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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.

INITIAL REPLY BRIEF OF APPELLANT

Rick Reames III (SC Bar No. 68327)
Jim Rourke (SC Bar No. 79879)
Nikki Wooten (SC Bar No. 73594)
MAYNARD NEXSEN PC
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Zachry T. Gladney (Bar No. 74789)
Alston & Bird LLP
90 Park Avenue
New York, New York 10016

Kathleen S. Cornett (admitted *pro hac vice*)
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street, Suite 4900
Atlanta, GA 30309

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INTRODUCTION

Respondent's Brief misstates both South Carolina law and the facts of this case. With respect to the law, the City makes three compounding errors. First, the City incorrectly defines "domicile" to make a statutory argument against physical presence. When "domicile" is correctly defined, the City's statutory interpretation crumbles. Second, the City incorrectly claims that 100 years of South Carolina precedent demonstrates that physical presence is not required for the business license tax. No case holds this; indeed, the taxpayer in each case it cites had undisputed physical presence. Moreover, the City improperly dismisses the South Carolina Attorney General's conclusion—on similar facts and identical law—that physical presence is necessary to impose a local business license tax. Third, the City embraces the Administrative Law Court's ("ALC") unprecedented conclusion that a business is subject to a business license tax if it profits "indirectly" from the activities of third parties in a jurisdiction. Yet the City—like the ALC—offers no principle to limit the absurd reach of the ALC's rule (because there is none).

With respect to the facts, the City incorrectly claims that the ALC found DoorDash has physical presence in the City through the use of independent contractors. But the ALC made no such finding, and in fact declined to rule on this issue three separate times. The undisputed facts in the record show that DoorDash does not have physical presence in Anderson.

Accordingly, DoorDash respectfully requests that this Court reverse the ALC's decision and conclude that the Ordinance requires that a business engage in business activities physically within the City before the business license tax can be imposed.

ARGUMENT

I. The Plain Reading of the Anderson Code of Ordinances, Applicable Case Law, and South Carolina Attorney General Opinions Contradict the City's Interpretation of These Authorities.

The plain language of the Ordinance imposes tax only on businesses operating physically within the geographic limits of the City. Specifically, it requires "[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*, . . . 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 (emphasis added). In its Brief, the City ignores this language and instead cherry picks a few terms and phrases to support its assertion that the Ordinance does not require physical presence in the City. None of these support the City's position.

Most importantly, the City ignores the Ordinance's language that creates physical restrictions by imposing the tax only on activities "*within the limits of the City of Anderson, South Carolina*." Anderson Code Ord. § 26-36 (emphasis added). "[S]tatutes should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous," and thus the City cannot ignore or minimize the language of the Ordinance, however inconvenient it might be to their contrived interpretation. *Abraham v. Palmetto Unified Sch. Dist. No.* 1, 343 S.C. 36, 48, 538 S.E.2d 656, 662 (Ct. App. 2000) (quoting *Pike v. S.C. Dep't of Transp.*, 332 S.C. 605, 618, 506 S.E.2d 516, 523 (Ct. App. 1998)).

A. "Domicile" is not synonymous with "physical presence" for purposes of the Ordinance.

The City relies on an erroneous interpretation of the term "domicile" as that term is used in the "gross income" definition. Domicile simply means a principal place of business. *See*

Anderson Code Ord. § 26-37 ("Domicile means a *principal place* of business from which the trade or business of a licensee is conducted, directed, or managed.") (emphasis added). DoorDash's principal place of business is in San Francisco; it has no place of business or employees in Anderson, South Carolina. (R. p. ---; Order, p. 3; Merrigan Aff., ¶ 5-7.) By conflating "domicile" with "physical presence," the City erroneously concludes that the Ordinance does not require DoorDash to have a physical presence inside the City limits.

By adopting the definition of "gross income" provided in the Business License Tax Standardization Act, the Ordinance simply provides different methods of calculating gross income for businesses that are domiciled in the City and businesses that are not. Anderson Code Ord. § 26-37 ("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."). This subsection says nothing about mere physical presence.

Despite the Ordinance *clearly* defining "domicile" only as a principal place of business, the City misunderstands "domicile" to mean physical presence. (Respondent's Brief, pp. 15-16). Based on this fundamental misunderstanding, the City argues that because the Ordinance applies to businesses that are not domiciled in the City, the Ordinance does not require physical presence for the tax to apply. *Id.* That is incorrect. Numerous businesses operate physical establishments within the City that are not their principal places of business or simply engage in business activity physically within the City without any permanent business establishment (e.g., a traveling salesman or an ice cream truck). Anderson Code Ordinance § 26-37 merely states that those businesses must apportion their gross income under the non-domiciliary provisions.

Finally, the City points to a provision contemplating that a business may have more than one domicile under the Ordinance and argues that this provision means that physical presence is not required. *See* Anderson Code Ord. § 26-37; Respondent's Brief, pp. 20-21. But this provision means only that when a business has multiple cities where operations are "conducted, directed, or managed," both cities could be considered a domicile. It does not mean that a business is domiciled in every single city where it has a physical presence. *See Creswick v. University of South Carolina*, 434 S.C. 77, 81, 862 S.E.2d 706, 708 (2021) (citing *Miller v. Aiken*, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005) ("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.")); *Grant v. City of Folly Beach*, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001) (concluding 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.").

B. The City incorrectly interprets the meaning of "established place of business."

The City compounds its "domicile" error by misconstruing "established place of business." The Ordinance clarifies that "[n]o person shall be exempt from the requirements of the ordinance by reason of the lack of an established place of business within the municipality." Anderson Code Ord. § 26-41(b). The City asserts that the reference to "established place of business" "removes any possibility of doubt when it comes to whether DoorDash must be physically present in the City in order to be taxed under the Business License Ordinance." (Respondent's Brief, p. 16).

But this provision simply explains that a business can engage in business within the limits of the City without having a permanent office, store, or other permanent location. For example, an ice cream truck that enters the City to sell ice cream is subject to the Ordinance despite not

having an "established place of business" within the City. This clarification says nothing about imposing tax on businesses that do not physically operate within the City limits.[1]

After correcting for the City's confusion on the meaning of "domicile" and "established place of business," the City's entire statutory interpretation argument collapses. Nothing in the Ordinance authorizes the City to impose tax on businesses that do not engage in activities physically within the City limits. To the contrary, the plain language of the Ordinance requires that a business perform activities within the City limits before it is subject to tax. *See Creswick*, 434 S.C. at 81, 862 S.E.2d at 708 (2021) (citing *Miller v. Aiken*, 364 S.C. at 307, 613 S.E.2d at 366 (2005) ("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.")); Anderson Code Ord. § 26-36.

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[1] The City also claims that the definition of "business" in Anderson Code Ord. § 26-37 does not have a limitation to physical presence within the City. (Respondent's Brief, p. 16). The City does not explain, however, why a physical presence requirement would necessarily have to be found in the definition of "business." As explained, the Ordinance imposition provision plainly applies only to a "business" operated "in whole or in part within the limits" of the City. Anderson Code Ord. § 26-36. Any requirement in the definition of "business" that a business must perform operations within the City would be redundant and thus unnecessary.

Moreover, the ALC's analytical error regarding the Ordinance's definition of "business" is compounded by its conclusion that "a business without a physical presence in a particular jurisdiction but which generates revenue from that jurisdiction through the use of *intermediaries* does business *indirectly* in that jurisdiction." (R. pp. ----; ALC Order, pp. 16-17) (emphasis added). The ALC's interpretation of the word "indirectly" to modify the earlier terms "business, calling, occupation, profession, or activity" is simply wrong. Properly construed, the phrase "directly or indirectly" in the definition of "business" modifies the immediately preceding prepositional phrase "with the object of gain, benefit, or advantage." *See Alltel Communications, Inc. v. S.C. Dep't of Rev.*, 399 S.C. 313, 318, 731 S.E.2d 869, 872 (2012) (concluding it is a "settled principle that any substantial doubt in the application of a tax statute must be resolved in favor of the taxpayer.") In other words, to qualify as a "business" under the Ordinance, the activity must have the direct or indirect object of gain, benefit or advantage.

C. Despite almost 100 years of South Carolina case law addressing business license taxation, the City cannot cite a single case where a business license was imposed without physical presence by the business.

1. *Town of Hilton Head Island v. Kigre, Inc. demonstrates that "engaging in business" requires activity by the business physically within the City's jurisdiction.*

In all cases where the court held that a business was subject to tax, the business, through its owners or employees, was physically within the city performing business activities. And in all cases, the court analyzed the activities that the business conducted physically within the city's jurisdiction.

In the most recent South Carolina Supreme Court case to address a local business license tax, *Town of Hilton Head Island v. Kigre, Inc.*, 408 S.C. 647, 760 S.E.2d 103 (2014), the Court provided the following explanation of the business license tax:

> 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.

Id. at 649, 760 S.E.2d at 103 (emphasis added). In other words, the business license tax is not concerned with the locations of a business's customers or the third parties with whom it contracts. The only relevant activity is what the business itself performs *within the physical limits of the City*. Kigre operated a manufacturing facility within the Town, so it was subject to its business license tax. (Again, physical presence was not at issue in the case.) It is undisputed that DoorDash operates its platform from wholly outside the City. Therefore, DoorDash is not engaged in business within the City for purposes of Anderson Code Ord. § 26-36.

2. *Every authority cited by the City involved habitual physical activity by the business within the city.*

The City would have this Court believe that it is a well-settled legal principle that deriving revenue from customers located in the City is sufficient to create a business license obligation. And yet, the City cannot produce a single case supporting its proposition. Instead, the City cites four South Carolina Supreme Court cases, all of which involved taxpayers physically present in the jurisdiction.

In every case, *the business itself*—not independent contractors, not customers of the business—was physically present in the jurisdiction at issue. The courts then analyzed whether the business activity, physically occurring within the jurisdiction, was sufficient to warrant the imposition of a business license tax. The courts did not need to conclude whether the business had physical presence because physical presence was conceded in the facts of each case.

In *Pee Dee Chair Co. v. Camden*, 165 S.C. 86, 89, 162 S.E. 771, 772 (1932), a furniture company with its principal place of business outside the city delivered furniture using its own truck, which was driven by a salaried employee, to a furniture store in the city. *Id.* at 88, 162 S.E. at 772. The city arrested the employee upon making the single delivery for engaging in business without paying the license tax. *Id.* There was no dispute that Pee Dee Chair had engaged in business activity physically within the city—its employee was literally arrested in the jurisdiction. But the Supreme Court held that 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 "engaging in or carrying on a business" within the city for purposes of the business license ordinance. *Id.* at 93, 162 S.E. at 772.

In *Crosswell & Co. v. Town of Bishopville*, 172 S.C. 26, 172 S.E. 698 (1934), a wholesale grocery business in Sumter owned several trucks that it used to deliver orders to customers in

Bishopville one to two times per week. *Id.* at 27, 172 S.E. at 699. The court distinguished these facts from the single delivery in *Pee Dee Chair*, holding that this level of activity constituted doing business for purposes of the business license tax. *Id.* at 29, 172 S.E. 699. Again, there is no dispute that the business, through its own equipment and employees, was itself engaging in business activity physically within the city limits.

In *Wrenn Bail Bond Services, Inc. v. City of Hanahan*, 335 S.C. 26, 515 S.E.2d 521 (1999), a bail bond service with its office outside the city contracted with a city resident to post bond to obtain his release from jail. Before posting the bond, Wrenn had to obtain the surety form from the city's clerk of court. The clerk refused to release the surety form until Wrenn paid the fee under the city's business license ordinance. The court's opinion does not state whether Wrenn physically traveled into the city because this fact was not relevant to its holding. The question presented to the South Carolina Supreme Court was very narrow: "Does one instance constitute doing business?" *Id.* at 28, 515 S.E.2d at 522. Thus, the Supreme Court's analysis of "doing business" for purposes of the business license tax spans three short paragraphs. The court noted that "[t]he only fact connecting the City with the actual transaction between the parties is that Wrenn provided a service to one of its residents." *Id.* at 29, 515 S.E.2d at 523. Citing *Pee Dee Chair*, the court held that "a single act does not constitute doing business for purposes of a business license fee where there are no facts to indicate it is not an isolated instance but an intention to engage in business." *Id.* Neither *Wrenn's* holding nor dicta support the assertion that earning revenue from customers located in a city or contracting with third parties in a city is sufficient to trigger the business license tax.

In *Triplett v. City of Chester*, 209 S.C. 455, 40 S.E.2d 684 (1946), the Supreme Court held that a construction company with an office in the city was subject to the city's business license

tax. The company regularly had employees in the office during business hours and stored equipment in the same building. There was no dispute over physical presence. The City invokes *Triplett* by claiming that South Carolina courts "have consistently held that businesses are not required to conduct all essential business within the taxing municipality before being subject to that jurisdiction's business license tax." (Respondent's Brief, p. 11). The City's statement is accurate but, like the *Triplett* case itself, has no bearing on this case. The construction company in *Triplett* had an office in the taxing municipality, whereas DoorDash does not have any physical presence within the City limits. And *Triplett* neither holds nor suggests that contracting with third parties located in a city means that a person is "engaging in business" in that city, regardless of whether those contractual relationships are "essential" to the business.

D. The South Carolina Office of the Attorney General opined, on similar facts, that the business license tax requires physical presence.

DoorDash continues to emphasize the persuasive authority of the opinion rendered by the South Carolina State Attorney General addressing the City of Myrtle Beach's business license tax, Op. Atty' Gen., 2023 WL 4918024 (S.C.A.G. July 26, 2023) (the Turo Opinion), and urges this Court not to ignore this guidance. *Marchant v. Hamilton*, 279 S.C. 497, 502, 309 S.E.2d 781, 784 (Ct. App. 1983).[2]

In the Turo Opinion, the Attorney General considered the application of the City of Myrtle Beach's business license ordinance to Turo, Inc., a California-based technology company offering a car-sharing platform accessible nationwide. The Attorney General opined that Turo was not "doing business" within the City of Myrtle Beach because it lacked physical presence.

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[2] At a minimum, the Turo Opinion belies Respondent's assertion that there is 100 years of clear precedent on this issue in South Carolina. It is inconceivable that the state's own Attorney General would miss such clear precedent when analyzing this same issue in 2023.

Respondent claims the Turo Opinion is inapplicable because it "does not interpret the same ordinance, involve the same facts, or include the same statutory analysis used by the ALC." (Respondent's Brief, p. 22) However, the statutes, factual circumstances, and irrational effects of applying these statutes to companies like Turo and DoorDash are identical for all material purposes.

The City of Myrtle Beach Municipal Code Section 11.21 provides 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 Myrtle Beach, South Carolina, is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided.

The City of Anderson Municipal Code Section 26-36 provides the same:

> 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. Approval must be obtained from building codes and/or zoning before a license can be issued.[3]

Respondent also claims that there is no indication that the City of Myrtle Beach and City of Anderson ordinances define "business" the same. However, the Myrtle Beach and Anderson ordinances do, in fact, define the term *business* the same: "*any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, either directly or indirectly.*" Myrtle Beach Code Ord. §11-22; Anderson Code Ord. § 26-37 (emphasis added). Thus, any claim the Turo Opinion is inapplicable based on statutory differences lacks merit.

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[3] The Business License Tax Standardization Act passed in 2020 did just that: it created a standardized business license model that could be adopted by municipalities across the state. *See* S.C. Code Ann. § 6-1-400 *et seq.* So it is not surprising that the ordinances analyzed by the Attorney General in the Turo Opinion and by the ALC in this case are identical.

In all material respects, Turo's business operations analyzed by the Attorney General are identical to DoorDash's business operations in this case. The relevant facts considered by the Attorney General in the Turo Opinion included the following:

> Turo is a technology company based in California that offers a peer-to-peer car sharing platform through its website and mobile app. Turo's platform allows vehicle owners ("Hosts") to share their vehicles with travelers and others who need a car ("Guests"). Turo does not own or maintain the vehicles shared on its platform. Turo has no employees, salespersons, property, vehicles, or offices in City (i.e. Turo has no physical presence in City). Turo is not registered in City for a business license.
>
> Turo's platform allows Hosts and Guests to transact on their own terms. Hosts set prices and availability, and Hosts and Guests decide on a location for the vehicle exchange. For example, a Host in Charleston may deliver their vehicle to a Guest in Myrtle Beach, or a Guest may pick up a vehicle from a Host in Myrtle Beach but then use it outside Myrtle Beach.
>
> Turo is not involved in the transactional decisions between the Hosts and Guests (e.g. prices, availability, handoff location, etc.). Turo earns revenue by charging fees to its Hosts and Guests for use of its platform. Stripe, Inc., a third-party payment processing company, processes all Guest payments, remitting to Turo and Hosts separate payments for their respective share of fees.

Op. Atty' Gen., 2023 WL 4918024 (S.C.A.G. July 26, 2023). Applying the City of Myrtle Beach's business license ordinance to these facts, the Attorney General found that "without a physical presence or evidence of additional activity within the City or intent to conduct business in the City, a court may find Turo is not doing business within the City." Op. Atty' Gen., 2023 WL 4918024 (S.C.A.G. July 26, 2023). [4]

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[4] The Attorney General in the Turo Opinion noted that the question of whether someone is doing business "must be determined upon the attending facts." Op. Atty' Gen., 2023 WL 4918024 (S.C.A.G. July 26, 2023) (citing *Sanders v. Columbian Protective Ass'n of Binghampton, N.Y.*, 208 S.C. 152, 155, 37 S.E.2d 533, 534 (1946)). Contrary to the City's claim, the Attorney General did not decline to opine based on the facts presented, but instead simply recognized that his fact-

In all material respects for this case, DoorDash and Turo have identical facts. DoorDash and Turo operate online platforms from outside of South Carolina. Just like Turo operates an online platform connecting local vehicle owners with individuals who need to rent a car, the parties agree that DoorDash operates an online platform that connects local restaurants or other local businesses, independent contractor delivery providers, and consumers. (R. p. -----; ALC Order, p. 3; Merrigan Affidavit ¶ 4; DoorDash Consumer Terms and Conditions ("CT&C"), § 2; *see also* R. p. -----; Decision of City of Anderson, dated Feb. 21, 2024 ("City Decision"), at 1.) Just like Turo did not rent vehicles to individuals in Myrtle Beach, DoorDash does not sell food or provide delivery services in the City. And like Turo, DoorDash does not operate an office or place of business in the City, does not employ individuals within the City, does not maintain any vehicles in the City, and does not perform any services within the City during the Assessment Period. The City fails to point to a single material fact where DoorDash differs from Turo.

Moreover, the Turo Opinion confirms that a lack of physical presence within a taxing jurisdiction means that a business is not "doing business" for purposes of the business license tax. Turo and DoorDash simply provide a digital technology platform to connect consumers and local service providers without themselves engaging in any activity physically within the jurisdiction of the City. Under a plain reading of Anderson Code Ord. § 26-36, DoorDash did not engage in business within the City for purposes of the business license ordinance, and the Attorney General's opinion in Turo confirms this understanding of the Ordinance.

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finding abilities are limited, and his opinion would be based upon the facts provided in the requests for an opinion along with case law and other prior opinions to provide guidance. Op. Atty' Gen., 2023 WL 4918024 (S.C.A.G. July 26, 2023).

II. Respondent's Brief Concedes that the ALC's Decision Leads to Absurd Results.

In Section III of its Initial Brief, DoorDash walks through a real-world scenario to highlight how the ALC's decision reaches an absurd result: if affirmed by this Court, the ALC decision effectively authorizes South Carolina municipalities to impose a business license tax on any business that profits "indirectly" from others' business activities in a municipality by contracting with a third party. (R. p. ----; Order at p. 17).[5] This standard sweeps in an unlimited number of unsuspecting businesses, from the magazine publisher across the state receiving advertising revenue from City businesses to national credit card companies that charge transaction fees when local merchants accept their payment methods. *See* Appellant's Brief at p. 27-31. The absurd results that cascade from the ALC's unbounded rule show that the ALC's statutory interpretation is incorrect.[6]

The City does not even attempt to explain how the ALC's decision does not yield these absurd results, effectively conceding DoorDash's argument.

As an initial matter, the City does not cite any language in the Ordinance which establishes a limiting principle for what it means to profit "indirectly" from others' business activity, nor does it identify a limiting principle in the ALC's decision itself. In other words, if the Ordinance means

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[5] It bears repeating that in adopting the Business License Standardization Act, the General Assembly has authorized the use of third-party tax collectors to identify and pursue businesses they deem noncompliant. *See* S.C. Code Ann. § 6-1-420. Those businesses are paid on contingency, based on how much revenue they can drive to the applicable municipality.

[6] "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.*

what the City says, then there is no rational limit to the reach of the Ordinance, and nothing would prevent the absurd results described by DoorDash. The City provided no limiting principle because there is none.

Even more fundamentally, the City misses this crucial point: the ALC failed to even consider the unintended consequences—and ultimately, absurd results—its interpretation would have upon all businesses that profit *indirectly* from a third-party transaction. The ALC's interpretation extends the City's business license tax well beyond its borders to any business, wherever located, that "indirectly" profits from business activities performed by others within the City. (R. p. ----; Order at p. 15-16.) The ALC's erroneous interpretation of the Ordinance leads to absurd results because it has no limiting principle. When faced with this problem, the City provides no meaningful factual or legal support to contradict the assertion that the ALC's unreasonable interpretation paves the way for numerous "indirect" parties being subject to business license tax in the City of Anderson without stepping foot in the City limits, as described in DoorDash's Brief. By agreeing that DoorDash's examples create an absurd result the City unwittingly concedes the point.

Simply put, neither the City nor the ALC explains how to constrain the Ordinance for all the "indirect" parties involved in a single transaction that touches the City.[7] The ALC's interpretation leads to a result that is "plainly absurd" and in direct conflict with the recognized "goal of statutory construction [ ] to harmonize conflicting statutes whenever possible and to

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[7] Again, as noted in DoorDash's Brief, implicit in the ALC 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 did not provide any statutory support for applying "economic or virtual contacts" as a standard for doing business for business license tax purposes under South Carolina law, did not provide any guidance on what that threshold is, nor did it engage in any analysis regarding what constitutes "economic or virtual contacts."

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).

Unable to dispute the extraordinary overbreadth and absurdity of the Ordinance as construed by the ALC, the City attempts to deflect by claiming that "[i]t is DoorDash's argument that would yield an absurd result." (Respondent's Brief, p. 28.) But the attempted deflection is unconvincing. The City says that it would be absurd to tax "a business who sends a single employee into the City for the purpose of delivering a chair or other isolated good" without also taxing businesses (like DoorDash) that never physically enter the City. (Respondent's Brief at p. 28). But physical presence alone is not enough to render a business subject to the tax; indeed, *Pee Dee* establishes that "isolated," "incidental," and "casual" physical presence is insufficient, so the City's hypothetical chair-delivery business doesn't work. Physical presence alone may not be sufficient to render a business taxable, but it is essential.

As discussed above, actual physical presence within the City is the *only* administrable standard discussed in South Carolina case law for purposes of the business license tax and, accordingly, the standard applied by the AG's Office in the Turo Opinion. South Carolina courts have espoused this limiting principle for nearly 100 years, and this Court should overturn the ALC's unprecedented attempt to expand that principle through this case.

III. The City Misreads the ALC Order, Argues Facts Unsupported by the Record, and Introduces New Issues Not Addressed By the ALC.

A. The ALC explicitly declined to address "whether DoorDash can be considered to be physically present in Anderson."

The City asserts that "[t]he ALC properly concluded . . . DoorDash has a physical presence inside the City." (Respondent's Brief, p. 6). That is incorrect. The ALC expressly stated—no less than ***three times***—that it declined to address whether DoorDash has a physical presence in the City:

(1) *"[I]t is not necessary to address the City's alternative argument that, even if a physical presence is required, DoorDash is physically present within this City."* (R. pp. ------; ALC Order, p. 25, n. 25) (emphasis added).

(2) *"The Court has not yet determined whether or not DoorDash is physically present within the City."* (R. pp. ------; ALC Order, p. 27, n. 28) (emphasis added).

(3) *Finally, directly in the ALC's Final Order provision, it again makes clear that "[t]he [ALC] specifically did not reach the question of whether DoorDash can be considered to be physically present in Anderson.* As the [ALC]'s ruling on the construction of the ordinance was dispositive, a ruling on this motion was not necessary." (R. pp. ------; ALC Order, p. 41, n. 34) (emphasis added).

Read as a whole, the ALC Order cannot reasonably be understood to *conclude* that DoorDash is physically present in the City for purposes of the business license ordinance.[8] The City simply ignores the ALC's repeated, express statements declining to determine whether DoorDash was physically present in the City—including one statement which is part of the ALC's

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[8] The City cites a single statement in the ALC Order that "[t]he 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." (R. p. ----; ALC Order, p. 10.) This line, however, contradicts multiple other, clearer statements that the ALC was not making a determination on physical presence—most importantly, that exact statement in the Final Order provision. Further, following this statement on page 10, the ALC Order does not provide any discussion or explanation of the facts supporting a conclusion that DoorDash is physically present in the City. Reviewing the ALC Order as a whole, the only reasonable conclusion is that the ALC declined to decide whether DoorDash was physically present in the City after concluding that physical presence was not required.

concluding statement. Moreover, as discussed below, there is no evidence in the Record that DoorDash is physically present in the City.

B. There is no evidence in the Record demonstrating that DoorDash has a physical presence in the City of Anderson.

That the ALC did *not* conclude that DoorDash is physically present in the City for purposes of its business license tax is appropriate given the *undisputed* facts in the Record and stated in the ALC Order: "DoorDash manages its platform from outside of the City of Anderson and *has no place of business or employees within the City*." (R. p. -----; ALC Order, p. 3.) (emphasis added). The ALC accepted the parties' undisputed facts that DoorDash does not have a place of business or employees within the City and incorporated those undisputed facts in the Final Order. Based on the facts, DoorDash is not physically present in the City.

Thus, if this Court concludes that the Ordinance requires a physical presence, it must hold for DoorDash or at most must remand to the ALC for further fact finding on this issue. *See Hamm v. S.C. Public Service Comm'n*, 298 S.C. 309, 311-312, 380 S.E.2d 428, 429 (1989) (court remanding to regulatory agency to determine findings of fact as required under the Administrative Procedures Act); *State v. Gordon*, 414 S.C. 94, 97-98, 777 S.E.2d 376, 378 (2015) (remanding to lower court to "make factual findings" in light of appellate court determination on appeal); *Frame v. Resort Services, Inc.*, 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004) (remanding to commission to "make the appropriate findings of fact" related to issue on appeal).

C. There is no evidence in the Record to support the City's assertion that independent contractors create physical presence for DoorDash for purposes of the Ordinance.

The City argues that DoorDash has a physical presence in the City based on the actions of independent contractors who use its platform, called Dashers. *See* Respondent's Brief, p. 27 ("Dashers absolutely give DoorDash a physical presence inside the City for purposes of the

Business License Ordinance . . . ."). The City further asserts that the use of "independent contractors or other agents . . . is sufficient to give that business a physical presence for taxation purposes." *Id.* The City's assertion lacks merit for at least two reasons: (1) the City has not cited and cannot cite any case or provision of the Ordinance establishing that a contractual relationship with independent contractors creates physical presence on behalf of a business; and (2) the Record contains no facts to differentiate Dashers from any other independent contractor. Indeed, the ALC Order contains no analysis suggesting that Dashers establish the physical presence of DoorDash.

The City does not dispute that Dashers are independent contractors. (R. p. -----; ALC Order, p. 9, n. 13; Respondent's Brief, p. 2). Independent contractors, by definition, are self-employed, and Dashers, as independent contractors, provide delivery services similar to other contracted couriers or common carriers who operate within the City.[9] (R. p. ---, ALC Order, pp. 3-4). "An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of his work." *Cooper v. Graham*, 231 S.C. 404, 409, 98 S.E.2d 843, 846 (1957) (quoting *Gomillion v. Forsythe*, 218 S.C. 211, 229, 62 S.E.2d 297, 304 (1950)).

The City cannot point to any South Carolina case or provision of the Ordinance to support its assertion that Dashers impute physical presence to DoorDash. Accepting the City's argument would mean the mere engagement of independent contractors within the City constitutes "doing business," such that nearly every business selling goods or services over the internet to City

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[9] The City's assertion that "independent contractors and employees acting on behalf of a business are its agents" misstates South Carolina law. (Respondent's Brief at p. 10). *See Langdale v. Carpets*, 395 S.C. 194, 201, 717 S.E.2d 80, 83 (Ct. App. 2011) (holding "[t]he existence of an agency relationship is a question of fact to be determined by the relation, the situation, the conduct, and the declarations of the party sought to be charged as principal.") (emphasis added).

residents would have a business license obligation. For example, under the City's theory, a retailer in Maine that sells its goods online to customers located in the City and has the goods delivered using FedEx or another independent delivery service provider (i.e., an independent contractor) would be subject to the business license tax. Nothing in South Carolina law suggests that the business license tax has that kind of reach.

Importantly, DoorDash has even less of a connection to the City than businesses that sell remotely into the City because those businesses sell their own goods in addition to having those goods delivered by independent contractors. Here, Dashers deliver the goods of a local merchant, *not* DoorDash's goods. DoorDash simply operates—from out of state—a platform that connects three independent parties: merchants, drivers, and customers.

CONCLUSION

Based on the foregoing, in addition to those arguments set forth in DoorDash's Brief, the Court should reverse the ALC's decision.

By: _____

Rick Reames III (SC Bar No. 68327)
Jim Rourke (SC Bar No. 79879)
Nikki Wooten (SC Bar No. 73594)
MAYNARD NEXSEN PC
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Zachry T. Gladney (Bar No. 74789)
Alston & Bird LLP
90 Park Avenue
New York, New York 10016

Kathleen S. Cornett (admitted *pro hac vice*)
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street, Suite 4900
Atlanta, GA 30309

Columbia, South Carolina
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