

It has long been recognized that the Commerce Clause, Article 1, Sec. 8, Cl. 3, of the Federal Constitution does not immunize interstate commerce from its fair share of the costs of State government. Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450, 461-462 (1959). However, a State may not tax the privilege of engaging in interstate commerce nor discriminate against interstate commerce by providing a direct commercial advantage to local business or by subjecting interstate commerce to the burdens of multiple taxations. Id. at 548. Although the "drummer cases" have long held that the Commerce Clause forbids the levying of a flat sum privilege tax on the solicitation of orders for goods to be shipped in interstate commerce, see Nippert v. City of Richmond, 327 U.S. 416, 421-422 and 435 (1946), West Point Wholesale Grocery Co. v. City of Opelika, 354 U.S. 390, 391 (1957), and Dunbar-Stanley Studios, Inc. v. Alabama, 393 U.S. 537, 540 (1969), it has also been held that this clause does not forbid a license tax on the essentially local activity of peddling, as distinguished from solicitation, Caskey Baking Co. v. Virginia, 313 U.S. 117, 119 (1941). However, resident and non-resident peddlers must be treated alike. Id. at 119-120. Thus, in Dunbar-Stanley Studios, Inc., 393 U.S. at 541-42, the Supreme Court upheld a license tax on itinerant photographers on the grounds that the taxable event was the act of taking photographs, but it did so only after noting that resident and non-resident photographers were both subject to the tax.

Although these out-of-state truck vendors may be subject to a license fee for selling their goods in this State, taxing non-resident vendors at a rate 5-1/2 times that of resident vendors is clearly discriminatory. Such unequal treatment of non-residents is also of doubtful validity under the Privileges and Immunities Clause of the Federal Constitution, Article IV, Sec. 2, Cl. 1. See Hicklin v. Orbeck, 437 U.S. 518, 520 (1978). However, we wish to emphasize that a uniform license tax on truck vendors which is intended to equalize the tax burden between truck vendors and businesses at fixed addresses which must have a traders license, Article 56, Sections 32 et seq., would be constitutional. See Caskey Baking Co., 313 U.S. at 120-121 and Dunbar-Stanley Studios, Inc., 393 U.S. at 542.

Very truly yours,
 Stephen H. Sachs
 Attorney General

Senate Bill No. 327

AN ACT concerning

Garrett County - Truck Vendors' Licenses

FOR the purpose of providing that it is a misdemeanor for certain out-of-county vendors coming into Garrett County by truck to sell, auction, or offer for sale certain goods without first