

1979 S.C. Op. Atty. Gen. 26 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-15, 1979 WL 29021

Office of the Attorney General

State of South Carolina

Opinion No. 79-15

January 29, 1979

**\*1 SUBJECT: Property Tax—Constitutionality of requiring payment of tax on mobile homes prior to relocation.**

Section 31–17–360, that requires payment of property taxes on a mobile home prior to its removal from the jurisdiction of the taxing county, does not conflict with our Constitution.

TO: Honorable Herbert D. Morgan  
Senator  
District No. 1

QUESTION:

Is it constitutional to require payment of property taxes on a mobile home for current or past years when the same is to be or is being moved beyond the taxing county's jurisdiction?

APPLICABLE LAW:

[Section 31–17–360, et seq., of the 1976 South Carolina Code](#) of Laws.

DISCUSSION:

[Section 31–17–360](#) requires a moving permit when a mobile home is being relocated. The section further provides:

‘If the mobile home is to be removed beyond the boundaries of the county, any taxes that have been assessed for that calendar year shall be paid in full, and if taxes have not yet been assessed for the calendar year in which the move is being made, the assessor shall provide the county auditor with an assessment and the auditor shall apply the previous year's millage. The county treasurer shall collect such taxes before issuing the requisite certificate to the licensing agent.’

The certificate there referred to is that the taxes have been paid. We see no constitutional objection to this statutory requirement. It is a means of collecting taxes when the property creating the tax is to be removed from the taxing jurisdiction. A similar requirement has long been the law of this State. Such requirement was first enacted in 1924 by Act 562 that provided:

‘As soon as any property is listed with the Auditor of any County in this State for taxation, such tax assessment shall immediately become a first lien on said property and in case such property is about to be removed from the State by bankruptcy proceedings or otherwise or is about to be taken from the jurisdiction of said County before taxes are due in said County and payable for any year the Treasurer of such County shall immediately issue his execution on such property and the sheriff of said County shall proceed to collect the taxes due on such property.’

This requirement is codified in the 1976 Code as Section 12–49–20.

Section 12–37–360 merely provides a better method to insure payment of the tax before the property is removed from the jurisdiction.

The power of the General Assembly to classify property for purposes of assessment and tax collection is not prohibited by our Constitution. The general rule is that:

‘Uniformity of taxation may require uniformity in dates of maturity and the time when interest, penalties, and costs may be imposed on the taxpayer, but generally the constitutional requirement of equality and uniformity is not applicable to statutes relating to the collection of taxes, and the state may, without violating the constitution, make reasonable and natural classifications with respect to the methods of collection of taxes.’ 84 C.J.S., Taxation, § 32, p. 107.

\*2 The Supreme Court of Virginia in the case of [Shepherd v. Moore](#), 207 Va. 498, 151 S.E. 2d 419, held:

‘In the next place, it is well settled that unless otherwise specifically provided, such provisions requiring uniformity of taxation apply only to the assessment and not to the collection of taxes. 84 C.J.S. Taxation § 32, pp. 107, 108, and cases there collected; [Tappan v. Merchants Nat. Bank](#), 19 Wall. (86 U.S.) 490, 22 L.Ed. 189; [Edinburg Improvement Ass'n v. City of Edinburg](#), Tex. Civ. App., 191 S. W. 2d 752, 754; [Mississippi State Tax Commission v. Flora Drug Co.](#), 167 Miss. 1, 148 So. 373, 378; [Hammett v. Kansas City](#), 351 Mo. 192, 173 S.W.2d 70, 73; [Robinson v. Stewart](#), 216 Or. 532, 339 P. 2d 432, 434.’ See also [Hess v. Mullaney](#), 213 F. 2d 635, cert. denied, 75 S. Ct. 50, 348 U. S. 836, 99 L. Ed. 2d 659, for similar treatment regarding the 14th Amendment.

Our court has held that the Constitution (prior to amendment) did not prohibit the General Assembly from classifying property for tax purposes. [Newberry Mills, Inc. v. Dawkins](#), 259 S. C. 7, 190 S. E. 2d 503; [Holtzwasser v. Brady](#), 262 S. C. 481, 205 S. E. 2d 701. It is only required that the classification be reasonable and that it apply equally and uniformly to all within the class. Here the classes are the mobile homes about to be removed from the taxing jurisdiction. Such appears to be a reasonable basis for the classification. While there is some argument that the tax may not be uniform and equal the same is predicated upon known millage and the difference, if any, is not constitutionally precluded.

#### CONCLUSION:

[Section 31–17–360](#), that requires payment of property taxes on a mobile home prior to its removal from the jurisdiction of the taxing county, does not conflict with our Constitution.

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