ALAN WILSON
ATTORNEY GENERAL

April 2, 2012

Joshua A. Gruber, Esquire
Office of the County Administrator, Beaufort County
Administration Building
Post Office Drawer 1228
Beaufort, South Carolina 29901-1228

Dear Mr. Gruber:

You have requested an opinion of this Office concerning the proper interpretation of the term "gross income" in the context of a county business license tax ordinance. Specifically, you have asked which "items as reported on a federal income tax return should be included and [which] items should be excluded" when calculating the gross income of a private club or homeowners' association pursuant to Beaufort County's ordinance.

As an initial matter, we note that you have not provided this Office with any information regarding the activities or sources of income of any particular club or association. Thus, we can provide only general guidance, beginning with the presumption that the county's ordinance is valid as written. *See, e.g.*, Letter to The Honorable N.R. "Bob" Salley, Sr., Op. S.C. Att'y Gen. (Nov. 18, 1996).[1]

Analysis

"Gross income" as defined by ordinance

Beaufort County Code section 18-51 imposes a business "license fee based on gross income." In general, gross income in the context of a business license tax "means the total receipts from a business before deducting expenditures for any purpose." *Columbia Ry., Gas & Elec. Co. v. Jones*, 119 S.C. 480, 112 S.E. 267, 272 (1922); *accord* Letter to The Honorable J. Ira Ruff, Op. S.C. Att'y Gen. No. 83-76 (Sept. 26, 1983). For the purposes of its business license tax, Beaufort County appears to use the terms "gross income" and "gross receipts" interchangeably.[2] Section 18-47 of the Beaufort County Code defines "gross receipts" as follows:

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[1] You have not inquired about the validity of the ordinance.

[2] You have represented that the county's business license tax was amended most recently by Beaufort County Ordinance 2010/13 (Aug. 23, 2010), a copy of which you have provided to this Office. The definition of "gross receipts" in 2010/13 appears to be an adoption—with modifications—of the definition of "gross income" provided by a previous version of the county code. *See* Beaufort County Ordinance 99-36 (Nov. 22, 1999).

> *Gross receipts* means the total revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected by the businesses [sic], excepting income from business done wholly outside of the unincorporated area of the county and fully reported to a municipality or other county. The term "gross receipts" means the value proceeding or accruing from the sale of tangible business personal property, including merchandise and commodities of any kind and character and all receipts, by the reason of any business engaged in, including interest, dividends, discounts, rentals of real estate or royalties, without deduction on the account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, or any other expenses whatsoever and without any deductions on account of losses. Gross income for business licenses purposes, [sic] may be verified by inspection of returns filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Insurance Commission, or other government agency. In cases of brokers or agents, gross income means commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall include the value of bartered goods and/or trade-in merchandise.

This definition appears to be consistent with the general definition of "gross income" noted above: "total receipts . . . before deducting expenditures for any purpose."

Section 18-54 of the Beaufort County Code clarifies the income to be used in calculating Beaufort County's license tax, as follows:

> No deductions from gross income shall be made, except income from business done wholly outside of the county jurisdiction on which a license tax is paid to another county or municipality, 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 article by reason of the lack of an established place of business within the county, unless exempted by state or federal law. . . . No person shall be exempt from this article by reason of the payment of any other tax, unless exempted by state law . . . .

In addition, section 18-69 clarifies that "[p]roperly apportioned gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax."

Accordingly, it appears that all "gross receipts" not specifically excluded by ordinance and not exempted by other law should be reported to the county as the basis for its tax. *Gay v. Ariail*, 381 S.C. 341, 344-45, 673 S.E.2d 418, 420 (2009) ("All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used. . . . If possible, legislative intent should be found in the plain language of the statute itself.").

Exemptions created by operation of other law

Section 4-9-30(12) of the South Carolina Code (1986 & Supp. 2011) provides the authority for Beaufort County's license tax and enumerates certain exemptions from that tax, as follows:

> 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:
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> . . . .
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> (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.

As can be seen, section 4-9-30 exempts several persons and businesses from the operation of the county's business license tax, and it exempts "the amount of gross income taxed in [another] county or [in a] municipality." Additional income might be excluded by operation of other law. *E.g.*, Letter to Adelaide R. Bodie, Op. S.C. Att'y Gen. (Aug. 2, 1972) (opining that taxes imposed upon purchasers of certain products but collected by dealers of those products as agents of the government should be excluded from the calculation of the dealers' gross receipts). As a general rule, however, the burden is on the taxpayer to demonstrate that it is entitled to a claimed exemption. *E.g.*, Letter to Debbie Owens, Op. S.C. Att'y Gen. No. 84-140 (Dec. 21, 1984).[3]

Effect of an exemption from income tax

Via subsequent conversation, you have clarified that your particular concern is whether exemption from federal or state income tax will operate to exclude income from the county's business license tax. 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

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[3] Section 12-20-110 of the South Carolina Code (2000 & Supp. 2011) exempts certain homeowners' associations from the corporate license fees imposed by that chapter. The section does not explicitly affect county license taxes.

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). Rather, the terms of the ordinance will control, provided they are not inconsistent with constitutional or statutory law.[4]

By its plain language, the Beaufort County license tax ordinance does not mandate the use of income tax returns in calculating gross income. Instead, it references these returns only as a resource for verifying the income reported to the county. Beaufort County Code § 18-47 ("Gross income for business license purposes, [sic] may be verified by inspection of returns filed with the Internal Revenue Service, the South Carolina Department of Revenue . . . or other government agency."); *id.* § 18-53(b) ("Applicants may be required to submit copies of state and federal income tax returns reflecting gross income figures."). For most businesses, the income to be reported to the county is defined by sections 18-47, 18-51, 18-54, and 18-69 of the Beaufort County Code—as quoted above—and these sections do not indicate that exemption from income tax will have any effect on the calculation of the county's license tax.

Nonetheless, it is worthy of note that some organizations or activities that are exempt from income tax might not qualify as "business" within the meaning of the Beaufort County license tax ordinance. *See* Beaufort County Code § 18-47 (defining the term "business" and explaining the circumstances under which an organization devoted to "charitable purposes" will be considered a business).[5] If an organization or activity is not "business," the receipts therefrom might not qualify as "gross receipts" for license tax purposes. *See id.* (defining gross receipts as the "total revenue <u>of a business</u> . . . " and as "the value proceeding or accruing from the sale of tangible <u>business</u> personal property . . . and all receipts, <u>by reason of any business engaged in</u> . . ." (emphasis added)). Any ambiguity in construing these provisions should be resolved in favor of the taxpayer. *Beard v. S.C. Tax Comm'n*, 230 S.C. 357, 367, 95 S.E.2d 628, 634 (1956) ("It is a well-established rule of construction that a tax statute is not to be extended

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[4] Again, we assume for the purposes of this opinion that the ordinance is valid.

[5] Section 18-47 provides, in relevant part:

> *Business* means a calling, occupation, profession or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly. In addition to the above-described activities . . . an individual shall be deemed to be in business if that individual owns and rents two (2) or more residential rental units . . . within the county, excluding the municipalities therein. This applies to both short-term and long-term rentals.
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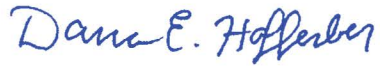
> *Charitable [p]urpose* means benevolent, philanthropic, patriotic, or eleemosynary purpose which does not result in personal gain to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization. [A] [c]haritable [o]rganization shall be deemed a business subject to a license tax unless the entire net proceeds of its operation, after necessary expenses, are devoted to charitable purposes. Compensation in any form to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization shall not be deemed a necessary operating expense.

beyond the clear import of its language, and that any substantial doubt as to its meaning should be resolved against the government and in favor of the taxpayer."); *accord Hay*, 212 S.C. at 92, 46 S.E.2d at 658 (applying this rule in the context of a business license tax).

Conclusion

In sum, an exemption from state or federal income tax does not necessarily create an exemption from Beaufort County's business license tax. Rather, gross income for business license tax purposes should be calculated according to the definition in the license tax ordinance, provided that definition is not inconsistent with constitutional or statutory law.

Very truly yours,



Dana E. Hofferber
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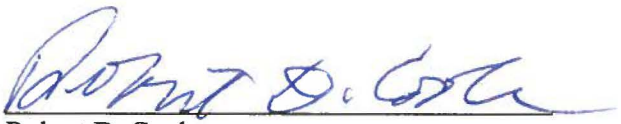
REVIEWED AND APPROVED BY:



Robert D. Cook
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