COURT OF APPEALS
DECISION
DATED AND RELEASED

March 13, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3098

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

ANR Pipeline Company,

Plaintiff-Appellant,

v.

Department of Revenue and Mark D. Bugher in his official capacity as the Secretary of the Wisconsin Department of Revenue and all persons acting under him, The Office of the State Treasurer, and Cathy S. Zeuske in her official capacity as Treasurer of the State of Wisconsin,

Defendants-Respondents.

APPEAL from an order of the circuit court for Dane County: GERALD C. NICHOL, Judge. *Affirmed in part; reversed in part and cause remanded.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

DEININGER, J. ANR Pipeline Co. (ANR) appeals from an order dismissing its Uniformity Clause claims against the Wisconsin Department of Revenue (DOR). The issues are: (1) whether the thirty-day deadline for requesting a redetermination of tax assessments, contained in § 76.08, STATS., bars ANR's claims for the years 1988 through 1992; and (2) whether allegations that DOR assessed 100% of the value of ANR's personal property, while exempting 80% of certain railroads' personal property, state a claim for violation of the Uniformity Clause of the Wisconsin Constitution.[1] We conclude that ANR's claims for 1988 through 1992 are barred by its failure to comply with § 76.08 for those years, but that the trial court erred in dismissing the Uniformity Clause claim for 1993. Thus, we affirm in part and reverse in part.

BACKGROUND

ANR owns and operates an interstate pipeline which transports natural gas through several states, including Wisconsin. Pipelines, railroads and certain other entities are assessed and taxed according to the same method. *See* § 76.07, STATS.[2]

In 1988, four railroads operating in Wisconsin sued the State in federal court, claiming that taxation of 100% of the assessed value of their personal property violated the "4-R Act." The 4-R Act prohibits states from, among other things, imposing higher property tax rates and assessment ratios on "rail transportation property" than on "other commercial and industrial property."[3] As of 1988, the Eighth Circuit Court of Appeals had held that

---

[1] "The rule of taxation shall be uniform ...." WIS. CONST. art. VIII, § 1.

[2] Railroads, pipelines and other utilities are taxed using the unit value method. Section 76.07, STATS. DOR determines the full market value of the total property of the taxpayer in and outside Wisconsin, and then allocates a portion of that system-wide value to Wisconsin. Section 76.07(4g).

[3] *See* Pub. L. No. 94-210, § 306 (1976).

exempting various classes of commercial and industrial property from ad valorem taxation while not doing so for railroad property violated the 4-R Act.[4]

DOR, pursuant to its interpretation of the 4-R Act at the time, entered into a stipulated settlement order with the railroads in which DOR agreed not to collect the property tax imposed by statute with respect to 80% of the value of the personal property of each railroad operating in Wisconsin for the year 1988.[5] DOR then continued to annually grant the railroads what was essentially an 80% exemption from taxation of personal property for the years 1989 through 1993.

ANR commenced this action under § 76.08, STATS., on November 11, 1993, for redetermination of DOR's October 12, 1993, assessment of its real and personal property in Wisconsin. While conducting discovery, ANR learned that DOR had been exempting 80% of railroads' personal property from taxation since 1988. ANR then amended its original complaint, alleging, *inter alia*, that the taxes assessed on it by DOR violated ANR's right to uniform taxation under the Wisconsin Constitution. ANR claimed it was entitled to partial refunds of the taxes it paid for the years 1988 through 1993.[6]

---

[4] *See* ***Trailer Train Co. v. Leuenberger***, 885 F.2d 415 (8th Cir. 1988), *cert. denied*, 490 U.S. 1066 (1989); ***Burlington N. R.R. Co. v. Bair***, 766 F.2d 1222 (8th Cir. 1985); ***Ogilvie v. State Bd. of Equalization***, 657 F.2d 204 (8th Cir.), *cert. denied*, 454 U.S. 1086 (1981). In 1989, the Kansas Department of Revenue entered into consent decrees which, like the 1988 stipulation between Wisconsin's DOR and the railroads, exempted 80% of railroads' property from taxation. *See* ***In re ANR Pipeline Co.***, 866 P.2d 1060 (Kan.), *cert. denied*, 115 S. Ct. 296 (1994). However, in ***Department of Revenue v. Trailer Train Co.***, 830 F.2d 1567 (11th Cir. 1987), the court of appeals held that exempting business inventory from ad valorem taxation, an exemption not available to railroads, was not necessarily a discriminatory tax prohibited by the 4-R Act.

[5] ***Burlington N. R.R. Co. v. DOR***, No. 88-C-967-S (Stipulation and Order, W.D. Wis. Apr. 26, 1989).

[6] On appeal, the only substantive issue raised by ANR is that DOR's tax treatment of the railroads for 1988 through 1993 violated the Uniformity Clause. The valuation dispute that initially prompted the action for review of the 1993 assessment has been resolved.

Specifically, ANR's "Third Claim" of its first amended complaint contained the following allegations:

> 14. In or around April, 1989, the [DOR] began exempting from Wisconsin property taxation under §§76.01 et seq., Stats., 80% of the personal property of railroads operating in the State. These exemptions became effective for the 1988 tax year and were given by the [DOR] through a mistaken belief that federal law required such exemptions. However, by the terms of §§76.01 et seq. Stats. such exempted property was and is subject to taxation.
>
> 15. The Secretary and the [DOR], however, did not seek to amend existing Wisconsin tax statutes nor to comply with existing Wisconsin tax statutes as to the railroads but continued to tax all personal property of pipelines even though pipelines were in the same statutory classification as railroads and were entitled to equal treatment and uniform taxation under the Wisconsin Constitution and statutes.
>
> ....
>
> 20. The above-described practices deprive ANR of the right to uniform taxation under the Wisconsin Constitution.

In January 1994, the United States Supreme Court decided ***Department of Revenue v. ACF Industries, Inc.***, 510 U.S. 332 (1994), in which the Court held that the 4-R Act did *not* require states to reduce railroads' ad valorem taxes commensurate with the specific property exemptions granted to commercial and industrial property. ***Id.*** at 342. DOR then issued an assessment to the railroads requiring them to pay the taxes which DOR had not collected prior to the decision in ***ACF Industries***. The railroads unsuccessfully challenged

the back assessments in federal court,[7] and are currently challenging the assessments in the circuit court for Dane County.[8]

DOR moved to dismiss ANR's claims for tax years 1988 through 1992, claiming that ANR's failure to request a redetermination of its tax assessments within thirty days of each assessment, as required by § 76.08(1), STATS., barred the claims for those years.[9] DOR also moved to have all Uniformity Clause claims dismissed for failure to state a claim upon which relief can be granted. It did not otherwise answer ANR's complaint.

The trial court granted the motion to dismiss as to all the claims for tax years 1988 through 1993. The court concluded that ANR's failure to comply with the thirty-day deadline under § 76.08, STATS., barred the claims for 1988 through 1992, and that the claim for 1993 was no longer at issue because the parties had settled the amount of taxes owing for the year 1993. ANR appeals from the order dismissing its claims.

DOR moved for a stay of this appeal and for this court to take judicial notice of the documents in an appendix it filed. We denied the stay, concluding that the appeal is appropriate for a decision in its present posture, and held the motion for judicial notice in abeyance pending our opinion deciding the appeal.

---

[7] ***Burlington N. R.R. Co. v. DOR***, 59 F.3d 55 (7th Cir. 1995).

[8] ***Fox River Valley R.R. Co. v. DOR***, Nos. 94-CV-1953 through 1958 (Dane Cty. Cir. Ct. (1994)).

[9] ANR does not dispute that it failed to request redetermination of the tax assessments for 1988 through 1992 within thirty days of the assessments for those years.

ANALYSIS

a. Procedural Posture; Standard of Review

Attached to its trial court briefs in support of its motion to dismiss, DOR submitted appendices containing excerpts from DOR's manuals for taxation of ch. 76 utilities, a copy of the stipulation it entered into with the railroads regarding the railroads' taxation for 1988, DOR's annual review of applicable case law prior to the decision in ***Department of Revenue v. ACF Industries, Inc.***, 510 U.S. 332 (1994), and a few other documents. The trial court considered most of these materials in ruling on DOR's motion.[10]

The materials submitted by DOR to the trial court on its motion to dismiss are the same documents of which it is requesting we take judicial notice. We previously granted DOR's motion to supplement the trial court record with its trial briefs. We therefore do not see the need for the court to take "judicial notice" of documents already in the record. We thus deny DOR's motion to take judicial notice of the documents.[11]

Whether a claim is barred by sovereign immunity and whether a complaint states a claim for which relief can be granted are matters of law which we review de novo, owing no deference to the trial court's determination. *See* ***Heinritz v. Lawrence Univ.,*** 194 Wis.2d 606, 610, 535 N.W.2d 81, 83 (Ct. App. 1995) (complaint); ***Lindas v. Cady***, 142 Wis.2d 857, 861, 419 N.W.2d 345, 347 (Ct. App. 1987) (sovereign immunity). Since pleadings are to be liberally construed, a claim will be dismissed only if it is "`quite clear that under no

---

[10] Under § 802.06(2)(b), STATS., where matters outside the pleadings are presented to and not excluded by the trial court on a motion to dismiss, the motion must be treated as one for summary judgment. ANR argues that it was not given the opportunity to respond to these materials as required by the statute cited. Since we are reversing the trial court's dismissal of the Uniformity Clause claim, ANR has not been prejudiced by any lack of opportunity to counter the appended materials.

[11] Two documents which DOR asks us to notice were apparently not submitted to the trial court: an excerpt from the Wisconsin Tax Reporter and a copy of a claim with the Claims Board filed by ANR on April 25, 1995. Neither document is relied upon in our disposition of this appeal.

conditions can the plaintiff recover.'" ***Evans v. Cameron,*** 121 Wis.2d 421, 426, 360 N.W.2d 25, 28 (1985) (quoted source omitted).

It could be argued that because the trial court considered matters outside of ANR's complaint, we are required to employ summary judgment methodology in our review. *See* § 802.06(2)(b), STATS. Consideration of either a motion to dismiss or one for summary judgment begins at the same place, however: with a determination whether the complaint states a proper claim. As we will discuss, disposition of the claims for years 1988 through 1992 does not require that we look beyond ANR's complaint. As to the claim for 1993, we conclude that ANR's complaint states a claim for violation of the Uniformity Clause. We further conclude that even if the materials regarding DOR's dealings with the railroads are considered, ANR's claim for 1993 may not be dismissed on this record.

b. Claims for 1988 through 1992: Section 76.08, STATS.

Section 76.08, STATS., states:

> (1) ... Any company aggrieved by the assessment [under § 76.07, STATS.] ... of its property thus made may have its assessment ... redetermined by the Dane county circuit court if within 30 days after notice of assessment ... is mailed to the company under s. 76.07(3) an action for the redetermination is commenced ....

The trial court concluded that ANR's failure to meet the thirty-day deadline prescribed by § 76.08, STATS., barred its claims for years 1988 through 1992 under the doctrine of sovereign immunity. We agree.

Under the doctrine of sovereign immunity, the state cannot be sued without its consent. ***Lister v. Board of Regents***, 72 Wis.2d 282, 291, 240 N.W.2d 610, 617 (1976).[12] The principles of sovereign immunity apply to the

[12] In Wisconsin, the doctrine of sovereign immunity is derived from WIS. CONST. art. IV, § 27, which provides:

state and its administrative arms and agencies which have no independent propriety powers or functions. *See* ***Majerus v. Milwaukee County***, 39 Wis.2d 311, 314-15, 159 N.W.2d 86, 87-88 (1968). Where the state consents to suit subject to certain conditions, those conditions must be strictly complied with by a party pursuing a claim against the state:

> "It is not disputed that it is an established principle of law that no action will lie against a sovereign state in the absence of express legislative permission. It is further established that when a sovereign permits itself to be sued upon certain conditions, compliance therewith is a jurisdictional matter, and a suit against the sovereign may not be maintained unless such conditions are complied with."

Metzger v. Wisconsin Dep't of Taxation, 35 Wis.2d 119, 131-32, 150 N.W.2d 431, 437 (1967) (quoting ***Martin v. Reis***, 230 Wis. 683, 685, 284 N.W. 580, 581 (1939)).

ANR first argues that by allowing suits for redetermination of tax assessments in § 76.08, STATS., the State has "waived its sovereign immunity." As we have noted above, enactment of a statute permitting suit upon expressed conditions "waives" sovereign immunity only if those conditions are fulfilled. *See* ***Metzger***, 35 Wis.2d at 131-32, 150 N.W.2d at 437. Waiver can occur, however, if the defense of sovereign immunity is not timely raised. The supreme court has held that sovereign immunity is "a matter of personal jurisdiction which may be waived" if the State has not "sufficiently raised" the defense in the trial court. ***Lister***, 72 Wis.2d at 296-97, 240 N.W.2d at 619-20; *see* ***City of Kenosha v. State,*** 35 Wis.2d 317, 327, 151 N.W.2d 36, 41 (1967). Here, however, there is no dispute that the State raised the defense of sovereign immunity in its motion to dismiss.

ANR next argues that the State should be estopped from raising the defense of sovereign immunity because the State's own actions prevented ANR from making timely claims for the years 1988 through 1992. Specifically,

(..continued)

> [T]he legislature shall direct by law in what manner and in what courts suits may be brought against the State.

ANR asserts that DOR's "failure to disclose its secret deal with the railroads" prevented it from filing its Uniformity Clause claims earlier. Citing ***DOR v. Family Hospital, Inc.,*** 105 Wis.2d 250, 313 N.W.2d 828 (1982), ANR contends that "[t]he Department, like any other litigant, is subject to equitable estoppel if the facts justify it." In ***Family Hospital***, the supreme court held that DOR was estopped from assessing a sales tax on parking receipts where the hospital reasonably relied on a memorandum issued by DOR which exempted the receipts from sales tax. ***Id.*** at 256, 313 N.W.2d at 830. The hospital had apparently complied with applicable statutory requirements for obtaining review of DOR's tax assessment by the Tax Appeals Commission. The Commission reversed the assessment, and DOR sought court review. Sovereign immunity was not at issue in the case.

Even if a state agency may be estopped by prior conduct from asserting a claim against a taxpayer, it does not necessarily follow that a taxpayer can cite an agency's conduct in an attempt to avoid the State's assertion of sovereign immunity. The supreme court in ***Lister*** stated "it appears that the principle of estoppel will not be applied to deprive a state of its sovereign rights." ***Lister***, 72 Wis.2d at 294 & n.9, 240 N.W.2d at 618-19; *see* ***Kegonsa Joint Sanitary Dist. v. City of Stoughton***, 87 Wis.2d 131, 144, 274 N.W.2d 598, 604 (1979); ***Green v. Osborne***, 758 P.2d 138, 140 (Ariz. 1988) (state may not be estopped by unauthorized acts of officers or employees if sovereign functions affected); *see also* P.H. Vartanian, Annotation, *Applicability of doctrine of estoppel against government and its governmental agencies*, 1 A.L.R.2d 338, 340 § 2 (1948) (state more susceptible to estoppel where it is moving party, asserting rights similar to private litigant, as opposed to when it defends against rights asserted in derogation of its sovereignty).

We conclude that ANR may not avail itself of the principles of estoppel against the State's assertion of sovereign immunity. Its failure to timely file under § 76.08, STATS., for the years 1988 through 1992 is fatal to the claims for those years. If harsh results flow from the doctrine of sovereign immunity, ANR must seek its remedies from the legislature, not the courts. ***Erickson Oil Products, Inc. v. State***, 184 Wis.2d 36, 54, 516 N.W.2d 755, 761 (Ct. App. 1994).

ANR's failure to request a redetermination of the tax assessments for the years 1988 through 1992 within the thirty-day period specified in § 76.08, STATS., deprived the trial court of personal jurisdiction over the State for those

claims. *See* ***City of Kenosha v. State***, 35 Wis.2d 317, 327-28, 151 N.W.2d 36, 41-42 (1967); *see also* ***Hermann v. Town of Delavan***, No. 96-0171, slip op. at 5 (Wis. Ct. App. Dec. 27, 1996, ordered published Feb. 25, 1997) (Uniformity Clause claim subject to dismissal if statutory requirements for review of assessment not complied with). The trial court properly dismissed ANR's claims for 1988 through 1992.

c. Uniformity Clause

ANR requested a redetermination of its tax assessment for the year 1993 within the thirty-day deadline specified in § 76.08, STATS.[13] In its amended complaint, ANR claimed that the 80% exemption granted to the railroads violated the Uniformity Clause of the Wisconsin Constitution. *See* WIS. CONST. art. VIII, § 1. DOR contends that ANR has not stated a claim for a Uniformity Clause violation. We disagree and conclude that the trial court erred in dismissing the 1993 claim.

The Wisconsin Supreme Court has determined that for a tax to conform to the Uniformity Clause, it must meet the following standards:

1. For direct taxation of property, under the uniformity rule there can be but one constitutional class.

2. All within that class must be taxed on a basis of equality *so far as practicable* and all property taxed must bear its burden equally on an ad valorem basis.

3. All property not included in that class must be absolutely exempt from property taxation.

4. Privilege taxes are not direct taxes on property and are not subject to the uniformity rule.

---

[13] The trial court dismissed the claim for 1993, concluding that because DOR and ANR had settled the amount of taxes owing for 1993, the issue of a refund for a possible Uniformity Clause violation was resolved. However, ANR contends, and DOR concedes, that the constitutional claim raised by ANR in its amended complaint regarding its 1993 taxes has not been resolved.

5. While there can be no classification of property for different rules or rates of property taxation, the legislature can classify as between property that is to be taxed and that which is to be wholly exempt, and the test of such classification is reasonableness.

6. There can be variations in the mechanics of property assessment or tax imposition so long as the resulting taxation shall be borne with *as nearly as practicable equality* on an ad valorem basis with other taxable property.

Gottlieb v. City of Milwaukee, 33 Wis.2d 408, 424, 147 N.W.2d 633, 641-42 (1967) (emphasis supplied).

DOR first argues that the Uniformity Clause is satisfied because ch. 76 has always provided for uniform taxation of railroads' and pipelines' personal property. However, the Wisconsin Supreme Court has held that the Uniformity Clause requires more than uniform treatment within the statutory language. The Uniformity Clause requires that "`each step taken must be uniform. The valuation must be uniform, the rate must be uniform.'" ***Id.*** at 419, 147 N.W.2d at 639 (quoting ***Knowlton v. Supervisors of Rock County***, 9 Wis. 378 [*410], 388 [*420-21] (1859)). We conclude that the uniform statutory treatment of pipelines and railroads in ch. 76 satisfies the Uniformity Clause only if the chapter is administered so as to accomplish uniformity. ANR's claim is that it was not so administered.

DOR acknowledges that it granted the railroads what is, in effect, an 80% exemption for 1993. The Wisconsin Supreme Court has held that even the legislature cannot grant partial exemptions for taxation of property. In ***Gottlieb***, the supreme court held that the "Urban Redevelopment Law," providing for a partial exemption from property taxes for property held by certain redevelopment corporations, violated the Uniformity Clause. The court noted that while the aim of legislation may be "socially desirable," if it is legislation that produces "less of [a] tax burden on the true *ad valorem* basis than [it] does [on] other property," it violates the Uniformity Clause. ***Gottlieb***, 33 Wis.2d at 426-29, 147 N.W.2d at 643-44. Under the Uniformity Clause, "`[t]he legislature can, with uniformity, exempt property from taxes, but it cannot

partially exempt particular property.'" ***Id***. at 425, 147 N.W.2d at 642 (quoting ***Ehrlich v. City of Racine***, 26 Wis.2d 352, 356, 132 N.W.2d 489, 490-91 (1965)). We thus conclude that ANR's complaint states a proper claim that DOR violated the Uniformity Clause when assessing ANR's property in 1993.

In reaching its conclusion that ANR has not stated a proper claim for a Uniformity Clause violation, the trial court relied in part on the previously described documents appended to DOR's trial brief. Even if these documents were deemed properly before the court, however, the present record would not permit us to affirm the dismissal of ANR's 1993 claim. The materials do not establish that there is no set of facts ANR might prove in order to show that DOR's action in exempting 80% of railroad personal property in 1993 violated the Uniformity Clause.

The trial court, citing ***Gottlieb*** and ***State ex rel. Fort Howard Paper Co. v. Lake District Board of Review***, 82 Wis.2d 491, 263 N.W.2d 178 (1978), concluded that given the various federal court decisions regarding state taxation of railroads prior to ***Department of Revenue v. ACF Industries, Inc.***, 510 U.S. 332 (1994), "[s]o far as practicable, the state attempted under the circumstances to tax in compliance with the uniformity clause." The court further concluded that "under the present set of facts there is an allowable exception to the uniformity rule." The "allowable exception" apparently derives from the "so far as practicable" language cited, and involves concepts of good faith, federal preemption and actions taken in settlement of litigation. DOR makes similar arguments on appeal.[14]

---

[14] For example, DOR argues that "[p]rior to the Supreme Court's decision in ***ACF***, 114 S. Ct. at 852, the Department could not have collected the full tax imposed by state law upon railroad personal property" because the Uniformity Clause was preempted by the 4-R Act. DOR contends that because almost every court in other jurisdictions which addressed the issue held that the 4-R Act preempted state tax classifications, we must hold that the 4-R Act preempted the Uniformity Clause. None of the cases cited by DOR were binding on Wisconsin.

The United States Supreme Court made clear in ***ACF*** that the 4-R Act does not require states to reduce taxation of railroads commensurate with the property tax exemptions given to commercial and industrial property within the state. ***Department of Revenue v. ACF Indus., Inc.***, 510 U.S. 332, 342 (1994). With the decision in the ***ACF***, federal preemption is no longer an issue. We cannot conclude on this record that, as a matter of law, there was no violation of the Uniformity Clause because DOR believed it was

In ***Gottlieb***, however, the supreme court did not discuss what is meant by the requirement of equality of taxation "so far as practicable." ***Gottlieb v. City of Milwaukee***, 33 Wis.2d 408, 147 N.W.2d 633 (1967). In ***Fort Howard***, the supreme court specifically declined to rule whether potential inequities in taxation resulting from a revaluation plan which would take four years to accomplish would meet the requirement that the tax burden be equal "so far as practicable." ***Fort Howard***, 82 Wis.2d at 510 & n.9, 263 N.W.2d at 188.[15]

Whether DOR's granting an 80% exemption to railroads in adherence to non-binding case law,[16] in settlement of litigation for 1988 and informally thereafter, constitutes uniformity "so far as practicable" is thus a novel question of law in Wisconsin. The trial court's conclusion that DOR made its decision to partially exempt the railroad property in good faith may ultimately be proven correct. But, the record thus far, let alone ANR's complaint, does not allow for a determination, as a matter of law, that DOR's actions achieved uniformity "so far as practicable." A conclusion that DOR was permitted to do what the legislature may not, must be grounded we believe, on more than an unanswered complaint and some documents appended to DOR's trial brief.[17]

(..continued)
preempted during the period of time preceding ***ACF***.

[15] The supreme court did note, however, that "cyclical revaluation plans have been declared constitutional in a number of other jurisdictions." ***Fort Howard Paper Co. v. Lake Dist. Bd. of Review***, 82 Wis.2d 491, 510 n.9, 263 N.W.2d 178, 188 (1978); *see also* W.W. Allen, Annotation, *Real-estate tax equalization, reassessment, or revaluation commenced but not completed within the year, as violative of constitutional provisions requiring equal and uniform taxation*, 76 A.L.R.2d 1077 (1961).

[16] Federal court decisions, other than United States Supreme Court decisions on questions of federal law are not binding on Wisconsin courts. ***Thompson v. Village of Hales Corners***, 115 Wis.2d 289, 307, 340 N.W.2d 704, 713 (1983).

[17] ANR points out that the materials before the trial court shed no light on whether DOR ***reasonably*** believed that it was "compelled" to grant the 80% exemption to the railroads, or on why it granted the exemption for 1993 even though the State had joined an amicus brief in ***Department of Revenue v. ACF Industries, Inc.***, 510 U.S. 332 (1994). We agree that before a constitutional conclusion is reached, better evidence as to precisely what DOR did, how it was done and why, should be available to the trial court.

Moreover, a court should not reach a constitutional issue in advance of the necessity of deciding it. ***State ex rel. Clarke v. Carballo***, 83 Wis.2d 349, 353, 265 N.W.2d 285, 287, *cert. denied*, 439 U.S. 964 (1978). DOR asserts that if it succeeds in its litigation with the railroads to collect back assessments for the previously exempted property, ANR's Uniformity Clause claim will be moot. ANR concedes "[t]hat is true for the years 1989 through 1993," but not for 1988. We have affirmed the dismissal of ANR's claim for 1988. It thus appears that the outcome of the pending railroad litigation is at least relevant, if not crucial, to the outcome of this case.[18]

Thus, we reverse the trial court's order in so far as it dismisses ANR's claim for the year 1993. On remand, we suggest that the trial court consider staying these proceedings until the pending railroad litigation is concluded.

By the Court.—Order affirmed in part; reversed in part and cause remanded.

Not recommended for publication in the official reports.

[18] Even if DOR does not prevail against the railroads, the reason or reasons it does not may well be relevant to a constitutional determination in this case.