Ky. 444, 14 S. W. 369 (1890).

⁸ 128 Ky. 1, 8, 107 S. W. 254 (1918).

⁹ *Id.* at 10.

¹⁰ *Id.* at 11.

the class in the sense that all had to pay the same tax regardless of the size of the city. "We do not believe it was contemplated by this section", the court continued, "that the General Assembly might impose a license fee for state purposes upon blacksmiths in one county and exempt blacksmiths in another." If some in an occupation or profession were taxed and others exempted the legislation "would not be general, but special or local, and forbidden by Sections 59 and 60 of the constitution". Such a construction the court thought was in "harmony with the dominant spirit of the constitution, which provides for uniformity in almost every subject it treats of . . .".¹¹

Another weighty reason, in the opinion of the court, in favor of uniformity "is the further consideration that it is important that the representatives of the people in the law-making department of the government shall all be directly interested in behalf of their constituents in laws involving the subject of taxation".¹² Some of course might not be properly interested if the members of the class taxed who lived in their districts were exempted, as might occur if a law did not have to apply alike to all in the occupation or profession.

The court went on to consider the history in the state of the principle of uniformity and stated that it was a rule "that is firmly embodied in the principles of constitutional law that have always obtained in this state . . . that although the legislature may single out certain persons, trades, occupations, and professions, dealing with each class separately, yet the burdens upon every person in the class thus selected must be the same".¹³

Since the legislature could classify, if there was a reasonable basis for the classification, the question was whether the law under consideration imposed a reasonable classification based, as it was, on the size of the cities. This was not, in the opinion of the court, a valid basis. Cities were classified solely for the purpose of dealing with their local affairs and such classification was not designed to influence or control legislation for state purposes. A law that "arbitrarily singles out for taxation a certain class of persons and exempts some of them altogether is unfair and unequal".¹⁴ As a revenue measure

¹¹ *Id.* at 12.

¹² *Id.* at 13.

¹³ *Id.* at 17.

¹⁴ *Id.* at 20

therefore the law was unconstitutional. What it had said, the court emphasized, had no application to a case involving an exercise of the police power.

The question, therefore, of what the court will regard as a reasonable classification is important. Almost every tax law involves some classification and if it strikes the court as unreasonable the law will generally be considered as lacking in uniformity. A review of the cases will disclose the principles and reasoning followed by the Court of Appeals.

The cases reveal that three principles of classification have been accepted by the court in upholding excise taxes. The first, evidenced by the opinion in the above case, is that a uniform tax upon all persons engaged in the same business without regard to the volume of business done is valid.

A city ordinance imposing a license tax on vehicles using the streets graduated according to the number of horses used in the vehicles was upheld as being uniform in the sense that every two-horse vehicle would pay the same tax.¹⁵ On the other hand, a business tax, similar in principle, imposing a license fee of two hundred dollars on four-horse wagons which was three times as much as the tax on three-horse wagons was declared invalid because discriminatory.¹⁶ "The taxing power may subdivide this class", said the court, "but it cannot unjustly discriminate between the subdivisions so made."¹⁷ Here the court did not mention the uniformity clause by name, but the reasoning is the same as that used when the uniformity clause is invoked. A tax law which is not uniform is usually pronounced discriminatory.

An ordinance of Covington imposing a license tax on only those grocers using delivery wagons was lacking in uniformity, because grocers who used no wagons were exempted.¹⁸ Also, a license tax which is heavier on cash and carry grocery stores than upon regular service grocery stores where both sell commodities of approximately the same kind, character, quality, quantity,

¹⁵ *Smith v. City of Louisville*, 9 Ky. L. Rep. 779, 6 S. W. 911 (1888).

¹⁶ *Fiscal Court of Owen County v. F. and A. Cox Co.*, 32 Ky. L. Rep. 740 (1888).

¹⁷ *Id.* at 746.

¹⁸ *City of Covington v. Dalheim*, 126 Ky. 26, 102 S. W. 829 (1907). To same effect in regard to milk dealers, see *Read v. Graham*, 31 Ky. L. Rep. 569, 102 S. W. 860 (1907). Also see, *Weyman v. City of Newport*, 153 Ky. 487, 156 S. W. 109 (1913).

and for approximately the same price is discriminatory and invalid.¹⁹ In neither case was there a valid basis of distinction. But a license tax upon all vendors of milk except those who sell from regular groceries is not lacking in uniformity where the latter pay a license tax on their general business.²⁰ In *Commonwealth v. Payne Medical Co.*²¹ a statute singled out sellers of patent medicines exclusively and imposed on them a license tax of one hundred dollars annually. The law was challenged as not being uniform since druggists selling such medicines along with other articles were exempt. The court held the law lacking in uniformity. Such a tax "must be uniform in the sense that the same fee must be charged every person engaged, under substantially similar conditions and circumstances, in the particular trade . . . taxed".²²

An ordinance imposing a license tax on painting contractors, but exempting the individuals working for themselves and who had no employee is valid.²³ Also, insurance companies could be classified into those writing industrial and those writing ordinary life insurance, the former being taxed one hundred dollars annually and the latter twenty-five dollars.²⁴ Here the classification had a reasonable basis. The same was true in *Williams v. Bowling Green*,²⁵ where a license tax of two hundred dollars was imposed on persons engaged in soliciting business of cleaning and dyeing clothes when the clothes were to be sent to Nashville, but taxing those in the same business who had a plant within the city only twenty-five dollars. The two businesses were essentially different, the court felt.

A city cannot, however, tax agents of insurance companies not located in the city and exempt agents of local companies. Since the business of the two classes is the same such a law is held to be discriminatory, and partial.²⁶

¹⁹ *City of Danville v. Quaker Maid*, 211 Ky. 677, 278 S. W. 98 (1926).

²⁰ *City of Newport v. French Bros. Bauer Co.*, 169 Ky. 174, 183 S. W. 532 (1916).

²¹ 138 Ky. 164, 127 S. W. 760 (1910).

²² *Id.* at 170.

²³ *Young v. City of Lexington*, 235 Ky. 822, 32 S. W. (2d) 410 (1930).

²⁴ *Metropolitan Life Insurance Co. v. City of Paris*, 138 Ky. 801, 129 S. W. 112 (1910).

²⁵ 254 Ky. 11, 70 S. W. (2d) 967 (1934).

²⁶ *Simrall v. Covington*, 90 Ky. 444, 14 S. W. 369 (1890).

In *Commonwealth v. Hazel*²⁷ a statute placed a license tax on tax brokers, that is, persons who made a business of buying lands being sold for taxes. Only those who bought land for as much as five hundred dollars had to pay the tax. The law was challenged as being based on an unreasonable classification according to the reasoning in *Covington v. Dalheim* referred to above. The court held however that the legislature in making the law apply only to those who bought land for as much as five hundred dollars was laying down a test by which to distinguish the regular tax broker from the occasional buyer. This it could do since the line had to be drawn somewhere.

In the cases discussed above the Court of Appeals examined the law to see if there was a reasonable basis for the classification imposed and to see if the tax imposed applied uniformly to all those of the class concerned. If either condition was met, the other one usually was also and the law was upheld. Just what the court's test of "reasonable" was is not always revealed. For instance, it could well be argued that in *Covington v. Dalheim* above there was a reasonable basis for distinction between grocers who used no delivery trucks and those who did, since the latter were using the city streets in ways that the former were not. Similarly, in *Commonwealth v. Payne Medical Co.* above a reasonable distinction could conceivably be made between sellers of patent medicines exclusively and the ordinary druggist. Perhaps the controlling elements in the court's decisions are to be found in the circumstances surrounding the enactment of the laws.

In addition to the license taxes imposed on the businesses and occupations discussed, and, involving the same principle, are license taxes imposed on the professions. A particular profession may be singled out and taxed so long as the tax is uniform on the entire class. Since a particular profession is not so easily divided into sub-classes there has been less difficulty in applying this type of license tax.

In *Bullitt v. City of Paducah*²⁸ the court upheld a license tax on lawyers, saying that, while such a tax "must be levied on

²⁷ 155 Ky. 30, 159 S. W. 673 (1913).

²⁸ 8 Ky. L. Rep. 870, 3 S. W. 802 (1887). See also the following: *Elliott v. City of Louisville*, 101 Ky. 262, 40 S. W. 690 (1897); *Levi v. City of Louisville*, 97 Ky. 394, 30 S. W. 973 (1895); *Burch v. City of Owensboro*, 18 Ky. L. Rep. 284, 36 S. W. 12 (1896).

all alike in the same profession, it is not essential to its validity that every calling within the particular locality shall be required to pay the tax". In the same way the occupation of peddlers may be taxed although the taxes on this occupation are usually upheld under the police power rather than as being merely for revenue purposes.²⁹

A second principle which the court has followed is to permit the legislature to tax business according to the amount of business done without the rate of the tax changing as the volume of business changed. Thus, a license tax of one and one-fourth cents per gallon on distilled spirits manufactured by companies in Kentucky which was challenged as a property tax and not uniform was upheld as a valid license tax.³⁰ The court in discussing the principle on which the law was based merely cited the case of *Strater Bros. Tobacco Co. v. Commonwealth*, discussed later, where a license tax based on the value of the goods produced was upheld. The same principle was applied in *Greene v. Taylor, Jr., and Sons*³¹ where the statute was upheld imposing a license tax of two cents a gallon on distilled spirits manufactured in Kentucky or stored in bonded warehouses in the state. A contrary decision, however, was reached by a divided court in *Craig et al. v. E. H. Taylor, Jr., and Sons*³² where a tax, purporting to be a license tax of fifty cents a gallon on "every corporation, etc. . . . engaged in the business of manufacturing distilled spirits . . . ; and every corporation, etc. . . . engaged in the business of owning and storing such spirits in bonded warehouses in this state, and in removing same therefrom"³³ was held to be a property and not a license tax. The company had temporarily ceased manufacturing liquor and the court by a strange

²⁹ *City of Newport v. French Bros. Bauer Co.*, 169 Ky. 174, 183 S. W. 562 (1916); *West v. City of Mt. Sterling*, 23 Ky. L. Rep. 1670, 65 S. W. 120 (1901); *City of Carlisle v. Hechinger*, 103 Ky. 381, 45 S. W. 358 (1898).

³⁰ *Brown-Forman Co. v. Commonwealth*, 125 Ky. 402, 101 S. W. 321 (1907). The pending litigation involving the tax of seven cents a quart on the sale of ice cream in this state involves the same principle. This law has been declared unconstitutional by Circuit Judge W. B. Ardery in *Aniello v. State Tax Commission* as "discriminatory, if not substantially confiscatory", although the exact provision of the constitution on which the opinion is based is not given. The case is at time of writing before the Court of Appeals.

³¹ 184 Ky. 739, 212 S. W. 295 (1919).

³² 192 Ky. 36, 232 S. W. 39 (1921).

³³ *Id.* at 398.

process of reasoning held that the tax was not on the business of storing, nor on the business of storing and removing liquor, nor yet alone on removing liquor. It was in fact a tax on property. A strong dissenting opinion was written by Judge Sampson in which he contended that it was a license tax and valid.

As was pointed out above license taxes are sometimes called franchise taxes. In *Southern Building and Loan Association v. Norman*³⁴ the court had before it such a tax. A statute imposed a license tax of two dollars on every one hundred dollars of gross receipts of foreign building and loan associations doing business in the state. The court held that this was a franchise tax on the privilege of doing business in the state as distinguished from a corporate franchise tax. So long as the tax applied to all such companies it was uniform, and Kentucky could determine the terms on which foreign companies could do business here.

A statute, however, imposing a license tax on foreign insurance companies doing business in the state and graduated according to the business done, that is, two dollars on each one hundred dollars of premiums, but which contained a provision calling for whatever additional tax was necessary to equal the tax imposed by the state concerned on Kentucky companies, was held invalid. Such a law was lacking in the uniformity and equality intended by the Kentucky constitution, said the court.³⁵ In other words foreign companies could do business in Kentucky on a basis of equality with domestic companies, subject apparently to the qualification laid down in the case of *Southern Building & Loan Association v. Norman*, above.

In *State Tax Commission v. Hughes Drug Co.*³⁶ the court had before it an excise tax in the restricted sense of the term. A state statute imposed a tax of fifty cents per pint on the sale of distilled spirits by any concern. It was challenged on the ground that it was a revenue measure and not uniform since it applied to druggists only and only to part of the druggists' business. It was argued, on the authority of *Commonwealth v. Fowler*,³⁷ that as a revenue measure it was invalid. In that case

³⁴ 98 Ky. 294, 32 S. W. 952 (1895).

³⁵ *Western and Southern Life Insurance Co. v. Commonwealth*, 133 Ky. 292, 117 S. W. 376 (1909).

³⁶ 219 Ky. 432, 293 S. W. 944 (1927).

³⁷ 96 Ky. 166, 28 S. W. 786 (1894).

a similar law applicable to druggists only was upheld on the ground of the police power, the court saying that it would not be sustained as a revenue measure. In the case now before the court, however, the court said the law by its terms applied to everybody who might be authorized to sell liquor even though in fact only druggists were so authorized. In *Commonwealth v. Fowler*, the court pointed out the law applied only to druggists though others were permitted to sell liquor. It went on to say that what was said in that case to the effect that the law would not be upheld as a revenue measure was dictum. The statute in the present case, the court went on, did not have to apply to the whole of a druggist's business since it was an excise. To hold that it did was "to confuse such a tax with an occupation tax".³⁸ The law was therefore not lacking in uniformity.

A third principle applied by the court in passing upon the validity of excise taxes is to permit the legislature to divide a general class into separate classes according to the volume of business done, with the tax rate increasing with the volume of business. Sometimes the law makes only two classes, while in other laws several classes are made. In *Strater Bros. Tobacco Co. v. Commonwealth*³⁹ a statute imposed on tobacco factories in the state a license tax of one dollar on the marketable value of each one thousand dollars of product up to one hundred thousand dollars and at the rate of fifty cents on each one thousand dollars of the marketable value on all in excess of the first one hundred thousand dollars. It was challenged as being a property tax and not uniform and hence unconstitutional. The court, however, held that it was a license tax and not "lacking in the quality of uniformity". "It is the same", the court continued, "on each person or corporation which manufactures the same quantity of tobacco. The legislature had the right to impose a graduated license tax."⁴⁰

The same principle was applied in *Gordon v. City of Louisville*⁴¹ where a city ordinance was in question by which a license

³⁸ *Id.* 946. In *Shanks v. Ky. Independent Oil Co.*, 225 Ky. 303, 8 S. W. (2d) 383 (1928), the court also had before it a pure excise law and drew a distinction between it and a license tax. See also, *Raydure v. Board of Supervisors of Estill County*, where a production tax on oil was upheld as a license tax. 183 Ky. 84, 209 S. W. 19 (1919).

³⁹ 117 Ky. 604, 78 S. W. 871 (1904).

⁴⁰ *Id.* at 608.

⁴¹ 138 Ky. 442, 128 S. W. 327 (1910).

tax was imposed on merchandise brokers. Those whose business amounted to two hundred thousand dollars or less annually had to pay a tax of twenty-five dollars; those whose business amounted to from two hundred thousand dollars to three hundred thousand dollars had to pay a tax of thirty-five dollars. Those whose business amounted to more than three hundred thousand dollars had to pay a tax of fifty dollars. The ordinance was challenged as being based upon an unreasonable classification, and as not being uniform as to the classes. The court stated the three principles, explained above, which it had applied and after emphasizing that exact equality in a tax system could not be achieved, declared that a classification had to have a reasonable basis "or, to put it another way, there must be some reason for the classification, as well as for the division of those engaged in a particular line of business into more than one class. This must be left in the first instance to the discretion and good judgment of the legislative bodies . . . to be finally tested by the judicial tribunals". The classification here was "manifestly suggested by the fact that the broker who did a small business should not be taxed as much as the one who did a big business."⁴² This was neither unreasonable nor unjust, the court thought, and the law therefore was not lacking in uniformity.

This principle was applied also by the court in upholding the gross sales tax.⁴³ Here the tax was graduated according to the gross sales with the rate increasing as the sales increased. The court held that not only could the legislature classify for tax purposes, but it could "discriminate in favor of certain classes if the discrimination be founded upon a reasonable distinction".⁴⁴ Classification according to the volume of business done is based on a valid distinction.

The city of Louisville sought to substitute for an ad valorem tax a license tax on merchants and manufacturers graduated in such a way that the rate decreased as the volume of business increased. The court declared the law lacking in uniformity. The small manufacturer had a greater burden than the large and this produced practical inequality. "The rich and the poor

⁴² *Id.*, at 448.

⁴³ *Moore v. State Board of Charities and Corrections*, 239 Ky. 729, 40 S. W. (2d) 349 (1931).

⁴⁴ *Id.* at 738.

must be taxed alike",⁴⁵ said the court. If the law had been laid in such a way as to make the burden practically the same as under an ad valorem tax it would have been valid,⁴⁶ the court indicated. Again in *City of Newport v. Frankel, et al.*⁴⁷ the court declared a tax invalid because it was based on an unreasonable classification. Newport imposed an annual tax of three hundred dollars on theaters whose admission fee was not more than ten cents; if admission was more than ten cents and not more than fifteen cents, the tax was four hundred and fifty dollars; if the admission was more than fifteen cents the annual tax was four hundred and fifty dollars plus fifteen dollars a day for each day on which said admission was charged. The court pointed out that while the increase in the admission charged by a show charging twenty cents over one charging fifteen cents was only one-third of the lower admission fee, the increase in tax was one thousand per cent. "Manifestly", said the court, "there is no sound basis for this distinction."⁴⁸ The law was therefore discriminatory and invalid.

The tax laws considered in the foregoing cases were primarily revenue measures and were treated as such by the court. But excise taxes are often enacted under the police power for regulatory purposes. Does the uniformity clause limit the legislature in such cases?

In the case of *Hager v. Walker*,⁴⁹ considered above, the court emphasized that what it said about the law not being uniform had no application to a measure enacted under the police power. Also, in *Commonwealth v. Fowler*⁵⁰ above, the court in upholding as a police measure a license tax on druggists who sold liquor stated that the law would not be upheld as a revenue law. In *Standard Oil Co. v. Commonwealth*⁵¹ the court had upheld under the police power a tax on each oil depot of the company which it said would not be upheld as a property tax. This would seem to indicate that there was some difference in imposing excise taxes for revenue and for regulatory purposes.

⁴⁵ *George Schuster and Co. v. City of Louisville*, 124 Ky. 139 at 206, 89 S. W. 689 (1907).

⁴⁶ *Id.* at 207.

⁴⁷ 192 Ky. 408, 233 S. W. 884 (1921).

⁴⁸ *Id.* at 410.

⁴⁹ *Supra*, note 5.

⁵⁰ *Supra*, note 37.

⁵¹ 119 Ky. 75, 82 S. W. 1020 (1904).

But in *Commonwealth v. Payne Medical Co.*,⁵² discussed above, the court, in holding invalid as lacking in uniformity a statute requiring a license tax of one hundred dollars of all vendors of patent medicines exclusively, said, "the doctrine of uniformity . . . applies with as much force to police measures as it does to revenue measures". It is difficult to harmonize these statements but since the statements indicating a difference between police and revenue laws were dicta and the latter decision a holding the law would seem to be that the uniformity clause does apply to both types of measures. However, the court will apparently go a little farther in upholding a police measure than one merely for revenue.

The results of this investigation may be summarized as follows:

By court decisions the uniformity clause of the Kentucky constitution applies to excise taxes as well as to property taxes. In passing upon the uniformity of an excise tax the Court of Appeals has laid down three principles upon which it will uphold such taxes. First, the same tax on all in a particular class without regard to the amount of business done is valid. The chief difficulty in applying this principle arises from the efforts of the legislature and city councils to determine the classes. The grouping of the taxpayers into classes must not, in the opinion of the court be arbitrary. That is to say there must be a basis for the classification which under all the circumstances strikes the court as reasonable and just. Second, a specific tax per unit of business done may be imposed on a class so that the total amount of tax paid will depend on the volume of business done. Third, a general class may be divided by law into sub-classes and each sub-class be taxed according to the volume of business done with the rate increasing with the volume of business. In the application of the last two principles, as in the first, the court must be convinced of the reasonableness and justness of the classification. Further, the uniformity clause applies to taxes imposed under the police power as well as to those imposed only for revenue purposes.

⁵² 138 Ky. 164, 168, 127 S. W. 760 (1910).

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