



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 13, 1996

The Honorable John T. Montford
Chair
Finance Committee
Texas State Senate
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 96-030

Re: Whether it is constitutional to require a lessor to pay ad valorem taxes on a motor vehicle that the lessor leases to a person who uses the vehicle primarily for personal purposes and not for the production of income (ID# 36801)

Dear Senator Montford:

You ask whether it is constitutional to require a lessor to pay ad valorem taxes on a motor vehicle that the lessor leases to a person who uses the vehicle primarily for personal use and not for the production of income. Section 11.14 of the Tax Code provides an exemption from taxation "of all tangible personal property, other than manufactured homes, that the person owns and that is not held or used for production of income." Tax Code § 11.14(a). As you note, although the governing body of a taxing unit may provide for the taxation of such property, *id.* § 11.14(c), most taxing jurisdictions have not chosen to do so. Thus, in most taxing jurisdictions, individuals who own motor vehicles and use them primarily for personal purposes and not for the production of income are not subject to ad valorem taxes.

You amplify your query as follows: "Should a lessor be required to pay ad valorem taxes on a leased motor vehicle which a lessee uses primarily for personal use and not for the production of income, when the same vehicle *would not be taxed* if it was *owned* and used for the same purpose[?]" You state that "[i]t seems that an equal protection question arises when a majority of jurisdictions tax the lessors of motor vehicles that are leased to a family or individual for personal use and do not tax motor vehicles that are owned by families or individuals and used for an identical purpose."

We gather you are concerned that the taxation of lessor-owners of motor vehicles runs afoul of article I, section 3 of the Texas Constitution, the state equal rights provision, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. You also refer to article VIII, section 1 of the Texas Constitution. Subsection (a) of that provision requires that taxation shall be equal and uniform; subsection (b) provides as follows:

All real property and tangible personal property in this State,
unless exempt as required or permitted by this Constitution, whether

owned by natural persons or corporations, other than municipal, *shall be taxed in proportion to its value*, which shall be ascertained as may be provided by law. [Emphasis added.]

In response to the contention that an exemption of certain property unconstitutionally discriminates between similarly situated property in violation of these state and federal provisions, courts take the following approach:

The fact that a statute discriminates in favor of a certain class does not in itself make the statute arbitrary. The legislature has broad powers in determining classification for purposes of taxation, and courts will not interfere unless there is a clear showing that there is no reasonable basis for the distinction. The difference between the subjects taxed need not be great; as long as there is any reasonable distinction between them, it is the duty of [a court] to sustain the classification embodied in the statute.

Aransas City Appraisal Review Bd. v. Texas Gulf Shrimp, 707 S.W.2d 186, 195 (Tex. App.--Corpus Christi, 1986, writ ref'd n.r.e.) (citations omitted).

It is inherent in the exercise of the power to tax that a state be free to select the subjects of taxation and to grant exemptions. Equal protection does not impose on a state any rigid equality of taxation. Inequalities which result from singling out one particular class for taxation or exemption infringe no constitutional limitation. Like considerations govern exemptions from the operation of a tax imposed on the members of a class. The legislature is not bound to tax every member of a class or none at all. The legislature may make rational distinctions of degree having a rational basis.

Bullock v. Texas Monthly, Inc., 731 S.W.2d 160, 163 (Tex. App.--Austin, 1987) (citations omitted), *rev'd on other grounds*, 489 U.S. 1 (1989).

In essence, you suggest that the statutory distinction between lessor-owners of motor vehicles and owners who own and use their motor vehicles primarily for personal purposes is unreasonable. We believe it is very likely, however, that a court would conclude that there is a reasonable basis for distinguishing between these two categories of personal property. The former motor vehicles are used by their owners for the production of income whereas the latter are not. We do not believe that the fact that the *lessees* of lessor-owned motor vehicles use them primarily for personal purposes is a relevant consideration.

You assert that Senate Bill 783, Act of May 26, 1995, 74th Leg., R.S., ch. 581, 1995 Tex. Sess. Law Serv. 3378, passed by the Seventy-fourth Legislature, "represents a recent legislative statement on how 'similarly situated' are an owner and a lessee of a motor vehicle." We disagree. Senate Bill 783 provides that a person leasing tangible

personal property *who is contractually obligated to reimburse the property owner for taxes imposed on the property* is entitled to protest an appraisal if the property owner does not do so. This legislation merely reflects that a lessee who is so obligated may have a greater interest than the owner of the property to protest an appraisal.

In sum, we believe it is very likely that a court would conclude that it is not unconstitutional to require a lessor to pay ad valorem taxes on a motor vehicle that the lessor leases to a person who uses the vehicle primarily for personal purposes and not for the production of income.

S U M M A R Y

It is very likely that a court would conclude that it is not unconstitutional to require a lessor to pay ad valorem taxes on a motor vehicle that the lessor leases to a person who uses the vehicle primarily for personal purposes and not for the production of income.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee