



Yesterday, the Arizona Supreme Court issued an opinion as to the Constitutionality of Proposition 208 (“Invest in Ed”), which was passed by the voters at the November 2020 election.

As you may recall, Prop. 208 provides for a 3.5% income tax surcharge on the income of individuals making over \$250,000 annually, and married couples filing jointly making an income of over \$500,000 annually.

After its passage, a group of Legislators, as well as the Goldwater Institute and the Arizona Free Enterprise Club filed a lawsuit alleging Proposition 208 violates the Arizona Constitution. The lawsuit alleged two main points:

- The voters do not have the power to levy a new tax with a simple majority vote because the Arizona Constitution requires a 2/3 vote of the Legislature to pass an act that increases state revenue (known as Prop. 108 requirements).
- Proposition 208 is unconstitutional because it creates mandatory state spending that will exceed the aggregate expenditure limit for education provided in the Arizona Constitution.

### **Voter Authority to Levy a Tax**

The court found that voters do in fact have the authority to levy a tax at the ballot. The provision requiring a 2/3 vote to raise state revenue (Prop. 108) applies specifically to the Legislature. Therefore the voters can pass a tax at the ballot and it only needs to pass with a simple majority.

### **Exceeding the Aggregate Expenditure Limit**

Prop. 208 was constructed to present the money collected as grants to school districts. Grants do not count against the K-12 aggregate expenditure limit. Prop. 208’s lawyers argued that because of this, the revenue should not count against the limit. The court found that revenues raised by the Prop.208 tax surcharge are not grants, and are in fact subject to the K-12 expenditure limit. It also indicated that if in fact the revenues generated exceed the aggregate expenditure limit, Proposition 208 as a whole violates the Constitution.

### **What’s Next?/Remand to Trial Court**

The court declined to immediately prevent the tax from being collected, because it did not have enough evidence in the record to determine whether 208 revenues will exceed the expenditure limit. The case will be sent back to the trial court to make a determination on that fact. If the court finds that the revenues collected will exceed the aggregate expenditure limit, the Supreme Court’s opinion says that it is unconstitutional and can’t be collected. The case will not be finalized until the trial court decides whether the revenue will exceed the limit.