EXHIBIT B

ORDER ON MOTIONS TO RECONSIDER

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DoorDash, Inc., Petitioner, vs. City of Anderson, Respondent.	Docket No. 24-ALJ-30-0067-CC **ORDER ON MOTION TO RECONSIDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("Court" or "ALC") pursuant to a Request for a Contested Case Hearing filed by Petitioner DoorDash, Inc. ("Petitioner" or "DoorDash"). The City of Anderson ("Respondent" or "City") issued a business license tax assessment to DoorDash for 2022 and 2023. DoorDash challenges those assessments and penalties and seeks a refund of the payments made under protest.[1] DoorDash asserts it does not "engage in business" in the City because it merely facilitates transactions through a platform operating outside of the City, and, therefore, is not subject the City's business license tax. Additionally, DoorDash asserted that the assessments violate the Dormant Commerce Clause[2] of the U.S. Constitution.

Petitioner filed its Request for a Contested Case Hearing on March 21, 2024. This matter was assigned to the undersigned on March 28, 2024.[3] The Court issued an Order for Prehearing Statements on April 8, 2024 and both parties subsequently submitted prehearing statements. DoorDash listed two issues for determination: 1) whether DoorDash was engaged in business within the City such that it was subject to the City's business license tax during the assessment period and 2) whether the assessment against DoorDash violates the Commerce Clause of the U.S. Constitution. The City characterized the issue before the Court to be "whether or not DoorDash, Inc. is subject to the Business License Tax of the City of Anderson." Pursuant to a Consent

[1] Petitioner apparently made payment on the assessment under protest pursuant to S.C. Code Ann. §6-1-410(B) (Supp. 2024).
[2] Article I, Section 8.
[3] The Court has jurisdiction of this matter pursuant to S.C. Code Ann. §§ 1-23-600 (Supp. 2024) and 6-1-410(C) (Supp. 2024).

Scheduling Order the parties both filed motions for summary judgment on September 20, 2024 and each party filed a response in opposition to the other's motion on November 4, 2024. On November 8, 2024, the Court noticed a hearing on the motions for December 11, 2024. A hearing on both motions was conducted on December 11, 2024. Counsel for both parties attended the hearing. No objections were presented by either party as to the Court's consideration of the exhibits submitted with the motions and responses.

Following the hearing, the Court issued an order on February 7, 2025. It denied the motion filed by DoorDash and granted in part the motion filed by the City of Anderson. DoorDash filed a motion to reconsider on February 14, 2025. DoorDash argued that the Court erred in construing the word "indirectly" as used in Anderson's business license tax ordinance. It also contends that the Court misconstrued the holdings in both *Travelscape, LLC v. S.C. Department of Revenue*, 391 S.C. 89, 705 S.E.2d 28 (2011) and *Town of Hilton Head Island v. Kigre, Inc.*, 408 S.C. 647, 760 S.E.2d 103 (2014). Notably, DoorDash did not request reconsideration of the Court's conclusions regarding its constitutional arguments. The City filed its opposition to the motion to reconsider on February 24, 2025.

DISCUSSION

SCALC Rule 29(D) permits a party to move for reconsideration of a final decision of an administrative law judge in a contested case for any of the grounds for relief set forth in Rule 59, SCRCP. Rule 59(e), SCRCP, in turn authorizes a motion to alter or amend. A Rule 59(e) motion not only serves as a vehicle to request the trial court "alter or amend the judgment," but also as a vehicle to seek "reconsideration" of issues and arguments. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21–22, 602 S.E.2d 772, 778–79 (2004).

DoorDash argues that the Court has misconstrued the City of Anderson's Ordinance in two ways: (1) by relying on the word "indirectly" as used in the ordinance to modify the terms business, profession, calling, or activity; and (2) by misreading the holdings of *Travelscape* and *Kigre*. The Court will address each of these arguments below.

I. Construction of the Anderson Ordinance

In its prior order, the Court concluded that the Ordinance does not require that a business be physically present in Anderson in order to be subject to the business license tax. It noted that:

- The Ordinance's definition of gross income clearly contemplates that businesses may be subject to a business license tax even if they are not domiciled in the City.

- The Ordinance also specifically defines the terms "business" as any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, either directly or indirectly. The plain and ordinary meaning of the term "indirectly" includes actions which are not done directly or are performed through intermediaries. Because business can be done indirectly, through intermediaries, physical presence is not required.
- The definition of "gross income" under the City's Ordinance uses the term "business" which again is a defined term including doing business indirectly.
- The South Carolina Supreme Court in *Travelscape* had similarly concluded that in another tax statute "doing business within the State of South Carolina" did not require a physical presence in the State.

DoorDash suggests that Court has committed an error in construing the definition of "business" in the Ordinance, and that, at a minimum, the Court erred in determining that the statute was unambiguous. DoorDash again asserts that if the statute is ambiguous, it must be construed liberally in favor of DoorDash. *See, e.g., Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 318, 731 S.E.2d 869, 872 (2012) (it is a settled principle that any substantial doubt in the application of a tax statute must be resolved in favor of the taxpayer). While the Court would ordinarily address these arguments in the order in which they were asserted, the Court, in this case, will begin by addressing DoorDash's reliance upon the rule that substantial doubt must be resolved in favor of the taxpayer. Application of this rule affects the analysis of DoorDash's first argument regarding the Court's construction of the definition of "business" in the Ordinance.

South Carolina has of course long followed the rule that where a tax statute is ambiguous and reasonably susceptible of an interpretation that would exclude taxation, any substantial doubt must be resolved against the government and in favor the taxpayer. *E.g., Alltel*, 399 S.C. at 318, 731 S.E.2d at 872; *Hadden v. S.C Tax Comm'n*, 183 S.C. 38, 199 S.E. 249, 252 (1937). But this rule does not require, as DoorDash suggests, that if resort to canons of statutory construction is necessary to determine the intent of the legislature, the statute in question must be construed against taxation.

The South Carolina Supreme Court has described the rule of strict construction against taxation in the following manner:

> While a tax statute is to be reasonably construed as a whole with the view of carrying out its purpose and intent, where the language relied upon to bring the particular person or subject within the law is ambiguous or is reasonably susceptible of an interpretation that would exclude the person or subject sought to be taxed, the well–established general rule requires that any substantial doubt should be resolved against the government and in favor of the taxpayer. *In the application of that general rule there are other recognized principles of construction which are pertinent and may lend controlling weight.*

Fuller v. S.C. Tax Comm'n, 128 S.C. 14, 121 S.E. 478, 481 (1924) (emphasis added). Or, as Judge Duffy explained in *City of Charleston, South Carolina v. Hotels.com, LP*:

> "[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." "The language of a statute must be read in a sense which harmonizes with its subject matter and accords with a general purpose." Regarding the strict interpretation of tax statutes specifically, the South Carolina Supreme Court has held that:
>
> > If the intent of the Legislature is apparent from an examination and consideration of the statute as a whole, the rule of strict construction in favor of the taxpayer has no application. *That rule of strict construction of penal laws and tax statutes "is subordinate to the rule of reasonable, sensible construction, having in view effectuation of the legislative purpose," and "does not prevent the courts from calling to their aid all the other rules of construction and giving each its appropriate scope ..."*

586 F.Supp.2d 538, 542-43 (D.S.C. 2008) (internal citations omitted) (emphasis added) (citing *Crescent Mfg. Co. v. Tax Comm'n*, 129 S.C. 480, 124 S.E. 761, 765 (1924)); *see also Travelscape*, 391 S.C. at 97-103, 705 S.E.2d at 32-35 (applying principles of statutory construction to sales tax statute without concluding that ambiguity was present and ultimately concluding that that appellant was subject to taxation); *City & Cnty. of Denver v. Expedia, Inc.*, 405 P.3d 1128, 1132 (Colo. 2017) (concluding "policy preference regarding tax burdens was never intended to displace other canons designed to help resolve doubts, or ambiguity"); 71 Am.Jur.2d, *State and Local Taxation* § 339 (January 2025 Update) ("[a] court need not apply a presumption either in favor of or against the taxpayer when it is able to ascertain legislative intent applying general canons of construction to a tax statute"). As before, the Court concludes that when the Ordinance is considered as a whole,

the language of the Ordinance indicates that physical presence is not required for imposition of a business license tax. It is clearly intended to encompass business conducted in Anderson through intermediaries, such as the contracted restaurants and drivers utilized by DoorDash. In any event, the application of additional and ordinary principles of statutory construction would yield the same result.

Business is defined as:

> any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, either directly or indirectly.

City of Anderson, S.C., Code § 26-37, *et seq*. (Nov 8, 2021, as amended). DoorDash argues that the phrase "directly or indirectly" does not modify the words business, calling, occupation, profession, or activity, but instead modifies the words "with the object of gain, benefit, or advantage" because those words are the words which immediately precede "directly or indirectly." It states that:

> to qualify as 'business' under the Ordinance, the activity must have the direct or indirect object of gain, benefit, or advantage. This does not mean that 'business' includes indirect activity within the City.

(DoorDash Motion to Reconsider at pp. 3-4).

DoorDash is correct of course that the words "directly or indirectly" immediately follow the words "gain, benefit, or advantage." This focus on placement of the words "directly or indirectly" is an attempt to invoke what is known at the doctrine of the last antecedent. The doctrine of the last antecedent has been described in the following manner:

> The rule of the last antecedent is the preferred procedure for clarifying whether modifying language is intended to modify all preceding antecedents or only the final one. Under the rule of the last antecedent, qualifying words or phrases modify the words or phrases immediately preceding them and not words or phrases more remote, unless the extension is necessary from the context or the spirit of the entire writing. Absent a contrary intent, a qualifying word or phrase should be read as modifying only the last noun or phrase that immediately precedes it, i.e., the last antecedent. The last antecedent is the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence.

Coffman v. Commonwealth, 795 S.E.2d 178, 180 (Va. Ct. App. 2017) (internal citations and quotations omitted).

The Court has considered this argument and concludes that it fails upon scrutiny. The last antecedent doctrine is itself a rule of construction which is applicable only as a last resort when a statute is found to be ambiguous after application of traditional principles of statutory construction. *Lockhart v. United States*, 577 U.S. 347, 352 (2016) (the last antecedent rule also "is not an absolute and can assuredly be overcome by other indicia of meaning"); *Paroline v. United States*, 572 U.S. 434, 447 (2014) ("[o]ther canons of statutory construction, moreover, work against the reading the victim suggests. When several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all") (internal quotations and citations omitted); *Payless Shoesource, Inc. v. Travelers Companies, Inc.*, 569 F. Supp. 2d 1189, 1197 (D. Kan. 2008), *aff'd*, 585 F.3d 1366 (10th Cir. 2009) (last antecedent rule only applies if a court finds language to be ambiguous); *Reg'l Urology, L.L.C. v. Price*, 966 So. 2d 1087, 1094 (La. Ct. App. 2007), *writ denied,* 976 So. 2d 176 (La. 2008) (last antecedent rule applies only where there are uncertainties or ambiguities, when other rules of construction fail, and when the intent of the legislature is unclear); § 47:33. Referential and qualifying words: Last antecedent rule, 2A Sutherland Statutory Construction § 47:33 (7th ed.) ("[i]n general, then, where the sense of an entire act requires that a qualifying word or phrase apply to several preceding or even succeeding sections, the qualifying word or phrase is not restricted to its immediate antecedent").

The City cannot have intended the meaning now proposed by DoorDash. DoorDash contends that the words "directly or indirectly" modify the words "gain, benefit, or advantage." If DoorDash were correct, the definition of business adopted by the City could be rewritten in the following manner:

> "Business" means any business, calling, occupation, profession, or activity engaged in with the object of direct or indirect gain, direct or indirect benefit, or direct or indirect advantage.

The Court struggles to envision a situation in which one would engage in a business, calling, profession or activity with the object of "indirect gain." Rather, any benefit in the form of profit, market awareness, or otherwise which one would receive by engaging in business would, simply by the mere fact of its receipt, have accrued directly to the business.

While DoorDash criticizes the Court for concluding that the South Carolina Supreme Court's construction of "within the State" in its *Travelscape* decision is supportive of its decision,[4] DoorDash ignores other language in the same opinion which undercuts its position. In addition to examining the "within the state" language at issue in that case, the court in *Travelscape* also examined what was meant by furnishing hotel accommodations. It stated:

> Travelscape is correct in pointing out that "furnish" as used in subsection (A) invokes the connotation of physically providing sleeping accommodations to customers. Indeed, the American Heritage Dictionary defines "furnish" as "[t]o equip with what is needed" and to "supply" or "give." *Am. Heritage Dictionary* 540 (2d College Ed.1982). Relying on *Powerex,* Travelscape argues the term "furnish" as used in subsection (E) should be read consonant with its use in subsection (A). We agree. As used in subsection (E), "furnish" does mean to physically provide sleeping accommodations. However, Travelscape's argument ignores the antecedent language in (E) that it applies to all persons "engaged ... in the business of" furnishing accommodations. *"Business" includes "all activities, with the object of gain, profit, benefit, or advantage, either direct or indirect."* S.C.Code Ann. § 12–36–20 (2000). *Accordingly, we find the context of "furnish" as it appears in subsection (E) demonstrates that it encompasses the activities of*

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[4] DoorDash incorrectly asserts that the Court applied the analysis found in *Travelscape* to the definition of business under the Ordinance when in fact the Court applied the analysis found in *Travelscape* to the City ordinance which contains the general requirement that business license taxes must be paid. City of Anderson, S.C., Code § 26-36 (Nov 8, 2021, as amended). However, even had DoorDash discussed the correct portion of the Order / ordinance in its motion to reconsider, the Court would reject this argument. The ordinance states that:

> Every person engaged or intending to engage in any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, in whole or in part within the limits of the City of Anderson, South Carolina, is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided.

This section does not contain the terms "directly or indirectly" but does contain the same phrase "object of gain, benefit or advantage" upon which DoorDash has focused its argument. The Court believes it is improper to focus on these terms in isolation because the entirety of what precedes "in whole or in part within the limits of the City of Anderson" is a defined term. The language "any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage" is the exact language used in the definition of "business." Substituting the defined term for the restated definition, the ordinance can be rewritten as follows:

> Every person engaged or intending to engage in any business in whole or in part within the limits of the City of Anderson, South Carolina, is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided.

Under this framework, the Court believes its prior conclusion was correct.

> *entities such as Travelscape who, whether directly or indirectly, provide hotel reservations to transients for consideration.* Contrary to the dissent's view, we do not read the term "furnish" differently in subsection (E) than we do in (A). Instead, we interpret subsection (E) in such a manner as to give effect to all the language contained therein—particularly that the entity be "engaged ... in the business of" furnishing accommodations—rather than focusing on the term "furnish" in isolation. While Travelscape does not physically provide accommodations, it is in the business of doing so.

Travelscape, 391 S.C. at 101, 705 S.E.2d at 34 (emphasis added).

Notably, the tax code provision discussed in *Travelscape* contains language which is almost identical to that employed by the City's ordinance. The statute in *Travelscape*, like the City's ordinance, defines the term "business" to include activities "with the object of gain, profit, benefit, or advantage, either direct or indirect." The South Carolina Supreme Court construed the words "direct or indirect" as applying to the furnishing of hotel rooms generally rather than the words "gain, profit, or advantage" used in the definition of business. Again, the Court finds the *Travelscape* decision to be instructive here and supportive of its initial decision.[5]

DoorDash reiterates its prior argument that *Travelscape* is owed no deference because *Travelscape* deals with a sales tax, which it contends is materially different from a business license tax. The Court does not deny that *Travelscape* involved a sales tax rather than an excise tax such as a business license tax. However, DoorDash has yet to provide the Court with a reason why the difference in the nature of the tax should alter the manner in which the ordinance is read. Indeed, as the Court noted in its prior order, the fact that *Travelscape* involved a sales tax, which imposes a much higher administrative burden than an excise tax, makes the conclusions of the *Travelscape* court more applicable rather than less applicable.

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[5] DoorDash argues that while Travelscape was in the business of furnishing hotel rooms in South Carolina, DoorDash is not the business of furnishing food in Anderson. The Court disagrees. In that case, Travelscape owned no hotels in South Carolina, operated no hotels in South Carolina, and had no offices in South Carolina. Yet the South Carolina Supreme Court stated that while Travelscape did not physically supply hotel rooms, it was in the business of doing so. Similarly, the Court concludes that DoorDash, while not physically supplying food in Anderson, is engaged in the business of supplying food therein. DoorDash's customers access its services through an application on a phone or through the DoorDash website. They select a restaurant, place a food order, and pay DoorDash. What many customers expect in turn for that payment is that the food or other items they ordered will be delivered to their homes without further payment. The customers have no contractual or other relationship with the restaurant which actually prepares the food or the driver who delivers the food. Through various sales, promotions, and surcharges, DoorDash can even alter the price paid by the customer from that which would ordinarily be charged by the restaurant which prepared.

DoorDash also argues that if the Court's interpretation of the Ordinance were correct, the South Carolina Attorney General would have addressed it in its *Turo* opinion. This argument fails to address the reality of the manner in which Attorney General's opinions are prepared, and, in any event, the Court sees no reason to alter its prior conclusion that the opinion is not controlling in this matter.[6]

Finally, DoorDash contends that the Court failed to give due weight to the *Kigre* decision. DoorDash relies primarily on the following language from the *Kigre*:

> We emphasize that the business license fee is an excise tax—not an income or a sales tax. A business license fee is a tax on the privilege of doing business within the Town, and therefore, it is the manufacturing activity of Appellant Kigre, Inc. ("Kigre"), which occurs wholly within the Town limits, and not Kigre's receipt of income or sales of its products in interstate commerce that is the business activity being taxed. Kigre has no other manufacturing facility and pays no license fee to any other taxing jurisdiction.

Id. at 649, 408 S.E.2d at 103. Based on this language, DoorDash asks the rhetorical question "[i]f it is not the receipt of income on interstate sales that is being taxed, then what is being taxed?" DoorDash then concludes that *Kigre* can only be understood to hold that a business license tax is an excise tax on the privilege of performing "business activities physically within the City."

The Court reads *Kigre* differently. That the manufacturing activity occurred wholly within town limits in *Kigre* was significant not because a physical presence was required for taxation but instead because the court in *Kigre* was addressing a dormant commerce clause challenged involving apportionment of taxes in interstate commerce. *Id.* at 650, 760 S.E.2d at 104 ("[o]ur judicial role is limited to determining whether the Ordinance withstands Kigre's constitutional challenges"). *Kigre* did hold that a business license fee is a tax on the privilege of doing business "within the Town," but it is DoorDash which converts this phrase to "*physically* within the Town."

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[6]Attorney General opinions are typically developed upon request of a single party and are not developed in the context of adversarial proceedings. Additionally, when issuing an opinion, the Attorney General works from the facts stated by the requesting party (*e.g.*, "Based on the information provided in your letter, it does not appear …") and does not conduct a factual investigation or engage in fact finding, an endeavor it leaves for the courts. "However, whether Turo is doing business within City is a question of fact that must ultimately be determined by a court that can consider all the evidence surrounding Turo's activities in relation to City. Moreover, as for Turo's Hosts, a court would have to evaluate their activity in relation to City on a case-by-case basis to determine if they are doing business in City." Op. Att'y Gen., 2023 WL 4918024 at *7 (S.C.A.G July 26, 2023). Finally, "Attorney General opinions are persuasive but not binding authority." *Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 560–61, 713 S.E.2d 604, 609 (2011); *see also United States v. Jones*, 914 F.3d 893, 904 (4th Cir. 2019) ("Under South Carolina law, the Attorney General's opinions are not binding on the courts").

This focus on physical presence is not found in other statements of this general rule by South Carolina courts, even decisions which cite *Kigre*. *E.g., Olds v. City of Goose Creek*, 424 S.C. 240, 246, 818 S.E.2d 5, 9 (2018) ("a business license fee is a tax on the privilege of doing business within a county or municipality"); *U.S. Fidelity and Guaranty Co. v. City of Newberry*, 257 S.C. 433, 186 S.E.2d 239 (1972). *Kigre* did not address the question of whether one can do business indirectly within a city or town.

ORDER

IT IS THEREFORE ORDERED that DoorDash's motion to reconsider is **DENIED. AND IT IS SO ORDERED**.

The Honorable Robert L. Reibold
Administrative Law Judge

March 17, 2025
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Jared Thompson, hereby certify that I have on this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Jared Thompson
Judicial Law Clerk

March 17, 2025
Columbia, South Carolina

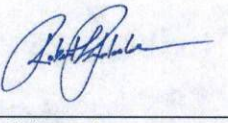
STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DoorDash, Inc., Petitioner, v. City of Anderson, Respondent.	Docket No. 24-ALJ-30-0067-CC **ORDER**

ORDER

In consideration of Petitioner's Motion for Admission *Pro Hac Vice* of Kathleen S. Cornett, Esq., it is hereby **ORDERED** that the Motion is **GRANTED**; and **IT IS FURTHER ORDERED** that Kathleen S. Cornett is admitted *Pro Hac Vice* for the above captioned matter.

AND IT IS SO ORDERED.



The Honorable Robert L. Reibold
Administrative Law Judge

December 9, 2024
Columbia, South Carolina