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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2011-CP-08-2814
Appellate Case No. 2014-002393

Todd Olds..... Appellant,

vs.

City of Goose Creek Respondent,

RECORD ON APPEAL

RECEIVED

AUG 27 2015

SC Court of Appeals

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STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Todd Olds,)

Appellant-Plaintiff,)

vs.)

City of Goose Creek,)

Respondent-Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-08-2814

ORDER

2014 SEP -5 PM 1:29
CLERK OF COURT
BERKELEY COUNTY, SC
JED

This matter comes before me on an appeal from the City of Goose Creek City Council on the determination of the business license fee of Todd Olds and a motion for summary judgment by Goose Creek as to several causes of action which Olds filed in conjunction with the appeal to Circuit Court. Procedurally, Mr. Olds contested the determination of his 2011 business license fees and followed the appeal route set forth in Goose Creek's business license ordinance. Following the Goose Creek business license ordinance, Olds' appeal was taken from the decision of the Finance Director to the City Administrator, then to City Council and, now, to the Circuit Court. Olds alleged various civil causes of action in conjunction with his appellate paperwork. Olds has filed a cross-motion for summary judgment as well.

The essence of this dispute revolves around the proper method of calculating "gross income" pursuant to Goose Creek's municipal business license ordinance. State law allows municipalities to charge a business license fee on "gross income." S.C. Code § 5-7-30. Olds is in the business of buying residential real estate, improving it, and selling the properties, either in his name or that of his company, Prime Properties of Charleston, LLC. Olds argues federal law including Internal Revenue Code § 61 should define "gross

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income." Under federal law, only the gain or profit on sale of real estate is gross income. The City of Goose Creek argues that based on the language of the City of Goose Creek's ordinance and South Carolina law, a business license fee is based on the total sales price without deduction for the cost.

This Court does believe it proper to make a determination of the appeal first. The Court will then proceed to consider the issue of whether any remaining causes of action are valid after a determination of the appeal. This Court acting in its appellate role must accept the decision of the lower tribunal unless there is some error of law. No provision is made for any additional factual hearing of an appeal and findings of fact must be accepted by the appellate court if supported by any evidence. However, because the primary issue of the appeal is an issue of statutory construction which is strictly a legal matter, this Court is not bound by the determination of the lower tribunal.

In its business license ordinance, the City of Goose Creek has defined "gross income" as:

GROSS INCOME. The total revenue of a business, received or accrued, for one calendar year, collected or to be collected by a business within the city, excepting, therefrom, business done wholly outside of the city on which a license tax is paid to some other municipality or county and fully reported to the city or county. The term **GROSS RECEIPTS** means the value proceeding or accruing from the sale of tangible personal property, including merchandise and commodities of any kind and character and all receipts, by the reason of any business engaged in, including interest, dividends, discounts, rentals of real estate or royalties, without any deduction on account for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid or any other expenses whatsoever and without any deductions on account of losses. The **GROSS INCOME** for business license purposes shall conform to the gross income reported to the State Tax Commission or the State Insurance Commission. In the case of brokers or agents, **GROSS INCOME** shall mean gross commissions received or retained, unless otherwise specified. **GROSS INCOME** for insurance companies means gross premiums collected. **GROSS INCOME** for business

license tax purposes shall not include taxes collected for a governmental entity, escrow funds or funds, which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in GROSS INCOME. The GROSS INCOME 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 Insurance Commission or other government agency.

City Business License Ordinance Section 110.001.

Lawmakers' intent embodied in an ordinance "must prevail if it can be reasonably discovered in the language used." Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). In Goose Creek's ordinance, the opening line clearly states that gross income shall be the "total revenue of a business." And further states "without any deduction on account for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid or any other expenses whatsoever and without any deductions on account of losses." This clearly evidences an intent to collect a business license fee on the total sales price of a property without a deduction for the cost of the property.

The City of Goose Creek's definition of "gross income" is generally consistent with the ordinances of other South Carolina municipalities which equate "gross income" to the total revenue or total income of a business. The Court was provided with the ordinances of numerous municipalities including Abbeville, Aiken, Anderson, Beaufort, Camden, Cayce, Charleston, Chester, Columbia, Conway, Dillon, Florence, Georgetown, Greenville, Greer, Hartsville, Hilton Head, Isle of Palms, Mount Pleasant, Summerville, Myrtle Beach, North Charleston, Simpsonville, Spartanburg, Sumter, Union, and Walterboro. All of these municipalities rely on a "total revenue" type definition of "gross income."

The City of Goose Creek's ordinance and interpretation is also consistent with the

position taken by the South Carolina Municipal Association which provides in its handbook: "A business license fee is an excise tax levied on the privilege of doing business, and the value of the privilege extended is measured by the business's gross receipts." Municipal Association Business License Handbook, page 2. The Handbook goes on to state "Gross income may be defined by the license ordinance and generally means all revenue received from the business operation without any deductions for such things as the cost of goods, overhead, salaries or cost of sales." Handbook, page 14.

Courts should afford substantial deference to the decisions of those charged with interpreting and applying local ordinances. Purdy v. Moise, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953). Likewise "where the construction of the statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons" Etiwan Fertilizer Company v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E.2d 682 (1950).

Olds makes the point that "gross income" cannot be defined by municipalities more expansively than the grant of authority from the statute authorizing such fees. While this is correct, it does not necessarily follow that the use of the term "gross income" in S.C. Code § 5-7-30 was meant to follow federal law. In Bogan v. Bogan, 298 S.C. 139, 378 S.E.2d 606 (Ct. App. 1989) the Court of Appeals held that "the term 'gross income' does not carry the same definite and inflexible meaning under all circumstances and wherever used. Its meaning depends upon the subject under consideration, the connection in which it was used, and the results intended to be accomplished."

In Carter v. Linder, 303 S.C. 119, 399 S.E.2d 423 (1990), the Supreme Court

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considered a county business license ordinance derives its authority from a substantially similar authorization at S.C. Code § 4-9-30 authorizing business license fees on "gross income." The South Carolina Supreme Court noted, "A license tax upon persons and businesses is an excise tax on the privilege of doing business, and no prohibition against the utilization of excise taxes exists. . . . The tax is not on the property itself, it is on the privilege of dealing with it. The value of such privilege is measured by the gross receipts therefrom and this is a familiar and valid method of ascertaining such value." Id. (citing, Hay v. Leonard, 212 S.C. 81, 46 S.E.2d 653 (1948)).

South Carolina has a long history of license taxes (also sometimes known as privilege taxes) based on the total revenue of a business. South Carolina had privilege taxes based on "gross income" before the enactment of any income tax and before the 1913 ratification of the 16th Amendment to the Constitution of the United States authorizing income taxes. As noted in Columbia Rwy Gas & Elect. Co. v. Jones, 119 S.C. 480; 112 S.E. 267 (S.C. 1921)

The tax imposed by Section 269, Vol. 1, Code 1912, therein called a "license fee," is manifestly an excise tax, laid under the benefit theory of taxation upon the public service corporation named for the privilege of exercising their corporate franchise and carrying on their business within the State. 26 R. C. L., p. 36, § 19; Ware Shoals Mfg. Co. v. Jones, 78 S.C. 211, 58 S.E. 811. The measure of the tax is volume of business or "gross income for business done." Gross income means the total receipts from a business before deducting expenditures for any purpose. Black's Law Dictionary; German Alliance Ins. Co. v. Van. Cleave, 191 Ill. 410, 61 N.E. 94, 96.

Other states also have similar notions of taxes based on "gross income." As noted in 2-29 Bender's State Taxation: Principles and Practice § 29.03

Gross receipts taxes may be imposed on the "gross income of the business," "gross receipts," "gross proceeds of sales" or any other term that suggests total business revenues before deductions. Consequently, the term is used

hne/s

in a different context than as it relates to federal tax law which defines "gross income" as income net of "cost of goods sold" and similar expenses related to producing the income.

Finally, this court must consider the meaning of the word "gross income" in South Carolina Code § 5-7-30 taking into consideration how the words are used by each code and the results sought to be accomplished. The federal income tax system is a tax on net income or profit. A merchant in goods other than real estate lists his total sales as "gross income" and deducts his cost of goods and other necessary and proper business expenses before application of the federal tax rate. Due to the wording of I.R.C § 61, a real estate entrepreneur may list the difference between the purchase price and sales price on the gross income line of the return. However, both get to deduct the costs of what is sold once. And both merchant and real estate entrepreneur ultimately pay a federal income tax on the net income, not the gross income.

In contrast, Mr. Olds advocates an interpretation for local taxes which would result in the merchant paying a municipal business license fee on gross receipts without deduction for the costs of goods sold while the real estate entrepreneur business pays a business license fee only on its net receipts. Mr. Olds' argument that I.R.C. § 61 defines the outer limits of taxation under S.C. Code § 5-7-30 and to Goose Creek's ordinances would produce an absurdly disparate result between real estate businesses and non-real estate businesses.

For the reasons stated above, I conclude federal law including I.R.C. § 61 does not provide the definition of "gross income" for the purposes of S.C. Code § 5-7-30 or the City of Goose Creek's Business License Ordinance. I believe that Goose Creek's method of calculating Olds' business license fee and the decision of City Council should be affirmed.

Olds has joined with his appeal a variety of causes of action. The Court will address each cause of action listed in the complaint.

A. Equal Protection

Olds claims a violation of Equal Protection on the basis that the City of Goose Creek has "adopted a deliberately tortured interpretation of its ordinance in an effort to single out the plaintiff for disparate treatment . . ." The deposition testimony in this case establishes that the City of Goose Creek is applying its interpretation uniformly and that there is no person known to be paying a business license fee in any manner different than Mr. Olds. See Althoff Deposition p. 19. (Q: Are you aware of anybody who is buying and selling homes for business purposes in the City of Goose Creek that is not paying based on the total amount of the home sale?" A: No. Q: . . . as far as you know, everybody is paying the way you are asking Mr. Olds to pay. A: Yes.) "The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." Town of Hollywood v. Floyd, 403 S.C. 466, 744 S.E.2d 161 (2013). Accordingly, there is no basis for an equal protection claim.

B. Abuse of Process

Olds complains that the City threatened to withhold water service if he did not pay his business license fee and in fact refused to open a new account until his business license was paid. The City's policy is that it will not turn on a new water connection for a business that does not have a proper business license or that is in arrears on its business license payments. But this policy is not abuse of process nor is it in any way illegal. Abuse of process is some misuse of the processes of the courts. A denial of water service is not an abuse of process. Further Mr. Olds has always had the ability to pay the sum

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under protest and to pursue an appeal of the same. As to the additional sum that was calculated to be due, he has not done so.

C. Procedural Due Process

Plaintiff complains that due process requires that he have been afforded an opportunity to be heard. Although Mr. Olds was allowed to appear (with or without counsel) at the hearing before the City Administrator who acted as the finder of fact/hearing officer, City Ordinance provides that at the next level of appeal "City Council shall review the records and without further oral argument or presentation of evidence will affirm, modify or deny the appeal." On its face, this section of the ordinance is not unfair or illegal. However, when the Court examined the record of the appeal, it appears that the appeal was held at a City Council meeting where the City Administrator and the City Finance Director were present. City Council called on the City Administrator and City Finance Director to explain the appeal and the City's position to Council. The City employees obliged. I find that this system is not fair. Either City Council should hear from no one or from both sides, but not just one side. In the City's defense, it invited Mr. Olds or his counsel to appear prior to the meeting, but Mr. Olds' counsel declined citing the language of the statute preventing him from arguing the case before Council. Whether Olds was included or excluded, explicitly or implicitly, is irrelevant under the facts of this case. Mr. Olds concedes the issue of interpretation of the ordinance is an issue for the Court to decide as a matter of law. Therefore, neither the appearance of Mr. Olds or his exclusion would have any impact on this appeal. Indeed, Mr. Olds did submit a memorandum setting forth his position that was provided to the City Administrator and the City Council. Because this is strictly a legal issue of statutory construction and because the appellant's

position was fully preserved and protected as to preservation of appellate issues by the filing of his brief, I find there are no damages here from the absence of Mr. Olds from the hearing. However, in the future, I would suggest City Council allow litigants to be heard or allow no one to be heard.

D. Substantive Due Process

Mr. Olds complains that there is a substantive due process violation in the City misapplying its ordinance. Because this court agrees with the City, there is no substantive due process claim.

E. Violation of Freedom of Information Act

Mr. Olds states in his appeal/complaint that there was a violation of the Freedom of Information Act. This is incorrect. The appellate record shows the agenda for the City Council Meeting. At the bottom of the agenda, it reveals that it was posted at least 24 hours in advance and it was sent to local media sources. The agenda identifies the subjects to be heard including the business license appeal hearing of Todd Olds. This complies with the South Carolina Freedom of Information Act in every respect. S.C. Code § 30-4-80.

F. Damages and Attorneys Fees

Plaintiff's last cause of action is for attorney's fees pursuant to South Carolina Code § 15-77-300 and § 30-4-100. The latter is the Freedom of Information Act which is addressed above. The former is the provision which allows for attorneys fees against government entities if the government entities position is not "substantially justified." The ruling of this court is that the City's interpretation of "gross income" is correct. Even if this court were to disagree, there is substantial justification for the position the City has taken.

G.. 42 U.S.C. § 1983 and S.C. Constitution Article I, §22

These are actually two entirely different causes of action. As it relates to 42 U.S.C. 1983, plaintiff can show no deprivation of a constitutionally protected right. The closest he comes is that the City refused him new water service. However, there is no known constitutional right to new water service.

The South Carolina Constitution Article I, Section 22 provides "No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review." There is no known case law suggesting violation of this section creates a private right of action. However, by its terms this section of the South Carolina Constitution is inapplicable. Olds did not appear before an "administrative agency." Further, Olds was granted a right of judicial review.

H. Civil Conspiracy

Plaintiff alleges in an amended complaint that Ron Faretra and Jennifer Althoff conspired to do certain things including miscalculating his business license fee and inspecting for a possible violation of the business license ordinance. As noted in the affidavit of City Administrator, Dennis Harmon, these actions were taken in the official capacity of Faretra and Althoff. Therefore, this action against them individually is barred by S.C. Code § 15-78-70. Furthermore, employees of a business acting together in furtherance of the business are not two or more persons acting in a conspiracy. McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 626 S.E.2d 884 (2006).

Handwritten signature/initials: RND/10

I. Breach of Contract

Plaintiff attempts to argue that he is entitled to sue the Department of Public Works of the City of Goose Creek. The City responds that the Public Works Department is simply a department of the City. Further, the evidence in this case shows that the City turned water off for the prior customer and would not turn on a new account in Olds' name as he had delinquent business license fee account. Olds makes the point that he was denied service even after he paid a water turn-on fee. This misses the point that the City is not required to turn on new water service to a business account which does not have the proper license due to non-payment of license fees. Nothing requires a municipality to provide water service simply because it has accepted a deposit. The turn-on fee has since been returned to Mr. Olds by the City.

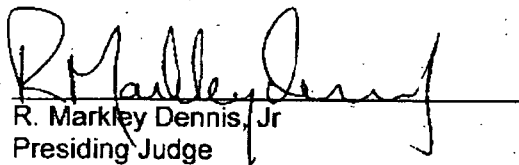
J. Tort Claims Act Immunities

Finally, the City of Goose Creek raises that all or some of the causes of action both alleged and proposed to be amended are barred by various provisions of the South Carolina Tort Claims Act. South Carolina Code § 15-78-60 has various subsections where sovereign immunity was retained. The City submits that multiple subsections are applicable including (1), (2), (3), (4), (11), (12), and (13).

I do note that subsection (11) prevents an action based on assessment or collection of a tax or enforcement of tax laws. A business license fee is a type of tax that is collected. Tort claims relating to assessment or collection of a tax would be barred by the retained sovereign immunities of the South Carolina Tort Claims Act. It would be unreasonable to interpret this as apply to only those taxes that were properly calculated and collected. There is no need for tort immunity for properly calculated and collected

taxes. Of course, there is a mechanism for contesting the calculation of taxes of all types including payment under protest. In the view of this Court there is no tort remedy for an improperly calculated tax or fee. The City concedes that if it has incorrectly calculated a tax, it will refund any sums paid under protest with interest.

For the reasons stated above, the appeal in this case is AFFIRMED. The Motion for Summary Judgment of the City of Goose Creek is GRANTED. The Motion for Summary Judgment of Todd Olds is DENIED.


R. Markley Dennis, Jr.
Presiding Judge

Charleston, S.C.

Sept 3, 2014

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Bein, Cobb, Infinger
and Goldstein, P.A.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
Case No. 2011-CP-08-2814

TODD OLDS,

PLAINTIFF,

CITY OF GOOSE CREEK,

DEFENDANT.

ORDER

CLERK OF COURT
BERKELEY COUNTY, SC

2014 OCT -8 PM 1:25

FILED
S.W.

This matter comes before me upon Motion for Reconsideration filed by Plaintiff, TODD OLDS, by and through his attorney, Thomas R. Goldstein, Esquire. Based on the pleadings, submissions and memorandums in this matter, the Motion for Reconsideration is denied without oral argument;

AND IT IS SO ORDERED!


R. MARKLEY DENNIS, JR.
Presiding Judge

Moncks Corner, South Carolina

October 3, 2014

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OCT 20 2014

Belk, Cobb, Ininger
and Goldstein, P.A.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-08-2814

Todd Olds

City of Goose Creek

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: 

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's Motion to Amend the Complaint to add Ron Faretra and Jennifer Althoff as individual defendants is hereby GRANTED. The merits of any defenses will be considered pursuant to any motion to dismiss and/or motion for summary judgment. Defendants shall have thirty (30) days from the service of the Amended Complaint to answer and/or move to dismiss. The cross-motions for summary judgment shall be refiled and reargued to address the allegations as set forth in the Amended Complaint.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

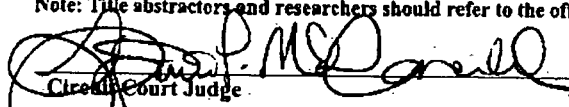
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2163
Judge Code

06/13/14
Date

SCRCP Form 4C (03/2013)

Page 1

For Clerk of Court Office Use Only

This judgment was entered on the 14th day of July, 2014, and a copy mailed first class or placed in the appropriate attorney's box on this 14th day of July, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: [REDACTED]

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
TODD OLDS,)
Plaintiff,)
v.)
CITY OF GOOSE CREEK,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-08-2814

**ORDER DENYING MOTION FOR
INJUNCTION**

2012 OCT-8 AM 11:43
CLERK OF COURT, SC
BERKELEY COUNTY, SC

THIS MATTER IS BEFORE THE COURT on Plaintiff Todd Old's Motion for Injunction, filed on August 31, 2012. In his Motion, Plaintiff requests that this Court direct the City of Goose Creek to allow water service to property he owns at 834 North Aylesbury Drive, Goose Creek, South Carolina.

The issuance of an injunction requires that the complaint allege facts sufficient to constitute a cause of action for an injunction while also showing an injunction is reasonably necessary to protect the legal rights of the plaintiff pending the litigation. Transcont'l Gas Pipe Line Corp. v. Porter, 252 S.C. 478, 480-81, 167 S.E.2d 313, 315 (S.C. 1969). A preliminary injunction should be issued only if necessary to preserve the status quo ante. Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 694 S.E.2d 15 (S.C. 2010). To obtain an injunction, a party must demonstrate (1) irreparable harm, (2) a likelihood of success on the merits, and (3) an inadequate remedy at law. Roach v. Combined Util. Comm'n, 290 S.C. 437, 442, 351 S.E.2d 168, 170 (Ct. App. 1986).

Upon consideration of the Motion for Injunction, the supporting affidavits, and the oral arguments placed on the record on October 3, 2012, this Court finds that the Plaintiff has not demonstrated the factors necessary to obtain an injunction. Because water service has never

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TODD

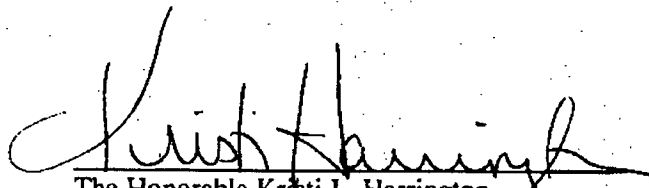
10/5/12

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previously been provided to the Plaintiff for this unoccupied property, an injunction is not necessary to preserve the status quo ante. The Plaintiff can obtain water service by payment of the disputed business license fees and penalties the City of Goose Creek alleges he owes. Additionally, the Plaintiff has failed to demonstrate the irreparable harm he would suffer if the injunction was not granted. There was no evidence presented of any loss of income or other monetary loss. Furthermore, the property has not been identified by the Plaintiff as his primary residence. Even though the Plaintiff owns the residence, he has failed to establish that water to the residence is essential, since at the time of the hearing, the home's purpose was unknown. Because the Plaintiff has failed to establish the elements required for an injunction, the Plaintiff's Motion is respectfully denied.

THEREFORE, IT IS HEREBY ORDERED that the Plaintiff's Motion for Injunction is DENIED.

AND IT IS SO ORDERED.



The Honorable Kristi L. Harrington
Presiding Judge, Ninth Judicial Circuit

Moncks corner, South Carolina.

October 5, 2012

This is special City Council meeting Tuesday, September 27, 2011. We have any comments from the audience before we get into the agenda?

OK, Frist item of business is, uh, business license appeal hearing for Mr. Todd Olds.

Mr. Harmon did you want to say anything relevant to that?

Mr. Harmon: Mr. Mayor, members of council, uh, we had, uh Mr. Olds had a business license, he does have a business license, he uh is in real estate, he purchases houses, uh refurbishes them and sells them. We have for many years now a business license inspector that goes through sale records to make sure the amounts that are claimed on business licenses are the same for sales records. Uh during that process we discovered a discrepancy, uh and then we sent Mr. Olds a letter uh telling him what the discrepancy was and we also have some phone calls with him. He appealed it, I denied his appeal, it was appealed again to the City Administrator, he denied the appeal and he has since appealed to you. And all of the information concerned in that should be in the packets that were handed out to you.

Thank you, Mr. Fletcher.

Do the members of the council have questions for Mr. Fletcher

Well he paid the full amount correct.

Yes sir, in accordance with that ordinance, You cannot appeal until you pay the full amount.

And it's uh a definition, basically a definition of what gross...

So based on what it states in our ordinance I can't provide any meaningful information.
So all of the information concerning the decision was given to you in your packet.

Well uh it is interesting reading that our attorney Mr. Tim Domin that he uh looked at case, case files or case records.

Again Mr. Mayor I can't provide additional information to you, um, there is a letter I believe in the package from Mr. Domin.

According to the letter Mr. Domin wrote, uh, I would assume, from what I gathered here, I would assume that he researched that case law and that we were well within our rights. He did cite some cases.

And he didn't cite any cases where the other methodology was followed.

I know Ron that I'm kind of bouncing it off of you, I know you are not an attorney so you cannot give us any additional information other than what is in the ordinance, but did Mr. Domin didn't give to us any case law that followed the other methodology that Mr. Olds would prefer us to follow, did he?

I don't remember that.

I didn't see it either.

Short of, would somebody on city council or somebody in this room give me an argument to support Mr. Olds methodology? Why would Mr. Olds position be correct that we would overrule Mr. Harmon's decision?

Mr. Mayor I read the packet that we received on this appeal and it really stressed out what the state is saying and also what our ordinances say about uh what's involved in this and uh, so I really don't see any connection on the letter that we received from Mr. Olds concerning why he shouldn't be required to pay the amount that, the four hundred and some dollars that is still owed on, on this appeal.

Uh, well then let me try to be an advocate for Mr. Olds. Uh, well if I was an advocate for Mr. Olds I would ask you some question regardless whether they were misleading or not.

I would ask you why is the city of Goose Creek one of the few cities that follows this methodology When the standard practice doesn't adhere to this City's methodology, so how can we justify it?

Oh here's one, the city charged a unique path by equating gross sales as gains.

Why would real sales be a gain if you were in real estate, [person's name: inaudible] you know that cause you buy and sell houses.

You don't gain anything, it's the difference between the price of the house that you sold and what you had to pay for it. in the first place That's the only gain you have.

So how can it be equated to gross sales?

You have to have a methodology on how you do this and whether or not you use one method or the other, in my opinion it just spread the tax differently,

You can try to get my do justify whether that gain is better on this sale or that sale? My opinion is..

Im trying to find out why, this is an attorney here, who is this, Mr. Goldstein?

If we assume that he is trying to tell us the truth, If we assume that Mr. Goldstein is actually trying to state the truth and I know we went into the Marbury vs. Madison, and all that business and that was a side show, but

He states in here that were the only one using this methodology, that other cities in town show gain a different way.

I think...

Do we know whether that is true or not?

As I remember we were looking at the business licenses structure before, you know, quite a while ago, you know it's based on gross because that's a pretty much, you know cause it is as it is, or you go into the net then you IRS, what about the guy who lost money? Does he owe us money, does that mean we don't have to pay the business license? It's based on how much you make, it based on gross cause You assume, you don't worry about what the guys makes, you know they're in business trying to make money, but you know that's not how we measure what the business license fee is.

Right, I know. So,

Are there any other administrative remedies for Mr. Olds within our city or is this it

[Can't really hear]

Circuit court, remedy

Indicated what?

Indicated that they're going to take the appeal to the circuit court and that is their remedy.

Do we have experience with this before? I don't remember a case coming before us like this before
Question

I think Mr Everett questioned it, yes Bill Everett, I remember that 20 years ago, maybe, 25 years ago
Margarette: I think this was the rule for a good while, I don't know just how long, we didn't change this
just to make things different for him, and uh, you know we have to keep things the same, you'll have to
prove to me that we make the wrong decision, b/c I don't think so.

The point that is important to me is that

Mike first page, the city's definition of gross income is in IRS defines as gross income, according to our
attorney so I don't have an issue with it.

If city council denies the appeal I think you know

Alright, do you want to take any action tonight

I make the motion to deny the appeal

Can we

I second

Any other discussion, all in favor say I, I

Motion carries



ORIGINAL

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BERKELEY

2011-CP-08-02814

TODD OLDS

VS.

CITY OF GOOSE CREEK

TRANSCRIPT OF RECORD

JULY 29, 2014

MONCKS CORNER, SC

B E F O R E:

HONORABLE R. MARKLEY DENNIS, JR.

A P P E A R A N C E S:

THOMAS R. GOLDSTEIN, ESQUIRE
Attorney for the Plaintiff

TIMOTHY A. DOMIN, ESQUIRE
Attorney for the Defendant

Ruth L. Mott, RPR, CRR
Official Court Reporter

I N D E X

CERTIFICATE OF REPORTER 17

E X H I B I T S

NO.	DESCRIPTION	ID	EVD

(NONE MARKED)

1 THE COURT: Okay. Thank you each for your memorandum
2 and your communications. I appreciate it. All memorandum
3 will be incorporated fully for purposes of review. There's
4 several motions that are pending. I'll defer to you all, the
5 order which you want to go is fine with me. I don't have a
6 preference.

7 MR. GOLDSTEIN: Your Honor, I think -- these are cross
8 motions for summary judgment.

9 THE COURT: Yes.

10 MR. GOLDSTEIN: I think, technically, in a timeline I
11 was first and Mr. Domin crossed.

12 THE COURT: That's fine.

13 MR. GOLDSTEIN: Then I amended my complaint. He refiled
14 his motion. I didn't. So I don't know.

15 MR. DOMIN: This is actually an appeal with a lawsuit
16 that's been piggy backed on top of it, and so we need to get
17 a decision on that appeal, and I would submit to you that's
18 the gist of what's going on today, but we can certainly
19 approach it whatever way you want.

20 THE COURT: Summary judgments deal with the action
21 pending contemporaneous with the appeal issue.

22 MR. GOLDSTEIN: Yes, sir. I think the motion summary
23 judgment, your decision, whatever it may be, I think will
24 resolve the entire case. There are other ancillary issues.

25 THE COURT: Does the appeal negate the hearing of the

1 motions for summary judgment?

2 MR. GOLDSTEIN: No.

3 MR. DOMIN: I think it does in the sense that if you
4 hear the appeal.

5 THE COURT: I'll tell you what, I'll pick it. Let's go
6 for the motions for summary judgment. I'll decide. Thank
7 you very much. You go first.

8 MR. GOLDSTEIN: Thank you, Your Honor, may it please the
9 Court.

10 THE COURT: Let me just ask you so that we can have an
11 understanding. This comes from a personal experience, not
12 with you guys, and I don't mean this disrespectfully, but in
13 1997 I was in Beaufort and heard a number of motions, and
14 motions for summary judgment really are based on the record,
15 so really the arguments of the attorney is not the record, so
16 we did a lot of those then, just to expedite, without a court
17 reporter. We'd do them in chambers. So I asked the lawyers,
18 I said, cross motions, that means you both agree this is a
19 matter of law for the Court's consideration. And they said,
20 yes, that's correct. I said, okay, well, we'll hear it. I
21 ruled, and the non-prevailing party appealed, said there were
22 issues of fact, and the Court reversed it on that issue, on
23 that basis. So do you agree that this is a decision the
24 Court has to make?

25 MR. GOLDSTEIN: Your Honor, I'm afraid --

1 THE COURT: Because if you tell me there's a scintilla,
2 then I can resolve these motions real quickly.

3 MR. GOLDSTEIN: That's right. I hate to say -- I want
4 to say yes so badly, but I cannot say yes because there is a
5 claim for damages.

6 THE COURT: Which is?

7 MR. GOLDSTEIN: Well, during the pendency of this action
8 we contend that two employees of the City of Goose Creek
9 acted outside the scope and course of their duties and
10 falsely imprisoned one person, invaded Mr. Olds' house and
11 also misused their corporate authority to deny him water
12 service.

13 THE COURT: Let me just hear it.

14 MR. GOLDSTEIN: Okay. Your Honor, this is a -- and I'm
15 going to be brief, Judge. I handed up a hard copy of my
16 two-page memorandum.

17 THE COURT: Yes, sir.

18 MR. GOLDSTEIN: And I think this two-page memorandum
19 contains all of the factors that I wish to bring to the
20 Court's attention.

21 THE COURT: Okay.

22 MR. GOLDSTEIN: Now, just by way of background, Mr.
23 Domin and I have spoken. Mr. Domin and I have good
24 communication. We've spoken, and part of our lawsuit is that
25 the City of Goose Creek denied Mr. Olds due process by

1 providing an administrative appeal process for him but not
2 permitting him to participate in it; and Mr. Domin and I
3 agree that if Your Honor were to find that as a fatal defect
4 and remand it back, that such an appearance back before the
5 town with his participation would be a futile effort, and
6 we're in agreement on that. But there is a due process
7 allegation in this case because while the town provides an
8 administrative appeal, it does not allow the appellant to
9 participate. Appellant can come, sit in the audience, but
10 can't talk. So with that background, this matter is a very
11 simple case of statutory construction, and I'll just run down
12 my premises, which are in my two-page memorandum, and then
13 I'll sit down and let Mr. Domin try to confuse the issue for
14 the Court.

15 My first premise -- and I submit, Your Honor, if any of
16 the nine premises, I'm sorry, eight premises that I'm going
17 to recite to this Court are incorrect, then I lose my motion
18 for summary judgment. I only get summary judgment if these
19 premises are not contested. The first premise is a statement
20 of law that the function of a Court is to enforce statutes as
21 they're written.

22 THE COURT: With all due respect, you submitted this as
23 filed. I don't think we have any problem with the law
24 specific as to what I'm required to do regarding interpreting
25 and applying statutes. Municipal governments obviously are a

1 creature of statute and possess the powers given by the law.
2 No question about that. They can't deviate, in other words,
3 they can't make laws as contrary to state law that applies to
4 them, and I don't think there's any quarrel about that. From
5 what I've looked at it, it looks like the argument really
6 comes in what's the income.

7 MR. GOLDSTEIN: That's correct. We contend the
8 income --

9 THE COURT: That's the issue.

10 MR. GOLDSTEIN: That's the issue.

11 THE COURT: Okay.

12 MR. GOLDSTEIN: We contend the income is defined by
13 Section 61 of the internal revenue code which is adopted by
14 the State of South Carolina, and if you look at the City of
15 Goose Creek's business license ordinance, it tells you what
16 line on your income tax return to go to to plug into their
17 calculation. Mr. Domin contends, or the city contends that
18 gross income is gross receipts, and so that's our entire
19 argument, Judge, is that income is not receipts.

20 THE COURT: Okay. All right. Mr. Domin?

21 MR. DOMIN: Your Honor, Mr. Olds is contending that
22 because he is a seller of real estate, as opposed to being a
23 seller of green beans or jewelry, that he should only have
24 his gross income calculated on the difference between what it
25 costs him and what he sells it for, what some people would

1 call profit. On the other hand, the seller of beans or
2 diamonds or whatever is unquestionably taxed on the entirety
3 of what they sell, a true gross number. Your Honor, for
4 federal income tax purposes it doesn't make a difference
5 because that is a tax on net taxable income. At the end of
6 the day the home seller puts on one line his profit, on the
7 other line the seller of green beans puts his total and then
8 deducts out his costs of doing business, which include the
9 cost of green beans. Likewise, when you pay your South
10 Carolina income taxes, they're going to incorporate that
11 federal standard because, again, that is an income tax.
12 However, in this situation municipalities tax on gross
13 income, which has a different meaning. And, specifically,
14 South Carolina Court of Appeals in 1989 said that the term
15 gross income doesn't necessarily have the same meaning in
16 every context, you have to look and see what it means in
17 taking into consideration the purposes of the statutes, the
18 results to be accomplished, the subject under consideration.
19 Goose Creek's ordinance specifically defines gross income the
20 way that all other municipalities really in the state do.
21 They say this is a privilege tax, and it is on the totality
22 of your receipts without any deduction on account of the cost
23 of the property sold. That same standard is what the Supreme
24 Court of South Carolina has said again and again that is what
25 we have to do. Carter versus Linder in 1990, even going back

1 to 1921 in Columbia Railway versus Jones. The measure of the
2 tax is the volume of business or gross income for business
3 done. Gross income means the total receipts from a business
4 before deducting expenditures for any purposes. In fact,
5 there was a case just last month of Hilton Head versus Kigre
6 where the Supreme Court once again rejected challenges to
7 business license ordinances and cited various cases that
8 involve its historical approach that these are gross income
9 taxes. The problem is not unique to South Carolina. In
10 fact, I believe on page 5 of our memo you'll see a quote,
11 which is a great quote from Bender on state taxation, which
12 is a noted treatise, and they note that gross receipt taxes
13 may be imposed on the gross income of a business, gross
14 receipts, gross proceeds of sales or any other term that
15 suggests total business revenue. Consequently, the term is
16 used different in context than it relates to federal tax law.
17 So Bender is saying in state tax, municipal privilege tax
18 purposes, the term gross income is different than in federal
19 tax law.

20 Your Honor, there's another good reason why I don't
21 think you would want to use the federal income tax definition
22 of gross income, and that is because the South Carolina
23 privilege taxes go back into the late 1800s and actually
24 preexist the federal income tax which was created in 1916 by
25 passing the 16th Amendment -- 1913 passing the 16th

1 amendment. The case law tells you you're supposed to defer
2 to the entity that is construing this, and that is a cardinal
3 rule of statutory construction.

4 And then, finally, I think it's just basic fairness.
5 Mr. Olds is asking for a system that would treat people who
6 sell real estate vastly differently than people who sell
7 green beans or diamonds or gold bars or anything else, or for
8 that matter services. He's asking for a rule that is very
9 different.

10 Your Honor, that really does encapsulate what I think
11 you can decide on the appeal and on summary judgment. You
12 can say the City of Goose Creek is correctly applying its
13 definition of gross income, and it is allowed to apply that
14 definition; and once you do that, I think a lot of things
15 fall into place. Mr. Olds has not paid all of his business
16 license tax because he says, I don't owe all that stuff.
17 City of Goose Creek is saying, we're not going to give you
18 water service because you're not paid up. You're not a
19 lawful business. That's where a lot of our disputes are
20 coming from.

21 We're of the view that if somebody's over there working
22 at his house, we went by and said, knock, knock, knock, do
23 you guys have business licenses because we're worried. We
24 want to make certain that we're getting all the business
25 license revenue that we're entitled to get if there's a

1 business there. So a lot of these other things fall into
2 place, and you can decide those on summary judgment or not.
3 I think it's most important that you decide the issue of
4 who's right on the issue of gross income. That's going to go
5 up on appeal. The Supreme Court will decide that, and then
6 probably everything else will sort its way out.

7 THE COURT: I haven't reviewed all of the cases that
8 you've submitted that were handed to me, but given the fact
9 that all -- you made the statement. I haven't done the
10 research on this. I would assume the accuracy of your
11 statement that all municipalities use the same, basically the
12 same definition of gross income or gross receipts, which
13 makes sense to me there's a logical reason for that because
14 it makes it a cleaner, clearer way of imposing a tax; and,
15 yes, it is a tax for the privilege of doing business within
16 the municipality. It's a cost of what you're going to do.
17 And surely, and this is something I realize as a lawyer and
18 more so as a judge, this isn't the first time somebody's
19 raised this issue, is it?

20 MR. DOMIN: To my knowledge it is. I'm in communication
21 with the municipal association on this.

22 THE COURT: Morris Rosen used to tell me something: If
23 you haven't seen it, and we've been doing business this way,
24 probably the reason you hadn't seen it is because you can't
25 do it that way. And the way that they're doing it is the

1 correct way. This makes sense to me. You are all
2 intelligent people, but there are a lot of intelligent people
3 that have dealt with this issue heretofore. As you've
4 stated, this has been around for a little while, little bit
5 longer than income tax, and certainly it's been applied.
6 People have paid taxes pursuant to this philosophy for years.
7 So I respect your position, but I don't know what -- I agree,
8 this is, it's kind of -- my church is involved in a dispute
9 right now, and Judge Goodstein will ultimately rule, but
10 everybody knows that that's just the first step. The
11 ultimate decision will be made in Columbia.

12 I understand that with this, and I don't fault either
13 one of you. As I said, I've had the pleasure of working with
14 both of you over the years and respect you both. You both
15 are great practitioners and just an asset to our profession,
16 but I'll make the call on what gross income is. I really
17 believe that obviously that needs to be decided from the
18 standpoint of the summary judgments because, frankly, there
19 probably are a number of issues that may or may not exist in
20 the action itself. The question, and this -- I don't know
21 whether those actions will be stayed or what pending the
22 appeal because obviously, just thinking out loud, if they're
23 doing what they had the legal right to do, then there may be
24 some -- may be some issues that you may have causes of action
25 but may dramatically affect your right to pursue some actions

1 if they're doing nothing more than -- the, quote, damages are
2 the result of them carrying out the duty which they're
3 required to do by law, so I think probably those matters
4 ought to be just held in abeyance, I think.

5 MR. GOLDSTEIN: May I respond to two points?

6 THE COURT: Yes, please, and I didn't mean to cut you
7 off. I'm just thinking out loud with respect to the summary
8 judgements to try to expedite this. It seems to me that the
9 issue on appeal, it's critical for me to rule on that so that
10 you then are set to go to the next level on that particular
11 issue if necessary.

12 MR. GOLDSTEIN: We both agree with Your Honor on that.

13 THE COURT: I'm looking at you, but that applies to Mr.
14 Domin as well.

15 MR. DOMIN: We're in agreement that that is the key
16 issue and that needs to be decided and that will be appealed
17 and that will be decided on appeal.

18 THE COURT: And I think that's probably the best thing
19 for me to do, but please feel free.

20 MR. GOLDSTEIN: Just two points.

21 THE COURT: Take as long as you want Mr. Goldstein.

22 MR. GOLDSTEIN: One, Your Honor was quoting the much
23 missed Morris Rosen -- we all miss Mr. Rosen -- as to, well,
24 if nobody has raised it before, then it must -- they must be
25 doing it right. Let me explain Your Honor why this case is

1 before this Court today.

2 THE COURT: Let me add this too because I went to Waties
3 Waring's statute unveiling, and he took at issue too, which I
4 think balanced what I just said, when he said we will
5 continue to provide that separate but equal is proper because
6 that's the way they decided it all those years, and we know
7 that wasn't so, and he said so, so I understand that too.

8 MR. GOLDSTEIN: And I have some personal experience with
9 that myself. My father was born in 1906 in a very bad place.

10 THE COURT: I understand.

11 MR. GOLDSTEIN: So we understand --

12 THE COURT: We're on the same page.

13 MR. GOLDSTEIN: -- the function of the Court. I do want
14 to respond to two points though. With regard to why this
15 case is before Your Honor now, people have been reporting
16 their gross income on these forms. Mr. Olds has been
17 reporting his gross income the way he calculates it.
18 Everybody's been reporting the gross income the way we say it
19 is, and the reason for that is, if you read the Goose Creek
20 ordinance, it says your gross income is the same income that
21 you report.

22 THE COURT: And I heard you. I need to look
23 specifically at the order.

24 MR. GOLDSTEIN: And the reason it came to a head is,
25 it's in Mr. Olds' affidavits, he had a disagreement with the

1 city on another unrelated matter. That brought -- and there
2 was some residual bitterness, and that brought him to the
3 attention of the City, and they audited his returns, and
4 that's what touched this controversy off. He's been
5 reporting what we contend is the right amount for years.

6 The second point is that we filed an affidavit with the
7 Court from a professor of law at Charleston School of Law,
8 Kristin Gutting, and in that affidavit she goes through the
9 detailed analysis of the difference between gross income and
10 gross receipts. And rather than citing case law, she cites
11 the treasury regulations.

12 THE COURT: And I appreciate that. Again, I'm afraid
13 we're trying to compare apples and oranges, but I'll be
14 happy -- I'll look at it, and I'll review all of that.

15 MR. GOLDSTEIN: And I'll sit down with this last
16 thought. The enabling statute, of course we both agree, is
17 section 5-7-30, which the Goose Creek ordinance incorporates,
18 which says gross income.

19 THE COURT: You wanted to respond?

20 MR. DOMIN: There is no vendetta against Mr. Olds, and
21 we have audited other people at his request even, and they're
22 all paying on the total --

23 THE COURT: Mr. Domin, I really don't need to get into
24 harsh feelings from anybody. That doesn't have a thing in
25 the world to do with my decision in what is gross income.

1 MR. DOMIN: I understand, Your Honor. Appreciate it.

2 THE COURT: Thank you, sir. All right, gentlemen, I'll

3 take this under advisement and be back in touch.

4 MR. GOLDSTEIN: Thank you, Your Honor.

5 THE COURT: Thank you, sir.

6 --- END OF TRANSCRIPT OF RECORD ---

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1 CERTIFICATE OF REPORTER

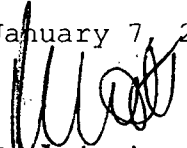
2 STATE OF SOUTH CAROLINA

3 COUNTY OF BERKELEY

4
5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 9th Judicial Circuit Court for Berkeley County, South
11 Carolina, on the 29th of July, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 January 7, 2015

16 
17 Ruth L. Mott

18 Official Court Reporter
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-08-284

Todd Olds,

Plaintiff,

vs.

City of Goose Creek,

Defendant.

SUMMONS

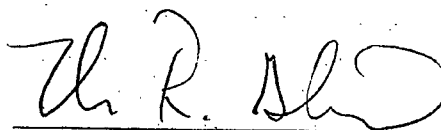
FILED
2011 OCT 12 PM 4:26
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you; and to serve a copy of your Answer to the said Complaint upon the subscribers at their offices at 2344 Cosgrove Avenue, Post Office Box 71121, Charleston, South Carolina, 29415-1121 within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN FURTHER NOTICE that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the Complaint.

October 7, 2011



Thomas R. Goldstein, Esq.
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121
(843) 554-4291; (843) 554-5566 fax
ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-08-2814

Todd Olds,

Plaintiff,

vs.

City of Goose Creek,

Defendant.

COMPLAINT
(Jury Trial Demanded)

FILED
2011 OCT 12 PM 4:26
MARY F. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

The Plaintiff above named, complaining of the Defendant above named, alleges and says as follows:

1. The Plaintiff is a citizen and resident of the County of Charleston, South Carolina and conducts business in the City of Goose Creek and is required by the City of Goose Creek to maintain a business license in that municipality.

2. The Defendant, the City of Goose is a municipality organized and existing pursuant to the laws of the State of South Carolina, existing entirely in Berkeley County, State of South Carolina.

3. The Court has jurisdiction over the parties hereto and the subject matter herein.

4. This action is in part an appeal from a decision of City Council dated September 29, 2011, mailed September 30, 2011, and received by counsel on October 4, 2011, as well as an application to the Court for declaratory judgment and for trial by jury for damages arising out of violation of the plaintiff's civil rights.

5. Approximately one year before the current controversy involving the calculation of the plaintiff's business license, the plaintiff had a disagreement with the City of Goose Creek in which the City of Goose Creek attempted to prevent the plaintiff from undertaking repairs to property he owned in the City of Goose Creek.

6. The dispute with the City of Goose Creek over repairs to the plaintiff's property resolved in favor of the plaintiff, but as a result, the City of Goose Creek retaliated against the

plaintiff by using its corporate powers to single him out for disparate treatment on his business license.

7. As part of the scheme to retaliate against the plaintiff, the City of Goose Creek audited the plaintiff's business license and informed the plaintiff that it was calculating his business license in a unique manner and in direct violation of the City's ordinance.

8. When the plaintiff protested that the City is violating his rights and seeking to punish him because he prevailed on an unrelated matter, the City informed the plaintiff that if he did not capitulate to the City's demands, that the City would terminate municipal water service to all of the plaintiff's properties.

9. The City of Goose Creek calculates the fee for a business license based on gross income, except for the plaintiff, for whom it calculates his fee for a business license based on gross receipts in violation of its own ordinance. The applicable Goose Creek Business License ordinance, §110.001 "Definitions" defines "gross income" as follows:

The **GROSS INCOME** for business license purposes shall conform to the gross income reported to the state Tax Commission or the State Insurance Commission. In the case of brokers or agents, **GROSS INCOME** shall mean gross commissions received or retained, unless otherwise specified. . . . The **GROSS INCOME** 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 Insurance Commission or other government agency.

In connection with this ordinance, the plaintiff produced to the City of Goose Creek a copy of his filed federal tax returns, which demonstrate his "gross income" to be \$131,665.

10. Despite furnishing conclusive proof of his "gross income" as reflected on line 7 of Schedule C of Form 1040, which is the line for "gross income," the City persists in asserting that in the plaintiff's case, his business license is calculated on his "gross receipts," or line 1 of Schedule C of Form 1040.

11. The plaintiff paid the disputed tax under protest and requested an administrative appeal as provided by the City of Goose Creek. On July 26, 2011, the City of Goose Creek

conducted an administrative hearing on the plaintiff's protest. After the hearing concluded, the Town hired a lawyer to prepare a written memorandum advising the Town to deny the protest application during an unknown process from which the City barred the plaintiff.

12. Based on the advice of counsel during some process in which the plaintiff was not permitted to participate, the Town denied the plaintiff's protest.

13. The plaintiff then appealed the decision to the City Council as provided for in § 110.016. The City Council decided the appeal based on presentation of the case by the same city administrator who denied the initial protest application, and, as before, conducted the hearing without allowing the participation of the plaintiff and in violation of the statutory requirements of the Freedom of Information Act.

14. § 18-7-10, South Carolina Code permits an appeal of the City Council decision to the circuit court.

FOR A FIRST CAUSE OF ACTION

(Appeal from City Council)

15. The plaintiff repeats the above allegations as if set forth here verbatim.

16. The decision of the City of Goose Creek is in violation of the definitions of its own ordinance and is not supported by fact or law. The decision to force the plaintiff to pay a business license fee based on "gross receipts" rather than "gross income," accompanied by threats to terminate his right to utilize water are willful acts taken against the plaintiff to punish him for challenging the City on an unrelated matter.

FOR A SECOND CAUSE OF ACTION

(Violation of Equal Protection)

17. The plaintiff repeats the above allegations as if set forth here verbatim.

18. The City of Goose Creek has adopted a deliberately tortured interpretation of its ordinance in an effort to single out the plaintiff for disparate treatment, including threatening to terminate municipal water service to each one of the plaintiff's properties.

FOR A THIRD CAUSE OF ACTION

(Abuse of process)

19. The plaintiff repeats the above allegations as if set forth here verbatim.

20. In an effort to force the plaintiff to capitulate to the City's punitive measures, the City has violated its duties to the plaintiff in threatening to withhold essential life services in order to force the plaintiff to capitulate on an unrelated tax dispute.

21. There is no relationship between the City's obligation to deliver essential life services and the plaintiff's First Amendment right to petition the government. The City's threat to withhold water from the plaintiff was taken with the ulterior purpose of forcing the plaintiff to yield on an unrelated tax dispute. The City's threat was an intentional act that is not proper in the regular conduct of its duties to supply water to all customers without regard to their status.

22. The plaintiff is entitled to a trial by jury to calculate the plaintiff's actual and punitive damages from the City's abuse of process.

FOR A FOURTH CAUSE OF ACTION

(Procedural Due Process)

23. The plaintiff repeats the above allegations as if set forth here verbatim.

24. The City of Goose Creek took up the plaintiff's administrative appeals in proceedings in which the plaintiff was permitted to participate partially, or, in the case of the appeal to the City Council, the City did not allow the plaintiff to participate at all.

25. The City denied the plaintiff an opportunity to participate in a meaningful manner in violation of the plaintiff's federal and state constitutional requirements for minimal due process.

FOR A FIFTH CAUSE OF ACTION

(Substantive due process)

26. The plaintiff repeats the above allegations as if set forth here verbatim.

27. The City's refusal to apply its own ordinance to the plaintiff's case is so arbitrary and capricious that it falls outside of the perimeter of the lawful exercise of legislative authority, and deprived the plaintiff of substantive due process by forcing the plaintiff to pay an excessive tax designed to punish the plaintiff for challenging the City's legal position on an unrelated matter. The City's action is so far beyond the limits of legitimate governmental action, that no process could cure the deficiency, and as set forth in the previous cause of action, the City of Goose Creek prohibits challengers from participating in the process.

FOR A SIXTH CAUSE OF ACTION

(Violation of F.O.I.A.)

28. The plaintiff repeats the above allegations as if set forth here verbatim.
29. On September 27, 2011, the City Council held a special meeting to consider the plaintiff's appeal.
30. The City Council refused to allow the plaintiff to participate either in person or through counsel, did not advertise the meeting, did not prepare an agenda, all of which are in violation of South Carolina's Freedom of Information Act, § 30-4-80, S. C. Code, ann.
31. The City Council's actions regarding the plaintiff are void as a matter of law.
32. The plaintiff is entitled to an award of attorney's fees as provided for in the Freedom of Information Act.

FOR A SEVENTH CAUSE OF ACTION

(Damages and Attorney's fees § 15-77-300, 310, 30-4-100, S. C. Code, ann)

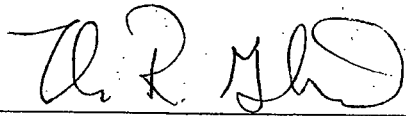
33. The plaintiff repeats the above allegations as if set forth here verbatim.
34. As a direct and proximate result of the City's actions against the plaintiff, he has been forced to pay an excessive license fee for which the City should reimburse him. Further, the plaintiff has been forced to divert time and energy to preventing an unlawful tax that has caused him to lose income. Further, the City's actions have chilled the plaintiff's ability to conduct business in the City of Goose Creek, all of which results from the City's unlawful acts directed against him.
35. The plaintiff is entitled to an award of a reasonable attorney's fees because the City's actions taken against him are without substantial justification and there are no circumstances that would make an award of attorney's fees in this case unjust.

WHEREFORE, having fully set forth his complaint, the Plaintiff prays an order of the Court;

- a. Granting the Plaintiff a trial by jury on the actions at law for damages;
- b. Enjoining the City of Goose Creek from collecting a business license fees based on gross sales;
- c. Vacating the action taken by City Council on September 27, 2011, as void as a matter of law;

- d. For an award of attorney's fees against the City of Goose Creek as allowed for under Sections 15-77-300 et. seq. and § 30-4-100 of the South Carolina Code of Laws;
- e. For a declaratory judgment against the City of Goose Creek enjoining the City from interpreting its ordinance contrary to the plain and ordinary language contained therein;
- f. For costs of this action;
- g. And for such other and further relief as this Court may deem just and proper.

October 7, 2011



Thomas R. Goldstein, Esq.
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121
(843) 554-4291; (843) 554-5566 fax
ATTORNEYS FOR PLAINTIFF

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-08-2814

ANSWER

Plaintiff,

VS.

Defendant.

5. That the City of Goose Creek denies the allegations of paragraph 5 of the Complaint as stated. The City did investigate whether Mr. Olds was repairing a property that he was flipping without a proper permit, but there was insufficient evidence at that time to proceed with a citation. Any remaining allegations contained in paragraph 5 are denied.
6. That the City of Goose Creek denies the allegations of paragraph 6 of the Complaint as stated. The City did investigate whether Mr. Olds was repairing a property that he was flipping without a proper permit, but there was insufficient evidence at that time to proceed with a citation. Any remaining allegations contained in paragraph 6 are denied.
7. That the City of Goose Creek denies the allegations of paragraph 7 of the Complaint.
8. That the City of Goose Creek denies the allegations of paragraph 8 of the Complaint as stated. The City does have the right to withhold water service from businesses that are operating illegally - - including ones that have not obtained a business license. As it relates to Mr. Olds, the City did not turn off Mr. Olds' water. He had the right and obligation to pay his business license fee. He had the right to pay it under protest which he chose to do and to pursue an appeal. He did not have the right to simply refuse to pay an assessment and to operate as if he had paid in full. The City of Goose Creek has not retaliated against him for filing an appeal in this case.
9. That the City of Goose Creek denies the allegations of paragraph 9 of the Complaint as stated. The City of Goose Creek charges all businesses on "gross

income" as is defined in the City's ordinance and as interpreted by the City's Finance Director and Business License Department.

10. That the City of Goose Creek denies the allegations contained in paragraph 10 of the Complaint as stated. Given that Schedule C of IRS Form 1040 is not the determination of "gross income" for Mr. Olds.
11. That the City of Goose Creek admits so much of paragraph 11 of the Complaint as indicates that Mr. Olds requested an appeal which was provided to him. That the City of Goose Creek further admits that the undersigned counsel was required to provide a Memorandum of Law. Based on that memorandum and the material submitted by Mr. Olds, the City Administrator made a decision to uphold the determination of the business license official.
12. That the City of Goose Creek denies the allegations contained in paragraph 12 of the Complaint.
13. In response to paragraph 13 of the Complaint, that the City of Goose Creek admits the plaintiff appealed and that said appeal was in favor of upholding the decision of the City Administrator and the business license official.
14. That the allegations of paragraph 14 of the Complaint are conclusions of law which need not be admitted or denied. If said response is required, the same are denied.
15. In response to the allegations of paragraph 15 of the Complaint, the City of Goose Creek realleges and incorporates by reference paragraphs 1 through 14 as fully and effectively as if set forth herein verbatim.
16. That the City of Goose Creek denies the allegations contained in paragraph 16 of the Complaint.

17. In response to the allegations of paragraph 17 of the Complaint, the City of Goose Creek realleges and incorporates by reference paragraphs 1 through 16 as fully and effectively as if set forth herein verbatim.
18. That the City of Goose Creek denies the allegations contained in paragraph 18 of the Complaint.
19. In response to the allegations of paragraph 19 of the Complaint, the City of Goose Creek realleges and incorporates by reference paragraphs 1 through 18 as fully and effectively as if set forth herein verbatim.
20. That the City of Goose Creek denies the allegations contained in paragraph 20 of the Complaint.
21. That the City of Goose Creek denies the allegations contained in paragraph 21 of the Complaint.
22. That the City of Goose Creek denies the allegations contained in paragraph 22 of the Complaint.
23. In response to the allegations of paragraph 23 of the Complaint, the City of Goose Creek realleges and incorporates by reference paragraphs 1 through 22 as fully and effectively as if set forth herein verbatim.
24. That the City of Goose Creek denies the allegations contained in paragraph 24 of the Complaint.
25. That the City of Goose Creek denies the allegations contained in paragraph 25 of the Complaint.
26. In response to the allegations of paragraph 26 of the Complaint, the City of Goose Creek realleges and incorporates by reference paragraphs 1 through 25 as fully and

effectively as if set forth herein verbatim.

27. That the City of Goose Creek denies the allegations contained in paragraph 27 of the Complaint.
28. In response to the allegations of paragraph 28 of the Complaint, the City of Goose Creek realleges and incorporates by reference paragraphs 1 through 27 as fully and effectively as if set forth herein verbatim.
29. That the City of Goose Creek admits the allegations contained in paragraph 29 of the Complaint.
30. That the City of Goose Creek denies the allegations contained in paragraph 30 of the Complaint.
31. That the City of Goose Creek denies the allegations contained in paragraph 31 of the Complaint.
32. That the City of Goose Creek denies the allegations contained in paragraph 31 of the Complaint.
33. In response to the allegations of paragraph 33 of the Complaint, the City of Goose Creek realleges and incorporates by reference paragraphs 1 through 32 as fully and effectively as if set forth herein verbatim.
34. That the City of Goose Creek denies the allegations contained in paragraph 34 of the Complaint.
35. That the City of Goose Creek denies the allegations contained in paragraph 35 of the Complaint.
36. That the City of Goose Creek denies each and every allegation of the Complaint not hereinabove specifically admitted or modified.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:

(Tort Claims Act)

37. That the City of Goose Creek specifically avails itself of the benefits and protections of the South Carolina Tort Claims Act including that the cap on damages and the retained immunities as specified in the Act. That the City of Goose Creek specifically avails itself of the retained immunities set forth in S.C. Code §15-78-60 (1) through (37).

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:

(Judicial/Legislative Immunity)

38. That when the City of Goose Creek acted to hear the appeal of the plaintiff, whether it acted in a *quasi* judicial or legislative capacity, said conduct was immune and privileged and no cause of action rests for such conduct.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:

(Failure to Exhaust Administrative Remedies)

39. That the plaintiff has attempted to bring a suit alleging violation of equal protection, abuse of process and due process claims without exhausting this appeal which

should be a pre-condition to any suit.

FURTHER ANSWERING THE COMPLAINT

AND AS AN AFFIRMATIVE DEFENSE THERETO,

THE DEFENDANT ALLEGES AND SAYS:

(Improper Joinder of Causes of Action)

40. That the plaintiff has improperly joined an appeal with a suit for monetary damage and accordingly this action should be dismissed or severed. The Court should determine the appeal as there is no cause of action if the appeal is affirmed. If the appeal results in a reversal for the City of Goose Creek, then there are still no claims as due process of an appeal is sufficient to protect plaintiff's rights.

CLAWSON AND STAUBES, LLC



Timothy A. Domin
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
(843) 577-2026

Attorney for the Defendant

Charleston, South Carolina

November 21, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing, hand delivering or electronically forwarding a copy properly addressed and with sufficient postage affixed thereto on this 13 day of November, 2011.

Candace L. Franklin

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Todd Olds,

Plaintiff,

vs.

City of Goose Creek,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-08-2814

ANSWER

FILED
2011 NOV 28 AM 11:06
MARY P. BENNETT, JSC
CLERK OF COURT
BERKELEY COUNTY, SC

The defendant, City of Goose Creek, answering the Complaint of the plaintiff above named, alleges and says as follows:

1. That the defendant admits so much of the allegations of paragraph 1 of the Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof. as indicates that the plaintiff is required by the City of Goose Creek to maintain a business license if he conducts business within the City, which he represents that he does.
2. That the City of Goose Creek admits so much of the allegations of paragraph 2 of the Complaint as indicates that it is a municipality organized and existing pursuant to the State of South Carolina.
3. That the allegations of paragraph 3 of the Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof. are conclusions of law which need not be admitted or denied. If said response is required, the same are denied.
4. That the allegations of paragraph 4 of the Complaint are conclusions of law which need not be admitted or denied. If said response is required, the same are denied.

5. That the City of Goose Creek denies the allegations of paragraph 5 of the Complaint as stated. The City did investigate whether Mr. Olds was repairing a property that he was flipping without a proper permit, but there was insufficient evidence at that time to proceed with a citation. Any remaining allegations contained in paragraph 5 are denied.
6. That the City of Goose Creek denies the allegations of paragraph 6 of the Complaint as stated. The City did investigate whether Mr. Olds was repairing a property that he was flipping without a proper permit, but there was insufficient evidence at that time to proceed with a citation. Any remaining allegations contained in paragraph 6 are denied.
7. That the City of Goose Creek denies the allegations of paragraph 7 of the Complaint.
8. That the City of Goose Creek denies the allegations of paragraph 8 of the Complaint as stated. The City does have the right to withhold water service from businesses that are operating illegally - - including ones that have not obtained a business license. As it relates to Mr. Olds, the City did not turn off Mr. Olds' water. He had the right and obligation to pay his business license fee. He had the right to pay it under protest which he chose to do and to pursue an appeal. He did not have the right to simply refuse to pay an assessment and to operate as if he had paid in full. The City of Goose Creek has not retaliated against him for filing an appeal in this case.
9. That the City of Goose Creek denies the allegations of paragraph 9 of the Complaint as stated. The City of Goose Creek charges all businesses on "gross

income" as is defined in the City's ordinance and as interpreted by the City's Finance Director and Business License Department.

10. That the City of Goose Creek denies the allegations contained in paragraph 10 of the Complaint as stated. Given that Schedule C of IRS Form 1040 is not the determination of "gross income" for Mr. Olds.
11. That the City of Goose Creek admits so much of paragraph 11 of the Complaint as indicates that Mr. Olds requested an appeal which was provided to him. That the City of Goose Creek further admits that the undersigned counsel was required to provide a Memorandum of Law. Based on that memorandum and the material submitted by Mr. Olds, the City Administrator made a decision to uphold the determination of the business license official.
12. That the City of Goose Creek denies the allegations contained in paragraph 12 of the Complaint.
13. In response to paragraph 13 of the Complaint, that the City of Goose Creek admits the plaintiff appealed and that said appeal was in favor of upholding the decision of the City Administrator and the business license official.
14. That the allegations of paragraph 14 of the Complaint are conclusions of law which need not be admitted or denied. If said response is required, the same are denied.
15. In response to the allegations of paragraph 15 of the Complaint, the City of Goose Creek realleges and incorporates by reference paragraphs 1 through 14 as fully and effectively as if set forth herein verbatim.
16. That the City of Goose Creek denies the allegations contained in paragraph 16 of the Complaint.

17. In response to the allegations of paragraph 17 of the Complaint, the City of Goose Creek realleges and incorporates by reference paragraphs 1 through 16 as fully and effectively as if set forth herein verbatim.
18. That the City of Goose Creek denies the allegations contained in paragraph 18 of the Complaint.
19. In response to the allegations of paragraph 19 of the Complaint, the City of Goose Creek realleges and incorporates by reference paragraphs 1 through 18 as fully and effectively as if set forth herein verbatim.
20. That the City of Goose Creek denies the allegations contained in paragraph 20 of the Complaint.
21. That the City of Goose Creek denies the allegations contained in paragraph 21 of the Complaint.
22. That the City of Goose Creek denies the allegations contained in paragraph 22 of the Complaint.
23. In response to the allegations of paragraph 23 of the Complaint, the City of Goose Creek realleges and incorporates by reference paragraphs 1 through 22 as fully and effectively as if set forth herein verbatim.
24. That the City of Goose Creek denies the allegations contained in paragraph 24 of the Complaint.
25. That the City of Goose Creek denies the allegations contained in paragraph 25 of the Complaint.
26. In response to the allegations of paragraph 26 of the Complaint, the City of Goose Creek realleges and incorporates by reference paragraphs 1 through 25 as fully and

effectively as if set forth herein verbatim.

27. That the City of Goose Creek denies the allegations contained in paragraph 27 of the Complaint.
28. In response to the allegations of paragraph 28 of the Complaint, the City of Goose Creek realleges and incorporates by reference paragraphs 1 through 27 as fully and effectively as if set forth herein verbatim.
29. That the City of Goose Creek admits the allegations contained in paragraph 29 of the Complaint.
30. That the City of Goose Creek denies the allegations contained in paragraph 30 of the Complaint.
31. That the City of Goose Creek denies the allegations contained in paragraph 31 of the Complaint.
32. That the City of Goose Creek denies the allegations contained in paragraph 31 of the Complaint.
33. In response to the allegations of paragraph 33 of the Complaint, the City of Goose Creek realleges and incorporates by reference paragraphs 1 through 32 as fully and effectively as if set forth herein verbatim.
34. That the City of Goose Creek denies the allegations contained in paragraph 34 of the Complaint.
35. That the City of Goose Creek denies the allegations contained in paragraph 35 of the Complaint.
36. That the City of Goose Creek denies each and every allegation of the Complaint not hereinabove specifically admitted or modified.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:

(Tort Claims Act)

37. That the City of Goose Creek specifically avails itself of the benefits and protections of the South Carolina Tort Claims Act including that the cap on damages and the retained immunities as specified in the Act. That the City of Goose Creek specifically avails itself of the retained immunities set forth in S.C. Code §15-78-60 (1) through (37).

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:

(Judicial/Legislative Immunity)

38. That when the City of Goose Creek acted to hear the appeal of the plaintiff, whether it acted in a *quasi* judicial or legislative capacity, said conduct was immune and privileged and no cause of action rests for such conduct.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:

(Failure to Exhaust Administrative Remedies)

39. That the plaintiff has attempted to bring a suit alleging violation of equal protection, abuse of process and due process claims without exhausting this appeal which

should be a pre-condition to any suit.

FURTHER ANSWERING THE COMPLAINT

AND AS AN AFFIRMATIVE DEFENSE THERETO,

THE DEFENDANT ALLEGES AND SAYS:

(Improper Joinder of Causes of Action)

40. That the plaintiff has improperly joined an appeal with a suit for monetary damage and accordingly this action should be dismissed or severed. The Court should determine the appeal as there is no cause of action if the appeal is affirmed. If the appeal results in a reversal for the City of Goose Creek, then there are still no claims as due process of an appeal is sufficient to protect plaintiff's rights.

CLAWSON AND STAUBES, LLC



Timothy A. Domin
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
(843) 577-2026

Attorney for the Defendant

Charleston, South Carolina

November 21, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing, hand delivering or electronically forwarding a copy properly addressed and with sufficient postage affixed thereto on this 23 day of November, 2011.

Andrew D. Franklin

FILED
2011 NOV 28 AM 11:06
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-08-2814

Todd Olds,
Plaintiff,

vs.

City of Goose Creek, and
Ron Faretra, Jennifer Altoff,
City of Goose Creek Department
Of Public Works,

Defendants.

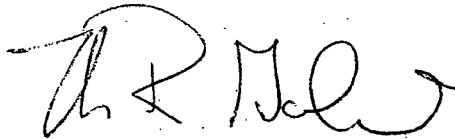
SUMMONS
(Amended Complaint)

FILED
14 JUN 26 PM 2:09
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you; and to serve a copy of your Answer to the said Complaint upon the subscribers at their offices at 2344 Cosgrove Avenue, Post Office Box 71121, Charleston, South Carolina, 29415-1121 within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN FURTHER NOTICE that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the Complaint.



June 24, 2014

Thomas R. Goldstein, #2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121
(843) 554-4291; (843) 554-5566 fax
ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-08-2814

Todd Olds,
Plaintiff,

vs.

City of Goose Creek,
Ron Faretra, Jennifer Althoff,
City of Goose Creek Department
Of Public Works,
Defendants.

AMENDED COMPLAINT
(Jury Trial Demanded)

14 JUN 26 PM 2:09
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED
SW

The Plaintiff above named, complaining of the Defendant above named, alleges and says as follows:

1. The Plaintiff is a citizen and resident of the County of Charleston, South Carolina and conducts business in the City of Goose Creek and is required by the City of Goose Creek to maintain a business license in that municipality.

2. The Defendant, the City of Goose is a municipality organized and existing pursuant to the laws of the State of South Carolina, existing entirely in Berkeley County, State of South Carolina.

3. The Defendant, Ron Faretra, is a citizen and resident of Berkeley County, South Carolina and is being named in his individual capacity because the plaintiff alleges that the defendant, Ron Faretra, has acted outside the course and scope of his employment as Director of Finance for the City of Goose Creek to deprive the plaintiff of civil rights.

4. The Defendant, Jennifer Althoff, is a citizen and resident of Berkeley County, South Carolina and is being named in her individual capacity because the plaintiff alleges that the defendant, Jennifer Althoff, has acted outside the course and scope of her employment as business license coordinator and assistant to the Director of Finance for the City of Goose Creek to Deprive the plaintiff of civil rights.

5. The Department of Public Works of the City of Goose Creek is an independent sub-agency of the City of Goose Creek and is authorized by Article VIII § 16, S. C. Constitution, to provide water and sewer service to ratepayers located within the city limits of the City of Goose Creek.

6. The Court has jurisdiction over the parties hereto and the subject matter herein.

7. This action is, in part, an appeal from a decision of City Council dated September 29, 2011, mailed September 30, 2011, and received by counsel on October 4, 2011, as well as an application to the Court for declaratory judgment and for trial by jury for damages arising out of violation of the plaintiff's civil rights.

8. Approximately one year before the current controversy involving the calculation of the plaintiff's business license, the plaintiff had a disagreement with the City of Goose Creek in which the City of Goose Creek attempted to prevent the plaintiff from undertaking repairs to property he owned in the City of Goose Creek.

9. The dispute with the City of Goose Creek over repairs to the plaintiff's property resolved in favor of the plaintiff, but as a result, the City of Goose Creek retaliated, particularly through the actions of the defendants, Ron Faretra and Jennifer Althoff, acting both in and out of the course and scope of their duties as employees of the City of Goose Creek, against the plaintiff by using its corporate powers to single him out for disparate treatment on his business license. (The defendants, Ron Faretra and Jennifer Althoff were acting in the course and scope of their duties as employees regarding the dispute with the plaintiff over his business license, but later exceeded the scope of their duties in using their positions in the Finance Department to deprive the plaintiff of municipal water system, which is not a function of the City's Finance Department.)

10. As part of the scheme to retaliate against the plaintiff, the City of Goose Creek, acting through Ron Faretra and Jennifer Althoff, singled the plaintiff out for disparate treatment, and audited the plaintiff's business license application and informed the plaintiff that it was calculating his business license in a unique manner and in direct violation of the City's own ordinance. (The City calculates the plaintiff's income from the sale of real estate as "gross receipts" and not "gross income" as is defined in the City's ordinance. § 61 of the *Internal Revenue Code* defines gross income from the sale of real estate.)

11. When the plaintiff protested that the City is violating his rights and seeking to punish him because he prevailed on an unrelated construction dispute, the City informed the plaintiff that if he did not capitulate to the City's demands, that the City would terminate municipal water service to all of the plaintiff's properties.

12. The City of Goose Creek's Business License Ordinance calculates the fee for a business license based on **gross income**, except for the plaintiff, for whom it calculates his fee for a business license based on **gross receipts** in violation of its own ordinance. The applicable Goose Creek Business License ordinance, §110.001 "Definitions" defines "gross income" as follows:

The **GROSS INCOME** for business license purposes shall conform to the gross income reported to the state Tax Commission or the State Insurance Commission. In the case of brokers or agents, **GROSS INCOME** shall mean gross commissions received or retained, unless otherwise specified. . . . The **GROSS INCOME** 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 Insurance Commission or other government agency.

In connection with this ordinance, the plaintiff produced to the City of Goose Creek a copy of his filed federal tax returns, which demonstrate his "gross income" to be \$131,665.

13. Despite furnishing conclusive proof of his "gross income" as reflected on line 7 of Schedule C of Form 1040, which is the line for "gross income," the City persists in asserting that in the plaintiff's case, his business license is calculated on his "gross receipts," or line 1 of Schedule C of Form 1040.

14. The plaintiff paid the disputed tax under protest and requested an administrative appeal as provided by the City of Goose Creek. On July 26, 2011, the City of Goose Creek conducted an administrative hearing on the plaintiff's protest. After the hearing concluded, the Town hired a lawyer to prepare a written memorandum, advising the Town to deny the protest application during an unknown process from which the City barred the plaintiff.

15. Based on the advice of counsel during some process in which the plaintiff was not permitted to participate, the Town denied the plaintiff's protest.

16. The plaintiff then appealed the decision to the City Council as provided for in § 110.016 of the Goose Creek City Ordinances. The City Council decided the appeal based on presentation of the case by the same city administrator who denied the initial protest application, and, as before, conducted the hearing without allowing the participation of the plaintiff and in violation of the statutory requirements of the *Freedom of Information Act*.

17. § 18-7-10, South Carolina Code permits an appeal of the City Council decision to the circuit court.

FOR A FIRST CAUSE OF ACTION

(Appeal from City Council—substantive/procedural due process)

18. The plaintiff repeats the above allegations as if set forth here verbatim.

19. The decision of the City of Goose Creek is in violation of the definitions of its own ordinance and is not supported by fact or law. The decision to force the plaintiff to pay a business license fee based on "gross receipts" rather than "gross income," and threats to terminate his right to utilize water are willful acts taken against the plaintiff to punish him for challenging the City on an unrelated matter.

20. The City's application of an *ad hoc* business license tax calculation is a willful act that is arbitrary and capricious and specifically tailored to punish the plaintiff because he prevailed on an earlier, unrelated dispute with the City.

21. The City's refusal to allow the plaintiff to participate in the presentation of his own administrative appeal to City Council deprived the plaintiff of any meaningful opportunity to participate in his own case is a deprivation of procedural due process that requires reversal of the Town's action.

FOR A SECOND CAUSE OF ACTION

(Violation of Equal Protection)

22. The plaintiff repeats the above allegations as if set forth here verbatim.

23. The City of Goose Creek has adopted an artificial interpretation of its ordinance to single out the plaintiff for disparate treatment, including threatening to terminate municipal water service to the plaintiff's properties.

FOR A THIRD CAUSE OF ACTION

(Procedural Due Process)

24. The plaintiff repeats the above allegations as if set forth here verbatim.

25. The City of Goose Creek took up the plaintiff's administrative appeals in proceedings in which the plaintiff was permitted to participate partially, or, in the case of the appeal to the City Council, the City did not allow the plaintiff to participate at all.

26. The City denied the plaintiff an opportunity to participate in a meaningful manner in violation of the plaintiff's federal and state constitutional requirements for minimal due process.

FOR A FOURTH CAUSE OF ACTION

(Abuse of process)

27. The plaintiff repeats the above allegations as if set forth here verbatim.

28. In an effort to force the plaintiff to capitulate to the City's punitive measures, the City has violated its duties to the plaintiff in threatening to withhold essential life services in order to force the plaintiff to capitulate on an unrelated tax dispute.

29. There is no relationship between the City's obligation to deliver essential life services and the plaintiff's First Amendment right to petition the government. The City's threat to withhold water from the plaintiff was taken with an ulterior purpose of forcing the plaintiff to yield on an unrelated tax dispute. The City's threat was an intentional act that is not proper in the regular conduct of its duties to supply water to all customers without regard to their status.

30. The plaintiff is entitled to a trial by jury to calculate the plaintiff's actual and punitive damages from the City's abuse of process.

FOR A FIFTH CAUSE OF ACTION

(§ 1983, U. S. C. ann.; Article I § 22 S. C. Constitution)

31. The plaintiff repeats the above allegations as if set forth here verbatim.

32. The City's refusal to apply its own ordinance to the plaintiff's case is so arbitrary and capricious that it falls outside of the perimeter of the lawful exercise of legislative authority, and deprived the plaintiff of substantive due process by forcing the plaintiff to pay an excessive tax designed to punish the plaintiff for challenging the City's legal position on an unrelated matter. The City's action is so far beyond the limits of legitimate governmental action, that no process could cure the deficiency, and as set forth in the previous cause of action, the City of Goose Creek prohibits challengers from participating in the process.

33. The plaintiff is entitled to trial by jury on his claim for violation of civil rights and for judgment against the City in such amounts as a jury may find to be due.

FOR A SIXTH CAUSE OF ACTION

(Violation of F.O.I.A.)

34. The plaintiff repeats the above allegations as if set forth here verbatim.

35. On September 27, 2011, the City Council held a special meeting to consider the plaintiff's appeal.

36. The City Council refused to allow the plaintiff to participate either in person or through counsel, did not advertise the meeting, did not prepare an agenda, all of which are in violation of South Carolina's Freedom of Information Act, § 30-4-80, S. C. Code, ann.

37. The City Council's actions regarding the plaintiff are void as a matter of law.

38. The plaintiff is entitled to an award of attorney's fees as provided for in the Freedom of Information Act.

FOR A SEVENTH CAUSE OF ACTION

AS TO RON FARETRA AND JENNIFER ALTOFF INDIVIDUALLY

(Civil Conspiracy)

39. The plaintiff repeats the above allegations as if set forth here verbatim.

40. The defendants Ron Faretra and Jennifer Althoff are the finance director and assistant in the City of Goose Creek's Finance Department. They report to the City Administrator.

41. The Department of Public Works of the City of Goose Creek is a separate agency of the City and is authorized to sell municipal water and sewer service by Article VIII § 16, S. C. Constitution. The Department of Public Works does not own a water system, but purchases water and sewer capacity in bulk from the Berkeley County Water Authority and then resells the water and sewer capacity to residents of Goose Creek for a monthly fee.

42. The defendants, Ron Faretra and Jennifer Althoff, are not employees of the Department of Public Works.

43. The defendants, Ron Faretra and Jennifer Althoff, acting outside of the scope of their employment as members of the Finance Department, directed the Goose Creek Department of Public Works to refuse municipal water service to the plaintiff and further directed that the Department of Public Works place a padlock on a water meter to property owned by the plaintiff.

44. The defendants, Ron Faretra and Jennifer Althoff, entered into an unlawful combination to misuse their authority as employees of the Finance Department to direct the Department of Public Works to refuse municipal service to the plaintiff to exercise a collateral advantage and punish the plaintiff for petitioning the government for redress of his grievance that the City is improperly calculating his business license tax.

45. There is no City ordinance that authorizes withholding essential municipal services for failure to pay a business license tax.

46. In July 2012, while this case was pending, the defendants Ron Faretra and Jennifer Althoff drove to the plaintiff's property located at 834 North Aylesbury, and confronted plaintiff's friend who was picking up trash, impersonated police officers, questioned the plaintiff's friend for an extended period of time, and then entered the plaintiff's property without a warrant—on the ground that the property was not locked—and spent an unknown period of time in the plaintiff's house.

47. As a direct and proximate result of the unlawful combination of actions taken by Ron Faretra and Jennifer Althoff, the plaintiff incurred special damages because he owned property he could not use or convey in the ordinary course because the defendants conspired to deprive the plaintiff of water service to the property. As a result, the plaintiff was delayed in making necessary repairs and incurred additional carrying costs and expenses.

48. The plaintiff is entitled to a trial by jury and for judgment against the individually named defendants, Ron Faretra and Jennifer Althoff, for both actual and punitive damages.

FOR AN EIGHTH CAUSE OF ACTION
AS TO DEPARTMENT OF PUBLIC WORKS
(Breach of Contract)

49. The plaintiff repeats the above allegations as if set forth here verbatim.

50. On July 9, 2012, the plaintiff applied to the Department of Public Works for municipal water service for 834 North Aylesbury, for which the plaintiff paid the Department's \$50.00 connection fee.

51. The Department received and retained the \$50.00 connection fee and approved the plaintiff's application for water service. (Following the deposition of the Department's designated witness on December 20, 2012, the Department attempted to refund the connection fee.)

52. The plaintiff has now learned that Ron Faretra and Jennifer Althoff directed the Department of Public Works to withhold municipal water service and lock the plaintiff's meter.

53. Acting on the direction of Ron Faretra and Jennifer Althoff, the Department of Public Works did lock the plaintiff's water meter without cause of allowing the plaintiff an opportunity to participate in the decision to lock the meter as required by the Department's governing ordinances.

54. The plaintiff and the defendant entered into a contract on July 9, 2012, in which the Department agreed to provide water services to the plaintiff in exchange for a monthly fee and connection fee.

55. The plaintiff paid all Water Department bills and is not in arrearage with the Department of Public Works.

56. Despite receiving the connection fee and approving the plaintiff for water service, the Department, acting on directions from Ron Faretra and Jennifer Althoff, terminated the plaintiff's water service without notice or giving him an opportunity to be heard as required by the governing ordinances.

57. As a direct and proximate result of the Department's breach of contract, the plaintiff had to sell the house as is without any improvements, which caused the plaintiff to be deprived of an opportunity to follow his usual course of conduct and rehabilitate the house prior to sale.

58. The plaintiff is entitled to an order of damages as determined by a jury for actual damages sustained as a result of the Department's breach of contract.

FOR A NINTH CAUSE OF ACTION

(Damages and Attorney's fees § 15-77-300, 310, §30-4-100, S. C. Code, ann, 42 § 1988 U.S.C. Code, ann.)

59. The plaintiff repeats the above allegations as if set forth here verbatim.

60. As a direct and proximate result of the City's actions against the plaintiff, he has been forced to pay an excessive license fee for which the City should reimburse him. Further, the plaintiff has been forced to divert time and energy to preventing an unlawful tax that has caused him to lose income. Further, the City's actions have chilled the plaintiff's ability to conduct business in the City of Goose Creek, all of which results from the City's unlawful acts directed against him.

61. This action is brought as a result of the City's deprivation of the plaintiff's civil rights by actions of the City of Goose Creek taken under color of law, and the plaintiff is entitled to an award of attorney's fees as authorized by 42 § 1988 U.S.C. Code, ann.

62. The plaintiff is entitled to an award of a reasonable attorney's fees because the City's actions taken against him are without substantial justification and there are no circumstances that would make an award of attorney's fees in this case unjust.

WHEREFORE, having fully set forth his complaint, the Plaintiff prays an order of the Court;

- a. Granting the Plaintiff a trial by jury on the actions at law for damages and for judgment for both actual and punitive damages as determined by the jury;

- b. Enjoining the City of Goose Creek from collecting a business license fees based on gross sales;
- c. Vacating the action taken by City Council on September 27, 2011, as void as a matter of law;
- d. For an award of attorney's fees against the City of Goose Creek as allowed for under Sections 15-77-300 *et. seq.* and § 30-4-100 of the South Carolina Code of Laws and; 42 U.S.C. § 1988, and
- e. For a declaratory judgment against the City of Goose Creek enjoining the City from interpreting its ordinance contrary to the plain and ordinary language contained therein;
- f. For costs of this action;
- g. And for such other and further relief as this Court may deem just and proper.

June 24, 2013



Thomas R. Goldstein, #2186
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Charleston, South Carolina 29415-1121
(843) 554-4291; (843) 554-5566 fax
ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Todd Olds,

Plaintiff,

vs.

City of Goose Creek, and
Ron Faretra, Jennifer Althoff,
City of Goose Creek Department
of Public Works,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-08-2814

DEFENDANTS' ANSWER TO THE
AMENDED COMPLAINT

FILED
14 JUL 22 AM 10:07
HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY S.C.

The defendants hereby answer the Amended Complaint/Appeal as follows:

1. That the defendants admit the allegations contained in paragraph 1 of the Amended Complaint.
2. In response to paragraph 2 of the Amended Complaint, the City of Goose Creek admits it is a municipality located partially in Berkeley County.
3. That the defendants deny the allegations contained in paragraph 3 of the Amended Complaint.
4. That the defendants deny the allegations contained in paragraph 4 of the Amended Complaint.
5. That the defendants deny the allegations contained in paragraph 5 of the Amended Complaint. The Goose Creek's Department of Public Works is not a separate entity. It is a department of the City.
6. That the defendants deny the allegations contained in paragraph 6 of the Amended Complaint.
7. That the defendants deny the allegations contained in paragraph 7 of the Amended Complaint.

RECEIVED
JUL 23 2014
BY: 11-1160

SCANNED

TO: Mr. S. S. ...
FROM: ...
DATE: ...

Complaint.

8. That the defendants deny the allegations contained in paragraph 8 of the Amended Complaint as stated. The City did investigate a matter involving certain work required permits, but there was insufficient evidence to issue a citation.
9. That the defendants deny the allegations contained in paragraph 9 of the Amended Complaint.
10. That the defendants deny the allegations contained in paragraph 10 of the Amended Complaint.
11. That the defendants deny the allegations contained in paragraph 11 of the Amended Complaint as stated. The Defendants do admit that it has a policy of not turning on new water accounts if a person or entity has no business license or is otherwise delinquent in their payment of business license fees or their other accounts with the City.
12. In response to paragraph 12 of the Amended Complaint, the defendants crave reference to the City's Code of Ordinances which set forth the entire text of the Business License Ordinance.
13. In response to paragraph 13 of the Amended Complaint, the defendants admit that line 7 of Schedule C is not the correct line for determining municipal business license fees for an entity in the business of real estate.
14. In response to paragraph 14 of the Amended Complaint, the City admits that it provided Mr. Olds an appeal, that Mr. Olds' counsel provided a memo of law, and that the City Attorney prepared a memo of law as requested and provided a copy to counsel for Mr. Olds. The City Administrator made a decision to uphold the

determination of the business license official.

15. That the defendants deny the allegations contained in paragraph 15 of the Amended Complaint.
16. In response to paragraph 16 of the Amended Complaint, the City admits Mr. Olds appealed to City Council but denies the remaining allegations of paragraph 16.
17. That the defendants deny the allegations contained in paragraph 17 of the Amended Complaint.
18. In response to the allegations of paragraph 18, the defendants hereby reallege and incorporate by reference paragraphs 1 through 17 as fully and effectively as if set forth herein verbatim.
19. That the defendants deny the allegations contained in paragraph 19 of the Amended Complaint.
20. That the defendants deny the allegations contained in paragraph 20 of the Amended Complaint.
21. That the defendants deny the allegations contained in paragraph 21 of the Amended Complaint.
22. In response to the allegations of paragraph 22, the defendants hereby reallege and incorporate by reference paragraphs 1 through 21 as fully and effectively as if set forth herein verbatim.
23. That the defendants deny the allegations contained in paragraph 23 of the Amended Complaint.
24. In response to the allegations of paragraph 24, the defendants hereby reallege and incorporate by reference paragraphs 1 through 23 as fully and effectively as if set

forth herein verbatim.

25. That the defendants deny the allegations contained in paragraph 25 of the Amended Complaint.
26. That the defendants deny the allegations contained in paragraph 26 of the Amended Complaint.
27. In response to the allegations of paragraph 27, the defendants hereby reallege and incorporate by reference paragraphs 1 through 26 as fully and effectively as if set forth herein verbatim.
28. That the defendants deny the allegations contained in paragraph 28 of the Amended Complaint.
29. That the defendants deny the allegations contained in paragraph 29 of the Amended Complaint.
30. That the defendants deny the allegations contained in paragraph 30 of the Amended Complaint.
31. In response to the allegations of paragraph 31, the defendants hereby reallege and incorporate by reference paragraphs 1 through 30 as fully and effectively as if set forth herein verbatim.
32. That the defendants deny the allegations contained in paragraph 32 of the Amended Complaint.
33. That the defendants deny the allegations contained in paragraph 33 of the Amended Complaint.
34. That the defendants deny the allegations contained in paragraph 34 of the Amended Complaint.

35. That the defendants admit the allegations contained in paragraph 35 of the Amended Complaint.
36. That the defendants deny the allegations contained in paragraph 36 of the Amended Complaint. That the City ordinance does not provide a right to appeal, but Olds was offered that opportunity and declined.
37. That the defendants deny the allegations contained in paragraph 37 of the Amended Complaint.
38. That the defendants deny the allegations contained in paragraph 38 of the Amended Complaint.
39. In response to the allegations of paragraph 39, the defendants hereby reallege and incorporate by reference paragraphs 1 through 38 as fully and effectively as if set forth herein verbatim.
40. That the defendants admit the allegations contained in paragraph 40 of the Amended Complaint.
41. That the defendants deny the allegations contained in paragraph 41 of the Amended Complaint.
42. That the defendants deny the allegations contained in paragraph 42 of the Amended Complaint.
43. That the defendants deny the allegations contained in paragraph 43 of the Amended Complaint.
44. That the defendants deny the allegations contained in paragraph 44 of the Amended Complaint.
45. In response to paragraph 45 of the Amended Complaint, this is admitted in part and

denied in part. While there is no ordinance, it is the City's policy not to turn on a new water account for a business that does not have a current business license and/or which is in arrears on its business license.

46. That the defendants deny the allegations contained in paragraph 46 of the Amended Complaint.

47. That the defendants deny the allegations contained in paragraph 47 of the Amended Complaint.

48. That the defendants deny the allegations contained in paragraph 48 of the Amended Complaint.

49. In response to the allegations of paragraph 49, the defendants hereby reallege and incorporate by reference paragraphs 1 through 48 as fully and effectively as if set forth herein verbatim.

50. That the defendants admit the allegations contained in paragraph 50 of the Amended Complaint.

51. In response to paragraph 51 of the Amended Complaint, the defendants admit that the connection fee was refunded to Mr. Olds after it was realized that the connection fee had not been returned to him.

52. That the defendants deny the allegations contained in paragraph 52 of the Amended Complaint.

53. In response to paragraph 53 of the Amended Complaint, the defendants admit that the City of Goose Creek did not allow new water service to be connected because Mr. Olds did not have a current business license and had not paid his current business license fees.

54. That the defendants deny the allegations contained in paragraph 54 of the Amended Complaint.
55. That the defendants deny the allegations contained in paragraph 55 of the Amended Complaint. Mr. Olds did not pay any bill. He paid a connection fee. After it was determined that he did not have a current business license, City policy provided that no new water connection would be made until he obtained a business license.
56. That the defendants deny the allegations contained in paragraph 56 of the Amended Complaint.
57. That the defendants deny the allegations contained in paragraph 57 of the Amended Complaint.
58. That the defendants deny the allegations contained in paragraph 58 of the Amended Complaint.
59. In response to the allegations of paragraph 59, the defendants hereby reallege and incorporate by reference paragraphs 1 through 58 as fully and effectively as if set forth herein verbatim.
60. In response to paragraph 60 of the Amended Complaint, it is denied as stated. However, the City admits that if it is finally determined that Mr. Olds' interpretation of "gross income" is correct, the City will refund any overpayments with interest.
61. That the defendants deny the allegations contained in paragraph 61 of the Amended Complaint.
62. That the defendants deny the allegations contained in paragraph 62 of the Amended Complaint.

63. That the defendants deny each and every not specifically admitted.

FURTHER ANSWERING THE AMENDED COMPLAINT

AND AS AN AFFIRMATIVE DEFENSE THERETO,

THE DEFENDANT ALLEGES AND SAYS:

(Tort Claims Act)

64. That the City specifically avails itself of the benefits and protections of the S.C. Tort Claims Act including the cap on damages and the retained immunities as specified in the Act. That the City of Goose Creek further avails itself of the retained immunities set forth in S.C. Code 15-78-60 (1) through (37).

FURTHER ANSWERING THE AMENDED COMPLAINT

AND AS AN AFFIRMATIVE DEFENSE THERETO,

THE DEFENDANT ALLEGES AND SAYS:

(Judicial/Legislative Immunity)

65. That when the City of Goose Creek acted to hear the appeal of the plaintiff, whether it acted in a quasi-judicial or legislative capacity, said conduct was immune and privileged and no action exists for such conduct.

FURTHER ANSWERING THE AMENDED COMPLAINT

AND AS AN AFFIRMATIVE DEFENSE THERETO,

THE DEFENDANT ALLEGES AND SAYS:

(Improper Joinder)

66. That the plaintiff has improperly joined an appeal with a suit for monetary damages. And, accordingly, this action should be dismissed or severed.

FURTHER ANSWERING THE AMENDED COMPLAINT

AND AS AN AFFIRMATIVE DEFENSE THERETO,

THE DEFENDANT ALLEGES AND SAYS:

(Qualified Immunity)

67. That Jennifer Althoff and Ron Faretra are entitled to qualified immunity under all federal causes of action as provided by the case law.

FURTHER ANSWERING THE AMENDED COMPLAINT

AND AS AN AFFIRMATIVE DEFENSE THERETO,

THE DEFENDANT ALLEGES AND SAYS:

(Improper Party)

68. That Althoff and Faretra are improper parties under the South Carolina Tort Claims Act to the extent their conduct was within the course and scope of employment.

CLAWSON AND STAUBES, LLC



Timothy A. Domin
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
(843) 577-2026

Attorney for the Defendants

Charleston, South Carolina

July 21, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading(s) has been served upon opposing counsel on the 21st day of July, 2014 via:

☒	United States Postal Service
☐	Facsimile
☐	Electronic Email

Patricia Ann Alderson

FILED
14 JUL 22 AM 10:08
MARY P. BROWN
CLERK OF COURT, S.C.
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-08-2814

Todd Olds,)

Plaintiff,)

vs.)

City of Goose Creek,)

Defendant.)

MOTION FOR INJUNCTION

FILED
2012 AUG 31 PM 12:55
NANCY E. BARNETT
CLERK OF COURT
BERKELEY COUNTY, SC

TO: TIM DOMIN, ESQ., ATTORNEY FOR DEFENDANT:

PLEASE TAKE NOTICE that the plaintiff will move ten days after notice hereof or as soon thereafter as counsel may be heard, for an Order of the Court directing the City of Goose Creek to allow water service to the plaintiff's property located at 834 North Aylesbury in the City of Goose Creek. This motion is based on the fact that the City of Goose Creek has a specific hostility for the plaintiff because of the existence of this lawsuit, and the City is misusing its corporate authority to deny the plaintiff the right to water as a form of non-judicial punishment. The City claims it can withhold essential life services such as water for citizens who do not possess valid business licenses. Assuming arguendo that this dubious premise is lawful, the plaintiff is in possession of a **valid 2012 business license** (see affidavit filed in support of this motion), which the plaintiff acquired by paying the disputed license fees under protest and seeking judicial review as authorized by statute. However, the City of Goose Creek contends that the plaintiff owes a **past** debt for alleged past underreporting for properties unrelated to 834 North Aylesbury Drive, and based on what the City contends is a past due debt, the City refuses to release water service to the plaintiff. The release of water service is a critical life/safety essential municipal service, and there is no basis

in law or in fact for a municipal corporation to withhold essential life/safety municipal services in an effort to coerce a citizen to pay an unrelated past disputed debt:

Rules and regulations of a water company or municipality furnishing water are not enforceable if they are unreasonable or discriminatory. The reasonableness and validity of such rules and regulations is a matter to be determined largely with reference to the facts and circumstances of the particular case, and the courts have jurisdiction to determine whether any such rule or regulation is fair and just or unreasonable and oppressive.

A regulation of a water company or a municipal ordinance that requires a property owner to pay a delinquent water bill of a tenant or of any other person, which the owner has not contracted to pay, is unreasonable and void in the absence of any lien on the premises given by statute, or at least in the absence of any statutory authority for such regulation or ordinance.

If a village requires the payment of a water tap-in charge before a building permit can be issued and the charge bears no relationship to the present or future cost of providing water, the act is invalid.

§ 75 Determination of reasonableness; particular regulations

Am Jur.2d "Waterworks and Water Companies"

A public utility corporation cannot refuse to render the service that it is authorized by its charter to furnish because of some collateral matter not related to that service. Thus, the proprietor of a summer resort who sells cottage lots and who undertakes as a public utility to supply owners with water and light cannot refuse to furnish water and light to a lot owner because of his refusal to comply with a rule requiring such owners to provide septic tanks for the disposal of sewage. Nor can a municipality attempt to collect a delinquent garbage disposal bill by shutting off the water supply of the patron. An electric company may not cease to serve the public because a city, in constructing a competing system, has

created conditions rendering continued service dangerous and refuses to alter them. Again, in the absence of some qualification in the charger of a public utility that undertakes to perform two distinct kinds of public service, reserving to it the right to furnish one kind of service only when the other is also furnished, the public utility has not right to refuse to furnish one kind of service without the other, and this is true even where one service is a byproduct of the other. A like limitation applies to a municipality offering two distinct kinds of public service.

§ 22 Refusal of service because of collateral matter

Am. Jur.2d "Public Utilities"

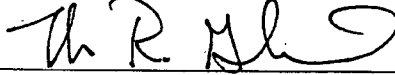
Here, it is undisputed that the City of Goose Creek is withholding water service to the Plaintiff to force the plaintiff to capitulate to a debt that the City claims is due from a 2010 business license ordinance. The City's action is both punitive and unlawful. As may be seen by the affidavit of Robert Eckhart, the City's director of finance and his assistant personally drove to 834 N. Aylesbury to harass the plaintiff's friend and intimidate him: "... while I was there [834 North Aylesbury] putting trash in plastic bags, two City of Goose Creek employees showed up at the residence and confronted me. I had no idea who they were. One of them showed me a badge, and I assumed that he was a police officer. Later on, I found out that the two people who showed up were Ron Faretra [Director of Finance] and Jennifer Althoff. Mr. Faretra and Ms. Althoff detained me for somewhere between one and a half and two hours." Affidavit of Robert Eckhardt.

It is beyond dispute that the City has targeted the plaintiff because he dared to challenge the City's interpretation of the Business License Ordinance. The denial of an essential life service is an irreparable harm, and the City suffers no prejudice for allowing a homeowner access to water service. Therefore, the plaintiff is entitled to an Order of this Court directing the City of Goose

Creek to release water service to Todd Olds at 834 North Aylesbury Drive.

Respectfully submitted,

BELK, COBB, INFINGER & GOLDSTEIN, P.A.



August 24, 2012

Thomas R. Goldstein, Esq. I.D.# 2186

P.O. Box 71121

Charleston, S.C. 29415-1121

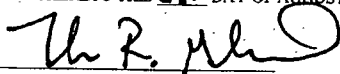
(843) 554-4291; (843) 554-5566 fax

tgoldstein@cobbblaw.net

Attorneys for plaintiff

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE
COPY OF THE FOREGOING PLEADING HAS BEEN
SERVED UPON OPPOSING COUNSEL BY MAILING A
COPY PROPERLY ADDRESSED WITH SUFFICIENT
POSTAGE AFFIXED THERETO THIS 29th DAY OF AUGUST, 2012.

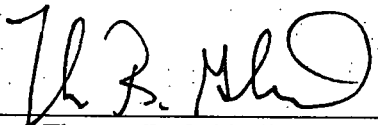
BY:



Rule 11 Certificate

I certify that I spoke to opposing counsel concerning this motion prior to filing it, and I was unable to resolve the matter.

August 24, 2012



Thomas R. Goldstein

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-08-2814

Todd Olds,)

Plaintiff,)

vs.)

City of Goose Creek,)

Defendant.)

MOTION FOR RECONSIDERATION

ju
FILED
OCT 26 PM 12:02
MARY E. DOMIN
CLERK OF COURT
BERKELEY COUNTY, SC

TO: TIM DOMIN, ESQ., ATTORNEY FOR DEFENDANT:

PLEASE TAKE NOTICE that the plaintiff will move ten days after notice hereof or as soon thereafter as counsel may be heard, for an Order of the Court altering or amending the Court's October 8, 2012, Order Denying Injunction, said Order received by plaintiff's counsel on October 16, 2012. This motion is based on the following grounds:

1. The Court's Order correctly sets out the controlling South Carolina law, in particular that the purpose of an injunction is to preserve the *status quo ante*: "Because water service has never previously been provided to the Plaintiff for this unoccupied property, an injunction is not necessary to preserve the *status quo ante*." (Order under review at page 2.) This correct statement of law is based on an erroneous conclusion of fact: (The plaintiff accepts the blame for not presenting the facts more lucidly.) The **undisputed** facts are that the plaintiff called the Goose Creek Department of Public Works (the water department) on July 9, 2012, and requested water service over the telephone for 834 North Aylesbury. The Department of Public Works routinely

accepts and processes water service applications over the phone. The receipt for the payment is attached to this motion, and the plaintiff will file a supplemental affidavit so that the facts alleged herein are under oath. The Department took the plaintiff's application, including his credit card information, and **approved** the application to begin water service. The City debited the plaintiff's credit card account for this service and received the money. Afterwards, Ron Faretra, or someone acting on his behalf,¹ became involved through some unknown internal process, and the plaintiff is informed and believes that either Ron Faretra himself, or someone acting on his direction, traveled to the plaintiff's property at 834 North Aylesbury and placed a padlock on the water meter. (The plaintiff will supplement this information once the City responds to supplemental discovery requests.) To date, the City of Goose Creek has never refunded the plaintiff's service fee for water service, and it is undisputed that the plaintiff owes no arrearage to the Department of Public Works for any water service. Therefore, the *status quo ante* was that the plaintiff received approval from the City of Goose Creek's Department of Public works to receive water, and the City terminated the service without notice or any opportunity to be heard.

2. As to the Court's conclusion that there "is no evidence of any loss of income or other monetary loss," (Order under review at page 2) the City concedes that a home without water service is uninhabitable. Without water, the plaintiff is denied all use of his property, and such a deprivation is total and constitutes harm by definition. It is undisputed that being denied the right to use property is an irreparable harm, protected by both the federal and state constitutions.

¹ The plaintiff served additional discovery on the City to discover the exact sequence of events. As of the date of filing this motion, the City's time to respond has not expired.

Based on the Court's overlooking critical facts that are not in dispute, the plaintiff respectfully requests that the Court reconsider its Order of October 8, 2012, as provide for under *South Carolina Rules of Civil Procedure*, Rule 59.

Respectfully submitted,

BELK, COBB, INFINGER & GOLDSTEIN, P.A.



October 24, 2012

Thomas R. Goldstein, Esq. I.D.# 2186
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tgoldstein@cobblaw.net
Attorneys for plaintiff

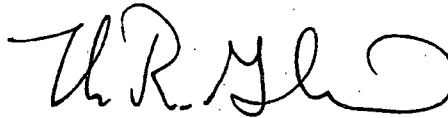
THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE
COPY OF THE FOREGOING PLEADING HAS BEEN
SERVED UPON OPPOSING COUNSEL BY MAILING A
COPY PROPERLY ADDRESSED WITH SUFFICIENT
POSTAGE AFFIXED THERE TO THIS 24th DAY OF OCTOBER, 2012.

BY: 

Rule 11 Certificate

I certify that I spoke to opposing counsel concerning this motion prior to filing it, and I was unable to resolve the matter.

October 24, 2012



Thomas R. Goldstein

Oct 24 12 05:17p

Todd Olds

RECEIVED 10/24/2012 11:22 8435545566

BELK CUBB INFINGER
8437471997 p.1Business Premium Card®
PRIME PRO CHAS
B TODD OLDS
Closing Date 08/08/12**OPEN**

Account Ending 4-020

Payments and Credits**Summary****Total****Detail**B TODD OLDS
Card Ending 4-02005

					Amount
07/08/12	OUTBACK 4113	CHARLESTON	SC		\$51.00
	RESTAURANT				
07/09/12	PARADISE POOLS & SPA	CHARLESTON	SC		\$39.05
	8435562920				
07/09/12	CITY OF GOOSE CREEK (GOOSE CREEK	SC			\$50.00
	8437976220				
07/10/12	HADDRELL'S POINT CHA	CHARLESTON	SC		\$168.22
	8435733474				

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-08-2814

Todd Olds,

Plaintiff,

vs.

City of Goose Creek,

Defendant.

MOTION FOR RECONSIDERATION

Rule 59(e) *South Carolina Rules of Civil Procedure*

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2014 SEP 22 PM 3:20

FILED

TO: TIM DOMIN, ESQ., ATTORNEY FOR DEFENDANT:

PLEASE TAKE NOTICE that the plaintiff will move ten days after notice hereof or as soon thereafter as counsel may be heard, for an Order of the Court altering or amending the Court's September 5, 2014, Order Granting the Town of Goose Creek Summary Judgment, said Order received electronically by plaintiff's counsel on September 8, 2014. This motion is based on the following grounds:

1. The Court's Order overlooks the controlling principle of § 12-6-1120, S. C. Code, ann., which adopts the statewide definition of "gross income." ("South Carolina gross income is computed by making modifications to gross income provided in the Internal Revenue Code as follows: ...")

2. The Court's Order gives no weight to Plaintiff's numerous affidavits, in particular the affidavit of Professor Kristen Gutting, and thus fails to view the evidence in the light most favorable to the Plaintiff as the party resisting the City of Goose Creek's motion for summary judgment. ("It is well settled under South Carolina law that gross income is reported to the South Carolina Department of Revenue in accordance with the rules set forth in § 61 of the Internal

Revenue Code ("IRC"). See S. C. Ann. § 12-6-1110. . . . Goose Creek's interpretation conflicts with Goose Creek Code § 110.009, which provides the business license fee should be based on gross income, and Goose Creek Code § 110.001, which defines gross income, as stated above, by referencing how the taxpayer reports his gross income to the South Carolina Department of Revenue." /s/ Kristin Balding Gutting, Affidavit January 15, 2013, filed January 18, 2013.

3. The Court overlooks 8 undisputed and established premises and controlling principles of law as follows:

PREMISE 1: The function of a court in construing and applying a state statute is to enforce the statute as written. *Storm M.H. v. Charleston County Board of Trustees*, 400 S.C. 478, 735 S.E.2d 492 (2012)

PREMISE 2: Municipal governments are creatures of statute and possess only the powers given to them by the State. *S. C. Constitution*, Article VIII, §§ 7, 9.

PREMISE 3: Municipal governments cannot deviate from the State's pronouncement of law. When a municipal ordinance is at variance with State law, the municipal ordinance is void. *City of North Charleston v. Harper*, 306 S. C.153, 410 S.E.2d 569 (1991); *State v. Solomon*, 245 S.C. 550, 141 S.E.2d 818 (1965)

PREMISE 4: Municipalities are authorized by the State to collect a Business License Tax. §5-7-30, S. C. Code, Ann.

PREMISE 5: The State of South Carolina authorizes municipalities to impose a Business License Tax **computed on a business's gross income**. §5-7-30, S. C. Code, Ann.

PREMISE 6: The State of South Carolina defines "gross income," by adopting the definition established by the Internal Revenue Code § 61. See § 12-6-1110 ("Modifications of gross, adjusted gross, and taxable income calculated under Internal Revenue Code; federal Section 1354 elections), § 12-6-1120 (Gross income; computation; modifications), and § 12-6-50 (listing the sections of the I.R.S. code **not** adopted by the State)

PREMISE 7: § 61 of the *Internal Revenue Code* defines "gross income" as being "gains derived from dealings in property."

PREMISE 8: "Gross Receipts" – "basis" = "Gain." § 1001, *Internal Revenue Code* and Income = Gain

CONCLUSION: Income $\neq$ Receipts and Gross Income $\neq$ Gross Receipts

CONCLUSION: The City of Goose Creek cannot compel a business owner to pay a business license tax computed on "gross receipts" because "receipts" are not "income."

4. The Court does not consider or give any weight to the Plaintiff's numerous affidavits of animus, including, but not limited to, the affidavit of Robert Eckhardt, which states in applicable part: "... while I was there putting trash in plastic bags, two City of Goose Creek employees showed up at the residence and confronted me. I had no idea who they were. One of them showed me a badge, and I assumed that he was a police officer. Later on, I found out that the two people who showed up were Ron Faretra and Jennifer Althoff. Mr. Faretra and Ms. Althoff detained me for somewhere between one and a half and two hours. They continued to ask me questions over and over, and were aggressive and mocked my answers. They made it clear that I was in a lot of trouble, and up until the very end of the meeting, I thought that one or both of them were Goose Creek Police Officers. I now know that they are not police officers, but while we were there, they led me to believe that they were law enforcement authorities and I was not free to leave.

/s/ Affidavit of Robert Eckhardt

5. The Court finds that the Plaintiff is the prevailing party on his claim for violation of procedural due process but simultaneously declines to award the Plaintiff any relief. The State Constitution requires courts to fashion a remedy wherever it finds a legal wrong and cannot withhold a remedy to which the Plaintiff has demonstrated a legal right. "All courts shall be public and every person shall have speedy remedy therein for wrongs sustained." *South Carolina Constitution*, Article I, § 9. When the framers of our Constitution chose the word "wrongs," they

meant "every injury to or impairment of rights of person or property. *State v. Lagerquist*, 254 S.C. 501, 176 S.E.2d 141 (*cert. den.* 91 S.Ct. 912, 401 U.S. 937, 28 L.Ed.2d 216). A remedy means the means by which the court redresses the wrong. *State v. Lagerquist*, *ibid.* Here, the Court finds a violation but withholds a remedy and thereby deprives the Plaintiff of his right to redress.

Based on the Court's overlooking the controlling statute § 12-6-1120, S. C. Code, ann, as well as failing to apply critical facts that are not in dispute, failing to view the evidence in the light most favorable to the Plaintiff as the party resisting a motion for summary judgment, and failing to adhere to the Constitutional requirements of Article I, § 9, the plaintiff respectfully requests that the Court reconsider its Order of September 8, 2014, as provided for under *South Carolina Rules of Civil Procedure*, Rule 59. The Plaintiff respectfully submits that if the Plaintiff has failed to show by uncontested facts and principles of law that he is entitled to judgment as a matter of law, the Plaintiff has at least demonstrated that there are genuine issues of material fact that prevent the Court from granting summary judgment to the City of Goose Creek.

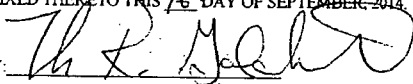
Respectfully submitted,



September 15, 2014

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Thomas R. Goldstein, Esq. I.D.# 2186
P.O. Box 71121
Charleston, S.C. 29415-1121
(843) 554-4291; (843) 554-5566 fax
tgoldstein@cobblaw.net
Attorneys for plaintiff

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE
COPY OF THE FOREGOING PLEADING HAS BEEN
SERVED UPON OPPOSING COUNSEL BY MAILING A
COPY PROPERLY ADDRESSED WITH SUFFICIENT
POSTAGE AFFIXED THERETO THIS 16TH DAY OF SEPTEMBER, 2014.

BY: 

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-08-2814

Todd Olds,
Plaintiff,

vs.

MOTION TO AMEND COMPLAINT

City of Goose Creek,
Ron Faretra, Jennifer Althoff,
City of Goose Creek Department
Of Public Works,
Defendants.

TO TIM DOMIN, ATTORNEY FOR THE DEFENDANTS:

Please take notice that the plaintiff will move ten days after notice hereof, or as soon thereafter as counsel may be heard for an Order of the Court allowing the plaintiff to file an amended complaint, a copy of which is attached hereto and incorporated by this reference. This motion is based on the ground that the events alleged in the amended complaint occurred after the filing and service of the original complaint, and the plaintiff learned through discovery that he has additional causes of action.

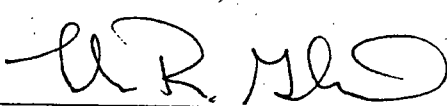
January 2, 2013


Thomas R. Goldstein, #2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121
(843) 554-4291; (843) 554-5566 fax
ATTORNEYS FOR PLAINTIFF

Rule 11 Certificate

I certify that prior to filing the Motion to Amend, I consulted with counsel for the City of Goose Creek who opposes the Motion.

January 2, 2013


Thomas R. Goldstein, #2186

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY) CASE NO.: 2011-CP-08-2814

Todd Olds,)

Plaintiff,)

vs.)

SUMMONS

(Amended Complaint)

City of Goose Creek,)

Ron Faretra, Jennifer Altoff,)

City of Goose Creek Department)

Of Public Works,)

Defendants.)

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you; and to serve a copy of your Answer to the said Complaint upon the subscribers at their offices at 2344 Cosgrove Avenue, Post Office Box 71121, Charleston, South Carolina, 29415-1121 within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN FURTHER NOTICE that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the Complaint.

January 2, 2013

Thomas R. Goldstein, #2186
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Post Office Box 71121
Charleston, South Carolina 29415-1121
(843) 554-4291; (843) 554-5566 fax
ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-08-2814

Todd Olds,

Plaintiff,

vs.

City of Goose Creek,
Ron Faretra, Jennifer Althoff,
City of Goose Creek Department
Of Public Works,

Defendants.

AMENDED COMPLAINT
(Jury Trial Demanded)

The Plaintiff above named, complaining of the Defendant above named, alleges and says as follows:

1. The Plaintiff is a citizen and resident of the County of Charleston, South Carolina and conducts business in the City of Goose Creek and is required by the City of Goose Creek to maintain a business license in that municipality.

2. The Defendant, the City of Goose is a municipality organized and existing pursuant to the laws of the State of South Carolina, existing entirely in Berkeley County, State of South Carolina.

3. The Defendant, Ron Faretra, is a citizen and resident of Berkeley County, South Carolina and is being named in his individual capacity because the plaintiff alleges that the defendant, Ron Faretra, has acted outside the course and scope of his employment as Director of Finance for the City of Goose Creek to deprive the plaintiff of civil rights.

4. The Defendant, Jennifer Althoff, is a citizen and resident of Berkeley County, South Carolina and is being named in her individual capacity because the plaintiff alleges that the defendant, Jennifer Althoff, has acted outside the course and scope of her employment as business license coordinator and assistant to the Director of Finance for the City of Goose Creek to Deprive the plaintiff of civil rights.

5. The Department of Public Works of the City of Goose Creek is an independent sub-agency of the City of Goose Creek and is authorized by Article VIII § 16, S. C. Constitution, to provide water and sewer service to ratepayers located within the city limits of the City of Goose Creek.

6. The Court has jurisdiction over the parties hereto and the subject matter herein.

7. This action is, in part, an appeal from a decision of City Council dated September 29, 2011, mailed September 30, 2011, and received by counsel on October 4, 2011, as well as an application to the Court for declaratory judgment and for trial by jury for damages arising out of violation of the plaintiff's civil rights.

8. Approximately one year before the current controversy involving the calculation of the plaintiff's business license, the plaintiff had a disagreement with the City of Goose Creek in which the City of Goose Creek attempted to prevent the plaintiff from undertaking repairs to property he owned in the City of Goose Creek.

9. The dispute with the City of Goose Creek over repairs to the plaintiff's property resolved in favor of the plaintiff, but as a result, the City of Goose Creek retaliated, particularly through the actions of the defendants, Ron Faretra and Jennifer Althoff, acting both in and out of the course and scope of their duties as employees of the City of Goose Creek, against the plaintiff by using its corporate powers to single him out for disparate treatment on his business license. (The defendants, Ron Faretra and Jennifer Althoff were acting in the course and scope of their duties as employees regarding the dispute with the plaintiff over his business license, but later exceeded the scope of their duties in using their positions in the Finance Department to deprive the plaintiff of municipal water system, which is not a function of the City's Finance Department.)

10. As part of the scheme to retaliate against the plaintiff, the City of Goose Creek, acting through Ron Faretra and Jennifer Althoff, singled the plaintiff out for disparate treatment, and audited the plaintiff's business license application and informed the plaintiff that it was calculating his business license in a unique manner and in direct violation of the City's own ordinance. (The City calculates the plaintiff's income from the sale of real estate as "gross receipts" and not "gross income" as is defined in the City's ordinance. § 61 of the *Internal Revenue Code* defines gross income from the sale of real estate.)

11. When the plaintiff protested that the City is violating his rights and seeking to punish him because he prevailed on an unrelated construction dispute, the City informed the plaintiff that if he did not capitulate to the City's demands, that the City would terminate municipal water service to all of the plaintiff's properties.

12. The City of Goose Creek's Business License Ordinance calculates the fee for a business license based on **gross income**, except for the plaintiff, for whom it calculates his fee for a business license based on **gross receipts** in violation of its own ordinance. The applicable Goose Creek Business License ordinance, §110.001 "Definitions" defines "gross income" as follows:

The **GROSS INCOME** for business license purposes shall conform to the gross income reported to the state Tax Commission or the State Insurance Commission. In the case of brokers or agents, **GROSS INCOME** shall mean gross commissions received or retained, unless otherwise specified. . . . The **GROSS INCOME** 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 Insurance Commission or other government agency.

In connection with this ordinance, the plaintiff produced to the City of Goose Creek a copy of his filed federal tax returns, which demonstrate his "gross income" to be \$131,665.

13. Despite furnishing conclusive proof of his "gross income" as reflected on line 7 of Schedule C of Form 1040, which is the line for "gross income," the City persists in asserting that in the plaintiff's case, his business license is calculated on his "gross receipts," or line 1 of Schedule C of Form 1040.

14. The plaintiff paid the disputed tax under protest and requested an administrative appeal as provided by the City of Goose Creek. On July 26, 2011, the City of Goose Creek conducted an administrative hearing on the plaintiff's protest. After the hearing concluded, the Town hired a lawyer to prepare a written memorandum, advising the Town to deny the protest application during an unknown process from which the City barred the plaintiff.

15. Based on the advice of counsel during some process in which the plaintiff was not permitted to participate, the Town denied the plaintiff's protest.

16. The plaintiff then appealed the decision to the City Council as provided for in § 110.016 of the Goose Creek City Ordinances. The City Council decided the appeal based on presentation of the case by the same city administrator who denied the initial protest application, and, as before, conducted the hearing without allowing the participation of the plaintiff and in violation of the statutory requirements of the *Freedom of Information Act*.

17. § 18-7-10, South Carolina Code permits an appeal of the City Council decision to the circuit court.

FOR A FIRST CAUSE OF ACTION

(Appeal from City Council—substantive/procedural due process)

18. The plaintiff repeats the above allegations as if set forth here verbatim.

19. The decision of the City of Goose Creek is in violation of the definitions of its own ordinance and is not supported by fact or law. The decision to force the plaintiff to pay a business license fee based on "gross receipts" rather than "gross income," and threats to terminate his right to utilize water are willful acts taken against the plaintiff to punish him for challenging the City on an unrelated matter.

20. The City's application of an *ad hoc* business license tax calculation is a willful act that is arbitrary and capricious and specifically tailored to punish the plaintiff because he prevailed on an earlier, unrelated dispute with the City.

21. The City's refusal to allow the plaintiff to participate in the presentation of his own administrative appeal to City Council deprived the plaintiff of any meaningful opportunity to participate in his own case is a deprivation of procedural due process that requires reversal of the Town's action.

FOR A SECOND CAUSE OF ACTION

(Violation of Equal Protection)

22. The plaintiff repeats the above allegations as if set forth here verbatim.

23. The City of Goose Creek has adopted an artificial interpretation of its ordinance to single out the plaintiff for disparate treatment, including threatening to terminate municipal water service to the plaintiff's properties.

FOR A THIRD CAUSE OF ACTION

(Procedural Due Process)

24. The plaintiff repeats the above allegations as if set forth here verbatim.

25. The City of Goose Creek took up the plaintiff's administrative appeals in proceedings in which the plaintiff was permitted to participate partially, or, in the case of the appeal to the City Council, the City did not allow the plaintiff to participate at all.

26. The City denied the plaintiff an opportunity to participate in a meaningful manner in violation of the plaintiff's federal and state constitutional requirements for minimal due process.

FOR A FOURTH CAUSE OF ACTION

(Abuse of process)

27. The plaintiff repeats the above allegations as if set forth here verbatim.

28. In an effort to force the plaintiff to capitulate to the City's punitive measures, the City has violated its duties to the plaintiff in threatening to withhold essential life services in order to force the plaintiff to capitulate on an unrelated tax dispute.

29. There is no relationship between the City's obligation to deliver essential life services and the plaintiff's First Amendment right to petition the government. The City's threat to withhold water from the plaintiff was taken with an ulterior purpose of forcing the plaintiff to yield on an unrelated tax dispute. The City's threat was an intentional act that is not proper in the regular conduct of its duties to supply water to all customers without regard to their status.

30. The plaintiff is entitled to a trial by jury to calculate the plaintiff's actual and punitive damages from the City's abuse of process.

FOR A FIFTH CAUSE OF ACTION

(§ 1983, U. S. C. ann.; Article I § 22 S. C. Constitution)

31. The plaintiff repeats the above allegations as if set forth here verbatim.

32. The City's refusal to apply its own ordinance to the plaintiff's case is so arbitrary and capricious that it falls outside of the perimeter of the lawful exercise of legislative authority, and deprived the plaintiff of substantive due process by forcing the plaintiff to pay an excessive tax designed to punish the plaintiff for challenging the City's legal position on an unrelated matter. The City's action is so far beyond the limits of legitimate governmental action, that no process could cure the deficiency, and as set forth in the previous cause of action, the City of Goose Creek prohibits challengers from participating in the process.

33. The plaintiff is entitled to trial by jury on his claim for violation of civil rights and for judgment against the City in such amounts as a jury may find to be due.

FOR A SIXTH CAUSE OF ACTION

(Violation of F.O.I.A.)

34. The plaintiff repeats the above allegations as if set forth here verbatim.

35. On September 27, 2011, the City Council held a special meeting to consider the plaintiff's appeal.

36. The City Council refused to allow the plaintiff to participate either in person or through counsel, did not advertise the meeting, did not prepare an agenda, all of which are in violation of South Carolina's Freedom of Information Act, § 30-4-80, S. C. Code, ann.

37. The City Council's actions regarding the plaintiff are void as a matter of law.

38. The plaintiff is entitled to an award of attorney's fees as provided for in the Freedom of Information Act.

FOR A SEVENTH CAUSE OF ACTION

AS TO RON FARETRA AND JENNIFER ALTOFF INDIVIDUALLY

(Civil Conspiracy)

39. The plaintiff repeats the above allegations as if set forth here verbatim.

40. The defendants Ron Faretra and Jennifer Althoff are the finance director and assistant in the City of Goose Creek's Finance Department. They report to the City Administrator.

41. The Department of Public Works of the City of Goose Creek is a separate agency of the City and is authorized to sell municipal water and sewer service by Article VIII § 16, S. C. Constitution. The Department of Public Works does not own a water system, but purchases water and sewer capacity in bulk from the Berkeley County Water Authority and then resells the water and sewer capacity to residents of Goose Creek for a monthly fee.

42. The defendants, Ron Faretra and Jennifer Althoff, are not employees of the Department of Public Works.

43. The defendants, Ron Faretra and Jennifer Althoff, acting outside of the scope of their employment as members of the Finance Department, directed the Goose Creek Department of Public Works to refuse municipal water service to the plaintiff and further directed that the Department of Public Works place a padlock on a water meter to property owned by the plaintiff.

44. The defendants, Ron Faretra and Jennifer Althoff, entered into an unlawful combination to misuse their authority as employees of the Finance Department to direct the Department of Public Works to refuse municipal service to the plaintiff to exercise a collateral advantage and punish the plaintiff for petitioning the government for redress of his grievance that the City is improperly calculating his business license tax.

45. There is no City ordinance that authorizes withholding essential municipal services for failure to pay a business license tax.

46. In July 2012, while this case was pending, the defendants Ron Faretra and Jennifer Althoff drove to the plaintiff's property located at 834 North Aylesbury, and confronted plaintiff's friend who was picking up trash, impersonated police officers, questioned the plaintiff's friend for an extended period of time, and then entered the plaintiff's property without a warrant—on the ground that the property was not locked—and spent an unknown period of time in the plaintiff's house.

47. As a direct and proximate result of the unlawful combination of actions taken by Ron Faretra and Jennifer Althoff, the plaintiff incurred special damages because he owned property he could not use because there was no water service to the property. As a result, the plaintiff was forced to sell the property as is and not make repairs and upgrades as is his custom.

48. The plaintiff is entitled to a trial by jury and for judgment against the individually named defendants, Ron Faretra and Jennifer Althoff, for both actual and punitive damages.

FOR AN EIGHTH CAUSE OF ACTION
AS TO DEPARTMENT OF PUBLIC WORKS
(Breach of Contract)

49. The plaintiff repeats the above allegations as if set forth here verbatim.

50. On July 9, 2012, the plaintiff applied to the Department of Public Works for municipal water service for 834 North Aylesbury, for which the plaintiff paid the Department's \$50.00 connection fee.

51. The Department received and retained the \$50.00 connection fee and approved the plaintiff's application for water service. (Following the deposition of the Department's designated witness on December 20, 2012, the Department attempted to refund the connection fee.)

52. The plaintiff has now learned that Ron Faretra and Jennifer Althoff directed the Department of Public Works to withhold municipal water service and lock the plaintiff's meter.

53. The Department of Works did lock the plaintiff's water meter.

54. The plaintiff and the defendant entered into a contract on July 9, 2012, in which the Department agreed to provide water services to the plaintiff in exchange for a monthly fee and connection fee.

55. The plaintiff paid all Water Department bills and is not in arrearage with the Department of Public Works.

56. Despite receiving the connection fee and approving the plaintiff for water service, the Department, acting on directions from Ron Faretra and Jennifer Althoff, terminated the plaintiff's water service without notice or giving him an opportunity to be heard as required by the governing ordinances.

57. As a direct and proximate result of the Department's breach of contract, the plaintiff had to sell the house as is without any improvements, which caused the plaintiff to be deprived of an opportunity to follow his usual course of conduct and rehabilitate the house prior to sale.

58. The plaintiff is entitled to an order of damages as determined by a jury for actual damages sustained as a result of the Department's breach of contract.

FOR A NINTH CAUSE OF ACTION

(Damages and Attorney's fees § 15-77-300, 310, §30-4-100, S. C. Code, ann, 42 § 1988
U.S.C. Code, ann.)

59. The plaintiff repeats the above allegations as if set forth here verbatim.

60. As a direct and proximate result of the City's actions against the plaintiff, he has been forced to pay an excessive license fee for which the City should reimburse him. Further, the plaintiff has been forced to divert time and energy to preventing an unlawful tax that has caused him to lose income. Further, the City's actions have chilled the plaintiff's ability to conduct business in the City of Goose Creek, all of which results from the City's unlawful acts directed against him.

61. This action is brought as a result of the City's deprivation of the plaintiff's civil rights by actions of the City of Goose Creek taken under color of law, and the plaintiff is entitled to an award of attorney's fees as authorized by 42 § 1988 U.S.C. Code, ann.

62. The plaintiff is entitled to an award of a reasonable attorney's fees because the City's actions taken against him are without substantial justification and there are no circumstances that would make an award of attorney's fees in this case unjust.

WHEREFORE, having fully set forth his complaint, the Plaintiff prays an order of the Court;

- a. Granting the Plaintiff a trial by jury on the actions at law for damages and for judgment for both actual and punitive damages as determined by the jury;
- b. Enjoining the City of Goose Creek from collecting a business license fees based on gross sales;
- c. Vacating the action taken by City Council on September 27, 2011, as void as a matter of law;

- d. For an award of attorney's fees against the City of Goose Creek as allowed for under Sections 15-77-300 *et. seq.* and § 30-4-100 of the South Carolina Code of Laws and ; 42 U.S.C. § 1988, and
- e. For a declaratory judgment against the City of Goose Creek enjoining the City from interpreting its ordinance contrary to the plain and ordinary language contained therein;
- f. For costs of this action;
- g. And for such other and further relief as this Court may deem just and proper.

January 2, 2013

Thomas R. Goldstein, #2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121
(843) 554-4291; (843) 554-5566 fax
ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY) CASE NO.: 2011-CP-08-2814

Todd Olds,)

Plaintiff,)

vs.)

City of Goose Creek,)

Defendant.)
_____)

MOTION FOR SUMMARY JUDGMENT

FILED
2013 JAN 16 PM 2:31
CLERK OF COURT
BERKELEY COUNTY, SC

TO: TIM DOMIN, ESQ., ATTORNEY FOR DEFENDANT:

PLEASE TAKE NOTICE that the plaintiff will move ten days after notice hereof or as soon thereafter as counsel may be heard, for an Order granting Summary Judgment on the issue of liability. This Motion is based on Rule 56 of the *South Carolina Rules of Civil Procedure*, the pleadings, discovery, and affidavits of Todd Olds and Kristen Gutting on the following grounds:

1. There is no genuine issue of material fact that the Town of Goose Creek provides an administrative appeal process that allows the Town to be heard and make arguments to Town Council, but does not allow the appellant to be heard or appear in person or through council, and this appellate process denies the appellant any meaningful opportunity to be heard.

2. As may be seen by reference to the affidavit of Professor Gutting, the Town's ordinances require that the business license fee be calculated on "gross income," yet the Town is calculating the plaintiff's taxes based on "gross receipts."

Because the plaintiff's application for summary judgment is based upon indisputable facts, there is no genuine issue of material fact to be decided by the Court or a jury as to the Town's improper calculation of the plaintiff's business license tax, and therefore, the plaintiff is entitled to judgment as a matter of law as provided by the *South Carolina Rules of Civil Procedure*, Rule 56.

Respectfully submitted,

BELK, COBB, INFINGER & GOLDSTEIN, P.A.



January 11, 2013

Thomas R. Goldstein, Esq. I.D.# 2186
P.O. Box 71121
Charleston, S.C. 29415-1121
(843) 554-4291; (843) 554-5566 fax
tgoldstein@cobblaw.net
Attorneys for plaintiff

Rule 11 Certificate

I certify that there is no duty to consult prior to filing a Motion for Summary Judgment.

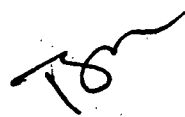
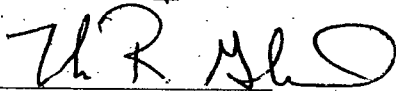
January 11, 2013



Thomas R. Goldstein

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF THE FOREGOING PLEADING HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING A COPY PROPERLY ADDRESSED WITH SUFFICIENT POSTAGE AFFIXED THERETO THIS 1st DAY OF JANUARY, 2013.

BY:



FILED
2013 JAN 16 PM 2:30
MARY F. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-08-2814

Todd Olds,

Plaintiff,

vs.

City of Goose Creek,

Defendant.

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2013 FEB -4 PM 4:02

FILED

**FACTUAL BACKGROUND
(Undisputed facts)**

The plaintiff, Todd Olds, is a licensed realtor. While he is licensed by the State of South Carolina to act as agent for either sellers or buyers of real estate, he also purchases real estate himself, which he refurbishes and then re-sells. Over the years, he has bought and sold several parcels of real estate in the City of Goose Creek. He takes title to the properties either in his name or in his company's name, Prime Properties of Charleston. Either way, he is the owner and he does much of the refurbishing work himself. He does hire various specialty sub-contractors to do work for specialized things beyond his ability such as electrical or plumbing.

In 2010, Mr. Olds got in to a dispute with the City of Goose Creek over what it contended was a city ordinance regulating the manner of repair work. (The City had a policy about the manner in which a homeowner must undertake repairs to correct termite damage. The City initially asserted that a City ordinance mandated its method, which turned out to not be an ordinance, but rather a memorandum prepared by a City employee.) This is how Mr. Olds described the incident in his August 2, 2012 deposition:

Q. What did the – you say until the city brought it to your attention. What did the city do to bring to your attention that you needed to have a business license in 2010?

A. They came out to my job at 217 Frances Street, terminated my water service, put a stop work order on my job saying I didn't have permits. And I was personally involved with my father working on the property. They produced me what they said was an ordinance with Bob Yarnall and Ginny whoever, an inspector, tried to produce a document to me to tell me it's an ordinance that didn't permit me to work on my house. And it was nothing but a written memorandum to the fire chief and the safety inspectors of the city, talking about termite damage repairs.

Deposition of Todd Olds, Page 18, line 20 through page 19, line 8

After the alleged City ordinance turned out to be an opinion of a city employee setting town policy, and after a series of contentious discussions, the City capitulated and Mr. Olds went about his business. Unfortunately, this disagreement about scope of repairs with the City brought him to the attention of City officials, giving rise to this dispute and reminiscent of the often quoted remark erroneously attributed to Thomas Jefferson: "Where the people fear the government you have tyranny. Where the government fears the people you have liberty." Thomas Jefferson said something like this, but the actual quote is from John Basil Barnhill, Barnhill-Tichenor Debate on Socialism, As It Appeared in the National Rip-Saw, Saint Louis, Mo.: The National Rip-Saw Pub. Co., 1914, 34.

After Mr. Olds became known to the City in 2010, he tendered his business license application and fee as he had done in the past. On May 23, 2011, Jennifer Althoff sent Olds a letter

from the City, informing him that he calculated his business license tax incorrectly, and that he owed an additional \$468.00, and informing Mr. Olds (and his wife!) that he was subject to various penalties, including being jailed:

If payment is not received by the above date your business license fee due will be submitted to the South Carolina Department of Revenue to be set off against your individual income tax return. Pursuant to the Setoff debt Collection Act (Section 12-56-10), the amount owed for your business license fee plus a \$565.00 fee will be deducted from your South Carolina individual income tax refund. If you file a joint return with your spouse, this amount will be deducted from the total joint return without regard to which spouse incurred the debt or actually withheld taxes. You may also be issued a Uniformed Ordinance Summons in the amount of \$1092.50, this includes State assessments, or 30 days in jail, each day in violation will be deemed a separate offense.

Sincerely,

Jennifer Althoff, MBI
Business License Inspector

In 2012, the City escalated the disagreement by contending that his gross income was \$643,700.00 (the City again contented that "gross income" is "gross receipts") instead of \$121,784.80, which is indisputably Olds' "gross income" as reported to the Internal Revenue Service and the State Department of Revenue. (See City of Goose Creek Business License Renewal Application, attached as Exhibit 2 to the July 6, 2012, deposition of Ron Faretra.) This application form contains the following "Certification of Applicant": "I hereby certify that the information given in this application is true. That the gross income is accurately reported without any unauthorized deduction, and that all assessments and property taxes due and payable have been paid." Olds paid the disputed amount under protest and applied for an administrative appeal as provided for in the Goose Creek Ordinances. On September 1, 2011, the City informed Mr. Olds

that it denied his administrative appeal, and pursuant to the City's administrative remedy, he appealed to the Town Administrator. After the Town Administrator ruled against Mr. Olds, he appealed to the Town Council. On September 27, 2011, the Town Council took up the Plaintiff's appeal. However, the City's ordinances do not permit the appellant to participate in his appeal. The appellant is permitted to sit in the audience and observe, but the City does not allow the appellant to address Council, present evidence, or be represented by counsel. After taking up the Plaintiff's appeal without his participation, the City affirmed its denial, and the Plaintiff then filed this action on October 12, 2011, appealing the City's decision and asking for a declaratory judgment and injunction as well as damages.

The motion now before the Court on the **Plaintiff's** motion for summary judgment. A Plaintiff's motion for summary judgment is as rare as the proverbial hens' teeth because the Plaintiffs' bar recognizes that there exist "genuine issues of material fact" in almost every case. Here, however, there are two independent bases for summary judgment, both of which are based on indisputable facts and supported by well-established case law. They will be discussed in two sections.

ARGUMENTS

1.

Due Process

Like every local government, the City of Goose Creek provides an administrative remedy for tax disputes such as the one here. Under the City's Ordinances, the final administrative appeal is

before the City Council, but an appellant is not permitted to appear in person or through council. See Goose Creek Ordinance § 110.016: "City Council shall review the records and without further oral argument or presentation of evidence will affirm, modify or deny the appeal." The City permits the City Administrator to argue the appeal for the City, but interestingly also allows the City's representative to summarize the Appellant's legal argument for him! As the transcript of the appeal hearing here demonstrates, the City took up the Plaintiff's case without permitting him to appear, and, as the transcript demonstrates, in a nod to its unusual view of fairness, proceeded to argue the Plaintiff's position for him:

EXCERPT FROM CITY COUNCIL APPEAL HEARING SEPTEMBER 27, 2011

So based on what it states in our ordinance I can't provide any meaningful information. So all of the information concerning the decision was given to you in your packet.

Well, uh, it is interesting reading that our attorney Mr. Tim Domin that he uh looked at case, case files or case records.¹

Again Mr. Mayor I can't provide additional information to you, um, there is a letter I believe in the package from Mr. Domin.

According to the letter Mr. Domin wrote, uh, I would assume, from what I gathered here, I would assume that he researched that case law and that we were well within our rights. He did cite some cases.

¹ As if an appeal without participation of the appellant is not bizarre itself, even more strange is that Tim Domin wrote City Council a letter on August 30, 2011, telling them that "Internal Revenue Code Section 61 defines gross income," which is exactly the plaintiff's position! Of course, since the plaintiff was excluded from his own case, he could not point out this agreement.

Short of, would somebody on city council or somebody in this room give me an argument to support Mr. Olds' methodology? Why would Mr. Olds' position be correct that we would overrule Mr. Harmon's?

Transcript of hearing before City Council, September 27, 2011. (The entire transcript is attached to this memorandum for the Court's convenience.) (emphasis added)

This process is so blatantly unfair and so obviously a violation of the requirements of due process as to be unconstitutional on its face.

The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decisionmaking when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose more particularly, is to protect his use and possession of property from arbitrary encroachment—to minimize substantive unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party. So viewed, the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of government interference.

Fuentes v. Shevin, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556(1972)

Here, the deprivation is even greater than in *Fuentes* because in *Fuentes*, the Florida replevin statute failed to provide for an opportunity to be heard until a private person already deprived the applicant of her property. Here, the City is the one who is improperly depriving the Plaintiff of his property—as well as his wife's property and threatening the appellant with jail—and then sitting in judgment of its own act—without permitting participation by the affected party!

2.

Gross income

Cities are statutory creatures imbued with powers from the State. They are not permitted to act inconsistent with State law. The City of North Charleston discovered this in 1991, when it

passed a city ordinance that deprived its municipal judges of the power to suspend any portion of a sentence handed down in municipal court for possession of marijuana. The Supreme Court made short shrift of the City's desire to chart its own course and held—surprising to no one—that North Charleston's penalties for possession of marijuana could not be greater than that authorized under state law. See *City of North Charleston v. Harper*, 306 S. C.153, 410 S.E.2d 569 (1991):

Local governments derive their police powers from the state. S.C. Const. Art. VIII, §§ 7, 9. The state has granted local governments broad powers to enact ordinances "respecting any subject as shall appear to them necessary and proper for the security, general welfare and convenience of such municipalities." S.C. Code Ann. § 5-7-30 (1976). This is in recognition that more stringent regulation often is needed in cities than in the state as a whole. *Arnold v. City of Spartanburg*, 201 S.C. 523, 23 S.E.2d 735 (1943). However, the grant of power is given to local governments with the proviso that the local law not conflict with state law. *City of Charleston v. Jenkins*, 243 S.C. 205, 133 S.E.2d 242 (1963). A city ordinance conflicts with state law when its conditions,

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express or implied, are inconsistent or irreconcilable with the state law. *Town of Hilton Head v. Fine Liquors, Ltd.*, 302 S.C. 550, ___, 397 S.E.2d 662, 664 (1990) (quoting *McAbee v. Southern Rwy. Co.*, 166 S.C. 166, 169-70, 164 S.E. 444, 445 (1932)). Where there is a conflict between a state statute and a city ordinance, the ordinance is void. *State v. Solomon*, 245 S.C. 550, 141 S.E.2d 818 (1965).

State law permits a municipality to collect a business license tax. The power of the City to collect this tax is codified at §5-7-30, "Powers conferred upon municipalities; surtax for parking spaces." This section allows cities to "levy a business license tax on **gross income**, . . ." (For the Court's convenience, the entire statute is attached here, and the Plaintiff emphasizes "gross income" because the entire dispute is that the City contends "gross income" means "gross receipts." And, as Mr. Domin conceded in his August 30, 2011, correspondence to the City, "gross income" is defined by § 61 of the *Internal Revenue Code*) In his deposition, the City's representative, Ron Faretra testified that the City follows the South Carolina Municipal Association's model ordinance. See

page 81, line 16 of Ron Faretra's July 6, 2012, deposition: "Q. . . . And No. 1, you admitted that your business license ordinance is based upon the Model Ordinance available to members of the South Carolina Municipal Association? A. Yes." On this point, the Municipal Association's handbook says:

State Laws Authorizing Business License Taxes

Municipalities

(a) Gross Income. SC Code Sec. 5-7-30 authorizes each municipality to levy a business license tax measured by gross income. No other basis is authorized, except for certain businesses. Railroads, telecommunications and insurance companies are subject to special statutes. See Part 2 for a discussion of what constitutes gross income.

EXEMPT INCOME

Many license ordinances provide for using federal and state income tax returns to verify gross income reported for license purposes. This sometimes leads to discussion of whether the amount reported on Schedule C, Line 1, is the proper amount to be used when a business reports returns and allowances resulting in a reduced gross income. The amount of gross receipts on which a business license tax may be levied is the amount of actual gross income to the owner. It does not include funds collected for others as noted, and it does not include funds returned to customers in the tax year, although the books of the business may show the funds as receipts which are later reduced by deductions for income tax purposes. The actual business gross income does not include funds collected but not retained as income. The fact that business bookkeeping practices are driven by income tax considerations does not change this.

South Carolina Municipal Association Handbook on Business License Ordinance at page 2.

In this case, after Todd Olds came to the attention of the City's governmental officials because of an unrelated dispute (see testimony quoted above), the City audited his business license tax returns and asserted that he underreported his income by reporting "gross income" when he should have been reporting "gross receipts." This is the entire controversy. The City contends

“gross income” means “gross receipts,” and the Plaintiff contends gross income means exactly what it says: “gross income.”

The first rule of statutory construction is that statutory laws must be interpreted in accordance with the plain meaning of the words used.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 147-48, 694 S.E.2d 525, 529 (2010) (quoting *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 5437 S.E.2d 6, 8 (1993)). Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009).

Storm M. H. v. Charleston County Board of Trustees, ___ S.C. ___, ___ S.E.2d ___ (Opinion No. 27201, filed December 12, 1012)

When an ordinance is penal in nature, it must be construed narrowly as possible against the government: “When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant.” *State v. Ramsey*, 398 S.C. 275, 727 S.E.2d 429 (Ct. App. 2012) “When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” *Sloan v. S. C. Bd. Of Physical Therapy Exam’rs.*, 370 S.C. 452, 468, 636 S.E.2d 598, 606 (2006); *Thalia S. v. Progressive Select Ins. Company*, ___ S.C. ___, ___ S.E.2d ___ (Ct. App. Opinion No. 5054, filed November 28, 2012)

The General Assembly knows the difference between “gross income” and “gross receipts.” The Internal Revenue Service knows the difference between “gross income” and “gross receipts.” The South Carolina Department of Revenue knows the difference between “gross income” and

“gross receipts.” As the affidavit of Professor Gutting demonstrates, the City **defines** “gross receipts” in its definitions section, but. The term “gross receipts” is not linked to any other provision of Goose Creek’s ordinances **then the term appears nowhere else in its ordinances.** The City contends—no small irony—that the “plain, unambiguous” meaning of “gross income” is quite ambiguous. Instead of applying “gross income” as it is applied by every other entity in the world, rather, Ron Faretra and Jennifer Althoff plucked “gross receipts” out of the definition section of the ordinances and plugged it in to their business license renewal application because of their demonstrated purposeful discrimination for Todd Olds. There is no doubt that the question of purposeful discrimination is almost always a question of fact for a jury, but when it comes to interpreting a statute or ordinance, that function is reserved for the Court. And because Courts possess the unique and independent authority to interpret statutory laws, legislators, like insurance companies, are not free to adopt private languages in the manner parodied by Lewis Carroll. The City cannot be like Humpty Dumpty and choose words to mean whatever they want. Rather, the City has an obligation to speak clearly and to choose words that mean exactly the same to everyone—nothing more, nothing less, especially where the City threatens to seize property and incarcerate citizens.

Throughout this litigation, the City has contended that “gross income” in the sale of real property means the same as “gross receipts” from the sale of personal property, arguing that the sale of pencils or sweaters or groceries is the same as the sale of a house. The City’s adherence to this argument is bizarre and against the weight of the whole world—especially as the manipulation of definition involves a tax statute with heavy penalties for non-compliance. As Mr. Domin concedes, **§ 61(a) of the Internal Revenue Code defines “gross income,”** and this is the definition

recognized by every government in America except Goose Creek. The *Internal Revenue Code* says:

§ 61 Gross income defined

(a) General definition.—Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including but not limited to) the following items:

- (1) Compensation for services, including fees, commissions, and similar items;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;**
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Alimony and separate maintenance payments;

...

(emphasis added)

As explained in Professor Gutting's affidavit, this definition is the same definition adopted by state law. See § 12-6-1110 ("Modifications of gross, adjusted gross, and taxable income calculated under Internal Revenue Code; federal Section 1354 elections), § 12-6-1120 (Gross income; computation; modifications) and § 12-6-50 (listing the sections of the I.R.S. code **not** adopted by the State). Since the State adopts § 61, the City of Goose Creek is not free to ignore it

and like North Charleston discovered when it passed a penal ordinance in contravention of state law, municipalities are circumscribed in what they can do. During discovery, the City asserted that its definition of "gross income" as "gross receipts" is the definition adopted by the "model ordinance" published by the South Carolina Municipal Association. However, as may be seen by reference to the Municipal Association's "model ordinance," published on-line and attached here, the Municipal Ordinance adopts a definition of "gross income" consistent with the I.R.S., state law, and the Plaintiff's assertion. (For the Court's convenience, the applicable pages of the model ordinance are attached here.) Here is what the "model ordinance" says in applicable part:

GROSS INCOME

Gross Income Defined

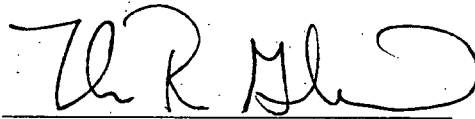
Gross income may be defined by the license ordinance and generally means all revenue received from the business operation without any deductions for such things as cost of goods, overhead, salaries or costs of sale. It should conform to the gross figure reported on the business' federal income tax return. Section 61(a) of the Internal Revenue Code defines gross income as "all income from whatever source derived." Although there are no allowable deductions from gross income for business license purposes, there are certain receipts customarily included on the income tax return in gross income and later deducted that are not really business income. These receipts are considered income for business license purposes because the funds are not retained by the business and do not constitute actual income.

Municipal Association of South Carolina
Model Ordinance Handbook
Page 14

Therefore, it is indisputable that the City of Goose Creek has adopted a definition of "gross income" that is variance with the entire world and, more importantly, at variance with state law. It is an uncontested fact that the figures supplied by Mr. Olds to the City of Goose Creek are exactly the figures reported to the I.R.S. and the State Department of Revenue, which are the very forms

demanding by the City to verify "gross income." However, rather than apply its ordinances in a fair and impartial manner, the City has engaged in purposeful discrimination against him to retaliate for having the temerity to challenge the City on an unrelated matter. Even if Goose Creek were to re-draft its ordinance to adopt "gross receipts" as its standard, it still would be in violation of state law just as North Charleston was in violation of state law when it drafted its ordinance to take away its municipal judge's discretion to sentence defendants convicted of simple possession. Therefore, because there is no genuine issue of material fact as to the validity of the City's ordinance as interpreted by the City, the Plaintiff is entitled to summary judgment only as to his declaratory judgment relief as provided for by Rule 56, *South Carolina Rules of Civil Procedure*.

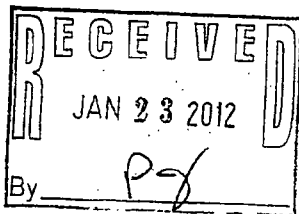
January 31, 2013



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tgoldstein@cobblaw.net



City of Goose Creek
Business License
Renewal Application



PRIME PROPERTIES OF CHARLESTON

4381 STONEY POYNT COURT
NORTH CHARLESTON, SC 29405



Current Information

Business License Number: 8108
Class: 7 Type of Business: Realtor
Owner: TODD OLDS
Social Security#: Fed. Id#: _____
Business Name 1: PRIME PROPERTIES OF CHARLESTON
Business Name 2: _____
Name of Point of Contact: B TODD OLDS
Local Phone #: 843-200-1813 Home Office Phone #: 843-200-1813
Location: 4381 STONEY POYNT COURT

Update Information

PLEASE PRINT

Location Change Name Change Contact Information Change
Class: _____ Type of Business: Realtor
Owner: _____
Business Name 1: _____
Business Name 2 or DBA: _____
Mailing Address: _____
Local Phone # _____ Home Office Phone # _____
Social Security #: _____ Fed. Id#: _____
E-Mail: _____
Location: _____

If you are no longer in business, please give us the date your business was dissolved and return this form. Business terminated on (date) _____

BUSINESS LICENSE FEES ARE DUE ON OR BEFORE THE LAST DAY OF FEBRUARY. The City of Goose Creek accepts checks and money orders made payable to City of Goose Creek, VISA, MasterCard and American Express. Renewal applications and payment should be mailed to: City of Goose Creek, Attn: Business License, P.O. Drawer 1768, Goose Creek, South Carolina, 29445-1768. Please complete form in its entirety.

BUSINESS LICENSE RENEWAL CALCULATION
(worksheet on back of form)

1. actual gross receipts (total receipts generated by the business regardless of source, without deduction) (gross receipts should be on a 12 month projected income based on the monthly average for a business in operation for less than one year)
From 1/1/2011 To 12/31/2011 \$ 121,784.80
2. Less allowable deductions (itemize on a separate sheet and attach hereto)
**(See back of this form for examples of allowable deductions). \$ 0
3. Gross receipts for license purposes. (subtract line 2 from line 1). \$ 121,784.80
4. Business License Fee (from worksheet on back of form, sum of lines 1, 2 & 3). \$ 788.00
5. Penalty: _____ % multiplied by business license fee (line 4)
5% for each month, or part thereof, beginning March 1st. \$ 0
6. Previous balance due (prior years). \$ 0
7. Amusement machines (paid for by the operator of the machines only).
Pool Table: _____ X \$12.50 = _____
Amus. Mach.: _____ X \$12.50 = _____
Non-Payout Mach: _____ X \$150.00 = _____
\$ N/A
8. Total payment due: add license fee due (line 4), penalty amount (line 5), previous balance (line 6), and amusement machines (line 7).
B. Todd Olds \$ 788.00

Name of person responsible for business license (print owner or agent name): _____

Certification of Applicant

I hereby certify that the information given in this application is true. That the gross income is accurately reported without any unauthorized deduction, and that all assessments and property taxes due and payable to the city have been paid. I understand that issuance of a city business license does not relieve me of the responsibility of meeting all City of Goose Creek zoning and Building Code requirements, and that I am subject to all provisions of the business license ordinance of the City of Goose Creek. I also understand and authorize the City of Goose Creek and its Agents to utilize all information on this application for the purposes of obtaining a business license and insuring that all other Federal, State, and Local laws are followed.

Signature of Applicant: B. Todd Olds
Date: 1/18/2012

Title: Owner / Agent / Realtor
City Administrator _____

For Office Use Only: Finance Director _____
Prior Years Gross: _____

Business License Calculation Worksheet

1. Base Rate: \$0 - \$1,000 gross receipts or fraction thereof
(see enclosed business license rates based on class)

Base Rate: \$1,001 - \$2,000 gross receipts or fraction thereof
(see enclosed business license rates based on class)

3. Per thousand rate: Multiply all income over \$2,000, up to
\$1,000,000 per thousand rate. (See enclosed business license rates based on
Class) (declining rate applies for gross receipts in excess of one million dollars)

\$ 82.00
\$ 82.00
\$ ~~120~~ ~~120~~ X 5.20 = 624.00
788.00
82.00
Total 788.00

Sec. 110-009(C) License fee according to classification; due date; separate license; computation of fee.

(c) A license fee based on gross income shall be computed on the gross income for the preceding calendar or fiscal year and on a twelve (12) month projected income based on the monthly average for a business in operation for less than one year. The fee for a new business shall be computed on the estimated probable gross income stated in the license application for the balance of the calendar year.

Gross Receipts are the total revenue of a business, received, accrued or collected for one calendar or fiscal year.

1) Exemptions from gross income are; *business done wholly outside of the City on which a license tax is paid and fully reported to some other municipality or county*, sales tax and gasoline taxes received on behalf of the state and federal government and sales from lottery tickets (lottery sales commission should be included in gross receipts).

a) Business license fees paid to another city or county.

1) Berkeley County does not require a business license; all gross receipts derived from work done in Berkeley County must be reported on your City of Goose Creek Business License Application.

b) Sales tax paid to the State of South Carolina Department of Revenue on retail sales is an exemption from your gross receipts.

c) Gasoline excise tax paid to the State of South Carolina and the Federal government is an exemption from your gross receipts.

d) Lottery Ticket Sales (not commission of lottery ticket sales) on behalf of the State of South Carolina are an exemption from your gross receipts.

See schedule below for business license rates

Class	First \$2,000.00 of Gross Income	After the first \$2,000.00 Up to 1 Million*
7	\$82.00 for the first \$1,000.00 \$82.00 for the second \$1,000.00 or fraction thereof	\$5.20 per \$1,000.00 or fraction thereof

*Declining rate applies in all classes for gross income in excess of 1 Million dollars

GROSS INCOME	PERCENTAGE OF FEE
First 1,000,000.00	100%
1,000,001.00 - 2,000,000.00	90%
2,000,001.00 - 3,000,000.00	80%
3,000,001.00 - 4,000,000.00	70%
4,000,001.00 - above	60%

Example: Class 7 Business - Outside City - Gross Income \$2,500,000.00

First \$1,000.00 @ \$82.00 per thousand

1 x \$82.00 = \$82.00

Second \$1,000.00 @ \$82.00 per thousand

1 x \$82.00 = \$82.00

Over \$2,000.00 to \$1 million @ \$5.20 per thousand

998 x \$5.20 = \$5,189.60

\$1 million to \$2 million @ 90% of \$5.20

1000 x \$4.68 = \$4,680.00

\$2 million to \$3 million @ 80% of \$5.20

500 x \$4.16 = \$2,080.00

TOTAL LICENSE FEE DUE

\$12,113.60



City of Goose Creek
Business License
Renewal Application



Current Information

Business License Number: 8108
Class: 7
Owner: TODD OLDS
Social Security#: _____
Business Name 1: PRIME PROPERTIES OF CHARLESTON
Business Name 2: _____
Name of Point of Contact: B TODD OLDS
Local Phone #: 843-200-1813 Home Office Phone #: 843-200-1813
Location: 4381 STONEY POYNT COURT

Update Information

PLEASE PRINT

Location Change _____ Name Change _____ Contact Information Change _____
Class: _____ Type of Business: _____
Owner: _____
Business Name 1: _____
Business Name 2 or DBA: _____
Mailing Address: _____
Local Phone # _____ Home Office Phone # _____
Social Security #: _____ Fed. Id#: _____
E-Mail: _____
Location: _____

PRIME PROPERTIES OF CHARLESTON

4381 STONEY POYNT COURT
NORTH CHARLESTON, SC 29405

2nd Attempt

If you are no longer in business, please give us the date your business was dissolved and return this form. Business terminated on (date) _____

BUSINESS LICENSE FEES ARE DUE ON OR BEFORE THE LAST DAY OF FEBRUARY. The City of Goose Creek accepts checks and money orders made payable to City of Goose Creek, VISA, MasterCard and American Express. Renewal applications and payment should be mailed to: City of Goose Creek, Attn: business license, P.O. Drawer 1768, Goose Creek, South Carolina, 29445-1768. Please complete form in its entirety.

BUSINESS LICENSE RENEWAL CALCULATION
(worksheet on back of form)

Actual gross receipts (total receipts generated by the business regardless of source, without deduction) (gross receipts should be on a 12 month projected income based on the monthly average for a business in operation for less than one year)
From 1/1/2011 To 12/31/2011

Less allowable deductions (itemize on a separate sheet and attach hereto)
**(See back of this form for examples of allowable deductions).

Gross receipts for license purposes. (subtract line 2 from line 1).

Business License Fee (from worksheet on back of form, sum of lines 1, 2 & 3).

Penalty: 10 % multiplied by business license fee (line 4)
5% for each month, or part thereof, beginning March 1st.

Previous balance due (prior years).

Amusement machines (paid for by the operator of the machines only).

Pool Table: _____ X \$12.50 = _____
Amus. Mach.: _____ X \$12.50 = _____
Non-Payout Mach: _____ X \$150.00 = _____

Total payment due: add license fee due (line 4), penalty amount (line 5), previous balance (line 6), and amusement machines (line 7).

Todd Olds

Name of person responsible for business license (print owner or agent name):

Certification of Applicant

I hereby certify that the information given in this application is true. That the gross income is accurately reported without any unauthorized deduction, and that all assessments and property taxes due and payable to the city have been paid. I understand that issuance of a city business license does not relieve me of the responsibility of meeting all City of Goose Creek and Building Code requirements, and that I am subject to all provisions of the business license ordinance of the City of Goose Creek. I also understand and authorize the City of Goose Creek and its Agents to utilize all information on this application for the purposes of obtaining a business license and insuring that all other Federal, State, and Local laws are followed.

Signature of Applicant:

Date: 4/23/12

Title:

Receptor

For Office Use Only:

Finance Director

Modbury 5/4/12

City Administrator

For Years Gross:

134,000

GROSS INCOME	
City	Olds
\$643,700.00	\$121,784.80
\$643,700.00	\$121,784.80
\$3502.40	\$788.00
\$3502.40	
\$0	
\$3852.64	

South Carolina Code

☐ South Carolina Code

☐ TITLE 5. MUNICIPAL CORPORATIONS

☐ CHAPTER 7. GENERAL STRUCTURE, ORGANIZATION, POWERS, DUTIES, FUNCTIONS AND RESPONSIBILITIES OF ALL MUNICIPALITIES

§ 5-7-30. Powers conferred upon municipalities; surtax for parking spaces.

Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them; the authority to abate nuisances; the authority to provide police protection in contiguous municipalities and in unincorporated areas located not more than three miles from the municipal limits upon the request and agreement of the governing body of such contiguous municipality or the county, including agreement as to the boundaries of such police jurisdictional areas, in which case the municipal law enforcement officers shall have the full jurisdiction, authority, rights, privileges, and

immunities, including coverage under the workers' compensation law, which they have in the municipality, including the authority to make arrests; and to execute criminal process within the extended jurisdictional area; provided, however, that this shall not extend the effect of the laws of the municipality beyond its corporate boundaries; grant franchises for the use of public streets and make charges for them; grant franchises and make charges for the use of public beaches; engage in the recreation function; levy a business license tax on gross income, but a wholesaler delivering goods to retailers in a municipality is not subject to the business license tax unless he maintains within the corporate limits of the municipality a warehouse or mercantile establishment for the distribution of wholesale goods; and a business engaged in making loans secured by real estate is not subject to the business license tax unless it has premises located within the corporate limits of the municipality and no entity which is exempt from the license tax under another law nor a subsidiary or affiliate of an exempt entity is subject to the business license tax; borrow in anticipation of taxes; and pledge revenues to be collected and the full faith and credit of the municipality against its note and conduct advisory referenda. The municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both. If the person or business taxed pays a business license tax to a county or to another municipality where the income is earned, the gross income for the purpose of computing the tax must be reduced by the amount of gross income taxed in the other county or municipality.

For the purpose of providing and maintaining parking for the benefit of a downtown commercial area, a municipality may levy a surtax upon the business license of a person doing business in a designated area in an amount not to exceed fifty percent of the current yearly

business license tax upon terms and conditions fixed by ordinance of the municipal council. The area must be designated by council only after a petition is submitted by not less than two-thirds of the persons paying a business license tax in the area and who paid not less than one-half of the total business license tax collected for the preceding calendar year requesting the designation of the area. The business within the designated area which is providing twenty-five or more parking spaces for customer use is required to pay not more than twenty-five percent of a surtax levied pursuant to the provisions of this paragraph.

HISTORY: 1962 Code § 47-32; 1975 (59) 692; 1976 Act No. 729; 1978 Act No. 409, § 1; 1988 Act No. 495, § 2; 1993 Act No. 171, § 1; 1999 Act No. 113, § 21; 2008 Act No. 412, § 2, eff June 25, 2008.

EFFECT OF AMENDMENT —

The 2008 amendment, in the first undesignated paragraph, added the third sentence relating to reduction of the amount of gross income taxed.

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CITY OF GOOSE CREEK BUSINESS LICENSE ORDINANCE

Available online at www.cityofgoosecreek.com AND

www.cityofgoosecreek.com/?name=Site&catID=15416&parentID=15414

§ 110.001 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context indicates or requires a different meaning.

BUSINESS. A calling, occupation, profession or activity engaged in the object of gain, benefit or advantage, either directly or indirectly.

CHARITABLE PURPOSE. A benevolent, philanthropic, patriotic or eleemosynary purpose which does not result in personal gain to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization. A charitable organization shall be deemed a business unless the entire proceeds of its operation are devoted to charitable purposes. Compensation in any form to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization shall not be deemed a necessary expense of operation.

CITY. The City of Goose Creek

CLASSIFICATION. That division of businesses by major groups subject to the same license rate as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationship of services or other bases deemed appropriate by City Council.

FINANCE DIRECTOR. A person designated to administer this chapter.

GROSS INCOME. The total revenue of a business, received or accrued, for one calendar year, collected or to be collected by a business within the city, excepting, therefrom, business done wholly outside of the city on which a license tax is paid to some other municipality or county and fully reported to the city or county. The term **GROSS RECEIPTS** means the value proceeding or accruing from the sale of tangible personal property, including merchandise and commodities of any kind and character and all receipts, by the reason of any business engaged in, including interest, dividends, discounts, rentals of real estate or royalties, without any deduction on account for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid or any other expenses whatsoever and without any deductions on account of losses. The **GROSS INCOME** for business license purposes shall conform to the gross income reported to the State Tax Commission or the State Insurance Commission. In the case of brokers or agents, **GROSS INCOME** shall mean gross commissions received or retained, unless otherwise specified. **GROSS INCOME** for insurance companies means gross premiums collected. **GROSS INCOME** for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds or funds, which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in **GROSS INCOME**. The **GROSS INCOME** 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

Insurance Commission or other government agency.

PERSON. Any individual, firm, partnership, LLP, LLC, cooperative nonprofit 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 principals.

(1985 Code, § 13-1) (Ord. 07-018, passed 11-13-2007)

§ 110.002 ADMINISTRATION; DESIGNATED OFFICERS; DUTIES.

The Finance Director, under the direction of the City Administrator, shall administer the provisions of this chapter, collect license fees, issue licenses, make or initiate investigations and audits to insure compliance, initiate denial or revocation procedures, report violations to the Police Department and assist in prosecution of violators, produce forms, make reasonable regulations relating to the administration of this chapter and perform other duties as may be duly assigned.

(1985 Code, § 13-2) (Ord. 07-018, passed 11-13-2007)

§ 110.003 INSPECTION AND AUDITS.

(A) For the purpose of enforcing the provisions of this chapter, the Finance Director or other authorized agent of the city is empowered to enter upon the premises of any person subject to this chapter to make inspections, examine and audit books and records. It shall be unlawful for any person to fail or refuse to make available the necessary books and records including copies of returns and reports filed with any governmental agency. In the event an audit or inspection reveals that false information has been filed by the licensee, the costs of the audit shall be added to the correct license fee and late penalties in addition to the other penalties provided herein. Each day of failure to pay the proper amount of license fee shall constitute a separate offense.

(B) The Finance Director may make systematic inspections and random audits of all businesses within the city to insure compliance with this chapter. Records of inspections and audits shall not be deemed public records, and the Finance Director shall not release the amount of license taxes paid or the reported gross income of any person by name without permission of the licensee, provided that statistics compiled by classifications may be made public.

(C) The Business License Inspector, upon approval of the Finance Director, may disclose gross income of licenses to the Internal Revenue Service, South Carolina Department of Revenue and other municipal or county offices for the purpose of assisting tax assessments, tax collections and enforcement. The disclosures shall be for internal, confidential and official use of these governmental agencies and shall not be deemed public records.

(1985 Code, § 13-3) (Ord. 07-018, passed 11-13-2007) Penalty, see § 110.999

§ 110.004 ASSESSMENTS; PAYMENT UNDER PROTEST; APPEAL.

(A) When a person fails to obtain a business license or to furnish the information required by this chapter, the Finance Director may proceed to examine the records of the business or any other available records as may be appropriate, and to conduct the investigations and statistical surveys as the Finance Director may deem appropriate to assess a license tax and penalties as provided herein.

(B) A notice of assessment shall be served by regular mail or hand delivery. An application for adjustment of the assessment may be made to the Finance Director within ten days after the notice is mailed, or the assessment will become final. The Finance Director shall establish, by regulation, the procedure for hearing an application for adjustment of assessment and issuing a notice of final assessment.

(C) A final assessment or other decision of the Finance Director may be appealed to the City Administrator and thereafter, to City Council. See § 110.016, which explains the procedures for appealing a final assessment, charge backs from an audit, revocation, suspension or a denial of a business license or other decision of the Finance Director related to business licenses.

(1985 Code, § 13-4) (Ord. 07-018, passed 11-13-2007)

§ 110.005 NOTICE OF LICENSE FEES.

The Finance Director may, but shall not be required, to serve or mail written notices that license fees are due. If notices are not mailed, there shall be published a notice of the due date in a newspaper of general circulation within the city three times during the month of December in each year. Failure to receive notice shall not constitute a defense to prosecution for failure to pay the tax due or grounds for waiver of penalties.

(1985 Code, § 13-5) (Ord. 07-018, passed 11-13-2007)

§ 110.006 LICENSE REQUIRED.

Every person engaged or intending to engage in any calling, business, occupation or profession in whole or in part, within the limits of the city, is required to pay an annual license fee for the privilege of doing business and obtain a business license as herein provided.

(1985 Code, § 13-6) (Ord. 07-018, passed 11-13-2007)

§ 110.007 PURPOSE AND DURATION OF LICENSE.

The business license levied by this chapter is for the purpose of providing the regulation as may be required of the business subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. Each license shall be issued for one calendar year beginning January 1 and shall expire on December 31. The provisions of this chapter and the rates herein shall remain in effect from year to year unless amended by City Council.

(1985 Code, § 13-7) (Ord. 07-018, passed 11-13-2007)

§ 110.008 REGISTRATION REQUIRED; LICENSE APPLICATION.

(A) The owner, agent or legal representative of every business subject to this chapter, whether listed in the classification index or not, shall register the business and make application for a business license on or before the due date of each year, except that a new business shall be required to have a business license prior to operation within the city.

(B) Application shall be on a form provided by the Finance Director which shall contain the social security number and/or the federal employer's identification number, the South Carolina Retail License Number (if applicable), the business name as reported on the South Carolina income tax return and all information about the applicant and the business deemed necessary to carry out the purpose of this chapter by the Finance Director. The applicant shall certify the information given in the application is true, and that the gross income is accurately reported or estimated for a new business, without any unauthorized deductions and all assessment and personal property taxes due and payable to the city have been paid. Applicants may be required to submit copies of portions of state and federal income tax returns reflecting gross income figures.

(C) The Finance Director may refuse to issue a business license until the applicant has demonstrated compliance with the City of Goose Creek Zoning Ordinance, Building Code, Electrical Code, Mechanical Code, Plumbing Code, Roofing Code and other regulatory codes as adopted by the City of Goose Creek, but issuance of a business license shall not be grounds to stop the city from enforcing the provisions of the Zoning Ordinance, Building Code, Electrical Code, Mechanical Code, Plumbing Code, Roofing Code and other regulatory codes.

(D) Insurance agents and brokers shall report the name of each insurance company for which a policy was issued and the total premiums collected for each company for each type of insurance coverage on a form approved by the license official. An insurance agent not employed by an insurance company or employed by more than one insurance company shall be licensed as a broker.

(1985 Code, § 13-8) (Ord. 07-018, passed 11-13-2007)

§ 110.009 LICENSE FEE ACCORDING TO CLASSIFICATION; DUE DATE;
SEPARATE LICENSE; COMPUTATION OF FEE.

The license fee for each class of business shall be computed in accordance with the rate schedules established and approved by City Council and on file in the offices of the Finance Director and City Clerk.

(A) The required license fee shall be paid for each business subject hereto according to the applicable rate classification on or before the last day of February in each year, except for those businesses in rate class 8 for which a different due date is specified.

(B) A separate license shall be required for each place of business and for each classification of business conducted at one place. However, all classifications of business conducted at one place may be licensed, at the option of the Finance Director, under a single license calculated at the primary rate for each classification. The primary rate must be applied for each business. If gross income cannot be separated for classification at one location, the license fee shall be computed on the combined gross income for the classification requiring the highest rate.

(C) A license fee based on gross income shall be computed on the gross income for the preceding calendar or fiscal year, and on a 12 month projected income based on the monthly average for a business in operation for less than one year. The fee for a new business shall be computed on the estimated probable gross income stated in the license application for the balance of the license year. No refund shall be made for a business that is discontinued, or for an overpayment of a prior year license fee.

(1985 Code, § 13-9) (Ord. 07-018, passed 11-13-2007)

§ 110.010 DEDUCTIONS AND EXEMPTIONS.

(A) No deduction from gross income shall be made except from income from business done wholly outside the city on which a license tax is paid to some other municipality or county, or income which cannot be taxed pursuant to state or federal law. The applicant shall have the burden to establish the right to exempt income by satisfactory records and proof. No person shall be exempt from the requirements of this chapter by reason of the lack of an established place of business within the city, unless exempted by state or federal law.

(B) The Finance Director shall determine the appropriate classification for each business in accordance with the latest issue of the *United States Bureau of Budget Standard Industrial Classification Manual*. No person shall be exempt from this chapter by reason of the payment of any other tax, unless exempted by state law, and no person shall be relieved of the liability for the payment of any other tax by reason of the application of this chapter.

(1985 Code, § 13-10) (Ord. 07-018, passed 11-13-2007) Penalty, see § 110.999

§ 110.011 FALSE APPLICATION.

It shall be unlawful for any person, subject to the provisions of this chapter, to make a false application for a business license, or to give or file, or direct the giving or filing, of any false information with respect to the license or fee required by this chapter.

(1985 Code, § 13-11) (Ord. 07-018, passed 11-13-2007) Penalty, see § 110.999

§ 110.012 DISPLAY AND TRANSFER.

(A) All persons shall display the license issued to them on the original form provided by the Finance Director in a conspicuous place in the business establishment at the address shown on the license. A transient or nonresident shall carry the license upon the person or in a vehicle used in the business readily available for inspection by an authorized agent of the city.

(B) A change of address must be reported to the Finance Director within ten days after removal of the business to a new location, and the license will be valid at the new address upon written notification of the Finance Director and compliance with zoning and building codes. Failure to obtain the approval of the Finance Director for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without a license.

(C) A business license shall not be transferable and a transfer of controlling interest shall be considered a termination of the old business and the establishment of a new business requiring a new business license. The license is to be based on the old business income.

(1985 Code, § 13-12) (Ord. 07-018, passed 11-13-2007)

§ 110.013 DELINQUENT LICENSE FEE.

(A) The Finance Director shall levy and collect a penalty on all licenses that are paid after the due date and all licenses not paid prior to operation. Penalties shall not be waived. For non-payment of all or any part of the correct license fee, a late penalty of 5% of the unpaid fee will be levied and collected for each month or portion thereof after the due date until paid. For non-payment of a business license prior to operation, a penalty of 5% of the unpaid fee will be levied and collected for each month or portion thereof from the date of initial operations. If any license fee shall remain unpaid for 60 days after its due date, the Finance Director may issue an execution which shall constitute a lien upon the property of the licensee for the tax, penalties and costs of collection, and shall proceed to collect the same in the same manner as prescribed by law for the collection of other taxes.

(B) Partial payment may be accepted by the Finance Director to toll imposition of penalties on the portion paid; provided, however, no business license shall be issued or renewed until the full amount of the tax due, with penalties, has been paid.

(1985 Code, § 13-13) (Ord. 07-018, passed 11-13-2007)

§ 110.014 DENIAL OF LICENSE.

(A) The Finance Director shall have authority to deny or revoke any business license under the provisions set forth in this section and it is determined that:

- (1) The application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of material fact;
- (2) The applicant has outstanding bench warrants or arrest warrants;
- (3) The activity for which a license is sought is unlawful, or violates a city ordinance or constitutes a public nuisance;
- (4) The applicant who has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude, an unlawful sale of merchandise or prohibited goods or has engaged in an unlawful activity or nuisance related to the business;
- (5) For a period of three years after a revocation of a business license, no new license shall be granted to:

(a) The same licensee; or

(b) The licensee's agent or any person who can be shown to be acting on the licensee's behalf in attempting to do business in the city; or

(c) No business license shall be granted to any applicant for the operation of the same or similar type of business in the same location when the prior applicant has been the subject of a revocation by the Finance Director in which all avenues of appeal have been sought and upheld.

(B) The Finance Director shall not issue a business license to any person until the time as any outstanding bench warrants and arrest warrants have been cleared. A decision of the Finance Director to deny or not issue shall be subject to appeal to the City Administrator and City Council as herein provided. Denial shall be written with reasons stated.

(Ord. 09-010, passed 12-8-2009)

§ 110.015 SUSPENSION OR REVOCATION OF LICENSE.

(A) When the Finance Director determines that:

- (1) A license has been mistakenly or improperly issued or issued contrary to law;
- (2) A licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this chapter;

- (3) A licensee has obtained a license through fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application;
- (4) A licensee has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude or an unlawful sale of merchandise or prohibited goods; or
- (5) A licensee has engaged in an unlawful activity or nuisance related to the business.

(B) The Finance Director shall give written notice to the licensee or the person in control of the business within the city by personal service or certified mail that the license is suspended pending an appeal to City Council. The notice shall state the time and place at which the hearing is to be held, which shall be within 30 days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this chapter.

(1985 Code, § 13-15) (Ord. 07-018, passed 11-13-2007)

§ 110.016 APPEALS TO CITY ADMINISTRATOR AND CITY COUNCIL.

(A) Any person aggrieved by a final assessment, charge backs from an audit, revocation and/or suspension, denial of a business license by the Finance Director may appeal the decision to the City Administrator by written request stating the reasons therefor. The appeal must be filed with the City Administrator within ten days after the payment of the assessment under protest or notice of assessment, charge backs from an audit, revocation, suspension or a denial of a business license is received. Payment under protest shall be a condition precedent to appeal. The fee will be refunded in the event of final resolution of the appeal in favor of the appellant.

(B) An appeal or a hearing from final assessment, charge backs from an audit, revocation, suspension, denial or other decision of the Finance Director shall be held by the City Administrator after receipt of a request for appeal. At the hearings, all parties shall have the right to be represented by counsel and to present testimony, evidence and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The decision of the City Administrator, shall be final unless appealed to City Council within ten days after service of the City Administrator's decision.

(C) An appeal to City Council shall be held within 30 days after receipt of a request for appeal or service of notice of suspension at a regular or special meeting, of which the applicant or licensee has been given written notice, unless continued by agreement. City Council shall review the records and without further oral argument or presentation of evidence will affirm, modify or deny the appeal. City Council shall, by majority vote of members present, render a decision which shall be final unless appealed to a court of competent jurisdiction within ten days after service of City Council's decision.

(D) No person shall be subject to prosecution for doing business without a license until the expiration of ten days after notice of final assessment, charge backs from an audit, suspension or revocation which is not appealed or until after final judgment of the circuit court upholding final

assessment, charge backs from an audit, denial, suspension or revocation. A person who has been denied a license hereunder shall be subject to prosecution until a license is issued.

(1985 Code, § 13-16) (Ord. 07-018, passed 11-13-2007)

§ 110.017 PERMISSION TO USE STREETS REQUIRED.

It shall be unlawful for any person to construct, install, maintain or operate in, on, above or under any street or public place under control of the city, any line, pipe, cable, pole, structure or facility for utilities, communications, cable vision or other purposes without a consent agreement or franchise agreement issued by City Council, by ordinance which prescribes the term, fees and conditions for use.

(1985 Code, § 13-17) (Ord. 07-018, passed 11-13-2007) Penalty, see § 110.999

§ 110.018 CONSENT, FRANCHISE OR BUSINESS LICENSE FEE REQUIRED.

The annual fee for use of streets or public places authorized by a consent agreement or franchise agreement shall be set by the ordinance approving the agreement and shall be consistent with uppermost limits set by state law. Existing franchise agreements shall continue in effect until expiration dates in the agreements. Franchise and consent fees shall not be in lieu of or be credited against business license fees unless specifically provided by the franchise or consent agreement.

(1985 Code, § 13-18) (Ord. 07-018, passed 11-13-2007)

§ 110.019 CONFIDENTIALITY.

Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for any official or employee to divulge or make known in any manner, the amount of income or any particulars set forth or disclosed in any report or return required under this chapter. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns. Any license data may be shared with other public officials or employees in the performance of their duties, whether or not those duties relate to enforcement of this chapter.

(1985 Code, § 13-19) (Ord. 07-018, passed 11-13-2007) Penalty, see § 110.999

§ 110.020 RATES.

The license fee for each class of business shall be computed in accordance with the rate schedules established and approved by City Council and on file in the offices of the Finance Director and City Clerk. (Ord. 07-018, passed 11-13-2007)

(A) *Out of city rates.* Unless otherwise specifically provided, all minimum fees and rates shall be doubled for business having no fixed permanent place of business within the city.

(B) (1) *Class 8 rates.* Each SIC number designates a separate subclassification. The businesses in this section are treated as separate and individual subclasses due to provisions of state law, regulatory requirements, service burdens, tax equalization consideration and the like, which are deemed to be sufficient to require individually determined rates. Nonresident rates do not apply except where indicated.

(2) *Contractors not having a permanent, principal place of business in the City of Goose Creek.*

(a) Contractors must have a permanent, principal place of business within the city limits of Goose Creek in order to be classified as such. Contractors who temporarily occupy a trailer, model home, structure or office space during construction will not constitute a permanent place of business under this chapter.

(b) The total fee for the full amount of the contract shall be paid prior to commencement of work and shall entitle the contractor to complete the job without regard to the normal license expiration date. No contractor shall be issued a business license until all state and city qualification examination and trade license requirements have been met. Each contractor shall post a sign in plain view on each job identifying all subcontractors.

(c) Subcontractors shall be licensed on the same basis as general or prime contractors for the same job. No deductions shall be made by a general or prime contractor for value of work performed by a subcontractor.

(d) No contractor shall be issued a business license until all performance and indemnity bonds required by the Building Code have been filed and approved. Zoning permits must be obtained when required by **Chapter 151**.

(C) *Amusement machines; coin-operated.* Not included in gross income of business where located or not owned by business where located.

(1) Music machines, juke boxes, kiddie rides, video games, pin tables with levers and amusement machines with or without free play feature licensed pursuant to S.C. Code § 12-21-2720 (A)(1) and (A)(2).

(2) Amusement machines of the non-payout type or in-line pin game licensed by South Carolina Department of Revenue pursuant to S.C. Code § 12-21-2720(A)(3).

(3) Distributor selling or leasing machines (not licensed by state as an operator pursuant to S.C. Code § 12-21-2728).

(D) *Telephone companies.*

(1) Notwithstanding any other provisions of this chapter, business license taxes for retail telecommunications service, as defined in S.C. Code § 589-2200, including but not limited to those services described in *Standard Industrial Classification Manual*, shall pay an annual business fee based on gross income.

(2) Pursuant to S.C. Code § 58-9-2200, the following business license tax schedule shall apply to the gross income from retail telecommunications services for the preceding calendar or fiscal year, which either originate or terminate in the city and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality or county. The measurement of the amounts derived from the retail of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the city.

Rate for license taxes due	As established by state law

(3) For a business in operation for less than one year, the amount of business license tax authorized by this section shall be computed on a 12-month projected income.

(4) The telecommunications business license tax shall be due on January 1 in each year. Declining rates shall not apply. Taxes are payable without penalty by January 31 following the due date. After January 31, the delinquent penalty shall be 5% of the tax due for each month, or portion thereof, after the due date until paid.

(5) Exemptions for income from business in interstate commerce are not permitted. Properly apportioned gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

(6) Nothing in this chapter shall be interpreted to interfere with a franchise agreement or contractual agreement entered into with a telecommunications provider prior to December 31, 1997.

(7) All fees collected under the franchise agreement or contractual agreement shall be in lieu of fees or taxes which might otherwise be authorized by this chapter.

(E) *Insurance companies and brokers.*

(1) A business license fee shall be levied on gross premiums collected through offices or agents located in the city, whenever the risk is located, or collected on policies written on property or risks located in the city, wherever the premiums are collected.

(2) Gross premiums shall include new and renewal businesses without deductions for any dividend, credit, return premiums or deposit.

(3) Solicitation of insurance, receiving or transmitting an application or policy, examination of a risk, collection or transmitting of a premium, adjusting a claim, delivering a benefit or doing any act in connection with a policy or claim shall constitute doing business within the city whether or

not an office is maintained therein. A premium collected on property or a risk located within the city, shall be deemed to have been collected within the city.

631-632	Life, health and accident; premiums (declining rates shall not apply)	2% of gross
633-635	Fire and casualty; premiums	2% of gross

(4) On gross premiums collected on policies of companies not licensed in South Carolina, the broker shall pay a 2% of gross premiums annual tax, to the Municipal Association of South Carolina for credit to the city, with a copy of the report required by the Insurance Commission showing location of the risk insured for remittance to the city. (Premiums for non-admitted business are not included in broker's gross commissions for other business. Declining rates shall not apply).

(5) Notwithstanding any other provisions of this chapter, license taxes for insurance companies and brokers for non-admitted insurers shall be payable on or before May 31, in each year without penalty. The penalty for delinquent payments shall be 5% of the tax due per month, or portion thereof, after the due date until paid.

(1985 Code, § 13-22) (Ord. 07-018, passed 11-13-2007)

§ 110.021 ALPHABETICAL BUSINESS CLASSIFICATION INDEX.

The Business Classification Index shall be approved by City Council and are on file in the offices of the Finance Director and City Clerk.

The business classification index, based on the latest edition of the *Federal Standard Industrial Manual* or the *Standard Industrial Classification Manual*, is such as has been established and approved by City Council and is on file with the Finance Director. The alphabetical index in this chapter is a tool for classification, not a limitation on businesses subject to a license tax. The Finance Director shall determine the proper class for a business according to the applicable SIC manual, whether or not the business is listed in the alphabetical index.

(1985 Code, § 13-23) (Ord. 07-018, passed 11-13-2007)

§ 110.022 NUMERICAL MAJOR GROUPS OF BUSINESS CLASSIFICATIONS.

The numerical major groups of business classifications, based on the latest edition of the *Federal Standard Industrial Classification Manual* or the *Standard Industrial Classification Manual*, is such as has been established and approved by City Council, and is on file with the Finance Director.

(1985 Code, § 13-4) (Ord. 07-018, passed 11-13-2007)

Foreword

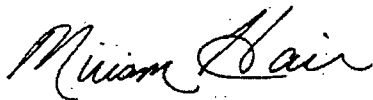
This handbook is a working tool for license inspectors to help interpret and administer the business license ordinance. It is also a training guide for elected officials and business license officials and a resource for license officials participating in the SC Business Licensing Officials Association certification program.

The handbook does not address every problem that could arise, but it does offer guidance in how to deal with most frequently encountered issues. The legal basis for some comments is included, but unusual situations should be referred to an attorney for specific advice.

The suggested procedures may require occasional revision to adapt to changes in state law, the license ordinance and field experience.

This handbook replaces earlier versions published in 1989, revised in 1991, 1995, 1997, 2000 and 2006.

The Municipal Association wishes to thank Roy Bates and Danny Crowe for their work on previous editions which has been incorporated in this revision.



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Part 1 – Business License Concept

Definition of Business License

Licensing of a trade may be referable to the police power of a local governing body when done to regulate avocations that disturb public order, health or morality. However, a business license ordinance enacted to raise revenue is an ordinance levying a tax. *State v. Columbia*, 6 S. C. 1 (1874).

A business license tax 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 SC 403 (1873). It is not a sales or income tax, although it is measured by gross income.

A business license fee is an excise tax levied on the privilege of doing business, and the value of the privilege extended is measured by the business’s gross receipts. It does not apply to those who work for wages or salary but only to those in business for themselves. *Hay v. Leonard*, 212 SC 81, 46 S.E. 2d 653 (1948); *Carter v. Linder*, 303 SC 119, 399 S.E.2d 423 (1990).

State Laws Authorizing Business License Taxes

Municipalities

- (a) **Gross Income.** SC Code Sec. 5-7-30 authorizes each municipality to levy a business license tax measured by gross income. No other basis is authorized, except for certain businesses. Railroads, telecommunications and insurance companies are subject to special statutes. See Part 2 for a discussion of what constitutes gross income.
- (b) **Surtax For Parking.** Sec. 5-7-30 also allows a municipality to levy a surtax on a business license in a designated area to provide and maintain parking for a downtown commercial area. A petition by two-thirds of the affected licensed taxpayers is required.
- (c) **Wholesalers and Lenders.** Sec. 5-7-30 limits taxation of wholesalers and real estate lenders to municipalities in which they maintain a warehouse or place of business.
- (d) **Annexed Business.** SC Code Sec. 5-21-60 requires prorating the license tax for a business annexed into a municipality for the number of months it is located in the municipality.

Counties

SC Code Sec. 4-9-30(12) authorizes a county to levy uniform license taxes on businesses in the county but outside corporate limits of a municipality. The statute exempts teachers, ministers, rabbis, telephone, telegraph, gas and electric utilities, or other utilities regulated by the Public Service Commission, insurance companies, entities exempt under another law, and a business

making loans secured by real estate unless it has a premises located in the county but outside a municipality. Gross income must be reduced by the amount of income upon which a license for another county or municipality is computed and paid.

Constitution

The SC Constitution contains no direct reference to business license taxes. Because the license tax is not a property tax, it is not subject to the provisions of Article X, Sec. 6 of the SC Constitution regarding uniformity. See *Hay v. Leonard*, 212 S. C. 81, 46 S.E. 2d 653 (1948).

Franchise Distinguished

SC Code Sec. 5-7-30 and Sec. 4-9-30(11) provide that municipalities and counties may grant franchises and charge for the use of public streets. It is important not to confuse a franchise with a business license.

A franchise is the extension of a privilege to use the streets for a purpose for which the franchisee does not have a legal right to do without permission of the governing body in control of the streets. Franchises are customarily granted for an annual fee to place telephone, electric, gas and cable television lines in streets or on public property. The fee is not a tax. The franchise holder is not exempt from a business license tax unless specifically provided by the franchise agreement.

The franchise agreement is a contract and may be enforced as such by either party. A business license is not a contract. Because a franchise is not exclusive unless approved by the voters in a referendum, more than one franchise could be granted for the same purpose.

The Supreme Court, in *City of Cayce v. AT&T*, 326 SC 237, 486 S.E.2d 92 (1997), ruled that the franchise power granted by SC Code Sec. 5-7-30 could be used only when the lines served customers within the municipality. Consent of the governing body to place lines in the streets not serving municipal customers may be required pursuant to SC Constitution Art. VIII, Sec. 15, and a fee may be charged for that consent.

The public has a legal right to use the street for ordinary purposes of pedestrian and vehicular travel and for transporting goods in commercial transactions. Such activities are not subject to franchise powers.

Counties may exercise the same franchise powers as municipalities, except counties may not franchise telephone, telegraph, gas and electric utilities or utilities owned and operated by a municipality.

Non-taxable Businesses and Limitations

The following businesses are exempt from business license taxes or have limitations on the amount or method of computing the tax pursuant to the cited sections of the SC Code or US Code:

1. Air express and passenger interstate transportation are exempt.
49 USC Sec. 40116(b), Sec. 40102.

2. Alcoholic liquors are exempt.
SC Const. Art. 8-A, Sec. 1; Sec. 12-33-20.
3. Banks and building loan companies are exempt. Sec. 12-11-30, Sec. 12-13-50.
4. Billiard tables must have state licenses and are subject to special rules. Sec. 12-21-2730 through 2746.
5. Buses - intrastate and interstate are exempt. Sec. 58-23-620, Sec. 12-23-220.
6. Carriers - common motor carriers, taxicabs, intrastate passenger and baggage companies holding PSC certificates A and B are exempt; others may be licensed only where principal offices are located.
Sec. 58-23-620, Sec. 12-23-220.
7. Coin-operated machines must have state licenses and are subject to special rules. Sec. 12-21-2720 - 2728.
8. Credit unions, state and federal, are exempt. Sec. 34-27-300; 12 USC Sec. 1768.
9. Fire insurance premiums are limited to 2 percent. Sec. 38-7-160.
10. Lenders on loans secured by real estate are limited to location of office.
Sec. 4-9-30(12); Sec. 5-7-30.
11. Marketing cooperative associations are exempt. Sec. 33-47-120.
12. Mutual benevolent aid associations are exempt. Sec. 38-35-60.
13. Railroads are limited to a maximum fee according to population.
Sec. 12-23-210.
14. Telecommunications providers are subject to limited license rates.
Sec. 58-9-2220.
15. Wholesalers not having places of business within a municipality are exempt. Sec. 5-7-30.
16. Workers' Compensation insurance premiums are exempt. Sec. 38-7-50.
17. Satellite television service programming which is transmitted by satellite directly to a subscriber's premises is exempt. Local activities which are subject to a business license tax include sale, installation and service equipment used for reception and viewing of satellite signals by a subscriber, and distribution of satellite programming from a master antenna by cable to subscribers.

Regulation

Although business licenses primarily are used as a revenue source, they also may be used to regulate businesses. The business license ordinance may impose health requirements, bonds, regulation of operating hours, etc. Most business license ordinances require a statement that personal property taxes have been paid as a condition for the license. This requirement is considered appropriate under the power to regulate by license ordinance.

A legal business is entitled to be licensed; an illegal operation is not. Revocation of the license of a newsstand dealer for selling obscene literature was upheld in *City of Greenville v. Bryant*, 257 SC 448, 186 S.E. 2d 236 (1972). The Greenville ordinance and the SC Code of Laws prohibit selling obscene magazines. The US Supreme Court has ruled consistently that obscene material is not protected under the U. S. Constitution's First Amendment.

The State Supreme Court, in *City of Columbia v. Abbott*, 269 SC 504, 238 S.E. 2d 177 (1977), upheld the license revocation for a bookstore selling obscene material declared by city council to be a nuisance.

However, denying or revoking of a business license must be based on a legally sufficient reason, preferably according to reasonable standards disclosed in the ordinance. Denial or revocation of a license does not allow summary closing of the business by enforcement officers, but it does subject the operator to prosecution for violating the license ordinance. If immediate closure of the business is sought, it should be accomplished through criminal prosecution or action for injunction.

Reasonableness

The statutory law does not give any guidelines for determining when a license tax is reasonable, yet the council is clearly required to enact reasonable ordinances.

Discretion of Council

In *US Fidelity and Guaranty Co. v. City of Newberry*, 253 SC 197, 169 S.E. 2d 599 (1969), the court declared that although a license tax must be reasonable, there is no doubt the specified rates charged may be different. The court held:

If different rates are to be charged for different classifications, it necessarily follows that the city council must use its judgment and set the different rates to be collected. In deciding whether the tax is reasonable, it has been held that the reasonableness is largely within the discretion of the city council.

The 1974 case of *US Fidelity and Guaranty Co. v. City of Spartanburg*, 263 SC 169, 209 S.E. 2d 36, dealt more definitively with reasonableness than prior cases and is discussed later in connection with insurance companies. The 1983 decision in *Southern Bell v. Aiken*, 279 SC 269, 306 S.E. 2d 220, raises some questions about the willingness of the court to substitute its judgment for that of an elected council and about who has the burden of proof of reasonableness.

However, this case is not considered a precedent because it has not been followed in later decisions of the court.

Comparison of Rates

The court in the *Newberry* case, *supra*, went on to add:

One can only speculate on the question of reasonableness by comparison. Reasonableness must be determined by the factual situation involved. It will be assumed, the contrary not being shown, that the council had all facts relative to each classification, including problems and municipal expenses brought about by the business in the various classifications.

The mere fact that the rate charged a company is several times that of businesses in other classifications does not entitle the company to relief.

Loss of Profits

The tax is not considered unreasonable merely because the business is losing money. The council cannot set aside a license simply because a business claims a loss. The court in the *Newberry* case held:

Many things bring about a loss or a profit, and neither city council nor this court should be called upon to determine whether a loss is caused by poor business management or payment of a license tax or some other cause.

The tax levied on the privilege of doing business is not based on profits, net income or taxable income for state and federal income tax purposes but on the total income from the business activity without deductions for expenses. The fact that expenses exceeded income in a particular year does not provide an exemption.

Study Questions for Part 1

1. What is taxed by a business license tax?
2. Who is subject to a business license tax?
3. What income is used to calculate a business license tax?
4. When must a license tax be prorated?
5. What are the differences between a franchise fee and a business license tax?
6. What are some non-taxable businesses?
7. Is the business license ordinance a good regulatory tool?
8. Can a business be closed by revocation of a business license?
9. Can different classes of businesses be charged different rates?
10. Who has the authority to set license rates?
11. Must a business that loses money pay a business license tax?

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

Part 2 – Interpretation

The license ordinance does not cover every situation. License officials must interpret and apply ordinance provisions in accordance with accepted principles of statutory construction and administration. Based on the ordinance, along with state and federal laws, the license official must decide if a business is subject to the tax, if a business needs more than one license, what classification applies to a business and whether the amount reported is correct. Although the license official has the right to interpret the license ordinance, the official cannot make rulings contrary to express provisions of the ordinance or make decisions that add to or take away words from the ordinance.

Doing Business

Municipalities and counties may charge business license taxes only for the privilege of doing business within their jurisdictions. What level of activity constitutes “doing business” within the scope of business licensing? The question of whether business is being done is often related to the nonresident’s business operations. Does occasional activity by a nonresident within a city or county constitute “doing business” within the meaning of the law? These questions are addressed briefly in the following sections. The interstate commerce aspect of business licensing is addressed in Part 3.

Place of Business

A license may be charged for the privilege of doing business within the city or county regardless of whether there is an established place of business therein, except for businesses given special treatment by statute. See Atty. Gen. Op. No. 1262, January 12, 1962; and *Crosswell & Co., Inc. v. Town of Bishopville*, 172 SC 26, 172 S.E. 698 (1933). SC Code Sec. 5-7-30 contains no general prerequisite that there be a place of business in the taxing municipality. However, wholesalers and real estate lenders must have an establishment within the taxing municipality under Sec. 5-7-30. See Sec. 4-9-30(12) for similar lender provisions for counties. Motor carriers and taxicab owners with specified Public Service Commission certificates are taxable only where principal offices are located pursuant to Sec. 58-23-620 and Sec. 12-23-220.

Limited Activities

Some limited activities by nonresidents do not constitute “doing business.” See *Pee Dee Chair Co. v. City of Camden*, 165 SC 86, 162 S.E. 771 (1931) and *Wrenn Bail Bond Service, Inc. v. City of Hanahan*, 335 SC 26, 515 S.E.2d 521 (1999), for examples.

In *Pee Dee Chair Co. v. City of Camden*, the court held that for licensing purposes, a single delivery of merchandise within a municipality does not constitute doing business therein. The Pee Dee Chair Company had its principal place of business in the City of Darlington, where it manufactured and sold in wholesale quantities chairs and other furniture. The court noted that although a single delivery might constitute doing business under certain conditions, the case before it was not such an instance. Only one load of chairs was delivered, and there was no indication that the

company planned to make any subsequent deliveries. There was nothing to indicate the delivery was anything other than an isolated, incidental or casual one. There was no indication the plaintiff planned to engage in the business of hauling merchandise by trucks in the City of Camden.

The 1999 *Hanahan* case involved a bail bondsman who performed a service in the city in a single instance. The court held that state law did not preempt municipal authority to levy a business license tax on bail bondsmen, but that the single isolated activity did not constitute "doing business," citing *Pee Dee Chair Co. v. City of Camden*.

Although a single delivery does not constitute doing business, the courts have held that repeated deliveries can be considered doing business. In *Crosswell & Co., Inc. v. Town of Bishopville*, 172 SC 26, 172 S.E. 698 (1933), the court ruled that a company with its principal place of business in the City of Sumter that had been delivering wholesale groceries to Bishopville once or twice a week for more than two years was doing business in Bishopville and could be required to obtain a business license. Under Sec. 5-7-30 as amended, this principle now would apply only to retail deliveries by nonresidents.

Collection of Money/Mail Order

A municipality or county can collect a business license from a person who has a place of business as a collector in the municipality or county. The collector would not be subject to a license if he had a place of business elsewhere, engaged in no business activities within the boundaries of the taxing jurisdiction and simply had creditors living in a town or county. Money collection by mail for goods sold by a nonresident by mail, telephone or electronic means and delivered by mail or common carrier does not provide a sufficient nexus for a business license tax. See *Quill Corporation v. North Dakota*, 112 S.Ct. 1904 (1992).

Sales

Test driving automobiles or other vehicles into a municipality by salesmen and customers in isolated instances does not allow the municipality to impose a business license tax on a nonresident dealer. The nonresident must conduct some part of his business within the municipality before the municipality may tax him. The direct sale of merchandise by peddlers is subject to a business license tax. Although a nonresident supplier may not be "doing business," an independent agent or salesperson may be subject to a license tax on the agent's commissions for taking orders for the supplier. The sale and delivery of building materials to a construction site is a retail sale subject to a license tax.

Regular Conduct

The *Bishopville* and *Hanahan* cases cited above make it plain that some course of regular conduct is necessary to constitute "doing business," but there are no fixed rules to apply. The court said in the *Hanahan* case: "Generally, the determination whether a party is 'doing business' in a certain jurisdiction is dependent upon the facts of each case."

The attorney general said that a municipality may lawfully impose a business license tax on a land surveyor who regularly conducts business within the municipality, even though the surveyor may have already paid a business license fee in another municipality. However, the court said in *Pee*

Dee Chair Co. v. City of Camden that sometimes the performance of a number of isolated acts pertaining to a particular business does not constitute doing business within the meaning of the license tax law, unless an intent to engage in the business is clearly apparent. The court stated that, although under some circumstances a single act may be sufficient, as a general rule only repeated and continuous acts constitute doing business. An example of a single act uniformly considered to be "doing business" is a construction or repair activity for which a building permit is required.

Tests for Doing Business

To determine if an operation is "doing business" within the meaning of the statutes, the license inspector must consider the nature of the business being done by the nonresident. There is no serious problem when the business or agent is a resident of the city or county imposing the license. Some pertinent questions to ask about nonresident activities are:

How frequently is the business operation carried out?

Does the business maintain an agent, office or vehicles within the city or county?

Does the activity place a burden on the municipal or county services?
[The license tax is not a tax on benefits.]

Does the business deal with people or property in a city or county on a regular or continuing basis?

Is the activity subject to regulation by the city or county? [For example, building codes]

Is the business listed in local directories as serving the city or county?

Does it advertise regularly in the city or county? [Newspapers, radio, TV, signs, etc.]

Does the business derive a substantial portion of its income from activity within the city or county?

Although these questions do not conclusively determine whether the activity constitutes "doing business" for business license purposes, they can assist the license inspector in making a reasonable decision.

State License Exemption

Contractors, subcontractors, bail bondsmen, elevator inspectors and others have claimed an exemption from business license taxes on income from activities requiring a state license. State contractor licensing statutes do not preempt local business license taxes. Bail bondsmen are not exempt by virtue of regulatory license requirements of SC Code Sec. 38-53-10, et seq. *Wrenn Bail Bond Service, Inc. v. City of Hanahan*, 335 SC 26, 515 S.E.2d 521 (1999). An elevator inspector subject to qualification licensing requirements of SC Code Sec. 41-16-10, et seq. is subject to a local business license tax that does not regulate. *City of Myrtle Beach v. Taylor Technologies Group, Inc.* (SC Circuit Court, May 20, 1999).

The Supreme Court in the *Hanahan* case held "in order to preempt an entire field, a state law must make manifest a legislative intent that no other enactment may touch upon the subject in any way." Where the legislature preempts only regulation of qualifications or professional licensing, there is no conflict between the state law and a business license ordinance not attempting to regulate qualifications or professional conduct. The ordinance may simply require payment of a fee for the privilege of doing business in the city. Some businesses for which the state has preempted local business license taxes are listed in Part 1, Non-taxable Businesses and Limitations.

Classification

It is necessary for license inspectors to find out sufficient details about a business to place it into the appropriate rate class. The application form provides this information in most cases, but additional questions should be asked when there is doubt. Most license ordinances require an applicant to provide all information deemed appropriate for the license inspector to carry out the purpose of the license ordinance.

Industrial Classification Systems

Any method of classification with a rational basis that is reasonably related to the purpose of licensing may be used. The Standard Industrial Classification Manual, last published in 1987, is a useful tool for placing businesses into the proper classification derived from indexes of ability to make a profit as determined from national IRS statistics. Many ordinances continue to use the SIC system of classification, and there is no mandate to change to another system.

The SIC Manual was replaced for federal statistical purposes by the 1997 North American Industry Classification System (NAICS) Manual, revised in 2002.

MASC has distributed a new model business license ordinance using 2002 NAICS codes and rate classes based on 1997 IRS statistics.

The 1997 and 2002 NAICS manuals are available in hardback and CD-ROM from:

U. S. Department of Commerce
National Technical Information Service
5285 Port Royal Road
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For more information and conversion tables which may be downloaded, go to www.census.gov/epcd/www/naics.html or www.ntis.gov/products (NTIS orders may be placed at this site). The 1997 hardback NTIS number is PB98-127293INF, and 1997 CD-ROM number is PB98-502024. The 2002 hardback NTIS number is PB2002-101430, and the 2002 CD-ROM number is PB2002-502024.

The license inspector's task regarding classification is different from that of council. The license inspector is concerned with making a proper classification of a particular business within the framework of an ordinance in which the council has established the broad categories of business types that fall within a given rate class.

Equal Protection

The city or county has the right to classify businesses for license purposes and to impose different rates on different classes. Compliance with the equal protection clauses of the state and federal constitutions requires that any classification not be arbitrary and bear a reasonable relation to the legislative purpose sought to be affected. All members of each class must be treated alike under similar circumstances. The tax must be fair and nondiscriminatory. *US Fidelity & Guaranty Co. v. Newberry*, 257 SC 433, 186 S.E. 2d 239 (1972).

The legislative purpose of the license tax is simply to raise revenue for operation of the city or county. Uniformity between classes is not required. *Carter v. Linder*, 303 SC 119, 399 S.E.2d 423 (1991).

The SC courts have recognized municipalities' right to establish different classes within the same broad category of businesses for fixing business license rates. This type of classification may be done only when there is some reasonable basis for making a distinction. Insight into the classification of retail merchants may be gained by examining the City of Spartanburg's ordinance that was tested in the State Supreme Court. *Great Atlantic and Pacific Tea Co. v. Spartanburg*, 170 SC 262, 170 S.E. 273 (1933).

See *Hill v. City Council*, 59 SC 396, 38 S.E. 11 (1901) for illustrations of classifications held constitutional by the State Supreme Court. However, the Supreme Court has confused the issue in three decisions: *US Fidelity & Guaranty Co. v. Newberry*, 257 SC 433, 186 S.E. 2d 239 (1972); *US Fidelity & Guaranty Co. v. Spartanburg*, 263 SC 169, 209 S.E. 2d 36 (1974); and *Southern Bell v. Aiken*, 279 SC 269, 306 S.E. 2d 220 (1983). It appears the court may require a showing of a rational basis for a wide disparity in rates between classes, overlooking the general rule that equal protection applies only within a classification and not between classes. The settled rules regarding the burden upon the taxpayer to prove unconstitutionality beyond a reasonable doubt were recited in *Thompson Newspapers, Inc. v. City of Florence*, 287 SC 305, 338 S.E. 2d 324 (1985).

Nonresidents

Many license ordinances provide that rates for nonresident businesses are classified higher than for residents, usually double the resident rates. The Supreme Court has upheld a differential rate classification between residents and nonresidents as fully justified, if the circumstances and conditions were different and if the imposition of a higher license on residents was not unreasonable, capricious or confiscatory. *American Bakeries Co. v. Sumter*, 173 S. C. 94, 174 S.E. 919 (1934); and *Crosswell & Co., Inc. v. Town of Bishopville*, 172 S. C. 26, 172 S.E. 698 (1933).

Ability to Pay

Since 1975, many municipalities have adopted ordinances with the ability to pay as determined from national statistics on income and profit as the principal basis for classification. A similar system

was upheld by the Georgia Supreme Court in *Pharr Road Investment Co. v. City of Atlanta*, 224 Ga. 752, 164 S.E. 2d 803 (1968), and was ruled constitutional in principle by the SC Supreme Court in *Southern Bell v. Aiken* (1983). In *North Carolina Land Corp. v. City of North Charleston*, 281 S. C. 470, 316 S.E. 2d 137 (1984), the court upheld the classification system's constitutionality based upon ability to pay. The court first recognized the profit concept in 1873 in *State v. Hayne*, 4 S. C. 403. Both the SIC and NAICS classification ordinances discussed above are based on ability to pay as determined by an index of ability to make a profit calculated from nationwide IRS statistics.

Gross Income

Basis for Tax

The general statutory basis for levying a business license tax requires it to be measured by gross income. SC Code Sections 4-9-30(12) and 5-7-30. The number of employees, capital invested, net income or losses and taxable income may not be used to calculate the business license tax. As noted in Part 1 (page 4), certain businesses are subject to state statutory provisions requiring business license taxes be levied on population, gross premiums or with limitations as to what revenue is included in gross income and limitations on rates.

Gross Income Defined

Gross income may be defined by the license ordinance and generally means all revenue received from the business operation without any deductions for such things as cost of goods, overhead, salaries or costs of sale. It should conform to the gross figure reported on the business' federal income tax return. Section 61(a) of the Internal Revenue Code defines gross income as "all income from whatever source derived." Although there are no allowable deductions from gross income for business license purposes, there are certain receipts customarily included on the income tax return in gross income and later deducted that are not really business income. These receipts are considered exempt income for business license purposes because the funds are not retained by the business and do not constitute actual income.

Exempt Income

Most early license ordinances exempted income from interstate commerce under US Supreme Court decisions prior to 1977. Since the decision in *Complete Auto Transit, Inc. v. Brady*, 430 US 274 (1977) allowing taxation of interstate commerce activities meeting four tests laid down by the Court, most ordinances have been amended to delete the interstate commerce exemption. Taxation of interstate commerce is treated in more detail in Part 3.

Counties are required to exempt income received from activities in another county or a municipality to which a license tax is paid. SC Code Sec. 4-9-30(12). Municipalities are also required to do the same under SC Code Sec. 5-7-30. This treatment was approved in *Eli Witt Co. v. City of West Columbia*, 309 SC 555, 425 S.E.2d 16 (1992).

Taxes, such as gasoline and sales taxes, collected by businesses are not income and should not be included in reported gross income. The same is true for the portions of fees and commissions divided with others. Such funds reported as income would result in a higher license fee because no

deductions are permitted in the manner for which income tax deductions may be taken. Only income to the business should be reported in the gross figure for business license tax purposes.

The tax on cigarettes is part of the wholesale price of the cigarettes and is not collected and remitted by the retailer. The cigarette tax is **not** exempt income.

Many license ordinances provide for using federal and state income tax returns to verify gross income reported for license purposes. This sometimes leads to discussion of whether the amount reported on Schedule C, Line 1, is the proper amount to be used when a business reports returns and allowances resulting in a reduced gross income. The amount of gross receipts on which a business license tax may be levied is the amount of actual gross income to the owner. It does not include funds collected for others as noted, and it does not include funds returned to customers in the tax year, although the books of the business may show the funds as receipts which are later reduced by deductions for income tax purposes. The actual business gross income does not include funds collected but not retained as income. The fact that business bookkeeping practices are driven by income tax considerations does not change this.

There are no exemptions for cost of goods sold or business expenses. These are deductions for income taxes levied on taxable income calculated under rules that are quite different from business license rules. Returns are not business expenses.

The burden is on the taxpayer to demonstrate exemption entitlement. There are no deductions for business license calculations. The licensing official should examine records considered relevant to determine what is actual gross income.

Income from Government Projects

Income from contracts or activities performed for the state or its political subdivisions and agencies is not exempt from business license taxes. There is no statutory exemption, and courts have ruled that although license fees may cause a higher contract price, this does not amount to a tax on another governmental unit. *North Myrtle Beach v. SC Public Service Authority (Santee Cooper)* [SC Circuit Court, 1991].

Income from a federal project is not exempt unless the work is performed on territory over which jurisdiction has been ceded by state statute to the federal government (for example, military bases and post offices; see SC Code Sec. 3-1-10, et seq.). If the tax is not laid on the federal government, even though the economic burden falls on the government, there is no immunity from the tax. *US v. County of Fresno*, 429 US 452; *US v. New Mexico*, 455 US 720; and *Washington v. US*, 103 S.Ct. 1344.

State or federal immunity from taxation cannot be transferred to a third party.

Outside Income Included

A business located in a municipality or county that does business beyond the boundaries of the taxing entity may be subject to a business license tax computed on total income on which a tax has not been paid to another municipality or county. The right to base the license fee on total receipts has

been confirmed by the State Supreme Court in *Triplett v. City of Chester*, 209 SC 455, 40 S.E. 2d 684 (1946); and *Eli Witt Co. v. City of West Columbia*, 309 SC 555, 425 S.E.2d 16 (1992).

The Court in the *Triplett* case said that a municipal corporation's right to impose a business license tax on a corporation for business conducted within the city limits, although part of the business was carried on outside the municipality, was generally recognized. The controversy arose over levying a license upon a general contractor whose business was constructing highway and railroad bridges in various parts of South Carolina and in other states. He had never done any actual construction work in the City of Chester. He established a central office in a building owned by him in the city. The Court said:

The administrative and executive work, an indispensable phase of respondent's business, was conducted in the office established, maintained and operated in the City. This portion of his business enjoyed all the advantages afforded by the municipal government of Chester to any other business conducted within its corporate limits. We cannot dissociate the managerial features of the business which were conducted within the City, along with the storing of equipment, from the manual execution of the work which was done without the City. All are essential functions of the general contracting business in which respondent is engaged.

Exclusion of gross receipts on which a license is paid to some other municipality or county avoids multiple taxation. This method of classification was held to be reasonable by the Supreme Court in *Eli Witt Co. v. City of West Columbia*, *supra*, which involved wholesale distribution of goods from a warehouse in the city to stores outside the city. Allowing credits for taxes paid elsewhere does not violate the constitutional requirement for equal protection.

Some ordinances provide for different rates on income produced from out-of-city activities and collected through an in-city office. In the absence of such a provision, the license inspector cannot give different treatment.

Rates and Fees

License inspectors are not concerned with rate setting, which is the function of city or county council. Problems can arise regarding fees charged a new or successor business or the operation of more than one type of business at the same location under one ownership.

Flat Fees

Because flat or fixed fees are not based on gross income, they do not comply with the state law authorization and would be discriminatory. However, it is generally accepted practice to charge a minimum base rate sufficient to cover administrative costs. A base rate charged on the first level of gross income (for example, the first \$2,000) is customary.

New Owner

When a new owner takes over an existing business, the license fee for the new owner may be based on the volume of business done by the old business during the preceding year. See *City of Columbia v. Niagara Fire Ins. Co.*, 249 SC 388, 154 S.E. 2d 674 (1967).

Proration

Proration for a new business is considered appropriate to meet the test of reasonableness. SC Code Sec. 5-21-60 provides that a business license shall be prorated for the year in which a business is annexed to the municipality. A reasonable method of proration for a new business is as follows:

(a) To test the estimate of the gross income for the remainder of the initial year of operation of a new business, compare the estimate submitted by the applicant to gross incomes reported by similar businesses for prior years (classification analysis). If the estimate appears reasonable, it should be accepted. If there is a question, request additional information to make a reasonable estimate. The estimated gross income should equal or exceed the basic fixed expenses of the business. For example:

Employees' salaries	\$2,000
Utilities	300
Other Expenses (supplies, etc.)	200
Cost of goods sold	<u>2,500</u>
Estimated Monthly Total	5,000

This total multiplied by the number of months remaining in the license year gives a reasonable minimum estimate.

(b) To determine the gross income for the next full license year of a new business, take the actual income for the portion of the first year in business and divide it by the number of months in business, then multiply that figure by 12 for a full year estimate. For example:

$(\text{actual income}) \$40,000 = \$10,000$ (average monthly gross)

(months in business) 4

(average monthly gross) $\$10,000 \times 12 = \$120,000$ (estimated gross for full year)

Nonresident Rates

Where circumstances warrant, an out-of-city agent or business may be charged a different rate than a similar business within the municipality. However, the charge cannot be unreasonable, capricious or confiscatory. *American Bakeries Co. v. Sumter*, 173 SC 94, 174 S.E. 919 (1934). Many ordinances set double rates for nonresidents.

Multiple Operations

Multiple business operations under one ownership may be required to obtain more than one business license. *Wood-Mendenhall Co. v. Greer*, 88 SC 249, 70 S.E. 724 (1911). Some ordinances permit an owner to obtain one license for all operations at one location based on the highest rate

applicable to any operation. A separate license for each business location is usually required, although some ordinances allow one license for a chain of businesses under one ownership. These matters should be addressed in the ordinance. If one license is permitted for multiple locations, duplicate licenses should be issued because there is usually a requirement to post the license at the place of business.

The license official determines if a given operation is distinct or separable from the general business. Some discretion is involved, and the SIC and NAICS manuals can help. Business operations' descriptions in these manuals usually indicate subsidiary activities included in the general business category. For example, an automobile dealership (SIC 5511; NAICS 4411) would include retailing new and used vehicles, repair services and sale of tires, batteries, parts and accessories. Therefore, one license would cover all included operations.

Calculation of Fees

Calculation of the correct fee is sometimes left to the taxpayer, particularly for renewals. However, it is the license official's responsibility to make sure the correct fee is paid.

License ordinances include varied fee schedules (see the Municipal Association's Business License Rate Survey). Some older ordinances contain rates that vary from one business classification to another on the amount of gross income covered by the base fee but have only minor variations in the rate per \$1,000 above the base. This treatment produces a large number of rates and makes administration more difficult.

The model SIC- and NAICS-based ordinances provide classifications with a rational basis and a simplified rate structure. License tax calculation under these ordinances is straightforward, as shown in the following example:

A food or grocery store (SIC 5411; NAICS 44511) is in Rate Class 1.

Assume that Class 1 Rates are:

RATE CLASS	<u>INCOME: 0 - \$2000</u>	<u>ALL OVER \$2000</u>
	MINIMUM FEE	Rate per Thousand or fraction thereof
1	\$25	\$1.00

and

Declining Rates apply in all Classes for gross income in excess of \$1,000,000	
Gross Income in \$ Millions	Percent of Class Rate for each additional \$1,000
0 - 1	100%
1 - 2	90%
2 - 3	80%
3 - 4	70%
Over 4	60%

Assume a grocery store has \$4,575,000 in gross income for the prior year.

The license tax would be calculated as follows:

On first \$ 2,000	minimum -	\$ 25.00
On next 998,000 at 100% of \$1.00 per thousand -		998.00
On next 1,000,000 at 90% of \$1.00 per thousand -		900.00
On next 1,000,000 at 80% of \$1.00 per thousand -		800.00
On next 1,000,000 at 70% of \$1.00 per thousand -		700.00
On next <u>575,000</u> at 60% of \$1.00 per thousand -		<u>345.00</u>
Gross Income 4,575,000	License Tax	3,768.00

Study Questions for Part 2

1. What level of activity constitutes “doing business?”
2. Must there be an established place of business in the taxing jurisdiction for the business license ordinance to be applicable?
3. What are examples of activities that do not amount to “doing business”?
4. What are some tests for determining whether an operation is “doing business”?
5. When is the holder of a state license exempt from a local business license?
6. What is required for classifying businesses in different rate classes?
7. Must every business in the same classification be treated in the same manner?
8. May higher rates be charged to nonresidents than to resident businesses?
9. Does a classification system based on ability to pay have a rational basis?
10. What is gross income for business license tax purposes?
11. What deductions from gross income are allowed for business license purposes?
12. What types of income are exempt from business license tax calculation?
13. Is income from government projects exempt?
14. How is income from outside activities treated?
15. Are flat fees authorized?
16. When should license taxes be prorated?
17. How are multiple operations at one location under one ownership licensed?
18. How is a license tax calculated for a high-income business under a declining rate schedule?

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-08-2814

Todd Olds,

Plaintiff,

vs.

City of Goose Creek,

Defendant.

Affidavit of Robert Eckhardt

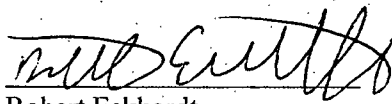
FILED
2012 AUG 31 PM 12:56
CLERK OF COURT
BERKELEY COUNTY, SC

PERSONALLY APPEARED BEFORE ME, Robert Eckhardt, who being duly sworn, says:

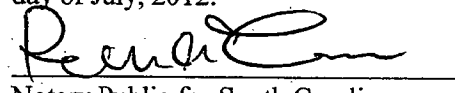
That I am 32 years old and a resident of Charleston County. I have known Todd Olds for many years, and I have done work for him from time to time. Recently, Todd asked me to do a favor for him by picking up some trash left behind by tenants who had moved out of a house located at 834 North Aylesbury, in Goose Creek, South Carolina. I agreed to do it, and while I was there putting trash in plastic bags, two City of Goose Creek employees showed up at the residence and confronted me. I had no idea who they were. One of them showed me a badge, and I assumed that he was a police officer. Later on, I found out that the two people who showed up were Ron Faretra and Jennifer Althoff. Mr. Faretra and Ms. Althoff detained me for somewhere between one and a half and two hours. They continued to ask me questions over and over, and were aggressive and mocked my answers. They made it clear that I was in a lot of trouble, and up until the very end of the meeting, I thought that one or both of them were Goose Creek Police Officers. I now know that they are not police officers, but while we were there, they led me to believe that they were law enforcement authorities and I was not free to leave. They essentially asked the same questions of me over and over and over, in essence, how much Todd Olds was paying me and whether or not I had a City of Goose Creek business license. I explained to them that Todd Olds was not paying me and that I was doing a favor for him because I have done work for him in the past. I also told them I was not aware I needed a business license to put trash in a plastic bag. I have no idea how the City of Goose Creek knew I was in the house, but when they finally told me I could go after approximately an hour and a half or two hours, I left them inside the house on their own. The whole

ordeal was intimidating and it was clear from the manner in which they treated me and the questions that they were asking me that they have it out for Todd Olds. Since they were still in the house when they ultimately let me leave, I have no idea what they did inside the house while they were unaccompanied by anyone or what purpose they had for remaining in the house after being inside for nearly two hours with me.

Further your deponent sayeth not.


Robert Eckhardt

Sworn to before me this 26th
day of July, 2012.


Notary Public for South Carolina
My Commission Expires: 10/30/2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO.: 2011-CP-08-2814
Todd Olds,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF TODD OLDS IN SUPPORT OF
	)	MOTION FOR INJUNCTION
City of Goose Creek,	)	
	)	
Defendant.	)	

FILED
 2012 AUG 31 PM 2:55
 HARRY B. BOSTON
 CLERK OF COURT
 BERKELEY COUNTY, SC

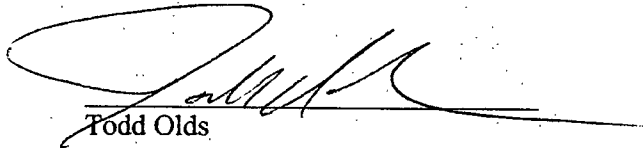
Personally appeared before me, Todd Olds, who being duly sworn, does depose and say:

I am the plaintiff in the above entitled action. I own the real estate that is commonly known as 834 North Aylesbury Drive, located in the City of Goose Creek. The City of Goose Creek has a specific hostility toward me and is doing everything in its power to harass and harm me. The City initially refused to supply water to my residence until I paid a 2012 Business License fee based on what it contends is its interpretation of its business license ordinance. (The City contends "gross income" from the sale of real estate is equivalent to "gross sales." I contend that "gross income" is defined by Section 61 of the Internal Revenue Code, and that the City is adopting a tortured interpretation to harass me. The pending lawsuit will answer this question.) I paid the amount under protest as allowed by law and sued the City for a refund and for declaratory judgment to determine whose interpretation is correct. In retaliation, the City has refused to supply water to me based on what it now contends was an underpayment on my business license from 2010. When I went to apply for service, the City processed my application for water service and charged my credit card the fifty dollars (\$50.00) to open the account (see attached receipt), but afterwards—apparently on the

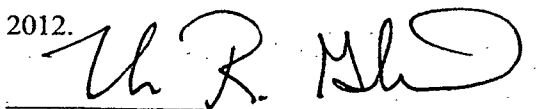
instructions of either Ron Faretra or Jennifer Althoff, or both, now refuses to turn on the water. This creates an intolerable health and safety problem, and it is shocking that the City withholds a fundamental necessity of life to punish me for challenging their calculations. Even more astonishingly, as may be seen by reference to the affidavit of Robert Eckhardt, the Director of Finance and his assistant both travelled **in person** to my residence and harassed an acquaintance who was on the property. According to Mr. Eckhardt, Ron Faretra impersonated a police officer by displaying a badge, walked through my front door in to my residence and detained Mr. Eckhardt against his will. The City's harassment of me is astonishing. It is refusing to allow water to be delivered to the home which is an obvious safety and health hazard and is causing me harm. I am asking the Court to require the City to stop harassing me and release water service to me as it is required to do.

Further your deponent saith naught.

Sworn to before me this 28th day of August


Todd Olds

2012.


Notary Public for South Carolina
My Commission expires: April 16, 2020

Aug 28 12 09:02a

RECEIVED 08/28/2012 09:10 8435545566
Todd OldsBELK COBB INFINGER
'71997 p.2Business Platinum Card®
PRIME PROP OF CHAS
B TODD OLDS
Closing Date 08/08/12

OPEN

p.3/11

Account Ending 4-02005

Payments and Credits

Summary

	Total
Payments	-\$15,947.08
Credits	\$0.00
Total Payments and Credits	-\$15,947.08

Detail *Indicates posting date

Payments	Amount
07/26/12* B TODD OLDS PAYMENT RECEIVED - THANK YOU	-\$15,947.08

New Charges

Summary

	Total
B TODD OLDS 4-02005	\$21,929.69
CONSTANCE K OLDS 4-01015	\$50.00
Total New Charges	\$21,979.69

Detail

B TODD OLDS
Card Ending 4-02005

	Amount
07/08/12 OUTBACK 4113 CHARLESTON SC RESTAURANT	\$51.00
07/09/12 PARADISE POOLS & SPA CHARLESTON SC 8435562920	\$39.05
07/09/12 CITY OF GOOSE CREEK GOOSE CREEK SC 8437976220	\$50.00
07/10/12 HADDRELL'S POINT CHA CHARLESTON SC 8435733474	\$168.22

Water Deposit 834 N. Hyles Bury

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-08-2814

Todd Olds,)

Plaintiff,)

vs.)

City of Goose Creek,)

Defendant.)

**SUPPLEMENTAL AFFIDAVIT
OF TODD OLDS IN SUPPORT OF
MOTION FOR RECONSIDERATION**

FILED
2012 MAY -7 PM 1:47
TERRY P. BRUNN
CLERK OF COURT
BERKELEY COUNTY SC

Personally appeared before me, Todd Olds, who being duly sworn, does depose and say:

On July 9, 2012, I applied for water service for my property known as 834 North Aylesbury Drive in Goose Creek. I applied for water service in the same manner as I have done for years. I telephoned the Public Works Department, gave them the address and my credit card number, and they approved my application for water service. (See copy of statement attached.) They made no mention that I was not entitled to water service or had to meet any other requirements. They charged me the standard fifty dollar (\$50.00) application fee, which I paid, and the City has never refunded. The Public Works Department told me that the water would be on that day or the next morning at the latest. As far as I know, the Public Works Department has nothing to do with the padlock on my water meter. My lawyer is currently trying to discover who put it on there, but whoever put it on there did it after I applied and received water service from the City of Goose Creek. I discovered the existence of the water meter approximately one week later. No one from Public Works contacted me about putting a lock on the meter, and there was no lock on the meter until after I applied for, paid for, and received water service.

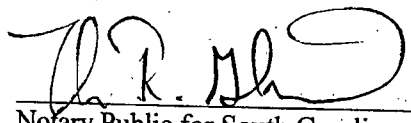
As to the Court's finding of no irreparable harm, I cannot stay in the house or rent it. I do

have a contract for sale of the house, and the buyers have successfully obtained water service in their name, which is further evidence of the City's hostility for me.

Further your deponent saith naught.

Sworn to before me this 24th day of
November 2012

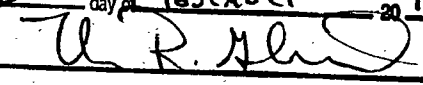

Todd Olds


Notary Public for South Carolina
My Commission expires: April 16, 2020

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- ☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon
- ☐ handing counsel a copy thereof
- ☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 24 day of November 2012
BY 



Business Platinum Card®
PRIME PR CHAS
B TODD O.
Closing Date 08/08/12

0437471997

p.1

OPEN

Account Ending 4-020

Payments and Credits

Summary

Total

Detail



B TODD OLDS
Card Ending 4-02005

				Amount
07/08/12	OUTBACK 4113	CHARLESTON	SC	
	RESTAURANT			\$51.00
07/09/12	PARADISE POOLS & SPA	CHARLESTON	SC	
	8435562920			\$39.05
07/09/12	CITY OF GOOSE CREEK	GOOSE CREEK	SC	
	8437976220			\$50.00
07/10/12	HADDRELL'S POINT CHA	CHARLESTON	SC	
	8435733474			\$168.22

834 N. Hyles Bury

Water

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO.: 2011-CP-08-2814
Todd Olds,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	SUPPLEMENTAL AFFIDAVIT
	)	OF TODD OLDS IN SUPPORT OF
City of Goose Creek,	)	MOTION FOR SUMMARY JUDGEMENT
	)	
Defendant.	)	
	)	

Personally appeared before me, Todd Olds, who being duly sworn, does depose and say:

I have been involved with this dispute with the City of Goose Creek approximately since December 2010. Prior to business license tax controversy that gave rise to this lawsuit, I had a previous disagreement with the City over the City's interpretation of an internal memorandum published by the City. The City put a stop work Order on me when I was making repairs to a home I owned. The City also turned off my water service. After numerous discussions, the City finally agreed with me and allowed me to continue work. The experience had the unfortunate consequence of making me known to the City, in particular Ron Faretra and Jennifer Althoff who have since harassed me.

After I satisfactorily resolved the repair dispute, I received shortly thereafter—around May of 2011—a notice from the City that it had audited my business license returns and informed me that I had not properly reported my gross income. This touched off the present dispute that led to the City doing various things that are not ordinary in the course of government because I questioned the interpretation of a City ordinance. For example, Ron Faretra and Jennifer Althoff drove over to my property and entered it and harassed a friend of mine. (See the affidavit of Robert Eckhardt,

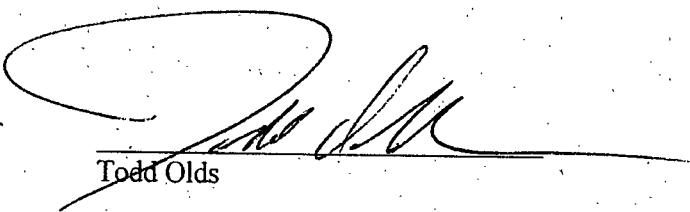
which is already on file.) Thereafter, the City once again, denied me water, and I recently discovered that Mr. Faretra and Ms. Althoff directed the Department of Public Works to shut off my water and lock a meter. Since I have had a disagreement with the City, rather than address the substance of the disagreement, Ron Faretra and Jennifer Althoff tell me that if I do not capitulate, they will shut off water to all properties. Throughout the controversy, the City has treated me in a rude and unprofessional matter. As to the tax dispute, I will leave that analysis to the Court and its review of the City's ordinances and the affidavit of Professor Gutting.

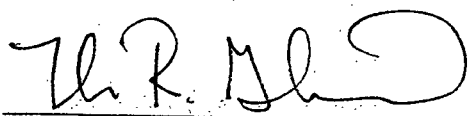
Further, it is the undisputed fact that the City refused to allow me to participate in my own appeal of my case—either in person or by counsel. After I protested the tax assessment and paid the taxes under protest, I appealed the decision to the City of Goose Creek in approximately June or July of 2011. That appeal was to the City Administrator, and the City allowed my lawyer to appear. After the City Administrator upheld the decision of the Finance Director, I appealed it, as required by ordinance, to the City Council. It came before City Council on September 27, 2011. When the City heard my appeal, the City allowed me to sit in the audience and listen, but it would not allow me to speak, present evidence, or even have a lawyer represent me. I am not a lawyer, but I am a businessman, and I am an elected official, and as a result of both, I am aware as a layperson that people are entitled to be heard. As a member of North Charleston City Council, we often have issues before us involving contested matters, and we always give all sides an opportunity to speak and present any relevant documentary evidence to us for our consideration. I cannot imagine our hearing someone's appeal while simultaneously denying a person or group an opportunity to address us. Even as a non-lawyer, that strikes me as unconscionable. Yet, that is the process Goose Creek adopts.

Throughout this process, the City of Goose Creek has treated me with a lack of respect and hostility. The fact that the Finance Director and the City's Chief Business License Clerk would leave their offices and drive to my property to confront a friend of mine who was doing me a favor speaks volumes about the City's attitude toward me.

Further your deponent saith naught.

Sworn to before me this 14th day of
January, 2013

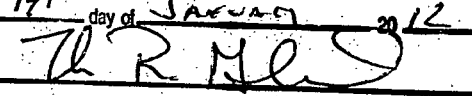

Todd Olds


Notary Public for South Carolina
My Commission expires: April 16, 2020

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- ☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon
- ☐ handing counsel a copy thereof
- ☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 14th day of January 2012
BY 

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-08-2814

Todd Olds,

Plaintiff,

vs.

City of Goose Creek,

Defendant.

**SECOND
SUPPLEMENTAL AFFIDAVIT
OF TODD OLDS IN SUPPORT OF
MOTION FOR SUMMARY JUDGEMENT**

2013 APR 3 PM 1:56
FILED
JUDY P. BRUNN
CLERK OF COURT
BERKELEY COUNTY, SC

Personally appeared before me, Todd Olds, who being duly sworn, does declare and say:

As set forth in my original affidavits, I have been involved with this dispute with the City of Goose Creek since December 2010. I am offering this second supplemental affidavit to cover only the events that have occurred since we appeared before the Court on my motion for summary judgment.

As set forth previously, I paid my taxes under protest and filed an administrative appeal of the City's miscalculation of my business license tax. After I filed that case on October 12, 2011, my taxes came due for 2012, and I did the same thing. However, citing this pending case, the City not only refused to acknowledge the dispute, but also refused to grant me a right to an administrative hearing or appeal in May 2012, on the ground that this lawsuit is pending. In early March of this year, I submitted payment for my business license tax. In response, Ron Faretra wrote to me on March 18th (copy attached), informing me that I could pay under protest, but still refusing to acknowledge or grant me any right to administrative appeal. Once again, the City demanded that I pay the full amount under protest, but the City will not grant me a right to appeal as required by the City's ordinance. In other words, I have to comply strictly with the City's ordinance, but the City

will not conform to their own rules and grant me my due process rights to appeal. In our previous appearance, we demonstrated that the City's administrative appellate procedure does not allow me to participate in the final administrative appeal before City Council. The City would allow me to sit in the audience and listen to my case being decided, but it would not permit me to say anything or have a lawyer. (The Court has a copy of those City Minutes from the September 27, 2011, appeal hearing.) Since our appearance before the court, the City will not even acknowledge that I have the right to an administrative appeal. I think this is significant because it shows that the City is treating me differently.

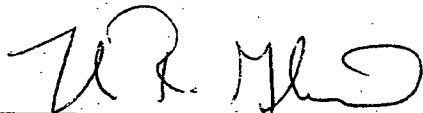
I am not a lawyer, but I am a member of the North Charleston City Council, and as a member of City Council, we have all kinds of administrative appeals come before us. I cannot imagine any member of North Charleston City Council—or any elected official anywhere—saying to a citizen: “You have the right to appeal, but you cannot participate in your own appeal.” I read Mr. Domin's supplemental memorandum where he compares my case to a grand jury proceeding where the defendant is not present. I will have to defer to the Court and the lawyers to sort that out, but I do not think my appeal of an incorrectly assessed tax is anything like a grand jury meeting in secret to determine if there is sufficient evidence to require a person to stand trial.

Leaving aside the question of whether the City of Goose Creek can take up my case without me, which is one of the questions already before the Court, this affidavit is about what the City of Goose Creek is now doing since we appeared in Court. Now the City of Goose Creek goes even further. Now it says because there is a lawsuit already pending, I do not have the right to appeal at all! I find this shocking, and I believe it is further evidence of Ron Faretra's demonstrated hostility to me personally. (See Ron Faretra's March 18, 2013, letter to me attached to this affidavit.)

Further your deponent saith naught.

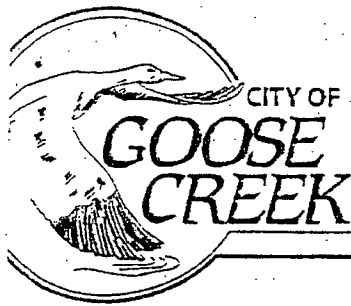
Sworn to before me this 29th day of
March, 2013


Todd Olds



Notary Public for South Carolina

My Commission expires: April 16, 2020



MICHAEL J. HEITZLER Ed.D.
Mayor
KIMO ESAREY
Mayor Pro-Tem
DENNIS C. HARMON
City Administrator
JEFF MOLINARI
Assistant City Administrator

MARGUERITE H. BROWN
JOHN B. McCANTS
MARK A. PHILLIPS
JERRY TEKAC
FRANKLIN MOORE
City Council

March 18, 2013

Prime Properties of Charleston
Todd Olds
4381 Stoney Poynt Court
North Charleston, South Carolina 29405

Dear Mr. Olds:

We are in receipt of your 2013 City of Goose Creek Business License Renewal application and check for Two Hundred and Sixty Five Dollars and 92/100 (\$265.92). As you know, you and the City have a disagreement over the calculation of gross income for the purposes of municipal business license fees. You contend that gross income must match the IRS definition and those lines on your federal tax forms. The City maintains that the business license ordinance includes the "total revenue of the business . . . without any deductions on account of the cost of the property sold" per section 110.001 of the City's Business License Ordinance.

Berkeley County's records show 834 North Aylesbury Road was sold for \$140,000.00 which would mean your gross income is at least that amount. In contrast, you have used your interpretation of gross income to arrive at an alleged gross income figure of \$38,071.22.

While we respect your right to disagree with the City and seek a judicial determination of whether you are correct in your interpretation, the City is not able to issue a business license for a sum less than the total amount calculated to be due based on information available and the City's current interpretation of the ordinance. It would be unfair to everyone else if we were to allow you to pay using your definition while this matter is being determined by the court system.

However, the City is able to accept payment under protest. Of course, you know this as you made payment under protest for the year 2011 and 2012. If there is a final determination by the South Carolina Court system that your interpretation is correct and the City's interpretation is wrong, the City will refund the difference plus interest as to all sums paid under protest. By making payment under protest, the City is able to issue a license which will allow you to continue to operate in the City. Without payment in full, either under protest or not under protest, the City is unable to issue a license.

We have recalculated your 2013 business license fee as follows:

138,000	
x \$4.60	every \$1,000.00 after 1st \$2,000.00
<u>\$634.80</u>	
<u>+100.00</u>	1st \$2,000.00
\$734.80	

I also wish to remind you that there is still the issue of the non-disclosure and non-payment for the sale of 100 Spalding Court which relates to your 2011 business license. During the course of your dispute with the City, it was revealed that you sold this property located in the City but it was not disclosed as part of the total income for that year. Based on the sales price that was discovered as stated in the HUD-1 for this sale, there was an additional charge of \$1435.20 due. Penalties for failure to timely pay were added for an additional \$1,794.00. (You were first requested to pay this additional sum in June of 2012).

The City is applying the payment of \$265.92 to the oldest outstanding debt which would be the fees related to the Spalding Court property.

Therefore, the City is not able to issue your 2013 license without payment of the outstanding amount due as a result of the sale of Spalding Court including penalties and the 2013 recalculated business license fees. Again, you may pay these sums under protest if you wish. But the City cannot issue a license without the proper payments or until there is a judicial determination that the method of calculation used by you is correct. Again, any amounts paid under protest as to Spalding Drive will be refunded with interest if it is determined that there was an overpayment as a result of the decision of the judicial system.

If you have any questions or concerns please contact Timothy A. Domin, Esquire at (843) 577-2026.

Sincerely,



Ronald R. Faretra
Finance Director

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-08-2814

Todd Olds,)

Plaintiff,)

vs.)

City of Goose Creek,)

Defendant.)

**AFFIDAVIT OF
KRISTIN BALDING GUTTING**

FILED
JAN 18 2013
CLERK OF COURT
BERKELEY COUNTY, SC

Personally appeared before me, Kristin Balding Gutting, who being duly sworn, does depose and say:

I am a tenured associate professor teaching at the Charleston School of Law. I teach, research, and write in the areas of Federal Income Taxation, Civil Tax Procedure and Litigation Strategy, and Partnership Taxation. Prior to joining the faculty at the Charleston School of Law in 2007, I was a visiting law professor at Levin College of Law at the University of Florida. Prior to entering academia, I practiced tax law with Sutherland, Asbil & Brennan in Atlanta, Georgia from 2004 to 2006 and with Chamberlin, Hrdlicka, White, Williams and Martin in Atlanta, Georgia from 2003 to 2004. Prior to moving to Atlanta, Georgia, I was a senior tax advisor with Deloitte in McLean, Virginia from 2001 until 2003. During my professional career, my emphasis has been in accounting and taxation matters.

My education background is also in accounting and taxation. In 1997, I graduated *cum laude* from Valparaiso University with a Bachelor of Science in accounting. Following graduation, I attended and graduated from St. Louis University School of Law graduating *magna cum laude* in

VB

May of 2000. Upon earning a *juris doctorate*, I attended the University of Florida Graduate Tax Program at the Levin School of Law, where I earned a Masters of Law (LL.M.) in Taxation and was awarded the Richard B. Stephens Award as Outstanding Student in Graduate Tax Program in 2001. Attached is an accurate copy of my most recent CV.

Tommy Goldstein, counsel for Plaintiff, Todd Olds ("Mr. Olds"), asked me to review the above-entitled case and render an opinion on the manner in which Defendant, City of Goose Creek ("Goose Creek") calculates its business license tax as it pertains to Mr. Olds. Thus, my opinion on this issue is as follows:

Under South Carolina law, municipalities are allowed to raise money by levying various taxes, including a business license tax. Specifically, "[e]ach municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State. . . Levy a business license tax on gross income" S.C. Code Ann. § 5-7-30. Pursuant to this enabling statute, Goose Creek adopted a business license ordinance that is codified in Chapter 110, "Occupational Licenses, Taxes and Regulations," of Goose Creek Code of Ordinances ("Goose Creek Code").

Under the Goose Creek Code, each business is required to pay a license fee. *See* Goose Creek Code § 110.009. If the license fee is "based on gross income [it] shall be computed on the gross income for the preceding calendar or fiscal year, and on a 12 month projected income based on the monthly average for a business in operation for less than one year." Goose Creek Code §

110.009(c). For purposes of Chapter 110, gross income is defined as:

The total revenue of a business, received or accrued, for one calendar year, collected or to be collected by a business within the city, excepting, therefrom, business done wholly outside of the city on which a license tax is paid to. . . . *The GROSS INCOME for business license purposes shall conform to the gross income reported to the State Tax Commission or the State Insurance Commission. . . .*

Goose Creek Code § 110.001 (emphasis added). Here, Mr. Olds is in the business of buying and selling real property, some of which is located within Goose Creek. Accordingly, Mr. Olds should calculate his business license for purposes of § 110.001 of the Goose Creek Code by including the portion of his gross income as reported to the South Carolina Department of Revenue on his South Carolina tax return for his business that is properly sourced to Goose Creek.

It is well settled under South Carolina law that gross income is reported to the South Carolina Department of Revenue in accordance with the rules set forth in § 61 of the Internal Revenue Code ("IRC"). See S.C. Code Ann. § 12-6-1110. In determining South Carolina gross income, certain modifications are made to federal gross income. See S.C. Code Ann. § 12-6-1120. None of which are applicable here. Furthermore, certain IRC code sections were specifically not adopted in South Carolina, but IRC § 61 was not one of those provisions. See S.C. Code Ann. § 12-6-60 (providing a list of IRC sections that South Carolina did not specifically adopt); see also South Carolina Form 1040, Individual Income Tax Return, Line 1 (stating for the taxpayer to enter on Line 1 "federal taxable income from your federal form"). Subject to certain exceptions, the IRC defines the term "gross income" as "all income from whatever source derived." IRC § 61(a). Section 61 further provides a nonexclusive list of fifteen categories of income. Relevant to the issue at hand, IRC § 61(a)(3) provides that "[g]ains derived from dealings in property" is gross income.

Treasury Regulation § 1.61-6(a) states that:

Gain realized on the sale or exchange of property is included in gross income, unless excluded by law. For this purpose property includes tangible items, such as a building, and intangible items, such as goodwill. Generally, the gain is the excess of the amount realized over the unrecovered cost or other basis for the property sold or exchanged. The specific rules for computing the amount of gain or loss are contained in section 1001 and the regulations thereunder.

Thus, Treasury Regulation § 1.61-6(a) provides three things relevant to the issue before this court:

(1) gross income includes *only* the *gain* from the sale of property, (2) property includes all tangible property, and (3) cross-references IRC § 1001 to calculate the gain from the sale of property.

Under the IRC, gain realized equals the amount realized on the sale minus the taxpayer's adjusted basis in the property sold. See IRC § 1001(a). Thus, in order to calculate the gross income from the sale of tangible property, two items must be determined: (1) the adjusted basis in the property sold and (2) the amount the seller realized on the sale of the property.

In determining adjusted basis, IRC § 1001(a) cross-references IRC § 1011 for calculating a taxpayer's adjusted basis in the item the taxpayer sold. Essentially, adjusted basis is calculated by first determining the original basis in an item and then adjusting it for any further investments into the item (e.g., an improvement) or any recovery of part of the investment from the item (e.g., insurance proceeds from part of the property being destroyed). See IRC § 1011(a). The original basis depends on how an item was acquired. For example, if a taxpayer inherits an item, then IRC § 1014 provides that the taxpayer's original basis, generally, equals the fair market value of the item immediately before the decedent's death. However, relevant to the case at hand, under IRC § 1012, if the item was acquired through a purchase, then the taxpayer's original basis in the item is the taxpayer's cost basis.

In determining the amount the seller realized, IRC § 1001(b), along with Treasury Regulation § 1.1001-2(a), states that amount realized consists of any of the following three items that the seller received from the purchaser (1) money, (2) the fair market value of property, and (3) liability relief.

Finally, gain should be recognized (i.e., included on the taxpayer's tax return as gross income), unless there is a reason not to recognize it provided for in the IRC. See IRC § 1001(c). There are only a handful of reasons not to recognize a gain realized; and, in the case at hand, it would appear that none of the nonrecognition provisions apply.

For example, if a taxpayer purchased a piece of investment real estate for \$500,000, the taxpayer's original basis in the item would be \$500,000. If the taxpayer later sells the piece of investment real estate, for \$600,000, the taxpayer's amount realized would be \$600,000. Thus, this hypothetical sale would result in \$100,000 of gross income, which would be reported on the taxpayer's federal income tax return and South Carolina income tax return. The \$100,000 in gross income is calculated as follows: amount realized (\$600,000) – adjusted basis in the property sold (\$500,000) = \$100,000 of IRC § 61(a)(3) gross income. To conclude the \$600,000 is gross income would go against the well-established fundamentals of tax. Unfortunately, based upon my review of the case record, this is exactly what Goose Creek is attempting to do in applying the definition of "gross income" under its business license ordinance to Mr. Olds.

The dispute in this case arises because Goose Creek asserts that Mr. Olds should pay a business license tax based on the concept of "gross receipts" and not "gross income." In applying the basic principles and concepts of tax, this is equivalent to Goose Creek imposing its business license tax on the \$600,000 received by the hypothetical taxpayer discussed above rather than his

gross income of \$100,000. Goose Creek's interpretation conflicts with Goose Creek Code § 110.009, which provides the business license fee should be based on gross income, and Goose Creek Code § 110.001, which defines gross income, as stated above, by referencing how the taxpayer reports his gross income to the South Carolina Department of Revenue. Based on my educational and professional experience, \$600,000 is not gross income, but rather under the well-settled principles of IRC § 61(a)(3) Code, gross income is \$100,000.

Interestingly, the term "gross receipts" is defined in Chapter 110 of the Goose Creek Code. See Goose Creek Code § 110.001. However, it is unclear the reason "gross receipts" is defined, as the term "gross receipts" is never again used in the Goose Creek Code. Specifically, gross receipts is defined as:

... the value proceeding or accruing from the sale of tangible personal property, including merchandise and commodities of any kind and character and all receipts, by the reason of any business engaged in, including interest, dividends, discounts, rentals of real estate or royalties, without any deduction on account for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid or any other expenses whatsoever and without any deductions on account of losses.

Goose Creek Code § 110.001. Two things are important about this definition: (1) it does not link to any other section in Chapter 110 of the Goose Creek Code in regards to the business license fee or the definition of gross income and (2) assuming a link can be established, it is inapplicable as it pertains to Mr. Olds, as he is selling real property not personal property.

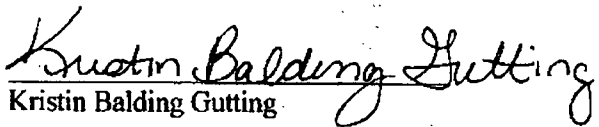
Thus, for the foregoing reasons, it is my opinion, that Goose Creek is improperly applying its own statute, because gross income as defined under IRC § 61 is the accepted definition of the term, and nowhere in the Goose Creek Code is there a different definition than the well-settled definition provided by IRC § 61. In fact, as discussed above, Goose Creek, indirectly references IRC § 61 as the definition of gross income "for business license purposes *shall conform to the gross*

income reported to the State Tax Commission” Goose Creek Code § 110.001 (emphasis added).

In conclusion, when Mr. Olds reports his “gross income” on the sale of his real property, just like the taxpayer in my hypothetical discussed above, he would report the amount of gain calculated under IRC § 1001 as his gross income pursuant to IRC § 61 (a)(3). This is true when Mr. Olds reports his income to the federal government, to the state government, and to local governments. Such reporting of gross income is consistent with the underlying fundamentals and policy of IRC § 61 and with the Goose Creek Code. IRC §§ 61(a)(3) and 1001 and the regulations thereunder, specifically describe how to compute and report gross income from the sale of real property. Conversely, reporting “gross receipts” as “gross income” from the sale of real property conflicts with the fundamental principles of tax and, therefore, would be a deviation from generally accepted practices.

Further your deponent saith naught.

Sworn to before me this 15 day of
January, 2013


Kristin Balding Gutting


Notary Public for South Carolina
My Commission expires: 2-17-2020

Kristin Balding Gutting

195 Carolinian Drive
Summerville, South Carolina 29485
(678) 634-3230

TEACHING

Charleston School of Law, Charleston, South Carolina

Associate Professor of Law with Tenure, August 2012 - Present

Assistant Professor of Law, August 2007 - August 2012

- Courses: Federal Income Taxation, Partnership Taxation, Advanced Federal Income Taxation, and Civil Tax Procedure and Litigation Strategy Seminar
- Chair, Learning Outcomes Committee, 2012 - Present
- Chair, Academic Standards Committee, 2008 - 2010
- Member, Faculty Development Committee, 2010 - Present
- Member, Learning Outcomes Committee, 2011 - 2012
- Member, Bar Performance, 2010 - 2011
- Member, Faculty Welfare Committee, 2009 - 2010
- Member, Strategic Planning Committee, 2008 - 2009
- Member, Admissions Committee, 2007 - 2008
- Member, Curriculum Committee, 2007 - 2008
- Member, Diversity Committee, 2007 - 2008
- Faculty Sponsor, Tax Law Society, 2007 - Present
- Faculty Sponsor, Law Republicans, 2007 - Present
- Faculty Sponsor, National Tax Moot Court Team, 2011 - 2012 (Winner), 2010 - 2011 (Quarter Finalist), 2009 - 2010 (2nd Runner-Up)

University of Florida-Levin College of Law, Gainesville, Florida

Visiting Assistant Professor, August 2006 - May 2007

PRACTICE EXPERIENCE

Sutherland Asbill & Brennan LLP, Atlanta, Georgia

Tax Controversy and State and Local Tax Associate, November 2004 - August 2006

Chamberlain, Hrdlicka, White, Williams & Martin, Atlanta, Georgia

Tax Controversy Associate, January 2003 - November 2004

Deloitte, McLean, Virginia

International Tax Senior Consultant, September 2001 - January 2003

EDUCATION

University of Florida-Levin College of Law, Gainesville, Florida

Masters of Laws (LL.M.) in Taxation, May 2001

G.P.A.: 3.92, Class Rank: 1

Honors: Recipient of the Richard B. Stephens Award (given to the most outstanding student in the LL.M. program, as determined by the University of Florida Levin College of Law tax faculty), *Florida Tax Review*-Student Editor, Graduate Tax Fellowship, and Phi Kappa Phi.

Saint Louis University-School of Law, St. Louis, Missouri

Juris Doctor, *Magna Cum Laude*, May 2000

G.P.A.: 3.574, Class Rank: Top 5%

Honors: Order of Woollsack; Academic Achievement Award for highest grade in Contracts, Property, Civil Procedure, Legal Research and Writing, and Partnership Tax; *Saint Louis University Law Journal*-Member 1998/99 and Staff Editor 1999/00.

Activities: Teaching Assistant for Legal Research and Writing, Student Bar Association Representative, and Taught Legal Related Education.

Kristin Balding Gutting

195 Carolinian Drive
Summerville, South Carolina 29485
(678) 634-3230

Valparaiso University-College of Business Administration, Valparaiso, Indiana

Bachelor of Science in Accounting, *Cum Laude*, May 1997

Cumulative G.P.A.: 3.466, Business School G.P.A.: 3.676

Honors: Graduated with Senior Honors, Presidential Academic Honors for Student-Athletes, Academic All-Conference for Softball, Valparaiso University Dean's List, and Athletic Scholarships.

SCHOLARSHIP Publications:

Relighting the Charitable Deduction: A Proposed Public Benefit Exception, 12 F.L.A. TAX REV. 401 (2012).

Keeping Pace with the Times: Exploring the Meaning of "Limited Partner" for Purposes of the Internal Revenue Code, 60 U. OF KANSAS L. REV. 101 (2011).

The Mortgage Forgiveness Debt Relief Act of 2007: Two New Provisions Regarding Principal Residence, 20-NOV S.C. Law. 24 (Nov. 2008).

It is a "War on Drugs" and it is Time to Reload Our Weapons: An Interpretation of 21 U.S.C. § 841, 43 ST. LOUIS U.L.J. 1449 (1999).

Trust Fund Recovery Penalty – Strict Liability or Not? (Work-in-Progress)

Should the Treasury Department Close the Door Left Open By Congress's Repeal of Section 1491? (Work-in-Progress).

Helping America's Youth: Enhancing Parental Involvement through the Internal Revenue Code (Work-in-Progress).

Presentations:

Mission Impossible: Tax Planning for 2013 and Beyond, South Carolina Bar Convention (January 26, 2013).

Moderator, Southeastern Law Scholars Conference (September 21, 2012).

Hot Topics in Tax: Trust Fund Recovery Penalty and Innocent Spouse Issues, South Carolina Department of Revenue CLE/CPE (April 22, 2012).

Relighting the Charitable Deduction: A Proposed Public Benefit Exception, Southeastern Law Scholars Conference (October 29, 2011).

Relighting the Charitable Deduction: A Proposed Public Benefit Exception, Charleston School of Law Faculty Development Committee (October 26, 2011).

Burn Baby Burn: An Examination of the Tax Implications of Donating a House for Live Burn Training but Retaining the Underlying Land, Southeastern Association of Law Schools Annual Meeting -- New Scholars Workshop (July 28, 2011).

Kristin Balding Gutting
195 Carolinian Drive
Summerville, South Carolina 29485

Keeping Pace with the Times: Exploring the Meaning of "Limited Partner" for Purposes of Internal Revenue Code Section 469(h)(2), 2011 North Carolina/South Carolina Tax Section Annual Meeting (May 29, 2011).

Internal Revenue Code Section 469(h)(2): It is Time to Modernize the Internal Revenue Code, Southeastern Law Scholars Conference (October 22, 2010).

Strike Three You're Out – Internal Revenue Code Section 469(h)(2) Does Not Apply to Limited Liability Companies And, Furthermore, Congress Should Remove Section 469(h)(2) From the Line-Up, Charleston School of Law Faculty Development Committee (November 4, 2009).

Are Interests in LLC's Subject to the Per Se Passive Loss Rules of Section 469(h)(2)?, Charleston Tax Council (October 8, 2009).

The Future of America's Children: Strengthening the Family Unit through the Internal Revenue Code, Charleston School of Law Faculty Development Committee (April 22, 2009).

What Does the Election Mean for Taxes?, Charleston School of Law (February 26, 2009).

What Does the Election Mean for Taxes?, South Carolina Bar CLE, Charleston, South Carolina (December 17, 2008).

Tax Debate '08, Charleston School of Law, Tax Law Society, Public Debate (October 24, 2008).

Blogs:

Obama's Mother-in-Law Tax Problem, TAXPROF BLOG (January 16, 2009).

Romney Writes-Off \$45m Campaign Loans, Also Must Write-Off Any Tax Deduction, TAXPROF BLOG (July 21, 2008).

PROFESSIONAL AFFILIATIONS	Appointed Member, Volunteer Income Tax Assistance Coalition (August 2009 - Present) Appointed Member, Trident United Way Income Vision Council (May 2009 - May 2011) Secretary and Treasurer, Legend Oaks HOA III (March 2009 - Present) Member, Beech Hill Elementary PTA (August 2012 - Present) President (2010) and President-Elect (2009), Charleston Tax Council Member, American Bar Association, Tax Section

BAR ADMISSIONS	Florida State Bar (Inactive) Georgia State Bar (Inactive)

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Todd Olds,

Plaintiff,

vs.

City of Goose Creek,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-08-2814

**MOTION FOR HEARING ON THE
APPEAL AND FOR DISMISSAL OR
SUMMARY JUDGMENT OF ANY
REMAINING CLAIMS**

FILED

2013 JAN 23 AM 10:43

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Defendant, City of Goose Creek, requests the Court hear the appeal in this matter as scheduled for February 6, 2013 and requests that the Court enter judgment in favor of the City as to any remaining claims at that time. This motion will be based on the ordinance, the records, the depositions in this action and such affidavits as will be served prior to the hearing.

CLAWSON AND STAUBES, LLC



Timothy A. Domin
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
(843) 577-2026

Attorney for the Defendant

Charleston, South Carolina

January 16, 2013

FILED

2013 JAN 23 AM 10:43

**MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading(s) has been served upon opposing counsel on the 21st day of January, 2013 via:

☒	Federal Express
☐	Facsimile
☐	Electronic Email

TS

Patricia Ann Alden

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Todd Olds,

Plaintiff,

vs.

City of Goose Creek,
Ron Faretra, Jennifer Althoff,
City of Goose Creek Department
of Public Works,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-08-2814

**MOTION FOR A DECISION/HEARING
ON THE APPEAL**

Defendant, City of Goose Creek, requests the Court hear the appeal portion of this case which involves an appeal from the City of Goose Creek City Council which affirmed the decision of the City Administrator. That there is no right to have a jury trial on the appeal and the appeal must be determined on the record below.

CLAWSON AND STAUBES, LLC



Timothy A. Domin
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
(843) 577-2026

Attorney for the Defendants

Charleston, South Carolina

July 2, 2014

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2014 JUL -3 AM 11:55

FILED

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading(s) has been served upon opposing counsel on the 2nd day of July, 2014 via:

X	Federal Express
	Facsimile
	Electronic Email

Patricia A. Cedeno

FILED
13 JUL -3 AM 11:55
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SS

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Todd Olds,

Plaintiff,

vs.

City of Goose Creek,
Ron Faretra, Jennifer Althoff,
City of Goose Creek Department
of Public Works,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-08-2814

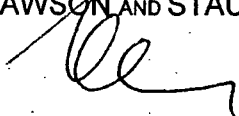
**MOTION FOR SUMMARY
JUDGMENT**

TO: THOMAS R. GOLDSTEIN, ATTORNEY FOR THE PLAINTIFF

PLEASE TAKE NOTICE that the Defendants, by and through undersigned attorney, shall, and hereby does, move this Honorable Court for an Order granting summary judgment in favor of the Defendants in the above-captioned matter upon the grounds set forth in the record and that there exists no genuine issue as to any material fact and that the Defendant is entitled to judgment as a matter of law in favor.

This Motion is based upon the pleadings in the within action, the depositions taken in this action, upon Rule 56 of the South Carolina Rules of Civil Procedure, and upon such additional law and argument as shall be appropriate.

CLAWSON AND STAUBES, LLC


Timothy A. Domin
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
843/577-2026

Attorney for Defendants

Charleston, South Carolina

July 2, 2014

FILED
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2014 JUL -3 AM 11:57

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading(s) has been served upon opposing counsel on the 2nd day of July, 2014 via:

☒	United States Postal Service
☐	Facsimile
☐	Electronic Email

Patricia A. Celdon

TSM
FILED
2014 JUL -3 AM 11:57
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SD

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Todd Olds,

Plaintiff,

vs.

City of Goose Creek,
Ron Faretra, Jennifer Althoff,
City of Goose Creek Department
of Public Works,

Defendants.

IN THE COURT OF COMMON PLEAS

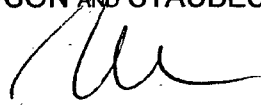
CASE NO.: 2011-CP-08-2814

**MOTION TO DISMISS OR IN THE
ALTERNATIVE FOR SUMMARY
JUDGMENT AS TO JENNIFER
ALTHOFF AND RON FARETRA AND
AS TO THE GOOSE CREEK
DEPARTMENT OF PUBLIC WORKS**

FILED
2014 JUL -3 11:11 AM
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

That the undersigned counsel hereby requests that the Court enter an order dismissing Ron Faretra and Jennifer Althoff on the ground that they are employees of the City of Goose Creek acting within the course and scope of their duties. As such they are entitled to be dismissed pursuant to the Tort Claims Act which does not allow suit against individual employees of the government entity acting within the scope of their duties. That the "Goose Creek Department of Public Works" is a department of the City without a separate legal identity and is not subject to suit. This Motion shall be supported by the affidavits of Ron Faretra and Dennis Harmon, City Administrator, previously filed and such additional material as may be filed.

CLAWSON AND STAUBES, LLC


Timothy A. Domin
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
(843) 577-2026

Attorney for the Defendants

Charleston, South Carolina
July 2, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading(s) has been served upon opposing counsel on the 2ND day of July, 2014 via:

☒	United States Postal Service
☐	Facsimile
☐	Electronic Email

D. Michael C. Cudde

131
FILED
2014 JUL -3 AM 11:54
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-08-2814

INDEX

Plaintiff,

VS.

Defendant.

1. City of Goose Creek Memorandum in Support of Its Position on Appeal and in Support of Its Motion for Summary Judgment as to the Remaining Causes of Action
2. Records of Proceedings Up to Appeal to Circuit Court
3. City of Goose Creek Business License Ordinance
4. Ordinances of Other Jurisdictions
5. Municipal Association of South Carolina Business License Handbook
6. Affidavits:
 - A. Dennis Harmon
 - B. Ron Faretra
7. Deposition excerpts from Todd Old's deposition taken July 6, 2012
8. Deposition excerpts from Todd Old's deposition taken August 2, 2012
9. Deposition excerpts from Ron Faretra's deposition taken on July 6, 2012
10. Deposition excerpts from Steve Price's deposition taken December 20, 2012
11. Affidavit of Robert Baldwin

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	CASE NO.: 2011-CP-08-2814
Todd Olds,	)	
	)	CITY OF GOOSE CREEK
	)	MEMORANDUM IN SUPPORT OF
Plaintiff,	)	ITS POSITION ON APPEAL AND IN
vs.	)	SUPPORT OF ITS MOTION FOR
	)	SUMMARY JUDGMENT AS TO THE
City of Goose Creek,	)	REMAINING CAUSES OF ACTION
	)	
Defendant.	)	

Todd Olds has taken an appeal as to the proper calculation of his Goose Creek business license fee and has attempted to join various causes of action related to that decision. The purpose of this motion hearing is to 1) obtain a decision on the appeal and 2) to address the remaining causes of action.

1. THE APPEAL RISES OR FALLS ON GROSS INCOMING DEFINED WHICH IS IN THE GOOSE CREEK ORDINANCE AS TOTAL REVENUE OF A BUSINESS.

The origin of the dispute in this case relates to the determination of the proper measure of calculating Mr. Olds taxable "gross income" for the purposes of a municipal business license fee. Mr. Olds is in the business of personally buying residential real estate properties and selling them. Mr. Olds calls himself a "realtor". The City of Goose Creek calls Mr. Olds a developer. As the City noted in the appeal paperwork, the name assigned to Mr. Olds business does not matter as both occupations are in category 9. Todd Olds claims that his business license should be based only on the difference between the purchase price of the homes he sells and the sales price. The City of Goose Creek disputes this and submits that per the language of the City of Goose Creek's ordinance, per South Carolina law, a business license fee is based on the total sales price of the goods, services, or real estate. State law allows municipalities to charge a business

license fee on "gross income." S.C. Code § 5-7-30.

A South Carolina Court of Appeals case noted "[t]he term 'gross income' does not carry the same definite and inflexible meaning under all circumstances and wherever used. Its meaning depends upon the subject under consideration, the connection in which it was used, and the results intended to be accomplished." Bogan v. Bogan, 298 S.C. 139, 378 S.E.2d 606 (Ct. App. 1989). Respectfully, this Court should take into consideration the definition used in the Goose Creek ordinance and should also understand the term in the larger context of local business license taxes.

The City of Goose Creek has defined "gross income" as:

GROSS INCOME. The total revenue of a business, received or accrued, for one calendar year, collected or to be collected by a business within the city, excepting, therefrom, business done wholly outside of the city on which a license tax is paid to some other municipality or county and fully reported to the city or county. The term **GROSS RECEIPTS** means the value proceeding or accruing from the sale of tangible personal property, including merchandise and commodities of any kind and character and all receipts, by the reason of any business engaged in, including interest, dividends, discounts, rentals of real estate or royalties, without any deduction on account for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid or any other expenses whatsoever and without any deductions on account of losses. The **GROSS INCOME** for business license purposes shall conform to the gross income reported to the State Tax Commission or the State Insurance Commission. In the case of brokers or agents, **GROSS INCOME** shall mean gross commissions received or retained, unless otherwise specified. **GROSS INCOME** for insurance companies means gross premiums collected. **GROSS INCOME** for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds or funds, which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in **GROSS INCOME**. The **GROSS INCOME** 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 Insurance Commission or other government agency.

City Business License Ordinance Section 110.001.

Quite clearly, the City of Goose Creek has defined gross income to include the "total revenue" of a business. Lawmakers' intent embodied in an ordinance "must prevail if it can be reasonably discovered in the language used." Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). Courts are bound to afford substantial deference to the decisions of those charged with interpreting and applying local ordinances. Purdy v. Moise, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953) ("This construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefore.")

The City of Goose Creek's definition of "gross income" is generally consistent with the ordinances of other South Carolina municipalities which equate "gross income" to the total revenue or total income of a business. See attached list of South Carolina Municipalities including Abbeville, Aiken, Anderson, Beaufort, Camden, Cayce, Charleston, Chester, Columbia, Conway, Dillon, Florence, Georgetown, Greenville, Greer, Hartsville, Hilton Head, Isle of Palms, Mount Pleasant, Summerville, Myrtle Beach, North Charleston, Simpsonville, Spartanburg, Sumter, Union, and Walterboro, to name only a few.

The City of Goose Creek's ordinance and interpretation thereof is consistent with the position taken by the South Carolina Municipal Association which provides in its handbook: "A business license fee is an excise tax levied on the privilege of doing business, and the value of the privilege extended is measured by the business's gross receipts." Municipal Association Business License Handbook, page 2. The Handbook goes on to state "Gross income may be defined by the license ordinance and generally means all revenue received from the business operation without any deductions for such

things as the cost of goods, overhead, salaries or cost of sales." Handbook, page 14.

The City of Goose Creek's ordinance and interpretation is consistent with South Carolina law. In Carter v. Linder, 303 S.C. 119, 399 S.E.2d 423 (1990), the Supreme Court considered a County business license ordinance derives its authority from a substantially similar authorization at S.C. Code § 4-9-30 for counties to collect business license fees based on "gross income" which is substantially identical to the authorization for municipalities to collect a fee on gross income. The court noted, "A license tax upon persons and businesses is an excise tax on the privilege of doing business, and no prohibition against the utilization of excise taxes exists. . . . The tax is not on the property itself, it is on the privilege of dealing with it. The value of such privilege is measured by the gross receipts therefrom and this is a familiar and valid method of ascertaining such value." Id. (citing, Hay v. Leonard, 212 S.C. 81, 46 S.E.2d 653 (1948)).

South Carolina has a long history of license taxes (also sometimes known as privilege taxes) based on the total revenue of a business. As stated by a 1921 case explaining application of "gross income":

The tax imposed by Section 269, Vol. 1, Code 1912, therein called a "license fee," is manifestly an excise tax, laid under the benefit theory of taxation upon the public service corporation named for the privilege of exercising their corporate franchise and carrying on their business within the State. 26 R. C. L., p. 36, § 19; Ware Shoals Mfg. Co. v. Jones, 78 S.C. 211, 58 S.E. 811. The measure of the tax is volume of business or "gross income for business done." Gross income means the total receipts from a business before deducting expenditures for any purpose. Black's Law Dictionary; German Alliance Ins. Co. v. Van. Cleave, 191 Ill. 410, 61 N.E. 94, 96.

Columbia Rwy Gas & Elect. Co. V. Jones, 119 S.C. 480; 112 S.E. 267 (S.C. 1921).

Appellant Olds attempts to rely on a portion of the Internal Revenue Code section 61, but misses the point that the modern Internal Revenue Code was first enacted in 1939. South Carolina has been operating under a different definition for the purposes of business license or privilege taxes since before 1921.

Nor is South Carolina unique in this regard:

Gross receipts taxes may be imposed on the "gross income of the business," "gross receipts," "gross proceeds of sales" or any other term that suggests total business revenues before deductions. Consequently, the term is used in a different context than as it relates to federal tax law which defines "gross income" as income net of "cost of goods sold" and similar expenses related to producing the income.

2-29 Bender's State Taxation: Principles and Practice § 29.03

Finally, plaintiff's reliance on Internal Revenue Code Section 61 is entirely misplaced. That code section provides that gross income includes "all income from whatever source derived." It includes a variety of items, but does not exclude the gross revenue from the sale of property. As noted by the affidavit of Robert Baldwin, CPA, it does not matter to the IRS whether the purchase price of a real estates asset is deducted from at the start or whether the cost basis of the property is taken as a deduction because the IRS will ultimately base its tax on profit, not gross revenue or gross income.

In the context of the City of Goose Creek's business license ordinance and in the context of similar ordinances of other local governments, gross income is properly measured as the total revenue of a business without deduction for cost of goods or property sold.

II. THE REMAINING "CAUSES OF ACTION" ARE MERITLESS.

A. Equal Protection

Olds claims a violation of Equal Protection on the basis that the City of Goose Creek has "adopted a deliberately tortured interpretation of its ordinance in an effort to single out the plaintiff for disparate treatment . . ." The deposition testimony in this case establishes that the City of Goose Creek is applying its interpretation uniformly and that there is no person known to be paying a business license fee in any manner different than Mr. Olds. See Althoff Deposition p. 19. (Q: Are you aware of anybody who is buying and selling homes for business purposes in the City of Goose Creek that is not paying based on the total amount of the home sale? A: No. Q: . . . as far as you know, everybody is paying the way you are asking Mr. Olds to pay. A: Yes.)

B. Abuse of Process

Old complains that the City threatened to withhold water service if he did not pay his business license fee. In fact, this is partially correct. The City's policy is that it will not turn on a new water connection for a business that does not have a proper business license or that is in arrears on its business license payments. But this policy is not abuse of process nor is it in any way illegal.

At the time the complaint was filed, Mr. Olds merely complained that the City was threatening to turn off his water. After the filing of the complaint, he purchased a property at 834 North Aylesbury in the city limits of Goose Creek. The prior owner requested that the water account be terminated in her name and the City of Goose Creek did refuse to turn on water to Mr. Olds at that location because of the fact he was determined to be in arrears as to a home which he failed to disclose whatsoever and which was only

discovered through materials exchanged in this case.¹

In Ruggles v. Padgett, 240 S.C. 494; 126 S.E.2d 553 (1964) the Court stated: "While in this state it is settled that the operation of water works by a municipality is so far governmental in character as to absolve the corporation from liability sounding in tort, there can be no doubt that in the fiscal aspect thereof the operation and maintenance of such utility partake largely of the nature of a commercial or business enterprise." If operation of the fiscal matters of a water utility are at all similar to the rights of a business enterprise, it is difficult to imagine any business enterprise being required to open a new water account for a customer who is delinquent with respect to their overall accounts.

Mr. Olds has always had the ability to pay the sum under protest and to pursue an appeal of the same. He has not done so.

Finally, withholding of water does not constitute abuse of process. Abuse of process involves improper use of court processes such as summonses or criminal process.

¹ And as to this specific \$2,798.56 amount due, this is as a result of a sale of property on Spaulding Drive that Olds failed to claim in any of his business license returns. The City calculated the fee based on a careful review of the HUD statements that were produced by Olds during this litigation. Per the HUD statements, the property on Spaulding Drive was sold in 2010 and should have been included on his 2011 business license fees. The City of Goose Creek has provided a detailed calculation of the amount due. Although Olds first stated in his deposition that the City may have been accurate in determining he left out the house at Spaulding Drive, (Olds Depo Volume II p. 25 line 14-15), he thereafter claimed that he included Spaulding in his prior calculations. However, Olds brought no documents to prove this. (Olds Depo v. 2, p. 26). He also indicated that he would probably have to go back to his Quickbooks to figure it out, but has not produced any Quickbooks information or alternative calculations since having been deposed in August. (Olds Depo, v. 2, pp. 26-27).

C. Procedural Due Process

Plaintiff complains that due process requires that he have been afforded an opportunity to be heard at every level. Although he was allowed to appear (with or without counsel) before the City Administrator who acted as the finder of fact/hearing officer, City Ordinance provides that at the next level of appeal "City Council shall review the records and without further oral argument or presentation of evidence will affirm, modify or deny the appeal.". It is critical that the Court understand that Attorney Timothy Domin did not engage in any exparte communication regarding the substance of this matter with the hearing officer prior to his decision. A brief was requested. It was provided by letter with a carbon copy to opposing counsel Goldstein. At City Council, no one from Timothy Domin's office participated or even attended.

There is no requirement in state law or in constitutional law that a person must be entitled to present oral argument at every stage of an appeal. Indeed, the appellate courts of South Carolina and federal courts frequently grant relief based on the record without oral argument. Olds' counsel took the opportunity to present a memo of law to the City Administrator. Mr. Olds knows of no argument which his attorney failed to raise at the hearing before the City Administrator.

D. Substantive Due Process

Mr. Olds complains that there is a substantive due process violation in the City misapplying its ordinance. The City submits that its interpretation is correct. Even if it is not, it would not amount to a substantive due process violation. If the City is wrong, it would amount to an error that is subject to being reversed by the court system.

E. Violation of Freedom of Information Act

Mr. Olds states in his appeal/complaint that there was a violation of the Freedom of Information Act. This is incorrect. The appellate record shows the agenda for the City Council Meeting. At the bottom it shows it was posted at least 24 hours in advance and it was sent to local media sources. The agenda identifies the items of business including the Business License Appeal Hearing of Todd Olds. This complies with the South Carolina Freedom of Information Act in every respect. S.C. Code § 30-4-80.

F. Damages and Attorneys Fees

Plaintiff's last cause of action is for attorney's fees pursuant to § 15-77-300 and § 30-4-100. The latter is the Freedom of Information Act which is addressed above. The former is the provision which allows for attorneys fees against government entities if the government entities position is not "substantially justified." The City of Goose Creek is correct. Even if this court were to disagree, there is substantial justification for the position it has taken.

III. PLAINTIFF'S ATTEMPT TO AMEND TO ALLEGE ADDITIONAL CAUSES OF ACTION ARE WITHOUT MERIT.

A. § 1983 and S.C. Constitution Article I, §22

These are actually two entirely different causes of action. As it relates to Section 1983, plaintiff can show no deprivation of a constitutionally protected right. The closest he comes is that the City refused him new water service. There is no known constitutional right to new water service.

The South Carolina Constitution Article I, Section 22 provides "No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting

private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review."

There is no known case law suggesting this creates a private right of action. By its terms it is inapplicable. Olds did not appear before an "administrative agency." Olds was granted a right of judicial review.

B. Civil Conspiracy

Plaintiff alleges in an amended complaint that Ron Faretra and Jennifer Althoff conspired to do certain things including miscalculating his business license fee and inspecting for a possible violation of the business license ordinance. As noted in the affidavit of City Administrator, Dennis Harmon, these actions were taken in the official capacity of Faretra and Althoff. Therefore, this action against them individually is barred by S.C. Code § 15-78-70.

C. Breach of Contract

Plaintiff attempts to argue that he is entitled to sue the Department of Public Works of the City of Goose Creek. However, that is simply a department of the City. He cannot sue the Department of Public Works separately.

IV. VARIOUS CAUSES OF ACTION ARE BARRED BY THE TORT CLAIMS ACT.

The Tort Claims Act retained immunities prevents an action for damages for a variety of the alleged wrongs committed in the complaint as stated and in the proposed amended complaint. S.C. Code § 15-78-60 has various subsections that are applicable

including 1, 2, 3, 4, 11, 12, and 13. Particular attention should also be made to 11 which prevents an action based on assessment or collection of a tax or enforcement of tax laws.

A business license fee is a tax.

Furthermore, as has been explained repeatedly, his water service was never terminated. The City refuses to initiate new service to Olds so long as he is in arrears on his business license obligation.

CLAWSON AND STAUBES, LLC



Timothy A. Domin
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
(843) 577-2026

Attorney for the Defendant

Charleston, South Carolina

February 5, 2013



City of Goose Creek
Business License
Renewal Application

Current Information

Business License Number: 8108
Class: 7 Type of Business: REAL ESTATE
Owner: TODD OLDS
Social Security#: Fed. Id#: _____
Business Name 1: PRIME PROPERTIES OF CHARLESTON
Business Name 2: _____
Name of Point of Contact: B TODD OLDS
Local Phone #: 843-200-1813 Home Office Phone #: 843-200-1813
Location: 4381 STONEY POYNT COURT

PRIME PROPERTIES OF CHARLESTON

4381 STONEY POYNT COURT
NORTH CHARLESTON, SC 29405

Update Information

PLEASE PRINT

Location Change Name Change Contact Information Change
Class: _____ Type of Business: _____
Owner: _____
Business Name 1: _____
Business Name 2 or DBA: _____
Mailing Address: _____
Local Phone # _____ Home Office Phone # _____
Social Security #: _____ Fed. Id#: _____
E-Mail: _____
Location: _____

If you are no longer in business, please give us the date your business was dissolved and return this form. Business terminated on (date) _____.

BUSINESS LICENSE FEES ARE DUE ON OR BEFORE THE LAST DAY OF FEBRUARY. The City of Goose Creek accepts checks and money orders made payable to City of Goose Creek, VISA, MasterCard and American Express. Renewal applications and payment should be mailed to: City of Goose Creek, Attn: Business License, P.O. Drawer 1768, Goose Creek, South Carolina, 29445-1768. Please complete form in its entirety.

BUSINESS LICENSE RENEWAL CALCULATION

(worksheet on back of form)

1. 0 actual gross receipts (total receipts generated by the business regardless of source, without deduction) (gross receipts should be on a 12 month projected income based on the monthly average for a business in operation for less than one year)
From Jan 2010 To Dec 2010 134,000 Sale of 123 Evergreen Mag
\$ 58,432.46
2. Less allowable deductions (itemize on a separate sheet and attach hereto)
**(See back of this form for examples of allowable deductions).
\$ 0
3. Gross receipts for license purposes. (subtract line 2 from line 1).
\$ 58,432.46
4. Business License Fee (from worksheet on back of form, sum of lines 1, 2 & 3).
\$ 457.44 460.40
850.40
5. Penalty: 0 % multiplied by business license fee (line 4)
5% for each month, or part thereof, beginning March 1st.
\$ 0 78.00
6. Previous balance due (prior years).
\$ 0
7. Amusement machines: Pool Table: _____ X \$12.50 = _____
Amus. Mach.: _____ X \$12.50 = _____
Non-Payout Mach.: _____ X \$150.00 = _____
\$ 0
8. Total payment due: add license fee due (line 4), penalty amount (line 5), previous balance (line 6), and amusement machines (line 7).
\$ 457.44 460.40
928.40 corrected amount

Name of person responsible for business license (print owner or agent name): B. Todd Olds

Certification of Applicant

I (We) do hereby certify that the information given in this application is true. That the gross income is accurately reported without any unauthorized deduction, and that all assessments and property taxes due and payable to the city have been paid. I understand that issuance of a city business license does not relieve me of the responsibility of meeting all City of Goose Creek and Building Code requirements, and that I am subject to all provisions of the business license ordinance of the City of Goose Creek. I also understand and authorize the City of Goose Creek and its Agents to utilize all information on this application for the purposes of obtaining a business license and insuring that all other Federal, State, and Local laws are followed.

Signature of Applicant: _____

Date: 1/12/11

Title: OWNER

For Office Use Only:

Finance Director: Madeline

City Administrator: James E. Harmon

Prior Years Gross:

1000.00

estimate



MICHAEL J. HEITZLER, Ed.D.
Mayor
KIMO ESAREY
Mayor Pro-Tem
DENNIS C. HARMON
City Administrator
JEFF MOLINARI
Assistant City Administrator

MARGUERITE H. BROWN
SAL GANDOLFO
JOHN B. McCANTS
MARK A. PHILLIPS
JERRY TEKAC
City Council

May 23, 2011

Prime Properties of Charleston
Todd Olds
4381 Stoney Poynt Court
N. Charleston, SC 29405

RE: Incorrect Gross Reported

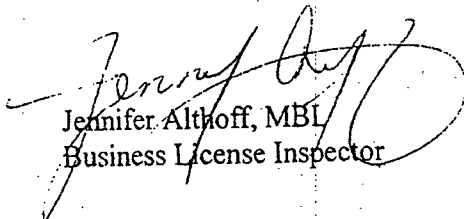
Dear Mr. Olds:

It has come to our attention that you sold 123 Evergreen Magnolia Avenue, Goose Creek, South Carolina. The sale price of 123 Evergreen Magnolia Avenue must be claimed as revenue on your 2011 City of Goose Creek Business License. This was not done therefore we are billing you for the remaining business license fee due. The total fee for your business license is \$928.40 subtracting out your payment of \$460.40 leaving a total due of \$468.00. Please remit \$468.00 with a copy of this letter prior to the June 10, 2011 in order to avoid any further fines and/or penalties.

If payment is not received by the above date your business license fee due will be submitted to the South Carolina Department of Revenue to be set off against your individual income tax return. Pursuant to the Setoff Debt Collection Act (Section 12-56-10), the amount owed for your business license fee plus a \$65.00 fee will be deducted from your South Carolina individual income tax refund. If you file a joint return with your spouse, this amount will be deducted from the total joint return without regard to which spouse incurred the debt or actually withheld taxes. You may also be issued a Uniformed Ordinance Summons in the amount of \$1,092.50; this includes State assessments, or 30 days in jail, each day in violation will be deemed a separate offence.

If you have any questions concerning this matter please contact me at (843) 797-6220 ext. 105.

Sincerely,


Jennifer Althoff, MBI
Business License Inspector

PAYMENT UNDER PROTEST AND APPEAL

Mr. Dennis C. Harmon

City of Goose Creek

City Administrator

519 N. Goose Creek Blvd.

Goose Creek, SC 29445

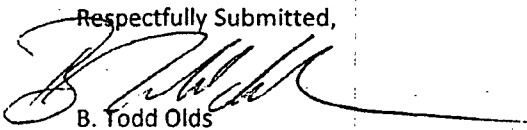
06/07/11

RE: Payment under protest and Appeal

Please take notice that Prime Properties of Charleston, LLC hereby makes payment under protest and Appeals on the foregoing.

1. That Prime Properties of Charleston, LLC was issued a business license by City of Goose Creek January 2011.
2. Under Duress Prime Properties of Charleston, LLC remits payment of improper business license assessment to City of Goose Creek under protest.
3. City of Goose Creek is improperly assessing a business license fee without following "plain and ordinary meaning" as outlined in city ordinance 110.001 related to Gross Income.
4. That Prime Properties of Charleston, LLC seeks relief from improper business license assessment.
5. Prime Properties hereby request proper notice for all Appeal requirements and hereby reserves all appeal rights.

Respectfully Submitted,



B. Todd Olds

Prime Properties of Charleston, LLC

Cc: Jennifer Althoff-Business License Inspector



PRIME PROPERTIES OF
4393 Stoney Point Ct
North Charleston, SC 29405
(843) 200-1813
EIN 26-2119255

CHARLESTON, LLC

SOUTHCOAST.COM
Southcoast Comm
Charleston, SC 29407

TY BANK
y Bank

10829

6/7/2011

PAY TO THE
ORDER OF

CITY OF GOOSE CREEK

\$ **468.00

Four Hundred Sixty-Eight and 00/100

DOLLARS

CITY OF GOOSE CREEK
PO Drawer 1768
Goose Creek, SC 29445

MEMO

Payment Under Protest / *Appeal Requested*

~~10829 10829 10829 10829 10829 10829 10829 10829 10829 10829~~

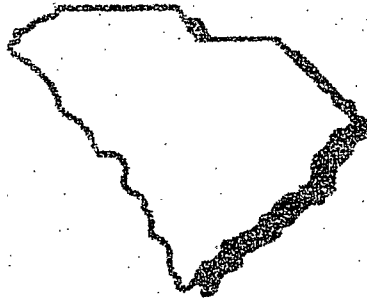
PRIME PROPERTIES OF CHARLESTON, LLC

CITY OF GOOSE CREEK
Business License

6/7/2011

10829

468.00



SouthCoast Bank

Payment Under Protest

468.00

6/7/2011

10829

468.00



8/08

rotest

468.00

City of Goose Creek
P.O. Drawer 1768
519 North Goose Creek Blvd.
Goose Creek, SC 29445

DATE : 6/10/2011 11:23 AM
OPER : Renee
TKBY : jla
TERM : 6
REC# : 00593400

320.00000 Business License Payment 468.00
6108-12/31/11 PRIME PROPERTIES OF CHA
CLASS 7 OUTSIDE 468.00CR

2-Check 468.00 REF:10829

APPLIED	468.00
TENDERED	468.00
CHANGE	0.00

July 1, 2011

Prime Properties of Charleston LLC
Todd Olds
4381 Stoney Poynt Court
North Charleston, South Carolina 29405

RE: Appeal – Business License Fee

Dear Mr. Olds:

We have scheduled your appeal of your business license fees for 10:00 am, July 26, 2011. At this hearing you have the right to be represented by counsel, to present testimony and evidence, and also cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party requesting it.

If you have any questions concerning these proceedings please contact me at (843) 797-6220 extension 109.

Sincerely,

Ronald R. Faretra
Finance Director

cc: Dennis C. Harmon



Certificate Of
Ma

This Certificate of Mailing provides evidence that mail has been presented to USPS® for
This form may be used for domestic and international mail.

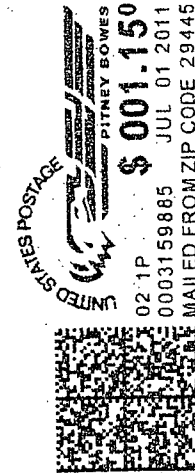
From:

City of Goose Creek
P.O. Drawer 1768
Goose Creek, SC 29445
Jennifer Althoff

To:

Prime Properties of Charleston LLC
Todd Old
4381 Stoner Baynt Court
North Charleston, South Carolina
29405

PS Form 3817, April 2007 PSN 7530-02-000-9065



BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobbaw@hotmail.com

Peggy M. Infinger
pinfinger@cobbaw.net

Thomas R. Goldstein
tgoldstein@cobbaw.net

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2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

August 5, 2011

Mr. Dennis C. Harmon,
City Administrator
City of Goose Creek
519 N. Goose Creek Blvd.
Goose Creek, S. C. 29445

HAND DELIVERY

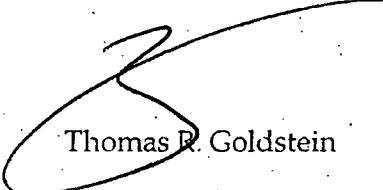
Re: Todd Olds

Dear Mr. Harmon,

Thank you for the opportunity to submit a written memorandum in support of Mr. Old's appeal. As promised, I enclose our Memorandum of Law. Please let me know if you require anything further from us in order to decide this appeal. With kind regards, I am

Very truly yours,

Belk, Cobb, Infinger & Goldstein, P.A.



Thomas R. Goldstein

cc: Todd Olds (with enclosure)

State of South Carolina	)	Before the Goose Creek Business License Review Board
	)	
County of Berkeley	)	
	)	
Todd Olds,	)	
	)	
Appellant,	)	
	)	
vs.	)	Memorandum of Law in Support of Appeal
	)	
City of Goose Creek,	)	
	)	
<u>Respondent.</u>	)	

This matter is before the City of Goose Creek's Business License Review Board¹ by virtue of Business License taxes paid under protest and an appeal as provided by Chapter 110 of the City of Goose Creek Municipal Ordinances. The appeal raises two issues:

1. Does the City of Goose Creek calculate the appellant's business license tax based on gross sales or gross income?
2. Can the City of Goose Creek impose additional penalties on a business owner who is delinquent in his or her tax liability?

1. Discussion of gross income

As to the first issue, there are hundreds of cases from every state and every federal circuit in America articulating the same standard in construing a statute or ordinance:

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Charleston County Sch. Dist. V. State Budget & Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). "The determination of legislative intent is a matter of law." *Eagle Container Co. v. County of Newberry*, 379 S.C. 564, 568, 666 S.E.2d 892, 894 (2008) (quoting *Charleston County Parks & Recreation Comm'n. v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995))

¹ Section 110.004 (B) sets out the appeal process, which is initially to the Finance Director, who "shall establish, by regulation, the procedure for hearing an application for adjustment of assessment and issuing a notice of final assessment."

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The best evidence of intent is the statute itself: "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03, at 94 (5th ed. 1992))

Media General Commns. V. South Carolina, 388 S.C. 138, 694 S.E.2d 525 (2010)

Here, the statute is clear and unambiguous. According to § 110.009 of Goose Creek's ordinances, the license fee is calculated "based on gross income. . . for the preceding calendar or fiscal year. The parties stipulate that the appellant's gross income is taken from line 7 of the appellant's Schedule C "Profit or Loss From Business." Line 7 of Schedule C is the line for "gross income," and it shows \$131,665.00. Despite being furnished a copy of the appellant's tax return, the Town has ignored its own ordinance and insisted on calculating the appellant's license fee based on "Total Sales." First of all, to reach this interpretation, the Town must ignore the plain words of its own ordinance, which it cannot do, and even if it could, there is not one court in the land that holds "total sales" equals "gross income." The United States Supreme Court held in 2005 that "The Internal Revenue Code defines "gross income" for federal tax purposes as "all income from whatever source derived." 26 U.S.C. § 61(a). The definition extends broadly to all **economic gains** not otherwise exempted. *Commissioner v. Banks*, 543 U.S. 426, 125 S.Ct. 826 (2005) (emphasis added) *Black's Law Dictionary*, 5th Ed., like the I.R.S. and S.C. Department of Revenue Regulations defines "income" as "gain." By defining "gross income" as "gross sales," the City of Goose Creek charts a unique path by equating "gross sales" as "gain." If the City of Goose Creek continues to adopt this tortured definition, it does so standing alone among government agencies and without any supporting authority. Leaving aside the inescapable rule of statutory construction that the City must enforce its ordinance the way it is written, the flaw in the City's position can be demonstrated further by considering the following fact pattern. Since the appellant is a broker, we will employ a house sale analogy. If the appellant sells a house for \$100,000.00, and the H.U.D.-1 demonstrates that after expenses of the sale, he receives \$90,000.00, then his "gain" is \$90,000.00. The City's ordinance follows the universal rule for "gain" and calculates the license fee based on "gross income," which is the gross "gain." However, despite the clear mandate of the ordinance and the overwhelming weight of legal authority to the contrary, the City overcharged the appellant on his license fee by defining "gross income" as "gross sales." Thus, the City overcharged the appellant, and it should recalculate the appellant's license fee based on his "gross income" and disgorge the overpayment as required by the plain reading of the Town's ordinance.

2. Discussion of due process²

During the dispute with the Town over the calculation of the license fee, the City informed the appellant that if he did not capitulate to its interpretation of the ordinance in question, that the City would discontinue municipal water service to each and every one of the appellant's properties located within the boundaries of the Town. While the City is free to invoke lawful remedies against the appellant for failure to pay a disputed tax, its powers are not unlimited. The City's powers are limited both by the statutory scheme it adopted and by the limitations imposed upon it by the Constitutions of the United States and the South Carolina. The City cannot invoke harsh remedies that are not authorized by law. Even the King of England is subject to orders of the Court. See *Marbury v. Madison*, 1 Cranch 137, 2 L.Ed. 60 (1803): "In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court." Even misconduct with the judiciary itself is subject to constitutional limitations if it oversteps its authority. *Dennis v. Sparks* 449 U.S. 24, 101 S. Ct. 183, 66 L.Ed. 2d 185 (1980): "Thus, in *Owen v. City of Independence*, *supra*, a municipality's claim that it could assert the immunity of its officers and agents in a § 1983 damages action was rejected since there was no basis for such a right at common law." The short-hand version of all this legal authority is that we are a country of laws and not men, or as it says above the pediment to the U. S. Supreme Court: "Equal Justice Under the Law."

Since the delivery of water is an essential life service, the City of Goose Creek violates the appellant's civil rights by withholding—or even threatening to withhold—that essential service as a means to force the appellant to capitulate to the City's legal position. Even if the City's statutory scheme provided for the termination of essential government services as a penalty to be imposed, the City would still be violating the appellant's constitutional rights. The City's position is akin to incarcerating an accused before he has his day in court, which is nothing more than a type of legal lynching. Since, during the dispute with the appellant regarding the calculation of his taxes, the City invoked its alleged powers to terminate municipal services as a legal strategy, the City should be enjoined from making such threats as part of its dispute resolution procedure.

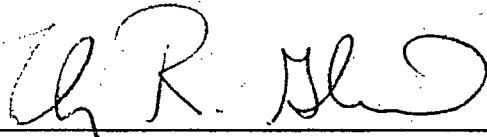
² In order to keep this memorandum short—and because it is not necessary to a resolution of the legal issues here—the appellant has not awakened the sleeping giant due process/equal protection violation in this case which is: How many taxpayers have had their business license calculations computed on "gross sales"?

Conclusion

Based on the foregoing, the appellant respectfully submits that the City should recalculate the appellant's license fee based on his demonstrated gross income of \$131,665.00 and refund the excess payment. Similarly, the City should be enjoined from threatening the termination of essential life-safety municipal services as a mechanism to collect disputed taxes.

Respectfully submitted,

August 5, 2011



Belk, Cobb, Infinger & Goldstein, P.A.

Thomas R. Goldstein

P. O. Box 71121

Charleston, S. C. 29415-1121

843 554-4291

843 554-5566 (fax)

tgoldstein@cobbblaw.net

CLAWSON AND STAUBES LLC

Timothy A. Domin
tdomin@clawsonandstaubes.com

August 30, 2011

File No.: 97-979

Mr. Dennis C. Harmon
City Administrator
City of Goose Creek
519 N. Goose Creek Blvd.
Goose Creek, SC 29445

Re: Todd Olds Appeal
Memorandum of Law dated August 5, 2011

Dear Dennis:

I am writing this letter in response to the Memorandum of Law filed by Thomas R. Goldstein, Esquire ("Goldstein") on behalf of Todd Olds ("Appellant"). Mr. Goldstein's position is that the City of Goose Creek (the "City") has improperly determined the Appellant's business license fee. The basis for this dispute centers on the definition of Gross Income and its relation to the business license fee.

The City's business license fee is based upon Chapter 110 of the City's Code of Ordinances. More specifically the computation of the fee is detailed by section 110.009. That section states that the license fee shall be "based on gross income." Gross income is defined in Section 110.001. Gross income is "[t]he **total revenue** of a business, received or accrued, for one calendar year, collected or to be collected by a business within the city." (Emphasis added). Total revenue includes all proceeds generated by a business through the services performed or items sold by the entity. Gross income or total revenue, which are synonymous terms, do not take into account costs or expenses. The entity would account for those items when determining its net income.

The Appellant argues that the parties stipulated gross income is taken from line 7 of the Appellant's Internal Revenue Service Form 1040 Schedule C. The City does not agree. The City did not stipulate to this fact and believes that the definition of gross income used by the City's ordinance is broader than the definition of gross income used on the Appellant's Schedule C and indeed should be Line 1 of the same Schedule C submitted by the Appellant. Furthermore, the City's definition of gross income is in accord with the Internal Revenue Code ("IRC").

www.clawsonandstaubes.com
126 Seven Farms Drive, Suite 200, Charleston, South Carolina 29492
Fax: (843) 722 - 2867 / Office: (843) 577 - 2026

Mr. Dennis C. Harmon
August 30, 2011
Page 2

IRC Section 61 defines gross income. IRC Section 61(a) states that "[e]xcept as otherwise provided in this subtitle, gross income means **all income from whatever source derived.**" (Emphasis added), which is consistent with the broad definition of "total revenue" used by the City's ordinance.

Furthermore, Appellant purports to be a real estate developer or other dealer in real estate, as such Appellant is involved in a business where the use of an inventory method of accounting, otherwise permitted under IRC § 471 or § 472, will not be required or allowed. A taxpayer engaged in the sale of real estate is not permitted to inventory real estate held for sale. Rev. Rul. 69-536; *amplified* in Rev. Rul. 86-149. Instead, a real estate dealer must use the specific identification of property method when determining costs. *W.C. & A.N. Miller Development Co. v. Commissioner*, 81 T.C. 619 (1983).

Therefore, the City's calculation of the Appellants business license fee based upon the Appellant's gross income, as defined by both the City of Goose Creek Ordinances and the Internal Revenue Code, is correct and should not be recalculated.

Please do not hesitate in contacting me with any questions.

With kindest regards, I remain

Very truly yours,

CLAWSON AND STAUBES, LLC


Timothy A. Domin

TAD/paa

cc: Thomas R. Goldstein, Esquire
Mr. Ron Faretra



DENNIS C. HARMON
City Administrator

September 1, 2011

Mr. Thomas R. Goldstein
Belk, Cobb, Infinger and Goldstein, P.A.
Attorneys At Law
2344 Cosgrove Avenue
Charleston, SC 29405

RE: Todd Olds Appeal – City of Goose Creek Business License

Dear Mr. Goldstein:

Thank you for your memorandum in support of Mr. Todd Olds' appeal of the City of Goose Creek Business License Ordinance and the enforcement of the same. I have attached a copy of the City Attorney's response in regard to your memorandum.

Based upon both submittals, it is my decision to deny the appeal of Mr. Olds and reaffirm that City staff's interpretation of the City of Goose Creek Business License Ordinance is correct.

Your client has the right to appeal my decision in accordance with Sections 110.004(C) and Section 110.016 of the Code of Goose Creek, respectively.

If you have any questions or need additional information please do not hesitate to contact me at your convenience.

Sincerely,

Dennis C. Harmon
City Administrator

Cc: Finance Director
City Attorney
File

BELK, BB, INFINGER AND GOLDST P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobbaw@hotmail.com

Peggy M. Infinger
pinfinger@cobbaw.net

Thomas R. Goldstein
tgoldstein@cobbaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

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Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

September 2, 2011

Mr. Dennis C. Harmon,
City Administrator
City of Goose Creek
519 N. Goose Creek Blvd.
Goose Creek, S. C. 29445

Re: Todd Olds

Dear Mr. Harmon,

I received today Mr. Domin's August 30th letter to you. Let me say at the outset that I think the world of Mr. Domin for whom I have the highest respect. Government, on the other hand, seldom impresses me. Of course, because I come from a long line of government oppressed – as I write this letter to you, I can see my father's naturalization papers on my wall – I come by my feelings historically. Subsequent practice in front of small municipal bodies has done nothing but amplify my distrust of government. My father's local government in Brest-Litovsk, Poland no doubt thought it was acting in the best interests of its citizens when it participated in the extermination of all my cousins – except one who survived, but he was made insane by the process – who, unlike my father, thought that the local government in their small town could not get worse.

I am not comparing your administration to that of the National Socialists, but the difference in the continuum of fairness is degree only. I do not think the Town of Goose Creek will be rounding up its citizens into concentration camps in the foreseeable future, but I cannot believe that either you or Mr. Domin thinks that your hiring private counsel to advise you and to justify the prosecution of a penal action against my client is ethical. (The Supreme Court has forbidden private counsel from participating in criminal actions unless an independent prosecutor is in charge of the case: "Further, the solicitor maintained control of the case." *State v. Nichols*, 325 S.C. 111, 481 S.E.2d 118 (1997). See also *State v. Mattoon*, 287 S.C. 493, 339 S.E.2d 867 (1986): "Although we find no error in this case, we express our disapproval of the practice of appointing private

counsel to prosecute criminal cases. Because of the increased possibility of a conflict when private counsel is involved, we believe the practice should be discouraged.") I will stipulate here and now that we have no chance of prevailing in a penal action when the Town of Goose Creek hires private counsel to represent the judge—you—on what is the proper decision. I know you are not a lawyer, but prosecutors, whether they are federal, state, or local are supposed to exercise independence. The fact that you can even entertain that Mr. Domin's participation is proper convinces me that Mr. Olds is wasting your time and his time in seeking an administrative remedy. Since the law does not require the performance of an obviously futile act to preserve rights, I am asking you to stipulate that Mr. Olds will lose this administrative appeal and the appeal to Town Council so that we can move forward and put this dispute in a proper forum where Mr. Olds can get a fair hearing before a neutral and detached presiding officer. With kind regards, I am

Very truly yours,

Belk, Cobb, Infinger & Goldstein, P.A.

A handwritten signature in black ink, appearing to be 'T. Goldstein', written over a horizontal line.

Thomas R. Goldstein

cc: Tim Domin, Esq.

Todd Olds (with enclosure)

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobbaw@hotmail.com

Peggy M. Infinger
pinfinger@cobbaw.net

Thomas R. Goldstein
tgoldstein@cobbaw.net

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Fax: (843) 554-5566

September 7, 2011

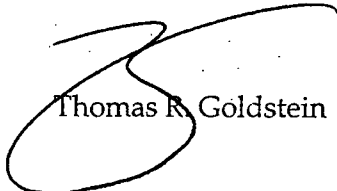
Mr. Dennis C. Harmon,
City Administrator
City of Goose Creek
519 N. Goose Creek Blvd.
Goose Creek, S. C. 29445

Re: Todd Olds

Dear Mr. Harmon,

I am in receipt of your letter dated September 1, 2011. Please be advised that we wish to appeal your September 1, 2011, decision to deny Mr. Olds a City of Goose Creek Business License to the Goose Creek Town Council. By copy of this letter to the Clerk of Council and Town's Council, we are notifying both of our intent to appeal. If there is a particular form the Town uses for these appeals, please send me the appropriate documents in the self-addressed and stamped envelope I have provided. According to your ordinance, the Town Council acts on the appeal without any further appearance from us. As I said in my September 2, 2011, correspondence, I am renewing my request for the Town to stipulate that further administrative appeals are futile so that we can move the matter along to the circuit court. With kind regards, I am

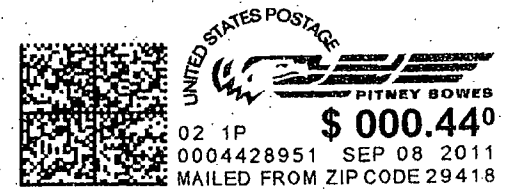
Very truly yours,
Belk, Cobb, Infinger & Goldstein, P.A.


Thomas R. Goldstein

cc: Tim Domin, Esq.
Clerk of Council
Todd Olds (with enclosure)

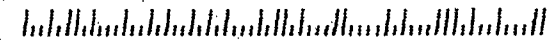
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Beik Cobb Infinger & Goldstein, P.A.
P.O. Box 71121
N. Charleston, SC 29415-1121



Mr. Dennis C. Harmon,
City Administrator
City of Goose Creek
519 N. Goose Creek Blvd.
Goose Creek, S. C. 29445

29445+2562





MICHAEL J. HEITZLER, Ed.D.
Mayor
KIMO ESAREY
Mayor Pro-Tem
DENNIS C. HARMON
City Administrator
JEFF MOLINARI
Assistant City Administrator

MARGUERITE H. BROWN
SAL GANDOLFO
JOHN B. McCANTS
MARK A. PHILLIPS
JERRY TEKAC
City Council

September 15, 2011

Mr. Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger and Goldstein, PA
2344 Cosgrove Avenue
Charleston, SC 29405

RE: Appeal – Decision of City Administrator in the Case of Todd Olds
(Appeal of Assessment for Business License Purposes)

Dear Mr. Goldstein:

I am receipt of your letter dated September 7, 2011, requesting an appeal of the decision of the City Administrator dated September 1, 2011, to City Council in the Todd Olds' business license case (i.e., appeal of assessment for business license purposes). Please be advised that the appeal hearing has been scheduled for **Tuesday, September 27, 2011, 6:00 PM, City Council Chambers, City Hall, Marguerite H. Brown Municipal Center, 519 N. Goose Creek Boulevard, Goose Creek, SC.,** in accordance with Section 110.016 of the Goose Creek City Code.

Please be advised that Section 110.016 (c) of the Goose Creek City Code states, in part, "City Council shall review the records and without further oral argument or presentation of evidence will affirm, modify or deny the appeal. City Council shall, by majority vote of members present, render a decision which shall be final unless appealed to a court of competent jurisdiction within ten (10) days after service of city Council's decision."

If you have questions or need additional information please do not hesitate to contact me at your convenience.

Sincerely,

Kelly J. Lovette, CMC
City Clerk

Cc: Mayor and City Council
City Administrator
City Attorney
Finance Director
✓ File

BELK BB, INFINGER AND GOLDSTEIN P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobbblaw@hotmail.com

Peggy M. Infinger
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Thomas R. Goldstein
tgoldstein@cobbblaw.net

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Fax: (843) 554-5566

September 15, 2011

Ms. Kelly J. Lovette, CMC,
City Clerk
City of Goose Creek
P. O. Box 1768
Goose Creek, S. C. 29445-1768

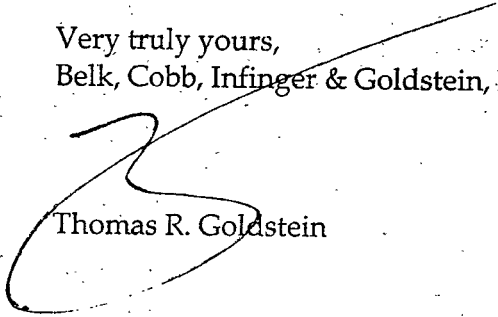
Re: Todd Olds

Dear Ms. Lovette,

Thank you for your letter of September 15, 2011, informing me that the City Council will take up Mr. Olds' appeal on September 27, 2011 at 6:00 p.m. Thank you also for reminding me that neither Mr. Olds nor I are permitted to participate in the process. Since we are not permitted to speak in our own behalf, I cannot discern a reason to attend, but if I have overlooked a reason to attend that you might be willing to share with me, please advise. There may be some unwritten procedure or process about which I am unaware. Even though you call the process a "hearing," clearly it cannot be a "hearing," for "Hearing" means: "Proceeding of relative formality. . . generally public, with definite issues of fact or of law to be tried, in which witnesses are heard and parties proceeded against have right to be heard, and is much the same as a trial and may terminate in final order." Since the governing ordinance you cite does not make an allowance for a party to participate in his own case, I will stipulate that the process is obviously not a "hearing," and that the outcome is certain. In order to save the City time and effort, I have previously agreed to stipulate that further administrative appeal is futile. I am still willing to make this concession.

If there is some other ordinance in effect that authorizes participation by the appellant, please advise. Otherwise, we will not attend since we cannot participate. Please understand that we are relying upon the ordinance you cite for our decision, so if there is some contrary authority in the municipal code, we ask that you identify it for us. Otherwise, we will not attend since we are not afforded an opportunity to participate. With kind regards, I am

Very truly yours,
Belk, Cobb, Infinger & Goldstein, P.A.


Thomas R. Goldstein

cc: Tim Domin, Esq.
Todd Olds

**AGENDA
CITY OF GOOSE CREEK
SPECIAL CITY COUNCIL MEETING
TUESDAY, SEPTEMBER 27, 2011
6:00 PM
CITY HALL
MARGUERITE H. BROWN MUNICIPAL CENTER
519 N. GOOSE CREEK BOULEVARD
GOOSE CREEK, SC**

CALL TO ORDER – Mayor Michael J. Heitzler, Ed.D.

COMMENTS FROM THE AUDIENCE

BUSINESS

- (1) Business License Appeal Hearing – Todd Olds**
- (2) Presentation of FY 2010 Audit – Mrs. Ellen Adkins, CPA, of WebsterRogers, LLP**
- (3) Strategic Goals & Objectives**
- (4) Miscellaneous Business**

COMMENTS FROM THE AUDIENCE

ADJOURNMENT

NOTE: A copy of this agenda was sent to The Goose Creek Gazette, The Post and Courier and The Hanahan and Goose Creek News, and a copy was posted in City Hall, at least twenty-four (24) hours prior to the meeting.

Kelly Lovette

From: Kelly Lovette
Sent: Monday, September 19, 2011 3:08 PM
To: Community Ads - Post and Courier; Dave Munday; 'Frank Johnson'; Jim Tatum; Jack Karlis (Hanahancom@aol.com); Greg Hambrick (greg.hambrick@patch.com)
Subject: Special City Council Meeting - September 27, 2011
Attachments: Special City Council Meeting 09-27-11.doc

Good afternoon:

Please find attached the Agenda for the Special City Council Meeting scheduled for Tuesday, September 27, 2011, at 6:00 p.m. Please do not hesitate to contact me should you have any questions concerning the meeting.

Sincerely,

Kelly J. Lovette, CMC
City Clerk
City of Goose Creek
Post Office Drawer 1768
519 N Goose Creek Boulevard
Goose Creek, SC 29445
(843) 797-6220 ext. 113 /Fax: (843) 863-5208
klovette@cityofgoosecreek.com

Special City Council Workshop
September 27, 2011
6:00 p.m.
City Hall

Council Members Present:

Mayor Michael J. Heitzler; Councilmember Marguerite H. Brown; Mayor Pro Tem James (Kimo) Esarey; Councilmember Sal Gandolfo; Councilmember John McCants; Councilmember Mark Phillips; Councilmember Jerry Tekac

Council Members Absent:

Staff Present:

City Administrator Dennis C. Harmon; Assistant City Administrator Jeff Molinari; Finance Director Ron Faretra

Staff Absent:

City Clerk Kelly J. Lovette

Guests Present:

Mrs. Ellen Adkins, CPA, WebsterRogers, LLP

Press Present:

Jim Tatum, The Gazette

I. Call to Order – Mayor Heitzler:

Mayor Heitzler called the meeting to order at 6:00 p.m.

II. Business License Appeal – Todd Olds:

Mayor Heitzler inquired if Mr. Harmon wanted to say anything about the appeal regarding Mr. Olds. Mr. Harmon requested Mr. Faretra give a short synopsis to City Council concerning the appeal. Mr. Faretra stated Mr. Olds has a business license and he is in real estate wherein he purchases, refurbishes and resells houses. He stated for many years now the City's Business License Inspector goes through sales records to make sure the amounts that are claimed on business licenses are the same for sales records. He stated during that process with regard to Mr. Olds, the Business License Inspector discovered a discrepancy and a letter was mailed to him explaining what the discrepancy was and that City staff also conversed with Mr. Olds by telephone. Mr. Faretra stated Mr. Olds appealed the business license fee and he denied Mr. Olds' appeal. He stated Mr. Olds then appealed the matter to the City Administrator, who then upheld Mr. Faretra's decision and Mr. Olds then appealed to City Council. He stated all of the information concerning this matter would be found in the packets received by each member of City Council.

Mayor Heitzler inquired if City Council had any questions for Mr. Faretra. Councilmember Tekac inquired if Mr. Olds paid the full amount. Mr. Faretra stated yes, and according to the

City's ordinance a person cannot appeal until they pay the full amount. Councilmember Phillips inquired if there was a definition as to gross. Mr. Faretra stated all of the information concerning the decision was given to City Council. Mayor Heitzler inquired if the City's attorney, Tim Domin, provided case law. Mr. Faretra stated he could not provide additional information to City Council, but there was a letter from Mr. Domin within their packet of information. Mayor Pro Tem Esarey stated according to the letter written by Mr. Domin, he would assume Mr. Domin researched case law and the City was well within its rights. Mayor Heitzler stated he knew Mr. Faretra was not an attorney and he could not provide City Council with any additional information other than what was in the City's ordinance; but, he inquired if Mr. Domin provided any case law that followed the other methodology that Mr. Olds would prefer the City to use. Councilmember Tekac stated he did not recall seeing any case law. Mayor Heitzler inquired if anyone wanted to provide an argument to support Mr. Olds methodology which would allow for City Council to over rule Mr. Harmon's decision.

Councilmember McCants stated he reviewed the documentation provided to City Council and he did not see how Mr. Olds methodology, as stated in his letter, would change his mind in why Mr. Olds should not be required to pay the amount as stated under City ordinance. Mayor Heitzler stated if he were an advocate for Mr. Olds, he would inquire, whether they were misleading or not, as to why the City was one (1) of the few cities that follows this methodology when the standard practice does not adhere to the City's methodology. Mayor Heitzler stated the City charts a unique path by equating gross sales as gain. He inquired why gross sales would be considered gain if you were into real estate and he mentioned Mayor Pro Tem Esarey may know the answer since he buys and sells houses. Mayor Heitzler stated gaining would be determined in the difference between what you purchased and sold the house for financially. Mayor Pro Tem Esarey stated what he stated was true. Mayor Heitzler inquired how that could be equated to gross sales. Mayor Pro Tem Esarey stated there had to be a methodology on how this is calculated and whether or not one method or the other is used. Mayor Heitzler stated Mr. Goldstein, Mr. Old's attorney, has stated the City was the only one that uses this methodology in comparison to other municipalities and that they show gain a different way. Councilmember Phillips stated he remembered when City Council was reviewing the structure of the business licenses a while back and it was based on gross. He stated if it was based on net proceeds, people are losing money, does that mean they do not have to pay a business license. He stated it is not based on how much you make, it is based on gross because that is how it is set up. Councilmember Phillips stated you know they are in business to try to make money, but that is not how the City measures the business license fee. Mayor Heitzler inquired if there were any other administrative remedies for Mr. Olds within our City. Mr. Harmon stated if Mr. Olds exhausted the administrative remedies with the City, he would then be able to appeal to the Circuit Court of Berkeley County and it was his understanding Mr. Olds would take that remedy and it was their prerogative. Mayor Heitzler stated he did not recall a case like this coming before City Council before and inquired if the City ever had a case like this. Mr. Harmon stated this was the only case that has reached the level of City Council, but in his thirty (30) years of experience there have only been a handful of people to ever question how the City calculates business license fees. Councilmember Brown stated this has been the rule for a good while, but the City has not changed anything just to make things different for Mr. Olds. She stated she would need proof the City made the wrong decision. Councilmember Tekac stated the point that was made by the City's attorney, as referenced in Mr. Domin's letter of August 30, 2011, was that the City was in accord with the Internal Revenue Service (IRS). He stated this meant the City was following what the IRS defined as gross income, according to Mr. Domin; therefore, he did not see an issue with how the City was calculating these fees. He stated if City Council decided to deny the appeal, Mr. Olds was free to seek his redress elsewhere. Mayor Heitzler inquired if Councilmember Tekac wished to take action.

Councilmember Tekac made a motion to deny Mr. Olds' appeal of the business license ordinance. Councilmember McCants seconded the motion. All in favor, none opposed. Motion carried.

- III. Presentation of FY 2010 Audit – Mrs. Ellen Adkins, CPA of WebsterRogers, LLP:** Mayor Heitzler introduced Ms. Adkins of WebsterRogers, who presented the 2010 Audit Report to City Council. Mrs. Adkins briefly explained the process of an audit and stated under the Independent Auditor's Report City Council would find it was WebsterRogers' opinion the City's financial statements were presented fairly and the audit report reflected a clean opinion, the highest rating possible for an audit. She commended the City and stated the City of Goose Creek had a long history of receiving a clean opinion and it was directly attributed to the hard work performed by the City's employees and they are very conscientious about their financial information.

Mrs. Adkins moved on to the Management's Discussion and Analysis portion of the report wherein she stated this was really important because it is actually drafted by the City's Finance Department, with Mr. Harmon's review. She stated it was the City's assessment of its financial information and what City staff sees as important in the financial statements. Mrs. Adkins thoroughly reviewed and answered all of City Council's questions in regard to the Statement of Net Assets, which represents all of the City's Assets, Liabilities, Net Assets, Capital, Revenues and Expenditures.

Mrs. Adkins thoroughly reviewed and answered all of City Council's questions in regard to the City's Enterprise Fund which consisted of the Water Division, Golf Department and Recreation Department. She stated the charges for sales and services actually decreased from 2009, with the City's water system. She stated it is actually made up of several different pieces and the sales from water itself actually went up by approximately six percent (6%); however, the tap and impact fees were way down and off by approximately \$315,000. She stated in total net Water Revenues, the City was about \$185,000, down from 2009. She stated the interest income was down from 2009, and under Capital Contributions the City showed \$796,000, which consist of water lines developers have donated to the City after they complete a project.

Mrs. Adkins stated what could be said about the golf course is that it was very flat. She stated the revenues were within \$1,000, from 2009's revenues of \$1,248,000. She stated there was not a big change in cost, although expenses were down by approximately \$60,000. Mayor Heitzler inquired if Mrs. Adkins was able to see a decrease in personnel costs. Mrs. Adkins stated a lot of changes made by the City to the Golf Department were made toward the last quarter of 2010; therefore, City Council and City staff would not see the impact in 2010, but should see more of an impact in 2011.

Mrs. Adkins stated with the Recreation Department she felt this would be another that City Council and City staff would see an impact because of the economy. She stated the charges for sales and services, which primarily consist of the registration fees that people pay to participate in the Recreation Department, was actually down by \$140,000. She stated, in general the revenues were about the same and were offset by increases in the property taxes. She stated the expenses stayed about the same and over all the year ended with a \$19,000, deficit. Ms. Adkins stated considering now how the economy was impacting the City, she felt the figures looked pretty reasonable and it was expected there would be some sort of a drop off due to the economy and people choosing not to participate in extra recreational functions.

Mrs. Adkins directed City Council to the last report in her audit. She stated this report states how well the City complies with its own regulations. She stated when her firm comes in to conduct an audit, they first gain an understanding of what types of laws apply to the City; for example, procurement regulations, what grants were received and what type of budget was adopted for the year. She stated also reviewed were the controls the City currently has in place to make sure the City does follow its own rules, as well as, reconciling its bank accounts or if the City pays its payroll taxes in a timely

manner. Mrs. Adkins stated if during the audit a problem was found in those areas, the report would bring it to the attention of City Council. She stated no problems were found to bring to City Council's attention. Mrs. Adkins closed her briefing to City Council with an explanation on how the audit was conducted.

Mr. Faretra thanked Mrs. Adkins and her staff, as well as, his staff for all of the hard work performed during the audit. Mrs. Adkins stated to Mayor Heitzler that he had a very professional organization and the City's employees take their jobs very seriously and they are very conscientious of their responsibilities.

IV. Strategic Goals & Objectives:

Mayor Heitzler stated City Council has not yet adopted the City's 2011 Strategic Goals & Objectives and added that there were eleven (11) goals this year and that the list has been shortened. He inquired if City Council wished to take any action. Councilmember Phillips stated he did not participate in the strategic planning process, therefore, he would defer to the remainder of City Council. After a brief discussion by City Council as to whether or not to take action on the 2011 Strategic Goals & Objectives that evening, Councilmember Tekac made a motion to approve the 2011 Strategic Goals & Objectives as presented. Councilmember Gandolfo seconded the motion. Councilmember Phillips inquired if the document could be amended at any time. Mayor Heitzler stated yes. He stated the proposed Strategic Goals and Objectives were pretty much the same from the past year with the exception some items were removed. Hearing no further discussion, Mayor Heitzler called for the vote. All in favor, none opposed. Motion carried.

V. Miscellaneous Business:

Councilmember McCants stated that past Friday afternoon, after 5:00 p.m., he received a phone call from Mr. Charles Watson, the former general manager of Ryland Homes. Councilmember McCants shared with City Council Mr. Watson's concerns about the appearance and condition of the Food Lion shopping center, located on St. James Avenue. He stated Mr. Watson told him the realtor, who is supposed to be taking care of the property, hung up on him when he tried to address his concerns for the property. Councilmember McCants stated Mr. Watson called him again to say he spoke with a young lady with the University of South Carolina Development Foundation who stated she was not aware of the condition of the shopping center. Mayor Heitzler stated he spoke with Mr. Raymond Owens, with Channel 2 News, and requested he consider taking on the story as an investigative type story and he said he would look into the matter. Mayor Heitzler inquired if there were any other comments by City Council.

Mayor Pro Tem Esarey stated he wished to discuss the issue in regard to Trident Hospital vs. Roper St. Francis Hospital and he assumed it would hit the news wherein Moncks Corner, St. Stephens, Bonneau and Jamestown were writing a petition, in what he believed, would request Roper St. Francis to step down and to not build their hospital in Goose Creek. He stated he was a real proponent of having both hospitals built and he felt they were both necessary. He stated they have both been approved by the Department of Health and Environmental Control (DHEC) and actually approved by the mayor's in the municipalities he mentioned, the Berkeley County Legislative Delegation and he felt it would be an economic boom for the City of Goose Creek and City Council should stand behind Roper St. Francis. He stated he was recently in the newspaper showing his support of Roper and it could be huge for the City and the Carnes Crossroads area, to jump start that development. He stated he would like to see City Council support Roper St. Francis being built in the City and for Trident Hospital building their hospital in Moncks Corner.

He stated he would be sending a letter to the editor and wanted to make City Council aware of what he was doing and why. He stated he certainly understood why people in the areas up around Moncks Corner would want Trident up there; but, did not understand why they had an issue with both hospitals being built, except for a fear Trident would not build if Roper St. Francis built. He stated that would be a business decision for Trident Hospital.

Mayor Heitzler thanked Mayor Pro Tem Esarey for his comments and stated City Council had an upcoming meeting in a few weeks and inquired if he wished to design a Resolution of some sort. Mayor Pro Tem Esarey stated he would like to see a Resolution go before City Council, but added that he would like to hear if City Council wished to make any comments. Councilmember Phillips stated DHEC approved both hospitals to be built and he inquired if DHEC has backed off. Mayor Pro Tem Esarey stated DHEC approved a Certificate of Need for two (2) fifty (50) bed hospitals and Trident appealed DHEC's decision and right now Trident and Roper were going through the legal process of that appeal. He stated to cap that off, Trident filed for a Certificate of Need for thirty (30) additional beds in Summerville and Roper appealed Trident's request for expansion in Summerville. He stated DHEC has approved the request for Summerville and all three (3) requests through DHEC still stand. He stated there were 170,000 residents in Berkeley County and we should be able to man two (2) hospitals within Berkeley County. There was a brief discussion in regard to the populated areas of Berkeley County and their proximity to where both hospitals would be located. Mayor Pro Tem Esarey requested Mr. Harmon's assistance with proposing a Resolution to City Council at their meeting in October showing support of both hospitals.

Mayor Heitzler welcomed the students in the audience from Garrett Academy.

Councilmember Phillips inquired what the status was of Alex's Restaurant. Mr. Harmon stated he was informed the restaurant was currently closed.

VI. Adjournment:

Mayor Pro Tem Esarey made a motion to adjourn. All in favor, none opposed. Motion carried. Meeting adjourned at 6:58 p.m.


Kelly J. Lovette, CMC
City Clerk

Date: November 8, 2011

A copy of this meeting's agenda was sent to the Post and Courier, The Goose Creek Gazette and The Hanahan & Goose Creek News; it was posted in City Hall 24 hours prior to the meeting.

BELK, COBB, INFINGER AND GOLDSTEIN P.A.

Harry C. Belk (1919-2003)

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dtcobblaw@hotmail.com

Peggy M. Infinger
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Thomas R. Goldstein
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September 28, 2011

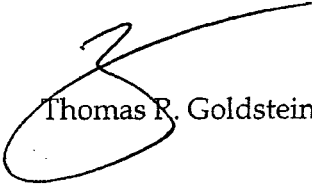
Mr. Dennis C. Harmon,
City Administrator
City of Goose Creek
P.O. Drawer 1768
Goose Creek, SC 29445-1768

Re: Special Council Meeting September 27, 2011

Dear Mr. Harmon,

Would you be so kind as to furnish me a copy of the audio recording of the City's September 27, 2011, Special City Council Meeting? If you require pre-payment for a copy, please advise me of the amount, and I will furnish pre-payment to the City. I am also requesting a copy of the agenda, which was not available on the night of the meeting. I have enclosed a self-addressed, stamped envelope for your convenience in replying. With kind regards, I am

Very truly yours,
Belk, Cobb, Infinger & Goldstein, P.A.



Thomas R. Goldstein

cc: Todd Olds

Received October 3, 2011. K92



MICHAEL J. HEITZLER, Ed.D.
Mayor
KIMO ESAREY
Mayor Pro-Tem
DENNIS C. HARMON
City Administrator
JEFF MOLINARI
Assistant City Administrator

MARGUERITE H. BROWN
SAL GANDOLFO
JOHN B. McCANTS
MARK A. PHILLIPS
JERRY TEKAC
City Council

October 18, 2011

VIA U.S. MAIL

Mr. Thomas P. Goldstein, Esquire
Belk, Cobb, Infinger and Goldstein, P.A.
P.O. Box 71121
Charleston, SC 29415-1121

**Re: Todd Olds
Special City Council Meeting – September 27, 2011**

Dear Mr. Goldstein:

I am responding to your letter dated September 28, 2011, wherein you requested a copy of the agenda in regard to the Special City Council Meeting held on September 27, 2011, as well as, a copy of the audio recording, from the same meeting, under the Freedom of Information Act, Sections 30-4-10 through 30-4-165 (Code of Laws of South Carolina 1976, Revised 2007 and Supplement 2010). As stated above, please find enclosed a copy of the agenda and a copy of the audio recording, as requested.

The total cost for the information requested is as follows:

Copies	\$.15	(1 page @ \$.15 per page)
Audio CD	\$5.00	
Postage	<u>\$.84</u>	
Amount Owed: \$5.99		

Please make check payable to: City of Goose Creek.

Should you have any questions or further inquiries please feel free to contact me at (843) 797-6220 ext. 113 or at klovette@cityofgoosecreek.com.

Very truly yours,

Kelly J. Lovette, CMC
City Clerk

/kjl
Enclosures

CITY OF GOOSE CREEK

BUSINESS LICENSE ORDINANCE

CHAPTER 110: OCCUPATIONAL LICENSES, TAXES AND REGULATIONS

1. Section

General Provisions

110.001 Definitions

110.002 Administration; designated officers; duties

110.003 Inspection and audits

110.004 Assessments; payment under protest; appeal

110.005 Notice of license fees

110.006 License required

110.007 Purpose and duration of license

110.008 Registration required; license application

110.009 License fee according to classification; due date; separate license; computation of fee

110.010 Deductions and exemptions

110.011 False application

110.012 Display and transfer

110.013 Delinquent license fee

110.014 Denial of license

110.015 Suspension or revocation of license

110.016 Appeals to City Administrator and City Council

110.017 Permission to use streets required

110.018 Consent, franchise or business license fee required

110.019 Confidentiality

110.020 Rates

110.021 Alphabetical business classification index

110.022 Numerical major groups of business classifications

Peddlers, Solicitors and Transient Vendors

110.035 License required

110.036 Definitions

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110.038 Display of license

110.039 Hours of operation

110.040 License

110.041 Investigation; issuance; appeals

110.042 License; fees

110.043 Fixed location transient merchants

110.044 Duplicate and individual licenses

110.045 Revocation of license; procedure

110.046 Carnivals and street shows

Precious Metals Dealers

110.080 Definitions

110.081 Place of operation

110.082 Daily report to police; positive identification of sellers; photographs of purchases; retention of records

110.083 Purchases from minors

110.084 Goods to be held

110.085 Purchases of coins

110.086 Exemptions

Gambling Establishments

110.100 Simulated gambling devices restricted

110.999 Penalty

GENERAL PROVISIONS

§ 110.001 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context indicates or requires a different meaning.

BUSINESS. A calling, occupation, profession or activity engaged in the object of gain, benefit or advantage, either directly or indirectly.

CHARITABLE PURPOSE. A benevolent, philanthropic, patriotic or eleemosynary purpose which does not result in personal gain to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization. A charitable organization shall be deemed a business unless the entire proceeds of its operation are devoted to charitable purposes. Compensation in any form to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization shall not be deemed a necessary expense of operation.

CITY. The City of Goose Creek

CLASSIFICATION. That division of businesses by major groups subject to the same license rate as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationship of services or other bases deemed appropriate by City Council.

FINANCE DIRECTOR. A person designated to administer this chapter.

GROSS INCOME. The total revenue of a business, received or accrued, for one calendar year, collected or to be collected by a business within the city, excepting, therefrom, business done wholly outside of the city on which a license tax is paid to some other municipality or county and fully reported to the city or county. The term **GROSS RECEIPTS** means the value proceeding or accruing from the sale of tangible personal property, including merchandise and commodities of any kind and character and all receipts, by the reason of any business engaged in, including interest, dividends, discounts, rentals of real estate or royalties, without any deduction on account for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid or any other expenses whatsoever and without any deductions on account of losses. The **GROSS INCOME** for business license purposes shall conform to the gross income reported to the State Tax Commission or the State Insurance Commission. In the case of brokers or agents, **GROSS INCOME** shall mean gross commissions received or retained, unless otherwise specified. **GROSS INCOME** for insurance companies means gross premiums collected. **GROSS INCOME** for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds or funds, which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in **GROSS INCOME**. The **GROSS INCOME** 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 Insurance Commission or other government agency.

PERSON. Any individual, firm, partnership, LLP, LLC, cooperative nonprofit 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 principals.

(1985 Code, § 13-1) (Ord. 07-018, passed 11-13-2007)

§ 110.002 ADMINISTRATION; DESIGNATED OFFICERS; DUTIES.

The Finance Director, under the direction of the City Administrator, shall administer the provisions of this chapter, collect license fees, issue licenses, make or initiate investigations and audits to insure compliance, initiate denial or revocation procedures, report violations to the Police Department and assist in prosecution of violators, produce forms, make reasonable regulations relating to the administration of this chapter and perform other duties as may be duly assigned.

(1985 Code, § 13-2) (Ord. 07-018, passed 11-13-2007)

§ 110.003 INSPECTION AND AUDITS.

(A) For the purpose of enforcing the provisions of this chapter, the Finance Director or other authorized agent of the city is empowered to enter upon the premises of any person subject to this chapter to make inspections, examine and audit books and records. It shall be unlawful for any person to fail or refuse to make available the necessary books and records including copies of returns and reports filed with any governmental agency. In the event an audit or inspection reveals that false information has been filed by the licensee, the costs of the audit shall be added to the correct license fee and late penalties in addition to the other penalties provided herein. Each day of failure to pay the proper amount of license fee shall constitute a separate offense.

(B) The Finance Director may make systematic inspections and random audits of all businesses within the city to insure compliance with this chapter. Records of inspections and audits shall not be deemed public records, and the Finance Director shall not release the amount of license taxes paid or the reported gross income of any person by name without permission of the licensee, provided that statistics compiled by classifications may be made public.

(C) The Business License Inspector, upon approval of the Finance Director, may disclose gross income of licenses to the Internal Revenue Service, South Carolina Department of Revenue and other municipal or county offices for the purpose of assisting tax assessments, tax collections and enforcement. The disclosures shall be for internal, confidential and official use of these governmental agencies and shall not be deemed public records.

(1985 Code, § 13-3) (Ord. 07-018, passed 11-13-2007) Penalty, see § 110.999

§ 110.004 ASSESSMENTS; PAYMENT UNDER PROTEST; APPEAL.

(A) When a person fails to obtain a business license or to furnish the information required by this chapter, the Finance Director may proceed to examine the records of the business or any other available records as may be appropriate, and to conduct the investigations and statistical surveys as the Finance Director may deem appropriate to assess a license tax and penalties as provided herein.

(B) A notice of assessment shall be served by regular mail or hand delivery. An application for adjustment of the assessment may be made to the Finance Director within ten days after the notice is mailed, or the assessment will become final. The Finance Director shall establish, by regulation, the procedure for hearing an application for adjustment of assessment and issuing a notice of final assessment.

(C) A final assessment or other decision of the Finance Director may be appealed to the City Administrator and thereafter, to City Council. See § 110.016, which explains the procedures for appealing a final assessment, charge backs from an audit, revocation, suspension or a denial of a business license or other decision of the Finance Director related to business licenses.

(1985 Code, § 13-4) (Ord. 07-018, passed 11-13-2007)

§ 110.005 NOTICE OF LICENSE FEES.

The Finance Director may, but shall not be required, to serve or mail written notices that license fees are due. If notices are not mailed, there shall be published a notice of the due date in a newspaper of general circulation within the city three times during the month of December in each year. Failure to receive notice shall not constitute a defense to prosecution for failure to pay the tax due or grounds for waiver of penalties.

(1985 Code, § 13-5) (Ord. 07-018, passed 11-13-2007)

§ 110.006 LICENSE REQUIRED.

Every person engaged or intending to engage in any calling, business, occupation or profession in whole or in part, within the limits of the city, is required to pay an annual license fee for the privilege of doing business and obtain a business license as herein provided.

(1985 Code, § 13-6) (Ord. 07-018, passed 11-13-2007)

§ 110.007 PURPOSE AND DURATION OF LICENSE.

The business license levied by this chapter is for the purpose of providing the regulation as may be required of the business subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. Each license shall be issued for one calendar year beginning January 1 and shall expire on December 31. The provisions of this chapter and the rates herein shall remain in effect from year to year unless amended by City Council.

(1985 Code, § 13-7) (Ord. 07-018, passed 11-13-2007)

§ 110.008 REGISTRATION REQUIRED; LICENSE APPLICATION.

(A) The owner, agent or legal representative of every business subject to this chapter, whether listed in the classification index or not, shall register the business and make application for a business license on or before the due date of each year, except that a new business shall be required to have a business license prior to operation within the city.

(B) Application shall be on a form provided by the Finance Director which shall contain the social security number and/or the federal employer's identification number, the South Carolina Retail License Number (if applicable), the business name as reported on the South Carolina income tax return and all information about the applicant and the business deemed necessary to carry out the purpose of this chapter by the Finance Director. The applicant shall certify the information given in the application is true, and that the gross income is accurately reported or estimated for a new business, without any unauthorized deductions and all assessment and personal property taxes due and payable to the city have been paid. Applicants may be required to submit copies of portions of state and federal income tax returns reflecting gross income figures.

(C) The Finance Director may refuse to issue a business license until the applicant has demonstrated compliance with the City of Goose Creek Zoning Ordinance, Building Code, Electrical Code, Mechanical Code, Plumbing Code, Roofing Code and other regulatory codes as adopted by the City of Goose Creek, but issuance of a business license shall not be grounds to stop the city from enforcing the provisions of the Zoning Ordinance, Building Code, Electrical Code, Mechanical Code, Plumbing Code, Roofing Code and other regulatory codes.

(D) Insurance agents and brokers shall report the name of each insurance company for which a policy was issued and the total premiums collected for each company for each type of insurance coverage on a form approved by the license official. An insurance agent not employed by an insurance company or employed by more than one insurance company shall be licensed as a broker.

(1985 Code, § 13-8) (Ord. 07-018, passed 11-13-2007)

§ 110.009 LICENSE FEE ACCORDING TO CLASSIFICATION; DUE DATE; SEPARATE LICENSE; COMPUTATION OF FEE.

The license fee for each class of business shall be computed in accordance with the rate schedules established and approved by City Council and on file in the offices of the Finance Director and City Clerk.

(A) The required license fee shall be paid for each business subject hereto according to the applicable rate classification on or before the last day of February in each year, except for those businesses in rate class 8 for which a different due date is specified.

(B) A separate license shall be required for each place of business and for each classification of business conducted at one place. However, all classifications of business conducted at one place may be licensed, at the option of the Finance Director, under a single license calculated at the primary rate for each classification. The primary rate must be applied for each business. If gross income cannot be separated for classification at one location, the license fee shall be computed on the combined gross income for the classification requiring the highest rate.

(C) A license fee based on gross income shall be computed on the gross income for the preceding calendar or fiscal year, and on a 12 month projected income based on the monthly average for a business in operation for less than one year. The fee for a new business shall be computed on the estimated probable gross income stated in the license application for the balance of the license year. No refund shall be made for a business that is discontinued, or for an overpayment of a prior year license fee.

(1985 Code, § 13-9) (Ord. 07-018, passed 11-13-2007)

§ 110.010 DEDUCTIONS AND EXEMPTIONS.

(A) No deduction from gross income shall be made except from income from business done wholly outside the city on which a license tax is paid to some other municipality or county, or income which cannot be taxed pursuant to state or federal law. The applicant shall have the burden to establish the right to exempt income by satisfactory records and proof. No person shall be exempt from the requirements of this chapter by reason of the lack of an established place of business within the city, unless exempted by state or federal law.

(B) The Finance Director shall determine the appropriate classification for each business in accordance with the latest issue of the United States Bureau of Budget Standard Industrial Classification Manual. No person shall be exempt from this chapter by reason of the payment of any other tax, unless exempted by state law, and no person shall be relieved of the liability for the payment of any other tax by reason of the application of this chapter.

(1985 Code, § 13-10) (Ord. 07-018, passed 11-13-2007) Penalty, see § 110.999

§ 110.011 FALSE APPLICATION.

It shall be unlawful for any person, subject to the provisions of this chapter, to make a false application for a business license, or to give or file, or direct the giving or filing, of any false information with respect to the license or fee required by this chapter.

(1985 Code, § 13-11) (Ord. 07-018, passed 11-13-2007) Penalty, see § 110.999

§ 110.012 DISPLAY AND TRANSFER.

(A) All persons shall display the license issued to them on the original form provided by the Finance Director in a conspicuous place in the business establishment at the address shown on the license. A transient or nonresident shall carry the license upon the person or in a vehicle used in the business readily available for inspection by an authorized agent of the city.

(B) A change of address must be reported to the Finance Director within ten days after removal of the business to a new location, and the license will be valid at the new address upon written notification of the Finance Director and compliance with zoning and building codes. Failure to obtain the approval of the Finance Director for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without a license.

(C) A business license shall not be transferable and a transfer of controlling interest shall be considered a termination of the old business and the establishment of a new business requiring a new business license. The license is to be based on the old business income.

(1985 Code, § 13-12) (Ord. 07-018, passed 11-13-2007)

§ 110.013 DELINQUENT LICENSE FEE.

(A) The Finance Director shall levy and collect a penalty on all licenses that are paid after the due date and all licenses not paid prior to operation. Penalties shall not be waived. For non-payment of all or any part of the correct license fee, a late penalty of 5% of the unpaid fee will be levied and collected for each month or portion thereof after the due date until paid. For non-payment of a business license prior to operation, a penalty of 5% of the unpaid fee will be levied and collected for each month or portion thereof from the date of initial operations. If any license fee shall remain unpaid for 60 days after its due date, the Finance Director may issue an execution which shall constitute a lien upon the property of the licensee for the tax, penalties and costs of collection, and shall proceed to collect the same in the same manner as prescribed by law for the collection of other taxes.

(B) Partial payment may be accepted by the Finance Director to toll imposition of penalties on the portion paid; provided, however, no business license shall be issued or renewed until the full amount of the tax due, with penalties, has been paid.

(1985 Code, § 13-13) (Ord. 07-018, passed 11-13-2007)

§ 110.014 DENIAL OF LICENSE.

(A) The Finance Director shall have authority to deny or revoke any business license under the provisions set forth in this section and it is determined that:

- (1) The application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of material fact;
 - (2) The applicant has outstanding bench warrants or arrest warrants;
 - (3) The activity for which a license is sought is unlawful, or violates a city ordinance or constitutes a public nuisance;
 - (4) The applicant who has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude, an unlawful sale of merchandise or prohibited goods or has engaged in an unlawful activity or nuisance related to the business;
 - (5) For a period of three years after a revocation of a business license, no new license shall be granted to:
 - (a) The same licensee; or
 - (b) The licensee's agent or any person who can be shown to be acting on the licensee's behalf in attempting to do business in the city; or
 - (c) No business license shall be granted to any applicant for the operation of the same or similar type of business in the same location when the prior applicant has been the subject of a revocation by the Finance Director in which all avenues of appeal have been sought and upheld.
- (B) The Finance Director shall not issue a business license to any person until the time as any outstanding bench warrants and arrest warrants have been cleared. A decision of the Finance Director to deny or not issue shall be subject to appeal to the City Administrator and City Council as herein provided. Denial shall be written with reasons stated.

(Ord. 09-010, passed 12-8-2009)

§ 110.015 SUSPENSION OR REVOCATION OF LICENSE.

(A) When the Finance Director determines that:

- (1) A license has been mistakenly or improperly issued or issued contrary to law;
- (2) A licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this chapter;

- (3) A licensee has obtained a license through fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application;
- (4) A licensee has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude or an unlawful sale of merchandise or prohibited goods; or
- (5) A licensee has engaged in an unlawful activity or nuisance related to the business.

(B) The Finance Director shall give written notice to the licensee or the person in control of the business within the city by personal service or certified mail that the license is suspended pending an appeal to City Council. The notice shall state the time and place at which the hearing is to be held, which shall be within 30 days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this chapter.

(1985 Code, § 13-15) (Ord. 07-018, passed 11-13-2007)

§ 110.016 APPEALS TO CITY ADMINISTRATOR AND CITY COUNCIL.

(A) Any person aggrieved by a final assessment, charge backs from an audit, revocation and/or suspension, denial of a business license by the Finance Director may appeal the decision to the City Administrator by written request stating the reasons therefor. The appeal must be filed with the City Administrator within ten days after the payment of the assessment under protest or notice of assessment, charge backs from an audit, revocation, suspension or a denial of a business license is received. Payment under protest shall be a condition precedent to appeal. The fee will be refunded in the event of final resolution of the appeal in favor of the appellant.

(B) An appeal or a hearing from final assessment, charge backs from an audit, revocation, suspension, denial or other decision of the Finance Director shall be held by the City Administrator after receipt of a request for appeal. At the hearings, all parties shall have the right to be represented by counsel and to present testimony, evidence and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The decision of the City Administrator, shall be final unless appealed to City Council within ten days after service of the City Administrator's decision.

(C) An appeal to City Council shall be held within 30 days after receipt of a request for appeal or service of notice of suspension at a regular or special meeting, of which the applicant or licensee has been given written notice, unless continued by agreement. City Council shall review the records and without further oral argument or presentation of evidence will affirm, modify or deny the appeal. City Council shall, by majority vote of members present, render a decision which shall be final unless appealed to a court of competent jurisdiction within ten days after service of City Council's decision.

(D) No person shall be subject to prosecution for doing business without a license until the expiration of ten days after notice of final assessment, charge backs from an audit, suspension or revocation which is not appealed or until after final judgment of the circuit court upholding final

assessment, charge backs from an audit, denial, suspension or revocation. A person who has been denied a license hereunder shall be subject to prosecution until a license is issued.

(1985 Code, § 13-16) (Ord. 07-018, passed 11-13-2007)

§ 110.017 PERMISSION TO USE STREETS REQUIRED.

It shall be unlawful for any person to construct, install, maintain or operate in, on, above or under any street or public place under control of the city, any line, pipe, cable, pole, structure or facility for utilities, communications, cable vision or other purposes without a consent agreement or franchise agreement issued by City Council, by ordinance which prescribes the term, fees and conditions for use.

(1985 Code, § 13-17) (Ord. 07-018, passed 11-13-2007) Penalty, see § 110.999

§ 110.018 CONSENT, FRANCHISE OR BUSINESS LICENSE FEE REQUIRED.

The annual fee for use of streets or public places authorized by a consent agreement or franchise agreement shall be set by the ordinance approving the agreement and shall be consistent with uppermost limits set by state law. Existing franchise agreements shall continue in effect until expiration dates in the agreements. Franchise and consent fees shall not be in lieu of or be credited against business license fees unless specifically provided by the franchise or consent agreement.

(1985 Code, § 13-18) (Ord. 07-018, passed 11-13-2007)

§ 110.019 CONFIDENTIALITY.

Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for any official or employee to divulge or make known in any manner, the amount of income or any particulars set forth or disclosed in any report or return required under this chapter. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns. Any license data may be shared with other public officials or employees in the performance of their duties, whether or not those duties relate to enforcement of this chapter.

(1985 Code, § 13-19) (Ord. 07-018, passed 11-13-2007) Penalty, see § 110.999

ORDINANCES OF OTHER JURISDICTIONS

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-08-2814

Plaintiff,

City of Goose Creek,

Defendant.

Definitions of Gross Income

Abbeville

Sec. 9-27 – Definitions

Gross income means the total revenue of a business, received or accrued, for one calendar year collected or to be collected from business done within the city, except there from income from business done wholly outside of the city on which a license tax is paid to some other municipality or a county and fully reported to the city. The gross income for business license purposes may be verified by inspection of returns filed with the Internal Revenue Service, the South Carolina Tax Commission for tax purposes, or the South Carolina Insurance Commission. In the case of brokers or agents, gross income shall mean gross commissions retained. Gross income for insurance companies shall mean gross premiums collected. (Ord. No. 15-99, § 2, 9-14-99).

Aiken

Sec. 12-32 - Definitions

Gross income means the total income of a business, received or accrued, for one calendar year or business fiscal year collected or to be collected from business done within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other city or a county and fully reported to the city. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income.

The gross income 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 Insurance Commission, or other government agency.

Anderson.

Sec. 26-37 Definitions

Gross income means the total income of a business, received or accrued, for one calendar year collected or to be collected from business done within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other city or a county and fully reported to the city. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income 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 Insurance Commission, or other government agency.

Beaufort

Sec. 7-1002 – Definitions

Gross income means the total revenue of a business, received or accrued, for one calendar year collected or to be collected by a business within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other municipality or a county and fully reported to the city. Gross income includes income realized in any form, whether in money, property or services.

Income may be realized, therefore, in the form of services, meals, accommodations, stock or other property, as well as cash. The gross income for business license purposes shall conform to the gross income reported to the South Carolina Tax Commission or the South Carolina Insurance Commission.

In the case of brokers or agents, gross income shall mean gross commissions retained.

(Ord. of 1-9-79, § 2; Ord. No. O-02-86, § 1, 1-28-86; Ord. No. O-04-88, § 1, 2-9-88; Ord. No. O-26-91, 7-23-91; Ord. No. O-29-92, 11-24-92; Ord. No. O-9-93, 1-26-93; Ord. No. O-27-93, 9-28-93; Ord. No. O-36-93, 11-23-93; Ord. No. O-18-96, 4-9-96; Ord. No. O-36-96, 9-10-96; Ord. No. O-38-97, 12-9-97; Ord. No. O-19-04, 7-27-04)

Bennettsville

Sec. 110.02 – Definitions

Gross Income - The total revenue of a business, received or accrued, for one calendar year collected or to be collected by a business within the city, excepting therefrom income from interstate commerce, except for insurance companies as provided in Classification 8 in the appendix to this chapter, and from business done wholly outside of the city on which a license tax is paid to some other municipality. The GROSS INCOME for business license purposes shall conform to the GROSS INCOME reported to the South Carolina Tax Commission or the South Carolina Insurance Commission. In the case of brokers or agents, GROSS INCOME shall mean gross commissions retained.

Camden

Sec. 110.02 – Definitions

Gross Income - The total income of a business, received or accrued, for one calendar year collected or to be collected from business done within the municipality, excepting income from business done wholly outside of the municipality on which a license tax is paid to some other municipality or a county and fully reported to the municipality. "GROSS INCOME" for brokers or agents means gross commissions received or retained, unless otherwise specified. "GROSS INCOME" for insurance companies means gross premiums collected. "GROSS INCOME" for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in "GROSS INCOME". The "GROSS INCOME" 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 Insurance Commission or other government agency.

Cayce

Sec. 12-37 – Definitions

Gross income means the total income of a business, received or accrued, for one calendar year collected or to be collected from business done within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other city or a county and fully reported to the city. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income 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 Insurance Commission, or other government agency.

Charleston

Sec. 2 - Definitions.

"Gross Income" means the total income of a business, received or accrued, for one calendar year collected or to be collected from business done within the City. Gross Income from interstate commerce shall be included in gross income for every business subject to a business license tax. Gross Income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross Income for insurance companies means gross premiums collected. Gross Income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party and held in escrow. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income 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 Insurance Commission, or other government agency.

Chester

Sec. 11-82 – Definitions

Gross income means the total income of a business, received or accrued, for one calendar year collected or to be collected from business done within the City, excepting there from income from business done wholly outside of the City on which a license tax is paid to some other municipality or a county and fully reported to the City. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income 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 Insurance Commission, or other government agency.

Clinton

Sec.18-2 – Definitions

"Gross Income" means the total revenue of a business, received or accrued, for one calendar year collected or to be collected from business done within the city, except therefrom income from business done wholly outside of the city on which a license tax is paid to some other municipality or a county and fully reported to the city. The gross income for business license purposes may be verified by inspections of returns filed with the Internal Revenue Service, the South Carolina Department of Revenue for income tax purposes, or the South Carolina Insurance Commission. Gross income for insurance companies shall mean gross premiums collected.

Columbia

Sec. 11-32 – Definitions

Gross income means the total revenue of a business received or accrued for one calendar year collected or to be collected by a business within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other municipality or a county and fully reported to the city. The gross income for business license purposes shall conform to the total income reported to the Internal Revenue Service, as defined by section 61 of the Internal Revenue Code for income tax purposes, or the state insurance commission, without deductions. In the case of brokers or agents, gross income shall mean gross commissions retained.

(Code 1979, § 8-1002; Ord. No. 93-98, 1-5-94; Ord. No. 2010-144, 11-9-10; Ord. No. 2011-093, 12-30-11)

Conway

Sec. 7-1-2 – Definitions

Gross income means the total revenue of business, received or accrued, for one calendar year collected or to be collected by a business located within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other municipality or a county and fully reported to the city. The gross income for business license purposes shall conform to the gross income reported to the Internal Revenue Service, the South Carolina Tax Commission for income tax purposes, or the South Carolina Insurance Commission. In the case of brokers or agents, "gross income" means gross commissions retained.

Dillon

Sec. 7-1-2 Definitions

Gross Income means the total revenue of a business, received or accrued, for one (1) calendar year collected or to be collected by a business within the city, excepting therefrom income from interstate commerce and from business done wholly outside of the city on which a license tax is paid to some other municipality or a county and fully reported to the city. The gross income for business license purposes shall conform to the gross income reported to the South Carolina Department of Revenue of the South Carolina Insurance Commission. In the case of brokers or agents, gross income shall mean gross commissions retained.

(Ord. passed 8-11-1986; Am. Ord. 97-04, passed 3-10-1997)

Florence

Sec. 13-1 Definitions

Gross income means the total revenue of a business, received or accrued, for one (1) fiscal year collected or to be collected by a business within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other municipality or a county and fully reported to the city. The gross income for business license purposes shall conform to the gross income reported to the South Carolina Tax Commission or the South Carolina Insurance Commission. In the case of brokers or agents, gross income shall mean gross commissions retained.

(Ord. No. 90-02-26(B), as amended by Ord. No. 92-07-27(A), 7/13/92)

Forest Acres

Sec. 9-2 – Definitions

Gross income means the total revenue of a business, received or accrued, for one (1) calendar year collected or to be collected by a business located within the city or located outside the city and doing business within the city, excepting therefrom income from an activity without a substantial nexus within South Carolina and from business done wholly outside of the city on which a license tax is paid to some other municipality or county and fully reported to the city. The gross income for business license purposes shall conform to the gross income reported to the Internal Revenue Service or the South Carolina Insurance Commission. In the case of brokers or agents, gross income shall mean gross commissions retained.

Gaffney

Sec. 14-20 – Definitions

Gross income means the total income of a business, received or accrued, for one calendar year collected or to be collected from business done within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other city or a county and fully reported to the city. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the state department of revenue, the state insurance commission, or other government agency.

Georgetown

Sec. 13-17 – Definitions

Gross income means the total revenue of a business, received or accrued, for one (1) calendar or fiscal year collected or to be collected by a business within the city, except therefrom income from business done wholly outside of the city on which a license tax is paid to some other municipality or a county and fully reported to the city. The gross income for business license purposes may be verified by inspection of returns filed with the Internal Revenue Service, the South Carolina Department of Revenue for income tax purposes, or the South Carolina Insurance Commission. In the case of brokers or agents, gross income shall mean gross commissions retained. Gross income for insurance companies shall mean gross premiums collected.

Greenville

Sec. 8-501 Definitions

Gross revenues: All cash, credits, property, or other consideration of any kind or nature received directly or indirectly by the franchisee, its subsidiaries, parent or any subsidiary of its parent, arising from, attributable to, or in any way derived from the sale or exchange of cable services by the franchisee within the city. Gross revenues includes, but is not limited to, monthly fees charged to subscribers for basic service; monthly fees charged to subscribers for any optional, premium or per-channel or per-program service; monthly fees charged to subscribers for any tier of service other than basic service; installation, disconnection, reconnection and change-in-service fees; leased channel fees; fees, payments or other consideration received from programmers for carriage of programming on the system; converter fees, rentals or sales; studio rental, production equipment and personnel fees (but not for non-cable purposes); advertising revenues; revenues derived by the franchisee from home shopping channel sales to city residents; and the sales, exchange or cablecast by the franchisee of any programming developed on or for access channels or institutional users. Revenues received by franchisee from the delivery of Internet access service over its cable system shall be included in gross revenues until such time as a final non-appealable determination by the FCC or a court with jurisdiction over the city determines that franchise fees are not assessable on such revenues. Advertising and home shopping revenues shall be allocated on a pro-rata basis based on the proportion of total subscribers on franchisee's cable system represented by subscribers residing within the city. Gross revenues shall be the basis for computing the franchise fee imposed pursuant to section 8-553 hereof. Gross revenues shall not include any taxes on services furnished by the franchisee (other than the franchise fee) which are imposed on any subscriber or user by the state, county, city or other governmental unit and collected by the franchisee on behalf of said governmental unit.

Greenwood

Sec. 10-27 – Definitions

Gross income means the total income of a business, received or accrued, for one calendar year collected or to be collected from business done within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other municipality or a county and fully reported to the city.

Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified.

Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, state department of revenue, state insurance commission, or other government agency.

Gross income for insurance companies means gross premiums collected.

Greer

Sec. 18-32 – Definitions

Gross income means the total revenue of a business, received or accrued, for one calendar year collected or to be collected from business done within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other city or a county and fully reported to the city. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income for business license purposes may be verified by inspection of returns and reports filed with the internal revenue service, the state department of revenue, the state insurance commission, or other government agency.

Hartsville

Sec. 14-31 – Definitions.

Gross income means the total revenue of a business, received or accrued, for one calendar year collected or to be collected from business done within the city, except therefrom income from business done wholly outside of the city on which a license tax is paid to some other municipality or a county and fully reported to the city. The gross income for business license purposes may be verified by inspection of returns filed with the Internal Revenue Service, the state tax commission for income tax purposes, or the state insurance commission. For brokers or agents, gross income means gross commissions retained. Gross income for insurance companies means gross premiums collected.

Hilton Head

Sec. 10-1-20 – Definitions

Gross income: The total revenue of a business, received or accrued, for one fiscal year collected or to be collected by reason of the conduct of business within the town, excepting therefrom income from business done wholly outside of the town on which a license tax is paid to some other municipality or a county and fully reported to the town. Gross income from interstate commerce shall be included in the gross income for every business subject to a business license fee. The gross income for business license purposes shall conform to the gross income reported to the Internal Revenue Service, the South Carolina Department of Revenue and Taxation, or the South Carolina Insurance Commission. In the case of brokers, or agents, gross income shall mean gross commissions retained. Gross receipts for insurance companies shall mean gross premiums collected.

Isle of Palms

Sec. 7-1-2 Definitions

Gross income means the total revenue of a business, received or accrued, for one (1) calendar year collected or to be collected from business done within the City, excepting therefrom income from business done wholly outside of the City on which a license tax is paid to some other city or a county and fully reported to the City. Gross income for brokers or agents means gross commissions received or retained. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the State Department of Revenue, the State Insurance Commission, or other government agency.

Mount Pleasant

Sec. 110.21 Definitions

Gross income means gross receipts consisting of the total revenue of a business, received or accrued, for one calendar year, collected or to be collected from business done within the town, excepting therefrom income from business done wholly outside of the town on which a license tax is paid to some other city or a county and fully reported to the town. The gross receipts 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 Insurance Commission, or other government agency. GROSS INCOME for brokers or agents means gross commissions received or retained, unless otherwise specified. GROSS INCOME for insurance companies means gross premiums collected. GROSS INCOME for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in GROSS INCOME. Real estate companies that sell or manage property on behalf of others shall report gross commissions for all its brokers, property managers and agents. See definition of "real estate activity."

Summerville

Sec. 8-32 Definitions

Gross income means the total income of a business, received or accrued, for one calendar year collected or to be collected from business done within the town, excepting therefrom income from business done wholly outside of the town on which a license tax is paid to some other town or a county and fully reported to the town. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income 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 Insurance Commission, or other government agency.

Lancaster

Sec. 12-2 – Definitions

Gross income means the total income of a business, received or accrued, for one (1) year collected or to be collected from business done within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other city or a county and fully reported to the city. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income 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 Insurance Commission, or other government agency.

Myrtle Beach

Sec. 11-22 – Definitions

Gross income means the total revenue of a business, received or accrued, for one calendar year collected or to be collected by a business located within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other municipality or a county and fully reported to the city. The gross income for business license purposes may be verified by inspection of returns filed with the Internal Revenue Service, the state tax commission for income tax purposes, or the state insurance commission. In the case of brokers or agents, gross income shall mean gross commissions retained. Gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

Newberry

Sec. 10-2 Definitions

Gross income means the total income of a business, received or accrued, for one calendar year collected or to be collected from business done within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other city or a county and fully reported to the city. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income 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 Insurance Commission, or other government agency.

North Augusta

Sec. 15-2 – Definitions

Gross income means the total income of a business, received or accrued, for one (1) calendar year collected or to be collected from business done within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other city or a county and fully reported to the city. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for bingo means receipts as reported to the secretary of state and shall include all prize money. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the state department of revenue, the state insurance commission, or other government agency.

North Charleston

Sec. 10.5-17 – Definitions

Gross income means the total revenue of a business, received or accrued, for one (1) calendar or fiscal year collected or to be collected by the business excepting income from business done wholly outside of the city on which a license tax is paid to some other city or a county and fully reported to the city. The term "gross receipts" means the value proceeding or accruing from the sale of tangible personal property, including merchandise and commodities of any kind and character and all receipts, by the reason of any business engaged in, including interest, dividends, discounts, rentals of real estate or royalties, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, or any other expenses whatsoever and without any deductions on account of losses. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income 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 Insurance Commission, or other government agency.

North Myrtle Beach

Sec. 7-2 – Definitions

Gross income means the total income of a business, received or accrued, for one (1) calendar year collected or to be collected from a business done within the city, excepting therefrom income from business done wholly outside the city on which a license tax is paid to some other municipality or a county and fully reported to the city. Gross income for a broker or agents means gross commission received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums otherwise specified. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of the third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income 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 Insurance Commission, or other government agency.

Rock Hill

Sec. 11-32 – Definitions

Gross income means the total income of a business, received or accrued, for one calendar year collected or to be collected from business done within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other city or a county and fully reported to the city. Gross income for brokers or agents means gross commissions received or retained. If a broker pays a license based on gross commissions received and includes a certification statement with a list of the agents whose commissions were included, the agents listed would not be required to pay a license tax on those commissions. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income 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 Insurance Commission, or other government agency.

Seneca

Sec. 2 – Definitions

"Gross Income" means the total income of a business, received or accrued, for one calendar year collected or to be collected from business done within the City, excepting therefrom income from business done wholly outside of the City on which a license tax is paid to some other City or a county and fully reported to the City. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected from a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income 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 Insurance Commission, or other government agency.

Simpsonville

Sec. 10-42 Definitions

Gross Income means the total revenue of a business, received or accrued for one calendar year collected or to be collected from business done within the city, less, however, income from business done wholly outside of the city on which a license tax is paid to some other municipality or a county and fully reported to the city. The gross income for business license purposes may be verified by inspection of returns filed with the Internal Revenue Service, the state tax commission for income tax purposes, or the state insurance commission. In the case of brokers or agents, gross income shall mean gross commissions retained. Gross income for insurance companies shall mean gross premiums collected.

Spartanburg

Sec. 2 Definitions

"Gross Income" means that every person liable for the payment of a license tax under this chapter based upon gross receipts, in make application for a License, shall include and report the gross amount of all receipts from all business done in whole or in part within the City during the preceding calendar year, or in the case of fiscal year taxpayers, during the fiscal year that ended in the preceding calendar year, and the amount of tax shall be computed thereon unless otherwise provided herein. No license based on gross receipts, or otherwise, shall be issued except upon oath of the applicant that the applicant's report of gross receipts, or otherwise, conforms to the books and records of the applicant's business and with the report or return of such gross receipts, or otherwise, for the corresponding period made or to be made to the Internal Revenue Service of the United States, the South Carolina Department of Revenue or the Insurance Commissioner of the State, as the case may be. In addition to the foregoing information the Application shall contain the Social Security Number and/or the Federal Employer's Identification Number.

Sumter

Sec. 2 Definitions

Gross income means the total revenue of a business, received or accrued, for one calendar year collected or to be collected by a business located within the City, excepting therefrom income from business done wholly outside of the City on which a license tax is paid to some other municipality or a county and fully reported to the City. The gross income for business license purposes may be verified by inspection of returns filed with the Internal Revenue Service, the South Carolina Tax Commission for income tax purposes, or the South Carolina Insurance Commission. In the case of brokers or agents, gross income shall mean gross commissions retained.

Union

Sec. 5-7 - Definitions

Gross income means the total revenue of a business, received or accrued, for one (1) calendar year collected or to be collected from business done within the city, except therefrom income from business done wholly outside of the city on which a license tax is paid to some other municipality or a county and fully reported to the city. The gross income for business license purposes may be verified by inspection of returns filed with the Internal Revenue Service or South Carolina Department of Revenue for income tax purposes or the South Carolina Insurance Commission. In the case of brokers or agents, gross income shall mean gross commissions retained. Gross income for insurance companies shall mean gross premiums collected.

Walterboro

Sec. 8-20 – Definitions

Gross income means the total revenue of a business, received or accrued, for one calendar year collected or to be collected from business done within the City, except therefrom income from business done wholly outside of the City on which a license tax is paid to some other municipality or a county and fully reported to the City. The gross income for business license purposes may be verified by inspection of returns filed with the Internal Revenue Service, the South Carolina Tax Commission for income tax purposes, or the South Carolina Insurance Commission. In the case of brokers or agents, gross income shall mean gross commissions retained. Gross income for insurance companies shall mean gross premiums collected.

West Columbia

Sec. 7-1-2 Definitions

Gross income means the total income of a business, received or accrued, for one (1) calendar year collected or to be collected from business done within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other city or a county and fully reported to the city. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income 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 Insurance Commission, or other government agency.

York

Sec. 10-34 – Definitions.

Gross income means the total revenue of a business, received for one calendar year collected by a business within the city, excepting therefrom income from interstate commerce and from business done wholly outside of the city on which a license tax is paid to some other municipality. The gross income for business license purposes shall conform to the gross income reported to the state department of revenue or the state insurance commission. In the case of brokers or agents, gross income shall mean gross commissions retained. Insurance agents shall not be charged a business license fee on property and casualty insurance commissions.

Appeals

Greenville

Sec. 8-44. - Notice of denial or revocation; hearing; appeals.

(a) Notice. Where grounds exist to deny or revoke a license under this article, the business license administrator shall provide written notice to the licensee or applicant setting forth the grounds, revoking the license effective 45 days from the date of the notice, and advising the licensee or applicant of appeal procedures.

(b) Hearing. The applicant or licensee may, within five working days from the date of the notice, request a hearing to contest the grounds or request an extension of time to close the business. The hearing shall be held within 15 days unless additional time is allowed by the city manager. The hearing officer shall be a supervisory employee designated by the city manager. The licensee or applicant may be represented by an attorney and may present witnesses, affidavits and any relevant documentary evidence. The licensee may view and copy any documentary evidence prior to the hearing. Formal rules of evidence shall not apply. The hearing officer shall prepare a summarized report of the hearing, to include his findings and recommendations, which shall be submitted to the city manager, who shall take final administrative action, notifying the licensee or applicant in writing. Unless extended in writing by the city manager, any revocation is effective 45 days from the date of the original notice to the licensee.

(c) Appeals. An appeal, which shall not stay the revocation, may be taken upon the written record to the city council. Notice of such appeal shall be served upon the city clerk within five days from the final action by the city manager, specifying the grounds for the appeal and the action requested. The record shall consist of the report of the hearing officer, any documentary evidence presented at the hearing, and the written appeal. The council may, in its discretion, hear oral arguments on the appeal.

(Ord. No. 2004-44, § 2, 6-28-04)

North Charleston

Sec. 10.5-34. - Appeals to council.

(a) Any person aggrieved by a final assessment, charge backs from an audit or a denial of a business license by the license official may appeal the decision to the business license/user fee appeals board by written request stating the reasons therefore. The appeal must be filed with the license official within ten (10) days after the payment of the assessment under protest or notice of denial is received. A written notice of appeal must be accompanied with a twenty-five dollar (\$25.00) fee that will be used to partially defray the costs incurred in connection with the administration of appeals. Payment under protest shall be a condition precedent to appeal. The fee will be refunded in the event of final resolution of the appeal in favor of the appellant.

(b) An appeal or a hearing on revocation shall be held by the appeals board after receipt of a request for appeal or service of notice of suspension at a meeting of which the applicant or licensee has the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by the board shall govern the hearing. The board shall, by majority vote of members present, render a written decision based upon findings of fact and the application of the standards herein which shall be served upon all parties or their representatives. The decision of the board shall be final unless appealed to city council with ten (10) days after service of the board's decision. City council shall review the record and without further hearing affirm, modify, or deny the appeal. The decision of council shall be final unless appealed to a court of competent jurisdiction within ten (10) days after service of city council's decision.

(c) No person shall be subject to prosecution for doing business without a license until the expiration of ten (10) days after notice of denial or revocation which is not appealed or until after final judgment of a circuit court upholding denial or revocation.

**MUNICIPAL ASSOCIATION OF
SOUTH CAROLINA
BUSINESS LICENSE HANDBOOK**

Foreword

This handbook is a working tool for license inspectors to help interpret and administer the business license ordinance. It is also a training guide for elected officials and business license officials and a resource for license officials participating in the SC Business Licensing Officials Association certification program.

The handbook does not address every problem that could arise, but it does offer guidance in how to deal with most frequently encountered issues. The legal basis for some comments is included, but unusual situations should be referred to an attorney for specific advice.

The suggested procedures may require occasional revision to adapt to changes in state law, the license ordinance and field experience.

This handbook replaces earlier versions published in 1989, revised in 1991, 1995, 1997, 2000 and 2006.

The Municipal Association wishes to thank Roy Bates and Danny Crowe for their work on previous editions which has been incorporated in this revision.



Miriam Hair
Executive Director

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July 2010

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Part 1 – Business License Concept

Definition of Business License

Licensing of a trade may be referable to the police power of a local governing body when done to regulate avocations that disturb public order, health or morality. However, a business license ordinance enacted to raise revenue is an ordinance levying a tax. *State v. Columbia*, 6 S. C. 1 (1874).

A business license tax 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 SC 403 (1873). It is not a sales or income tax, although it is measured by gross income.

A business license fee is an excise tax levied on the privilege of doing business, and the value of the privilege extended is measured by the business's gross receipts. It does not apply to those who work for wages or salary but only to those in business for themselves. *Hay v. Leonard*, 212 SC 81, 46 S.E. 2d 653 (1948); *Carter v. Linder*, 303 SC 119, 399 S.E.2d 423 (1990).

State Laws Authorizing Business License Taxes

Municipalities

- (a) **Gross Income.** SC Code Sec. 5-7-30 authorizes each municipality to levy a business license tax measured by gross income. No other basis is authorized, except for certain businesses. Railroads, telecommunications and insurance companies are subject to special statutes. See Part 2 for a discussion of what constitutes gross income.
- (b) **Surtax For Parking.** Sec. 5-7-30 also allows a municipality to levy a surtax on a business license in a designated area to provide and maintain parking for a downtown commercial area. A petition by two-thirds of the affected licensed taxpayers is required.
- (c) **Wholesalers and Lenders.** Sec. 5-7-30 limits taxation of wholesalers and real estate lenders to municipalities in which they maintain a warehouse or place of business.
- (d) **Annexed Business.** SC Code Sec. 5-21-60 requires prorating the license tax for a business annexed into a municipality for the number of months it is located in the municipality.

Counties

SC Code Sec. 4-9-30(12) authorizes a county to levy uniform license taxes on businesses in the county but outside corporate limits of a municipality. The statute exempts teachers, ministers, rabbis, telephone, telegraph, gas and electric utilities, or other utilities regulated by the Public Service Commission, insurance companies, entities exempt under another law, and a business

was upheld by the Georgia Supreme Court in *Pharr Road Investment Co. v. City of Atlanta*, 224 Ga. 752, 164 S.E. 2d 803 (1968), and was ruled constitutional in principle by the SC Supreme Court in *Southern Bell v. Aiken* (1983). In *North Carolina Land Corp. v. City of North Charleston*, 281 S. C. 470, 316 S.E. 2d 137 (1984), the court upheld the classification system's constitutionality based upon ability to pay. The court first recognized the profit concept in 1873 in *State v. Hayne*, 4 S. C. 403. Both the SIC and NAICS classification ordinances discussed above are based on ability to pay as determined by an index of ability to make a profit calculated from nationwide IRS statistics.

Gross Income

Basis for Tax

The general statutory basis for levying a business license tax requires it to be measured by gross income. SC Code Sections 4-9-30(12) and 5-7-30. The number of employees, capital invested, net income or losses and taxable income may not be used to calculate the business license tax. As noted in Part 1 (page 4), certain businesses are subject to state statutory provisions requiring business license taxes be levied on population, gross premiums or with limitations as to what revenue is included in gross income and limitations on rates.

Gross Income Defined

Gross income may be defined by the license ordinance and generally means all revenue received from the business operation without any deductions for such things as cost of goods, overhead, salaries or costs of sale. It should conform to the gross figure reported on the business' federal income tax return. Section 61(a) of the Internal Revenue Code defines gross income as "all income from whatever source derived." Although there are no allowable deductions from gross income for business license purposes, there are certain receipts customarily included on the income tax return in gross income and later deducted that are not really business income. These receipts are considered exempt income for business license purposes because the funds are not retained by the business and do not constitute actual income.

Exempt Income

Most early license ordinances exempted income from interstate commerce under US Supreme Court decisions prior to 1977. Since the decision in *Complete Auto Transit, Inc. v. Brady*, 430 US 274 (1977) allowing taxation of interstate commerce activities meeting four tests laid down by the Court, most ordinances have been amended to delete the interstate commerce exemption. Taxation of interstate commerce is treated in more detail in Part 3.

Counties are required to exempt income received from activities in another county or a municipality to which a license tax is paid. SC Code Sec. 4-9-30(12). Municipalities are also required to do the same under SC Code Sec. 5-7-30. This treatment was approved in *Eli Witt Co. v. City of West Columbia*, 309 SC 555, 425 S.E.2d 16 (1992).

Taxes, such as gasoline and sales taxes, collected by businesses are not income and should not be included in reported gross income. The same is true for the portions of fees and commissions divided with others. Such funds reported as income would result in a higher license fee because no

deductions are permitted in the manner for which income tax deductions may be taken. Only income to the business should be reported in the gross figure for business license tax purposes.

The tax on cigarettes is part of the wholesale price of the cigarettes and is not collected and remitted by the retailer. The cigarette tax is **not** exempt income.

Many license ordinances provide for using federal and state income tax returns to verify gross income reported for license purposes. This sometimes leads to discussion of whether the amount reported on Schedule C, Line 1, is the proper amount to be used when a business reports returns and allowances resulting in a reduced gross income. The amount of gross receipts on which a business license tax may be levied is the amount of actual gross income to the owner. It does not include funds collected for others as noted, and it does not include funds returned to customers in the tax year, although the books of the business may show the funds as receipts which are later reduced by deductions for income tax purposes. The actual business gross income does not include funds collected but not retained as income. The fact that business bookkeeping practices are driven by income tax considerations does not change this.

There are no exemptions for cost of goods sold or business expenses. These are deductions for income taxes levied on taxable income calculated under rules that are quite different from business license rules. Returns are not business expenses.

The burden is on the taxpayer to demonstrate exemption entitlement. There are no deductions for business license calculations. The licensing official should examine records considered relevant to determine what is actual gross income.

Income from Government Projects

Income from contracts or activities performed for the state or its political subdivisions and agencies is not exempt from business license taxes. There is no statutory exemption, and courts have ruled that although license fees may cause a higher contract price, this does not amount to a tax on another governmental unit. *North Myrtle Beach v. SC Public Service Authority (Santee Cooper)* [SC Circuit Court, 1991].

Income from a federal project is not exempt unless the work is performed on territory over which jurisdiction has been ceded by state statute to the federal government (for example, military bases and post offices; see SC Code Sec. 3-1-10, et seq.). If the tax is not laid on the federal government, even though the economic burden falls on the government, there is no immunity from the tax. *US v. County of Fresno*, 429 US 452; *US v. New Mexico*, 455 US 720; and *Washington v. US*, 103 S.Ct. 1344.

State or federal immunity from taxation cannot be transferred to a third party.

Outside Income Included

A business located in a municipality or county that does business beyond the boundaries of the taxing entity may be subject to a business license tax computed on total income on which a tax has not been paid to another municipality or county. The right to base the license fee on total receipts has

been confirmed by the State Supreme Court in *Triplett v. City of Chester*, 209 SC 455, 40 S.E. 2d 684 (1946); and *Eli Witt Co. v. City of West Columbia*, 309 SC 555, 425 S.E.2d 16 (1992).

The Court in the *Triplett* case said that a municipal corporation's right to impose a business license tax on a corporation for business conducted within the city limits, although part of the business was carried on outside the municipality, was generally recognized. The controversy arose over levying a license upon a general contractor whose business was constructing highway and railroad bridges in various parts of South Carolina and in other states. He had never done any actual construction work in the City of Chester. He established a central office in a building owned by him in the city. The Court said:

The administrative and executive work, an indispensable phase of respondent's business, was conducted in the office established, maintained and operated in the City. This portion of his business enjoyed all the advantages afforded by the municipal government of Chester to any other business conducted within its corporate limits. We cannot dissociate the managerial features of the business which were conducted within the City, along with the storing of equipment, from the manual execution of the work which was done without the City. All are essential functions of the general contracting business in which respondent is engaged.

Exclusion of gross receipts on which a license is paid to some other municipality or county avoids multiple taxation. This method of classification was held to be reasonable by the Supreme Court in *Eli Witt Co. v. City of West Columbia*, *supra*, which involved wholesale distribution of goods from a warehouse in the city to stores outside the city. Allowing credits for taxes paid elsewhere does not violate the constitutional requirement for equal protection.

Some ordinances provide for different rates on income produced from out-of-city activities and collected through an in-city office. In the absence of such a provision, the license inspector cannot give different treatment.

Rates and Fees

License inspectors are not concerned with rate setting, which is the function of city or county council. Problems can arise regarding fees charged a new or successor business or the operation of more than one type of business at the same location under one ownership.

Flat Fees

Because flat or fixed fees are not based on gross income, they do not comply with the state law authorization and would be discriminatory. However, it is generally accepted practice to charge a minimum base rate sufficient to cover administrative costs. A base rate charged on the first level of gross income (for example, the first \$2,000) is customary.

licensees, except upon the broker-in-charge at the place where the real estate licensee shall maintain a principal or branch office. The license, occupation, or professional tax or fee shall permit the broker-in-charge and the broker's affiliated associate brokers, salespersons, and property managers to engage in all of the brokerage activities described in Chapter 57 of Title 40 without further licensing or taxing, other than the state licenses issued pursuant to Chapter 57 of Title 40 or pursuant to other provisions of law. No license, occupation, or professional tax or fee shall be required of the affiliated associate brokers, salespersons, or property managers of a broker-in-charge for such gross receipts upon which a license, occupation, or professional tax or fee has already been paid *Section 6-1-315*.

Brokered transactions of real property in counties or municipalities other than those in which the broker-in-charge maintains a principal or branch office create a nexus for imposition of a license, occupation, or professional tax or fee only with respect to gross receipts derived from transactions of property located in that county or municipality *Section 6-1-315*.

Reduction of amount of gross income taxed under certain conditions. (Updated October 2009)

If the person or business taxed pays a business license tax to a county or to another municipality where the income is earned, the gross income for the purpose of computing the tax must be reduced by the amount of gross income taxed in the other county or municipality *Section 5-7-30*.

Telephone Companies and Service

Because court-ordered divestiture broke up the telephone monopoly, it is necessary to get a detailed description of the operation of a company to determine how it should be classified. To be classified as a telephone company, the operation must involve the communication of information in some manner (for example, wire, microwave, fiber optic cable or radio wave).

Counties may not license or franchise telephone companies. SC Code Sec. 4-9-30.

If the company sells or leases communication equipment or installs and services equipment but transmits no information, it is not classified as a telephone company for business license purposes. One of the following classifications may apply:

Installation of equipment (SIC 1731; NAICS 23531);
Leasing and rental of equipment (SIC 7359; NAICS 53249);
Retail sales (SIC 5999; NAICS 443112); or
Service of equipment (SIC 7629; NAICS 811213).

Franchise or Consent

In *City of Cayce v. AT&T*, 326 SC 237, 486 S.E.2d 92 (1997), the Supreme Court limited the power to franchise granted by SC Code Sec. 5-7-30 to those businesses using public streets for lines to serve customers within the municipality. SC Code Sec. 5-7-30 gives a municipality authority to grant a franchise for the use of public streets and to charge for that use. The Court also held that consent of the governing body to place lines in the streets that do not serve municipal customers may be required pursuant to SC Constitution Art. VIII, Sec. 15. A fee may be charge for that consent. For many years, municipalities have routinely charged telephone

companies with lines in public streets a franchise fee of 3 percent of recurring local service charges. In some instances, long distance tolls were included in the gross revenue on which the franchise fee was based after the decision of the US Supreme Court in *Goldberg v. Sweet*, 488 US 252 (1989). The 5 percent franchise fee imposed by the City of Orangeburg on gross income from all sources was upheld in *BellSouth Telecommunications, Inc. v. City of Orangeburg*, 337 SC 35, 522 S.E.2d 804 (1999). However, the whole picture was changed by Act 112 of 1999, as discussed below.

State Telecommunications Act of 1999

Act 112 of 1999, SC Code Sec. 58-9-2200, *et seq.*, changed the emphasis from franchise fees to business license taxes on telecommunications services and placed statutory limitations on municipal franchise fees, consent fees and business license taxes. The legislation is complicated because of efforts to address existing unexpired franchises and ordinances adopted prior to December 31, 1997. All municipalities are subject to the Act.

(a) Franchise or Consent Fees

Under Act 112, municipal franchise or consent fees are limited by population ranges according to the following schedule:

<u>Population</u>	<u>Maximum Fee</u>
1 - 1,000	\$ 100.00
1,001 - 3,000	\$ 200.00
3,001 - 5,000	\$ 300.00
5,001 - 10,000	\$ 500.00
10,001 - 25,000	\$ 750.00
Over 25,000	\$ 1,000.00

(b) Business License Taxes

The effect of the Act on business license taxes can be understood by reference to the following Municipal Association of SC model ordinance adopted by participants in the Association's Telecommunications Tax Collection Program.

AFFIDAVITS

A. DENNIS HARMON

B. RON FARETRA

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-08-2814

AFFIDAVIT OF
DENNIS C. HARMON

VS.

Defendant.

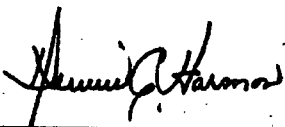
4. Second, Mr. Faretra is the City's Finance Director and in that capacity he is the senior Business License Official. He is officially the Director of Business Licenses for the City of Goose Creek. Mrs. Althoff is the City's Business License Inspector and she handles many of the day-to-day tasks relating to the City's Business Licenses. Mr. Faretra is Mrs. Althoff's immediate supervisor.

5. It has been suggested that Mr. Faretra and Mrs. Althoff acted outside the scope of their authority in going to 834 North Aylesbury Road and confronting the person at the property and questioning said person concerning whether he was working on the property without a business license. This task is entirely within the duties of Mr. Faretra and Mrs. Althoff. It is within the scope of their duties to investigate activities which may be commercial in nature to determine whether a business license is necessary. They have the authority to direct someone to get a business license and have the authority to issue a ticket for operating without a business license.

6. It has been suggested that Mr. Faretra and Mrs. Althoff acted outside the scope of their employment when they directed that a new City water service account not be initiated for Todd Olds at 834 North Aylesbury Road. Again, that is within the scope of Mr. Faretra and Mrs. Althoff's authority to direct the Public Works Department not to turn on water service to a new account due to failure to have a business license in place. I believe this has previously been set forth in documents to the Court, but I will make this 100% clear: The City of Goose Creek's policy is to not initiate new water service if a business does not have a business license and/or is not paid up on its business license. The business can pay under protest if there is some question or challenge to the application of the ordinance, but it cannot simply refuse to pay. The City does not

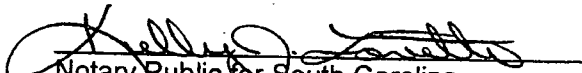
shut off water service where the business does not have a business license or will not initiate a new account. But, the City does not believe that it is obligated to establish new water service if a business is not current on its business license and/or lacks a business license. This is the City's current policy. It is not Mr. Faretra or Mrs. Althoff's personal policy.

FURTHER AFFIANT SAYETH NOT.


Dennis C. Harmon

SWORN and SUBSCRIBED

before me this 31st Day of January, 2013.


Notary Public for South Carolina

My Commission Expires: 8/4/2016

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Todd Olds,

Plaintiff,

vs.

City of Goose Creek,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-08-2814

AFFIDAVIT OF RONALD FARETRA

Personally appeared before me Ronald Faretra, who being duly sworn, deposes and says:

1. That I am the Finance Director of the City of Goose Creek. That I have the responsibility for administration of the business license ordinance. That Jennifer Althoff is the business licence inspector and works under me. That we are both duly authorized code enforcement officers. As part of our duties, we are authorized to stop in at construction sites and other locations to determine if the people working there have business licenses and they have appropriate building permits.

2. That I did go to the property at 834 North Aylesbury with Jennifer Althoff on or about July 11, 2012 because I observed what appeared to be a work truck at the property and I wanted to see if there were any permits or business licenses that were necessary associated with that work. I did know that this was a property that was owned by Todd Olds and that he had made various claims including that he was not required to have any business license in the City of Goose Creek because he was a realtor.

3. The front door was open. I yelled hello. A man came to the front room and we introduced ourselves. I gave him a business card. I did show him my code enforcement badge and told him I was the finance director for the City of Goose Creek. In fact, he specifically asked if I was the police. I said that I was not. I said that I was the Finance Director for the City.

4. We asked him what he was doing on the property and whether he was getting paid. He said he was just cleaning up. As to payment, he said he was being paid in "dinners and gift cards." We did ask if he was an employee of Todd Olds. He said he was not. He claimed that he was a relative of Todd Olds. We told him that if he was being paid in trade or in gift cards, then it was still for work for compensation and he needed to have a business licence. We told him to stop working unless he got a business license. We explained he could come to City Hall to get a business license. He then claimed that he

was just joking and was not getting paid at all. As he had just told me he was being paid in gift cards, I told him to come to City Hall to get a business license.

5. About that time a painter pulled up. We asked the painter if he had a business license in the City. He indicated did not have a license and that he was just giving an estimate. We told him that if he was going to paint the exterior, he would also need to get a permit from City Hall.

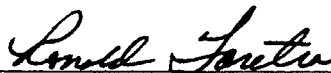
6. This whole process took less than 15-20 minutes.

7. That the City of Goose Creek owns the municipal water system. We don't turn on new water for anyone that doesn't have a business license. Likewise, we do not turn on water service if a person is in arrears on payment of their municipal business license fees. If a tenant is in the unit, we don't turn off water service that has been properly initiated, but will refuse to turn it back on if the owner of the property has not paid their business licenses in full.

8. As it relates to Mr. Olds, in connection with this litigation, it was found through discovery that Mr. Olds had failed to report any income related to a property he sold at 100 Spalding Drive. We provided Mr. Olds with written notice of the amount and penalties that were due related to his 2011 business license fees. (See Exhibit A). Mr. Olds has refused to pay this sum.

9. He is well aware that he is able to pay under protest and can appeal the determination as he had already done that in the past. However, Mr. Olds has refused to do so. Nor has he provided any rational explanation as to why he left this property off his business license reports.

10. If Mr. Olds pays his past due business license fees in full, he can do so under protest and can institute an appeal as is provided by ordinance. Until he pays, the City has no intention of providing him with new water service at his property.



Ronald Faretra

SWORN and SUBSCRIBED
before me this 15 Day of October, 2012.



Notary Public for South Carolina

My Commission Expires: My commission expires
December 8, 2016

June 6, 2012

Prime Properties of Charleston LLC
Todd Olds
4381 Stoney Poynt Court
North Charleston, South Carolina 29405

RE: 2011 City of Goose Creek Business License

Dear Mr. Olds:

We have reviewed your HUD Statements for properties sold by you in 2010 and discovered that you sold 100 Spalding Circle, Goose Creek on October 7, 2010 but failed to claim this revenue on your 2011 City of Goose Creek business license renewal. I have enclosed a copy of this HUD Statement which shows the gross revenue you collected for the sale of this property. The additional fees due to the City of Goose Creek for your 2011 business license are \$2,511.60 this amount is calculated based on \$276,000.00 gross revenue.

276
<u>x \$5.20</u>
\$1,435.20
<u>x 75%</u>
\$1,076.40
\$1435.20
<u>+1076.40</u>
\$2,511.60

Please remit payment no later than June 15, 2012 to avoid any further fines and/or penalties. If you have any questions you may contact me at 843.797.6220 extension 105.

Sincerely,

Jennifer Althoff, MBL
Business License Inspector



1	STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
2	COUNTY OF BERKELEY	)	FOR THE
3	TODD OLDS,	)	NINTH JUDICIAL CIRCUIT
4	Plaintiffs,	)	
5	vs	)	
6	THE CITY OF GOOSE CREEK	)	DEPOSITION OF
7	Defendants.	)	B. TODD OLDS
8		)	

COPY

Case No.: 2011-CP-08-2814

9 Deposition on oral examination of B. TODD
10 OLDS, reported by Naomi E. McCracken, a Computerized
11 Stenotype Reporter and Notary Public in and for the
12 State of South Carolina, said deposition taken pursuant
13 to Notice of Deposition, by agreement and in accordance
14 with the South Carolina Rules of Civil Procedure at the
15 offices of DeLuca & Maucher, LLP, 102 Marilyn Street,
16 Goose Creek, South Carolina, on Friday, the 6th day of
17 July, 2012, commencing at the hour of 2:43 p.m.

1 As far as Prime Properties of Charleston; is it
2 fair to say the purpose or business operation of that is
3 to buy properties and then to sell them, hopefully, for
4 a profit?

5 A. Well, let me say: Todd Olds, a South Carolina
6 licensed realtor, is the sole member/owner of Prime
7 Properties.

8 Q. Okay.

9 A. So I see them as synonymous.

10 Q. Okay.

11 A. And I am a realtor who engages in purchasing
12 property for the purpose of resale.

13 Q. Okay. Do you also help bring together buyers and
14 sellers of properties that you do not own?

15 A. I have before; yes.

16 Q. Do you presently operate in that capacity?

17 A. I am available for that at any time.

18 Q. Do you have a broker in charge now?

19 A. I do.

20 Q. Who is your broker in charge now?

21 A. Real Estate Advocates.

22 Q. Okay. And how long have you been affiliated with
23 Real Estate Advocates?

24 A. Since 2006 or '07.

25 Q. And you have been with them the entire time?

1 A. Yes.

2 Q. Who is the main broker in charge there?

3 A. Robert Mandell.

4 Q. And which office are you based out of?

5 A. Columbia, South Carolina.

6 Q. Is that where he is located physically, is
7 Columbia?

8 A. His office is in Columbia.

9 Q. Are there local offices to Real Estate Advocates in
10 the Charleston area?

11 A. Not to my knowledge.

12 Q. Okay. In the year -- let's see. We're here about
13 the year 2011 and 2012 business license, which is based
14 on '10 and '11; so we'll start this in 2010 -- the
15 beginning of 2010 through the end of 2011. That's a
16 two-year time frame. Are you still with me on the
17 parameters?

18 A. The end of 2010 and the end of 2011; so all of 2010
19 and '11 is two years.

20 Q. All of 2010 and 2011. Did you engage in the sale
21 of homes, putting together buyers and sellers of where
22 you did not own either side of that transaction?

23 A. Yes.

24 Q. Okay. And were any of those sales in Goose Creek?

25 A. No.

1 A. I could.

2 Q. You could sell T-shirts out of that LLC if you
3 wanted to. And that's what I was trying to understand,
4 whether you do or don't.

5 A. I'm not.

6 Q. Okay. That's the question.

7 Now, as far as Prime Properties' activities of
8 buying houses and then selling those houses, hopefully
9 for a profit, is that something you have done roughly
10 since 2006?

11 A. Well, Prime Properties may actually have engaged in
12 part of -- and, again, Todd Olds is Prime Properties.
13 But Real Estate Advocates is technically the listing
14 authority and the selling authority.

15 Every property is listed and sold under Real Estate
16 Advocates. Prime Properties has no listing connectivity
17 with that property or sale.

18 Q. But when you purchase a property with the hopes of
19 selling it, you take the title in either your name or in
20 that of Prime Properties?

21 A. I do, indeed; yes.

22 Q. And you list it with whoever you list it with, but
23 you typically would list it with your own affiliates
24 there at Real Estate Advocates?

25 A. Right.

1 Q. And you act as your own selling agent?

2 A. Right.

3 Q. And as an owner agent, do you owe any commission to
4 your broker in charge?

5 A. Through our broker agreement, I do not.

6 Q. Okay.

7 A. And there are different brokers' agreements.

8 Q. Absolutely.

9 A. 70/30, 80/20, or 100 percent or a flat fee paid per
10 month, so we have a different -- we have an agreement
11 where I get 100 percent commission.

12 Q. 100 percent commission on one of your properties
13 that you actually own an interest in?

14 A. Exactly.

15 Q. Okay. And different real estate companies have
16 different deals on that; you would agree with me on
17 that?

18 A. I'm saying --

19 Q. Different real estate companies have different
20 deals on that; some of those companies do want to
21 charge -- the broker gets a cut on an agent owned
22 property; others do not?

23 A. I can only presume that; I'm not certain. I've
24 never been with any other -- you know, I have heard it.
25 I've got associates and affiliates that I've heard it

1 from, so I presume they do.

2 Q. Okay. Did you have houses that you, Todd Olds or
3 Prime Properties, own in the City of Goose Creek before
4 the year 2010?

5 A. Mr. Domin, I don't know that. But if you have
6 something to reference and give me, because I don't have
7 any files. I've sold a number of properties throughout
8 the tri-county.

9 Q. Okay.

10 A. And I would have to say, yes; I have. In fact, I
11 think the very one that brought this attention, I may
12 have had it in '09 and it was picked up in '10, the
13 Evergreen Magnolia, so --

14 Q. Do you have a business license in North Charleston?

15 A. No.

16 Q. Okay.

17 A. I'm not required to, nor in Charleston County, and
18 I have inquired with them.

19 Q. Let me make certain I understand. Have you bought
20 and/or sold homes in North Charleston?

21 A. I have. And let me clarify this because I am a
22 licensed South Carolina realtor in the Municipal
23 Association of South Carolina Business License Code and
24 Guide that the City of Goose Creek likes to reference,
25 it states clearly that a licensee, an agent or licensee,

1 broad number of definitions. That may be your
2 interpretation of a realtor.

3 Q. What did you learn in real estate school before you
4 took your real estate exam?

5 A. Gosh, I can't remember. I learned a lot. What
6 specifically are you -- and I'm not being facetious
7 here; I'm just trying to understand you.

8 Q. Wouldn't you agree with that definition, that a
9 real estate agent is a person who brings together a
10 willing buyer and a willing seller?

11 A. I'd say there is some truth to that.

12 Q. And they take a commission in exchange for that
13 service?

14 A. There is, I think, other broader explanations of a
15 realtor, too, has marketing ability, has a right to
16 invest in property and sell it for profit.

17 Q. Maybe that's where we have our first disagreement.
18 What you're saying to me is that you believe that the
19 definition of real estate agent means you are able to
20 buy property in your own name and then sell it for
21 profit and, as a result of that, you do not owe any form
22 of a business license fee?

23 A. I don't understand what you just said.

24 Q. Let me go back up. You engage in some transactions
25 where you would assist a seller of a property find a

1 buyer of a property and you don't own any interest in
2 that property; is that correct?

3 A. Well, without making this complex, I could be
4 considered that individual that doesn't have an interest
5 at the time I'm negotiating the deal.

6 Q. I understand.

7 A. A realtor is not precluded from doing that.

8 Q. You would agree with me that the realtor isn't
9 precluded from becoming an airline pilot?

10 A. Indeed.

11 Q. That doesn't mean that when they are flying an
12 airplane that that is a real estate activity; correct?

13 A. To that question; yes. But because I own Prime
14 Properties of Charleston, does not mean that I'm not an
15 active licensed South Carolina Realtor Licensee.

16 Q. Would you agree with me that the task of buying a
17 home and selling it for a profit is not something that
18 is the exclusive domain of realtors? You don't have to
19 be a realtor to buy a house and sell them for profit;
20 right?

21 A. True. But being a realtor, you're not precluded
22 from doing it, either.

23 Q. The same way you are not precluded from being an
24 airline pilot?

25 A. Yeah.

1 time. I am not limited to the office. I think that's
2 clear, Mr. Domin. You know realtors are open to do
3 business anywhere.

4 Q. Sure. Do you have a home office?

5 A. I have a home where I have my computer and store
6 some files; yes.

7 Q. Do you take a home office deduction?

8 A. I do.

9 Q. So for Federal Tax purposes, you do have a home
10 office in North Charleston?

11 A. Yes.

12 Q. Okay. Now do you have records of homes that you
13 have bought and sold both for others as well as for
14 yourself?

15 A. Do you mean today?

16 Q. In general.

17 A. Yeah. We're charged with retaining records; yes.

18 Q. How far do your records go back?

19 A. We are charged five, I believe, or seven.

20 Q. You do have records on that?

21 A. To my recollection, yes, I have records; either me
22 or my broker in Columbia.

23 Q. Since you've started this real estate business,
24 approximately how many homes in North Charleston have
25 you bought and then attempted to sell for a profit that

1 that correct?

2 A. "Those" as in what? I mean give me some
3 specifics. You just asked me a broad-based question.
4 Give me some specifics "of those" what.

5 Q. Those business license fees that you paid under
6 protest for 2011. You have received that statement;
7 correct?

8 A. A statement as to what I owed?

9 Q. Yeah.

10 A. Yes, sir; yes, sir.

11 Q. You've reviewed that statement?

12 A. Yes, sir.

13 Q. And as to 2011, you received a statement as to what
14 was allegedly owed by you and you've reviewed that
15 statement?

16 A. Yes.

17 Q. And do I understand that the only issue that you
18 have with the computation of what you owe is the
19 question as to whether the City of Goose Creek is
20 properly using gross income as you define it versus
21 gross income as they define it?

22 A. Is that my only contention?

23 Q. I'm trying to understand if that's your only
24 contention as to the amount that is due.

25 A. Let me try and explain. I think I understand your

1 question.

2 I am not in any way arguing, implying or saying if
3 the City believes I'm supposed to have a business
4 license then I don't have to have a business license.

5 Q. Okay.

6 A. I am simply saying that I am being treated unfairly
7 based upon the plain and ordinary language of an
8 ordinance -- the key words being "gross income" -- for
9 purpose of calculating business license fee shall the
10 State Tax Commission, Internal Revenue Codes or returns
11 or the State Insurance Commission.

12 Q. Okay.

13 A. That plain and ordinary language has been an
14 identifying factor to me that gross income is not gross
15 sale receipts or revenue. It's plain and ordinary
16 language. I'm not a tax accountant. I'm not an expert,
17 but I'm certainly intelligent enough to know that gross
18 income is a different word than gross sale, gross
19 revenue and gross receipts.

20 Q. And I'm trying to make certain that that's -- that
21 is the totality of your disagreement with the City of
22 Goose Creek, whether or not your business license fees
23 should be computed on what you call gross income based
24 off of your Schedule C Line 7 versus what they apply as
25 a definition, meaning all inclusive without deduction

1 for cost of the real property acquired?]

2 A. Is that the totality of my claim?

3 Q. Yes. Is that the totality of your claim.

4 A. I would say there are other claims in our suit.

5 Q. Okay. Let me ask you this: Is that the totality
6 of the claim, as far as computation, as far as the
7 amount that's due?

8 A. As far as equitable figuring computations -- in
9 relation to computation, that's a part of our claim.

10 Q. Let me ask you this way: If you have a business
11 that operates buying and selling properties in the City
12 of Goose Creek for an intended profit, you would agree
13 that you are engaged in a business in Goose Creek; you
14 don't dispute that?

15 A. What? An office here; yeah. I mean

16 Q. You don't have to have an office here.

17 A. If you're engaged in --

18 Q. If you're engaged in business here; correct?

19 A. Yes.

20 Q. You will agree if you're a plumber and fix
21 somebody's plumbing in some lady's house in Goose Creek,
22 you are engaged in business in Goose Creek; correct?

23 A. Right.

24 Q. You would agree with me that when you physically
25 own a home that you are going to fix up and sell to

1 somebody else in Goose Creek, you're engaged in business
2 in Goose Creek; correct?

3 A. Yes, but I would also agree that -- going back to a
4 comment you made earlier about pass-through income:
5 You, being a lawyer, and you clearly sold property in
6 Goose Creek and you've received all of the funds, is
7 that your gross income or is it gross income after you
8 dispersed to all the mortgagees, mortgage owners,
9 lienholders? So there is no difference there in me as a
10 licensee and an agent selling my properties.

11 My profits shall be based on the sale of the
12 property; and gross income is what is reported to the
13 Internal Revenue Service, as the City ordinance clearly
14 defines and references as their authority.

15 Q. Let's take this step by step. Do you agree that in
16 the years 2011 -- 2010, 2011 and 2012, you have engaged
17 in business activity in the City of Goose Creek?

18 A. Absolutely; I agree with that.

19 Q. Do you agree with me that businesses can be levied
20 a business license fee if they operate business activity
21 in the City; correct?

22 A. I agree with that; don't disagree with it. In
23 fact, I'm willing to pay the fee, so long as it conforms
24 to the ordinary language of the ordinance as it's
25 written in the City of Goose Creek on gross income.

1 Where I have a problem with it is being treated
2 unfairly, not being afforded my rights and paying
3 something in excess and above and beyond what the plain
4 language says.

5 I didn't write the ordinance. The City wrote the
6 ordinance. I was the first one, probably, to challenge
7 it and I'm sorry we're here today. But I deserve fair
8 and equitable treatment.

9 Q. Okay. Well, let me make certain that I
10 understand. You don't have a problem paying what is
11 fair. And I understand, but your definition of fair is
12 you want to pay exactly what you owe and no more; is
13 that fair to say?

14 A. I want to pay it based on what the language of the
15 Law says it should be: not gross sales, but gross
16 income. Gross sales is the sale of a property.

17 If you sell a property for \$100,000, that's the
18 gross sale of the property. The gross income is what
19 you walk out of and actually go physically deposit at
20 the bank: That's the gross income. And your
21 ordinance -- your City's ordinance says gross income.

22 Q. So I want to be clear. If you operate a grocery
23 store, you're telling me that if you buy the peas for 80
24 cents and you sell them for a dollar, the gross income
25 is 20 cents?

1 A. That would be -- that would be how it falls under
2 your present written ordinance in the language; yes.

3 Q. And you would contend that if you're talking about
4 a clothing store, that you would deduct the cost of the
5 clothing; is that right?

6 A. Under your present language of your ordinance of
7 gross income, that would be correct, in my
8 interpretation and understanding.

9 Q. Okay. And let's say that -- you would agree with
10 me that the definition that's used by the City of Goose
11 Creek doesn't necessarily have to be the same as the
12 definition that's been used by the IRS; is that correct?

13 A. No; I wouldn't agree with you.

14 Q. We have a book of the City's ordinance that makes
15 reference to the Internal Revenue Tax Commission.

16 A. I think it's simple math. I mean I just think it's
17 simple and it's a common sense approach and it's
18 unfortunate we're here. But, you know, as Mr. Goldstein
19 said earlier, you don't buy something for a dollar and
20 sell it for a dollar and still make a profit. There is
21 no profit; there is no income.

22 Q. Well, Mr. Olds, let me make certain I understand
23 your contentions. You are -- first of all, you refer to
24 the City of Goose Creek's plain language.

25 A. Okay.

1 challenge that you filed; correct?

2 A. Yes. I believe that's right.

3 Q. Okay.

4 A. Did initiate in 2010 and I first made the first
5 appeal challenge in 2011.

6 Q. And there was an appeal in process; you had the
7 ability to pay it and to then challenge it to
8 Mr. Faretra, then to Mr. Harmon, then the City Council
9 and then on to the Courts; correct?

10 A. Yes.

11 Q. We still don't know what the outcome of that is
12 from the Courts; correct?

13 A. Right.

14 Q. You would agree with me that in the contexts of
15 that process, your attorney was allowed to submit a
16 memorandum of law as to your position as to why you were
17 correct; is that correct?

18 A. Yes.

19 Q. Okay. It's your understanding he had actually did
20 get to appear before Mr. Harmon in order to present
21 whatever factual information or arguments he wanted to
22 present your behalf; is that correct?

23 A. He had to write the appeal for Mr. Harmon.

24 Q. Yes, sir. In the administrative appeal, he had the
25 right --

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON
2 COUNTY OF BERKELEY) PLEAS
3) NINTH JUDICIAL CIRCUIT
4) CASE NO. 2011-CP-08-2814
5)  COPY
6) CONTINUED
7) DEPOSITION OF:
8) TODD OLDS
9)
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25)

DATE: Thursday, August 2, 2012
TIME: 10:12 a.m.
LOCATION: Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492
REPORTER: Michele Darling Neville, RPR, ACR

Michele Darling Neville, RPR, ACR
Independent Contractor working in
association with Milligan Court Reporting
Telephone: (843) 971-5867
Fax: (843) 971-6509
Email: Milligansc@comcast.net

TODD OLDS - EXAMINATION BY MR. DOMIN

1 don't have -- I didn't have this in my file so.

2 Q Okay. I'm trying to understand the amount that's
3 written there. \$58,436?

4 A Thirty-two dollars.

5 Q 46 cents. 58,432.46. That's the amount that you
6 wrote in on the application; is that correct?

7 A That's correct.

8 Q Okay. And that is your signature at the bottom of
9 the application?

10 A That's correct.

11 Q Okay. Now, did anybody assist you in providing
12 that computation of the first handwritten line, that 58,000
13 figure?

14 A No one but myself. And I based it solely on what
15 I believed my sales were for gross income within the City of
16 Goose Creek.

17 Q Okay. Now, at that point in time, that is in
18 January of 2011, had you had any discussions with anyone at
19 the City of Goose Creek about what they contended to be the
20 application of -- proper application or calculation of gross
21 income?

22 A At the time of this application?

23 Q Yes, sir.

24 A Certainly I did.

25 Q Okay. What communications would you of had up to

TODD OLDS - EXAMINATION BY MR. DOMIN

1 that point in time about how the City of Goose Creek
2 interpreted its ordinance as it relates to the issue of
3 gross income?

4 A Based on my recollection, Mr. Domin, when I made
5 application to the city, they issued my license, if I recall
6 correctly. And then they issued me a letter stating that I
7 didn't properly disclose a property; which is where this
8 originated and started.

9 And the property was 123 Evergreen Magnolia in
10 Goose Creek. Where Ms. Jennifer Althoff had contacted me by
11 letter and I appeared in person to question her on the gross
12 income language and clarification of that. And their
13 ordinance that the city has established.

14 Ms. Althoff told me that I didn't properly
15 disclose my income. And I said on -- "And what do you base
16 that on?" And she said, "Well you sold a property at 123
17 Evergreen Magnolia for 134,000 dollars." And I greed, Yes,
18 I did; that's the sale price of the property. She further
19 went to say that's your income. And I refuted that, and
20 still to this day dispute that; because it's not my income.

21 I asked her how she figured that's my gross income
22 when it was actually the gross sale of the property. And
23 she says, "Our city ordinance says it's gross income. It's
24 what you turn in" -- and she stated, "It's what you turn in
25 to the Internal Revenue Service. I said, "Well, that's fine

TODD OLDS - EXAMINATION BY MR. DOMIN

1 I've got a tax return, I can prove that. Would you like
2 it?"

3 And she says, "Sure, but it doesn't matter, it's
4 what you made on this property is what we're dealing with."

5 I didn't make but \$131,000 in that very year as my
6 gross income. So my question to her was how can you assert
7 I grossed income of 134,000 on one house? So that's where
8 we began to differ in the ordinance. And I tried to gain
9 clarification through her explanation, explaining the
10 ordinance, and getting a copy of the ordinance and the like.
11 And all to no avail. And that's why we're here today.
12 Simply over plain and ordinary language: Gross income.

13 Q Okay. So when you first submitted the 2011
14 application in January of 2011, did you have a conversation
15 at that time with anybody at the City of Goose Creek about
16 how they wanted the gross income line filled out?

17 A Well, now, you're referencing 2011; and this is an
18 application for 2010.

19 Q What I handed you, down at the bottom, is dated by
20 you--

21 A Okay. You're correct.

22 Q 1/12/2011.

23 A You're correct. My apologies.

24 Q Okay.

25 A Yeah, you're right. And that was for -- yes, this

TODD OLDS - EXAMINATION BY MR. DOMIN

1 included those and that was the gross income for those or --
2 I don't believe I made \$58,000 on Evergreen Magnolia as one
3 property.

4 Q Okay.

5 A As my gross income.

6 Q So you calculated the \$58,000 figure, but as we
7 sit here today, you have no basis to be able to tell me
8 where you derived that--

9 A I don't have it in my file. I don't have all the
10 properties that I sold to reference. So to give a fair and
11 appropriate answer, I can't -- I can't give clarification to
12 that 58,000.

13 Q Okay.

14 A It's not a fictitious number; I arrived at it
15 through either one sale, which is Evergreen Magnolia, or
16 either other sales that it came to that number. I believe
17 from -- I believe I legitimately did overlook Evergreen
18 Magnolia. And when they referenced it, I went back to
19 adjust and pay the difference; and that's where this dispute
20 arose is on the gross income. So I think this is from
21 another property or two.

22 Q Okay. If you were given the homework task by way
23 of an interrogatory to identify which properties represent
24 that \$58,000, what documents would you go look at in order
25 to do that homework assignment?

TODD OLDS - EXAMINATION BY MR. DOMIN

1 A I would reference my sales in the city
2 jurisdiction, HUD statements.

3 Q Okay.

4 A And -- and my -- and in order to arrive at the --
5 the gross income number, I would -- I would reference my
6 cost basis and -- against my sales price and calculate my
7 gross income.

8 Q And I guess the nature of my question is designed
9 to try to figure out what documents you have that we would
10 be able to go back and take a look at as necessary in order
11 to be able to derive answers to certain questions that you
12 may not know the answer to as we sit here today.

13 A Right.

14 Q And do I take it from your answer that you have
15 some kind of a file that shows which properties that you've
16 sold in the City of Goose Creek or not?

17 A Well, I do, and I believe we've turned over that
18 in discovery. You should have HUDs that we've turned over.
19 And as Ms. Althoff has become, you know, quite involved with
20 it, the Berkeley County tax records researching me, she
21 should have any and all records related to me and Goose
22 Creek.

23 Q You understand though that you're under an
24 obligation to turn over records; she's not under and
25 obligation to try and hunt you down every time; right?

TODD OLDS - EXAMINATION BY MR. DOMIN

1 A Oh, absolutely. And if I haven't produced
2 something, I'll be glad to produce it.

3 Q Okay. And I'm talking about -- my question's
4 trying to make certain I understand what you have that
5 you've produced.

6 A You want to know how I'm arriving at the fees?

7 Q I do. I want to try and figure out how you're
8 arriving at a \$58,000 figure if there are more properties
9 than Evergreen that would be involved.

10 Let me just check something.

11 A And I respect that, and I would be glad to -- if
12 you want to search through what we produced you and if we
13 haven't produced, I'll go back and search for more.

14 Q Well, I am showing for -- I'm looking at the
15 discovery requests that were sent by your lawyer, that
16 obviously you provided to him the information. And there
17 was attached to it a settlement statement involving 123
18 Evergreen Magnolia Avenue?

19 A Uh-huh.

20 Q Which we've been talking about.

21 A You've got the settlement statement on that one.

22 Q I do.

23 A Right. Okay.

24 Q Okay. And then I'm looking at a settlement
25 statement where you sold a property of 100 Spalding Circle.

TODD OLDS - EXAMINATION BY MR. DOMIN

1 As attentive as Mr. Faretra and Ms. Althoff had
2 been, why was it not discovered, you know, prior to them
3 issuing my business license? They've got every reference
4 from the tax in the county. And they're just asserting that
5 I didn't include it. Prove to me I didn't include it in
6 here. My gross income in my figure.

7 Q Let me ask you this. You're not claiming that if
8 you fail to tell the tax man something and you get away with
9 it, that it's their problem?

10 A No, I'm not.

11 Q Okay.

12 A But I'm sitting here saying that they're
13 asserting, after the fact of issuing my business license,
14 that I didn't include Spalding.

15 Q Okay.

16 A When I believe I did include it. And I'm asking
17 for their references to why they say I didn't.

18 MR. DOMIN: Okay. Let me go ahead -- and because
19 we have a prior deposition, do you mind if I go Exhibit A?

20 THE REPORTER: No.

21 MR. DOMIN: Would that be okay?

22 I'm just going to--

23 [WHEREUPON, an off-the-record discussion was had.]

24 [Defendant's Exhibit A was marked for identification.]

25 BY MR. DOMIN:

TODD OLDS - EXAMINATION BY MR. DOMIN

1 Q Okay. Let me show you Exhibit A. Did you get a
2 copy of that letter, probably on Goose Creek stationary?

3 A Yeah, I believe I did, Mr. Domin, yeah.

4 Q Okay.

5 A But, again, this is -- this is -- you know, is
6 this speculation? Is this just pulling it out the -- where
7 did they come up with this? How can they say it's not
8 included in my license fee? In my license calculations?

9 Q Mr. Olds, would you say that it's fair to say that
10 they had specified that according to their records, they had
11 detected that -- their belief was that you had not paid any
12 fee as it related to the Spalding house; is that a fair
13 statement?

14 A Based on the numbers that they're using to
15 calculate being gross sales price, that may be accurate.
16 Based on my number of gross income and what I believe I made
17 on the properties I sold in that year, I would say it's not
18 accurate.

19 Q Okay. But you would agree with me they have
20 specified to you the property location they feel--

21 A That's the property they believe I didn't pay
22 taxes on.

23 Q Okay. And they did show you the computation as to
24 how they came up with it; that's fair?

25 A They did.

TODD OLDS - EXAMINATION BY MR. DOMIN

1 Q Okay. Now, my question to you is if you sent back
2 any computation of your own attempting to show that you did
3 pay this and somehow it was in there--

4 A My application, I believe, is inclusive of the
5 Spalding property. I believe -- and I need -- I don't
6 have -- I don't have everything with me.

7 Q Okay. So you didn't bring with you documents
8 related to any computation of that number in the 2012
9 application?

10 A I don't have it with me, no, sir.

11 Q Okay. So even as we sit here today in your
12 deposition, you don't have any documents to disagree with
13 Ms. Althoff's calculation?

14 A I've -- not present with me today, but I've got
15 documentation I believe I can prove that I paid it in the
16 2011 application.

17 Q And, again, this question is more so about what
18 documents you have than whether you have them here today.
19 What documents would you look at in order to determine that
20 you included Spalding in the figures that you put down on
21 the application?

22 A I would probably go back to my accounting
23 documents, my QuickBooks, to verify my gross income on
24 properties for that year.

25 Q Okay. Now, I understand, as we sit here today,

TODD OLDS - EXAMINATION BY MR. DOMIN

1 you have not attempted to pay under protest the amounts that
2 were set forth in the June 6th, 2012 letter; is that
3 correct?

4 A I have made no attempt to pay that under protest.
5 because I got a present appeal under protest that I can't
6 even get a response or a hearing before the administration.
7 And, you know, according to Mr. Faretra, as I believe they
8 make the rules as they go, they've included the appeal in
9 the last -- first appeal.

10 So it seems like a moot point for me to try to
11 make protest of that issue when we're in litigation. That's
12 Mr. Faretra's testimony. So I'm kind of confused.

13 [Defendant's Exhibit B was marked for identification.]

14 BY MR. DOMIN:

15 Q Now, let me also show you what's marked as exhibit
16 number B and ask you if you've received a copy of that
17 letter.

18 A I believe I did, yeah.

19 Q When Ms. Althoff corresponded with you in April
20 2012, she indicated that you had sent in a check, but it was
21 short by \$351 and 80 cents?

22 A Yeah.

23 Q And did you in turn pay that amount?

24 A I believe I did.

25 Q Okay.

TODD OLDS - EXAMINATION BY MR. DOMIN

1 Creek relates to me and how the United States Tax Code
2 relates to me. And it relates to me regarding property.
3 Not personal property, but real property.

4 [Defendant's Exhibit C was marked for identification.]

5 BY MR. DOMIN:

6 Q Okay. Let me show you a copy of exhibit C. Do
7 you recognize that as a letter that you received? It was
8 copied to you.

9 A Did I receive?

10 Q Yeah, the copy to you at the bottom?

11 A Yeah. Uh-huh.

12 Q It's from your attorney, Mr. Goldstein, to the
13 City of Goose Creek?

14 A Yep.

15 Q Okay. Take a moment, or as long as you need, to
16 look at that letter. It states in there that you do not own
17 any property in the City of Goose Creek in 2012; do you see
18 that line?

19 A [Reviewing document.] Yes.

20 Q Is that an accurate statement?

21 A I would think -- I think that that could of been a
22 oversight and misunderstanding, because I did in fact have a
23 property that sold in 2012 in -- in -- in Fairfax.

24 Q Okay.

25 A On, I think, Aylesbury Circle, which is the very

TODD OLDS - EXAMINATION BY MR. DOMIN

1 A That's correct. But I'm of the belief that I've
2 already paid it in my 2011 application fee.

3 Q Okay. Now, the home that you purchased at
4 Aylesbury, the last owner disconnected water service; is
5 that correct?

6 A I couldn't answer that.

7 Q Okay. But the water service was previously in
8 that person's name; is that correct?

9 A I presume, yeah.

10 Q Okay. Would you have -- having bought and sold
11 numerous properties, you would normally call up and get
12 service turned off when you sell a property?

13 A No, I get them transferred. Just turn it on in my
14 name.

15 Q Okay. You normally wouldn't continue to pay for
16 the water after you sell the house?

17 A No.

18 Q Okay. And you want water turned on in your name;
19 is that right?

20 A For 834 North Aylesbury?

21 Q Yes, sir.

22 A I've made a call to have it put on in my name,
23 yes, and was denied.

24 Q And it's your understanding Goose Creek runs the
25 water system for that property; correct?

TODD OLDS - EXAMINATION BY MR. DOMIN

1 Q Okay.

2 A In fact, Mr. Faretra says, and Ms. Althoff says
3 they were coming to give bids. And they needed a business
4 license to give a bid. And I'd like to see the ordinance
5 that states that anybody that comes in the city to give a
6 bid has to have a business license. Where is that
7 ordinance?

8 Q Were the people -- what are the names of the
9 people who are on the property?

10 A What are the names?

11 Q Who are the -- yeah, what are the names?

12 A Robert Eckhardt and Jorge Pachuca is who I believe
13 came up after they were there.

14 Q Okay. Robert Eckhardt. Can you try and spell
15 that last name for the court reporter?

16 A E-C-K-H-A-R-D-T, I believe.

17 Q Okay. And Jorge?

18 A J-O-R-G-E. Pachuca. P-A-C-H-U-C-A, I believe.

19 They should know the names; they impersonated
20 themselves as a police officer and detained them.

21 Q You were not present?

22 A No, I wasn't present.

23 Q Okay.

24 A But I got a call from them.

25 Q Clarifying that. Okay. Mr. Eckhardt, what

TODD OLDS - EXAMINATION BY MR. DOMIN

1 A But not in the City of Goose Creek.

2 Q I hadn't asked that yet, but thank you.

3 A I wanted to clarify.

4 Q Now, these gentlemen, you know how to contact
5 them? You have telephone numbers for them?

6 A I do.

7 Q Okay. And your testimony is that even to this day
8 they have performed no work at that location; is that
9 correct?

10 A Robert was there merely and took upon himself, as
11 he told me, just moving some trash around; okay? He was not
12 engaged in any work and nothing structural, nothing that
13 would require any permit, as the home that I would be doing
14 there -- I don't know that it requires any permit. I've
15 talked to the City of Goose Creek and I've referenced stuff
16 with Renee Wilcox and, you know, I'm told that, you know,
17 you can put carpet in your own home and you can paint inside
18 your own home and there are certain things that don't
19 require permits.

20 Q Certain things don't require permits, certain
21 things that do, fair to say?

22 A We can agree on that.

23 Q Okay. Now, you are not related by blood or
24 marriage to either of these gentlemen; correct?

25 A No.



MICHAEL J. HEITZLER, Ed.D.
Mayor
KIMO ESAREY
Mayor Pro-Tem
DENNIS C. HARMON
City Administrator
JEFF MOLINARI
Assistant City Administrator

MARGUERITE H. BROWN
SAL GANDOLFO
JOHN B. McCANTS
MARK A. PHILLIPS
JERRY TEKAC
City Council

April 23, 2012

Prime Properties of Charleston
Todd Olds
4381 Stoney Poynt Court
N. Charleston, SC 29405

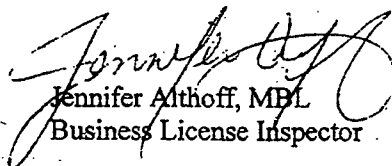
Dear Mr. Olds:

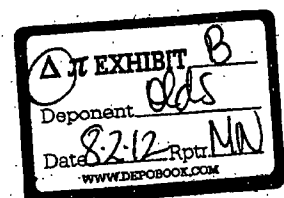
Thank you for the return of your City of Goose Creek Business License renewal. Unfortunately, we are unable to further process your license due to a miscalculation of your license fee.

The correct fee is \$3,852.64 (this amount includes a 10% penalty). Your check was made out in the amount of \$3,500.84; therefore please remit the remaining balance of \$351.80 with a copy of this letter prior to April 30, 2012 in order to avoid any further fines and/or penalties. Licenses will not be issued until all fees due are paid in full.

If you have any questions concerning this matter please contact me at (843) 797-6220 extension 105.

Sincerely,


Jennifer Althoff, MBL
Business License Inspector



BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
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Thomas R. Goldstein
tgoldstein@cobbblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

February 16, 2010

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

Mr. Dennis C. Harmon,
City Administrator
City of Goose Creek
P.O. Drawer 1768
Goose Creek, SC 29445-1768

Re: Application for 2012 Business License

Dear Mr. Harmon,

I am writing directly to you in regard to a new matter involving Mr. Olds. In light of the fact that we have litigation pending on the same subject matter from a previous year, I will understand if you prefer your attorney to respond to these new matters. If you prefer Mr. Domin to handle the response, I am sending him a copy of this letter, but since this is a new matter, I thought I would give you the opportunity to address it if that is your preference.

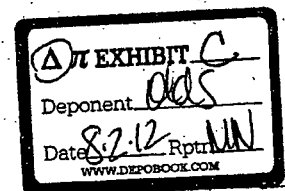
Mr. Olds informs me that he has been unsuccessful in obtaining his 2012 Business License from the City of Goose Creek. According to Mr. Olds, he timely submitted the renewal with a tax payment calculated on his 2011 gross income. However, in talking with him further, I now understand that he no longer owns real estate in the City of Goose Creek. Even though he is a licensed realtor, he currently owns no property in Goose Creek. Under these circumstances, I cannot understand what ordinance or state statute requires him to possess a Goose Creek Business License. Can you please advise of your position on this matter?

On a related matter, your office informed Mr. Olds that he came to the attention of the Business License office due to a "citizen complaint." Would you let me know what process I must follow in order to obtain a copy of the citizen complaint? I look forward to hearing from you. With kind regards, I am

Very truly yours,
Belk, Cobb, Infinger & Goldstein, P.A.


Thomas R. Goldstein

cc: Tim Domin, Esq.
Hon. Todd Olds



1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF BERKELEY) FOR THE
 3) NINTH JUDICIAL CIRCUIT

4 TODD OLDS,)

5 Plaintiff,)

6 vs)

7 THE CITY OF GOOSE CREEK,)

8 Defendant.)
 9 _____)

COPY

Case No.: 2011-CP-08-2814

DEPOSITION OF
 RON FARETRA

10 Deposition on oral examination of RON
 11 FARETRA, reported by Naomi E. McCracken, a Computerized
 12 Stenotype Reporter and Notary Public in and for the
 13 State of South Carolina, said deposition taken pursuant
 14 to Notice of Deposition, by agreement and in accordance
 15 with the South Carolina Rules of Civil Procedure at the
 16 offices of DeLuca & Maucher, LLP, 102 Marilyn Street,
 17 Goose Creek, South Carolina, on Friday, the 6th day of
 18 July, 2012, commencing at the hour of 11:21 a.m.
 19
 20
 21
 22
 23
 24
 25

1 A. Yes, sir.

2 Q. And it says, "The correct fee is \$3,852.64. This
3 amount includes a 10 percent penalty;" correct?

4 A. Yes, sir.

5 Q. All right. Now, Mr. Olds, you've already told us,
6 had appealed this decision; correct?

7 A. Yes, sir.

8 Q. And. But he paid that. He paid it?

9 A. Yes, sir.

10 Q. Right. Because he paid it under protest?

11 A. That is correct.

12 Q. Because that's the way you are supposed to do it?

13 A. That's correct.

14 (Althoff-Olds Letter dated 6/8/12 and HUD-1 Statement
15 Plaintiff's Exhibit 13

16 (4 pages, two pages front and back)

17 was marked for identification.)

18 BY MR. GOLDSTEIN:

19 Q. Then we got this letter from Ms. Althoff. And this
20 is her original letter because it's got the yellow
21 highlighting on it.

22 A. Yes, sir.

23 Q. Do you see yellow highlighting on Plaintiff's 13?

24 A. Yes, sir.

25 Q. And it shows a copy going to me?

1 A. Yes, sir.

2 Q. And it says, "Dear Mr. Olds: We've reviewed your
3 HUD statements." Do you know how you-all would get
4 Mr. Olds' HUD statements?

5 A. Yes, sir. You provided them to us in discovery.

6 Q. All right. And you discovered he sold 100
7 Spaulding Circle, Goose Creek; correct?

8 A. Yes, sir.

9 Q. All right. And it says, "I've enclosed a copy of
10 this HUD statement, which shows gross revenue --
11 correct?

12 A. That's what it says.

13 Q. And it says the additional fees due the City of
14 Goose Creek for your 2011 business license are
15 \$2,511.60. So this amount is based on \$276,000 gross
16 revenue and then she gives the calculation?

17 A. Yes, sir.

18 Q. Okay. And then she says: Please remit payment no
19 later than June 15th to avoid any other fines and/or
20 penalties?

21 A. Yes, sir.

22 Q. Okay. What are the additional penalties? Is that
23 what we discussed before?

24 A. The City charges a 5 percent penalty for each month
25 that your business license is late after the last day in

1 Q. Right.

2 A. -- and the other people within the State of South
3 Carolina and the Model ordinance.

4 Q. I absolutely have it. I got it. And I'm wrapping
5 up by saying: Is there any other basis? And all you
6 have to say is: Nope; that's it. And we're done. But
7 I don't want to be surprised at trial by saying "Oh,
8 no" --

9 A. Off the top of my head, I don't believe I have
10 another reference.

11 Q. Okay.

12 A. But I could be wrong.

13 Q. All right. Let me talk to Mr. Olds, and I think
14 that's it. Unless Mr. Domin has some question, I think
15 that will conclude it.

16 MR. DOMIN: I might have a few.

17 (A recess was taken off the record.)

18 MR. GOLDSTEIN: Thank you,

19 Mr. Faretra. It was a pleasure meeting you. I
20 have no further questions. Mr. Domin may have
21 some questions for you.

22 EXAMINATION

23 BY MR. DOMIN:

24 Q. Mr. Faretra, you are the official at the City of
25 Goose Creek charged with interpretation of the Business

1 License Ordinance; is that correct?

2 A. Yes, sir.

3 Q. And under your direction and control for how many
4 years have you administered this program?

5 A. Almost 14 years.

6 Q. And in those 14 years, have you had occasion to
7 coordinate and consult with other municipalities as well
8 as experts in the areas of business licenses?

9 A. I have.

10 Q. And have the municipalities in South Carolina
11 generally try to operate in a consistent fashion as to
12 business licenses?

13 A. They do. In fact, they have a Business License
14 Officials Organization that we actually go to and
15 attend.

16 Q. Now Mr. Goldstein asked you -- you were asked to
17 draw a square circle and you could not do that without
18 further definition; is that correct?

19 A. Yes.

20 Q. And for however as silly as that question was,
21 there was, in fact, an admission that if you don't have
22 a definition, you may have to look up a definition for
23 something; is that correct?

24 A. Yes.

25 Q. Now, when were asked what was your authoritative

1 source on something, do you agree with me that it
2 depends on what context it was in?

3 A. Yes.

4 Q. If you want know the authoritative source on some
5 issue of religion, you would need to know which
6 religious authority you need to consult; is that
7 correct?

8 A. That's correct.

9 Q. It might not be the same, depending which branch or
10 philosophy we're in.

11 A. It will not be the same.

12 Q. And, likewise, to your understanding, there is
13 nothing in the City of Goose Creek's ordinance consents
14 that you-all will apply IRS definitions; is that
15 correct?

16 A. To the best of my knowledge, there is nothing that
17 says that.

18 Q. Does the City of Goose Creek provide the definition
19 of gross income?

20 A. Yes; it does.

21 Q. And when the City of Goose Creek provides a
22 definition of gross income, it includes the phrase "The
23 total revenue of a business;" is that correct?

24 A. Yes, sir.

25 Q. And as the Business License official Finance

1 Director -- do you interpret that to mean all of the
2 income of a business without deduction for the cost of
3 goods or property sold?

4 A. That's correct.

5 Q. And, in fact, does that same definition section for
6 income go on to refer to and compare it to the term
7 "gross receipts"?

8 A. It does.

9 Q. And have you applied that definition consistently
10 to persons who buy houses as part of their business
11 motto and then to sell those houses attempting to sell
12 those for a profit?

13 A. Yes, sir; we do.

14 Q. And as I understand it, this entire case came about
15 because you received an e-mail or your department
16 received an e-mail indicating that some properties had
17 been purchased at a tax sale; is that correct?

18 A. That's correct.

19 Q. And did you check all of those properties as
20 opposed to just the properties that were owned by
21 Mr. Olds?

22 A. We checked all the properties.

23 Q. And other than Mr. Olds' property, were there any
24 properties that had not been paid on the basis of your
25 definition of gross income, meaning the total revenue of

1 the business?

2 A. When we looked at the other business licenses
3 associated with the other properties listed, it appeared
4 that the appropriate fees has been paid.

5 Q. Except for Mr. Olds?

6 A. Except for Mr. Olds.

7 Q. And as it related to Mr. Olds, that caused you to
8 make an inquiry to try to determine if there were any
9 additional property -- or additional income that
10 Mr. Olds owed a business license fee on?

11 A. Yes.

12 Q. Now, in terms of how you actually calculate the
13 business fees that are due from Mr. Olds, are you under
14 oath telling us that you applied the same rules to him
15 as you do to other people who buy and sell real estate,
16 whether we call those people developers, realtors or
17 real estate persons? Whatever we call them, do you
18 apply the same rules?

19 A. Yes; we apply the same rules.

20 Q. And by that, it means without deduction for the
21 costs of goods sold; is that right?

22 A. That's correct.

23 Q. And that's also true, I think you said, for
24 Walmart; they don't get to deduct the shirts they sell
25 or the canned beans that they sell?

1 A. They do not.

2 Q. And the law firms don't get to deduct for the cost
3 of paper they print their legal pleadings on; is that
4 correct?

5 A. They do not.

6 Q. You addressed an issue of businesses in the city
7 versus outside the city; and I want to get one
8 clarification: if a business is located inside the
9 city -- let's call the construction company ABC
10 Construction Company. Do I understand your testimony as
11 they allow a business license fee on everything that
12 they do both inside the city as well as outside the city
13 except for that which is properly deducted as result of
14 payment to another municipality?

15 A. That's correct. And that is why I mentioned to
16 Mr. Goldstein that he wasn't reading that entire
17 sentence. Because that sentence clearly states "except
18 for that which is properly reported to another
19 municipality or county."

20 Q. Let's make sure that we understand this. If you
21 have a construction company that's based here in Goose
22 Creek, either they do job in Rural Berkeley County or
23 Orangeburg County, which has no business license fee
24 whatsoever, than it is going to come back to their
25 office and will be assessed at the appropriate rate

1 schedule for a construction business for those projects
2 that were done outside; is that correct?

3 A. That's correct

4 Q. On the other hand, if they go to downtown in the
5 City of Charleston or the downtown City of North
6 Charleston, which both happen to have business license
7 fees, those municipalities are going to force that
8 construction company to get a business license fee on
9 the value of the work that is being done in Charleston
10 or North Charleston; is that correct?

11 A. That's correct.

12 Q. And you would allow that company then to deduct the
13 cost of that particular contract from their business
14 license fees that they are being charged in Goose Creek,
15 "this" being a Goose Creek-based company?

16 A. That is correct.

17 Q. Okay. Now as far as inspection and auditing, you
18 have a number of different mechanisms by which you
19 attempt to find out if people are not paying what is due
20 on their business license fees; is that correct?

21 A. That's correct.

22 Q. And, amazingly, not everybody is a hundred percent
23 honest with reporting their business license fees on
24 their taxes; correct?

25 A. That's correct.

1 Q. Okay. Let's talk about some of the things that you
2 do with respect to real estate and other businesses.

3 What are some of those things that you do to try to find
4 out if people who have not provided correct information?

5 A. Well, first let's talk about the housing industry.

6 And we'll take our track home builder, say, Centex
7 Homes, say they come in and build. They come in and get
8 a building permit and a business license based on what
9 they say they are going to sell the home for or what
10 they project to sell a home for. And say they based
11 that on \$150,000. What we do is monitor that address.
12 Once that address is sold, then we look at the business
13 license, see what that business license was based on,
14 see what that property sold for and then we asses them
15 that difference that they have to pay for their business
16 license. We do that with all of the new home
17 construction.

18 As far as rental property goes, we ask people that
19 come in -- unfortunately, not all of the addresses
20 inside the city limits of Goose Creek have Goose Creek
21 water service. But all the ones that do have water
22 service, when they come in to get water service, we ask
23 that person: Do you own or do you rent? If they
24 rent -- if they tell us they rent, then we ask who the
25 landlord is. Then we compare that information given to

1 us to see if that individual has a business license. We
2 go and we try to search for multiple -- for people with
3 the same name owning multiple properties in the water
4 system. Once we do that, then we can determine if that
5 person owns multiple properties, do they need a business
6 license?

7 We compare the business license revenue that's
8 claimed on the business license to the Department of
9 Revenue report that we receive every year from the
10 Department of Revenue that lists an individual with the
11 individual claimed as sales tax revenue. So we can
12 compare the sales tax revenue to the business license
13 revenue that was claimed on that form. And if there is
14 a disparity, then we will conduct an audit there.

15 We do audits based on people complaining -- or not
16 complaining, but saying that someone does something. If
17 someone gives us a name of a company or an individual
18 that's doing something, then we research that. And, in
19 fact, if we find out that yes, they are, then we'll do
20 an audit on them.

21 We do a random audit where Ms. Althoff actually
22 goes -- and there is a bunch of computers -- or not
23 computers, but programs online where you can put in any
24 random list of numbers and tell it to pick some
25 numbers. And it picks business license numbers and we

1 audit those. We do that on a regular basis.

2 We -- I guess that's not an all-inclusive list, but
3 that's probably a fairly extensive list of how we
4 conduct our business license audits.

5 Q. Okay. Now you have discretion, if you find issues,
6 to go back and check those same tax payers in later
7 years; is that correct?

8 A. We do. In fact, we have a couple of tax payers we
9 audited a few years back that there were some issues and
10 we're going back to audit them again.

11 Q. And, certainly, in this case, when you initially
12 looked at Mr. Olds' 2011 information, you found that
13 there was a discrepancy; is that correct?

14 A. Yes.

15 Q. And when you went and looked at --

16 A. '11 or '10.

17 Q. Well, it was '11 based on the '10.

18 A. Based on '10; right.

19 Q. '11 based on '10; that is correct. And, likewise,
20 as it got to the 2012 filing, which was based on 2011 --
21 so your understanding was Mr. Olds was already coming in
22 saying, "I only intend to pay on my profit" or what we
23 would call -- what he calls a gross, which you would
24 call a net profit?

25 A. Net; that's correct. When Mr. Olds came in to

1 apply for his 2012 license, he again used a figure that
2 we disputed. And we advised Mr. Olds what he needed to
3 pay. Mr. Olds eventually paid it and protested it
4 again, which is the same protest that was filed the
5 first time.

6 Q. Now, as far as you are concerned, Mr. Olds has the
7 right to follow the procedures of paying under protest;
8 is that right?

9 A. That's correct.

10 Q. You may disagree with him, but you don't care if he
11 uses the legal system; is that correct?

12 A. I don't care if he uses the legal system.

13 Q. So as long as he follows that legal system --

14 A. Right. Right.

15 Q. -- which, to your understanding, includes an actual
16 payment in full under protest; is that correct?

17 A. Yes; that's what the ordinance says.

18 Q. And has Mr. Olds has attempted to come in and say
19 to you that he intend to pay less than the amount
20 assessed, but still wants you to issue that business
21 license?

22 A. Yes; he did.

23 Q. And did you maintain firm that he would have to pay
24 the amount that was assessed and he may pay it under
25 protest and then challenge it?

1 A. Yes.

2 Q. Is that the official position of the City of Goose
3 Creek?

4 A. Right. And Mr. Olds still owes us for the property
5 at 100 -- or 110 Spaulding.

6 Q. And I was about to get to that. Did you, as a
7 result of getting the discovery in this case, found yet
8 one more property, which, based on what information you
9 have, presumptively appears there is additional
10 information that would suggest that he owes an
11 additional amount.

12 A. That's correct.

13 Q. \$112: Is that what it was?

14 A. No; that was the address.

15 Q. How much is the amount?

16 A. The amount owed is -- I have it in here somewhere.
17 Here it is. The amount he owes is \$2,583.28; that's if
18 it's paid by July 21st.

19 Q. Of which the penalty amount is -- how much? Do
20 that math for me again.

21 A. The penalty amount, unfortunately, when we did the
22 initial letter that I sent to Mr. Olds or that we sent
23 to Mr. Olds, we told him it was 75 percent penalty. It
24 really should have been an 80 percent penalty. However,
25 we made that mistake. Therefore, it will stay at the 75

1 percent. Plus there's an additional -- we sent a letter
2 asking for payment by the end of June. Since we have
3 not received it and it's July, I've added 5 percent; so
4 it's 80 percent now, even though it should be at 85.

5 I also subtracted out for that amount. He actually
6 paid eight cents on his 2012 business license, and that
7 is where I come up with \$2,583.28.

8 Q. And of that, both the amounts \$1,076.40, that's a
9 penalty amount?

10 A. Yes, sir.

11 Q. As well as \$71.76 is a penalty amount?

12 A. Yes, sir.

13 Q. Now, to your knowledge, you've not received that
14 payment under protest nor have you received any
15 challenge to that assessment; is that correct?

16 A. That's correct.

17 Q. Now as it relates to the 2012 license, you were
18 starting to say that if we had this deposition before,
19 we would have discussed that sort of thing. I want to
20 make certain, because I don't think that came out very
21 clearly.

22 The last deposition was scheduled within 30 days of
23 when the determination had been made on 2012 appeal from
24 Dennis Harmon to the Council -- or it would have been at
25 that stage?

1 A. When we would have had the first deposition, it
2 would have been within the 30 days of when Mr. Olds
3 turned in his second appeal.

4 Q. And what you determined was, because the issue was
5 the same, it was truly a futility to go through the
6 process of again of going to City Council; is that what
7 I heard I say?

8 A. Yes, sir; that is correct.

9 Q. You know you're going to Court on this very same
10 issue?

11 A. That's correct.

12 Q. You're going to court on it, and you're going to
13 abide by whatever decision the Court rules?

14 A. Whatever the decision of the Court is, that is what
15 we'll abide by. If the first business license appeal is
16 heard in favor of Mr. Olds by the Court, then I will
17 apply that same decision to the second appeal.

18 Likewise, if the City wins that appeal, we'll apply that
19 second decision to the second appeal -- or that decision
20 to the second appeal, also.

21 MR. DOMIN: Now let's go off the
22 record.

23 (A discussion was held off the
24 record.)

25 MR. DOMIN: I don't have any further



MICHAEL J. HEITZLER, Ed.D.
Mayor
KIMO ESAREY
Mayor Pro-Tem
DENNIS C. HARMON
City Administrator
JEFF MOLINARI
Assistant City Administrator

MARGUERITE H. BROWN
SAL GANDOLFO
JOHN B. McCANTS
MARK A. PHILLIPS
JERRY TEKAC
City Council

May 23, 2011

Prime Properties of Charleston
Todd Olds
4381 Stoney Poynt Court
N. Charleston, SC 29405

RE: Incorrect Gross Reported

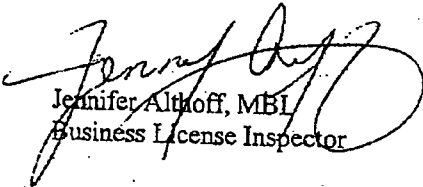
Dear Mr. Olds:

It has come to our attention that you sold 123 Evergreen Magnolia Avenue, Goose Creek, South Carolina. The sale price of 123 Evergreen Magnolia Avenue must be claimed as revenue on your 2011 City of Goose Creek Business License. This was not done therefore we are billing you for the remaining business license fee due. The total fee for your business license is \$928.40 subtracting out your payment of \$460.40 leaving a total due of \$468.00. Please remit \$468.00 with a copy of this letter prior to the June 10, 2011 in order to avoid any further fines and/or penalties.

If payment is not received by the above date your business license fee due will be submitted to the South Carolina Department of Revenue to be set off against your individual income tax return. Pursuant to the Setoff Debt Collection Act (Section 12-56-10), the amount owed for your business license fee plus a \$65.00 fee will be deducted from your South Carolina individual income tax refund. If you file a joint return with your spouse, this amount will be deducted from the total joint return without regard to which spouse incurred the debt or actually withheld taxes. You may also be issued a Uniformed Ordinance Summons in the amount of \$1,092.50, this includes State assessments, or 30 days in jail, each day in violation will be deemed a separate offence.

If you have any questions concerning this matter please contact me at (843) 797-6220 ext. 105.

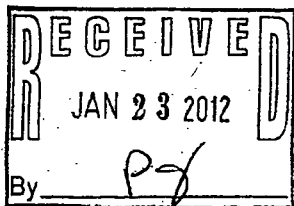
Sincerely,


Jennifer Althoff, MBL
Business License Inspector





City of Goose Creek
Business License
Renewal Application



PRIME PROPERTIES OF CHARLESTON

4381 STONEY POYNT COURT
NORTH CHARLESTON, SC 29405



Current Information

Business License Number: 8108
Class: 7 Type of Business: Realtor
Owner: TODD OLDS
Social Security#: Fed. Id#:
Business Name 1: PRIME PROPERTIES OF CHARLESTON
Business Name 2:
Name of Point of Contact: B TODD OLDS
Local Phone #: 843-200-1813 Home Office Phone #: 843-200-1813
Location: 4381 STONEY POYNT COURT

Update Information

PLEASE PRINT

Location Change Name Change Contact Information Change
Class: Type of Business: Realtor
Owner:
Business Name 1:
Business Name 2 or DBA:
Mailing Address:
Local Phone # Home Office Phone #
Social Security #: Fed. Id#:
E-Mail:
Location:

If you are no longer in business, please give us the date your business was dissolved and return this form. Business terminated on (date) _____.

BUSINESS LICENSE FEES ARE DUE ON OR BEFORE THE LAST DAY OF FEBRUARY. The City of Goose Creek accepts checks and money orders made payable to City of Goose Creek, VISA, MasterCard and American Express. Renewal applications and payment should be mailed to: City of Goose Creek, Attn: Business License, P.O. Drawer 1768, Goose Creek, South Carolina, 29445-1768. Please complete form in its entirety.

BUSINESS LICENSE RENEWAL CALCULATION

(worksheet on back of form)

1. actual gross receipts (total receipts generated by the business regardless of source, without deduction) (gross receipts should be on a 12 month projected income based on the monthly average for a business in operation for less than one year)
From 1/1/2011 To 12/31/2011

\$ 121,784.80

2. Less allowable deductions (itemize on a separate sheet and attach hereto)
**(See back of this form for examples of allowable deductions).

\$ 0

3. Gross receipts for license purposes. (subtract line 2 from line 1).

\$ 121,784.80

4. Business License Fee (from worksheet on back of form, sum of lines 1, 2 & 3).

\$ 788.00

5. Penalty: _____ % multiplied by business license fee (line 4)
5% for each month, or part thereof, beginning March 1st

\$ 0

6. Previous balance due (prior years).

\$ 0

7. Amusement machines (paid for by the operator of the machines only).

Pool Table: _____ X \$12.50 = _____
Amus. Mach.: _____ X \$12.50 = _____
Non-Payot Mach: _____ X \$150.00 = _____

\$ N/A

8. Total payment due: add license fee due (line 4), penalty amount (line 5), previous balance (line 6), and amusement machines (line 7).

\$ 788.00

B. Todd Olds

Name of person responsible for business license (print owner or agent name):

Certification of Applicant

I hereby certify that the information given in this application is true. That the gross income is accurately reported without any unauthorized deduction, and that all assessments and property taxes due and payable to the city have been paid. I understand that issuance of a city business license does not relieve me of the responsibility of meeting all City of Goose Creek zoning and Building Code requirements, and that I am subject to all provisions of the business license ordinance of the City of Goose Creek. I also understand and authorize the City of Goose Creek and its Agents to utilize all information on this application for the purposes of obtaining a business license and insuring that all other Federal, State, and Local laws are followed.

Signature of Applicant: _____

Date: 1/18/2012 Title: Owner / Agent / Realtor

For Office Use Only: Finance Director _____ City Administrator _____

Prior Years Gross: _____

Business License Calculation Worksheet

1. Base Rate: \$0 - \$1,000 gross receipts or fraction thereof
(see enclosed business license rates based on class)

\$ 82.00

Base Rate: \$1,001 - \$2,000 gross receipts or fraction thereof
(see enclosed business license rates based on class)

\$ 82.00

3. Per thousand rate: Multiply all income over \$2,000, up to
\$1,000,000 per thousand rate. (See enclosed business license rates based on
Class) (declining rate applies for gross receipts in excess of one million dollars)

\$ ~~119.78~~ 120 x 5.20

Sec. 110-009(C) License fee according to classification; due date; separate license; computation of fee.

(c) A license fee based on gross income shall be computed on the gross income for the preceding calendar or fiscal year and on a twelve (12) month projected income based on the monthly average for a business in operation for less than one year. The fee for a new business shall be computed on the estimated probable gross income stated in the license application for the balance of the calendar year.

788.00 82.00
870.00
788.00

Gross Receipts are the total revenue of a business, received, accrued or collected for one calendar or fiscal year.

1) Exemptions from gross income are; *business done wholly outside of the City on which a license tax is paid and fully reported to some other municipality or county*, sales tax and gasoline taxes received on behalf of the state and federal government and sales from lottery tickets (lottery sales commission should be included in gross receipts).

a) Business license fees paid to another city or county.

1) Berkeley County does not require a business license; all gross receipts derived from work done in Berkeley County must be reported on your City of Goose Creek Business License Application.

b) Sales tax paid to the State of South Carolina Department of Revenue on retail sales is an exemption from your gross receipts.

c) Gasoline excise tax paid to the State of South Carolina and the Federal government is an exemption from your gross receipts.

d) Lottery Ticket Sales (not commission of lottery ticket sales) on behalf of the State of South Carolina are an exemption from your gross receipts.

See schedule below for business license rates

Class	First \$2,000.00 of Gross Income	After the first \$2,000.00 Up to 1 Million*
7	\$82.00 for the first \$1,000.00 \$82.00 for the second \$1,000.00 or fraction thereof	\$5.20 per \$1,000.00 or fraction thereof

*Declining rate applies in all classes for gross income in excess of 1 Million dollars

GROSS INCOME	PERCENTAGE OF FEE
First 1,000,000.00	100%
1,000,001.00 - 2,000,000.00	90%
2,000,001.00 - 3,000,000.00	80%
3,000,001.00 - 4,000,000.00	70%
4,000,001.00 - above	60%

Example: Class 7 Business - Outside City - Gross Income \$2,500,000.00

First \$1,000.00 @ \$82.00 per thousand

1 x \$82.00 = \$82.00

Second \$1,000.00 @ 82.00 per thousand

1 x \$82.00 = \$82.00

Over \$2,000.00 to \$1 million @ \$5.20 per thousand

998 x \$5.20 = \$5,189.60

\$1 million to \$2 million @ 90% of \$5.20

1000 x \$4.68 = \$4,680.00

\$2 million to \$3 million @ 80% of \$5.20

500 x \$4.16 = \$2,080.00

TOTAL LICENSE FEE DUE

\$12,113.60



City of Goose Creek
Business License
Renewal Application



Current Information

Business License Number: 8108
Class: 7 Type of Business: SC Realtor
Owner: TODD OLDS
Social Security#: Fed. Id#: _____
Business Name 1: PRIME PROPERTIES OF CHARLESTON
Business Name 2: _____
Name of Point of Contact: B TODD OLDS
Local Phone #: 843-200-1813 Home Office Phone #: 843-200-1813
Location: 4381 STONEY POYNT COURT

PRIME PROPERTIES OF CHARLESTON

4381 STONEY POYNT COURT
NORTH CHARLESTON, SC 29405

Update Information

PLEASE PRINT

Location Change Name Change Contact Information Change
Class: _____ Type of Business: _____
Owner: _____
Business Name 1: _____
Business Name 2 or DBA: _____
Mailing Address: _____
Local Phone # _____ Home Office Phone # _____
Social Security #: _____ Fed. Id#: _____
E-Mail: _____
Location: _____

2nd Attempt

If you are no longer in business, please give us the date your business was dissolved and return this form. Business terminated on (date) _____

BUSINESS LICENSE FEES ARE DUE ON OR BEFORE THE LAST DAY OF FEBRUARY. The City of Goose Creek accepts checks and money orders made payable to City of Goose Creek, VISA, MasterCard and American Express. Renewal applications and payment should be mailed to: City of Goose Creek, Attn: Business License, P.O. Drawer 1768, Goose Creek, South Carolina, 29445-1768. Please complete form in its entirety.

BUSINESS LICENSE RENEWAL CALCULATION

(worksheet on back of form)

1. actual gross receipts (total receipts generated by the business regardless of source, without deduction) (gross receipts should be on a 12 month projected income based on the monthly average for a business in operation for less than one year)
From 11/1/2011 To 12/31/2011

2. Less allowable deductions (itemize on a separate sheet and attach hereto)
**(See back of this form for examples of allowable deductions).

3. Gross receipts for license purposes. (subtract line 2 from line 1).

4. Business License Fee (from worksheet on back of form, sum of lines 1, 2 & 3).

5. Penalty: 10 % multiplied by business license fee (line 4)
5% for each month, or part thereof, beginning March 1st

6. Previous balance due (prior years).

7. Amusement machines (paid for by the operator of the machines only).

Pool Table: _____ X \$12.50 = _____
Amus. Mach.: _____ X \$12.50 = _____
Non-Payout Mach: _____ X \$150.00 = _____

8. Total payment due: add license fee due (line 4), penalty amount (line 5), previous balance (line 6), and amusement machines (line 7).

Todd Olds

Name of person responsible for business license (print owner or agent name):

Certification of Applicant

I hereby certify that the information given in this application is true. That the gross income is accurately reported without any unauthorized deduction, and that all assessments and property taxes due and payable to the city have been paid. I understand that issuance of a city business license does not relieve me of the responsibility of meeting all City of Goose Creek zoning and Building Code requirements, and that I am subject to all provisions of the business license ordinance of the City of Goose Creek. I also understand and authorize the City of Goose Creek and its Agents to utilize all information on this application for the purposes of obtaining a business license and insuring that all other Federal, State, and Local laws are followed.

Signature of Applicant: _____

Date: 4/23/12

Title: Realtor

For Office Use Only: Finance Director _____
Prior Years Gross: 134,000

5/4/12

City Administrator DCH

GROSS INCOME
City Olds
\$643,700.00 \$121,784.80
\$0 \$0
\$643,700.00 \$121,784.80
\$3502.40 \$788.00
\$3502.40
\$0
\$3852.64

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING



PRIME PROPERTIES OF CHARLESTON, LLC

4381 Stoney Point Ct.
North Charleston, SC 29405
(843) 200-1813
EIN-26-2119255

SOUTHCOAST COMMUNITY BANK

Charleston, SC 29407
67-794/532

11186

4/22/2012

PAY TO THE ORDER OF CITY OF GOOSE CREEK

\$**3,500.84

Three Thousand Five Hundred and 84/100*****

DOLLARS

CITY OF GOOSE CREEK

PO Drawer 1768
Goose Creek, SC 29445

A TAMPER RESISTANT TONER AREA A



MEMO

PAYMENT UNDER PROTEST AND APPEAL / UNLAWFUL BUSINESS License Tax/Pd

⑈011186⑈ ⑆053207944⑆02 200007611⑈

City of Goose Creek
P.O. Drawer 1768
519 North Goose Creek Blvd.
Goose Creek, SC 29445

DATE : 04/23/2012 3:38 PM
OPER : Renee
TKBY : RENEE
TERM : 6
REC# : 00664606

320.00000 Business License Payment 3500.84

8108-12/31/12 PRIME PROPERTIES OF CHA
CLASS 7 OUTSIDE 3,500.84CR

2-Check 3500.84 REF:11186

APPLIED	3500.84
TENDERED	3500.84
CHANGE	0.00

City of Goose Creek
P.O. Drawer 1768
519 North Goose Creek Blvd.
Goose Creek, SC 29445

DATE : 05/02/2012 11:02 AM
OPER : Renee
TKBY : RENEE
TERM : 6
REC# : 00666633

320.00000 Business License Payment 351.88
8108-12/31/12 PRIME PROPERTIES OF CHA
CLASS 7 OUTSIDE 351.88CR

2-Check 351.88 REF:11193

APPLIED	351.88
TENDERED	351.88
CHANGE	0.00

Jennifer Althoff

From: Ron Faretra
Int: Thursday, January 26, 2012 8:12 AM
To: Jennifer Althoff
Subject: FW: City of Goose Creek
Attachments: 2012 License Fees TO PPC.xls

From: Tim Domin [mailto:Tdomin@CLAWSONANDSTAUBES.COM]
Sent: Wednesday, January 25, 2012 9:15 PM
To: TGoldstein@cobblaw.net
Subject: Fwd: City of Goose Creek

I have your letter of January 23, 2012 together with Prime Properties of Charleston's check. I am sure it crossed in the mail with the e mail that I sent to you when you called. Some of the issues, I have already addressed.

I have already noted that the City employee who Mr. Olds dealt with disagrees as to what Mr. Olds asked for. She says he asked for all businesses that are Class 7. That would require a FOIA. I told you immediately on the phone that Mr. Olds was entitled to the classifications and rate schedules and sent them to you that same day you called me.

Mr. Olds and the City can agree to disagree on whether he is acting as a "Realtor" or as a "Developer." To my common man's definition, a realtor brings together buyers and sellers for a commission. A person who buys houses, fixes them up and resells them for a profit is a real estate developer. As noted in my prior e mail, we can agree he is Class 7 either way. We can agree to put "Class 7" in "Type of business" for all I care.

Here is where we cannot agree to disagree. The attached spreadsheet shows the properties the City of Goose Creek has identified were sold and the price of sale. Table A are ones sold by the LLC and Table B is Olds personally. Below each is the total is the amount of business license fee that is due.

If Olds wants to get two separate business licenses---one for him and one for the LLC, the totals are shown. If you agree that he took title individually, but on behalf of his company, then you can reduce the total due by \$153.60

If Mr. Olds has income related to transactions where he or his company did not take title---for example if he earned a commission in Goose Creek on a sale or purchase, then he is required to provide that information.

Olds has the option of paying under protest and appealing. But Olds does not have the option of forcing the City to issue a business license for a sum substantially less than what is claimed to be due. He cannot say that because we are in litigation, he is able to pay less and that the city must accept it. I don't think you can get a judge to issue a writ of mandamus to force that.

If Olds pays the full sum due under protest on a new signed application with the correct information on gross---of course he can write on it whatever he wants about protesting and not agreeing to the meaning of the word "gross"---then he does not have to drive to the City of Goose Creek City Hall again. We will gladly mail his license to you or to him.

If the City has incorrect information on the gross (without deduction of cost of property), then please provide it. But I do not intend to debate you on your position on gross versus my position on gross. A court will decide that. And if a refund is due, then a refund will be paid.

#1

Address	Gross Sales/Receipts/Income
423 Robin Drive Goose	\$105,000.00
217 Frances Street Goo	\$111,900.00
214 Border Road	\$129,000.00
	\$345,900.00 Total

\$1,952.80 Fee Due

#2

Address	Gross Sales/Receipts/Income
207 Maypop Drive	\$118,900.00
169 Hearthstone Circle	\$178,900.00
	\$297,800.00 Total

\$1,703.20 Fee Due

- \$153.60
\$3,502.40

CLAWSON AND STAUBES LLC

Timothy A. Domin
tdomin@clawsonandstaubes.com

February 29, 2012

File No.: 2011-1160 tad

VIA E-MAIL

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
Charleston, SC 29415-1121

Re: Todd Olds v. City of Goose Creek
Case No: 2011-CP-08-2814

Dear Tommy:

Due to pending litigation, I think it is best for me to respond to matters involving Mr. Olds including an e-mail from Mr. Olds to the City of Goose Creek and your letter to Mr. Harmon as well as a recent e-mail from you to me.

Several different passages inquire as to why Mr. Olds has to have a business license for 2012. Any person who is doing business in the City of Goose Creek must have a business license. Whether a person is doing business in the City has to be examined on the facts of each case. If Mr. Olds is to be engaged in business in the City of Goose Creek in the year 2012, then he needs a license. If he is not going to be engaged in business in Goose Creek, then he does not need a license. You represent that Mr. Olds is not doing business in the City in 2012. However, it is our understanding Mr. Olds' company still owns a property in Goose Creek—111 Aylesbury Road—and thus it is presumptively doing business in the City of Goose Creek. Please provide all relevant information on this property and any other property owned by Olds/Prime Properties if you claim there is no business activity.

The inquiry was made as to whether a real estate agent would have to get a license to list a home for sale in the City. I do believe such a person would be engaged in business in the City. However, at this juncture I should note that we previously "agreed to disagree" over whether Mr. Olds is acting as a realtor when he purchases houses, fixes them up, and then sells them. I believe that this pattern clearly has adequate nexus and sufficient activity in the City to require a business license fee.



www.clawsonandstaubes.com

126 Seven Farms Drive, Suite 200, Charleston, South Carolina 29492

Fax: (843) 722-2867 / Office: (843) 577-2026

Thomas R. Goldstein, Esquire
February 29, 2012
Page 2

Your letter and Mr. Old's e-mail request pursuant to the FOIA all information related to the citizen complaint-inquiry. I am attaching an e-mail inquiry-notice (it doesn't really complain, it just notifies) from City Council member Kimo Esarey indicating that there were some properties that had come to his attention where work was likely to occur.

Finally, Mr. Olds is asked how the fee was calculated. I have previously provided you a spreadsheet which explained how the fee was calculated. Please advise if I misunderstood Mr. Olds request.

With kindest regards, I remain

Very truly yours,

CLAWSON AND STAUBES, LLC


Timothy A. Domin

TAD/paa
Enclosures



MICHAEL J. HEITZLER, Ed.D.
Mayor
KIMO EBAREY
Mayor Pro-Tem
DENNIS C. HARMON
City Administrator
JEFF MOLINARI
Assistant City Administrator

MARGUERITE H. BROWN
SAL GANDOLFO
JOHN B. McCANTS
MARK A. PHILLIPS
JERRY TEKAC
City Council

July 1, 2011

Prime Properties of Charleston LLC
Todd Olds
4381 Stoney Poynt Court
North Charleston, South Carolina 29405

RE: Appeal - Business License Fee

Dear Mr. Olds:

We have scheduled your appeal of your business license fees for 10:00 am, July 26, 2011. At this hearing you have the right to be represented by counsel, to present testimony and evidence, and also cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party requesting it.

If you have any questions concerning these proceedings please contact me at (843) 797-6220 extension 109.

Sincerely,

Ronald R. Faretra
Finance Director

cc: Dennis C. Harmon



STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Todd Olds,

Plaintiff,

vs.

City of Goose Creek,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-08-2814

**DEFENDANT'S ANSWERS TO
PLAINTIFF'S REQUESTS FOR
ADMISSIONS**

The defendant, City of Goose Creek, answering the Requests for Admissions of the plaintiff, above named, states as follows:

1. Please admit that the City of Goose Creek drafted its business license ordinance.

ANSWER:

The City of Goose Creek admits that it drafted its business license ordinance based upon the model ordinance available to members of the South Carolina Municipal Association. Any remaining portions of Requests for Admission number 1 are denied.

2. Please admit that the business license ordinance requires the business ordinance license fee to be calculated based on gross income.

ANSWER:

The City of Goose Creek admits that its business license uses the term "gross income" which is further defined in the ordinance.

3. Please admit that gross income is different than gross sales.

ANSWER:

Objection. Plaintiff provides no context or definition. To the extent the request is



concerning the City of Goose Creek's Business License Ordinance (or for that matter the ordinances of other local jurisdictions), this request is denied. The words are different, but "gross income" includes gross sales under the definition used in the City's business license ordinance.

4. Please admit that gross income is different than total sales.

ANSWER:

Objection. Plaintiff provides no context or definition. To the extent the request is concerning the City of Goose Creek's Business License Ordinance (or for that matter the ordinances of other local jurisdictions), this request is denied. The words are different, but "gross income" includes gross sales under the definition used in the City's business license ordinance.

5. Please admit that as shown by line 7 of Todd Olds 2009 income tax returns, his gross income was \$131,665.

ANSWER:

Objection. Plaintiff does not describe in what context the term gross income is being used. Subject to said objection, the request is denied. As applied to this case involving Goose Creek business license issues, IRS Schedule C, line 7 is not the same as the "gross income" under the City of Goose Creek's ordinances.

6. Please admit that the City of Goose Creek's tax ordinances are penal in nature.

ANSWER:

Denied.

7. Please admit that the ordinances of the City of Goose Creek must be construed most strictly against the City of Goose Creek as the author of its own ordinances.

ANSWER:

Denied.

8. Please admit that Todd Olds' gross income for 2009 is \$131,665.

ANSWER:

Objection. Plaintiff does not describe in what context the term gross income is being used. Subject to said objection, the request is denied. The term "gross income" as used in the City of Goose Creek business license ordinance would not deduct for cost of goods or real estate sold.

9. Please admit that the City of Goose Creek furnishes water to residences located within its service area.

ANSWER:

Admitted.

10. Please admit that the City of Goose Creek may not withhold water from City customers to punish City customers who disagree with the City of Goose Creek on tax matters.

ANSWER:

Objection. The defendant objects to this request as not involving either facts or application of law to facts. Subject to said objection, admitted in part and denied in part. The City of Goose Creek does not withhold water from persons or properties by virtue of those persons opposing the City's tax policies or business license

policies. However, the City is allowed to withhold water from businesses and/or persons who are operating without proper permits or licenses. There is a proper lawful process set up for contesting a business license. Those who fail to follow that process and choose to operate without a permit or without paying under protest and/or appeal are not entitled to have water service from the City.

11. Please admit that the City of Goose Creek cannot withhold essential life services in order to exact compliance with unrelated ordinances.

ANSWER:

Objection. Plaintiff fails to identify what "services" or what "compliance" is involved or which "unrelated" ordinances are involved. As it relates to water service and business licenses, The City is allowed to withhold water from businesses and/or persons who are operating without proper permits or licenses. There is a proper lawful process set up for contesting a business license. Those who fail to follow that process and choose to operate without a permit or without paying under protest and/or appeal are not entitled to have water service from the City.

CLAWSON AND STAUBES, LLC



Timothy A. Domin
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
(843) 577-2026

Attorney for the Defendant

Charleston, South Carolina

November 121, 2011

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF BERKELEY) CASE NO.: 11-CP-08-2814
3 TODD OLDS,)
4 Plaintiff,)
5 vs.)
6 CITY OF GOOSE CREEK,)
7 Defendant.)

COPY

10
11 DEPOSITION OF: STEVE PRICE 30(b)(6)
12 DATE TAKEN: December 20, 2012
13 TIME TAKEN: 1:55 p.m. - 2:55 p.m.
14
15 LOCATION: Dept. Of Public Works for the
16 City of Goose Creek
17 200 Brandywine Blvd.
18 Goose Creek, South Carolina
19 Reported by: Kimberly S. DeMichele
20

21 **South Carolina Quality Court Reporting, LLC**
22 Independent Court Reporters
23 Post Office Box 351
24 Mt. Pleasant, SC 29465
25 Tel.: (843) 607-7138
scqualitycourtreporting@yahoo.com

1 this account -- that would have the date that those
2 were printed.

3 Q. Okay. Now is it Goose Creek's
4 Department of Public Works' policy to lock every
5 meter every time a customer closes an account?

6 A. Yes.

7 Q. So any time that a customer leaves a
8 residence and comes by and says, "I'm leaving.
9 Close out my account," you automatically lock the
10 meter?

11 A. Yes.

12 Q. A hundred per cent of the time?

13 A. Yes.

14 Q. Okay. Is there ever been an exception
15 to that rule?

16 A. Not that I'm aware of.

17 Q. Okay. Now, the job action says,
18 "Disconnect." And is there -- is that a technical
19 term within the department, or is it just mean the
20 normal term as we would use in ordinary English?

21 A. That would be standard language
22 meaning to turn off the service and to terminate
23 the service.

24 Q. Okay. All right. Then the next one
25 is dated July 10, 2012. So this is five days

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1 later, correct?

2 A. Uh-huh.

3 Q. Okay. And that was a "yes?"

4 A. Yes.

5 Q. Just for the court reporter. And it
6 has a service order number. What is the
7 significance of a service -- is that just the
8 number assigned to this particular transaction?

9 A. Correct. That was a tracking number
10 that's used in our work order system.

11 Q. So if you put in service order SO
12 0013132, you're going to pull up this document that
13 I'm holding?

14 A. Correct.

15 Q. And it says, "Account Todd Olds. New
16 turn on. New customer." Is that correct?

17 A. That's correct.

18 Q. What does that mean?

19 A. That would mean that there was a
20 service order that was generated on that day to
21 turn on the service at that address for that
22 account holder.

23 Q. Okay. And then on the right-hand
24 side, it says, "Voided." What is the significance
25 of that?

1 A. That someone -- and I don't know who,
2 in the customer service office voided that service
3 order, which made it so we would not act on that.

4 Q. Okay. Do you know who put the word
5 "Voided" on there?

6 A. I do not.

7 Q. Do you know the mechanism by which the
8 word "Voided" would get on there?

9 A. I -- it would be entered into the work
10 order tracking system, and it would be printed on
11 that as a result of an entry by someone in the work
12 order tracking system.

13 Q. Would the person who's entering it be
14 Sherry Bodden?

15 A. It could very well be. I -- I don't
16 know if there's a way -- that was who originally
17 issued the service order. I do not know if Sherry
18 Bodden is the person who voided the service order.

19 Q. Okay. Could it have been Mr. Faretra?

20 A. It could have been anyone with access
21 to the service order system.

22 Q. Does Mr. Faretra have access to the
23 service -- what was the term you used? Service --

24 A. The service order system.

25 Q. Service order system?

1 A. Yes.

2 Q. Did Mr. Faretra have access to the
3 service order system?

4 A. He should have access. Yes.

5 Q. How about Ms. Althoff? Would she have
6 access?

7 A. That I don't know.

8 Q. Okay. All right. Now, when Mr. Olds
9 applied for the service at 834 North Aylesbury, did
10 he pay a fee to the Department of Public Works?

11 A. I don't know. He -- there would be no
12 fee paid directly to the Department of Public Works
13 for any service. There would be a fee to set up
14 the account set up fee.

15 Q. Okay.

16 A. I do not know what he paid. That
17 would be something that would have to be answered
18 by the customer service office.

19 Q. All right. And who would be the
20 person at the customer service office who could
21 address that?

22 A. The customer service people all work
23 for Mr. Faretra, but there are several -- any of
24 the customer service representatives who would be
25 able to answer that question.

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1 A. Correct. And we subsequent to the
2 voided.

3 Q. Okay. And there would a technician
4 for that?

5 A. Correct. We would actually go check
6 and verify that that was the case.

7 Q. Okay. Now to your knowledge, based on
8 the documentation you've seen, did you ever turn
9 off the water on Mr. Olds?

10 A. No.

11 Q. Okay.

12 A. Based on what I've seen, we had a
13 request from the customer Infinger to turn the
14 service off, because the service was being -- the
15 account was being discontinued.

16 Q. And at one point, there was a work
17 order to initiate service to Mr. Olds, but it was
18 voided before you acted on it?

19 A. That's correct.

20 Q. So you never opened up an account
21 -- you never opened up the water lines, I guess I
22 should say, for Mr. Olds's property at 834 North
23 Aylesbury?

24 A. From what I can tell from the work
25 orders that the lock was never removed, and the

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1 valve was never turned to allow water to the house
2 based on that work -- that work order.

3 Q. Okay. I understand some time
4 subsequent to that that Mr. Olds sold the property
5 to someone and that there may be an account in
6 somebody else's name, but that's not something
7 which you have knowledge of?

8 A. No.

9 Q. Okay. I don't have any other
10 questions.

11 RE-EXAMINATION

12 BY MR. GOLDSTEIN:

13 Q. I just got two follow up. It gets
14 narrower and narrower. If you didn't turn off the
15 water to Mr. Olds, you did deny him service. You
16 didn't permit him to get service? Did not remove
17 the lock?

18 A. Could you repeat that question?

19 Q. Sure. Mr. Olds applied for water
20 service at 834 North Aylesbury?

21 A. I don't know that.

22 Q. Okay.

23 A. I assume so, because there was a work
24 order to turn the meter on.

25 Q. Okay.

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1 A. That was voided.

2 Q. All right. And that was voided?

3 A. Right.

4 Q. So the meter never got turned on?

5 A. From that work order -- yes. We never
6 acted on that.

7 Q. And so the lock remained on the meter?

8 A. Correct.

9 Q. So he was denied service?

10 A. That would be your interpretation. I
11 don't -- I don't know. I didn't deny him service.

12 Q. Okay. Who did?

13 A. I don't know that anyone did. I don't
14 know the circumstances around that other than I
15 have a work order that says there was -- to turn
16 the water on, and it was voided.

17 Q. Okay. If Mr. Olds had taken matters
18 into his own hands and cut the lock off the meter,
19 would he have been in trouble for doing that?

20 A. Yes.

21 Q. Okay. Why would he have been in
22 trouble?

23 A. Because the meter is the property of
24 the City of Goose Creek, and under our ordinance,
25 that would be tampering with the water system.

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1 Q. Okay. So the only way he can get the
2 lock removed is to go through the City?

3 A. Correct.

4 Q. All right. And the City has the
5 authority to either remove the lock or not remove
6 the lock, correct?

7 A. Correct.

8 Q. All right. And in this case, it shows
9 not to remove the lock?

10 A. Based on the information I see, that
11 is correct.

12 Q. Right. And when the lock is not
13 removed, then no water can flow through the meter
14 to that house at 834 North Aylesbury?

15 A. That's correct.

16 Q. All right. Now, at the time the work
17 order was voided, is that -- I think that was your
18 term when you said you got an application that was
19 voided?

20 A. Uh-huh.

21 Q. I'm not trying to put words in your
22 mouth.

23 A. That's what is stamped on the --

24 Q. Yeah. I'm just trying to adopt your
25 vocabulary.

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1 A. Yeah.

2 Q. At the time that the work order was
3 voided, did Mr. Olds have any outstanding unpaid
4 water bills with the City of Goose Creek?

5 A. I don't know.

6 Q. Okay. Who instructs the techs to go
7 and lock a meter? Whose decision is it?

8 A. They -- part of their job is to -- is
9 to do the work orders every day, so the work orders
10 come from --

11 Q. Customer service?

12 A. -- customer service, and then they're
13 distributed to the technician that day who is doing
14 work orders. That's his job for the day, and then
15 he goes and acts on those work orders.

16 Q. Okay. Now, as the head of the
17 Department of Public Works, you agree that it's
18 your responsibility to know the ordinances,
19 implement the ordinances and follow them, correct?

20 A. Correct.

21 Q. Okay. That's all I have.

22 MR. DOMIN: Nothing further.

23 (The deposition ends at 2:55 p.m.)
24
25

I, Robert M. Baldwin, am a certified public accountant licensed by the State of South Carolina. My license number is 1617. I have been licensed as a certified public accountant since February 12, 1981. I have worked with individuals and businesses on federal, state and local taxation issues. This includes helping businesses understand and properly comply with municipal business license fees.

Mr. Brian Todd Olds files his individual income tax returns with the United States Treasury (Internal Revenue Service) and the South Carolina Department of Revenue for the years of this litigation. Mr. Olds is the sole owner of a limited liability company named Prime Properties of Charleston, LLC. That the business of the Limited Liability Company is the acquisition of real property with an intention to resell it after construction of residences and other buildings. Such business may include renovation or new construction of residences and other buildings.

That for federal income tax reporting purposes, the limited liability company is a disregarded entity and thus is reported on Schedule C (Profit or Loss from Business) of the individual income tax return of Mr. Olds. Schedule C as prepared and included in Mr. Old's individual income tax returns report that the business is a cash basis taxpayer. Further, the Schedule C reports the Standard Industrial Classification Code (SIC Code) of the business to be 531390 which is defined as other activities related to real estate.

It is the position of Mr. Olds that the definition of Gross Income for the Goose Creek Business License tax is the reported Gross Income on Schedule C of his individual income tax return. As presented by the Schedule C form, Gross Income is after deduction of Cost of Goods Sold. Line 7 is the indicated line on the 2011 Schedule C Form 1040.

The position of Mr. Olds is, in my opinion is not meritorious on multiple grounds. First, the meaning of "gross income" for the purposes of municipal and local business license purposes should be derived from the language of the local ordinances which for Goose Creek and other jurisdictions in the state specify the basis as "total revenue." Second, the meaning of the tax term "gross income" is not defined by virtue of the federal Schedule C. As will be explained, below, those forms have changed over the years and even currently, different business types have the ability to use different forms. The federal forms do not dictate what a local government entity must use for calculation of business license fees.

As to the first issue, while the Goose Creek Ordinance contains the words "gross income" the ordinance provides additional words for taxpayers and professionals to understand the operation of the ordinance.

Gross Income as defined in the City of Goose Creek License Ordinance is "The total revenue of a business, received or accrued, for one calendar year, collected or to be collected by a business within the city, excepting, there from, business done wholly outside of the city on which a license tax is paid to some other municipality or county and fully reported to the city or county."

Further Gross Income as defined in the City of Goose Creek License Ordinance is "In the case of brokers or agents, **GROSS INCOME** shall mean gross commissions received or retained, unless otherwise specified".

The term "total revenue" is one which is common to municipal and county business license ordinances. It has an ascertainable and understood meaning in the context of South Carolina municipal business license ordinances and means the total revenue of an entity without deduction for the cost of goods sold or any other expenses of the business. It is not taxable income or adjusted income. The only deduction permitted in a business license calculation is for income taxed by another jurisdiction. There are not deductions for business expenses or itemized deductions like the federal and state income taxes.

This type of definition providing a business license fee on total revenue is common in South Carolina. In fact, I know of no jurisdiction in South Carolina which uses a different approach for business licenses than "total revenue" or "total income" of the business without deduction for costs of goods sold.

Charleston County

A review of their current ordinance obtained from the Charleston County Website defines Gross Income as "the total revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected by the businesses, excepting income from business done wholly outside the unincorporated area of the county and fully reported to a municipality or other county." Further it references Gross Income reported on tax returns as a basis for verification. Section 2(E) of the Ordinance as of 11/4/2003. Also, Section 4(b) provides that the license fee is based on gross income. Section 6(a) further provides that no deduction from gross income shall be made except for income subject to a license tax by another jurisdiction. I called the county of Charleston and inquired of their business license ordinance. The county of Charleston indicated that in the case of a seller of homes, the actual sales revenue without reduction for costs of the home is Gross income for their business license purposes.

Other Cities

City of Charleston

A review of their current ordinance obtained from the City of Charleston website defines Gross Income as the total income of a business, received or accrued, for one calendar or fiscal year collected or to be collected or to be collected from business done in the city. See Section 2 definitions. Further it references Gross Income reported on tax returns as a basis for verification. Also, Section 4(b) provides that the license fee is based on gross income. Section 7(a) further provides that no deduction from gross income shall be made.

Mount Pleasant

A review of their current ordinance obtained from the City of Mount Pleasant website defines Gross Income as the total revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from business done in the town, excepting income from business done wholly outside the town and on which a license tax is paid to some other city or county and fully reported to the town. See Section 110.21 definitions. Further it references Gross Income reported on tax returns as a basis for verification. Also, Section 110.23

provides that the license fee is based on gross income. Section 110.25 further provides that no deduction from gross income shall be made except for income from business done wholly outside the municipality which is subject to a license tax by another jurisdiction.

I called the city of Mount Pleasant and inquired of their business license ordinance. The city of Mount Pleasant indicated that in the case of a seller of homes, the actual sales revenue without reduction for costs of the home is Gross income for their business license purposes.

North Charleston

Section 10.5-17 provides the definitions for the City of North Charleston License tax. It reads: *Gross income* means the total revenue of a business, received or accrued, for one (1) calendar or fiscal year collected or to be collected by the business excepting income from business done wholly outside of the city on which a license tax is paid to some other city or a county and fully reported to the city. Section 10.5-24 further reads: No deductions from gross income shall be made except income from business done outside of the city on which a license tax is paid to some to another municipality or county, taxes collected for a governmental entity, or income which cannot be taxed pursuant to state or federal law.

I called the city of North Charleston and inquired of their business license ordinance. The city of North Charleston indicated that in the case of a seller of homes, the actual sales revenue without reduction for costs of the home is Gross income for their business license purposes.

Model Business License Ordinance

The 2012 Model Business License Ordinance as released by the Municipal Association of South Carolina provides the following guidance on gross income in its definition section:

"Gross Income" means the total income of a business, received or accrued, for one calendar year collected or to be collected from business done within the Municipality, excepting therefrom income earned outside of the Municipality on which a license tax is paid to some other municipality or a county and fully reported to the Municipality. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income 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 Insurance Commission, or other government agency."

It further restricts deductions from Gross Income as follows:

"Section 6. **Deductions, Exemptions, and Charitable Organizations.**

A. No deductions from gross income shall be made except income earned outside of the Municipality on which a license tax is paid to some other municipality or a county and fully reported to the Municipality, taxes collected for a governmental entity, or income which cannot be included for computation of the tax pursuant to State or Federal law. The applicant shall have the burden to establish the right to exempt income by satisfactory records and proof."

Federal Tax Forms

Mr. Olds makes his argument based upon Federal Tax Forms in use at this time. In particular, he calls attention to Form 1040 Schedule C, Line 7 (2010 year) which has Gross Income as the sum of Gross Receipts less costs of goods sold and other income. He points to this as evidence that the Goose Creek Business License is measured after costs of goods sold. This is Part 1 of the Form Schedule C titled "Income".

However, this is merely a function of which form was used. Line 7 of the schedule C has no special significance for federal taxation purposes. Because federal taxation is generally based on net profit or taxable income, different federal forms have different lines. With the exception of certain forms not allowing certain deductions, an example being the 1040EZ which does not allow any itemized deductions, the purpose of the federal forms is to reach the end point—where the total taxable income is applied to the federal tax tables to determine the taxpayer's total federal income tax obligation. The federal government forms have different forms that are used by different business types. In fact, some businesses have the option of using several different forms. An examination of those forms reveals should help the Court understand that "gross income" is not a term which has particular significance to the federal form. In fact, it does not even appear on many of the forms.

Another way of stating this is that the federal forms really do not place emphasis on whether the cost of goods and services are deducted on one line or another. For federal income tax purposes, it doesn't matter which order certain costs or expenses of a business are deducted from the total income. Ultimately, the forms can ask for information in a different order or using different terms.

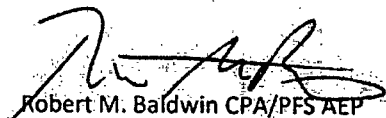
As it relates to Mr. Olds' Schedule C argument, a single member limited liability company as in Mr. Olds' case may be reported three different ways for United States income tax return purposes. It may be taxed as a proprietorship on Schedule C, or as a Corporation on Form 1120 or as an S Corporation on Form 1120S. The form 1120 and 1120S do not provide a "gross income" line.

An examination of the US Return of Partnership Income (2010 year) does not have a "gross income." This is Part 1 of the Form 1065 US Return of Partnership Income titled "Income".

It is also valuable to note that the Schedule C form has changed over the years. A review of Schedule C (Form 1040) for the 1962 year does not disclose Gross Income on the form whatsoever. It refers to Gross Profit (in this

case line 10). A review of Schedule C (Form 1040) for the 1975 year does not disclose Gross Income on the form whatsoever.

In my professional opinion and experience, local governments may want to examine federal or state tax forms in order to make sure that the business is properly reporting its income, but the form does not define the local business license tax ordinance.


Robert M. Baldwin CPA/PFS AEP

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF CHARLESTON)

Robert M. Baldwin personally appears before me, the undersigned officer duly authorized by the laws of South Carolina to administer oaths, and now on this 24th day of January, in the year of 2013 being by me first duly sworn on his/her oath/affirmation, deposes and says:
The forgoing is true and correct to the best of my knowledge


(Signature of Affiant)

Robert M. Baldwin
(Printed name of Affiant)

Sworn/affirmed to and subscribed before me
On this 24th day of January, 2013.
Personally known []


(signature of Notary Public)
Shelby B. Sweet
(printed name of Notary Public), Notary Public
Charleston, South Carolina
My commission expires 4/3/2021

U.S. Return of Partnership Income

For calendar year 2010, or tax year beginning _____, 2010, ending _____, 20_____
▶ See separate instructions.

OMB No. 1545-0088

2010

A Principal business activity	Print or type.	Name of partnership	D Employer identification number
B Principal product or service		Number, street, and room or suite no. If a P.O. box, see the instructions.	E Date business started
C Business code number		City or town, state, and ZIP code	F Total assets (see the instructions) \$ _____

- G Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended return
(6) ☐ Technical termination - also check (1) or (2)
- H Check accounting method: (1) ☐ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶ _____
- I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year ▶ _____
- J Check if Schedules C and M-3 are attached ☐

Caution. Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

Income	1a	Gross receipts or sales	1a			
	b	Less returns and allowances	1b			1c
	2	Cost of goods sold (Schedule A, line 8)				2
	3	Gross profit. Subtract line 2 from line 1c				3
	4	Ordinary income (loss) from other partnerships, estates, and trusts (attach statement)				4
	5	Net farm profit (loss) (attach Schedule F (Form 1040))				5
	6	Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)				6
	7	Other income (loss) (attach statement)				7
8	Total income (loss). Combine lines 3 through 7				8	
Deductions (see the instructions for limitations)	9	Salaries and wages (other than to partners) (less employment credits)				9
	10	Guaranteed payments to partners				10
	11	Repairs and maintenance				11
	12	Bad debts				12
	13	Rent				13
	14	Taxes and licenses				14
	15	Interest				15
	16a	Depreciation (if required, attach Form 4562)	16a			
	b	Less depreciation reported on Schedule A and elsewhere on return	16b			16c
	17	Depletion (Do not deduct oil and gas depletion.)				17
	18	Retirement plans, etc.				18
	19	Employee benefit programs				19
	20	Other deductions (attach statement)				20
	21	Total deductions. Add the amounts shown in the far right column for lines 9 through 20.				21
22	Ordinary business income (loss). Subtract line 21 from line 8				22	

Sign
Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member manager) is based on all information of which preparer has any knowledge.

Signature of general partner or limited liability company member manager _____ Date _____

May the IRS discuss this return with the preparer shown below (see instructions)? ☐ Yes ☐ No

Paid
Preparer
Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
Firm's name ▶	Firm's EIN ▶			
Firm's address ▶	Phone no. ▶			

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 11390Z

Form 1065 (2010)

U.S. Corporation Income Tax Return

For calendar year 2010 or tax year beginning _____, 2010, ending _____, 20

OMB No. 1545-0123

2010

▶ See separate instructions.

A Check if:

- 1a Consolidated return.
(attach Form 851) ☐
b Life/nonlife consolidated return ☐
2 Personal holding co.
(attach Sch. PH) ☐
3 Personal service corp.
(see instructions) ☐
4 Schedule M-3 attached ☐

**Print
or
type**

Name	B Employer identification number
Number, street, and room or suite no. If a P.O. box, see instructions.	C Date incorporated
City or town, state, and ZIP code	D Total assets (see instructions) \$

E Check if: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change

Income	1a Gross receipts or sales	b Less returns and allowances	c Bal ▶	1c
	2 Cost of goods sold (Schedule A, line 8)			2
	3 Gross profit. Subtract line 2 from line 1c			3
	4 Dividends (Schedule C, line 19)			4
	5 Interest			5
	6 Gross rents			6
	7 Gross royalties			7
	8 Capital gain net income (attach Schedule D (Form 1120))			8
	9 Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)			9
	10 Other income (see instructions—attach schedule)			10
	11 Total income. Add lines 3 through 10.			11
Deductions (See instructions for limitations on deductions.)	12 Compensation of officers (Schedule E, line 4)			12
	13 Salaries and wages (less employment credits)			13
	14 Repairs and maintenance			14
	15 Bad debts			15
	16 Rents			16
	17 Taxes and licenses			17
	18 Interest			18
	19 Charitable contributions			19
	20 Depreciation from Form 4562 not claimed on Schedule A or elsewhere on return (attach Form 4562)			20
	21 Depletion			21
	22 Advertising			22
	23 Pension, profit-sharing, etc., plans			23
	24 Employee benefit programs			24
	25 Domestic production activities deduction (attach Form 8903)			25
	26 Other deductions (attach schedule)			26
	27 Total deductions. Add lines 12 through 26.			27
	28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11.			28
29 Less: a Net operating loss deduction (see instructions)	29a		29c	
b Special deductions (Schedule C, line 20)	29b		29c	
Tax, Refundable Credits, and Payments	30 Taxable income. Subtract line 29c from line 28 (see instructions)			30
	31 Total tax. (Schedule J, line 10)			31
	32a 2009 overpayment credited to 2010	32a		
	b 2010 estimated tax payments	32b		
	c 2010 refund applied for on Form 4466	32c		
	d Bal ▶	32d		
	e Tax deposited with Form 7004	32e		
	f Credits: (1) Form 2439 (2) Form 4136	32f		
	g Refundable credits from Form 3800, line 19c, and Form 8827, line 8c	32g		32h
	33 Estimated tax penalty (see instructions). Check if Form 2220 is attached ☐			33
34 Amount owed. If line 32h is smaller than the total of lines 31 and 33, enter amount owed			34	
35 Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid			35	
36 Enter amount from line 35 you want: Credited to 2011 estimated tax ▶ Refunded ▶			36	

**Sign
Here**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer _____ Date _____ Title _____

May the IRS discuss this return with the preparer shown below (see instructions)? ☐ Yes ☐ No

**Paid
Preparer
Use Only**

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
Firm's name ▶	Firm's EIN ▶			
Firm's address ▶	Phone no.			

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 11450Q

Form 1120 (2010)

Form **1120S**Department of the Treasury
Internal Revenue Service**U.S. Income Tax Return for an S Corporation**▶ Do not file this form unless the corporation has filed or is
attaching Form 2553 to elect to be an S corporation.

▶ See separate instructions.

OMB No. 1545-0130

2010

For calendar year 2010 or tax year beginning

, 2010, ending

, 20

A S election effective date	TYPE OR PRINT	Name	D Employer identification number
B Business activity code number (see instructions)		Number, street, and room or suite no. if a P.O. box, see instructions.	E Date incorporated
C Check if Sch. M-3 attached ☐		City or town, state, and ZIP code	F Total assets (see instructions)

G Is the corporation electing to be an S corporation beginning with this tax year? ☐ Yes ☐ No. If "Yes," attach Form 2553 if not already filed**H** Check if: (1) ☐ Final return (2) ☐ Name change (3) ☐ Address change
(4) ☐ Amended return (5) ☐ S election termination or revocation**I** Enter the number of shareholders who were shareholders during any part of the tax year**Caution.** Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.

Income	1a Gross receipts or sales	b Less returns and allowances	c Bal ▶	1c
	2 Cost of goods sold (Schedule A, line 8)			2
	3 Gross profit. Subtract line 2 from line 1c			3
	4 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)			4
	5 Other income (loss) (see instructions—attach statement)			5
	6 Total income (loss). Add lines 3 through 5			6
Deductions (see instructions for limitations)	7 Compensation of officers			7
	8 Salaries and wages (less employment credits)			8
	9 Repairs and maintenance			9
	10 Bad debts			10
	11 Rents			11
	12 Taxes and licenses			12
	13 Interest			13
	14 Depreciation not claimed on Schedule A or elsewhere on return (attach Form 4562)			14
	15 Depletion (Do not deduct oil and gas depletion.)			15
	16 Advertising			16
	17 Pension, profit-sharing, etc., plans			17
	18 Employee benefit programs			18
	19 Other deductions (attach statement)			19
	20 Total deductions. Add lines 7 through 19			20
	21 Ordinary business income (loss). Subtract line 20 from line 6			21
Tax and Payments	22a Excess net passive income or LIFO recapture tax (see instructions)	22a		22c
	b Tax from Schedule D (Form 1120S)	22b		
	c Add lines 22a and 22b (see instructions for additional taxes)			
	23a 2010 estimated tax payments and 2009 overpayment credited to 2010	23a		
	b Tax deposited with Form 7004	23b		
	c Credit for federal tax paid on fuels (attach Form 4136)	23c		
	d Add lines 23a through 23c			23d
	24 Estimated tax penalty (see instructions). Check if Form 2220 is attached ☐			24
	25 Amount owed. If line 23d is smaller than the total of lines 22c and 24, enter amount owed			25
	26 Overpayment. If line 23d is larger than the total of lines 22c and 24, enter amount overpaid			26
27 Enter amount from line 26 Credited to 2011 estimated tax ▶		Refunded ▶	27	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here

Signature of officer

Date

Title

May the IRS discuss this return with the preparer shown below (see instructions)? ☐ Yes ☐ No**Paid Preparer Use Only**

Print/Type preparer's name

Preparer's signature

Date

Check ☐ if self-employed

PTIN

Firm's name ▶

Firm's EIN ▶

Firm's address ▶

Phone no.

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 11510H

Form **1120S** (2010)

SCHEDULE C
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Profit or Loss From Business

(Sole Proprietorship)

► Partnerships, joint ventures, etc., generally must file Form 1065 or 1065-B.
► Attach to Form 1040, 1040NR, or 1041. ► See instructions for Schedule C (Form 1040).

OMB No. 1545-0074

2010

Attachment
Sequence No. 09

Name of proprietor

Social security number (SSN)

A Principal business or profession, including product or service (see instructions)

B Enter code from pages C-8, 10, & 11

C Business name. If no separate business name, leave blank.

D Employer ID number (EIN), if any

E Business address (including suite or room no.) ►

City, town or post office, state, and ZIP code

F Accounting method: (1) ☐ Cash (2) ☐ Accrual (3) ☐ Other (specify) ►

G Did you "materially participate" in the operation of this business during 2010? If "No," see instructions for limit on losses ☐ Yes ☐ No

H If you started or acquired this business during 2010, check here ☐

Part I Income

1 Gross receipts or sales. Caution. See instructions and check the box if:

• This income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, or

• You are a member of a qualified joint venture reporting only rental real estate income not subject to self-employment tax. Also see instructions for limit on losses.



2 Returns and allowances

3 Subtract line 2 from line 1

4 Cost of goods sold (from line 42 on page 2)

5 Gross profit. Subtract line 4 from line 3

6 Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)

7 Gross income. Add lines 5 and 6

Part II Expenses. Enter expenses for business use of your home only on line 30.

8 Advertising

9 Car and truck expenses (see instructions)

10 Commissions and fees

11 Contract labor (see instructions)

12 Depletion

13 Depreciation and section 179 expense deduction (not included in Part III) (see instructions)

14 Employee benefit programs (other than on line 19)

15 Insurance (other than health)

16 Interest:

a Mortgage (paid to banks, etc.)

b Other

17 Legal and professional services

18 Office expense

19 Pension and profit-sharing plans

20 Rent or lease (see instructions):

a Vehicles, machinery, and equipment

b Other business property

21 Repairs and maintenance

22 Supplies (not included in Part III)

23 Taxes and licenses

24 Travel, meals, and entertainment:

a Travel

b Deductible meals and entertainment (see instructions)

25 Utilities

26 Wages (less employment credits)

27 Other expenses (from line 48 on page 2)

28 Total expenses before expenses for business use of home. Add lines 8 through 27

29 Tentative profit or (loss). Subtract line 28 from line 7

30 Expenses for business use of your home. Attach Form 8829

31 Net profit or (loss). Subtract line 30 from line 29.

• If a profit, enter on both Form 1040, line 12, and Schedule SE, line 2, or on Form 1040NR, line 13 (if you checked the box on line 1, see instructions). Estates and trusts, enter on Form 1041, line 3.

• If a loss, you must go to line 32.

32 If you have a loss, check the box that describes your investment in this activity (see instructions).

• If you checked 32a, enter the loss on both Form 1040, line 12, and Schedule SE, line 2, or on Form 1040NR, line 13 (if you checked the box on line 1, see the line 31 instructions). Estates and trusts, enter on Form 1041, line 3.

• If you checked 32b, you must attach Form 6198. Your loss may be limited.

32a ☐ All investment is at risk.

32b ☐ Some investment is not at risk.

For Paperwork Reduction Act Notice, see your tax return instructions.

Cat. No. 11334P

Schedule C (Form 1040) 2010

SCHEDULE C
(Form 1040)
Department of the Treasury
Internal Revenue Service

Profit or (Loss) From Business or Profession
(Sole Proprietorship)
Partnerships, Joint Ventures, etc., Must File Form 1065.
▶ Attach to Form 1040. ▶ See Instructions for Schedule C (Form 1040).

1975

Name(s) as shown on Form 1040

Social security number

A Principal business activity (see Schedule C Instructions) ▶; product ▶
B Business name ▶ C Employer identification number ▶
D Business address (number and street) ▶
City, State and ZIP code ▶ **C**
E Indicate method of accounting: (1) ☐ Cash (2) ☐ Accrual (3) ☐ Other ▶
F Were you required to file Form W-3 or Form 1096 for 1975? (see Schedule C Instructions)
If "Yes," where filed ▶
G Was an Employer's Quarterly Federal Tax Return, Form 941, filed for this business for any quarter in 1975?
H Method of inventory valuation ▶ Was there any substantial change in
the manner of determining quantities, costs, or valuations between the opening and closing inventories? (If "Yes," attach explanation)
Yes No

Income	
1 Gross receipts or sales \$..... Less: returns and allowances \$..... Balance ▶	1
2 Less: Cost of goods sold and/or operations (Schedule C-1, line 8)	2
3 Gross profit	3
4 Other income (attach schedule)	4
5 Total income (add lines 3 and 4)	5

Deductions	
6 Depreciation (explain in Schedule C-3)	6
7 Taxes on business and business property (explain in Schedule C-2)	7
8 Rent on business property	8
9 Repairs (explain in Schedule C-2)	9
10 Salaries and wages not included on line 3, Schedule C-1 (exclude any paid to yourself)	10
11 Insurance	11
12 Legal and professional fees	12
13 Commissions	13
14 Amortization (attach statement)	14
15 (a) Pension and profit-sharing plans (see Schedule C Instructions)	15(a)
(b) Employee benefit programs (see Schedule C Instructions)	(b)
16 Interest on business indebtedness	16
17 Bad debts arising from sales or services	17
18 Depletion	18
19 Other business expenses (specify):	
(a)	
(b)	
(c)	
(d)	
(e)	
(f)	
(g)	
(h)	
(i)	
(j)	
(k) Total other business expenses (add lines 19(a) through 19(j))	19(k)
20 Total deductions (add lines 6 through 19(k))	20
21 Net profit or (loss) (subtract line 20 from line 5). Enter here and on Form 1040, line 28. ALSO enter on Schedule SE, line 5(a)	21

SCHEDULE C-1.—Cost of Goods Sold and/or Operations (See Schedule C Instructions for Line 2)

1 Inventory at beginning of year (if different from last year's closing inventory, attach explanation)	1
2 Purchases \$..... Less: cost of items withdrawn for personal use \$..... Balance ▶	2
3 Cost of labor (do not include salary paid to yourself)	3
4 Materials and supplies	4
5 Other costs (attach schedule)	5
6 Total of lines 1 through 5	6
7 Less: Inventory at end of year	7
8 Cost of goods sold and/or operations. Enter here and on line 2 above	8

10-82517-1

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobbblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobbblaw.net

Thomas R. Goldstein
tgoldstein@cobbblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

July 10, 2014

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

Mr. Tim Domin, Esq.
Clawson & Staubes
126 Seven Farms Drive
Suite 200
Daniel Island, S. C. 29492

Re: Todd Olds vs. City of Goose Creek

Dear Tim,

It is hard to believe that we are corresponding on this case three years into it. As you know, Todd attempted to purchase his 2014 business license. Because, as you may recall, the last time he tendered a check to the City of Goose Creek for a business license, the City refused to apply it to the license fee as he directed and instead applied all of his check to "penalties" and none of it to his application for a business license. Regardless of the merits of our respective legal positions, I hope that we agree that a taxpayer has the right to direct how his payment is applied.

At any rate, in an effort to secure a 2014 business license, Todd contacted the City to submit his application. For reasons that are known only to Ron Faretra, Mr. Faretra computed that Todd owes \$1,142.24 for his 2014 license. In an e-mail dated April 8, 2014, Mr. Faretra calculates this amount based on the sales of three properties. In an e-mail dated April 9, 2014, Ms. Althoff informs Todd that the calculations are based on the following sales:

2011 - 100 Spalding Circle for \$276,000.00
2013 [sic.] - 834 N. Aylesbury Road for \$140,000.00
2014 - 116 Fairhaven Drive for \$206,000.00.

Based on these figures, the City contends that Todd owes \$1,142.24. Obviously we dispute this figure for a number of reasons, the most obvious is because we contend that "gross receipts" is not the same thing as "gross income." You and I have agreed to disagree about this long ago, and we agree that the Court will settle this issue. However, beyond that, Todd has not owned 100 Spalding Circle since 2010, and he sold N. Aylesbury in 2012. Therefore, whether the tax should be computed on gross receipts, as you contend, or gross income, as we contend, the numbers are still not correct for the obvious reason that Mr. Faretra is making his calculation is based on the preceding four year's income.

Normally, I would tell Todd to go into the City and sit down with Mr. Faretra and work through these figures. We all know that the dispute over "gross receipts" vs. "gross income" will have to be decided by the courts. However, I think that a

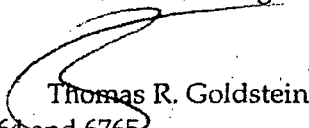
sophisticated government official like Ron Faretra could sit down with a sophisticated businessman such as Todd Olds and do the calculations to compute the previous year's income. I do not think there is a dispute about the convention of using a calendar to demarcate the passage of time. Surely we can agree that 2011 is a different year than 2013. Part of the problem, I think, is that Mr. Faretra and Ms. Althoff double-team the issue, and I think this multiplicity of calculations multiplies the problems. It should not take two government officials to look at financial records that are not in dispute and calculate a sum. In 2013, Todd sold one home for 140,000.00. I do not know how it could be any simpler.

In an effort to move everyone forward, I am enclosing two checks. The first is my trust account check, number 6764 in the amount of \$1,142.24 for payment of Todd's 2014 business license tax. This is the figure Mr. Faretra computed even though it is incorrect because it is based on "gross receipts" of three years. I think it is obvious—and it should go without saying—we are tendering this amount under protest and reserving all rights to seek a refund. We ask that the payment under protest be processed as an appeal in accordance with the City's administrative appeal process. (If you desire to stipulate the administrative appeal process is fruitless and resolve the matter as part of the circuit court case now pending, I am agreeable to that procedure.) Please advise if we are required to submit a particular or separate form or pay any additional filing fee in order to challenge the calculation through the administrative procedure provided by the City.

I enclose a second trust check, number 6765, in the amount of \$1,000.00, which we are tendering to be held as an escrow deposit in against any penalties that Todd may owe to the City after conclusion of the on-going litigation. We are not aware of any unpaid license fees, and as far as we can tell, the City is compounding interest on interest to run up the alleged penalty amounts. There is no way to calculate what penalties, if any, are due to the City absent a decision by the Court. Nonetheless, as a token of good faith, we are tendering an extra \$1,000.00 in the hopes the City will agree to hold this amount in escrow pending a decision by the court of last resort. It should go without saying that we dispute there is any penalty amount due, and the tendering of the \$1,000.00 is a payment made under protest and reserving all rights as allowed by South Carolina law.

Please confirm receipt of these payments and advise us if anything further is required in order to appeal the calculations. With kind regards, I am

Very truly yours,
Belk, Cobb, Infinger & Goldstein, P.A.


Thomas R. Goldstein

Enclosure: Trust Account Checks 6764 and 6765

TRG/

cc: Todd Olds (with enclosure)

CLAWSON AND STAUBES LLC

Timothy A. Domin
tdomin@clawsonandstaubes.com

July 18, 2014

File No.: 2011-1160 tad

VIA E-MAIL

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
Charleston, SC 29415-1121

Re: Todd Olds v. City of Goose Creek, Ron Faretra, Jennifer Althoff, City of Goose
Creek Department of Public Works
Case No: 2011-CP-08-2814

Dear Tommy:

I have two checks for \$1142 and \$1000. The City has offered to allow the penalties to stop running if Mr. Olds 1) comes current under protest for the actual taxes due 2) deposits penalties in escrow with you or with my law firm, again reserving all rights to protest. The checks and letter are a step in the right direction, but fall short in both respects. They neither cover the outstanding balance of actual license fees owed and do not reflect that money for penalties is being held in escrow by you. I can take both checks and apply them to the actual business license fees owed. I will return them to you if you request in the next 5 days. Otherwise, I will apply them to your outstanding balance. If the City does that, Mr. Olds owes another \$800.24 cents in actual fees and penalties and the amount of \$3,281.20 should be held by either your law firm or mine. This should be done by 7/31/2014 to avoid another month's penalties. By doing this Mr. Olds can stop the penalties from running. He can still pay under protest and argue about what he is supposed to pay.

Goose Creek will always apply amounts received to the oldest balance. That is the way that it works at the bank, at the power company, the cable company, etc. And in situations where there is ongoing service like the power or cable company, you cannot pay the current charges amount, ignore the previous two bills still outstanding and expect the company to restore service. You have to bring your payments up to date entirely—including any late fees. Under this unique situation where we have been in this lawsuit for roughly three years waiting for the Judge to decide through no fault of Olds or Goose Creek, I have offered a reasonable proposal which involves paying the actual license fees only (under protest so that Olds can get a refund if his argument is correct.) And to allow his penalties to be held by someone in escrow.

www.clawsonandstaubes.com

126 Seven Farms Drive, Suite 200, Charleston, South Carolina 29492

Fax: (843) 722 - 2867 / Office: (843) 577 - 2026

Thomas R. Goldstein, Esquire
July 18, 2014
Page 2

I went through your letter as to amounts and years, I think you are confused. I asked Ron and Jennifer to set it forth again in more detail.

The \$1,142.24 was based on the following calculation as of April 2014.

Prime Properties of Charleston LLC

2014 Business License

\$206,000.00	Gross Receipts 2013
204	
<u>x4.60</u>	every 1,000.00 after 1st \$2,000.00
938.40	
<u>100.00</u>	1st \$2,000.00
\$1,038.40	
	10% penalty 2014 business due on
<u>103.84</u>	February 28th
\$1,142.24	Total 2014 fee due April 30, 2014

As you can see, that included penalties quoted as of April 2014.

Listed below is the recalculated business license fees based on current balances and penalties as of July 15, 2014.

Prime Properties of Charleston LLC

2014 Business License

\$206,000.00	Gross Receipts 2013	116 Fairhaven (sold 2013)
204		
<u>x4.60</u>	every 1,000.00 after 1st \$2,000.00	
938.40		
<u>100.00</u>	1st \$2,000.00	
\$1,038.40		
	25% penalty due by last day of February 2014 license	
<u>259.6</u>	year	
\$1,298.00	Total 2014 fee due July 31, 2014	

Thomas R. Goldstein, Esquire
 July 18, 2014
 Page 3

2013 Business License

\$140,000.00	Gross Receipts 2012834 N Aylesbury (sold 2012)
138	
x4.60	every 1,000.00 after 1st \$2,000.00
634.80	
<u>100.00</u>	1st \$2,000.00
\$734.80	
 624.58	85% penalty due by last day of February 2013 license year
\$1,359.38	Total 2013 fee due July 31, 2014

2011 Business License

\$276,000.00	Gross Receipts 100 Spalding Circle (sold 2010)
276	
<u>x5.20</u>	every 1,000.00 after 1st \$2,000.00
1,435.20	
<u>-265.92</u>	Payment made 2-25-2013
1,169.28	
 2,397.02	205% penalty due by last day of February 2011 license year
\$3,566.30	Total 2011 fee due July 31, 2014

\$1,298.00	2014
\$1,359.38	2013
<u>\$3,566.30</u>	2011
\$6,223.68	Total fee due currently

The City in good faith will issue Todd Olds/Prime Properties a business license under the following conditions: 1) actual business license fees are paid to current 2) penalties are escrowed.

Prime Properties pays for the unpaid balances of the actual business license fees for 2011 & 2013 business licenses and the 2014 business license which is calculated as follows:

Thomas R. Goldstein, Esquire
July 18, 2014
Page 4

Prime Properties of Charleston LLC

2014 Business License

\$206,000.00	Gross Receipts 2013 116 Fairhaven (sold 2013)
204	
<u>x4.60</u>	every 1,000.00 after 1st \$2,000.00
\$938.40	
<u>100.00</u>	1st \$2,000.00
\$1,038.40	

2013 Business License

\$140,000.00	Gross Receipts 2012 834 N Aylesbury (sold 2012)
138	
<u>x4.60</u>	every 1,000.00 after 1st \$2,000.00
\$634.80	
<u>100.00</u>	1st \$2,000.00
\$734.80	

2011 Business License

\$276,000.00	Gross Receipts 100 Spalding Circle (sold 2010)
276	
<u>x5.20</u>	every 1,000.00 after 1st \$2,000.00
\$1,435.20	
<u>-265.92</u>	Payment made 2-25-2013
1,169.28	

\$1,038.40	2014
\$734.80	2013
<u>\$1,169.28</u>	2011
\$2,942.48	Total fee due currently
<u>-\$1,142.24</u>	Check number 6764 for attorney
<u>-\$1,000.00</u>	Check number 6765 for attorney
\$800.24	Balance due to issue 2014 license

The \$800.24 balance must be paid by 7/31/2014.

This calculation does not include penalties which to date are \$3,281.20. Prime Properties places \$3,281.20 in an escrow account with you or with Clawson and Staubes, LLC. The

Thomas R. Goldstein, Esquire
July 18, 2014
Page 5

funds in the escrow account would be distributed to the appropriate party following the courts final decision.

With kindest regards, I remain

Very truly yours,

CLAWSON AND STAUBES, LLC



Timothy A. Domin

TAD/paa

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

AUG 28 2015

SC Court of Appeals

Case No. 2011-CP-08-2814
Appellate Case No.: 2014-002393

Todd Olds..... Plaintiff,

vs.

City of Goose Creek Respondent,

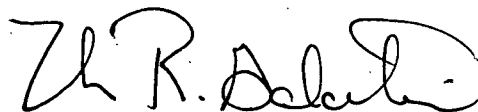
of whom

Todd Olds is the..... Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Record on Appeal on the Respondent, City of Goose Creek, by depositing a copy of it in the United States Mail, postage prepaid, on August 25, 2015, addressed to its attorney of record, Timothy A. Domin, 126 Seven Farms Drive, Suite 200, Daniel Island, S. C. 29492.

August 25, 2015

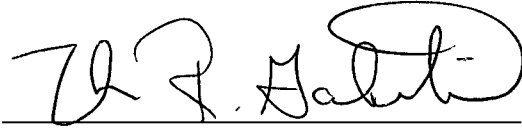


Thomas R. Goldstein, #2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554-4291; (843) 554-5566 fax
Attorneys for the Appellant

CERTIFICATE OF COUNSEL

I certify that that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 22, 2015



Thomas R. Goldstein I.D. #2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554-4291
Attorneys for Appellant

RECEIVED
AUG 27 2015
SC Court of Appeals