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,

v.

City of Goose Creek ..... Respondent.

RESPONDENT'S REPLY TO APPELLANT'S PETITION FOR REHEARING

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December 19, 2016

In his petition for Reconsideration, Olds sets forth four grounds, but then overlaps some of his arguments under each section. In the interest of clarity, the City has responded to the Petition for Rehearing in a different order, believing the starting point should logically begin with the rules of statutory construction.

I. OLD ARGUMENTS RELATING TO STATUTORY CONSTRUCTION ARE NOT CORRECT. (RESPONSE TO PORTION OF OLDS RECONSIDERATION ARGUMENT 3.)

Olds claimed at oral argument and attempts to subtly claim in his petition for reconsideration a rule of strict construction. He cites Purdy v. Moise, 223 S.C. 298, 75 S.E.2d 605 (1953) in his motion for reconsideration for the proposition that a statute in derogation of "natural rights" and the right to "use private property so as to realize its highest utility" must be strictly construed. This is not the correct standard to apply in the present case. This is not a case involving rights of use of private property.

The cardinal principal of statutory interpretation is to ascertain and give effect to the intent of the legislative body. A hundred or more could be cited for this proposition. "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000).

"A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). "Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law." Bennett v.

Sullivan's Island Bd. of Adjustment, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct. App. 1993).

Olds does soften his position also claiming (correctly) that even in the context of municipal taxation cases, reasonable construction in light of the overall purpose and subject matter of the ordinance is necessary, see e.g., Municipal Association of South Carolina v. AT&T Communications, 351 S.C. 576, 606 S.E.2d 468 (2004), but claims the Court of Appeals "tortured" the meaning of the words of the City's ordinance in the present case. The Court need not revise is section on the standard of review in this case. Olds uses the remainder of this section to argue that the Court did not properly interpret the City's ordinance which will be addressed below.

II. THE COURT CORRECTLY INTERPRETED THE CITY'S BUSINESS LICENSE ORDINANCE (RESPONSE TO PORTION OF OLDS RECONSIDERATION ARGUMENT 3 AND ALL OF 2.)

Applying the proper standard, and in light of the clear intent, purpose and history of business license fees, it is clear the Court of Appeals reached the proper result. As noted by the Court, business license taxes have historically been defined in South Carolina (and in other states) as measured by the total revenue of the business. Columbia Ry, Gas & Elec. Co v. Jones, 119 S.C. 480, 112 S.E.2d 267 (1922)("Gross income means the total receipts from a business before deducting any expenditures for any purpose."); see also, Carter v. Linder, 303 S.C. 119, 399 S.E. 2d 423 (1990)(county business license case stating fee based on "gross receipts. . . is valid and familiar method" (quoting Hay v. Leonard, 212 S.C. 81, 46 S.E. 2d 653 (1948)). Local business license fees based on gross income without deduction for expenses of the business is common across the country. See 2-29 Bender's State Taxation: Principles and Practice § 29.03

The Court should also not forget Appellant's concession at oral argument that the intent of the City's business license ordinance was to reach all of the revenue it could in as broad a fashion as possible.

In light of the above purpose and history, it is clear the Court did properly interpret the City's business license ordinance. There is nothing unclear about the City's definition which begins by stating "Gross Income" means "the total revenue of a business . . . ." That broad, all-inclusive first seven word definition is not restricted by any language in the remainder of the definition. If anything, there is an intent to clarify that the first seven words were meant to be as broad as possible in discussing various situations.

In specific response to Olds suggestion (Olds Rehearing Argument 2) the ordinance defines Gross Income to mean the same as the IRS definition, this is also plainly incorrect. That language is nowhere in the ordinance. The closest passage and the one that Olds quotes states that gross income shall "conform to the gross income reported to the State Tax Commission . . . ." But as pointed out in the Court's opinion, the State Tax Commission no longer exists. It has been replaced by the South Carolina Department of Revenue. Furthermore, the Department of Revenue's forms do not have a line for "gross income." So that clause certainly does not change the result of the first seven words of the definition generally, or as to Olds specifically.

In addition, there is language stating the City may verify information 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. Again, this does not state the city will use the IRS definition of gross income. Instead, it allows the City to demand that a taxpayer provide a copy of a state or federal in an effort to assist the City in verifying information provided in the

business license application. Different taxpayers returns will be of different value to local business license officials. As is shown at pages 394-399 of the Record, various returns do provide income on gross receipts and other information that can be helpful when determining of the entity has properly claimed what is due under a municipal or county business license application. A provision allowing for verification of information via a federal or state return is a common feature of the business license ordinances of various jurisdictions found at pp. 254-298 of the record.

Appellant attempts to read into the City's business license ordinance is a statement the City will simply use the IRS definition of gross income. This is not present. (Of course, for state income tax purposes, the state of South Carolina did exactly that---adopting the I.R.C.'s definition by reference with certain stated modifications. S.C. Code Ann. § 12-6-1120 (2014))

Appellant then uses this section of his motion to reconsider to make a comparison to a personal injury lawyer. Appellant claims that if a lawyer settles a personal injury case for $9000, the City would be assessing a business license fee based on $9000 and not his fee of $3000. That is incorrect. A lawyer receives $9000. But $6000 does not belong to lawyer and is not income in any sense of the word. The lawyer has income of $3,000 in appellant's example. For business license purposes, the lawyer cannot deduct the costs of his secretary, his rent, or his advertising from the $3000. He can deduct those costs for federal income tax purposes, but municipal license fees do not work the same way. In the same vein, a grocery story can sell a can of beans for $1. For business license purposes, the grocery store cannot deduct the wholesale cost of the beans, the rent on the store, or the salary of the cashier. The grocery can deduct those costs for federal income tax purposes. Mr. Olds is no different. He can sell a property for $100,000, but he cannot deduct the cost of the

property, the cost of contractors to clean the property, or the cost of advertising the sale. He can deduct those costs for federal income tax purposes, but not local business license purposes per the language of the City of Goose Creek's ordinances which are premised on the total revenue of the business without deduction for expenses or costs of goods sold. These examples are the case for municipalities across South Carolina consistent with the methods tough by the Municipal Association of South Carolina. http://www.masc.sc/SiteCollectionDocuments/Finance/business_license_handbook.pdf p. 14 ("Gross income may be defined by the license ordinance. Generally, it means all revenue received from the business operation without deduction for such things as costs of goods, overhead, salaries or costs of sale" "The number of employees, capital invested, net income or losses, and taxable income may not be sued to calculate the business license tax.")

III. THERE IS NO ERROR AS TO THE COURT'S DISCUSSION OF GROSS RECEIPTS AS FOOTNOTE ONE OF ITS OPINION. THE PASSAGE IS FACTUALLY CORRECT, NOR DOES THIS CREATE ANY LEGAL ISSUE (RESPONSE TO OLDS REHEARING ARGUMENT 1.)

Olds states there is an error as to footnote one of the Court's opinion. There is no error. The opinion's footnote 1 accurately states that the Goose Creek application has a line for "gross receipts" and also at the bottom of the application asks for a certification that applicant has accurately stated the business "gross income." So, the opinion is clear and correct in that regard. Again, for business license tax purposes, these are the same.

Appellant then uses this as a launching point for an argument that IRS "gross income" must match because to do otherwise will result in perpetual audits because City employees will turn Olds' information over to the IRS due to the imagined animus against him. First, this is an entirely new argument. And it is without any factual basis.

Despite all the years of his dealings with the City, there is not shred of evidence the City has reported him to the IRS or has any intention of doing so. Of course, this also presumes the IRS does not understand local license taxes and is incapable of reading the Court of Appeals decision explaining how "gross income" for IRS purposes and municipal purposes differ.

IV. THE CITY HAS NOT EXCEEDED ITS AUTHORITY (RESPONSE TO OLDS ARGUMENT 3.)

Olds makes the argument that under South Carolina law, municipalities only have those powers granted to them.

First, this Court accurately noted in its opinion that municipalities are NOT limited to strictly those fees and taxes that are expressly set forth in state law. The Court cited Hosp. Ass'n. of S.C, Inc. v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995) which found the only limitation on the grant of powers to municipalities in 5-7-30 is that the ordinance may not be inconsistent with the constitution and general law of the state. In that case the County of Charleston and the Town of Hilton Head passed accommodations taxes. Accommodation taxes were not specifically authorized nor were they expressly prohibited. The Court interpreted § 5-7-30 as a grant of power, not a limitation. The Hospitality Association case was an important extension of prior "home rule" cases which concluded that municipalities have those powers that they are not expressly prohibited from exercising.

Appellant completely misses the import of this section of the Court's opinion. Appellant argues that municipal power is limited. The Court's opinion accurately notes Appellant has not even argued that the City's definition of "gross income" is prohibited by any provision of state law. This is a much higher standard than arguing that the City's definition should be consistent with other state laws relating to income taxes.

However, the present Court of Appeals opinion also makes clear Goose Creek's ordinance defining gross income as the "the total revenue of a business. . . " is not in harmony with S.C. Code 5-7-30---once it is realized that S.C. Code 5-7-30 is referring to gross income for business license fees which have historically be been based on total revenue and is not referring to the IRS definition.

V. NO RIGHT WITHOUT A REMEDY RESPONSE (RESPONSE TO OLDS RECONSIDERATION ARGUMENT 4.)

Plaintiff fails to make any meaningful response to the portions of the Court of Appeals decision relating to causes of action, damages, or remedies. He merely suggests an equitable maxim and then makes reference to 42 U.S.C. 1983.

In the first, instance, the Court of Appeals decision is correct that without a harm, there is no claim. Reference to an equitable maxim does not supercede case law.

Appellant's reference to 42 U.S.C.1983 does not make a valid claim either. Plaintiff has not shown he has had a protected right taken away from him. As was argued in Respondent's brief at Section II, there has been no constitutional deprivation of rights. Under section 1983, Olds would have to have some life, liberty or property interest taken. He has not had any such right taken. As was noted in the Court of Appeals decision, due process only requires a meaningful opportunity to be heard at some point. Plaintiff entirely disregards this portion of the Court of Appeals opinion which cites Kurshner v. City of Camden Planning Comm'n, 376 S.C. 165, 656 S.E.2d 346 (2003). Clearly, Olds had an opportunity to be heard on the issue of his interpretation of "gross income" and also the City's refusal to turn on a new water account until fees that were in arrears were paid.

And Olds' failure to address the substance of the Court of Appeals ruling on this point should preclude further reconsideration or argument about it.

Of course, the court found that Olds had generally not preserved his causes of action in his brief and the petition for reconsideration does not contest this point either.

As a final note on any issue of damages, the lower court ruled South Carolina Tort Claims Act, S.C. Code § 15-78-60 subsection 11 barred any such claims. The Appellant did not address this anywhere in his brief. The City noted in its brief this portion of the lower court's order was not challenged. It should be the law of the case. Appellant should not be allowed to circumvent that ruling given his failure to contest that issue.

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PROOF OF SERVICE

I certify that I have served Respondent's Reply to Appellant's Motion for Reconsideration by depositing a copy of it in the United States Mail, postage prepaid, on December 19, 2016, addressed to its attorney of record, Thomas R. Goldstein, P. O. Box 71121, North Charleston, South Carolina, 29415-1121.

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December 15, 2016

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December 19, 2016

File No.: 20111160.000

VIA US MAIL
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

Re: Todd Olds v. City of Goose Creek
Case No.: 2011-CP-08-2814
Claim No.: SF110935

Dear Ms. Kitchings:

Please find enclosed the original and six copies of Respondent's Reply to Appellant's Motion for Reconsideration regarding the above-referenced case. After filing please return a copy to me in the enclosed envelope.

Thank you for your assistance in this matter.

Very truly yours,

CLAWSON and STAUBES, LLC

Timothy A. Domin

TAD/paa
Enclosures

cc: Thomas R. Goldstein, Esq.
Danny C. Crowe, Esq.
(Both via US Mail & w/enclosures)

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