ed within the newspapers and by the exemption of shoppers' guides.

[14–16] A state law is not arbitrary even though it discriminates in favor of a certain class, if that discrimination is founded upon a reasonable distinction or difference in state policy, not in conflict with the Constitution. *Kahn v. Shevin*, 416 U.S. 351, 355, 94 S.Ct. 1734, 1737, 40 L.Ed.2d 189 (1974). Courts will not invalidate tax statutes on the basis of equal protection so long as the classification and selection are reasonable. The legislature has wide discretion in the adoption of tax measures, since they produce the revenue with which government operates, and it may impose special burdens on defined classes to achieve permissible ends. While not unrestrained, the legislature's judgment must be respected and its enactments must be given every intendment. The test is whether a statute rests on a reasonable basis. It will not be held discriminatory if there is any possible reason or justification for its passage. *Genesco, Inc. v. Woods*, 578 S.W.2d 639, 641 (Tenn.1979).

[17] The purpose of the newspaper exemption is to guarantee freedom of the press and to relieve newspapers of this tax burden. Shoppers' advertisers have most of the characteristics of newspapers in that they are produced on the same quality paper and regularly distributed by carriers in precisely the same manner that newspapers are distributed.

[18] However, even if this Court were to find that the exemptions for newspapers and shoppers advertisers are violative of the Equal Protection Clause, it would provide Sears no remedy. Striking down of the exemptions for these publications would simply bring them within the ambit of the tax and would not remove preprints from the coverage of the tax. Courts cannot create a tax exemption where the legislature has not provided one.

[19–21] The taxing power of the state is an attribute of sovereignty and exclusively a legislative function. *Waterhouse v. Public Schools*, 68 Tenn. (9 Baxter) 398, 400 (1876). The legislature alone has the right to determine all questions of time, method, nature, purpose and extent in respect to the imposition of taxes, including the subjects on which the power may be exercised. 84 C.J.S. (Taxation) § 7, pp. 51–55. Among all the institutions of the state, there is no agency vested with authority to restrain the legislative discretion in the exercise of its power in levying taxes. *Nashville, C. & St.L.Ry. v. Carroll County*, 161 Tenn. 581, 33 S.W.2d 69, 70 (1930). Of course, the taxing power is restrained by the federal and state constitutions. 84 C.J.S. (Taxation) § 6, p. 48. The power to exempt property from taxation, like the power to tax, is an attribute of sovereignty exercised by the legislature. Indeed, the selection of any subjects for taxation is an exemption of those subjects not selected. 84 C.J.S. (Taxation) § 216, pp. 414–415. In short, the selection of subjects for tax exemption is a legislative, not a judicial function. *Hulse v. Kirk*, 28 Ill.App.3d 839, 329 N.E.2d 286, 289 (1975).

There is no merit to any of the issues presented by Sears. The judgment of the Chancery Court is affirmed. Costs are taxed against the plaintiff/appellant.

COOPER, C.J., and HARBISON, BROCK and DROWOTA, JJ., concur.

FONES, J., not participating.

Samuel HAMRICK and wife, Carol Hamrick, Brenda Gates, widow and next of kin of Carlos Gates, and William Hixson and wife, Vickie Hixson, Plaintiffs/Appellants,

v.

SPRING CITY MOTOR COMPANY, Defendant/Appellee.

Supreme Court of Tennessee, at Knoxville.

March 24, 1986.

Actions were brought for personal injury and wrongful death arising out of

possessions from the vehicle being traded and delivered its keys to Mr. Bacon. One of Mr. Bacon's employees transferred the license plate from the traded vehicle to the new truck. It was understood that Champion was to confirm financing at his credit union, and Mr. Bacon testified that he supposed the remainder of the transaction would be handled by mail.

On the following day Champion did visit the credit union and testified that financing was confirmed. He did not have an executed bill of sale from Mr. Bacon in his possession, but simply an unsigned one setting out the terms of the purchase, showing the down-payment and the balance to be financed. Accordingly Champion would have had to contact Mr. Bacon or go back to the dealership to get an executed bill of sale and whatever other papers the credit union would have needed in order to complete the transaction and send a check to the seller.

Mr. Champion's father was well acquainted with Mr. Bacon and had purchased several automobiles at his dealership previously. Mr. Bacon did not know the son, but the evidence reveals nothing in the background of the son which would have been evidence of negligence in entrusting possession of a new vehicle to him. The evidence shows that he obtained a commitment for proper financing of the vehicle on the day after it was entrusted to him. That evening he drank a considerable amount of intoxicating beverages, and the accident occurred about 11:45 in the evening after he had taken his girl friend to her home and was returning to his father's residence. He was not shown, however, to be a chronic alcoholic, nor was he intoxicated at the time the vehicle was entrusted to him. There is no dispute as to any material facts concerning entrustment to him and no basis upon which a finding of negligence by the seller in that regard could be sustained. *See Kennedy v. Crumley,* 51 Tenn.App. 359, 367 S.W.2d 797 (1962). Accordingly summary judgment was properly granted to appellee upon that theory.

[4] There is no claim of any defect in the vehicle delivered to Champion, so that the only remaining basis upon which liability could theoretically be imposed upon the dealership was that of *respondeat superior.* In order to impose liability under this theory, of course, it is necessary to show that the operator of a vehicle was acting as a servant or employee of the owner and in the course and scope of the employment at the time of the accident. To establish a prima facie case on this theory, appellants rely upon the terms and provisions of T.C.A. § 55–10–311:

> *"Prima facie evidence of ownership of automobile and use in owner's business.*—In all actions for injury to persons and/or to property caused by the negligent operation or use of any automobile, auto truck, motorcycle, or other motor propelled vehicle within this state, proof of ownership of such vehicle, shall be prima facie evidence that said vehicle at the time of the cause of action sued on was being operated and used with authority, consent and knowledge of the owner in the very transaction out of which said injury or cause of action arose, and such proof of ownership likewise shall be prima facie evidence that said vehicle was then and there being operated by the owner, or by the owner's servant, for the owner's use and benefit and within the course and scope of his employment. The prima facie evidence rules of the preceding sentence shall also apply in cases of the negligent operation of a vehicle being test-driven by a prospective purchaser with the knowledge and consent of the seller or his agent whether or not the seller or his agent is present in the vehicle at the time of the alleged negligent operation. This section is in the nature of remedial legislation and it is the legislative intent that it be given a liberal construction."

The second sentence, making the prima facie evidence rules applicable to the test-driving of a vehicle by a prospective purchaser, was added by 1974 Tenn.Pub.Acts,