

1975 S.C. Op. Att. Gen. 251 (S.C.A.G.), 1975 S.C. Op. Att. Gen. No. 4206, 1975 WL 22503

Office of the Attorney General

State of South Carolina

Opinion No. 4206

December 1, 1975

***1 A city may constitutionally impose a license fee under Section 47–271 of the Code on the total gross income of a corporation doing business both within and without the city where a relationship exists between the activity without and the activity within the city.**

License Committee

Leesville Town Council

You have asked the following question: What effect would the deletion of Section 12–9 have on the Leesville Business and Professional License (Tax) Ordinance? That section provides that when a taxpayer is engaged in business both within and without the City, the license tax is imposed only on the portion of business done in the City.

If Section 12–9 was repealed, the tax would be imposed under Sections 12–3 and 12–5 of the Ordinance. Section 12–3 imposes the tax on the gross income of businesses which conduct such business either in whole or in part in the City. Section 12–5 provides for the calculation of the tax. It is based on all business done both within and without the City with a deduction for gross receipts on which a tax is paid in another city. The effect of the repeal of Section 12–9 would, therefore, be to subject to taxation the total gross income of a taxpayer who had business outside the City, unless he was taxed on that business by another city or town.

In the case of *Triplett v. Chester*, 209 S. C. 455, 40 S. E. 2d 684, our Supreme Court held that a contractor, home based in Chester, could be taxed on gross income from jobs performed outside the City. The Court cited facts which proved that the company's business outside the city, i.e., paving streets, was directly related to 'acts of executive management (and) other important functions, constituting a material portion of the business as a unified whole'. In *Triplett*, the taxpayer had argued extraterritorial taxation, however, the Court relied on the West Virginia case of *Bluefield Product & Provision Co. v. City of Bluefield*, 120 W. Va. 111, 196 S. E. 568, which held that a business license tax is not a sales tax and that sales outside the taxing jurisdiction could be considered so long as they had relationship to business done within the city. That Court distinguished *City of Sedalia v. Shell Petroleum Corporation*, 81 F. 2d 193 (8 Cir.) which had found a tax imposed on sales outside a city to be extraterritorial taxation.

The effect of the repeal of Section 12–9 of the Leesville Professional License (Tax) Ordinance would be to impose a fee on the total gross income of a taxpayer who had business both within and without the City with a deduction allowed for sales in other cities which also imposed a license tax. So long as a relationship existed between the activity in the City and the business without the City, such a tax would be valid even though a portion of the business used as a measure of the tax was conducted without the City.

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