

1975 S.C. Op. Atty. Gen. 175 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4097, 1975 WL 22393

Office of the Attorney General

State of South Carolina

Opinion No. 4097

August 26, 1975

***1 Motor truck lines and bus lines are taxable under Section 65–606 of the Code and not under Sections 65–608 and 65–609 of the Code.**

Director

Income Tax Division

The general license tax is imposed on corporations under the provisions of Section 65–606 of the Code. It is based on the corporation's capital stock and paid in surplus. In lieu of this tax, Sections 65–608 and 65–609 of the Code impose two license taxes which are respectively based on the value of property and on gross receipts. These sections apply to a group of enumerated corporations which are specified as follows:

‘* * * railroad company, express company, street railway company, navigation company, waterworks company, power company, light company, gas company, telegraph company, telephone company, parlor, dining or sleeping car company, tank car company, refrigerating car company and fruit growers' express car company, and all privately operated car lines.’

The legislative history of Sections 65–608 and 65–609 shows that these sections apply only to those utilities enumerated and that all others are to be taxed under the general license tax provisions. Sections 65–608 and 65–609 of the present Code were formerly contained in Section 65–606(2) of the 1952 Code which specifically imposed the special taxes in question only on ‘those enumerated’.

The only enumerated class of utility which could be argued to include motor truck lines or bus lines is ‘express company’, however, the ordinary meaning of the term express is, ‘(1) a system for the prompt and safe transportation of parcels, money or goods at rates higher than standard freight charges, (2) a company operating such a merchandise freight service.’ See Webster's New Collegiate Dictionary. Also, various cases have distinguished express companies from other common carriers based on the characteristic of speedy delivery of small but valuable packages of goods and money. See *Alsop v. Southern Express Co.*, 104 N. C. 278, 10 S. E. 297, 6 L.R.A. 271. See also *Delaware L. & W. Co. v. Smyth*, 193 N. J. 80, 115 A. 65; *Auclair Transportation, Inc. v. United States*, 221 F. Supp. 328, affirmed 376 U. S. 514.

In the South Carolina case of *Ryder Truck Lines v. South Carolina Tax Commission*, 248 S. C. 148, 149 S. E. 2d 435, the question before the Court was whether or not a motor truck line was taxable under the provisions of Section 65–256 of the Code which imposed an income tax on public service corporations. An enumeration was also provided there which included the term ‘express service’. The Court held that the truck line was a similar form of public service corporation to those enumerated and therefore within the catch-all provision of ‘or other form of public service’ provided in that action. The Court did not say that a truck line was an ‘express service’.

At least since 1940 the Tax Commission has taken the consistent position that motor truck lines are not ‘express companies’ but are subject to the general license tax imposed by Section 65–606 of the Code. This construction has also been applied to bus lines. As stated at 2 Am. Jur. 2d, *Administrative Law*, Section 241, and in the above-mentioned *Ryder Truck Lines* case, such construction is entitled to great weight.

***2** Motor truck lines and bus lines are not subject to license tax under the provisions of Sections 65–608 and 65–609 of the Code and should be taxed under the provisions of Section 65–606 which applies to corporations generally.

John C. von Lehe
Assistant Attorney General

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