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Steve R. Johnson
Florida State University College of Law

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Recommended Citation
Steve R. Johnson, *When General Statutes and Specific Statutes Conflict*, 57 *St. Tax Notes* 599 (2010),
Available at: https://ir.law.fsu.edu/articles/304

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When General Statutes And Specific Statutes Conflict

by Steve R. Johnson

It's no secret that the pace of lawmaking in the United States has accelerated dramatically in recent decades. So much so that one may be forgiven for thinking that the best law reform would be a moratorium on further law reform — to give citizens, their legal representatives, and government officials the opportunity to catch up with the laws we already have made.

Legislatures, agencies, and courts all have made their contributions to the torrent of lawmaking. The phenomenon has been attributed to various causes, including growing populations, greater population densities as a result of urbanization, rapid technological changes, proliferating economic and social forms, and electorates or interest groups demanding more activism from their governments.

For whatever reason, American legislatures are enacting more laws than a generation ago, and often do so in haste and with insufficient care.[1] One result is that new statutes sometimes conflict with previously enacted statutes. That is as true of tax as other statutes and of state and local statutes as federal statutes.

How should courts decide cases when two or more statutes bear on the matter and those statutes conflict? One long-standing response to that situation is the canon of construction that, in cases of conflict, specific statutes control over general statutes.

This installment of Interpretation Matters examines the application of that canon to state and local tax controversies. The first part describes the canon. The second part explores strategies by which assertion of the canon may be opposed. The third part gives examples of the use of the "specific controls over general" canon in state-local tax cases, both situations in which the canon was embraced and situations in which it was forced to yield to other rules of interpretation.

The 'Specific Controls Over General' Canon

"When faced with a general statute and a specific statute on the same subject, the more specific one should be applied."[2] That precept has often and rightly been described as "well settled."[3] It has been applied by the federal courts[4] and by the courts of almost every state.[5]

Why should specific statutes control over conflicting general statutes? There are at least two reasons. The first operates when the general statute is enacted after the specific section. The general statute will not expressly identify the earlier specific statute

[1]"Today's tax policy process is often dictated by crisis, current legislative topics, or political campaign promises — a marked difference from the legislative process of the 1960s and 1970s." Meg Shreve, "JCT Chief Says Times Have Changed for Tax Policy Process," *Tax Notes*, May 10, 2010, p. 629 (reporting remarks of Thomas Barthold, chief of staff of the Joint Committee on Taxation).

[2]*Ross v. State*, 729 N.E.2d 113, 116 (Ind. 2000), *superseded on other grounds as stated in Mills v. State*, 868 N.E.2d 446 (Ind. 2007).

[3]*Grisworld Airport Inc. v. Madison*, 289 Conn. 723, 728 n.10 (2008); *Maryland-Nat'l Capital Park & Planning Comm'n v. Anderson*, 395 Md. 172, 194 (2006).

[4]*See, e.g., Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 170 (2007); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384-85 (1992).

[5]*See, e.g., City of Cordova v. State, Alaska Dep't of Health & Social Servs., Medicaid Rate Comm'n*, 789 P.2d 346, 352 (Alaska 1990); *In re K.M.H.*, 285 Kan. 53, 82 (2007), *cert. denied sub nom. Hendrix v. Harrington*, 129 S. Ct. 36 (2008); *Kilgore v. Barnes*, 508 So. 2d 1042, 1045-1046 (Miss. 1987); *People v. Nieves*, 896 N.Y.S.2d 644, 650 (Sup. Ct. 2010).

and, as a general rule, the courts hold that repeals by implication are disfavored.[6] That is particularly the case when the earlier provision is specific and the later provision is general.[7]

A legislature is more likely to have formed and expressed an intention regarding a given matter when it was considering a particular provision than when it was considering a more general one.

The second reason operates regardless of the chronology of the two provisions. Numerous courts subscribe to the following proposition or a variation of it: "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature."[8] It is possible for both purposivist judges and textualist judges to subscribe to that proposition. The former take "the intent of the Legislature" to mean its actual, subjective intent, while the latter take it to mean an objectivized intent discernible from the language of the statute.[9] A legislature is more likely to have formed and expressed an intention regarding a given matter when it was considering a particular provision than when it was considering a more general one. Thus, "this oft-stated principle reflects the fact that specific statutory language constitutes a more accurate representation of the legislature's purpose or intent than more general pronouncements concerning the same subject matter."[10]

Attacking the Canon

The specific controls over general canon may be invoked by either the tax authority or the taxpayer. If it is invoked against a party, how may that party oppose the canon? There are two main strategies: demonstrate that the predicate for application of the canon — conflict between or among the pertinent statutes — does not exist, and trump the canon by enlisting a contrary and higher principle of interpretation. Those strategies are developed below.

First, application of the canon depends on there being a conflict between or among the relevant statutes.[11] Thus, the opponent of the canon will attempt to dispel the purported conflict.

That may be done in a number of ways. In some states, the purported conflict must be express, not inferential.[12] Moreover, the statutes are not in conflict if one of them is ambiguous. For example, in one Maryland case, the court noted the specific controls over general principle,[13] but it engaged in a lengthy analysis by which it found the specific statute to be ambiguous on the point at issue.[14] If any plausible ground can be found by which the apparent conflict may be removed, the court may embrace it. At the extreme, that may cause the court to declare the specific statute ambiguous (even when, under other circumstances, it would not do so) or to adopt a perhaps strained interpretation in order to "harmonize" the two statutes.[15]

The other strategy by which to attempt to defeat assertion of the specific controls over general precept involves invoking a higher principle of interpretation. For instance, as noted in Part I, the precept is justified in part as a device by which to gauge the intent of the legislature. Thus, if better evidence of legislative intent points in the opposite interpretational direction, the precept should yield.[16]

The practitioner attacking the canon along this line might do well to add to the assault some citations that undermine (or put in their proper place) the role of canons of construction generally. An excellent example appears in *Xilinx, Inc. v.*

[6]*See, e.g., Morton v. Mancari*, 417 U.S. 535, 549-551 (1974).

[7]*See, e.g., West Cameron Port v. Lake Charles Harbor & Terminal Dist.*, 2010 WL 1873039, at * 4 & n.2 (La. App. May 12, 2010) (quoting *Black's Law Dictionary* 692 (7th ed. 1999)). We know this is a canon because it has a Latin name: "generalia specialibus non derogant."

[8]*Collins v. State*, 861 A.2d 727, 730 (Md. 2004).

[9]*See* Steve R. Johnson, "The Two Kinds of Legislative Intent," *State Tax Notes*, Mar. 30, 2009, p. 1045, Doc 2009-5906, or 2009 STT 59-3.

[10]*Thibodeau v. Design Group One Architects, LLC*, 206 Conn. 691, 713-14 (2002) (citations omitted).

[11]*See, e.g., Stone Street Capital, LLC v. California State Lottery Com.*, 165 Cal. App. 4th 109, 119 (2008); *Walker v. Wenatchee Valley Truck & Auto Outlet, Inc.*, 2010 WL 961598, at * 4 (Wash. App, Mar. 18, 2010).

[12]*See, e.g., City of Columbus v. Miller*, 2010 WL 1248840, at * 9 (Ohio App. Mar. 31, 2010) (stating that an ordinance "is not in conflict with a general law upon the same subject merely because certain specific acts the ordinance declares unlawful are not referred to in the general law").

[13]*Board of Educ. of Worcester Cty. v. Beka Inds.*, 989 A.2d 1181, 1198 (Md. Spec'l App. 2010) (accepting the principle as "well settled").

[14]*Id.* at 1198-1200.

[15]*See, e.g., In re Estate of Kerr*, 134 Wash. 2d 328, 343 (1998) (the "specific controls over general" principle will be applied only when the two statutes "conflict to the extent that they cannot be harmonized"). This instinct to "harmonize" apparently conflicting statutes stems from the same judicial impulse — respect for the handiwork of the legislature as a coordinate branch of government — as does the principle that, whenever possible, no words of a statute will be found to be surplusage. *See, e.g., Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 697-698 (1995).

[16]"For purposes of statutory interpretation, a specific statute will prevail over a general statute, *absent any indication of a contrary legislative intent*." *Garden Hills Civic Ass'n v. MARTA*, 273 Ga. 280, 284 (2000) (emphasis added).

Commissioner, a recent federal tax case. *Xilinx* involved the always problematic area of IRS adjustments to transfer pricing between related entities under section 482 of the Internal Revenue Code. Treasury and the IRS have promulgated extensive regulations under section 482. Unfortunately, in the view of the Ninth Circuit, two of the regulations were in conflict on the critical point in the case and they could not be harmonized. In its first opinion in the case, the court resolved the conflict by holding that the more specific of the two conflicting regulations would be applied in preference to the more general regulation.[17]

On reconsideration, the Ninth Circuit discarded its prior specific controls over general rationale and reversed its decision. The new decision acknowledged that "often the specific controls the general," but it minimized the role of the canon in the case at hand. The court's treatment of the matter is worth quoting at length because it can be emulated by parties opposing the canon in state or local tax cases:

> This simple solution is all too pat. It gives controlling importance to a single canon of construction. But, as every judge knows, the canons of construction are many and their interaction complex. The canons "are not mandatory rules." *Chickasaw Nation v. United States*, 534 U.S. 84, 94 . . . (2001). They are guides "designed to help judges determine the legislature's intent." *Id.* They can be "overcome" by "other circumstances" manifesting that intent. *Id.* The canons are "tools designed to help courts better determine what Congress intended, not to lead courts to interpret the law contrary to that intent." *Scheidler v. National Org. of Women, Inc.*, 547 U.S. 9, 23 . . . (2006).[18]

The Ninth Circuit then resolved the case based in part on the perceived purpose behind the section 482 regulations[19] and in part on the basis of a tax treaty.[20]

Examples

This part explores three examples of the use of the specific controls over general canon in state-local tax litigation: the Georgia case *Oxford v. Shuman*, the Connecticut case *Evans v. Town of Guilford*, and the Kansas case *In re Appeal of the Mental Health Association of the Heartland (MHAH)*.[21] The canon prevailed in *Oxford* and *Evans* but yielded in *MHAH*.

Oxford

The taxpayer filed a tax refund suit under a statute that specifically authorized such an action. The Georgia State Revenue Commission denied the refund claim. It relied on a general statute providing that payments that had been made voluntarily are not subject to refund. The Georgia Court of Appeals rejected that defense and held that the taxpayer's refund suit could go forward. The court reasoned that the general statute codifying the voluntary payment doctrine had to yield because there was "a specific statute relative to the tax collected" and that specific statute therefore was controlling.[22] Later, the Georgia Supreme Court endorsed the *Oxford* holding.[23]

Evans

The town's tax assessor preformed an interim real property tax assessment on a residence that had been only partially completed. The taxpayer argued that the assessment was void because the assessor had disregarded a state statute under which only "*completed* new construction" is liable for interim assessment.[24] In defense, the town relied on a different statute, under which assessors are empowered "to correct inequalities, whether too high or too low."[25] The court held for the taxpayer based on the canon, saying:

> Here, the specific terms of section 12-53a(a), governing new construction, prevail over the broad terms of section 12-55. Because an interim assessment under section 12-53a(a) cannot commence until after new construction is completed, the assessor acted outside his statutory mandate by performing an interim assessment when the property was 69 percent completed.[26]

MHAH

MHAH is an organization exempt from federal income tax under IRC section 501(c)(3) and is a not-for-profit corporation under Missouri law. Among other activities, it owns and operates in

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[17] *Xilinx, Inc. v. Commissioner*, 567 F.3d 482, 492-493 (9th Cir. 2009), *opinion withdrawn*, 592 F.3d 1017 (9th Cir. 2010).

[18] *Xilinx, Inc. v. Commissioner*, 598 F.3d 1191, 1196 (9th Cir. 2010).

[19] *Id.* (stating that "purpose is paramount.").

[20] *Id.* at 1196-1197.

[21] *Oxford v. Shuman*, 106 Ga. App. 73 (1962); *Evans v. Town of Guilford*, 2009 WL 5698121 (Conn. Super. Dec. 29, 2009) (unpublished); *MHAH*, 221 P.3d 580 (Kan. 2009).

[22] 106 Ga. App. at 79.

[23] *Southstar Energy Servs., LLC v. Ellison*, 691 S.E.2d 203, 205 (2010).

[24] Conn. Gen'l Stat. statute 12-53a(a) (emphasis added).

[25] Conn. Gen'l Stat. statute 12-55.

[26] 2009 WL 5698121, at *5.

Kansas an apartment building for chronically homeless, low-income people who suffer from severe mental handicaps and physical disabilities. MHAH sought exemption of that property from Kansas property tax. Although the county appraiser recommended that the exemption be granted, the state board of tax appeals denied it. The Kansas Court of Appeals upheld the denial.

On review, the Kansas Supreme Court noted that the case turned on close reading of three statutes.[27] MHAH satisfied the requirements under Kansas Statutes Annotated 79-201 *Second* and *Ninth* that the property be used for benevolent or charitable purposes. However, the board of tax appeals and the court of appeals found that MHAH did not satisfy all the requirements under Kansas Statutes Annotated 79-201b *Fourth* on exemption for residential property.

The 'specific controls over general' canon can play an important role in interpreting state and local tax statutes. However, it is not invincible and care must be used in deploying or opposing it.

The Kansas Supreme Court said the specific controls over the general, quoting with favor a case that had called that precept "a cardinal rule of law."[28] However, the court found the principle to be inapplicable. It used both of the strategies described in the second part of this article by finding no conflict between the statutes MHAH satisfied and the statute it did not satisfy and by appealing to the statutes' legislative history. The Kansas Supreme Court read the satisfied statutes as applying to organizations that qualify for federal exemption under section 501(c)(3) and the unsatisfied statute as applying to organizations that do not so qualify. The court also saw in the legislative history evidence that the Legislature had intended the three statutes to broaden the scope of exemption rather than one statute canceling out the effect of the other two.[29] Accordingly, the court held for MHAH, reversing the court of appeals and abrogating three other, contrary decisions.[30]

As these cases demonstrate, the specific controls over general canon can play an important role in interpreting state and local tax statutes. However, as is true of all canons of construction, it is not invincible and care must be used in deploying or opposing it. ✰

Interpretation Matters is a column by Steve R. Johnson, E.L. Weigand Professor of Law and associate dean for faculty development and research at the University of Nevada, Las Vegas. He can be reached at steve.johnson@unlv.edu.

[27]221 P.3d at 583.

[28]*Id.* at 586 (quoting *Chelsea Plaza Homes, Inc. v. Moore*, 226 Kan. 430, 432 (1979)).

[29]221 P.3d at 587.

[30]*In re Tax Exemption Application of Gracious Promise Foundation*, 211 P.3d 161 (Kan. App. 2009); *In re Tax Exemption Application of Inter-Faith Villa*, 185 P.3d 295 (Kan. App. 2008); *In re Tax Exemption Application of Johnson Cty. Housing Coalition, Inc.*, 26 P.3d 1279 (Kan. App. 2001).