



# The Supreme Court of South Carolina

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August 24, 2018

The Honorable Mary P. Brown  
Clerk of Court, Berkeley County  
PO Box 219  
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## REMITTITUR

Re: Todd Olds v. City of Goose Creek  
Lower Court Case No. 2011-CP-08-02814  
Appellate Case No. 2017-000297

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

cc:

Timothy Alan Domin, Esquire

Danny Calvert Crowe, Esquire

Thomas R. Goldstein, Esquire

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

Todd Olds, Petitioner,

v.

City of Goose Creek, Respondent.

Appellate Case No. 2017-000297

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**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

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Appeal from Berkeley County  
R. Markley Dennis Jr., Circuit Court Judge

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Opinion No. 27829  
Heard June 13, 2018 – Filed August 8, 2018

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**REVERSED**

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Thomas R. Goldstein, of Belk Cobb Infinger & Goldstein,  
PA, of Charleston, for Petitioner.

Timothy Alan Domin, of Clawson & Staubes, LLC, of  
Charleston, for Respondent.

Danny C. Crowe, of Crowe LaFave, LLC, of Columbia,  
for Amicus Curiae, Municipal Association of South  
Carolina.

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**JUSTICE JAMES:** The City of Goose Creek (the City) collects a business license fee<sup>1</sup> on persons doing business within the city limits. The amount of the fee is based upon a business's gross income from the preceding year. This matter stems from Todd Olds' dispute with the City as to the meaning of "gross income" under the City's business license fee ordinance. Since Olds and the City differ on the definition of gross income, their calculations of the amount of the fee owed differ as well. The circuit court ruled the City's definition of gross income was correct, and the court of appeals affirmed. *Olds v. City of Goose Creek*, 418 S.C. 573, 795 S.E.2d 163 (Ct. App. 2016). We granted Olds a writ of certiorari to address whether the court of appeals erred in its interpretation of the term "gross income" as defined and used in the City's business license ordinance, §§ 110.001-.022. Under the very narrow facts of this case, we reverse.

## I. FACTUAL AND PROCEDURAL HISTORY

Todd Olds is a licensed realtor. He is also in the business of flipping houses; he purchases residential real estate, improves it, and sells the properties—either in his name or that of his company, Prime Properties of Charleston, LLC. Over the years, Olds has purchased and sold several parcels of real property in the City. A duly enacted ordinance requires every person engaged in business within the City's limits to pay an annual license fee for the privilege of doing business within the City. The City's Business License Inspector audits sales records to determine whether the fee is being properly computed and paid.

In January 2011, Olds filed an application to renew his business license and reported his actual gross receipts (total receipts generated by the business regardless of source, without deduction) from January 2010 to December 2010 to be \$58,432.46.<sup>2</sup> Based on this reported figure, Olds paid the City a business license fee of \$460.40. In May 2011, the City discovered what it considered to be a discrepancy in the amount Olds paid to the City. The City sent Olds a letter stating: "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." The City informed

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<sup>1</sup> The City's ordinance refers to this as a business license "fee"; however, a business license fee operates essentially as a tax.

<sup>2</sup> The City's business license renewal form uses the term "actual gross receipts" rather than "gross income." However, the form also includes a section for the applicant to certify he or she has accurately reported the business's "gross income."

Olds that he owed an additional \$468.00 in business license fees to the City. Olds paid the excess amount under protest and appealed the City's calculation.

Under the ordinance, a business's business license fee is computed based upon that business's gross income from the preceding calendar or fiscal year. The dispute in this appeal centers upon the following provisions in the ordinance. The provisions relevant to the instant dispute are underlined for emphasis:

**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.

Goose Creek City Code § 110.001.

Olds argued the City was not applying the "plain and ordinary meaning" of the term "gross income," which he contended was the gain he realizes from the properties he flips. He further argued the City was improperly attempting to levy a business license fee upon his "gross receipts," rather than his "gross income." The City disagreed and argued that the language of the ordinance mandates that fee be calculated based on the total sales price of real estate. Olds pursued the appeals process delineated in the City's ordinance, and the City Administrator and City Council both found the City's calculation to be correct.

Olds appealed to the circuit court. The circuit court affirmed the City Council's definition of the term "gross income" under the ordinance and granted the City summary judgment as to Olds' additional claims.<sup>3</sup> The court of appeals affirmed the circuit court. *Olds v. City of Goose Creek*, 418 S.C. 573, 795 S.E.2d 163 (Ct. App. 2016). Olds contends the City misapplied its ordinance by levying the fee on the sales price of real property as opposed to the gain realized from the sale. He argues that pertinent provisions of the Internal Revenue Code (I.R.C.) allow his tax to be computed according to the gain realized from the sale.

The court of appeals disagreed with Olds. The court of appeals noted the ordinance provides gross income is "[t]he total revenue of a business, received or accrued, for one calendar year . . . ." *Olds*, 418 S.C. at 584, 795 S.E.2d at 169 (quoting Goose Creek City Code § 110.001). The court of appeals looked to Black's Law Dictionary, which defines "revenue" as "[i]ncome from any and all sources; gross income or gross receipts." *Id.* (quoting *Revenue*, *Black's Law Dictionary* (10th ed. 2014)). The court of appeals reasoned:

Notwithstanding the ordinance's later explanation that gross income for business license purposes shall conform to the gross income reported to the State Tax Commission and that gross income may be verified by the inspection of

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<sup>3</sup> Olds brought additional causes of action against the City for (1) a violation of equal protection; (2) a violation of procedural due process; (3) abuse of process; (4) violations of 42 U.S.C. § 1983 and article I, section 22 of the South Carolina Constitution; and (5) a violation of the South Carolina Freedom of Information Act (FOIA). Olds also brought a civil conspiracy claim against the City Business License Inspector and the City Finance Director and a breach of contract claim against the City's Department of Public Works. None of Olds' additional causes of action is before this Court.

state and federal tax returns, we find the City intended to define gross income for business license tax purposes as the total revenue of the business. This is consistent with how our supreme court has historically defined gross income in the context of business license taxes. *See Columbia Ry., Gas & Elec. Co. v. Jones*, 119 S.C. 480, 494, 112 S.E. 267, 272 (1922) ("Gross income means the total receipts from a business before deducting expenditures for any purpose.").

*Id.* (footnote omitted). Thus, the court of appeals found the City intended the business license fee to apply to the total sales price of real property rather than merely the business's gain from the sale of real property. *Id.* We granted Olds a writ of certiorari to review the following question.

## II. ISSUE

Did the court of appeals err in its interpretation of the term "gross income" as defined and used in the City's business license ordinance, §§ 110.001-.022?

## III. STANDARD OF REVIEW

The issue before this Court is limited to the interpretation of the City's business license ordinance; therefore, we are free to decide this issue without any deference to the lower courts. *See CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below.").

## IV. DISCUSSION

A business license fee is an excise tax—not an income or sales tax. *Town of Hilton Head Island v. Kigre, Inc.*, 408 S.C. 647, 649, 760 S.E.2d 103, 103 (2014). Specifically, a business license fee is a tax on the privilege of doing business within a county or municipality. *Id.* There is no prohibition against the utilization of excise taxes, *Carter v. Linder*, 303 S.C. 119, 122, 399 S.E.2d 423, 424 (1990), and this Court has upheld the constitutionality of business license fees. *See Kigre*, 408 S.C. at 648, 760 S.E.2d at 103; *Carter*, 303 S.C. at 126, 399 S.E.2d at 427.

The General Assembly has specifically granted municipalities the authority to enact ordinances so long as the ordinances are not "inconsistent with the Constitution and general law of this State." S.C. Code Ann. § 5-7-30 (Supp. 2017). One such

power possessed by a municipality is the power to "levy a business license tax on gross income." *Id.* "Gross income" is not defined within Title 5 of the South Carolina Code, which sets forth the laws governing municipal corporations.

The City enacted its ordinance pursuant to section 5-7-30, which allows a municipality to levy a business license fee on gross income; again, that term is not defined. Section 110.006 of the City's ordinance mandates that every person engaged in business within the City's limits pay an annual license fee for the privilege of conducting business within the City. Section 110.009(C) provides the license fee shall be computed based upon the gross income for the preceding calendar or fiscal year. The definitions section of the ordinance bears repeating:

**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***<sup>[4]</sup> 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

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<sup>4</sup> Although defined in section 110.001, the term "gross receipts" does not appear elsewhere in the ordinance.

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 [(IRS)], the South Carolina Department of Revenue [(SCDOR)], the South Carolina Insurance Commission or other government agency.

Goose Creek City Code § 110.001 (emphasis added by underlining).

Section 110.003(C) of the ordinance provides, "The Business License Inspector, upon approval of the Finance Director, may disclose gross income of licenses to the [IRS], [SCDOR] and other municipal or county offices for the purpose of assisting tax assessments, tax collections and enforcement." Further, section 110.008(B) states the applicant must certify he has accurately reported gross income without any unauthorized deductions, and that he "may be required to submit copies of portions of state and federal income tax returns reflecting gross income figures."

The following definition of "gross income" set forth in the I.R.C. is integral to our analysis:

**(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, fringe benefits, and similar items;

(2) Gross income derived from business;

(3) *Gains derived from dealings in property;*

....

I.R.C. § 61(a) (2012) (emphasis added).<sup>5</sup> Section 1001(a) of the I.R.C. explains how to calculate gains and losses derived from dealings in property. Further, Treasury Regulation section 1.61-6(a) provides:

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.

Similarly—for income tax purposes—South Carolina has adopted the federal definition of and method for calculating gross income; therefore, Olds' reported gross income to the IRS and the SCDOR—at least regarding his dealings in real property—would be identical. *See* S.C. Code Ann. §§ 12-6-50, -1110, -1120 (2014 & Supp. 2017).

"The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Mikell v. Cty. of Charleston*, 386 S.C. 153, 160, 687 S.E.2d 326, 330 (2009). "When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used." *Id.* "An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." *Charleston Cty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 68, 459 S.E.2d 841, 843 (1995). "In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." *City of Myrtle Beach v. Juel P. Corp.*, 344 S.C. 43, 47, 543 S.E.2d 538, 540 (2001).

Olds argues the lower courts' interpretation of the term "gross income" does not conform to the definition used by the City in the ordinance. Olds contends the City has erroneously required his business license fee to be calculated on "gross receipts"/"sales price" rather than a properly calculated "gross income." He argues

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<sup>5</sup> Certain I.R.C. code sections are not adopted in South Carolina; however, section 61 is not one of those sections. *See* S.C. Code Ann. § 12-6-50 (2014 & Supp. 2017) (providing a list of I.R.C. sections that are specifically not adopted in South Carolina). Therefore, we must take into account the provisions of section 61 in interpreting the ordinance.

that the ordinance—as written—requires the City to define his gross income as "[g]ains derived from dealings in property." See I.R.C. § 61(a)(3). Olds argues the court of appeals did not interpret the ordinance but essentially rewrote it to comport with its own notion of the meaning of the term.

Again, pursuant to section 5-7-30 of the South Carolina Code, the City is permitted to "levy a business license tax on gross income." The City's ordinance first defines gross income as "[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 . . . ." Goose Creek City Code § 110.001 (emphasis added). As noted by the court of appeals, Black's Law Dictionary defines revenue as "[i]ncome from any and all sources; gross income or gross receipts." *Revenue*, *Black's Law Dictionary* (10th ed. 2014). This Court and other municipalities across our state have previously allowed gross income to be equated with total revenue when calculating the amount of a business license fee. See *Town of Hilton Head Island v. Kigre, Inc.*, 408 S.C. 647, 760 S.E.2d 103 (2014) (rejecting a constitutional challenge to a business license fee calculated using a business's gross income which was defined as the "total revenue of a business").

However, the City's ordinance goes from broadly defining gross income as "the total revenue of a business" to narrowly mandating that the gross income figure reported to the City "shall conform" to the gross income reported to the State Tax Commission.<sup>6</sup> See *Mikell*, 386 S.C. at 160, 687 S.E.2d at 330 ("[W]here two provisions deal with the same issue, one in general and the other in a more specific and definite manner, the more specific prevails."). We find such a clear mandate made by the City in its ordinance requires Olds' gross income figure to conform to the gross income figure he reported to the SCDOR.

When determining South Carolina gross income for income tax purposes, certain modifications are made to federal gross income. See S.C. Code Ann. § 12-

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<sup>6</sup> The State Tax Commission was subsumed into the South Carolina Department of Revenue. See S.C. Code Ann. § 12-4-10 (2014) (declaring "[t]he South Carolina Department of Revenue is created to administer and enforce the revenue laws of this State"). Effective July 1, 1993, the State Tax Commission formerly provided for in section 12-3-10 of the South Carolina Code (1976), was transferred to, and incorporated in, the South Carolina Department of Revenue and Taxation. See S.C. Code Ann. § 1-30-95 (2005). Thereafter, on February 1, 1995, the duties and powers given to the commissioners of the Department of Revenue were transferred to the director of the Department of Revenue. See S.C. Code Ann. § 12-2-5 (2014).

6-560 (2014) ("A resident individual's South Carolina gross income . . . is computed as determined under the [I.R.C.] with the modifications provided in Article 9 of this chapter and subject to allocation and apportionment as provided in Article 17 of this chapter."). However, none of the modifications provided are applicable to Olds' situation. See S.C. Code Ann. § 12-6-1120 (2014) (providing a list of modifications to gross income under the I.R.C.). Additionally, section 12-6-50 of the South Carolina Code (2014 & Supp. 2017) lists I.R.C. sections that are specifically rejected in South Carolina. Section 61 of the I.R.C. has not been rejected; therefore, the definitions of gross income under section 61 are determinative. Thus, under the facts of this case, South Carolina gross income (for income tax purposes) is equal to federal gross income (for income tax purposes). Since section 61(a)(3) of the I.R.C. defines gross income as "[g]ains derived from dealings in property," the plain language of this narrow provision in the ordinance requires Olds to report the same gross income figure to the City as he would report to the IRS and SCDOR. His gross income under the ordinance is therefore equal to his "[g]ains derived from dealings in property." See Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992) ("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.").

The City addressed the impact of the "shall conform" language by arguing it "appears to be a historical artifact" and "it is impossible for the Court to give effect to this provision."<sup>7</sup> Although this sentence may indeed be a historical artifact due to the South Carolina Tax Commission having been replaced by the SCDOR, we disagree with the City's contention that this Court should not give any effect to the language of this provision. See *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." (quoting *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995))). The City conceded at oral argument that its interpretation of the ordinance would be incorrect if the "shall conform" language referred to the SCDOR rather than the State Tax Commission. There is no practical difference between the two.

The City places great emphasis upon how business license fees have historically been calculated by the City and by other municipalities throughout the state. The City included in the record the business license ordinances of forty municipalities throughout the state. Of these other ordinances, thirty-one do not include the language that gross income "for business license purposes shall conform

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<sup>7</sup> The City amended the ordinance in 2017, and this provision was deleted.

to the gross income reported to" the Tax Commission/SCDOR or the IRS. How other municipalities calculate business license fees under differently-worded ordinances, or even under identically-worded ordinances, is of no import to our conclusions in this case. The plain language of the City's ordinance mandates that a business's gross income comport to the gross income reported to the State Tax Commission (now SCDOR).

Support for the position that the plain language of the City's ordinance adopted the federal definition can be found elsewhere in the ordinance. *See Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 623, 611 S.E.2d 297, 302 (Ct. App. 2005) ("Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and given effect, if it can be done by any reasonable construction."). Section 110.001 of the ordinance further provides, "The **GROSS INCOME** for business license purposes may be verified by inspection of returns and reports filed with the [IRS], the [SCDOR], the South Carolina Insurance Commission or other government agency." Section 110.003(C) states, "The Business License Inspector, upon approval of the Finance Director, may disclose gross income of licenses to the [IRS], [SCDOR] and other municipal or county offices for the purpose of assisting tax assessments, tax collections and enforcement." Additionally, section 110.008(B) of the ordinance requires the applicant to certify that he has accurately reported gross income without any unauthorized deductions, and that he "may be required to submit copies of portions of state and federal income tax returns reflecting gross income figures." Because the City's ordinance allows for the use of IRS and SCDOR tax return figures for verification and disclosure purposes, it logically follows that the City wanted the reported gross income figures to match.

Further support for the position that the plain language of the ordinance adopted the I.R.C. definition of gross income can be found in statements made by the City during litigation. For example, in a letter written by the City's attorney to City Council prior to Olds' municipal appeal hearing, the City's attorney stated, "[T]he City's definition is in accord with the [I.R.C.]. [I.R.C.] Section 61 defines gross income. [I.R.C.] Section 61(a) states that [e]xcept as otherwise provided in this subtitle, gross income means **all income from whatever source derived.**" Although the City's attorney contended the City's interpretation of its ordinance was congruent with section 61, the City's attorney did not address the narrower definition of gross income (argued by Olds) several lines down in section 61(a)(3). Similarly, the City Council's meeting minutes indicate it based its decision in Olds' municipal appeal on the fact that the City's definition of gross income complied with the federal definition as explained in the City's attorney's letter.

## V. CONCLUSION

Based on the plain language of this particular ordinance, we find the City adopted the definition of gross income as provided in section 61(a)(3) of the I.R.C. for Olds' particular business. For Olds' business, "gross income" therefore means "[g]ains derived from dealings in property." For the years in dispute, Olds' business license fee must be calculated according to Olds' gains derived from dealings in property.<sup>8</sup> We therefore **REVERSE** the court of appeals.

**BEATTY, C.J., KITTREDGE, HEARN and FEW, JJ., concur.**

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<sup>8</sup> As we have noted several times, the first line in the disputed section of the ordinance defines gross income as "the total revenue of a business." Olds argues that he should prevail under that portion of the ordinance as well, as he claims the term "total revenue" should not be defined as his total receipts but rather should be defined as only the gains he realizes from his real estate endeavors. We need not address that issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when disposition of a prior issue is dispositive).

**THE STATE OF SOUTH CAROLINA**  
**In The Court of Appeals**

Todd Olds, Appellant,

v.

City of Goose Creek, Respondent.

Appellate Case No. 2014-002393

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Appeal From Berkeley County  
R. Markley Dennis, Jr., Circuit Court Judge

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Opinion No. 5454  
Heard June 6, 2016 – Filed November 16, 2016

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**AFFIRMED**

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Thomas R. Goldstein, of Belk Cobb Infinger &  
Goldstein, PA, of Charleston, for Appellant.

Timothy Alan Domin, of Clawson & Staubes, LLC, of  
Charleston, for Respondent.

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**SHORT, J.:** Todd Olds appeals the circuit court's order affirming a decision of the Goose Creek City Council regarding the computation of gross income under the business license tax ordinance of the City of Goose Creek (the City). On appeal, Olds argues the circuit court erred in finding the City (1) was not exceeding its authority under the state constitution by imposing a business license tax on the sale price of real property and (2) was properly applying its business license tax ordinance. Olds also appeals the circuit court's grant of summary judgment as to his claim against the City for a violation of procedural due process, arguing the circuit court erred in finding the City's appeal procedure was unfair but not

granting Olds a remedy. Finally, Olds appeals the circuit court's grant of summary judgment as to various claims he alleged against the City, arguing evidence demonstrated City employees violated his constitutional rights and singled him out for disparate and arbitrary treatment. We affirm the circuit court on all issues.

## **FACTS/PROCEDURAL HISTORY**

The City collects a business license tax on persons doing business within the City limits. The tax is computed according to the business's gross income from the preceding year. This case arises out of Olds's dispute with the City as to the meaning of gross income under its business license tax ordinance.

Olds is engaged in the business of buying and selling real property. In January 2011, Olds filed an application to renew his City business license and reported actual gross receipts for 2010 of \$58,432.46.<sup>1</sup> Based on this information, Olds calculated his 2011 business license tax to be \$460.40, and he paid this amount to the City. In May 2011, City Business License Inspector Jennifer Althoff sent Olds a notice, informing him of a deficiency in his business license payment. Althoff claimed Olds failed to report "revenue" from the sale of real property located at 123 Evergreen Magnolia Avenue in Goose Creek. Althoff explained Olds should have included the sale price of the property as revenue on his 2011 business license renewal application. Accordingly, Althoff claimed Olds underpaid his business license tax by \$468. Olds appealed this decision to City Finance Director Ron Faretra, then to City Administrator Dennis Harmon, and eventually to the City Council.

In anticipation of the City Council hearing his appeal, Olds submitted a memorandum of law in support of his appeal. Prior to reviewing Olds's appeal, the City informed Olds that pursuant to the relevant ordinance, the appeal would be reviewed without further oral argument or presentation of evidence. During the appellate hearing, City officials presented a brief summary of the issue to the City Council and answered questions from council members. Olds attended the hearing; however, neither he nor his attorney was allowed to actively participate. The City Council affirmed the City Administrator's decision.

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<sup>1</sup> The City's business license renewal form uses the term "actual gross receipts," rather than "gross income." However, the form also includes a section where the applicant certifies he or she has accurately reported the business's "gross income."

On October 12, 2011, Olds filed a complaint against the City in the Berkeley County Court of Common Pleas. Olds later amended his complaint, adding Althoff, Faretra, and the City Department of Public Works as defendants. In his amended complaint, Olds listed his first cause of action as "Appeal from City Council—substantive/procedural due process." Olds asserted additional claims against the City for (1) violation of equal protection; (2) violation of procedural due process; (3) abuse of process; (4) violations of 42 U.S.C. § 1983 and Article I § 22 of the South Carolina Constitution; and (5) violation of the South Carolina Freedom of Information Act. Olds also included a civil conspiracy claim against Faretra and Althoff and a breach of contract claim against the City's Department of Public Works.

On August 31, 2012, while the case was pending in circuit court, Olds moved for an injunction, requesting the circuit court order the City to turn on water service at a home he owned, located at 834 North Aylesbury Road. Olds alleged the City was withholding water service in an attempt to force him to capitulate to the City's position in the 2011 business license dispute. In support of his motion, Olds submitted an affidavit from himself, explaining the City initially refused to supply water to the property until he paid his 2012 business license tax based on gross sales from 2011. Olds further explained that after he paid this tax under protest, the City still refused to supply water service based on an alleged underpayment of his 2011 business license tax. Olds also submitted an affidavit from Robert Eckhardt, who claimed that while picking up trash at the home one day, he was "detained" by Faretra and Althoff and questioned about how much Olds was paying him and whether he had a business license. The circuit court denied the motion.

On January 16, 2013, Olds moved for summary judgment on the issue of liability on the grounds that (1) the City had denied him due process by not allowing him to appear and be heard in the appeal to the City Council and (2) the City was improperly attempting to levy a business license tax upon his gross receipts, rather than his gross income. In support of his motion, Olds submitted a supplemental affidavit describing his disagreement with the City. In the affidavit, Olds explained that in 2010 he had a dispute with the City regarding repairs he was making to a home he owned. Olds stated that shortly after resolving the repair dispute, he received the City's notice alleging he had incorrectly reported his gross income on his business license renewal application. Olds claimed the City had denied him water service and Faretra and Althoff threatened to "shut off water to all properties" if he did not capitulate to the City's position in the business license dispute. Olds also submitted an affidavit of Kristin Balding Gutting, a professor of

tax law at the Charleston School of Law. In her affidavit, Professor Gutting opined the City was incorrectly applying its business license tax ordinance by levying the tax on the sale price of the homes sold by Olds, rather than his gain.

Subsequently, the City moved the circuit court to hear Olds's appeal from the City Council and for summary judgment as to Olds's other claims. In support of its motion, the City submitted affidavits from Harmon and Faretra. Both Harmon and Faretra explained it is the City's policy to not initiate water service if a business does not have a business license or has failed to pay its business license tax. However, they explained the City will not shut off existing water service in these instances. Faretra also claimed the City had discovered Olds did not report any income from the 2010 sale of a home located at 100 Spalding Drive and stated the City will not provide Olds with new water service until his past due business license taxes are paid in full.

The circuit court affirmed the City Council's decision regarding the meaning of gross income under the ordinance and granted the City summary judgment on Olds's other claims. As to Olds's procedural due process claim, the circuit court found it was unfair for the City to allow its employees to participate in the appellate hearing but not allow Olds to participate. However, the circuit court found Olds was not prejudiced by this process because the issue was one of statutory construction and the issue was preserved for appeal. The circuit court suggested that in the future, the City Council allow persons appealing the City Administrator's decisions to participate in the appellate hearing or review the decision without hearing from either side.

The circuit court also granted summary judgment to the City on Olds's other claims. The circuit court found evidence showed the City was applying the business license ordinance uniformly and not taxing Olds differently from any other business. Additionally, the circuit court found that under the Tort Claims Act, Olds was barred from asserting any tort claim based on the City's assessment of the business license tax. Olds filed a motion for reconsideration, which the circuit court denied. This appeal followed.

## **STANDARD OF REVIEW**

This appeal consists of a review of the circuit court's decision affirming the decision of the City Council and the circuit court's order granting the City summary judgment as to Olds's other claims. As to the circuit court's decision affirming the City Council, the issue on appeal concerns the construction of a state

statute and a city ordinance. Accordingly, this court is free to decide this issue without any deference to the circuit court. *See Sloan v. Greenville Cty.*, 380 S.C. 528, 534, 670 S.E.2d 663, 667 (Ct. App. 2009) ("The issue of statutory interpretation is a question of law for the court."); *id.* ("We are free to decide questions of law with no deference to the trial court.").

We review Olds's other issues under the standard of review applicable to appeals from a grant of summary judgment. "When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming*, 350 S.C. at 493-94, 567 S.E.2d at 860.

## **I. GROSS INCOME AND THE BUSINESS LICENSE TAX**

Olds argues the circuit court erred in affirming the City Council's decision concerning the meaning of gross income under the City's business license ordinance because (1) the City exceeded its authority under the South Carolina Constitution by levying its business license tax on Olds's gross receipts and (2) the plain language of the ordinance imposes a tax on gross income, not gross receipts. We disagree.

"The cardinal rule of statutory construction is that courts will ascertain and effectuate the intent of the lawmaking body." *Historic Charleston Found. v. Krawcheck*, 313 S.C. 500, 504, 443 S.E.2d 401, 404 (Ct. App. 1994). "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 412, 526 S.E.2d 716, 719 (2000).

Section 5-7-30 of the South Carolina Code (Supp. 2015) grants municipalities the power to "enact regulations, resolutions, and ordinances, not inconsistent with the [c]onstitution and general law of this [s]tate." This statute describes various powers possessed by municipalities, including the power to "levy a business license tax on gross income." *Id.* The statute does not define gross income.

Furthermore, gross income is not defined anywhere within Title 5 of the South Carolina Code, which provides the laws governing municipal corporations.

Olds first argues the City has exceeded its authority under our state constitution by levying a business license tax on the sale price of real property. Olds contends the City's authority to levy a business license tax is limited by the meaning of "gross income," as that term is used in section 5-7-30. Olds further asserts gross income under section 5-7-30 carries the same meaning as gross income under the South Carolina Income Tax Act, which provides that South Carolina gross income is computed by making certain modifications to gross income computed under the Internal Revenue Code (IRC). S.C. Code Ann. § 12-6-1120 (2014). None of the modifications required to compute South Carolina gross income are relevant in Olds's case, and both parties agree that under the IRC, gross income on the sale of real property is equal to the seller's gain. *See id.*; I.R.C. § 61(a)(3) (2012) (explaining gross income includes "[g]ains derived from dealings in property"); Treas. Reg. § 1.61-6(a) (2015) ("Generally, the gain is the excess of the amount realized over the unrecovered cost or other basis for the property sold or exchanged.").

We find the City's power to levy a business license tax is not limited by section 5-7-30. As our supreme court has explained, "the broad grant of power stated at the beginning of [section 5-7-30] is not limited by the specifics mentioned in the remainder of the statute." *Hosp. Ass'n of S.C., Inc. v. Cty. of Charleston*, 320 S.C. 219, 227, 464 S.E.2d 113, 118 (1995). "The only limitation on the broad grant of power to municipalities in [section] 5-7-30 is that the regulation, resolution, or ordinance may not be inconsistent with the [c]onstitution and general law of this [s]tate." *Id.* Olds has not set forth an argument explaining how the ordinance is inconsistent with our state constitution or other state law. Accordingly, our inquiry must focus on whether the City is properly applying its own ordinance.

For the purpose of calculating the applicable business license tax, the City defines gross income as follows:

**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.

Goose Creek City Code § 110.001.

Similar to his argument regarding section 5-7-30, Olds contends gross income under the ordinance is the same as gross income under the IRC. Olds asserts the City is misapplying its ordinance by levying its business license tax on the sale price of real property rather than the gain. We disagree.

"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." *Bogan v. Bogan*, 298 S.C. 139, 142-43, 378 S.E.2d 606, 608 (Ct. App. 1989) (quoting *Alexander v. Alexander*, 158 F.2d 429, 430 (10th Cir. 1946)). The ordinance in this case defines gross income as "[t]he total revenue of a business, received or accrued, for one calendar year . . . ." Black's Law Dictionary

defines "revenue" as "[i]ncome from any and all sources; gross income or gross receipts." *Revenue, Black's Law Dictionary* (10th ed. 2014).

Notwithstanding the ordinance's later explanation that gross income for business license purposes shall conform to the gross income reported to the State Tax Commission<sup>2</sup> and that gross income may be verified by the inspection of state and federal tax returns, we find the City intended to define gross income for business license tax purposes as the total revenue of the business. This is consistent with how our supreme court has historically defined gross income in the context of business license taxes. *See Columbia Ry., Gas & Elec. Co. v. Jones*, 119 S.C. 480, 494, 112 S.E. 267, 272 (1922) ("Gross income means the total receipts from a business before deducting expenditures for any purpose."). Applying the ordinance to the facts of the instant case, we find the City intended the business license tax to apply to the total sale price of real property rather than merely the business's gain. Accordingly, we affirm the circuit court on this issue.<sup>3</sup>

## II. PROCEDURAL DUE PROCESS

Olds also appeals the circuit court's grant of summary judgment as to his procedural due process claim, arguing the circuit court erred in finding Olds was not entitled to a remedy for a violation of due process after declaring the City's administrative appeal procedure flawed and recommending the City amend its procedure. Olds contends he was prejudiced by the City Council allowing City employees to present the City's position in the appellate hearing but not allowing him to present his case. We disagree.

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<sup>2</sup> The State Tax Commission is now known as the South Carolina Department of Revenue. We note the standard income tax forms from the South Carolina Department of Revenue do not include a space for gross income to be reported.

<sup>3</sup> Olds also contends the circuit court erred in deciding this issue by ignoring (1) evidence of animus that exists between Olds and City employees and (2) Professor Gutting's affidavit. We find any animus that may exist between Olds and City employees is irrelevant in determining the meaning of gross income under the ordinance. As to Professor Gutting's affidavit, the circuit court properly disregarded the affidavit because it was nothing more than a legal argument. *See Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) ("In general, expert testimony **on issues of law** is inadmissible."); *id.* at 66-67, 580 S.E.2d at 437 (finding the trial court properly refused to consider an affidavit that was a legal argument as to why summary judgment should be denied).

"Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution." *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Id.* "Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest." *Id.* "Rather, due process is flexible and calls for such procedural protections as the particular situation demands." *Id.* at 172, 656 S.E.2d at 350. "To prevail on a claim of denial of due process, there must be a showing of substantial prejudice." *Olson v. S.C. Dep't of Health & Env'tl. Control*, 379 S.C. 57, 69, 663 S.E.2d 497, 504 (Ct. App. 2008).

The circuit court found the City Council's appellate procedure unfair; however, it found Olds was not prejudiced because the issue was one of statutory construction and Olds's position was fully preserved by the filing of his brief. We agree with the circuit court. The central issue of Olds's appeal to the City Council was the meaning of "gross income" as that term is used in computing Olds's business license tax under the applicable city ordinance. This is a question of law, which the circuit court reviewed without any deference to the City Council's decision. *See Sloan*, 380 S.C. at 534, 670 S.E.2d at 667 ("The issue of statutory interpretation is a question of law for the court."); *id.* ("We are free to decide questions of law with no deference to the trial court."). Because the circuit court was able to review this issue without any deference to the City Council's decision, Olds suffered no prejudice from the procedure used by the City Council in reviewing Olds's appeal. Furthermore, as noted by the circuit court, Olds was able to submit a written memorandum to the City Council.

Olds also raised an issue to the City Council regarding the City's decision to withhold water service. Olds was able to raise this issue again in circuit court through various claims; therefore, the City Council's procedure did not prejudice Olds as to this issue. Accordingly, the circuit court properly granted summary judgment. *See Olson*, 379 S.C. at 69, 663 S.E.2d at 504 ("To prevail on a claim of denial of due process, there must be a showing of substantial prejudice.").

### III. DISPARATE AND ARBITRARY TREATMENT

Olds further argues the circuit court erred in granting summary judgment because evidence showed the City singled him out for disparate and arbitrary tax treatment and shut off the water supply to his properties in an attempt to force him to capitulate to the City's position in the business license tax dispute. We disagree.

First, we note Olds does not clearly identify the causes of action to which this issue applies. His stated issue on appeal refers to his constitutional rights; however, in his argument, Olds also discusses some of his other claims that are not based on a violation of any constitutional right. In his brief, Olds writes:

Whether the Court evaluates [the acts of Faretra and Althoff] as violations to the appellant[']s right to substantive due process, or equal protection or as acts of a civil conspiracy or abuse of process, the classification of [the] violation is not important at the summary judgment stage when all the plaintiff has to demonstrate is the existence of genuine issues of material fact as to whether the [City] did or did not single him out for particular action.

In his reply brief, Olds even suggests he intended this issue to relate to causes of action not mentioned in his argument under this issue in his appellant's brief.<sup>4</sup> Regardless of Olds's failure to clearly identify the causes of action to which this issue relates, we find there was no genuine issue of material fact regarding Olds's allegation that the City treated him differently from other similar businesses. Olds did not present any evidence to the circuit court to support this allegation. Accordingly, we affirm the circuit court's grant of summary judgment.

### CONCLUSION

For the foregoing reasons, the circuit court's order is

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<sup>4</sup> For example, in Olds's reply brief, he contends it was unnecessary for him to set forth an argument regarding the circuit court's grant of summary judgment as to his breach of contract action because "[i]t is not a separate claim, but rather part of the same transaction that forms the plaintiff's claim for abuse of process [and] civil conspiracy."

**AFFIRMED.**

**HUFF and THOMAS, JJ., concur.**