



ALAN WILSON
ATTORNEY GENERAL

February 7, 2023

Sean Thornton, Esq.
Colleton County Attorney
PO Box 157
Walterboro, SC 29488

Dear Mr. Thornton:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

I am requesting an opinion on the ability of a County Council to exempt agricultural businesses from a business registration ordinance based on section 12-37-135 of the South Carolina Code.

The section indicates that: "The business registration authorized by this section must be administered and enforced in the same manner as the business license tax described in Section 4-9-30(12), but must not be converted into a business license tax as described in that provision."

Since section 4-9-30(12) is silent on the propriety of an agricultural exemption, would a County Council have the authority to implement a countywide business registration under 12-37-135, but exempt agricultural businesses?

Law/Analysis

It is this Office's opinion that a court would hold a county governing body may except agricultural businesses from a business registration fee ordinance authorized by S.C. Code § 12-37-135 if it can identify another law which would exempt those businesses from business license

taxes under S.C. Code § 4-9-30. As described above, S.C. Code § 12-37-135 permits a county governing body to adopt a business registration fee.

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. The business registration authorized by this section must be administered and enforced in the same manner as the business license tax described in Section 4-9-30(12), but must not be converted into a business license tax as described in that provision. The business registration administrative fee may be billed on any property tax bill and is deemed to be property tax for the purposes of collection if so billed. This registration, if adopted, is in lieu of any business license which is authorized pursuant to Section 4-9-30(12).

S.C. Code § 12-37-135 (emphasis added). This Office has not located an order from our state courts interpreting this statute.

As a matter of first impression, we must interpret the provisions in S.C. Code § 12-37-135 according to the rules of statutory construction. It should be emphasized that the General Assembly's intent is the primary consideration in interpreting the terms of a statute. See Kerr v. Richland Mem'l Hosp., 383 S.C. 146,148, 678 S.E.2d 809, 811 (2009) (The primary rule of statutory construction is to "ascertain and give effect to the intent of the legislature."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The rule of statutory construction "'*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' ... holds that 'to express or include one thing implies the exclusion of another or the alternative.'" Id. at 86, 533 S.E.2d at 582. This rule of construction generally means if the General Assembly creates a list of exceptions from a statute, courts generally find that list is meant to be finite and are not inclined to find additional implied exceptions. Based on these principles, we next examine the text of S.C. Code § 12-37-135 and related statutes to determine whether county governing body may exempt agricultural businesses from a business registration fee ordinance.

Section 12-37-135 states that the business registration authorized thereunder "must be administered and enforced in the same manner as the business license tax described in Section 4-9-30(12)." The business license taxes are authorized in section 4-9-30(12) under the following circumstances.

(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 § 4-9-30 (emphasis added). Section 4-9-30(12) lists several exceptions for specific named professions and types of business, but, as noted in your letter, section 4-9-30(12) does not contain an express exception for agricultural businesses. However, section 4-9-30(12) does include an exception for “an entity which is exempt from license tax under another law.” Therefore, because section 4-9-30(12) does not contain an express exception for agricultural businesses, in order for a county governing body to authorize such an exception it must be based on an exemption from license tax under another law. See Hodges v. Rainey, supra; see also Op. S.C. Att’y Gen., 2010 WL 440995 (January 20, 2010) (Opining that the canon of *expressio unius est exclusio alterius* prohibited extending a statute’s benefits beyond the two circumstances described in the statute.)

Conclusion

It is this Office’s opinion that a court would hold a county governing body may except agricultural businesses from a business registration fee ordinance authorized by S.C. Code § 12-37-135 if it can identify another law which would exempt those businesses from business license taxes under S.C. Code § 4-9-30. Section 12-37-135 states that the business registration authorized thereunder “must be administered and enforced in the same manner as the business license tax described in Section 4-9-30(12).” Section 4-9-30(12) lists several exceptions for specific named professions and types of business, but section 4-9-30(12) does not contain an express exception for agricultural businesses. Section 4-9-30(12) does, however, include an exception for “an entity which is exempt from license tax under another law.” Therefore, because section 4-9-30(12) does not contain an express exception for agricultural businesses, in order for a county governing body to authorize such an exception it must be based on an exemption from license tax under another law. See Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (The rule of statutory

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construction “‘*expressio unius est exclusio alterius*’ or ‘*inclusio unius est exclusio alterius*’ ... holds that ‘to express or include one thing implies the exclusion of another or the alternative.’”).

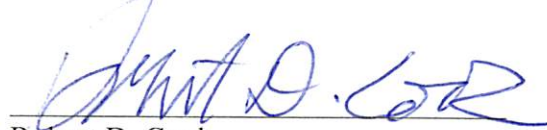
Sincerely,



Matthew Houck

Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General