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## Business License Concept: Duties, Responsibilities, and State Law

### Part 1 (page 1) Business License Handbook

Business Licensing Officials Association  
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### What is a business license?



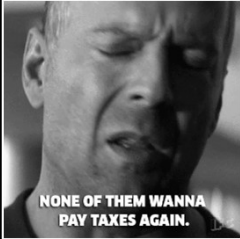
#### It is:

- "An ordinance levying a tax." <sup>P.1</sup>
- "A method of requiring a business or occupation to contribute its share in support of the government." <sup>P.1</sup>
  - Without business & occupation taxes to raise revenue "in aid" of property taxes, property owners would bear a larger burden in paying for local government. See "Nature of a Business License Tax" for summary of *State v. Hayne* (1873).
- "An excise tax levied on the privilege of doing business," with the value or volume of business done measured by gross income. <sup>P.1</sup>

#### It isn't:

- A property tax. <sup>P.1</sup>
  - Most jurisdictions charge a lower rate for resident businesses, partly because these businesses pay property taxes. See "Nature of a Business License Tax" for summaries of *American Bakesies Co. v. City of Sumter* (1934) and *Crosswell & Co v. Town of Bishopville* (1943).
- A sales tax, which is usually charged on goods and collected from the user or consumer of the goods. <sup>P.1</sup>
- A income tax, which is paid by employees, the self-employed and businesses on net income. <sup>P.1</sup>
- A contract. <sup>P.4</sup>

### Who is subject to a business license?



#### Yes:

- **Businesses or "those in business for themselves."** <sup>P.1</sup>
  - A business issues 1099 forms to subcontractors that are in business for themselves.
  - Self-employed occupations accept payments directly from individual customers or other businesses and may only receive 1099 forms from some of those businesses.
  - If an individual files a schedule C with the 1040 form for their federal income taxes, they are a sole proprietorship. For licensing purposes, this is a business even though filing with the Secretary of State isn't required for sole proprietorships.

#### No:

- Employees that "work for wages or salary." <sup>P.1</sup>
  - A business issues w-2 forms to employees.
  - Day laborers generally own no tools or equipment and are paid by the hour or day, not by the job. For licensing purposes, day laborers are generally treated as employees, although this will depend on your jurisdiction's ordinance or policies.

### Who said municipalities could levy business license taxes?



#### SC Code of Laws SECTION 5-7-30:

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 be 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 abate nuisances; the authority to provide police protection in contiguous municipalities and in unincorporated areas located not more than three miles from the municipal limits upon the request and agreement of the governing body of such contiguous municipality or the county, including agreement as to the boundaries of such police jurisdictional areas, in which case the municipal law enforcement officers shall have the full jurisdiction, authority, rights, privileges, and immunities, including coverage under the workers' compensation law, which they have in the municipality, including the authority to make arrests, and to execute criminal process within the extended jurisdictional area; provided, however, that this shall not extend the effect of the laws of the municipality beyond its corporate boundaries; **grant franchises for the use of public streets and make charges for them; grant franchises and make charges for the use of public beaches; engage in the recreation function; 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 he maintains within the corporate limits of the municipality a warehouse or mercantile establishment for the distribution of wholesale goods; and a business engaged 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; borrow in anticipation of taxes; and pledge revenues to be collected and the full faith and credit of the municipality against its note and conduct advisory referendum. The municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both. If the person or business taxed pays a business license tax to a county or to another municipality where the income is earned, the gross income for the purpose of computing the tax must be reduced by the amount of gross income taxed in the other county or municipality.**

For the purpose of providing and maintaining parking for the benefit of a downtown commercial area, a municipality may levy a surtax upon the business license of a person doing business in a designated area in an amount not to exceed fifty percent of the current yearly business license tax upon terms and conditions fixed by ordinance of the municipal council. The area must be designated by council only after a petition is submitted by not less than two-thirds of the persons paying a business license tax in the area and who paid not less than one-half of the total business license tax collected for the preceding calendar year requesting the designation of the area. The business within the designated area which is providing twenty-five or more parking spaces for customer use is required to pay not more than twenty-five percent of a surtax levied pursuant to the provisions of this paragraph.

## Who said municipalities could levy business license taxes? (continued)



### SC Code of Laws SECTION 5-21-60:

Notwithstanding any other provision of law, when any business establishment is annexed into the corporate limits of a municipality which has a business license tax, the tax for the business concerned for the year in which the annexation became effective shall be prorated so that the amount payable shall be one-twelfth of the annual tax multiplied by the number of full months of the tax year the business was located within the corporate limits. The provisions of this section shall apply to the year 1976 and each year thereafter.

With the passage of Act 176 in September of 2020, this is now also found in SECTION 6-1-400. Business license tax standardization

## Who said Counties could levy business license taxes?



### SC Code of Laws Section 4-9-30:

Under each of the alternate forms of government listed in Section 4-9-20, except the board of commissioners form provided for in Article 13, each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof:

(12) to levy uniform license taxes upon persons and businesses engaged in or intending to engage in a business, occupation, or profession, in whole or in part, within the county but outside the corporate limits of a municipality except those persons who are engaged in the profession of teaching or who are ministers of the gospel and rabbis, except persons and businesses acting in the capacity of telephone, telegraph, gas and electric utilities, suppliers, or other utility regulated by the Public Service Commission and except an entity which is exempt from license tax under another law or a subsidiary or affiliate of any such exempt entity. No county license fee or tax may be levied on insurance companies. The license tax must be graduated according to the gross income of the person or business taxed. A business engaged in making loans secured by real estate is subject to the license tax only if it has premises located in the county but outside the corporate limits of a municipality. If the person or business taxed pays a license tax to another county or to a municipality, the gross income for the purpose of computing the tax must be reduced by the amount of gross income taxed in the other county or municipality.

With the passage of Act 176 in September of 2020, this is now also found in SECTION 6-1-400. Business license tax standardization

## Are there any exceptions to licensing per US codes or SC state codes?



### Alternative Collections:

- Some business license taxes may be collected through a third party. This trend will likely increase as virtual services, online sales, and the sharing economy continue to grow.
  - (Optional) In 1994, MASC expanded its delinquent tax collection program to include current tax collections from insurance companies on the behalf of enrolled local governments.
  - (Mandatory) In 2015, H3525 put the regulation of transportation network companies like Uber under the state Office of Regulatory Staff, which collects a local assessment fee equal to one percent of the company's gross revenue and remits it to local governments.
  - Act 176 put strict regulations into place regarding third-party tax collections companies. SECTION 6-1-420. Assistance in collection of business license tax due; private right of action.

### Optional Fee in Lieu of Tax:

- Per SC Code, Municipalities and Counties may grant a franchise agreement to allow a business to use the municipality's or county's public property for a fee. <sup>P.3</sup>
  - These contracts usually are made with cable, power, gas, and water utility companies that are placing infrastructure under or above the streets or sidewalks. <sup>P.3</sup>
  - These contracts do not exempt the franchise holder (or its subcontractors) from a business license unless specified in the contracts. <sup>P.3</sup>
  - Counties may not franchise services or utilities owned and operated by a municipality. <sup>P.4</sup>

### Exemptions & Limitations:

- Air express and passenger interstate transportation are exempt. 49 USC Sec. 40116(b), Sec. 40102.
- 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 and are subject to special rules. Sec. 12-21-2730 through 2746
- 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 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
- Coin-operated machines must have state licenses and are subject to special rules. Sec. 12-21-2720 - 2728
- 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 loans secured by real estate are limited to location of office. Sec. 4-9-30(12), Sec. 5-7-30
- Marketing cooperative associations are exempt. Sec. 33-47-120
- Mutual benevolent aid associations are exempt. Sec. 38-35-60
- Railroads are limited to a maximum fee determined by population. Sec. 12-23-210
- Telecommunications providers are subject to limited license rates. Sec. 58-9-2220
- Wholesalers not having places of business within a municipality are exempt. Sec. 5-7-30
- Workers' compensation insurance premiums are exempt. Sec. 38-7-50
- Satellite television service programming transmitted by satellite directly to a subscriber's premises is exempt. Local activities subject to a business license tax include sale, installation and service equipment used for reception and viewing of satellite signals by a subscriber, and distribution of satellite programming from a master antenna by cable to subscribers.

## Are there any exceptions to licensing per US codes or SC state codes? (continued)



## Are business licenses regulatory?



### Yes:

- **An illegal operation is not entitled to be licensed.** <sup>p.6</sup>
- **"The business license ordinance may impose health requirements, bonds, regulation of operating hours" or "a statement that personal property taxes have been paid as a condition for the license."** <sup>p.6</sup>
  - Best practices recommend using planning and zoning ordinances to restrict locations for de-incentivized business classes instead of using the business license ordinance to regulate those classes.

### No:

- **"A legal business is entitled to be licensed."** <sup>p.6</sup>
  - "Denying or revoking a business license must be based on a legally sufficient reason, preferably according to reasonable standards disclosed in the ordinance." <sup>p.4</sup>
  - **"Denying or revoking a license does not allow summary closing of the business by enforcement officers.** However, it does subject the operator to prosecution for violating the license ordinance." <sup>p.6</sup>
  - "If immediate closure of the business is sought, it should be accomplished through criminal prosecution or action for injunction." <sup>p.6</sup>

## Is it reasonable to charge different rates?



### Between classifications:

- Neither "Federal nor state law provide any guidelines for determining when a license tax is reasonable." <sup>p.6</sup>
  - "The power of a municipality to fix different rates for licenses where the classes are different has been upheld by this Court many times, *Hill v. City Council of Abbeville*, 59 S.C. 396, 38 S.E. 11; *Cowart v. City Council of Greenville*, 67 S.C. 35, 45 S.E. 122; *Great Atlantic Pacific Tea Co. v. City of Spartanburg*, 170 S.C. 262, 170 S.E. 273; *American Bakeries Co. v. City of Sumter*, 173 S.C. 94, 174 S.E. 919; *Triplett v. City of Chester*, 209 S.C. 455, 40 S.E.2d 684," *City of Columbia v. Putnam* (1962)
  - "It must first be noted that **there is no doubt but that the rates charged specified classes may be different.**" *US Fidelity and Guaranty Co. v. City of Newberry* (1969)
  - "If different rates are to be charged for different classifications it necessarily follows that 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." *US Fidelity and Guaranty Co. v. City of Newberry* (1969) <sup>p.4</sup>
  - "The burden is on the taxpayer to prove unconstitutionality beyond a reasonable doubt." *N. Charleston Land Corp. v. City of N. Charleston* (1984)
- Act 176 now requires all taxing jurisdictions to use the standard class schedule prepared by the Association and approved by SC Revenue and Fiscal Affairs Office.

## What if a business is losing money?



### Licensing and loss of profits:

- Businesses are placed into the appropriate class using the standard class schedule and businesses' NAICS code.
- Per Sections 5-7-30 and 4-9-30 of the SC Code of Laws, the business license tax must be based on gross receipts, not net income or profit, and local government councils set their rates with this understanding.
- **Showing a profit loss has not been supported as proof of unreasonable taxation.**

### Licensing and profitability:

- Using the same North American Industry Classification System (NAICS) codes used by Federal statistical agencies allows local governments to build consideration of average profitability into setting rates for entire classes of businesses. The class schedule updates that we receive from MASC ranks industries into profitability tiers using aggregate figures provided by the IRS.
  - While court cases have upheld the idea of setting varying rates for classes of businesses, where the rate is uniform for all similar types of businesses, court cases have not upheld setting special rates on a case by case basis.

## Quick Review



### Study Questions for Part 1 Business License Handbook page 8

1. What is taxed by a business license tax?
2. Who is subject to a business license tax?
3. What income is used to calculate a business license tax?
4. When must a license tax be prorated?
5. What are the differences between a franchise fee and a business license tax?
6. What are some non-taxable businesses?
7. Is the business license ordinance a good regulatory tool?
8. Can a business be closed by revocation of a business license?
9. Can different classes of businesses be charged different rates?
10. Who has the authority to set license rates?
11. Must a business that loses money pay a business license tax?

## Resources



- *SC Business Licensing Handbook*  
[https://www.masc.sc/sites/default/files/uploads/finance/business\\_license\\_handbook.pdf](https://www.masc.sc/sites/default/files/uploads/finance/business_license_handbook.pdf)
- South Carolina State Code  
[www.scstatehouse.gov/code/statmast.php](http://www.scstatehouse.gov/code/statmast.php)
- Justia  
[law.justia.com/cases/south-carolina](http://law.justia.com/cases/south-carolina)
- North American Industry Classification System (NAICS) code search  
<https://www.census.gov/naics/>