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Supreme Court of South Carolina.
 ED ROBINSON LAUNDRY AND DRY CLEAN-
 ING, INC., et al., Appellants,
 v.
 SOUTH CAROLINA DEPARTMENT OF REVE-
 NUE and the State of South Carolina, Respondents.
 No. 25731.

Heard May 14, 2003.
 Decided Oct. 13, 2003.
 Rehearing Denied Nov. 20, 2003.

Provider of dry cleaning and laundering services, as taxpayer, brought action against State and Department of Revenue, alleging that portions of the Sales and Use Tax Act violated equal protection. The Circuit Court, Richland County, G. Thomas Cooper, Jr., J., granted summary judgment to State and Department. Taxpayer appealed. The Supreme Court, Burnett, J., held that: (1) sales tax on dry cleaning did not treat similarly situated dry cleaners differently, and thus did not violate equal protection; (2) even assuming relevant class of similarly situated taxpayers included all service-oriented businesses, state's interest in fostering economic development of dry cleaners and defraying cost of environmental harm was rationally related to tax; and (3) mere fact that Act had 60 exemptions from sales tax did not render it unconstitutional as arbitrary and special legislation.

Affirmed.

Toal, C.J., filed dissenting opinion in which Diane S. Goodstein, Acting Justice, concurred.

West Headnotes

[1] Constitutional Law 92 ↪ 3560

92 Constitutional Law
 92XXVI Equal Protection
 92XXVI(E) Particular Issues and Applications
 92XXVI(E)6 Taxation
 92k3560 k. In General. Most Cited Cases
 (Formerly 92k228.5)
 Under rational basis test for determining whether a tax

offends equal protection, the court is tasked with determining: (1) whether the law treats similarly situated entities different; (2) if so, whether the Legislature has a rational basis for the disparate treatment; and (3) whether the disparate treatment bears a rational relationship to a legitimate government purpose. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 3.

[2] Constitutional Law 92 ↪ 1033

92 Constitutional Law
 92VI Enforcement of Constitutional Provisions
 92VI(C) Determination of Constitutional Questions
 92VI(C)4 Burden of Proof
 92k1032 Particular Issues and Applications
 92k1033 k. In General. Most Cited Cases
 (Formerly 92k48(4.1))

Taxpayer bears the burden of proving a tax is unconstitutional, and it must overcome the Supreme Court's mandate to sustain a legislative enactment if there is any reasonable hypothesis to support it.

[3] Constitutional Law 92 ↪ 3576

92 Constitutional Law
 92XXVI Equal Protection
 92XXVI(E) Particular Issues and Applications
 92XXVI(E)6 Taxation
 92k3576 k. Sales and Use Taxes. Most Cited Cases
 (Formerly 92k229.4)

Taxation 371 ↪ 3627

371 Taxation
 371IX Sales, Use, Service, and Gross Receipts Taxes
 371IX(B) Regulations
 371k3625 Validity of Acts and Ordinances
 371k3627 k. Equality and Uniformity in General. Most Cited Cases
 (Formerly 371k1213)
 Sales tax on dry cleaning did not treat similarly situated dry cleaners differently, and thus did not violate

equal protection. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 3; Code 1976, § 12-36-910 et seq.

[4] Constitutional Law 92 ⚡3682

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)12 Trade or Business
92k3681 Licenses and Regulation
92k3682 k. In General. Most Cited

Cases

(Formerly 92k240(1))

For purposes of equal protection analysis, a class may be constitutionally confined to a particular trade. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 3.

[5] Constitutional Law 92 ⚡3576

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)6 Taxation
92k3576 k. Sales and Use Taxes. Most

Cited Cases

(Formerly 92k229.4)

Environmental Law 149E ⚡434

149E Environmental Law
149EIX Hazardous Waste or Materials
149Ek425 Hazardous, Dangerous, or Toxic Waste
149Ek434 k. Fees and Taxes. Most Cited

Cases

(Formerly 92k229.4)

Taxation 371 ⚡3627

371 Taxation
371IX Sales, Use, Service, and Gross Receipts Taxes
371IX(B) Regulations
371k3625 Validity of Acts and Ordinances
371k3627 k. Equality and Uniformity in

General. Most Cited Cases

(Formerly 371k1213)

Even assuming relevant class of similarly situated taxpayers included all service-oriented businesses, and not just dry cleaners, State's legitimate govern-

mental interest in fostering economic development of dry cleaners and defraying cost of potential environmental harm from dry cleaning chemicals provided a rational basis for treating dry cleaners differently from other service-oriented businesses, and thus, sales tax on dry cleaning did not violate equal protection, where dry cleaners were given a tax exemption for supplies and expensive start-up costs for their machinery in return for payment of sales taxes on later-earned receipts. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 3; Code 1976, § 12-36-910 et seq.

[6] Statutes 361 ⚡95(1)

361 Statutes

361II General and Special or Local Laws
361k95 Regulation of Taxation, Indebtedness and Public Funds
361k95(1) k. In General. Most Cited Cases

Taxation 371 ⚡3626

371 Taxation

371IX Sales, Use, Service, and Gross Receipts Taxes
371IX(B) Regulations
371k3625 Validity of Acts and Ordinances
371k3626 k. In General. Most Cited

Cases

(Formerly 371k1212.1)

Mere fact that Sales and Use Tax Act had 60 exemptions from sales tax did not render the Act unconstitutional as arbitrary and special legislation, considering that State identified six major categories of exemptions and provided a rational basis for each. Code 1976, § 12-36-2120.

[7] Constitutional Law 92 ⚡3039

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)5 Scope of Doctrine in General
92k3038 Discrimination and Classification

92k3039 k. In General. Most Cited

Cases

(Formerly 92k211(1))

The fact a classification may result in an inequity or may be unwise in an economic sense does not render it

unconstitutional on equal protection grounds. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 3.

[8] Constitutional Law 92 1021

92 Constitutional Law

92VI Enforcement of Constitutional Provisions

92VI(C) Determination of Constitutional Questions

92VI(C)3 Presumptions and Construction as to Constitutionality

92k1006 Particular Issues and Applications

92k1021 k. Equal Protection. Most

Cited Cases

(Formerly 92k48(6))

In conducting an equal protection inquiry, courts must give great deference to the General Assembly's classification decisions because it presumably debated and weighed the advantages and disadvantages of the legislation at issue. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 3.

**98 *122 A. Camden Lewis and Thomas A. Pendarvis, both of Lewis, Babcock & Hawkins, of Columbia; Gary W. Poliakoff, of *123 Poliakoff, Poole & Associates, of Spartanburg; R. **99 Bryan Harwell, of Harwell, Ballenger, Barth & Hofer, of Florence; and William J. Quirk, of the University of South Carolina School of Law, of Columbia, for appellants.

Attorney General Henry Dargan McMaster, of Columbia; Harry T. Cooper, Ronald W. Urban, Milton G. Kimpson and Leonard P. Odom, all of South Carolina Department of Revenue and Taxation, of Columbia, for respondents.

Justice BURNETT.

Ed Robinson Laundry and Dry Cleaning, Inc., ("Robinson") appeals the trial court's grant of summary judgment to the State. We affirm.

FACTS

Robinson, a provider of dry cleaning and laundering services, brings this action alleging portions of the Sales and Use Tax Act (the "Act"), S.C.Code Ann. § 12-36-910 (1976) *et seq.* violate the equal protection clauses of the United States and South Carolina Constitutions.^{FN1}

FN1. U.S. Const. amend. XIV; S.C. Const. art. 1, § 3.

ISSUES

I. Did the lower court err in holding the imposition of a sales tax on dry cleaning does not violate the equal protection clause?

II. Did the lower court err in holding the number and character of exemptions within the Act did not render the Act violative of the equal protection clause?

I

Imposition of the sales tax upon dry cleaners

Robinson argues the sales tax violates the equal protection clause because it is not imposed upon all service providers, only dry cleaners.

[1] Both parties agree this Court is charged with applying the rational basis test to determine whether the tax offends *124 the equal protection clause. Under the test the Court is tasked with determining: 1) whether the law treats "similarly situated" entities different; 2) if so, whether the Legislature has a rational basis for the disparate treatment; and 3) whether the disparate treatment bears a rational relationship to a legitimate government purpose. *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973); *Bibco Corp. v. City of Sumter*, 332 S.C. 45, 504 S.E.2d 112 (1998).

[2] Robinson bears the burden of proving the tax is unconstitutional and it must overcome this Court's mandate to sustain a legislative enactment if there is "any reasonable hypothesis to support it." *D.W. Flowe & Sons, Inc. v. Christopher Constr. Co.*, 326 S.C. 17, 482 S.E.2d 558 (1997).

[3] The fundamental disagreement between Robinson and the State focuses on the first prong of the test. Specifically, each side views the composition of those "similarly situated" differently.

[4] Robinson asserts those businesses "similarly situated" to it are all service-oriented businesses, while

the State asserts "similarly situated" businesses are only dry cleaners. The State, therefore, defines the class in terms of a distinct trade as opposed to Robinson's formulation of a broad economic sector. A class may be constitutionally confined to a particular trade. See *Armour Packing Co. v. Lacy*, 200 U.S. 226, 26 S.Ct. 232, 50 L.Ed. 451 (1906); *State v. Byrnes*, 219 S.C. 485, 66 S.E.2d 33 (1951).

As Robinson does not claim the State taxes dry cleaners, i.e. those "similarly situated," differently it fails to prove a violation of the equal protection clause. See *TNS Mills, Inc. v. South Carolina Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998).

[5] Assuming, arguendo, Robinson's definition of "similarly situated" is correct, the argument fails because the State has a rational basis for treating dry cleaners differently. The State's rational basis for treating dry cleaners differently from other service **100 providers serves a legitimate government interest.

*125 To find both the legitimate government interest and the rational basis for treating dry cleaners differently, we view the Act in its entirety. See *South Carolina Coastal Council v. South Carolina State Ethics Com'n*, 306 S.C. 41, 410 S.E.2d 245 (1991) (in interpreting a law a court must look to its language and its meaning in conjunction with the purpose of the whole statute and the policy of the law).

In reviewing the entire Act we note the code provides dry cleaners with a tax exemption for supplies and machinery used to perform their services. See S.C.Code Ann. § 12-36-2120(24). As noted by the circuit court, "[u]nlike most service industries, dry cleaners have high startup costs as a result of expensive machinery and equipment [b]y exempting machinery purchased by dry cleaners and, in turn, taxing their sales, the Legislature makes it less expensive for individuals to start this type of business."

The State's rational basis for treating dry cleaners differently from other trades in the service industry is to promote the legitimate governmental interests of fostering economic development in a particular segment of the economy. The Legislature achieves this goal by exempting dry cleaners from paying sales taxes on expensive machinery necessary to start the business in exchange for allowing the payment of

sales taxes based on later-earned receipts.

Significantly, the State argued below the dry cleaning process involves the use of chemicals and other products posing a threat of environmental harm. The tax may be a method to defray the cost of such harm.

II

Exemptions

[6] Robinson argues the sheer number and nature of the exemptions in § 12-46-2120 renders the Act special legislation and unconstitutional in its entirety.

Robinson asserts the Act, which has sixty exemptions,^{FN2} violates equal protection because it treats some sectors of the * service economy more beneficially than others. Robinson further asserts the nature of the categorical exemptions renders it arbitrary and special legislation.^{FN3}

FN2. There are currently sixty-one exemptions. S.C.Code Ann. § 12-36-2120 (Supp.2002).

FN3. We note that even if we were to find the exemptions unconstitutional it would not render Robinson's tax burden unconstitutional. Robinson would still be compelled to pay the sales tax on all laundered goods. *Thayer v. South Carolina Tax Commission*, 307 S.C. 6, 413 S.E.2d 810 (1992).

Robinson's argument that "[t]he sheer number of exemptions demonstrates the exemptions are arbitrary" is without merit. We are concerned not with size or volume but with content.

[7] Robinson complains the exemptions' content is not natural or reasonable. For example, Robinson asserts that providing tax exemptions for dental prosthetic devices but not for wheelchairs may be arbitrary in the political sense. Robinson may be correct in noting such exemptions belie a misunderstanding of economics, and are therefore unwise in an economic sense. Robinson is not correct in asserting, however, that the exemptions are arbitrary in the constitutional sense. The fact a classification may result in an inequity or may be unwise in an economic sense does not

render it unconstitutional. *Davis v. County of Greenville*, 313 S.C. 459, 443 S.E.2d 383 (1994)

[8] Robinson's assertions notwithstanding, we must give great deference to the General Assembly's classification decisions because it presumably debated and weighed the advantages and disadvantages of the legislation at issue. *Lee v. South Carolina Dep't of Natural Resources*, 339 S.C. 463, 467, 530 S.E.2d 112, 114 (2000). We agree with the circuit court the State has identified major categories of exemptions and provided a rational basis for each; while Robinson has failed to carry its burden of showing the exemptions are unconstitutional.^{FN4}

FN4. The State proffered the following categorical exemptions: 1) exemptions related to agriculture; 2) exemptions related to health or environmental concerns; 3) exemptions to promote economic development; 4) exemptions related to governmental or tax-exempt entities; 5) exemptions related to education; and 6) exemptions designed to prevent excise taxes. Each of the categories has previously been upheld as constitutional. *See, e.g., Byrnes, supra; Robinson v. Richland County Council*, 293 S.C. 27, 358 S.E.2d 392 (1987); *Quirk v. Campbell*, 302 S.C. 148, 394 S.E.2d 320 (1990).

Accordingly, we AFFIRM.

**101 *127 MOORE and WALLER, JJ., concur. TOAL, C.J., dissenting in a separate opinion in which Acting Justice Diane S. Goodstein, concurs. Chief Justice TOAL:

I respectfully dissent because I disagree with the majority on both issues I and II. In my opinion, there is no rational basis for treating dry cleaning services differently from other services. I would also find that when viewed in the light most favorable to Robinson, a genuine issue of material fact exists as to whether the sixty-one exceptions to the sales tax are arbitrary and capricious and thus violate the Equal Protection Clause. *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002).

I

In my view, the sales tax violates the rational basis test and thus violates equal protection. *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973); *Bibco Corp. v. City of Sumter*, 332 S.C. 45, 504 S.E.2d 112 (1998). Because I believe that dry cleaning services are part of the same class as other service providers, I would hold that the statute treats "similarly situated" entities differently. Further, I would hold that there is no rational basis for singling out dry cleaners-to the exclusion of other services-for sales tax purposes. Finally, I am not persuaded by the assertion that since the sales tax statute exempts dry cleaners' start-up machinery and equipment costs, S.C.Code Ann. § 12-26-2120(24), dry cleaners are obligated to pay a sales tax on their services. While the trial judge's statement that the majority quoted, "[u]nlike most service industries, dry cleaners have high startup costs as a result of heavy machinery and equipment" may have been true in the 1950's,^{FN5} it certainly is not the case in today's economy. All service industries incur *128 significant startup costs, whether they come in the form of equipment, labor, rent, or other overhead costs. I find no reason today for singling out dry cleaners' startup costs as a justification for imposing a sales tax upon their services when all other services also are faced with high costs to enter the marketplace, yet a sales tax is not levied on their services. Therefore, in my view, segregating dry cleaning services from all other services does not rationally relate to a legitimate government purpose.

FN5. The original statutes providing for the exemption for start-up supply and machinery costs and for the tax on dry cleaning services were enacted in the 1950's.

II

I would also find that Robinson raised a genuine issue of material fact as to whether the 61 exemptions found in S.C.Code Ann. § 12-46-2120, *in toto*, amount to an arbitrary classification of different entities for tax purposes that is unconstitutional. *See City of Laurens v. Anderson*, 75 S.C. 62, 64, 55 S.E. 136, 137 (1906) (for a law to be deemed constitutional, it "must possess two indispensable qualities: [f]irst, it must be framed as to so extend to and embrace equally all persons who are or may be in the like situation and circumstances; and secondly, the classification must be natural and reasonable, not arbitrary and capricious."). Although this Court ruled in 1951 that the

then 19 exemptions to the sales tax were not a “tyrannical exercise of arbitrary power,” it is my view that they would conclude that 61 exemptions would rise to that level. *State ex rel. Roddey v. Byrnes*, 219 S.C. 485, 515, 66 S.E.2d 33, 46 (1951).

The State attempted to pigeonhole 33 of the exemptions into six neat categories for tax classification purposes in an effort to illustrate that the exemptions are not arbitrary and capricious. In my opinion, the whimsical nature of the other 28 exemptions renders this legislation arbitrary and capricious. For example, broadcasting companies fare well under the statute, as “all supplies, **102 technical equipment, machinery, and electricity sold to radio and television stations, and cable television systems, for use in producing, broadcasting, and distributing programs” are exempt from the sales tax. S.C.Code Ann. § 12-36-2120(26). The same purchases are tax-free for motion picture companies. S.C.Code Ann. § 12-36-2120(43). Vacation time-sharing plans are exempt. S.C.Code Ann. § 12-36-2120(31). Promotional direct mail *129 advertising materials are also exempt. S.C.Code Ann. § 12-36-2120(58).

Based on the foregoing reasoning, I would hold that the legislature had no rational basis for singling out dry cleaners from other services for sales tax purposes, and I would reverse the trial judge's grant of summary judgment and remand the exemption issue to determine whether the entire retail tax exemption statute is unconstitutional based on its whimsical treatment of various entities for tax purposes.

Acting Justice DIANE S. GOODSTEIN, concurs.
S.C., 2003.
Ed Robinson Laundry and Dry Cleaning, Inc. v. South Carolina Dept. of Revenue
356 S.C. 120, 588 S.E.2d 97

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