

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

April 16, 1990

SUBJECT: Taxation and Revenue - Municipal Business Tax

SYLLABUS: A business that provides temporary storage to another business is subject to the authority of a municipality to impose a business license tax, notwithstanding the fact that the business that is provided the storage is also subject to such authority.

TO: The Honorable Joe Wilson, Senator
District 23, Lexington County

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: May a municipality impose a business license tax on a business, such as a temporary storage business, that is leaving a storage trailer at the location of another business that is subject to the municipality's business license tax?

APPLICABLE LAW: Article VIII, Section 9, of the South Carolina Constitution and Section 5-7-30 of the South Carolina Code of Laws, 1976.

DISCUSSION:

Article VIII, Section 9, imposes the duty upon the General Assembly to provide for the powers, duties, functions and responsibilities of municipalities by general law. Section 5-7-30 provides in part that a municipality may:

" . . . 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 distribution of wholesale goods; and a business engaged in making loans secured by real estate is not subject

April 16, 1990

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 such an exempt entity is subject to the business license tax; . . ."

It is assumed for purposes of this opinion that the business that provides the temporary storage is not within the exceptions. Under such circumstance, a business that provides temporary storage would be subject to the authority of a municipality to impose a business license tax on the gross income of that business.

In Thomason Newspapers, Inc. v. City of Florence, 287 S.C. 305, 338 S.E.2d 324 (1985), the Court held that:

"Municipalities are empowered to levy a business license tax on gross income . . ."

The fact that the temporary storage would be provided to a separate business that is also subject to the authority of the municipality to levy a business license tax would not alter this conclusion. Under the facts as understood, there would be two separate businesses being conducted within the municipality. One by the provider of the temporary storage and the other by the user of that storage. Both are subject to the authority of the municipality to impose a business license tax measured by the gross income of each business.

"Municipal licensing requirements ordinarily relate directly to activities, businesses, occupations and things, and only indirectly to persons. However, they are binding on all persons, except those exempt under law, who carry on the activity or maintain the thing that is subject to the license requirement. . . ." 9
McQuillin, Municipal Corporations,
Section 26.43.

The Honorable Joe Wilson
Page Three

April 16, 1990

CONCLUSION:

A business that provides temporary storage to another business is subject to the authority of a municipality to impose a business license tax, notwithstanding the fact that the business that is provided the storage is also subject to such authority.

JLAJr:wcg