

8178 Lelway



HENRY McMASTER
ATTORNEY GENERAL

May 26, 2006

The Honorable Gilda Cobb-Hunter
Member, House of Representatives
309-C Blatt Building
Columbia, South Carolina 29211

Dear Representative Cobb-Hunter:

We received your letter requesting an opinion regarding a municipality's authority to levy a local business license tax. You informed us:

According to one of my constituents, the town of Holly Hill's business license tax is based on the business' gross income, instead of what the business nets. This method of computation differs from other municipalities in the area and places a serious hardship on business in Holly Hill.

Accordingly, you request an opinion as to whether "the municipality of Holly Hill has the Authority to tax business licenses based on the business' gross income, and if so, from what statute does its authority derive"?

Law/Analysis

"A municipal corporation is a creature of statute and has only the powers expressly granted it, those which are necessarily or fairly implied in or incident to the express powers, or those powers essential to the accomplishment of its purpose." Piedmont Pub. Serv. Dist. v. Cowart, 319 S.C. 124, 131, 459 S.E.2d 876, 880 (Ct. App. 1995). Article VIII, section 9 of the South Carolina Constitution (1976) provides, in part: "The structure and organization, powers, duties, functions, and responsibilities of the municipalities shall be established by general law . . ." In section 5-7-30 of the South Carolina Code (2004), the Legislature confers numerous powers upon municipalities, including the power to

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

Request Letter

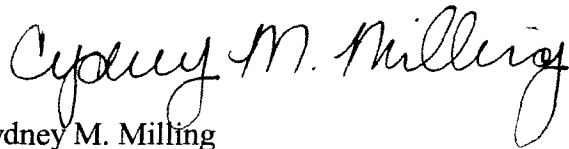
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distribution of wholesale goods; and a business engaged in making loans secured by real estate is not subject to the business license tax unless it has premises located within the corporate limits of the municipality and no entity which is exempt from the license tax under another law nor a subsidiary or affiliate of an exempt entity is subject to the business license tax

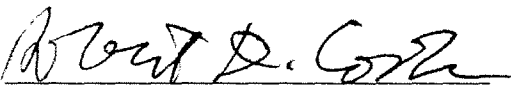
(emphasis added). Furthermore, our Supreme Court has stated: "the licensing power of municipalities is to be strictly construed and exercised in strict conformity with the terms of its grant." Southern Bell Tel. and Tel. Co. v. City of Aiken, 279 S.C. 269, 272, 306 S.E.2d 220, 222 (1983).

In accordance with the authorities cited above, it is our opinion that not only would Holly Hill be authorized to tax business licenses based on gross income, section 5-7-30 of the South Carolina Code appears to mandate this basis for taxation of business licenses by a municipality.

Very truly yours,


Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Assistant Deputy Attorney General