

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008

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Contractually Limiting the State's Taxing Power

Introduction: Where We Are Today

Alaska State Constitution, Article IX, Section 1 provides:

“The power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article.”

Contractually Limiting the State's Taxing Power

What does Article IX, Section 1 mean?

“The power of taxation shall never be surrendered.”

- “Surrender” means –
 - “To relinquish possession or control of [something] to another because of demand or compulsion.”
 - “To give [something] up in favor of another.”
 - “To give up or abandon [something without another getting it].”
- This prohibition against “surrender” of the taxing power is absolute

Contractually Limiting the State's Taxing Power

What does Article IX, Section 1 mean?

“The power of taxation shall never be surrendered. This power shall not be suspended or contracted away[.]”

- If the second sentence stopped here, the prohibition against “suspend[ing] or contract[ing] away” the taxation power would be as absolute and unqualified as the one against “surrender[ing]” that power

Contractually Limiting the State's Taxing Power

What does Article IX, Section 1 mean?

“The power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article.” (emphasis added)

- The “except” clause means that the taxation power can be suspended or contracted away if it is done “as provided in” Article IX
- The only condition on suspending or contracting away the taxation power is that it must be done “as provided in this article”
- But where “in this article” is it “provided” for the State to suspend or contract away the taxation power???
- After taking the trouble to include this “except” clause, did the Framers then intend it to be a dead letter?

Contractually Limiting the State's Taxing Power

Part II-A. The Direct Evidence of the Framers' Intent from the Proceedings of the 1955-56 Constitutional Convention

April 3, 2003

Contractually Limiting the State's Taxing Power

How We Got Where We Are Today

Where the Framers began

“The power of taxation shall never be surrendered, suspended or contracted away.”

Contractually Limiting the State's Taxing Power

How do we know this is where the Framers began?

- Article IX was drafted by the Committee on Finance and Taxation, chaired by Delegate Leslie Nerland
- In presenting his Committee's proposed Article IX to the Convention in Second Reading on January 16, 1956, Delegate Nerland said:
“Section 1 of this proposal has been altered slightly from the usual wording of a number of state constitutions and also the model state constitution in that which, as some of you perhaps might have noticed, generally reads, ‘The power of taxation shall never be surrendered, suspended or contracted away.’ ”
(emphasis added)

Contractually Limiting the State's Taxing Power

How We Got Where We Are Today

Where the Framers began:

“The power of taxation shall never be surrendered, suspended or contracted away.”

What the Committee on Finance and Taxation proposed:

“The power of taxation shall never be surrendered; and shall never be suspended or contracted away, except as provided herein.”

Contractually Limiting the State's Taxing Power

There are 3 explanations of the Committee's changes

- The Committee's own *Commentary* on its proposed Article IX (12/16/1955)
- A summary of the Committee's proposed Article IX, made to the Convention by Committee Secretary Barrie White when Article IX was in First Reading (12/19/1955)
- An explanation of the Committee's proposed Article IX, given to the Convention by Committee Chair Leslie Nerland when Article IX was in Second Reading (1/16/1956)

Contractually Limiting the State's Taxing Power

Model Constitution

The power of taxation shall never be surrendered, suspended or contracted away.

Proposal by Committee on Finance and Taxation

[Sec. 1.] The power of taxation shall never be surrendered; and shall never be suspended or contracted away, except as provided herein.

[Sec. 4.] The real and personal property of the state and of its political subdivisions shall be exempt from taxation under such conditions and with such exceptions as the legislature may direct. All or any portion of property used exclusively for non-profit religious, charitable, cemetery, or educational purposes as defined by law, is exempt from taxation.

Other exemptions of like or different kind may be granted by general law; and until otherwise provided by law, all exemptions from taxation validly granted are retained. [emphasis added]

Committee's Commentary

"[Sec. 1. Taxing Power.] The power to tax is never to be surrendered, but under terms that may be established by the legislature, it may be suspended or temporarily contracted away. This could include industrial incentives, for example.

"[Sec. 4. Exemptions from Taxation.] All property owned by the state and its subdivisions is exempt from taxation unless the legislature directs otherwise. An exception from tax immunity might be appropriate if a government engaged in what is normally a private business, such as operating a ski resort, a moving picture theater, or a swimming pool.

"The second sentence of this section is intended to exempt from taxation that part of the property of religious, charitable, cemetery, or educational organizations which is actually used for these purposes, as the legislature may direct. But their property used for other purposes would be taxable, for example, an office building owned by a college as part of its endowment.

"The legislature is authorized to make further tax exemptions to encourage, among other purposes, new industry, and all valid current exemptions are continued." (emphasis added)

Contractually Limiting the State's Taxing Power

Model Constitution

The power of taxation shall never be surrendered, suspended or contracted away.

Proposal by Committee on Finance and Taxation

[Sec. 1.] The power of taxation shall never be surrendered; and shall never be suspended or contracted away, except as provided herein.

[Sec. 4.] The real and personal property of the state and of its political subdivisions shall be exempt from taxation under such conditions and with such exceptions as the legislature may direct. All or any portion of property used exclusively for non-profit religious, charitable, cemetery, or educational purposes as defined by law, is exempt from taxation.

Other exemptions of like or different kind may be granted by general law; and until otherwise provided by law, all exemptions from taxation validly granted are retained. [emphasis added]

Delegate White's Summary in First Reading

"Section 1 is a rather routine statement that the power of taxation shall never be surrendered or contracted away. The reason for the division of thought there and the addition of the words, 'except as provided herein' is to remove doubt as to what we might mean later on down in the article by providing exceptions. ...

"Section 4 deals with exemptions from taxation, most of it is pretty standard. The reason in the first sentence for the words, 'with such exceptions as the legislature may direct' in referring to taxation of real and personal properties of the state and of its political subdivisions, is to leave to future legislatures the decision as to whether normally business enterprises of the state or political subdivision should or should not be taxable. The exemption given to religious, charitable, cemetery, or educational purposes is pretty standard. These are the only ones we have attempted to spell out here. And then in the last paragraph of that section it provides that other exemptions may be provided by general law. This would allow for, among other things, for a granting of tax incentives to new industries." (emphasis added)

Contractually Limiting the State's Taxing Power

Model Constitution

The power of taxation shall never be surrendered, suspended or contracted away.

Proposal by Committee on Finance and Taxation

[Sec. 1.] The power of taxation shall never be surrendered; and shall never be suspended or contracted away, except as provided herein.

[Sec. 4.] The real and personal property of the state and of its political subdivisions shall be exempt from taxation under such conditions and with such exceptions as the legislature may direct. All or any portion of property used exclusively for non-profit religious, charitable, cemetery, or educational purposes as defined by law, is exempt from taxation.

Other exemptions of like or different kind may be granted by general law; and until otherwise provided by law, all exemptions from taxation validly granted are retained. [emphasis added]

Delegate Nerland's Explanation in Second Reading

"Section 1 of this proposal has been altered slightly from the usual wording of a number of state constitutions and also the model state constitution in that which, as some of you perhaps might have noticed, generally reads, 'The power of taxation shall never be surrendered, suspended or contracted away.' The Committee felt that definitely the power of taxation should never be surrendered so we inserted a semicolon, but we did feel that there would possibly be occasion and good justification in the future for such things as allowing an industry-wide exemption to encourage new industry to come in and that is the reason for the particular wording there. That is provided for under Section 4. ...

"Section 4, the thought was to exempt the state [and! its political subdivisions from taxation under such provisions and such exceptions as the legislature may direct. There are certain conditions under which these properties might be subject to taxation, and the more or less standard phrase of all or any portion probably used exclusively for non-profit, charitable, cemetery, or educational purposes as defined by law is exempt from taxation and this is the provision that allows for some exemption or inducement to industries or similar things." (emphasis added)

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All 3 explanations confirm the following key points

- The language “except as provided herein” in Section 1 was understood by the Framers to refer to the provision in Section 4 authorizing the legislature to grant “like or different” tax exemptions by general law
- The Finance & Taxation Committee's express purpose in linking the “like or different” tax-exemption authority in Section 4 to the exception to the general principles in Section 1 was to allow the attraction and encouragement of new industries in Alaska

Contractually Limiting the State's Taxing Power

The Convention did not alter the Committee's intent.

This is proved by 4 facts:

- There was no Floor amendment to either Section 1 or the "like or different" tax-exemption provision in Section 4

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The Convention did not alter the Committee's intent

- There was no disagreement or debate on the Floor about the link between the exception clause in Section 1 and the provision in Section 4 for "like or different" tax exemptions

- The only Floor discussion at all on these two provisions was this colloquy during Second Reading (1/16/1956):

KILCHER: Thank you. Then in Section 1, a similar question, in the second line, the power "shall never be suspended or contracted." Could you consider that the power of taxation – could you consider that taxes could be suspended, taxes applying to farms as a part of an integral industry?

NERLAND: I would suspect that if all farms in the Territory were so included, that perhaps they could be.

KILCHER: Yes, that's what I had in mind. Thank you.

Contractually Limiting the State's Taxing Power

The Convention did not alter the Committee's intent

- All textual changes between the Committee's proposed Article IX and the final version adopted by the Convention were made by the Committee on Style and Drafting
 - The Style & Drafting Committee had “no authority to change the sense or purpose of any proposal referred to it” – Rule 16(c) of the Convention's Permanent Rules, adopted 11/14/1955
 - Style & Drafting Committee changes were made in consultation with at least 1 representative of each committee offering a proposed Article – *see* Convention Minutes of 1/9/1956, statement by Delegate Sundborg, Chair of the Style & Drafting Committee

Contractually Limiting the State's Taxing Power

The Convention did not alter the Committee's intent

4. The Style & Drafting Committee's changes were non-substantive

Proposal by Finance & Taxation Committee

[Sec. 1. Taxing Power.] The power of taxation shall never be surrendered; and shall never be suspended or contracted away, except as provided herein.

[Sec. 4. Exemptions from Taxation.] The real and personal property of the state and of its political subdivisions shall be exempt from taxation under such conditions and with such exceptions as the legislature may direct. All or any portion of property used exclusively for non-profit religious, charitable, cemetery, or educational purposes as defined by law, is exempt from taxation.

Other exemptions of like or different kind may be granted by general law; and until otherwise provided by law, all exemptions from taxation validly granted are retained. [emphasis added]

Revision by Style & Drafting Committee

[Sec. 1. Taxing Power.] The power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article.

[Sec. 4. Exemptions.] The real and personal property of the state or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of, property used exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained until otherwise provided by law. [emphasis added]

Contractually Limiting the State's Taxing Power

The conclusions to be drawn from the Convention

- The Convention adopted without change the Finance & Taxation Committee's intended link between the exception language in Section 1 and the "like or different" tax-exemption language in Section 4
- The intent and purpose of this link, as expressed by and on behalf of the Finance & Taxation Committee, are therefore also the intent and purpose of the Constitutional Convention as a whole

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The conclusions to be drawn from the Convention

3. The correct reading of Section 1 in conjunction with Section 4 is something like this:

“The power of taxation shall never be surrendered, but the Legislature may – to attract or encourage industry in Alaska (or, under the Kilcher-Nerland colloquy, to maintain or enhance an existing industry) – enact a general law establishing the terms under which this power may be suspended or temporarily contracted away through tax exemptions of like or different kind from the ones listed in Section 4.”

Cf. “The power to tax is never to be surrendered, but under terms that may be established [“by general law”] by the legislature, it may be suspended or temporarily contracted away. This could include industrial incentives, for example.” – Finance & Taxation Committee’s *Commentary* on Article IX, Section 1

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The conclusions to be drawn from the Convention

4. It is likely that the State is constitutionally authorized to enter into a binding "tax contract" under the Alaska Stranded Gas Development Act (AS 43.82)
 - AS 43.82 is a "general law" by which the Legislature has exercised its constitutional authority to establish by general law the terms for the State's taxing power to be "suspended or contracted away" temporarily in order to attract or encourage industry in Alaska
 - Development of stranded natural gas is clearly within the scope of "industry" that the Framers intended these provisions to help
 - The reduction in fiscal risk that a "tax contract" under AS 43.82 provides is of material benefit to a Gas Project even if the financial obligations under that contract are equivalent to those under the existing tax statutes

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Part II-B. Indirect Evidence of the Framers' Intent

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Contractually Limiting the State's Taxing Power

When the Convention met, Alaska already had a contract-based system of tax incentives

1. Alaska Property Tax Act of 1949 -- chapter 10, SLA 1949
 - Imposed a 1% (10 mill) tax on the value of all taxable property
 - § 6(h)(1) authorized Tax Commissioner to exempt “new industry” and “new industrial enterprises” from up to half the tax for up to 10 years
 - § 6(h)(3): “All exemptions granted hereunder shall be negotiated and consummated prior to the initial commencement of [industrial] production by the applicant.” (emphasis added)
 - Emphasized words imply case-by-case bargaining, resulting effectively in individual tax-exemption contracts but without explicitly saying so

Contractually Limiting the State's Taxing Power

When the Convention met, Alaska already had a contract-based system of tax incentives

2. Contractual nature of Alaska Property Tax Act exemptions was made explicit under chapter 32, SLA 1953

- § 1(b) authorized local taxing jurisdictions, on their own without the Tax Commissioner, to provide “new industry” the same tax exemptions (i.e., up to half the tax for up to 10 years) as under the 1949 Property Tax Act
- § 2: “The governing body ... of the [local] taxing unit shall ... grant the exemptions ... permitted herein ... by appropriate ordinance or resolution, which ordinance or resolution shall constitute a contract between the [local] taxing unit, and the owner of the property” (emphasis added)
- § 3: “All exemptions granted ... under ... Section 6, Chapter 10, Session Laws of Alaska 1949 shall ... apply to all taxes levied and assessed by the [local] taxing units ... as fully as though they had been granted or made under the provisions of this Act” (emphasis added), which includes the “provision” about tax exemptions being contracts with the taxpayer

Contractually Limiting the State's Taxing Power

When the Convention met, Alaska already had a contract-based system of tax incentives

- Overlapping membership between the 1949 and 1953 Legislatures and the Constitutional Convention
 - Members of the 1949 Legislature who were Convention delegates
 - Senate (5 of 16): Barr, Collins, McCutcheon, Peratrovich and (Victor) Rivers
 - House (3 of 24): Egan, Nolan and Taylor
 - Members of the 1953 Legislature who were Convention delegates
 - Senate (1 of 16): Egan
 - House (1 of 24): Coghill

Contractually Limiting the State's Taxing Power

The 1957 Legislature enacted a new system of contract-based tax incentives – Alaska Industrial Incentive Act (chapter 129, SLA 1957)

- Exemptions it authorized (apply to local as well as territorial taxes):
 - “industrial development income” was exempt from income tax for first 10 years (§ 1(a)); business property was exempt from property taxes for first 5 – 10 years, depending on amount invested (§ 1(b)); business was from all “license fees, excises or other taxes” for first 10 years (§ 1(c)); dividends/profit distributions of “industrial development income” were exempt from income tax for first 15 years (§ 3(a)); capital gains from sale of shares in exempt-business were exempt from income tax for first 10 years (§ 3(c)); payments made/received in qualifying liquidations of exempt-businesses were exempt from income tax for transferors and transferees owning 80% or more of the business (§ 4)

Contractually Limiting the State's Taxing Power

The 1957 Legislature enacted a new system of contract-based tax incentives – Alaska Industrial Incentive Act (chapter 129, SLA 1957)

2. § 5(a): “Any natural or artificial person who has established or proposes to establish in Alaska an eligible business, may apply to the Board [administering the tax-exemption program] for the benefits of this Act. The grants of tax exemption under this Act shall be considered in the nature of a contract between the grantee and the Territory of Alaska. The Board may include in grants of tax exemption hereunder such terms and conditions as in its judgment will further the purposes of industrial development of this Act.” (emphasis added)

Contractually Limiting the State's Taxing Power

The 1957 Legislature enacted a new system of contract-based tax incentives – Alaska Industrial Incentive Act (chapter 129, SLA 1957)

3. It's unlikely the 1957 Legislature would have knowingly enacted legislation inconsistent with the new Constitution
 - Convention's intent would have been known to the 1957 Legislature
 - Membership overlap between Convention and 1957 Legislature
 - Senate (5 of 16): Barr, McNees, Nolan, Peratrovich and V. Rivers
 - House (10 of 24): Awes, Buckalew, Coghill, E.A. Fischer, V. Fischer, Gray, Metcalf, Riley, Sweeney and Taylor
 - Inconsistent legislation could have caused confusion/concern in Congress, possibly jeopardizing Statehood (the Statehood Act was not passed until mid 1958)

Contractually Limiting the State's Taxing Power

The 1957 Legislature enacted a new system of contract-based tax incentives – Alaska Industrial Incentive Act (chapter 129, SLA 1957)

4. Given the likely intent to be consistent with the new Constitution, the Act provides an almost contemporaneous illustration of how key provisions of Sections 1 and 4 of Article IX would work in practice

4A. The taxing power was “contracted away”

- i. Each exemption under 1957 Act was a true contract with taxpayer
 - Declaration in § 5(a) that all exemptions were contracts
 - Authorization in § 5(a) for Board to negotiate additional terms and conditions of the exemption reinforces its nature as a contract
 - Authorization in § 1(f) for Board to grant “partial exemption[s]” further reinforces the contractual nature of the exemptions
- ii. Each exemption was “temporary” – i.e., limited to a fixed term

Contractually Limiting the State's Taxing Power

The 1957 Legislature enacted a new system of contract-based tax incentives – Alaska Industrial Incentive Act (chapter 129, SLA 1957)

4B. Tax “exemptions of like or different kind”

- In Article IX, Section 4 the phrase of “like or different kind” refers to the sentence immediately before it, which exempts only certain listed “property” from tax (i.e., from property taxes)
- 1957 Act exempts property, business income, dividends and distributions, and capital gains – not only from property taxes, but also from income taxes, “license fees, excises [and] other taxes”

Contractually Limiting the State's Taxing Power

The 1957 Legislature enacted a new system of contract-based tax incentives – Alaska Industrial Incentive Act (chapter 129, SLA 1957)

4C. The 1957 Act was a “general law”

- It applied statewide, instead of to a named community or town
- It applied to qualifying new industries categorically, instead of to any named businesses or proprietors

Contractually Limiting the State's Taxing Power

The 1957 Legislature enacted a new system of contract-based tax incentives – Alaska Industrial Incentive Act (chapter 129, SLA 1957)

4D. Tax exemptions “granted by general law”

- i. The Act was not self-executing in terms of “grant[ing]” exemptions
 - § 5(a) specifically stated that “grants of tax exemption under [note: not “by”] this Act shall be considered in the nature of a contract between the grantee and the Territory” (emphasis added)
 - Various sections of the Act declared without qualification that certain property, income, payments and activities were exempt from various kinds of taxes, but the Board under 2nd ¶ of § 2(c) and § 2(d)(7) had discretion to refuse to grant an exemption anyway
 - Exemptions were “granted” by the Board acting under the Act
 - People “appl[ied] to the Board for the benefits of this Act” instead of filing with the Board a notice or claim to those benefits; *see* § 5(a)
 - Board could “grant a partial exemption” under § 1(f) (emphasis added)

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Contractually Limiting the State's Taxing Power

The 1957 Legislature enacted a new system of contract-based tax incentives – Alaska Industrial Incentive Act (chapter 129, SLA 1957)

5. The key elements of the 1957 Act are also in the Stranded Gas Development Act (AS 43.82)
 - Each Act is a “general law” authorizing grants of individualized tax exemptions
 - The tax exemptions granted under each Act are contractual in nature
 - Negotiation of specific terms and conditions reflecting a grantee's particular circumstances is explicitly authorized under each Act
 - The actual “grant” of an exemption under each Act is made by a person or board exercising authority conferred by that Act

Contractually Limiting the State's Taxing Power

The 1957 Legislature enacted a new system of contract-based tax incentives – Alaska Industrial Incentive Act (chapter 129, SLA 1957)

6. Historical footnote – 2 Alaska Supreme Court cases involve a tax exemption granted under the 1957 Act: *Union Oil Co. of California v. State, Dept. of Revenue*, 677 P.2d 1256 (Alaska 1984) and *Union Oil Co. of California v. State*, 804 P.2d 62 (Alaska 1990)
 - Both cases were litigated over the interpretation of the exemption
 - From the absence of any mention in either case about the validity of the exemption, it appears the Court and the parties all took it for granted that the exemption was valid and was duly authorized under the Constitution
 - Note: the “grandfather” provision in the last sentence in Article IX, Section 4 would not apply to validate Union Oil’s tax exemption because it had not been granted when the Constitution took effect

Contractually Limiting the State's Taxing Power

**Part III. Discussion of the Counter-Argument
that the Phrase “grant[ing tax exemptions] by
general law” in Article IX, Section 4 Implies an
Ability for Subsequent Legislatures to Amend
that “law” and thereby Unilaterally Alter the
Terms of Those Exemptions**

Contractually Limiting the State's Taxing Power

What is the substance of this counter-argument?

- **Granted:** The exception clause in Article IX, Section 1 refers to the “like or different” tax-exemptions sentence in Section 4
- But Section 4 says “Other exemptions of like or different kind may be granted by general law” and says nothing about contracts
- Therefore, the exemptions and similar tax incentives under Section 4 can only be “granted” (i.e., conferred upon the individual recipient) “by general law” -- not by contracts
 - The State lacks authority under Article IX, Section 4 to enter into a binding tax contract granting an incentive by fixing the fiscal terms for a project
- Establishment of a fiscal regime by “general law” cannot bind the State
 - It is inherent in the legislative power that one legislature cannot prevent a subsequent one from altering a law that the former passes

Contractually Limiting the State's Taxing Power

The counter-argument has at least 2 problems

- It runs against the plain meaning of Section 1 and the Framers' express intent
 - Section 1's "except as" clause clearly implies the taxing power can be "contracted away"
 - The Framers explicitly said it was their intent that the taxing power could be temporarily "contracted away"
 - e.g., "The power to tax is never to be surrendered, but under terms that may be established by the legislature, it may be suspended or temporarily contracted away." – Finance & Taxation Committee's *Commentary* (emphasis added)
 - The counter-argument asserts that this power can only be exercised through "grant[s] by general law[s]" instead of contracts, which is in conflict with the Framers' clear intent to allow it by contract

Contractually Limiting the State's Taxing Power

The counter-argument has at least 2 problems

2. It applies the phrase "by general law" in Section 4 to the wrong part of the linked provisions in Sections 1 and 4
 - A. It would have been most unwise to allow the State to temporarily "contract away" the taxing power only by a "general law"
 - A "contract" by its very nature is something private that pertains to and governs only the individual parties to it; in contrast, a "general law" by its very nature treats all persons or an entire group of persons without distinction among them, instead of on an individual basis
 - To create any contracts at all with individuals, a "general law" would have to constitute a generic, take-it-or-leave-it standing offer to the public at large, so that a contract would arise anytime time someone accepts that offer
 - A contract under such a generic standing offer by "general law" would arise without negotiation between the State and the accepting party to reflect the particular situation of that party or its project

Contractually Limiting the State's Taxing Power

The counter-argument has at least 2 problems

2. It applies the phrase "by general law" in Section 4 to the wrong part of the linked provisions in Sections 1 and 4 (cont.)

B. The correct application of "by general law" is to apply it to the means by which a general legal framework is established within which tax "contracts" with individuals can then be made

- It makes much more sense to use a "general law" to create a framework for negotiating tax "contracts" that reflect the actual circumstances of a person or project, than to create contracts directly by a generic standing offer under a "general law" without negotiation
- See how naturally, in this application, the term "by general law" fits within the Framers' intent for Section 1's "except as" clause:

"The power to tax is never to be surrendered, but under terms that may be established by the legislature ["by general law"], it may be suspended or temporarily contracted away." – Finance & Taxation Committee's *Commentary*

Contractually Limiting the State's Taxing Power

The counter-argument has at least 2 problems

Possible 3rd problem with it

Assume: Counter-argument is correct and contractual tax exemptions, if allowed at all under Article IX, Section 4, must be "granted [direct-ly] by general law" through something like a take-it-or-leave-it stand-ing offer to the public

Then: Alaska Industrial Incentive Act of 1957 would have become un-constitutional when the Constitution took effect at Statehood. Why?

- Because the Board "granted" (or denied) the exemptions under 1957 Act, not the Act directly; and they were "contractual in nature"
- The 1957 Act conflicted with Article IX, Section 4 as read under counter-argument's interpretation, and hence would have been unconstitutional

Union Oil cases (1984 & 1990) never even hint that the tax exemption might be invalid because that underlying statute was unconstitutional₄₄

Contractually Limiting the State's Taxing Power

Recap

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Contractually Limiting the State's Taxing Power

Constitutional authority for tax contracts

- The plain meaning of the clause “except as provided in this article” in Section 1 of Article IX implies that the taxing power can be “suspended or contracted away”
- The Framers expressly stated their intent to allow the taxing power to be “temporarily contracted away” as “industrial incentives, for example”

Contractually Limiting the State's Taxing Power

How “by general law” in Section 4 fits into “contract[ing] away” the taxing power under Section 1

- The Framers understood and intended the phrase “except as provided in this article” in Section 1 to be a cross-reference to “Other exemptions of like or different kind may be granted by general law” in Section 4
- The most natural application of “by general law” within the Framers’ express intent for Section 1 is, “The power to tax is never to be surrendered, but under terms that may be established [“by general law”] by the legislature, it may be suspended or temporarily contracted away.”

Contractually Limiting the State's Taxing Power

How “by general law” in Section 4 fits into “contract[ing] away” the taxing power under Section 1 (cont.)

- Thus “general law” “establishe[s]” the “terms” under which contracts may be made that temporarily “contract away” the taxing power, but does not create the actual contracts themselves (unless the legislature chooses to do so by establishing a generic, take-it-or-leave-it standing offer to the public)
- The Alaska Stranded Gas Development Act (AS 43.82) is an example of a “general law” establishing general “terms” to “contract[]away” the taxing power temporarily – its operation resembles that of territorial industrial-incentive tax-exemption statutes already on the books when the Convention met, as well as that of the law enacted by the 1957 Legislature (15 of 40 legislators had been Convention delegates)
- The State therefore has the necessary constitutional authority to be able to enter into any contract it makes pursuant to AS 43.82

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