

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin S. Dukes, III, Special Circuit Court Judge for Beaufort County

Case No. 2012-213239

Town of Hilton Head Island, Respondent

v.

Kigre, Inc., Appellant

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

TOWN OF HILTON HEAD ISLAND,)

Plaintiff,)

vs.)

KIGRE, INC.)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 06-CP-07-796

ORDER ENDING CASE

2012 FEB -1 PM 2:52
JEREMY ROSE, CLERK
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter came before me for trial on December 8 and 9, 2010 and April 27, 2011. Present for the Town of Hilton Head Island (the "Town"), was Gregory M. Alford and on behalf of Kigre, Inc., was Thomas C. Taylor. I took testimony and listened to the extensive and well made arguments of counsel. Having heard and considered the testimony and arguments, and having studied the exhibits and applicable law, I issue this Order Ending the Case.¹

Background and Facts

This case involves the Town's business license fee established in Section 10-1-10 *et. seq.* of the Town's Municipal Code pursuant to the authority granted in S.C. Code Ann. §5-7-30. The Town audited Kigre's business license fee liability for the 2002, 2003, 2004, and 2005 license periods. While the audit was underway, Kigre corresponded with the Town and denied liability to the payment of any business license fee, and threatened litigation against the Town.

The Town filed this action against Kigre on April 3, 2006, seeking declaratory judgment as to the validity of the arguments and exemptions made and claimed by Kigre and to collect

¹ Both parties made cross motions for Summary Judgment which I heard and took under advisement. Those motions are hereby denied and this decision is based upon the trial and all matters presented therein.

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past due amounts. On August 17, 2006, Kigre filed its Answer and Counterclaim. The Town filed its Reply on September 13, 2006.²

As a result of the audit performed by the Town, Kigre was assessed \$41,645.81 for past due business license fees and penalties. On November 13, 2006, Kigre paid the amount due under protest.

Kigre denied liability for payment of the business license fee, and asserted that the Town's business license fee ordinance was unenforceable as to Kigre, and that Kigre was exempt from payment of the business license fee on numerous grounds. Among other things, Kigre argued that under Section 10-1-10, *et.seq.* of the Town's Municipal Code, the Town should have given Kigre a hearing before Town Council instead of bringing the declaratory action.

In its pleadings, during motion hearings and at trial, Kigre claimed that the Town's business license fee was unconstitutional and /or unenforceable on the following grounds:³

- (1) The Ordinance cannot be applied to Kigre's business because Kigre's sales are almost exclusively done in interstate commerce;
- (2) The Ordinance does not properly apportion between sale of goods and manufacturing;
- (3) The Ordinance does not fairly apportion the fee among all businesses because it uses incorrect or outdated datum for the profitability of businesses and uses an outdated SIC (Standard Industrial Code) system, under which Kigre is not properly classified;
- (4) The License Fee is not fairly related to the services which the Town provides;
- (5) The Business License Fee is enforced in a discriminatory manner; and,

² Kigre filed its Amended Answer and Counterclaim on September 8, 2009, and the Town filed its Reply on September 16, 2009.

³ Kigre's Amended Answer and Counterclaim sets forth ten defenses and counterclaims, however the Court believes that the 6 grounds set forth above encompass all of the claims made by Kigre and the arguments presented by Kigre at trial.

- (6) The Town is estopped from charging Kigre anything more the minimum fee because the Town has accepted Kigre's assertions regarding exemptions prior to 2006.

Findings of Fact

1. The Town is a municipal corporation organized and existing pursuant to the laws of the State of South Carolina, located in Beaufort County.
2. Kigre is an Ohio corporation and is authorized by the State of South Carolina to conduct business in South Carolina. Since 1986, Kigre's business has been located within the corporate limits of the Town. Kigre is engaged in the manufacturing, assembling and sales of certain specialized laser devices which business generates a gross income. Within the corporate limits of the Town, Kigre owns and operates a 23,000 square foot facility which includes a clean room, machining center, offices and laboratories. In its Business License Applications, Kigre describes its business as "mfg laser and laser glass," (license form for 2005); "medical laser manufacturing," (license form for 2003); "laser component mfg," (license form for 2002). The Town placed Kigre in a classification based on the descriptions given by Kigre and in accordance with Section 10-1-190 of the Town's Municipal Code, which utilizes the Standard Industrial Classification (SIC), a commonly used tool for placing businesses into the proper classification. It is undisputed that prior to the inception of this litigation that Kigre never objected to its classification.
3. Jeffrey Meyers testified that Kigre has a gross income which is derived from its business activities from its operations within the Town.⁴ Jeffrey Meyers testified that Kigre does not have any other offices or facilities, and it does not pay any license or franchise fee in any other

⁴ During Trial, the parties agreed that the exact financial information would be kept out of the record but that if Kigre's challenges to the Business License Fee Ordinance failed, then the Town would have access to those records to prepare an assessment, and that Kigre could then appear before Town Council to challenge any amounts alleged due, prior to the Town taking any action with respect to Kigre's business license.

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country, state, county or municipality, other than the fee paid to the Ohio Secretary of State to maintain its Ohio Corporate Charter. I find these to be matters of fact.

4. Kigre has held a business license from the Town of Hilton Head since 1987. However, the license applications completed by Jeffrey Meyers show that Kigre paid the minimum amount due of \$62.50 because Kigre claimed that the business license fee was "N/A" to its income. The Town did not challenge the claim by Kigre that its income was exempt until March of 2004, when the Town notified Kigre that it was going to audit Kigre's records to determine if Kigre was making the correct payment and if not, what amount was due. On March 24, 2004, Kigre responded via e-mail that the Kigre's revenues were exempt because they were derived from interstate commerce. Thereafter, the Town and Kigre engaged in correspondence which resulted in an audit.

5. As a result of the correspondence from Kigre, and the claims asserted therein, the Town commenced this action, seeking a declaratory judgment on the validity of Kigre's claims.

6. Following the audit, the Town notified Kigre that business license fees and penalties were due in the amount of \$41,645.81. On November 13, 2006, Kigre paid the \$41,645.81 and Kigre's counsel submitted a detailed letter setting forth 25 grounds as to why the Town's business License Fee ordinance is invalid and why Kigre was exempt from payment of the business license fee.

7. At the trial, Kigre argued that it should have been afforded a hearing before the Town Council for the Town on its claims related to the validity of the business license fee ordinance and Kigre's claims that it was exempt from paying the business license fee. Material to these arguments, Sec. 10-1-150 of the Town's Municipal Code reads, in relevant part:

When the license inspector determines that:

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(2) A licensee has breached any condition upon which his license was issued or has failed to comply with the provisions of this chapter;

...

the license inspector shall give written notice to the licensee or the person in control of the business within the town by personal service or certified mail that the license is suspended pending a hearing before town council for the purpose of determining whether the license should be revoked. The notice shall state the time and place at which the hearing is to be held, which shall be at a regular or special council meeting within thirty (30) days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this chapter.

In addition, Sec. 10-1-160, of the Town's Municipal Code reads as follows:

(a) Any person aggrieved by a final assessment or a denial of a business license by the license inspector may appeal the decision to town council by written request stating the reasons therefor filed with the town clerk within ten (10) days after the payment of the assessment under protest or notice of denial is received.

(b) An appeal or a hearing on revocation shall be held by town council within thirty (30) days after receipt of a request for appeal or service of notice of suspension at a regular or special meeting of which the applicant or licensee has been given written notice. At the hearing all parties shall have the right to be represented by counsel, to present testimony and evidence and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by town council shall govern the hearing. Town council shall by majority vote of members present render a written decision based on findings of fact and the application of the standards herein which shall be served upon all parties or their representatives and shall be final unless appealed to a court of competent jurisdiction within ten (10) days after service.

(c) No person shall be subject to prosecution for doing business without a license until the expiration of ten (10) days after written notice of denial or revocation which is not appealed or until after final judgment of court upholding denial or revocation.

In this case, no hearing was held before Town Council apparently due to oversight. Rather than seek to suspend the license or criminally prosecute Kigre for non-payment of the license fee, the Town sought declaratory judgment to determine the validity of the defenses to payment asserted by Kigre. Neither party argued that this Court did not have jurisdiction based

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on a failure to exhaust administrative remedies. Because the Town did not suspend Kigre's business license or prosecute Kigre for non-payment, the fact that a hearing was not held is of little or no import to the legal and factual claims before this Court.

8. At trial, the parties stipulated that their disputes regarding Kigre's claims to exemption, Kigre's challenges to the Town's ordinance and its application to Kigre, and the Town's claim regarding the invalidity of Kigre's claims, were all ripe for adjudication.

Conclusions of Law

1. The Town is authorized to establish a business license fee by S.C. Code Ann. § 5-7-30 which states in part as follows:

Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the *authority to levy and collect taxes on real and personal property* and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them; the authority to ... *levy a business license tax on gross income, ...* (emphasis added).

2. The Town established a business license fee in Section 10-1-10 of the Town's Municipal Code, which states in part as follows:

License required. Every person engaged or intending to engage in *any calling, business, occupation or profession listed in the rate classification index portion of this chapter, in whole or in part, within the limits of the town*, is required to pay an annual license fee and obtain a business license as herein provided.... (emphasis added).

3. Kigre is doing business within the limits of the Town limits and is a "business" and has "gross income" as defined in Section 10-1-20 of the Town's Municipal Code, which includes "gross income from interstate commerce." The Section reads in part as follows:

The following words, terms and phrases, when used in this chapter shall have the meaning ascribed herein:

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(1) *Business*: A calling, occupation, profession or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly. ...

...
(3) *Gross income*: The total revenue of a business, received or accrued, for one fiscal year collected or to be collected by reason of the *conduct of business within the town*, excepting therefrom income from business done wholly outside of the town on which a license tax is paid to some other municipality or a county and fully reported to the town. *Gross income from interstate commerce shall be included in the gross income for every business subject to a business license fee.* The gross income for business license purposes shall conform to the gross income reported to the Internal Revenue Service, the South Carolina Department of Revenue and Taxation, or the South Carolina Insurance Commission. ...

4. Based on the information provided by Kigre in its applications, the Town established a "classification" for Kigre pursuant to Section 10-1-190 of the Town's Municipal Code.

"Classification" is defined in Section 10-1-20 of the Town's Municipal Code, which states:

The following words, terms and phrases, when used in this chapter shall have the meaning ascribed herein:

...
(2) *Classification*: That division of businesses by major groups subject to the same license rate, as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationship of services, or other basis deemed appropriate by the town council.

Section 10-1-190 of the Town's Municipal Code states:

Classification rate ... The license fee for each class of business shall be computed in accordance with the following rates and with the Standard Industrial Classification (SIC) Manual 1987, except in cases of conflict between the provisions of the SIC and the Town Code, the Town Code provisions shall prevail. TABLE INSET:

5. Kigre argues that the Town's Ordinance is fatally flawed because it attempts to attach to income earned entirely in interstate commerce. However, Kigre's argument ignores the plain language of Section 10-1-20(3) of the Municipal Code, which defines gross income as follows:

(3) *Gross income*: The total revenue of a business, received or accrued, for one fiscal year collected or to be collected by reason of the conduct of business within the town, *excepting therefrom income from business done wholly outside of the town on which a license tax is paid to some other municipality or a county and fully reported to the town.* Gross income

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from interstate commerce shall be included in the gross income for every business subject to a business license fee. ... (emphasis added).

Section 10-1-60 also provides for a deduction for tax paid to another municipality and states in part:

No deductions from gross income shall be made, except from income from business done wholly outside of the town on which a license tax is paid to some other municipality or a county, or income which cannot be taxed pursuant to state law. The applicant shall have the burden to establish the right to a deduction by satisfactory records and proof.

The fee only takes into account that income which is connected with the Town and which has not been taxed in another jurisdiction. The distinction does not depend on whether or not the income is derived in interstate commerce. The income derived from interstate commerce is treated in the same manner as any other income. There is no question that interstate commerce may be made to pay its way. *Complete Auto, Inc. v. Brady*, 430 U.S. 274 at 284 (1977). Accordingly, the Town does not need to provide a method for calculating the portion of the Town's business license fee which is allocated/derived from interstate commerce. The validity of the business license fee does not depend upon income being characterized as derived from interstate commerce or any other source. The business license fee applies equally to all income which is connected with the business conducted within the Town.

Kigre manufactures/assembles components in the Town and sells the finished product. Without the manufacturing/assembly side of the business conducted within the Town, the sales would not take place as there would be no product to sell. South Carolina courts have recognized that a municipal corporation has the right to impose a license fee for conducting business within its limits, even though a portion of business is carried on or completed outside of the municipality. In *Triplett v. City of Chester*, 209 S.C. 455, 40 S.E.2d 684 (1946), the South

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Carolina Supreme Court considered the application of a municipal business license tax on a construction contractor who, while conducting his administrative and executive work within the city limits and storing equipment therein, did all of his construction work outside the city. The Court stated:

We are unable to agree with the soundness of respondent's contention that no part of his business was conducted within the corporate limits of Chester. It is the privilege of doing business within the municipality that is sought to be taxed. The administrative and executive work, an indispensable phase of respondent's business, was conducted in the office established, maintained and operated in the City. His equipment when not in use was stored in the City. This portion of his business enjoyed all the advantages afforded by the municipal government of Chester to any other business conducted within its corporate limits. We cannot dissociate the managerial features of the business which were conducted within the City, along with the storing of equipment, from the manual execution of the work which was done without the City. All are essential functions of the general contracting business in which respondent is engaged. It frequently happens that there is a business located within a municipality that does not do *all* of its business within the corporate limits of such town or city.

...

The tax was imposed for the privilege of maintaining and conducting a place of business within that municipality and it was intended that the business should be considered as a whole. The gross income or volume of such business is merely made the basis on which the tax is graduated.

The gross income of Kigre in this case is derived from its business conducted within the Town and is therefore properly included in the business license fee calculation. This appears especially true since Kigre's officer admitted that Kigre pays no other Business License Fee in any other jurisdiction. Thus, according to Kigre's own evidence, there is nothing to apportion.

7. Kigre next asserts that the Town does not apportion the income between the sale of goods in interstate commerce from the manufacturing of such goods. Kigre has given the Court no law or fact in evidence that would support the argument that the Town's Business License Ordinance Fee is not enforceable for want of an apportionment between income derived from the sale of goods as opposed to the manufacturing of such goods. The business license fee is based

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on the gross income of the business [See: Section 10-10-120(3) of the Town's Municipal Code]. Kigre has provided no authority for the proposition that the Town is obligated to make a distinction in the manner that Kigre suggests.

8. Kigre next argues that the Town's Ordinance is invalid because it uses the outdated Standard Industrial Codes to classify businesses. Addressing a similar constitutional attack on a business license fee and the classifications used, the South Carolina Court of Appeals in *City of Beaufort v. Holcombe*, 369 S.C. 643, 632 S.E.2d 894 (SC App. 2006), determined that classifications in the city's license fee ordinance had a "rational and reasonable basis" and stated:

Courts generally analyze equal protection challenges under one of three standards: (1) rational basis; (2) intermediate scrutiny; or, (3) strict scrutiny. If the classification does not implicate a suspect class or abridge a fundamental right, the rational basis test is used. Inherently suspect classifications include those based on factors "such as race, religion, or alienage.

In this instance, we agree with the circuit court's determination that "landlords do not constitute a 'suspect' class, [so] the 'rational basis' test is used." "To satisfy the equal protection clause, a classification must (1) bear a reasonable relation to the legislative purpose sought to be achieved, (2) members of the class must be treated alike under similar circumstances, and (3) the classification must rest on some rational basis.

Equal Protection Clauses are subject to a wide scope of discretion and legislative enactments are to be avoided only when they are without any reasonable basis. Only "irrational and unjustified classifications" are barred.

If a classification is reasonably related to a proper legislative purpose and the members of each class are treated equally, any challenge under the Equal Protection clause fails. *Eli Witt Company v. City of West Columbia*, 309 S.C. 555, 425 S.E.2d 16 (1992), citing *Robinson v. Richland County Council*, 293 S.C. 27, 358 S.E.2d 392 (1987). An ordinance will only be found to violate the Equal Protection clause if it is arbitrary and there is no conceivable hypothesis to support the classification. *Medlock v. S.C. State Family Farm Dev. Auth.*, 279 S.C. 316, 306 S.E.2d 605 (1983).

The Town's classification system utilizes the Standard Industrial Classification (SIC) Manual 1987, a classification system with a rational and reasonable basis. All businesses in the same classification are treated the same. A review of the Table in Section 10-1-190 of the Town's Municipal Code shows categories of business types falling within a given rate class, and shows the reasonableness of the classifications. Any reasonable basis for the different classification will satisfy the requirements of the equal protection clause. See *Medlock, supra*.

The license fee system is also reasonably related to a proper legislative purpose as stated in Section 10-1-30 of the Town's Municipal Code:

The business license levied by this chapter is for the purpose of providing such regulation as may be required by the businesses subject thereto and for the purpose of raising revenue for the general fund through a privilege fee. Each license shall be issued for one (1) calendar year and shall expire on December 31st. The provisions of this chapter and the rates herein shall remain in effect from year to year until amended by council.

The Court of Appeals in *City of Beaufort, supra*, further stated:

A municipal ordinance is a legislative enactment and is presumed to be constitutional. The burden is upon the taxpayer to *prove unconstitutionality beyond a reasonable doubt. The burden requires the attacker to negate every conceivable basis that might support it.* The reasonableness of an ordinance is a question of law for the court to decide unless there is a controversy about the facts of the case, which must be decided by a jury. (emphasis added).

9. Kigre has an extraordinary burden in this case and no argument or evidence presented by Kigre "proves unconstitutionality beyond a reasonable doubt." Given the numerous arguments presented herein, the case law, and the rational and reasonable basis for the Town's business license fee, Kigre is unable to carry its burden of negating "every conceivable basis that might support" its argument of unconstitutionality of the Town's ordinance.⁵

⁵ Kigre argued, and the Town conceded, that the Municipal Association of South Carolina (to whom the Town looks for guidance on the drafting and implementation of municipal legislation) now suggests that where possible, municipalities convert from the standard industrial codes (SIC) to the North American Industry

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10. Kigre asserts that the business license fee imposed by the Town is not fairly related to the services provided by the Town to Kigre's business in interstate commerce and others similarly situated. The Town does not need to present a detailed accounting of the services provided to Kigre in order for the business license fee to be considered "fairly related." *Oklahoma Tax Comm. v. Jefferson Lines, Inc.*, 514 U.S. 175 (1995). Police, fire protection, along with all of the advantages conferred by the Town's maintenance of a civilized society are all justifications for imposition of the fee. The fact that these costs may not be thought of as directly benefiting Kigre does not mean that they are not fairly related to the fee. See *Oklahoma Tax Comm.*, *supra*; *Goldberg v. Sweet*, 488 U.S. 252 (1989); *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 (1981). The Town provides the benefits of a civilized society to Kigre and therefore the fair relation prong is satisfied. Despite Kigre's argument that the business license fee is a direct tax on the privilege of engaging in interstate commerce, it is rather a fee imposed on the privilege of maintaining and conducting a place of business within the Town. See *Eli Witt Co.*, *supra*. Further, the testimony of the Town's employee Steven Markiw, which I find credible, established that on an annual basis, as part of its budget review, the Town does in fact analyze its income and relationship between the services it offers to residents and businesses within the Town.

11. Kigre argues that some businesses in the Town do not pay any business license fees while it must pay the same and no rational basis exists for this distinction. Section 10-1-200 of the Town's Municipal Code is captioned as "local industry license." This Section exempts any person who exclusively engages in the business of offering for public sale at designated locations farm and garden products, or flowers grown on the property of such person, or flower arrangements, arts or crafts produced in the home of such person, or seafood caught by such

Classification System (NAICS). While this suggests that the Town could use a different method for classification, the Town's Ordinance is only required to meet the "rational basis" test, which I expressly find use of the SIC does.

person, from payment of the business license fee. Kigre is not in the same market as the local producers and is not engaged in a substantially similar business.

The Town is not prohibited from taxing different businesses at different rates. See *Thompson Newspapers, Inc. v. City of Florence*, 287 S.C. 305, 338 S.E.2d 324 (1985) (no equal protection violation where daily newspapers charged higher rate than other businesses); *Eli Witt, supra*, (no equal protection violation where business was taxed on untaxed income earned outside of the municipality). Any reasonable basis for the different classification will satisfy the requirements of the equal protection clause. See *Medlock, supra*. The classification set out in §10-1-200, *supra*, has a reasonable basis, which is that it seeks to promote local small businesses that sell locally produced, caught or grown products.⁶

12. As to the issue of Estoppel, as has been repeatedly held, and most recently cited in *Quail Hill, LLC v. County of Richland, South Carolina*, 387 S.C. 223, 692 S.E.2d 499 (S.C. 2010), there can be no estoppel against a government agency for a mistake. 'As a general rule, estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy.' *Greenville County v. Kenwood Enterprises, Inc.*, 353 S.C. 157, 577 S.E.2d 428 (2003). This Court has explained: No estoppel can grow out of dealings with public officers of limited authority, and the doctrine of equitable estoppel cannot ordinarily be invoked to defeat a municipality in the prosecution of its public affairs because of an error or mistake of . . . one of its officers or agents . . ." *DeStefano v. City of Charleston*, 304 S.C. 250, 257-58, 403 S.E.2d 648, 653 (1991) (citations omitted)(emphasis added)"

"administrative officers of the state cannot estop the state through mistaken statements of law." *Kenwood Enters.*, 353 S.C. at 172, 577 S.E.2d at 436 (quoting *Kelso & Irwin, P.A., v. State Ins. Fund*, 997 P.2d 591, 599 (Idaho 2000)).

⁶ The various grounds asserted by Kigre all fall into, and are covered by, the larger categories that are discussed above. All of Kigre's grounds are denied.

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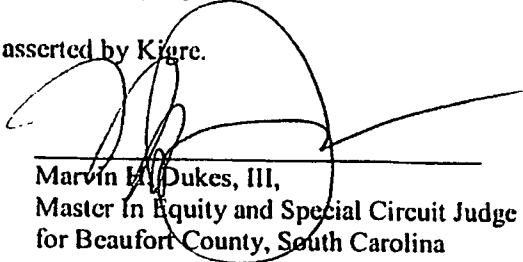
Specifically, "[e]stoppel will not lie against a government entity where a government employee gives erroneous information in contradiction of statute. Simply stated, equity follows the law." *Morgan v. South Carolina Budget and Control Board*, 377 S.C. 313, 659 S.E.2d 263 (Ct. App. 2008) (citations omitted)."

Kigre's claim of estoppel is also misplaced as there can be no estoppel of the Town due to Kigre's unclean hands through its erroneous representations of its income on its business license applications. "One who comes into Court seeking equity must come with clean hands." *Emery v. Smith*, 361 S.C. 207, 603 S.E. 2d 598 (Ct.App. 2004). The doctrine of "unclean hands" will preclude a litigant from recovering in equity if that litigant acted unfairly to the detriment of the Plaintiff. *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568-69, 511 S.E.2d 372, 379 (Ct.App.1998). Because Kigre knowingly referenced its income as "n/a" on its business license applications, based on its own incorrect interpretations of the law, and the Town relied on these representations, the Town is not estopped from collecting the correct amounts due for the business license fees.

Conclusion

This Court attempted to fairly scrutinize all the claims and arguments presented by Kigre, but, after consideration, this case boils down to the fact that I am presented with a taxpayer, Kigre, who misrepresented information on a business license application which resulted in it not paying the correct amounts of business license fees due to the Town. For the foregoing reasons, the Town is granted judgment on its claims for declaratory judgment and for the amounts due and is granted judgment in its favor on all claims asserted by Kigre.

This 7 day of July, 2017
Beaufort, South Carolina


Marvin H. Dukes, III,
Master In Equity and Special Circuit Judge
for Beaufort County, South Carolina

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
TOWN OF HILTON HEAD ISLAND)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 06-CP-07-796

Plaintiff,)
vs.)
KIGRE, INC.)
Defendant.)
AMENDED ORDER ENDING CASE

This matter originally came before me for trial on December 8 and 9, 2010 and April 27, 2011. Present for the Town of Hilton Head Island (the "Town"), was Gregory M. Alford, and on behalf of Kigre, Inc., was Thomas C. Taylor. I took testimony and listened to the extensive and well made arguments of counsel. Having heard and considered the testimony and arguments, and having studied the exhibits and applicable law, I issued an Order Ending the Case on February 2, 2012.¹ Defendant filed a Rule 59 Motion for Reconsideration and I heard arguments on that motion on May 17, 2012. I decline to change the rulings contained in the February 7, 2012 Order however, I am changing certain verbiage contained in that Order. Accordingly, this Amended Order Ending Case hereby replaces the Order Ending Case filed February 7, 2012.

Background and Facts

This case involves the Town's business license fee established in Section 10-1-10 *et. seq.* of the Town's Municipal Code pursuant to the authority granted in S.C. Code Ann. §5-7-30. The Town audited Kigre's business license fee liability for the 2002, 2003, 2004, and 2005 license periods. While the audit was underway, Kigre corresponded with the Town and denied liability to the payment of any business license fee, and threatened litigation against the Town.

¹ Both parties made cross motions for Summary Judgment which I heard and took under advisement. Those motions are hereby denied and this decision is based upon the trial and all matters presented therein.

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The Town filed this action against Kigre on April 3, 2006, seeking declaratory judgment as to the validity of the arguments and exemptions made and claimed by Kigre and to collect past due amounts. On August 17, 2006, Kigre filed its Answer and Counterclaim. The Town filed its Reply on September 13, 2006.²

As a result of the audit performed by the Town, Kigre was assessed \$41,645.81 for past due business license fees and penalties. On November 13, 2006, Kigre paid the amount due under protest.

Kigre denied liability for payment of the business license fee, and asserted that the Town's business license fee ordinance was unenforceable as to Kigre, and that Kigre was exempt from payment of the business license fee on numerous grounds. Among other things, Kigre argued that under Section 10-1-10, *et seq.* of the Town's Municipal Code, the Town should have given Kigre a hearing before Town Council instead of bringing the declaratory action.

In its pleadings, during motion hearings and at trial, Kigre claimed that the Town's business license fee was unconstitutional and /or unenforceable on the following grounds:³

- (1) The Ordinance cannot be applied to Kigre's business because Kigre's sales are almost exclusively done in interstate commerce;
- (2) The Ordinance does not properly apportion between sale of goods and manufacturing;
- (3) The Ordinance does not fairly apportion the fee among all businesses because it uses incorrect or outdated datum for the profitability of businesses and uses an outdated SIC (Standard Industrial Code) system, under which Kigre is not properly classified;
- (4) The License Fee is not fairly related to the services which the Town provides;

² Kigre filed its Amended Answer and Counterclaim on September 8, 2009, and the Town filed its Reply on September 16, 2009.

³ Kigre's Amended Answer and Counterclaim sets forth ten defenses and counterclaims, however the Court believes that the 6 grounds set forth above encompass all of the claims made by Kigre and the arguments presented by Kigre at trial.

- (5) The Business License Fee is enforced in a discriminatory manner; and,
- (6) The Town is estopped from charging Kigre anything more the minimum fee because the Town has accepted Kigre's assertions regarding exemptions prior to 2006.

Findings of Fact

1. The Town is a municipal corporation organized and existing pursuant to the laws of the State of South Carolina, located in Beaufort County.
2. Kigre is an Ohio corporation and is authorized by the State of South Carolina to conduct business in South Carolina. Since 1986, Kigre's business has been located within the corporate limits of the Town. Kigre is engaged in the manufacturing, assembling and sales of certain specialized laser devices which business generates a gross income. Within the corporate limits of the Town, Kigre owns and operates a 23,000 square foot facility which includes a clean room, machining center, offices and laboratories. In its Business License Applications, Kigre describes its business as "mfg laser and laser glass," (license form for 2005); "medical laser manufacturing," (license form for 2003); "laser component mfg," (license form for 2002). The Town placed Kigre in a classification based on the descriptions given by Kigre and in accordance with Section 10-1-190 of the Town's Municipal Code, which utilizes the Standard Industrial Classification (SIC), a commonly used tool for placing businesses into the proper classification. It is undisputed that prior to the inception of this litigation that Kigre never objected to its classification.
3. Jeffrey Meyers testified that Kigre has a gross income which is derived from its business activities from its operations within the Town.⁴ Jeffrey Meyers testified that Kigre does not have

⁴ During Trial, the parties agreed that the exact financial information would be kept out of the record but that if Kigre's challenges to the Business License Fee Ordinance failed, then the Town would have access to those records to prepare an assessment, and that Kigre could then appear before Town Council to challenge any amounts alleged due, prior to the Town taking any action with respect to Kigre's business license.

any other offices or facilities, and it does not pay any license or franchise fee in any other country, state, county or municipality, other than the fee paid to the Ohio Secretary of State to maintain its Ohio Corporate Charter. I find these to be matters of fact.

4. Kigre has held a business license from the Town of Hilton Head since 1987. However, the license applications completed by Jeffrey Meyers show that Kigre paid the minimum amount due of \$62.50 because Kigre claimed that the business license fee was "N/A" to its income. The Town did not challenge the claim by Kigre that its income was exempt until March of 2004, when the Town notified Kigre that it was going to audit Kigre's records to determine if Kigre was making the correct payment and if not, what amount was due. On March 24, 2004, Kigre responded via e-mail that the Kigre's revenues were exempt because they were derived from interstate commerce. Thereafter, the Town and Kigre engaged in correspondence which resulted in an audit.

5. As a result of the correspondence from Kigre, and the claims asserted therein, the Town commenced this action, seeking a declaratory judgment on the validity of Kigre's claims.

6. Following the audit, the Town notified Kigre that business license fees and penalties were due in the amount of \$41,645.81. On November 13, 2006, Kigre paid the \$41,645.81 and Kigre's counsel submitted a detailed letter setting forth 25 grounds as to why the Town's business License Fee ordinance is invalid and why Kigre was exempt from payment of the business license fee.

7. At the trial, Kigre argued that it should have been afforded a hearing before the Town Council for the Town on its claims related to the validity of the business license fee ordinance and Kigre's claims that it was exempt from paying the business license fee. Material to these arguments, Sec. 10-1-150 of the Town's Municipal Code reads, in relevant part:

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When the license inspector determines that:

...

(2) A licensee has breached any condition upon which his license was issued or has failed to comply with the provisions of this chapter;

...

the license inspector shall give written notice to the licensee or the person in control of the business within the town by personal service or certified mail that the license is suspended pending a hearing before town council for the purpose of determining whether the license should be revoked. The notice shall state the time and place at which the hearing is to be held, which shall be at a regular or special council meeting within thirty (30) days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this chapter.

In addition, Sec. 10-1-160, of the Town's Municipal Code reads as follows:

(a) Any person aggrieved by a final assessment or a denial of a business license by the license inspector may appeal the decision to town council by written request stating the reasons therefor filed with the town clerk within ten (10) days after the payment of the assessment under protest or notice of denial is received.

(b) An appeal or a hearing on revocation shall be held by town council within thirty (30) days after receipt of a request for appeal or service of notice of suspension at a regular or special meeting of which the applicant or licensee has been given written notice. At the hearing all parties shall have the right to be represented by counsel, to present testimony and evidence and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by town council shall govern the hearing. Town council shall by majority vote of members present render a written decision based on findings of fact and the application of the standards herein which shall be served upon all parties or their representatives and shall be final unless appealed to a court of competent jurisdiction within ten (10) days after service.

(c) No person shall be subject to prosecution for doing business without a license until the expiration of ten (10) days after written notice of denial or revocation which is not appealed or until after final judgment of court upholding denial or revocation.

In this case, no hearing was held before Town Council apparently due to oversight.

Rather than seek to suspend the license or criminally prosecute Kigre for non-payment of the license fee, the Town sought declaratory judgment to determine the validity of the defenses to

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payment asserted by Kigre. Neither party argued that this Court did not have jurisdiction based on a failure to exhaust administrative remedies. Because the Town did not suspend Kigre's business license or prosecute Kigre for non-payment, the fact that a hearing was not held is of little or no import to the legal and factual claims before this Court.⁵

8. At trial, the parties stipulated that their disputes regarding Kigre's claims to exemption, Kigre's challenges to the Town's ordinance and its application to Kigre, and the Town's claim regarding the invalidity of Kigre's claims, were all ripe for adjudication.

Conclusions of Law

1. The Town is authorized to establish a business license fee by S.C. Code Ann. § 5-7-30 which states in part as follows:

Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the *authority to levy and collect taxes on real and personal property* and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them; the authority to ... *levy a business license tax on gross income, ...* (emphasis added).

2. The Town established a business license fee in Section 10-1-10 of the Town's Municipal Code, which states in part as follows:

License required. Every person engaged or intending to engage in *any calling, business, occupation or profession* listed in the rate classification index portion of this chapter, *in whole or in part, within the limits of the town*, is required to pay an annual license fee and obtain a business license as herein provided.... (emphasis added).

3. Kigre is doing business within the limits of the Town limits and is a "business" and has "gross income" as defined in Section 10-1-20 of the Town's Municipal Code, which includes "gross income from interstate commerce." The Section reads in part as follows:

⁵ At trial, the Town conceded that it had waived its right to collect the \$41,645.81 in fees and penalties.

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The following words, terms and phrases, when used in this chapter shall have the meaning ascribed herein:

(1) *Business*: A calling, occupation, profession or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly. ...

...
(3) *Gross income*: The total revenue of a business, received or accrued, for one fiscal year collected or to be collected by reason of the conduct of business within the town, excepting therefrom income from business done wholly outside of the town on which a license tax is paid to some other municipality or a county and fully reported to the town. *Gross income from interstate commerce shall be included in the gross income for every business subject to a business license fee.* The gross income for business license purposes shall conform to the gross income reported to the Internal Revenue Service, the South Carolina Department of Revenue and Taxation, or the South Carolina Insurance Commission.

4. Based on the information provided by Kigre in its applications, the Town established a "classification" for Kigre pursuant to Section 10-1-190 of the Town's Municipal Code.

"Classification" is defined in Section 10-1-20 of the Town's Municipal Code, which states:

The following words, terms and phrases, when used in this chapter shall have the meaning ascribed herein:

...
(2) *Classification*: That division of businesses by major groups subject to the same license rate, as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationship of services, or other basis deemed appropriate by the town council.

Section 10-1-190 of the Town's Municipal Code states:

Classification rate ... The license fee for each class of business shall be computed in accordance with the following rates and with the Standard Industrial Classification (SIC) Manual 1987, except in cases of conflict between the provisions of the SIC and the Town Code, the Town Code provisions shall prevail. TABLE INSET:

5. Kigre argues that the Town's Ordinance is fatally flawed because it attempts to attach to income earned entirely in interstate commerce. However, Kigre's argument ignores the plain language of Section 10-1-20(3) of the Municipal Code, which defines gross income as follows:

(3) *Gross income*: The total revenue of a business, received or accrued, for one fiscal year collected or to be collected by reason of the conduct of business within the town, *excepting therefrom income from business done*

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wholly outside of the town on which a license tax is paid to some other municipality or a county and fully reported to the town. Gross income from interstate commerce shall be included in the gross income for every business subject to a business license fee. ... (emphasis added).

Section 10-1-60 also provides for a deduction for tax paid to another municipality and states in part:

No deductions from gross income shall be made, except from income from business done wholly outside of the town on which a license tax is paid to some other municipality or a county, or income which cannot be taxed pursuant to state law. The applicant shall have the burden to establish the right to a deduction by satisfactory records and proof.

The fee only takes into account that income which is connected with the Town and which has not been taxed in another jurisdiction. The distinction does not depend on whether or not the income is derived in interstate commerce. The income derived from interstate commerce is treated in the same manner as any other income. There is no question that interstate commerce may be made to pay its way. *Complete Auto, Inc. v. Brady*, 430 U.S. 274 at 284 (1977). Accordingly, the Town does not need to provide a method for calculating the portion of the Town's business license fee which is allocated/derived from interstate commerce. The validity of the business license fee does not depend upon income being characterized as derived from interstate commerce or any other source. The business license fee applies equally to all income which is connected with the business conducted within the Town.

Kigre manufactures/assembles components in the Town and sells the finished product. Without the manufacturing/assembly side of the business conducted within the Town, the sales would not take place as there would be no product to sell. South Carolina courts have recognized that a municipal corporation has the right to impose a license fee for conducting business within its limits, even though a portion of business is carried on or completed outside of the

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municipality. In *Triplett v. City of Chester*, 209 S.C. 455, 40 S.E.2d 684 (1946), the South Carolina Supreme Court considered the application of a municipal business license tax on a construction contractor who, while conducting his administrative and executive work within the city limits and storing equipment therein, did all of his construction work outside the city. The Court stated:

We are unable to agree with the soundness of respondent's contention that no part of his business was conducted within the corporate limits of Chester. It is the privilege of doing business within the municipality that is sought to be taxed. The administrative and executive work, an indispensable phase of respondent's business, was conducted in the office established, maintained and operated in the City. His equipment when not in use was stored in the City. This portion of his business enjoyed all the advantages afforded by the municipal government of Chester to any other business conducted within its corporate limits. We cannot dissociate the managerial features of the business which were conducted within the City, along with the storing of equipment, from the manual execution of the work which was done without the City. All are essential functions of the general contracting business in which respondent is engaged. It frequently happens that there is a business located within a municipality that does not do *all* of its business within the corporate limits of such town or city.

...
The tax was imposed for the privilege of maintaining and conducting a place of business within that municipality and it was intended that the business should be considered as a whole. The gross income or volume of such business is merely made the basis on which the tax is graduated.

The gross income of Kigre in this case is derived from its business conducted within the Town and is therefore properly included in the business license fee calculation. This appears especially true since Kigre' officer admitted that Kigre pays no other Business License Fee in any other jurisdiction. Thus, according to Kigre's own evidence, there is nothing to apportion.

7. Kigre next asserts that the Town does not apportion the income between the sale of goods in interstate commerce from the manufacturing of such goods. Kigre has given the Court no law or fact in evidence that would support the argument that the Town's Business License Ordinance Fee is not enforceable for want of an apportionment between income derived from the

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sale of goods as opposed to the manufacturing of such goods. The business license fee is based on the gross income of the business [See: Section 10-10-120(3) of the Town's Municipal Code]. Kigre has provided no authority for the proposition that the Town is obligated to make a distinction in the manner that Kigre suggests.

8. Kigre next argues that the Town's Ordinance is invalid because it uses the outdated Standard Industrial Codes to classify businesses. Addressing a similar constitutional attack on a business license fee and the classifications used, the South Carolina Court of Appeals in *City of Beaufort v. Holcombe*, 369 S.C. 643, 632 S.E.2d 894 (SC App. 2006), determined that classifications in the city's license fee ordinance had a "rational and reasonable basis" and stated:

Courts generally analyze equal protection challenges under one of three standards: (1) rational basis; (2) intermediate scrutiny; or, (3) strict scrutiny. If the classification does not implicate a suspect class or abridge a fundamental right, the rational basis test is used. Inherently suspect classifications include those based on factors "such as race, religion, or alienage."

In this instance, we agree with the circuit court's determination that "landlords do not constitute a 'suspect' class, [so] the 'rational basis' test is used." "To satisfy the equal protection clause, a classification must (1) bear a reasonable relation to the legislative purpose sought to be achieved, (2) members of the class must be treated alike under similar circumstances, and (3) the classification must rest on some rational basis."

Equal Protection Clauses are subject to a wide scope of discretion and legislative enactments are to be avoided only when they are without any reasonable basis. Only "irrational and unjustified classifications" are barred.

If a classification is reasonably related to a proper legislative purpose and the members of each class are treated equally, any challenge under the Equal Protection clause fails. *Eli Witt Company v. City of West Columbia*, 309 S.C. 555, 425 S.E.2d 16 (1992), citing *Robinson v. Richland County Council*, 293 S.C. 27, 358 S.E.2d 392 (1987). An ordinance will only be found to violate the Equal Protection clause if it is arbitrary and there is no conceivable hypothesis to

support the classification. *Medlock v. S.C. State Family Farm Dev. Auth.*, 279 S.C. 316, 306 S.E.2d 605 (1983).

The Town's classification system utilizes the Standard Industrial Classification (SIC) Manual 1987, a classification system with a rational and reasonable basis. All businesses in the same classification are treated the same. A review of the Table in Section 10-1-190 of the Town's Municipal Code shows categories of business types falling within a given rate class, and shows the reasonableness of the classifications. Any reasonable basis for the different classification will satisfy the requirements of the equal protection clause. See *Medlock, supra*.

The license fee system is also reasonably related to a proper legislative purpose as stated in Section 10-1-30 of the Town's Municipal Code:

The business license levied by this chapter is for the purpose of providing such regulation as may be required by the businesses subject thereto and for the purpose of raising revenue for the general fund through a privilege fee. Each license shall be issued for one (1) calendar year and shall expire on December 31st. The provisions of this chapter and the rates herein shall remain in effect from year to year until amended by council.

The Court of Appeals in *City of Beaufort, supra*, further stated:

A municipal ordinance is a legislative enactment and is presumed to be constitutional. The burden is upon the taxpayer to prove unconstitutionality beyond a reasonable doubt. The burden requires the attacker to negate every conceivable basis that might support it. The reasonableness of an ordinance is a question of law for the court to decide unless there is a controversy about the facts of the case, which must be decided by a jury. (emphasis added).

9. Kigre has an extraordinary burden in this case and no argument or evidence presented by Kigre "proves unconstitutionality beyond a reasonable doubt." Given the numerous arguments presented herein, the case law, and the rational and reasonable basis for the Town's business

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license fee, Kigre is unable to carry its burden of negating "every conceivable basis that might support" its argument of unconstitutionality of the Town's ordinance.⁶

10. Kigre asserts that the business license fee imposed by the Town is not fairly related to the services provided by the Town to Kigre's business in interstate commerce and others similarly situated. The Town does not need to present a detailed accounting of the services provided to Kigre in order for the business license fee to be considered "fairly related." *Oklahoma Tax Comm. V. Jefferson Lines, Inc.*, 514 U.S. 175 (1995). Police, fire protection, along with all of the advantages conferred by the Town's maintenance of a civilized society are all justifications for imposition of the fee. The fact that these costs may not be thought of as directly benefiting Kigre does not mean that they are not fairly related to the fee. See *Oklahoma Tax Comm.*, *supra*; *Goldberg v. Sweet*, 488 U.S. 252 (1989); *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 (1981). The Town provides the benefits of a civilized society to Kigre and therefore the fair relation prong is satisfied. Despite Kigre's argument that the business license fee is a direct tax on the privilege of engaging in interstate commerce, it is rather a fee imposed on the privilege of maintaining and conducting a place of business within the Town. See *Eli Witt Co.*, *supra*. Further, the testimony of the Town's employee Steven Markiw, which I find credible, established that on an annual basis, as part of its budget review, the Town does in fact analyze its income and relationship between the services it offers to residents and businesses within the Town.

11. Kigre argues that some businesses in the Town do not pay any business license fees while it must pay the same and no rational basis exists for this distinction. Section 10-1-200 of the Town's Municipal Code is captioned as "local industry license." This Section exempts any

⁶ Kigre argued, and the Town conceded, that the Municipal Association of South Carolina (to whom the Town looks for guidance on the drafting and implementation of municipal legislation) now suggests that where possible, municipalities convert from the standard industrial codes (SIC) to the North American Industry Classification System (NAICS). While this suggests that the Town could use a different method for classification, the Town's Ordinance is only required to meet the "rational basis" test, which I expressly find use of the SIC does.

person who exclusively engages in the business of offering for public sale at designated locations farm and garden products, or flowers grown on the property of such person, or flower arrangements, arts or crafts produced in the home of such person, or seafood caught by such person, from payment of the business license fee. Kigre is not in the same market as the local producers and is not engaged in a substantially similar business.

The Town is not prohibited from taxing different businesses at different rates. See *Thompson Newspapers, Inc. v. City of Florence*, 287 S.C. 305, 338 S.E.2d 324 (1985) (no equal protection violation where daily newspapers charged higher rate than other businesses); *Eli Witt, supra*, (no equal protection violation where business was taxed on untaxed income earned outside of the municipality). Any reasonable basis for the different classification will satisfy the requirements of the equal protection clause. See *Medlock, supra*. The classification set out in §10-1-200, *supra*, has a reasonable basis, which is that it seeks to promote local small businesses that sell locally produced, caught or grown products.⁷

12. As to the issue of Estoppel, as has been repeatedly held, and most recently cited in *Quail Hill, LLC v. County of Richland, South Carolina*, 387 S.C. 223, 692 S.E.2d 499 (S.C. 2010), there can be no estoppel against a government agency for a mistake. 'As a general rule, estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy.' *Greenville County v. Kenwood Enterprises, Inc.*, 353 S.C. 157, 577 S.E.2d 428 (2003). This Court has explained: No estoppel can grow out of dealings with public officers of limited authority, and the doctrine of equitable estoppel cannot ordinarily be invoked to defeat a municipality in the prosecution of its public affairs because of an error or

⁷ The various grounds asserted by Kigre all fall into, and are covered by, the larger categories that are discussed above. All of Kigre's grounds are denied.

mistake of . . . one of its officers or agents" *DeStefano v. City of Charleston*, 304 S.C. 250, 257-58, 403 S.E.2d 648, 653 (1991) (citations omitted)(emphasis added)"

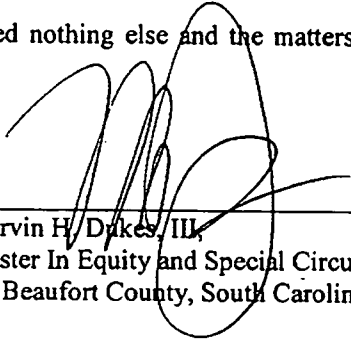
"administrative officers of the state cannot estop the state through mistaken statements of law." *Kenwood Enters.*, 353 S.C. at 172, 577 S.E.2d at 436 (quoting *Kelso & Irwin, P.A., v. State Ins. Fund*, 997 P.2d 591, 599 (Idaho 2000)). Specifically, "[e]stoppel will not lie against a government entity where a government employee gives erroneous information in contradiction of statute. Simply stated, equity follows the law." *Morgan v. South Carolina Budget and Control Board*, 377 S.C. 313, 659 S.E.2d 263 (Ct. App. 2008) (citations omitted)."

Kigre's claim of estoppel is also misplaced as there can be no estoppel of the Town due to Kigre's unclean hands through its erroneous representations of its income on its business license applications. "One who comes into Court seeking equity must come with clean hands." *Emery v. Smith*, 361 S.C. 207, 603 S.E. 2d 598 (Ct.App. 2004). The doctrine of "unclean hands" will preclude a litigant from recovering in equity if that litigant acted unfairly to the detriment of the Plaintiff. *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568-69, 511 S.E.2d 372, 379 (Ct.App.1998). Because Kigre knowingly referenced its income as "n/a" on its business license applications, based on its own incorrect interpretations of the law, and the Town relied on these representations, the Town is not estopped from collecting the correct amounts due for the business license fees.

Conclusion

This Court attempted to fairly scrutinize all the claims and arguments presented by Kigre, however, this case boils down to the fact that Kigre's legal theories are incorrect. Because Kigre's theories were incorrect, it did not pay the correct amounts of business license fees due to the Town. For the foregoing reasons, the Town is granted judgment on its claims for declaratory judgment. The Town's Ordinance is declared valid and Kigre's exemptions have been addressed herein. The Town will have the ability to assess, levy and collect (by separate action if

necessary) any amounts determined to be due for the years 2006 and forward. Kigre may have defenses to those amounts, however Kigre shall hereinafter be barred from bringing or relying upon the defenses which have been ruled upon in this Order. In other words, the Town waived the right to collect on the \$41,645.81, but they waived nothing else and the matters ruled on herein shall not be available to Kigre in the future.


Marvin H. Dukes, III,
Master In Equity and Special Circuit Judge
for Beaufort County, South Carolina

This 19 day of Sept, 20 .
Beaufort, South Carolina

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STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

TOWN OF HILTON HEAD ISLAND)

Plaintiff,)

vs.)

KIGRE, INC.)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO. 06-CP-07- 796

Complaint

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

06 APR -3 PM 4:30

The Plaintiff, by and through their undersigned counsel, complaining of the Defendant, allege and show unto this Honorable Court as follows:

1. Plaintiff, Town of Hilton Head Island, ("Town") is a municipal corporation organized and existing pursuant to the laws of the State of South Carolina and is a political subdivision of the State of South Carolina. The Town of Hilton Head is located within Beaufort County.

2. Upon information and belief, the Defendant Kigre, Inc. ("Kigre") is an Ohio corporation that is registered in South Carolina and engaged in business on Hilton Head Island.

3. Section 10-1-10 License Required of the Town of Hilton Head Island's Municipal Code requires any person engaged in any business within the Town that is listed in the rate classification index "to pay an annual license fee and obtain a business license."

4. Section 10-1-20(3) Gross Income of the Town's Municipal Code defines gross income as follows:

The total revenue of a business, received or accrued, for one fiscal year collected or to be collected by reason of the conduct of business within the town, excepting therefrom income from business done wholly outside of the town on which a license tax is paid to some other municipality or a county and fully reported to the town. Gross income from interstate commerce shall be included in the gross income for every business subject to a

business license fee. The gross income for business license purposes shall conform to the gross income reported to the Internal Revenue Service, the South Carolina Department of Revenue and Taxation, or the South Carolina Insurance Commission. In the case of brokers, or agents, gross income shall mean gross commissions retained. Gross receipts for insurance companies shall mean gross premiums collected.

5. Section 10-1-190 Classification Rates of the Town's Municipal Code lists each class of business and the license fee that coordinates with each classification. Class 5 businesses pay a minimum of \$62.50 on the first \$5,000.00 of gross income. All additional gross income is charged at \$1.08 per every additional \$1,000.00 of gross income.

6. The Town classified Kigre as a Class 5 business. Kigre received the Business License Gross Receipts Form for business renewal from the Town each year of its business. The form states Kigre's classification and how to calculate the appropriate fee based on gross income.

7. Since 2002, Kigre has refused to pay its business license fee in excess of the minimum base amount of \$62.50 due for the first \$5,000.00 of gross income. From 2002 through 2005, Kigre's unpaid fees and late penalties total \$41,645.81. For the years 2003, 2004, and 2005, Kigre's unpaid fees and late penalties total \$28,645.81. Kigre claims that it is subject to a Federal exemption from paying the Town's entire business license fee.

8. On or about August 2, 2005, the Town requested copies of Kigre's federal income tax returns showing the gross receipts generated for fiscal years 2001, 2002, and 2003 to determine the appropriate business license fees for 2002, 2003, and 2004. The Town also requested documentation to support any exemptions that Kigre claimed.

9. On or about September 6, 2005, accountants from Robinson Grant & Co., P.A. inspected Kigre's tax records, at the Town's request. Based on that firm's findings, the Town

audited Kigre's business license file. This audit revealed the great discrepancy in Kigre's reported income on its business license application and its federal income tax returns.

10. Upon information and belief, Kigre has willfully and intentionally refused to pay its business license fee to the Town, in its entirety.

11. Section 1-5-10 General Penalty; Continuing Violation of the Town's Municipal Code establishes the following penalties for noncompliance with provisions of the Town's Municipal Code:

(a) Whenever in this Code or in any ordinance any act is prohibited or is declared to be unlawful or an offense, or whenever in this Code or in any ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefore, the violation of any such provisions of this Code or any such ordinance shall be punishable by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment not exceeding thirty (30) days, or both.

(b) In addition to any penalty imposed for a violation of this Code, *the town shall have the right to pursue any legal remedy available to correct the violation.*

(c) Each day any violation of any provision of this Code shall continue shall constitute a separate offense unless otherwise specifically provided.

(emphasis added).

For a First Cause of Action
(ACCOUNTING)

12. The allegations of the foregoing paragraphs are hereby restated as if fully set forth.

13. The Town is entitled to a complete and accurate accounting of Kigre's gross income for the years 2001, 2002, 2003, 2004, and 2005.

For a Second Cause of Action
(RECOVERY OF OVERDUE BUSINESS LICENSE FEES)

14. The allegations of the foregoing paragraphs are hereby restated as if fully set forth.

15. The Town is entitled to the overdue, unpaid portion of Kigre's business license fee for the years of 2003, 2004, and 2005, as well as a 5% late penalty, in accordance with Section 10-1-120 of the Town's Municipal Code.

16. The Town is entitled to the costs of the inspection and audit of Kigre's records, pursuant to Section 10-1-100 of the Town's Municipal Code, since the inspection revealed that false information had been filed by Kigre concerning its gross income.

For a Third Cause of Action
(DECLARATORY JUDGMENT)

17. The allegations of the foregoing paragraphs are hereby restated as if fully set forth.

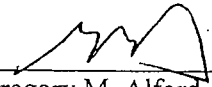
18. The Town is entitled to a declaratory judgment by the Court stating that Kigre is not entitled to any alleged Federal exemption shielding Kigre from paying the Town's business license fee.

WHEREFORE, Plaintiff prays that the Court inquire into this matter, and issue an Order and Judgment ruling:

1. That an Order be issued requiring Defendant to comply with Section 10-1-10 of the Town's Municipal Code, if Defendant continues to do business within the town limits;
2. For a declaratory judgment declaring that Defendant's business license fee based on its gross income is not reduced by any federal exemption;
3. For an injunction preventing Defendant from operating its business without the payment of its business license fees;
4. For an accounting of Defendant's gross income during the necessary years;
5. For the award of all overdue license fees, a late fee, and the costs of the audit;

6. For the award of the costs of this action; and
7. Such other further relief as the Court deems proper.

Alford & Wilkins, P.C.

By: 
Gregory M. Alford
Post Office Box 8008
Hilton Head Island, SC 29938
(843) 842-5500
Attorneys for the Plaintiff

March 29th, 2006
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 06-CP-07-796

TOWN OF HILTON HEAD ISLAND,

Plaintiff,

vs.

KIGRE, INC.,

Defendant.

ANSWER AND COUNTERCLAIM

06 AUG 17 PM 4:37
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT S.C.

The Defendant, Kigre, Inc., for its Answer and Counterclaim and subject to motions previously filed would respectfully show unto this honorable Court as follows:

1. That each and every allegation of the Complaint not hereinafter admitted, modified or otherwise explained is expressly denied and strict proof is demanded thereof.

2. That as to the allegations contained in Paragraph 1, this Defendant admits that the Plaintiff is a municipal corporation, but is without sufficient information and knowledge to form an opinion or belief as to whether such constitutes "a political subdivision of the State of South Carolina".

3. This Defendant admits that the Town of Hilton Head Island is located within Beaufort County.

4. The allegations contained in Paragraph 2 are admitted only in so far as Kigre, Inc. is an Ohio corporation and is authorized by the State of South Carolina to conduct business in the State of South Carolina; with respect to being engaged in business on Hilton Head Island, South Carolina, the majority if not all of the Defendant's business is in interstate commerce and outside the corporate limits of the Town of Hilton Head Island.

5. That as to the allegations contained in Paragraphs 3, 4 and 5 reference is made to the Town's Municipal Code and not to the Complaint; that further answering the allegations contained in Paragraphs 3, 4 and 5, the same contains conclusions of law and require no response from this Defendant; and that further answering the allegations contained in Paragraphs 3, 4 and 5, such license fee is a tax on gross income of businesses located within the corporate limits of the Plaintiff.

6. That with respect to the allegations contained in Paragraph 6, this Defendant admits that the Town has arbitrarily classified this Defendant as a Class 5 business under a specialty classification that upon information and belief, is not descriptive of the business activities of this Defendant.

7. That as to the receipt of the Business License Gross Receipts Form, the Defendant admits that it has had a business license from the Town of Hilton Head Island since its business is located within the corporate limits of the Town of Hilton Head Island.

8. That on information and belief this Defendant's license has been paid in accordance with the actual business conducted within the corporate limits of the Town of Hilton Head Island which due to the specialized nature of this Defendant's business and as its business is transacted outside the corporate limits of the Plaintiff, and, this Defendant's business is in interstate commerce.

9. The allegations contained in Paragraph 7 are, upon information and belief, denied. That, further, on information and belief, this Defendant, has endeavored since 2002 to pay the business tax charged by the Town of Hilton Head Island under protest and to avail itself of those procedures set forth in the Town's Municipal Code. Such was on information and belief a denial of this Defendant's constitutional protections. That, further, on information and belief, the Plaintiff has refused, to allow payment under protest. With respect to the remainder of the allegations contained in Paragraph 7, this Defendant is without sufficient information or knowledge to form an opinion or belief as to what the Town means by a "Federal exemption" to the extent that the Plaintiff is referring to the Constitution of the United States and, specifically, the Commerce Clause contained at U.S. Constitution Article 1, Section 8, Clause 3, then such does control interstate commerce and, specifically, should control the actions of the Plaintiff with respect to its efforts to collect a business tax on interstate commerce.

10. That as to the allegations contained in Paragraphs 8 and 9, this Defendant admits, on information and belief, that the Plaintiff requested certain information that a so-called audit was conducted and that the tax returns of this Defendant were provided to the Plaintiff on its assets. That, further, this Defendant is without sufficient information to form a belief as to what the audit revealed as the Plaintiff has not favored this Defendant with the "audit". That, further, answering the allegations contained in Paragraphs 8 and 9, the "audit" failed to fairly apportion between interstate commerce and that commerce which was conducted inside the corporate limits of the Town of Hilton Head Island and that which was interstate commerce, or more specifically, that which takes place outside the jurisdictional limits of the Town of Hilton Head Island.

11. The allegation contained in Paragraph 10 is denied.

12. As to the allegation contained in Paragraph 11, that such sets forth criminal violations not cognizable by the Court of Common Pleas and for which this Court lacks subject matter jurisdiction. That, further, on information and belief, the Town is attempting to threaten criminal prosecution against this Defendant in an effort to determine its right to tax interstate commerce in violation of the United States Constitution Article 1, Section 8, Clause 3.

13. That as to the allegations contained in Paragraphs 12, the Defendant realleges that the allegations contained in Paragraphs 1 through 12 of this Answer and Counterclaim as fully as if repeated verbatim herein.

14. That as to the allegations contained in Paragraph 13, on information and belief, the Plaintiff, the Town of Hilton Head Island, has conducted and completed its so-called accounting and has had access to all information sought. That, further, the period of time that the Plaintiff seeks to "look back" is excessive and arbitrary and inconsistent with the prior conduct of the Plaintiff with respect to the business license of this Defendant.

15. That as to the allegations contained in Paragraph 14, this Defendant realleges that the allegations contained in Paragraphs 1 through Paragraph 14 of this Answer and Counterclaim as fully as if repeated verbatim herein.

16. The allegations contained in Paragraph 15 are denied.

17. That further answering the allegations contained in Paragraph 15, this Defendant is ready, willing and able to pay the amount claimed by the Plaintiff as being owed at the time of the audit, albeit under protest, which the Plaintiff has refused and not allowed, thereby depriving this Defendant of its rights, as set forth in the Municipal Code of the Town's, specifically Section 10-1-10, et seq. Further, that on information and belief the information provided by the Defendant was not false; it was consistent with income derived from activities within the Town as is contemplated by the United States Constitution Article 1, Section 8, Clause 3. This Defendant denies that it owes any business tax, interest, attorney fees, costs or any penalties.

18. As to the allegations contained in Paragraph 17, this Defendant realleges the allegations contained in Paragraphs 1 through 17 of this Answer and Counterclaim as fully as if repeated verbatim herein.

19. That the allegations contained in Paragraph 18 are denied. That, further, this Defendant lacks sufficient information or knowledge to form an opinion or belief as to what the Plaintiff means by alleged Federal exemption to the extent that the Plaintiff is referring to the United States Constitution Article 1, Section 8, Clause 3, then such is denied and the Town does not have the power to vitiate the United States Constitution as it pertains to this Defendant, nor does it have the power to vitiate the United States Constitution and its protections to any other business or individual.

FOR A SECOND DEFENSE

20. The allegations in Paragraphs 1 through 19 of this Answer and Counterclaim are realleged as fully as if repeated verbatim herein.

21. That the Plaintiff has had access to the receipts of this Defendant at any time it may have chosen since this Defendant commenced business and obtained its first business license and the Plaintiff could have at any time it chose entered the premises of this Defendant's business, pursuant to the authority that the Town granted to itself under Section 10-1-10, et seq. of the Town's Municipal Code. That further this Defendant has supplied consistent and accurate information as related to its business activities to the Plaintiff and the Plaintiff for years did not seek to audit to challenge this Defendant's business in interest commerce or otherwise assess a tax on Defendant's business in interstate commerce.

22. This Defendant has relied upon the actions of the Town with respect to its business activities and as a result of such reliance, has maintained a position consistent for its activities in interstate commerce consistent with the commerce clause. That the Plaintiff is estopped now from asserting a different position.

FOR A THIRD DEFENSE

23. That the allegations contained in Paragraphs 1 through 22 of this Answer and Counterclaim are realleged as fully as if repeated verbatim herein.

24. That on information and belief the actions of the Town by commencing suit (following the audit) was delayed intentionally so as to increase the penalties, interest, costs and fees to be assessed against this Defendant. Such delay on the part of the Plaintiff being totally unreasonable under the circumstances and, as such, the Plaintiff's claim is barred by the equitable doctrine of laches.

25. That the allegations contained in Paragraphs 1 through 24 of this Answer and Counterclaim are realleged as fully as if repeated verbatim herein.

26. That this Defendant has been prepared to pay the amount claimed by the Plaintiff albeit unlawfully and improperly under protest and to avail itself of the rights provided under the Municipal Code all of which has been denied by the Plaintiff.

27. As such, the Plaintiff has denied this Defendant its due process rights under both the United States Constitution and the Constitution of the State of South Carolina.

28. That the allegations contained in Paragraphs 1 through 27 of this Answer and Counterclaim are realleged as fully as if repeated verbatim herein.

29. That the Plaintiff has failed to mitigate its damages by failing to accept payment of the amount claimed as a result of the alleged audit under protest and to allow an appeal to the Town Council of the Plaintiff. That, as such, the Plaintiff has failed to mitigate its alleged damages and it has endeavored and attempted to create further damages all as a matter of punishment and as a deterrent to prevent challenges to the Ordinances of the Town of Hilton Head which purport, unlawfully, to place a burden on business conducted in interstate commerce outside of the jurisdictional limits of the Town of Hilton Head Island.

30. That such actions, upon information and belief were done knowingly by the Plaintiff, and that further upon information and belief, the Plaintiff has known since its inception and enactment of its Business License Tax Ordinance that it fails to comport with the constitutional mandates contained in the United States Constitution Article 1, Section 8, Clause 3, as interpreted by various courts, and specifically, the Supreme Court of the United States.

31. That as such the Plaintiff endeavored by a comprehensive scheme of ordinances to deter, prevent and intimidate this Defendant and others similarly situated from challenging the Plaintiff's discrimination against businesses that deal in interstate commerce by virtue of the Plaintiff's failure to apportion that amount realized from interstate commerce versus that amount realized from activities within the jurisdictional limits of the Plaintiff.

32. That further the comprehensive scheme contained in Section 10-1-10, et seq. of the Municipal Code of the Town of Hilton Head Island is discriminatory and denies equal protection as to this Defendant (and others similarly situated) in that it exempts certain businesses from any business license fee and is contradicting of the mandate contained within its own ordinance of Section 10-1-10, et seq. as to what persons are required to pay a business license tax.

33. That further the Plaintiff purports to have a severability clause contained within its business license ordinance such that the validity and unenforceability does not affect other portions which contain punitive provisions to include criminal prosecution as well as civil fines, penalties and assessments. That such ordinance denies due process to this Defendant and other similarly situated. Further the efforts of the Plaintiff to impose a burden on this Defendant pursuant to Section 10-1-10, et seq. and to exempt certain "local industry" from payment of any business license tax pursuant to Section 10-1-200, is an undue restriction and impedes interstate commerce, and is a denial of due process and equal protection to this Defendant and others similarly situated.

**FOR A FOURTH DEFENSE
BY WAY OF COUNTERCLAIM**

34. The allegations contained in Paragraphs 1 through 33 of this Answer and Counterclaim are realleged as fully as if repeated verbatim herein.

35. That the Defendant, Kigre, Inc., is a corporation organized under the State of Ohio and is authorized to transact business in the State of South Carolina.

36. That the Plaintiff, the Town of Hilton Head Island, is upon information and belief, a municipal corporation organized under and existing pursuant to the laws of the State of South Carolina, and as such, has limited powers and duties as are set forth in applicable South Carolina Code provisions, and that at all times, the Plaintiff was required to observe and honor obligations incumbent upon it as a municipal corporation under the Constitution of the United States and the Constitution of the State of South Carolina.

37. That the Plaintiff seeks to impose liability on the Defendant for a business tax which the Plaintiff euphemistically declares to be a business license fee, but is a *de facto* tax on gross income of the Defendant.

38. That the Plaintiff additionally seeks to assess certain penalties, costs, charges, fees and other punitive measures for failure to pay the business tax which it levies on businesses located within the Town of Hilton Head Island that fail to meet the Plaintiff's requirements as set forth in Section 10-1-10, et seq. of the Municipal Code of the Town of Hilton Head Island.

39. That since the Defendant acquired its first business license from the Plaintiff, the Defendant has consistently renewed its business license with the Plaintiff for each subsequent year declaring income derived from business activities within the jurisdictional limits of the Town of Hilton Head Island for payment.

40. That at all times set forth herein the Plaintiff knew that Defendant's business was devoted to interstate commerce.

41. That at all times this Defendant was entitled to the protections afforded to it under the Constitution of the United States, specifically U. S. Constitution Article 1, Section 8, Clause 3.

42. In conducting its business activities, the Defendant does not need, nor require, nor does it have provided to it any fairly related services by the Plaintiff. That further the comprehensive scheme enacted by Plaintiff was known by this Plaintiff to be fatally defective and unconstitutional on its face.

43. The recommendations and model ordinances provided by the Municipal Association of South Carolina instruct the Plaintiff that it must and

should honor the obligations imposed upon it by the Commerce Clause in the United States Constitution.

44. That, upon information and belief, the Plaintiff should have known that its actions with respect to this Defendant, and others similarly situated, was in violation of the Commerce Clause.

45. That upon information and belief in order to overcome such the Plaintiff created a scheme of laws for the business license tax designed to frustrate, punish, intimidate, discourage, and extract payments from businesses, including the Defendant and those like it, which trade in interstate commerce was not within the corporate limits of the Plaintiff.

46. That Defendant is engaged in assembling and sales of certain specialized laser devises.

47. That because of the specialized nature of its business the demand within the corporate limits of Hilton Head Island is non-existent. Defendant's business is conducted almost wholly, if not wholly, in total, outside of the Town's municipal jurisdictional limits; that is to say outside the boundaries of the Town of Hilton Head Island.

48. That under the Municipal Code of the Town of Hilton Head Island, specifically Section 10-1-10, et seq., the Plaintiff fails to fairly apportion the receipts of this business engaged inside and outside of the municipal limits of the Town of Hilton Head Island.

49. That further upon information and belief, the Plaintiff is a member of and supports its officials who act or who have rights as officers of the Municipal Association of South Carolina.

50. That upon information and belief since on or about October of 2000, the Plaintiff knew or should have known that its ordinance related to business license taxes was defective in that it failed to meet constitutional standards and, specifically, was violative of the Commerce Clause as set forth in the United States Constitution Article 1, Section 8, Clause 3.

51. This action is brought pursuant to Section 15-53-10, et seq. for a declaration that the business license tax as applied to this Defendant and other such similarly situated businesses that deal in interstate commerce and conduct business in interstate commerce, is violative of the United States Constitution and specifically Article 1, Section 8, Clause 3 and that further for a declaration that the allowing of certain home businesses under Section 10-1-210 of the Municipal Code of the Town of Hilton Head Island conflicts with Section 10-1-10 and that additionally Section 10-1-200 of the Municipal Code of the Town of Hilton Head Island related to local industries, is discriminatory and favors certain businesses over others because of "local industry licenses" which have no rational basis and which denies equal protection to this Defendant and

others similarly situated and, as such, Section 10-1-10, et seq. should be declared unconstitutional on the basis of the failure of the Plaintiff to apportion fairly that portion of income derived from interstate commerce versus that not derived from interstate commerce and on the basis that allowing a free local industry license favors certain businesses over those engaged in interstate commerce.

52. That further this Defendant seeks a declaration that the business tax as applied by the Plaintiff to this Defendant and others similarly situated is unconstitutional in that the activity of this Plaintiff does not have a substantial nexus with the Town of Hilton Head Island. That the tax is not fairly apportioned and that the tax does discriminate against interstate commerce and favors other businesses and that the tax is not fairly related to the services provided by the Town of Hilton Head Island to this Defendant and others similarly situated.

53. That further the business license tax ordinances as applied does not provide for attorney fees to a business which prevails against an unconstitutional ordinance and the oppressive nature of the Town's activities in its effort to force payment of the business license tax and which denies equal protection to this Defendant and which constitutes a denial of equal protection to this Defendant and others similarly situated.

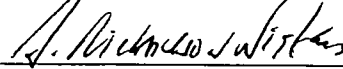
54. That further the business license tax as applied by the Plaintiff to this Defendant and others similarly situated is an attempt by the Plaintiff to place a direct tax on the privilege of engaging in interstate commerce.

55. That further the Defendants seeks such other declarations as are necessary as pertains to the business license tax ordinances of the Plaintiff to determine the constitutionality as applied to the Defendant and others similarly situated and for such other and further declarations as this honorable Court deems just and proper. That the Defendant seeks a further declaration that the efforts by the Town in refusing to allow payment under protest, the failure to timely audit, the imposition of attorney fees and other penalties, are punitive and as such are unconstitutional as applied, by this Plaintiff to this Defendant and others similarly situated. That further upon such declaration, that the Defendant be allowed to seek such damages as are appropriate for violation of the Constitutional protections afforded to this Defendant and others similarly situated.

WHEREFORE, having fully answered the Defendant prays that this honorable Court inquire into the matters set forth herein, that the Complaint of Plaintiff be dismissed and that the Defendant have the declarations as sought, that the ordinances are improper and unlawfully place a burden on Defendant's activities in interstate commerce, that the ordinances as applied to this Defendant and others similarly situated are unconstitutional and that the ordinance on its face denies this Defendant equal protection as to other businesses and further for a declaration which denies the Plaintiff's relief for any punitive damages to include interest, penalties or attorney fees and that this

Defendant be awarded its attorney fees and for any and all further declarations as this Court deems just and proper.

G. RICHARDSON WIETERS, P.C.



G. Richardson Wieters

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Hilton Head Island, SC 29938

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ATTORNEY FOR DEFENDANT

KIGRE, INC.

August 15, 2006

Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 14 TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. 06-CP-07-796
	)	
TOWN OF HILTON HEAD ISLAND,	)	
	)	
Plaintiff,	)	
vs.	)	REPLY TO COUNTERCLAIM
	)	
KIGRE, INC.,	)	
	)	
Defendant.	)	

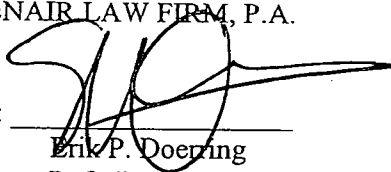
Plaintiff, replying to Defendant's counterclaim, admit, deny and allege as follows:

34. Denies the allegations of paragraph 34 of Defendant's counterclaim.
35. Admits the allegations of paragraph 35 of Defendant's counterclaim.
36. Admits the allegations of paragraph 36 of Defendant's counterclaim.
37. Denies the allegations of paragraph 37 of Defendant's counterclaim.
38. Admits the allegations of paragraph 38 of Defendant's counterclaim which allege that Plaintiff has the legal authority to assess a business license tax pursuant to applicable law and ordinance, but denies the remaining allegations of this paragraph.
39. Denies the allegations of paragraph 39 of Defendant's counterclaim.
40. Denies the allegations of paragraph 40 of Defendant's counterclaim.
41. Admits the allegations of paragraph 41 of Defendant's counterclaim which allege that Defendant is entitled to protections afforded it and all citizens under the Constitution of the United States of America, but denies the remaining allegations of this paragraph.
42. Denies the allegations of paragraph 42 of Defendant's counterclaim.
43. Denies the allegations of paragraph 43 of Defendant's counterclaim.
44. Denies the allegations of paragraph 44 of Defendant's counterclaim.
45. Denies the allegations of paragraph 45 of Defendant's counterclaim.
46. Admits the allegations of paragraph 46 of Defendant's counterclaim.

47. Denies the allegations of paragraph 47 of Defendant's counterclaim.
48. Denies the allegations of paragraph 48 of Defendant's counterclaim.
49. Admits the allegations of paragraph 49 of Defendant's counterclaim which allege that Plaintiff is a member of the South Carolina Municipal Association, but denies the remaining allegations of this paragraph.
50. Denies the allegations of paragraph 50 of Defendant's counterclaim.
51. Admits that Defendant is seeking the relief requested in paragraph 51 of Defendant's counterclaim, but denies that defendant is entitled to the relief so requested.
52. Admits that Defendant is seeking the relief requested in paragraph 52 of Defendant's counterclaim, but denies that defendant is entitled to the relief so requested.
53. Admits the allegations of paragraph 53 of Defendant's counterclaim which allege that Plaintiff's applicable business license tax ordinance and related provisions do not provide for recovery of attorneys fees, but denies the remaining allegations of this paragraph.
54. Denies the allegations of paragraph 54 of Defendant's counterclaim.
55. Admits that Defendant is seeking the relief requested in paragraph 55 of Defendant's counterclaim, but denies that defendant is entitled to the relief so requested.

WHEREFORE, Plaintiff prays that Defendant take nothing by its counterclaim, and the Court order the relief requested by Plaintiff in its Complaint.

McNAIR LAW FIRM, P.A.

By: 

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Gregory M. Alford
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Hilton Head Island, SC 29938-8008
(843) 842-5500

Attorneys and Co-Counsel for
Plaintiff

Columbia, South Carolina
10/10, 2006

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 14 th JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. 06-CP-07-796
	)	
TOWN OF HILTON HEAD ISLAND,	)	
	)	
Plaintiff,	)	MOTION TO DISMISS
	)	
vs.	)	
	)	
KIGRE, INC.,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff, Town of Hilton Head Island, by and through the undersigned attorneys, hereby moves this Court to dismiss this action, including all counterclaims raised by the Defendant, pursuant to South Carolina Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction.

This motion is supported by the Affidavit of Steven Markiw and a Memorandum in Support of Plaintiff's Motion for Summary Judgment, both of which are filed herewith.

Respectfully submitted,

Attorneys and Co-Counsel for Plaintiff

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Erik P. Doerring

BY: 
Erik P. Doerring

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Gregory M. Alford

Columbia, SC
August 30, 2007

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 14 th JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. 06-CP-07-796
	)	
TOWN OF HILTON HEAD ISLAND,	)	
	)	
Plaintiff,	)	
	)	MEMORANDUM IN SUPPORT OF
vs.	)	PLAINTIFF'S MOTION TO DISMISS
	)	
KIGRE, INC.,	)	
	)	
Defendant.	)	
_____	)	

The Plaintiff, Town of Hilton Head Island, hereby submits this Memorandum in Support of Plaintiff's Motion to Dismiss.

I. STATEMENT OF THE CASE

This case involves business license fees and penalties Plaintiff assessed against, collected from, and which now have been returned/refunded to, the Defendant, Kigre, Inc. Kigre raised various constitutional defenses in its answers and counterclaims. Answer ¶ 1 - 34; ¶¶ 52, 55.

II. STATEMENT OF FACTS

Plaintiff, Town of Hilton Head Island, is a municipal corporation organized and existing pursuant to the laws of the State of South Carolina. Complaint ¶ 1, Answer ¶ 2. Plaintiff is located in Beaufort County. Complaint ¶ 1, Answer ¶ 3.

Defendant, Kigre, Inc., is an Ohio corporation and is authorized by the State of South Carolina to conduct business in South Carolina. Complaint ¶ 2, Answer ¶ 4. Defendant's business is located within the corporate limits of Plaintiff. Answer ¶ 7.

Plaintiff audited Defendant's business license fee liability calculations for the 2002, 2003, 2004, and 2005 license periods. Affidavit of Steven Markiw at ¶ 3. Plaintiff assessed \$41,645.81 of additional business license fees and penalties for Defendant's 2002, 2003, 2004, and 2005 license fee periods as result of the audit. Affidavit of Steven Markiw at ¶ 3.

Plaintiff filed this action against Defendant on March 29, 2006. Affidavit of Steven Markiw at ¶ 4.

On or about November 13, 2006 the Plaintiff received a payment under protest from Defendant in the amount of \$41,645.81 paying in full the assessed business license fees and penalties for the 2002, 2003, 2004, and 2005 license periods. Affidavit of Steven Markiw at ¶ 4.

On or about November 13, 2006 Defendant appealed the assessment of the business license fees and penalties, which were paid under protest, to the Plaintiff's Town Council. Affidavit of Steven Markiw at ¶ 5.

On February 2, 2007, Plaintiff returned and refunded Defendant's payment for the business license fees and penalties

paid under protest because Plaintiff's Town Council failed to provide Defendant with a hearing on its appeal within 30 days of the date the appeal was requested, as required by Section 10-1-160 of the Town Code. Affidavit of Steven Markiw at ¶ 6.

As a result, Defendant now owes no outstanding business license fees or penalties for the license fee periods 2002, 2003, 2004, and 2005. Affidavit of Steven Markiw at ¶ 7. Defendant has no outstanding business license fee liabilities for any other license fee periods. Affidavit of Steven Markiw at ¶ 10.

Plaintiff is no longer auditing Defendant's business license fee liability for license periods 2002, 2003, 2004, and 2005. Affidavit of Steven Markiw at ¶ 8. Plaintiff is not currently auditing Defendant's business license fee liability for any other license fee periods. Affidavit of Steven Markiw at ¶ 9.

III. ARGUMENT

THE COURT LACKS SUBJECT MATTER JURISDICTION BECAUSE NO JUSTICIABLE CONTROVERSY REMAINS.

Plaintiff has moved to dismiss this action, including all counterclaims, for lack of subject matter jurisdiction pursuant to South Carolina Rule of Civil Procedure 12(b)(1) as no

justiciable controversy remains between the parties concerning the business license fees at issue in the case.

A justiciable controversy is "a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute of difference of a contingent, hypothetical or abstract character." *Guimarin & Doan, Inc. v. Georgetown Textile and Mfg. Co., Inc.*, 249 S.C. 561, S.E.2d 618 (1967). The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing. *Holden v. Cribb*, 349 S.C. 132, 136, 561 S.E.2d 634, 637 (Ct. App. 2002).

"A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E. (2d) 713, 715 (1973).

The doctrine of ripeness prevents courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect governmental bodies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by challenging parties. See *Eagle Container Co. v. County of Newberry*, 366 S.C. 611, 622 S.E.2d 733 (Ct. App. 2005), citing 2 Am. Jur. 2d Administrative Law Section 485.

Each license fee period, like all tax periods, stands on its own as a separate cause of action. See, e.g., *Burnet v. Sandford & Brooks Co.*, 282 U.S. 359 (1931).

The only license fee periods at issue are Defendant's 2002, 2003, 2004, and 2005 license fee periods. Defendant has no outstanding business license fee liabilities for any other license fee period, and no license fee period of Defendant is under audit by Plaintiff.

Plaintiff has returned/refunded all business license fees and penalties paid by Defendant under protest for the license fee periods 2002, 2003, 2004, and 2005, and there remains no active controversy involving these liabilities. All of Plaintiff's claims set forth in the Complaint and Defendant's defenses and counterclaim presented in the Answer and Counterclaim are moot as a result of the return/refund of the business license fees and penalties for the license fee periods at issue. A judgment, if rendered, would have no effect on Defendant's business license fee liability for these periods.

IV. CONCLUSION

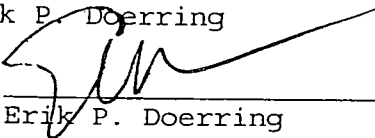
For the forgoing reasons the action, including all counterclaims, should be dismissed.

Respectfully submitted,

Attorneys and Co-Counsel for Plaintiff

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Erik P. Doerring

BY: 

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Gregory M. Alford

Columbia, SC
August 30, 2007

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 14 th JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. 06-CP-07-796
	)	
TOWN OF HILTON HEAD ISLAND,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF
vs.	)	STEVEN MARKIW
	)	
KIGRE, INC.,	)	
	)	
Defendant.	)	
	)	

The undersigned, first being duly sworn, deposes and states as follows:

1. I am over age eighteen and competent to testify in this matter, and the statements made herein are based on my own personal knowledge.

2. I have been employed by the Town of Hilton Head Island for 3^{1/2} years as Deputy Director of Finance. My duties as Deputy Director of Finance for the Town of Hilton Head include oversight of the Revenue and Collections Division; preparation of the annual budget, comprehensive annual financial report, and quarterly financial statements.

3. The Town of Hilton Head Island audited Kigre, Inc.'s business license fee liability calculations for the license fee periods 2002, 2003, 2004, and 2005. As a result of the audit, the Town of Hilton Head Island assessed \$41,645.81 of additional business license fees and penalties against Kigre, Inc. for the license fee periods 2002, 2003, 2004, and 2005.

4. The Town of Hilton Head Island received a payment under protest from Kigre, Inc. on or about November 13, 2006 in the amount of \$41,645.81, which paid the business license fees and penalties assessed by the Town of Hilton Head Island for license fee periods 2002, 2003, 2004, and 2005 in full.

5. On or about November 13, 2006 Kigre, Inc. requested a hearing pursuant to Section 10-1-160 of the Ordinances of the Town of Hilton Head Island.

6. Section 10-1-160 of the Ordinances of the Town of Hilton Head Island requires town council to hold a hearing within thirty (30) days of a request. A hearing on Kigre, Inc.'s business license fee liability was not held within thirty (30) days as required by Section 10-1-160 of the Ordinances of the Town of Hilton Head Island. As a result, the Town of Hilton Head Island refunded the entire \$41,645.81 of business license fees and penalties Kigre, Inc. paid under protest for the 2002, 2003, 2004, and 2005 tax periods on February 2, 2007.

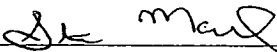
7. Kigre, Inc. does not owe any business license fees or penalties for the 2002, 2003, 2004, or 2005 tax periods.

8. Kigre, Inc.'s business license fee liability for the 2002, 2003, 2004, and 2005 tax periods is no longer being audited by the Town of Hilton Head Island.

9. None of Kigre, Inc.'s business license fee periods are currently being audited.

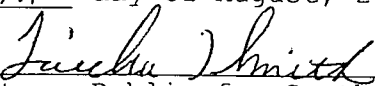
10. There are no outstanding business license fee assessments against Kigre, Inc.

FURTHER AFFIANT SAYETH NOT.



Steven Markiw

SWORN to before me this
29th day of August, 2007.



Notary Public for South Carolina
My Commission Expires May 14, 2017

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 06-CP-07-796

TOWN OF HILTON HEAD ISLAND,

Plaintiff,

vs.

KIGRE, INC.,

Defendant.

**AMENDED
ANSWER AND COUNTERCLAIM**

2009 SEP -8 PM 3:39
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

FOR A FIRST DEFENSE

The Defendant, Kigre, Inc., (hereinafter "Kigre") for its Amended Answer and Counterclaim and subject to motions previously filed, would respectfully show unto this honorable Court as follows:

1. That each and every allegation of the Complaint not hereinafter admitted, modified or otherwise explained, is expressly denied and strict proof is demanded thereof.
2. That as to the allegations contained in Paragraph 1, this Defendant admits that the Plaintiff is a municipal corporation, but is without sufficient information and knowledge to form an opinion or belief as to whether such constitutes "a political subdivision of the State of South Carolina".
3. This Defendant admits that the Town of Hilton Head Island is located within Beaufort County.
4. The allegations contained in Paragraph 2 are admitted only in so far as Kigre, Inc. is an Ohio corporation and is authorized by the State of South Carolina to conduct business in the State of South Carolina; with respect to being engaged in business on Hilton Head Island, South Carolina, the majority of the Defendant's business is in interstate commerce and outside the corporate limits of the Town of Hilton Head Island.
5. That as to the allegations contained in Paragraphs 3, 4 and 5, reference is made to the Town's Municipal Code and not to the Complaint; that further answering the allegations contained in Paragraphs 3, 4 and 5, the same contains conclusions of law and require no response from this Defendant; and that further answering the allegations

contained in Paragraphs 3, 4 and 5, such license fee is a tax on gross income of businesses located within the corporate limits of the Plaintiff.

6. That with respect to the allegations contained in Paragraph 6, this Defendant admits that the Town has arbitrarily classified this Defendant as a Class 5 business under a specialty classification that upon information and belief, is not descriptive of the business activities of this Defendant.

7. That as to the receipt of the Business License Gross Receipts Form, the Defendant admits that it has had a business license from the Town of Hilton Head Island since its business is located within the corporate limits of the Town of Hilton Head Island.

8. That on information and belief this Defendant's license has been paid in accordance with the actual business conducted within the corporate limits of the Town of Hilton Head Island which due to the specialized nature of this Defendant's business and as its business is predominantly transacted outside the corporate limits of the Plaintiff, and, this Defendant's business is predominantly in interstate commerce.

9. The allegations contained in Paragraph 7 are, upon information and belief, denied. That, further, on information and belief, this Defendant, has endeavored since 2002 to pay the business tax charged by the Town of Hilton Head Island under protest and to avail itself of those procedures set forth in the Town's Municipal Code. Such was on information and belief a denial of this Defendant's constitutional protections. That, further, on information and belief, the Plaintiff has refused, to allow payment under protest. With respect to the remainder of the allegations contained in Paragraph 7, this Defendant is without sufficient information or knowledge to form an opinion or belief as to what the Town means by a "Federal exemption". To the extent that the Plaintiff is referring to the Constitution of the United States and, specifically, the Commerce Clause contained at U.S. Constitution Article 1, Section 8, Clause 3, then such does control interstate commerce and, specifically, should control the actions of the Plaintiff with respect to its efforts to collect a business tax on interstate commerce.

10. That as to the allegations contained in Paragraphs 8 and 9, this Defendant admits, on information and belief, that the Plaintiff requested certain information, that a so-called audit was conducted, and that the tax returns of this Defendant were provided to the Plaintiff on its assets. That, further, this Defendant is without sufficient information to form a belief as to what the audit revealed as the Plaintiff has not favored this Defendant with the "audit". That, further, answering the allegations contained in Paragraphs 8 and 9, the "audit" failed to fairly apportion between interstate commerce and that commerce which was conducted inside the corporate limits of the Town of Hilton Head Island and that which was interstate commerce, or more specifically, that which takes place outside the jurisdictional limits of the Town of Hilton Head Island.

11. The allegation contained in Paragraph 10 is denied.

12. As to the allegation contained in Paragraph 11, Kigre asserts that such sets forth criminal violations not cognizable by the Court of Common Pleas and for which this Court lacks subject matter jurisdiction. That, further, on information and belief, the Town is attempting to threaten criminal prosecution against this Defendant in an effort to determine its right to tax interstate commerce in violation of the United States Constitution Article 1, Section 8, Clause 3.

13. That as to the allegations contained in Paragraphs 12, the Defendant realleges that the allegations contained in Paragraphs 1 through 12 of this Amended Answer and Counterclaim as fully as if repeated verbatim herein.

14. That as to the allegations contained in Paragraph 13, on information and belief, the Plaintiff, the Town of Hilton Head Island, has conducted and completed its so-called accounting and has had access to all information sought. That, further, the period of time that the Plaintiff seeks to "look back" is excessive and arbitrary and inconsistent with the prior conduct of the Plaintiff with respect to the business license of this Defendant.

15. That as to the allegations contained in Paragraph 14, this Defendant realleges the allegations contained in Paragraphs 1 through Paragraph 14 of this Amended Answer and Counterclaim as fully as if repeated verbatim herein.

16. The allegations contained in Paragraph 15 are denied.

17. That further answering the allegations contained in Paragraph 15, this Defendant did tender the amount claimed by the Plaintiff as being owed at the time of the audit, albeit under protest, which the Plaintiff had refused and not allowed, thereby depriving this Defendant of its rights, as set forth in the Municipal Code of the Town's, specifically Section 10-1-10, et seq. Further, that on information and belief the information provided by the Defendant was not false; it was consistent with income derived from activities within the Town as is contemplated by the United States Constitution Article 1, Section 8, Clause 3. This Defendant denies that it owes any business tax, interest, attorney fees, costs or any penalties.

18. As to the allegations contained in Paragraph 17, this Defendant realleges the allegations contained in Paragraphs 1 through 17 of this Amended Answer and Counterclaim as fully as if repeated verbatim herein.

19. That the allegations contained in Paragraph 18 are denied. That, further, this Defendant lacks sufficient information or knowledge to form an opinion or belief as to what the Plaintiff means by alleged Federal exemption to the extent that the Plaintiff is referring to the United States Constitution Article 1, Section 8, Clause 3, then such is denied and the Town does not have the power to vitiate the United States Constitution as it pertains to this Defendant, nor does it have the power to vitiate the United States Constitution and its protections to any other business or individual.

FOR A SECOND DEFENSE

20. The allegations in Paragraphs 1 through 19 of this Amended Answer and Counterclaim are realleged as fully as if repeated verbatim herein.

21. That the Plaintiff has had access to the receipts of this Defendant at any time it may have chosen since this Defendant commenced business and obtained its first business license and the Plaintiff could have at any time it chose entered the premises of this Defendant's business, pursuant to the authority that the Town granted to itself under Section 10-1-10, et seq. of the Town's Municipal Code. That further this Defendant has supplied consistent and accurate information as related to its business activities to the Plaintiff and the Plaintiff for years did not seek to audit to challenge this Defendant's business in interest commerce or otherwise assess a tax on Defendant's business in interstate commerce.

22. This Defendant has relied upon the actions of the Town with respect to its business activities and as a result of such reliance, has maintained a position consistent for its activities in interstate commerce consistent with the Commerce Clause. Kigre maintains the Plaintiff is estopped now from asserting a different position.

FOR A THIRD DEFENSE

23. That the allegations contained in Paragraphs 1 through 22 of this Amended Answer and Counterclaim are realleged as fully as if repeated verbatim herein.

24. That on information and belief, the actions of the Town by commencing suit (following the audit) were delayed intentionally so as to increase the penalties, interest, costs and fees to be assessed against this Defendant. Such delay on the part of the Plaintiff was totally unreasonable under the circumstances and, as such, the Plaintiff's claim is barred by the equitable doctrine of laches.

FOR A FOURTH DEFENSE

25. That the allegations contained in Paragraphs 1 through 24 of this Amended Answer and Counterclaim are realleged as fully as if repeated verbatim herein.

26. That this Defendant has been prepared to pay the amount claimed by the Plaintiff albeit unlawfully and improperly under protest and to avail itself of the rights provided under the Municipal Code all of which has been denied by the Plaintiff.

27. As such, the Plaintiff has denied this Defendant its due process rights under both the United States Constitution and the Constitution of the State of South Carolina.

FOR A FIFTH DEFENSE

28. That the allegations contained in Paragraphs 1 through 27 of this Amended Answer and Counterclaim are realleged as fully as if repeated verbatim herein.

29. That the Plaintiff has failed to mitigate its damages by failing to accept proffered payment of the amount claimed as a result of the alleged audit under protest and to allow an appeal to the Town Council of the Plaintiff. That, as such, the Plaintiff has failed to mitigate its alleged damages and it has endeavored and attempted to create further damages all as a matter of punishment and as a deterrent to prevent challenges to the Ordinances of the Town of Hilton Head which purport, unlawfully, to place a burden on business conducted in interstate commerce outside of the jurisdictional limits of the Town of Hilton Head Island.

30. That such actions, upon information and belief were done knowingly by the Plaintiff, and that further upon information and belief, the Plaintiff has known since its inception and enactment of its Business License Tax Ordinance that it fails to comport with the constitutional mandates contained in the United States Constitution Article 1, Section 8, Clause 3, as interpreted by various courts, and specifically, the Supreme Court of the United States.

31. That the Plaintiff endeavored by a comprehensive scheme of ordinances, to deter, prevent and intimidate this Defendant and others similarly situated, from challenging the Plaintiff's discrimination against businesses that deal in interstate commerce by virtue of the Plaintiff's failure to apportion that amount realized from interstate commerce versus that amount realized from activities within the jurisdictional limits of the Plaintiff.

32. That further, the comprehensive scheme contained in Section 10-1-10, et seq. of the Municipal Code of the Town of Hilton Head Island is discriminatory and denies equal protection as to this Defendant (and others similarly situated) in that it exempts certain businesses from any business license fee and is contradicting of the mandate contained within its own ordinance of Section 10-1-10, et seq. as to what persons are required to pay a business license tax.

33. That further the Plaintiff purports to have a severability clause contained within its business license ordinance such that the validity and unenforceability does not affect other portions, which contain punitive provisions to include criminal prosecution as well as civil fines, penalties and assessments. Kigre asserts that such ordinance denies due process to this Defendant and other similarly situated. Further the efforts of the Plaintiff to impose a burden on this Defendant pursuant to Section 10-1-10, et seq. and to exempt certain "local industry" from payment of any business license tax pursuant to Section 10-1-200, is an undue restriction and impedes interstate commerce, and is a denial of due process and equal protection to this Defendant and others similarly situated.

**FOR A SIXTH DEFENSE AND
BY WAY OF COUNTERCLAIM**

34. The allegations contained in Paragraphs 1 through 33 of this Amended Answer and Counterclaim are realleged as fully as if repeated verbatim herein.

35. That the Defendant, Kigre, Inc., is a corporation organized under the State of Ohio and is authorized to transact business in the State of South Carolina.

36. That the Plaintiff, the Town of Hilton Head Island, is upon information and belief, a municipal corporation organized under and existing pursuant to the laws of the State of South Carolina, and as such, has limited powers and duties as are set forth in applicable South Carolina Code provisions, and that at all times, the Plaintiff was required to observe and honor obligations incumbent upon it as a municipal corporation under the Constitution of the United States and the Constitution of the State of South Carolina.

37. That the Plaintiff seeks to impose liability on the Defendant for a business tax which the Plaintiff euphemistically declares to be a "business license fee", but is a *de facto* tax on gross income of the Defendant.

38. That the Plaintiff additionally seeks to assess certain penalties, costs, charges, fees and other punitive measures for failure to pay the business tax which it levies on businesses located within the Town of Hilton Head Island that fail to meet the Plaintiff's requirements as set forth in Section 10-1-10, et seq. of the Municipal Code of the Town of Hilton Head Island.

39. That since the Defendant acquired its first business license from the Plaintiff, the Defendant has consistently renewed its business license with the Plaintiff for each subsequent year declaring income derived from business activities within the jurisdictional limits of the Town of Hilton Head Island for payment.

40. That at all times set forth herein the Plaintiff knew that Defendant's business was predominantly devoted to interstate commerce.

41. That at all times this Defendant was entitled to the protections afforded to it under the Constitution of the United States, specifically U. S. Constitution Article 1, Section 8, Clause 3.

42. In conducting its business activities, the Defendant does not need, nor require, nor does it have provided to it any fairly related services by the Plaintiff. That further, the comprehensive scheme known as the "business license fee", enacted by Plaintiff was known by this Plaintiff to be fatally defective and unconstitutional on its face.

43. The recommendations and model ordinances provided by the Municipal Association of South Carolina instruct the Plaintiff that it must and should honor the obligations imposed upon it by the Commerce Clause in the United States Constitution.

44. That, upon information and belief, the Plaintiff should have known that its actions with respect to this Defendant, and others similarly situated, were in violation of the Commerce Clause.

45. That upon information and belief, in order to overcome such, the Plaintiff created a scheme of laws for the business license tax designed to frustrate, punish, intimidate, discourage, and extract payments from businesses, including the Defendant and those like it, which trade in interstate commerce was not within the corporate limits of the Plaintiff.

46. That Defendant is engaged in assembling and sales of certain specialized laser devises.

47. That because of the specialized nature of its business, the demand within the corporate limits of Hilton Head Island is almost non-existent. Defendant's business is conducted almost wholly, in total, outside of the Town's municipal jurisdictional limits; that is to say outside the boundaries of the Town of Hilton Head Island.

48. That under the Municipal Code of the Town of Hilton Head Island, specifically Section 10-1-10, et seq., the Plaintiff fails to fairly apportion the receipts of this business engaged inside and outside of the municipal limits of the Town of Hilton Head Island.

49. That further upon information and belief, the Plaintiff is a member of and supports its officials who act or who have rights as officers of the Municipal Association of South Carolina.

50. That upon information and belief, since on or about October of 2000, the Plaintiff knew or should have known that its ordinance related to business license taxes was defective in that it failed to meet constitutional standards and, specifically, was violative of the Commerce Clause as set forth in the United States Constitution Article 1, Section 8, Clause 3.

51. This action is brought pursuant to Section 15-53-10, et seq. for a declaration that the business license tax as applied to this Defendant and other such similarly situated businesses that deal in interstate commerce and conduct business in interstate commerce, is violative of the United States Constitution and specifically Article 1, Section 8, Clause 3 and that further for a declaration that the allowing of certain home businesses under Section 10-1-210 of the Municipal Code of the Town of Hilton Head Island conflicts with Section 10-1-10 and that additionally Section 10-1-200 of the Municipal Code of the Town of Hilton Head Island related to local industries, is

discriminatory and favors certain businesses over others because of "local industry licenses" which have no rational basis and which denies equal protection to this Defendant and others similarly situated and, as such, Section 10-1-10, et seq. should be declared unconstitutional on the basis of the failure of the Plaintiff to apportion fairly that portion of income derived from interstate commerce versus that not derived from interstate commerce and on the basis that allowing a free local industry license favors certain businesses over those engaged in interstate commerce.

52. That further this Defendant seeks a declaration that the business tax as applied by the Plaintiff to this Defendant and others similarly situated is unconstitutional in that the activity of this Plaintiff does not have a substantial nexus with the Town of Hilton Head Island. Kigre further alleges that the tax is not fairly apportioned and that the tax does discriminate against interstate commerce and favors other businesses and that the tax is not fairly related to the services provided by the Town of Hilton Head Island to this Defendant and others similarly situated.

53. That further the business license tax ordinance as applied does not provide for attorney fees to a business which prevails against an unconstitutional ordinance and the oppressive nature of the Town's activities in its effort to force payment of the business license tax and as such denies equal protection to this Defendant and which constitutes a denial of equal protection to this Defendant and others similarly situated.

54. That further, the business license tax as applied by the Plaintiff to this Defendant and others similarly situated, is an attempt by the Plaintiff to place a direct tax on the privilege of engaging in interstate commerce.

55. That further, the Defendant seeks such other declarations as are necessary and pertains to the business license tax ordinance of the Plaintiff to determine the constitutionality as applied to the Defendant and others similarly situated and for such other and further declarations as this honorable Court deems just and proper. That the Defendant seeks a further declaration that the efforts by the Town in refusing to allow payment under protest, the failure to timely audit, the imposition of attorney fees and other penalties, are punitive and as such are unconstitutional as applied, by this Plaintiff to this Defendant and others similarly situated. That further upon such declaration, that the Defendant be allowed to seek such damages as are appropriate for violation of the Constitutional protections afforded to this Defendant and others similarly situated.

**FOR A SEVENTH DEFENSE AND BY WAY OF
SECOND COUNTERCLAIM**

56. The allegations contained in Paragraphs 1 through 55 of this Amended Answer and Counterclaim are realleged as fully as if repeated verbatim herein.

57. Defendant Kigre alleges that the Plaintiff Town of Hilton Head has demanded and collected a Business License Fee from Kigre, Inc. every year from 2002 forward. Kigre alleges such fee was a requirement to operate its business within the Town's jurisdiction.

58. Defendant Kigre alleges that the Plaintiff Town of Hilton Head failed to abide by the express terms of its Business License Fee ordinance (Section 10-1-10 et. seq.) in that the town levied and collected business license fees and/or business license taxes in disregard of the appropriate rate classification requirements and system set forth in the language of the subject Business License Fee ordinance.

59. The subject ordinance specifically requires that industry-wide profitability rates as indexed by the United States government, be applied for classification and determination of the proper rate class for each business, and corresponding amounts of business license fees for each class. Kigre alleges, on information and belief, that the Town of Hilton Head failed to follow the classification standards established by its own ordinance, resulting in the Plaintiff randomly, erroneously, and imperfectly implementing the ordinance so as to cause the business license fees to be arbitrary, random, capricious, vague, speculative, illegal, and invalid.

60. Kigre further alleges that the Plaintiff failed to place Kigre in a classification that corresponds to the United States government profitability statistics or to establish any basis for delineation of profitability (ability to pay) for classifying and indexing such businesses into the various Rate Classes.

61. The Town's business license fee ordinance uses and is required to be based upon a calculated index of "ability to pay" based on national averages by types of business as categorized in the Standard Industrial Classification (SIC) Manual, which is now published as the North American Industry Classification System (NAISC).

62. Article 1, Section 8, Clause 1 of the United States Constitution provides that: "The Congress shall have power to lay and collect taxes, duties, Imposts, and Excises, to pay the Debts and provide for the Common Defense and General Welfare of the United States; but all Duties, and Imposts, and Excises shall be uniform throughout the United States".

63. The Fourteenth Amendment of the United States Constitution provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of a citizen of the United States nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of laws".

64. The South Carolina Constitution provides that: "The privileges and immunities of citizens of this State and of the United States under this Constitution

shall not be abridged nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of laws".

65. The power and authority available to defendant Town of Hilton Head Island to impose a business license fee begins with the South Carolina Constitution, Article X., Section 5, which provides that: "No tax, subsidy or charge shall be established, fixed, laid or levied under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied."

66. The foregoing constitutional provision applies to all acts that levy taxes or create a new tax.

67. The South Carolina Constitution Article X., Section 6 states that: "The General Assembly may vest the power of assessing and collecting taxes in all the political subdivisions of the state".

68. The South Carolina Legislature enacted S. C. Code Annotated Section 5-7-30(1976 and 2005 Supp.) to identify the specific powers conferred upon municipalities": Each municipality of the State, in addition to the powers conferred to a specific form of government, may enact Regulations, Resolutions, and Ordinances, not inconsistent with the Constitution and general laws of this State,... including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them;... levy a business license tax on gross income, but a wholesaler delivering goods to retailers in a municipality is not subject to the business license tax unless it maintains within the corporate limits of the municipality a warehouse or mercantile establishment for the distribution of wholesale goods; and a business engaging in making loans secured by real estate is not subject to the business license tax unless it has premises located within the corporate limits of the municipality and no entity which is exempt from the license tax under another law nor a subsidiary or affiliate of an exempt entity is subject to the business license tax..."

69. To be valid, an ordinance enacted by a governmental entity must be consistent with the Constitution and general laws of South Carolina.

70. A business license fee is an excise tax on the owner for the privilege of doing business, and therefore is based upon classification and gross income, not upon the level of governmental services provided.

71. The subject ordinance purports to apply the rates charged for business license fees based on the business's ability to pay using SIC/NAICS

classifications as a standard by which to apply a graduated rate of fees, increasing as profitability increases.

72. The SIC/NAICS publications group various industry types into major groups. IRS statistics on nationwide business income are the basis used to calculate a ratio or index of ability to make a profit for each SIC/NAICS group included in the subject business license fee ordinance: "The indexes of ability to make a profit, which indicate the ability to pay a license tax, were arranged in ascending order and plotted from major groups to be taxed. Businesses were placed in Rate classifications by dividing the range of indexes into even increments, disregarding irregularities in the plotted curve at the high end. This procedure resulted in those major groups having the same range of ability to pay being taxed at the same rate". Municipal Association of South Carolina, Business License Rate Survey Report and Sample License Ordinance, paragraph 3, page 48 (1995) (MASC Handbook).

73. Pursuant to the express language in the subject ordinance, the Town of Hilton Head is required to set the rate for each classification with "a uniform variation between classes, since the variation in the indexes is uniform." Except for the last rate class, all of the rate classes were purported to have been originally established employing the system.

74. The actual rates applied to business license fees are determined by the Rate Class into which the governing body places a particular type of business or industry. The Rate Classes are arranged so that Class I is the lowest rate, ascending in amount in increases to the highest Rate Class.

75. Over time as the IRS collects additional information concerning profitability, new SIC/NAICS statistics are issued. The Municipal Association of South Carolina handbook advises municipalities that when the latest IRS statistics are available, they should re-calculate Rate Classes based on new SIC/NAICS profitability information: "Once the system is adopted, it is imperative to maintain the rate classifications to assure validity of the ordinance. The arbitrary shifting of a business class to a different rate class destroys the basis for defense of the system".

76. Internal Revenue Service statistics on nationwide income published periodically were supposed to be used to find the profit ratios for each SIC/NAICS group included in the subject ordinance. The ratios were supposed to have been arranged and plotted in ascending order and major groups were placed in rate classifications by division into equal increments of ratio, disregarding the upper ratios which made the curve irregular. This procedure would result in those major groups having the same range of ability to pay being taxed at the same rate.

77. The theory behind the classification system is to utilize nationwide statistics on business income to determine profit making ability in order that

businesses with similar paying potentials would be placed in the same rate class unless there is some additional overriding state or local consideration.

78. The Plaintiff Town of Hilton Head has failed to use or implement the calculations and classifications that would result from the implementation of the methodology required by its business license ordinance.

79. The Plaintiff Town of Hilton Head has failed to provide any basis, method or procedure for delineation and indexing based on profitability between the rate classes.

80. The Plaintiff Town of Hilton Head randomly, speculatively, vaguely, arbitrarily, capriciously, and illegally put businesses in rate classes and the Plaintiff is not recalculating rate classes based on new SIC/NAICS profitability information. As a result, businesses are arbitrarily and randomly shifted into rate class categories that do not accurately reflect their profitability and ability to pay. On information and belief, Defendant Kigre is such a business that has been arbitrarily and randomly shifted into a rate class category that does not accurately reflect its "ability to pay" and profitability.

81. Plaintiff Town of Hilton Head's failure to accurately classify the rate class or to delineate the break point between classes appropriate for Kigre, proximately and directly caused harm to Kigre by causing such affected taxpayer to pay business license fees that are not in accordance with the dictates of the express language of the ordinance.

82. Defendant Kigre conferred benefits to plaintiff town of Hilton Head Island by and through the payment of illegal business license fees.

83. Plaintiff Town of Hilton Head realized and enjoyed the benefits conferred by defendant Kigre.

84. Under the subject business license fee ordinance, Plaintiff Town of Hilton Head is illegally and improperly collecting business license fees from defendant Kigre.

85. Defendant Kigre has, since the filing of the original Answer and Counterclaim, protested the payment of a business license fee. All fees paid since that date have been paid under protest.

86. It would be inequitable for Plaintiff Town of Hilton Head Island to retain such illegally obtained benefits without disgorging those funds back to Defendant Kigre.

87. Plaintiff Town of Hilton Head Island has not returned and continues to hold the illegal, arbitrarily and improperly collected business license fees collected

from the Defendant Kigre and as such, the Town of Hilton Head Island has been unjustly enriched

88. As a direct and proximate result of Plaintiff Town of Hilton Head's illegal, arbitrary and improper imposition and collection of the business license fee, Defendant Kigre has been damaged and is entitled to disgorgement of those monies in an amount to be more specifically proven at trial of this case.

FOR AN EIGHTH DEFENSE AND BY WAY OF THIRD COUNTERCLAIM

89. The previous paragraphs are restated and realleged as fully as if repeated verbatim.

90. The express language of the subject business license fee ordinance imposes a requirement on Plaintiff Town of Hilton Head Island to accurately classify and levy the business license fees using the appropriate rate class as determined by the SIC/NAICS in order to correlate the amount of business license fee levied with the taxpayer's (Kigre's) ability to pay as determined from national statistics on profitability.

91. Plaintiff Town of Hilton Head Island breached the terms of its ordinance by failing to accurately classify and levy business license fees using the appropriate Rate Class as determined under the SIC/NAICS' national averages. Instead, Plaintiff Town of Hilton Head Island levied and imposed a business license fee on Kigre in an amount that did not correspond with Kigre's profitability rate as determined by the SIC/NAICS' national averages and was arbitrary and without legal basis.

92. As a direct and proximate result of Plaintiff Town of Hilton Head Island's failure to comply with its own requirements concerning the business license fee ordinance, Kigre has sustained damages in an amount to be determined at the trial of this case.

FOR A NINTH DEFENSE AND BY WAY OF FOURTH COUNTERCLAIM

93. The previous paragraphs are reiterated and realleged as fully as if repeated verbatim herein.

94. The method provided by Plaintiff Town of Hilton Head Island's business license fee scheme imposes a fee which does not bear a reasonable relationship to the taxpayer's profitability within the Town of Hilton Head's jurisdiction.

95. The Plaintiffs business fee license ordinance is unconstitutionally vague in failing to provide any means, method or procedure to determine indexing or the delineation between Rate Classes based on ability to pay.

96. Plaintiff Town of Hilton Head Island is denying Kigre due process of law by depriving Kigre of its "property" interest in the money used to pay the Plaintiff Town of Hilton Head Island's business license fee in that the business license fee collected from Kigre, as it was placed by the Plaintiff in a Rate Class, does not correspond with the industry profitability ratios generated by the federal government for the industry in which the particular taxpayer (Kigre) operates.

97. The business license fee charged by Plaintiff is arbitrary and does not comply with the express requirements of the subject business license fee ordinance where the actual rate applied to a taxpayer in a Rate Class to calculate the business license fee amount does not correlate to the profitability of the taxpayers in that rate class as determined by the SIC/NAICS.

98. As a direct and proximate result of Plaintiff's denial of due process, defendant suffered and will continue to suffer damages in an amount to be proven at trial of this case.

FOR A TENTH DEFENSE AND BY WAY OF FIFTH COUNTERCLAIM

99. The previous paragraphs are restated and realleged as fully as if set forth verbatim.

100. Defendant Kigre has a right to equal protection of the laws secured by the Fourteenth Amendment to the United States Constitution and by Article 1, Section 3 of the South Carolina Constitution.

101. The business license fee imposed on Kigre by the subject business license fee ordinance is random and arbitrary and in violation of the express language of the subject ordinance.

102. Therefore, entities that are placed in a Rate Class that accurately corresponds with their profitability according to the SIC/NAICS data pay different amounts in business license fees as it relates to industry profitability when compared with the business license fees paid by businesses such as Kigre, all of whom were treated disparately by Plaintiff Town of Hilton Head Island when they were placed in Rate Classes that do not correlate with industry profitability.

103. The subject of business license fee ordinances as applied to Kigre, impairs Kigre's rights to the equal protection of the law secured by the United States Constitution and the South Carolina Constitution. The creation of a class of business

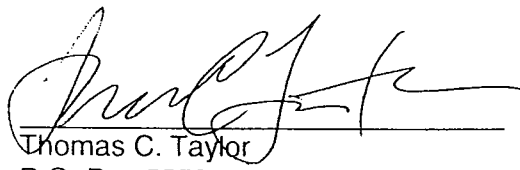
entities who are placed in Rate Classes that do not correspond to their industry profitability according to the SIC/NAICS data or any basis for indexing or delineation between rate classes, was and is arbitrary and capricious.

104. There is no rational basis for creating a class of business entities that are placed in rate classes that do not correspond to their industry profitability according to the SIC/NAIC a data when the express language of the subject business license fee ordinance requires otherwise.

105. As a direct and proximate result of Plaintiff Town of Hilton Head Island's denial of equal protection of the law, Defendant Kigre has sustained damages in an amount to be proven at the trial of this case.

WHEREFORE, having fully answered and asserted its Counterclaims, the Defendant Kigre, Inc. prays that this honorable Court inquire into the matters set forth herein, that the Complaint of Plaintiff be dismissed and that the Defendant have the declarations as sought, that the ordinance is improper and unlawfully places a burden on Defendant's activities in interstate commerce, that the ordinance as applied to this Defendant and others similarly situated is unconstitutional and that the ordinance on its face and as it is being administered, deprives the Defendant Kigre, Inc. of due process of the law and denies this Defendant equal protection as to other businesses, and further for a declaration which denies the Plaintiff's relief for any punitive damages to include interest, penalties or attorney fees and that this Defendant be awarded damages in the amount to be proven at trial, its attorney fees and for any and all further declarations as this Court deems just and proper.

Law Office of Thomas C. Taylor, LLC



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ATTORNEY FOR DEFENDANT
KIGRE, INC.

September 2, 2009
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 06-CP-07-796
TOWN OF HILTON HEAD ISLAND,	)	
	)	
Plaintiff,	)	PLAINTIFF, TOWN OF HILTON
	)	HEAD ISLAND'S, REPLY TO
vs.	)	DEFENDANT'S AMENDED
	)	ANSWER AND COUNTERCLAIM
KIGRE, INC.	)	
	)	
Defendant.	)	
	)	

TO: DEFENDANT, KIGRE, INC., AND ITS ATTORNEY, THOMAS C. TAYLOR, ESQ.:

COMES NOW Plaintiff, Town of Hilton Head Island, ("Plaintiff") reserving all rights to amend this Reply to Defendant's Amended Answer and Counterclaim ("Amended Counterclaim") within thirty (30) days pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure and reserving all rights to include in the Reply any defenses and/or objections under Rule 12 of the South Carolina Rules of Civil Procedure, and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure, replying to the Amended Counterclaim as follows:

FIRST DEFENSE
(Admissions and Denials)

1. Each and every allegation of the Amended Counterclaim not hereinafter expressly admitted, qualified, or explained below, is denied and strict proof is hereby demanded.
2. Plaintiff denies the allegations of paragraph 34 of the Amended Counterclaim and demands strict proof thereof.
3. Plaintiff admits the allegations of paragraphs 35 and 36 of the Amended Counterclaim.

4. Plaintiff denies the allegations of paragraph 37 of the Amended Counterclaim and demands strict proof thereof.
5. Plaintiff admits the allegations of paragraph 38 of the Amended Counterclaim which alleges that Plaintiff has the legal authority to assess a business license tax pursuant to applicable law and ordinance, but denies the remaining allegations of this paragraph.
6. Plaintiff denies the allegations of paragraphs 39 and 40 of the Amended Counterclaim and demands strict proof thereof.
7. Plaintiff admits the allegations of paragraph 41 of the Amended Counterclaim which alleges that Defendant is entitled to protections afforded it and all citizens under the Constitution of the United States of America, but denies the remaining allegations of this paragraph.
8. Plaintiff denies the allegations of paragraphs 42, 43, 44 and 45 of the Amended Counterclaim and demands strict proof thereof.
9. Plaintiff admits the allegations of paragraph 46 of the Amended Counterclaim.
10. Plaintiff denies the allegations of paragraphs 47 and 48 of the Amended Counterclaim and demands strict proof thereof.
11. Plaintiff admits the allegations of paragraph 49 of the Amended Counterclaim which alleges that Plaintiff is a member of the South Carolina Municipal Association, but denies the remaining allegations of this paragraph.
12. Plaintiff denies the allegations of paragraph 50 of the Amended Counterclaim and demands strict proof thereof.
13. Plaintiff admits that Defendant is seeking the relief requested in paragraphs 51 and 52 of the Amended Counterclaim, but denies that Defendant is entitled to the relief requested.

14. Plaintiff admits the allegations of paragraph 53 of the Amended Counterclaim which alleges that Plaintiff's applicable business license tax ordinance and related provisions do not provide for recovery of attorneys fees, but denies the remaining allegations of this paragraph.
15. Plaintiff denies the allegations of paragraph 54 of the Amended Counterclaim and demands strict proof thereof.
16. Plaintiff admits that Defendant is seeking the relief requested in paragraph 55 of the Amended Counterclaim, but denies that Defendant is entitled to the relief requested.
17. In reply to paragraph 56 of the Amended Counterclaim, each and every admission, denial, qualification, and allegation of the paragraphs above are hereby re-alleged and restated as if fully set forth herein.
18. Plaintiff admits the allegations of paragraph 57 of the Amended Counterclaim which alleges that Plaintiff demanded and collected a certain portion of the business license fee from Defendant and that a business license fee is required to operate a business within the Town's jurisdiction, but denies the remaining allegations of this paragraph.
19. Plaintiff denies the allegations of paragraphs 58, 59, and 60 of the Amended Counterclaim and demands strict proof thereof.
20. Plaintiff admits the allegations of paragraph 61 of the Amended Counterclaim which alleges that Plaintiff uses the Standard Industrial Classification (SIC), but denies the remaining allegations of this paragraph.
21. Plaintiff craves reference to the United States Constitution and the South Carolina Constitution for the complete and correct provisions and denies any allegations of paragraphs 62, 63, 64, 65, 67, and 68 of the Amended Counterclaim that are inconsistent therewith and further denies the remaining allegations of these paragraphs.

22. Plaintiff admits the allegations of paragraph 66 of the Amended Counterclaim which alleges that the South Carolina Constitution applies to acts of the Plaintiff, but denies the remaining allegations of this paragraph.
23. Plaintiff admits the allegations of paragraph 69 of the Amended Counterclaim.
24. Plaintiff craves reference to the Plaintiff's ordinances and the publications cited by Defendant in paragraphs 70, 71, 72, 73, 74, and 75 of the Amended Counterclaim, for the complete and correct provisions thereof, and denies any allegations of these paragraphs that are inconsistent therewith and further denies the remaining allegations of these paragraphs.
25. Plaintiff lacks sufficient information to admit or deny the allegations in paragraphs 76 and 77 and therefore denies the same.
26. Plaintiff denies the allegations of paragraphs 78, 79, 80, 81, 82, 83, 84, 86, and 88 of the Amended Counterclaim and demands strict proof thereof.
27. Plaintiff admits the allegations of paragraph 85 of the Amended Counterclaim which alleges that Defendant has protested the payment of a business license fee and denies the remaining allegations of this paragraph.
28. Plaintiff admits the allegations of paragraph 87 of the Amended Counterclaim which alleges that Plaintiff has not returned the business license fees collected from Defendant, but denies the remaining allegations of this paragraph.
29. In reply to paragraph 89 of the Amended Counterclaim, each and every admission, denial, qualification, and allegation of the paragraphs above are hereby re-alleged and restated as if fully set forth herein.

30. Plaintiff craves reference to the Plaintiff's ordinance cited by Defendant in paragraph 90 of the Amended Counterclaim for the complete and correct provisions thereof, and denies any allegations of this paragraph that is inconsistent therewith and further denies the remaining allegations of this paragraph.

31. Plaintiff denies the allegations of paragraphs 91 and 92 of the Amended Counterclaim and demands strict proof thereof.

32. In reply to paragraph 93 of the Amended Counterclaim, each and every admission, denial, qualification, and allegation of the paragraphs above are hereby re-alleged and restated as if fully set forth herein.

33. Plaintiff denies the allegations of paragraphs 94, 95, 96, 97 and 98 of the Amended Counterclaim and demands strict proof thereof.

34. In reply to paragraph 99 of the Amended Counterclaim, each and every admission, denial, qualification, and allegation of the paragraphs above are hereby re-alleged and restated as if fully set forth herein.

35. Plaintiff admits the allegations of paragraph 100 of the Amended Counterclaim.

36. Plaintiff denies the allegations of paragraphs 101, 102, 103, 104, and 105 of the Amended Counterclaim and demands strict proof thereof.

SECOND DEFENSE
(Failure to State a Claim)

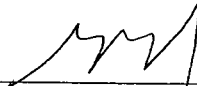
37. Each and every admission, denial, qualification, and allegation of the paragraphs above are hereby re-alleged and restated as if fully set forth herein.

38. The allegations of the Amended Counterclaim fail to state facts sufficient to constitute a cause of action against Plaintiff so as to bar the Defendant from recovery pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully replied to the Amended Counterclaim, the Plaintiff prays:

1. That the Amended Counterclaim be dismissed with prejudice and that Plaintiff recover its costs incurred herein, including reasonable attorneys fees,
2. For all other and further relief as this Honorable Court may deem just and proper

ALFORD & WILKINS, P.C.



Gregory M. Alford, Esq.
Scott M. Wild, Esq.
Post Office Box 8008
Hilton Head Island, SC 29938
843-842-5500
Attorneys for Plaintiff

This 15th day of Sept, 2009

Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
TOWN OF HILTON HEAD ISLAND,)
Plaintiff,)
vs.)
KIGRE, INC.,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 06-CP-07-796

DEFENDANT KIGRE, INC.'S
S.C.R. Civ. P. 52 and 59
NOTICE OF MOTION AND
MOTION TO ALTER OR
AMEND JUDGMENT

TO: PLAINTIFF TOWN OF HILTON HEAD ISLAND AND ITS ATTORNEY GREGG ALFORD:

YOU WILL PLEASE TAKE NOTICE that pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure, the Defendant will, ten (10) days after the filing of this Notice of Motion and Motion, or as soon thereafter as the Court schedules same for Hearing, move this Honorable Court to alter or amend the "Order Ending Case" signed by Judge Dukes and filed of record on February 7, 2012. Counsel for the Defendant received a copy of the filed Order on February 10, 2012.

As the basis of this Motion, the Defendant shows that the Order Ending Case is a final Judgment as contemplated under the Rules, and that same fails to reflect the Court's rulings at trial, and fails to address certain claims made by the Defendant sufficient to insure that same are preserved for appeal. Specifically, the Defendant Kigre moves the Court as follows:

- a. The Order as presently written grants the Town judgment "for the amounts due" premised upon the finding of fact that Kigre "misrepresented information on a business license application which resulted in it not paying the correct amounts of business license fees due the Town." (See page 14.) Kigre moves to alter or amend the Judgment to reflect the fact that the Plaintiff admitted it failed to follow its ordinance, failed to grant Kigre its administrative appeal, refunded the \$41, 645.81 that Kigre paid under protest, and basically withdrew that claim at trial. See page 252 of the transcript where the Town's counsel admitted: "we're not seeking that based on the errors that were made." Judge Dukes accepted the Town's admission as a verbal motion to conform the pleadings to the evidence, thereby withdrawing any claim for recovery of the fees the Town alleged were owed in the Complaint. The representation made to the Court at trial was that if Judge Dukes upheld the validity of the Ordinance, that a new assessment would be made for later years within the applicable Statute of Limitations, and then Kigre would have the opportunity to make its arguments (appeal) to the Town Council on the new assessments. The only issues Judge

Dukes had under consideration at the end of the trial were the Town's claims for a Declaratory Judgment upholding the constitutionality of the Ordinance, and Kigre's counterclaims. The Judgment should be altered or amended to delete any finding of damages against the Defendant.

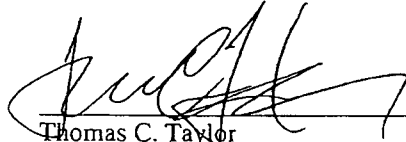
- b. The Order as written finds that Kigre "misrepresented information on a business license application which resulted in it not paying the correct amounts of business license fees due the Town." (See page 14.) Kigre moves that the Judgment be amended or altered to reflect the evidence tendered at trial that Kigre, since 1987, consistently and openly advised the Town that it did not believe it owed more than the minimum payments due (which it made), because the Town did not, in Kigre's belief, have the right to tax Kigre's income from sales made outside the Town's jurisdiction. There was never any misrepresentation nor omission of income. The Town chose to accept the minimum payments for more than 15 years, and then decided to seek more.
- c. The Order as written states that the Standard Industrial Classification (SIC) is "a commonly used tool for placing businesses into the proper classification." See page. 3. Kigre moves that the Court alter or amend its Judgment to reflect the undisputed fact that the SIC is rarely used today, is outdated, and has been replaced by the NAICS. The Town's position at trial was that although the SIC was outdated and rarely used today, that the Town had no legal obligation to adopt the new system.
- d. Although Kigre does not agree with the Court's Conclusions of Law as to the issue of required apportionment of gross income under Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977), Kigre acknowledges that this is not the appropriate vehicle to resolve that issue. It will be addressed on appeal. However, Kigre does hereby move the Court to alter or amend the judgment to reflect the actual legal argument that Kigre makes. At page 2, the Court states that Kigre claims the Ordinance "cannot be applied to Kigre's business because Kigre's sales are almost exclusively done in interstate commerce." Setting aside the other claims Kigre makes as the constitutionality of the ordinance as written, Kigre does not maintain that a constitutionally sufficient business license fee ordinance, properly and fairly enforced, could not be applied to it because of where its products are sold. It maintains that in computing what is owed as a business license fee by Kigre or other similarly situated business, the business' gross income must be properly apportioned under the Complete Auto test. Kigre's position is and always has been that it owes only the minimum amount because a proper apportionment of its gross income would reflect that amount as the proper fee on qualifying "gross income."
- e. In order to insure that all of Kigre's positions are properly preserved for appeal, Kigre moves this Court to alter or amend the Judgment to address the following claims:
 1. That the Town was paid by Kigre in accordance with the actual business conducted within the corporate limits of the Town;

2. That Article 1, Section 8, Clause 3 of the United States Constitution applies to the Town;
3. That the "audit" conducted by the Town of Hilton Head failed to apportion Kigre's sales income between that income derived from interstate sales and that derived from sales within the Town's jurisdictional limits;
4. The Town's failure to grant Kigre the appeal hearing after Kigre paid the \$41, 645.81 under protest, was a denial of Kigre's due process rights under both the South Carolina and U. S. Constitution.
5. The Ordinance is discriminatory and denied equal protection of the law in that it exempts certain businesses from the obligation to pay the business license fee.
6. The Town provided no services that are "fairly related" to the business license fee as required under Complete Auto.
7. The fact the Ordinance allows the recovery of attorneys fees by the Town for prosecution of an action to collect, but does not provide for the recovery of attorneys fees by a business that defends its actions in refusing to pay business license fees not properly due and payable, denies the equal protection of the law to the defending business.
8. The Town's Business License Fee Ordinance is a direct tax on the privilege of engaging in interstate commerce.
9. The Town of Hilton Head failed to follow the requirements of its Ordinance by failing to follow the classification standards that required a business to be classified as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationship to services, or other basis deemed appropriate by the Town Council.
10. The Town failed to provide any reasonable basis for its usage of the Standard Industrial Classification System when the Town knew it was outdated, rarely used and probably led to businesses not being classified under any actual ability to pay criteria.
11. That in consideration of all the facts and circumstances, to allow the Town to collect any damages from Kigre would be inequitable.
12. That the Town Ordinance was unconstitutionally vague and therefore unenforceable because it failed to provide any type of accurate or reliable means, method or procedures to insure businesses were properly classified.
13. The scheme set forth by the Ordinance and used by the Town to classify businesses had no reasonable correlation of a particular business to its ability to pay.

For all of the foregoing reasons, Kigre, Inc. prays that this Court alter or amend its Judgment to reflect the evidence revealed at trial, as is set forth above.

I SO MOVE.

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ATTORNEY FOR DEFENDANT
KIGRE, INC.

February 16, 2012
Hilton Head Island, South Carolina

Jeffrey Myers - Exam (Cross) by Alford

15

1 ALFORD - J. MEYERS (EXAMINATION)

2 please?

3 THE WITNESS: Jeffrey Alan Myers.

4 THE COURT: Where do you live?

5 THE WITNESS: 10 Old House Creek,
6 Hilton Head.

7 THE COURT: Go ahead, please.

8 MR. ALFORD: Sorry.

9 BY MR. ALFORD:

10 Q Sir, what is Kigre?

11 A It is a corporation.

12 Q What does it do?

13 A We manufacture laser components and
14 laser glass.

15 Q How long has Kigre been in business?

16 A Since 1973.

17 Q How long has Kigre been in business on
18 Hilton Head?

19 A Since 1986.

20 Q Well, I guess that was a dumb question?

21 Kigre does business on Hilton Head,
22 right?

23 A Yes.

24 Q It's located on Hilton Head?

25 A Yes.

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1 ALFORD - J.MEYERS (EXAMINATION)

2 certify the information herein as true, in gross
3 income is accurately reported or estimated for a
4 new business without any unauthorized
5 deductions, and that all assessments and
6 personal property taxes due and payable to the
7 Town have been paid.

8 Q Okay; thank you?

9 THE COURT: If that goes on a
10 little bit, you may have to slow down a
11 little for the court reporter so she
12 can catch up.

13 THE WITNESS: I can hand it to her
14 so she can just --

15 THE COURT: She'll have it in a
16 second, but just -- it might be easier
17 if you hand up -- I don't know how much
18 more Mr. Alford is going to have you
19 read, but just try to take it slow so
20 she can catch it. Thank you.

21 MR. ALFORD: Sorry about that.

22 I'll try to reduce the reading.

23 THE COURT: Whatever you want to
24 do.

25 BY MR. ALFORD:

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1 ALFORD - J.MEYERS (EXAMINATION)

2 Q There's some affirmation at the bottom
3 of that document; is that a fair statement, sir?

4 A Yes.

5 Q And for your income in 1994 you marked
6 N/A; is that right?

7 A Yes, I did.

8 Q Why?

9 A Because it was not applicable because
10 sales were interstate and international
11 primarily.

12 Q And who told you that?

13 A The Town of Hilton Head.

14 Q So you basically took the position
15 based on, I guess some legal advice or some
16 position that the town took that you didn't have
17 to pay your taxes because you were interstate
18 commerce?

19 A No. I did pay my taxes, \$62.50.

20 Q You're right. Let me re-ask that?

21 You took the position that this tax
22 wasn't applicable to your company's gross
23 income for 1994? That's not applicable,
24 right? Because you have this reason --

25 A I took the position that the gross

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Steven Markiw - Exam (Cross) by TAYLOR

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1 TAYLOR - MARKIW (EXAMINATION)

2 of it.

3 MR. ALFORD: No. Unless it comes
4 up. Thank you.

5 BY MR. TAYLOR:

6 Q Mr. Markiw, you did not send the
7 assessment or anything to do with the quality of
8 the assessment that was made?

9 A No.

10 Q Very good?

11 Mr. Markiw, I want to move onto
12 some other provisions of the ordinance.
13 First, I'd like to get clarification. It is
14 10-1-20 and it reads I believe, the division
15 of businesses by major groups subject to the
16 same license rate, as determined by
17 calculated index of ability to pay based on
18 national averages, benefits, equalization of
19 tax burden, relationship of services, or
20 other basis deemed appropriate by the town
21 council; is that an accurate reading of the
22 ordinance?

23 A I guess it is.

24 Q To your knowledge, has the town council
25 adopted any other basis as appropriate other

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1 TAYLOR - MARKIW (EXAMINATION)

2 than the classification set forth in the
3 ordinance?

4 A No.

5 Q Let's then examine each of these?

6 The classification of businesses at
7 this time the Town of Hilton Head goes by
8 the standard industry classification; is
9 that correct?

10 A That's correct.

11 Q And that has been in used since 1973
12 when the ordinance first went into effect,
13 correct?

14 A That's correct.

15 Q The Town of Hilton Head does not have
16 any idea about the businesses that are in the
17 SIC as far as their probability, does it?

18 A No.

19 Q And the town makes no effort whatsoever
20 to evaluate the classification in the SIC based
21 upon --

22 MR. ALFORD: I object to the form.

23 That question is -- it's especially a
24 trick question because the SIC code
25 does that for you. So by adopting that

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1 TAYLOR - MARKIW (EXAMINATION)

2 code --

3 THE COURT: I understood the
4 question. The town makes a
5 determination but if you can re-ask the
6 question.

7 MR. TAYLOR: Now that Mr. Alford
8 has coached the witness on that, I'd be
9 glad to.

10 THE COURT: Anyway, just try to --

11 MR. ALFORD: I'll try to do better
12 with my objections.

13 BY MR. TAYLOR:

14 Q Mr. Markiw, what is the standard
15 industry code and how does it classify
16 businesses?

17 A The standard industry classification
18 codes in business is based upon the type of
19 services provided.

20 Q It has to your knowledge nothing to do
21 with a business' probability, correct?

22 A That's correct.

23 Q And it has nothing to do to your
24 knowledge with the business' ability to pay a
25 business fee license or another tax of some

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1 TAYLOR - MARKIW (EXAMINATION)

2 sort, right?

3 A That's correct.

4 Q Thus is there anything to your
5 knowledge that the town does to classify
6 businesses based upon their ability to pay?

7 A No.

8 Q Is there any national average that the
9 town ever looked at in order to evaluate for
10 businesses or for business license fee purposes?

11 A No.

12 Q Are there IRS statistics available for
13 a man with your background and experience where
14 you can go and look at business' ability to pay?

15 A I believe there are.

16 Q But you don't do anything -- excuse me
17 -- the town doesn't do anything like that
18 insofar as its enforcement?

19 A That is correct.

20 Q The next thing supposedly that's in the
21 classification is calculated by the ability to
22 pay based on national average benefits?

23 Does the town in any way enter to
24 evaluate what benefits are provided to a
25 business when it considers what rate

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1 TAYLOR - MARKIW (EXAMINATION)

2 classification to put it in?

3 A No.

4 Q The next thing is evaluation of tax.

5 Does the town do anything to make any evaluation
6 of businesses when it places them in a
7 classification as to whether or not it is exempt
8 of a tax burden?

9 A No.

10 Q The next premise is the relationship of
11 services. Does the town do anything to evaluate
12 service to a type of business before it puts
13 them --

14 A No.

15 Q And we've already talked about it,
16 there is no other basis that's been deemed
17 appropriate by the town council, correct; to
18 your knowledge?

19 A To my knowledge, no.

20 Q So insofar as the classification system
21 is set forth, when it says that the division of
22 business by major groups subject to the same
23 license rate ability to pay based on national
24 average equation of tax burden relationship of
25 service or other deemed appropriate by town

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1 TAYLOR - MARKIW (EXAMINATION)

2 council makes no effort whatsoever to find any
3 of those factors when it places the --

4 A That's correct.

5 Q Okay?

6 Mr. Markiw, there is a provision
7 within the ordinance I believe that provides
8 any businesses that are located off of the
9 Town of Hilton Head shall pay twice the
10 normal rate; is that correct?

11 A That's correct.

12 Q And why is that?

13 A I have no knowledge as to how that was
14 established or what type of national
15 relationship may exist between that premise and
16 the town's position. I don't know how the rate
17 structure was established.

18 Q And Mr. Markiw, businesses that are
19 located outside of the state under the ordinance
20 are actually required to pay three times the
21 normal rate?

22 A I believe that's correct.

23 Q And do you know why?

24 A No.

25 Q I want to direct your attention to

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1 TAYLOR - MARKIW (EXAMINATION)

2 10-1-200 called the local industry license.

3 You're familiar with that I assume?

4 A Yes.

5 Q And I'm going to read this into the
6 record to be sure. If you will just correct me
7 if I'm wrong. Any person who desires to
8 exclusively engage in the business of offering
9 for public sale at designated locations, as
10 determined by the town manager, farm and garden
11 products or flowers grown on the property of
12 such person, or flower arrangements, arts or
13 crafts produced in the home of such person, or
14 seafood caught by such person, shall secure from
15 the town an annual business license, but shall
16 be exempt from a payment of a business license
17 fee?

18 A That's correct.

19 Q And that's the way that your office
20 operates, correct?

21 A Yes.

22 Q Now, Mr. Markiw, has there ever been an
23 instance since you've been in the finance
24 department where there has been an application
25 for such a business license?

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1 TAYLOR - MARKIW (EXAMINATION)

2 A I don't believe so; no.

3 Q And you are familiar with the community
4 of Hilton Head of course?

5 A Yes.

6 Q You live in this area? I believe you
7 live in Bluffton?

8 A Yes.

9 Q And you are certainly aware, I am sure,
10 there are a number of such entities in operation
11 on Hilton Head, correct?

12 A Yes.

13 Q For example Spanish Wells Vegetable
14 Market that is located near Cross Island and
15 Spanish Wells?

16 A Right.

17 Q Right?

18 A Yes.

19 Q Out there are you aware that they have
20 not made application for a business license that
21 is required under the ordinance?

22 MR. ALFORD: Objection; relevance.

23 THE COURT: I think it's relevant.

24 Go ahead.

25 THE WITNESS: I believe so; yes.

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///

1 TAYLOR - MARKIW (EXAMINATION)

2 BY MR. TAYLOR:

3 Q Have you taken any steps whatsoever to
4 bring in these businesses that may be exempt
5 from paying the fee, but who are not even making
6 --

7 A Yes, we are.

8 Q What are you doing?

9 A We are actually doing audits right now
10 through two different parts of the department;
11 those that need to have what we would call
12 exempt licenses and we are providing exempt
13 license enforcement of the schools and of the
14 property regimes. We have limited staff. We've
15 got -- we are going to exempt licenses as
16 quickly as we possibly can. But due to staffing
17 constraints, we can't get to all of the
18 businesses and they are doing that right now.

19 Q And was there any particular genesis
20 that you just talked about?

21 A No. I can probably explain why they
22 started now. When I came in, our systems were
23 in need of a change within the software within a
24 lot of the operational fees of the determination
25 and that was when we focused our efforts on

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1 TAYLOR - MARKIW (EXAMINATION)

2 identification.)

3 BY MR. TAYLOR:

4 Q And could you identify that for me?

5 A It's the 2006 business license
6 handbook. A guidebook we use in doing our
7 enforcement.

8 Q Did you produce that?

9 A Yes, I did.

10 Q Who makes that guideline?

11 A Municipal Association of South
12 Carolina.

13 Q And the Municipal Association of South
14 Carolina is in fact the entity that the Town of
15 Hilton Head looks to for guidance and separation
16 of the business license fee, correct?

17 A That's correct.

18 Q It was in fact South Carolina which
19 helped draft that initially back in 1973, right?

20 A I believe that is correct.

21 Q And if an issue comes up in your area
22 regarding an interpretation of the business fee,
23 that's the bible that you would go to, correct?

24 A We would go to the Municipal
25 Association, but we also seek guidance from

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1 TAYLOR - MARKIW (EXAMINATION)

2 first, during all of the conversations you've
3 had with Mr. Myers, many of which are going back
4 as far as 2004, it's true, isn't it, that
5 Mr. Myers continually took the position that
6 Kigre's interstate manufactures were not subject
7 to the town's business license fee?

8 A That is correct.

9 Q That's always been their position?

10 A Yes.

11 Q Has the town since the early
12 discussions with Mr. Myers from the 2003, 2004
13 time frame ever looked at Kigre's books with any
14 key toward separating out the profits that were
15 made interstate sales within the State of South
16 Carolina?

17 A No.

18 Q Why not?

19 A Because we believe interstate commerce
20 is not an exemption. We will adjust the
21 necessary license fee with another municipality
22 in another state or another county, but we do
23 not regulate their business license regarding
24 the portion of interstate.

25 Q The Town of Hilton Head simply doesn't

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1 TAYLOR - MARKIW (EXAMINATION)

2 care to know about whether or not Kigre's
3 manufacturing is sold in the State of South
4 Carolina or outside the State of South Carolina,
5 right?

6 A I would agree.

7 Q Your position is that they are liable
8 for all of their sales?

9 A Yes.

10 Q And the town does not make any effort
11 with anyone, Kigre or any other business, to
12 apportion any type of tax if that entity
13 maintains that its sales are out-of-state; is
14 that correct?

15 A That's correct.

16 Q Does the town do anything to determine
17 whether or not the business license fees levied
18 upon businesses are in any way fairly related to
19 the interest that the town provides?

20 A No.

21 Q The town makes no analysis on a yearly
22 basis or a five year basis concerning the
23 service that it provides to those businesses?

24 A We analyze the service provided to all
25 businesses during our budget process, but

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1 TAYLOR - MARKIW (EXAMINATION)

2 specifically related to how it relates to the
3 business, the answer is no.

4 Q A more appropriate question, the town
5 really doesn't seek to analyze where the service
6 in any way relates to the amount of money it
7 gains from the business license fee on a yearly
8 basis, correct?

9 A We don't provide that analysis; no.
10 The finance department's administrative position
11 from the finance budgetary standpoint has not
12 been done.

13 Q All right?

14 The town brings in, as I understand
15 about 7.9 million a year in business license
16 fees?

17 A That's correct.

18 Q At least according to this year's
19 number?

20 A That's correct.

21 Q Do you have testimony for this Court
22 that will provide us any useful guidance on the
23 amount of specific services the town provides
24 for businesses?

25 A No.

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1 TAYLOR - MARKIW (EXAMINATION)

2 MR. TAYLOR: Yes. It's been
3 marked as Exhibit Number 2.

4 BY MR. TAYLOR:

5 Q All right?

6 Mr. Markiw, will you start with
7 that paragraph, but I'm going to probably
8 ask you to read through.

9 A Interstate commerce is the trading in
10 commodities between citizens of different
11 states.

12 Q Okay; go ahead and read the next
13 paragraph?

14 A Interstate commerce is not a technical
15 legal conception but a practical matter to be
16 determined upon a broad consideration of the
17 substance of the whole transaction. It means
18 not merely interstate movement but interstate
19 business. It includes trade resulting in the
20 passage of property, people or messages from
21 within one state to within another state.

22 Q Before you go on, I'm going to ask you
23 this, Mr. Myers has constantly maintained to you
24 that Kigre engages predominately over 95 percent
25 of its business in out-of-state interstate

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1 TAYLOR - MARKIW (EXAMINATION)

2 commerce, correct?

3 A That's correct.

4 Q You have no reason to dispute that; do
5 you?

6 A No, I do not.

7 Q The documents have been there for the
8 town to look at during your audit or they
9 verified what Kigre was maintaining, correct?

10 A That's correct.

11 Q Would you go on and read the next
12 paragraph?

13 A Articles are considered interstate
14 commerce when they commence their final movement
15 for transportation from the state of their
16 origin to the state of their destination.
17 Interstate commerce includes buying and selling
18 goods for shipment from one state to another and
19 all component parts of the transaction are
20 included; for example, taking orders, shipping,
21 unloading, storage, delivery to purchaser and
22 collection of sales price. However, goods may
23 come out of interstate commerce at some stage
24 and become a part of an activity that is
25 intrastate in nature and subject to a license

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Steven Markiw - EXAM (Re-directed) by Alford

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1 ALFORD - MARKIW (EXAMINATION)

2 do those things -- able to pay apparently
3 criticized for now considering according to that
4 what's written there exactly?

5 MR. TAYLOR: Same objection, Your
6 Honor.

7 THE WITNESS: Yes.

8 THE COURT: The objection as to
9 leading or hearsay?

10 MR. TAYLOR: Both.

11 THE COURT: All right; overruled.

12 BY MR. ALFORD:

13 Q I'd like to show you if I could -- and
14 I'm going have to stand over your shoulder, sir.
15 Would you identify that document for the Court?

16 A It's a complaint titled Hilton Head
17 versus Kigre, Incorporated and it's dated
18 March 29th, 2006.

19 Q Okay. And if I may, there's facts
20 recited and the first cause of action is for
21 accounting?

22 A Right.

23 Q 2003, 2004, 2005?

24 A That's correct.

25 Q The second one is overdue business

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1 ALFORD - MARKIW (EXAMINATION)

2 license fee cause of action?

3 A Right.

4 Q Declaratory judgment any Federal?

5 A Right.

6 Q Now, can I publish from that this
7 pleading?

8 MR. TAYLOR: It's already of
9 record. That's the complaint in this
10 case.

11 MR. ALFORD: Yes, sir.

12 THE COURT: You can certainly call
13 the Court's attention to it.

14 MR. ALFORD: If I may call the
15 Court's attention to paragraph 11 of
16 the complaint containing municipal
17 codes and it says whether the code is a
18 lawful ordinance. In doing so, it
19 clearly is therefore a violation of
20 such, and provided this code is
21 punishable not to exceed 30 days or
22 both. The town shall have the right to
23 pursue any legal remedy available to
24 direct violation.

25 BY MR. ALFORD:

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1 ALFORD - MARKIW (EXAMINATION)

2 Q Is that what that says, sir?

3 A Yes.

4 Q So is it fair to say, sir the town is
5 not limited by the license fee with Kigre?

6 MR. TAYLOR: Objection.

7 THE COURT: Argumentative.

8 MR. ALFORD: I'll withdraw it.

9 THE COURT: Okay; thank you.

10 BY MR. ALFORD:

11 Q The town elected to follow that action?

12 A Yes.

13 Q The town had a dispute with Kigre about
14 whether or not they had enjoyed --

15 A Yes.

16 Q And the town's asked in this complaint
17 for the Court to decide whether or not that is
18 lawful; is that how you read that?

19 A Yes.

20 Q I don't know if you know the answer to
21 this; how many business licenses are there?

22 A There are 5,500 business licenses and
23 there are additional 5,000 accommodation tax
24 accounts that are -- that were managed through
25 the department.

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Steven Markiw EXAM (Re-cross) by TAYLOR

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1 TAYLOR - MARKIW (EXAMINATION)

2 the SIC code which is 3845 and then
3 under 3845 electrical.

4 MR. ALFORD: I mean, if that's the
5 testimony, you got that out of the SIC
6 code, then I don't need to admit the
7 exhibit then.

8 THE COURT: Mr. Taylor, anything?

9 MR. TAYLOR: Yes, sir.

10 EXAMINATION

11 BY MR. TAYLOR:

12 Q Just briefly on that point. I believe
13 based upon your deposition testimony that you're
14 of the opinion that Kigre was originally placed
15 in that classification merely by a town clerk
16 the day their business first came in; is that
17 correct?

18 A That's correct.

19 Q And you never on behalf of the town
20 sought to evaluate whether or not that is an
21 accurate placement for Kigre; have you?

22 A No. We did not at this point, no.

23 Q During all of this time of analyzing
24 and chasing and suing there's never been a
25 review by the Town of Hilton Head that he had to

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1 TAYLOR - MARKIW (EXAMINATION)

2 determine whether or not 3845 is the actual
3 Standard Industry Code that should be used and
4 you're just assuming it's right?

5 A No, I'm not. And I would like to speak
6 to that. What we have done is updated our
7 process. One of the things we are trying to do
8 is move forward in the near future trying to get
9 funding for SIC to NAICS, and in that process we
10 will hire an outside firm to be determined and
11 we will review the businesses and we will review
12 their classification at that point in time when
13 we review the rate structure, that sort of
14 analysis is by the town, and we plan on doing
15 that.

16 So the answer is no, to this date we
17 have not. But we do have it in our queue to get
18 it done and we have never been more forward in
19 that direction. We hope to do that very soon.

20 Q Now, the second thing, which is one for
21 the court reporter, what does NAICS stand for?

22 A The North American Industry
23 Classification System.

24 Q That's in fact the new system that most
25 have gone to over the past ten years, correct?

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THE COURT: All right; no
objection.

(Whereupon, the questioning of
Mr. Markiw concluded at 4:27 p.m.)
(Whereupon, a short break was
taken.)

MR. ALFORD: Just back on the
record, Your Honor. I wanted to
clarify something. We have agreed to
in lieu of his live testimony admit the
deposition of Mayor Peoples.

THE COURT: All right.

MR. ALFORD: I've reviewed it.
That helps me clarify one issue that
sort has been out there in this case
and I want to go ahead and put it on
the record where we stand on it.

In reading the Mayor's deposition
it's clear to me that the \$41,000
assessment has been essentially due to
the error of the town in not scheduling
the hearing. It is not in play, and we
are not seeking the 41,000.

What we're seeking is the

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declaratory judgment about the
exemption, and basically upholding the
validity of the ordinances.

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So I guess what I'm saying is,
there's been some question as to
whether or not the 41,000 is still in
play. From our perspective we're not
seeking that based on the errors that
were made. That's water under the
bridge. To the extent that our
ordinance is constitutional and valid,
we do intend to go back as long as the
law will allow us and assess. I want
to make that clear. Am I making sense?

THE COURT: I think so.

So the town's claim then is for
every year since the 41,000 but not
including that year? You're saying the
town has waived any claim to that 41,000
or the fee for that year?

MR. ALFORD: Yes.

THE COURT: And prior to that?

MR. ALFORD: Yes.

THE COURT: So the town is

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1
2 claiming whatever the appropriate fee,
3 assuming the fee structure is
4 constitutional, from what year was
5 that?

6 MR. ALFORD: That was --

7 THE COURT: '06 maybe?

8 MR. ALFORD: Yes, '06 forward.

9 THE COURT: From '06 forward?

10 MR. ALFORD: Yes, sir.

11 And those would be numbers you plug
12 in and then he would be given an
13 assessment. It would be presented to
14 him and then he has a right to go in
15 front of town council and state that
16 he's aggrieved if he doesn't like the
17 assessment.

18 THE COURT: If I understand this,
19 so you're basically you're moving to
20 conform the pleadings to the record by
21 simply removing some claims?

22 MR. ALFORD: That's correct.

23 THE COURT: So I'm guessing that
24 Mr. Taylor doesn't have an objection,
25 but I don't know.

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Jeffrey Meyers Exam (Direct) by TAYLOR

12

1 TAYLOR - J. MEYERS (EXAMINATION)

2 Carolina.

3 Q And I believe you testified to it
4 yesterday, but could you tell the Court briefly
5 where you are employed and what you do?

6 A I am the vice president and chief
7 operating officer of Kigre, Incorporated. I'm
8 also on the board of directors.

9 Q Kigre being the Defendant in this case?

10 A Correct.

11 Q Jeff, how long have you been involved
12 with the business aspect of Kigre in Hilton
13 Head?

14 A Since we moved here in 1986.

15 Q Were you the contact person at Kigre
16 who initiated the business license fee
17 application to the Town of Hilton Head
18 originally?

19 A I don't remember specifically, but I
20 would have been in 1986.

21 Q Do you know how it came to be that the
22 town took and accepted for more than 15 years
23 the base amount of tax for the business license?

24 A As I recall, when I first started
25 getting a business license, to put in --

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1 TAYLOR - J. MEYERS (EXAMINATION)

2 of a specific amount that the town alleged
3 you should pay?

4 A No. There was never -- they just said
5 they wanted to audit and they wanted my tax
6 records.

7 Q And when you refused to provide them
8 with -- with sending them the tax records, they
9 then propose that they come in and perform an
10 audit, correct?

11 A No. I had actually proposed that.

12 Q Okay?

13 A I went back and told them that legally
14 they had no right to my tax records, that they
15 had the legal right to send in town staff to
16 audit, and I would make any records available
17 that they wanted to see.

18 Q And did they in fact advise you they
19 were going to do that?

20 A Some time later they did finally advise
21 me that they wanted to. And I scheduled the day
22 within a week or so that was convenient for
23 their auditor and their town staff member to
24 come in and look at our records.

25 Q Would that have been in the

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1 TAYLOR - J. MEYERS (EXAMINATION)

2 concerning the town's request for business
3 licenses fees?

4 A I heard nothing else from the town
5 until they filed suit. I was never given any
6 assessment, any notification of assessment, any
7 dollar amount, or anything. I think it was some
8 months later, six months later or so, that they
9 came in and just filed suit.

10 Q And were you personally served with a
11 lawsuit?

12 A I was.

13 Q What then did you have to do?

14 A I then hired an attorney.

15 Q Who was that?

16 A That was Rick Wieters.

17 Q And for what purpose did you hire Mr.
18 Wieters?

19 A To defend me in the lawsuit.

20 Q Did you have to pay Mr. Wieters?

21 A Yes, I did.

22 Q Do you know how much?

23 A I do not. All of those records I have
24 turned over to my counsel.

25 Q Okay?

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1 TAYLOR - PEEPLES (DIRECT EXAMINATION) 16
2 Q Markiw?
3 A Markiw.
4 Q You know how to pronounce it?
5 A I wasn't positive.
6 Q Markiw?
7 A Markiw. I don't do that. My
8 conversations would always be with Steve. I
9 don't deal directly with staff, certainly not at
10 that level.
11 Q And you don't recall, though, having
12 any conversations with Steve Riley or let's say
13 Greg DeLoach, who I understand may have been in
14 the chain coming up about this? I am looking
15 for anything you might have remembered that
16 didn't involve Greg?
17 A I certainly don't remember that, and
18 generally speaking in an issue like this where
19 there is some potential legal dispute, it would
20 have been an executive session discussion of
21 which the town attorney presumably would have
22 been there, as well as all council and Steve
23 Riley.
24 Q Tom, did you agree with as I understand
25 the decision that was made to move forward and

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1 TAYLOR - PEEPLES (DIRECT EXAMINATION)

2 put the matter of the \$41,000 behind you since
3 the appeal was not heard?

4 A Yes, since we had dropped the ball on
5 doing what our responsibility was, it certainly
6 seemed the prudent thing to do, yes.

7 Q And as far as you know did the rest of
8 the Town Council who were in authority to make
9 such a decision agree with that?

10 A Yes. At least the majority of them. I
11 can't remember individually how that might have
12 gone, but yes.

13 Q Mayor, what is your understanding as we
14 sit here today of the town's position concerning
15 Kigre's obligation to pay the business license
16 fee?

17 A My understanding is that they need to
18 pay the business license fee based on gross
19 receipts, just like all the rest of us do.

20 Q No other decision as far as you know
21 has been made to treat Kigre in any way
22 different than anyone else?

23 A No.

24 Q Tom, are you aware of whether or not
25 any business in the town during your tenure as

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Hx Date/Time

JUL-21-2005 (THU) 10:10

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P. 003

7-21-05; 11:03AM;

BLN0100469

TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, SC 29928 Phone #: 843-341-4610 Fax #: 843-341-4637

BUSINESS LICENSE GROSS RECEIPTS FORM

2003 BUSINESS LICENSE RENEWAL

SIC

3800-IT

Local Rate Code: 05A

\$62.50 (min) +1.08/M

**All Businesses Are Subject To Be Audited*Mailing Address
KIGRE INC-0-
100 MARSHLAND RD
HILTON HEAD SC 29926

MASTERCARD/VISA ONLY--NO DEBIT CARD

Credit Card # _____ Exp Date _____

Additional Auth# required for some cards.

See back of card next to signature: _____

Signature: _____

Current Information: To correct information use the enclosed change form.

Physical Address

Owner: KIGRE INC
Business Name: KIGRE INC
Location: 100 MARSHLAND ROAD
HILTON HEAD SC 29928
Phone #: 8436815800

Type Business: MEDICAL LASER MFG

FEB 17 2003
FINANCE DEPARTMENTBusiness closed: Date of closure: _____ (Sign below and return form)
Business sold: Date of sale: _____ Sold to: _____ Phone: _____*An incomplete form will delay the issuance of your business license. Fees paid after May 31, 2003, will be subject to 5% per month penalty.***1. Calculate your fees:** Using your gross income figure and the rates printed on the above right side of this form, complete the following:

* Notice for out-of-town contractors and businesses - use only the gross income from business or profession generated in the Town of Hilton Head Island.

	Use this column	Office use only*
a. Amount of gross income, round up to next even thousand: \$ <u>N/A</u>	\$ _____	\$ _____
Example: \$250,225 - \$251 (thousands)		
b. Enter minimum payment for 1st \$5,000 gross income	\$ <u>62.50</u>	\$ _____
c. Subtract 1st \$5,000 from your gross, *	\$ _____	\$ _____
balance is \$ _____ x rate "M" (per thousand) \$ _____	\$ _____	\$ _____
* Example: \$251 - \$5 = \$246		
d. Taxi and vending permit (if applicable) number _____ x rate per unit _____	\$ _____	\$ _____
e. Application Fee, if owed (\$10.00)	\$ _____	\$ _____
f. Penalty Due (5% per month after May 31st)	\$ _____	\$ _____
g. Previous Year Unpaid License Fee Balance	\$ _____	\$ _____
h. Total Amount Due (payable to Town of Hilton Head Island)	\$ <u>62.50</u>	\$ _____

2. Fed. I.D.# 34-1126612 SSN# _____
If a retail business, give SC Retail Tax # _____

Receipt # _____

Received _____

3. Sign and return completed form with your payment.

Postmarked _____

4. You are required to notify the Business License Office of any changes or corrections immediately.

Balance Due \$ _____

Refund Due \$ _____

NOTE: This business must be in compliance with all other applicable ordinances.

I certify that the information stated above is true and correct, that the gross income is accurately reported, without any unauthorized deductions, and that all assessments and personal property taxes due and payable to the Town and County have been paid. I understand that the Town ordinance provides for penalties and license revocation for making false or fraudulent statements on this application. I consent to the release of information on this form as a part of the Business License review process.

Signature: _____

Title: K.P.Date: 2/10/03

031749

6250

21703

K-IT

144

Account #: 8482

BLN0100469

BUSINESS LICENSE GROSS RECEIPTS FORM
2004 BUSINESS LICENSE RENEWAL

TOWN OF HILTON HEAD ISLAND
One Town Center Court, Hilton Head Island, SC 29928
Phone #: 843-341-4610 Fax #: 843-341-4637

Mailing Address

-0-
KIGRE INC
100 MARSHLAND RD
HILTON HEAD SC 29928



MASTERCARD/VISA ONLY--NO DEBIT CARD

Credit Card #: _____ Exp Date: _____

Additional Auth# required for some cards.

See back of card next to signature: _____

Signature: _____

BLN#: BLN0100469
PIN#: 6873

SIC: 3800-IT
Local Rate Code: 05A

Current Information: To correct information use the enclosed change form.

Physical Address

Owner: KIGRE INC
Business Name: KIGRE INC
Location: 100 MARSHLAND ROAD
HILTON HEAD SC 29928
Phone #: 8436815800
Business Type: MEDICAL LASER MFG

Business closed: _____ Date of closure: _____ (Sign below and return form)
Business sold: _____ Date of sale: _____ Sold to: _____ Inactive for 2004? Yes _____
Contractors (off island only): If you will be "Inactive" on Hilton Head Island in 2004, please indicate above and sign below and return form.
An incomplete form will delay the issuance of your business license. Fees paid after June 1, 2004, will be subject to 5% per month penalty.

1. Calculate your fees: Using your gross income figure and the rates \$62.50(min)+1.08/M, complete the following:

* Notice for out-of-town contractors and businesses - use only the gross income from business or profession generated in the Town of Hilton Head Island.

	Use this column	*This column Office use only
a. Amount of gross income, round up to next even thousand: Example: \$250,225 - \$251 (thousands)	\$ <u>N/A</u>	\$ _____
b. Enter minimum payment for 1st \$5,000 gross income:	\$ <u>62.50</u>	\$ _____
c. Subtract 1st \$5,000 from your gross, * balance is \$ _____ x rate "M" (per thousand) \$ _____ * Example: \$251 - \$5 = \$246 x "M" rate	\$ _____	\$ _____
d. Taxi and vending permit (if applicable) number _____ x rate per unit	\$ _____	\$ _____
e. Sub-total (use this amount to determine penalty due, if applicable):	\$ _____	\$ _____
f. Penalty Due (5% per month after May 31st):	\$ _____	\$ _____
g. Previous Year Unpaid License Fee Balance (office use only):	\$ _____	\$ _____
h. Total Amount Due (payable to Town of Hilton Head Island):	\$ <u>62.50</u>	\$ <u>62.50</u>

2. Fed. I.D.# 34-1126612 SSN# _____
If a retail business, give SC Retail Tax # _____

3. Sign and return completed form with your payment.

4. You are required to notify the Business License Office of any changes or corrections immediately.

NOTE: This business must be in compliance with all other applicable ordinances.

I certify that the information stated above is true and correct, that the gross income is accurately reported, without any unauthorized deductions, and that all assessments and personal property taxes due and payable to the Town and County have been paid. I understand that the Town ordinance provides for penalties and license revocation for making false or fraudulent statements on this application. I consent to the release of information on this form as a part of the Business License review process. **All Businesses Are Subject To Be Audited**

Signature: _____

Title: V.P.

Date: 1/16/04

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CH 033843
1/28/04
62.50
a

Receipt # 0400174
Received 1-31-04
Postmarked _____
Balance Due \$ _____
Refund Due \$ _____

TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, S.C. 29928

(843) 341-4600 Fax (843) 842-7728

<http://www.hiltonheadislandsc.gov>

Thomas D. Peebles
Mayor

Kenneth S. Heitzke
Mayor Pro Tem

Council Members

Willie (Bill) Ferguson
Drew A. Laughlin
W. J. (Bill) Mottel
John Safay
George W. Williams, Jr.

Stephen G. Riley
Town Manager

March 18, 2004

KIGRE INC

-0-

100 MARSHLAND RD

HILTON HEAD SC 29926

Dear Business Owner:

In accordance with the Town of Hilton Head Island's Business License Ordinance the above named business has been randomly selected for a verification of gross income for the years 2001, 2002 and 2003.

We are requesting a copy of your Federal Income Tax Returns showing the gross receipts generated by this business for calendar years 2000, 2001 and 2002. This information will be used to ensure the correct license fee was paid. If the gross receipt figure does not equal the amount that was provided by you on your application for each of the years identified above, you must provide documentation to support the exemptions taken.

Under section 10-1-100 of the Business License Ordinance the License Inspector is given the ability to make systematic inspections of all businesses within the city to insure compliance with the Ordinance. All reported information shall not be released without permission from the licensee, except as is required by law, provided that statistics compiled by classifications or groups of businesses may be made public. All requested information will be used to ensure compliance with the Ordinance and will be treated in the manner stated.

To conduct this verification the documents are required by April 2, 2004, if for any reason the required documents cannot be provided by this date, please contact me immediately.

Please send the requested information to the following address:

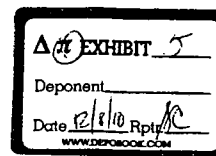
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

Attention: Steven Markiw
Deputy Finance Director
Finance Department

Feel free to contact me with any questions. You can reach me by phone at 341-4612 or by e-mail at stevenm@hiltonheadislandsc.gov.

Sincerely,

Steven Markiw
Deputy Finance Director



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Markiw Steven

From: Jeffrey A. Myers [jeffmyer@rhsnet.com]
Sent: Tuesday, March 23, 2004 2:21 PM
To: stevenm@hiltonheadislandsc.gov
Subject: Request for Audit under Section 10-1-100

Dear Mr. Markiw,

We received notice from you requesting to verify our sales subject to the Town of Hilton Head's Business License Tax on Revenue. As we do not have any revenue generated from sales inside the state of South Carolina, all of our revenue is exempted from this sales tax under US Federal laws.

Please feel free to contact me if you require more information.

Best Regards,

Jeffrey A. Myers
Kigre, Inc.
100 Marshland Rd.
Hilton Head, SC 29926

(843) 681-5800



TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, S.C. 29928

(843) 341-4600 Fax (843) 842-7728

<http://www.hiltonheadislandsc.gov>

Thomas D. Peeples
Mayor

April 6, 2004

Kenneth S. Heitzke
Mayor ProTem

Council Members

Willie (Bill) Ferguson
Drew A. Laughlin
W. J. (Bill) Mottel
John Safay
George W. Williams, Jr.

Mr. Jeffery A. Myers
Kigre, Inc.
100 Marshland Road
Hilton Head, SC 29926

Stephen G. Riley
Town Manager

Dear Mr. Myers:

I have reviewed your e-mail regarding our request for tax information to verify gross sales revenue you reported on your business license applications for the past three years. In your e-mail you state that you do not have any revenue generated from sales inside the state of South Carolina and that all of your revenue is exempted from this sales tax under federal laws. I did some research and came upon a similar case the Town had in the past that made similar assertions to yours. It was determined at that time that the assertions were not valid and the business was required to comply with the Town's licensing requirements.

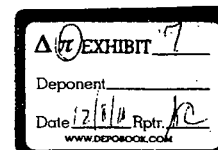
The Town does not impose a sales tax. According to the Municipal Association of South Carolina's Business License Handbook:

A business license fee is an excise tax levied on the privilege of doing business, and the value of the privilege extended is measured by the business's gross receipts. Hay v. Leonard, 212 S.C. 81, 46 S.E. 2d 653 (1948); Carter v. Linder, 303 S.C. 119, 399 S.E. 2d 423 (1991).

It is a method of requiring a business or occupation to contribute its share in support of the government "as it regards the profits or advantages of such occupations." State v. Hayne, 4 S.C. 403 (1873).

Income from a federal project is not exempt unless the work is performed on territory over which jurisdiction has been ceded by state statute to the federal government. U.S. v. County of Fresno, 429 U.S. 452; U.S. v. New Mexico, 455 U.S. 720; and Washington v. U.S., 103 S. Ct. 1344.

State or federal immunity from taxation cannot be transferred to a third party.



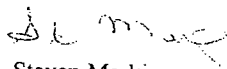
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Mr. Jeffery A. Meyers
Page 2
April 6, 2004

Based on this information the Town is requesting that you comply with the request for tax returns for the years mentioned in the correspondence you received from us. All requested information must be provided to the Town by no later than April 23, 2004. Should you choose not to comply with the request the Town will have no choice but to begin proceedings to suspend your license.

If you have any questions please feel free to contact me, my phone number is 843-341-4612.

Sincerely,

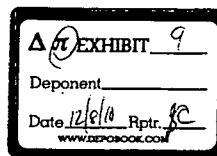


Steven Markiw
Deputy Director of Finance

Cc: Gregory D. DeLoach, Assistant Town Manager, Legal Department Director
Shirley A. Freeman, Director of Finance

Markiw Steven

n: Jeffrey A. Myers [jeffmyer@rhsnet.com]
Sent: Thursday, April 08, 2004 2:54 PM
To: stevenm@hiltonheadislandsc.gov
Subject: Additional Information



Dear Mr. Markiw,

Here is some additional information that you may find useful. If we are going to go through with this, let's do it according to the law. According to your letter of April 6, you threaten to initiate proceedings to revoke our business license if we do not submit our tax returns by April 23. I submit that the Town has no legal authority to take such actions at that time. There is nothing in the Town Ordinances that requires Kigre to submit anything to the Town by April 23, 2004 (Sec 10-1-100). The Town may request an audit with 24 hour notice. To date, the Town has not scheduled any appointment to review our records. We will be glad you have a Town representative visit our facility. We will allow the Town inspector to examine any pertinent documents requested.

At the Town's discretion, it may then assess additional taxes (Please note that even the ordinances call it a "License Tax"). This amount will be paid immediately under protest. At that time we will make a written appeal to the Town Council.

Town Council is then required to hear the appeal within 30 days in an open meeting. During this appeal, we intend to give a complete defense. This will include relevant case law and the statements made by an expert at the SC Dept. of Revenue that the code as written will be struck down in Federal Court.

At that point, if council denies our appeal, we file the class action suit in Federal Court as described to you earlier.

If the Town Council grants our appeal we will lose standing to sue. However, I'm sure that the information on case law and the State's own opinion will lead to the filing of the suit by a third party. The Town will be forced to repay 3 years of non-resident business license taxes, pay attorney fees for both sides, rewrite the business license ordinances, etc.

The class action case will be taken on a contingency basis, so Kigre's financial risk in this matter is essentially zero.

We will leave it to the Town to determine its financial risk v. reward.

Best Regards,

Jeff Myers
Kigre, Inc.

PAYMENT MUST ACCOMPANY APPLICATION
(Cash, Check, MasterCard, or Visa Accepted)

INSTRUCTIONS ON REVERSE

LICENSE DUE MAY 31ST
5% PER MONTH
PENALTY IS APPLIED
ON JUNE 1ST

TOWN OF HILTON HEAD ISLAND
REVENUE COLLECTION DIVISION
One Town Center Court
Hilton Head Island, SC 29928
(843) 341-4610 FAX (843) 341-4637
www.hiltonheadislandsc.gov

FOR THE LICENSE YEAR 2005
THE BUSINESS LICENSE IS MAILED AFTER APPROVAL

IF BUSINESS IS PERMITTED OR LICENSED BY THE STATE OF SOUTH CAROLINA, A PHOTOCOPY OF THE LICENSE
OR PERMIT MUST ACCOMPANY THE APPLICATION. ADDITIONAL DOCUMENTATION MAY BE REQUIRED BY THE
REVENUE COLLECTOR. ALL APPLICABLE SPACES MUST BE COMPLETE BEFORE THE LICENSE WILL BE ISSUED.

D/B/A or
TRADE NAME: KIGRE INC
ATTENTION: -0-
MAILING ADDRESS: 100 MARSHLAND RD
CITY, STATE, ZIP: HILTON HEAD ISLAND SC 29928

POSTED

RECEIPT NO.	
ID#	Processed By
Date	
☐ RENEW ☐ NEW	HOSP FEE: YES NO
ACCOMMODATIONS TAX: YES NO	CLASS: YES NO
PAYMENT AMOUNT	SIC:
FEE DUE/REFUND	
PENALTY DUE/REFUND	
COMPLETE ONLY IF PAYMENT BY CREDIT CARD:	
Card #	
Signature	
Exp. Date	
☐ VISA ☐ MC	
NEW LICENSE MUST COMPLETE NEW APPLICATION	
AND NOT UPD OLD LICENSES IN NEW YEAR	

EXHIBIT 10
Deponent
Date 7/18/05 Rpt. JC
www.hiltonheadsc.com

Base Fee/Min - Additional Fee/M \$62.50(min)+1.08/M PIN # 6873 BLN0100469 / 8482 3800-IT / 05A
LICENSE FEE: Calculate using your gross income as reported to the IRS or estimate if a New Business.

a. Amount of gross income as reported	Use this column
b. Gross Income rounded up to next even thousand	\$ 177A
c. Base fee for 1st \$5,000 gross income: (See Label Above and Refer to Example on Back)	\$ 62.50
d. Number of Thousands over \$5,000: _____ x rate per thousand (above)	
e. Subtotal (use this amount to determine penalty due, if applicable)	
f. Taxi Decals (\$25.00 per sticker/vehicle)	
g. Pool or billiard table, foosball, skeeball machine or other game table (\$5.00 per sticker)	
h. Electrical vending machine or any machine selling more than 1 item per machine OR amusement machine: Video Games, Jukebox, Pinball, etc. (\$12.50 per sticker)	
i. Penalty Due (5% per month after May 31st)	
j. Total Amount Due (payable to Town Of Hilton Head Island)	\$ 62.50

LEGAL NAME OF BUSINESS ENTITY: _____ and LEGAL FORM OF ENTITY: _____
PERSON RESPONSIBLE FOR CONDUCT OF BUSINESS: _____ and TITLE OF PERSON: _____
DESCRIBE BUSINESS: _____ BUSINESS PH# _____ ALT PH# _____
PHYSICAL ADDRESS: _____ LANDLORD NAME _____ PH # _____
PHYSICAL LOCATION: _____ IN TOWN _____ IN COUNTY _____ OUT OF COUNTY EST. START DATE: _____ IS BUSINESS A HOME OCCUPATION? YES NO
Has the building space been vacant for 6 months or more? YES NO Is this a change in the type of business for this building space? YES NO
Will there be any renovation or construction at this site? YES NO Will you want to erect a new sign? YES NO
SSN # _____ FED EIN # 34-1126612 SC RETAIL IC # _____ CLOSED or SOLD and DATE _____
CONTRACTOR: _____ STATE LIC# _____ GROUP # _____ EXP DATE _____
E-MAIL: _____ ACCOUNTANT/BOOKKEEPER _____ PH # _____
BY MY SIGNATURE BELOW, I AFFIRM UNDER OATH THAT ALL OF THE INFORMATION STATED ABOVE IS THE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE
AND THAT I HAVE THE AUTHORITY TO MAKE THIS APPLICATION. I AFFIRM UNDER OATH THAT ALL ASSESSMENTS, TAXES, FEES, AND PERSONAL PROPERTY
TAXES DUE AND PAYABLE TO THE TOWN AND COUNTY HAVE BEEN PAID. I AFFIRM UNDER OATH THAT I WILL MAINTAIN ACCURATE CONTACT INFORMATION FOR
RESPONSIBLE PERSONS ON FILE WITH THE TOWN AND COUNTY. I UNDERSTAND THAT TOWN ORDINANCE PROVIDES FOR PENALTIES AND LICENSE REVOCATION
FOR MAKING FALSIFYING STATEMENTS ON THIS APPLICATION.
APPLICANT SIGNATURE: _____ PRINTED NAME: JEFFREY A. MYERS
Final Approval: _____ TITLE: V.P. DATE: 7/10/05
Hosp # _____

	KIGRE, INC. 100 MARSHLAND RD. HILTON HEAD ISLAND, SC 29928	THE NATIONAL BANK OF SOUTH CAROLINA Hilton Head, S.C. 29928 67-88 0032	Check No: 036589 36589	DATE: 08/17/05	AMOUNT: *****62.50
PAY TO THE ORDER OF: Town of Hilton Head One Town Center Court Hilton Head Island SC 29928	NON-NEGO				
KIGRE, INC.					
KIGRE120 151					

Rx date/time AUG-02-2005(TUE) 14:21
AUG-01-2004 03:27 TO: JF HILTON HEAD

98433414637

98433414637 P. 002
P. 02

TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, S.C. 29928

(843) 341-4600 Fax (843) 842-7728

<http://www.hiltonheadislandsc.gov>

August 2, 2005

Thomas D. Peoples
Mayor

Kenneth S. Heitzke
Mayor ProTem

Council Members

Willie (Bill) Ferguson
Drew A. Laughlin
W. J. (Bill) Mottel
John Safay
George W. Williams, Jr.

Stephen G. Riley
Town Manager

Mr. Jeffrey Myers
Kigre Inc.
100 Marshland Road
Hilton Head Island, SC 29926

RE: Bln0100469

Dear Mr. Myers:

In accordance with the Town of Hilton Head Island's Business License Ordinance the above named business has been selected for a verification of gross income for the years 2002, 2003 and 2004.

We are requesting a copy of your Federal Income Tax Returns showing the gross receipts generated by this business for calendar years 2001, 2002 and 2003. This information will be used to ensure the correct license fee was paid. If the gross receipt figure does not equal the amount that was provided by you on your application for each of the years identified above, you must provide documentation to support the exemptions taken.

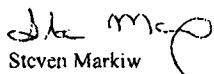
Under section 10-1-100 of the Business License Ordinance the License Inspector is given the ability to make systematic inspections of all businesses within the city to insure compliance with the Ordinance. All reported information shall not be released without permission from the licensee, except as is required by law, provided that statistics compiled by classifications or groups of businesses may be made public. All requested information will be used to ensure compliance with the Ordinance and will be treated in the manner stated.

To conduct this verification the documents are required by August 16, 2005, if for any reason the required documents cannot be provided by this date, please contact us immediately.

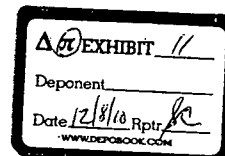
Please send the requested information to the following address:

Revenue Collections
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

Feel free to contact Steven Markiw at (843)341-4612.


Steven Markiw
Deputy Finance Director

CC: Greg Alford





Chapter 1

BUSINESS AND PROFESSIONAL LICENSES

Sec. 10-1-10. License required.

Every person engaged or intending to engage in any calling, business, occupation or profession listed in the rate classification index portion of this chapter, in whole or in part, within the limits of the town, is required to pay an annual license fee and obtain a business license as herein provided.

(Ord. No. 83-5, 9-26-83)

Sec. 10-1-20. Definitions.

The following words, terms and phrases, when used in this chapter shall have the meaning ascribed herein:

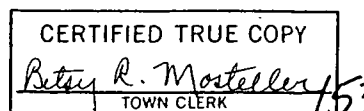
- (1) *Business*: A calling, occupation, profession or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly. A charitable organization shall be deemed a business unless the entire proceeds of its operation are devoted to charitable purposes. In addition to the above-described activities constituting doing business in the town, an individual shall be deemed to be in "business" if that individual owns and rents more than one (1) residential unit within the town. This applies to both short-term and long-term rentals.
- (2) *Classification*: That division of businesses by major groups subject to the same license rate, as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationship of services, or other basis deemed appropriate by the town council.
- (3) *Gross income*: The total revenue of a business, received or accrued, for one fiscal year collected or to be collected by reason of the conduct of business within the town, excepting therefrom income from business done wholly outside of the town on which a license tax is paid to some other municipality or a county and fully reported to the town. Gross income from interstate commerce shall be included in the gross income for every business subject to a business license fee. The gross income for business license purposes shall conform to the gross income reported to the Internal Revenue Service, the South Carolina Department of Revenue and Taxation, or the South Carolina Insurance Commission. In the case of brokers, or agents, gross income shall mean gross commissions retained. Gross receipts for insurance companies shall mean gross premiums collected.
- (4) *License inspector*: The town employee(s), or other individual(s), designated by the town manager to perform the duties set forth herein.
- (5) *Person*: Any individual, firm, partnership, cooperative nonprofit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a business in the absence of the principals. A governmental entity is not a "person" as defined above.

(Ord. No. 83-5, 9-26-83; Ord. No. 94-28, § 1, 10-18-94; Ord. No. 2006-15, § 1, 8-1-06)

Sec. 10-1-30. Purpose and duration.

The business license levied by this chapter is for the purpose of providing such regulation as may be required by the businesses subject thereto and for the purpose of raising revenue for the general fund through a privilege fee. Each license shall be issued for one (1) calendar year and shall expire on December 31st. The provisions of this chapter and the rates herein shall remain in effect from year to year until amended by council.

(Ord. No. 83-5, 9-26-83)



Sec. 10-1-40. License fee.

The required license fee shall be paid for each business subject hereto according to the applicable rate classification on or before May 31st in each year. A separate license shall be required for each place of business and for each classification of business conducted at one (1) place. If gross income cannot be separated for classifications at one (1) location, the license fee shall be computed on the combined gross income for the classification requiring the highest rate. A license fee based on gross income shall be computed on the gross income for the preceding calendar or fiscal year, and on a twelve-month projected income based on the monthly average for a business in operation for less than one (1) year. The fee for a new business shall be computed on the estimated probable gross income stated in the license application for the balance of the calendar year. (Ord. No. 90-28, § 1, 10-1-90; Ord. No. 91-19, § 1, 11-18-91; Ord. No. 94-11, § 1, 5-2-94; Ord. No. 94-28, § 2, 10-18-94)

State law reference—Authority to levy business license tax, S.C. Code 1976, § 5-7-30.

Sec. 10-1-50. Registration required.

(a) The owner, agent or legal representative of every business subject to this chapter, whether listed in the classification index or not, shall register the business and make application for a business license on or before May 31st of each year, except that a new business shall be required to have a business license prior to operation within the town. Application shall be on a form provided by the license inspector which shall contain the social security number and/or the federal employer's identification number, the business name as reported on the South Carolina income tax return, and all other information about the applicant and the business deemed necessary to carry out the purposes of this chapter by the license inspector. The applicant shall certify that the information given in the application is true, that the gross income is accurately reported, or estimated for a new business, without any unauthorized deductions, and that all assessments and personal property taxes due and payable to the town have been paid. With regard to registration of insurance companies and bro-

kers for nonadmitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the town and is empowered to utilize all procedures and actions authorized by ordinance or state law.

(b) Every business, which either 1) acts as an agent, broker or representative for any other person, or 2) has contractual arrangements with persons, who are acting as independent contractors for it, shall supply the following information. The information required shall include the name, address, telephone number, and estimated payments or premiums due to that person. Such information shall be supplied upon the request of the license inspector and shall be a condition precedent to the obtainment of the license required under this chapter.

(c) Elimination of commercial waste. On the business license application form, each business shall fully disclose its method of solid waste handling and shall present proof of such solid waste disposal before a license is granted.

(Ord. No. 83-5, 9-26-83; Ord. No. 86-6, § 1, 4-18-88; Ord. No. 90-28, § 2, 10-1-90; Ord. No. 94-28, § 3, 10-18-94; Ord. No. 99-17, § 1, 6-1-99)

Sec. 10-1-60. Deductions and exemptions.

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

state law, and no person shall be relieved of the liability for the payment of any other tax by reason of the application of this chapter.
(Ord. No. 83-5, 9-26-83; Ord. No. 94-28, § 4, 10-18-94)

Sec. 10-1-70. False application unlawful.

It shall be unlawful for any person subject to the provisions of this chapter to make a false application for a business license, or to give or file, or direct the giving or filing, of any false information with respect to the license or fee required by this chapter.
(Ord. No. 83-5, 9-26-83)

Sec. 10-1-80. Display and transfer.

All persons shall display the license issued to them on the original form provided by the license inspector in a conspicuous place in the business establishment at the address shown on the license. A transient or nonresident shall carry the license upon his person or in a vehicle used in the business readily available for inspection by any authorized agent of the town. The Town Revenue and Collection Office must be notified in writing prior to any change in location, name or ownership. Failure to obtain the approval of the town prior to any change shall invalidate the license and subject the licensee to prosecution for doing business without a license. A business license shall not be transferable and a transfer of ownership shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on old business income, prorated for the balance of the calendar year.
(Ord. No. 83-5, 9-26-83; Ord. No. 05-30, § 1, 12-6-05)

Sec. 10-1-90. Administration of chapter.

The license inspector shall administer the provisions of this chapter, collect license fees, issue licenses, make or initiate investigations and audits to insure compliance, initiate denial or revocation procedures, report violations to the town council, or the appropriate law enforcement agency, and assist in prosecution of violators, produce forms, make reasonable regulations relating to

the administration of this chapter, and perform such other duties as may be assigned by the town manager. With regard to the administration of this chapter as it pertains to license fees from insurance companies and brokers for nonadmitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the town and is empowered to utilize all procedures and actions authorized by ordinance or state law.

(Ord. No. 83-5, 9-26-83; Ord. No. 94-28, § 5, 10-18-94)

Sec. 10-1-100. Inspection and audits.

For the purpose of enforcing the provisions of this chapter the license inspector or other authorized agent of the town is empowered to enter upon the premises of any person subject to this chapter to make inspections, examine and audit books and records, and it shall be unlawful for any person to fail or refuse to make available the necessary books and records during normal business hours with twenty-four (24) hours' prior written notice. In the event an audit or inspection reveals that false information has been filed by the licensee, the costs of the audit shall be added to the correct license fee and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of license fee shall constitute a separate offense. The license inspector may make systematic inspections of all businesses within the town to ensure compliance with this chapter. Records of inspections and audits shall not be deemed public records, the license inspector shall not release the reported gross income of any person by name without permission of the licensee, provided that statistics compiled by classifications may be made public. With regard to inspections and audits of insurance companies and brokers for nonadmitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the town and is empowered to utilize all procedures and actions authorized by ordinance or state law.

(Ord. No. 83-5, 9-26-83; Ord. No. 94-28, § 6, 10-18-94)

Sec. 10-1-110. Assessments.

When any person shall have failed to obtain a business license or to furnish the information

required by this chapter or the license inspector, the license inspector shall proceed to examine the records of the business or any other available records as may be appropriate and to conduct investigations and statistical surveys as he may deem appropriate to assess a license tax and penalties as provided herein. A notice of assessment shall be served by certified mail and an application for adjustment of the assessment may be made to the license inspector within five (5) days after the notice is mailed or the assessment will become final. The license inspector shall establish by regulation the procedure for hearing an application for adjustment of assessment and issuing a notice of final assessment. A final assessment may be appealed to town council only by payment in full of the assessment under protest within five (5) days and the filing of written notice of appeal within ten (10) days after payment pursuant to the provisions of this chapter relating to appeals to town council. With regard to assessments of insurance companies and brokers for nonadmitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the town and is empowered to utilize all procedures and actions authorized by ordinance or state law.
(Ord. No. 83-5, 9-26-83; Ord. No. 94-28, § 7, 10-18-94)

Sec. 10-1-120. Delinquent license fees.

For nonpayment of all or any part of the correct license fee, the license inspector shall levy and collect a late penalty of five (5) percent of the unpaid fee for each month or portion thereof after the due date until paid. If any license fee shall remain unpaid for sixty (60) days after its due date, the license inspector shall issue an execution which shall constitute a lien upon the property of the licensee for the tax, penalties and costs of collection, and he shall proceed to collect in the same manner as prescribed by law for the collection of other taxes. With regard to the collection of delinquent business license fees from insurance companies and brokers for nonadmitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the town and is empowered to utilize all procedures and actions authorized by ordinance

or state law. Upon identification of a delinquent account the director of finance or his/her designee has the authority to establish payment plans, revenue procedures, and reduce or waive penalties based the revenue procedures as adopted with this amendment.

(Ord. No. 83-5, 9-26-83; Ord. No. 94-28, § 8, 10-18-94; Ord. No. 04-19, § 1, 4-20-04)

Sec. 10-1-130. Notices.

The license inspector may but shall not be required to serve or mail written notices that license fees are due, but he shall publish a notice of the due date in a newspaper of general circulation within the town three (3) times prior to the due date in each year. With regard to providing notice to insurance companies and brokers for nonadmitted insurance companies that license fees are due, the Municipal Association of South Carolina is designated as the exclusive agent of the town and is empowered to utilize all procedures and actions authorized by ordinance or state law.

(Ord. No. 83-5, 9-26-83; Ord. No. 94-28, § 9, 10-18-94)

Sec. 10-1-140. Denial of license.

The license inspector shall deny a license to an applicant when the application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact, does not comply with all other applicable town ordinances, or when the activity for which a license is sought is unlawful or constitutes a public nuisance. A decision of the license inspector shall be subject to appeal to town council as herein provided. Denial shall be written with reasons stated.

(Ord. No. 83-5, 9-26-83; Ord. No. 90-28, § 3, 10-1-90)

Sec. 10-1-150. Suspension or revocation of license.

When the license inspector determines that:

- (1) A license has been mistakenly or improperly issued or issued contrary to law;

- (2) A licensee has breached any condition upon which his license was issued or has failed to comply with the provisions of this chapter;
- (3) A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application;
- (4) A licensee has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude, or an unlawful sale of merchandise or prohibited goods;
- (5) A licensee has engaged in an unlawful activity or nuisance related to the business; or
- (6) The business is not in compliance with all other applicable town ordinances;

the license inspector shall give written notice to the licensee or the person in control of the business within the town by personal service or certified mail that the license is suspended pending a hearing before town council for the purpose of determining whether the license should be revoked. The notice shall state the time and place at which the hearing is to be held, which shall be at a regular or special council meeting within thirty (30) days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this chapter.

(Ord. No. 83-5, 9-26-83; Ord. No. 90-28, § 4, 10-1-90)

Sec. 10-1-160. Appeals to town council.

(a) Any person aggrieved by a final assessment or a denial of a business license by the license inspector may appeal the decision to town council by written request stating the reasons therefor filed with the town clerk within ten (10) days after the payment of the assessment under protest or notice of denial is received.

(b) An appeal or a hearing on revocation shall be held by town council within thirty (30) days after receipt of a request for appeal or service of

notice of suspension at a regular or special meeting of which the applicant or licensee has been given written notice. At the hearing all parties shall have the right to be represented by counsel, to present testimony and evidence and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by town council shall govern the hearing. Town council shall by majority vote of members present render a written decision based on findings of fact and the application of the standards herein which shall be served upon all parties or their representatives and shall be final unless appealed to a court of competent jurisdiction within ten (10) days after service.

(c) No person shall be subject to prosecution for doing business without a license until the expiration of ten (10) days after written notice of denial or revocation which is not appealed or until after final judgment of court upholding denial or revocation.

(Ord. No. 83-5, 9-26-83)

Sec. 10-1-170. Confidentiality and violations.

(a) *Confidentiality.* Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any official or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this ordinance. Nothing in this section shall be construed to prevent the identification of particular reports or returns.

(b) *Violations.* Any persons violating any provision of this chapter shall be subject to punishment under the general penalty provisions of the Town Code upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent penalties and costs provided for herein.

(Ord. No. 83-5, 9-26-83; Ord. No. 97-38, § 1, 12-16-97)

Sec. 10-1-180. Separability and effective date.

(a) *Separability.* A determination that any portion of this ordinance is invalid or unenforceable shall not affect the remaining portions.

(b) *Effective date.* The business license tax for the town shall be effective as of October 1, 1983. For the purpose of the balance of the 1983 calendar year, the license tax shall be calculated on the basis of the gross revenues of the business for the business's 1982 fiscal or calendar year, as appropriate, prorated on the basis of three-twelfths year. For persons not in business for a full tax year ending in 1982, the gross revenues required to be prorated shall be estimated in the same manner, as provided in section 10-1-40; provided, however, the pro rata license fee due for 1983 by each business shall not be lower than the stated annual minimum fee for the business's category. Said business license tax shall be implemented on an annual basis for calendar year 1984 and all subsequent years. The required due date for the payment of all fees and the display of the license

for 1983 shall be December 10, 1983. In all subsequent years the due date shall be as specified in section 10-1-40.

(Ord. No. 83-5, 9-26-83; Ord. No. 97-38, § 2, 12-16-97)

Sec. 10-1-190. Classification rates, schedules.*

The license fee for each class of business shall be computed in accordance with the following rates and with the Standard Industrial Classification (SIC) Manual 1987, except in cases of conflict between the provisions of the SIC and the Town Code, the Town Code provisions shall prevail.

*Editor's note—For the 1984 calendar year, Ordinance No. 84-6 established reduced rates for many classes. The following rates are applicable for 1983, 1985, and subsequent years, inclusive, unless amended.

Class	Income: 0—\$5,000	All over \$5,000
	Up to \$5,000 Minimum	Rate per thousand or fraction thereof
1	\$37.50	\$.60
2	43.75	.72
3	50.00	.84
4	56.25	.96
5	62.50	1.08
6	68.75	1.20
7	75.00	1.32

See Individual Business in Class 8.

Nonresident business rate:

Unless otherwise specifically provided, all rates shall be doubled for businesses located in county and itinerants having no fixed place of business within the town and triple for businesses located out of county.

The following alternate rates shall apply to all classifications of manufacturers engaged in interstate commerce which elect to pay based on total gross income from all sources:

Income	Base	Rate per \$1,000 or fraction
First \$100,000.00	\$62.50 plus	\$.60
Over \$100,000.00		.50

CLASS 8 RATES

(Each SIC number designates a separate subclassification. The businesses in this section are treated as separate and individual subclasses due to provisions of State law, regulatory requirements, service burdens, tax equalization considerations, etc., which are deemed to be sufficient to require individu-

ally determined rates. Nonresident rates do not apply except where indicated.)

SIC	Income	Minimum	Per \$1,000 or fraction
15, 16, 17			
Contractors, construction, all types:			
A. Having place of business within the town			
First	\$5,000.00	\$ 43.75	
Over	5,000.00		\$0.72
B. Having place of business in county, but not in the town			
First	5,000.00	87.50	
Over	5,000.00		1.44
C. Having no place of business within the town or county			
First	5,000.00	131.25	
Over	5,000.00		2.16

For Type "C" contractors, the total fee for the full amount of the contract shall be paid prior to commencement of work and shall entitle contractor to complete the job without regard to the normal license expiration date. A trailer at the construction site, a home office or structure in which the contractor resides is not a permanent place of business under this ordinance.

No contractor shall be issued a business license until all state and town qualification examination and trade license requirements have been met. Each contractor shall post a sign in plain view on each job identifying the contractor with the job.

Subcontractors shall be licensed on the same basis as general or prime contractors for the same job, and no deductions shall be made by a general or prime contractor for value of work performed by subcontractors.

No contractor shall be issued a business license until all performance and indemnity bonds required by the town building code have been filed and approved. Zoning permits must be obtained when required by the town zoning ordinance.

Each prime contractor shall file with the license inspector a list of subcontractors furnishing labor or materials for each project.

SIC	License Fee
40 Railroad Companies-(See Code section 12-23-210)	(Compute)
41 Passenger transportation, on gross income	Rate Class 7
Plus each vehicle per year	\$25.00

(a) Permission to use streets required: It shall be unlawful for any person to construct, install, maintain or operate in, on, above or under any street or public place under control of the Town of Hilton Head Island any line, pipe, cable, pole, structure or facility for utilities, communications, cablevision or other purposes without a consent agreement or franchise agreement issued by the Town Council of the Town of Hilton Head Island by ordinance which prescribes the term, fees, and conditions for use.

(b) Consent, franchise, or business license fee required: The annual fee for use of streets or public places authorized by a consent agreement or franchise agreement shall be set by the ordinance approving the agreement and shall be based on gross revenues derived from activities in the town, the length of lines installed in streets and public places, or other formula deemed appropriate by Town Council. No consent fee or franchise fee shall be construed to be in lieu of a business license tax based on gross revenue unless specifically provided by ordinance. Credits for business license taxed paid may be applied

to fees set by ordinance granting consent or a franchise when specifically authorized by the ordinance.

481 Telephone companies not using public streets under franchise or consent:

Establishments providing local or long distance telephone communications as described in Standard Industrial Classification (SIC) group 481, including voice and data communications; radiotelephone services; cellular telephone services; paging and beeper services; leasing lines, fiber optic cables, microwave or satellite facilities; selling access and reselling use of facilities or methods to others shall pay an annual business license tax of one (1) percent of gross receipts from all communications activities conducted in the town and for communications services billed to customers located in the town on which a business license tax has not been paid to another municipality.

4841 Television, cable or pay, basic fee..... Consent or franchise

491—493 Electrical and gas companies

		Consent or franchise		
		Income	Minimum	Per \$1,000 or fraction
5093	Junk or scrap dealers			
	First	\$5,000.00	\$ 93.75	
	Over	5,000.00		\$1.44
55	Automotive, motor vehicle dealers and farm machinery, retail			
	First	\$5,000.00	\$43.75	PLUS
	Over	\$5,000.00		\$0.72
One sales lot not more than 400 feet from the main showroom may be operated under this license provided that proceeds from sales at the lot are included in gross receipts at the main office when both are operated under the same name and ownership.				
Gross receipts from this classification shall include full sales price without deduction for trade-ins.				
Dealer transfers shall not be included in gross receipts.				
5813	Drinking places (alcoholic beverages, beer and wine consumed on premises)	5,000.00	93.75	
		5,000.00		1.44
5932	Pawnbrokers, all types			
	First	5,000.00	93.75	
	Over	5,000.00		1.44
5962	Vending machines and all other coin-operated automatic merchandising machines (Not included in business gross income)			
	First	5,000.00	93.75	
	Over	5,000.00		1.44
5963	Peddlers, solicitors, canvassers, door-to-door sales, direct retail sales of merchandise. (Non-resident rates apply).			
A.	Regular activities (more than two sale periods of more than three days each per year)			
	First	\$5,000.00	\$87.50	PLUS
	Over	5,000.00		\$1.44

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B. Seasonal activities (not more than two sale periods of more than three days each year, separate license required for each sale period)			
First	\$5,000.00	\$43.75	PLUS
Over	5,000.00		\$0.72

5999 Promoter/Coordinator of Arts and Crafts Shows			
First	\$5,000.00	\$43.75	
Over	5,000.00		\$0.72
Plus, for each participating vendor		5.00	

This shall be a special license issued only for special arts and crafts events sanctioned as such by the Town of Hilton Head Island and shall be valid solely for the time period and the specific location stated thereon. This special license must be applied for and obtained before commencement of the event for which it is to be used.

It is the responsibility of the special events promoter or coordinator to ensure that all participating vendors are included in this special arts and crafts license.

Each participating vendor must be the creator of the art or craft which is to be sold. This includes any person who desires to engage in the business of offering for public sale flower arrangements or any hand-crafted item produced in the home. Goods purchased for sale or resale cannot be vended on this special license.

Inspections shall be made on site during the sale.

Other merchants and vendors at such special events, not qualifying for this special license under arts and crafts, shall be required to obtain a regular business license.

Merchants and vendors now operating under valid licenses shall be allowed to operate on those licenses, incorporating such gross sales in the annual gross sales to be reported on the succeeding year's application.

63 Insurance companies:

Except as to fire insurance, "gross premiums" means gross premiums collected (1) on policies on property or risks located in the town, and (2) on policies, wherever the insured property or risk is located, that are sold, solicited, negotiated, taken, transmitted, received, delivered, applied for, produced or serviced by the insurance company's office located in the town or by the insurance company's employee doing business within the town or by the office of the insurance company's licensed or appointed producer (agent) located in the town or by the insurance company's licensed or appointed producer (agent) doing business within the town. As to fire insurance, "gross premiums" means gross premiums (1) collected in the town, and/or (2) realized from risks located within the limited of the town.

Gross premiums shall include new and renewal business without deductions for any dividend, credit, return premiums, or deposit.

Solicitation for insurance, receiving or transmitting an application or policy, examination of a risk, collection or transmitting of a premium, adjusting a claim, delivering a benefit, or doing any act in connection with a policy or claim shall constitute doing business within the town whether or not an office is maintained therein. A premium collected on property or a risk located within the town shall be deemed to have been collected within the town. Declining rates shall not apply.

	<i>Rates</i>
631—632 Life, health and accident	0.75% of gross premiums
633—635 Fire and casualty	2% of gross premiums
636— Title insurance	2% of gross premiums
6411 Brokers for fire and casualty insurers—Nonadmitted: As to brokers for non-admitted fire and casualty insurers, "gross premiums" means gross premiums collected by or for fire and casualty insurers not licensed in South Carolina (1) on policies on property or risks located in the town and/or (2) on policies, wherever the insured property or risk is located, that are sold, solicited, negotiated, taken, transmitted, received, delivered, applied for, produced or serviced by a broker located in or doing business within the town. Brokers shall provide, with their payment of the tax, a copy of the report required by the state department of insurance showing the locations of the property or risks insured.	2% of gross premiums
(Premiums for non-admitted businesses are not included in broker's gross commissions for other businesses. Declining rates shall not apply.)	

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

Any exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

The agreement with the Municipal Association of South Carolina, pursuant to S.C. Code § 5-7-300, for collection of current and delinquent license taxes from insurance companies and brokers for non-admitted fire and casualty insurers shall continue in effect.

	Income	Minimum	Per \$1,000 or fraction
7993 Amusement machines, coin-operated			
A. Music machines, kiddie rides, and amusement machines licensed pursuant to S.C. Code section 12-21-2720(A)(1) and (A)(2)			
1. Operator of machine (Section 12-21-2746).....			12.50 per machine, PLUS \$12.50 business license for operation of all machines (not on gross income)
2. Distributor selling or leasing machines (not licensed by the state as an operator pursuant to section 12-21-2728): (Non-resident rates apply.)			
First	5,000.00	187.50	PLUS
Over	5,000.00		2.88
B. Video poker and amusement machines license pursuant to S.C. Code Ann. section 12-21-2720(A)(3):			
1. Operator of machine (Section 12-21-2720(B))			\$180.00 per machine, PLUS \$12.50 business license (not on gross income)
2. Distributor selling or leasing machines (not licensed by the state as an operator pursuant to section 12-21-2728): (Non-resident rates apply.)			
First	\$5,000.00	\$187.50	PLUS
Over	5,000.00		2.88
7999 Billiard or pool tables, all types			
First	5,000.00	93.75	
Over	5,000.00		1.44
Additional license per table		5.00	
7999 Carnivals and circuses:			
First	5,000.00	187.50	
Over	5,000.00		5.85

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RATE CLASSIFICATION INDEX

<i>SIC</i>	<i>Rate Class 1 Business Group</i>
47	Travel agencies
53	General merchandise stores
54	Food stores
553—554	Automotive supply stores and gasoline service stations
56	Apparel and accessory stores
58	Eating places
86	Membership organizations
<i>SIC</i>	<i>Rate Class 2 Business Group</i>
01	Agricultural production—Crops
02	Agricultural production—Animals
20	Food and kindred products
22	Textile mill products
23	Apparel and other finished products from fabrics and similar materials
25	Furniture and fixtures
30	Rubber and miscellaneous plastic products
31	Leather and leather products
32	Stone, clay, glass and concrete products
33	Primary metal industries
34	Fabricated and metal products (except machinery and transportation equipment)
37	Transportation equipment
39	Miscellaneous manufacturing industries
50	Wholesale trade—Durable goods
51	Wholesale trade—Nondurable goods
52	Building materials, hardware, garden supply and mobile home dealers
57	Furniture, home furnishings and equipment stores
70	Hotels, rooming houses, camps and other lodging
<i>SIC</i>	<i>Rate Class 3 Business Group</i>
07	Agricultural service
24	Lumber and wood products (except furniture)
26	Paper and allied products
29	Petroleum refining and related industries
36	Electrical and electronic machinery, equipment and supplies
42	Motor freight transportation and warehousing
44	Water transportation
45	Transportation by air
59	Miscellaneous retail (except vending machines, peddlers and pawnbrokers)
61	Credit agencies other than banks
75	Automotive repair, services and garages
78	Motion pictures
79	Amusement and recreation services (except motion pictures, amusement machines and carnivals)

89	Miscellaneous services	
<i>SIC</i>		<i>Rate Class 4</i> <i>Business Group</i>
27	Printing, publishing and allied products	
28	Chemicals and allied products	
35	Machinery, except electrical	
48	Communication (except telephone)	
76	Miscellaneous repair services	
<i>SIC</i>		<i>Rate Class 5</i> <i>Business Group</i>
09	Fishing, hunting and trapping	
14	Mining—Minerals	
38	Measuring, analyzing and controlling instruments; photographic, medical and optical goods; watches and clocks	
41	Local and suburban transit and interurban highway passenger transportation	
62	Security and commodity brokers, dealers—Exchanges and services	
73	Business services	
<i>SIC</i>		<i>Rate Class 6</i> <i>Business Group</i>
49	Sanitary services	
72	Personal services	
<i>SIC</i>		<i>Rate Class 7</i> <i>Business Group</i>
08	Forestry	
10	Mining—Metals	
21	Tobacco manufacture	
46	Pipelines (except natural gas)	
64	Insurance agents, brokers and service	
65	Real estate	
67	Holding and other investment offices	
80	Health services	
81	Legal services	
82	Educational services	
83	Social services	
87	Engineering, accounting, research, management and related services	
<i>SIC</i>		<i>Rate Class 8</i> <i>Business Group</i>
15, 16, 17	Contractors, construction, all types	
40	Railroad companies	
4121	Taxicabs	
481	Telephone communication	
491—493	Electric and gas services	
55	Automotive and motor vehicle dealers and farm machinery, retail (except auto supply store-553 and gasoline service stations-554)	

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5093	Junk and scrap dealers
5813	Drinking places (alcoholic beverages)
5932	Pawnbrokers
5962	Vending machines (automatic merchandising)
5963	Peddlers, itinerant
63	Insurance companies
6411	Brokers for nonadmitted insurers
7993	Amusement machines, coin-operated
7999	Billiard or pool tables, all types
7999	Carnivals and circuses
(Ord. No. 83-5, 9-26-83; Ord. No. 89-11, § 1, 6-5-89; Ord. No. 90-20, § 1, 6-25-90; Ord. No. 90-28, § 5, 10-1-90; Ord. No. 94-28, § 10, 10-18-94; Ord. No. 94-33, § 1, 12-20-94; Ord. No. 95-10, § 1, 5-23-95; Ord. No. 95-26, § 1, 11-22-95; Ord. No. 96-06, § 1, 1-23-96; Ord. No. 97-38, § 3, 12-16-97; Ord. No. 04-40, §§ 1-4, 12-7-04; Ord. No. 05-30, § 2, 12-6-05; Ord. No. 2006-15, § 2, 8-1-06)	

APPENDIX

NUMERICAL BUSINESS CLASSIFICATION INDEX

<i>SIC Group</i>	<i>Name</i>	<i>Class</i>
01	Agricultural production—Crops	2
02	Agricultural production—Animals	2
07	Agricultural services	3
08	Forestry	7
09	Fishing, hunting and trapping	5
10	Mining, metals	7
14	Mining—Minerals	5
15, 16, 17	Contractors, construction, all types	8
20	Food and kindred products	2
21	Tobacco manufacture	7
22	Textile mill products	2
23	Apparel and other finished products from fabrics and similar materials	2
24	Lumber and wood products (except furniture)	3
25	Furniture and fixtures	2
26	Paper and allied products	3
27	Printing, publishing and allied products	4
28	Chemicals and allied products	4
29	Petroleum refining and related industries	3
30	Rubber and miscellaneous plastic products	2
31	Leather and leather products	2
32	Stone, clay, glass and concrete products	2
33	Primary metal industries	2
34	Fabricated and metal products (except machinery and transportation equipment)	2
35	Machinery, except electrical	4
36	Electrical and electronic machinery, equipment and supplies	3
37	Transportation equipment	2

<i>SIC Group</i>	<i>Name</i>	<i>Class</i>
38	Measuring, analyzing and controlling instruments; photographic, medical and optical goods; watches and clocks	5
39	Miscellaneous manufacturing industries	2
40	Railroad companies	8
41	Local and suburban transit and interurban highway passenger transportation	5
4121	Taxi license	8
42	Motor freight transportation and warehousing	3
44	Water transportation	3
45	Transportation by air	3
46	Pipeline (except natural gas)	7
47	Travel agencies	1
48	Communication (except telephone)	4
481	Telephone communication	8
49	Sanitary services	6
491—493	Electric and gas services	8
50	Wholesale trade—Durable goods	2
5093	Junk and scrap dealers	8
51	Wholesale trade—Nondurable goods	2
52	Building materials; hardware, garden supply and mobile home dealers	2
53	General merchandise stores	1
54	Food stores	1
55	Automotive and motor vehicle dealers and farm machinery, retail (except auto supply stores-553 and gasoline service stations-554)	8
553—554	Auto supply stores and gasoline service stations	1
56	Apparel and accessory stores	1
57	Furniture, home furnishings and equipment stores	2
58	Eating places	1
5813	Drinking places (alcoholic beverages)	8
59	Miscellaneous retail	3
5932	Pawnbrokers	8
5962	Vending machines	8
5963	Peddlers	8
61	Credit agencies other than banks	3
62	Security and commodity brokers, dealers exchanges and services	5
63	Insurance companies	8
64	Insurance agents, brokers and service (except brokers for nonadmitted)	7
6411	Brokers for nonadmitted insurers	8
65	Real estate	7
67	Holding and other investment offices	7
70	Hotels, rooming houses, camps and other lodging	2
72	Personal services	6
73	Business services	5
75	Automotive repair, services and garages	3
76	Miscellaneous repair services	4
78	Motion pictures	3

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<i>SIC Group</i>	<i>Name</i>	<i>Class</i>
79	Amusement and recreation services (except amusement machines and carnivals)	3
7993	Amusement machines, coin-operated	8
7999	Billiard or pool tables, all types	8
7999	Carnivals	8
80	Health services	7
81	Legal services	7
82	Educational services	7
83	Social services	7
86	Membership organizations	1
87	Engineering, accounting, research, management and related services	7
89	Miscellaneous services	3

Note: This numerical listing of business is not a part of the Code. It is included solely to be of benefit to the reader.

ALPHABETICAL BUSINESS CLASSIFICATION INDEX

This index is not intended to be a complete listing of all types of businesses. It is an aid in finding classifications by common name and reference to the Standard Industrial Classification manual group number. All businesses not exempt by law which are in the major groups listed under each rate class are subject to a license tax whether found in the alphabetical index or not. The license inspector shall determine the proper classification of a business not listed.

NAME	SIC	CLASS
Abattoirs	2011	2
Abstract land title or warranty	6541	7
Accounting and bookkeeping services	8721	7
Acupuncture - Except M.D.	8049	7
Administrative office	7389	5
Advertising agencies or agents	7311	5
Advertising novelties, signs, placards, etc.	7319	5
Air conditioning		
Contractor	1711	8
Service and repair	7623	4
Aircraft		
Retail	5599	8
Supplies - wholesale	5088	2
Service and repair	4581	3
Airport limousine service	4111	5
Alterations, clothing	7219	6
Ambulance service	4119	5
Amusement and recreation services	7999	3
Amusement machines, coin operated	7993	8
Amusement parks	7996	3
Animal hospital	0742	3
Answering service	7399	5
Antenna - installation—except household	1799	8
Sales - household	5731	2
System - satellite, master	4841	4
Antiques - retail	5932	3
Appliances household - repair	7629	4
Retail	5722	2
Appraisers, real estate	6531	7
Architects	8712	7
Armature rewinding shops	7694	4
Armored car services	7381	5
Art glass, dealers in	5999	3
Artificial flowers, dealers in	5999	3
Artists		
Portrait	8999	3
Commercial	7336	5
Studios	8999	3
Supplies, retail	5999	3
Assignment, purchasers of accounts, factors	6153	3

HILTON HEAD ISLAND CODE

NAME	SIC	CLASS
Astrologers		
Athletic arena	Prohibited	
Athletic clubs	7941	3
Admission charged		
Membership	7991	3
Attorneys	7997	3
Auction houses	8111	7
Auctioneers - Regulated by state law	5999	3
Automatic sprinklers - installation		
Automobile	1711	8
Accessories - retail		
Automatic car wash	5531	1
Body, paint and trim shop	7542	3
Club, membership	7532	3
Dealers new or used - retail	8699	1
Detailers	5511	8
Leasing - long term	7542	3
Manufacturing	7515	3
Parts - new - wholesale	3711	2
Parts - new - retail	5013	2
Parts - used-wholesale/retail	5531	1
Rental - short term	5015	2
Repairs and service	7514	3
Salvage or scrap	7538	3
Service station	5093	2
Tires, recapping	5541	1
Tires - wholesale	7534	3
Tires - retail	5014	2
Towing service	5531	1
Awning and tent	7549	3
Makers		
Rentals	2394	2
Repair	7359	5
	7699	4
B		
Bags, bagging and ties, dealers in		
Bail bondsman	5113	2
Bakery	7389	5
Retail		
Wholesale	5461	1
Ballroom, leased or rented	5149	2
Barber	7911	3
Schools		
Shops	7241	6
Supplies - wholesale	7241	6
Barrel and drum makers and dealers	5087	2
Bars - drinking places	5085	2
Baskets, boxes, crates, bags, etc. dealers	5813	8
	5113	2

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NAME	SIC	CLASS
Bath houses	7999	3
Bath, turkish, sauna or vapor	7299	6
Batteries		
Manufacture	3692	3
Vehicle - retail or wholesale	5531	1
Bearings - wholesale	5085	2
Beauty		
Schools	7231	6
Shops	7231	6
Supplies - wholesale	5087	2
Bed and breakfast inns	7011	2
Beeper service, radio pager	4812	8
Belting - wholesale	5085	2
Beverage coolers - wholesale	5087	2
Bicycle		
Retail	5941	3
Rental	7999	3
Repair	7699	4
Supplies - wholesale	5091	2
Bill distributors, handbills	7319	5
Billboards, erection and lease	7312	5
Billiard or pool hall	7999	8
Bingo	7999	3
Blacksmith	7699	4
Blood bank	8099	7
Blueprinting	7334	5
Boarding house	7021	2
Boats - sightseeing operation	4489	3
Supplies and accessories - wholesale	5091	2
Supplies and accessories - retail	5551	8
Boat yards, storage, repair and rental	4499	3
Boiler		
Installation	1711	8
Repair	7699	4
Wholesale	5074	2
Bolts and screws - wholesale	5072	2
Bondsman	7389	5
Book publisher	2731	4
Book store - retail	5942	3
Bookbinder	3555	4
Booking Agent, films	7829	3
Bootblack, bootblack stand	7251	6
Bottlers		
Flavored milk	2087	2
Soft drinks	2086	2
Supplies - wholesale	5085	2
Bowling		

NAME	SIC	CLASS
Apparel and accessories	5699	1
Lane equipment and supplies	5941	3
Lanes and centers	7933	3
Box, manufacturing	2653	3
Boxing or wrestling matches	7941	3
Brick, agents for	5211	2
Brokers. See heading under type of broker		
Building construction - general contractors	1541	8
Building materials and supplies:		
Brick and stone		
Wholesale	5032	2
Construction materials		
Retail	5211	2
Wholesale	5039	2
Roofing, siding & insulation - wholesale	5033	2
Burglar alarms - installation only	1731	8
Sale and installation	7382	5
Bus, charter	4141	5
Bus and motor coach company		
Bus terminal	Franchise	
Business broker, selling businesses	4173	5
Business college	7389	5
Business consultant	8244	7
Business forms, manufacturing	8748	7
Business forms - retail	2759	4
Business services, not elsewhere classified	5943	3
	7389	5
Cablevision		
Cabaret	4841	Franchise
Cabinets	5813	8
Custom order		
Manufacturing	5712	2
Cafeteria	2434	3
Camera and photo supplies	5812	1
Repair shop		
Retail	7699	4
Wholesale	5946	3
Candy	5043	2
Retail		
Wholesale	5441	1
Canvasser	5145	2
Car Rental - short term	5963	8
Car wash	7514	3
Carnival	7542	3
Carpenter	7999	8
Carpet	1751	8
Cleaning		
	7217	6

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NAME	SIC	CLASS
Installation	1752	8
Retail	5713	2
Wholesale	5023	2
Carriage, horse drawn for hire	4789	1
Cater	5812	1
Cement manufacture (chemical adhesives)	2891	4
Cement products (see Concrete)		
Cemetery		
Agent or sales of sites	6553	7
Caretaker	0782	3
Charcoal, producers	2861	4
Chauffeur and limousine tour services	4119	5
Cheese, manufacturer or processor	2022	2
Chemical and allied products, manufacture	2819	4
Chimney cleaner	7349	5
Chiropractor	8041	7
Christmas tree sales	5241	2
Cigarettes, cigars, tobacco		
Manufacture	21	7
Retail	5993	3
Wholesale	5194	2
Circus	7999	8
Claim adjustment agent or agency	6411	7
Clay, stone and glass products, manufacture	3200	2
Clipping service, press	8999	3
Closing out sale—See Municipal Code for regulations		
Clothing		
Retail	5651	1
Secondhand dealer	5932	3
Wholesale	5130	2
Coal, wood or coke		
Retail	5989	3
Wholesale	5052	2
Coffee or tea store - retail	5499	1
Coffee roasters and wholesale coffee dealers	5149	2
Coin shop - retail	5999	3
Cold storage warehouse	4222	3
Collection and claim agency	7322	5
Compact disks music-retail	5735	2
Computer		
E-Mail service only	4822	4
Internet provider	7375	5
Repairs	7378	4
Service (not repairs)	7371-7379	5
Stores-retail	5734	2
Concession stands (peddlers)	5963	8
Concrete		

NAME	SIC	CLASS
Manufacture (paving)	2951	3
Manufacture, ready-mixed	3273	2
Mixtures and products-retail	5211	2
Wholesale	5032	2
Consultant, business	8748	7
Contractors, construction - all types	15,16,17	8
Carpentry	1751	
Commercial and industrial building	154	
Concrete	1771	
Electrical	1731	
Flooring	1752	
General contractors, residential & commercial	15	
Grading/excavating	1794	
Heavy construction other than residential	16	
Masonry	1741	
Painting & paper hanging	1721	
Plastering, dry wall, acoustical, & insulation	1742	
Plumbing, heating & air-conditioning	1711	
Residential building	152	
Roofing, siding & sheet metal	1761	
Signs, erecting	1799	
Special trade contractors	17	
Tile, terrazzo, marble	1743	
Convalescent home	8052	7
Convenience store - primarily gasoline and limited food-retail	5541	1
Convention promoter or decorator	7389	5
Cosmetics		
Manufacture	2844	4
Retail	5999	3
Wholesale	5122	2
Cotton brokers	6221	5
Cotton presses and warehouses	4221	3
Cotton mill	2211	2
Cracker manufacture	2051	2
Craft shops	5945	3
Crafters (peddlers)	5963	8
Credit reporting agency	7323	5
D		
Dairy		
Products - retail	5451	1
Products - wholesale	5143	2
Supplies - wholesale	5084	2
Dancing school	7911	3
Dance hall	7911	3
Data processing		
Service	7379	5
Systems, supplies and equipment	7372	5

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NAME	SIC	CLASS
Day care		
Adult and handicapped	8322	7
Child	8351	7
Decorator, interior	7389	5
Delicatessen	5411	1
Delivery service		
Local trucking without storage	4212	3
Messenger/courier (except air)	4215	3
Dental equipment and supplies - wholesale	5086	2
Dental laboratory	8072	7
Dentist	8021	7
Department store	5311	1
Design of machinery	8712	7
Detective service	7381	5
Diaper service	7219	6
Directory - telephone - distribution	7389	5
Dog kennel or grooming	0752	3
- Dressmaker for retail trade	5699	1
Drinking place - alcoholic	5813	8
Driver training school	8299	7
Drugs - store		
Retail	5912	3
Wholesale	5122	2
Dry cleaning		
Coin operated	7215	6
Retail or agents	7212	6
Wholesale	7219	6
Dry goods		
Retail	5399	1
Wholesale	5131	2
Dyeing and finishing textiles	2269	2
E		
Electric appliances and supplies		
Repair	7629	4
Retail	5722	2
Wholesale	5064	2
Electric Power Company	4900	8
Electrical Contractor	1731	8
Electrical machinery - manufacture	3600	3
Electronics, consumer - retail	5731	2
Elevator dealer - wholesale	5084	2
Elevator maintenance	7699	4
Employment agency	7361	5
Engineering services	8711	7
Engraving, metal	3479	2
Entertainment	7929	3
Equipment rental - construction	7353	5

NAME	SIC	CLASS
Escort service	7299	6
Explosives - wholesale	5169	2
Exterminators	7342	5
F		
Fabrics - retail		
Factors	5949	3
Farm and industrial machinery - wholesale	6153	3
Farm machinery - retail	5080	2
Fertilizer	5599	8
Manufacture		
Retail	2874	4
Wholesale	5261	2
Field warehousing	5191	2
Film	7389	5
Developers for general public		
Developers for movies and TV	7384	5
Distributor	7819	3
Finance company	7822	3
Fire and security services	6141	3
Fireworks	7382	5
Retail + \$50.00 State License Required +		
Wholesale	5999	3
Fish and seafood	5092	2
Retail		
Wholesale	5421	1
Fisheries	5146	2
Fishermen's equipment - retail	0912	5
Fixtures and furniture - manufacture	5941	3
Flea market operator	2500	2
Floor covering	7389	5
Contractor		
Retail	1752	8
Wholesale	5713	2
Florist	5023	2
Retail		
Wholesale	5992	3
Flour - wholesale	5193	2
Flowers, real or artificial	5149	2
Retail		
Wholesale	5992	3
Food	5193	2
Broker		
Retail, not consumed on premises	5141	2
Wholesale	5411	1
Food service equipment - sale and installation	5141	2
Fortune telling	1799	8
Laundry	Prohibited	
	3300	2

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NAME	SIC	CLASS
Freight forwarder	4731	1
Fruit and produce		
Harvesting by machine	0722	3
Retail	5431	1
Wholesale	5148	2
Fuel oil		
Retail	5983	3
Wholesale	5172	2
Funeral home, mortician, crematory	7261	6
Fur, clothing - retail	5632	1
Furnace		
Retail	5075	2
Wholesale	5075	2
Heating contractor	1711	8
Furniture		
Repair, refinishing, upholstering	7641	4
Retail	5712	2
Secondhand	5932	3
Wholesale	5021	2
Manufacture	2500	2
G		
Garage, auto repairs	7538	3
Garbage service, collection and disposal	4953	6
Garment pressing, alteration	7212	6
Gas		
Liquefied petroleum and equipment	5984	3
Natural gas company	4900	8
Gasoline - Service station		
Retail	5541	1
Wholesale	5172	2
Gift shop	5947	3
Glass		
Motor vehicles sale and installation	7536	3
Products, manufacture	3200	2
Retail	5231	2
Golf		
Courses (including miniature)	7992	3
Sporting goods-retail	5941	3
Grain		
Broker (Commodity)	6221	5
Dealer - wholesale or retail	5153	2
Elevator	4221	3
Gravel		
Retail	5211	2
Wholesale	5032	2
Greeting Cards - retail	5947	3
Grocers		

NAME	SIC	CLASS
Retail	5411	1
Wholesale	5141	2
Guns		
Retail or dealer	5941	3
Wholesale	5091	2
Gunsmith	7699	4
H		
Hair grooming	7231-7241	6
Hardware		
Retail	5251	2
Wholesale	5072	2
Hazardous waste storage, disposal or transportation	4953	6
Health		
Club	7991	3
Food store	5499	1
Health services, HMO	8010	7
Health services, medical service plans (insurance)	6324	8
Home health care services	8082	7
Hearing aids - retail	5999	3
Heating contractor	1711	8
Hemstitching and pleating	7219	6
Hobby shop	5945	3
Holding companies	6700	7
Horticulturist	0781	3
Hose, industrial - wholesale	5085	2
Hosiery		
Mill	2200	2
Retail	5632	1
Wholesale	5137	2
Hospital		
Animal	0742	3
General medical and surgical	8062	7
Psychiatric	8063	7
Specialty	8069	7
Hotel	7011	2
Hotel supplies, wholesale	5046	2
House mover, wrecker	1799	8
I		
Ice - dealer		
Retail	5999	3
Manufacture	2097	2
Ice cream		
Manufacture	2024	2
Retail dairy products	5451	1
Shop or stand	5812	1
Wholesale	5143	2
Industrial chemicals - wholesale	5169	2

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NAME	SIC	CLASS
Industrial and farm machinery and equipment	5080	2
Inn, food and lodging	7011	2
Insulation contractor	1742	8
Insurance - adjuster	6411	7
Agent, broker (see 8 for non-admitted), solicitor	6411	7
Broker for non-admitted insurer	6411	8
Company, fire and casualty	633-635	8
Company, life and health	631-632	8
Company, title and others not elsewhere classified	636-639	8
Consultant or engineer	6411	7
Interior decorator	7389	5
Internet		
Provider, information retrieval	7375	5
E-Mail (electronic mail service only)	4822	4
Investment counselor	6282	5
Investment firm, general brokerage	6211	5
Iron and steel, semi-finished items - wholesale	5051	2
J		
Janitor or housekeeping service	7349	5
Janitor supplies - wholesale	5087	2
Jewelry		
Repair	7631	4
Retail	5944	3
Wholesale	5094	2
Junk dealer - wholesale	5093	8
K		
Karate school	7999	3
Kennel	0752	3
Kerosene & fuel oil, heating		
Retail	5983	3
Wholesale	5172	2
Kindergarten	8211	7
Kitchen designers and contractors	1521	8
Knitting mill - textile manufacture	2253	2
L		
Laboratory, testing, commercial	8734	7
Lamps		
Retail	5719	2
Wholesale	5023	2
Land title or abstract company	6361	1
Landfill, solid waste	4953	6
Landscape service	0781	3
Lapidary		
Retail shop	5999	3
Supplies and equipment - wholesale	5085	2
Laundries	7215	6
Laundry agent or pickup station	7211	6

NAME	SIC	CLASS
Lawn care service		
Lawnmowers	0782	3
Repair		
Retail	7699	4
Wholesale	5261	2
Leased equipment, not otherwise listed	5083	2
Leasing company, vehicles, and non-expendable equipment	7359	5
Leather goods - retail	7510	3
Leather and products, manufacture	5948	3
Legal services, attorney	3111	2
Libraries, lending and depositories in stores	8111	7
Limousine service	8231	7
Linen service	4111	5
Livestock dealer and services	7213	6
Locksmith	0751	3
Locker, cold storage of food	7699	4
Luggage - retail	4222	3
Lumber	5948	3
Manufacture		
Retail	2400	3
	5211	2
M		
Machine shop	3599	4
Magazine, sales or subscriptions, door-to-door	5963	8
Mail order business	5961	3
Management consultant	8742	7
Manicurist	7231	6
Manufactured home (See mobile home)		
Manufacturing		
Chemicals and allied products	2800	4
Clay, stone and glass products	3200	2
Computer equipment	3500	4
Electrical machinery, equipment, supplies	3600	3
Furniture and fixtures	2500	2
Leather and leather products	3100	2
Lumber	2400	3
Machinery - industrial, commercial, computer	3500	4
Medicine	2833	4
Metals, primary	3300	2
Metal products	3400	2
Paper and allied products	2600	3
Petroleum refining and related	2900	3
Rubber and miscellaneous products	3000	2
Soap	2841	4
Textile mill products	2200	2
Tobacco products	2100	7
Transportation equipment	3700	2
Manufacturing not otherwise listed	3900	2

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NAME	SIC	CLASS
Marble, building - cut and shape	3281	2
Marble, granite and other stone yards	5032	2
Marina	4493	3
Massage	7299	6
Mattress		
Manufacture	2515	2
Retail	5712	2
Meat processing	2013	2
Meat		
Retail market	5421	1
Wholesale	5147	2
Medical and health services	8000	7
Medical, dental, hospital equipment and supplies - wholesale	5047	2
Medicine - manufacture	2833	4
Men's and boys wearing apparel - retail	5611	1
Messenger service	4215	3
Metal jobber - wholesale	5051	2
Metal products, manufacture	3400	2
Milk		
Retail	5451	1
Wholesale	5143	2
Millinery		
Retail	5632	1
Wholesale	5137	2
Mining		
Metals	1000	7
Minerals	1400	5
Miscellaneous business services, not listed	8999	3
Mobile home		
Parks	6515	7
Repairs	7699	4
Retail	5271	2
Money lender - industrial loans, finance company (not banks)	6141	3
Monuments - retail	5999	3
Mortgage broker	6163	3
Motel	7011	2
Motion picture		
Film agent	7829	3
Operator	7832	3
Supply house	5043	2
Theater and drive-in	7833	3
Motor freight line	4231	3
Motor vehicle driver training school	8299	7
Motorcycles		
Dealer or agent	5571	8
Rental	7999	3
Repairs	7699	4

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NAME	SIC	CLASS
Motor vehicle dealer - retail	551-552	8
Motors, outboard - retail	5551	8
Movers, trucking and storage	4214	3
Multigraphing or photocopying	7334	5
Music - sheet music and musical instruments		
Retail	5736	2
School	8299	7
Tapes & compact disks - retail	5735	2
Teachers & educational services	8299	7
Wire transmitted, systems	7389	5
Musicians - entertainers	7929	3
N		
Natatorium or swimming pool	7999	3
Neckwear - retail	5611	1
News syndicate	7383	5
Newspaper		
Advertising	7311	5
Publishing	2711	4
Retail	5994	3
Wholesale	5192	2
Newsstand	5994	3
Nightclub	5813	8
Nothings, novelties		
Peddlers	5963	8
Retail	5947	3
Nursery, day	8351	7
Nursery or horticulturist	5261	2
Nurses registry	7361	5
Nursing home		
Skilled care	8051	7
Intermediate care	8052	7
Assisted living with health care	8053	7
O		
Office building, rental agent	6531	7
Office furniture		
Rental	7359	5
Retail	5999	3
Wholesale	5021	2
Office machines		
Rental	7359	5
Retail	5999	3
Service and repair	7629	4
Wholesale	5044	2
Office supplies		
Retail	5999	3
Wholesale	5112	2
, fuel only		

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NAME	SIC	CLASS
Retail	5983	3
Wholesale	5172	2
Ophthalmic goods - wholesale	5048	2
Optical goods		
Retail	5995	3
Wholesale	5048	2
Optometrist	8042	7
Osteopathic, physicians and clinics	8031	7
P		
Packing house, cold storage	4222	3
Paging service, electronic	4812	8
Paint		
Manufacture	2851	4
Retail	5231	2
Wholesale	5198	2
Paper and allied products		
Manufacture	2621	3
Retail	5943	3
Wholesale	5113	2
Parcel delivery company	4215	3
Parking lots and garages	7521	3
Parking spaces, trailer park	6515	7
Party shop	5411	1
Pawn brokers, all types	5932	8
Peanut and popcorn stands	5441	1
Peddlers, all types	5963	8
Personal holding company--	6719	7
Personnel supply services	7361	5
Pest control - exterminators	7342	5
Pet		
Grooming, kennel, boarding, training	0752	3
Shop	5999	3
Pharmacy	5912	3
Phonograph records		
Retail	5735	2
Wholesale	5099	2
Photo copying	7334	5
Photograph developing and retouching	7384	5
Photographer		
Commercial	7335	5
Portraits	7221	6
Photo supply store - retail	5946	3
Physical fitness center	7991	3
Physician	8011	7
Piano tuner	7699	4
Pianos - retail	5736	2
Pictures or picture frames - retail	5999	3

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NAME	SIC	CLASS
Food	5411	1
Furniture, home equipment	5712	2
General merchandise	5399	1
Miscellaneous, not listed	5999	3
Retirement center	8361	7
Riding school, academy	7999	3
Roofing		
Contractor	1761	8
Manufacture	2952	3
Retail	5211	2
Wholesale	5033	2
Rooming house	7021	2
Rubber - related products - manufacture	3069	2
Stamps - manufacture	3999	2
Stamps - retail	5999	3
Rugs and carpets - retail	5713	2
		S
Safes - wholesale	5044	2
Sales, door-to-door or by telephone	5963	8
Sales engineer	7389	5
Sales office. See heading under product.		
Sales promotion	7389	5
Sand		
Retail	5211	2
Wholesale	5032	2
Sandwiches		
Manufacture and wholesale	5149	2
Retail	5812	1
Sanitarium	8051	7
Satellite antenna - sales and installation - household	5731	2
Satellite master antenna systems - services	4841	4
Sausage factory	2013	2
Saw mill, planing mill	2421	3
Saws - wholesale	5072	2
Scales		
Coin operated	7299	6
Wholesale	5046	2
School		
Acting	8299	7
Dance	7911	3
Educational or vocational	8200	7
Supplies and books - retail	5943	3
Supplies and desks - wholesale	5021	2
Scrap Yards - wholesale	5093	8
Screens, doors, windows		
Manufacture	2431	3
Retail	5211	2

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NAME	SIC	CLASS
Wholesale		
Secondhand goods, all types	5051	2
Secretarial service	5932	3
Security and guard services (state permit and bond required)	7338	5
Seeds - retail	7381	5
Sewer pipe - wholesale	5261	2
Sewing machines	5032	2
Manufacture		
Retail	3634	3
Wholesale	5722	2
Shipyards	5064	2
Shirts, manufacture	3731	2
Shoes	2326	2
Repair		
Retail	7251	6
Wholesale	5661	1
Shooting gallery	5139	2
Shopping service for individuals	7999	3
Shuffleboards	7299	6
Sign painter	7999	3
Signs, erecting	7389	5
Silver and gold dealers - retail	1799	8
Skating rink - ice or rollerskate	5944	3
Soap	7999	3
Manufacture		
Wholesale	2841	4
Social club, membership	5122	2
Soda fountain	8641	1
Soda fountain supplies - wholesale	5812	1
Soda water - wholesale	5145	2
Soft drinks - wholesale	5145	2
Soft drink stands - retail	5145	2
Solicitor (see peddler)	5812	1
Spa - health club	5963	8
Sporting goods	7991	3
Retail		
Wholesale	5941	3
Stable, feed, boarding or sales	5091	2
Stamp shop - retail (philatelist)	7999	3
Stationery, including books	5999	3
Statuary - retail	5943	3
Steam, heating and cooling contractor	5999	3
Stenographer, fee or commission	1711	8
Stevedoring	7338	5
Stock broker or dealer	4491	3
Stone, clay, glass products - manufacture	6211	5
Stoves	3299	2

BUSINESS AND PROFESSIONAL LICENSES

§ 10-1-190

NAME	SIC	CLASS
Repair	7699	4
Retail	5722	2
Wholesale	5064	2
Manufacture	3631	3
Sugar - wholesale	5149	2
Surgical instruments - wholesale	5047	2
Surveyor	8713	7
Swimming pool contractor	1799	8
T		
Tailor, custom - retail	5699	1
Tailor shop - repair	7219	6
Talent agent	7399	5
Tanning salon	7299	6
Tape recorders - retail	5731	2
Tapes, music - retail	5735	2
Tavern	5813	8
Tax service	7291	6
Taxi cab	4121	7
Taxidermist	7699	4
Tea, coffee - retail	5499	1
Telegraph or signal company agent	4822	4
Telephone		
Answering service	7389	5
Beeper service, radio pager	4812	8
Billing services	7389	5
Communication services (based on gross receipts Billed to customers within the city)	481	8
Company	481	8
Directory	7389	5
Equipment leasing	7359	5
Equipment sales - retail	5999	3
Installation	1731	8
Maintenance	7629	4
Paging service, electronic	4812	8
Pay phones, public	7389	5
Solicitation service	7389	5
Television		
Broadcast station	4833	4
Closed circuit system	4841	4
CATV		Franchise
Pay TV		Franchise
Television and VCR		
Rent or lease	7359	5
Repair	7622	4
Tape rental	7841	3
Temporary employment agency	7363	5
Tents		

NAME		SIC	CLASS
Wood sawyer, sawing wood by machinery		2421	3
Woodenware - retail		5999	3
Woolen mill		2282-4	2
Wrecker, towing service		7549	3
Wrecking buildings		1795	8
	X		
X-ray laboratories		8071	7
X-ray machines - wholesale		5047	2
	Y		
Yacht basins - operation		4493	3
Yacht clubs		7997	3
Yard cleaning		0782	3
Yard goods			
Retail		5949	3
Wholesale		5131	2
Yarn			
Manufacture		2281	2
Retail		5949	3
Yogurt			
Manufacture		2024	2
Retail shop, stand		5812	1
Wholesale		5143	2

Sec. 10-1-200. Local industry license.

Any person who desires to exclusively engage in the business of offering for public sale at designated locations, as determined by the town manager, farm and garden products or flowers grown on the property of such person, or flower arrangements, arts or crafts produced in the home of such person, or seafood caught by such person, shall secure from the town an annual business license, but shall be exempt from the payment of a business license fee.
(Ord. No. 85-11, § 1, 5-20-85)

Sec. 10-1-210. Telecommunications companies.

(a) Notwithstanding any other provisions of the Business License Ordinance, the business license tax for "retail telecommunications services," as defined in S.C. Code § 58-9-2200, shall be at the maximum rate authorized by S.C. Code § 58-9-2220, as it now provides or as provided by its amendment. The business license tax year shall begin on January 1 of each year. The rate for the 2005 business license tax year shall be the

maximum rate allowed by State law as in effect on February 1, 2005. Declining rates shall not apply.

(b) In conformity with S.C. Code § 58-9-2220, the business license tax for "retail telecommunications services" shall apply to the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The measurement of the amounts derived from the retail sale of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality. For a business in operation for less than one (1) year, the amount of business license tax shall be computed on a 12-month projected income.

(c) For the year 2005, the business license tax for "retail telecommunications services" shall be due on February 1, 2005, and payable by Febru-

ary 28, 2005, without penalty. For years after 2005, the business license tax for "retail telecommunications services" shall be due on January 1 of each year and payable by January 31 of that year, without penalty.

(d) The delinquent penalty shall be five (5) percent of the tax due for each month, or portion thereof, after the due date until paid.

(e) Exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Properly apportioned gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

(f) Nothing in this section shall be interpreted to interfere with continuing obligations of any franchise agreement or contractual agreement in the event that the franchise or contractual agreement should expire after December 31, 2003.

(g) All fees collected under such a franchise or contractual agreement expiring after December 31, 2003, shall be in lieu of fees or taxes which might otherwise be authorized by this section.

(h) As authorized by S.C. Code § 5-7-300, the agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from telecommunications companies pursuant to S.C. Code § 58-9-2200 shall continue in effect. Notwithstanding the provisions of the agreement, for the year 2005, the Municipal Association of South Carolina is authorized to collect current and delinquent license taxes, in conformity with the due date and delinquent date for 2005 as set out in this Ordinance and is further authorized, for the year 2005, to disburse business license taxes collected, less the service charge agreed to, to this municipality on or before April 1, 2005, and thereafter as remaining collections permit.

(Ord. No. 98-27, § 1, 7-7-98; Ord. No. 99-27, § 1, 9-21-99; Ord. No. 04-37, § 1, 9-21-04)

Chapter 3

VEHICLES FOR HIRE

Sec. 10-3-10. Applicability.

Any company owner engaged in the business of offering vehicles for hire as defined in section 10-3-20 shall be subject to the provisions of this chapter. Other kinds of vehicles for hire, including, but not limited to animal-drawn vehicles, shall not be permitted.

(Ord. No. 85-16, § 1, 8-19-85; Ord. No. 97-12, § 1, 5-6-97)

Sec. 10-3-20. Definitions.

The following definitions shall apply in this chapter:

- (1) *A vehicle for hire* is defined as any of the following:
 - a. *Limousine*: A "limousine" is a passenger carrier utilizing luxury vehicles equipped to carry up to fifteen (15) passengers and operates on a contract basis with customers for use of the vehicles for a specified time period and does not operate on a per trip basis. A "limousine" includes town cars and luxury sport utility vehicles.
 - b. *Shuttle service*: Service using any type of motor vehicle, including, but not limited to vans and buses, which operates on a predetermined route and/or a regular schedule, or both, for the conveyance of passengers.
 - c. *Taxicab*: Any motor vehicle engaged in the business of carrying passengers for hire or offering to carry passengers for hire, and subject to the regulations of this chapter, and which operates on a per trip basis from point to point.
 - d. *Tour bus*: Any large motor coach, exclusive of interstate carriers, with a seating capacity of not less than ten (10) and primarily engaged in

the business of conveying passengers for sightseeing purposes along predetermined routes.

- e. *Van*: Any motor vehicle other than a sedan-type vehicle with a designated seating capacity of not less than five (5) and not more than fifteen (15) passengers which operates as a courtesy vehicle at no charge to the passenger.

- (2) *Owner*: Any individual, firm, partnership or corporation having charge or control of a business operating vehicles for hire.

- (3) *Driver*: Any person who actually drives the vehicle for hire whether an employee of the owner, a lessee of the owner, an independent contractor driving for the owner or any other person driving for the owner.

(Ord. No. 85-16, § 1, 8-19-85; Ord. No. 97-12, § 2, 5-6-97; Ord. No. 07-12, § 1, 4-3-07)

Sec. 10-3-30. Vehicle for hire companies; license.

Each owner desiring to engage in the business of offering vehicles for hire within the town shall first secure a regular town business license as required by this title. No additional permits or licenses shall be required by the town for the operation of such business. Upon submission and satisfactory review by the town of the information required by this chapter, the town business license clerk shall issue an appropriate sticker for each vehicle used in the business to be placed on the driver's side front window as evidence of compliance with the requirements of this chapter. (Ord. No. 85-16, § 1, 8-19-85; Ord. No. 97-12, § 3, 5-6-97)

Sec. 10-3-40. Required company and driver information.

The following information shall be submitted to the town business license clerk at the time of

business license application and it shall be the responsibility of the owner of the vehicle for hire company to regularly update such information:

- (1) Proof of ownership or lease status for each vehicle.
- (2) South Carolina registration information, license plate number, the make, type, year of manufacture, serial number, engine number and passenger capacity of each taxicab or limousine for which application for a business license is made.
- (3) Proof of current inspection for each vehicle as required by the town.
- (4) Name, home address, phone number and social security number for each driver.
- (5) Valid current driver's license number and state of issuance for each driver.
- (6) The name and address of the owner, and in the event that the owner is a corporation, a certified copy of the articles of incorporation.
- (7) The number of vehicles actually owned and the number of vehicles actually operated by such owner on the date of such application, if any.
- (8) Whether there are any unpaid or unbonded judgments of record against owner, and, if so, the title of all actions and the amount of all judgments unpaid or unbonded.
- (9) If applicant is a corporation, a list of the officers, directors and supervising employees thereof, including general manager.
- (10) Whether there are any liens, mortgages or other encumbrances on such taxicabs or limousines and if so, the amount and character thereof.

(Ord. No. 85-16, § 1, 8-19-85; Ord. No. 97-12, § 4, 5-6-97)

Sec. 10-3-50. Insurance.

The owner or manager of each vehicle for hire company shall submit proof of current insurance for each vehicle or a group policy covering all vehicles in the fleet. The required minimum insurance for each vehicle shall be three hundred

thousand dollars (\$300,000.00) single liability coverage. The town business license clerk shall be immediately notified of any change in insurance coverage.

(Ord. No. 85-16, § 1, 8-19-85)

Sec. 10-3-60. Company responsibilities.

Each vehicle for hire owner who operates more than two (2) vehicles for hire shall maintain a business office and regular office hours at all times it is operating, a listed public phone number and sufficient off-street parking at or near the business office of such company. Each vehicle for hire owner shall maintain for at least one (1) year and make available copies of the daily contract for limousine services, trip sheet or book (including charges) kept by drivers upon request of the town business license clerk. Owners shall submit a proposed vehicle color scheme to the town manager within sixty (60) days after the adoption of this chapter. The town shall within one hundred fifty (150) days after the adoption of this chapter, evaluate the proposed vehicle color schemes and determine which color scheme shall be used by each owner so that there will not be any confusion in identifying a vehicle for hire with another owner. At the end of the 150-day period, the town shall notify all owners of its determination so that each owner will be notified of his own color scheme as well as those of other owners. Any disputes about the color schemes determined by the town manager may be appealed by written notice to town council, and its decision shall be final and binding. An appeal shall be heard by town council within thirty (30) days from the time notice to the town is given. Owners shall implement the color schemes within three (3) years after the adoption of this chapter, provided, however, that any vehicle which enters the service or is painted during this three-year period shall be painted to conform with the approved color scheme. (Ord. No. 85-16, § 1, 8-19-85; Ord. No. 97-12, § 5, 5-6-97; Ord. No. 07-12, § 2, 4-3-07)

Sec. 10-3-70. Taxicab requirements.

Any owner engaged in the business of offering taxicabs for hire shall:

- (1) Have the name of the company and telephone number, permanently affixed and

conspicuously displayed, on both sides and trunk of each taxi. Letters and numbers shall be a minimum of three (3) inches high and shall conform to the approved color scheme.

- (2) Have a schedule of rates and charges and the name of the owner or manager and telephone number of the company office posted and affixed inside each taxi in a conspicuous location legible to passengers. This schedule shall remain posted and affixed at all times. In the event the owner desires to change the schedule, he shall send the revised schedule to the town manager by registered mail ten (10) days prior to the effective date and post the revised schedule in the taxi on the effective date.
- (3) Have a properly charged minimum two and one-half (2½) pound ABC fire extinguisher available in their vehicles.
- (4) Own or lease in the owner's name all vehicles operated by the owner.
- (5) Have a taxi roof light installed on each taxi within one year after May 6, 1997. All such roof lights shall be of a size, color and shape approved by the town manager.

(Ord. No. 97-12, § 6, 5-6-97)

Sec. 10-3-80. Reserved.

Editor's note—Ordinance No. 97-12, § 7, adopted May 6, 1997, deleted § 10-3-80. Formerly, such section pertained to complaints and derived from Ord. No. 85-16, § 1, 8-19-85.

Sec. 10-3-90. Enforcement.

In addition to any other penalties provided in this municipal code for the violation of municipal ordinances, the town manager is authorized to suspend the business license of any vehicle for hire company which has violated any of the provisions of this chapter.

(Ord. No. 85-16, § 1, 8-19-85)

Sec. 10-3-100. Taxicab or limousine prohibitions.

In order to promote the public health, safety, and welfare of all individuals using taxicabs or limousines, it shall be unlawful for:

- (1) Scanners to be operated from taxicabs or limousines.
- (2) Taxicab or limousine drivers to play a radio (tape, CD, etc.) while a passenger is present without the permission of a passenger.
- (3) Taxicab or limousine drivers to smoke at any time while in the taxi or limousine.
- (4) A taxi or limousine driver to fail to offer a passenger a receipt reflecting the charge.
- (5) Taxicab or limousine drivers to dispatch company taxicabs or limousines from a moving taxicab or limousine.

(Ord. No. 97-12, § 8, 5-6-97; Ord. No. 07-12, § 3, 4-3-07)

Sec. 10-3-110. Qualifications of drivers.

Each driver of a vehicle for hire shall meet the following requirements:

- (1) Be at least eighteen (18) years of age;
- (2) Be of good health without any infirmity of body or mind which might render him unfit for the safe operation of a taxicab or limousine;
- (3) Be able to read, write and speak the English language;
- (4) Be neat and clean in appearance;
- (5) Not be addicted to the use of drugs or intoxicating liquors; and
- (6) Possess a valid driver's license.

(Ord. No. 97-12, § 9, 5-6-97)

Sec. 10-3-120. Authority to operate.

No owner may allow a driver to operate a vehicle for hire:

- (1) Whose driver's license to operate a taxicab or limousine has been suspended or revoked.

- (2) Who has been convicted of a felony.
- (3) Who shall have previously been convicted of a traffic offense resulting in a death of a person.
- (4) Who shall have been convicted of driving a motor vehicle while under the influence of alcohol or drugs.
- (5) Who shall have been convicted of a violation of any state or federal statute, law or ordinance relating to the use, possession or sale of intoxicating liquors.
- (6) Who shall have been convicted of a violation of any state or federal law relating to prostitution.
- (7) Who shall have been convicted of a violation of any, state or federal statute, law or ordinance relating to the use, possession or sale of intoxicating, narcotic or illegal drugs.
- (5) The owner of a vehicle does not replace his vehicle at any time the same becomes unsafe for public conveyance.
- (6) For any reason for which a business license may be revoked under the provisions of Section 10-1-150, Code of the Town of Hilton Head Island, South Carolina, (1983).
- (7) An owner is convicted of:
 - a. A felony.
 - b. A violation of any federal or state statute relating to the possession or sale of intoxicating liquors.
 - c. A violation of any federal or state statute relating to prostitution.
 - d. A violation of a federal or state statute relating to the use, possession or sale of narcotic, intoxicating or illegal drugs; or
 - e. Any of his drivers have been convicted of violations of traffic laws or ordinances.

The town manager, or his designee may waive the requirements of this section in the event the owner provides the town with evidence that a person found to have been convicted of an enumerated crime in this section is capable of operating a vehicle in a safe manner.
(Ord. No. 97-12, § 10, 5-6-97)

Sec. 10-3-130. Grounds for suspension or revocation; hearing.

(a) Vehicle for hire business licenses may be suspended or revoked by the town council for the following reasons:

- (1) The owner fails to operate the vehicle in accordance with the provisions of this chapter.
- (2) The taxicab is operated at a rate or charge of fare other than that stated on the rate sheet published by the owner.
- (3) The owner fails to submit to a vehicle inspection as required by the town.
- (4) The owner allows his vehicle to deteriorate by failure to maintain it in a safe and dependable condition: to maintain interior and exterior as to cleanliness and appearance acceptable to the town.

(b) The town shall give written notice to the licensee of the person in control of the business within the town by personal service or certified mail that the license is suspended pending a hearing before town council for the purpose of determining whether the license should be revoked. The notice shall state the time and place at which the hearing is to be held, which shall be a regular or special town council meeting within thirty (30) days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this chapter.

(Ord. No. 97-12, § 11, 5-6-97)

Chapter 5

FRANCHISES

Sec. 10-5-10. Telephone service franchise granted to Hargray Telephone Company, Inc.

A franchise is granted to Hargray Telephone Co., Inc., to use the public rights-of-way for the provision of telephone service to the corporate area of the town for the purpose of erecting, constructing, maintaining, and operating facilities thereon and thereunder under the terms of the attached franchise agreement which is hereby made a part hereof (but which is not set forth herein).

(Ord. No. 89-18, § 1, 8-21-89)

Sec. 10-5-20. Electric service franchise granted to Palmetto Electric Cooperative, Inc.

A non-exclusive franchise is granted to Palmetto Electric Cooperative, Inc., to use the public rights-of-way for the provision of electric service to the corporate area of the town for the purpose of erecting, constructing, maintaining, and operating facilities thereon and there under the terms of the attached franchise agreement which is hereby made a part hereof (but which is not set forth herein).

(Ord. No. 89-19, § 1, 8-21-89; Ord. No. 04-35, § 1, 9-21-04)

Sec. 10-5-30. Reserved.

Editor's note—Ord. No. 92-18, § 1, adopted May 18, 1992, amended the Code with the addition of section 2-11-50, wherein the town public safety division was created, including the emergency medical services department. At the request of the city, section 10-5-30, which formerly pertained to the ambulance and emergency health care services franchise granted to Hilton Head Island Rescue Squad, Inc. has been repealed as obsolete. Section 10-5-30 derived from Ord. No. 90-29, § 1, adopted Oct. 1, 1990.

Sec. 10-5-40. Cable television franchise.

A nonexclusive franchise for the use of the public streets and roads within the town limits is granted to SVHH Cable Acquisition, L.P., to provide the construction, operation and maintenance

of a cable television system pursuant to the terms and conditions of the franchise agreement which is made a part hereof by reference.
(Ord. No. 92-13, § 1, 4-6-92)

Sec. 10-5-50. Commercial activities franchise granted to Shore Beach Services, Inc.

A non-exclusive franchise is granted to Shore Beach Services, Inc. to conduct, within specified public beach areas, certain commercial activities pursuant to the terms and conditions of the attached franchise agreement which is attached hereto and made a part hereof, is hereby renewed.
(Ord. No. 92-17, § 1, 5-18-92; Ord. No. 94-30, § 1, 11-15-94; Ord. No. 97-37, § 1, 12-16-97; Ord. No. 01-02, § 1, 2-6-01; Ord. No. 03-13, § 1, 4-22-03; Ord. No. 04-10, § 1, 3-16-04; Ord. No. 04-34, § 1, 8-17-04; Ord. No. 2009-12, § 1, 4-21-09)

Sec. 10-5-60. Cable television franchise granted to Hargray CATV Company, Inc.

A non-exclusive franchise for the use of the public streets and roads within the town limits is granted to Hargray CATV Company, Inc., to provide the construction, operation, and maintenance of a cable television system pursuant to the terms and conditions of the franchise agreement which is made a part hereof by reference.
(Ord. No. 05-08, § 1, 4-5-05)

Sec. 10-5-70. Telecommunications franchise granted to Embarq Communications, Inc.

A non-exclusive franchise for the use of the public rights-of-way within the Town limits is granted to Embarq Communications, Inc. to construct, install, operate, and maintain its facilities for use in providing telecommunications Services within the Town pursuant to the terms and conditions of the franchise agreement which is made a part hereof by reference.
(Ord. No. 07-14, § 1, 5-15-07)

Chapter 7

SEXUALLY-ORIENTED BUSINESSES*

Sec. 10-7-10. Purpose and intent.

It is the purpose of this chapter, and by reference, chapter 16 of the Town Land Management Ordinance to regulate adult entertainment businesses, to promote the health, safety, morals and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult entertainment businesses within the Town of Hilton Head Island. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this section to restrict or deny access for adults to any sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented adult entertainment to their intended market. Neither is it the intent or effect of this section to condone or legitimize the distribution of adult materials.

(Ord. No. 95-16, § 1, 6-6-95)

Sec. 10-7-20. Definitions.

For the purposes of this chapter, the following words, terms and phrases shall have the meanings ascribed herein, unless the text clearly indicates otherwise:

Adult arcade shall mean any commercial place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing adult material, specified sexual activities or specified anatomical areas.

Adult bookstore or adult video store shall mean a commercial establishment which, as its principal business purpose, offers for sale or rent, for any form of consideration any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which depict or describe adult material, specified sexual activities or specified anatomical areas; or
- (2) Instruments, novelties, devices or paraphernalia designed for use in connection with specified sexual activities, as defined herein, but are used as birth control devices or devices for disease prevention, are excluded from this definition.

A commercial establishment may have other principal business purposes that do not involve disseminating adult material or specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishment from being categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rent specified materials which depict or describe specific sexual activities or specified anatomical areas.

An establishment will not be considered an adult bookstore or adult video store if the establishment demonstrates either:

- a. The adult material is accessible only by employees and the gross income from the sale comprises less than ten (10) percent of the gross income from the sale or rental of goods or services at the establishment; or

*Editor's note—Ordinance No. 95-16, § 1, adopted June 6, 1995, amended and added sections to chapter 7. Formerly, such chapter pertained to similar provisions and derived from Ord. No. 91-14, § 1, 9-9-91 and Ord. No. 93-24, § 5, 9-20-93.

Cross reference—Land management ordinance, tit. 16, ch. 7.

- b. The items of adult material offered for sale or rental comprise less than ten (10) percent of the inventory of stock used in trade and/or publicly displayed in the establishment and which are not accessible to minors.

Adult cabaret shall mean a nightclub, bar, club, tavern, restaurant or similar commercial establishment which features:

- (1) Service to patrons by persons in a state of nudity or semi-nudity;
- (2) Live performances, characterized by the exposure of "specified anatomical areas," depiction of specified sexual activities or by sexual conduct; or
- (3) Films, motion pictures, video cassettes, slides or other photographic reproductions characterized by the depiction or description of adult material, specified sexual activities or specified anatomical areas.

Adult entertainment use or business shall mean an adult arcade, adult bookstore or adult video store, adult cabaret, adult motion picture theater, adult theater, sexually oriented escort agency, nude model studio or sexual encounter center.

Adult material shall mean any book, magazine, newspaper or other printed or written material, any picture, drawing, photograph, motion picture or other pictorial representation, any statue or other figure, any recording, transcription or mechanical, chemical or electrical reproduction, any other articles, equipment or machines which depicts or describes specified sexual activities or specified anatomical areas.

Adult motel means a hotel, motel or similar commercial establishment which:

- (1) Offers accommodations to the public for any form of consideration where patrons are provided closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and has a sign visible from the public right-of-

way which advertises the availability of this adult type of photographic reproductions;

- (2) Offers a sleeping room for rent with rates for a period of time that is less than ten (10) hours; or
- (3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

Adult motion picture theater shall mean a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown and where a substantial portion of the presentation time is devoted to the showing of material which depicts or describes adult material, specified sexual activities or specified anatomical areas.

Adult theater shall mean a theater, concert hall, auditorium or similar commercial establishment which regularly features persons appearing nude or semi-nude, or engaged in live performances characterized by the exposure of specified anatomical areas or specified sexual activities.

Available to the public shall mean that the matter or performance may be purchased or attended on a subscription basis, on a membership fee arrangement, or for a separate fee for each item or performance.

Child care center shall mean a private establishment enrolling four (4) or more children between two (2) and five (5) years of age and where tuition, fees or other forms of compensation for the care and/or education of the children is charged, and which is licensed or approved to operate as a child care center.

Day care education center. See "Child care center."

Disseminate shall mean to transfer possession of, with or without consideration.

Establish shall include any of the following:

- (1) The opening or commencement of any adult entertainment business as a new business;

- (2) The conversion of an existing business, whether or not an adult entertainment business, to any adult entertainment business;
- (3) The additions of any adult entertainment use to any other existing adult entertainment use or business;
- (4) The relocation of any adult entertainment business; or
- (5) The reinstatement or application for reinstatement of a revoked permit or license.
- (6) An existing adult entertainment business which continues to operate after passage of this chapter.

Licensee or permittee shall mean a person in whose name a permit and/or license to operate an adult entertainment business or use has been issued, as well as any other individual listed as an applicant on the application for a permit or license.

Nude dancing establishment shall mean an establishment operated for commercial gain wherein performers or employees of the establishment display or expose to others specified anatomical areas regardless of whether the performer or employee so exposed is actually engaging in dancing.

Nude model studio shall mean an establishment which, as one of its principal businesses, provides a person or persons appearing in a state of nudity, semi-nudity or displaying "specified anatomical areas" to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or offer any form of consideration. Exempted from this definition is a proprietary school, licensed by the State of South Carolina; a college, junior college or university supported entirely or partly by taxation; or a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university that is supported entirely or partly by taxation, or any other school defined and regulated by Title 59 of the Code of Laws of South Carolina, 1976, as amended.

Nude, nudity or a state of nudity shall mean the appearance of a bare human anal cleft, anus, male genitals, female genitals or female breast.

Performance shall mean any preview, play, show, skit, film, dance or other exhibition performed before an audience.

Person shall mean an individual, corporation, partnership, association, firm, club, proprietorship or other legal or commercial entity, including any type of charity organization.

Promote shall mean to cause, permit, procure, counsel or assist.

School shall mean any building or part thereof which is designed, constructed or used for educational or instruction in any branch or knowledge.

Service to patrons shall mean the provision of services to paying guests in establishments providing food and beverages, including, but not limited to, hosting, hat checking, cooking, bartending, serving, table setting and clearing, waiter and waitressing and entertaining.

Semi-nude, semi-nudity or in a state of semi-nudity shall mean a state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexual conduct shall mean any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any other sexual act such as erotic touching, caressing or fondling or the simulation thereof, of the breasts, buttocks, anus or genitals or any portion thereof.

Sexual encounter center shall mean a person, business or commercial enterprise that, as one of its business purposes, offers for any form of consideration specified sexual activities between male and female persons and/or persons of the same sex.

Sexually-oriented business shall mean an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, sexually-oriented escort agency, nude model studio, massage parlor or sexual encounter center.

Specified anatomical areas shall mean:

- (1) Less than completely and/or opaquely covered male or female pubic region, anal cleft, anus or female breast below a point immediately above the top of the areola;
- (2) Male genitals in a discernible turgid state, whether covered or not covered or the more intimate parts of the female genitals.

Specified sexual activities means and includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in (1) through (3), above.

Transfer of ownership or control of an adult entertainment business means and includes any of the following:

- (1) The sale, lease or sublease of the business;
- (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
- (3) The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, and includes transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. No. 95-16, § 1, 6-6-95)

Sec. 10-7-25. Classification of adult entertainment uses.

For the purposes of this section, permitted adult entertainment uses are classified and defined in accordance with section 16-4-1203.

(Ord. No. 95-16, § 1, 6-6-95)

Sec. 10-7-30. Permit and/or license required.

In accordance with title 10 of this Code a license is required to establish or operate any adult entertainment use as specified within section 16-4-1203 of the Land Management Ordinance.

- (1) A person commits an offense if he operates an adult entertainment use or business without a valid license, issued by the town for the particular type of adult entertainment use.
- (2) An application for a license must be made on a form provided by the town business license department and in accordance with title 10, chapter 1 and other provisions of this chapter.
- (3) The applicant must be qualified in accordance with the provisions of section 10-7-31 of this chapter.
- (4) If a person who wishes to operate an adult entertainment business is an individual, he must sign the application for a license as applicant. If a person who wishes to operate an adult entertainment business is other than an individual, each individual who has an interest in the business must sign the application for a license as applicant. Each applicant must be qualified under section 10-7-31 and each applicant shall be considered a licensee if a license is granted.
- (5) The fact that a person possesses a valid theater license, dance hall license, public house of amusement license or other type license, does not exempt him from the requirement of obtaining an adult entertainment use or business license. A person who operates an adult entertainment business and possesses a theater license, dance hall license, public house of amusement license or other type business license, shall comply fully with the requirements and provisions of this chapter.

(Ord. No. 95-16, § 1, 6-6-95)

Sec. 10-7-30.1. Fees.

The annual license fee for an adult entertainment business shall be in accordance with section

10-1-90. Transfer of ownership shall not be exempt from payment of fees, except in cases of bequestment involving death or other operation of law upon the death of the person possessing the ownership or control of the establishment. (Ord. No. 95-16, § 1, 6-6-95)

Sec. 10-7-31. Issuance of license.

Upon receipt of proper application for a permit and/or license the Town of Hilton Head shall approve and issue a permit and/or license to an applicant in accordance with the provisions of title 10 of this Code and within thirty (30) days after receipt of an application, unless one (1) or more of the following are found to be true:

- (1) An applicant is under eighteen (18) years of age.
- (2) An applicant or an applicant's spouse is overdue in his payment to the town of taxes, fees, fines or penalties assessed against or imposed upon him.
- (3) An applicant has failed to provide information reasonably necessary for issuance of the permit and/or license or has falsely answered a question or request for information on the applicant form.
- (4) An applicant is residing with a person or has a business partner or affiliate who has been denied a permit and/or license by the town to operate an adult entertainment business within the preceding twelve (12) months, or residing with a person or has a business partner or affiliate whose license to operate an adult entertainment business has been revoked within the preceding twelve (12) months.
- (5) The premises to be used for the adult entertainment has not been approved by health, fire marshal and building official as being in compliance with applicable laws and ordinances.
- (6) The permit and/or license fee required by this section has not been paid.
- (7) In cases where the adult entertainment use or business is considered newly established or application is a reinstatement of a revoked permit, and the location of the

proposed establishment, has not received special exception approval under section 16-3-1801 et seq.

- (8) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this section.
 - (9) The application has not been sworn to be true and correct by the applicant.
 - (10) An applicant has a criminal record.
- (Ord. No. 95-16, § 1, 6-6-95)

Sec. 10-7-32. Inspection.

(a) An applicant or permittee and/or licensee shall permit the administrator of the Land Management Ordinance and representatives of the police, health or fire departments or other town departments or agencies involved in code enforcement to inspect the premises of an adult entertainment business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(b) A person who operates an adult entertainment business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.
(Ord. No. 95-16, § 1, 6-6-95)

Sec. 10-7-33. Expiration of permit and/or license.

(a) Each permit or license shall expire in accordance with the provisions of section 10-1-30. The annual expiration and subsequent payment of fees for renewal shall be considered the continuation of an existing use and shall be exempt from the provisions of section 16-3-1701, Special Exception Review. Renewal and payment of license or permit fee shall be made in accordance with the provisions of sections 10-1-40 and 10-7-31.

(b) When the issuance of a renewal permit or license is denied for any of the reasons as stated in this chapter, the applicant shall not be issued a permit and/or license for one year from the date of denial. If, subsequent to denial, the administrator finds that the basis for denial of the renewal

permit or license has been corrected or abated, the applicant may be granted a permit or license if at least ninety (90) days have elapsed since the date the denial became final.
(Ord. No. 95-16, § 1, 6-6-95)

Sec. 10-7-34. Suspension of permit and/or license.

The administrator shall suspend a license for a period not to exceed thirty (30) days if he determines that a permittee and/or licensee or an employee of a permittee and/or licensee has:

- (1) Violated or is not in compliance with any section of this chapter.
- (2) Engaged in excessive use of alcoholic beverages while on the premises of the adult entertainment business.
- (3) Refused to allow an inspection of the premises of the adult entertainment business as authorized under section 10-7-32.
- (4) Knowingly permitted gambling by any person on the adult entertainment business premises.
- (5) Of, if premises of permittee has been deemed as not in compliance with applicable laws and ordinances as determined by health, fire or building officials.

(Ord. No. 95-16, § 1, 6-6-95)

Sec. 10-7-35. Revocation of permit and prohibited acts.

(a) The administrator shall revoke a permit and/or license if a cause of suspension, as described in section 10-7-34, occurs and the permit and/or license has been suspended within the preceding twelve (12) months.

(b) The administrator shall revoke a permit and/or license if he determines that:

- (1) A permittee, and/or licensee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises.
- (2) A permittee, licensee or an employee has knowingly allowed prostitution on the premises.

(3) A permittee, licensee or an employee knowingly operated the adult entertainment business during a period of time when the permittee's and/or licensee's permit and/or license was suspended.

(4) A permittee, licensee and/or licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sexual conduct to occur in or on the permitted and/or licensed premises.

(5) A permittee and/or licensee is delinquent in payment to the town or state any taxes, fees, fines or penalties as assessed against him.

(c) In accordance with section 10-1-80, it shall be unlawful for a permittee and/or licensee to transfer his permit and/or license to another, nor shall a permittee and/or licensee operate an adult entertainment business under the authority of a permit and/or license at any place other than the address designated in the application. It shall be unlawful for a person to transfer ownership of an adult entertainment business as specified within section 10-1-80.

(d) When the administrator revokes a permit and/or license, the revocation shall continue for one (1) year, and the permittee shall not be issued a permit to operate an adult entertainment business for one (1) year from the effective date of revocation. If, subsequent to revocation, the zoning administrator finds that the basis for the revocation has been corrected or abated, the permit and/or license may be reinstated if at least ninety (90) days have elapsed since the date the revocation became effective.

(e) Upon revocation of a permit for any reason, for a period greater than ninety (90) days the application for reinstatement of the permitted shall be considered as a newly proposed use and shall be subject to the full requirements of section 16-7-632.

(Ord. No. 95-16, § 1, 6-6-95)

Sec. 10-7-36. Location of adult entertainment uses.

(a) All adult entertainment uses shall be located in accordance with the provisions of sections 16-4-1104 and 16-4-1203.

(b) A person commits a misdemeanor if he violates any portion of title 16 as pertaining to the location or other restrictions imposed upon adult entertainment uses or businesses.
(Ord. No. 95-16, § 1, 6-6-95)

Sec. 10-7-40. Penalties.

(a) A person who operates or causes to be operated an adult entertainment business without a valid permit and/or license or in violation of section 10-7-36 of this chapter is subject to a suit for injunction as well as prosecution for criminal violation. Such violations shall be punishable by a fine as provided for in section 1-5-10 of this Code.

(b) Each day any violation of any provision of this chapter shall continue shall constitute a separate offense.

(c) Upon conviction of a violation of this chapter, the business license issued by the town shall be revoked upon written notice.
(Ord. No. 95-16, § 1, 6-6-95)

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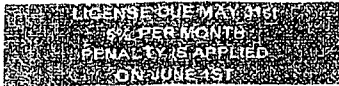
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Business License Form

PAYMENT MUST ACCOMPANY APPLICATION
Cash, Check, MasterCard, or Visa Accepted

INSTRUCTIONS ON REVERSE



TOWN OF HILTON HEAD ISLAND

REVENUE COLLECTION DIVISION

One Town Center Court
Hilton Head Island, SC 29928

(843) 341-4610 FAX (843) 341-4637

www.hiltonheadislandsc.gov

FOR THE LICENSE YEAR 2005

THE BUSINESS LICENSE IS MAIL TO AFTER APPROVAL

IF BUSINESS IS PERMITTED OR LICENSED BY THE STATE OF SOUTH CAROLINA, A PHOTOCOPY OF THE LICENSE OR PERMIT MUST ACCOMPANY THE APPLICATION. ADDITIONAL DOCUMENTATION MAY BE REQUIRED BY THE REVENUE COLLECTOR. ALL APPLICABLE SPACES MUST BE COMPLETE BEFORE THE LICENSE WILL BE ISSUED.

BY: 3658-9
6058

D/B/A or
TRADE NAME: KIGRE INC
ATTENTION: -0- Jeffrey Myers
MAILING ADDRESS: 100 MARSHLAND RD
CITY, STATE, ZIP: HILTON HEAD ISLAND SC 29926

RECEIPT NO.	
ID#	Processed by <u>2/10/05</u> Date <u>2/10/05</u>
☐ RENEW ☐ NEW	HOSP FEE: YES ☐ NO ☐
ACCOMMODATIONS TAX: YES ☐ NO ☐	TYPE: CLASS: <u>62.50</u>
PAYMENT AMOUNT	FEE DUE/REFUND
PENALTY DUE/REFUND	
COMPLETE ONLY IF PAYMENT BY CREDIT CARD:	
Card #	Signature: _____
Exp. Date: _____	☐ VISA ☐ MC

60500855

Base Fee/Min - Additional Fee/M \$62.50(min)+1.08/M PIN # 6873 BLN0100469 / 8482 3800-IT / 05A

LICENSE FEE: Calculate using your gross income as reported to the IRS or estimate if a New Business.

- Amount of gross income as reported
- Gross Income rounded up to next even thousand
- Base fee for 1st \$5,000 gross income:
(See Label Above and Refer to Example on Back)
- Number of Thousands over \$5,000: _____ x rate per thousand (above)
- Subtotal (use this amount to determine penalty due, if applicable)
- Additional Decals (\$25.00 per sticker/vehicle)
- Pool or billiard table, foosball, skeeball machine or other game table (\$5.00 per sticker)
- Electrical vending machine or any machine selling more than 1 item per machine OR amusement machine: Video Games, Jukebox, Pinball, etc. (\$12.50 per sticker)
- Penalty Due (5% per month after May 31st)
- Total Amount Due (payable to Town Of Hilton Head Island)

Use this column

\$ N/A
\$ 62.50
\$ _____
\$ _____
\$ _____
\$ _____
\$ _____
\$ _____
\$ _____
\$ 62.50

OFFICE USE ONLY

\$ _____
\$ _____
\$ _____
\$ _____
\$ _____
\$ _____
\$ _____
\$ _____
\$ _____
\$ 62.50

LEGAL NAME OF BUSINESS ENTITY: Kigre Inc and LEGAL FORM OF ENTITY: _____
PERSON RESPONSIBLE FOR CONDUCT OF BUSINESS: Jeffrey Myers and TITLE OF PERSON: CEO
DESCRIBE BUSINESS: High Laser & Laser Glass Scientific BUSINESS PH# _____ ALT PH# _____
PHYSICAL ADDRESS: 100 Marshland Rd LANDLORD NAME _____ PH# _____
PHYSICAL LOCATION: IN TOWN IN COUNTY _____ OUT OF COUNTY _____ EST. START DATE: _____ IS BUSINESS A HOME OCCUPATION? YES ☒ NO ☐
Has the building space been vacant for 6 months or more? YES ☐ NO ☐ Is this a change in the type of business for this building space? YES ☐ NO ☐
Will there be any renovation or construction at this site? YES ☐ NO ☐ Will you want to erect a new sign? YES ☐ NO ☐
SSN # _____ FED EIN # 34-1126612 SC RETAIL IC # _____ CLOSED or SOLD and DATE _____
CONTRACTOR: _____ STATE LIC# _____ GROUP # _____ EXP DATE _____
E-MAIL: _____ ACCOUNTANT/BOOKKEEPER Ron Armstrong PH# _____

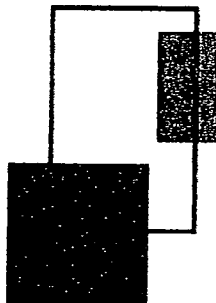
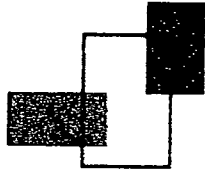
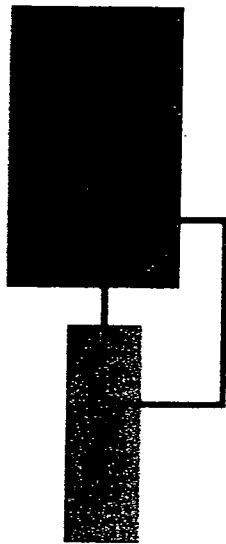
BY MY SIGNATURE BELOW, I AFFIRM UNDER OATH THAT ALL OF THE INFORMATION STATED ABOVE IS THE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE THE AUTHORITY TO MAKE THIS APPLICATION. I AFFIRM UNDER OATH THAT ALL ASSESSMENTS, TAXES, FEES, AND PERSONAL PROPERTY TAXES DUE AND PAYABLE TO THE TOWN AND COUNTY HAVE BEEN PAID. I AFFIRM UNDER OATH THAT I WILL MAINTAIN ACCURATE CONTACT INFORMATION FOR RESPONSIBLE PERSONS ON FILE WITH THE TOWN AND COUNTY. I UNDERSTAND THAT TOWN ORDINANCE PROVIDES FOR PENALTIES AND LICENSE REVOCATION FOR MAKING FRAUDULENT STATEMENTS ON THIS APPLICATION.

APPLICANT SIGNATURE: Jeffrey A. Myers PRINTED NAME: JEFFREY A. MYERS TITLE: V.P. DATE: 2/10/05

EXHIBIT <u>16</u>
Deponent: _____
Date: <u>2/10/05</u> Rptr: <u>MC</u>
www.bepobook.com

204

Ⓐ EXHIBIT 2
Deponent _____
Date 12/8/06 Rptr. AL
www.depofool.com



2006 Business License Handbook

Municipal Association of SC

Municipal Association of South Carolina

Business License Handbook

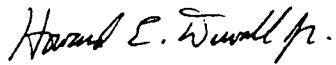
FOREWORD

This handbook is a working tool for interpreting and administering the Business License Ordinance by license inspectors. It is also a training guide for elected officials and business license officials and a resource for license officials participating in the Business Licensing Officials Association certification program.

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

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

This handbook was edited by Roy Bates for the Municipal Association of South Carolina and replaces earlier versions.



Howard E. Duvall, Jr.
Executive Director

Municipal Association of South Carolina

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February 2006

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Part 1 – Business License Concept

Definition of Business License

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

A business license tax is not a property tax. It is a method of requiring a business or occupation to contribute its share in support of the government "as it regards the profits or advantages of such occupations." *State v. Hayne*, 4 S. C. 403 (1873). It is not a sales or income tax, although it is measured by gross income.

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

State Laws Authorizing Business License Taxes

Municipalities

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

(b) **Surtax For Parking.** Sec. 5-7-30 also allows a municipality to levy a surtax on a business license in a designated area to provide and maintain parking for a downtown commercial area. A petition by two-thirds of the affected licensed taxpayers is required.

(c) **Wholesalers and Lenders.** Sec. 5-7-30 limits taxation of wholesalers and real estate lenders to municipalities in which they maintain a warehouse or place of business.

(d) **Annexed Business.** S.C. Code Sec. 5-21-60 requires prorating the license tax for a business annexed into a municipality for the number of months located in the municipality.

Counties

S.C. Code Sec. 4-9-30(12) authorizes a county to levy uniform license taxes on businesses in the county but outside corporate limits of a municipality. The statute exempts teachers, ministers, rabbis, telephone, telegraph, gas and electric utilities, or other utilities regulated by the Public Service Commission, insurance companies, entities exempt under another law, and a business making loans secured by real estate unless it has a premises located in the county but outside a municipality. Gross income must be reduced by the amount of income upon which a license for another county or municipality is computed and paid.

Constitution

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

Franchise Distinguished

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

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

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

The Supreme Court, in *City of Cayce v. AT&T*, 326 S.C. 237, 486 S.E.2d 92 (1997), ruled that the franchise power granted by S.C. Code Sec. 5-7-30 could be used only when the lines served customers within the municipality. Consent of the governing body to place lines in the streets not serving municipal customers may be required pursuant to S.C. Constitution Art. VIII, Sec. 15, and a fee may be charged for that consent. Telecommunications franchises are limited by the State Telecommunications Act of 1999. See Part 3, page 41.

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

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

Non-taxable Businesses and Limitations

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

1. Air express and passenger interstate transportation are exempt.
49 U.S.C. Sec. 40116(b), Sec. 40102.
2. Alcoholic liquors are exempt.
S.C. Const. Art. 8-A, Sec. 1; Sec. 12-33-20.
3. Banks and building loan companies are exempt. Sec. 12-11-30, Sec. 12-13-50.
4. Billiard tables must have state licenses and are subject to special rules. Sec. 12-21-2730 through 2746.
5. Buses - intrastate and interstate are exempt. Sec. 58-23-620, Sec. 12-23-220.
6. Carriers - common motor carriers, taxicabs, intrastate passenger and baggage companies holding PSC certificates A and B are exempt; others may be licensed only where principal offices are located.
Sec. 58-23-620, Sec. 12-23-220.
7. Coin-operated machines must have state licenses and are subject to special rules. Sec. 12-21-2720 - 2728.
8. Credit unions, state and federal, are exempt. Sec. 34-27-300; 12 USC Sec. 1768.
9. Fire insurance premiums limited to 2 percent. Sec. 38-7-160.
10. Lenders on loans secured by real estate limited to location of office.
Sec. 4-9-30(12); Sec. 5-7-30.
11. Marketing Cooperative Associations are exempt. Sec. 33-47-120.
12. Mutual benevolent aid associations are exempt. Sec. 38-35-60.
13. Railroads are limited to a maximum fee according to population.
Sec. 12-23-210.
14. Telecommunications providers are subject to limited license rates.
Sec. 58-9-2220
15. Wholesalers not having places of business within a municipality are exempt. Sec. 5-7-30.
16. Worker's Compensation insurance premiums are exempt. Sec. 38-7-50.

Regulation

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

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

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

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

Reasonableness

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

Discretion of Council

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

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

[illegible]

Part 2 – Interpretation

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

Doing Business

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

Place of Business

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

Limited Activities

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

In *Pee Dee Chair Co. v. City of Camden*, the court held that for licensing purposes, a single delivery of merchandise within a municipality does not constitute doing business therein. The Pee Dee Chair Company had its principal place of business in the City of Darlington, where it manufactured and sold in wholesale quantities chairs and other furniture. The court noted that although a single delivery might constitute doing business under certain conditions, the case before it was not such an instance. Only one load of chairs was delivered, and there was no indication that the company planned to make any subsequent deliveries. There was nothing to indicate the delivery was anything other than an isolated, incidental or casual one. There was no indication the plaintiff planned to engage in the business of hauling merchandise by trucks in the City of Camden.

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

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

Collection of Money/Mail Order

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

Sales

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

Regular Conduct

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

The attorney general said that a municipality may lawfully impose a business license tax on a land surveyor who regularly conducts business within the municipality, even though the surveyor may have already paid a business license fee in another municipality. However, the court said in *Pee Dee Chair Co. v. City of Camden* that sometimes the performance of a number of isolated acts pertaining to a particular business does not constitute doing business within the meaning of the license tax law, unless an intent to engage in the business is clearly apparent. The court stated that, although under some circumstances a single act may be sufficient, as a general rule only repeated and continuous acts constitute doing business. An example of a single act uniformly considered to be "doing business" is a construction or repair activity for which a building permit is required.

Tests for Doing Business

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

How frequently is the business operation carried out?

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

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

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

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

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

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

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

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

State License Exemption

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

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

Classification

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

Industrial Classification Systems

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

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

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

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

U. S. Department of Commerce
National Technical Information Service
5285 Port Royal Road
Springfield, VA 22161
Tel. (800) 553-6847
Fax (703) 321-8547
E-mail: orders@ntis.fedworld.gov

or:

BERNAN
4611-F Assembly Dr.
Lanham, MD 20706-4391
Tel. (800) 274-4447
www.bernan.com
E-mail: order@bernan.com

For more information and conversion tables which may be downloaded, go to the Internet: www.census.gov/epcd/www/naics.html or www.ntis.gov/products (NTIS orders may be placed at this site). The 1997 hardback NTIS number is PB98-127293INF, and 1997 CD-ROM number is PB98-502024. The 2002 hardback NTIS number is PB2002-101430, and the 2002 CD-ROM number is PB2002-502024.

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

Equal Protection

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

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

The S.C. courts have recognized municipalities' right to establish different classes within the same broad category of businesses for fixing business license rates. This type of classification may be done only when there is some reasonable basis for making a

distinction. Insight into the classification of retail merchants may be gained by examining the City of Spartanburg's ordinance that was tested in the State Supreme Court. *Great Atlantic and Pacific Tea Co. v. Spartanburg*, 170 S. C. 262, 170 S.E. 273 (1933).

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

Nonresidents

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

Ability to Pay

Since 1975, many municipalities have adopted ordinances with the ability to pay as determined from national statistics on income and profit as the principal basis for classification. A similar system was upheld by the Georgia Supreme Court in *Pharr Road Investment Co. v. City of Atlanta*, 224 Ga. 752, 164 S.E. 2d 803 (1968), and was ruled constitutional in principle by the S.C. Supreme Court in *Southern Bell v. Aiken* (1983). In *North Carolina Land Corp. v. City of North Charleston*, 281 S. C. 470, 316 S.E. 2d 137 (1984), the Court upheld the classification system's constitutionality based upon ability to pay. The Court first recognized profit concept in 1873 in *State v. Hayne*, 4 S. C. 403. Both the SIC and NAICS classification ordinances discussed above are based on ability to pay as determined by an index of ability to make a profit calculated from nationwide IRS statistics.

Gross Income

Basis for Tax

The general statutory basis for levying a business license tax requires it to be measured by gross income. S.C. Code Sections 4-9-30(12) and 5-7-30. The number of employees, capital invested, net income or losses and taxable income may not be used to calculate the business license tax. As noted in Part 1 (page 3), certain businesses are subject to state statutory provisions requiring business license taxes be levied on population, gross premiums or with limitations as to what revenue is included in gross income and limitations on rates.

Gross Income Defined

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

Exempt Income

Most early license ordinances exempted income from interstate commerce under U.S. Supreme Court decisions prior to 1977. Since the decision in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977) allowing taxation of interstate commerce activities meeting four tests laid down by the Court, most ordinances have been amended to delete the interstate commerce exemption. Taxation of interstate commerce is treated in more detail in Part 3.

Counties are required to exempt income received from activities in another county or a municipality to which a license tax is paid. S.C. Code Sec. 4-9-30(12). Municipal ordinances usually provide for such an exemption to meet the test of reasonableness and avoid payment of two or more license fees calculated on the same income. This treatment was approved in *Eli Witt Co. v. City of West Columbia*, 309 S.C. 555, 425 S.E.2d 16 (1992).

Taxes, such as gasoline and sales taxes, collected by businesses are not income and should not be included in reported gross income. The same is true for the portions of fees and commissions divided with others. Such funds reported as income would result in a higher license fee because no deductions are permitted in the manner for which income tax

deductions may be taken. Only income to the business should be reported in the gross figure for business license tax purposes.

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

There are no exemptions for cost of goods sold or business expenses. These are deductions for income taxes levied on taxable income calculated under rules that are quite different from business license rules. Returns are not business expenses.

The burden is on the taxpayer to demonstrate exemption entitlement. There are no deductions for business license calculations. The licensing official should examine records considered relevant to determine what is actual gross income.

Income from Government Projects

Income from contracts or activities performed for the state or its political subdivisions and agencies is not exempt from business license taxes. There is no statutory exemption, and courts have ruled that although license fees may cause a higher contract price, this does not amount to a tax on another governmental unit. *North Myrtle Beach v. S.C. Public Service Authority (Santee Cooper)* [S.C. Circuit Court, 1991].

Income from a federal project is not exempt unless the work is performed on territory over which jurisdiction has been ceded by state statute to the federal government (for example, military bases and post offices; see S.C. Code Sec. 3-1-10, et seq.). If the tax is not laid on the federal government, even though the economic burden falls on the government, there is no immunity from the tax. *U.S. v. County of Fresno*, 429 U.S. 452; *U.S. v. New Mexico*, 455 U.S. 720; and *Washington v. U.S.*, 103 S.Ct. 1344.

State or federal immunity from taxation cannot be transferred to a third party.

Outside Income Included

A business located in a municipality or county that does business beyond the boundaries of the taxing entity may be subject to a business license tax computed on total

income on which a tax has not been paid to another municipality or county. The right to base the license fee on total receipts has been confirmed by the State Supreme Court in *Triplett v. City of Chester*, 209 S.C. 455, 40 S.E. 2d 684 (1946); and *Eli Witt Co. v. City of West Columbia*, 309 S.C. 555, 425 S.E.2d 16 (1992).

The Court in the *Triplett* case said that a municipal corporation's right to impose a business license tax on a corporation for business conducted within the city limits, although part of the business was carried on outside the municipality, was generally recognized. The controversy arose over levying a license upon a general contractor whose business was constructing highway and railroad bridges in various parts of South Carolina and in other states. He had never done any actual construction work in the City of Chester. He established a central office in a building owned by him in the city. The Court said:

The administrative and executive work, an indispensable phase of respondent's business, was conducted in the office established, maintained and operated in the City. This portion of his business enjoyed all the advantages afforded by the municipal government of Chester to any other business conducted within its corporate limits. We cannot dissociate the managerial features of the business which were conducted within the City, along with the storing of equipment, from the manual execution of the work which was done without the City. All are essential functions of the general contracting business in which respondent is engaged.

Exclusion of gross receipts on which a license is paid to some other municipality or county avoids multiple taxation. This method of classification was held to be reasonable by the Supreme Court in *Eli Witt Co. v. City of West Columbia*, *supra*, which involved wholesale distribution of goods from a warehouse in the city to stores outside the city. Allowing credits for taxes paid elsewhere does not violate the constitutional requirement for equal protection.

Some ordinances provide for different rates on income produced from out-of-city activities and collected through an in-city office. In the absence of such a provision, the license inspector cannot give different treatment.

Rates and Fees

License inspectors are not concerned with rate setting, which is the function of city or county council. Problems can arise regarding fees charged a new or successor business or the operation of more than one type of business at the same location under one ownership.

Flat Fees

Because flat or fixed fees are not based on gross income, they do not comply with the state law authorization and would be discriminatory. However, it is generally accepted practice to charge a minimum base rate sufficient to cover administrative costs. A base rate charged on the first level of gross income (for example, the first \$2,000) is customary.

New Owner

When a new owner takes over an existing business, the license fee for the new owner may be based on the volume of business done by the old business during the preceding year. See *City of Columbia v. Niagara Fire Ins. Co.*, 249 S. C. 388, 154 S.E. 2d 674 (1967).

Proration

Proration for a new business is considered appropriate to meet the test of reasonableness. S.C. Code Sec. 5-21-60 provides that a business license shall be prorated for the year in which a business is annexed to the municipality. A reasonable method of proration for a new business is as follows:

(a) To test the estimate of the gross income for the remainder of the initial year of operation of a new business, compare the estimate submitted by the applicant to gross incomes reported by similar businesses for prior years (classification analysis). If the estimate appears reasonable, it should be accepted. If there is a question, request additional information to make a reasonable estimate. The estimated gross income should equal or exceed the basic fixed expenses of the business. For example:

Employees' salaries	\$2,000
Utilities	300
Other Expenses (supplies, etc.)	200
Cost of goods sold	<u>2,500</u>
Estimated Monthly Total	5,000

This total multiplied by the number of months remaining in the license year gives a reasonable minimum estimate.

(b) To determine the gross income for the next full license year of a new business, take the actual income for the portion of the first year in business and divide it by the number of months in business, then multiply that figure by 12 for a full year estimate. For example:

(actual income) \$40,000 = \$10,000 (average monthly gross)

(months in business) 4

(average monthly gross) \$10,000 × 12 = \$120,000 (estimated gross for full year)

Nonresident Rates

Where circumstances warrant, an out-of-city agent or business may be charged a different rate than a similar business within the municipality. However, the charge cannot be unreasonable, capricious or confiscatory. *American Bakeries Co. v. Sumter*, 173 S. C. 94, 174 S.E. 919 (1934). Many ordinances set double rates for nonresidents.

Multiple Operations

Multiple business operations under one ownership may be required to obtain more than one business license. *Wood-Mendenhall Co. v. Greer*, 88 S. C. 249, 70 S.E. 724 (1911). Some ordinances permit an owner to obtain one license for all operations at one location based on the highest rate applicable to any operation. A separate license for each business location is usually required, although some ordinances allow one license for a chain of businesses under one ownership. These matters should be addressed in the ordinance. If one license is permitted for multiple locations, duplicate licenses should be issued because there is usually a requirement to post the license at the place of business.

The license official determines if a given operation is distinct or separable from the general business. Some discretion is involved, and the SIC and NAICS manuals can help. Business operations' descriptions in these manuals usually indicate subsidiary activities included in the general business category. For example, an automobile dealership (SIC 5511; NAICS 4411) would include retailing new and used vehicles, repair services, and sale of tires, batteries, parts and accessories. Therefore, one license would cover all included operations.

Calculation of Fees

Calculation of the correct fee is sometimes left to the taxpayer, particularly for renewals. However, it is the license official's responsibility to make sure the correct fee is paid.

License ordinances include varied fee schedules (see MASC 1995 Business License Rate Survey). Some older ordinances contain rates that vary from one business classification to another on the amount of gross income covered by the base fee but have only minor variations in the rate per \$1,000 above the base. This treatment produces a large number of rates and makes administration more difficult.

The model SIC- and NAICS-based ordinances provide classifications with a rational basis and a simplified rate structure. License tax calculation under these ordinances is straightforward, as shown in the following example:

A food or grocery store (SIC 5411; NAICS 44511) is in Rate Class 1.

Assume that Class 1 Rates are:

RATE CLASS	<u>INCOME: 0 - \$2000</u>	<u>ALL OVER \$2000</u>
	MINIMUM FEE	Rate per Thousand or fraction thereof
1	\$25	\$1.00

and

Declining Rates apply in all Classes for gross income in excess of \$1,000,000	
Gross Income in \$ Millions	Percent of Class Rate for each additional \$1,000
0 - 1	100%
1 - 2	90%
2 - 3	80%
3 - 4	70%
Over 4	60%

Assume a grocery store has \$4,575,000 in gross income for the prior year.

The license tax would be calculated as follows:

On first \$ 2,000	minimum - \$ 25.00
On next 998,000 at 100% of \$1.00 per thousand -	998.00
On next 1,000,000 at 90% of \$1.00 per thousand -	900.00
On next 1,000,000 at 80% of \$1.00 per thousand -	800.00
On next 1,000,000 at 70% of \$1.00 per thousand -	700.00
On next <u>575,000</u> at 60% of \$1.00 per thousand -	<u>345.00</u>
Gross Income 4,575,000	License Tax 3,768.00

Study Questions for Part 2

1. What level of activity constitutes "doing business?"
2. Must there be an established place of business in the taxing jurisdiction for the business license ordinance to be applicable?
3. What are examples of activities that do not amount to "doing business"?
4. What are some tests for determining whether an operation is "doing business"?
5. When is the holder of a state license exempt from a local business license?
6. What is required for classifying businesses in different rate classes?
7. Must every business in the same classification be treated in the same manner?
8. May higher rates be charged to nonresidents than to resident businesses?
9. Does a classification system based on ability to pay have a rational basis?
10. What is gross income for business license tax purposes?
11. What deductions from gross income are allowed for business license purposes?
12. What types of income are exempt from business license tax calculation?
13. Is income from government projects exempt?
14. How is income from outside activities treated?
15. Are flat fees authorized?
16. When should license taxes be prorated?
17. How are multiple operations at one location under one ownership licensed?
18. How is a license tax calculated for a high-income business under a declining rate schedule?

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page or a sheet of stationery. There is no handwriting or other markings on the page.

Part 3 – Difficult Applications

Some business types often request clear explanations from the license inspector on the inability to allow deductions and exemptions or the correct application of federal law concerning interstate commerce. The more common difficult applications are discussed with the warning that an attorney should always be consulted when unusual or complicated cases arise.

Agricultural Products

Agricultural products are exempt from county vendor licenses pursuant to S. C. Code Sec. 40-41-90. There is no state law exemption from municipal business licenses for sale of agricultural products. A municipal ordinance may allow an exemption or omit sale of agricultural products as a class from licensing if desired. The exempt class is usually limited to products grown by the seller.

Air Express and Transportation

Air express of parcels and passenger transportation, if any part of the activity is across a state line, are exempt from licensing by federal statute, 49 U.S.C. Sec. 40116(b) and Sec. 40102. These activities may not be taxed locally except by ad valorem, income and sales taxes. The exemption applies to the entire operation, including ground delivery by truck.

Alcoholic Beverages

S.C. Code Sec. 12-33-20 specifically preempts county and municipal license taxes for the privilege of engaging in the business of manufacturing and selling "alcoholic liquors." The definition of "alcoholic liquors" in Sec. 61-6-20 applies. That definition excludes "a beverage declared by statute to be nonalcoholic or nonintoxicating." Sec. 61-4-10 expressly declares, as "nonalcoholic or nonintoxicating beverages", all beer or fermented beverages not exceeding 5 percent alcohol by weight and all wines not exceeding 21 percent alcohol by weight. A previous statute (Sec. 12-21-1080) which preempted a license tax on beer and wine was repealed effective in July 2001.

Amusement Machines - See Coin-operated Machines

Auctioneers

S.C. Code Sec. 40-6-320 provides: "Notwithstanding any other provision of law, municipalities may not enact ordinances to provide for the licensing of auctioneers. " However, the provisions of Title 40, Chapter 6 deal with state licensing of auctioneers based on qualifications. Under the Supreme Court decision in *Wrenn Bail Bond Service, Inc. v. City of Hanahan*, 335 S.C. 26, 515 S.E.2d 521 (1999), a nonregulatory local privilege tax may be imposed on auctioneers.

Automobile Dealers

Some automobile dealers believe they should be allowed to deduct the value of trade-in vehicles from gross income. Some license ordinances allow the deduction. There is no statutory provision for such a deduction. The gross income from a transaction is the full sale price, whether paid in cash or something of agreed value. There is no deduction allowed for the cost of vehicles sold, so the sale price of a new or used vehicle would be included in gross income. The result may be taxation on the value of the trade-in twice. This problem may be addressed in the rate-setting process as an unusual operational characteristic that justifies an adjusted rate if the governing body so decides. Motor vehicle, boat and farm machinery dealers are included in Rate Class 8 of the model NAICS-based ordinance for this reason.

Bail Bondsmen

Bail bondsmen are not exempt from business license taxes under the regulatory license requirements of S.C. Code Sec. 38-53-10, et seq. *Wrenn Bail Bond Service, Inc. v. City of Hanahan*, 335 S.C. 26, 515 S.E.2d 521 (1999). There is nothing in the statutes indicating preemption by the state or prohibiting local license taxes on the privilege of doing business.

Bingo

The state regulates bingo under the Bingo Tax Act, S.C. Code Title 12, Chapter 21, Article 24, Sec. 12-21-3910, et seq. Bingo operators must obtain a license from the S.C. Department of Revenue pursuant to S.C. Code Sec. 12-21-3940. Only nonprofit organizations exempt from federal income taxes under IRS Code Sec. 501(c)(3), (4), (8), (10), or (19) may be licensed. Bingo must be conducted by a licensed promoter who must pay an annual state privilege tax of \$1,000. S.C. Code Sec. 12-21-3950. The state licenses and taxes bingo in six categories. S.C. Code Sec. 12-21-4020. There is no language in the statutes prohibiting a municipal or county business license tax on the organization or a paid promoter. See *AmVets Post 100 v. Richland County*, 280 S.C. 317, 313 S.E.2d 293 (1984). Exemption from income taxes does not automatically exempt a business from business license taxes. A charitable exemption depends on language in the business license ordinance.

Canvassers - See Peddlers and Solicitors

Carriers, Buses and Taxicabs

S. C. Code Sec. 58-23-620, as amended in 1995, prohibits a city or county license tax on holders of Public Service Commission A and B certificates. The holder of an E or F certificate, Certificate of Compliance, or a common or contract motor carrier of property may be taxed only at their place of residence or location of principal place of business. Holders of C certificates are subject to business license taxes.

A taxicab usually has a certificate C. However, S.C. Code Sec. 12-23-220 provides that a taxi license issued in the municipality or county *"in which his principal place of business is situated"* is good in every municipality or county in the state. The exemption provided by this section applies only to interurban business. S.C. Code Sec. 58-23-1210 states: *"The governing body of a county or city may license taxis only in the county or city where the taxi principally is operated at the time of application for a license."* Recommendation: Charge a business license at the operator's residence or location of the principal place of business - where the vehicles are registered. If a taxi licensed elsewhere is operated principally for intraurban transportation between points within the municipality or county, it may be subject to a local license tax. A taxi properly licensed elsewhere and delivering passengers from or picking up passengers destined for another jurisdiction is exempt.

Charitable and Religious Activities

Charitable Activities

Charitable solicitations are regulated by state law. S.C. Code Sec. 5-27-910 requires a municipal or county permit to solicit funds from motorists on streets.

The Solicitation of Charitable Funds Act in S. C. Code Sec. 33-56-10, *et seq.* provides for annual registration of charitable organizations with the Secretary of State, payment of a \$50 fee, annual reports and enforcement by the attorney general. Charitable organizations under these statutes mean tax-exempt organizations under state and federal income tax laws. "Charitable purpose" is defined as a purpose described in Section 501(c)(3) of the Internal Revenue Code or a benevolent, social welfare, scientific, educational, environmental, philanthropic, humane, patriotic, public health, civic or other eleemosynary objective. This Act does not preempt local regulation and does not exempt an organization from a business license.

Most business license ordinances specifically exempt charitable activities when the entire proceeds are used for charitable (eleemosynary) purposes. This means a non-commercial activity or solicitation out of which no one realizes personal gain or profit is exempt from licensing. This does not mean an organization with overhead or

paid employees does not qualify for exemption. Net profit usage is usually the test for determining whether the activity is charitable. Exemption from state or federal income taxes does not automatically entitle the activity to exemption from a business license. The license ordinance may define charitable in more stringent terms than the income tax laws. However exemption under IRS Code Sec. 501(c) is sometimes considered as a factor in determining whether an organization is charitable. See Bingo discussion above.

The license ordinance cannot impinge on the exercise of free speech. For example, ordinances permitting solicitation only between 9:00 a.m. and sunset have been held unconstitutional.

Religious Activities

Promulgation of religious beliefs is a freedom protected by the First Amendment to the U. S. Constitution. Evangelism, preaching, house-to-house distribution of religious literature and the solicitation of contributions for religious purposes are not subject to business licensing.

In *Follett v. Town of McCormick*, 321 U. S. 573 (1944), the U. S. Supreme Court held that a municipality could not require a business license for a minister who went from house to house distributing religious literature, although his activities were confined to his home town and he depended for his livelihood on contributions requested in return for the literature.

Bookstores selling books not solely for the purposes of spreading religious beliefs may be licensed even if they are owned and operated by religious denominations.

Kindergartens and schools operated by churches as extensions of religious outreach may not be licensed. However, if they are operated for profit as secular activities, they may be licensed.

Coin-operated Amusement Machines and Billiard Tables

State, municipal and county licensing of amusement machines and billiard tables is prescribed in S. C. Code Title 12, Chapter 21.

Amusement Machines

(a) Video Poker

Under Act 125 of 1999, S.C. Code Sec. 12-21-2710 and Sec. 12-21-2720 as construed by the Supreme Court in *Joytime Distributors and Amusement Co., Inc. v. The State of South Carolina*, 338 S.C. 634, 528 S.E.2d 647 (1999), video poker machines with a free play feature or cash payout are prohibited in the state effective July 1, 2000.

(b) Nonpay Amusement

S.C. Code Sec. 12-21-2720(B) provides from and after July 1, 2000, that a municipality may not limit the number of machines licensed pursuant to subsection (A)(3) of Sec. 12-21-2720, but may impose a license fee on those machines not exceeding 10 percent of \$3,600 for a two-year period. A machine that may be licensed by the S.C. Department of Revenue under subsection (A)(3) is "a machine of the nonpayout type, or in-line pin game, operated by a slot in which is deposited a coin or thing of value except machines of the nonpayout pin table type with levers or flippers operated by the player by which the course of the balls may be altered or changed." Each of these machines would continue to be subject to a \$180-per-year municipal license fee, plus a \$12.50 business license tax for operation of all machines at one location.

(c) Music, Rides, Pinball

The limits of \$12.50 per year per machine plus \$12.50 for a municipal business license tax for operation of all machines at one location licensed under S.C. Code Sec. 12-21-2720(A)(1) and (A)(2) remain in effect. Under those subsections, the state requires a license for each machine for playing of music, kiddy rides, juke boxes, amusements, video games without free play feature, crane type machines and nonpayout pinball tables operated by any coin or thing of value.

The maximum municipal business license of \$12.50 on the business operating machines at one location is set by Code Sec. 12-21-2746, limiting all licenses by municipalities and counties to one-half of the amount charged by the state before March 28, 1956 (which was \$25.00). *Crenco v. City of Lancaster*, 318 S.C. 278, 457 S.E.2d 338 (1995).

Pursuant to S. C. Code Sec. 12-21-2728, the state requires a machine owner to purchase an operator's license for the business in addition to the license for each machine.

The bottom line for municipal amusement machine license taxes:

Operator of machines licensed under Sec. 12-21-2720(A)(1) and (A)(2) - \$12.50 per machine, plus \$12.50 business license tax for operation of all machines at one location.

Operator of nonpayout machines licensed under Sec. 12-21-2720(A)(3) - \$180 per machine, plus \$12.50 business license tax for operation of all machines at one location.

Distributor who does not own and operate the machines nor is licensed as an operator under Sec. 12-21-2728, but sells or leases the machines - a gross receipts business license tax may apply.

Vending Machines

Vending machines not listed (for example, cigarettes, candy, food machines) are not subject to local licenses on each machine by a state statute. A business license may be charged on gross income from operation of vending machines.

Billiard Tables

The state requires a license for each billiard or pocket billiard table, football table, bowling lane table and skeeball table under S. C. Code Sec. 12-21-2730, and a license for the privilege of engaging in the business pursuant to Sec. 12-21-2734.

S. C. Code Sec. 12-21-2746 authorizes municipalities and counties to levy a license tax on the business not to exceed one-half of the amount levied by the state before March 28, 1956. The maximum municipal license now is \$5.00 per table measuring less than 3 ½ feet wide and 7 feet long, and \$12.50 per table longer than that.

Some municipalities charge a business license fee on the gross receipts from the whole business in addition to the fee authorized by statute for each table.

Contractors and Subcontractors

No State Exemption

Contractors and subcontractors have no basis under S.C. law to claim an exemption from the business license tax. A contractor who claims that the license fee charged for being certified by the state exempts him from municipal license fees may be charged without regard to other forms of taxation. A license may be collected by each municipality in which he takes a contract. 1950-51 Op. Attorney General pg. 198.

Outside Income Included

Contractors may object to the license being based on total gross receipts, especially on funds not earned within the municipality or county. The right to base the license fee on total receipts has been confirmed by the State Supreme Court in *Triplett v. City of Chester*, 209 S.C. 455, 40 S.E. 2d 684 (1946); and *Eli Witt Co. v. City of West Columbia*, 309 S.C. 555, 425 S.E.2d 16 (1992). See the discussion in Part 2, Gross Income, page 14.

As noted in Part 2, some ordinances provide for different rates on income produced from out-of-city activities and collected through an in-city office. In the absence of such a provision, the license inspector cannot give different administrative treatment.

Subcontractors Taxable

Subcontractors are not exempt from a business license tax even though the general contractor may pay a tax on the full contract price of a project. Neither may a general contractor deduct the amount paid to a subcontractor from the gross income upon which he computes his license tax.

The contractor and subcontractor are two different people or entities engaged in two different business activities. Each is subject to a license tax based upon the gross income received. The tax is levied upon the privilege of doing business not on the income. Therefore, there is no double taxation as is frequently argued.

However, if an owner pays a general contractor to supervise the work but pays the tradesmen or subcontractors directly, the amounts paid subcontractors would not be included in the contractor's gross income.

If a subcontractor claims to be an employee of the contractor, he should be required to produce payroll records or W-2 withholding records to substantiate employee status. Otherwise, he is subject to a license tax as an independent contractor.

Government Contracts

Contractors with state agencies or subdivisions are not exempt from business license taxes. The tax is based on the contractor's privilege of doing business not on the governmental entity. The fact that license fees may cause a higher contract price does not affect this principle. *North Myrtle Beach v. S. C. Public Service Authority (Santee Cooper)* [Circuit Court, 1991]. See the discussion on income from government projects in Part 2, Gross Income, page 14.

A contractor on a federal project is not exempt from a license tax unless the work is performed on territory over which jurisdiction has been ceded by state statute to the federal government (such as military bases; see S. C. Code Sec. 3-1-10 through 3-3-340).

The U. S. Supreme Court has upheld taxes on contractors dealing with the federal government if the tax is not laid on the federal government. The federal immunity from taxation may not be conferred on a third party even though the entire economic burden falls on the federal government. See *U. S. v. County of Fresno*, 429 U.S. 452; *U. S. v. New Mexico*, 455 U.S. 720; and *Washington v. U. S.*, 103 S. Ct. 1344.

Corporate Offices

Corporate offices maintained in a municipality or county without involvement of an income producing activity or collection of income are classified under NAICS code 551114 in the MASC Model Business License Ordinance. The minimum fee may be collected under ordinances levying a fee on income from zero to a stated amount (e.g., 0

- \$2,000). If there is no income collected through the office or from an activity conducted by that office, there can be no additional tax.

Credit Unions

Federal and state credit unions are exempt from local business license taxes. 12 U.S.C. Sec. 1768; S.C. Code Sec. 34-27-300.

Door-to-door Sales - See Peddlers and Solicitors

Fireworks

The state has preempted the regulation of the sale of fireworks and requires a \$50 annual retail license fee for a permit to be issued by a municipal or county clerk. The fee is retained by the municipality or county and is treated as a regulatory fee in addition to a normal business license fee on gross income required by local ordinance. Because the state specifically permits sale of fireworks, retail sale cannot be prohibited outright by municipalities and counties. See S. C. Code Sec. 23-35-10 through 23-35-80.

The location of sale of fireworks is subject to zoning laws and requires approval of the municipal fire chief or county sheriff as meeting safety standards of the State Board of Pyrotechnic Safety. Licenses and permits must be issued on forms prescribed by the State Board of Pyrotechnic Safety. S.C. Code Sec. 23-35-70. A fireworks display is subject to a permit approved by the municipal or county governing body. S.C. Code Sec. 23-35-60.

Fortunetelling

S. C. Code Sec. 16-17-690 makes fortunetelling, palmistry, phrenology, clairvoyance or prediction of future events by cards, etc. illegal as an inducement to promote some other business. Many municipalities prohibit such activities for any purpose by ordinance. The prohibition may be made in the business license ordinance.

Fortunetellers in any county must obtain a license from the Clerk of Court pursuant to S. C. Code Sec. 40-41-310.

Fuel Dealers

Heating-fuel dealers making retail deliveries from out-of-town locations to customers in town are subject to a license tax. The absence of an office or facility in the town makes no difference. However, wholesale-fuel deliveries are exempt under S. C. Code Sec. 5-7-30 unless the wholesaler has an establishment in town. Separate reporting of gross income by dealers making both retail and wholesale deliveries may be

necessary since the NAICS-based model license ordinance (MASC Model Ordinance 2006) places retail fuel oil sales in rate class 2 and wholesale deliveries in rate class 1.

Health Maintenance Organization (HMO)

SIC Code 8010 and NAICS Code 621491 specifically include HMOs, which are associations or groups primarily engaged in providing medical or health services to members **through their own facilities or employed physicians** for a fixed prepaid fee. S.C. Code Sec. 38-33-140(D) prohibits an HMO from referring to itself as an insurer, even though an HMO is regulated through the Insurance Commissioner. However, a medical service plan providing health services by **contract through private physicians or facilities owned by others** in accordance with a prearranged schedule of specified charges is classified as insurance under SIC 6324 and NAICS 52411.

Home Occupations

Home occupations such as teaching music, hairstyling, bookkeeping and tailoring are subject to a business license tax unless the business classification is entirely exempt from licensing regardless of location. An exemption for "all home occupations" would be invalid as a denial of equal protection. The location alone cannot be the basis for exemption.

There may be a rational basis for classifying businesses by the number of participants (for example, teaching fewer than four music students) and allowing an exemption for a level of activity too small to really be considered a business. Take care to identify a rational basis for the classification.

A home occupation must be a permitted use under local zoning regulations to be licensed. It must be licensed according to the nature of the business operation in the same manner as any other business. There is no "home occupation" business license classification.

Insurance Companies and Agents

Municipal Taxation

Insurance companies operating within a municipality are subject to business license taxes measured by the gross premiums collected. Generally speaking, the municipality may levy the license on all premiums collected by the insurance company through an office in the municipality or on risks located in the municipality, regardless of whether an office or an agent is maintained therein. See the MASC Model Business License Ordinance for the suggested definition of gross premiums. Payment of state taxes through the Insurance Commission does not exempt insurance companies from municipal taxes. S.C. Code Sec.38-7-160 provides that nothing in the insurance laws

prevents municipal business license fees. The Municipal Association Insurance Tax Collection Program collects for participants' current and delinquent license taxes on gross premiums from domestic and foreign insurance companies and brokers for non-admitted insurers. Agents for insurers licensed to do business in this state are subject to a local business license tax on gross commissions if the ordinance so provides.

(a) Doing Business

Out-of-state insurance companies who have no agents or offices within the city are not exempt from the license tax on the basis that they are either not "doing business" or are engaged in interstate commerce. The insuring of a risk located within the city, the collection of premiums on that risk in any manner and the adjustment of claims on policies constitutes "doing business." Collection of premiums exclusively by mail would make no difference.

Support for this position may be found in the U.S. Supreme Court case of *Equitable Life Society v. Pennsylvania*, 238 U.S. 143 (1915); *City of New Orleans v. Kansas City Life Ins. Co.*, 22 So. 2d 51 (1945). S.C. insurance statutes require that insurance business be conducted in this state through licensed agents, managers and adjusters. S.C. Code Sec. 38-43-60.

(b) Interstate Commerce Not Exempt

Prudential Ins. Co. v. Benjamin, 328 U.S. 408 (1946), held that Congress expressly left to the states the regulation and taxation of insurance companies by the McCarran-Ferguson Act, 15 U.S.C. Sec. 1011, and insurers in interstate commerce could be taxed. *North Myrtle Beach v. GEICO* (DCSC 1991), held that a mail-order insurer in interstate commerce could be taxed, but an interstate commerce exemption in the ordinance prevented taxation. All participants in the MASC insurance collection program have removed exemptions for interstate commerce from their ordinances. Under the decision in *City of Charleston v. Government Employees Insurance Company*, 334 S.C. 67, 512 S.E.2d 504 (1999), mail-order insurance companies with no offices in the state are subject to municipal business license taxes on gross premiums collected in the municipality or realized from risks located in the municipality as authorized by S.C. Code Sec. 38-7-160.

(c) Fire Insurance

Fire insurance companies are placed in a separate licensing category. According to S. C. Code Sec. 38-7-160, municipalities may base the license of fire insurance companies operating in the municipality only on a percentage of premiums collected from risks located within the limits or collected on property both inside and outside of the limits if an agent is located within the municipality. There is a major exception, however. When the company can show that it has paid a license tax on premiums to any other city, that amount must be deducted from the gross premiums by the city in which the office may

be located. When another city is not involved, the home city can collect on premiums collected outside of the city limits.

For most municipalities, the business license on fire insurance premiums cannot exceed 2 percent. In cities of 50,000 population and over, the maximum is 5 percent.

Other than fire insurance, there are no special laws applying to insurance companies, except those exempting certain types of insurance from taxation (See Part 1). Consequently, most insurance companies may be licensed subject to only the general restrictions placed on all business licenses.

S. C. Code Sec. 38-7-160 also provides that nothing in the state insurance laws may be "construed as preventing any municipality from levying and collecting license fees or taxes in accordance with its ordinances."

(d) Classification

Casualty companies and life insurance companies may be placed into different rate categories. The Supreme Court has consistently upheld reasonable classifications so long as all companies of the same general type are treated alike. In *City of Columbia v. Putnam*, 241 S.C. 195, 199, 127 S.E. 2d 631, 633 (1962), the Court held:

(A)n ordinance setting the amount of license fees on a percentage of gross premiums as provided for in the present ordinance in respect to casualty companies is not invalid in that (the) . . . Casualty Insurance Company is treated equally with other casualty companies in the same class. The fact that one class may pay more proportionately than other classes does not of itself make the license fee unreasonable or arbitrary since this is largely within the discretion of City Council.

(e) Reasonableness of Rates

In *U.S. Fidelity and Guaranty Co. v. City of Spartanburg*, 263 S.C. 169, 209 S.E. 2d 36 (1974), U.S. Fidelity and Guaranty paid 2 percent of gross receipts while other businesses paid much less. The Court stated that a gross disparity between license taxes laid on different classifications of business is constitutionally impermissible unless there is a rational basis.

The City defended the disparity on two grounds: (1) fire and casualty insurers receive more benefit than other businesses from two of the City's most expensive and efficient services, fire and police protection, and (2) such insurers pay little, if any, ad valorem property tax so should contribute substantially to the cost of city government by the business license tax. The Supreme Court concluded that the reasons given by the city were not irrational, nor was the resulting rate palpably unreasonable.

The burden is on the attacker to prove a lack of a rational basis. However, a municipality should be able to show why it charges one business class more than another. In doing so, the municipality should consider factors such as the net profit index of one business class as compared to another, the amount of other taxes paid, if any, and the service and protection given by the city to one business class as compared with other categories of business.

County Taxation Prohibited

Counties are prohibited from levying a business license tax on insurance companies by S.C. Code Sec. 4-9-30(12).

Insurance Agents and Brokers

Payment of license fees by insurance companies does not exempt independent agents or brokers from license fees. Employees of insurance companies who sell insurance are exempt. See *Hay v. Leonard*, 212 S.C. 81, 46 S.E.2d 653 (1948).

The tax on the insurance companies is on the privilege of insuring risks in the municipality. The tax on the independent agents is on the privilege of selling insurance and handling claims. These are two different business activities conducted by two different entities. Whether the agent sells for one or a number of companies does not determine whether he is subject to the tax. The test is whether he is an employee or an independent agent. An employee's paycheck would include payroll deductions for income taxes and social security. The independent agent or broker would receive a commission that would be his gross income for business license purposes.

Independent insurance agents sometimes argue that they should not pay a business license tax because the company pays a tax on the gross premiums. They contend this would be double taxation because their commissions are paid from gross premiums. This is a misconception.

Some points to consider in support of taxation of agents are:

- ? Agents are in business just like other people who contract to perform a service. They contract with insurance companies to sell policies.
- ? It is unfair to tax other businesses and exempt agents. Other businesses must carry a heavier burden to support the city budget when a class of businesses is exempt from the tax. Other types of agents and brokers are taxed.
- ? Tax payments by insurance companies do not come from the commission income received by agents for the sale of policies. The companies do not pay license fees for agents.

- ? There is no double taxation. The taxes are levied on two different businesses. For example: manufacturers, wholesalers and retailers may be subject to license taxes on gross income from the sales of the same goods because each activity is a separate business. Neither the goods nor the sales transactions are the subjects of the tax.
- ? The tax is due for the privilege of doing business. It is measured by gross income, but it is not an income tax.

Brokers may be classified differently from agents. Most municipalities charge a 2 percent license fee to brokers for non-admitted surplus lines coverage that may be issued only through a resident broker. This tax is not on the insurance company but is levied on the full premium collected by the broker even though a portion is remitted to the company. The tax is on the privilege of selling surplus lines insurance for which the premium is negotiated and is not regulated. However, approval of the Insurance Commission must be obtained for a specific policy which companies licensed in this state have declined to issue. Agents cannot sell such insurance.

Interstate Commerce

Interstate Commerce Defined

"Interstate Commerce" is the trading in commodities between citizens of different states.

"Interstate commerce" is not a technical legal conception but a practical matter to be determined upon a broad consideration of the substance of the whole transaction. It means not merely interstate movement but interstate business. It includes trade resulting in the passage of property, people or messages from within one state to within another state.

Articles are considered interstate commerce when they commence their final movement for transportation from the state of their origin to the state of their destination. Interstate commerce includes buying and selling goods for shipment from one state to another and all component parts of the transaction are included; for example, taking orders, shipping, unloading, storage, delivery to purchaser and collection of sales price. However, goods may come out of interstate commerce at some stage and become a part of an activity that is intrastate in nature and subject to a license tax, as following examples indicate.

Taxable Interstate Commerce

Prior to 1977, a business license tax could not be levied on the privilege of carrying on a business exclusively interstate in character according to the U. S. Supreme Court ruling in *Spector Motor Service, Inc. v. O'Connor*, 340 U.S. 602 (1951). However, the

Supreme Court overruled the *Spector* case in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), and established a four-pronged test for validity of state or local taxes on interstate commerce.

Under that test, a local tax on interstate commerce is valid if:

- (1) the tax is applied to an activity with a substantial nexus [connection] with the taxing state [local government];
- (2) the tax is fairly apportioned;
- (3) the tax does not discriminate against interstate commerce; and
- (4) the tax is fairly related to the service provided by the state [local government].

Many business license ordinances in this state contained an express exemption for interstate commerce in keeping with the law prior to 1977. Where there is such a provision, interstate commerce is not subject to the business license tax. See *Carolina Manufacturing Co. v. City of Greenville*, 260 S.C. 580, 197 S.E. 2d 665 (1973); *North Myrtle Beach v. GEICO*, (DCSC 1991). However, most ordinances have been amended to delete the interstate commerce exemption.

Therefore, the first inquiry is whether the license ordinance contains an exemption. If it does, no tax is levied. If it does not, the tax may be levied only if all four tests in the *Complete Auto Transit* case are met. In either event, it is necessary to determine whether the activity in question is interstate commerce.

The intrastate activity of a business also engaged in interstate commerce is subject to the tax where the intrastate activity is separable, even if the ordinance exempts interstate commerce.

Examples of Interstate Commerce

These examples are taken from actual court decisions from across the nation and should be considered only as guidelines in making local decisions. The courts don't always agree on similar facts, and a single factual difference or the purpose for the determination can produce varied results. License inspectors should consult the city or county attorney in difficult cases.

(a) **Advertising.** Although a local newspaper, magazine, radio station or television station may be engaged in interstate commerce to some degree by distribution or broadcast across state lines, advertisements sold or contracted for within this state are not in interstate commerce. Such activity would be subject to a business license.

(b) **Insurance.** Insurance transacted across state lines may be interstate commerce. However, if the ordinance does not exempt interstate commerce, mail order insurance companies may be taxed on premiums from risks in this state. *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408 (1946), *City of Charleston v. Government Employees Insurance Company*, 334 S.C. 67, 512 S.E.2d 504 (1999).

(c) **Manufacturing.** Manufacturing of goods intended to be shipped across state lines is not interstate commerce. Interstate commerce does not commence until the goods are shipped. However, the activity of manufacturing produces no gross income as a general rule, and a business license must be computed on gross income from an activity subject to the privilege tax. A sale in interstate commerce may be a separate activity from the manufacture of the goods. Therefore, there must be an apportionment of the sales price to the manufacturing process conducted within the taxing jurisdiction. A tax on the capital invested in a business is no longer authorized by state law.

(d) **Motion Pictures.** Motion picture films manufactured out of state and leased to exhibitors in this state are in interstate commerce until delivered. The showing of films by local theaters is not interstate commerce.

(e) **Newspapers.** Publication of a local newspaper is not interstate commerce, even if a small portion of its circulation is located across a state line and it carries some advertising from out of state. The sale of advertisements is not interstate commerce.

Distribution by a local distributor within the state of an out-of-state newspaper to vending machines and dealers for local sale in this state is not interstate commerce. The local distributor would be subject to a license tax based on his gross income.

(f) **Office.** An out-of-state business maintaining only a local office through which it keeps records, holds meetings, distributes dividends and executes documents is not engaged in interstate commerce. However, where no gross income is collected by that office, it may be subject to only a base minimum fee if the license ordinance so provides.

(g) **Peddlers and Solicitors.** Peddlers who obtain goods from out of state and sell them on their own terms, even if they remit a portion of the proceeds to the out-of-state supplier, are not in interstate commerce and are subject to a license tax.

Solicitors or traveling salesmen who take orders for goods from out of state, even though samples are displayed and a portion of the purchase price is collected with the order, are in interstate commerce.

A local commission agent of an out-of-state company to whom goods are shipped for sale in the original packages is involved in interstate commerce.

(h) **Professional Services.** Professional services rendered locally by an out-of-state consultant, engineer, architect, contractor, advisor, etc., are not interstate commerce.

(i) **Radio and Television Broadcasting.** Radio and television broadcasting constitutes interstate commerce whether programs originate locally or out of state

where they are broadcast to listeners and viewers out of state. The sale of advertisements is not interstate commerce.

(j) Repairs. Local repairs or work performed on an article that reaches the local shop by a shipment in interstate commerce is not interstate commerce. The mere fact that an anticipated local transaction causes movement in interstate commerce is not sufficient to constitute the local transaction a part of interstate commerce.

(k) Securities. Transactions on national security exchanges are interstate in nature. The sales of securities are subjects of interstate commerce. However, some security transactions may be intrastate, and the broker may be subject to a license tax.

(l) Small Loans. A small loan transaction completed by the borrower when he signs documents and receives money in this state does not involve interstate commerce even if the funding source was a main office out of state.

(m) Sports Exhibitions. The business of giving sports exhibitions does not involve interstate commerce just because the participants are transported across state lines.

(n) Stevedoring. A stevedoring company that loads and unloads out-of-state or foreign cargo is involved in interstate commerce. However, if the company merely supplies longshoremen to the ship owner without controlling the loading or unloading, that is not an activity in interstate commerce.

(o) Warehousing. Warehousemen who are employed by a company that owns or has contracted to deliver goods shipped from out of state and which are stored as a part of the process of delivery to the purchaser are engaged in interstate commerce. Examples: Freight carriers, parcel delivery services, mail order firms, chain store warehouses and storage by the purchaser for use by the purchaser.

Local distribution of goods owned by a wholesaler from a wholesaler's warehouse to retailers is not interstate commerce.

Goods shipped to a warehouse to meet anticipated needs without specific orders from customers to whom they are to be delivered are not in interstate commerce after they reach the warehouse. However, some transaction-generating revenue must occur thereafter to subject the activity to a business license. The independent operation of a warehouse for a fee to any user would be subject to a business license based on gross fees collected, regardless of the source or destination of the goods stored. It would be a separate transaction from sale or delivery of the goods.

Lenders

A business making loans secured by real estate is not subject to a business license tax unless it has premises located within the municipality or county levying the tax. S.C. Code Sec. 5-7-30; Sec. 4-9-30(12).

Newspapers

Local newspaper publishers are subject to business license taxes, and they may be classified appropriately (SIC 2711; NAICS 51111). Newspaper publication is not required to be classified with general manufacturing. See *Thomson Newspaper, Inc. v. City of Florence*, 287 S. C. 305, 338 S. E. 2d 324 (1985).

Pawnbrokers

Pawnbrokers in cities and counties must be licensed pursuant to S. C. Code Sec. 40-39-20, and the business must be conducted only at the location designated in the license.

Pawnbrokers may be required to meet other regulatory conditions set by local ordinance, including the business license ordinance.

Peddlers, Hawkers and Itinerants

Door-to-door Sales

Although the U.S. Supreme Court has upheld "Green River" ordinances (see *Green River v. Fuller Brush Co.*, 10 Cir., 65 F.2d 112) that prohibit uninvited door-to-door sales or solicitations (see *Breard v. City of Alexandria*, 341 U.S. 622), the S.C. Supreme Court has held such ordinances to be unreasonable and void.

In *City of Orangeburg v. Farmer*, 181 S. C. 143, 186 S.E. 783 (1936), the Court held that the occupation of soliciting orders from house to house is lawful when conducted in a proper manner. The ordinance declaring a lawful occupation to be a nuisance was held to be unconstitutional. The Court noted that the ordinance was passed at the request of the Retail Merchants Association and that there was no logical or valid public health or safety reason for it.

Peddlers selling goods at retail for immediate delivery are subject to a business license tax. Solicitors of orders for goods to be delivered in the future, not in interstate commerce, are subject to a business license tax, unless an interstate commerce exemption applies.

Street Sales

Vendors do not have the right to sell their goods in the public streets without express permission of the governing body in control of the streets. *Huffman v. City of Columbia*, 146 S.C. 436, 144 S.E.2d 157 (1928); *City of Charleston v. Roberson*, 275 S.C. 285, 269 S.E.2d 772 (1980). This does not restrict the right to travel on the streets for purposes of making deliveries.

Sales may be made from vehicles parked on private property if the activity complies with zoning, safety and health regulations. A business license must be issued for a lawful activity.

Transient merchants may be charged higher license fees than resident merchants, but transient merchants may not be denied licenses to restrain trade for protection of local merchants. See McQuillin, MUNICIPAL CORPORATIONS, Sec. 26.144, *et seq.*

County Licenses

In addition to the Home Rule licensing provisions in S. C. Code Sec. 4-9-30, there are specific state statutes authorizing counties to license peddlers and hawkers in Title 40, Chapter 41 of the Code. Section 40-41-90 exempts vendors of newspapers, magazines, vegetables, tobacco and agricultural products, and sales by sample for established commercial houses from county licenses.

Real Estate

Leasing

Gross rents from the leasing of real estate, commercial or residential, constitute business income for computation of a license tax. The type of tenant is immaterial, and there is no interstate commerce involved in local leasing to an out-of-state firm. Some municipalities classify and exempt owners of fewer than a certain number of leased units from the tax. Others exempt owners with less than a threshold amount of rental income. This is done to avoid a tax on people who are not really in the business but have a small personal investment. Such an exemption is not required by law, and it must have a rational basis if granted by ordinance.

Operation

Operation of buildings, developments, projects, complexes, malls, etc., is a business, and the gross receipts of the operator (who may also be the owner) would be used to compute the tax. If the operator is also the owner, rents plus any other charges collected from tenants would be included.

Sales

Sales may be made by owners, brokers or salesmen.

(a) Owner Sales.

Sales by owners are subject to license taxes if the owners are in the business of selling real estate. A single or occasional sale by an owner as a personal investment transaction would not be a business. It may be necessary to get information on the

frequency of sales and how the owner reports proceeds on income tax returns to determine whether he is in the business of selling real estate.

The full sale price with no deductions for mortgages, commissions, closing costs, or purchase cost to the owner is the amount used to compute the license tax.

(b) Broker Sales.

Commissions received by real estate brokers constitute gross income for license purposes. If commissions are divided with other brokers or salesmen - as frequently occurs - only the amount retained by a broker is considered income to him.

(c) Salesmen.

Although a real estate salesman is required to work for a broker, the salesman is subject to business license fees if he works on commission rather than salary and the broker does not withhold income taxes. Only the actual commission retained constitutes income. The amount remitted to a broker should not be included. If the salesman works on a salary or if the broker pays a license fee on the entire commission, the salesman would not pay a license tax.

Telephone Companies and Service

Since court-ordered divestiture broke up the telephone monopoly, it is necessary to get a detailed description of the operation of a company to determine how it should be classified. To be classified as a telephone company, the operation must involve the communication of information in some manner (for example, wire, microwave, fiber optic cable or radio wave).

Counties may not license or franchise telephone companies. S. C. Code Sec. 4-9-30.

If the company sells or leases communication equipment or installs and services equipment but transmits no information, it is not classified as a telephone company for business license purposes. One of the following classifications may apply:

Installation of equipment (SIC 1731; NAICS 23531);
Leasing and rental of equipment (SIC 7359; NAICS 53249);
Retail sales (SIC 5999; NAICS 443112); or
Service of equipment (SIC 7629; NAICS 811213).

Franchise or Consent

In *City of Cayce v. AT&T*, 326 S.C. 237, 486 S.E.2d 92 (1997), the Supreme Court limited the power to franchise granted by S.C. Code Sec. 5-7-30 to those businesses using public streets for lines to serve customers within the municipality. S.C. Code Sec.

5-7-30 gives a municipality authority to grant a franchise for the use of public streets and to charge for that use. The Court also held that consent of the governing body to place lines in the streets that do not serve municipal customers may be required pursuant to S.C. Constitution Art. VIII, Sec. 15. A fee may be charge for that consent. For many years, municipalities have routinely charged telephone companies with lines in public streets a franchise fee of 3 percent of recurring local service charges. In some instances, long distance tolls were included in the gross revenue on which the franchise fee was based after the decision of the U.S. Supreme Court in *Goldberg v. Sweet*, 488 U.S. 252 (1989). The 5 percent franchise fee imposed by the City of Orangeburg on gross income from all sources was upheld in *BellSouth Telecommunications, Inc. v. City of Orangeburg*, 337 S.C. 35, 522 S.E.2d 804 (1999). However, the whole picture was changed by Act 112 of 1999, as discussed below.

State Telecommunications Act of 1999

Act 112 of 1999, S.C. Code Sec. 58-9-2200, *et seq.*, changed the emphasis from franchise fees to business license taxes on telecommunications services and placed statutory limitations on municipal franchise fees, consent fees and business license taxes. The legislation is complicated because of efforts to address existing unexpired franchises and ordinances adopted prior to Dec. 31, 1997. All municipalities are subject to the Act.

(a) Franchise or Consent Fees

Under Act 112, municipal franchise or consent fees are limited by population ranges according to the following schedule:

<u>Population</u>	<u>Maximum Fee</u>
1 - 1,000	\$ 100.00
1,001 - 3,000	\$ 200.00
3,001 - 5,000	\$ 300.00
5,001 - 10,000	\$ 500.00
10,001 - 25,000	\$ 750.00
Over 25,000	\$ 1,000.00

(b) Business License Taxes

The effect of the Act on business license taxes can be understood by reference to the following MASC model ordinance adopted by participants in the MASC Telecommunications Tax Collection Program (TTCP).

**MASC SAMPLE ORDINANCE
AMENDING THE BUSINESS LICENSE ORDINANCE
LEVYING A BUSINESS LICENSE TAX ON TELECOMMUNICATIONS**

WHEREAS, South Carolina Code sections 58-9-2200 through 58-9-2270, effective June 30, 1999, provide for municipal business license taxes on "retail telecommunications services" as defined and limited therein; and

WHEREAS, the South Carolina General Assembly, on June 3, 2004, ratified an act (Rat # 0406) amending S.C. Code sections 58-9-2200, 58-9-2220, and 58-9-2230, that will take effect upon approval by the Governor, and that, among other things, authorizes municipalities, for business license tax years beginning after 2003, to levy a maximum business license tax on the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year at the rate of one percent; and

WHEREAS, it is necessary to amend the Business License Ordinance to conform to the State law as amended;

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the City/Town of _____, that the Business License Ordinance is amended as follows:

Section 1.

a. Notwithstanding any other provisions of the Business License Ordinance, the business license tax for "retail telecommunications services," as defined in S.C. Code section 58-9-2200, shall be at the maximum rate authorized by S.C. Code section 58-9-2220, as it now provides or as provided by its amendment. The business license tax year shall begin on January 1 of each year. The rate for the 2005 business license tax year shall be the maximum rate allowed by State law as in effect on February 1, 2005. Declining rates shall not apply.

b. In conformity with S.C. Code section 58-9-2220, the business license tax for "retail telecommunications services" shall apply to the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The measurement of the amounts derived from the retail sale of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality. For a business in operation for less than one year, the amount of business license tax shall be computed on a twelve-month projected income.

Section 2.

a. For the year 2005, the business license tax for "retail telecommunications services" shall be due on February 1, 2005, and payable by February 28, 2005, without penalty. For

years after 2005, the business license tax for "retail telecommunications services" shall be due on January 1 of each year and payable by January 31 of that year, without penalty.

b. The delinquent penalty shall be five percent (5 %) of the tax due for each month, or portion thereof, after the due date until paid.

Section 3.

Exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Properly apportioned gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

Section 4.

a. Nothing in this ordinance shall be interpreted to interfere with continuing obligations of any franchise agreement or contractual agreement in the event that the franchise or contractual agreement should expire after December 31, 2003.

b. All fees collected under such a franchise agreement or contractual agreement expiring after December 31, 2003, shall be in lieu of fees or taxes which might otherwise be authorized by this ordinance.

Section 5.

As authorized by S.C. Code section 5-7-300, the agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from telecommunications companies pursuant to S.C. Code section 58-9-2200 in the form attached hereto is approved, and the Mayor is authorized to execute it. Notwithstanding the provisions of the Agreement, for the year 2005, the Municipal Association of South Carolina is authorized to collect current and delinquent license taxes in conformity with the due date and delinquent date for 2005 as set out in this Ordinance and is further authorized, for the year 2005, to disburse business license taxes collected, less the service charge agreed to, to this municipality on or before April 1, 2005, and thereafter as remaining collections permit.

Section 6.

All previous ordinances, or portions of ordinances, in conflict with this ordinance are hereby repealed.

Wholesalers

Wholesalers are exempt from municipal license taxes unless they maintain warehouses or distribution establishments within the municipality. S.C. Code Sec. 5-7-30. A wholesale transaction involves a sale to someone who will resell the property. It does not include a sale to a user or consumer. See S.C. Code Sec. 12-36-120.

Study Questions for Part 3

1. Is a vendor of agricultural products grown by the vendor exempt from a license tax?
2. Is ground delivery by truck of a parcel transported from another state by air exempt?
3. Are retail liquor stores subject to a local business license tax?
4. Are auctioneers subject to a license tax?
5. How are trade-in motor vehicles treated for license tax calculation?
6. Is a licensed bingo promoter for a charitable sponsor exempt?
7. When can taxicabs be charged a license tax?
8. Is a 501(c)(3) charitable organization automatically exempt from a business license tax?
9. When is a church kindergarten subject to a license tax?
10. What is the maximum business license tax allowed by statute for operation of all coin-operated amusement machines at one location?
11. Are cigarette vending machines subject to a tax per machine?
12. Are independent subcontractors subject to a license tax when the contractor pays a license tax on the full contract price?
13. When are contractors on government projects exempt?
14. When are nonresident fuel dealers subject to a license tax?
15. How are home occupations licensed?
16. Are mail order insurance companies in interstate commerce subject to a license tax?
17. Why should independent insurance agents pay a license tax when the company pays a tax on gross premiums that include agent commissions?
18. What are the four tests for taxing interstate commerce?
19. What are some examples of interstate commerce that are subject to license taxes?

20. May peddlers be denied licenses to protect local businesses?
21. Is the owner of an apartment building claiming it as a personal investment exempt?
22. Are real estate salesmen working for a broker exempt?
23. What telephone related activities are not classified as a "telephone company"?
24. What are the limitations on franchise and consent fees and business license taxes under the 1999 Act on telecommunications fees?
25. When is a mortgage lender or wholesaler exempt from a municipal license tax?

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

Part 4 - Administration

In addition to making each license conform to constitutional and statutory regulations, there are several administrative problems that must be properly solved to insure a successful licensing program. The license ordinance must be administered according to law and enforced in a reasonable and nonarbitrary manner. An effort should be made to collect from all businesses and citizens subject to the license. Each business or group within a license category must be treated equally with all other members of that same group or class.

A license ordinance cannot possibly cover every situation that arises or every detail of administration. Those responsible for administering the ordinance must have the authority to make decisions and administrative interpretations or regulations not inconsistent with the ordinance or state law. Any such regulations or interpretations should be put in writing and made available to applicants. The courts recognize that administrative interpretations are entitled to weight in cases requiring an ordinance.

Office Procedures

Freedom of Information

Business license applications should be treated as confidential. Licensees generally object to public disclosure of such information. Upon proper inquiry, the disclosure that a particular person has complied with the ordinance, paid the proper license fee and obtained a license is sufficient to satisfy the public's need to know and the Freedom of Information Act, which specifically provides that income reported on business license applications is not public information. See S.C. Code Sec. 30-4-40(a)(2).

S.C. Code Sec. 6-1-120, as originally adopted in 1999, caused mass confusion by prohibiting release of any information provided by a business license taxpayer. This statute was amended in 2000 to provide for release of information in accordance with the Freedom of Information Act and specifically authorizes sharing of data between public officials or employees in the performance of their duties.

Under the Freedom of Information Act, gross receipts are specifically exempt from disclosure. Any information requested for person-to-person commercial solicitation of handicapped people is exempt from disclosure under the FOI Act, Sec. 30-4-40(a)(2).

The FOI Act does not provide a penalty for disclosure of exempt records. However, many license ordinances contain a confidentiality provision that removes discretion from the license official and limits release of information to that required to be released by law. The governing body has ultimate responsibility for compliance with the FOI

Act. A request for information that is not clearly required to be released should be referred to council.

S.C. Code Sec. 6-1-120 prohibits disclosure to the public of financial information provided by a taxpayer. Publication of statistics classified to prevent the identification of particular reports, returns or applications and the information on them is not prohibited. For a knowing violation, Sec. 6-1-120 provides severe penalties of up to \$1,000 or imprisonment for up to one year, or both. In addition, a municipal or county officer or employee must be dismissed from office or position and is disqualified from holding a public office in this state for five years following conviction.

It is considered incorrect to disclose the amount of license tax paid by a business because gross income could be calculated using the license rate schedule. This position may have little meaning in view of the requirement in most license ordinances that the business license be posted in the place of business and the amount of tax paid is routinely entered on the license.

Under the statutes effective on the publication date of this handbook, the following information is subject to disclosure:

1. Any data may be shared with other public officials or employees in the performance of their duties, when those duties relate to enforcement of the license ordinance.
2. The public is entitled to obtain any information on license records except gross income, financial data provided by the taxpayer and information used for commercial solicitation of handicapped persons.
3. Statistics classified to prevent identification of particular license records are public records.

Advice to taxpayers

Many taxpayers do not understand that the business license is an excise tax on the privilege of doing business in a municipality or county and not a sales, income or property tax. The license must be computed on gross income pursuant to state law without deductions. Frequently, explanations must be given to avoid misunderstanding and improper reporting.

"Part 3 - Difficult Applications" contains information on many problem areas that arise in administration. Sharing this information could help applicants better understand licensing requirements.

Taxpayers are not exempt from a license tax simply because no notice or application was mailed to them. Every business operator is presumed to have knowledge of the law applicable to the business.

Double taxation is a common objection raised by contractors and subcontractors. See the discussion in Part 3, page 28, for answers to this objection.

License ordinances do not provide for penalty waivers by either the license official or the council. This is sometimes difficult to explain to a taxpayer. The explanation could refer to penalties for other delinquent taxes that are not waived. A waiver provision without standards would violate equal protection rights. No standards have been devised that would meet a constitutional test.

Be careful to deal courteously and consistently with taxpayers. Providing information and assistance with forms can reduce problems in administration.

Administration Checklist

- (a) Be thoroughly familiar with the license ordinance and forms.
- (b) Assist applicants in completing forms correctly.
- (c) Explain the classification and tax rate.
- (d) Stress necessity for reporting gross income accurately and inform applicant that it is subject to verification by examination of other tax records or audit.
- (e) Require name, address and Federal I.D. or Social Security number to be the same as those used by applicant on income and sales tax returns.
- (f) Courteously challenge information suspected to be incorrect.
- (g) Require sufficient information to determine whether the applicant is entitled to a license for a lawful business and to determine the proper rate class.
- (h) Require production of applicable state licenses.
- (i) Coordinate licensing with other municipal or county departments such as zoning, building inspection, health, fire and law enforcement.
- (j) Keep accurate records systematically filed.
- (k) Investigate and deal with violations promptly.

Forms and Records

Notice

No notice that a business license is due is required by state law, but it is advisable to mail a renewal application to an existing business each year or run a newspaper notice, or both. Mailing of renewal applications should be done well in advance of the due date to avoid arguments of when penalties must be imposed for late payment. Some ordinances prescribe notice procedure. Failure to receive a notice does not excuse liability for the tax or penalties.

Forms List

Forms are necessary for administration. The following list of forms and records are adequate in most cases:

- (a) A single page license application form used for all businesses.
SAMPLE FORM 1.
- (b) A code clearance form for confirmation that the proposed business and premises comply with applicable zoning, building, fire and health regulations.
SAMPLE FORM 2.
- (c) A supplementary information sheet for businesses requiring special attention or regulation (such as bars, massage parlors, bookstores, ambulance services, taxi cabs, contractors, fireworks, utilities, etc.).
- (d) A short license form in duplicate serially numbered. The license numbers should be entered on the applications that should be filed alphabetically. Duplicate licenses should be filed numerically for accountability.
- (e) An inquiry form for checking law enforcement records for regulated business applicants. SAMPLE FORM 3.
- (f) A license fee assessment form to be sent by certified mail, receipt requested.
SAMPLE FORM 4.
- (g) Form letters for notice of audits, denial or revocation of a license to be sent by certified mail, receipt requested.
- (h) A form letter for making inquiry to the S.C. Department of Revenue for verification of gross income.
- (i) Warrant forms approved by the Attorney General for prosecution in court. SEE PART 5.

- (j) Sales tax return printout from S.C. Department of Revenue.
- (k) Current list of all known businesses operating in the taxing jurisdiction.
- (l) Annual delinquent list showing collection action taken.
- (m) Records of random and special audits.

Public Records Act

The South Carolina Public Records Act, S.C. Code Sec. 30-1-10, et seq., requires a public body to retain and preserve all records defined as "public records" in the Freedom of Information Act, S.C. Code Sec. 30-4-20(c). Records are to be maintained according to regulations and records management program of the S.C. Department of Archives and History. No records may be destroyed except in accordance with records schedules and procedures approved by the Archives.

Regulations of the Department of Archives and History, R-12-603.1 and 12-603.2, contain general schedules applicable to business license records. Applications and records documenting authorization for a business to operate must be retained for three years (microfilm optional), then they may be destroyed.

**Sample Form 1
License Application**

INSTRUCTIONS FOR FILING LICENSE APPLICATION

1. PERSONS REQUIRED TO FILE APPLICATION

Every person engaged or intending to engage in any calling, business, occupation or profession listed in the rate classification index portion of the business license ordinance, in whole or in part, within the limits of the city/county is required to pay an annual license fee and obtain a business license fee as herein provided.

All applications must be filed on this standard application form.
Verify accuracy of information and make corrections in red ink where necessary.

2. COMPUTATION OF LICENSE FEES

- A. Enter gross income for preceding calendar or fiscal year (12 months).
Gross income does not include taxes collected for a government agency.
- B. Deduct income on which a license tax was paid to another municipality or county.
- C. Enter balance of gross income subject to license tax.
- D. Use rate schedule provided to compute license fee due.
Apply declining schedule if applicable.
- E. Add penalty for late payment if applicable.
- F. For BUSINESSES OPERATING LESS THAN A FULL YEAR, divide the gross by the number of months in business and multiply by 12 for an annualized figure.
- G. Business Licenses will not be issued until payment has been made in full.
- H. MAKE CHECKS PAYABLE TO THE CITY/COUNTY OF _____.

3. PENALTIES Mail postmarked after April 15 MUST INCLUDE a penalty of 5% per month.

ALL BUSINESSES ARE SUBJECT TO AUDIT AND VERIFICATION OF GROSS RECEIPTS BY EXAMINATION OF INCOME TAX RETURNS AND DOCUMENTS FILED WITH STATE AND FEDERAL GOVERNMENT AGENCIES.

4. MASTER LICENSE NUMBER MUST BE FURNISHED WHEN APPLICABLE.

MECHANICAL ELECTRIC GAS EXTERMINATOR

CARD NO. _____

NAME _____, ADDRESS _____ EXPIRATION DATE _____

5. DECLINING RATE SCHEDULE for Gross income over \$1,000,000: MINIMUM \$ _____
- | | | |
|--------------------|---|----------|
| 1st | Million - Rate indicated in applicable rate class | \$ _____ |
| 2nd | Million 90% of class rate per \$1,000 | \$ _____ |
| 3rd | Million 80% | \$ _____ |
| 4th | Million 70% | \$ _____ |
| over 4 | Million 60% | \$ _____ |
| TOTAL LICENSE FEE: | | \$ _____ |

ORIGINAL APPLICATION MUST BE SIGNED AND RETURNED WITH REMITTANCE.

Sample Form 1
License Application

CITY/COUNTY OF _____ ACCOUNT NO. _____ START DATE _____

BUSINESS NAME _____ ADDRESS (LOCATION OF BUSINESS) _____
TAX MAP _____ BLOCK _____ LOT _____ ZONING DISTRICT _____
FEDERAL ID/SS NUMBER _____ S.C. RETAIL TAX NUMBER _____
TYPE OF BUSINESS _____ SIC/NAICS CODE _____ RATE CLASS _____
APPLICATION FOR: ___ NEW ___ RENEWAL ___ GOING OUT OF BUSINESS [date _____]
OWNERSHIP: ___ CORPORATION ___ PARTNERSHIP ___ INDIVIDUAL - NO. EMPLOYEES _____
NAME OF OWNER, PARTNER OR PRINCIPAL _____
TELEPHONE NO. LOCAL _____ HOME _____ EMERGENCY _____
FAX NO. _____ E-MAIL _____

IS HAZARDOUS WASTE INVOLVED IN OPERATION? ___ NO ___ YES (ATTACH DETAILS)
CODE CLEARANCE: ___ ZONING ___ INSPECTION ___ FIRE ___ HEALTH ___ LAW ENFOR.

COMPUTATION OF LICENSE TAX

COMPUTE YOUR TAX ACCORDING TO THE FOLLOWING SCHEDULE AND MAKE CHECK
PAYABLE TO: _____ DELIVER BY DUE DATE _____

GROSS INCOME FOR PRECEDING CALENDAR OR FISCAL YEAR \$ _____

LESS INCOME ON WHICH A LICENSE TAX WAS PAID TO ANOTHER
CITY OR COUNTY FOR OPERATIONS OUTSIDE CITY/COUNTY - \$ _____

BALANCE OF GROSS INCOME SUBJECT TO LICENSE TAX \$ _____

TAX: RATE CLASS MINIMUM ON FIRST \$2,000 _____ PLUS

\$ _____ PER \$1,000 FOR INCOME OVER \$2,000 _____

[See declining rate schedule for over \$1 million] [-OFFICE USE ONLY-]

TOTAL LICENSE TAX \$ _____ [PAYMENT RECORD:]

PENALTY AFTER DUE DATE ___ % PER MONTH \$ _____ [CHECK NO. _____]

TOTAL LICENSE TAX AND PENALTY \$ _____ [DATE RECEIVED _____]

CERTIFICATION

I (WE) DO HEREBY CERTIFY THAT THE ABOVE INFORMATION AND AMOUNT RETURNED AS GROSS INCOME FROM MY BUSINESS IS TRUE AND CORRECT, AND THAT I HAVE MADE NO DEDUCTIONS EXCEPT INCOME ON WHICH I HAVE PAID A BUSINESS LICENSE TAX TO ANOTHER CITY OR COUNTY, FOR WHICH I HAVE PROOF OF PAYMENT. I AM FAMILIAR WITH THE PENALTY PROVISIONS OF THE ORDINANCE AND THE GROUNDS FOR REVOCATION OF THE LICENSE, INCLUDING MAKING FALSE OR FRAUDULENT STATEMENTS IN THIS APPLICATION. I CERTIFY THAT ALL BUSINESS PERSONAL PROPERTY TAXES DUE AND PAYABLE TO THE CITY/COUNTY HAVE BEEN PAID, AND THAT THE ABOVE BUSINESS NAME IS THE SAME AS REPORTED ON DOCUMENTS FILED WITH THE STATE AND FEDERAL GOVERNMENTS. I UNDERSTAND THAT MY BUSINESS INCOME TAX RETURNS AND OTHER DOCUMENTS MAY BE INSPECTED TO VERIFY GROSS INCOME OR OTHER BUSINESS DATA.

SIGNATURE _____

TITLE _____

DATE _____

Sample Form 2
Code Clearance Form

This form is required for all businesses located in the City/County.

We have received your application for a business license. Before a license can be issued, you are required to get the necessary approvals for code compliance applicable to the location and nature of your business.

A check mark indicates which approvals are required. Upon completion of this clearance sheet you may mail or bring it with the required license fee to this office. You may not lawfully conduct business until a license is issued.

Date: _____ Name of Business: _____
Name of Owner(s): _____
Street Address: _____
Telephone: _____ Zip Code: _____
Type of Business: _____
Type of Building: () Residence () Store () Office Building () Warehouse

- ☐ Zoning Division: Compliance with Zoning Ordinance
 () Approved
 () Disapproved

- _____
Signature Date
- ☐ Inspection Division: Compliance with Building Code
 () Approved
 () Disapproved

- _____
Signature Date
- ☐ Fire Department: Compliance with Fire Code
 () Approved
 () Disapproved

- _____
Signature Date
- ☐ Health Department: Compliance with Health Regulation
 () Approved
 () Disapproved

Signature Date

In the event of a change of location or ownership of a business, the same procedure shall be followed within ten (10) days of change. If you have a problem, please call this office at _____ (Tel. No.).

Deliver or mail to: _____

Sample Form 3
Law Enforcement Inquiry
For Business License Application

TO: CHIEF OF POLICE/SHERIFF
FROM: LICENSE INSPECTOR

Date: _____

_____ of _____
(Name) (Home Address)

has applied for a business license at _____
(Address)

to operate a _____
(Nature of business)

Please provide any relevant information you have.

Business License Inspector

TO: LICENSE INSPECTOR
FROM: CHIEF OF POLICE/SHERIFF

☐ I have no information regarding this license applicant.

☐ I report the following:

☐ Applicant has a criminal record.

☐ The nature of the business is unlawful.

☐ The location of the business has a past history of law enforcement problems.

☐ Applicant has managed or operated other businesses in the City/County and has encountered difficulties with law enforcement as follows: _____

☐ Other: _____

FURTHER INFORMATION: _____

Date: _____

CHIEF OF POLICE/SHERIFF

individual's name, address and social security number be sent to the Commission along with the amount reported to the city. If information is desired concerning a partnership or a corporation, the Commission requires the name and address of the partnership or corporation and the federal identification number. For administrative purposes, the Commission requests business be identified as either a partnership or a corporation.

It is important to require a license applicant to use the same name and social security or federal I.D. number for the business license as used for state tax reporting. Inquiries should be for specific years.

City and county officials will have to determine which merchants on the list are located within their boundaries. Some companies, instead of sending in individual reports for each place of business, report on a company-wide basis. This type of reporting is permitted by law, and the Commission will not be able to furnish gross receipts for a particular merchant when this procedure is followed.

Requests for information should be addressed to:

Research and Public Affairs
SC Department of Revenue and Taxation
PO Box 125
Columbia, S.C. 29214

Applicants should be advised that sales taxes, gasoline taxes and funds collected for others or held in escrow should not be included in gross income. If those funds are included in the gross income reported for income tax purposes, they should be excluded when computing the business license tax.

Federal Tax Returns

According to the 1987 opinion of an Internal Revenue Service Disclosure Officer, a local taxing authority may require disclosure of federal tax return information in connection with a business license application. There is no federal prohibition against such a requirement. However, a city or county using such a requirement should include in the license ordinance a prohibition against unauthorized disclosure of the information to protect the confidentiality of the tax information that is not public information under federal or state law.

Field Inspections

Field inspections can be a useful way to obtain first-hand information and to verify license records. Using a location report, street index, property tax records or city directory as a guide, a physical check of each street can be made. State retail license

information can be obtained and compared with business license information (such as name, address and I.D. number).

Every retail business, including rooming houses and motels (except where such facilities consist of less than six sleeping rooms contained in a single building) used as the place of abode of the owner or operator of such facilities must have a state retail license.

A field inspection also can determine whether more than one operation is conducted at a location, which would require more than one license; whether a business has moved or has a new owner; whether unlawful activities or public nuisances are present; or to find unlicensed businesses.

The public relations aspect of the field inspection should not be overlooked. It can provide an opportunity to answer questions, give information and let the business community know that the license ordinance is uniformly applied and enforced.

Assessment

When no license is obtained, insufficient information is voluntarily given or records are not available locally for audit, the license inspector may make an assessment where authorized by ordinance. A sample assessment form is provided in Part 4.

The assessment must be based on the best information available to the license inspector and may involve statistical sampling, annualizing known figures for short periods, calculations of expenses and projected profit or information from the Department of Revenue or Insurance Commission.

The license ordinance should provide for an appeal method for the assessment. Unless appealed, it should become final after a fixed period and be collected in the same manner as any other license fee. Sample ordinance provisions for assessment that should meet constitutional requirements for due process may be found in the model business license ordinance, MASC Model Business License Ordinance (2003).

Audits

License ordinances usually include a statement pointing out that the municipality may audit the accounts of businesses or individuals when the accuracy of the gross amount reported is in doubt. There are no specific statutes giving this authority, but it is generally agreed that the power to impose a license tax would include the right to check on the accuracy of the accounts. Normally, when the audit shows data have been reported falsely, the company is charged the cost of the audit in addition to all other charges due. The audit may be performed by city or county personnel or accountants employed for the specific purpose.

Auditing may be done to check on accounts expected to be fraudulent or as a routine check on the accuracy of all license reports. Making routine, spot audits of all types of businesses or certain types of businesses would require more staff than most municipalities have. However, a systematic random audit procedure for a limited number of businesses each year could work well.

When an audit is deemed appropriate, the following steps are suggested:

1. Notify the owner of the business and set a time.
2. Give an advance list of records to be inspected, such as sales tax returns, income tax returns or original business records.
3. Do not disrupt normal business activities.
4. Be firm but polite.
5. Explain the purpose of the audit and procedures to be followed.
6. Refusal to allow an audit constitutes grounds for prosecution.
7. Inspect only those records necessary to obtain needed information. Income tax returns may be sufficient.

Civil Suits

Applicable Circumstances

It is unusual for a municipality to bring a civil action against a taxpayer to collect a tax. However, this approach may be useful where circumstances make prosecution difficult or undesirable. For instance, an out-of-state business not easily reached for prosecution could be served with a civil action with less trouble and expense than a warrant involves. A nonresident would not be subject to service of an ordinance summons outside the municipal or county limits.

There is also a technical difference: prosecution does not necessarily result in collection of the tax. It can produce a fine for each day of violation, but most courts are reluctant to impose large fines in such cases. The civil action permits collection of all fees and penalties without the stigma and unpleasantness attendant to prosecution initiated by an arrest warrant or ordinance summons.

The city or county attorney should handle those cases in which civil action seems appropriate.

Statute of Limitation

The Supreme Court in *State v. Life Ins. Co. of Ga.*, 254 S.C. 286, 175 S.E.2d 203 (1970), held that in the absence of a specific statute of limitation, the ordinary period of limitation applicable to an action upon a liability created by statute, applies to an action for collection of taxes.

S.C. Code Sec. 15-3-530, as amended in 1988, reduced the applicable six-year limitation to three years. Therefore, recovery of delinquent license taxes by civil action is limited to the taxes due for three years preceding the date of filing the action.

Warrants

The violation of the license ordinance is a misdemeanor within the jurisdiction of municipal court or magistrate's court. Prosecution is by a criminal proceeding instituted by an arrest warrant in the form approved by the state attorney general pursuant to statute. The following suggestions may be helpful.

1. Have the city or county attorney approve the warrant language.
2. The warrant is issued by a municipal judge, ministerial recorder or magistrate.
3. The warrant must be issued upon the affidavit of a person who has actual knowledge of the facts indicating the violation. Each day of known violation constitutes a separate offense.
4. Evidence of the violation should be carefully preserved for trial (for example, notes of inspections, photographs, witnesses, notices and correspondence).
5. Payment of the license fee after service of a warrant does not dismiss the case. The case may be dismissed only by the prosecuting officer (license inspector or attorney) or the Court for good reason (such as lack of sufficient evidence).
6. A municipal warrant cannot be served upon a nonresident unless countersigned by a magistrate having jurisdiction where the defendant resides.
7. An owner should not be prosecuted for doing business without a license pending a determination or an appeal from a denial or revocation of a license.

Ordinance Summons

S.C. Code Sec. 56-7-80 permits adoption of a municipal or county ordinance authorizing a law enforcement or code enforcement officer to issue a uniform ordinance summons for violation of an ordinance. The summons must be issued by an officer who has personal knowledge of the violation. It is served without arrest of the offender. A

bond is not set or collected by the issuing officer – the summons must set forth the procedure to post bond. The summons gives jurisdiction over disposition of the offense to a magistrate or municipal judge. The ordinance summons may not be used for violations of local ordinances regulating operation of motor vehicles.

The ordinance summons can be a very useful enforcement tool. It is particularly attractive because no arrest is involved.

Penalties

Civil Penalties

State law allows municipalities to impose by ordinance a civil penalty for the late payment of business license taxes. In *Municipal Association of South Carolina v. AT&T Communications of the Southern States, Inc.*, 361 S.C. 576, 606 S.E. 2d 468 (S. Ct. 2004), the Supreme Court held that a penalty of 5 percent per month was within the implied power of municipalities to impose a civil fine for violation of ordinances under Home Rule constitutional and statutory provisions. See S.C. Const. art. VIII, § 17, and S.C. Code § 5-7-10.

Delinquent penalties may not be waived administratively by the license official. There is no statutory provision authorizing waiver of penalties by council. A waiver of penalties on a case by case basis would violate equal protection rights. No standards for waiver of penalties have been devised that would meet a constitutional test.

The civil penalties that accrue monthly on unpaid license taxes provide a strong incentive for prompt payment. These penalties also apply to amounts by which taxes are underpaid, even though prompt payment of the insufficient amount was made. These penalties are added to the taxes due and are collected in the same manner as the taxes.

Criminal Penalties

The maximum penalties that may be imposed by a court for a business license ordinance violation are a fine of \$500, imprisonment for 30 days or both for each separate offense (each day of violation).

Lien

A right to place a lien on property for collection of a business license tax and penalties is not specifically granted by statute. This provision is sometimes included on the generally accepted theory that the power to levy a tax carries with it the power to collect in the normal manner, but enforcement by a court is doubtful. The MASC Model Business License Ordinance does not provide for a lien.

Denial or Revocation of License

Powers of License Inspector

Most license ordinances contain some provision for denial or revocation of a license for cause. Because the issuance of a business license is generally regarded as a ministerial act, the license inspector cannot exercise discretion as to whether a license should be issued but must follow the standards established by ordinance. In other words, a license inspector must issue a license to anyone who complies with the ordinance and pays the proper fee for the operation of a lawful business.

Whether the power to deny or revoke for cause is delegated to the license inspector or reserved to city or county council, it must be exercised for legally sufficient specified reasons. The procedure used should afford due process of law. The Supreme Court upheld one such procedure in the case of *City of Columbia v. Abbott*, 269 S. C. 504, 238 S. E. 2d 177 (1977). The MASC Model Business License Ordinance prescribes essentially the same procedure.

A licensing provision that is regulatory and impacts on first amendment rights will be given strict scrutiny by the courts to see that constitutional safeguards are afforded. First amendment issues are usually encountered in connection with adult or sexually oriented businesses. See *Harkins v. Greenville County*, 340 S.C. 606, 533 S.E.2d 886 (2000), which invalidated a regulatory permit provision in the zoning ordinance.

Continuation of Business

Regulatory provisions should be set forth clearly and be carefully followed. It is not legally permissible to close a business's doors simply by revocation of the business license. The owner of a business that has no license, regardless of the reason, is subject to prosecution for a separate offense for each day of operation without a license, but some other legal route such as an injunction or public nuisance laws must be used to prohibit continued operation. See the discussion of Regulation in Part 1, page 4.

Abatement of Nuisances

Many business license ordinances authorize revocation of a license for a business operated as a public nuisance. The Home Rule Act gives municipal and county councils authority to abate public nuisances. S.C. Code Sec. 5-7-30; Sec. 4-9-30. However, revocation of a license may not result in abatement of the nuisance. Other remedies are available.

Case law requires care in declaring an activity a public nuisance. Solicitors are given powers regarding nuisances, and an attorney should be consulted when it appears appropriate to request use of those powers. See S. C. Code Sec. 15-43-20:

Whenever a nuisance is kept, maintained or exists, as defined in this chapter, the Attorney General, the solicitor of the judicial district in which such nuisance is kept or any citizen of the State may maintain an action in equity in the name of the State, upon the relation of such Attorney General, solicitor or citizen, to enjoin perpetually such nuisance, the person conducting or maintaining the nuisance and the owner or agent of the building or ground upon which the nuisance exists.

The operation of a business constituting a common law nuisance is a criminal offense that is indictable by a grand jury. A leading case in this state on the subject is *State v. Turner*, 198 S.C. 487, 18 S.E.2d 372 (1942).

If revocation of the business license to deal with a nuisance is requested, pursuit of either an injunction under S.C. Code Sec. 15-43-20 or prosecution for operation of a common law nuisance is a better solution. Business license revocation may be appropriate as a part of the process, but it is a poor tool for nuisance abatement.

Unlawful Business

A business that is unlawful under provisions of the Constitution or statutes is not entitled to operate. A license should be denied upon application or revoked upon discovery of unlawfulness.

A business use that is prohibited in the location of the proposed business by health, safety, land use or zoning regulations, building codes or fire prevention codes would be unlawful and may not be licensed for that location. A home occupation not permitted by zoning regulations is unlawful.

Mistake or Misrepresentation

A license issued by mistake or upon misrepresentation that is material may be revoked. The public cannot be bound by an administrative error, and a licensee obtains no superior rights in a license to which he is not entitled, even if he has expended funds in reliance thereon.

Payment Under Protest

Act 60 of 1995 repealed S.C. Code Sec. 12-47-230 under which business license taxes were required to be paid under protest prior to a legal action contesting the validity of the tax. The Revenue Procedures Act adopted by Act 60, S.C. Code Sec. 12-60-10, et seq., does not apply to municipal or county business license taxes.

Taxpayers may now bring a declaratory judgment action testing the validity of a business license tax without first paying the tax. Without a time limitation on the filing

of an action, it appears that the three-year statute of limitation in S.C. Code Sec. 15-3-530 may be applicable, and a suit to recover taxes for three years could be brought.

Act 60 does not affect assessment procedure and requirement for payment of the tax prior to appeal contained in many ordinances using the SIC or NAICS systems of classification. Taxpayers should be advised that the only way to avoid a penalty in the event the tax is upheld is to pay under protest.

State License Regulations

Contractors

A state license issued by the S.C. State Licensing Board for Contractors does not exempt a contractor from local licensing requirements, regardless of the contract price or cost of construction. A business license should not be issued to a contractor who does not have the required state license. This helps enforce state laws and protects the public from unqualified contractors to the extent possible locally.

The statutes dealing with licensing contractors are complicated and are frequently amended. Therefore, the general information given here should be checked for possible amendments and new regulations.

S.C. Code Sec. 40-11-30 provides that practice as a contractor for work costing more than \$5,000 for general contracting or mechanical contracting requires a license from the S.C. State Licensing Board for Contractors.

The state licenses contractors in five major classifications containing numerous subclassifications based on the nature of the work performed. S.C. Code Sec. 40-11-410. Financial statements required of general and mechanical contractors pursuant to S.C. Code Sec. 40-11-260 are classified according to the total job cost. The five categories for general contractors have limits of \$30,000; \$100,000; \$350,000; \$750,000 and unlimited. The five groups for mechanical contractors have limits of \$17,500; \$30,000; \$50,000; \$125,000 and unlimited.

S.C. Code Sec. 40-59-5 through 40-59-130 provide for state licensing of a "residential builder," which includes anyone who constructs at a cost exceeding \$5,000 a residential building for sale. An owner performing work on his own residence is not covered by this section.

Questions of compliance with state licensing requirements and requests for current regulations should be directed to the S.C. State Licensing Board for Contractors.

Fireworks Sales

As noted in Part 3, page 29, the state has not only preempted regulation of sale of fireworks, it has imposed on municipalities and counties the burden of issuing an annual retail permit for a license fee of \$50, which is retained by the municipality or county. The purpose for this requirement is to assure inspection of the premises by the fire chief for compliance with safety standards set by the State Board of Pyrotechnic Safety. The applicant must hold a state sales tax license issued by the Department of Revenue and Taxation at least 60 days prior to issuance of the municipal or county license. S.C. Code Sec. 23-35-70. This is mandated enforcement of state law for protection of public safety.

Tort Claims

The South Carolina Tort Claims Act in S. C. Code Sec. 15-78-60 exempts governmental entities from tort liability for exercising licensing powers, including issuance, denial, suspension, renewal, or revocation of or failure or refusal to so act, except when the function is exercised in a grossly negligent manner (usually, a jury question). The refusal to perform a purely ministerial duty (one in which no discretion is authorized) could result in a finding of gross negligence for which the individual employee would be liable. When in doubt, consult the city or county attorney for advice before taking action.

Study Questions for Part 5

1. What state records are available for gross income verification?
2. What tax returns are subject to inspection to verify gross income?
3. What are the benefits of field inspections?
4. When can an assessment of license taxes be made?
5. What are some steps that can be taken to audit business records?
6. When would a civil suit be appropriate to collect a business license tax?
7. What is the statute of limitation for collection of delinquent license taxes?
8. What factors should be considered before seeking a warrant to prosecute for violation?
9. When is an ordinance summons appropriate?
10. What civil penalties may be levied for delinquent license taxes?
11. What are the maximum criminal penalties that may be imposed for violations?
12. When can a license official revoke a business license?
13. How can a business be closed by revocation of the business license?
14. What methods are available to deal with a business operated as nuisance?
15. What actions may be taken by a taxpayer to recover contested license taxes?

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 14 th JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. 06-CP-07-796
	)	
TOWN OF HILTON HEAD ISLAND,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF
vs.	)	STEVEN MARKIW
	)	
KIGRE, INC.,	)	
	)	
Defendant.	)	
	)	



The undersigned, first being duly sworn, deposes and states as follows:

1. I am over age eighteen and competent to testify in this matter, and the statements made herein are based on my own personal knowledge.

2. I have been employed by the Town of Hilton Head Island for 3^{1/2} years as Deputy Director of Finance. My duties as Deputy Director of Finance for the Town of Hilton Head include oversight of the Revenue and Collections Division; preparation of the annual budget, comprehensive annual financial report, and quarterly financial statements.

3. The Town of Hilton Head Island audited Kigre, Inc.'s business license fee liability calculations for the license fee periods 2002, 2003, 2004, and 2005. As a result of the audit, the Town of Hilton Head Island assessed \$41,645.81 of additional business license fees and penalties against Kigre, Inc. for the license fee periods 2002, 2003, 2004, and 2005.

4. The Town of Hilton Head Island received a payment under protest from Kigre, Inc. on or about November 13, 2006 in the amount of \$41,645.81, which paid the business license fees and penalties assessed by the Town of Hilton Head Island for license fee periods 2002, 2003, 2004, and 2005 in full.

5. On or about November 13, 2006 Kigre, Inc. requested a hearing pursuant to Section 10-1-160 of the Ordinances of the Town of Hilton Head Island.

6. Section 10-1-160 of the Ordinances of the Town of Hilton Head Island requires town council to hold a hearing within thirty (30) days of a request. A hearing on Kigre, Inc.'s business license fee liability was not held within thirty (30) days as required by Section 10-1-160 of the Ordinances of the Town of Hilton Head Island. As a result, the Town of Hilton Head Island refunded the entire \$41,645.81 of business license fees and penalties Kigre, Inc. paid under protest for the 2002, 2003, 2004, and 2005 tax periods on February 2, 2007.

7. Kigre, Inc. does not owe any business license fees or penalties for the 2002, 2003, 2004, or 2005 tax periods.

8. Kigre, Inc.'s business license fee liability for the 2002, 2003, 2004, and 2005 tax periods is no longer being audited by the Town of Hilton Head Island.

9. None of Kigre, Inc.'s business license fee periods are currently being audited.

10. There are no outstanding business license fee assessments against Kigre, Inc.

FURTHER AFFIANT SAYETH NOT.

Steven Markiw
Steven Markiw

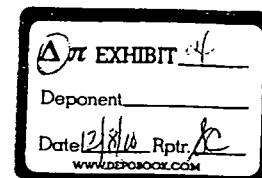
SWORN to before me this
24th day of August, 2007.

Lucia Smith
Notary Public for South Carolina
My Commission Expires May 14, 2017

G. RICHARDSON WIETERS, P.C.

ATTORNEY AT LAW
SUITE 300 WATERSEDGE AT SHELTER COVE
19 SHELTER COVE LANE
HILTON HEAD ISLAND, SOUTH CAROLINA 29928
POST OFFICE BOX 7682
HILTON HEAD ISLAND, SOUTH CAROLINA 29938

G. RICHARDSON WIETERS



TELEPHONE (843) 341-7000
FACSIMILE (843) 341-7007

November 13, 2006

VIA HAND DELIVERY

Honorable Betsy Mosteller, Town Clerk
Town of Hilton Head Island
One Town Center
Hilton Head Island, SC 29928

In Re: Appeal by Kigre, Inc. of Business License Tax

Dear Ms. Mosteller:

Please be advised that I have been retained by Kigre, Inc. in connection with the recent assessment by the Town of Hilton Head Island against Kigre, Inc. for payment of a business license tax. Under separate cover my client tendered (by virtue of an agreement reached with the Town of Hilton Island's legal counsel (Mr. Alford and Mr. Doerring) a check in the amount of \$41,685.12 representing the amount claimed by the Town as allegedly due and owing by my client. This payment was tendered by my client to the Town under protest.

Please consider this letter as notice of my client's appeal pursuant to Section 10-1-160 et seq. of the Ordinances of the Town of Hilton Head Island.

Pursuant to Section 10-1-160 (a) of the Ordinances of the Town of Hilton Head Island, which requires that the reasons for this appeal be stated, Kigre, Inc. states its reasons as follows:

1. The Town has failed to provide for apportionment of income derived in interstate commerce in its business license ordinance.
2. The Town has failed to provide in its ordinances any method or means by which to calculate that portion of the Town's business license tax which is allocated/derived from interstate commerce for any business engaged in interstate commerce.
3. The Town has taxed interstate commerce in its entirety, without exception.

KIGRE021

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Honorable Betsy Mosteller, Town Clerk
November 13, 2006
Page Two

4. The Town has allegedly required all businesses (except for those exempted by express designation) to have licenses but discriminates in favor of certain home industries which receive a business license for free thereby discriminating between one form of business (that does not deal/trade/derive income in interstate commerce with a business that does engage in interstate commerce.
5. The Town places an unfair and discriminating financial burden upon those persons seeking to challenge the business license tax by requiring them to pay for the cost of the transcript of any appeal.
6. The Town, by virtue of its ordinances, favors some types of business activity to the financial detriment of other forms of business; the Town facially discriminates against interstate business while offering commercial advantages to certain local businesses.
7. The Town of Hilton Head Island has failed to recognize and apply US Const. Article I Section 8 Clause 3 to its business license ordinances.
8. Kigre's license fees have not been determined in accord with the actual business conducted within the corporate limits of the Town of Hilton Head Island; Kigre which by its specialized nature transacts business in interstate commerce outside of the corporate limits of the Town – the Town fails to account for this type of business in its ordinances.
9. The Town is a member of the Municipal Association of South Carolina ("MASC"); the MASC cautions that the Town should in its business license ordinances provide for allocation of that portion of the income derived from interstate commerce and that the Town can not lawfully impose a tax on interstate commerce. Despite such caution, the Town has continued to tax interstate commerce without the proper apportionment rules in effect.
10. The Town failed to require that when an audit has been conducted of a business that a copy of the audit be provided to the business involved so that it can determine the lawfulness and accuracy of the audit conducted by the Town. The failure of the Town to require such information be shared with the business violates protections in the US Constitution and is a denial of due process.

Honorable Betsy Mosteller, Town Clerk
November 13, 2006
Page Three

11. The Town commenced a lawsuit against Kigre, Inc. purporting to set forth criminal violations against Kigre in the Court of Common Pleas which court lacks subject matter jurisdiction and in essence threatened criminal prosecution, to obtain an advantage in a civil matter. The Town knew its business tax was subject to constitutional attack and that the Town has failed, to properly apportion as required by the United States Constitution, Article I Section 8 Clause 3 for those businesses that are engaged in interstate commerce.
12. The Town did not timely allow an appeal as no audit information was supplied except the total amount claimed by the Town's from the alleged audit. As such, the Town has denied due process to Kigre, and others similarly situated, and has failed to provide procedural and substantive due process as guaranteed under the Constitution of the United States.
13. The Town delayed commencing suit to obtain payment upon the alleged audit intentionally thereby increasing the penalties, interest, costs, and fees assessed against Kigre, Inc., as such, the delay on the Town's behalf was unreasonable and denies procedural due process to Kigre specifically; the Town has failed to provide as of the time of this appeal the results of its audit of Kigre, Inc.
14. That the business license tax scheme contained in the Municipal Code of the Town of Hilton Head Island is discriminatory and denies equal protection as to Kigre, Inc., and other businesses similarly situated in that the Town exempts certain businesses from any business license fee and contradicts the mandate contained within its own ordinances to what persons are required to pay for business license tax.
15. The Town's business license tax ordinances contain a severability clause such that the validity of unenforceability does not affect the portions of the Ordinances which contain punitive provisions to include criminal prosecution, as well as civil fines, penalties and assessments. As such, the Town, denies to Kigre, Inc. and other businesses similarly situated equal protection and due process.
16. That requiring payment of a business license tax on Kigre while exempting certain "local industries" from payment of any business license tax is an undue and unfair restriction which impedes interstate

Honorable Betsy Mosteller, Town Clerk
November 13, 2006
Page Four

commerce and is a violation not only of due process but also equal protection and is violative of Article I Section 8 Clause 3 of the United States Constitution.

17. That the favoring of certain businesses over other businesses was on its face lacking any rational basis; the tax is not internally and externally consistent.
18. The Town ordinances fail to apportion fairly that portion of income derived from interstate commerce versus that not derived from interstate commerce, and on the basis of allegedly "free local industry" thereby favors certain businesses over those engaged in interstate commerce.
19. The business license taxes applied by the Town to the entire income of Kigre, Inc. is unconstitutional in that activity of Kigre, Inc. does not have substantial nexus with the Town of Hilton Head Island. The income is derived by sales in interstate commerce and other matters transacted in interstate commerce and as such the Town by its business license tax, does discriminate against interstate commerce and favors other businesses not engaged in interstate commerce over those that do engage in interstate commerce.
20. The business license tax imposed by the Town on Kigre, Inc. is not fairly related to the services provided by the Town to Kigre's business in interstate commerce and others similarly situated.
21. The business license tax ordinance as applied to Kigre does not provide for attorney fees to a business which prevails against an unconstitutional ordinance and the oppressive nature of the Town's activity in its efforts to force payment of the business license tax thereby denies equal protection to Kigre and which constitutes a denial to equal protection of other businesses similarly situated so as to require that the Town be responsible for its attorney fees even if Kigre is successful in its appeal.
22. The business license, as applied by the Town to Kigre and others similarly situated places a direct tax on the privilege of engaging in interstate commerce.

Honorable Betsy Mosteller, Town Clerk
November 13, 2006
Page Five

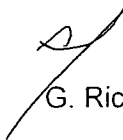
23. To the extent necessary the Town's business license tax ordinance as applied is also offensive to the Constitution of South Carolina and exceeds the grant of power for the Town by the State of South Carolina.
24. The Town's business license tax ordinance does not apportion the sales price to the manufacturing/assembly process of Kigre, Inc.
25. The SIC classification of Kigre's business is arbitrary and not accurately descriptive of its business.

Please advise me which of the Rules of Evidence that the Town intends to follow as set forth in its ordinances as well as the date of the hearing. Also, please advise me in my capacity as counsel for Kigre, Inc. of all witnesses the Town of Hilton Island intends to call at the time of such hearing.

I would also request that you acknowledge receipt of this cover by signing below and returning this page to be by facsimile (843-341-7007).

With kind regards, I am,

Yours very truly,


G. Richardson Wieters

cc Gregory M. Alford, Esquire (via facsimile only 842-8400)
Erik P. Doerring, Esquire (via facsimile only 803-753-3277)

GRW:mas

Received: _____, 2006

Honorable Betsy Mosteller, Town Clerk

KIGRE025
297

DO NOT ACCEPT UNLESS THIS CHECK IS PRINTED WITH A GREEN BACKGROUND, CONTAINS A PANTOGRAPH, MICROPRINTING FACE AND BACK, UV FIBERS AND AN ARTIFICIAL WATERMARK ON THE BACK

Town of Hilton Head Island

Accounts Payable

One Town Center Court
Hilton Head Island, SC 29928
434 341-4600

Check Date: 01/31/2007
Check Number: 045633
67-776/532

*****41,645 DOLLARS AND 81 CENTS

\$41,645.81

Pay To The Order Of

KIGRE INC.
100 MARSHLAND ROAD
HILTON HEAD ISLAND SC 29926

Wachovia Bank, N.A.
Columbia, S.C.

[Signature] MP
Authorized Signature
[Signature] MP
Authorized Signature

⑈045633⑈ ⑆053207766⑆ 2000021013139⑈

Town of Hilton Head Island

Accounts Payable

Invoice Date	Invoice Number	Invoice Amount	Invoice Type	Invoice Description	Invoice Total
01/31/07	181		55401	REFUND OF PYMNT UNDER PRO	41,645.81
Ⓐ EXHIBIT 5 Deponent _____ Date 12/8/06 Rptr lc www.dspool.com					
Vendor ID	Vendor Name	Check No.	Check Date	Check Amount	
6331	KIGRE INC.	045633	01/31/2007	\$41,645.81	

[Large handwritten "Copy" stamp]

[Handwritten note:]
(Michael Myers
picked up
ck. 3/15/07)
[Signature]

No. 72722

LICENSE = TOWN OF HILTON HEAD ISLAND

40 PALMETTO PKWY., HILTON HEAD IS., SC 29928

NOT TRANSFERABLE

KIGRE INC
100 MARSHLAND RD
HILTON HEAD

SC 29928 8482 1987

ORIGINAL
40.00 FOR 1ST 5000 GROSS
(40.00 MIN) PLUS .29 FOR
EACH 1000.00 (OR PART OF)
OVER 5000.00.

This License Expires
DECEMBER 31, 1987
This License may be revoked at
any time by the Town Council



Shirley A. Freeman
AUTHORIZED SIGNATURE



TO BE POSTED IN CONSPICUOUS PLACE

No. 82243

LICENSE = TOWN OF HILTON HEAD ISLAND

40 PALMETTO PKWY., HILTON HEAD IS., SC 29928

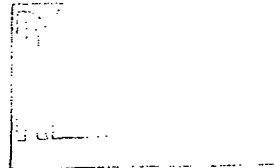
NOT TRANSFERABLE

KIGRE INC
100 MARSHLAND RD
HILTON HEAD

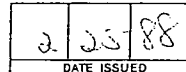
SC 29928 8482 1988

ORIGINAL
40.00 FOR 1ST 5000 GROSS
(40.00 MIN) PLUS .29 FOR
EACH 1000.00 (OR PART OF)
OVER 5000.00.

This License Expires
DECEMBER 31, 1988
This License may be revoked at
any time by the Town Council



Shirley A. Freeman
AUTHORIZED SIGNATURE



TO BE POSTED IN CONSPICUOUS PLACE

No. 92038

LICENSE = TOWN OF HILTON HEAD ISLAND

40 PALMETTO PKWY., HILTON HEAD IS., SC 29928

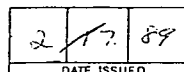
NOT TRANSFERABLE

KIGRE INC
100 MARSHLAND RD
HILTON HEAD

SC 29928 8482 1989

ORIGINAL
40.00 FOR 1ST 5000 GROSS
(40.00 MIN) PLUS .29 FOR
EACH 1000.00 (OR PART OF)
OVER 5000.00.

This License Expires
DECEMBER 31, 1989
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any time by the Town Council



Shirley A. Freeman 299
AUTHORIZED SIGNATURE

TO BE POSTED IN CONSPICUOUS PLACE

22228 KIGRE132

BUSINESS LICENSE APPLICATION - TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, SC 29928

Account # 8682
JOHN MYERS
JEFF MEYER
100 MARSHLAND RD
HILTON HEAD

For the Year 1994
Owner
Business Location
Type Business
City, State, Zip
Telephone No.

INSURANCE COMPANIES ONLY
Insurance companies complete this section only, and sign below before a notary public or witnesses.
Gross premiums \$ _____ x rate _____ (see below) equals
total fee due \$ _____ Fed I.D.# _____
Make checks payable to: "TOWN OF HILTON HEAD ISLAND"

(541) 880-0880 681-5800

Indicate any changes above and below by crossing through incorrect information and replacing with corrected information.

KIGRE INC
100 MARSHLAND RD
HILTON HEAD

SC 29928 MAR 15 1994

62.50 FOR 1ST 5000 GROSS
(62.50 MIN) PLUS .72 FOR
EACH 1000.00 (OR PART OF)
OVER 5000.00.

FINANCE DEPT.

BLN0100469

LICENSE COMPLETION INSTRUCTIONS:

1. Check the applicable box below and fill in appropriate blanks. An incomplete application may delay the issuance of your business license.

☒ RENEWAL - Gross income for preceding calendar year ending December 31 or for last preceding fiscal year. \$ N/A Gross Income

Calendar Year Fiscal Year (From _____ to _____)

☐ NEW APPLICATION - Estimate of gross income for my business or profession for balance of 19 ____ is \$ _____

☐ BUSINESS CLOSED (date _____) sign below and return.

☐ BUSINESS SOLD (date _____) TO: _____ TELEPHONE: _____

☐ We do not plan to do business in Hilton Head in 19 ____.

2. Using your above gross income figure and the rates printed on the above right side, complete the following:

* Notice for out-of-town contractors - use only the gross income from business or profession generated in the Town of Hilton Head Island.

a. Amount of gross income, round to next even thousand \$ _____

(Example: \$250,225 - \$251 (thousands))

b. Enter minimum payment for 1st \$5,000 gross income

\$ 62.50

c. Subtract 1st \$5,000 from your gross,

balance is \$ _____ x rate \$ N/A =

(Example: \$251 - \$5 = \$246)

d. Taxi and vending permit (if applicable) number N/A x rate per unit _____ =

e. Total license fee (add b, c, d)

\$ 62.50

If applicable:

f. PENALTY DUE (5% PER MONTH AFTER MARCH 15TH)

g. Duplicate license application fee (\$10.00)

h. Previous year unpaid license fee balance

TOTAL AMOUNT DUE (Payable to "Town of Hilton Head Island")

LICENSE FEES DUE ON OR BEFORE MARCH 15

NOTICE: ALL BUSINESSES ARE SUBJECT TO AN
AUDIT TO DETERMINE GROSS INCOME.

ALL BUSINESSES, PLEASE COMPLETE THE FOLLOWING:

If a retail business, give SC Retail Tax # NOT RETAIL

Number under which the business Federal Tax is filed:

Fed. I.D.# 34-1126112 SSN# _____

Contractors Trade Certificate # N/A

COMPLETE THIS SECTION ONLY IF YOU HAVE AN
ACTUAL PHYSICAL LOCATION IN THE TOWN:

Location 100 MARSHLAND RD

Square Footage of Business 23,000

NOTE: This business must be in compliance with all other applicable ordinances.

I do hereby make application in accordance with the Ordinance of the Town of Hilton Head Island to conduct the above-named business in the Town of Hilton Head Island for license year 1994 and certify that the information herein is true, the gross income is accurately reported, or estimated for a new business, without any unauthorized deductions, and that all assessments and personal property taxes due and payable to the Town have been paid.

Signature of Applicant

Title

(Date)

If notary public unavailable, two witnesses sign:

Witness

Date

Witness

Date

Notary public for state of: South Carolina

Attested to and subscribed before me this 11th day

of March, 1994

My term expires January 14 2001

white copy - return to Town with payment yellow copy - keep for your records

300

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin S. Dukes, III, Special Circuit Court Judge for Beaufort County

Case No. 2012-213239

Town of Hilton Head Island,

Respondent

v.

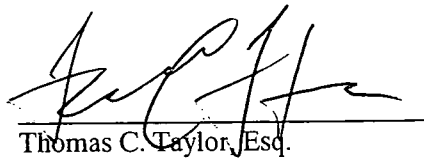
Kigre, Inc.,

Appellant

CERTIFICATE OF COUNSEL

I, Thomas C. Taylor, Counsel for Appellant Kigre, Inc., hereby certify pursuant to Rule 210 that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

This, the 25th day of April, 2013.



Thomas C. Taylor, Esq.
P.O. Box 5550
Hilton Head Is., SC 29938
(843)785-5050
Attorney For Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin S. Dukes, III, Special Circuit Court Judge for Beaufort County

Case No. 2012-213239

Town of Hilton Head Island,

Respondent

v.

Kigre, Inc.,

Appellant

PROOF OF SERVICE

Pursuant to SCACR 210, I certify that I have served a copy of the Record on Appeal on the Respondent Town of Hilton Head Island by depositing a copy of it in the United States Mail, postage prepaid, on April 25, 2013, addressed to its attorney of record, Gregory M. Alford, P.O. Drawer 8008, Hilton Head Island, SC, 29938-8008.

This, the 25th day of April, 2013.



Thomas C. Taylor
P.O. Box 5550
Hilton Head Island, SC 29938
(843) 785-5050
Attorney for Appellant

RECEIVED

APR 29 2013

SC COURT OF APPEALS