

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas  
The Honorable R. Markley Dennis, Jr.

**SC Court of Appeals**

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

Todd Olds.....Appellant,

v.

City of Goose Creek.....Respondent.

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**AMICUS CURIAE BRIEF OF THE  
MUNICIPAL ASSOCIATION OF SOUTH CAROLINA**

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### STATEMENT OF ISSUES ON APPEAL

The Appellant raises three issues on appeal. By this brief, the Municipal Association of South Carolina ("the Municipal Association") addresses only the first issue: whether the trial court correctly held that the City of Goose Creek's business license ordinance is valid.

### STATEMENT ON THE INTERESTS OF THE AMICUS

The Municipal Association is a nonpartisan, non-profit association of the State of South Carolina's incorporated cities and towns with 270 member municipalities. The Municipal Association, in addition to offering services and programs to its members, promotes and represents the collective interests of municipalities throughout the State.

Municipalities have a substantial and vital interest in judicial and legislative determinations pertaining to local business license taxation given the potential statewide impact on local ordinances. The Municipal Association believes the trial court correctly held that the City acted within its statutory authority in enacting a business license tax ordinance defining "gross income" as "total revenue of a business" or "gross receipts" and that such terms are consistent with state and federal law.

Municipalities have broad authority to enact ordinances pursuant to S.C. Code §5-7-30 (1976). South Carolina jurisprudence has long established that municipalities have authority to define the terms to levy a business license tax if those definitions are consistent with state and federal law. South Carolina does not define "gross income" for business license tax purposes; however, our courts have upheld ordinances that define the use of "gross income" as "gross receipts" or "total revenue". State and federal income tax definitions do not dictate or control municipal business license tax definitions.

## STATEMENT OF THE CASE

The Municipal Association adopts the Statement of the Case in the Final Brief of Respondent.

## ARGUMENT

The Municipal Association agrees with the clear arguments as set forth in Respondent's Final Brief.

### **I. THE TRIAL COURT CORRECTLY DETERMINED THE CITY OF GOOSE CREEK'S BUSINESS LICENSE TAX ORDINANCE IS VALID**

The central issue on appeal to be addressed by the Municipal Association in its Amicus Curiae Brief is whether the business license tax ordinance of the City of Goose Creek (Ord. §110.001) defining "gross income" as "total revenue" or "gross receipts" is valid.

South Carolina law is well settled that the test for the validity of a municipal ordinance is 1) whether the municipality enacting the ordinance had the power to do so and 2) whether the ordinance is inconsistent with state or federal law. Hospitality Association of South Carolina, Inc. v. County of Charleston, 320 S.C. 219, 224, 464 S.E.2d 113, 117-118 (1995).

#### **a. THE TRIAL COURT CORRECTLY HELD THE CITY OF GOOSE CREEK ACTED WITHIN STATUTORILY CONFERRED AUTHORITY TO DEFINE "GROSS INCOME" AS "TOTAL REVENUE" OR "GROSS RECEIPTS"**

Appellant argues that the City of Goose Creek (hereinafter "the City") exceeds the authority granted to municipalities by S.C. Code §5-7-30 to "levy business license taxes on gross income" because the City does not adopt the State's income tax definition of "gross income". The Appellant's argument fails on at least two separate grounds. First, Appellant has provided no authority to support the imposition of income tax definitions on an excise tax and such a sweeping application has been rejected in South Carolina. Second, the ordinance defines "gross

income” as “the total revenue of a business” or “gross receipts” employing the well settled and long standing definitions found in both South Carolina jurisprudence and common definitions.

i. Municipalities Act Within Statutorily Conferred Authority In Defining “Gross Income” for Business License Tax Purposes When No State or Federal Excise Tax Definition Is Imposed

Appellant contends that the definition of “gross income” found in S.C. Code §12-6-1110 defining “gross income” expressly for “income tax purposes” must be adopted by municipalities. However, Appellant provides no state or federal law requiring that the use of the income tax definition of “gross income” and such an argument misapprehends the very nature of the business license tax. Appellant provides no authority for his position because none exists.

S.C. Code §5-7-30 grants the ability to municipalities to levy business license taxes; however, this statute remains completely silent on the method, terminology, modifiers or specifics of said taxes. No attempt is made by the legislature to define “gross income” in this context nor does this statute invoke other definitions by reference. The legislature made no attempt to constrain municipalities in exercising their broad authority to levy a business license tax by imposing particular definitions. Appellant’s argument suggests that one definition of “gross income” is applicable in all contexts but such an expansive application has been rejected in this State. South Carolina has held that “[t]he term ‘gross income’ does not carry the same definite and inflexible meaning under all circumstances and wherever used. Its meaning depends on 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, 142-143, 378 S.E.2d 606, 608 (Ct. App. 1989). The subject ordinance employs a definition of “gross income” for purposes of a tax completely different in nature than the income tax definition relied upon by Appellant.

A business license tax is an excise tax which is a tax on the privilege of conducting business within a geographical area and, in this instance, a municipality. A business license tax can be thought of as a tax on a transaction or activity. The value of the privilege is measured by the gross receipts therefrom. Carter v. Linder, 303 S.C. 119, 122, 399 S.E.2d 423, 425 (1990) (citing Hay v. Leonard, 212 S.C. 81, 46 S.E.2d 653 (1948) *superseded on other grounds by Constitutional Amendment as stated in Home Builders Association of South Carolina v. Sch. Dist. No. 2 of Dorchester County*, 405 S.C. 458, 748 S.E.2d 230 (2013)).

Contrastingly, an income tax is a tax on the gain realized. "Income" in the context of an income tax is defined as the gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital. Stratton's Independence v. Howbert, 231 U. S. 399, 415, 34 S. Ct. 136, 58 L. Ed. 285 (1913). A business license tax is not an income tax. Town of Hilton Head Island, S.C. v. Kigre, Inc., 408 S.C. 647, 649, 760 S.E.2d 103 (2015).

Appellant's argument that the City must employ the income tax definition of "gross income" in an excise business license tax ordinance is improper for three reasons. First, Appellant has no state or federal law on which to rely to institute such a broad application of the "gross income" definition which has been rejected in South Carolina. Second, such a definite and inflexible application as suggested by the Appellant is contradictory to prevailing law. Finally, a business license tax is a tax on a privilege, not on the gain realized; as such, Appellant's argument fails to consider the circumstances for which the tax is employed and the results intended to be accomplished. In sum, no state or federal authority exists imposing the income tax definition on municipalities as Appellant contends, and without legislative direction otherwise, municipalities are within their authority to establish such definitions.

ii. The Definition of “Gross Income” Adopted by the City is Consistent with South Carolina Jurisprudence and Common Definition

Appellant also argues that municipalities only have authority under S.C. Code §5-7-30 to levy a business license tax on “gross income” and not on “total revenue” or “gross receipts”. Specifically, Appellant contends that the City’s ordinance defining “gross income” as “total revenue” or “gross receipts” institutes a meaning of “gross income” not contemplated by the statute; therefore, using any other definition conflicts with state law falling outside the authority granted to municipalities.

Appellant’s argument continues to rely heavily on the State’s income tax definition of “gross income”. Rather than employing income tax terms on an excise tax ordinance as Appellant suggests, the City’s definitions are more rationally and historically based on prevailing authority.

Appellant’s argument fails to consider that South Carolina jurisprudence does not support such a severe partition of “gross income”, “gross receipts” and “total revenue”; instead, South Carolina has long employed the interchangeable and synonymous use of these three terms. Black’s Law Dictionary defines these terms as follows:

- Gross income: total income from all sources before deductions, exemptions, or other tax reductions.
- Gross receipts: total amount of money or other consideration received by a business taxpayer for goods sold or services performed in a taxable year, before deductions.
- Revenue: income from any and all sources; gross income or gross receipts.

- GROSS INCOME, GROSS RECEIPTS, REVENUE, Black’s Law Dictionary (10<sup>th</sup> ed. 2014).

Historically, ordinances using “total revenue” to define “gross income” for business license tax purposes are valid. Eli Witt Company v. City of West Columbia, 309 S.C. 555, 559, 425 S.E.2d 16, 18 (1992); Town of Hilton Head Island, S.C. v. Kigre, Inc., 408 S.C. 647, 650, 760 S.E.2d 103, 104 (2015) (holding ordinances that define “gross income” as “total revenue” are within municipal authority and valid); Carter v. Linder, 303 S.C. 119, 122, 399 S.E.2d 423, 425 (1990) quoting Hay v. Leonard, 212 S.C. 81, 46 S.E.2d 653 (1948) (“gross income” defined as “gross receipts” is a “familiar and valid business license tax method”). In fact, the interchangeable use of these terms in the law dates back to the turn of the century prior to the establishment of state or federal income taxes when a business license tax defined “gross income” as “total receipts from a business before deducting expenditures for any purpose”. Columbia Railyway, Gas & Elect. Co. v. Jones et al., 119 S.C. 480; 112 S.E. 267, 272 (1922) citing Black’s Law Dictionary and German Alliance Ins. Co. v. Van Cleave, 191 Ill. 410, 61 N.E. 94, 96 (1901).

Also in support of the interchangeability of these terms is a long line of South Carolina Attorney General (hereinafter “Attorney General”) opinions acknowledging a “gross receipts” or “total revenue” formulation for “gross income”. Based on the predecessor statute to S.C. Code §5-7-30, a 1972 Attorney General opinion justifies a town’s ordinance for business license taxes measuring “gross income” by “gross receipts” using the terms interchangeably throughout. 1972 S.C. Op. Atty. Gen. 201 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3356, 1972 WL 20487. In 1979 the Attorney General opined that both prevailing case law and §5-7-30 authorize a “gross receipts or gross income tax” method for business license purposes as imposed by a

municipality. 1979 WL 42955 (S.C.A.G.).<sup>1</sup> Further entrenching the parallel use of these terms, by 1983, the Attorney General took the position that the term “gross income” is given its common meaning when defined as “total receipts of a business, before any deductions are taken”. 1983 S.C. Op. Atty. Gen. 121 (S.C.A.G.), 1983 S.C. Op. Gen. No. 83-76, 1983 WL 142745. As recently as 2005 and 2012, the S.C.A.G. has regarded “gross income” and “gross receipts” as synonymous and within a municipality’s authority to define; therefore, the use of the terms interchangeably within an ordinance does not, without more, render the ordinance invalid. 2005 WL 774157 (S.C.A.G.) (citing Eli Witt Company v. City of West Columbia, 309 S.C. 555, 559, 425 S.E.2d 16 (1992)); 2012 WL 1615813 (S.C.A.G.) (supporting the principle that municipalities have authority to define the terms of their business license tax as long as those terms do not conflict with state or federal law).

Appellant’s argument that the use of the terms “gross income” and “gross receipts” interchangeably creates an unauthorized ambiguous definition of “gross income” is fatally flawed for relying on a definition of “gross income” not applicable in the context of business license taxes. Also, this position is unavailing on the grounds that the subject ordinance employs a definition of “gross income” previously upheld by South Carolina Courts, firmly entrenched in South Carolina jurisprudence and long supported by the South Carolina Attorney General.

The trial court correctly applied South Carolina law in holding that the City acted within statutorily conferred authority to define “gross income” using the common definition of the term as “total revenue” and/or “gross receipts”. The City’s business license tax ordinance is valid unless determined inconsistent with state or federal law.

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<sup>1</sup> Citing Dravo Corp. v. Tacoma, 496 P.2d 504 (1972); Stork Diaper Service, Inc. v. Richmond, 173 S.E.2d 859 (1970); Suburban Title & Investment Corp. v. District of Columbia, 180 F.2d 387 (1950); Cedar Hill Cemetery Corp. v. District of Columbia, 124 F.2d 286 (1941); Food Center of St. Louis, Inc. v. Village of Warson Woods, 277 S.W. 573 (1925); New Yorker Magazine, Inc. v. Gorosa, 144 N.E.2d 367 (1957).

**b. THE CITY OF GOOSE CREEK'S BUSINESS LICENSE TAX  
ORDINANCE IS CONSISTENT WITH STATE AND FEDERAL LAW**

Appellant argues that the City's business license tax ordinance provides a definition of "gross income" inconsistent with state law rendering the ordinance invalid.

First, to be deemed inconsistent with state or federal law, the City's definition of "gross income" must directly conflict or be irreconcilable with state or federal authority. Appellant has provided no relevant authority requiring the City to adopt the definition of "gross income" that Appellant has plucked from S.C. Code §12-6-1110. This statute chosen by the Appellant provides a definition of "gross income" expressly limited to "income tax purposes". This statute is unrelated to excise taxes. Second, Appellant fails to identify any other relevant state or federal law defining "gross income" for business license tax purposes or, at the very least, any law that imposes federal or state definitions of the term on municipalities. Generally speaking, a tax statute is not to be extended beyond the clear import of its terms. Beard v. S.C. Tax Commission, 230 S.C. 357, 368, 95 S.E.2d 628, 634 (1956). An extension of the term "gross income" applied outside of the South Carolina state income tax statute (§12-6-1110) to a municipal ordinance would directly conflict with well-established principles of statutory construction for a tax statute.

Providing a more relevant analysis on the subject ordinance, the South Carolina Supreme Court has held that the issue of whether a state tax definition conforms to a federal tax definition is strictly for legislative judgment and that federal adaptations of "gross income" are not automatically imposed on the state. Scott v. South Carolina Tax Commission, 262 S.C. 144, 146-147 (1974). In Scott, the Court set out the principle that the governmental body implementing the tax has the ability to define a respective taxpayer's obligations. South Carolina has also held the definition of "gross income" as adopted by the State does not carry the same "definite and inflexible meaning" under all circumstances and wherever used. Bogan v. Bogan, 298 S.C. 139,

142-143, 378 S.E.2d 606, 608 (Ct. App. 1989). As recently as 2014, South Carolina continued to agree with the Scott and Bogan holdings in a municipal context, deeming a business license tax defining “gross income” as “the total revenue of a business” consistent with state and federal law. Town of Hilton Head Island v. Kigre, Inc., 408 S.C. 647, 649, 760 S.E.2d 103, 103 (2014), *reh'g denied* (July 24, 2014), *cert. denied sub nom. Kigre, Inc. v. Town of Hilton Head Island, S.C.*, 135 S. Ct. 959, 190 L. Ed. 2d 832 (U.S.S.C. 2015); Eli Witt Company v. City of West Columbia, 309 S.C. 555, 559, 425 S.E.2d 16 (1992) (holding an ordinance defining “gross income” as “total revenue” constitutional).

As previously mentioned, the South Carolina Attorney General, has an established history of opinions analyzing municipal ordinances defining “gross income” as “gross receipts” or “total revenue” without the inclusion of deductions. None of these opinions regarding ordinances with substantially similar or identical language as the City’s subject ordinance have been deemed inconsistent with state or federal law by the S.C.A.G. on the basis of the “gross income” definition. *See* 2012 WL 1615813 (S.C.A.G.) (analyzing substantially similar “gross income” definition and language from a Beaufort County business license tax ordinance); 2005 WL 774157 (S.C.A.G.) (analyzing identical “gross income” definition and language from the City of Conway’s business license tax ordinance); 1979 WL 42955 (S.C.A.G.) (providing that the City of Newberry’s gross receipts tax was consistent with §5-7-30); 1983 S.C. Op. Atty. Gen. 121 (S.C.A.G.), 1983 S.C. Op. Gen. No. 83-76, 1983 WL 142745 (Town of Leesville ordinance defining “gross income” as “gross receipts” was not inconsistent with state or federal authority).

In sum, a municipal ordinance is valid when it is enacted within the authority granted by the state and is consistent with state and federal law. The trial court correctly found that the business license tax ordinance of Goose Creek Ord. §110.001 defining “gross income” as “total

revenue” or “gross receipts” was within the City’s authority and consistent with prevailing state and federal authority.

**CONCLUSION**

For the reasons stated above, and for the reasons stated by the City of Goose Creek in their Brief, the Court should affirm the holding of the Circuit Court that municipalities have the authority to define “gross income” as “total revenue” or “gross receipts” and that such a definition is consistent with both state and federal law.

Respectfully submitted,



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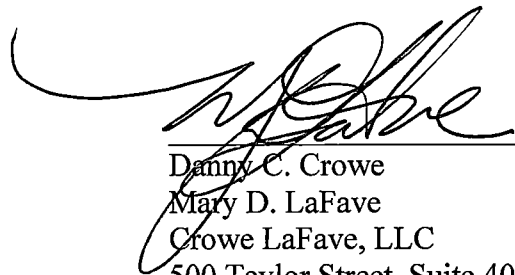
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**CERTIFICATE OF COUNSEL**

The Municipal Association's counsel hereby certify that the *Amicus Curiae* Brief of The Municipal Association of South Carolina as required by Rule 213, SCACR, complies with Rules 208(b) and 211, SCACR.



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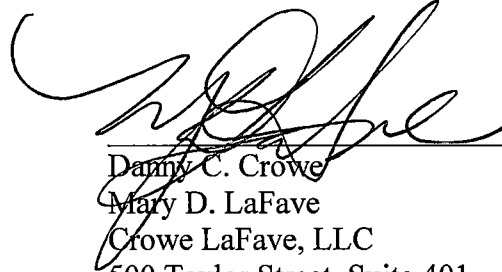
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**CERTIFICATE OF SERVICE**

I certify that I have this 17<sup>th</sup> day of May, 2016, mailed a copy of the Municipal Association's *Amicus Curiae* Brief to the following via U.S. Mail with sufficient postage thereto to the below listed attorneys.



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