

1975 WL 29242 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 29, 1975

*1 The Puerto Rico Maritime Shipping Authority, a body corporate and politic, is subject to both corporate income and franchise tax in this State.

TO: South Carolina Tax Commission
Columbia, South Carolina

QUESTION

Do the taxing statutes of this State impose an income tax or a franchise tax on the Puerto Rico Maritime Shipping Authority?

STATUTES AND CASES

Section 65-222 and Section 65-607, South Carolina Code of Laws; Puerto Rico Maritime Shipping Authority Act No. 62 of 1974, Commonwealth of Puerto Rico; *City of Cincinnati, Ohio v. Commonwealth of Kentucky*; *City Council of Augusta, Ga. v. Timmerman*.

DISCUSSION

The Puerto Rico Maritime Shipping Authority (hereinafter PRMSA) is a body corporate and politic of the Commonwealth of Puerto Rico. PRMSA was created by a 1974 Commonwealth Act for the purpose of acquiring and operating three formerly private shipping lines. It engages exclusively in shipping between Puerto Rico and the United States. The entire net income from the operation of the lines is required, under the terms of the Act, to be paid to Puerto Rico.

PRMSA leases a port facility, including a warehouse, at Charleston from the South Carolina Ports Authority. The necessary services connected with warehousing are provided by designated agents of PRMSA. All stevedoring and husbanding services are performed for designated agents of PRMSA. PRMSA owns no real property in South Carolina, but does own trailers, chassis and related operating maintenance equipment which it makes available to certain designated agents. Approximately sixty (60%) per cent of the freight shipped from Charleston is of South Carolina origin.

A state can tax a political corporation of another state. See [City Council of Augusta, Ga. v. Timmerman](#), 333 F. 216 (applying South Carolina law); [Taggart v. Holcomb](#), 116 P. 251 (Kan.) cert. denied 33 S. Ct. 112; 71 Am. Jur. 2d, [State and Local Taxation](#), Section 206. It has also been held that even a state may not claim sovereign immunity beyond its borders. [State of Georgia v. City of Chattanooga](#), 264 U. S. 472, 44 S. Ct. 369; [Bonaparte v. Appeals Tax Court of Baltimore](#), 104 U. S. 592, 26 L. Ed. 845.

There is little question that South Carolina can constitutionally exact an income tax from PRMSA. The Import-Export Clause of [Article I, Section 10, Clause 2 of the United States Constitution](#) applies only to imports from abroad. [Woodruff v. Parham](#), 8 Wall. 123 (U. S. 1868). In any case, the taxes in question are not laid upon the goods shipped or upon the

act of importing-exporting the goods. See [Richfield Oil Corp. v. State Board of Equalization](#), 329 U. S. 69, 67 S. Ct. 156; [Canton Railroad Co. v. Rogan](#), 340 U. S. 511, 71 S. Ct. 447 and [Peck & Co. v. Lowe](#), 247 U. S. 165, 38 S. Ct. 432.

When fairly apportioned a state has the power to exact an income tax from a foreign corporation engaged in exclusively interstate or foreign commerce. [Mercury Motors Express, Inc. v. South Carolina Tax Commission](#), 244 S. C. 134, 135 S. E. 2d 756. [Northwestern States Portland Cement Co. v. State of Minnesota](#), 358 U. S. 450, 79 S. Ct. 357. PRMSA has sufficient contacts within this State to support a fairly apportioned income tax. [Wisconsin v. J. C. Penny](#), 311 U. S. 435, 61 S. Ct. 246; [International Shoe Co. v. State of Washington](#), 326 U. S. 310, 66 S. Ct. 154. The Supreme Court of Oregon has held that the mere fact that a lessor's railroad cars were used by the lessee in Oregon afforded a sufficient connection with that state to support an apportioned income tax on the rents derived from the cars. [American Refrigerator Transit Company v. Oregon](#), 238 Or. 340, 395 P. 2d 127.

*2 The only case decided in this country on the question now before us is [City of Cincinnati, Ohio v. Commonwealth of Kentucky](#), 292 Ky. 597, 167 S. W. 2d 709, cited at 85 C.J.S., [Taxation](#), 1092(d). There the court decided that the Kentucky income tax was imposed on the City of Cincinnati which owned railroad tracks and terminals running through Kentucky for which the City received rent from a private railroad. The Kentucky income tax imposition statute was similar to our own, Section 65-222 of the South Carolina Code, in that the tax was imposed on 'every foreign corporation doing business' in Kentucky. South Carolina imposes both an income tax and a license fee on 'every foreign corporation' * * * 'whether or not such corporation be engaged in or the income derived from intrastate, interstate, or foreign commerce'. The Kentucky Court stated that a municipality operating beyond the boundaries of the sovereignty creating it is universally regarded as a private corporation with respect to such operations.

In the [Timmerman](#) case, supra, the Fourth Circuit made an even stronger statement with regard to South Carolina property tax law. It stated:

'For a state to attempt to promote the development of cities and towns outside of its borders by exempting property owned by them from taxation exacted of its own citizens would be so anomalous and contrary to legislative history and governmental policy that nothing but the clearest affirmative expression would warrant such an inference.'

We accept, without question, the fact that PRMSA's activities will be beneficial to both Puerto Rico and South Carolina, however, no matter what benefits PRMSA will bring to the Commonwealth or to this State, it is inescapable that PRMSA is a municipal corporation operating in this State beyond its sovereignty and engaged in foreign commerce. Section 65-222 of the Code expressly imposes an income tax on it and there is no provision which exempts it.

The license fee for corporations is imposed by Section 65-602 of the Code on all corporations required to file an income tax return. Although the license fee is apportioned (Section 65-607), a constitutional question is involved. Unlike an income tax, a privilege tax, even though properly apportioned, cannot be imposed on interstate or foreign commerce. See [Spector Motor Service, Inc. v. O'Connor](#), 340 U. S. 602, 71 S. Ct. 508. A South Carolina Circuit Court opinion has held that the license fee is not imposed on interstate commerce, but is imposed as compensation for the protections this State gives to interstate operations.

[Plantation Pipeline Co. v. South Carolina Tax Commission](#), Order of Judge Spruill, Richland County (July 1973). In view of PRMSA's activities in this State, such a construction would uphold a license fee imposed on it even though it might be engaged exclusively in interstate or foreign commerce. See [Colonial Pipeline Co. v. Traigle](#), United States Supreme Court, filed April 28, 1975.

CONCLUSION

*3 It is the opinion of this office that the taxing statutes of this State impose both an income tax and a franchise tax on the Puerto Rico Maritime Shipping Authority.

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