WHEN SOME SINS ARE MORE EQUAL THAN OTHERS: A CRITIQUE OF *BRITISH AMERICAN TOBACCO V. CAMACHO* AND THE RATIONAL BASIS TEST*

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I. INTRODUCTION

The problem of crafting an equitable excise tax system while maximizing revenue has plagued Congress for years. The current system utilizes a multi-tiered, price-based classification with a freezing provision allegedly designed to simplify collection. Not surprisingly, the system has been assailed by calls for reform from different sectors. The freezing provision, in particular, has long been challenged as allegedly being violative of the equal protection clause of the Constitution.

This paper proceeds by briefly giving a general background on the nature of excise taxes, then continues with a more specific discussion on the characteristics of the excise tax system on cigarettes in the Philippines. A discussion of the decision in *British American Tobacco v. Camacho*[1] follows. This paper submits that while the rational basis test may be sufficient to review tax laws, the Supreme Court's exposition in its decision is inadequate and unsatisfactory.

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This author would like to dedicate this paper to Speaker Feliciano Belmonte, Jr., under whose term reforms to excise taxation were passed.

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[1] The case is hereafter referred to as BAT v. Camacho, G.R. No. 163583 (2008).

In particular, while the Court spent considerable time discussing the purposes of the excise tax law, it failed to expound on why or how it found the freezing provision to be reasonably related to its alleged purposes. *Its failure is symptomatic of the shallow nature of judicial review in cases involving the application of the rational basis test, particularly in tax cases.* To prove this, the paper discusses landmark cases involving equal protection challenges with respect to tax laws and finds that through the years, the Supreme Court has virtually rubber-stamped its approval of tax legislation upon a mere showing of a facially valid purpose.

This paper then evaluates this approach to judicial review by critiquing *BAT v. Camacho* using the traditional method of judicial review, albeit with a slightly tighter analysis based on US jurisprudence.[2] It then introduces a stricter approach to the rational basis test using a two-step review involving a scrutiny of the purposes of the excise tax and its relation to the classification chosen for its implementation. The purposes are tested against an economic interpretation of constitutional principles applicable to taxation, particularly the concepts of horizontal and vertical equity, in order to ascertain adherence to the equal protection clause of the Constitution. The fit between the classification in the law and its alleged purpose is then tested against a minimum rationality constraint.[3] Such an approach entails triadic criteria on which the subjects of the law are assessed based on the strength or weakness of their interest against their being burdened or benefited by the law, as well as the administrative cost of identifying them in contrast to other subjects who are not covered by the legal classification. This paper concludes that, whether tested against the traditional method of judicial review or by the two-step rational basis approach introduced herein, the freezing provision should have been invalidated for being violative of the equal protection clause.

II. BRIEF HISTORY OF EXCISE TAXES

The excise tax has long been a staple method in increasing revenues because of its high potential to raise revenues, its depressive effect on

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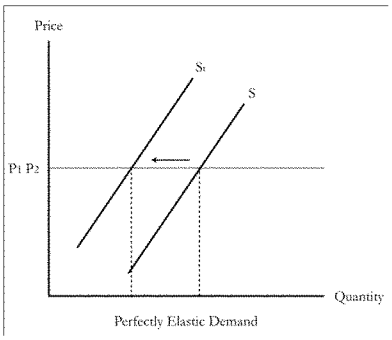
[2] While the US Supreme Court has been more elaborative of the grounds of its decisions, it has been subjected to roughly the same criticism that the authors level against the Philippine courts, i.e. the use of a very low, almost non-existent, standard in the rational basis test.

[3] This standard is based on US jurisprudence and on an exposition of the concept by the MICHIGAN LAW REVIEW, note 90 *infra*.

consumption (economically thought to contribute little to stable and permanent economic development), and its malleability as a regulatory tool to discourage the consumption of luxury or undesirable goods. The tax is usually based on the value of the good or its quantity.

Economic theory favors *ad valorem* taxation since it automatically adjusts to inflation. It is perceived to be fairer than a quantity-based tax that imposes the same tax rates on substantially similar luxury and non-luxury goods.[4] Countries typically levy the tax within the chain of production, usually against the manufacturers or retailers. Economic theory favors a retail tax – one that is imposed on that point closest to the final consumer – since this is likely to entail less distributional and income effects.

The strongest objection to an excise tax, however, is its potentially regressive character when imposed on goods with inelastic demand.[5] The more inelastic the demand, the more the burden is carried by the consumer. Conversely, where supply is inelastic, the more the burden is borne by producers.[6] This is illustrated by the graphs[7] below using extreme conditions where demand is perfectly elastic and perfectly inelastic, respectively:



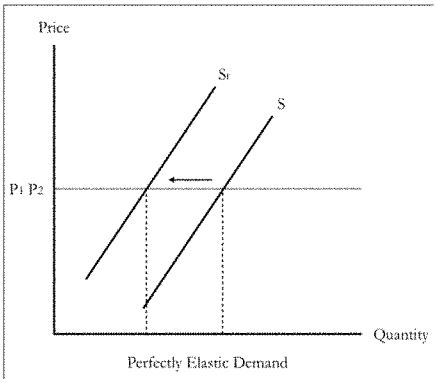
The tax pushes supply back from S to S_t. Demand is perfectly elastic, so it is illustrated as a straight horizontal line to show how the increase in price caused by the tax also leads to a resulting decrease in demand. The decrease in producer welfare is shown by the reduction of the area below the line P_1P_2 from S to S_t.

[4] Frans Vanistendael, *Legal Framework for Taxation*, *in* I TAX LAW DESIGN AND DRAFTING (1996).

[5] JOHN DUE, INDIRECT TAXATION IN DEVELOPING ECONOMIES: THE ROLE AND STRUCTURE OF CUSTOMS DUTIES, EXCISES AND SALES TAXES 61 (1970).

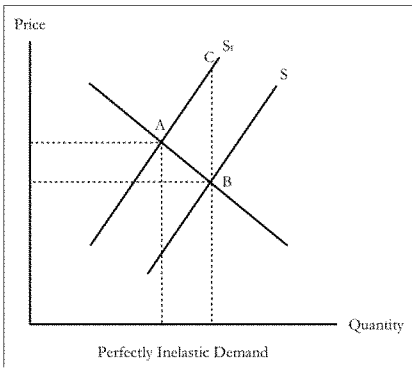
[6] JOSEPH PECHMAN, FEDERAL TAX POLICY 192 (1987).

[7] SIMON JAMES & CHRISTOPHER NOBES, THE ECONOMICS OF TAXATION 76 (1992).



In this second graph, demand is perfectly inelastic - no matter the increase in price, the same amount of the good is demanded, as illustrated by the vertical line. Since demand is perfectly inelastic, the burden of the tax is borne by the consumer, as shown by the decrease in consumer welfare from P_1 to P_2.

The tax may then be regressive if a good has inelastic demand and is purchased by low-income families. Economic theory states that, generally, people with low incomes spend a greater proportion of their salaries than those with high incomes.[8] Since the burden of a tax on an inelastic good is borne more by the consumers, the low-income consumers end up shouldering a greater burden of the tax as compared to those with high incomes.[9] A prime example would be the case of an excise tax levied against rice in the Philippines. Since rice is a staple part of a Filipino's diet, it may be safe to assume that the demand for rice is relatively inelastic, such that an increase in its price will not likely correspond with a proportionate decrease in consumption. The demand being inelastic, as shown in the graph[10] above, the tax will be borne mainly by consumers.



Here, consumption is originally at B when, given its negative externality, it should be at A. However, if a tax which accurately captures this negative externality is imposed on the good, the supply curve shifts from S to S_t, and demand moves to A. Thus, a social gain results, as represented by the triangle ABC.

[8] PECHMAN, *supra* note 6 at 200.
[9] *Id.* at 193.
[10] JAMES & NOBES, *supra* note 7.

An excise tax, however, need not necessarily result in economic loss. In cases where the production or consumption of a good results in a negative externality, a tax which discourages consumption or moves the demand curve upwards may result in a net gain instead of a net loss (see graph above). This is the economic basis of taxing products such as cigars, wines, and liquors. The negative externality brought about by the consumption of the good, such as disruptive or violent behavior, diminished productivity, and loss of income due to absence from work and other effects is minimized by the reduction in consumption as well as the transfer of income from the consumer to the government, which may then utilize the tax collected to address the negative externalities of consumption. Although this paper will focus on excise taxes on cigarettes, the same arguments and approach may be extended to cover Philippine excise taxes on wines and distilled spirits considering their identical nature.

III. HISTORY OF EXCISE TAXATION OF CIGARETTES

The system of excise taxation on cigarettes has a vacillating and complicated history, partly because of the employment of different tax base combinations. The regime was initially *ad valorem* under Presidential Decree ("PD") No. 1158.[11] Not only did it consolidate our tax laws, but it also provided for a multi-level classification scheme.

Cigarettes were first classified according to the number of sticks per pack – either 20 or 30 sticks. Further subdivision was based on origin, i.e., domestic brands, locally manufactured cigarettes bearing foreign brands, and imported cigarettes. The manufacturer's registered wholesale price was used as the tax base for each subdivision of cigarettes.

This was amended by Batas Pambansa Blg. 81,[12] which adopted the *specific* tax system and changed the tax base to retail price. The amendment, however, maintained the classification based on quantity per pack as well as the division based on origin. For cigarettes packed by 20s, the amendment introduced seven different ranges of retail prices with corresponding rates.

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[11] Pres. Dec. No. 1158 (1977). This is the National Internal Revenue Code of 1977.

[12] Batas Pambansa Blg. 81 (1980).

Amendments on the rates of these tiers were imposed pursuant to Executive Order ("EO") Nos. 924[13] and 958.[14]

Less than three months after the effectivity of EO No. 958, a change in the tax base was introduced by EO No. 960,[15] which also put in place a hybrid system of specific and *ad valorem* taxes. Under this EO, the manufacturer's or importer's gross selling price became the tax base. The EO also amended the rates for the various tiers of the cigarettes packed by 20s. More importantly, it added a ten percent *ad valorem* tax on the tax base, net of specific tax. Another round of adjustments on the range of the tiers and an uptick in their respective rates were made through EO No. 978,[16] which also lowered the *ad valorem* tax to two percent. PD No. 2007[17] maintained the basic classification but, effected an increase in the specific tax component.

EO No. 22[18] changed the tax base to manufacturer's or importer's registered wholesale price, inclusive of the *ad valorem* tax. When the value-added tax ("VAT") was imposed in 1988, the tax base was slightly altered to exclude the VAT in the price.

Republic Act ("RA") No. 7654[19] ushered in a major shift by introducing a purely *ad valorem* tax regime. It did away with the classification of cigarettes based on quantity per pack. It also changed the tax base to the constructive manufacturer's wholesale price, which was defined as the manufacturer's actual or constructive wholesale price. The law also removed the multiple tiers. However, it did not do away with classification altogether, but simply introduced, as a new basis, the manner by which the cigarettes were packed, i.e., whether by hand or machine.

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[13] Exec. Order No. 924 (1983). This revised the retail prices and specific taxes on local and imported cigarettes.

[14] Exec. Order No. 958 (1984). This revised the maximum retail prices of cigarettes.

[15] Exec. Order No. 960 (1984). This imposed an *ad valorem* tax on cigarettes in addition to the specific tax levied thereon.

[16] Exec. Order No. 978 (1984). This imposed an *ad valorem* tax and revised the specific tax rates and maximum retail prices of cigarettes.

[17] Pres. Dec. No. 2007 (1986). This increased the specific tax on cigarettes.

[18] Exec. Order No. 22 (1986).

[19] Rep. Act No. 7654 (1993). This revised the excise tax base.

Under RA No. 8240,[20] the system reverted to a predominantly *specific* tax regime. The tax base was changed to net retail price per pack because of reported falsification of wholesale prices.[21] "Net retail price" was defined thereunder as

> [T]he price at which the cigarette is sold on retail in 20 major supermarkets in Metro Manila (for brands of cigarettes marketed nationally), excluding the amount intended to cover the applicable excise tax and the value-added tax. For brands which are marketed only outside Metro Manila, the net retail price shall mean the price at which the cigarette is sold in five major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.[22]

Cigarettes were still classified according to how they were packed, but a four-tier system (low-medium-high-premium) of net retail prices was included for cigarettes packed by machine.

The most significant change introduced by RA No. 8240 was the so-called *classification freeze* provision. The law provides that "[t]he classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex 'D' of this Act, shall remain in force until revised by Congress."[23] As a result, even if the net retail prices of these brands increase due to inflation, manufacturing costs, and other factors, their classification under Annex "D" would remain, allowing them to enjoy the same excise tax rate when, absent the freezing provision, they would have been reclassified under a higher bracket.

As a consequence of this provision, brands introduced after January 1, 1997, per Revenue Regulations ("RR") No. 1-97[24] issued by the Bureau of Internal Revenue ("BIR"), were taxed according to their current net retail prices. Previously, their respective net retail prices were determined using

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[20] Rep. Act No. 8240 (1997). This amended certain sections of the National Internal Revenue Code.

[21] *See* Commissioner of Internal Revenue v. Court of Appeals & Fortune Tobacco Corporation, G.R. No. 119322 (1996).

[22] Rep. Act No. 8240, § 4 (1997).

[23] § 4.

[24] Rev. Regs. No. 1-97.

suggested net retail prices. The new system was adopted in RA No. 8424[25] and became Section 145 thereof. The law also provided for an automatic and across-the-board 12% adjustment of tax rates by the year 2000.

On February 17, 2003, the BIR issued RR No. 9-2003,[26] which required the conduct of a periodic review of the new brands every two years. To amplify this, Revenue Memorandum Order ("RMO") No. 6-2003[27] prescribed the guidelines in determining the current net retail prices of the new brands. On August 8 of the same year, the BIR issued RR No. 22-2003,[28] which implemented the revised tax classification of these new brands.

The last major change on the subject was effected by RA No. 9334,[29] which mandated an adjustment of the rates for each tier every two years and thereafter until 2011. More significantly, RA No. 9334 maintained the *classification freeze* provision under Annex "D," although it went a step further in providing for *another round* of freezing. Thus, "brands of cigarettes introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress."[30]

The following table shows the evolution of rates for the four tiers under the laws mentioned:

	EXCISE TAX RATE/PACK (in PhP)					
	RA No. 8240 (1997)		**RA No. 9334 (2005)**			
TIER *If the net retail price (in PhP) is:*	As adopted by RA No. 8424	Adjustment by year 2000	1st tranche (2005)	2nd tranche (2007)	3rd tranche (2009)	4th tranche (2011)

[25] TAX CODE. The National Internal Revenue Code is Rep. Act No. 8424 (1997). This is also known as the Tax Reform Act of 1997.

[26] Rev. Regs. No. 9-2003.

[27] Bureau of Internal Revenue Rev. Memo. Order No. 6-2003.

[28] Rev. Regs. No. 22-2003.

[29] Rep. Act No. 9334 (2005). This increased the excise tax rates imposed on alcohol and tobacco products.

[30] § 5.

> 10.00 (premium)	12.00	13.44	25.00	26.06	27.16	28.30
> 6.50 – 10.00 (high)	8.00	8.96	10.35	10.88	11.43	12.00
5.00 - 6.50 (medium)	5.00	5.60	6.35	6.74	7.14	7.56
< 5.00 (low)	1.00	1.12	2.00	2.23	2.47	2.72

Table 1. Excise Tax Rates/Tier.

What we have now, therefore, is a system that is mainly *specific*, based on how cigarettes are packed with the net retail price as the tax base. For cigarettes packed by machine, a four-tier, price-based system was put in place. Within said system, there is a three-pronged temporal classification: *first*, cigarettes whose net retail prices were determined in 1996, or the Annex "D" brands; *second*, those which were introduced between 1997 and 2003; and, *third*, those which were introduced after 2003. The classification of those falling under the first two types are frozen, while the classification of those under the third is based on suggested retail price, which shall mean the net retail price at which the new brands "are intended by the manufacturer or importer to be sold on retail in major supermarkets or retail outlets in Metro Manila for those marketed nationwide, and in other regions, for those with regional markets."[31]

IV. BACKGROUND ON *BAT V. CAMACHO*

As a result of the system created by RA No. 8242, RA No. 9337, and the subsequent regulations that implemented them, the classifications of retail prices of new brands were adjusted more than once to reflect their current retail prices. Three of these brands were Lucky Strike Filter, Lucky Strike Lights, and Lucky Strike Menthol Lights, which were all introduced to the Philippine market by British American Tobacco ("BAT") in 2001. When first marketed, these brands had suggested net retail prices of PhP 9.90 per pack and, an excise tax of PhP 8.96 was accordingly imposed on them. In 2003, as a result of a survey conducted by the BIR, the classification of the three brands went up to the highest level with the applicable tax of PhP 13.44 per pack. Under RA No. 9334, the excise tax on these brands increased to PhP 25.00 per pack.

[31] §1.

BAT filed a petition for injunction, with prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction, before the Regional Trial Court ("RTC") of Makati on the ground that Section 145 of the National Internal Revenue Code ("NIRC") and RR Nos. 1-97, 9-2003, and 22-2003, as well as RMO No. 6-2003, discriminate against new brands of cigarettes, in violation of the equal protection and uniformity provisions of the Constitution. The RTC issued the writ prayed for but eventually rendered a decision that upheld the constitutionality of the said provision and the revenue regulations.

BAT brought a petition for review before the Supreme Court on a pure question of law. The pivotal controversy was "whether or not the classification freeze provision violates the equal protection and uniformity of taxation clauses of the Constitution."[32] BAT claimed that the said provision of law created a "grossly discriminatory classification scheme between old and new brands."[33] To illustrate this point, BAT referred to competitors Marlboro and Philip Morris – brands which were among those classified under Annex "D." BAT presented evidence that tracked the net retail prices of these competitor brands. Marlboro and Philip Morris were introduced before October 1, 1996 with net retail prices in the range of PhP 6.78 - 6.84 for the former, and PhP 7.39 - 7.48 for the latter. These prices fell within the high-priced bracket.[34] Seven years thereafter, the net retail prices for both increased to about PhP 15.59, a price within the premium range. The classification freeze, however, rendered an upward shift impossible. As a result, the brands remained within their original classification. On the other hand, as mentioned previously, the classification of Lucky Strike brands moved up once, from high to premium, while their excise tax rates increased twice.

Preliminarily, the Court viewed the challenge against this contentious provision as an attack against the entire mechanism and philosophy of the law on classification of cigarettes. It declared that the issue is not only Annex "D," but the very method of classification. This means that a declaration of unconstitutionality of the legislative freeze provision would lead to the nullification of Section 145. This, in turn, would result in a NIRC without a governing procedure on the classification of cigarettes. From a mere reading of this part of the decision alone, one can already sense the heightening wall BAT

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[32] *Supra* note 1.

[33] *Id.*

[34] *See* Table 1.

had to breach to convince the Court to invalidate the provision, and the increasing hesitation and weight of bias against a declaration of the invalidity of the law.

On the main issue, the Court ruled that the classification freeze provision does not violate the equal protection clause. Using the *rational basis test*, it ratiocinated that tax legislation on sin products does not contain a suspect classification, nor does it involve a fundamental right. The law must be shown to "rationally further a legitimate state interest."[35] This can be defeated only by the "most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes, and that there is no conceivable basis which might support it."[36]

The Court then analyzed the law using the four requirements of a valid and reasonable classification, *viz*: (1) it rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it applies, all things being equal, to both present and future conditions; and, (4) it applies equally to all those belonging to the same class. It held that the first element is met as the provision was inserted for "reasons of practicality and expediency."[37] New brands were not yet in existence at the time of the passage, so Congress needed a "uniform mechanism to fix the tax bracket of a new brand."[38] The third and fourth elements are also met because the classification freeze provision also applied to all brands, even those introduced after January 1, 1997. The Court discussed this lengthily in its resolution of the corollary issue raised by BAT – that the revenue regulations which empowered the BIR to reclassify its brands were *ultra vires*. The Court found for BAT and held that the NIRC, *mutatis mutandis*, did not authorize the BIR to update the classifications. Accordingly, the Court nullified the aforementioned revenue regulations and revenue memorandum order insofar as they empowered the BIR to conduct periodic surveys for the purpose of reclassification.

While the Court summarily disposed of the first, third, and fourth requisites, it lingered on the second by expounding on the purposes of the freezing provision. *First*, it held that Congress adopted the classification freeze mainly for administrative reasons, rationalizing that "administrative concerns

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[35] *Supra* note 1.
[36] *Id.*
[37] *Id.*
[38] *Id.*

may provide a legitimate, rational basis for legislative classification."[39] In support of this, the Court averred that the provision was intended to improve the efficiency and effectivity of tax administration over these products while balancing the same with other state interests.

More particularly, the Court explained that this system would prevent possible abuse of discretion and corruption by the BIR. It would also address tax avoidance and tax evasion by giving the least amount of discretion to the tax implementers. *Second*, the Court also noted that the law was intended to generate buoyant and stable revenues for the government and aid its revenue-planning. *Third*, the Court held that the law was meant to foster fair competition among industry players.

Finally, the Court declared that BAT failed to overcome the presumption of constitutionality since it was not able to demonstrate the extent of the impact of the classification freeze on market competition. In relation to this, the Court said that price is not the only determinant factor in the market. The Court also held that the law cannot be declared unconstitutional on the ground that the classification freeze went against the objective of creating fair competition. More importantly, the Court concluded that the means chosen by Congress are policy questions which cannot be made subject to judicial review.

The striking feature of this decision, however, is how it only gives lip service to its requisites while appearing to apply the rational basis test. *First*, it only summarily discussed and concluded that the requisites, apart from reasonable relation, were met by the freezing provision *without discussing why it was so*. When it came to testing the reasonableness of the classification vis-à-vis the purpose, it got mired down by *a lengthy discussion on the purposes of the law without matching such depth of discussion in determining whether the freezing provision does promote its alleged purposes*. Instead, upon stating what it deems are the purposes of the law, the Court intuitively accepted the relation between the purposes and the freezing provision. The purposes were not even tested as legitimate state interests in the first place. Such a hands-off attitude by the Court in applying the rational basis test seems to be a common characteristic when it comes to equal protection challenges regarding economic matters. Apart from

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[39] *Id.*

the acute analysis in *Lutz v. Araneta*[40] and *Sison v. Ancheta,*[41] the application of the rational basis test in Philippine jurisprudence has been sporadic.

V. DOMESTIC JURISPRUDENCE ON EQUAL PROTECTION

A review of Supreme Court decisions on equal protection questions involving taxation shows that the Court has been using the general guideline of "reasonableness" of classification as enunciated in the landmark case of *People v. Cayat.*[42] This case also espoused the four-fold test to determine the reasonableness of legislative classification.

The Court, in a battery of cases, has encountered the need to determine the concept of substantial distinction. In *Eastern Theatrical Co., Inc. v. Alfonso,*[43] an ordinance issued by the City of Manila imposed a fee for every admission ticket sold by cinematographs, theaters, and vaudeville companies, but not on tickets issued by other places of amusement. The Court upheld the ordinance, and opined that the taxing authority has the power to make "reasonable and *natural classifications* for purposes of taxation." (Emphasis supplied) It defined equality and uniformity in taxation as the taxation at the same rate of "all taxable articles or kinds of property of the same class."[44] Thus, even early on, the standard was simply the "reasonableness" of classification.

The case of *Manila Race Horse Trainers Association, Inc. v. De la Fuente*[45] was an offshoot of *Eastern.* In upholding the validity of an ordinance that taxes boarding stables for race horses, and not boarding stables for other horses, the Court held that owners of boarding stables for race horses constitute a class in themselves. What is significant here was the Court's brief venture into the wisdom of the law: "*[f]rom the viewpoint of economics and public policy* the taxing of boarding stables for race horses to the exclusion of boarding stables for horses dedicated to other purposes is not indefensible."[46] (Emphasis supplied)

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[40] *See infra* note 48.

[41] *See infra* note 51.

[42] People v. Cayat, G.R. No. 45987 (1939).

[43] Eastern Theatrical Co., Inc. v. Alfonso, G.R. No. 1104 (1949).

[44] *Id.*

[45] Manila Race Horse Trainers Association, Inc. v. De la Fuente, G.R. No. 2947 (1951).

[46] *Id.*

Moreover, in justifying the "reasonableness" of the classification, it considered *all circumstances* and held that, "the differentiation against which the plaintiffs complain conforms to the practical dictates of justice and equity and is not discriminatory within the meaning of the Constitution."[47]

The Court's standard became much clearer in *Lutz v. Araneta*,[48] which involved the legality of the taxes imposed by the Sugar Adjustment Act. Walter Lutz argued that the tax was unconstitutional since it was being levied for the support of the sugar industry exclusively. He futher averred that this was not a public purpose for which a tax may be imposed. The Court observed that the protection and promotion of the sugar industry was a matter of public concern, and legislative discretion must be allowed in full, limited only by the test of reasonableness. Citing American cases, the Court held thus: "That the tax to be levied should burden the sugar producers themselves can hardly be a ground of complaint; indeed, it appears *rational* that the tax be obtained precisely from those who are to be benefited from the expenditure of the funds derived from it."[49] It added that the State was free to select the subjects of taxation, and "inequalities which result from a singling out of one particular class for taxation, [sic] or exemption infringe no constitutional limitation."[50] It is crucial to note that unlike in *BAT v. Camacho*, the Court, in arriving at its decision, considered the fact that it was the sugar producers themselves who were being made liable for sugar tax, which was imposed precisely to benefit the industry. Since the sugar producers would benefit from the tax imposition, the Court found that it was only fair that they themselves bear the tax burden. Such in-depth analysis in determining the fit between the law and the purpose is a stark contrast to the hands-off attitude of the Court in *BAT v. Camacho.*

The doctrine in *Lutz* was applied in *Sison v. Ancheta*,[51] where a challenge was brought against the equality of a law that imposes taxes on gross income while differentiating between professionals and compensation income-earners. Antero Sison, Jr. alleged that he was unduly discriminated against by the imposition of higher rates of tax upon his income arising from the exercise of his profession vis-à-vis those which are imposed upon salaried taxpayers. In holding that the law is valid, the Court said: "equal protection and security shall be given to every person under circumstances which if not identical are

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[47] *Id.*

[48] Lutz v. Araneta, G.R. No. 7859 (1955).

[49] *Id.*

[50] *Id.*

[51] Sison v. Ancheta, G.R. No. 59431 (1984).

analogous" and "classification if rational in character is allowable."[52] Like *Lutz*, *Sison* connected the inherent differences between the compensation income-earners and the professionals with respect to the features of the tax imposed on each. Again, such an analysis is missing in *BAT v. Camacho*.

The same principle was applied in *Kapatiran ng Mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan*[53] which upheld the VAT Law. It was argued therein that the law violates equal protection because customs brokers were not exempted unlike other professionals. The Court held that there are material differences between the two, because the activities of the former partake more of a business rather than a profession.

The rest of the cases, however, fail to even reason out in alignment with the four-fold rational basis test. In *Tan v. Del Rosario,*[54] the Simplified Net Income Tax System was challenged on the ground that it violates equal protection because it singles out professionals and sole proprietorships. The Court upheld the law, *and mentioned – without explanation – the four-fold test.* In *Tolentino v. Secretary of Finance*,[55] the question was on the exemption of certain transactions such as the sale of agricultural products, but not the sale of real property which, it was argued, was essential. In settling the issue on equal protection, the Court held that the "taxing power has the authority to make reasonable and natural classifications for purposes of taxation. To satisfy this requirement, it is enough that the statute or ordinance applies equally to all persons, forms and corporations placed in [sic] similar situation."[56] This is the same as saying that any classification the law makes is valid as long as all those within the same classification are treated alike, and is tantamount to abandoning any type of test as to the reasonableness of the classification in the first place. Finally, in *Tiu v. Court of Appeals*,[57] an executive order that grants tax and duty incentives only to business enterprises and resident individuals within the secured area of the Subic Special Economic Zone was challenged. The Court upheld the law and averred that there are actual, substantial, and material differences between the businesses and residents within the secured area and those outside it.

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[52] *Id.*

[53] Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan, G.R. No. 81311 (1988).

[54] Tan v. Del Rosario, G.R. No. 109289 (1994).

[55] Tolentino v. Secretary of Finance, G.R. No. 115455 (1995).

[56] *Id.*

[57] Tiu v. Court of Appeals, G.R. No. 127410 (1999).

These cases show that while the Court has frequently used the general guideline of reasonableness, it has not regularly and clearly discussed whether the subject classifications have indeed met the four-fold test. *It is crucial to note that in instances where the Court did apply the test, it found the classifications to be suspect.*

In *Pepsi-Cola Bottling Co. of the Philippines, Inc. v. Butuan,*[58] a question on the validity of an ordinance that imposes a tax on sales by agents or consignees of outside dealers of liquors and carbonated beverages was involved. The Court invalidated the ordinance on the ground that sales made by local dealers were unjustifiably exempted from tax while similar sales made by those outside Butuan City were not. Here, the four requisites were not met because "there is no reason why sales by dealers other than agents or consignees of producers or merchants established outside the City of Butuan should be exempt from tax."[59]

Another ordinance was voided in *Ormoc Sugar Co., Inc. v. Ormoc City.*[60] In this case, the city imposed a tax on the production of the Ormoc Sugar Company *only*. The Court declared the ordinance invalid, reasoning that by limiting the scope to one company, the ordinance failed to apply to future conditions. The taxing ordinance should not be so singular and exclusive as to exclude any subsequently established sugar centrals of the same class as the plaintiff from the coverage of the tax. As it was, even if a similar company was later set up, it would not be subject to the same tax because the ordinance expressly mentions and limits its provisions to the Ormoc City Sugar Company.

In a more recent case, the Court again employed the reasonable relation test to validate a classification. In *Philippine Rural Electric Cooperatives Association, Inc. v. Secretary*,[61] the Court used the four-fold test and held that there is reasonable classification to justify the different treatments of electric cooperatives registered under P.D. No. 269[62] and those registered with the

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[58] Pepsi-Cola Bottling Co. of the Philippines, Inc. v. Butuan, G.R. No. 22814 (1968).

[59] *Id.*

[60] Ormoc Sugar Co., Inc. v. Ormoc City, G.R. No. 23794 (1968).

[61] Philippine Rural Electric Cooperatives Association, Inc. v. Secretary, G.R. No. 143076 (2003).

[62] Pres. Dec. No. 269 (1973). This is the National Electrification Administration Decree.

Cooperative Development Authority, by virtue of the Cooperative Code. In particular, the Court found the fact that the Cooperative Code required equitable contributions to capital and employed the principle of subsidiarity, in contrast with PD No. 269, sufficient to justify the exemption of one and not the other.

This same rigor in analysis, however, was absent once again in *Abakada Guro v. Purisima*,[63] which ruled on the constitutionality of R.A. No. 9335.[64] The Court used the rational basis test and held that:

> In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion [. . .] Hence, legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evil as they may appear.[65]

From all these cases, it is clear that while there are decisions that do actually analyze reasonableness of classification vis-à-vis the purposes of legislation, in most cases, the Court has observed a rather low standard in determining the validity of tax classifications. This is manifested in two ways. *First*, the "rationale" that was used was simply reduced to finding the "justification" for the classification. Where there is support for the classification, the challenged provision will pass scrutiny. A prominent exception was *Manila Race Horse* where the Court considered "all circumstances," including the standards of justice and equity, as well as public policy and economics.

Second, the low standard is also shown in the way the Court discusses – or dismisses – the four-fold test. As shown earlier, the Court has not been consistent in its depth of examination as compared with its determination of whether the subject classifications meet the four requisites of equal protection as enunciated in *Cayat*. Applying the four-fold test would have been significant to ensure that the "reasonableness" is solid on all fronts, especially in cases where suspect classifications are involved. The resolutions of these cases would

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[63] Abakada Guro v. Purisima, G.R. No. 166715 (2008).

[64] Rep. Act No. 9335 (2005). This is the Attrition Act of 2005.

[65] *Supra* note 63.

show that the Court has focused *merely* on determining the reason for the distinction, regardless of whether the distinction meets the other requirements.

VI. CRITIQUE OF *BAT V. CAMACHO*

Thus, through the years, the Court has been sliding down the slope of rationality, slowly loosening the standard of "reasonable relation" as to amount to no standard at all. *As it stands now, rational basis merely entails that a reason be given by the legislature for the classification. If there is a reason given, the Court tends to uphold the classification with little discussion as to whether the classification is reasonably related. Reasonable relation, it would seem, is intuitively assumed.*

Unfortunately, this non-standard has been maintained in *BAT v. Camacho*. Using the standard set in *Sison,* the Court held that as long as the classification is reasonable and rests upon some difference having a "fair and substantial relation to the object of the legislation,"[66] no violation of equal protection occurs. However, while it mentions that a classification must have a substantial relation to the purpose of legislation, there is no discussion on whether this relation actually exists. The Court gave short shrift to the equal protection challenge, merely declaring that the classification meets the first, third, and fourth requisites of the rational basis test.

While the Court did make a lengthy discussion on the purposes of the provision, as in previous equal protection cases using the rational basis test, the analysis stopped there and the Court already declared that the classification was reasonably related to the object of the law. *A mere showing that reasons exist was held to be sufficient* with next to little discussion as to how the classification related to the purpose in the first place. In contrast, this paper will tackle each of the requisites of rational basis to show how the questioned provision violates the equal protection clause. This paper will then introduce an approach to testing rational basis in taxation laws by applying economic principles, the minimum rationality constraint, and symbolic logic. In using this new approach, this paper hopes to show the utility of using other disciplines to test the constitutionality of a tax law under an equal protection challenge.

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[66] *Supra* note 1.

A. Section 145 of the NIRC does not Treat the Same Things Equally and Creates an Artificial Sub-Class within Each Tax Tier

At its most basic formulation, an equal protection and uniformity challenge argues that similar objects are not being treated alike. The threshold question is whether the subjects treated differently under the law are actually *relevantly* similar such that the difference in treatment violates the constitutional protection. How does one determine relevant similarity and, conversely, relevant difference? The US Supreme Court expounded on this question in *Magoun v. Illinois Trust*:

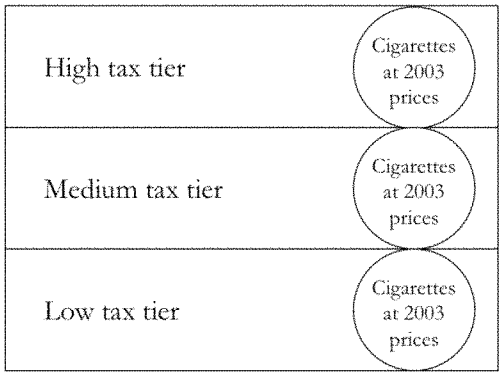
> [E]quality of operation does not mean indiscriminate operation on persons, merely as such, but on persons *according to their relations*. In some circumstances it may not tax A. more than B.; but, if A. be of a different trade or profession than B., it may. And, in matters not of taxation, if A. be a different kind of corporation than B., it may subject A. to a different rule of responsibility to servants than B and to a different measure of damages …
>
> It may, if it chooses, exempt certain classes of property from any taxation at all [. . .] It may impose different specific taxes upon different trades and professions, and vary the rates of excise upon various products …
>
> If there is unsoundness, it must be in the classification. The *members of each class are treated alike; that is to say, all who inherit $10,000 are treated alike, - all who inherit any other sum are treated alike. There is equality, therefore, within the classes.* If there is inequality, it must be because the members of a class are arbitrarily made such, and burdened as such, upon no distinctions justifying it.[67] (Emphasis supplied, citations omitted)

Based on this rule, relevant difference could be a difference in trade, type of product, classes of property, or such other distinction. Within such trade, product group, or class of property, however, equal protection requires that the law treats members within a grouping similarly. It is crucial to note at this point, however, that it would seem from the bases of classification enumerated above that all of them refer to differences that are *inherent* among those classified, i.e., that A is real and not personal property, or that C is a

[67] Magoun v. Illinois Trust, 170 US 283 (1898).

motorized cycle while D is a bike. The requirement of "inherency" in the basis of classification in Philippine jurisprudence was implied in *Eastern Theatrical Co.*, where the Court emphasized the *"natural"* difference between theaters and other places of amusement.

Under Section 145 of the NIRC, cigarettes are differentiated according to the manner by which they are packed – by hand or by machine. These are broad categories that, like the classifications above, are based on *inherent characteristics* that differentiate one object of legislation from the other and, thus, justify differing treatment. On this level, Section 145 does not violate the equal protection clause. However, it goes further by creating another category by classifying cigarettes according to retail price and then, within said category, creating another classification such that those registered before 2003 are taxed based on their 2003 retail prices, while other brands are taxed at their current retail prices. Unlike the distinction between machine- and hand-packed cigarettes, however, the distinction between those taxed at 2003 prices and those taxed at current retail prices is not inherent. In other words, within the tax tiers, there is a sub-class of cigarette-sellers who, while perhaps having the *same* prices, distribution mechanism, or current retail price, are treated differently than the rest.



True, equal protection allows the law to treat different objects differently, but it should do so based on *inherent* and *relevant* differences between the subjects of legislation. In this instance, the law created an artificial difference between cigarettes based on the time they were registered such that within the low-, medium-, high-, and premium-priced tiers, a sub-class of cigarettes registered and surveyed by 2003 was created and treated differently.

BAT v. Camacho merely says that 1997-2003 cigarette-sellers are taxed at their old rates. These cigarette-sellers are not inherently different – at least not in a way that the law recognizes – thus, the law should tax them in the same manner. It, however, does not. The fact that the freezing provision will be applied in time to other brands does not justify the initial arbitrary selection of 2003 brands for taxation at their 2003 prices, when at the time of the promulgation of the law, there were already other brands existing that would have to be surveyed for the freeze to apply. It begs the question: why did the law not mandate a survey of all existing brands at the time of promulgation and apply a freeze to all? In what way were 2003 brands so different from others that the law had to create a particular niche? Neither Congress nor the Court had a substantial answer.

Of course, one can posit that since all cigarette brands registered in 2003 are treated the same, similar things are still treated alike. However, this argument is circuitous and untenable since it refers to the manner in which the law is implemented. If we follow this reasoning to its logical conclusion, then no law creating a distinction can ever be invalidated on this ground since if any difference is cited, the lawmaker need merely argue that a sub-class is created and that within such sub-class, there is no dissimilar treatment.

The point of this requisite is to require that where a law operates differently, it should do so because there are *relevant and inherent differences that justify varying treatment*. Even assuming that the law can create artificial differences, the distinction must still be substantial to merit the differing treatment. As shown below, the law fails on this account as well.

B. Mere Temporal Classification is not a Substantial Distinction

The rational basis test requires a substantial distinction between the subject burdened or benefited by the imposed tax, as opposed to those not affected by it. Under Section 145 of the NIRC, this distinction rests on the period within which a particular brand of cigarette was registered or introduced into the market. Those brands introduced between January 1, 1997 and December 31, 2003 will be classified according to the tier in which they belonged as of the latter date. In contrast, brands introduced after this date will be classified according to their current net retail price to be determined after a survey by the BIR. A temporal classification, therefore, is utilized to differentiate between cigarettes packed by machine. Is this substantial?

Unfortunately, Philippine jurisprudence has not had occasion to discuss the substantiality of a temporal classification. Resort is made to US cases, which in light of the provenance of our tax laws, is of persuasive authority. In *Binney v. Long*,[68] the US Supreme Court was faced with a tax law that created two classes of beneficiaries, those who succeed by means of a deed dated before 1907 and those who succeed by a deed dated after. The first class of beneficiaries are taxed while the latter are exempted. The Court invalidated the law and declared that the temporal classification was without rational basis, thus:

> [T]he only basis for the classification is the time when the estate was created. This court has said that a tax on gifts inter vivos, so laid as to hit those made within a given period prior to the donor's death and exempting all others, *would be wholly arbitrary*. And we have also said that a discrimination in the taxation of loans *based solely upon the time* when the loan was made would clearly be arbitrary *and capricious*.[69] (Emphasis supplied, citations omitted)

Binney, however, refers to a law dealing with taxation and exemption. It may be argued that since exemptions are construed strictly, the Court could have decided differently if the challenged statute concerned a temporal classification that merely imposed different rates. This was precisely the case in *Allegheny Pittsburgh Coal v. County Commission*.[70]

Here, the US Court was faced with a tax law based on a proportion of the value of particular property. Properties recently purchased, however, were taxed at their recent purchase price while properties not so transferred were taxed based on their previous assessed values. Thus, those who recently purchased property were taxed at an effectively higher rate than those who had acquired property earlier. While declaring respect for legislative discretion in determining the objects of taxation and the burdens they must respectively bear, the Court voided the assessments as violative of the equal protection clause:

> Viewed in isolation, the assessments for petitioners' property may fully comply with West Virginia law. But *the fairness of one's*

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[68] Binney v. Long, 299 U.S. 280 (1936); *See also* Colgate v. Harvey, 296 U.S. 404 (1935).

[69] *Id.*

[70] 488 U.S. 336 (1989).

> *allocable share of the total property tax burden* can *only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings.* The *relative undervaluation of comparable property* in Webster County over time therefore denies petitioners the equal protection of the law.[71] (Emphasis supplied)

The principles behind these decisions are wholly applicable to the case at hand. *Allegheny* may as well be referring to the artificial difference between 2003 cigarettes vis-à-vis cigarettes introduced after 2003, such that the relative undervaluation of the former as opposed to the latter is ground enough to justify the invalidation of Section 145's freezing provision. From these cases, we can extrapolate the rule that differing treatment based *merely* on temporal classification is arbitrary. On its own, it creates an artificial distinction between groups. Allowing it without justification will, if extended further, be tantamount to allowing the legislature to arbitrarily classify taxpayers on the basis of any period.

However, not all temporal classifications have been invalidated by US Courts. A statute may be upheld where a reason is given reasonably relating to and justifying the discrimination in treatment based on temporal classification. How does one test "reasonable relation?" This is where the third requisite of rational basis comes in.

C. A Temporal Classification May Be Justified If it is Reasonably Related to the Goals of a Statute

Two US cases are particularly relevant in determining reasonable relation – one invalidating a temporal classification, the other upholding the same. In *Zobel v. Williams*,[72] the Court was faced with an Alaska state program that distributed dividends according to whether a person had been residing in the state subsequent to 1959 – the year of Alaskan independence. Those who became residents after 1959 were given a unit of dividend for each year that they lived in Alaska after said date. The program was challenged by residents who arrived in 1978 (or later than 1959) but who were already residents when the program came into effect. It is easy to see that those who arrived in 1959 will receive greater dividends because of the length of their stay as opposed to those who arrived later. It is obvious as well that the choice of 1959 was not arbitrary. *It was the year of the state's independence.* And yet, the Court still

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[71] *Id.*

[72] Zobel v. Williams, 457 US 55 (1982).

invalidated the program because the temporal classification was not reasonably related to the alleged purposes of the statute – to encourage residence in Alaska, and the "prudent management" of its state funds. Facially, prudent fund-management has nothing to do with length of residence. And, while the Court admitted that giving dividends may encourage residence in Alaska, it did not justify why those who had been residing in Alaska since 1959 should benefit more when the mere fact of giving dividends without a temporal classification may be sufficient.

In contrast, the US Court validated a temporal classification in *Nordlinger v. Hahn.*[73] In this case, a tax system assessed real properties based on current appraised value for cases of recent constructions or sales. In time, those who did not sell their properties enjoyed lower rates, as opposed to those who recently acquired property. In contrast to *Allegheny*, the Court upheld the difference in the bases of taxation based on a finding that it furthered a "legitimate state interest." In this case, the Court found that the higher basis was meant to discourage turnovers of property and thus promote "neighbourhood preservation, continuity and stability."[74]

From this discussion, it is clear that what may be a valid classification in one case may be invalid in another. The difference lies in whether the temporal classification *furthers or promotes a state purpose*, or whether it is merely arbitrary. Does the freezing provision in Section 145 of the NIRC promote a state purpose? This is answered in the next section.

D. The Freezing Provision is not Germane or Reasonably Related to the Purpose of the Law

The two general purposes of taxation are: (1) revenue-generation and (2) regulation. The latter assumes more significance for an excise tax law because it is imposed for *sumptuary* purposes.[75] The sumptuary thrust – an interface of police power and taxation – is pursued to lessen the consumption of products that are harmful and, thus, promote the general welfare. Indeed, when the State imposes an excise tax on these goods, it aims not only to raise revenues, but also to control the consumption of such goods. To this end, sin taxes on alcohol and tobacco manufacturers "help dissuade the consumers

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[73] Nordlinger v. Hahn, 505 U.S. 1 (1992).

[74] *Id.*

[75] *See, e.g.,* La Tondeña Inc. v. CIR, G.R. No. 14336 (1964).

from excessive intake of these potentially harmful products."[76] However, in this instance, the sumptuary nature of an excise tax is irrelevant vis-à-vis a temporal classification. Taxing some cigarettes at 2003 prices while taxing others at current retail prices will not affect consumption in the absence of evidence that those taxed at 2003 prices retained their prices. With this particular situation, the temporal classification may even encourage consumption, at least of cigarettes assumed sold at 2003 prices. However, no such data has been given. In fact, cigarettes taxed at 2003 prices are actually being sold at a higher rate now. Thus, the temporal classification has either a negative relation or no relation at all to the sumptuary purpose of taxation.

Tobacco Brand	Net Retail Price (in PhP) NIRC 1997	Net Retail Price (in PhP) Current Ave.	Present Tax Classification	Tax Classification if based on Current Average Net Retail Price
Hope Lux M 100's	7.37	14.25	High	Premium
Champion Intl M 100's	5.51	17.86	Medium	High

Table 2: Comparison of Tax Rates Based on Current Average Net Retail Price with NIRC Rates Using Two Sample Products.[77]

The classification freeze provision was actually held to be germane to the purpose of the law on mainly administrative grounds, i.e. efficiency and effectivity of tax administration. Of course, administrative efficiency is a valid purpose. In fact, courts have validated tax laws with such avowed purposes. Since collection of tax requires spending to determine the subjects of taxation as well as to prevent evasion, a classification may be developed in such a way that the law will not tax those whose administrative burden of taxation is unduly expensive, or where the revenue from taxation will be relatively small or disproportionate to the costs of collection.[78]

However, the classification used must be sufficiently tailored to prevailing circumstances, such that those taxed are those which entail relatively

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[76] Southern Cross Cement Corporation v. Cement Manufacturers Association of the Philippines. G.R. No. 158540 (2005).

[77] Congressional Policy and Budget Research Department (CPBRD), Policy Brief No. 2011-10. October 2011.

[78] John Sholley, *Equal Protection in Tax Legislation*, 24 VA. L. REV. 229 (1938), *available at* http://www.jstor.org/stable/1067845 (last visited Jan. 24, 2012).

easy collection that is at least proportionate to the expense involved, while those not taxed are those with unduly high administrative costs for collection. A general statement of administrative efficiency as a basis for classification without showing how the classification furthers this goal is insufficient.[79]

A classification also has to sufficiently fit the administrative goal so as to be neither under-inclusive nor over-inclusive. To paraphrase *Schlesinger v. State of Wisconsin,*[80]

> A. may [not] be required to submit to an exactment forbidden by the Constitution [even] if this seems necessary in order to enable the state readily to collect lawful charges against B. Rights guaranteed by the federal Constitution are not to be so lightly treated; they are superior to this supposed necessity.

In this case, the State of Wisconsin decided to cast the net wide on inheritance taxes by presuming that donations *inter vivos* made within six years of a decedent's death are actually made in contemplation of death. The state justified this by arguing that it was necessary to avoid tax evasion. The overinclusive character of the tax is obvious. While it may be true that there are dispositions made within six years of death in contemplation thereof that are clothed as *inter vivos* transfers to evade taxes, it does not mean that all such dispositions within said period are actually transfers *mortis causa.* The six-year period is arbitrary. It has no relation to the number of transfers *inter vivos* that are actually transfers *mortis causa.* The law might well have set any other period. It will neither increase nor decrease the possibility of catching more tax evaders who utilize the scheme sought to be prevented.

Conversely, an underinclusive classification is just as violative of equal protection. It is, in fact, what Section 145 of the NIRC does. By freezing prices for 2003 brands on the claim of administrative efficiency, it casts the net too tightly, thereby unduly benefitting some with lower tax rates while burdening others.

The classification is also underinclusive vis-à-vis the alleged purpose of preventing graft and corruption. Both Congress and the Court argued that graft may be prevented by denying BIR discretion in computing the applicable tax base of the products in Annex "D." Likewise, by freezing the net retail

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[79] Stewart Dry Goods Co. v. Lewis, 294 US 550 (1935).

[80] Schlesinger v. State of Wisconsin, 270 US 230 (1926).

prices of the enumerated cigarette brands in Annex "D," instead of putting an indexation provision, the legislature is said to have prevented a surrender or unwarranted delegation of the congressional power to tax to the executive branch.

The underinclusive character of the classification is clear. *First*, the discretion that was removed from the BIR is only with regard to the Annex "D" brands. The BIR can and must still compute the appropriate tax base for those that were introduced post-1996, after a survey is done.

Second, indexation does not mean virtual surrender of powers to the executive. In fact, provisions to this effect are also present in the NIRC. Under Section 149 thereof, the brackets reflecting the automobile manufacturer's price or importer's selling price "will be indexed by the Secretary of Finance once every two (2) years" under a certain condition. Under Section 109, in paragraphs (P), (Q), and (S), the amounts indicated for purposes of exemption from the VAT shall be adjusted to their present values using the Consumer Price Index, as published by the National Statistics Office. In other words, the law has accommodated indexation under circumscribed conditions. It could have easily done the same in this instance. Granting that the legislature has discretion to choose the methods of taxation, this discretion is and should be circumscribed by the standards in the Constitution, one of which is equal protection.

E. The Supreme Court Unjustifiably Added the Requisite of Hostility in Classification as an Additional Ground for the Rational Basis Test

The Supreme Court added insult to injury when, apart from failing to substantially test whether a reasonable relation existed between the temporal classification and the purposes of the law, it added a *hostile classification requisite* to the grounds for rational basis. In its decision, the Court stated that an equal protection challenge can only prevail by the "most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes, and that there is no conceivable basis which might support it."[81]

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[81] *Supra* note 1.

While the equal protection clause does prohibit distinctions rooted in hostility, it does not mean that a party challenging the validity of a law has to prove such hostility. Congress may have the best of intentions, but a classification that discriminates without reasonable relation to the law's purpose must be invalidated.

Moreover, the Court was incorrect when it stated that "the burden of proof is on the one attacking the constitutionality of the law to *prove beyond reasonable doubt* that the legislative classification is without rational basis."[82] While a law is presumed to be constitutional, such that any challenge to its validity must clearly show a violation of the Constitution, this burden is met by merely presenting substantial evidence. There is no reason why challenging a law should require the same burden of proof as a criminal prosecution. Clearly, the Court, while paying lip service to rational basis, set the standard too high against the petitioner and too low in favor of Congress.

VII. RETHINKING THE RATIONAL BASIS TEST

Having critiqued *BAT v. Camacho*, this paper will now introduce a new approach to the rational basis test. From what we have seen above, the Court's current approach lacks basis and standards. The problem lies in the fact that the Court failed to test whether the classification developed was reasonably related to the alleged goals of the law. It is almost as if in economic (particularly tax) issues, the Court, in respecting the discretion of the legislature, is hesitant to use its own discretion to judge the validity of the acts of Congress.

US decisions have, in fact, been used here in critiquing Philippine jurisprudence on equal protection challenges to tax laws for being wanting in reasoning and analysis, particularly in terms of testing whether a reasonable relation exists between a challenged classification and the purposes of the law. The US decisions have become, by necessity, a source of persuasive authority not only because they serve as the basis of our tax laws, but also because they contain logical expositions of arguments – and logic knows no nationality nor bows to any lobby or parliament.

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[82] *Id.*

Thus, this paper agrees that the rational basis test is the proper standard for an equal protection challenge on tax laws. Absent any showing that suspect classifications or rights higher up in the constitutional hierarchy are used, there is no justification for using strict or intermediate scrutiny. Indeed, if the subject involved is not a fundamental right, then the classification must only be shown to further a legitimate state interest. However, this paper suggests that a clearer, sounder, and "more" rational approach is possible if economic principles and logic are applied in a way that will allow the courts to test the validity of tax laws without running into charges of judicial legislation or overreaching.

A. Rethinking the Rational Basis Test by Applying Economic Principles to Taxation

Tax is a subject that peculiarly straddles the boundary between economics and law. Throughout the years, economists have studied and propounded theories on taxation, its effects on the economy and social welfare, as well as the type or nature of tax that will maximize revenue or social utility. This is not surprising given the nature of a tax. What is bewildering though is how little courts have used or tried to apply by analogy the wisdom accumulated by economists in judging tax laws. True, the judiciary is not concerned with economic policy, which touches on the wisdom of the law. However, it is another thing entirely to use economic principles in applying judicial tools to determine the validity of legislation

Section 1, Article VIII of the 1987 Constitution gives the Judiciary the power and, more importantly, the *duty* to strike down acts of the coordinate branches of government when such amount to grave abuse of discretion. This principle, however, gives little guidance and is far from being a bold red line. Determining whether a government agency has crossed that line is an obligation of the Judiciary. Different standards of judicial review have been developed to answer that question. Thus, in equal protection challenges, strict scrutiny is used to test a law's validity when the Court is faced with suspect classifications. Matters pertaining to property rights and economic issues, on the other hand, are tested against a rational basis standard.

The issue this paper is trying to address is that *as it stands, rational basis amounts to no standard at all.* As the review of equal protection decisions have shown above, the Court has validated laws where the legislature showed any possible reason for the classification. In fact, while the Court cites reasonable

relation as a test of validity, it hardly bothers to apply it to the cases at hand nor explain how it could find that Classification A furthers Purpose B. Perhaps the Court thinks that the relation is intuitive or that it is self-explanatory. It may also be reluctant to strike down the law absent a clearly arbitrary reason out of deference for a co-equal branch of the government or to avoid embarking on judicial legislation.

The problem lies in the fact that the "reasonable relation" standard provides little guidance. Precisely, the standard must be vague because it needs to be applied to countless varying situations. This paper proposes, however, that for tax laws, the rational basis approach should be modified to include a two-step process: *first*, a test of the validity of the purposes of legislation, and, *second*, a test of the fit between the means or classification used and the purpose of the law. This is hardly controversial. The classic formulation of rational basis, i.e., that the classification bears a "reasonable relation to a legitimate state interest," already includes both tests. Test them against what, however? The answer again is simple: to test the purpose against the Constitution and to test the means against the logic behind the proposition using the minimum rationality constraint.

B. Testing the Purpose

Using the Constitution as a standard against which the purposes of a particular tax law may be tested should not be controversial. After all, anyone asserting a violation of equal protection is basically putting forth a constitutional challenge. What is often forgotten, however, is that the Constitution has other provisions applicable to tax legislation and that these provisions should have bearing on whether a tax law is ultimately validated.

Explicitly testing the purpose against constitutional principles is actually a method already used in the US Known as "rational basis with bite," this standard has been used to invalidate laws challenged on an equal protection violation due to illegitimate ends.[83] At its strictest level of analysis, the purpose test requires that a law's purpose must have textual basis in the Constitution.[84] At its most permissive form, a purpose may be valid where it does not transgress a constitutional principle. The method is summarized below:

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[83] *See* Ashutosh Bhagwat, *Purpose Scrutiny in Constitutional Analysis*, 85 CAL. L. REV. 297 (1997). For a summary of US cases utilizing "rational basis with bite."

[84] This idea is attributed to Stephen Gottlieb.

	Direct Burden on Core Constitutional Right	Incidental Burden or Marginal Right	Minor and Incidental Burden
Illegitimate Purposes	Illegitimate purpose analysis: law is invalidated	Illegitimate purpose analysis: law is invalidated	Illegitimate purpose analysis: law is invalidated
Legitimate Purpose	Limited purpose-analysis: law is valid only if purpose is consistent with principles underlying substantive constitutional right	Balancing test: Court's assessment of the burden on rights should be measured against importance of government's purpose	No scrutiny

Table 3: Framework for Judicial Scrutiny of Government Purposes.[85]

Thus, where a law espouses a purpose that is contrary to the Constitution, regardless of whether only the rational basis test is used, it should be invalidated. Where a legitimate purpose is shown, it is given deference – at least at this stage of the test. If there is legitimate purpose but it violates a constitutional right, then the Court should weigh the purpose against the right and decide accordingly.[86]

We deviate from this framework, however, by also requiring that in applying constitutional principles to test the *validity of purposes* in a tax law, the Court should also bear in mind the *economic meaning* of such a purpose. For instance, where a law is challenged because it unduly burdens a particular industry by the imposition of an excise tax, and the legislature defends the law by saying that it is imposing it as a sumptuary tax, then apart from the provision on equal protection, other provisions pertaining to distributive justice and the common good must be considered, particularly, Section 6, Article XII of the Constitution.[87] Thus, in economics, while taxes usually result

[85] Bhagwat, *supra* note 81.

[86] *Id.*

[87] CONST. art. XII, § 6. This provision partly states: "Individuals and private groups [. . .] shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands."

in an income effect where there is simply a transfer of wealth from the taxpayer to the government, as well as a net economic loss, a sumptuary tax such as an excise tax, if imposed correctly, may actually lead to a negative economic burden.

Arguing for an economic interpretation of tax laws is not so farfetched. Germany's 1919 general tax law contained such a provision requiring the application of "economic meaning" in the construction of revenue provisions.[88] It was also applied here as early as *Manila Race Horse Trainers Association* where the Court considered public policy and economics in validating a tax on race horse stables.

This paper is not deviating from the Constitution as a standard. It merely considers what these provisions may mean or entail when viewed from an economic perspective. The principles of economics actually already mirror the standards in the Constitution and in tax administration. Adam Smith's four canons of a good tax, for instance, includes: (1) equality of taxation (further broken down into horizontal and vertical equity); (2) certainty of tax; (3) convenience of payment; and, (4) economy in collection.[89] These are readily applicable to the standard of equal protection and the principle in tax abatement under Section 204(b)(2) of the NIRC, which states that the Commissioner may decide to abate a tax where the costs of collection do not justify it.

Applying this approach, this paper considers the purposes of the freezing provision. These include administrative efficiency, the elimination of opportunities for corruption, the avoidance of undue delegation of the taxing power, the promotion of competition, and the attainment of stable and buoyant tax revenues. None of them facially violates a constitutional principle. However, BAT argues that it violates their right to equal protection. Using the framework given above, in a situation where a purpose is legitimate but a right is said to be violated, the Court must balance the interests involved and uphold the right or the purpose when warranted.

In deciding whether there is a violation of the equal protection and uniformity of taxation clauses it must be considered that in economic theory,

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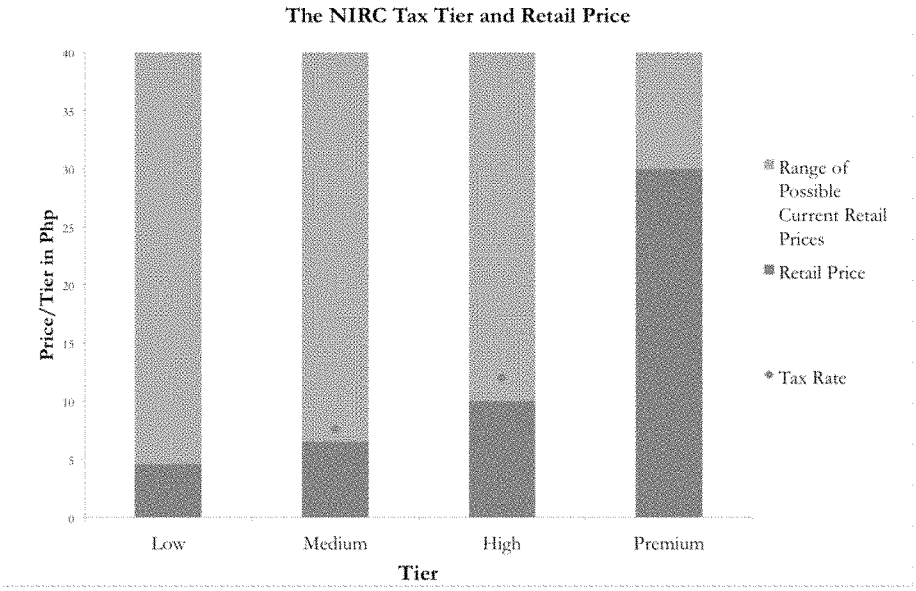
[88] *See* Ben Terra, *Excises*, *in* I TAX LAW DESIGN AND DRAFTING (1996).

[89] Michael Boskin, *Factor Supply and the Relationships among the Choice of Tax Base, Tax Rates and the Unit of Account in the Design of an Optimal Tax System*, *in* THE ECONOMICS OF TAXATION (1980).

one of the four canons of a good tax measure is horizontal and vertical equity. Horizontal equity corresponds roughly with the rule of uniformity and states that similar subjects should be treated alike. In economics, as in law, taxation should not differ as against subjects based on irrelevant individual characteristics.[90] Vertical equity, on the other hand, roughly translates to progressivity or the principle that one with a higher ability to pay should be taxed higher.[91] The economic effects of the tax should also be considered in judging the tax laws by plotting the tax rates imposed against cigarette-sellers, the retail prices per tax tier, and possible current retail prices.



The lower bar shows the price range covered by a particular tax tier. The tax rate is represented by the diamonds. The higher bar, on the other hand, represents current retail prices which are above the price range covered by a tax tier, but are still taxed at the lower tax tier because of the freezing provision. Thus, the higher the current retail price of a 2003 brand within a price range covered by a particular tax tier, the greater its benefit or effective exemption from a part of the excise tax imposed on other brands.

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[90] BERNARD SALANIE, THE ECONOMICS OF TAXATION (2003).

[91] *See id.*; JAMES & NOBES, *supra* note 7.

It is crucial to note as well that by 2007, the rates imposed on cigarettes within the medium and high tiers actually exceeded the maximum retail price for both tiers. In other words, the tax on cigarettes under the medium and high tiers is now higher than their retail prices. Again, this gives a disproportionate and unjustified benefit to 2003 cigarettes as opposed to post-2003 cigarette brands.

It is clear from the above that there is a substantial difference in treatment between 2003 and post-2003 cigarette-sellers and that said difference stems not from any inherent characteristic of these cigarette-sellers but from an arbitrary imposition of a temporal classification. Furthermore, while relatively higher prices alone are not sufficient to conclude a higher taxable income, the fact that there are some brands with high retail prices taxed at the medium tax tier shows that a portion of the prices which other high retail-priced brands pay as tax to the government are kept by cigarette-sellers taxed at 2003 prices. This violates the rule on equity.

In light of the fact that the law purports to promote legitimate purposes, we must balance these purposes with the right violated. Assuming for the sake of discussion that the Court finds that the purposes outweigh the imposition on the alleged right, we must now go to the second tier of this revised rational basis approach and examine whether the classification used is reasonably related to the goals of legislation. If it is not, then there is no reason why we should continue to uphold the law or its purpose since apart from infringing on a right, the law's avowed goals will not be met anyway absent such reasonable relation.

C. Examining Reasonable Relation and Fit between Purpose and Means by the Minimum Rationality Constraint

In *Equal Protection: A Closer Look at Closer Scrutiny,* the Michigan Law Review ("MLR") discussed the concept of "minimum rationality constraint," which attempts to provide a criterion in figuring out the existence of a reasonable relation. This is done by determining whether the individual subject of a particular field of law, in this case, tax law, is *relevantly different.*[92] Given that a law in its broadest formulation is generally promulgated to address a need or harm, the criterion states that individuals are relevantly different if they have:

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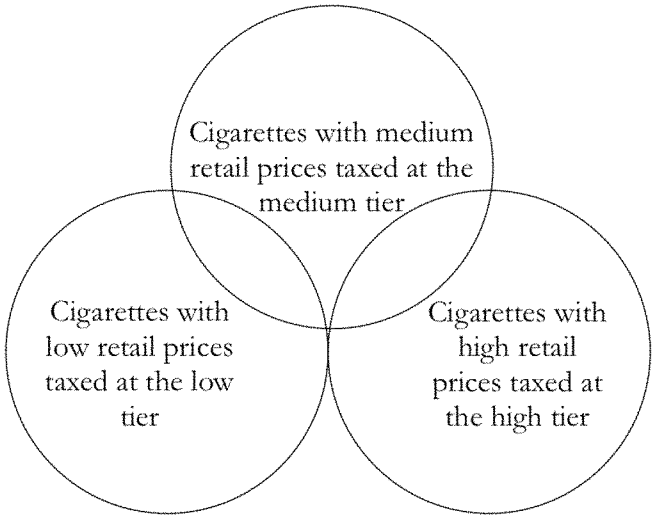
[92] Michigan Law Review, *Equal Protection: A Closer Look at Closer Scrutiny*, 76 MICH. L. REV. 771 (1978).

> (1) a greater index of the social harm, mischief [or need] which the burden [or benefit] is designed to control [or address], (2) a lower index of the personal interest in not being burdened [or in needing the benefit], or (3) a lower index of administrative cost in applying the burden [or benefit].[93]

Reminiscent of the rule in *Allegheny*, where the fact of difference and its effect on a taxpayer is judged not in isolation or by absolute standards but in *relation to others*, the minimum rationality constraint summarized by the MLR provides three criteria for testing whether the differences between taxpayers are sufficiently substantial to warrant differing treatment. It is crucial to note, however, that apart from the administrative cost, the other two criteria of relevant difference pertain to *inherent characteristics* of individuals subject to taxation – strengthening our earlier argument that a valid classification should be one based on differences inhering in the various subjects of legislation instead of one artificially imposed or created by law.



[93] *Id.*

The circles in the Venn diagram represent both the high, medium, and low tax tiers, as well as cigarettes with high, low, and medium retail prices.

Thus, while the tax purports to cover all cigarettes packed by machine regardless of prices, those cigarettes registered between 1996 and 2003 are taxed differently. There are high-priced cigarettes taxed under the medium-tier tax rates, and medium-priced cigarettes taxed at the low-tier rates.

A fair tax system would have been represented by three concentric, non-overlapping circles.

Note: The premium tier was not represented for simplicity.

It is reasonable to assume that all brands have no greater interest in being benefited by a freezing provision or being burdened by a tax as compared with post-2003 brands. There is also no showing that 2003 brands are easier to tax than post-2003 brands, or that taxes from post-2003 brands may be more difficult to collect.

It would be different if the size of operation were the basis of the classification. It will be easy to see, for instance, that a cigarette-seller with a larger operation would be easier to collect taxes from. He would also have a greater interest in the freezing classification and, consequently, in minimizing the tax burden, as opposed to a person who sells cigarettes on the street. In fact, in that scenario, no violation of the equal protection clause will occur if the law exempts the individual cigarette vendor who earns marginal income from excise tax. Collection costs will be tremendous and may even be disproportionate to the revenue collected. The marginal cigarette vendor will have a widely large difference in interest in avoiding the tax than a large cigarette conglomerate.

Under the minimum rationality constraint, none of the avowed purposes of the law is even slightly related to the temporal classification imposed. To illustrate, the freeze is supposed to deter corruption. Using the three criteria, we see that while, facially, giving the BIR limited opportunities to contact the taxpayers may arguably limit the opportunities for corruption there is *no reason why the freeze should have been imposed on 2003 brands exclusively*. There is no showing that brands registered between 1996 and 2003 are more prone to corrupting public officials. Even if they are, then the temporal classification

would only have created an absurd situation where acts of corruption benefited the offender by subjecting them to lower tax rates as against their competitors.

The argument that the freeze will eventually apply to all brands since new ones, once surveyed, will remain in their respective tax tiers is unavailing. If anything, it opens the floodgates of corruption by creating an interest in influencing when the BIR will do its survey. Furthermore, it does not justify why brands registered between 1996 and 2003 are given the initial benefit of being taxed at their old rates. Again, these brands do not have any higher level of interest vis-à-vis being burdened by the tax or benefited by the effectively lower tax rates than any other brand. They also have not been shown to be easier to collect from, which would have, in effect, justified what amounts to an exemption from a portion of the excise tax.

D. Revealing the Logical Fallacies in BAT v. Camacho

While the above discussion is a sufficient critique of the *BAT v. Camacho* decision as well as a relatively complete exposition of the suggested approach to the rational basis test given time and resource constraints, the authors would like to devote a few pages to a logical analysis of the Court's and Congress's arguments in *BAT v. Camacho* if only to objectively show that the major conclusions reached by the Court do not logically follow from its propositions. Valid and critical reasoning is the primary tool of lawyers. It is reasonable, therefore, to test the logical validity of the arguments in the Court's decision precisely because, far from utilizing persuasive syntax or semantics, logic is and should form the basis of all legal arguments.

The analysis begins by transforming the arguments of the decision into logical propositions according to the rules of propositional calculus or symbolic logic. To prove validity or invalidity, a truth table is constructed by assigning truth values to each proposition in the argument. Given any set of propositions, P and Q, truth values are assigned according to the rules of logic, as summarized below:

Guide columns		1	2	3	4	5
P	Q	~P	P&Q	PvQ	P>Q	P<>Q
T	T	F	T	T	T	T
F	T	T	F	T	T	F
T	F		F	T	F	F
F	F		F	F	T	T

In words:

1. A statement, P, and its negation, ~P, have opposite truth values
2. A conjunction, P&Q, is true if and only if both its conjuncts are true
3. A disjunction, PvQ, is false if and only if both its disjuncts are false
4. A conditional, P>Q, is false if and only if its antecedent is true and its consequent is false
5. A biconditional, P<>Q, is true if and only if its two components have the same truth-value
6. A truth table is invalid if all the premises are true but the conclusion is false

Table 4. Truth Table. [94]

Using these rules of logic, we construct a truth table to test the various arguments for the freezing provision used by the Court in resolving the issue. These arguments basically revolved around the purposes of reducing corruption, simplifying tax administration, reducing tax avoidance and evasion, and promoting a more stable and buoyant revenue stream from taxation. With regard to the reduction of opportunities for corruption, the Court quoted legislative deliberations. Particular emphasis was placed on the use of the freezing provision to avoid corruption as put forth by then Senator Raul Roco, who said: "My point, Mr. President, is, *by giving the Secretary of Finance, the BIR and the National Statistics Office discretion over a two-year period will invite corruption and arbitrariness, which is more dangerous than letting the House of Representatives and this Chamber set the adjustment rate.*"[95] (Emphasis supplied)

The argument logically translates to the following simple propositions and its truth table, where:

F: Freezing provision
D: Discretion
C: Corruption

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[94] ROBERT RODES, JR. & HOWARD POSPESEL, PREMISES AND CONCLUSIONS: SYMBOLIC LOGIC FOR LEGAL ANALYSIS (1997).

[95] *Supra* note 1.

A: Arbitrariness

Thus,

1. If we use a Freezing provision (F), then we reduce Discretion (~D)
2. Discretion (D) leads to Corruption and Arbitrariness (C&A)
3. We use a Freezing provision (F)
4. Therefore, we remove corruption and arbitrariness, ~(C&A)

F>~D, D > (C & A), F |- ~(C&A)

F	**>**	**~D**	**D**	**>**	**C**	**&**	**A**	**F:**	**~**	**(C**	**&**	**A)**
T	F	F	T	T	T	T	T	T	F	T	**T**	T
F	T	F	T	T	T	T	T	F	F	T	**T**	T
T	T	T	F	T	T	T	T	T	F	T	**T**	T
F	T	T	F	T	T	T	T	F	F	T	**T**	T
T	F	F	T	F	F	F	T	T	T	F	**F**	T
F	T	F	T	F	F	F	T	F	T	F	**F**	T
T	T	T	F	T	F	F	T	T	T	F	**F**	T
F	T	T	F	T	F	F	T	F	T	F	**F**	T
T	F	F	T	F	T	F	F	T	T	T	**F**	F
F	T	F	T	F	T	F	F	F	T	T	**F**	F
T	T	T	F	T	T	F	F	T	T	T	**F**	F
F	T	T	F	T	T	F	F	F	T	T	**F**	F
T	F	F	T	F	F	F	F	T	T	F	**F**	F
F	T	F	T	F	F	F	F	F	T	F	**F**	F
T	T	T	F	T	F	F	F	T	T	F	**F**	F
F	T	T	F	T	F	F	F	F	T	F	**F**	F

The first three highlighted columns represent the truth values of the premises, while the fourth highlighted column represents the truth value of the conclusion. As stated above, an argument is invalid if there is a row where all

the premises are true, but the conclusion is false. In this instance, the highlighted row meets this condition. Therefore, the argument is invalid.

Compare this with the following argument, also in *BAT v. Camacho*, pertaining to the use of the freezing provision to reduce tax avoidance and evasion. The Court held: "Congress may have reasonably conceived that *a tax system which would give the least amount of discretion to the tax implementers would address the problems of tax avoidance and tax evasion.*"[96] (Emphasis supplied)

This argument translates to the following propositions and truth table:
F: Freezing provision
D: Discretion
A: Tax avoidance
E: Evasion

Thus,

1. Freezing will reduce Discretion (F>~D)
2. Reducing Discretion will reduce both Avoidance and Evasion, (~D>~(A&E))
3. We use the Freezing Provision, F
4. Therefore, we reduce both Avoidance and Evasion ~(A&E)

F>~D, ~D > ~(A &E), F| ~(A&E)

F	**>**	**~D**	**~D**	**>**	**~**	**(A**	**&**	**E)**	**F:**	**~**	**(A**	**&**	**E)**
T	F	F	F	T	F	T	T	T	T	F	T	T	T
F	T	F	F	T	F	T	T	T	F	F	T	T	T
T	T	T	T	F	F	T	T	T	T	F	T	T	T
F	T	T	T	F	F	T	T	T	F	F	T	T	T
T	F	F	F	T	T	F	F	T	T	T	F	F	T
F	T	F	F	T	T	F	F	T	F	T	F	F	T
T	T	T	T	T	T	F	F	T	T	T	F	F	T
F	T	T	T	T	T	F	F	T	F	T	F	F	T
T	F	F	F	T	T	T	F	F	T	T	T	F	F

[96] *Id.*

F	T	F	F	T	T	T	F	F	F	T	T	F	F
T	T	T	T	T	T	T	F	F	T	T	T	F	F
F	T	T	T	T	T	T	F	F	F	T	T	F	F
T	F	F	F	T	T	F	F	F	T	T	F	F	F
F	T	F	F	T	T	F	F	F	F	T	F	F	F
T	T	T	T	T	T	F	F	F	T	T	F	F	F
F	T	T	T	T	T	F	F	F	F	T	F	F	F

Unlike the previous argument, this one is valid since there is no row where the premises are all true and the conclusion is false. Why the difference? Well, the second instance is a slightly modified form of a chain argument, of the form A>B, B>C, therefore A>C. This is easily proven by the following:[97]

1. A>B, A
2. B>C, A
3. A, PA
4. B, 1,3 >O
5. C, 2, 4 >O
6. A>C, 3-5 >I

Where the letters on the right-hand side after the first comma refer to the rule on which the proof is based, while the numbers refer to the statement on which it is based, such that:

A: Assumption rule
P: Provisional assumption
>O: Statement is derived from previous assumptions on which the premise depends
>I: The conditional is based on the assumptions on which its consequent depends without the assumption pertaining to its antecedent

The above is merely a symbolical restatement and proof of an argument that goes thus: B follows from A, while C follows from B; therefore, C follows from A. The chain of argument basically follows the principle of

[97] The proof above is based on a logically similar proof in RODES & POSPESEL, *See supra* note 92.

transitivity. Therefore, since the argument with respect to the freezing provision – that aims to minimize tax avoidance and evasion – follows this form, it is valid.

In contrast, the argument for the freezing provision as a tool against corruption is an invalid modification of the principle of *modus tollens* or denying the antecedent. *Modus tollens* is of the form: A>B, ~B; therefore, ~A. Denying the antecedent takes the form: A>B, ~A; therefore, ~B. The corruption argument denied the antecedent when it argued that D>(C&A), and that since F>~D, if we have F, then ~(C&A) follows. It does not. We can see this more clearly if we simplify such that in the invalid argument, A>B, ~A; therefore, ~B, we take A as equivalent to D and B as equivalent to (C & A). Then, we can see that merely denying D (i.e., ~D) by assuming F is exactly denying the antecedent since F>~D.

In plain English, the absence of corruption and arbitrariness logically implies the absence of discretion since corruption and arbitrariness cannot occur if there is no discretion. Therefore, if there is no corruption and arbitrariness, it follows that there is no discretion. The reverse is not true. In contrast, the mere absence of discretion in the Executive cannot ensure that there will be no corruption and arbitrariness. Why? The simplest counter-argument would be because corruption and arbitrariness may occur in Congress. Therefore, taking away discretion in the Executive will not necessarily minimize or eliminate these twin evils. It merely gives them a different venue, from the halls of Malacañang to those of the House and the Senate. This is just one of the possible reasons why the corruption argument for the freezing provision is invalid. While it assumes evil in the Executive, it impliedly assumes saintliness in the Legislature. The argument obviously assumes too much.

Finally, this paper addresses the last major purpose, that of utilizing the freezing provision to enable a more stable and predictable tax collection system. The argument goes:

> With the frozen tax classifications, the revenue inflow would remain stable and the government would be able to predict with a greater degree of certainty the amount of taxes that a cigarette manufacturer would pay given the trend in its sales volume over time. The reason for this is that the previously classified cigarette brands would be prevented from moving either upward or downward their tax brackets despite the changes in their net retail

> prices in the future and, as a result, the amount of taxes due from them would remain predictable.[98]

For this argument, this paper includes an additional premise based on the nature of the computation of tax rates – that a change in quantity sold as well as the rate leads to changes in tax collected. The propositions and the argument therefore goes:

Q: Change in quantity sold
R: Change in rate or tax tier
T: Change in tax collected
F: Freezing provision

Thus:

1. Both a change in quantity[99] of goods sold and a change in rate will lead to changes in the amount of tax collectible
2. The freezing provision removes the changes in tax rates
3. We use a freezing provision
4. Therefore, we reduce the changes in tax rate

(Q&R)>T, F>~R, F | ~T

(Q	&	R)	>	T	F	>	~R	F:	~T
T	T	T	T	T	T	F	F	T	F
F	F	T	T	T	T	F	F	T	F
T	F	F	T	T	T	T	T	T	F
F	F	F	T	T	T	T	T	T	F
T	T	T	F	F	T	F	F	T	T
F	F	T	T	F	T	F	F	T	T
T	F	F	T	F	T	T	T	T	T
F	F	F	T	F	T	T	T	T	T
T	T	T	T	T	F	T	F	F	F
F	F	T	T	T	F	T	F	F	F

[98] *Supra* note 1.
[99] This is assumed from the method of computation of the excise tax.

T	F	F	T	T	F	T	T	F	F
F	F	F	T	T	F	T	T	F	F
T	T	T	F	F	F	T	F	F	T
F	F	T	T	F	F	T	F	F	T
T	F	F	T	F	F	T	T	F	T
F	F	F	T	F	F	T	T	F	T

Three rows have true premises and a false conclusion. The argument is, therefore, invalid. The proposition that freezing the rates will allow for a more stable computation of tax collectible ignores the fact that the amount of the tax collected is dependent on both the quantity sold and the applicable rate. We cannot assume that quantity sold is constant or that it can be fairly predicted, especially when we introduce a tax rate that effectively imposes different rates of tax on similar goods with the same prices. Basic economic theory will say that substitution may occur[100] such that brand X may suffer a decline in quantity sold because consumers have shifted to the cheaper brand Y. In fact, the amount of tax collected may even decrease since, with the freezing provision, post-2003 brands are effectively burdened with a heavier tax rate, while 2003 brands could effectively undercut their competition by charging at lower but still profitable prices. If the quantity sold by 2003 brands is not as high as the loss in revenue due to the freeze, the total tax collectible will decline. The net gain will go, without lawful justification, to the 2003 brands.

Again, this paper is not proposing that the Court should create a truth table for every equal protection challenge presented to it. Logical reasoning is something that may be done intuitively. Sometimes, however, semantics and language make logical fallacies seem valid. The discussion above merely strips the arguments purporting to support the freezing provision to its core propositions, and tests them against the simple rules of logic to more clearly show their invalidity. The two-step purpose and means test using constitutional standards and the minimum rationality constraint, without the use of symbolic logic, is sufficient for equal protection challenges.

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[100] JAMES & NOBES, *supra* note 7.

VIII. CONCLUSION

BAT v. Camacho adds to a long history of inadequate and deficient analyses of tax classifications. It contributes neither principles for sound legal reasoning nor a satisfying conclusion to a controversial legal issue. What it *has* given us is merely more case law to add to the already replete jurisprudence of relatively low standards of examination vis-à-vis equal protection challenges. While this paper agrees that the rational basis test is the proper standard of scrutiny, the case has not been able to provide a rigorous scrutiny of the validity of the classification imposed by the law. Instead of rigor in analysis, what has been religiously observed is a determination that lacks meticulousness.

This paper does not propose that the rational basis test be approached and applied with pedantic and formalistic rigor. Indeed, what is suggested is the employment of the very same test that would not only pass upon constitutional values, but also consider the contributions of other fields that have essential interstices with taxation. These disciplines – such as economics and philosophy – should be taken into account because taxation is a technical and multi-disciplinary subject with multi-dimensional implications. Therefore, principles from other fields of study that may be suitably adjusted to legal analysis can and should be applied to the determination of the validity of a classification. After all, the true measure of a good tax law is one that does not only have legal basis, but also meets the requisites of theoretical justice, revenue sufficiency, and administrative feasibility.

With these considerations in mind, this paper showed that BAT failed to pass the rational basis test. The law has created a temporal classification that does not muster scrutiny. This classification – intended or otherwise – has resulted in sub-classes within a class. By employing domestic precedents such as the cases that have sufficiently passed upon the requisites of a reasonable classification, the conclusion is clear that the legislative freeze provision fails the standard.

In particular, this paper has demonstrated that the classification is not germane to the purpose of the law. Indeed, while the Court was able to identify the purpose, it has not clearly provided enough justifications to rationalize its imposition. Moreover, it failed to provide an exposition on the links it may have intuitively found between the purpose and the result. The result is

injustice – the promotion of a standard that has little bite or rigor, and the validation of a provision that serves neither the purpose of excise taxation nor the principle of equal protection.

By applying doctrines borrowed from US jurisprudence and using them as persuasive authority, this paper has also shown that temporal classifications in taxation are generally disfavored. Where they are utilized, Congress should take care that a fit can be readily shown between the chosen temporal classification and the purposes of the law. Otherwise, it may be prone to challenges of overinclusiveness. By using economic and philosophical models to construct a two-step approach to the rational basis test, the authors have demonstrated that the legislative freeze provision lacks basis and has precisely failed to fit its purposes. It should have been struck down for being violative of the equal protection clause.

Finally, this paper hopes that the two-pronged approach introduced above can be used in resolving similar questions in the future. By introducing a more thorough analysis of the purposes of taxation and the relation between the means and goals of legislation, the two-pronged approach adds considerable rigor to the rational basis test and will undoubtedly aid the Court in determining the validity of arguments apart from establishing the economic and logical soundness of tax classifications.

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