

1981 S.C. Op. Atty. Gen. 14 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-6, 1981 WL 96533

Office of the Attorney General

State of South Carolina

Opinion No. 81-6

January 23, 1981

***1 SUBJECT: Taxation—Constitutionality of a Tax On Proceeds From Furnishing Lodging Accommodations to Transients.**

The General Assembly may make reasonable classifications of persons or property for taxation. The separate classification for tax purposes of persons furnishing accommodations to transients is constitutionally permissible unless there is no reasonable basis therefor.

TO: Ms. Inez Moore
Director of Research
Medical Military, public and Municipal Affairs Committee
House of Representatives

QUESTION:

The Committee is considering legislation that would levy a separate tax on persons that furnish lodging accommodations to transients for a charge that is equal to two percent of the charge. Request is for the opinion of this office of whether such a tax is constitutional.

DISCUSSION:

It is well settled that the General Assembly has the constitutional right to classify persons and property. The requirements are that the classifications be reasonable and that the tax applied to persons and property within a class be equal.

‘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.’ 84 C.J.S., Taxation, § 36, p. 112.

The above rule is applicable to this State. [Newberry Mills, Inc. v. Dawkins](#), 259 S.C. 7, 190 S.E.2d 503, [Holzwasser v. Brady](#), 262 S.C. 48, 205 S.E.2d 481. See also [Carolina Music Co. v. Query](#), 192 S.C. 308, 6 S.E.2d 473.

Likewise, the equal protection clauses of both the Federal and State Constitutions do not prohibit a reasonable classification. [Holzwasser v. Brady](#), *supra*.

Additionally, the General Assembly has wide latitude in prescribing the classes.

‘Where taxation is concerned with no specific federal right, apart from equal protection, is imperilled, states have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.’ [Kahn v. Shevin](#), 94 S.Ct. 1734, 416 U.S. 351, 40 L.Ed.2d 189. (For other cases see 74 F.P.D.2d, Key 42)

Classification of persons furnishing accommodations is not unusual.

‘Hotels, motels, boardinghouses, restaurants, and similar places may be classified on a reasonable basis for the imposition of license fees and taxes. For example, a license tax on such establishments may be based upon, or graduated in accordance with, the revenue or the amount of business done, the number of rooms, or the method or manner of doing business.’ 40 Am.Jur.2d, Classification of hotels, motels, restaurants, etc., § 47, p. 931.

The General Assembly in considering the classification should determine the need and purpose for the legislation and whether the same is reasonable. An obvious justification would be the need for revenue to specifically or more generally benefit the class.

CONCLUSION:

*2 The General Assembly may make reasonable classifications of persons or property for taxation. The separate classification for tax purposes of persons furnishing accommodations to transients is constitutionally permissible unless there is no reasonable basis therefor.

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Deputy Attorney General

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