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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Robert L. Reibold, Administrative Law Judge

Case No. 24-ALJ-30-0067-CC

Appellate Case No. 2025-000735

DoorDash, Inc., Appellant,

v.

City of Anderson, Respondent.

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ISSUES PRESENTED

I. **Did the ALC err in concluding that the ordinance does not require a business to be physically present in the City of Anderson before a business license tax can be imposed?**

II. **Did the ALC err in its application of the *Travelscape* decision, where such decision was based upon the imposition of a state sales tax rather than a local business license tax and encompassed distinguishable facts?**

III. **Does the ALC's decision result in absurd results by authorizing South Carolina municipalities to impose a business license tax on businesses that profit "indirectly" from a third-party transaction?**

INTRODUCTION

This case arises from Respondent City of Anderson's ("City" or "Anderson") improper assessment of business license tax (the "Assessment") against Appellant DoorDash, Inc. ("DoorDash") for the 2022 and 2023 tax years (the "Assessment Period"). In South Carolina, a statute (or ordinance) may impose tax upon a taxpayer, but only if it *clearly applies* to such taxpayer. If any doubt arises as to whether the tax may be imposed upon a taxpayer, and if the taxpayer's reasonable interpretation demonstrates that the statute excludes imposition of the tax on the taxpayer, then the taxpayer's interpretation *must* prevail.

DoorDash operates an online platform using web-based technology that connects independent contractors, local restaurants or other local businesses, and consumers to allow for the purchase and delivery of goods from participating restaurants and other businesses. It is undisputed that DoorDash did not operate within the City: it did not have an office or place of business in the City, did not employ any individuals in the City, did not maintain any vehicles in the City, and did not perform any services within the City during the Assessment Period.

Nevertheless and contrary to statutory authority and case law, the South Carolina Administrative Law Court ("ALC") erroneously concluded that DoorDash was subject to the business license tax imposed by the City pursuant to Anderson Code Ord. § 26-36. Based on these undisputed facts, the Assessment is improper because DoorDash did not engage in business within the City for purposes of Anderson Code Ord. § 26-36 and therefore was not subject to the City's business license tax. Accordingly, DoorDash respectfully requests this Court to reverse the ALC's decision and conclude that the City's Ordinance requires that a business must engage in business activities physically within the City before the business license tax can be imposed on such business's activity.

To conclude otherwise, as the ALC did, is not only inconsistent with authority, but also leads to an absurd result: the City's business license tax becomes untethered and unconstrained, applying to an *unlimited* number of businesses, many only tangentially connected to the City. Businesses across the world become subject to the City's business license regime, so long as *their customers* are located in Anderson. Consider the magazine located in Charleston which never sends its employees to the City but receives advertising revenue from the restaurant in these transactions. Consider further the Chinese manufacturer selling disposable containers to the Anderson restaurant for use with To-Go orders, whose employees never step foot *in the United States*, never mind the City, but which profits indirectly from the resident business's activity. As discussed more fully in Section III below, if one hundred years of precedent requiring physical presence falls as a result of this case, the floodgates of business license taxation surely will open.

STATEMENT OF THE CASE

DoorDash requested a contested case hearing before the ALC pursuant to S.C. Code Ann. § 1-23-600 and S.C. Code Ann. § 6-1-410(C) to review a business license tax assessment issued

to DoorDash for the Assessment Period. (R. p. ---; ALC Order on Motions for Summary Judgment ("Order"), p. 1). DoorDash challenged the assessments and penalties and sought a refund of the payments made under protest. (R. p. ---; ALC Order, p. 1). DoorDash and the City filed cross 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. (R. p. ---; ALC Order, p. 2). The ALC held a hearing on the motions on December 11, 2024. (R. p. ---; ALC Order, p. 2). Counsel for both parties attended the hearing. (R. ---; ALC Order, p. 2). Neither party objected to the ALC's consideration of the exhibits submitted with the parties' motions and responses. (R. p. ---; ALC Order, p. 2).

On February 7, 2025, the ALC issued its Order on Motions for Summary Judgment and for purposes of this appeal, the ALC concluded the City's ordinance does not require physical presence as a prerequisite to assessment of a business license tax.[1] (R. p. ---; ALC Order, p. 41). Further, the ALC "did not reach the question of whether DoorDash can be considered to be physically present in Anderson." (R. p. ---; ALC Order, p. 41). DoorDash moved for reconsideration on February 14, 2025. (R. p. ---; ALC Reconsideration Order, p. 2). The City filed its opposition to the motion to reconsider on February 24, 2025. (R. p. ---; ALC Reconsideration Order, p. 2). The ALC denied the motion on March 17, 2025, and DoorDash filed a Notice of Appeal to this Court on April 14, 2025. (R. p. ---; ALC Reconsideration Order).

[1] The ALC also considered DoorDash's constitutional arguments related to the Commerce Clause. However, DoorDash does not raise any constitutional arguments in this appeal.

STATEMENT OF UNDISPUTED FACTS

DoorDash operates an online platform[2] (the "Platform") using web-based technology that connects independent contractors, local restaurants and other local businesses, and consumers.[3] (R. p. -----; ALC Order, p. 3; Merrigan Affidavit ¶ 4; DoorDash Consumer Terms and Conditions ("CT&C"), § 2[4]; *see also* Decision of City of Anderson, dated Feb. 21, 2024 ("City Decision"), at 1.) This Platform connects participating restaurants to their customers, allowing customers to place orders fulfilled directly by the restaurant. (R. p. -----; Order, p. 3). DoorDash operates its business from its headquarters in San Francisco and other locations where it has employees. (R. p. ---; Order, p. 3; Merrigan Aff., ¶ 5.) During the Assessment Period, DoorDash had no place of business or employees in the City. (R. p. ----; Order, p. 3; Merrigan Aff., ¶ 5-7; §§ 2, 3, 6, 9 of Independent Contractor Agreement; Hr'g Tr. 40:2-5; 19:16-18; 20:7-8, 19-21).

During the Assessment Period, DoorDash had agreements with restaurants in the City, and these restaurants advertised their food and goods through the Platform. (R. p. ---; Order, p. 3). Customers ordered and paid for goods from participating restaurants through the Platform. (R. p. ---; Order, p. 3). DoorDash also had agreements with local businesses or individuals, referred to as "Dashers", that provided delivery services between the restaurant and customer based on communications received through DoorDash's "Dasher App." (R. p. ---; Order, p. 3). When a

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[2] The DoorDash Platform may be accessed via traditional computer and internet browser as well as through a dedicated software application available for use on smart phones and tablets. (R. p. ---; Order, p. 3, n. 4).

[3] During the Assessment Period, DoorDash facilitated transactions for some non-restaurant merchants, such as convenience, drug and grocery stores. Because the vast majority of the merchants on the Platform during the Assessment Period were restaurants, for convenience, this Brief refers to restaurants in general when describing merchants.

[4] The terms are identical in all material respects to the terms in effect throughout the Assessment Period.

customer ordered food through the Platform from a restaurant located within the City, that order was sent to the restaurant for fulfillment. (R. p.---; Order, p. 3; Merrigan Aff., ¶ 8; CT&C § 6(a) ("DoorDash provides the Services to facilitate the transmission of orders by Users to Merchants.")). The restaurant prepared the food to fulfil the order. (R. p. ---; Merrigan Aff., ¶ 9; CT&C §6(a) ("You agree that the goods that you purchase will be prepared by the Merchant you have selected."); Hr'g Tr. 36:18-19). DoorDash did not prepare food or sell food within the City. (R. p. ---; Hr'g Tr. 36:18-19; Merrigan Aff. ¶¶ 10-11). Local restaurants prepared food and transferred title to the food to the customer at the restaurant's location when either the customer or the Dasher picked it up. (R. p. ---; CT&C § 6). DoorDash never took title to the food, and it was not responsible to consumers for issues with the food sold by restaurants. (R. p.---; CT&C, § 6).

During the Assessment Period, DoorDash did not deliver food within the City. (R. p. ---; Hr'g Tr. 20:19-24; 36:22-23; Merrigan Aff., ¶ 12-14; CT&C § 6 ("DoorDash is not in the delivery business, does not provide delivery services, and is not a common carrier."). The customer may elect to pick up the food at the restaurant's location where offered by the particular restaurant. (R. p. ----; CT&C § 2; Merrigan Aff., ¶ 14). If the customer requested delivery, the Platform identified a Dasher, who is an independent contractor courier, to pick up the order and deliver it to the customer. (R. p. ---; Order, p. 3; Merrigan Aff., ¶ 13; Consumer T&Cs § 6(a); City Decision at 1). Dashers may accept or decline a specific delivery. (R. p. ---; Order, p. 3). If the Dasher accepted the specific delivery, the Dasher delivered the food to the customer based on delivery instructions provided by the customer through the Platform. (R. p. ---; Merrigan Aff., ¶ 13; CT&C at §6(a).

When a customer requested delivery, the Dasher had previously consented to the Independent Contractor Agreement, which provides the following:

> Contractor understands and expressly agrees that **they are not an employee of DoorDash** or any restaurant, other business, or

> individual using the DoorDash Platform and that **they are performing Contracted Services on behalf of themselves and their business, not on behalf of DoorDash**. Contractor understands that: (i) <u>they are free to select the times they wish to be available on the DoorDash Platform</u> to receive Contracted Service Opportunities; (ii) <u>they are free to negotiate their compensation</u> by, among other things, accepting or rejecting the Contracted Service Opportunities transmitted through the DoorDash Platform, and can make such decisions to maximize their opportunity to profit; and (iii) <u>they have the sole right to control the manner in which Contracted Services are performed</u> and the means by which those Contracted Services are completed in accordance with applicable laws.

(R. p. ---; Independent Contractor Agreement, p. 2, ¶1) (emphasis added).

The restaurant received the price of the food through third-party payment processors. (R. p. ---; Merrigan Aff. ¶ 15). DoorDash charged customers certain fees for use of the Platform. (R. p. ---; Order, pp. 3-4; CT&C, § 12(e)).

During the Assessment Period, DoorDash did not in any way operate the Platform from within the City. (R. p. ---; Order, p. 3; Merrigan Aff., ¶ 7; Hr'g Tr. 14:13-18; 19:16-19). DoorDash did not engage in any business activities within the City. (R. p. ---; Merrigan Aff. ¶6-7, 10-12). DoorDash's business – the operation of a Platform – was limited to connecting and facilitating transactions among customers, restaurants, and Dashers. (R. p. ---; Merrigan Aff. ¶ 4). That business was run completely outside of the City from its principal place of business in San Francisco and other offices, none of which are in the City. (R. p. ---; Merrigan Aff. ¶ 5).

During the Assessment Period, DoorDash had agreements with 94 restaurants within the City. (R. p. ---; Order, p. 4). DoorDash received gross income of $1,940,388.10 in 2022 and $2,504,028.90 in 2023 from merchant commissions charged to restaurants in the City. (R. p. ---; *Id.).* Based on the gross income received in 2022 and 2023, the City assessed DoorDash $14,290.80 in business license tax and $4,130.70 in penalties for years 2022 and 2023. (R. p. ---;

Id.). The Assessment in this matter *does not* include gross income or business license tax derived from the food prepared and sold by restaurants, as that business license tax is paid by the restaurant whose business activity occurs within the City. (R. p. ----; Ex. A to Appellant's Motion for Summary Judgment and Memorandum in Support, p. 2; Ex. D to Appellant's Motion for Summary Judgment and Memorandum in Support, p. 2). The Assessment in this matter also does not include payments made to Dashers to deliver food to the restaurants' customers. (R. p. ----; Cite needed).

STANDARD OF REVIEW

The ALC's Final Order is subject to judicial review pursuant to S.C. Code Ann. § 1-23-610 (Supp. 2019) under the Administrative Procedures Act ("APA"). Under the APA, the applicable standard of review is in § 1-23-610(B), which states that this Court may reverse or modify the Final Order where the finding, conclusion, or decision is:

> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

This Court reviews questions of law, including the proper interpretation of a statute, "*de novo*" and "without any deference to the court below." *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008); *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011); *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016). The City's business license tax ordinance (the "Ordinance") is a tax imposition statute, and if the Court determines the Ordinance's language is ambiguous, then the Court must resolve any doubt in DoorDash's favor. *Alltel Commc'ns, Inc. v.*

S.C. Dep't of Revenue, 399 S.C. 313, 321, 731 S.E.2d 869 (2012). "[W]here the language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded, any substantial doubt being resolved in his favor." *Id.* at 321, 731 S.E.2d at 873.

When interpreting ordinances, "words must be given their plain and ordinary meaning." *Olds v. City of Goose Creek*, 424 S.C. 240, 249, 818 S.E.2d 5, 10 (2018). However, when there is a degree of ambiguity or disagreement, "an ordinance requiring a business license or occupation tax **must be construed liberally in favor of the citizen** and strictly against the government" unless he comes "clearly" within the terms of the ordinance. *Pee Dee Chair Co v. City of Camden* 165 S.C. 86, 162 S.E. 771, 772 (1932) (emphasis added); *Triplett v. City of Chester*, 209 S.C. 455, 462, 40 S.E.2d 684, 687 (1946). Licensing ordinances as tax measures may not be extended in scope beyond the clear import of its language. *City of Columbia v. Niagara Fire Ins. Co.*, 249 S.C. 388, 391, 154 S.E.2d 674, 675 (1967). Interpretation of business licenses ordinances are questions of law; thus, the court is free to decide these issues without any deference to the lower courts. *Olds*, 424 S.C. at 246, 818 S.E.2d at 9.

ARGUMENT

I. The ALC Erred in Concluding that the Ordinance Does Not Require a Business to be Physically Present in the City of Anderson Before a Business License Tax can be Imposed.

The Ordinance prohibits the City from levying a business license tax on businesses that do not engage in business activities physically within the City. (R. p. ---; Anderson Code of Ordinances ("Anderson Code Ord.") Chapter 26, Article II, §§ 26-36 and 26-37). For the reasons set forth more fully below, the ALC's decision must be reversed as it erred in interpreting the Ordinance: (1) its interpretation of the City's business license ordinance conflicts with the plain

and unambiguous language of the Ordinance, which provides that a business license tax is due from those doing business "in whole or in part within the limits of the City of Anderson" on the business's "gross income," which means "the gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from business done within a taxing jurisdiction;"[5] and (2) even if the Ordinance is ambiguous, the ALC erred by failing to construe the Ordinance under this Court's well-established rules of statutory construction favoring a taxpayer's reasonable interpretation of the law.

A. The ALC Erred by Ignoring the Plain and Unambiguous Language of the Ordinance Requiring a Business to be Physically Present in the City.

i. Statutory and Ordinance Overview, Generally

S.C. Code Ann. § 5-7-30 grants municipalities the power to levy "a business license tax on gross income." *See Olds*, 424 S.C. at 246, 818 S.E.2d at 9 (recognizing § 5-7-30 authorizes a municipality to levy a business license tax on gross income). To that end, in 2020, the South Carolina General Assembly enacted Act 176, "Business License Tax Standardization Act" (the "Act" or "Act 176"), effective January 1, 2022. S.C. Code Ann. § 6-1-400 *et seq*. (Supp. 2024). To ensure standardization and uniformity in the area of business license taxation by municipalities, the legislature requires that "a county or municipality that levies a business license tax must comply with the provisions of this article" unless otherwise specifically provided for by state law. S.C. Code Ann. § 6-1-400(A)(1). Act 176 also requires that a business license tax must be computed on a taxpayer's gross income as defined by the Act:

> (a) "Gross income" means the gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from business done **within a taxing jurisdiction**. For taxing jurisdictions in which the person or business has a domicile, business done within that taxing jurisdiction shall include all gross receipts or revenue received or

[5] *See* S.C. Code § 6-1-400(E)(1)(a); Anderson Code Ord. §§ 26-36 and 26-37.

accrued by such person or business, excepting income earned outside of the taxing jurisdiction on which a license tax is paid by the person or business to some other taxing jurisdiction and fully reported to the taxing jurisdiction. For taxing jurisdictions in which the person or business does not have a domicile, business done within that taxing jurisdiction shall include only gross receipts or revenue received or accrued within such taxing jurisdiction. In all cases, if the taxpayer pays a business license tax to another county or municipality, then the taxpayer's gross income for the purpose of computing the tax within the taxing jurisdiction must be reduced by the amount of gross income taxed in the other county or municipality.

S.C. Code Ann. § 6-1-400(E)(1)(a) (emphasis added).

After the enactment of Act 176, the City adopted a new business license ordinance codified at Anderson Code Ord. Chapter 26, Article II, which complies with the requirements of the Act, including adopting the uniform definition of "gross income." The City's business license ordinance requires that:

> "[e]very 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."

Anderson Code Ord. § 26-36, *et seq.* (Nov. 8, 2021, as amended) (emphasis added). As noted in the ALC Order (R. p. ---), the following definitions in the City's Ordinance are also relevant:

> *Business* means any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, either directly or indirectly.
>
> *Gross income* means the gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from business done **within the municipality**. If the licensee has a domicile within the municipality, business done within the municipality shall include all gross receipts or revenue received or accrued by such licensee. If the licensee does not have a domicile within the municipality, business done within the municipality shall include only gross receipts or revenue

> received or accrued within the municipality. In all cases, if the licensee pays a business license tax to another county or municipality, then the licensee's gross income for the purpose of computing the tax within the municipality must be reduced by the amount of revenues or receipts taxed in the other county or municipality and fully reported to the municipality. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds that are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross receipts or gross revenues for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Department of Insurance, or other government agencies….
>
> *Person* means any individual, firm, partnership, limited liability partnership, limited liability company, cooperative non-profit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company, or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a business in the absence of the principal.

Anderson Code Ord. § 26-37 *et seq.* (emphasis added).

ii. *The Ordinance's plain and unambiguous language prohibits the City from imposing the business license tax on a Person unless the Person is doing business "in whole or in part within the limits of the City of Anderson."*

South Carolina courts review questions of statutory interpretation de novo. *Books-A-Million, Inc. v. S.C. Dep't of Rev.*, 437 S.C. 640, 880 S.E.2d 476 (2022). "The usual rules of statutory construction apply to the interpretation of tax statutes." *Alltel Commc'ns, Inc. v. S.C. Dep't of Rev.*, 399 S.C. 313, 319-20, 731 S.E.3d 869, 872 (2012). "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Charleston Cty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). When interpreting a statute, the first question a court considers is "whether the statute's meaning is clear on its face." *Creswick v. University of South Carolina*, 434 S.C. 77, 81, 862 S.E.2d 706, 708 (2021) (*citing Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 346, 549 S.E.2d 243, 246 (2001)). "If a statute's language is plain,

unambiguous, and conveys a clear and definite meaning, there is no need to employ the rules of statutory interpretation, and this Court must apply the statute according to its literal meaning." *Id.* *(citing Miller v. Aiken*, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005)). Further, where "a statute's language is plain and unambiguous, and conveys a clear and definite meaning," there is nothing to interpret, "and the court has no right to look for or impose another meaning." *Grant v. City of Folly Beach*, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001).

Here, the ALC's decision ignores the plain and unambiguous language of Anderson Code Ord. § 26-36 that requires a business to engage in activity physically within the City to be subject to the business license tax: "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 . . . ." (emphasis added). The ALC's decision also ignores the plain and unambiguous definition of "gross income": "the gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from **business done within the municipality**." Anderson Code Ord. § 26-37 (emphasis added). By focusing on business done "within" the City, Anderson Code Ord. §§ 26-36 and 26-37 clearly and unambiguously require that a taxpayer be engaged in activity physically within the City to be subject to the business license tax. Certainly, the law allows municipalities to assess the business license fee against nonresidents (i.e., those that are not domiciled in the City) but only when they are physically present in the municipality doing business.

Because the language is plain and unambiguous, no South Carolina court has ever held that a business was "doing business" in a city when it did not engage in activity physically within a jurisdiction. To the contrary, a long line of South Carolina cases establishes that doing business within a city for purposes of the business license ordinance requires that the business engage in

activity while being physically present within the city limits. Stated differently, no court has held, or even hinted in dicta, that merely receiving revenue from customers located in the city is sufficient to be "doing business" for business license tax purposes.

Rather, when analyzing a company's business license tax obligations, South Carolina courts have consistently reviewed the type of activities engaged in by the business while it was physically present within the city limits. In *Pee Dee Chair Company v. Camden*, the South Carolina Supreme Court held that a nonresident furniture company was not engaged in "business" in the city by using its own truck to make a single delivery to a customer in the city. *Pee Dee Chair Co*, 165 S.C. 86, 89, 162 S.E. 771, 772 (1932). According to the court, an "isolated incidental or casual" delivery by the business, without evidence that the business intended to engage in more deliveries in the city, was not sufficient to constitute a taxable "business" in the city. *Id.* at 93, 162 S.E.2d at 774.

In *Triplett v. City of Chester*, 209 S.C. 455, 40 S.E.2d 684 (1946), the South Carolina Supreme Court held that a construction company with an office in the city was subject to the city's business license tax, despite its construction projects being located outside the city. The court based its holding on the physical presence of the company's equipment and employees actively conducting business within the city's limits:

> One or more employees are regularly in said office during business hours and response is there when not away at some project under construction. All equipment when not in use is stored in the building in which the office is located. . . . 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.

Id. at 458-59, 40 S.E.2d at 685 (emphasis in original).

Finally, in *Town of Hilton Head Island v. Kigre, Inc.*, 408 S.C. 647, 760 S.E.2d 103 (2014), the South Carolina Supreme Court rejected a constitutional challenge to the Town of Hilton Head Island's business license tax brought by a business with a manufacturing facility within the Town. In upholding the ordinance, the court explained that the "business license fee is a tax on the privilege of doing business within the Town, and therefore, **it is the manufacturing activity of [the business], which occurs wholly within the Town limits, and not [the business's] receipt of income or sales of its products in interstate commerce that is the business activity being taxed**." *Id.* at 649, 760 S.E.2d at 103 (emphasis added).

These cases demonstrate that the relevant activity for the business license tax is the activity the taxpayer physically engages in within the city's geographic limits. There is no support in South Carolina law for the proposition that deriving revenue from the operation of a Platform wholly outside of the state constitutes doing business "within the municipality" for purposes of the business license tax.

The undisputed facts establish that DoorDash does not engage in any business within the City's limits. *See* R. p. ----; Order, p. 3 ("DoorDash manages its platform from outside of the City of Anderson and has no place of business or employees within the City.").[6] Therefore, under the plain meaning of Anderson Code Ord. § 26-36, DoorDash is not engaged in business in the City,

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[6] The ALC's order contains conflicting statements regarding DoorDash's physical presence in the City. *Cf.* R. p. ---; Order, p. 3 ("DoorDash manages its platform from outside of the City of Anderson and has no place of business or employees within the City") with R. p. ---; Order, p. 10 ("The Court concludes both that the City's ordinance does not require a physical presence and that, even if a physical presence is required, that requirement is satisfied." Nevertheless, the ALC ultimately concludes "[t]he Court specifically did not reach the question of whether DoorDash can be considered to be physically present in Anderson. As the Court's ruling on the construction of the ordinance was dispositive, a ruling on this motion was not necessary." (R. p. ---; Order, p. 41, n. 34).

and the City has no authority to impose a business license tax upon DoorDash. The business of DoorDash is providing the Platform, which connects customers, restaurants, and Dashers to facilitate transactions between those parties. (R. p. ----; Merrigan Aff., ¶ 4, CT&C, 2). Every component of DoorDash's business is directed from its San Francisco headquarters or other locations where DoorDash has employees managing the Platform, none of which are in the City. (R. p. ---; Merrigan Aff. ¶ 5). All services that DoorDash provides that earn revenue occur through the Platform, and DoorDash performs each and every one of these services completely outside of the City. (R. p. ---; Merrigan Aff., ¶ 6-7, 10-12). Thus, the City has no jurisdiction to tax any of DoorDash's income. Simply put, the City is impermissibly attempting to tax DoorDash's business activity which occurs wholly outside the City limits. *See Town of Hilton Head Island v. Kigre, Inc.*, 408 S.C. 647, 649, 760 S.E.2d 103, 103-104 (2014).

The ALC's conclusion ignores the plain and unambiguous meaning of the phrase "business . . . done within the municipality" because the undisputed facts establish DoorDash did not engage in "business" within the City of Anderson: DoorDash did not have an office or place of business in the City; it did not employ any individuals in the City; it did not maintain any vehicles in the City; and it did not perform any services within the City (i.e., it did not prepare or sell food, and it did not deliver food). (R. p. ---; Order, p. 3; Hr.'g Tr. 20:19-24, 36:18-19, 36: 22-23; Merrigan Aff. ¶¶ 10-14; CT&C § 6).

"If a statute's language is plain, unambiguous, and conveys a clear and definite meaning, there is no need to employ the rules of statutory interpretation, and this Court must apply the statute according to its literal meaning." *Creswick v. Univ. of S.C.*, 434 S.C. at 81, 862 S.E.2d at 708 *(citing Miller v. Aiken*, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005)). Where there is nothing

to interpret, "the court has no right to look for or impose another meaning." *Grant v. City of Folly Beach*, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001).

Accordingly, under the plain meaning of S.C. Code § 6-1-400(E)(1)(a) and Anderson Code Ord. §§ 26-36 and 26-37, DoorDash was not engaged in business in the City because it had no presence in the City. Further, because DoorDash had no presence in the City, there were no gross receipts subject to the City's business license tax. All business activities taking place within the City were performed by *other* people—i.e., restaurants who sold food from their locations within the City, and Dashers (independent contractors) who delivered goods to customers within the City. (R. p. ---; Merrigan Aff. ¶8-9, 13-14). Because DoorDash did not engage in any "business" *within the City*, it cannot be doing business in the City for purposes of the business license ordinance and cannot have any gross income subject to tax.

B. Even if the Language of the City of Anderson's Ordinance is Ambiguous, the ALC Erred by Failing to Construe the Ordinance Under Well-Established Rules of Statutory Construction Favoring a Taxpayer's Reasonable Interpretation.

Even if the Ordinance is ambiguous, the ALC's decision ignores well-established statutory construction principles that any doubt in the application of a tax statute must be resolved in favor of the taxpayer. Not only did the ALC disregard DoorDash's reasonable interpretation of the statute and misinterpret several South Carolina cases confirming that "doing business" requires engaging in activity while physically present within a jurisdiction, but the ALC also failed to properly analyze guidance from the South Carolina Attorney General and the state's municipal association, both of which confirm DoorDash's interpretation of the Ordinance. This Court should

reverse the ALC's decision and uphold the long-standing principle that a taxpayer's reasonable interpretation of the business license tax ordinance must prevail.

i. The City's interpretation is not entitled to deference.

When interpreting a tax imposition statute, in the absence of statutory clarity, the court must interpret the statute in favor of the taxpayer. *S.C. Nat'l Bank v. S.C. Tax Comm'n*, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989). "There is no question that all tax laws must be construed against the taxing power and in favor of the taxpayer where there is any doubt in the mind of the Court." *Pacolet Mfg. Co. v. Query*, 174 S.C. 359, 364, 177 S.E. 653, 655 (1934); accord *Clark v. S.C. Tax Comm'n*, 259 S.C. 161, 169, 191 S.E.2d 23, 26 (1972). In South Carolina it is "settled principle that any substantial doubt in the application of a tax statute must be resolved in favor of the taxpayer." *Alltel Communications, Inc. v. S.C. Dep't of Rev.*, 399 S.C. 313, 318, 731 S.E.2d 869, 872 (2012); *see also Hadden v. S.C. Tax Comm'n*, 183 S.C. 38, 190 S.E. 249, 251-52 (1937); *Columbia Ry., Gas & Elec. Co. v. Carter*, 127 S.C. 473 121 S.E.377, 380 (1924).

In fact, the South Carolina Supreme Court confirmed that a "statute or an ordinance requiring a business license or imposing a license or occupation tax must be construed liberally in favor of the citizen and strictly against the government, and no one can be held to payment of the tax unless he comes clearly within the terms of the particular statute or ordinance." *Pee Dee Chair Co. v. Camden*, 165 S.C. 86, 89 (1932); *see also Olds v. City of Goose Creek*, 424 S.C. 240, 251, 818 S.E.2d 5, 11 (2018) (rejecting the city's interpretation of a certain phrase in their business license tax ordinance because it was "impossible for the court to give effect to the provision."); *cf. Charleston Cnty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995) ("Although great deference is accorded the decisions of those charged with interpreting and

applying local zoning ordinances, 'a broader and more independent review is permitted when the issue concerns the **construction** of an ordinance.'") (emphasis added).

Even if the Ordinance, on its face, is unclear whether a business must engage in activity physically within the jurisdiction, the ALC erred in its interpretation of the City's Ordinance because South Carolina law requires that any ambiguity in the Ordinance be resolved in DoorDash's favor. *See Pee Dee Chair Co., v. Camden*, 165 S.C. 86, 89 (1932) ("A statute or an ordinance requiring a business license or imposing a license or occupation tax must be construed liberally in favor of the citizen and strictly against the government."). The purpose of this well-established principle is to ensure that tax requirements are clear to taxpayers in advance. *See id.* ("[N]o one can be held to payment of the tax unless he comes clearly within the terms of the particular statute or ordinance.") Accordingly, the City is not afforded any deference in its interpretation of the statute.[7]

ii. South Carolina administrative guidance confirms that "doing business" for purposes of the business license tax requires a business to be physically present in the municipality.

Although the cases addressed *supra* do not address the business license tax obligations of an out-of-state internet platform, the South Carolina Office of the Attorney General (the "AG's Office") has opined on the primary legal issues in this case—whether a city's business license tax requires physical presence for a similar technology platform—and reached the same conclusion as DoorDash in this matter. *See S.C. Dep't of Soc. Servs. v. Johnson*, 386 S.C. 426, 436, 688 S.E.2d 588, 593 (Ct. App. 2009) ("While this court is not bound by the opinions of the Attorney General,

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[7] South Carolina Courts have acknowledged the recent U.S. Supreme Court case *Loper Bright Enters, v. Raimondo*, in which the Court overruled precedent requiring a reviewing court to defer to permissible agency interpretations of the statutes those agencies administered. *See Colonial Pipeline Co. v. S.C. Dep't of Revenue*, 905 S.E.2d 129, 134 (2024) (citing *Loper Bright Enters, v. Raimondo*, 144 S. Ct. 2244 (2024).

we find it instructive to reference an opinion specifically discussing section 20-7-870 and its application in an indirect contempt proceeding."); *Marchant v. Hamilton*, 279 S.C. 497, 502, 309 S.E.2d 781, 784 (Ct. App. 1983) ("[T]hese opinions are not binding on the Court. However, they should not be disregarded without cogent reasons.").

Specifically, in a 2023 opinion, the AG's Office addressed the application of Myrtle Beach's business license tax to a car-sharing technology platform, Turo, Inc. In its Opinion, the AG's Office confirmed the requirement that a business be physically present within the city before the business license tax can be imposed on a business. Op. Atty' Gen., 2023 WL 4918024 (S.C.A.G. July 26, 2023) (the "*Turo* Opinion").

Turo offers a peer-to-peer car sharing platform through its website and mobile app that allows vehicle owners ("Hosts") to rent their vehicles to individuals ("Guests"). The Hosts set the prices and availability for renting the vehicles, and the Host and Guest decide on the location for the vehicle exchange. Hosts could deliver vehicles to Guests in Myrtle Beach, Guests could use the vehicles in Myrtle Beach, and either the Guest or Host could be a Myrtle Beach resident. Turo, however, does not own or maintain any of the vehicles being shared through the platform. Turo is based in California and does not have offices, employees, salespeople, or property in Myrtle Beach. Turo earns revenue by charging fees to Hosts and Guests for use of the platform.

South Carolina State Representative Cody Mitchell requested an opinion on whether Turo has nexus with Myrtle Beach to require it to register for a business license or subject it to the tax and whether Turo has gross receipts in the city for purposes of the business license tax. After reviewing South Carolina case law and its prior opinions on municipal business license ordinances, the AG's Office issued the *Turo* Opinion, concluding that, despite earning revenue from Hosts and

Guests in the city, there was insufficient facts to conclude that Turo was engaged in business in the city:

> Regarding Turo, you indicate it does not have an office in [Myrtle Beach], does not maintain vehicles in [Myrtle Beach], does not employ any salespeople in [Myrtle Beach], or own any property in [Myrtle Beach]. While Turo is not required to be a resident of [Myrtle Beach] to be subject to its business license tax, the information you provide indicates Turo has no physical presence in [Myrtle Beach]. **Additionally, the information you provided does not include evidence that Turo intends to conduct business in [Myrtle Beach]. Without a physical presence or evidence of additional activity within [Myrtle Beach] or intent to conduct business in [Myrtle Beach], a court may find Turo is not doing business within [Myrtle Beach].**

Op. Atty' Gen., 2023 WL 4918024 (S.C.A.G. July 26, 2023) (emphasis added).

The *Turo* Opinion is consistent with numerous opinions issued by the Attorney General demonstrating that a business must engage in business activity physically within the boundaries of a city to be subject to its business license ordinance. For instance, in a 1971 opinion, the AG's Office concluded "[i]t is equally clear, however, that a municipal corporation has no inherent power to impose revenue license charges on activities, such as businesses and occupations, that are carried on exclusively outside the municipality's geographical limits." Op. Att'y Gen., 1971 WL 17513 (S.C.A.G. June 15, 1971) (concluding that a nonresident automobile dealer was not doing business in the city because of test-driving of automobiles in the city). Similarly, in a 1988 opinion, the AG's Office concluded that a nonresident realtor could only be "doing business" within a city if the realtor was engaging in business activities while physically present within the city limits:

> If the nonresident realtor advertises the property from his nonresident office and has no activity within the municipality, then such would not constitute doing business. Should the realtor, however, actively participate in the showing, listing, advertising or other solicitation of buyers within the municipality, then under such

> circumstances, the realtor would most properly be doing business within the municipality and subject to its license fees.

Op. Att'y Gen., 1988 WL 485210 (S.C.A.G. Jan. 7, 1988). In other words, advertising to potential customers within the city and, by implication, earning revenue from city residents, is not "doing business" in the city if these activities are performed by the business from a location outside of the city. Finally, in this Opinion, the AG's Office recognized the analysis does not begin and end with whether a person is a resident or nonresident of the municipality; rather, the important inquiry is whether the person is "within a municipality's boundaries"—that is, physically located within the municipality:

> The prevailing rule that ordinances of a general nature are binding upon all persons within the corporate area, whether residents or not, and upon all property within the municipal boundaries whether owned by inhabitants or strangers, applies to licensing ordinances. That is to say, license requirements and taxes imposed upon all engaging in certain businesses, occupations or activities within the municipality may be made and generally are binding on residents and non residents alike.

Op. Att'y Gen., 1988 WL 485210 (S.C.A.G. Jan. 7, 1988); *see also Turo* Opinion, Op. Atty' Gen., 2023 WL 4918024 (S.C.A.G. July 26, 2023) ("As we stated in prior opinions, municipal ordinances are binding upon all persons and property within a municipality's boundaries regardless of whether they are residents or not.") (*citing* Op. Att'y Gen., 1988 WL 485210 (S.C.A.G. Jan. 7, 1988).

These Opinions from the AG's Office support DoorDash's reasonable interpretation that the City's business license tax does not apply to DoorDash. Like Turo, DoorDash offers a platform connecting consumers with third-party sellers of goods and services. Like Turo, DoorDash is not physically present in the City. It does not have an office in the City, does not maintain any vehicles in the City, does not provide any services in the City, does not employ any salespeople in the City,

and does not otherwise operate in the City. "Without a physical presence or evidence of additional activity within [the City] or intent to conduct business in [the City], DoorDash is not doing business in the City for purposes of the business license ordinance and, thus, cannot have any gross income subject to tax. Op. Atty' Gen., 2023 WL 4918024 (S.C.A.G. July 26, 2023).

iii. The Municipal Association of South Carolina publicly advises that municipalities do not have any authority to tax nonresidents who remotely sell goods to residents within the municipality.

The Municipal Association of South Carolina ("MASC") is a nonprofit association that represents and serves the state's 271 incorporated municipalities. Mission, *available at* www.masc.sc/association/mission (lasted visited June 23, 2025). MASC's stated mission is "to offer services, programs, and tools that will give municipal officials the knowledge, experience, and tools for enabling the most efficient and effective operation of their municipalities in the complex world of municipal government." *Id.* To that end, MASC publishes a "Business License Handbook" for municipalities to use when administering its business license tax ordinances. (R. p. ---; Appellant's Mo. For Summary Judge, Ex. G, at Foreword). In its Business License Handbook, MASC affirmed that municipalities have no authority to tax nonresidents who sell goods remotely to residents within the municipality:

> Money collection by mail for goods sold by a nonresident by mail, telephone, or electronic means and delivered by mail or common carrier has historically been considered insufficient to provide a nexus for a business license tax. *See Quill Corporation v. North Dakota*, 504 U.S. 298 (1992). The federal case of *South Dakota v. Wayfair, Inc.,* 138 S.Ct. 2080 (2018), has eased the requirement of physical presence of internet sellers within a state for the imposition of state sales tax. **However, *Wayfair*[8] has not yet been extended to municipal business license tax**.

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[8] In *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080, the U.S. Supreme Court held that the Dormant Commerce Clause does not require that a seller have physical presence in the taxing state to be

(R. at _____; MASC "Business License Handbook" at 11, attached to Appellant's Motion for Summary Judgment as Exhibit G) (emphasis added). As the organization charged with advising and guiding municipalities in the administration of their business license ordinances, MASC's public statements are consistent with DoorDash's position in this matter: a municipality's business license tax may *only* be imposed on activity of a nonresident business when that business's activity is performed within the municipality's territory.

iv. *DoorDash adopted a reasonable interpretation when it concluded that the Ordinance did not require it to pay the business license tax.*

The weight and history of South Carolina authorities—from caselaw, to Attorney General opinions, to even the advice of the MASC to cities on how to implement local business license tax ordinances—demonstrate the well-established interpretation that the Ordinance requires a business to engage in activity physically within a city's jurisdiction to be subject to the tax. Therefore, if the plain language of the Ordinance is ambiguous on this point, DoorDash's interpretation must have been reasonable. To conclude otherwise means that the South Carolina Supreme Court in *Town of Hilton Head Island v. Kigre*, the Attorney General's Office, and the MASC were not only wrong but unreasonable in their interpretation of the business license tax statutes.

Because South Carolina requires that the Ordinance "be construed liberally in favor of the citizen and strictly against the government, and no one can be held to payment of the tax unless he comes clearly within the terms of the particular statute or ordinance," any ambiguity must be resolved in favor of DoorDash. Therefore, to the extent that there is any ambiguity whether the Act or Ordinance requires a business to engage in activity physically within the jurisdiction to be

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required to collect and remit sales tax. *See* S.C. Rev. Ruling #18-14; S.C. Code Ann. § 12-36-70(3) (requiring marketplace facilitators to collect and remit sales and use tax to the Department of Revenue on facilitated transactions). Importantly, neither § 12-36-70(3) nor S.C. Revenue Ruling #18-14 applies to local businesses in any way, as acknowledged by MASC in its Business License Handbook.

subject to a business license tax, the ALC erred in not construing the Ordinance in favor of DoorDash. *Pee Dee Chair Co. v. Camden*, 165 S.C. 86, 89 (1932).

II. The ALC Erred in its Application of the *Travelscape* Decision, Where Such Decision was Based Upon the Imposition of a State Sales Tax Rather than a Local Business License Tax and it Encompassed Distinguishable Facts from this Matter.

In its decision, the ALC cited to *Travelscape, LLC v. South Carolina Department of Revenue*, 391 S.C. 89, 705 S.E.2d 28 (2011) as "instructive" in determining whether the City's ordinance requires physical presence before the City can impose a business license tax. More specifically, the ALC relied upon *Travelscape* to determine whether DoorDash conducted business within the City by comparing phrases in the relevant statutes – in isolation – to the language of the Ordinance at issue in this matter. (R.p. ---; Order, pp. 18-19). However, *Travelscape* is not applicable here for two important reasons: that case concerned a different tax and a business with distinguishable facts from DoorDash.

A. *Travelscape* is distinguishable from this matter because it concerned the imposition of a state sales tax rather than a local business license tax.

As an initial matter, the ALC erred in applying the legal doctrine of *in pari materia* to analyze the applicable statutes in *Travelscape* to Anderson Code Ord. § 26-36 and § 26-37. Under the doctrine of *in pari materia*, "statutes dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single harmonious result." *Amisub of S.C., Inc. v. S.C. Dep't of Health and Envtl.*, 407 S.C. 583, 598, 757 S.E.2d 408, 419 (2014). This rule of statutory construction, however, applies only "where there is an ambiguity to be resolved and not where, as in this case, the meaning of the statute is clear and unambiguous." *Rabon v. S.C. St. Highway Dep't*, 258 S.C. 154, 157, 187 S.E.2d 652, 654 (1972). The ALC erred in applying this rule because Act 176 and the City's Ordinance are not ambiguous (discussed, *infra*).

Nevertheless, even if the relevant provisions of Act 176 and Anderson City Ordinance § 26-36- and § 26-37 are ambiguous,[9] they are not *in pari materia* to the sales tax laws because they do not deal with the same subject matter. The business license tax is a fundamentally different tax from the sales tax. South Carolina imposes a sales tax on "the gross proceeds of sales" by those "engaged or continuing within this State in the business of selling tangible personal property at retail." S.C. Code Ann. § 12-36-910(A). It is a transactional tax that the retailer collects from the purchaser on each transaction. *See* S.C. Code Ann. § 12-36-940(A). In contrast, the business license tax is a direct tax on a business's gross income for "the privilege of doing business in that county or municipality." S.C. Code Ann. § 6-1-400(A)(2); Andeson Code Ord. § 26-36. Simply because both laws impose taxes does not mean they deal with the same subject matter. *See, e.g., City of Spartanburg v. Public Serv. Comm. of SC*, 281 S.C. 223, 225, 314 S.E.2d 599, 600 (1984) (rejecting the argument that business license taxes should be treated in the same manner as ad valorem property taxes). In fact, the South Carolina Supreme Court has previously ruled that business license taxes are distinct from sales taxes. *See Town of Hilton Head Island v. Kigre, Inc.*, 408 S.C. 647, 649, 760 S.E.2d 103, 103 (2014) ("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.").

The purpose of the business license tax is to fund revenue for the municipality based on the taxpayer's use—or burden—of the municipality's infrastructure. The "burdens" relate to use of roads, public safety officials, and utility infrastructure. This purpose is in complete consistency with the plain language of Act 176 and the City's Ordinance: to raise funds by persons physically

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[9] And if the relevant provisions of Act 176 and Anderson City Ordinance § 26-36- and § 26-37 are ambiguous, as a tax law, it "must be construed liberally in favor of the citizen and strictly against the government." *Pee Dee Chair Co. v. Camden*, 165 S.C. 86, 162 S.E. 771 (1932).

present in the City for the use of the City's infrastructure (i.e., the restaurant, the couriers, etc.). Those individuals are entirely different from DoorDash, who conducts its business wholly outside of the City and does not create a burden on the infrastructure within the City.

MASC also acknowledges this purpose in its Business License Handbook, when describing the "Business License Concept": "A business license is not a property tax. It is a method of requiring a business or occupation to contribute its share in support of the government 'as it regards the profits or advantages of such occupations.' *State v. Hayne*, 4 S.C. 403 (1873); *Town of Hilton Head v. Kigre, Inc.*, 408 S.C. 647, 760 S.E.2d 103 (201); *Olds v. City of Goose Creek*, 424 S.C. 240, 818 S.E.2d 5 (2018)." (R. p. ----; MASC "Business License Handbook" at 1, attached to Appellant's Motion for Summary Judgment as Exhibit G).

B. The undisputed facts of this matter demonstrate DoorDash is distinguishable from the facts in *Travelscape*.

DoorDash does not prepare, provide, deliver or sell any food within the City and those facts are entirely distinguishable from *Travelscape* where the taxpayer was "engaged in the business of *furnishing* accommodations." *Travelscape, LLC*, 391 S.C. at 102-03, 705 S.E.2d at 35 (emphasis added). Travelscape furnished hotel reservations to the general public through the website, Expedia.com. *Id.* at 95, 705 S.E.2d at 30. That is distinct from the service DoorDash provides: DoorDash does not sell food through its Platform; rather, it operates a Platform that connects restaurants who prepare and sell their food to customers, and independent contractors who deliver the prepared food to the customers. Thus, there is no basis to apply the rationale of *Travelscape* where such rationale was based upon the fact Travelscape was *furnishing* accommodations. The critical fact in that case according to the Court was that Travelscape was "supplying hotel rooms." 705 S.E.2d at 35. Here, DoorDash is not furnishing or providing food, delivery services, or any other activity within the City limits.

III. The ALC's Decision Reaches an Absurd Result by Authorizing South Carolina Municipalities to Impose a Business License Tax on Businesses the Profit "Indirectly" from a Third-Party Transaction.

The ALC's decision reaches an absurd result by authorizing South Carolina municipalities to impose a business license tax on businesses that profit "indirectly" from a third-party transaction. (R. p. ----; Order at p. 17). "The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd." *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000) (*citing Ray Bell Constr. Co. v. School Dist. of Greenville Co.,* 331 S.C. 19, 501 S.E.2d 725 (1998)). "However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention." *Id.*

DoorDash offers an online Platform connecting consumers with third-party sellers of goods and services. Because DoorDash does not engage in business activities physically within the City, it does not have an office in the City, it does not maintain any vehicles in the City, it does not provide any services in the City, and it does not employ any salespersons in the City, the analysis should end here. Neither the City nor the ALC disputed any of these facts. And neither the City nor the ALC cited to any case that supports the position that these activities alone are sufficient to demonstrate a taxpayer is conducting "business" within the municipality for purposes of the business license tax.

Nevertheless, the ALC's Order takes an unprecedented step by extending the City's business license tax well beyond its borders to any business, wherever located, that "indirectly" profits from business activities in the City by contracting with others in the City and receiving revenue from them. (R. p. ----; Order at p. 15-16.) The ALC's erroneous interpretation of the

Ordinance leads to absurd results. There are innumerable businesses and industries that profit "indirectly" from others' business activity in the City. This certainly includes any remote business making direct sales to Anderson consumers, as well as any business that serves a local Anderson business making its own sales. These industries include payment processors, credit card companies, banks, advertisers, and more as they all receive fees connected with sales by others. More specific to the facts of this matter, the ALC's unreasonable interpretation could lead to numerous "indirect" parties being subject to business license tax in the City of Anderson without stepping foot in the City limits.

Consider a typical DoorDash transaction occurring in the City every day. Let's say a customer picks up his copy of Garden & Gun magazine and sees an advertisement for an Anderson-based restaurant. Hungry and wanting to support local business, the customer hops on DoorDash and places an order for shrimp and grits via credit card with that restaurant. The restaurant receives the order and the chef pulls down the shrimp and grits needed to prepare the meal. The shrimp were delivered to the restaurant fresh that day by a local fisherman, while the grits were delivered via common carrier from a company in Alabama. After the food is prepared, the order is boxed up in a disposable container ordered in bulk from a Chinese supplier selling on Amazon, the customer's credit card is charged, and then once prepared, a Dasher drives to the restaurant, picks up the order, and delivers it to the customer's home. At the end of the night, the Anderson-based restaurant records its sales using its monthly subscription-based accounting software used to manage the restaurant's finances.

Under the reasonable interpretation proposed by DoorDash, the business license ordinance would apply to gross income received on each transaction from (1) the restaurant, which is located in Anderson; (2) the local fisherman, who delivered his shrimp to the restaurant in Anderson; and

(3) perhaps the Dasher, which picked up the food at the Anderson restaurant and delivered within the City limits.

However, under the ALC's analysis, although based in Charleston, Garden & Gun is doing business in the City limits because it "indirectly" received gross revenue (i.e., advertising revenue) that is attributable to business activity that occurred within the City limits (i.e., the restaurant's sale of food). This is despite the fact the Charleston magazine is not physically present in the City limits, did not prepare the food, and did not deliver the food.

Likewise, when a customer uses a credit card via DoorDash's Platform, credit card companies impose a "transaction fee" on either or both the customer and/or merchant for use of the credit card companies' network. Again, under the ALC's rationale, the credit card companies' fee revenue generated from the food purchase would be considered "indirect" gross income that is attributable to business activity that occurred within the City limits. Like DoorDash and Garden & Gun, the credit card company is not physically present in the City limits, did not prepare the food, and did not deliver the food. However, under the ALC's rationale, the City can impose the business license tax on credit card companies and banks that profited "indirectly" from the Anderson restaurant's business activity within the City.

Further, although the company in Alabama manufactures its grits out of state and delivers them via common carrier, that company "indirectly" generated revenue in the City when the Anderson-based restaurant places its grits order. Under the ALC's rationale, the City can require the Alabama company to obtain a business license and pay the business license tax, as well.

And why stop there? Consider the disposable container the restaurant ordered from Amazon. That container is vital to the order—without the container, the Dasher cannot transport the meal to its customer. Under the ALC's analysis, the Chinese supplier profits "indirectly" from

the restaurant's business activity in the City. The supplier has no physical presence *in the United States*, let alone Anderson. However, according to the ALC, the City can reach across the ocean to assess the business license tax on that retailer.

And how about the monthly fee the software company collects from the Anderson-based restaurant for accessing the accounting software? The software company has entered into a contract with the restaurant in the City and is "indirectly" profiting from the restaurant's business activity in the City; the restaurant would not need the software but for the sales it makes in the City.

Let's take it one step further. Assume the Dasher involved in this sale is in need of reliable transportation to make deliveries, so she leases a vehicle, making a down payment at a GM dealership in Greenville and entering into a lease through Financial, GM's wholly owned finance subsidiary. GM Financial is located in Fort Worth, Texas. Each month, the Dasher in this example makes payments via mail to GM Financial. Under the ALC's rationale, GM Financial is "indirectly" generating revenue in Anderson, based on the Dasher's business activities performed within the City. This same rationale applies not only to the lease payments, but also the down payment. It even applies when the Dasher fills her gas tank outside the City—that gas stations "indirectly" profits from the Dasher's business activities when the Dasher buys gas to make her deliveries.

The ALC did not even discuss the breadth of the principle it adopted, much less explain how to constrain it.[10] The ALC's interpretation leads to a result that is "plainly absurd" and in

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[10] Implicit in the ALC's Order is the principle that a business without physical presence must meet some threshold of "economic or virtual contacts." (R. p. ----; Order, p. 30). However, the ALC failed to state what that threshold is or engage in any analysis regarding what constitutes "economic or virtual contacts."

direct conflict with the recognized "goal of statutory construction [ ] to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd." *Hodges*, 341 S.C. 79, 533 S.E.2d 578 (2000) (*citing Ray Bell Constr. Co. v. School Dist. of Greenville Co.,* 331 S.C. 19, 501 S.E.2d 725 (1998)). "A cornerstone of the law is the unwavering commitment to ensure that the law is applied even handedly—similarly situated parties must be fed from the same spoon. The law abhors the dissimilar treatment of similarly situated taxpayers." *Books-A-Million, Inc. v. S.C. Dep't of Rev.*, 437 S.C. 640, 880 S.E.2d 476 (2022). In the examples above, DoorDash's business activity is no different from the Charleston-based magazine, national credit card companies, the Chinese manufacturer, and the auto leasing company, yet the City has not imposed the business license tax on these similar taxpayers who indirectly receive gross revenue from a transaction that occurs with the City limits.[11] Actual physical presence within the City is the *only* administrable standard for the business license tax. South Carolina courts have espoused this limiting principle for nearly 100 years, and this Court should overturn the ALC's unprecedented attempt to expand this workable standard through this matter.

CONCLUSION

DoorDash respectfully requests that the Court reverse the Order on Motions for Summary Judgment, reverse the Order on Motion to Reconsider, and rule in DoorDash's favor. The ALC's decision ignores the plain and unambiguous language of the Ordinance, misapplies statutory

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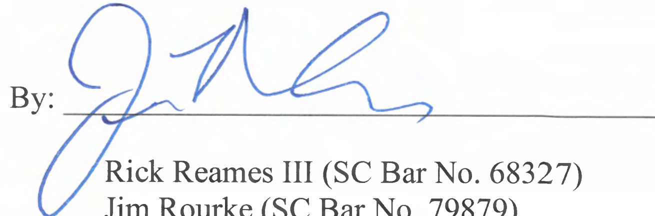
[11] Notably, S.C. Code Ann. § 6-1-420 authorizes municipalities to hire third party tax collectors to identify and essentially assess noncompliant businesses. These third parties can and do work on contingency, which means their fee is based exclusively on which noncompliant businesses they can identify—the wider the net the third party can cast, the more it is paid. Thus, a decision in favor of the City absolutely will open the flood gates to aggressive business license tax collection well beyond the territorial limits of the City.

construction principles by failing to resolve any doubt in DoorDash's favor, is irreconcilable with the *Travelscape* decision, and leads to an absurd result by treating similarly situated taxpayers differently. Accordingly, the ALC decisions below merit reversal.



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July 17, 2025

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Robert L. Reibold, Administrative Law Judge

Case No. 24-ALJ-30-0067-CC

Appellate Case No. 2025-000735

DoorDash, Inc., Appellant,

v.

City of Anderson, Respondent.

PROOF OF SERVICE

I, Nikki Wooten, attorney for DoorDash, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) specified by emailing a copy of the same to the email addressed below:

Pleadings: Initial Brief of Appellant Doordash, Inc. with Cover page

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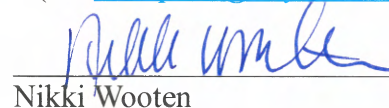

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Re: **DoorDash, Inc. v. City of Anderson**
Appellate Case No. 2025-000735
ALC Docket No. 24-ALJ-30-0067-CC

Dear Ms. Kitchings:

Pursuant to your letter dated July 17, 2025, enclosed please find the *Appellant's Initial Brief* with cover page *and Proof of Service* in the above-referenced matter. We would ask that you file the original and return a file-stamped copy via email to jrourke@maynardnexsen.com and nwooten@maynardnexsen.com.

By copy of this letter, I am hereby serving a copy of the same on all counsel of record via electronic mail.

Thank you for your assistance.

Please contact me if you have any questions or if I can be of assistance.

Sincerely,

Jim Rourke

Enclosures