1979 S.C. Op. Atty. Gen. 91 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-70, 1979 WL 29075

Office of the Attorney General

State of South Carolina
Opinion No. 79-70
May 23, 1979

***1 SUBJECT: Municipal License Taxes.**
Charges for originating and terminating intrastate telephone calls within a municipality may be included in the measure of municipal license taxes and would be presumed reasonable until facts are presented to overcome the presumption.

To: Honorable Michael G. Herring
Ridgeland Town Administrator

QUESTION:

In arriving at the measure of municipal license taxes, can charges for telephone calls originating and terminating in the municipality be included?

STATUTE:

Section 5–7–30, 1976 South Carolina Code of Laws.

DISCUSSION:

Article VIII, Section 7 of the South Carolina Constitution, ratified on March 7, 1973, is authority for municipal home rule. Article VIII, Section 1 continues the municipal ordinances in force before ratification of this section. Legislation providing for municipal home rule was enacted in 1975 in Act No. 283. Codified as a part of such legislation is Section 5–7–30 of the Code which is the power-conferring provision that includes the power to levy and collect business license taxes. It states in part:
'All municipalities of the State shall * * * have authority to * * * levy a business license tax on gross income;'

We are not asked to review any particular ordinance, however, in resolving the question presented, we shall assume that a proper ordinance is or would be enacted requiring the inclusion of both charges for telephone calls originating and terminating within a municipality as a base or measure of license taxes. In the case of Postal Tel. Cable Co. v. The City of Charleston, 153 U. S. 692, 38 L. Ed. 871, 14 S. Ct. 1094, the United States Supreme Court held that a municipal revenue license charge upon a business that is conducted within the city limits is proper although a portion of the transaction is factually completed outside the city limits. See also Triplet v. The City of Chester, 209 S. C. 455, 40 S. E. 2d 684. This authority, however, must be exercised within the rule of reason. In United States Fidelity & G. Co. v. City of Newberry, 257 S. C. 433, 186 S. E. 2d 239, the rule was stated with respect to the city ordinance imposing license taxes:
'* * * such municipality had the power to classify the various businesses and professions for the purpose of license taxes and to impose reasonable amounts upon the respective classes graduated, nevertheless, according to gross income. While the Constitution and the statute together require that the tax must be reasonable, 'The fact that one class may pay more proportionately than other classes does not of itself make the license fee unreasonable or arbitrary since this is largely within the discretion of City Council.' City of Columbia v. Putnam, 241 S. C. 195, 127 S. E. 2d 631. As was pointed

  

out in the opinion in the prior case between these parties, in the absence of positive evidence to the contrary, the license tax here imposed upon the plaintiff is presumed to be reasonable and not to be interfered with by the courts, unless its unreasonableness and oppressiveness are clearly apparent, the burden of proving invalidity being upon the plaintiff.'

***2** More recently in the case of United States Fidelity & G. Co. v. The City of Spartanburg, decided May 3, 1979, the Court affirmed an earlier ruling upholding the license tax upon fire and casualty insurers against a challenge that the tax was irrational and unreasonable.

The earlier ruling is found in United States Fidelity & G. Co. v. City of Spartanburg, 263 S. C. 169, 209 S. E. 2d 36, in which the Court reviewed and considered the impact of ad valorem taxation and license taxation and commented that it was reasonable to consider the amount of both taxes against a taxpayer in deciding reasonableness.

If a telephone company maintains an office and has facilities for sending and receiving calls, it is subject to a municipal license tax. If the ordinance includes both calls originating and terminating intrastate calls, the measure would be presumed reasonable and proper for license taxation. Only when evidence is presented to prove that the tax imposed constitutes an unreasonable tax would the presumption be overcome.

CONCLUSION:

Charges for originating and terminating intrastate telephone calls within a municipality may be included in the measure of municipal license taxes and would be presumed reasonable until facts are presented to overcome the presumption.

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