

On what is a business license tax levied?

The business license tax, levied on the privilege of doing business, is based on the total gross income from the business activity without deductions for expenses or cost of goods.

Municipalities are given the ability to levy a business license tax on the gross income of businesses in state law.





Businesses already pay property taxes. Why another tax?

Businesses locate in cities because of the concentration of commercial activity centered in a city which acts as both a source for customers and a magnet for talent. To be successful, this commercial activity relies on city services, including police and fire protection, zoning, street lights, sidewalks and many others that can't be billed on an individual usage basis.

Businesses put a larger burden on city services than the average citizen.



How important is the business license tax to city services?

In most cities, 25% to 50% of their general fund budgets come from the business license tax, and there is no alternative revenue stream to replace it.

This amount does not include programs collected through the Association.

City leaders have little flexibility in raising revenue because of Act 388's millage and reassessment caps and restrictions on the use of other revenue sources such as hospitality and accommodations taxes, thereby making the business license tax a critical revenue source.



Gross Income

"Gross income" means the gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from a business done within a taxing jurisdiction.

- Not Based on State or Federal Taxable Income
- No Deductions for Expenses/Cost of Goods
- Some Revenue Non-Taxable by Statute
- Must be reduced by the amount of income upon which a license for another county or municipality is computed and paid.



State Law Authorization

- SC Code Section 5-7-30 (Cities)
- SC Code Section 4-9-30 (Counties)
- SC Code Section 6-1-400 thru 6-1-420 (Act 176)

Section 6-1-400 - The General Assembly passed the SC Business License Tax Standardization Act, Act 176, in September 2020. Act 176 streamlines the business license process, creating the same process for taxing jurisdictions across the state.



State Law Authorization

Gross Income. Each municipality can levy a business license tax measured by gross income (*5-7-30*) No other basis is authorized, except for certain businesses. Railroads, telecommunications and insurance companies are subject to special statutes.

Surtax For Parking. A municipality can levy a surtax on a business license in a designated area to provide and maintain parking for a downtown commercial area (*5-7-30*) A petition by two-thirds of the affected licensed taxpayers is required.

Wholesalers and Lenders. Wholesalers and real estate lenders pay business license taxes to municipalities in which they maintain a warehouse or place of business (5-7-30)

Annexed Business. The license tax for a business annexed into a municipality must be prorated to reflect the number of months it is located in the municipality. SC Code Sec. 5-21-60



What About Counties

SC Code Sec. 4-9-30(12) authorizes a county to levy uniform license taxes on businesses in the *unincorporated* area of the county.

Presently Beaufort, Charleston, Dorchester, Horry, Jasper, Marion, Orangeburg, Richland and Sumter

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 unincorporated area of the county.



Non-Taxable Businesses and Limitations

- Air express and passenger interstate transportation are exempt
- Alcoholic liquors are exempt (SC Const. Art. 8-A, Sec. 12-33-20)
- Banks and building loan companies are exempt (Sec. 12-11-30, Sec. 12-13-50)
- Billiard tables must have state licenses, subject to special rules. (12-21-2730 46)
- Buses, both intrastate and interstate, are exempt (Sec. 58-23-620, Sec. 12-23-220)
- Carriers common motor carriers, taxicabs, intrastate passenger and baggage companies w/ PSC cert A and B are exempt (Sec. 58-23-620, Sec. 12-23-220
- Coin-operated machines must have state licenses and are subject to special rules (Sec. 12-21-2720 – 2728)



Non-Taxable Businesses and Limitations

- Credit unions, state and federal, are exempt (Sec. 34-27-300; 12 USC Sec. 1768)
- Fire insurance premiums are limited to 2 percent (Sec. 38-7-160)
- Lenders on real estate secured loans limited to location of office (Sec. 5-7-30)
- Railroads are limited to maximum fee based on population (Sec. 12-23-210)
- Telecommunications providers subject to 1% license rate (Sec. 58-9-2220)
- Wholesalers w/o place of business within municipality are exempt (Sec. 5-7-30)
- Workers' compensation insurance premiums are exempt. Sec. 38-7-50
- Satellite TV service programming is exempt. Local activities such as sale, installation and service of equipment are subject to a business license tax.



Franchise Distinguished

It is important not to confuse a franchise with a business license. It is not a business license.

Municipalities may grant franchises and charge for the use of public streets (5-7-30)

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 the permission of the governing body in control of the streets.

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Franchise Distinguished

Franchises are customarily granted for an annual fee and that 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.



Regulation

- Although business licenses primarily are used as a revenue source, they also may be used to regulate businesses.
- The business license ordinance may impose health requirements, bonds, regulation of operating hours, etc.
- Most business license ordinances require a statement that personal property taxes have been paid as a condition for the license.











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Tests for Doing Business

- 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? (not a tax on benefits)

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Tests for Doing Business

- 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?



Tests for Doing Business

- 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?











| NAICS Sector/Subsector | | dian |
|---------------------------|---|---------------|
| | Industry Sector Agriculture, forestry, hunting and fishing | Class 2.00 |
| 11 | | |
| 21 | Mining | 4.00 |
| 31 | Manufacturing | 2.00 |
| 32 | Manufacturing | 2.00 |
| 33 | Manufacturing | 2.00 |
| 42 | Wholesale trade | 1.00 |
| 44 | Retail trade | 1.00 |
| 45 | Retail trade | 1.00 |
| 48 | Transportation and warehousing | 2.00 |
| 49 | Transportation and warehousing | 2.00 |
| 51 | Information | 4.00 |
| 52 | Finance and insurance | 7.00 |
| 53 | Real estate and rental and leasing | 7.00 |
| 54 | Professional, scientific, and technical services | 5.00 |
| 55 | Management of companies | 7.00 |
| 56 | Administrative and support and waste management and remediation | 4.00 |
| 61 | Educational services | 4.00 |
| 62 | Health care and social assistance | 4.00 |
| 71 | Arts, entertainment, and recreation | 3.00 |
| 721 | Accommodation | 3.00 |
| 722 | Food services and drinking places | 1.00 |
| 81 | Other services | 5.00 |
| Class 8 | Mandatory Subclasses | |
| 23 | Construction | 8.10 |
| 482 | Rail Transportation | 8.20 |
| 517311 | Wired Telecommunications Carriers | 8.30 |
| 517312 | Wireless Telecommunications Carriers (except Satellite) | 8.30 |
| 5241 | Insurance Carriers | 8.40 |
| 5242 | Insurance Brokers for non-admitted insurance Carriers | 8.40 |
| 713120 | Amusement Parks and Arcades | 8.5 |
| 713290 | Nonpayout Amusement Machines | 8.52 |
| 713990 | All Other Amusement and Recreational Industries (pool tables) | 8.60 |

Difficult Applications • Agricultural Products • Air Express and Transportation • Alcoholic Beverages • Amusement Machines and Billiard Tables • Auctioneers • Automobile Dealers • Bail Bondsmen • Bingo • Carriers, Buses and Taxicabs • Charitable and Religious Activities

Difficult Applications

- Insurance Companies and Agents
- Lenders
- Lottery Ticket Sales
- Newspap<mark>ers</mark>
- Pawnbrokers
- Door to Door Sales
- Street Sales
- Precious Metal Dealers
- Real Estate
- Telecommunication Companies
- Wholesalers



Difficult Applications

- Credit Unions
- Fireworks
- Fortunetelling
- Fuel Dealers
- Home Occupations
 Insurance Companies and Agents
- Counties cannot tax insurance companies or telecom companies.
- Multiple business activities for one business
- Contractors
- Manufacturers



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| RATE CLASS | APPENDIX A: BUSINESS LICENSE RATE SO INCOME: \$0 - \$2,000 INCOME OV BASE RATE RATE PER \$3 | | | | |
|------------|---|-------------------------|--|---|--|
| 1 | \$40.00 | \$1.10 | | | |
| 2 | \$45.00 | \$1.20 | | | |
| 3 | \$50.00 | \$1.30 | | IN-RESIDENT RATES | |
| 4 | \$55.00 | \$1.40 | Unless otherwise specifically provided, all taxes and rates shall be doubled for nonresidents an | | |
| 5 | \$60.00 | \$1.50 | itinerants having no fixed principal place of business within the Municipality. | | |
| 6 | \$65.00 | \$1.60 | DECLINING RATES | | |
| 7 | \$70.00 | \$1.70 | Declining Rates apply in all Classes for gross income in excess of \$1,000,000, unless otherwise | | |
| 8.1 | \$40.00 | \$1.00 | specifically provided for in this ordinance. | | |
| 8.2 | Set by state statute | | Gross Income in \$ Millions | Percent of Class Rate for each additional \$1,000 | |
| 8.3 | MASC Telecommunications | | 0 - 1 | 100% | |
| 8.4 | MASC Insurance | | 1-2 | 95% | |
| 8.51 | \$12.50 + \$12.50 per machine | | 2-3 | 90% | |
| 8.52 | \$12.50 + \$180.00 per machine | | 3-4 | 85% | |
| 8.6 | \$150.00 plus \$5.00 ·OR · \$12.50 per table | \$2.00 | 4-5 | 80% | |
| 9.1 | \$150.00 | \$2.50 | 5-6 | 75% | |
| 9.2 | \$200.00 | \$2.50 | 6-7 | 70% | |
| 9.3 | \$40.00 | \$.40 | 7-8 | 65% | |
| 9,41 | \$40.00 | \$1.45 | 8-9 | 60% | |
| 9.42 | \$40.00 | \$0.40 | 9-10 | 55% | |
| 9.6 | \$200.00 | \$2.50 | 9-10 OVER 10 | 50% | |
| 9.7 | \$300.00 | \$2.50 | OVER 10 | 3076 | |
| | INCOME: \$0 - \$10,000 INCO | ME OVER \$10,000 | | | |
| RATE CLASS | BASE RATE RATE PER \$3 | 000 OR FRACTION THEREOF | | | |
| 9,43 | \$10.00 | \$1.20 | AIII ≞∖. | Municipal Association | |







| How m | uch tax | is owe | ed? | | |
|----------------------------------|------------------------------------|-------------------------------------|--------------------------------|--|--|
| • In-city bus | iness | | Gross Income in \$ Millions | Percent of Class Rate for each additional \$1,000 | |
| Gross Reve | | 0-1 | 100% | | |
| · GIUSS Reve | nue. \$1,09 | 1 - 2 2 - 3 | 90% 80% | | |
| Base Rate: \$50 on first \$2,000 | | | 3-4 | 70% | |
| • \$1.50 pe <mark>r t</mark> | housand o | r f <mark>r</mark> action th | over 4 | 60% | |
| | | | Та | x Owed | |
| Base: | \$50.00 | \$ 2,00 | 00 \$ | 50.00 | |
| 0-1 100% | \$ 1.50 | \$9 <mark>9</mark> 8,000 \$1,497.00 | | | |
| 1-2 90% | \$ 1.35 \$ 99,000 <u>\$ 133.65</u> | | | | |
| | | | \$1 | ,680.65 | |
| | | | | Iunicipal Associat f South Carolina | |







Appeals process



Standard appeals process for all jurisdictions

Within 30 days after the date of postmark or personal service, the taxpayer may appeal the notice of final assessment by filing the completed appeal form with the taxing jurisdiction business license official, by mail or personal service, and by paying to the taxing jurisdiction in protest at least eighty percent of the business license tax based on the final assessment.

Within 30 days after receipt of the appeal form, a hearing by the taxing council or its designee, must be held.

A written decision must be filed with the taxing jurisdiction business license official and served on the taxpayer by mail or personal service. This is the final decision of the taxing jurisdiction. **Within 30 days** of the postmark or personal service, the taxpayer may appeal to the Administrative Law Court.





Retention Schedule

- The retention schedule is put out by the South Carolina Department of Archives and Records Management Division.
- The retention schedule is not law, it just gives best practice.
- <u>https://scdah.sc.gov/sites/default/files/Documents</u> /Records%20Management%20(RM)/Schedules/gen skedmun.pdf



Retention - Business License Applications

- Business license applications should be kept 3 years and then destroyed.
- According to the retention schedule business license applications are, "Applications submitted by persons seeking to operate businesses in the municipality. Information includes name of business, location, classification, license number, gross sales for preceding calendar year, type of application, date, fee, Federal ID number or social security number."

























Brokers Tax Program

- Insurance companies not licensed to directly sell policies in the state can provide coverage through South Carolina licensed brokers. These brokers provide insurance for unusual risks.
- Brokers pay a 4% state tax and a 2% municipal tax on these policies.
- As a result of the federal Dodd-Frank law of 2010 and legislation the South Carolina General Assembly passed in 2012, the S.C. Department of Insurance collects both the state and local tax. The Municipal Association, as designated by state law, then distributes to cities and towns the municipal portion of the tax.

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Brokers Tax Program

- The law requires the SC Department of Insurance to collect the brokers premium tax and deposit all revenue collected in to a special fund.
- The SCDOI is required to give the Association a full accounting, including the name and address of the broker, amount collected from each broker and the location of the risk covered by the insurance.
- In 2022, the Association disbursed \$23 million.



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Insurance Tax Program

- In 1994, the Association expanded the program to collect current business license taxes from insurance companies.
- Participating municipalities adopt a standard ordinance for insurance company business license taxes.
- 2% tax on property, casualty, and title companies.
- 0.75% on life, accident, and health companies.



Insurance Tax Program

- To ensure accurate payment, the Association's staff analyzes current and past reported municipal premiums to check for significant fluctuations of premiums, confirms the accuracy of risk and agent data, and reconciles the company's reporting to cities with the total statewide taxable premiums reported to the SC Department of Insurance.
- In 2022, the Association disbursed \$250 million.

















