

HE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
Marvin H. Dukes, III Special Circuit Court Judge for Beaufort County

Case No. 2012-213239

RECEIVED  
JUN 18 2013  
SC Court of Appeals

Town of Hilton Head Island, ..... Respondent

v.

Kigre, Inc.....Appellant

**RESPONDENT'S MOTION TO AMEND RESPONDENT'S AMENDED INITIAL BRIEF**

The Respondent hereby requests permission to amend Respondent's Amended Initial Brief by way of its Final Brief in order to correct a citation mistake contained in Respondent's Amended Initial Brief. By way of further explanation, rather than citing to the trial transcript for one citation, Respondent inadvertently cited to a deposition transcript. Attached hereto as Exhibit "A" is the portion of Respondent's Amended Initial Brief that Respondent wishes to correct.<sup>1</sup>

The deposition transcript to which Respondent previously cited in Respondent's Amended Initial Brief was not admitted at trial, and hence is not a part of the record this Court would normally review. This motion simply requests permission to amend the citation itself, which is the trial testimony of the same witness as in the deposition. The subject matter of the

<sup>1</sup> The sections sought to be amended are on the bottom of Page 8 and the top of Page 9 of Respondent's Amended Initial Brief, and are delineated by a box around the text and citation at issue.

cited deposition testimony and the actual trial testimony sought to be substituted address the exact same matter.

The portions of the trial testimony to which Respondent intended to properly cite are as follows:

1. Trial Transcript Vol. I, re-cross examination of Steven Markiw by Gregory M. Alford, pp. 238, l. 5-239, l. 2;
2. Trial Transcript, Vol. II, direct examination of Jeffrey Myers by Thomas C. Taylor, p. 37, l. 4-13;
3. Trial Transcript, Vol. II, cross examination of Jeffrey Myers by Gregory M. Alford, pp. 53, l. 6-56, l. 9; and
4. Trial Transcript, Vol. II, cross examination of Jeffrey Myers by Gregory M. Alford, p. 59, l. 14-5.

Such additional time or amendment would result in no prejudice to Appellant, as such portions of the trial record Respondent seeks to substitute:

1. are already a part of the trial transcript;
2. address the identical subject matter as in Respondent's Initial Brief;
3. will not change the text or legal argument set forth in Respondent's Initial Brief; and
4. does not change any argument or position for either party.

Respondent also requests herein permission to amend its Designation of Matter to be Included in the Record on Appeal, as well as to supplement the Record on Appeal, to reflect these changes.

In addition, Respondent omitted from Respondent's Designation of Matter to be Included in the Record on Appeal the following document:

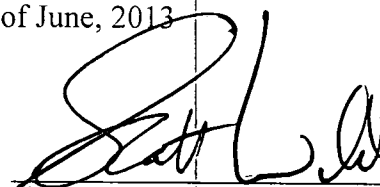
- January 30, 2012 letter from counsel for Appellant to counsel for Respondent cited as "See January 30, 2012 letter." on page 14 of Respondent's Amended Initial Brief

Respondent desires to amend Respondent's Designation of Matter to be Included in the Record on Appeal and to supplement the Record on Appeal to include this document as well.

By this motion, Respondent hereby withdraws all motions submitted on May 13, 2013 except the motion requesting an extension to file Respondent's Final Brief. However, Respondent would ask that this motion replace those withdrawn motions and make the grounds stated herein the reason for the requested extension.

Respondent's counsel has not consulted with counsel for Appellant prior to the filing of this Motion since it would serve no useful purpose. Opposing counsel did not consent to the last iteration of this motion, and Respondent has no reason to believe that Appellant will consent to this version.

Respectfully submitted this 13th day of June, 2013



Scott M. Wild for Gregory M. Alford  
Alford Law Firm, LLC  
Post Office Drawer 8008  
Hilton Head Island, SC 29938  
(843) 842-5500  
Attorney for Respondent

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**EXHIBIT "A" TO RESPONDENT'S MOTION TO AMEND RESPONDENT'S  
AMENDED INITIAL BRIEF**

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have recognized that a municipal corporation has the right to impose a license fee for conducting business within its limits, even though a portion of business is carried on or factually completed outside of the municipality. In Triplett v. City of Chester, 209 S.C. 455, 40 S.E.2d 684 (1946), the South Carolina Supreme Court considered the application of a municipal business license tax on a construction contractor who, while conducting his administrative and executive work within the city limits and storing equipment therein, did all of his construction work outside the city.

The Court stated:

We are unable to agree with the soundness of respondent's contention that no part of his business was conducted within the corporate limits of Chester. **It is the privilege of doing business within the municipality that is sought to be taxed. The administrative and executive work, an indispensable phase of respondent's business, was conducted in the office established, maintained and operated in the City....<sup>5</sup>**

The gross income of the Appellant in this case is connected to its business conducted within Respondent and is therefore properly included in the business license fee calculation.

C. **Relation to Services:** Appellant attempts to assert that the business license fee imposed by Respondent is not fairly related to the services provided by Respondent to Appellant's business in interstate commerce and others similarly situated. Respondent does not need to present a detailed accounting of the services provided to the Appellant in order for the business license fee to be considered "fairly related." Oklahoma Tax Comm. V. Jefferson Lines, Inc., 514 U.S. 175 (1995) **Police, fire protection, along with all of the advantages conferred by**

<sup>5</sup> "...His equipment when not in use was stored in the City. This portion of his business enjoyed all the advantages afforded by the municipal government of Chester to any other business conducted within its corporate limits. We cannot dissociate the managerial features of the business which were conducted within the City, along with the storing of equipment, from the manual execution of the work which was done without the City. All are essential functions of the general contracting business in which respondent is engaged. It frequently happens that there is a business located within a municipality that does not do *all* of its business within the corporate limits of such town or city.

...  
The tax was imposed for the privilege of maintaining and conducting a place of business within that municipality and it was intended that the business should be considered as a whole. The gross income or volume of such business is merely made the basis on which the tax is graduated."

the Town's maintenance of a civilized society are all justifications for imposition of the fee. Appellant admits it in fact receives services such as these in the deposition of Jeffrey Meyers (p. 46 l. 4-25, p. 47 l. 1-25, p. 48 l. 1-25, p. 49 l. 1-8) The fact that these costs may not be thought of as directly benefiting the Appellant does not mean that they are not fairly related to the fee. See Oklahoma Tax Comm., supra; Goldberg v. Sweet, 488 U.S. 252 (1989); Commonwealth Edison Co. v. Montana, 453 U.S. 609 (1981). Respondent provides the benefits of a civilized society to Appellant and therefore the fair relation prong is satisfied. Despite Appellant's argument that the business license fee is a direct tax on the privilege of engaging in interstate commerce, it is rather a fee imposed on the privilege of maintaining and conducting a place of business within a municipality. See Eli Witt Co., supra.

D. **Classification:** Appellant asserts that its business is not properly classified, that Respondent uses incorrect and an out of date SIC system to classify businesses, and otherwise claims the license fee ordinance is unconstitutional.

Appellant's initial argument against paying the business license fee charged by the Town of Hilton Head Island was that it solely conducted interstate and international commerce and therefore was exempt from the fees. Despite Appellant's argument that the business license fee is a direct tax on the privilege of engaging in interstate commerce, it is rather a fee imposed on the privilege of maintaining and conducting a place of business within a municipality. See Eli Witt Company v. City of West Columbia, 309 S.C. 555, 425 S.E.2d 16 (1992) The income derived from interstate commerce is treated in the same manner as any other income. There is no question that interstate commerce may be made to pay its way. Complete Auto, Inc. v. Brady, 430 U.S. 274 at 284 (1977). However, as stated in his deposition, Jeffrey Meyers admits that it

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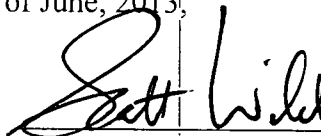
Kigre, Inc.....Appellant

**PROOF OF SERVICE**

I, Scott M. Wild, on behalf of Gregory M. Alford, attorney for the Respondent, do hereby certify that on June 13th, 2013, I served **Respondent's Motion to Amend Respondent's Amended Initial Brief** by depositing a copy of the document in the United States mail, with postage prepaid, at Hilton Head Island, South Carolina, addressed as follows:

Thomas C. Taylor  
Law Office of Thomas C. Taylor, LLC  
P.O. Box 5550  
Hilton Head Island, SC 29938

Respectfully submitted this 13th day of June, 2013.



Scott M. Wild for Gregory M. Alford  
Alford Law Firm, LLC  
Post Office Drawer 8008  
Hilton Head Island, SC 29938  
(843) 842-5500  
Attorney for Respondent

# ALFORD LAW FIRM, LLC

*Attorneys at Law*

18 Executive Park Road, Building 1  
P.O. Drawer 8008  
Hilton Head Island, SC 29938-8008  
Telephone (843) 842-5500  
Facsimile (843) 842-8400  
[www.alfordlawsc.com](http://www.alfordlawsc.com)

SCOTT M. WILD  
EMAIL: [SCOTT@ALFORDLAWSC.COM](mailto:SCOTT@ALFORDLAWSC.COM)

(NOT FOR CONFIDENTIAL COMMUNICATIONS)

GREGORY M. ALFORD\*  
MITCHELL J. THORESON  
SCOTT M. WILD  
THOMAS E. WILLIAMS†  
\*Also member Georgia Bar  
† Of Counsel

June 13, 2013

## Via First Class United States Mail

The Honorable Jenny Abbott Kitchings  
Clerk of Court for the South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

RECEIVED

JUN 18 2013

SC Court of Appeals

**Re: Town of Hilton Head Island, Respondent v. Kigre, Inc.,**  
**Appellant**  
**Case # 2012-213239**

To the Honorable Jenny Abbott Kitchings:

Please allow this letter to serve as a very brief summary of the relief requested in the motion accompanying this letter. **Quite simply, Respondent is trying to correct a mistake in Respondent's Amended Initial Brief that inadvertently cited to a deposition transcript when it meant to cite to a trial transcript.**

This motion is also intended to amend and simplify the relief requested in the motions sent to you on May 13, 2013. Respondent hereby withdraws those prior motions with the exception of the request for an extension to file Respondent's Final Brief. Respondent requests that the grounds set forth in the attached motion replace the grounds stated in the motion requesting an extension as the basis for that extension request.

If permitted to amend Respondent's Amended Initial Brief, Respondent also requests permission to clean up the record by updating Respondent's Designation of Matter to be Included in the Record on Appeal and to supplement the Record on Appeal to reflect the same.

Finally, Respondent would seek to make a part of the Record on Appeal a letter cited in Respondent's Amended Initial Brief, but which was not included in Respondent's Designation of Matter to be Included in the Record on Appeal and the Record on Appeal itself.

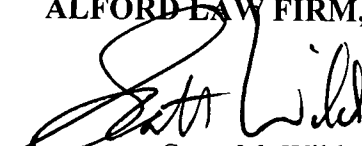
Therefore, enclosed you will find one (1) original and six (6) copies of Respondent's Motion to Amend Respondent's Amended Initial Brief. You will also find a check for Twenty-

Five and No/100<sup>ths</sup> Dollars (\$25.00) representing the filing fee for this motion. In addition, you will find a Proof of Service for said motion.

Should you have any questions or comments, please do not hesitate to contact me. Thank you in advance for your assistance and cooperation with this matter.

With kindest regards, I am,

Sincerely,  
**ALFORD LAW FIRM, L.L.C.**



Scott M. Wild

Enclosures

cc: Thomas C. Taylor, Esq. (with enclosures)  
Law Office of Thomas C. Taylor, LLC  
P.O. Box 2250  
Hilton Head Island, SC 29938  
(via First Class United States Mail)