

1982 WL 189456 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 6, 1982

**\*1 RE: Opinion Request—Worker's Compensation Premium Tax**

Edward E. Saleeby  
Senator  
Darlington County  
Box 519  
Hartsville, SC 29550

Dear Senator Saleeby:

You have asked for an opinion regarding the legality of the Worker's Compensation Premium Tax, codified as 42-5-140, Code of Laws of South Carolina, (1976). Specifically, you have asked if the fact that this tax brings in several times more revenue than is appropriated to operate the Industrial Commission renders the Act unconstitutional.

In order to answer your question it will first be necessary to review the history of the statute in question to determine the legislative intent behind its passage and subsequent amendment. It is undisputed that the General Assembly has the power to levy general taxes in order to provide funds sufficient to meet the ordinary expenses of the government. [Article X, § 7, Constitution of South Carolina](#). In doing so, the Legislature may create reasonable classifications and is not required to assure that the benefits afforded to each taxpayer are equivalent to his tax burden. [Carmichael v. Southern Coal and Coke Co.](#), 301 U.S. 495, 81 L.Ed. 1245 (1937). If the Act in question is a general taxing statute, the General Assembly may apply the revenue as it sees fit and may, from time to time, change such application. [State ex. rel. Brown, et. al. v. Bates](#), 18 SE2d 346, 198 S.C. 430 (1941).

The Statute about which you have inquired was enacted in 1936 by the passage of Act 610. That Act provided for a general tax to be imposed upon Worker's Compensation carriers at a rate of 2.5% of gross premiums received as a result of business written in this State. Because the Act was silent as to the disposition of the tax revenue, such revenue would have to have been deposited into the General Fund of the State. Act 610 also provided for a general appropriation for the operation of the Industrial Commission. Therefore, the Statute in question was a general tax levied for the purpose of raising revenue. As such, the amount of the tax levied or the allocation of revenues was not subject to attack. [Carmichael v. Southern Coal and Coke Co.](#), supra.

Act 381 of 1937 amended the subject Statute in two relevant respects. First, it raised the premium tax to 4.5%. Second, it provided that the tax revenues be placed in a special fund and applied to the support of the Industrial Commission.

The allocation of the revenue provided by the 1937 Amendment was to be short-lived. Act 212, Section 5, of 1943 provided that all expenses for the operation of the Industrial Commission be appropriated from the General Fund. This Act provided for the Worker's Compensation Tax to be applied to the creation of the State Worker's Compensation Fund, which depended partially upon this revenue for its funding until 1974, when Act 1049 provided that it would be funded totally from annual charges applied to employers. Further division of the revenue derived from the subject tax was accomplished by Act 1390 of 1972, which established the Second Injury Fund and provided that a portion of the Worker's Compensation premium tax be used for part of its initial funding.

**\*2** It therefore becomes clear that, since 1943, the General Assembly has levied a general tax upon Worker's Compensation carriers and has apportioned the revenue as it deemed necessary. Three subsequent recodifications of the Act in question leave little doubt as to this fact. 72-414, 1952 CODE; 72-414, 1962 [CODE: 42-5-140](#), 1976 CODE. See Also: [Independence Insurance](#)

[Co. v. Independent Life and Accident Insurance Co.](#), 61 SE2d 399, 218 SC 22 (1950). Nowhere in the numerous Acts amending or affecting the subject Statute is there any indication that the tax was intended merely to support the Industrial Commission except for a brief period between 1937 and 1943, and this allocation was subject to change by legislative enactment. State ex. rel. Brown v. Bates, supra.

For the purposes of this analysis the Worker's Compensation premium tax is no different than the premium taxes imposed upon other types of insurance carriers. These taxes have withstood attack on equal protection and due process grounds in both the South Carolina and United States Supreme Courts. [Prudential Insurance Company v. Murphy](#), 207 S.C. 324, 35 SE2d 586, affirmed [Prudential Insurance Company v. Benjamin](#), 66 S.Ct. 1142, 328 U.S. 408, 90 L.Ed. 1342, 164 ALR 476 (1946). The subject tax is also similar to the taxing provisions contained in the South Carolina Unemployment Compensation Act, which were upheld against a broadside constitutional attack. [Pickelsimer v. Pratt, et al.](#), 17 SE2d 524, 198 S.C. 225 (1941).

State, ex. rel. Brown v. Bates, supra., presents a factual situation which is analogous to the question at hand. In that case the statute under attack imposed a license fee upon operators of motor vehicle carriers in the state and provided that, after the costs of administering the program were met and a specific portion was allocated to counties and municipalities, the revenue was to be deposited into the General Fund. The Brown Court recognized a long line of decisions which hold that where a tax is levied to support a specific object or project, the revenue derived therefrom cannot be diverted to some other purpose during the life of such object or project. However, the Court found no special purpose of specific object within the meaning of those cases and held that the General Assembly was not bound to apply the revenue to the use of the Highway Department, but could allocate such revenue as it saw fit.

Applying the reasoning of Brown to the problem at hand leads to the inescapable conclusion that the subject tax was intended as a means of raising general revenue. Although the General Assembly saw fit during a brief period to apply all of the revenue derived from the tax to the operation of the Industrial Commission, it did so merely as a valid exercise of its Constitutional powers. The reallocation of such revenue in subsequent years was no less valid.

It is, therefore, the opinion of this office that the Worker's Compensation Premium Tax is a general tax and the revenue derived therefrom may be allocated by the General Assembly as it sees fit for the funding of any legitimate public purpose.

\*3 I trust that this has sufficiently answered your question; if not, feel free to contact me.

Sincerely,

Clifford O. Koon, Jr.  
Assistant Attorney General

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