

# **Bond Case Briefs**

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## **TAX - NEW HAMPSHIRE**

### **Rand v. State**

**Supreme Court of New Hampshire June 10, 2025 - A.3d - 2025 N.H. 27 - 2025 WL 1634480**

Property owners brought action against state, seeking permanent injunction requiring state to discontinue public education funding scheme, and alleging that state violated state constitution through practice of permitting property-wealthy towns to retain funds raised by Statewide Education Property Tax (SWEPT) beyond those necessary to pay for cost of adequacy of education and by setting negative local education tax rates in unincorporated places.

The Superior Court granted property owners' motion for partial summary judgment, denied state's and intervenor's cross-motions for summary judgment, and enjoined state from permitting communities to retain excess SWEPT funds or offset SWEPT rate via negative local tax rates. State and intervenor appealed.

The Supreme Court held that:

- Tax was administered in a manner that was equal in valuation and uniform in rate throughout state;
- Legislature did not intend to exempt unincorporated places from SWEPT;
- Department of revenue administration's (DRA) practice of setting negative local education tax rates in unincorporated places violated legislature's constitutional power and authority to impose proportional and reasonable tax; and
- Determination that state violated legislature's constitutional power and authority to impose proportional and reasonable tax warranted vacatur of trial court's injunction remedy.

By its plain language, statute imposing education tax on property across the state, directing how Statewide Education Property Tax (SWEPT) revenue was required to be spent, and requiring each municipality's selectmen or assessors to assess SWEPT revenue and pay it to the municipality for school districts' use, administered tax in a manner that was equal in valuation and uniform in rate throughout state, which, standing alone, did not implicate legislature's constitutional power and authority to impose proportional and reasonable tax, notwithstanding any theoretical indirect effects of scheme on municipalities; fact that scheme permitted a locality to spend SWEPT funds beyond what was needed to fund cost of providing opportunity for an adequate education in that locality had no effect on uniform SWEPT rate assessed to each taxpayer across the state.

Legislature did not intend to exempt unincorporated places from Statewide Education Property Tax (SWEPT) given that, to maintain harmony with statute providing for calculation of education grant funds that were issued to municipalities, and which contemplated unincorporated places being subject to SWEPT, unincorporated places were encompassed within term municipality found in statute imposing education tax on property, which required commissioner of department of revenue administration (DRA) to calculate the portion of education tax to be raised by a municipality, based on its tax base and to issue a warrant to selectmen or assessors of each municipality directing them to assess such sum and pay it to the municipality for school districts' use.

Department of revenue administration's (DRA) practice of setting negative local education tax rates in unincorporated places that nearly or completely offset Statewide Education Property Tax (SWEPT) rate in unincorporated places was administered in a manner that was not equal in valuation or uniform in rate throughout the state, and therefore violated legislature's constitutional power and authority to impose proportional and reasonable tax.

Determination that state violated legislature's constitutional power and authority to impose proportional and reasonable tax by administering Statewide Education Property Tax (SWEPT) in a manner that was not equal in valuation or uniform in rate throughout the state through department of revenue administration's (DRA) practice of setting negative local education tax rates in unincorporated places warranted vacatur of trial court's injunction remedy of enjoining the state from permitting communities to offset the equalized SWEPT rate via negative local tax rates.