

BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

February 4, 2024

Bill: SJR-18

Sponsor: Senator Cliff R. Pirtle

Short Title: Property Tax & Foreign Nations, CA

Description: This joint resolution proposes an amendment to Article 8, Section 1 of the Constitution of New Mexico to provide that agricultural real property owned by a foreign nation may be taxed for property tax purposes at a higher rate.

Effective Date: Not specified; 90 days following adjournment (May 15, 2024). The amendment proposed by this resolution shall be submitted for approval or rejection at the next general election or at any special election prior to that date.

Taxation and Revenue Department Analyst: Lucinda Sydow

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2024	FY2025	FY2026	FY2027	FY2028		
No impact					R	Counties, Municipalities, Property Taxing Districts
No impact					R	State General Obligation Bond Fund

* In thousands of dollars. Parentheses () indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

Methodology for Estimated Revenue Impact: No fiscal impact as based on federal law would be retracted if implemented.

Policy Issues: Under the New Mexico Constitution, all similar property must be taxed uniformly. N.M. Const. art. VIII, § 1. This Joint Resolution proposes to amend the New Mexico Constitution to allow real property owned by a foreign nation to be taxed at a higher rate.

Though a higher tax rate may be permitted on real property owned by a foreign nation if the New Mexico Constitution is amended, any higher tax rate would almost certainly be struck down under federal law. The tax discrimination based on nationality contained in this amendment is not allowed under the U.S. Constitution. The U.S. constitution grants the U.S. Congress the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” The “dormant commerce clause” refers to the prohibition against states passing legislation that discriminates against or excessively burdens both interstate and foreign commerce outside of the boundaries of the state. The federal courts scrutinize laws that discriminate against foreign commerce very closely, due to the pre-eminence of the federal government over the states in foreign affairs. Of particular importance is the prevention of protectionist state policies that favor state citizens or businesses at the expense of non-citizens conducting business within that state. Taxing property owned by a foreign nation at a higher rate than property owned domestically is also contrary to the tax policy principle of equity.

The Supremacy Clause of the United States Constitution provides that federal statutes and treaties are “the supreme Law of the Land.” U.S. Const. art. VI, cl. 2. This clause grants Congress the power to preempt the application or exercise of state law in particular areas and under particular circumstances. *State v. Prieto-Lozoya*, 2021-NMCA-019, ¶ 10, 488 P.3d 715, 722, cert. denied (Mar. 31, 2021). This includes

granting foreign nations exemption from state property tax. *See City of New York v. Permanent Mission of India to United Nations*, 618 F.3d 172, 175 (2d Cir. 2010) (finding the U.S. State Department has authority under the Foreign Missions Act, 22 U.S.C. § 4301 et seq. to grant an exemption from real property taxes on property owned by foreign governments pursuant to its authority).

It is highly likely that the federal government would conform to long-standing international law that has long recognized that when a foreign state owns real property outside its jurisdiction, it “must follow the same rules as everyone else.” *City of New York v. Permanent Mission of India*, 446 F.3d 365, 374 (2d Cir. 2006), *aff’d*, 551 U.S. 193 (2007); *accord* Restatement (Third) of Foreign Relations Law of the United States § 455(1)(c) (1987). In this case, that would mean taxing foreign government-owned property at the same rate as all other property.

Technical Issues: None.

Other Issues: None.

Administrative & Compliance Impact: This bill presents no impact for Tax & Rev. If implemented and not struck down for violation of the U.S. Constitution, it could present implementation challenges for county assessors.

Related Bills: Similar to SJR-8 (2023)