

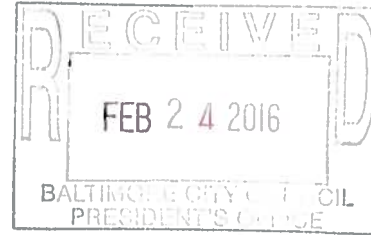
CITY OF BALTIMORE
STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW
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Baltimore, Maryland 21202

February 24, 2016

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna B. Austin, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 15-0611 – Admissions and Amusement Tax – Arena
Artistic Performance Exemption

Dear Mr. President and City Council Members:

The Law Department has reviewed City Council Bill 15-0611 for form and legal sufficiency. The bill exempts certain artistic performances from the admissions and amusement tax.

A local subdivision may enact exemptions to the admissions and amusement tax. A subdivision must, however, have a rational basis for the classification that it creates in order to avoid violating the constitutional guarantees of equal protection. In a March 16, 1978, Opinion of the Attorney General, *see* 63 Md. Op. Atty. Gen. 612, 1978 WL 33779, the question posed was whether a county could exempt certain non-profit organizations from the admissions and amusement tax. The Attorney General advised that from the broad grant of taxing authority given to the subdivisions in Article 81, Section 402 (the predecessor to the Tax General Art., Title 4), it is necessarily inferred that subdivisions have the power to enact exemptions from the admissions tax. In enacting any exemptions, however, the subdivisions must have a rational basis for the classification they establish so that the constitutional guarantees of equal protection are not violated.

In a later opinion, the Attorney General clarified the equal protection issue. *See* 67 Md. Op. Atty. Gen. 372 (1982), 1982 WL 187880. The question asked in that opinion was whether a county could charge a lower admissions tax for professional hockey games than for other types of admissions. In the analysis of the issue, the Attorney General stated, *quoting Allied American Co. v. Commissioner*, 219 Md. 607, 623 (1959): “The constitutional need for equal protection does not shackle the legislature. *It has the widest discretion in classifying those who are to be regulated and taxed.* Only if the grouping is without any reasonable basis, and so entirely arbitrary is it forbidden. Abstract symmetry or mathematical nicety are not requisites. . . . *If any state of facts reasonably can be conceived that would sustain a classification, the existence of that state of facts as a basis for the passage of the law must be assumed.* The burden is on him who assails a classification to show that it does not rest on any reasonable basis.” *See also Villa Nova Night Club, Inc. v. Comptroller of the Treasury*, 256 Md. 381 (1970) (an admissions tax



that taxed cabarets at a different rate from other places of amusement did not violate equal protection).

In upholding the lower amusement tax for professional hockey in Prince George's County, the Attorney General stated: "given the broad discretion afforded the County Council regarding this kind of tax classification, coupled with the heavy burden on one who seeks to demonstrate that such a classification is without rational basis, we certainly are unable to conclude that the proposed reduction is unconstitutional." The Attorney General noted in conclusion that the County Council might perceive a justification for the tax reduction from the factors cited in the preamble to the bill, the testimony presented at the hearing, as well as from other sources of information.

It is clear from the law, and its interpretation set forth above, that the City Council can provide for classifications among categories of admissions and charge different admission tax rates within those classifications, including exemptions, so long as there is a rational basis to support the disparate treatment. Exempting artistic performances at the City owned arena located at 201 West Baltimore Street from the amusement tax, but not exempting: (1) other performances at the arena, or (2) artistic performances at other venues, which like the arena, are not located within an arts district, creates a classification that must have a rational basis to justify the different treatment of similarly situated activities. In this case, the justification could be the promotion of "artistic works" at the arena, a venue which typically showcases sports, such as hockey and basketball, as well as popular musical groups. The record at the hearing should include a statement of such justification, or it should be included in the bill.

Sincerely,



Jennifer Landis
Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Victor Tervalo, Chief Solicitor