

1976 S.C. Op. Atty. Gen. 69 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4258, 1976 WL 22878

Office of the Attorney General

State of South Carolina

Opinion No. 4258

February 11, 1976

\*1 TO: Mr. Edward B. Burgess  
Associate Director for Planning and Research  
State Development Board

### QUESTION

Does the opinion, number 74–1396, of the Supreme Court of the United States rendered in the case of Michelin Tire Corp. v. Wages, et al., have any effect on the South Carolina ‘no situs law?’

### STATUTES INVOLVED

Article 3.1 of Chapter 18 of Title 65, Section 65–1655, et seq.

### DISCUSSION

The opinion of the Court in the above case overruled an earlier decision issued in 1871 in the case of Low v. Austin, 13 Wall. 29, that provided in substance that tangible personal property imported into the United States was not subject to a nondiscriminatory property tax by a state as long as it remained in its original package or container. The effect of the opinion in the Michelin case is that such property may be subject to a nondiscriminatory property tax when the ‘import transit’ of the property has ended. The Court’s language was that:

‘Nothing in the history of the Import-Export Clause even remotely suggests that a nondiscriminatory ad valorem property tax which is also imposed on imported goods that are no longer in import transit was the type of exaction that was regarded as objectionable by the Framers of the Constitution \* \* \*.’

\* \* \*. Unlike imposts and duties, which are essentially taxes on the commercial privilege of bringing goods into a country, such property taxes are taxes by which a State apportions the cost of such services as police and fire protection among the beneficiaries according to their respective wealth; there is no reason why an importer should not share these costs along with his competitors handling domestic goods.’

‘There is no reason why local taxpayers should subsidize the services used by the importer; ultimate consumers should pay for such services as police and fire protection accorded the goods just as much as they should pay transportation costs associated with those goods.’

The decision, however, has no effect upon existing South Carolina law and only removes an immunity from taxation that had existed because of the 1871 decision of the Court in the Low v. Austin case.

The ‘no situs’ provisions of the South Carolina law are not affected by the opinion, however, it may be that some importers will now qualify under the statute so that no tax will be levied upon the imported goods. Whether the conditions of the statutes are satisfied is factual, however, and should be presented to the Tax Commission.

CONCLUSION

The opinion of the United States Supreme Court rendered in the case of Michelin Tire Corp. v. Wages, permits the taxation of imported goods when the import transit has ended, however, does not affect the South Carolina 'no situs' provisions.

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