THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Appellate Case № 2017-000847

Shred With Us, LLC, ... Appellant,

vs.

Steffanie Dorn, City of Greenwood Business License Official ..... Respondent

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REPLY BRIEF OF APPELLANT

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
SC Bar #006188

Attorney for Appellant

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Question I

Did the lower court err in upholding the decision of the City Counsel for the City of Greenwood to require Shred-With-Us, LLC to obtain a city business license when South Carolina Code § 58-23-620 precludes a municipality from imposing a city business license fee when the business has a Class E certificate?

Respondent apparently recognizes that if the business of Shred-With-Us cannot be broken down into two or more businesses, then South Carolina Code § 58-23-620 precludes imposing a city tax on the business. They also apparently concede that if in fact Shred-With-Us conducts two interrelated businesses, the Code section in question prevents them from taxing the interrelated businesses. The reference to *Wood-Mendenhall Co. v. City of Greer,* 88 S.C. 249, 70 S.E. 724 (1911) concedes this fact. But what the Respondent has not recognized is that even if one looks at shredding and transportation as two different businesses, they are so interrelated that one would not exist without the other. If there were no shredding, there would be no transportation. If there were no transportation, there would be no shredding. The two activities are interrelated so as to make them one business. Contrary to the finding of the City, the two activities are not separate and are totally interrelated.

Respondent and the lower court argue that if one had a Class E certificate for a food truck then the city could tax the activity of selling food. Br. of Resp. at 12, Rec. on App. at (Order at 10). While that precise case is not before this Court, the conclusion may not be proper. If a person applies for a Class E certificate for a food truck to be used to carry prepared food to various cities in an area, then the act of selling the food it was carrying would in fact be a businesses interrelated with the business for which they applied for a Class E certificate. While

the food truck might not be the type of use of a Class E certificate contemplated by the law, that does not change the fact that the business would be exempt. If the municipalities in South Carolina wish to tax such activities, then they need to lobby the legislature to change the law and not urge this Court to make such a change. This Court can only interpret the law as written.

By acknowledging that when a Class E certificate holder is not exempt from all businesses conducted by the certificate holder, Shred-With-Us is not acknowledging that its activities should not be exempt from the license tax. Clearly a person with a Class E certificate cannot set up a separate business, unrelated to its Class E certificate, and then claim they are exempt. The Statute provides "The Office of Regulatory Staff, upon order of the commission, may issue a certificate E for the property-carrying vehicles which will not operate upon any particular route or schedule." S.C. Code Ann. § 58-23-260. A company could not set up a business for carrying merchandise and then stop in a city and start a painting businesses even if the truck were transporting paints. The painting business could exist without the transportation business and the transportation business could exist without the painting business. In the case of Shred-With-Us, as discussed above, the two are totally dependent upon one another. No company would pay Shred-With-Us to carry off their garbage when it is done locally much cheaper. Also, no company would pay Shred-With-Us to shred their paper if it were not going to be carried off.

The Respondent seems to concede that if all the paper were shredded on the go, as is possible with the trucks, the city could not tax the shred on the go operation. The mere fact that some, if not most, customers want their paper shredded before it is transported should not be a basis for saying shredding is a totally independent business. The shredding in intrinsically

related to the transportation. The Respondent also appears to concede that if Shred-With-Us were to simply pick up the paper and transport it to their home office in Lexington, they would not be subject to a tax. Why does the mere act of shredding then become a completely independent activity? As was testified at the hearing, the shredding also enables the company to transport more paper as it will compact better.

The Respondent contends that because the North American Industry Classification System lists transportation and shredding as two separate business, then the City may treat them as two separate businesses. What the Respondent fails to consider is that the two may be so interrelated that they cease to be two businesses and become one businesses, depending on how the company operates.

Perhaps the best admission by the Respondent that the shredding activity is not subject to a city license fee is their admission that they will accept whatever number Shred-With-Us puts on the shredding activities. As the Respondent said the city imposes "a business license tax on its gross income (as self-apportioned) from its collection and shredding activities within the City (but not on its income from its transportation activities.) Br. of Resp. at 2. This is a number that is, and will be, virtually impossible to determine. What the City has agreed to accept is the minimum tax imposed by the City licensing fee. As a practical matter, the City would never be able to make a determination if Shred-With-Us is paying the proper fees. The reason is simple, the two activities are too intertwined to be able to make such a determination. A separate fee is not charged for shredding. It is part of the service provided by Shred-With-Us from transporting the paper whether shredded on site on en route.

Question II

Did the Appellant waive further argument on appeal as to whether the City Council erred in finding the collection and shredding activities of the business were separate and distinct from the transportation activities?

The Respondent is in error in contending this alleged issue was waived for two reasons. First, the lower court discussed and dealt with this issue. It is discussed a length in the Order and was argued by counsel for both sides.

Second by contending that the City of Greenwood erred in failing to give Shred-with-Us an exemption under S. C. Code 58-23-620 the issue of whether the business is one business or two businesses is preserved. The exemption under the Code section only applies if all the activities are so interrelated that it is one business. Shred-With-Us has always contended that the activities are interrelated. If the dispute were that the City was claiming that 25% of the income derived were subject to the license tax and Shred-With-Us contended that only 10% were, then the factual findings of the City Council would be relevant. Since Shred-With-Us is contending that none of the income is subject to a license fee because of the code section, the correctness of the decision of the City Council that some unknown amount is subject to a business license tax was before the lower court and is before this court.

CONCLUSION

Based upon the argument in the opening brief as supplemented in this Reply brief, the decision of the lower court should be reversed and decision entered that exempt Shred-With-Us as a holder of a Class E certificate is exempt from a business license tax for the City of Greenwood.

Nov. 6th, 2017

C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S. C. Bar № 06188

Attorney for Shred-With-Us, LLC

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Frank R. Addy, Jr., Circuit Court Judge

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Reply Brief of Appellant complies with Rule 211(b), SCACR.

November 6th, 2017

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(8640 229-5010
S.C. Bar No. 00188

Attorney for Appellant