

1975 S.C. Op. Atty. Gen. 45 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3973, 1975 WL 22271

Office of the Attorney General

State of South Carolina

Opinion No. 3973

February 18, 1975

***1 That part of Senate Bill S–209 that subclassifies property owned by different types of corporations for tax purposes is probably constitutional.**

S. C. Tax Study Commission
Columbia, S. C.

You have requested the opinion of this office concerning Section 2(d) of Senate Bill S–209. The Bill would tax agricultural lands at 4% of market value when actually used for such purposes and owned by individuals and other entities except corporations having more than ten (10) shareholders, a non-individual shareholder, a non-resident South Carolinian or non-resident alien shareholder and having more than one class of stock.

Specifically, you request the view of this office of the legality of that part of the Bill that sub-classified the land because the same is owned by two different kinds of corporations. The purpose of the sub-classification is to tax family farm and timber lands when owned by ‘family’ corporations at 4% of fair market value, while taxing similar lands of other corporations at 6% of fair market value.

Clearly, the General Assembly has the power under the Constitution to classify property for tax purposes.

‘We find nothing in our Constitution that prohibits the General Assembly of this State from *classifying property according to its use* so long as such classification is reasonable and not arbitrary, and the tax imposed is uniform on the same class of property.’ *Holzwasser v. Brady*, 205 S. E. 2d 701. See also *Newberry Mills v. Dawkins*, 259 S. C. 7, 190 S. E. 2d 503. (Emphasis added)

We have no judicial decision from the courts of this State holding that property can be classified except by use and in the Bill the sub-classification is apparently based on ownership. Unless a real and substantial difference between the two types of corporations exist, the sub-classification would fail.

‘Classification in tax statutes, as in legislative enactments generally, must be based upon real and substantial differences between the * * * property * * * taxed and those not taxed.’ 51 *Am. Jur., Taxation*, Sec. 177, p. 237.

Classification based upon ownership has been declared invalid.

‘The character of the ownership of taxable property—whether a given species of property, for example, is owned by a corporation, joint stock company of association, or an individual—afford no reasonable basis for classification.’ *Gamble-Robinson Fruit Co. v. Thoreson*, 53 N. D. 28, 204 N. W. 861, 42 A.L.R. 1039.

The state's right to classify and tax some corporations different from others has, however, long been recognized; in example, railroads. *Piedmont & N. Ry. Co. v. Query*, 56 F. 2d 172.

The United States Supreme Court, in the recent decision of *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U. S. 356, 93 S. Ct. 1001, 35 L. Ed. 2d 351, upheld an Illinois constitutional provision that subjected personal property to taxation when owned by non-individuals and the syllabus is as follows:

*2 'An Illinois constitutional provision subjecting corporations and similar entities, but not individuals, to ad valorem taxes on personalty comports with equal protection requirements, the States being accorded latitude in making classifications and drawing lines that in their judgment produce reasonable taxation systems.'

As is evident, the authorities differ on this type classification. The presumption is that all acts of the General Assembly are constitutional, therefore relying on this presumption and the holding of the United States Supreme Court in the *Lehnhausen* case and others, it is the opinion of this office that the Bill, if enacted, would probably be held to be constitutional.

The reservation of constitutionality is made because of the difference in the holdings of the courts on this type classification. It has been settled for some time, however, that this State could distinguish between corporations for license and excise tax purposes and the rationale of those cases is now being adopted for property tax purposes as was done in the *Lehnhausen* case. A separate classification of the two kinds of corporations now exists under present Federal law for income tax purposes.

The purpose of the classification, as found by the Commission and considered by the General Assembly in enacting the legislation, will be given great weight by the courts in a constitutional attack of the Bill. It is therefore recommended that the purpose of the Bill and the facts found and considered by the Commission in preparing the same be made a part of the Commission's permanent records.

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