

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 15-41 p 129

April 16, 1985

SUBJECT: Taxation and Revenue - Constitutionality of the subclassification of Merchant's Inventory.

SYLLABUS: That part of House Bill 2595 that exempts or taxes the assessed value of inventory based upon the value of inventory possessed by each merchant for the 1984 tax year would be unconstitutional. It treats differently like inventory of the same merchant and/or differently taxes or exempts the inventory of merchants in business in 1984 and those first entering business after 1984.

TO: Honorable Robert N. McLellan
Member, House of Representatives

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: Is the provision of House Bill 2595 that exempts from ad valorem taxation the assessed value of a merchant's inventory added after the 1984 tax year constitutional?

APPLICABLE LAW: The Equal Protection Requirements of the State and Federal Constitutions; Article X, §§ 3 and 6 of the South Carolina Constitution.

DISCUSSION:

The language here considered is as follows:

"The assessed value of inventories added after tax year 1984, because of increased inventories or new business establishments is exempt from tax on the percentage provided in item (A). * *

It should be noted that inventories of merchants are in constant change, the inventories are sold and replaced with new, improved or different items. The assessed value of a merchant's inventory for the 1984 tax year would be subject to taxation notwithstanding the fact that it is frequently

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replaced. Should the merchant increase his inventory above the value amount of the 1984 tax year, that increased inventory is exempt. The inventory of a merchant going into business after December 31, 1984 is likewise exempt.

Factually, similar or identical inventory of one merchant would under the language be taxed and that of another in whole or in part exempted.

Article X, § 3 of the South Carolina Constitution, provides that:

"In addition to the exemptions listed in this section, the General Assembly may provide for exemptions from the property tax, by general laws applicable uniformly to property throughout the state and in all political subdivision, but only with the approval of two thirds of the members of each House."

Whether the exemption here involved applies uniformly to property throughout the State creates a substantial constitutional issue. Similar or identical inventory could be taxed to one merchant and exempt to another and there the exemption would not apply uniformly to all merchants' inventory.

Article X, § 6 provides authority to the General Assembly to delegate certain taxing powers to the State's political subdivisions. It provides in part that:

"* * *. Property tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing such taxes; * * *."

Again, there is a lack of uniformity to all persons and property within the State. A new merchant's inventory is exempt while all or a part of the inventory of a merchant in business in 1984 is taxable.

We come now to the due process and equal protection clause of our Constitution. The State has the power to classify persons and property for taxation, however, the same must be reasonable. In Newberry Mills, Inc. v. Dawkins, 259 S.C. 7, 190 S.E.2d 503, our Court favorably quoted from 84 C.J.S. Taxation, as follows:

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"Generally, within constitutional limitations, the state has power to classify persons or property for purposes of taxation, and the exercise of such power is not forbidden by the constitutional requirement that taxation be uniform and equal provided the tax is uniform on all members of the same class and provided the classification is reasonable and not arbitrary." See also Holzwasser v. Brady, 262 S.C. 481, 205 S.E.2d 701.

In Shasta Beverages v. South Carolina Tax Commission, 310 S.E.2d 655, our Court in commenting upon the classification of persons and property for tax purposes held that:

"Nonetheless, in equal protection cases it is necessary for the classification to have a rational basis in order to survive a constitutional attack. * * *."

The Court there struck down an exemption statute for soft drink bottlers that delivered drinks in their own vehicles in a retail store-door method of doing business. The Court found the distinction between doing business in this manner and those selling and delivering to only designated customers to be insufficient to satisfy the requirements of equal protection. We have no difference between the value of inventory for that existing on December 31, 1984 and inventory added after that tax year. In the absence of a reasonable basis upon which to separately classify the inventories, the provision within the Bill would fall.

CONCLUSION:

That part of House Bill 2595 that exempts or taxes the assessed value of inventory based upon the value possessed by each merchant for the 1984 tax year would be unconstitutional. It treats differently like inventory of the same merchant and/or differently taxes or exempts the inventory of merchants in business in 1984 and those first entering business after 1984.

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