

Tom G.
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Bartel

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

RECEIVED

JAN 19 1995

REVENUE ADMIN.

SCHROCK LAND & CATTLE, INC.,
 and R.D.O., Inc. and LLOYD
 ERICKSON,

 Plaintiffs,

 vs.

 M. BERRI BALKKA, Tax Commissioner
 of the State of Nebraska,

 Defendant,

 and

 JOBS FOR NEBRASKA,

 Intervenor.

Docket 506, Page 010.

ORDER

DEPT. OF JUSTICE

JAN 18 1995

NEBRASKA

The Motion for Summary Judgment came on for hearing on the 7th day of November, 1994. Robert B. Crosby, Sylvester J. Orsi and Brian Wickens were present for Plaintiffs, L. Jay Bartel was present for the Defendant, and Nicholas K. Niemann was present for the Intervenor. Evidence was adduced and the court finds and orders as follows:

This is a declaratory judgment action in which the plaintiffs, Schrock Land & Cattle, Inc., R.D.O., Inc., and Lloyd Erickson, owners of real and personal property subject to taxation in Phelps County, Nebraska, seek to challenge the constitutionality of personal property tax exemptions provided under Neb. Rev. Stat. §§ 77-202(6) (Cum. Supp. 1992) and 77-4105(2) (Reissue 1990).

Specifically, these plaintiffs claim they are entitled to summary judgment as a matter of law because the personal property tax exemptions at issue were declared unconstitutional under Neb. Const., art. VIII, § 1 in Jaksha v. State, 241 Neb. 106, 486 N.W.2d 858 (1992).

The defendant in this action is M. Berri Balka, the Tax Commissioner and Chief Executive Officer of the Nebraska Department of Revenue. The defendant intervenor in this action is Jobs for Nebraska, an unincorporated Nebraska association which represents many of the companies which have formed contracts with the State of Nebraska pursuant to the 1987 Legislative Bill 775 property tax incentives which the plaintiffs seek to have declared unconstitutional. [Petition in Intervention Para. 1 & 2].

In considering the plaintiff's motion for summary judgment, filing #10, the court considers the following, set forth in Alder v. First Nat'l Bank & Trust Co., 241 Neb. 873, 876, 491 N.W.2d 686, ___ (1992):

. . .[A] summary judgment is properly granted only when the pleadings, depositions, admissions, stipulations, and affidavits in the record disclose that there is no genuine issue concerning any material fact or the ultimate inferences deducible from such fact or facts and that the moving party is entitled to judgment as a matter of law. [Citations omitted.] The movant has the burden to show that no genuine issue of material fact exists and must produce sufficient evidence to demonstrate that if the evidence presented remains uncontroverted, the movant is entitled to judgment as a matter of law. [Citations omitted.] After the movant has shown facts entitling it to judgment as a matter of law, the opposing party has the burden to present evidence showing the existence of an issue of material

fact which, as a matter of law, prevents the entry of judgment in favor of the movant. [Citations omitted.]

STATEMENT OF FACTS

The personal property tax exemptions at issue are part of 1987 Neb. Laws, L.B. 775 which enacted the Employment and Investment Growth Act [LB 775]. Under LB 775, a business qualifies for certain tax benefits if it meets certain requirements. To qualify, a business must develop a project plan which meets thresholds of employment and investment in Nebraska. Neb. Rev. Stat. § 77-4104 (Reissue 1990). This project plan is submitted for approval to the state Tax Commissioner. Upon approval, the State enters into a contract with the business, under which the state agrees to allow specified tax benefits for the qualifying project. Neb. Rev. Stat. § 77-4101(4). If a project will result in at least one hundred new jobs and at least \$10 million in new investment, the business will receive personal property tax exemptions for a period of fifteen years on turbine-powered aircraft and mainframe business computers. Neb. Rev. Stat. § 77-4105(2) (a) & (b). If the threshold of one hundred jobs is achieved, and the project involves \$10 million of new investment in business equipment utilized in manufacturing or processing of agricultural products, then this equipment is also exempt from personal property tax for fifteen years. Neb. Rev. Stat. § 77-4105(2) (c).

To date, approximately ninety companies [LB 775 Companies] have contracted with the State of Nebraska to receive the LB 775 tax incentives granted in exchange for each company's agreement

to invest in Nebraska at least \$10 million in new property, plant, and equipment and to add in Nebraska at least one hundred new jobs. [Petition in Intervention, Para. 4]. Only one taxpayer in Phelps County has received an exemption for personal property pursuant to LB 775. (Gerdes Affidavit #3). Said taxpayer did not receive any exemptions until 1990. (Gerdes Affidavit #3).

STANDING

First, this Court addresses defendant's argument that the plaintiffs lack standing because they have failed to show that LB 775 exemptions have increased their burden as taxpayers. Neb. Rev. Stat. § 25-21,150 (Reissue 1989) provides:

Any person. . .whose rights, status or other legal relations are affected by a statute,. . .may have determined any question of construction or validity arising under the. . .statute. . .and obtain a declaration of rights, status or other legal relations thereunder.

Therefore, a plaintiff in a declaratory judgment action must show that he/she is a person "whose rights, status, or other legal relations are affected" by the challenged statute. Mullendore v. Nuernberger, 230 Neb. 921, 927, 434 N.W.2d 511, 516 (1989). Generally, a plaintiff has standing only if he/she can show a direct injury or interest different from that of the general public. Nebraska School Dist. No. 148 v. Lincoln Airport Auth. et al., 220 Neb. 504, 506-07, 371 N.W.2d 258, 261 (1985) (Citation omitted). However, "[t]here is an exception to the general interest prohibition where a resident taxpayer (who has a general interest with other taxpayers) sues to enjoin an illegal act by a municipal body." Id. at 507, 371 N.W.2d at 261.

Similarly, a resident taxpayer, without showing an injury different from the general public, has standing to enjoin the illegal expenditure of public funds or the illegal creation of a debt which the taxpayer may be required to pay. Lincoln Airport at 507, 371 N.W.2d at 261. [Quoting Martin v. City of Lincoln, 155 Neb. 845, 850, 53 N.W.2d 923, 926 (1952)]. See also, Cunningham v. Exon, 202 Neb. 563, 567, 276 N.W.2d 213, 215 (1979) (in declaratory judgment action, plaintiff must show special injury unless challenged statute involves expenditure of public funds or illegal increase in the burden of taxation).

This case does not involve the illegal expenditure of public funds nor the illegal creation of a debt. Moreover, the defendant argues, and has presented evidence in support thereof, that the tax exemptions in LB 775 have not created a shift in the burden of taxation upon these plaintiffs because only one company in Phelps County has invoked the privileges granted by LB 775. Moreover, the defendant asserts that the investments made by and the number of employees hired by said company have actually caused an expansion of the tax base in Phelps County adding substantial dollars of taxable property to the tax rolls. (Pursell Affidavit #4-7).

First, the size of the taxpayer's interest in a taxpayer's action is irrelevant, therefore, the fact that only one LB 775 Company exists in Phelps County is immaterial. See e.g., 74 Am.Jur.2d Taxpayers' Actions, § 4, pg. 191 (1974). However, it is relevant that this company did not receive exemptions until

1990. For example, in Mullendore, 230 Neb. 921, 434 N.W.2d 511, a taxpayer seeking a declaratory judgment that an education revenue statute determining high school tuition rates for nonresident students was unconstitutional, was denied standing when he failed to show that any students from his school district were sent to another district while the statute was operative. The Court reasoned that the statute in question was activated only when a student was sent by his/her district and received by another district. Id. at 927, 434 N.W.2d at 516. Therefore, without proof that the plaintiff's district sent students, it was impossible to tell whether he was actually taxed pursuant to the statute in question and the plaintiff was therefore denied standing. Id. at 928, 434 N.W.2d at 516.

Likewise, in the case at hand, LB 775 is not invoked unless a company applies for and receives a contract with the state. Therefore, the plaintiffs could not have possibly suffered a loss in this case until 1990.

Additionally, in order to receive the personal property tax exemptions under § 77-4105(2), a company must invest at least \$10 million and add at least 100 new full time jobs. The defendant has presented evidence that the addition of one hundred new jobs has the effect of causing a direct expansion of the property tax base in the county in which the project is located. [Pursell Affidavit #3]. Expert opinion in the form of an affidavit was presented which stated that one hundred new employees in Phelps County would increase that county's tax base at least \$95,000 in

annual new property taxes. [Pursell Affidavit #4]. This same expert opined that the indirect impact of adding one hundred new employees in Phelps County would increase the tax base at least \$164,000 with some of this occurring outside of Phelps County. [Pursell Affidavit #7]. Therefore, this expert concluded that the LB 775 exemptions granted in Phelps County did not cause any shift in the tax burden to these particular plaintiffs. [Pursell Affidavit #8].

Plaintiffs argue, however, that the Court in Jaksha, 241 Neb. 106, 486 N.W.2d 858, found as a matter of law that all of the tax exemptions granted during the 1980's resulted in a proportionate increase in the tax burden to remaining taxpayers. While it is true that the Court in Jaksha discussed the "erosion of the property tax base" in which it mentioned the exemptions granted by LB 775, the Court began its discussion of § 7 of L.B. 829 by stating, ". . .it is first necessary to determine whether § 7 of L.B. 829 improperly shifts the property tax burden. . .". 241 Neb at 124, 486 N.W.2d at 871. Therefore, it is evident that the Court did not find in its previous general discussion of the "erosion of the tax base" that as a matter of law, all exemptions granted during the 1980's caused a shift in the burden of taxation. The Court then held only that, as it relates to tax year 1991, § 7 of L.B. 829 placed an unconstitutionally heavy burden on the remaining taxpayers. Id. at 127, 486 N.W.2d at 872.

Therefore, this Court finds that the defendant has presented evidence raising a material issue of fact as to whether a shift

of the tax burden has resulted due to the LB 775 exemptions granted in Phelps County.

Plaintiffs also argue that they have standing due to another exception to the general standing rules adopted by the Nebraska Supreme Court in Cunningham, 202 Neb. 563, 276 N.W.2d 213. This exception relied upon by the plaintiffs exists in cases ". . . where matters of great public concern are involved and a legislative enactment may go unchallenged unless plaintiff has the right to bring the action." Id. at 567, 276 N.W.2d at 215. In Cunningham, the Court gave a plaintiff taxpayer standing in a declaratory judgment action involving a constitutional amendment which made changes as to the use of public funds for sectarian and educational purposes on the grounds that such amendment was of great public interest and concern. See also, Howard v. City of Boulder, 290 P.2d 237 (Colo. 1955) (change in form of government was matter of great interest sufficient to provide taxpayer standing) (cited in Cunningham).

The present case does not appear to be of the type to fit within this public interest exception. Moreover, although Neb. Rev. Stat. § 25-21,150 grants a person the opportunity to have his/her own rights determined, it does not entitle such a person to assert the rights of another person. Schroder v. City of Lincoln, 155 Neb. 599, 607, 52 N.W.2d 808, 813 (1952). The fact that taxpayers from other counties may be able to show an increase in their tax burden as a result of LB 775 is insufficient to provide standing for these plaintiffs.

JAKSHA V. STATE

Next, the Court addresses plaintiffs' argument that the provisions in question were declared unconstitutional in Jaksha, 241 Neb. 106, 486 N.W.2d 858. Contrary to plaintiffs' assertion, Jaksha did not hold the exemptions granted by Neb. Rev. Stat. § 77-202(10) (now § 77-202(6)) and § 77-4105(2) unconstitutional under Neb. Const. art. VIII, § 1. Rather, the Jaksha opinion addressed only § 7 of L.B. 829, codified at Neb. Rev. Stat. § 77-202(12) (Supp. 1991), which added to the previous version of § 77-202, a tax exemption for all personal property except motor vehicles for tax year 1991 only. 241 Neb. at 109-110, 486 N.W.2d at 863. Only section 12 of § 77-202 limited its application to tax year 1991. It is evident that the Jaksha opinion was limited to addressing the constitutionality of § 77-202(12) because the Court's opinion likewise limited itself to tax year 1991. Specifically, the Court stated: ". . .we hereby declare § 7 of L.B. 829, as it relates to tax year 1991, unconstitutional as a violation of the uniformity clause of Neb. Const. art. VIII, § 1." Id. at 127, 486 N.W.2d at 872.

In fact, the Court found plaintiff's challenge to § 7 of L.B. 829 as it relates to 1992 and subsequent years moot stating:

The provision in § 7 exempting all personal property except automobiles from the tax rolls applies only to tax year 1991. Thereafter, the bill essentially recodifies the schedule of exemptions as they existed at the time of the MAPCO Ammonia Pipeline decision. The plaintiff argues that not only are the exemptions which this court struck down in MAPCO Ammonia Pipeline still invalid, but the remainder of the statute is invalid as well. See § 77-202(1) through (11). It is unnecessary to address this issue, however, because

subsequent events have rendered the question moot.

Id. The subsequent event referred to by the Court in Jaksha was the passage of 1992 Neb. Laws, L.B. 1063, which became effective on March 19, 1992. The Court noted in its opinion that the exemptions contained in § 7 were repealed as of January 1, 1992, as a result of L.B. 1063 making its determination of the constitutionality for subsequent years moot. Id. at 128, 486 N.W.2d at 873. However, L.B. 1063 reenacted § 77-202(10) (previously (6)) and only omitted section 12. Obviously, if the Court were addressing the constitutionality of section 10 in its opinion, it would have addressed this provision as it relates to 1992 and subsequent years because the provision was still in full effect.

The plaintiffs argue, however, that the Jaksha opinion spoke to all personal property tax exemptions when it discussed the "system of exemptions" enacted between 1972 and 1991 and the "erosion of the tax base". However, the Jaksha Court created a two part test to determine the constitutionality of statutes under the Neb. Const. art., VIII, §§ 1 & 2 of which § 77-202(10) was never analyzed under. This test requires a determination of:

- (1) whether the exemptions improperly shift the property tax burden to the remaining tax base, and
- (2) whether there is a substantial difference of situation or circumstance justifying differing legislation for the objects classified.

Id. at 116-117, 486 N.W.2d at 866.

Therefore, an issue of fact exists as to whether the provisions stated in Neb. Rev. Stat. §§ 77-202(10) & 77-4105(2)

would pass the test stated in Jaksha. The next issue to be resolved by this Court is the effect of subsequent constitutional amendments and the passage of L.B. 1063 upon the statutes in question. Resolution of these issues will determine whether the test stated in Jaksha is still applicable to these statutes, and, if not, for how long said test was applicable.

CONSTITUTIONAL AMENDMENTS

In May, 1992, the voters of Nebraska approved a proposed amendment to the Nebraska Constitution designated as Amendment 1. This amendment changed the provisions of Neb. Const. art. VIII, §§ 1 & 2, and added a new provision, art. VIII, § 13. The defendant argues that the statutes in question were made constitutional pursuant to Amendment 1 because they were "existing revenue laws" at the time of Amendment 1's passage.

Article VIII, § 1 which previously provided that taxes were required to "be levied by valuation uniformly and proportionately upon all tangible property and franchises, . . .", was amended to provide, in part, as follows:

Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 4, of this Constitution or any other provision of this Constitution to the contrary: (1) Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution; [and] (2) tangible personal property, as defined by the Legislature, not exempted by this Constitution or by legislation, shall be taxed at depreciated cost using the same depreciation and reasonable class lives, as determined by the Legislature, or shall all be taxed by valuation uniformly and proportionately; . . .

Amendment 1 also altered the provisions of Neb. Const. art.

VIII, § 2, regarding the classification and exemption of property from taxation stating:

Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 1 or 4, of this Constitution or any other provision of this Constitution to the contrary, . . . (8) the Legislature may exempt inventory from taxation; [and] (9) the Legislature may define and classify personal property in such manner as it sees fit, whether by type, use, user, or owner, and may exempt any such class or classes of property from taxation if such exemption is reasonable or may exempt all personal property from taxation; . . .

Amendment 1 also added a new constitutional provision, art.

VIII, § 13, which provides:

Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 1 or 4, of this Constitution or any other provision of this Constitution to the contrary, amendments to Article VIII of this Constitution passed in 1992 shall be effective from and after January 1, 1992, and existing revenue laws and legislative acts passed in the regular legislative session of 1992, not inconsistent with this Constitution as amended, shall be considered ratified and confirmed by such amendments without the need for legislative reenactment of such laws.

The defendant argues that these constitutional changes which took place in 1992 provide independent grounds which establish the validity of the LB 775 exemptions. First, defendant argues this is so because Amendment 1 retroactively ratified existing revenue laws of which LB 775 was so existing. However, the Nebraska Supreme Court stated in Jaksha:

[a]n act of the legislature that is forbidden by the Constitution at the time of its passage is absolutely null and void, and is not validated by a subsequent amendment to the Constitution authorizing it to pass such an act.

241 Neb. at 110, 486 N.W.2d at 863. (Quoting State ex rel. Rogers

v. Swanson, 192 Neb. 125, 128, 219 N.W.2d 726, 729 (1974)).

Accordingly, although Jaksha was decided on July 24, 1992, subsequent to the voter approved Amendment 1 in May, 1992, the Court reviewed L.B. 829 under the Constitution as it existed on June 11, 1991, since it was under the latter which L.B. 829 was passed. Id. Likewise, the challenged statutes in this case cannot be made constitutional by constitutional amendments passed subsequent to their enactment.

The defendant argues however that a constitutional amendment may operate retroactively if there is shown a clear intention that it was meant to do so. Defendant cites several cases in support thereof, however, all are distinguishable from the case at hand as none had the effect of making a previously enacted statute, which could have been unconstitutional at the time it was passed, constitutional. See e.g., State ex rel. Mathews v. Houndersheldt, 186 N.W. 234 (Minn. 1922) (time when constitutional amendment changing the length of term for probate court judges becomes effective); Luikart v. Higgins, 130 Neb. 395, 264 N.W. 903 (1936) (effect of constitutional amendment on stockholders who purchased stock prior to amendments adoption); Kneip v. Herseth, 214 N.W.2d 93 (S.D. 1974) (effect of constitutional amendment shortening term of office on individual holding office at time amendment passed).

Therefore, the reasoning of these cases is inapplicable to the issue currently before the Court and Amendment 1 does not apply retroactively to LB 775. Defendant's argument that the

provisions at issue, because they were reenacted by L.B. 1063 in 1992 making them "legislative acts passed in the regular session of 1992", and therefore, constitutional without the need for legislative reenactment must also fail for the same reasons set forth above.

L.B. 1

The defendants next assert that the LB 775 exemptions have been reenacted by virtue of the repeal and reenactment of Neb. Rev. Stat. § 77-202 in Laws 1992, Second Sess., L.B. 1063, approved by the Governor on March 18, 1992, and Laws 1992, Second Spec. Sess., L.B. 1, approved by the Governor on August 12, 1992.

L.B. 1063 deleted the previous exemptions found at § 77-202(6) - (9) as well as sections 11 and 12. However, it included subsection (6) with the same language found in the former § 77-202(10) providing:

Any personal property exempt pursuant to subsection (2) of section 77-4105 shall be exempt from the personal property tax.

L.B. 1063 was reenacted as L.B. 1 in a Special Session by a 34 to 12 vote on August 12, 1992. 1992 Neb. Laws, Second Spec. Session, L.B.1. Legislative Journal, August 12, 1992 at 139-41. Therefore, the defendant argues that both § 77-4105(2) and § 77-202(10) (now subsection (6)) were validly reenacted in 1992 and validated by the already passed Amendment 1. Therefore, their constitutionality must now be analyzed under the newly adopted reasonableness test set forth at amended Neb. Const. art VIII, § 2(a).

In contrast, the plaintiff argues that L.B. 1063 and L.B. 1 did not reenact § 77-4105(2) because said section was not listed in the title of L.B. 1063 nor L.B. 1 as being amended or repealed in violation of Neb. Const. art. III, § 14 which provides:

[E]very bill and resolution shall be read by title when introduced, and a printed copy thereof provided for the use of each member, and the bill and all amendments thereto shall be printed and read at large before the vote is taken upon its final passage. . . And no law shall be amended unless the new act contain the section or sections as amended and the section or sections so amended shall be repealed.

However, contrary to plaintiff's argument, neither L.B. 1063 nor L.B. 1 violate Neb. Const. art. III, § 14 because neither amend or repeal § 77-4105(2). Therefore the bills at issue differ from those in the case cited in support of the plaintiffs' argument, State v. Greenburg, 187 Neb. 149, 187 N.W.2d 751, (1971). In Greenburg, Nebraska law prior to 1969 defined possession of cannabis as a felony. However, a legislative bill passed in 1969 made such possession of less than a specified amount of cannabis only a misdemeanor. Therefore, the Court concluded that the legislative bill passed in 1969 amended the prior relevant statute by implication. However, since the legislative bill failed to list the previous Nebraska statute relating to cannabis, the Court found said bill invalid and inoperative due to its failure to comply with art. III, § 14. Id. Similarly, the Supreme Court rejected defendant's argument in Adams v. State, 138 Neb. 613, 294 N.W. 396 (1940) that a statute making a bailee who converts goods to his own use guilty of larceny violated Neb. Const. art. III, § 14 as an invalid attempt

to amend the general larceny statute. The statute in question in Adams did not specifically reference the general larceny statute, but rather stated that a bailee found guilty of conversion shall be deemed guilty of larceny and punished accordingly. Id. at 614, 294 N.W. at 397. The Court found that the effect of this language was not to amend the larceny statute, but rather to incorporate in the new statute, by reference, the penalty provisions of the general larceny statute. Id. In so holding, the Court stated:

'A statute may adopt a part or all of another statute by a specific and descriptive reference thereto, and the effect is the same as if the statute or part thereof adopted had been written into the adopting statute.' Id. at 615, 294 N.W. at 397 [Quoting 59 C. J. 1059].

Therefore, the penalty provisions of the general larceny statute were treated as if written into the subsequent statute relating to bailees. Id. See also, Schurmann v. Curtiss, 183 Neb. 277, 159 N.W.2d 554 (1968) (where legislative bill did not make reference to particular statute, court held that said bill was not intended to amend said statute and art. III, § 14 was therefore not violated).

It is evident from these decisions and from the language of art. III, § 14 itself that it only applies to legislative acts which purport to amend an existing statute. Neither L.B. 1063 nor L.B. 1 make any changes, either express or implied, to Neb. Rev. Stat. § 77-4105(2). Mere reenactment of a statute which makes reference to § 77-4105(2) does not have the effect of changing § 77-4105(2) and bringing the bills within the

requirements of art. III, § 14. Instead, as stated in Adams, the reference to § 77-4105(2) in § 77-202(6) had the effect of incorporating the provisions of the former into the latter as completely as though they had been written into § 77-202(6). See also, Jensen v. Omaha Public Power, 159 Neb. 277, 66 N.W.2d 591 (1954) (statute may adopt a part or all of another statute by reference and effect is to treat statute or portion so adopted as if written into the adopting statute).

Therefore, L.B. 1063 and L.B. 1 did have the effect of reenacting § 77-202(6) and by reference, § 77-4105(2). Accordingly, the constitutionality of these provisions must be determined according to the constitutional provisions in affect when the bills were enacted. Therefore, they are subject to the test of reasonableness set forth at Neb. Const. art. VIII, § 2(a) (as it existed on August 12, 1992, the date L.B. 1 was passed, subsequent to passage of Amendment 1). Therefore, a material issue of fact exists regarding the constitutionality of § 77-4105(2) and § 77-404(6) since August 12, 1992. Prior to August 12, 1992, the constitutionality of the statutes at issue would be determined under the test set forth in Jaksha, which as stated, also requires a determination of material fact.

STATUTE OF LIMITATIONS

Neb. Rev. Stat. § 25-21,149 (Cum. Supp. 1992) provides in relevant part:

Any action or proceeding seeking a declaratory judgment that any tax, penalty, or part thereof is unconstitutional shall be brought in the tax year in which the tax or penalty was levied or assessed.

This statute merely prevents a plaintiff from, for example, bringing an action in 1994 that a tax imposed in tax year 1987 was unconstitutional. Contrary to the defendant's argument, this provision does not mean that a tax provision may only be declared unconstitutional for the year in which the action was brought. Plaintiffs brought this action in 1993, in a tax year in which the tax at issue was imposed, therefore, they have met the requirements of § 25-21,149. Had these plaintiffs been seeking a tax refund in this action, a different statute of limitations would be applicable in which the defendant's argument would be relevant. Also because the plaintiffs in this matter have complied with this statute of limitations, the defendant's claim for laches is also without merit.

NECESSARY PARTIES

Lastly, defendants argue that the plaintiffs in this action have not joined all of the necessary parties as required by Neb. Rev. Stat. § 25-21,159 (Reissue 1989) which states in relevant part:

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

Thus, a duty is placed upon the plaintiff to join as parties any persons who have or could claim an interest which would be affected by a declaration in the case at hand. Redick et al. v. Peony Park, 151 Neb. 442, 448, 37 N.W.2d 801, 806 (1949). Consistent with the Court's opinion in Redick, the Supreme Court

in Haynes v. Anderson, 163 Neb. 50, 77 N.W.2d 674 (1956) declined jurisdiction over a declaratory judgment action in which the plaintiff sought to have a highway construction bill declared unconstitutional because the plaintiff failed to join contractors with whom the State had contracted for construction of the highways. Because the declaratory judgment would have the effect of invalidating these contracts, the Court found these contractors to be necessary parties without whom the action could not proceed. Id. at 54-55, 77 N.W.2d at 678. Likewise, in the cast at hand, a declaratory judgment could have the effect of invalidating existing contracts between LB 775 Companies and the State of Nebraska, thus making such LB 775 Companies necessary parties. However, as pointed out by the plaintiffs, defendant intervenor in this action, Jobs for Nebraska, has asserted in its Petition for Intervention that it does, in fact, represent the interests of the LB 775 Companies in Nebraska. Similarly, in a letter submitted to the Court by the defendant intervenor and entered as evidence by the plaintiffs, the defendant clearly asserts that it is acting on behalf of the LB 775 Companies and their direct interest. Therefore, defendants' argument that necessary parties are not represented in this action is without merit.

CONCLUSION

Plaintiffs' Motion for Summary Judgment is denied. Issues of material fact exist as to whether plaintiffs have suffered a shift in the tax burden, thus, providing them standing in this

matter; whether Neb. Rev. Stat. §§ 77-202(6) and 77-4105(2) pass the test set forth in Jaksha for the time period from 1990 to August 12, 1992; and whether the exemptions provided in said statutes are reasonable as required by Neb. Const. art. VIII, § 2(a) since August 12, 1992.

DATED this 12 day of January, 1995.

BY THIS COURT:


District Court Judge

Brian Wickens
cc: Robert B. Crosby
Sylvester J. Orsi
L. Jay Bartel
Nicholas K. Niemann