



ALAN WILSON
ATTORNEY GENERAL

April 23, 2012

The Honorable Christopher R. Hart
Representative, District 73
432-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Hart:

You have inquired whether counties and municipalities may impose business license “fees” based upon gross income, rather than net income. You remark that “state and federal taxes are assessed on the net income of a business, not its gross income.”

The statutory authorizations for county and municipal business license taxes require that such taxes be based upon gross income. Section 4-9-30 of the South Carolina Code (1986 & Supp. 2011) provides in relevant part:

Under each of the alternate forms of government listed in § 4-9-20 . . . 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 The license tax must be graduated according to the gross income of the person or business taxed. . . . 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.

(Emphasis added). Similarly, section 5-7-30 of the South Carolina Code (2004 & Supp. 2011) provides in relevant part:

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 authority to . . . levy a business license tax on gross income 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.

(Emphasis added).

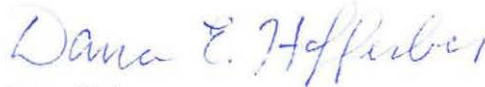
These statutory requirements are presumptively valid. *See, e.g., Clarke v. S.C. Public Service Authority*, 177 S.C. 427, 181 S.E. 481, 485 (1935) (“It is the theory and intent of the Constitution of South Carolina that the powers vested in the General Assembly include all powers not specifically reserved by the Constitution.”); *State v. Moorner*, 152 S.C. 455, 150 S.E. 269, 279 (1929) (“Under our form of government the Legislature is given plenary power in the matter of taxation, subject, of course, to express constitutional limitation.” (quoting Cooley, *Constitutional Limitations* 986 (8th ed.))). As we explained in a recent opinion of this Office:

Because a business license tax is not a tax upon the income itself, income that is exempt from income tax will not necessarily be exempt from use in calculating a license tax. *Cf. Hay v. Leonard*, 212 S.C. 81, 97, 100, 46 S.E.2d 653, 660, 661 (1948) (“[T]he tax is not on the property itself; it is on the privilege of dealing with it. The value of such privilege is measured by the gross receipts therefrom”); *Thomson Newspapers, Inc. v. City of Florence*, 287 S.C. 305, 338 S.E.2d 324 (1985) (newspaper did not satisfy its burden to show a license tax was unconstitutional simply by showing that the newspaper’s classification for purposes of the license tax differed from its classification for the purposes of income and *ad valorem* taxation); Letter to Joseph H. Earle, Jr., Op. S.C. Att’y Gen. No. 82-56 (Aug. 18, 1982) (explaining that an exemption from *ad valorem* taxation would not automatically exempt an entity from a business license tax).

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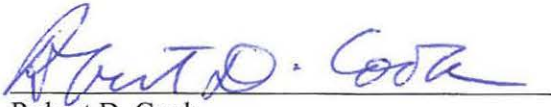
Letter to Joshua A. Gruber, Op. S.C. Att’y Gen. (Apr. 2, 2012). In sum, a business license tax imposed by a county or municipality must be calculated using gross income.¹

Very truly yours,



Dana E. Hofferber
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

¹ You have used the term “fee”—rather than “tax”—in your request. Accordingly, we note that a business registration fee imposed pursuant to section 12-37-135 of the South Carolina Code (Supp. 2011) may not be based on income:

A county governing body may require a business registration throughout the entire county area and may impose an administrative fee not to exceed fifteen dollars. The fee is an administrative fee and must not be based upon business income. . . . This registration, if adopted, is in lieu of any business license which is authorized pursuant to Section 4-9-30(12).