



ALAN WILSON  
ATTORNEY GENERAL

July 19, 2022

W.K. Taylor, Esq.  
County Attorney  
Beaufort County  
Post Office Drawer 1228  
Beaufort, South Carolina 29901-1228

Dear Mr. Taylor:

We received your request for an opinion of this Office concerning the imposition of business license taxes by Beaufort County. You indicate local governments regularly charge different rates to different businesses based on SIC codes and some charge higher rates to businesses domiciled outside of the jurisdiction. Thus, you ask “whether any provision of law would prohibit Beaufort County Council from adjusting its tax rates to charge businesses domiciled in a municipality, which are also doing business in the county, the same tax rate, rather than a higher, non-domiciled rate?”

#### Law/Analysis

As you mentioned in your letter, section 4-9-30(12) of the South Carolina Code (2021) authorizes counties to levy a business license tax on those engaged in business within the county. Section 4-9-30 states as follows:

Under each of the alternate forms of government listed in Section 4-9-20, except the board of commissioners form provided for in Article 11, 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. No county license fee or tax may be levied on a professional sports team as defined in Section 12-6-3360(M)(17). 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.

S.C. Code Ann. § 4-9-30. In interpreting this statute, we keep in mind the rules of statutory construction, the primary of which is “to ascertain and effectuate legislative intent.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “The legislature’s intent should be ascertained primarily from the plain language of the statute.” Georgia-Carolina Bail Bonds, Inc. v. Cnty. of Aiken, 354 S.C. 18, 23, 579 S.E.2d 334, 336 (Ct. App. 2003). In this instance, section 4-9-30(12) requires a uniform levy of the license tax. According to Black’s Law Dictionary, “uniform” means “Characterized by a lack of variation; identical or consistent.” UNIFORM, Black’s Law Dictionary (11th ed. 2019). Therefore, the statute itself appears to call for business license taxes to be levied on businesses in an identical or consistent way. However, in a 1977 opinion, this Office concluded that “uniform” under section 4-9-30(12) does not “preclude the classification of the persons or businesses upon some reasonable basis.” Op. Att’y Gen., 1977 WL 24682 (S.C.A.G. Nov. 1, 1977). See also, Op. Att’y Gen., 2018 WL 6252023 (S.C.A.G. Nov. 19, 2018) (stating that license tax ordinances are presumed reasonable and the burden of proving unreasonableness is on person challenging the ordinance).

In addition, our courts recognize counties’ ability to charge different businesses different rates. In Carter v. Linder, 303 S.C. 119, 122, 399 S.E.2d 423, 424 (1990), the South Carolina Supreme Court describes business license taxes as “[a] license tax upon persons and businesses is an excise tax on the privilege of doing business, and no prohibition against the utilization of excise taxes exists.” Based on the fact that section 4-9-30(12) states “[t]he license tax must be graduated according to the gross income of the person or business taxed” and “in Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973), the United States Supreme Court determined that a state ‘may impose different specific taxes on different trades and professions and may vary the rate of excise,’” the Court determined an ordinance classifying

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businesses and assessing a graduated tax rate in accordance with gross income did not violate taxpayers' rights to equal protection. Id. at 124, 399 S.E.2d at 426. Likewise, other cases involving classifications related to business license taxes analyze the classifications against an equal protection framework in order to insure they do not run afoul of the Equal Protection Clause. See City of Beaufort v. Holcombe, 369 S.C. 643, 632 S.E.2d 894 (Ct. App. 2006) (considering whether a City of Beaufort ordinance distinguishing between landlords who rent to themselves from landlords that rent to others for purposes of its business license violates equal protection).

Your question relates to classifications based on domicile rather than based on type of business or profession. Section 4-9-30(12) neither specifically permits nor prohibits such a classification. Additionally, we did not find any cases addressing a county's ability to charge businesses different rates based on their domicile. Classifying businesses based on domicile could raise equal protection concerns. The South Carolina Constitution provides no person shall "be denied the equal protection of the laws." S.C. Const. art. I, § 3 (2009). Because classification based on domicile does not appear to involve a suspect class or infringe on a fundamental right, we presume it would be analyzed under a rational basis test. Denene, Inc. v. City of Charleston, 359 S.C. 85, 91, 596 S.E.2d 917, 920 (2004) ("If the classification does not implicate a suspect class or abridge a fundamental right, the rational basis test is used."). "Under the rational basis test, the requirements of equal protection are satisfied when: (1) the classification bears a reasonable relation to the legislative purpose sought to be affected; (2) the members of the class are treated alike under similar circumstances and conditions; and, (3) the classification rests on some reasonable basis." Id. at 91, 596 S.E.2d at 920.

While we are not aware of the specific reason Beaufort County desires to make classifications based on domicile, presuming these three requirements are satisfied, a court would find such a classification constitutional. Making specific determinations regarding these requirements involves making factual determinations, which are beyond the scope of an opinion of this Office. Op. Att'y Gen., 2022 WL 1020398 (S.C.A.G. Mar. 28, 2022) (stating "this Office does not have the ability to make factual determinations."). But, we are reminded that any ordinance adopted by Beaufort County "is a legislative enactment and is presumed to be constitutional," unless and until a court declares otherwise. Whaley v. Dorchester Cnty. Zoning Bd. of Appeals, 337 S.C. 568, 575, 524 S.E.2d 404, 408 (1999).

### Conclusion

You inquire as to whether a county may make classifications for purposes of its business license tax based on the domicile of the business. Section 4-9-30(12), allowing counties to levy license taxes, does not permit or prohibit such a classification. Further, we are unaware of any cases dealing specifically with this question. However, we note this Office and our courts have determined other types of classifications related to business licenses are permissible and specifically, do not violate equal protection. Because we do not believe making a classification based on domicile would involve a suspect class or the infringement of a fundamental right, so long as (1) classifying businesses based on domicile bears a reasonable relationship to the legislative purpose, (2)

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businesses domiciled in Beaufort County are treated alike under similar circumstances, and (3) Beaufort County has a rational basis for classifying businesses domiciled in Beaufort County differently than businesses not located in Beaufort County, we believe such a classification may be permissible.

Sincerely,



Cydney Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General