



RICHLAND COUNTY COUNCIL

ADMINISTRATION AND FINANCE COMMITTEE

Paul Livingston
District 4

Greg Pearce
District 6

Joyce Dickerson, Chair
District 2

Mike Montgomery
District 8

Val Hutchinson
District 9

November 25, 2008
6:00 PM

Richland County Council Chambers
County Administration Building
2020 Hampton Street

Call to Order

Approval of Minutes

October 28, 2008: Regular Meeting

Pages 3 – 6

Adoption of Agenda

Items for Action

1. Sheriff: Request to approve a \$5,000 grant from Palmetto Pride (No personnel or matching funds required) Pages 7 – 8
2. Emergency Services: Request to approve a contract with Walter L. Hunter Construction Company, Inc. for storage building site work Pages 9 – 10
3. Emergency Services: Request to approve the purchase of a Medical Ambulance Bus from Sartin Services, Inc. in an amount not to exceed \$350,000 Pages 11 – 12
4. Business License Appeal: Dick Smith Automotive Group, Inc. Pages 13 – 25
5. Business License Appeal: FN Manufacturing, LLC Pages 26 – 55
6. Business License Appeal: McEntire Produce Pages 56 – 87

7. An ordinance amending the Richland County Code of Ordinances, Chapter 2, Administration; Article VIII, Personnel Regulations; Division 6, Conditions of Employment; so as to amend the county's holiday schedule Pages 88 – 91
(Jackson)
8. Eastover Sewer Budget Amendment

Items for Discussion / Information

9. Discussion of the role and duties of the Business Service Center Appeals Board Pages 92 – 94

Adjournment

Staffed by: Joe Cronin

MINUTES OF



RICHLAND COUNTY COUNCIL ADMINISTRATION AND FINANCE COMMITTEE TUESDAY, OCTOBER 28, 2008 5:00 P.M.

In accordance with the Freedom of Information Act, a copy of the agenda was sent to radio and TV stations, newspapers, persons requesting notification, and was posted on the bulletin board located in the lobby of the County Administration Building.

MEMBERS PRESENT

Chair: Joyce Dickerson
Member: Valerie Hutchinson
Member: Paul Livingston
Member: Mike Montgomery
Member: L. Gregory Pearce, Jr.

ALSO PRESENT: Joseph McEachern, Damon Jeter, Norman Jackson, Bill Malinowski, Bernice G. Scott, Kit Smith, Milton Pope, Tony McDonald, Roxanne Matthews, Joe Cronin, Larry Smith, Lillian McBride, Jennifer Dowden, Daniel Driggers, Angie McInchok, Becky Knotts, Andy Metts, Michael Byrd, Monique Walters, Michelle Onley

CALL TO ORDER

The meeting started at approximately 5:09 p.m.

APPROVAL OF MINUTES

September 23, 2008 (Regular Session) – Ms. Hutchinson moved, seconded by Mr. Pearce, to approve the minutes as submitted. The vote in favor was unanimous.

ADOPTION OF AGENDA

Mr. Pearce moved, seconded by Ms. Hutchinson, to adopt the agenda as distributed. The vote in favor was unanimous.

ITEMS FOR ACTION

Request to approve the purchase of 25 GlideScope Ranger Video Laryngoscopes for the Emergency Services Department – Mr. Pearce moved, seconded by Ms.

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Hutchinson, to forward this item to Council with a recommendation for approval. The vote in favor was unanimous.

Request to authorize the negotiation and awarding of a contract to EMS Management and Consultants, Inc. for EMS billing and collection services – Ms. Hutchinson moved, seconded by Mr. Montgomery, to forward this item to Council with a recommendation for approval. A discussion took place.

The vote in favor was unanimous.

Request to negotiate and approve a design-build contract to provide renovations to the equipment rooms at the 911 center and the back-up 911 center – Ms. Hutchinson moved, seconded by Mr. Montgomery, to forward this item to Council with a recommendation for approval. A discussion took place.

The vote in favor was unanimous.

An Ordinance amending the Fiscal Year 2008-09 General Fund Annual Budget to move fifty thousand dollars (\$50,000) from the Non-Departmental Budget to the Human Resources Budget due to health insurance savings – Mr. Montgomery moved, seconded by Ms. Hutchinson, to forward this item to Council with a recommendation for approval. A discussion took place.

The vote in favor was unanimous.

Request to approve the purchase of a Microsoft Software Assurance from ASAP SOFTWARE in an amount not to exceed \$124,568 – Mr. Pearce moved, seconded by Mr. Livingston, to forward this item to Council with a recommendation for approval. The vote in favor was unanimous.

Request to approve the Hospitality Tax Advisory Committee's funding recommendations for Round II of the FY 2009 County Promotions funding process – Mr. Livingston moved, seconded by Ms. Hutchinson, to forward this item to Council with a recommendation for approval. A discussion took place.

The vote was in favor.

Request to approve additional funding for the Black Expo (\$25,000) and Pioneer Bowl (\$10,000) – Mr. Livingston moved to forward this item to Council with a recommendation for approval. The motion died for lack of a second. A discussion took place.

Ms. Dickerson moved, seconded by Mr. Livingston, to forward this item to Council with a recommendation for approval. The vote was in favor.

An Ordinance authorizing the issuance and sale of not exceeding \$5,500,000 General Obligation Bond Anticipation Notes, Series 2008, or such other appropriate series designations, of Richland County, South Carolina; fixing the form and details of the bonds; authorizing the administrator of the county to determine certain matters relating to the bonds, providing for the payment of the bonds and the disposition of the proceeds thereof; and other matters relating thereto – Mr. Pearce moved, seconded by Ms. Hutchinson, to forward this item to Council with a recommendation for approval.

Mr. Montgomery offered the following proviso: “prior to the issuance of any bond anticipation notes that the Administration will provide Council with the breakdown of the costs and the justification for savings to the County.

Mr. Pearce accepted that amendment.

The vote in favor was unanimous.

A resolution relating to the declaration of intent by Richland County, South Carolina, to reimburse certain expenditures prior to the issuance by the county of its tax-exempt debt – Ms. Hutchinson moved, seconded by Mr. Livingston, to forward this item to Council with a recommendation for approval. The vote in favor was unanimous.

Request to approve a budget amendment to the Hospitality Tax Fund in the amount of \$40,000 to provide operating capital for the Township Auditorium – Mr. Livingston moved, seconded by Ms. Hutchinson, to forward this item to Council with a recommendation for approval.

Mr. Montgomery made a substitute motion, seconded by Mr. Livingston, to forward the Administrator’s recommendation to Council with a recommendation for approval. The vote in favor was unanimous.

Request to approve a budget amendment in the amount of \$100,000 to redirect funds allocated to support the Midlands Area Commission on Homelessness to the Midlands Housing Alliance – Mr. Pearce moved, seconded by Ms. Hutchinson, to forward this item to Council with a recommendation for approval. The vote in favor was unanimous.

Mr. Montgomery moved, seconded by Mr. Livingston, to forward to Council a resolution expressing Council’s support of the project and the Council’s commitment of the \$100,000. A discussion took place.

The vote in favor was unanimous.

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ITEMS FOR DISCUSSION/INFORMATION

Board of Voter Registration Office Structure and Salaries – Ms. McBride gave a brief overview of the current voting situation.

ADJOURNMENT

The meeting adjourned at approximately 5:55 p.m.

Submitted by,

Joyce Dickerson, Chair

The minutes were transcribed by Michelle M. Onley

Richland County Council Request of Action

Subject: Palmetto Pride/ No Personnel/ No Match

A. Purpose

County Council is being requested to approve a grant proposal that was not included in the Grant Budget Request for 2008-2009.

B. Background / Discussion

The Richland County Sheriff's Department has applied for a grant from Palmetto Pride that will assist with code and litter control enforcement.

C. Financial Impact

| Grant Program | Costs | Match |
|-----------------------------------|----------------|------------|
| <u>Palmetto Pride Program</u> | <u>\$5,000</u> | |
| <u>Total Grant Budget Request</u> | <u>\$5,000</u> | <u>\$0</u> |

D. Alternatives

1. Approve the request to fund this program to provide supplies for the Palmetto Pride grant program.
2. Do not approve, forfeit funds, and decrease likelihood for future funding.

E. Recommendation

It is recommended that Council approve the request to approve a grant for Palmetto Pride grant program.

Recommended by:
Chief Deputy Dan Johnson

Department:
Sheriff's Department

Date:
November 7, 2008

F. Reviews

Finance

Reviewed by: Daniel Driggers
 Recommend Council approval
Comments regarding recommendation:

Date: 11/17/08
 Recommend Council denial

Legal

Reviewed by: Larry Smith
 Recommend Council approval

Date: 11-17-08
 Recommend Council denial

Comments regarding recommendation:

Administration

Reviewed by: J. Milton Pope

Date: 11-17-08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Recommend approval

Richland County Council Request of Action

Subject: Emergency Services – Storage Building Site Work Contract

A. Purpose

The purpose of this report is to obtain council’s approval to award a contract for site work for Emergency Service’s Storage Buildings. Funds are available in the Emergency Service’s budget. No other funds are required.

B. Background / Discussion

Council has previously awarded a contract for the construction of three storage buildings located on the Emergency Service’s Gills Creek Station site. The contract for the site preparation was not included in the construction contract and was bid separately. The buildings will provide a secure place to store emergency response equipment including trailers and vehicles. The following bids were received:

| <u>NAME</u> | <u>TOTAL AMOUNT</u> |
|----------------------------------|---------------------|
| 1. Walter L. Hunter Construction | \$230,780 |
| 2. AOS Specialty Contractors | \$268,660 |
| 3. Shirley Construction | \$280,002 |
| 4. Cherokee, Inc | \$292,072 |
| 5. Carolina Contracting | \$264,531 |
| 6. Johnson & Lesley | \$312,105 |
| 7. Conder Construction | \$322,171 |
| 8. LAD Corporation | \$325,555 |
| 9. CGB, Inc | \$326,670 |
| 10. JC Wilkie Construction | \$331,800 |
| 11. Richardson Construction Co. | \$361,494 |
| 12. Loftis Corporation | \$379,100 |
| 13. Corley Construction | \$396,792 |

Walter L. Hunter Construction Company, Inc. is the lowest responsible and responsive bidder at \$230,780.

C. Financial Impact

This contract is part of the storage building project. The building construction contract has been previously awarded to Hoover Buildings. The funding for the site work contract is included in the Emergency Service’s Budget (7500390- 5322) and is available. No other funds are needed.

D. Alternatives

Richland County Council Request of Action

Subject: EMS Medical Ambulance Bus Purchase

A. Purpose

The purpose of this report is to obtain Council's approval to purchase a Medical Ambulance Bus. Funds are available in the EMS budget so no other funds are needed.

B. Background / Discussion

The EMS bus that is used to transport up to 18 patients from a Mass Casualty Incident (MCI) or other large emergency has major structural problems and must be replaced. The bus is a 1976 MCI bus which was converted to be used as an ambulance. In the last several years, the bus has developed numerous mechanical issues. The bus recently developed two large cracks in the chassis which creates safety issues. This will require us to purchase a new bus this year instead of next year. Sartin Services, Inc., located in North Carolina, is the only company that produces an ambulance bus. This is a sole-source procurement to Sartin Services.

C. Financial Impact

Each year EMS purchases new ambulance vehicles. The purchase of the new Medical Ambulance Bus will be made this year instead of next year. The cost of the bus is approximately the cost of three ambulance vehicles. Because of the bus purchase, EMS will purchase fewer ambulances this year. EMS has funding available in the EMS budget account 2210-5313 so no additional funds are required.

Cost of the Medical Ambulance Bus will not exceed \$350,000.

D. Alternatives

1. Approve the purchase of the Medical Ambulance Bus to Sartin Services.
2. Do not approve the purchase.

E. Recommendation

It is recommended that Council approve the purchase of a Medical Ambulance Bus from Sartin Services for a cost not to exceed \$350,000.

Submitted by: Michael A. Byrd **Department:** Emergency Services **Date:** 11/12/2008

F. Reviews

Finance

Reviewed by: Daniel Driggers

Date: 11/17/08

✓ Recommend Council approval Recommend Council denial
Comments regarding recommendation: Funds are available as stated

Procurement

Reviewed by: Rodolfo Callwood Date: 11/17/08
✓ Recommend Council approval Recommend Council denial
Comments regarding recommendation:

Legal

Reviewed by: Larry Smith Date: 11/18/08
✓ Recommend Council approval Recommend Council denial
Comments regarding recommendation:

Administration

Reviewed by: J. Milton Pope Date: 11-20-08
✓ Recommend Council approval Recommend Council denial
Comments regarding recommendation: Recommend approval...we will surplus the existing bus and proceeds will replenish some of the funds expended from the General Fund.

Richland County Council Request of Action

Subject: Business Service Center: Appeal by Dick Smith Automotive Group

A. Purpose

Council is requested to consider the appeal of Dick Smith Automotive Group, which appealed the decision of the Business Service Center Appeals Board.

B. Background / Discussion

The Business Service Center Appeals Board heard the appeal made by Dick Smith Automotive Group on August 28, 2008.

This business appealed to the BSC Appeal Board on the basis that the increase in its business license fee “is excessive.” While an appeal of a final assessment is authorized by the Code of Ordinances, the Business Service Center Appeals Board is not authorized to change business license rates. Therefore, the Appeals Board dismissed the appeal.

Procedures:

According to the Richland County Code of Ordinances Section 16-19(2), “County Council shall review the record and without further hearing affirm, modify, or deny the appeal in the event of an error of fact by the Board.” The “record” referred to in the ordinance is the written record of the meeting, i.e., the minutes. The minutes relating to each appeal have been attached at the end of this document.

Specifics:

The specifics of this case which Council may consider are found in the minutes of the meeting and the documentation submitted by the County and the business to the Appeals Board prior to the meeting. The following documents are attached below for Council’s review and consideration:

1. Applicable portion of the minutes of the Appeals Board meeting from August 28, 2008
2. The County’s response to the appeal
3. The business’ case for the appeal

C. Financial Impact

Any reduction of the business license rate or expansion of authorized deductions will reduce the revenues to the County, upon which the current budget is based. The extent of the impact would depend upon the scope of the reduction in the rates or expansion of authorized deductions.

D. Alternatives

1. Determine that an error of fact was made by the Board.
2. Determine that an error of fact was not made by the Board.

E. Recommendation

Council is recommended to review the specific facts of the appeal and conclude for itself whether an error in calculation (ie, “an error of fact”) has been committed. If such an error is determined, Council is recommended to specify the exact nature of the error such that remedy to the business for the error may be pursued and granted.

Recommended by: Pam Davis, Director

Department: BSC

Date: 11/13/2008

F. Reviews

Finance

Reviewed by: Daniel Driggers

Date: 11/17/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: No recommendation.

Legal

Reviewed by: Larry Smith

Date: 11/20/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Council’s discretion

Administration

Reviewed by: Roxanne Matthews

Date: 11/20/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Per the Richland County Code of Ordinances Section 16-19(2), “County Council shall review the record and without further hearing affirm, modify, or deny the appeal in the event of an error of fact by the Board.” It is recommended that County Council deny the appeal of Dick Smith Automotive Group because the business license fee was calculated without error, and no error of fact was made by the Board.



DICK SMITH AUTOMOTIVE GROUP, INC.

Richland County
MAR 31 2008
Business Service Ctr.

March 26, 2008

Dear Pam Davis,

Re: Dick Smith Motors, Inc. Account # 2008-3523-2675

This letter is our written request for an appeal hearing regarding the amount of our business license fee for 2008.

The basis for our appeal is the amount of the increase in our business license fee is excessive. Our gross receipts increased approximately 8.25% from the previous year's fiscal year. However, our business license fee increased 167.18%. Using last year's license fee rate, we would have paid \$17,284. Instead, with the increased rate we paid \$43,016.

Due to the March 15th due date, we have paid the fee under protest.

Sincerely,

Brian K. Smith
President and CEO

4030 WEST BELTLINE BOULEVARD • COLUMBIA, SC 29204
(803) 256-6600 • 1-800-944-8570
INTERNET ADDRESS: www.dicksmith.com



DICK SMITH AUTOMOTIVE GROUP, INC.

August 7, 2008

Richland County

AUG 06 2008

Business Service Ctr.

To: Whom it may Concern
Re: Business License Appeal

I'm making my appeal based on the outrageous increase we had last year verses prior year. In my talking to board members they were told prior to approval of the increase the move would be revenue neutral and would bring Richland County in line with what other counties do in this state. We do business all over this state so I'm providing you with a list of what we paid in 2007 and 2008. As you can see Richland County has completely gotten out of line with other counties. I look forward to presenting this information and answering any questions you may have on August 28th.

Sincerely

Brian Smith

4030 WEST BELTLINE BOULEVARD • COLUMBIA, SC 29204
(803) 256-6600 • 1-800-944-8570

INTERNET ADDRESS: www.dicksmith.com

Dick Smith Automotive Group Inc.
Business Licenses paid 2008

2008

paid 2007

| | | gross income per 1,000 | | gross income | per 1,000 |
|-------------------|----------------|------------------------|---------|---------------|------------------------|
| Aiken County | No license fee | | | | |
| Berkeley County | No license fee | | | | |
| Greenville County | No license fee | | | | |
| Lexington County | No license fee | | | | |
| Town of Lexington | \$ 10,646 | \$ 27,851,981 | \$ 0.38 | \$ 11,257 | \$ 0.38 |
| City of Columbia | \$ 14,057 | \$ 41,052,854 | \$ 0.34 | \$ 9,241 | \$ 0.37 |
| Richland County | \$ 43,016 | \$ 51,811,628 | \$ 0.83 | \$ 16,100 | \$ 0.34 |
| | | | | \$ 25,000,000 | start up- estimated |
| | | | | \$ 47,861,135 | |

2007 vs 2008
+ 26,916 increase
167% increase



Richland County Business Service Center

2020 Hampton Street, Suite 1050
P.O. Box 192
Columbia, SC 29202

Phone: (803) 576-2287
Fax: (803) 576-2289
bsc@rcgov.us
<http://www.rcgov.us/bsc>

Richland County Business Service Center Response to the Appeal by Dick Smith Automotive Group, Inc.

Requirements to Appeal:

The Richland County Business License ordinance sets forth the requirements of a business to make an appeal, Section 16-18. These are:

- the appeal must be filed with the license official within ten (10) calendar days after the payment of the assessment,
- the notice of appeal must be in writing with the reasons for the appeal stated, and
- the appeal must be accompanied by an administrative fee.

The business has has not met these requirements.

- The date of the postmark of the envelope containing the payment of the business license fee is March 17th. The appeal must be filed no more than ten calendar days from the date of this payment, which is March 27th. See the copy of the envelope and the check stub, with the amount redacted, attached.
- The date of the postmark of the envelope containing the letter providing the notice of appeal is March 31, which is outside the ten day period. Reasons were specified as required in this notice of appeal. See the copy of the envelope and the notice of appeal attached.
- The administrative fee of \$25 was not included with the March 31 notice of appeal. The check for the administrative fee was dated April 11, and date-stamped by the office on April 14th, well outside the ten day period. See the copy of the check stub attached.

Appeal within Scope of Appeals Board:

The Richland County Business License ordinance establishes what conditions a business may make an appeal to the Business Service Center Appeals Board, Section 16-18. These include businesses that dispute:

- a final assessment,
- charge backs from an audit,
- denial of a business license, and/or

- intent to revoke a business license.
- The business is appealing something else. _____

This purpose of the appeal is is not within the scope of the Appeals Board to consider.

The reasons for the appeal of the final assessment are addressed below:

Issues and Responses:

(1) The amount of the increase in our business license fee is excessive.

The business license fee charged to this business is consistent with the rate set forth in the Business License Fee Schedule as adopted by the County Council and that is referred to by the business license ordinance in Section 16-5, Classification and Rates, for establishing business license rates.

Additionally, councils of local governments are authorized to change rates as they deem appropriate.

The business license ordinance does not include any exemptions or reductions based upon the impact to businesses.

The County Council recognizes that businesses with greater revenues pay greater business license fees. To help provide some relief to large businesses, County Council has authorized a declining rate schedule for businesses with revenues exceeding one million dollars. That declining rate schedule is shown below:

Declining rates apply in all classes for gross income over
\$1,000,000.00

| Gross Income (In Millions) | Percent of Class Rate for each additional \$1,000 |
|-------------------------------|------------------------------------------------------|
| 0.00 – 1.00 | 100% |
| 1.01 – 2.00 | 95% |
| 2.01 – 3.00 | 90% |
| 3.01 – 4.00 | 85% |
| 4.01 – 5.00 | 80% |
| 5.01 – 6.00 | 75% |
| 6.01 – 7.00 | 70% |
| 7.01 – 8.00 | 65% |
| 8.01 – 9.00 | 60% |
| 9.01 – 10.00 | 55% |
| Over 10.00 | 50% |

This discount schedule was provided in the calculation of the business license fee for this business.

Conclusion:

The County recommends that the Business Service Center Appeals Board:

- dismiss the appeal due to not meeting the requirements of an appeal.
- dismiss the appeal due to the reasons for the appeal not being within the scope of the BSC Appeals Board.
- uphold the decision of the Business Service Center for the reasons provided here.

**ATTACHMENT A:
VERBATIM MINUTES RELATING TO THE
DICK SMITH AUTOMOTIVE GROUP APPEAL HEARING**

MS. DAVIS: The next appeal is with Dick Smith Automotive group and their, their concerns are listed here. Item one the amount of the increase in our business license fee is excessive, and that's their sole issue.

MR. QUATTLEBAUM: Mr. Chairman, I had [inaudible].

MR. WEST: [Inaudible]

TESTIMONY OF BRIAN SMITH:

MR. SMITH: I'm Brian Smith, I'm CO of Dick Smith Automotive group, I won't take much of your time cause I see where this is headed. Just so you know just as a back note I certainly -

MR. WEST: You need to be sworn in.

MR. SMITH: Okay.

MR. WEST: Do you swear or affirm that the testimony that you shall give here today shall be the truth, the whole truth and nothing but the truth?

MR. SMITH: I do. I served with DHEC just like a little background. I served on the DHEC Board for six years so I know all about Executive Session and what happens in Executive Session. So it's a Freedom of Information ploy and it's just government at its finest. The, ya'll have a handout on license fees that we pay. Just as, to add to the gentleman, was it Dennis from Nexsen Pruet, you can see if you look there, we do business in, we have eight different dealerships throughout the State of South Carolina. I've listed the counties and towns and cities that we do business in. The right hand

portion is what the company paid in '07, the left hand portion is what we paid in '08. My Ford store from, from, our Richland County store, which is our Nissan store on Beltline Boulevard, you can throw a stone and hit my Ford store, which is in the City of Columbia. And you can see the difference in '08 because of the increase. So, obviously I understand this is beyond ya'lls purview. I will tell you that it's, it's not fair, it's not right. Having served on the DHEC Board if someone, if we have public hearing with stakeholders and no one showed up, it would probably be an indication to me as a Council member or Board member that staff didn't do their job in notifying the people or affected parties. So I think Mr. West made an excellent point [inaudible] when you asked Pam if anyone showed up. So my recommendation, obviously you can't, you're not gonna waive the increase and I understand it's beyond ya'lls purview. I would say that maybe it would be helpful if you're so inclined to maybe just make a recommendation to County Council from this Appeals Board to either A, increase your powers or B, disband the Appeals Board and to make a recommendation to them that they open this back up for public comment so that car dealerships, which we've been severely affected, I know Jim Hudson and the Dyar organization among others are not very happy with this. We had a meeting with Mr. Montgomery on Monday and we will continue that dialog but it might be helpful if this Appeal Board maybe make that suggestion to County Council that they maybe take that back up. The only other side note I would say and something that the county I think needs to take up is, my Beltline store is located in a Federal Empowerment zone. It's an act by the Clinton Administration in 1993, it basically, if you read the act, the, the federal statutes on it the, the whole, whole point of it is to develop a strategic plan and it's desired, desired effect

of it is to create jobs and opportunities in our nation's most impoverished and urban/rural areas. My Beltline store is located in that Empowerment zone. Federal government gives me a \$3000.00 tax credit for every employee that we hire that works in that zone. At my Beltline location we have five of those employees. So the federal, and also in that Act, if you read the federal government encourages counties and municipalities to work with those businesses to give similar incentives for these businesses to stay open. If you just drive down Beltline Boulevard on your way home, where our dealership's located you can see what happened, is happening to businesses in that area. And so I think that as maybe another suggestion to the County Council is they look at maybe these tougher areas of the county where businesses are leaving and they're all building new dealerships up in Northeast Columbia to maybe give an opportunity for some redevelopment. So with that I'll shut up and let ya'll get on to lunch and you can vote if you want to, I don't know if that, you don't have to unless that's going to maybe take away some of my future rights. But, so with that I'm done.

MR. WEST: Pam, one question I noticed on Mr. Smith's question or spreadsheet here that he's reflecting the gross income rate went from \$.34 to \$.83, is that in fact correct? I mean, obviously that's some type of blended, blended affective rate based on your volume of business.

MR. SMITH: Yeah, we, we have several, we, we get no deductions. It used to be we got a – and you understand in the car business it's a high sale business, high cost to sell business.

MR. WEST: Right cause you obviously take trade ins -

MR. SMITH: Yeah and so we're, yeah -

MR. WEST: - [inaudible] comes revenue, sell the revenue, that becomes revenue again [inaudible] I mean so you -

MR. SMITH: I mean I paid \$16,000 last year, I wish I only paid \$255 so we, we don't have any deductions and never have and we used to have a trade in deduction that we could take away the goods that came in on new cars and that would lower our license fee. But I think they did away with that a long time ago. So it's just, you know, it's not reasonable. I think the biggest, the biggest complaint I have other than no one knowing is that staff informed County Council that this was bringing Richland County in line with other counties in the state. And they used one county as an example, Charleston County. And so to me, again I'm not saying this happened, but certainly County Council was misinformed that this action that they were being asked to take by staff, which is bringing County Council in line with other counties in the state. Now I don't know about every county in the state but I do know about eight and I've given you that information. You can make your own judgment whether or not it's reasonable or not and I would, you know, I would say that it's not. So, you know, the other beef I have is that County Council was misled by staff on the reasonableness on this increase, which, you know, ticks you off, so.

MS. DAVIS: If I might clarify something. Richland County did look at Charleston County as well as Sumter County as well as all the municipalities within Richland County. With an answer to your question of the rate per thousand, that does include the declining rate discount and it does appear to be correct.

MR. WEST: Any further discussion? Motion?

MS. VITON: Dismiss, it's not within our scope.

MR. WEST: Second? Okay the motion is to dismiss as it is not within our scope to [inaudible].

MR. SMITH: Okay, thanks for ya'lls time. We'll see you.

MS. MCLEAN: Vote?

MR. WEST: For? Opposed?

[All approved – 1 abstained?]

MR. WEST: No opposed.

MR. QUATTLEBAUM: [Inaudible]

Richland County Council Request of Action

Subject: Business Service Center: Appeal by FN Manufacturing

A. Purpose

Council is requested to consider the appeal of FN Manufacturing, which appealed the decision of the Business Service Center Appeals Board.

B. Background / Discussion

The Business Service Center Appeals Board heard the appeal made by FN Manufacturing on August 28, 2008.

The Richland County Code of Ordinances Section 16-18(1) specifies on what grounds an appeal may be made. These include “Any person aggrieved by”

- a final assessment,
- charge backs from an audit, or
- a denial of a business license.

FN Manufacturing appealed to the BSC Appeal Board for the following reasons:

- (2) The substantial increase in the 2008 Business License Fee as compared to the prior year’s fee is made without substantial justification.
- (3) The substantial increase in the 2008 Business License Fee as compared to the prior year’s fee is not authorized by the Richland County Code of Ordinances.
- (4) The County’s incorrect application of the Richland County ordinance authorizing the business license fee is incorrect.
- (5) The ordinance itself is incorrect.
- (6) The County’s incorrect application of the Richland County ordinance authorizing the business license fee violates FN Manufacturing, LLC’s right to equal protection of the law.
- (7) The County’s incorrect application of the Richland County ordinance authorizing the business license fee violates FN Manufacturing, LLC’s right to procedural and substantive due process.
- (8) The Ordinance and the County’s application thereunder further violate state and federal constitutional principals governing interstate commerce.

An appeal of final assessment is authorized by the Code of Ordinances.

The County Council must now consider the appeal.

Procedures:

According to the Richland County Code of Ordinances Section 16-19(2), "County Council shall review the record and without further hearing affirm, modify, or deny the appeal in the event of an error of fact by the Board." The "record" referred to in the ordinance is the written record of the meeting, i.e., the minutes. The minutes relating to this appeal have been attached at the end of this document.

Specifics:

The specifics of this case which Council may consider are found in the minutes of the meeting and the documentation submitted by the County and the business to the Appeals Board prior to the meeting. The following documents are attached below for Council's review and consideration:

1. Applicable portion of the minutes of the Appeals Board meeting from August 28, 2008
2. The County's response to the appeal
3. The business' case for the appeal

C. Financial Impact

Any reduction of the business license rate or expansion of authorized deductions will reduce the revenues to the County, upon which the current budget is based. The extent of the impact would depend upon the scope of the reduction in the rates or expansion of authorized deductions.

D. Alternatives

1. Determine that an error of fact was made by the Board.
2. Determine that an error of fact was not made by the Board.

E. Alternatives

Council is recommended to review the specific facts of the appeal and conclude for itself whether an error in calculation (ie, "an error of fact") has been committed. If such an error is determined, Council is recommended to specify the exact nature of the error such that remedy to the business for the error may be pursued and granted.

Recommended by: Pam Davis, Director

Department: BSC

Date: 11/13/2008

F. Reviews

Finance

Reviewed by: Daniel Driggers

Date: 11/17/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: No recommendation

LegalReviewed by: Larry SmithDate: 11/20/08 Recommend Council approval Recommend Council denialComments regarding recommendation: Council's discretion**Administration**Reviewed by: Roxanne MatthewsDate: 11/20/08 Recommend Council approval Recommend Council denial

Comments regarding recommendation: Per the Richland County Code of Ordinances Section 16-19(2), "County Council shall review the record and without further hearing affirm, modify, or deny the appeal in the event of an error of fact by the Board." It is recommended that County Council deny the appeal of FN Manufacturing because the business license fee was calculated without error, and no error of fact was made by the Board.

Richland County

MAR 26 2008

NEXSEN | PRUET

Business Service Ctr.

March 26, 2008

James Frederick Reames III
Member
Admitted in SC

VIA HAND DELIVERY

Licensing Official
Richland County Business Service Center
2020 Hampton Street, Suite 1050
Columbia, South Carolina 29201

Re: FN Manufacturing, LLC – 2008 Business License Fee Appeal

Dear Licensing Official:

Our firm represents FN Manufacturing, LLC in this matter. On March 17, 2008, FN Manufacturing, LLC timely paid the 2008 Richland County Business License Fee under protest and now wishes to appeal the assessment and licensing fee to the Business Service Center Appeals Board. An administrative fee in the amount of \$25.00 is enclosed.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach

The basis for this appeal is that the substantial increase in the 2008 Business License Fee as compared to the prior year's fee is made without substantial justification and is not authorized by the Richland County Code of Ordinances. The County's incorrect application of the Richland County ordinance authorizing the business license fee, as well as the Ordinance itself, is incorrect, violates FN Manufacturing, LLC's right to equal protection of the law, and its right to procedural and substantive due process. The Ordinance and the County's application thereunder further violate state and federal constitutional principals governing interstate commerce. FN Manufacturing, LLC reserves the right to raise additional reasons for the appeal at a later time.

I look forward to hearing from you at your earliest convenience.

Very truly yours,



Rick Reames III

RR/shp
Enclosure

cc: Ron Vallee, FN Manufacturing, LLC
Mark Knight, Esquire

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NPCOL1:1326720.1-LT-(RR) 023532-00162

NEXSEN | PRUET

James Frederick Reames III
Member
Admitted in SC

August 13, 2008

VIA HAND DELIVERY

Pam Davis, Director
Richland County Business Service Center
2020 Hampton Street, Suite 1050
Columbia, SC 29201

Re: FN Manufacturing, LLC
Appeals Board Hearing
August 28, 2008

Dear Pam:

As instructed by your July 29, 2008 letter, enclosed please find six (6) copies of FN Manufacturing, LLC's memorandum submitted to the Appeals Board in this matter. I understand that your office will coordinate forwarding the copies to the Board members.

Charleston
Charlotte

Columbia
Greensboro
Greenville

Hilton Head
Myrtle Beach

Raleigh

As we discussed previously, I am out of town the entire week of August 25th through August 29th. I understand that it is difficult to move the hearing, so another attorney practicing in my office will likely represent FN at the hearing.

If you need anything further in advance of the hearing, please feel free to let me know.

Very truly yours,



Rick Reames III

RR/shp
Enclosure

cc: Ron Vallee
G. Marcus Knight, Esquire

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2008 BUSINESS LICENSE APPEAL

FN MANUFACTURING, LLC

FN Manufacturing, LLC ("FN") employs approximately 735 people in and around Richland County, South Carolina. FN is engaged in the business of manufacturing firearms and sells its products. The vast majority of FN's sales occur in interstate commerce, with a very small portion to customers within South Carolina.

FN objects to Richland County's imposition of the 2008 business license tax for the following reasons:

1. The business license ordinance and the related rate schedule were not properly enacted by Richland County Council.

On July 24, 2007, Richland County Council adopted Ordinance No. 069-07HR (the "Ordinance") which purported to amend the Richland County business license provisions. The Ordinance did not contain a rate schedule on which fees for business licenses would be calculated. On October 16, 2007, Richland County Council approved a rate schedule. This approval did not follow the procedures required by South Carolina state law (S.C. Code § 4-9-120) which provides, among other things, that ordinances enacted by counties must receive public notice, public hearings, and three readings by the county councils.

As such, the Ordinance and the rate schedule were not properly enacted at the time FN's 2008 business license fee was purportedly due. Thus, the County's imposition of 2008 business license fees is impermissible for 2008. Very simply put, there was no valid rate schedule in effect for 2008 and, thus, the County's collection is invalid.

2. Richland County's taxation of non-South Carolina sales is not fairly apportioned and places an impermissible burden on interstate commerce.

It is a well established legal principal that a state's or municipality's taxation of sales occurring in interstate commerce is unconstitutional where the tax is not fairly apportioned and where it discriminates against interstate commerce. Richland County's imposition of the 2008 business license fee with no deduction available for sales made in interstate commerce clearly violates this rule.

3. The Ordinance violates public policy and creates a disincentive for businesses.

Even if the Ordinance and rate schedule had been valid for 2008, they place an unbelievable burden on local businesses. FN's **business license fees increased over**

500-fold, from \$254.90 in 2007 to \$128,865.78 in 2008! The vast majority of this increase was due solely to changes in the Ordinance, including the removal of the deduction for sales occurring in interstate commerce. This 50,734% increase in the business license fees is unconscionable, and was imposed without notice.

FN is a good corporate citizen and significantly contributes to the County's economic benefit. As mentioned, FN employs 735 people in Richland County and recently engaged in a significant expansion project which added to its already substantial investment in the County. The Ordinance discourages future investment. In fact, other foreign companies frequently contact FN regarding the business climate in South Carolina and Richland County (one prospective business called last week). FN's future responses will have to include a discussion of this burdensome tax and the unpredictable and egregious manner in which it was imposed. Why would other large multistate companies locate in Richland County when their interstate and international sales will be so heavily taxed?



Richland County Business Service Center

2020 Hampton Street, Suite 1050
P.O. Box 192
Columbia, SC 29202

Phone: (803) 576-2287
Fax: (803) 576-2289
bsc@rcgov.us
<http://www.rcgov.us/bsc>

Richland County Business Service Center Response to the Appeal by FN Manufacturing

Requirements to Appeal:

The Richland County Business License ordinance sets forth the requirements of a business to make an appeal, Section 16-18. These are:

- the appeal must be filed with the license official within ten (10) calendar days after the payment of the assessment,
- the notice of appeal must be in writing with the reasons for the appeal stated, and
- the appeal must be accompanied by an administrative fee.

The business has has not met these requirements.

Appeal within Scope of Appeals Board:

The Richland County Business License ordinance establishes what conditions a business may make an appeal to the Business Service Center Appeals Board, Section 16-18. These include businesses that dispute:

- a final assessment,
- charge backs from an audit,
- denial of a business license, and/or
- intent to revoke a business license.
- The business is appealing something else. _____

This purpose of the appeal is is not within the scope of the Appeals Board to consider.

However, some of the reasons that the final assessment is disputed are outside the scope of the Appeals Board. The reasons for the appeal of the final assessment are addressed below:

Issues and Responses:

(1) The substantial increase in the 2008 Business License Fee as compared to the prior year's fee is made without substantial justification.

Councils, whether municipal or county, are not required to provide *any* justification for the rates they set for business license fees.

However, they do have the responsibility to ensure that the rates that are set are “reasonable.” Therefore, this response will be related to the issue of “reasonableness.”

In the court case *US Fidelity and Guaranty Co. v. City of Newberry* (253 SC 197, 169 S.E. 2d 599(1969)), the court held,

“If different rates are to be charged for different classifications, it necessarily follows that the ...council must use its judgment and set the different rates to be collected. In deciding whether the tax is reasonable, it has been held that the reasonableness is largely within the discretion of the ... council.”

The court further added in this case,

“One can only speculate on the question of reasonableness by comparison. Reasonableness must be determined by the factual situation involved. It will be assumed, the contrary not being shown, that the council had all facts relative to each classification, including problems and ... expenses brought about by the business in the various classifications.”

Consequently, according to the 2008 Business License Handbook produced by the Municipal Association of SC's Business Licensing Officials Association, “the mere fact that the rate charged a company is several times that of businesses in other classifications does not entitle the company to relief.” (pg. 6)

Richland County Council exercised its right to adjust the County's business license rates on July 24, 2007 by amending the County's business license ordinance to revise the business license fee structure to be consistent with business license fee structures in cities and counties across South Carolina. This new fee structure has been successfully defended by other SC cities and counties in judicial actions.

(2) The substantial increase in the 2008 Business License Fee as compared to the prior year's fee is not authorized by the Richland County Code of Ordinances.

The 2008 business license fee is authorized by Section 16-5(1), Classification and Rates, of the Richland County Code of Ordinances, which reads as follows:

“The County Council shall establish and approve a Business License Fee Schedule providing a business license rate for each Class of businesses subject to this article.”

There are two elements comprising a business license fee which can increase the business license fee: the rate itself and the deductions allowed. The interstate commerce exemption, which this business claimed for 99.77% of its revenue in 2007, is the reason for this business' substantial increase in 2008. The County Council exercised its right to remove the interstate commerce exemption by amending the business license ordinance.

This ordinance was adopted as required by state law. First reading was held on April 3, 2007 and second reading on July 10. The public hearing – advertised in accordance with State law and offering businesses the opportunity to provide comment – and third reading was held on July 24, 2007, with the minutes of that meeting approved at the following Council meeting.

Therefore, this business had 99.77% more revenue on which to apply the rate in 2008. This resulted in the significant increase in the business license fee in 2008 over 2007.

(3) The County’s incorrect application of the Richland County ordinance authorizing the business license fee is incorrect.

The business license fee that is charged to this business is consistent with the fee that is set forth in the Business License Fee Schedule and was established by the business license ordinance in Section 16-5, Classification and Rates, for establishing business license rates.

This fee was calculated according to the rate specified for this type of business, which is:

| | |
|---------------------------------------------------------------|-----------------|
| Rate Class 3 for NAICS Codes beginning with 33, Manufacturing | |
| On the first \$2,000 | \$25.00 |
| Each additional \$1,000 | \$1.20/thousand |

Any revenue reported over one million dollars shall have declining rates applied to each million dollars after the first million dollars, as set forth in the Business License Fee Schedule. This declining rate schedule is shown below:

Declining rates apply in all classes for gross income over
\$1,000,000.00

| Gross Income (In Millions) | Percent of Class Rate for each additional \$1,000 |
|-------------------------------|------------------------------------------------------|
| 0.00 – 1.00 | 100% |
| 1.01 – 2.00 | 95% |
| 2.01 – 3.00 | 90% |
| 3.01 – 4.00 | 85% |
| 4.01 – 5.00 | 80% |
| 5.01 – 6.00 | 75% |
| 6.01 – 7.00 | 70% |
| 7.01 – 8.00 | 65% |
| 8.01 – 9.00 | 60% |
| 9.01 – 10.00 | 55% |
| Over 10.00 | 50% |

The tool used to determine the business license fee is the Business Service Center software, which uses this rate to calculate the fee. There is no user interaction in this calculation, thereby avoiding human error. The software was tested extensively prior to implementation to ensure accuracy.

The specified NAICS code indicated on the business’ renewal form is 332994, Small Arms Manufacturing. This NAICS code has not been disputed by the business.

(4) The ordinance itself is incorrect.

The business license ordinance accurately reflects the will of Council. It was adopted by County Council on July 24, 2007, with the minutes of that adoption also approved by Council with no corrections.

This is also addressed in Item 2.

(5) The County's incorrect application of the Richland County ordinance authorizing the business license fee violates FN Manufacturing, LLC's right to equal protection of the law.

The assertion that the application of the Richland County ordinance is incorrect is disputed in Items 2 and 3.

Making the determination that the business' right to equal protection of the law has been violated is a constitutional issue and is not within the scope of the Business Service Center Appeals Board. While the Board may hear an appeal on any basis, any relief provided on this basis must be subsequent to such a determination by a body qualified to make that determination.

(6) The County's incorrect application of the Richland County ordinance authorizing the business license fee violates FN Manufacturing, LLC's right to procedural and substantive due process.

The assertion that the application of the Richland County ordinance is incorrect is disputed in Items 2 and 3.

Making the determination that the business' right to procedural and substantive due process has been violated is a constitutional issue and is not within the scope of the Business Service Center Appeals Board. While the Board may hear an appeal on any basis, any relief provided on this basis must be subsequent to such a determination by a body qualified to make that determination.

(7) The Ordinance and the County's application thereunder further violate state and federal constitutional principals governing interstate commerce.

The 2008 Business License Handbook, produced by the Municipal Association of SC effectively addresses the issue of taxing interstate commerce. See the text below:

Taxable Interstate Commerce

Prior to 1977, a business license tax could not be levied on the privilege of carrying on a business exclusively interstate in character according to the US Supreme Court ruling in *Spector Motor Service, Inc. v. O'Connor*, 340 US 602 (1951). However, the Supreme Court overruled the *Spector* case in *Complete Auto Transit, Inc. v. Brady*, 430 US 274 (1977), and established a four-pronged test for validity of state or local taxes on interstate commerce.

Under that test, a local tax on interstate commerce is valid if:

- (1) the tax is applied to an activity with a substantial nexus [connection] with the taxing state [local government];
- (2) the tax is fairly apportioned;
- (3) the tax does not discriminate against interstate commerce; and
- (4) the tax is fairly related to the service provided by the state [local government].

Many business license ordinances in this state contained an express exemption for interstate commerce in keeping with the law prior to 1977. Where there is such a provision, interstate commerce is not subject to the business license tax. See *Carolina Manufacturing Co. v. City of Greenville*, 260 SC 580, 197 S.E. 2d 665 (1973); *North Myrtle Beach v. GEICO*, (DCSC 1991).

However, most ordinances have been amended to delete the interstate commerce exemption. Therefore, the first inquiry is whether the license ordinance contains an exemption. If it does, no tax is levied. If it does not, the tax may be levied only if all four tests in the *Complete Auto Transit* case are met. In either event, it is necessary to determine whether the activity in question is interstate commerce.

The intrastate activity of a business also engaged in interstate commerce is subject to the tax where the intrastate activity is separable, even if the ordinance exempts interstate commerce.

Richland County's business license ordinance did historically exempt interstate commerce. However, County Council exercised their right to remove this exemption by amending the business license ordinance on July 24, 2007. The exemption's removal was effective on and after January 1, 2008.

Conclusion:

The County recommends that the Business Service Center Appeals Board:

- dismiss the appeal due to not meeting the requirements of an appeal.
- dismiss the appeal due to the reasons for the appeal not being within the scope of the BSC Appeals Board.
- uphold the decision of the Business Service Center for the reasons provided here.

**ATTACHMENT A:
VERBATIM MINUTES RELATING TO THE
FN MANUFACTURING APPEAL HEARING**

MR. WEST: Okay, alright. FN Manufacturing.

MS. DAVIS: Let me give you a brief overview of this and I'll give you a very brief synopsis of their concerns of this business and one issue is the substantial increase in the 2008 business license fee as compared to the prior year is made without substantial justification. A second issue that was raise is that the substantial increase in the 2008 business license fee as compared to the prior year is not authorized by the Richland County Code of Ordinances. The third issue, the county's incorrect application as the Richland County Ordinance authorizing the business license fee is incorrect. Item four, the ordinance itself is incorrect. Item five, the county's incorrect application of the ordinance authorizing the business license fee violates FN's right to equal protection of the law. Item six, the incorrect application of the county's ordinance authorizing the business license fee violates their right to procedural and substantive due process. And item seven the ordinance and the county's application there under violates state and federal constitutional principles governing interstate commerce.

MR. WEST: Okay. Before we begin does anyone on the Board have any conflicts? The only conflict I would like to expose, at one point in time when I was the tax director at Deloitte I was in charge of reviewing the provision for FN Manufacturing. But that fortunately or unfortunately was three or four years ago, I think. Of course I remember very little, well I remember some about your business but very little of it.

MS. DAVIS: And if you could please state your name, address and your business for the record please.

TESTIMONY OF DENNIS LYNCH:

MR. LYNCH: Yes. My name is Dennis Lynch, I'm an attorney with Nexsen Pruet here in Columbia, South Carolina, and I represent FN Manufacturing. I have with me, Mr. Ron Bally who is the CFO of FN Manufacturing. And I appreciate ya'lls time this morning and thank you Mr. Chairman. FN Manufacturing -

MR. WEST: One second. First off I, I do need both of ya'll to take the oath. Please raise your right hand. Do you swear or affirm that the testimony that you are, that you shall give here today shall be the whole truth, the truth, the whole truth and nothing but the truth?

MR. LYNCH: I do.

MR. BALLY: Yeah.

MR. WEST: Proceed please.

MR. LYNCH: Again I'm here on behalf in representing FN Manufacturing. FN Manufacturing is a precision machine manufacturer, which specializes in the manufacture of small arms, mainly for the military and for law enforcement. They're located here in Columbia, off of Old Clemson Road. There is no dispute that they're a wonderful county citizen, they've been here for over 25 years, they incorporated in South Carolina nearly 30 years ago. It employs over 735 folks here in the county. A large percentage of their sales, a vast majority of a percentage of their sales is from revenue generated sales outside the state. In other words sales generated through interstate commerce. And up until 2007, and this is the whole crux of the appeal, businesses in Richland County have received a deduction for their gross revenue received through interstate commerce. That ordinance in which the, that deduction was

codified through the definition of gross income was stripped out with the 2008 amendment to it. Now in 2007, just to give you an example, FN had a license fee against gross revenue of over 163 million and their license fee was approximately \$255 for that year. And the way that would work is you would go in and you would apply the deduction and after the deduction from the net revenue you would then apply a separate rate schedule, which would set out the calculation for what that fee would be for that year. Now in the, in the amendment of the ordinance in 2008 they took away the deduction but they didn't set out, the county did not set out separately a rate schedule. The amendment was, or the ordinance was passed in, in July 24, 2007, and that ordinance is number 69-07HR and that amended those license provisions. Three months after adopting that new ordinance, Richland County separately approved and passed a rate schedule. Now significantly that wasn't done, without any proper hearing or notice subject to its own rules and subject to state rules. In fact the state rule, which is, which essentially says that any time the Council takes legislative action is to do so by ordinance and if you're gonna do it, to do it by ordinance, you have to, I'm sure ya'll are familiar with the fact that you have to have three separate hearings, three, or three separate readings, public readings, public notice, and these rules are adopted as the minimum by the county. And added to that the county further notes that you're gonna have to have certain, you know, at least fifteen day public notice to give people proper amount of time to come in, air their grievances if they have any and help with the process, keep the process transparent. And that's the whole idea behind why we have notice and why we have public hearings. That didn't happen here. Now the county will take the position that the, the calculation, the rate schedule was, was mentioned in the

ordinance but it wasn't incorporated and it wasn't set out. That didn't happen until three months after adopting the new ordinance. At that point they separately approved the rate schedule and again without proper hearing; that was on October 16, 2007. Now FN paid their fee under the new March 17, 2008 deadline and paid it timely. The 2008 license fee against gross revenues of approximately 209 million, without the interstate commerce deduction and under the new rate schedule was \$128,865. It had increased 505-fold from what they had paid in 2007, it's a 50,000% increase over what they had paid. Now we're taking the position, among other things that this is, this amounts to a taxation of inter commerce, interstate commerce sales and you can't do it cause it's discriminatory and it's unfairly apportioned. Kelly's taking the position that you can't touch that issue, we believe you can. We believe this is just common sense. The county wants to talk about reasonableness, so we're to an issue of reasonableness and if you look at the handbook on, on this kind of apportionment and, and this kind of collection by the county we say that the, the mere, the mere increase by several times in comparison to other businesses isn't unreasonable. Well, I would submit that this is absolutely the definition of unreasonableness and oppressiveness. There's no way I think anybody can sit here and argue with a straight face that 505 times increase, and that kind of unconscionable percentage increase is somehow reasonable, it's not. But that aside I think that the chronology of what happened here I think is very instructive. Again, they passed the ordinance without the rate schedule, after the fact and without, without proper procedure it passed the rate schedule. Six months after passage of the rate schedule, and this is after the March 17, 2008 deadline when FN went in and wrote the check for \$128,000, Greg Pierce, Gregory Pierce, a member of the Board, moved

the Board for review of the current rate schedule as it had “significant impact on certain county businesses that do interstate commerce”. I’m talking about a small percentage of these county businesses that were getting hit big time. A Board member recognized this, a Board member said this, we need to look at the significant impact. And he set out a number of ways in which the Board may want to consider mitigating that effect, okay. Aside from whether the deduction should have been stripped out to begin with and, of course, we are assuming that it shouldn’t have, we have a Board member saying if we’re gonna strip out that deduction then we need to look at ways to make sure that these businesses aren’t absolutely blown out the water by this unbelievable increase they’re seeing in their license fee. And one of the things he did is he looked at the rate calculation itself, in other words the separately passed rate calculation, which was never part of the ordinance to begin with. And he said well we can take a look at that and one of the ways we can do it is in, in that, in that fee application or rate, rate calculation, we have a, we have a declining rate allowance and we could re-jigger that to mitigate effect and he went through a number of other examples how it might be done. The point being that well after the fact the Board is now admitting that this has, or may have a very significant impact on a small percentage of our businesses through our seeing a inordinate, unconscionable hit on their business license fees is a result of that deduction being stripped out. And the unfortunate thing here is that the ship has already sailed, the fee’s already been paid, this is all happening after the fact. This chronology is important because it, it points out that when we talk about process, when we talk about due process, when we talk about, you know, the requirement of public hearings, of public notice, this all could have been dealt with when, you know, back

before March of 2007 when it came due and FN sat down, calculating out their, their fee and all a sudden instead of stroking a \$200 or \$300 dollar check, they're having to stroke a \$128,000 check. That ship has sailed. Now our position in the brief we've submitted is that because of a lack of process the rate schedule is void and without the rate schedule, because that's where the calculation is codified, that's how you do it, it's all there. It's not in this ordinance that they passed subject to public hearing, it's in that rate schedule that was illegally passed, okay. We need to void it, okay, and as a result of that the remedy here of course is a reversal of that collection. Now I should note that on April 22, 2008 it appears that the Board is looking finally to somehow kind of rectify and do what the county apparently claims in their briefing had been done prior, which is, you know, incorporate this rate schedule. That really had not been done and in fact well after the fact. And even after Mr. Pierce's motion there, you see, you see county records showing that, that the county was looking to go ahead and see if they can somehow kind of fix and go ahead and incorporate within the old ordinance, the rate schedule, which had been illegally passed. But again that ship had sailed and it was too late for companies like FN Manufacturing that were hit so severely by this. I would note as an aside, and I'm not sure if Mr. Bally may have some comments, he might, but the county I'm sure is not in the business of running off good companies that come, come here and employ our citizens and are good corporate citizens of this county. That's not, I, I don't think there's any question, I don't think there's, I don't think there's any dispute that that's what we're all about. That this, this is what this county would want to do and I would submit that that's exactly what's happening here when you're passing that kind of oppressive tax hike and there's a tax, you know, it's a privilege tax.

That kind of tax hike without proper due process, without proper hearing, and when the Board itself, one of its own members recognizes well after the fact that what has happened has had significant impact on a small percentage of businesses who has seeing this dramatic and really unnecessary rate hike. We don't want to be doing this to our businesses. FN Manufacturing doesn't have to be here in Richland County, other businesses don't have to be here in Richland County but they've been here, they've been here for 30 years. They have, they've been good employers, they have been good citizens, and this is not the way we should treat them. But it's not just a matter of how we treat folks, it's a matter of, you know, what is right and what is wrong. What is legal and what is not. What has happened here is on its face illegal and this Board does have the power to reach that issue and rectify it. Unless Mr. Bally has any additional comments -

TESTIMONY OF RON BALLY:

MR. BALLY: Good morning, again my name is Ron Bally, I'm the CFO of FN Manufacturing. I just want to make a few additional comments. I think Dennis has pointed out the, the illegal side of the issue that we feel is, is pertinent to this situation. But as he's mentioned, as a, you know, as a corporate citizen of Richland County we don't have any issue in, in terms of paying, paying our taxes. We know that that's part of the process, we're here to support the county as well. We have been investing in this county for a number of years, especially in the last five or six years, we've had quite additional growth, which has really added to the property tax base for the county. The thing that we object to that we have to, we believe we have to as a, as a corporate citizen is when you see a significant increase in one of the taxes to the extent that we

have on this, for this particular issue. It would be very difficult for us to recommend to any company looking at coming into Richland County for us to not give an indication that while the tax impact that they may see initially based on, based on negotiating with the county that eventually those could go away and we use this particular situation as an example. It's kind of interesting that, that as a company that once you're in the county that all the favorable situations seem to go to attracting new companies to the disregard of some companies that have been here for some period of time. So again we, we have been in Richland County for some period of time, we feel that we are a good corporate citizen, we feel that we have been adding to both the employment and the tax base here in this county. But in this particular situation we feel we have a right, a duty on our part to really kind of protest what happened in this particular situation. Thank you.

MR. WEST: Mr. Bally, do you - FN obviously manufacture small arms at, in, at Clemson Road. Do you also have salesmen or sales offices in other locales?

MR. BALLY: We do not. FN, FN Manufacturing here in Columbia is basically a separate subsidiary within the FN Group, which is a, which is a Belgium-owned company. We have, there are sister divisions in, in Virginia, sister division in Virginia that basically has a responsibility for selling the law enforcement side of our business. Our business is primarily direct contact with the Department of Defense. We as such don't have salesmen primarily because the, the method of doing business is the government will put out a solicitation and we'll respond to that solicitation.

MR. WEST: Do they request a bid, you submit a bid?

MR. BALLY: Yes.

MR. WEST: You and you make a couple hundred thousand?

MR. BALLY: Right.

MR. WEST: Okay.

MS. MCLEAN: Ms. Davis needs to be sworn in as well cause she hasn't done that.

MR. WEST: Ms. Davis, raise your right hand please. Do you swear or affirm that the testimony that you shall give here today shall be the truth, the whole truth and nothing but the truth?

MS. DAVIS: I do. I wanted to start out perhaps by giving a tiny bit of history and a little context, and to start with the reason for the increase with FN Manufacturing was, as was pointed out, the removal of the interstate commerce exemption. This exemption was in place since the beginning of Richland County's business license operation in 1987. However 10 years prior to that in 1977, the Supreme Court allowed cities and counties to charge business license fees on interstate commerce. Throughout South Carolina no other city, and to my knowledge the seven counties that have business license operations, none of those seven allow interstate commerce exemptions. They all tax it to the extent that is permitted by the courts and by law. When Richland County adopted its ordinance in 1987, this ordinance included that exemption. This was not consistent with the rest of the state and when we revised our ordinance and made it consistent with business license ordinances around the state the, the interstate commerce exemption was removed. That is the significant contributing factor to the increase in fees, not to the rates themselves on which the fee was based. And the importance of this is that the ordinance which was passed and adopted and had a

public hearing on July 24 of '07, was the ordinance on which the interstate commerce exemption was removed. And it is that impact affecting FN Manufacturing, which was passed in accordance with all the applicable county and state requirements. The second point I wanted to bring to your attention is that the county does acknowledge that the fee schedule was not passed as it should have been. When we recognized this, we did some research and there is a body of law, of case law which allows procedural errors to be corrected. We made that correction as quickly as possible but we also followed of course the state and county requirements for doing so. We did have three readings of that ordinance and that did include the public hearing as well.

MR. QUATTLEBAUM: Pam?

MS. DAVIS: Yes.

MR. QUATTLEBAUM: Did anyone, did anyone testify at the public hearing, you know, oppose the rates, express concern?

MS. DAVIS: I don't believe, I don't know that many did, there may have been a few. But I know that there was not a, a large turnout. We did advertise of course in accordance with all the state advertising requirements, however. But, so, and as far as the calculation of the fees goes, it was done as authorized and required by the county ordinances and the County Council does have the discretion to remove the exemption. We recognize, in hindsight, that the impact to businesses has been pretty substantial and I, I will admit it is quite substantial. However it was Council's option and discretion to remove that exemption. They are now considering other options that will mitigate that impact whether putting the exemption back in altogether, whether it will be giving some kind of declining discount on the rates based on how much interstate commerce they

do. That has not been finalized yet but I know Council goes back in session in September so that will be an issue coming up. So they are looking at that, so I would emphasize to you that they have the discretion to remove that exemption and they did so in accordance with all applicable state and county requirements and that with the error that was made on the fee schedule, that has been corrected also in accordance with all requirements. And we did have the public hearing with that as well, so.

MR. QUATTLEBAUM: Pam, chronologically, okay, explain to me first of all the ordinance was passed with the three readings, it was passed removing the exemption, correct?

MS. DAVIS: Yes.

MR. QUATTLEBAUM: Then later a fee schedule.

MS. DAVIS: That's correct because Council wanted to explore and look at more about the actual fees themselves.

MR. QUATTLEBAUM: So the exemption was removed initially?

MS. DAVIS: It was removed in the initial ordinance that was passed in July.

MR. WEST: When you, you stated that the Supreme Court in 1977, I presume you're referring to the [inaudible].

MS. DAVIS: Yes.

MR. WEST: Which basically advanced a four-pronged test, one of the prongs being that [inaudible] to be prepared.

MS. DAVIS: That's correct. Or I believe that's correct.

MR. WEST: If under the current Richland County ordinance, I had a manufacturer that was located out of state, with a sales office in Richland County and

through that sales office they sold \$200 million worth of product, they would be subject to the Richland County business license on that \$200 million?

MS. DAVIS: That's correct.

MR. WEST: Even though that is arguably a sale and, I mean, it is a sales and interstate commerce.

MS. DAVIS: Um-hum (affirmative). Now one thing we are very careful to do and I work with Roger, our auditor on this as well, that when there's interstate commerce that we look at whether it's a multi-state corporation where they have locations in other cities or other, I'm sorry other states. And we look at the apportionment that is reported also to the state Department of Revenue.

MR. WEST: So if, if FN in this case had had sales offices in Washington, DC, Fort Bragg, North Carolina -

MS. DAVIS: Sure.

MR. WEST: - wherever and had sold -

MS. DAVIS: \$400 million, yeah.

MR. WEST: Say their, their gross revenue was, I don't, no one ever mentioned a number but \$200 million is a good starting, say they had sold 175 million of that through that Washington, DC sales office or through either foreign sales office of, you know, some foreign country where they also sales arms, then you would have allowed that deduction?

MS. DAVIS: We would have to certainly investigate that but we would take the apportionment into account. And that's one thing I'm learning as we, as we go through this is a lot of businesses have in the past been reporting, even if they have five

locations in other states, they would report everything to us and then exempt it, I'm sorry deduct it as interstate commerce. Well, when we remove that deduction all of a sudden they were paying a business or calculating a business license fee on five different locations and we made very, very clear and worked with many businesses to say tell me what your situation is and we realize that they might have had those five other locations and we would help narrow it to that single location within Richland County. And that helped a lot of businesses as well because we really try to make sure that they're only paying what they need to pay for the revenues generated by the location within Richland County.

MR. WEST: Mr. Bally, is the revenue that you're reporting, it doesn't include revenue from any other locality to your knowledge? It's basically the manufacturing revenue?

MR. BALLY: Again I don't really remember the specifics of the [inaudible] and I doubt very much [inaudible]. If we're state apportionment then we would, would go back and refer to what we do for state tax purposes, state income tax purposes, which is, has quite a significant apportionment, impact in terms of what we pay within the state. I think from my perspective the discussion about apportionment is kind of a new concept and again I'm not totally familiar with the instructions, I have to go back to it. But I would doubt very much if that's very clear within the instructions.

MR. WEST: I can promise you it's very unclear. It's, it's very nebulous. Any other questions?

MS. VITON: I have one more question to ask. You would consider the apportionment even after the removal of the interstate commerce clause in the ordinance?

MS. DAVIS: We would certainly have to explore that and investigate that and I tend to defer to my auditor who's a lot better at that than I am.

MS. VITON: Okay, thank you.

MR. QUATTLEBAUM: Has there, there's been no information from FN regarding that, regarding apportionment [inaudible] sales [inaudible].

MR. BALLY: Well, you know, part of the business license return includes a detailed listing of where all the sales, where all our sales got shipped to. So there is information at least provided with the business license return. But again if we're talking apportionment in the same context that we would use for state income tax reporting purposes, that would probably be a, you know, different story.

MR. WEST: Yeah, the state income sales tax apportionment is typically triggered by clear title passes with regard to delivery. And my understanding of the Richland County ordinance governs more along the lines of where the revenue originates from, by what process do the revenue originates from, which I mean, arguably in a manufacturing setting the revenue originates from actually manufacturing a product but another approach would be to say, well where does the sale activity take place? Because certainly if you have a sales office here in Richland County, Richland County is gonna get that piece of your sales if you're a foreign manufacturer or they're gonna try to. But by the same token if you have a manufacturing facility here in Richland County and you have a sales office in another facility then Richland County

should in theory, all things being fair under complete auto transit exempt that. Any other questions?

MS. SALANE: Mr. Chairman, Ms. Davis, maybe with Council, if you'd like to, there are certain actions, the appeals can be based on anything that the appellate wants to stay in the appeal. But there are, as I understand it there are certain limitations that the Business Service Center Appeals Board may take, would you address that?

MS. MCLEAN: I'll address that since Ms. Davis is an adversary party right this second. According to the ordinance by which the Board of Appeals here was created, that would be 05-007HR, your responsibilities are adopting procedures related to the Board, receiving written materials for the businesses, holding meetings to receive testimony by the Business-to-Business Service Center official and a nearer official approved by the appeals board, reviewing and analyzing the information presented and the testimony provided, making a factual conclusion as to the issue in question based upon the review and analysis, and then write your formal determination. I would just refer ya'll to the legal advice that I gave you in Executive Session. I'd be glad to go over that again but if, you know, I think what I said, you know, earlier probably stands but if you'd like to, I mean, we can talk about it in open session if you'd like. But that, that, those are your actual, actual powers that were given by the ordinance and beyond those powers I don't think that you have any. But if you'd like to go back into Executive Session and talk about or if you want to talk about it in open session what we discussed earlier, that's up to you. I wouldn't suggest that as your counsel but that is up to you.

MS. SALANE: The appellants have all received copies of the, the county's response, is that correct?

MS. DAVIS: That, that is correct.

MS. SALANE: Thank you.

MR. WEST: Do you have a motion? Any discussion?

MR. QUATTLEBAUM: While I'm very sympathetic [inaudible] I'm sure it's within our powers to discuss the legality of [inaudible] legal or illegal [inaudible]. I don't know that's it really within our Board's power. [Inaudible]

MS. SALANE: That's my understanding, I think we have very limited powers here.

MR. WEST: Unfortunately, I think you're right.

MR. QUATTLEBAUM: So I think we're gonna have to move to deny the [inaudible] FN Manufacturing's other courses of action that are beyond the powers of this Board.

MR. WEST: Is there a second?

?: Second

MR. WEST: For? Opposed?

[All approved]

MR. WEST: [Inaudible] your appeal is denied by this Board.

MR. LYNCH: Quick question. Is it the, is it [inaudible] county's position that this Board is without any [inaudible]?

MS. MCLEAN: As to the ordinance itself?

MR. LYNCH: Yes.

MS. MCLEAN: Yes, that is correct.

MR. LYNCH: And [End of Tape 1, Side A]

MR. WEST: - at the next available meeting to request verification on that from the Board, the county. But as has been explained to us and based on the review of the ordinance, we are very limited as to what we can do. And, and if indeed I think, I would like to put forth a motion, if indeed the county does tell us that we do have the power to consider such thing, I think I would like to move that we grant a rehearing -

MR. LYNCH: You read my, you read my mind, Mr. Chairman. I was just gonna move that the decision be held in abeyance.

MR. QUATTLEBAUM: I'll second.

MR. WEST: For?

MS. SALANE: I have a question before we vote. I don't know if we have the power to do that procedurally. I think all of our powers come, emanate from Council, if I am correct. I'm not even sure if we can float that option. So I, I just, we as a, I'd be glad to do it if, if somebody tells me we can but I don't think we have the power to do that.

MR. WEST: As I understand it we adopted bylaws just recently where we could not, that all decisions were final.

MS. MCLEAN: That is correct.

MR. WEST: But we also adopted bylaws that we could suspend those temporarily.

MS. MCLEAN: You may suspend your rules. Yes, you may. You need a vote. Because your bylaws, I agree, do not allow that, specifically say you can't do it but you can suspend them by majority vote.

MS. VITON: They do have other appeals process available to them, do we not?

MS. MCLEAN: Correct, after hearing it goes to county council and then to any court of law.

MS. VITON: Thank you. I move that it's beyond our scope and that they would take further appeals process.

MR. WEST: Do we have a second for that?

MS. SALANE: I second that.

MR. WEST: For? Opposed?

MR. QUATTLEBAUM(?): Nay.

[Approved: 4; Opposed 1]

MR. WEST: By 4 to 1, it carries.

MR. LYNCH: To state my objection for the Record, I do want to thank you, thank you Mr. Chairman and the Board as well for its time this morning.

Richland County Council Request of Action

Subject: Business Service Center: Appeal by McEntire Produce

A. Purpose

Council is requested to consider the appeal of McEntire Produce, which appealed the decision of the Business Service Center Appeals Board.

B. Background / Discussion

The Business Service Center Appeals Board heard the appeal made by McEntire Produce Group on September 29, 2008.

The Richland County Code of Ordinances Section 16-18(1) specifies on what grounds an appeal may be made. These include “Any person aggrieved by”

- a final assessment,
- charge backs from an audit, or
- a denial of a business license.

McEntire Produce appealed to the BSC Appeal Board for the following reasons:

1. “[The increase in the business license fee] has got to be an error.”
2. “This [increase] clearly in an unconstitutional taking without justification.”
3. “This [increase] clearly is an unconstitutional taking without due process.”

An appeal of final assessment is authorized by the Code of Ordinances.

The first issue was neither raised or considered by the Board during its hearing on September 29.

The County Council must now consider the appeal.

Procedures:

According to the Richland County Code of Ordinances Section 16-19(2), “County Council shall review the record and without further hearing affirm, modify, or deny the appeal in the event of an error of fact by the Board.” The “record” referred to in the ordinance is the written record of the meeting, i.e., the minutes. The minutes relating to this appeal have been attached at the end of this document.

Specifics:

The specifics of this case which Council may consider are found in the minutes of the meeting and the documentation submitted by the County and the business to the Appeals Board prior to the meeting. The following documents are attached below for Council’s review and consideration:

1. Applicable portion of the minutes of the Appeals Board meeting from August 28, 2008
2. The County's response to the appeal
3. The business' case for the appeal

C. Financial Impact

Any reduction of the business license rate or expansion of authorized deductions will reduce the revenues to the County, upon which the current budget is based. The extent of the impact would depend upon the scope of the reduction in the rates or expansion of authorized deductions.

D. Alternatives

1. Determine that an error of fact was made by the Board.
2. Determine that an error of fact was not made by the Board.

E. Recommendation

Council is recommended to review the specific facts of the appeal and conclude for itself whether an error in calculation (ie, "an error of fact") has been committed. If such an error is determined, Council is recommended to specify the exact nature of the error such that remedy to the business for the error may be pursued and granted.

Recommended by: Pam Davis, Director

Department: BSC

Date: 11/13/2008

F. Reviews

Finance

Reviewed by: Daniel Driggers

Date: 11/17/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: No recommendation

Legal

Reviewed by: Larry Smith

Date: 11/21/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Council discretion

Administration

Reviewed by: Roxanne Matthews

Date: 11/21/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Per the Richland County Code of Ordinances Section 16-19(2), "County Council shall review the record and without further hearing affirm, modify, or deny the appeal in the event of an error of fact by the

Board.” It is recommended that County Council deny the appeal of McEntire Produce because the business license fee was calculated without error, and no error of fact was made by the Board.



Richland County

JUN 04 2008

Business Service Ctr.

Richland County Business Service Center
P.O. Box 192
Columbia, SC 29202

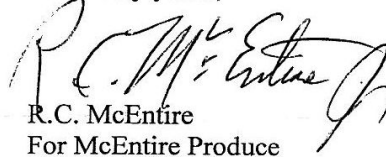
RE: Richland County Business License

Dear Sir or Madam:

Last year our business license was \$480.50. This year it has been increased to \$34,420.54. This has got to be an error. There is no possible way that the license fee could increase a hundredfold in one year. The amount charged is confiscatory and if upheld would certainly discourage any business from coming into Richland County. Why would any large business come to Richland County with these outrageous fees, when they can locate in Lexington County where there are no such fees?

We are paying under protest as provided by the rules, but ask that this matter be on appeal before the county council. By copy of this letter we are submitting it as a written request to be heard within ten (10) days with this payment under protest, as provided by the rules. This clearly is an unconstitutional taking without justification or due process. I look forward to hearing from you as to the time of the appeal requested.

Very truly yours,



R.C. McEntire
For McEntire Produce

cc: Richland County Council
Richland County Clerk
Richland County License Inspector

GRIER LAW FIRM, L.L.C.

2999 Sunset Boulevard, Suite 200
West Columbia, South Carolina 29169

Mailing Address

Post Office Box 2823
Columbia, South Carolina 29202
Telephone (803) 731-0030
Facsimile (803) 731-4059

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Spartanburg, SC 29318
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Facsimile (864) 342-9705

F. Barron Grier, III*
James C. (Trey) Cox, III
Bradford W. Cranshaw
Lauri Soles Darwin
H. Thomas Morgan, Jr.

* Also Certified Mediator and Arbitrator

E-mail: grier@grierlawfirm.com
Website: www.GrierLawFirm.com

August 5, 2008

Pam Davis, Director
Richland County Business Service Center
P.O. Box 192
Columbia, SC 29202

RE: *McEntire v. Richland County*
Our File No.: 200-019

Dear Ms. Davis:

We are herewith enclosing six (6) copies of last year's Business License Fee of \$480.50 and this year's copy totaling \$34,420.54, plus penalties. I'm also enclosing six (6) copies of this letter and ask that each member be given a copy of this letter as well.

Evidently, the business license increased more than one hundred fold in one year because Richland County at some point (the timing is unknown to us) withdrew an exception for out-of-state sales for agricultural produce. Our client was never advised ahead of time that this was going to take place, as he did not receive adequate notice, adequate opportunity for a hearing, the right to introduce evidence, or the right to confront and cross examine witnesses as required by due process under the Fifth and Fourteenth Amendments of the United States Constitution. I'm enclosing six (6) copies of that statement of law that was decided by our Supreme Court in 2008.

In addition, the law is clear that the County can only exercise powers that have been conferred upon it by the Legislature in expressed terms or by reasonable implication, and as a general rule the grant of power will be strictly construed against the county, Lomax v. City of Greenville 82 S.E.2nd. 191, Blake v. Walker 23 S.C. 517. If a local ordinance or rule is used by the county, the first step is to determine whether the county had the power to adopt the ordinance, and if no power existed, the ordinance is invalid.

August 5, 2008

Page 2

Section 6-1-315 of the South Carolina Code of Laws puts a limit on imposition or increase of business license tax. It states "by ordinance adopted by a positive majority vote, a local governing body may impose a business license tax or **increase the rate** of a business license tax, authorized by Section 4-9-30 (12) and Section 5-7-30." This year the attempted withdrawal of an exception does not meet the statutory definition of empowerment. The statute only allows the county to increase the rate. Withdrawing an exception is not an increase of the rate of the business license tax and, therefore, is invalid. Additionally, Section 5-7-30 applies to municipalities and states that "...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." McEntire Produce is not in the municipality. Even if he were, that would be a tax by the city and not by the county.

Finally, the withdrawing of the exception for out-of-state gross sales is an Ex Post facto law which is forbidden by the constitution, Article 1 Section 10.

Respectfully submitted,



F. Barron Grier, III

FBG, III/mas
Enclosures



Richland County
 Business Service Center
 2020 Hampton Street, Suite 1050
 Columbia, SC 29202

Phone: (803) 576-2287
 Fax: (803) 576-2289
 E-mail: bsc@rcgov.us
 website: www.rcgov.us/b

PAID RECIEPT

Business License #:3635-2787

Business Location Information

R. C. MCENTIRE AND COMPANY, INC.
 1001 BLUFF Rd
 Columbia, SC 29201

12,797

Receivables and Charges

| <u>Ticket</u> | <u>Description</u> | <u>Fee Description</u> | <u>Fee Paid</u> |
|---------------|---------------------------|------------------------|-----------------|
| 12,797 | O78 - MERCHANTS WHOLESale | Business License Fee | \$480.50 |
| | | Total Due | \$480.50 |

Payments

| <u>TicketID</u> | <u>Payment Type</u> | <u>Check Number</u> | <u>Amount</u> |
|-----------------|---------------------|----------------------|-----------------|
| 12,797 | Check | 65999 | \$480.50 |
| | | Total Payment | \$480.50 |
| | | Balance Due | \$0.00 |

Not All Sections May Apply to Your Business

Section 2: New Businesses Opened Last Year

- Month your business obtained its 2007 business license: Line 1: _____
 - Number of months left in year (including starting month): Line 2: _____
 - Revenue projected in 2007: Line 3: _____
 - Actual revenue in 2007: Line 4: _____
 - Divide Line 4 by Line 2, and multiply by 12 to get an estimated total gross income for 2008. Line 5: _____
 - Difference between Line 3 and Line 4 Line 6: _____
 - If Line 3 is greater than Line 4, subtract Line 6 from Line 5; Line 7*: _____
if Line 3 is less than Line 4, add Line 6 to Line 5
- *Put this number on Line 1 on Page 1

Section 3: Deductions

- Allowed:**
- | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|------------------------|
| • Gross receipts fully reported and taxed by another jurisdiction, <u>Must</u> attach a sheet reporting all jurisdictions and revenues: No sheet – no deductions. | \$ | Revenue amount, if any |
| • Work covered by a <i>Richland County</i> building permit | \$ | |
| • Gas/excise tax (for gasoline stations ONLY) | \$ | |
| • Lottery sales | \$ | |
| • Liquor sales (cannot deduct beer/wine sales) | \$ | |
| TOTAL*: | | \$ |
- *Put this number on Line 2 on Page 1
- NOT Allowed:**
- Interstate commerce • Vehicle trade-ins • Operational costs • Business losses • Cigarette taxes

Section 4: Business License Fee Calculations

Subtract any deductions, above, from your gross revenue. Find the resulting revenue below. Calculate the fee on each applicable line of the ranges below. Add the amounts together and put on the "Total" line. Construction contractors: If you are located in unincorporated Richland County AND perform work outside Richland County, this section is for revenue from work performed inside Richland County.

| Revenue Range | Fee Calculation | Fee Due |
|---------------------------------|------------------------------------|------------------------------|
| \$ 0.00 \$ 2,000.00 | \$ <u>20.00</u> | Line 1: \$ <u>20.00</u> |
| \$ 2,000.01 \$ 1,000,000.00 | \$ <u>1.00</u> per \$1,000 or part | Line 2: \$ <u>998.00</u> |
| \$1,000,000.01 \$ 2,000,000.00 | 95% of rate per \$1,000 or part | Line 3: \$ <u>950.00</u> |
| \$2,000,000.01 \$ 3,000,000.00 | 90% of rate per \$1,000 or part | Line 4: \$ <u>900.00</u> |
| \$3,000,000.01 \$ 4,000,000.00 | 85% of rate per \$1,000 or part | Line 5: \$ <u>850.00</u> |
| \$4,000,000.01 \$ 5,000,000.00 | 80% of rate per \$1,000 or part | Line 6: \$ <u>800.00</u> |
| \$5,000,000.01 \$ 6,000,000.00 | 75% of rate per \$1,000 or part | Line 7: \$ <u>750.00</u> |
| \$6,000,000.01 \$ 7,000,000.00 | 70% of rate per \$1,000 or part | Line 8: \$ <u>700.00</u> |
| \$7,000,000.01 \$ 8,000,000.00 | 65% of rate per \$1,000 or part | Line 9: \$ <u>650.00</u> |
| \$8,000,000.01 \$ 9,000,000.00 | 60% of rate per \$1,000 or part | Line 10: \$ <u>600.00</u> |
| \$9,000,000.01 \$ 10,000,000.00 | 55% of rate per \$1,000 or part | Line 11: \$ <u>550.00</u> |
| Revenue over \$10,000,000.01 | 50% of rate per \$1,000 or part | Line 12: \$ <u>26,652.51</u> |
| TOTAL*: | | \$ <u>34,420.51</u> |

*Put this number on Line 4 on Page 1

(BL #: _____)

RETURN ALL FOUR PAGES

which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.” Kurschner v. City of Camden Planning Comm’n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). “Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.” Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007). Procedural due process requirements are not technical, and no particular form of procedure is necessary. Sloan v. S.C. Bd. Of Physical Therapy Exam’rs, 370 S.C. 452, 485, 636 S.E.2d 598, 615 (2006). Rather, due process is flexible and calls for such procedural protections as the particular situation demands. Id. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. S.C. Dep’t. of Soc. Servs. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997). To prevail on a claim of denial of due process, there must be a showing of substantial prejudice. Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm’n, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984).

The amended permit for the Sims/McCown joint-use dock was issued in February 2004 and the Olsons appealed the approval of the amendment the following month. A full hearing was held on the matter before the ALC, where the Olsons challenged the joint-use dock permit approved for Sims and McCown. As noted by the ALC judge, the Olsons participated extensively in the hearing by eliciting testimony, presenting evidence, and confronting witnesses. Thus, the Olsons received an opportunity to be heard at a meaningful time and in a meaningful manner. Furthermore, no prejudice resulted because the Olsons received sufficient notice of the actions of OCRM such that they were able to obtain a hearing before the ALC providing them the opportunities required by due process. We also agree with the ALC judge the fact that Sims and McCown continued construction of the joint-use dock did not violate the Olsons’ due process rights since, had the Olsons been successful in contesting the matter, the ALC could have ordered the removal of the dock. Accordingly, we find no denial of the Olsons’ due process rights.

Westlaw

SC ST § 6-1-315
Code 1976 § 6-1-315

Page 1



Code of Laws of South Carolina 1976 Annotated Currentness
Title 6. Local Government--Provisions Applicable to Special Purpose Districts and Other Political Subdivisions
Chapter 1. General Provisions
Article 3. Authority of Local Governments to Assess Taxes and Fees

→ § 6-1-315. Limitation on imposition or increase of business license tax.

By ordinance adopted by a positive majority vote, a local governing body may impose a business license tax or increase the rate of a business license tax, authorized by Sections 4-9-30(12) and 5-7-30.

HISTORY: 1997 Act No. 138, § 7.

LIBRARY REFERENCES

Licenses k5.5.
Westlaw Key Number Search: 238k5.5.

C.J.S. Licenses §§ 10 to 12.

Code 1976 § 6-1-315, SC ST § 6-1-315

Current through End of 2007 Reg. Sess.

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END OF DOCUMENT

Westlaw.

SC ST § 5-7-30
Code 1976 § 5-7-30

Page 1



Code of Laws of South Carolina 1976 Annotated Currentness

Title 5. Municipal Corporations

Chapter 7. General Structure, Organization. Powers, Duties, Functions and Responsibilities of All Municipalities

→ § 5-7-30. Powers conferred upon municipalities; surtax for parking spaces.

Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them; the authority to abate nuisances; the authority to provide police protection in contiguous municipalities and in unincorporated areas located not more than three miles from the municipal limits upon the request and agreement of the governing body of such contiguous municipality or the county, including agreement as to the boundaries of such police jurisdictional areas, in which case the municipal law enforcement officers shall have the full jurisdiction, authority, rights, privileges, and immunities, including coverage under the workers' compensation law, which they have in the municipality, including the authority to make arrests, and to execute criminal process within the extended jurisdictional area; provided, however, that this shall not extend the effect of the laws of the municipality beyond its corporate boundaries; grant franchises for the use of public streets and make charges for them; grant franchises and make charges for the use of public beaches; engage in the recreation function; 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 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 an exempt entity is subject to the business license tax; borrow in anticipation of taxes; and pledge revenues to be collected and the full faith and credit of the municipality against its note and conduct advisory referenda. The municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both.

For the purpose of providing and maintaining parking for the benefit of a downtown commercial area, a municipality may levy a surtax upon the business license of a person doing business in a designated area in an amount not to exceed fifty percent of the current yearly business license tax upon terms and conditions fixed by ordinance of the municipal council. The area must be designated by council only after a petition is submitted by not less than two-thirds of the persons paying a business license tax in the area and who paid not less than one-half of the total business license tax collected for the preceding calendar year requesting the designation of the area. The business within the designated area which is providing twenty-five or more parking spaces for customer use is required to pay not more than twenty-five percent of a surtax levied pursuant to the provisions of this paragraph.

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LAWRENCE, SC. 2008 AUG 1 10:01 AM

SC ST § 5-7-30
Code 1976 § 5-7-30

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HISTORY: 1962 Code § 47-32; 1975 (59) 692; 1976 Act No. 729; 1978 Act No. 409, § 1; 1988 Act No. 495, § 2; 1993 Act No. 171, § 1; 1999 Act No. 113, § 21.

Code 1976 § 5-7-30, SC ST § 5-7-30

Current through End of 2007 Reg. Sess.

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Richland County Business Service Center Response to the Appeal by McEntire Produce

Requirements to Appeal:

The Richland County Business License ordinance sets forth the requirements of a business to make an appeal, Section 16-18. These are:

- the appeal must be filed with the license official within ten (10) calendar days after the payment of the assessment,
- the notice of appeal must be in writing with the reasons for the appeal stated, and
- the appeal must be accompanied by an administrative fee.

The business has has not met these requirements.

- The date of the postmark of the envelope containing the payment of the business license fee (did not include the payment of penalties) is June 4th. This envelope also contained the notice of appeal letter. See a copy of the notice of appeal letter, check stub (amount redacted), and the envelope attached.
- The date of the postmark of the envelope containing the payment of the business license penalties (which completed full payment) is June 11th. See a copy of the check stub (amount redacted) and the envelope attached.
- The administrative fee of \$25 was paid on June 19th. Although this administrative fee was paid within the ten days of the payment of the penalty, on June 11th, it was *not* paid within ten calendar days of the notice of appeal letter on June 4th. See the copy of the administrative fee receipt attached.
- The intent of the time limit for appeals is to have a defined period of time in which a business may submit an appeal, i.e., ten calendar days. The total period of time in which all components of the appeal were submitted by the business was fifteen (15) calendar days, from June 4th, when the notice of appeal was submitted, to the payment of the administrative fee on June 19th.

Appeal within Scope of Appeals Board:

The Richland County Business License ordinance establishes what conditions a business may make an appeal to the Business Service Center Appeals Board, Section 16-18. These include businesses that dispute:

- a final assessment,
- charge backs from an audit,
- denial of a business license, and/or
- intent to revoke a business license.
- The business is appealing something else. _____

This purpose of the appeal is is not within the scope of the Appeals Board to consider.

The reasons for the appeal of the final assessment are addressed below:

Issues and Responses:

(9) [The increase in the business license fee] has got to be an error.

The business license fee that is charged to this business is consistent with the fee that is set forth in the Business License Fee Schedule and was established by the business license ordinance in Section 16-5, Classification and Rates, for establishing business license rates.

The NAICS code for this business, as indicated on the business’ renewal form, is 424480, described as “Fresh Fruit and Vegetable Merchant Wholesalers.” This NAICS code was self-reported by the business and has not been disputed by the business.

This NAICS code is given Rate Class 1 in the Business License Fee Schedule. The business license fee was calculated according to the rate specified for this type of business, which is:

| | |
|---------------------------------------------------------------------------|-----------------|
| Rate Class 1 for NAICS Codes starting with 42, Wholesale Trade businesses | |
| On the first \$2,000 | \$20.00 |
| Each additional \$1,000 | \$1.00/thousand |

Any revenue reported over one million dollars shall have declining rates applied to each million dollars after the first million dollars, as set forth in the Business License Fee Schedule. This declining rate schedule is shown below:

Declining rates apply in all classes for gross income over
\$1,000,000.00

| Gross Income (In Millions) | Percent of Class Rate for each additional \$1,000 |
|-------------------------------|------------------------------------------------------|
| 0.00 – 1.00 | 100% |
| 1.01 – 2.00 | 95% |
| 2.01 – 3.00 | 90% |
| 3.01 – 4.00 | 85% |
| 4.01 – 5.00 | 80% |

| | |
|--------------|-----|
| 5.01 – 6.00 | 75% |
| 6.01 – 7.00 | 70% |
| 7.01 – 8.00 | 65% |
| 8.01 – 9.00 | 60% |
| 9.01 – 10.00 | 55% |
| Over 10.00 | 50% |

The rate for this business was calculated according to this schedule.

The tool used to determine the business license fee is the Business Service Center software, which uses this rate to calculate the fee. There is no user interaction in this calculation, thereby avoiding human error. The software was tested extensively prior to implementation to ensure accuracy.

Additionally, city and county councils are authorized to change rates as they deem appropriate. The Richland County Council changed the business license rate schedule on July 24, 2007 to standardize the rate schedule format with the business license rate schedules of cities and counties across South Carolina.

(10) This [increase] clearly is an unconstitutional taking without justification.

Making the determination that an increase in the business license fee is an unconstitutional taking without justification is a constitutional issue and is not within the scope of the Business Service Center Appeals Board. While the Board may hear an appeal on any basis, any relief provided on this basis must be subsequent to such a determination by a body qualified to make that determination.

The right of governing bodies to charge business license fees as a privilege of doing business, with the measure of the privilege being the business’ gross receipts, and applied to those in business for themselves, has been upheld by courts in *Hay v. Leonard (1948)* and *Carter v. Linder (1990)*.

South Carolina Code Section 4-9-30(12) authorizes counties to charge uniform business license taxes on businesses in the county but outside the corporate limits of a municipality.

The issue of justification is addressed below:

Councils, whether municipal or county, are not required to provide *any* justification for the rates they set for business license fees.

However, they do have the responsibility to ensure that the rates that are set are “reasonable.” Therefore, this response will be related to the issue of “reasonableness.”

In the court case *US Fidelity and Guaranty Co. v. City of Newberry (253 SC 197, 169 S.E. 2d 599(1969))*, the court held,

“If different rates are to be charged for different classifications, it necessarily follows that the ...council must use its judgment and set the different rates to be

collected. In deciding whether the tax is reasonable, it has been held that the reasonableness is largely within the discretion of the ... council.”

The court further added in this case,

“One can only speculate on the question of reasonableness by comparison. Reasonableness must be determined by the factual situation involved. It will be assumed, the contrary not being shown, that the council had all facts relative to each classification, including problems and ... expenses brought about by the business in the various classifications.”

Consequently, according to the 2008 Business License Handbook produced by the Municipal Association of SC’s Business Licensing Officials Association, “the mere fact that the rate charged a company is several times that of businesses in other classifications does not entitle the company to relief.” (pg. 6)

Richland County Council exercised its right to adjust the County’s business license rates on July 24, 2007 by amending the County’s business license ordinance to revise the business license fee structure to be consistent with business license fee structures in cities and counties across South Carolina. This new fee structure has been successfully defended by other SC cities and counties in judicial actions.

(11) This [increase] clearly is an unconstitutional taking without due process.

Making the determination that an increase in the business license fee is an unconstitutional taking without due process is a constitutional issue and is not within the scope of the Business Service Center Appeals Board. While the Board may hear an appeal on any basis, any relief provided on this basis must be subsequent to such a determination by a body qualified to make that determination.

The right of governing bodies to charge business license fees as a privilege of doing business, with the measure of the privilege being the business’ gross receipts, and applied to those in business for themselves, has been upheld by courts in *Hay v. Leonard (1948)* and *Carter v. Linder (1990)*.

South Carolina Code Section 4-9-30(12) authorizes counties to charge uniform business license taxes on businesses in the county but outside the corporate limits of a municipality.

Conclusion:

The County recommends that the Business Service Center Appeals Board:

- dismiss the appeal due to not meeting the requirements of an appeal.
- dismiss the appeal due to the reasons for the appeal not being within the scope of the BSC Appeals Board.
- uphold the decision of the Business Service Center for the reasons provided here.

**ATTACHMENT A:
VERBATIM MINUTES RELATING TO THE
McENTIRE PRODUCE APPEAL HEARING**

BSC APPEALS BOARD MEETING
September 29, 2008

[Present: Rhonda Willis, Patrice Viton, Teri Salane, William Quattlebaum, William West]

Called to order: 8:58 a.m.

MS. DAVIS: Okay, we'll go on get started. Elizabeth McLean overslept, so she's on her way. We'll go on and get started if you're comfortable with that? And there is one item on the Agenda, which is the next to last item, so hopefully by the time we get to that, she'll be here. If not, then ya'll can decide whether, in fact, we don't even have a copy of that yet, so we can't consider that until she gets here, or postpone it for another meeting or so or do it by email or something along those lines. For you two fellows who don't know me, I'm Pam Davis. I'm the Director of the Business Service Center and we'll go on and get started. Would you like to call the meeting?

CHAIRMAN WEST: I guess we're called to order. One item I would like to amend on the Agenda is at Item Number Four. I have drafted a letter yesterday evening to Joseph McEachern and the Board concerning those items we discussed at the prior meeting and we'll, I'll circulate it and we can discuss it and ya'll can edit it over the next several days or so. I guess the first order is to adopt the Minutes of the meeting of August 28th as mailed to us earlier. Do I have a Motion? Or any corrections?

MS. DAVIS: Hopefully future meeting Minutes won't be quite so lengthy as this one was.

CHAIRMAN WEST: I must say I think we copied down everything.

MS. SALANE: Yeah. I move the approval of Minutes.

MS. VITON: Second.

CHAIRMAN WEST: Any opposed? Any for?

[Approved: Willis, Viton, Salane, Quattlebaum, West]

CHAIRMAN WEST: Alright, the approval of the Minutes passes five to nothing. Item number Three, the Appeals Hearing for McEntire Produce.

TESTIMONY OF BARRON GRIER:

MR. GRIER: It is alright to sit or -

CHAIRMAN WEST: Well, certainly feel free to sit.

MR. GRIER: Okay.

CHAIRMAN WEST: I think, does someone have my swear to tell the whole truth and nothing but the truth and -

MR. GRIER: Well, I'm not a witness; I'm a lawyer here, okay.

CHAIRMAN WEST: We expect that out of lawyers, too, though.

MR. GRIER: I have Buddy McEntire with me. My name is Barron Grier. I thank ya'll for allowing us to be here today and for giving us the time because we had to miss the last one because I had to be in court. So, there are two prongs to my remarks today; one of which is legal that I'll get to kind of last. But the other is practical and, and common sense and I'm gonna start with that. First I'd like for you to know a little bit about my client Buddy McEntire. He, he runs McEntire Produce. His father started that

as a tomato, little stand out at the Farmer's Market back in the day. And Buddy inherited that little stand and has brought it up to a tremendous, good business. He now employs 300 people in this county and he has in a, state trucks, 18-wheelers that go all the way across the country. But I tell you that just to tell you a little background about him. Mr. McEntire kind of changed my life and I want to tell you about that. Buddy and I graduated from high school the same time and I was a young lawyer and he called me up and said that he had been charged with a very minor problem where he could be fined \$50.00 and he said Mr., he said, "Barron I want to fight that because I'm not guilty." And I said, "Oh, Buddy, \$50.00, you know, it's gonna cost you \$2,000.00 to fight the thing even through the trial level, much less appeals." He said, "I don't care about the cost, I'm not guilty." So we went down and tried the case and the jury found him not guilty, but it taught me a lesson about integrity. Sometimes you have to fight things over the principle as much as anything else in your life. And that's why we're here today. Now we are talking real money, but we're not talking millions. But Buddy didn't get to be where he is, employing 300 people, by not having integrity. As a matter of fact, almost all of my friends whose children graduated from high school and some from college that couldn't get jobs, now work for Buddy McEntire. And if he doesn't have a job for them, he creates one for them and there's nothing that builds up integrity more than having a job. And short of health problems, I cannot think of anything worse than not having a job and he provides that. Now why, what does that got to do with why I'm here today? It has everything to do with it. Mr. McEntire has been charged a business license in the past, at late as 2007 for \$480.00. Now why was it so cheap? It was so cheap because 99.9% of his business is out of state, over which this Body has no

jurisdiction. The Interstate Commerce Commission deals with that, not this Body. That's real important. For some reason and unbeknownst to Buddy or anybody in his organization, his tax went from \$480.00 to almost \$35,000.00 in 2008, without notice, without an opportunity to be heard, without an opportunity to appear before any body, without an opportunity to present witnesses, without an opportunity to show that the County Council had no authority to do that. Now the county is bound by the law to only exercise the privileges and authorities that's given to it by the Legislature. The Legislature gives the county to right to assess taxes, and that's what license fees are, or to raise rates. This is not a rate increase. What happened here was the withdrawal of the exemption from out-of-state dealings. Those are governed by the Federal Government, they're governed by PACA, Perishable Agricultural Commodity Act. This county can only tax the business it does in the State of South Carolina. So this exemption is illegal. So, or withdrawing the exemption is illegal because that's what's required by Interstate Commerce. Now, aside from the legalities, and there are Constitutional issues because, you know, due, basic due process requires that you have notice, that you have the opportunity to be heard, that you have the opportunity to confront witnesses against you, and to present evidence on your side. None of that was done. Where the County Attorney is so confused is in his letter to you all, he is saying that this was a rate increase. In no way was it a rate increase. It was a withdrawal of an exemption protected by Federal Law. And it's wrong, and I think that's what I'm here to tell you more than anything else, it's wrong. You cannot run a business by not being able to factor in and budget for increases such as this. He was planning on \$480.00 to \$500.00. Instead he got hit with \$35,000.00. Now the law does also require that if

you're going to have monumental rate increases, which this wasn't, this wasn't a rate increase, don't get confused, but the law requires that if you're gonna raise rates that way, then you have to prove that you're providing additional services. There have been no additional services to McEntire, none. The County Attorney also says, "Well, we're just doing what every other county does." Wrong, they're not, no other county has done this. I know California tried to do it because I took a deposition in California and they tried to tax me for the legal fees in California. The courts out there said no we can't do that. You got no jurisdiction. You only have jurisdiction on inter, intrastate. You don't have interstate and this is violating interstate commerce. So, you know, we can fight this thing through the courts, and I'm telling you we will if we have to, but reasonable people should see this and not feel like they've got to protect something that's wrong. Admit that it's wrong, go ahead and if you need to raise rates in the county, that's one thing. You've got all the power to do that, but you would raise them I'm sure in an incremental period. You would not go from \$500.00 to \$35,000.00 in one year. You just wouldn't do it. The County Attorney also said in his letter that other, other counties do the same. Well I'm here to tell you that's not so because I've practiced law in Richland County for 39 years, 38 years and I had a license fee that I thought was too high for a one man law firm. I later moved to a five man law firm and I moved to Lexington County because they don't have one. They have a city license, but if you're not in the municipality of the City of Lexington, there is no business tax. I don't pay a business tax at all and I'm right over there at the Lexington Hospital. I tell you that because here's a man that's taken a nothing business to employing 300 people in this county that pay taxes and he pays a lot of property taxes, believe me. But we're not

talking about just \$35,000.00, he had to pay a \$6,000.00 penalty on top of that, but we're talking about over the next 10 years almost a half a million dollars on taxes, and, and also Mr. McEntire for the first time in his career, excuse me, the second time since he's been in business, is not making a profit this year. And this comes as a double whammy. Now \$38,000.00 might not sound like a lot of money to a big outfit, but you understand all of this is based on gross income, not net, which I've never understood anyway how that's even legal. But the Supreme Court has said it's legal, so until we get them to change the law, that's it. But how is that legal? I run through my office millions of dollars for clients every year. I don't make millions. Now what if I was taxed on the millions of dollars that I run through my office for my clients? I'd be out of business. He gets a very small percentage of net income. If he didn't everybody here would be out trying to compete with his business. He doesn't make millions of dollars. He bills millions of dollars. He doesn't make millions of dollars and for some reason, and I'll never understand it, nobody can show me how it's right to be taxing somebody on their gross sales. But as I said, 99% of them are out of state, which cannot be taxed by Richland County. So, you know, like I said we can go through the court system, but I'm hoping that this group right here will just see that it's wrong. It's not right to our fellow citizens. I can guarantee you Buddy McEntire would never recommend that anybody come to Richland County to open up a business. Had he known this, he would have never built his building here. He'd have built it in Lexington County and that's terrible, that's terrible for this community. It's terrible for this county; it's shooting yourselves in the foot. So I ask you, look at it hard, look at what's been done, do the right thing. It's pretty simple, do the right thing. Thank you very much. Thank you for hearing me.

CHAIRMAN WEST: Any, any, just, well, you might as well sit down.

MR. GRIER: Alright.

CHAIRMAN WEST: Any questions from the Board? Yes, ma'am.

MS. SALANE: I have a question. Mr. Grier, would you address the timing of the filing of the appeal please, sir?

MR. GRIER: We filed the appeal at, and we paid the rate increase, I mean, the penalty, we made the payment on June 4th. We paid the penalty on June 11th, which I understand is well within the 10-day rule and frankly didn't know about the \$25.00 fee. That was something though that somebody called to our attention after the fact, but we sent that in on June 19th. So that was still within eight days of paying the penalty.

CHAIRMAN WEST: Could you elaborate as to the nature of the business? I mean, I know obviously you're, you're selling produce.

MR. GRIER: Yes, sir.

CHAIRMAN WEST: But, I mean, do you buy the produce from out of state and sell it out of state? Do you, and then the revenue is just channeled through here?

MR. GRIER: Yes sir. We buy, Buddy, you can answer it, but I think we, we buy like 90% from Florida, Georgia, California and we sell it all over the Eastern Seaboard, but very little in South Carolina.

CHAIRMAN WEST: How do you buy this produce?

MR. GRIER: They should -

CHAIRMAN WEST: In other words, in other words do you have agents out in Florida, in Georgia?

MR. GRIER: No, we -

CHAIRMAN WEST: Or is it basically long-time contacts with Mr. McEntire?

MR. GRIER: That's done primarily by the buyers who buy it over the telephone and they ship it here to us, we put it on our trucks and move it out, ship, ship it out. And we do things to the products and then send, send it out to North Carolina, Virginia, all up and down the Eastern Seaboard.

CHAIRMAN WEST: So you do actually ship the product through Richland County?

MR. GRIER: It is, it comes in here and we process it and ship it out.

CHAIRMAN WEST: So there's no incidences where you would buy it in Florida and ship to Alabama?

MR. GRIER: Now that I don't know. Buddy, could you answer that?

TESTIMONY OF BUDDY MCENTIRE:

MR. MCENTIRE: Not at this time, but we do, you know, we, some of where it comes from, theirs is about a month and half or two months, we do buy local in seasons here in South Carolina. But we primarily buy from, you know, where we go, where [inaudible] and at this time we're not doing that. We're not brokering that you're talking about where we buy produce and send it somewhere else and then it comes through here and is charged a fee. We actually take possession of the product.

MR. GRIER: But am I correct that 2%, or one percent of your business is sold here in South Carolina?

MR. MCENTIRE: Very little. Very little.

CHAIRMAN WEST: You made a reference to apparently a Federal Interstate Commerce Legislation, PACA I believe was your reference?

MR. GRIER: Yes, yes, sir.

CHAIRMAN WEST: What -

MR. GRIER: PACA controls all agricultural dealings between the partners and they have exclusive jurisdiction that is, trumps any state or local jurisdictions because, you know, the Federal Government has the exclusive rights to that. And even, even if we have a dispute with the grower and everything else, they'd have to, you can't go to our courts, it has to go to PACA.

CHAIRMAN WEST: Meaning it goes to a Federal Administrative Law Judge? Or a Federal Judge?

MR. GRIER: Yes, yes, sir it does.

CHAIRMAN WEST: Since I presume PACA does not have its own judicial branch?

MR. GRIER: Actually they do, they have their in-house arbitrators and they arbitrate it first, and then if there's an appeal, it goes through the Federal Court.

MR. QUATTLEBAUM: Now your position is though the business license is not legitimate in that PACA has to rule on it or what?

MR. GRIER: Well, they, they have exclusive jurisdiction over all things that are interstate, not intrastate. So you have the exclusive jurisdiction intrastate, Richland County does.

MR. QUATTLEBAUM: But interstate, they do not?

MR. GRIER: Interstate they do not.

MR. QUATTLEBAUM: Well, wouldn't that apply to all tax laws though? I mean, where, where are you drawing your distinction between this business license and income tax?

MR. GRIER: No the agricultural, the agricultural, yeah, well as you know, the agricultural has special laws.

MR. QUATTLEBAUM: Right.

MR. GRIER: And, and that's why, just like the insurance industry is regulated by the insurance industry, like you can't sue the insurance company for certain things, you've got to go through the Insurance Department because they have exclusive jurisdiction? Well, that's the same way it works with PACA, they have the exclusive jurisdiction.

MR. QUATTLEBAUM: And you, but your, your position is, is that this, this removal of the agricultural exemption is not, was not justifiable or, or allowed because of PACA? Is that your position?

MR. GRIER: And the agricultural laws.

MR. QUATTLEBAUM: And the agricultural laws?

MR. GRIER: And, and Interstate Commerce, it violates Interstate Commerce, which is a Constitutional issue.

MR. QUATTLEBAUM: Right.

MR. GRIER: Because -

MR. QUATTLEBAUM: I mean, I think you -

MR. GRIER: - and plus you've got, those getting there, the, excuse me for interrupting.

MR. QUATTLEBAUM: That's alright. I, I was just gonna say I think that, looking at your argument about the, you're saying it's within, it's within the county's powers to increase the rate, but your taxes went up because of the removal of the agricultural exemption?

MR. GRIER: Precisely, precisely. That's exactly right. And I think if ya'll increase the rates, which you have the power to do, you wouldn't increase from a 100% in one year? I mean, I doubt seriously if you would do that. It would be bad business and that's what happened here and this is a 100-fold increase.

CHAIRMAN WEST: Well, unfortunately this, all this legislation and increase formed before we were ever constituted to the Body.

MR. GRIER: Yes, sir. Well, I'm not blaming you, I'm just appealing to you. I think ya'll are the right group to deal with this though. I hope so. [Laughter]

CHAIRMAN WEST: Suffice it to say, we would like to be.

MR. GRIER: Yes, sir.

MS. VITON: But we're not, unfortunately we're not. Our mandate requires that we not try to interpret or change what Council has put in place. And so since they removed the exemption, Council would be the one that would have to reinstate the exemption. We don't get the opportunity to say they were wrong in what they did.

MR. GRIER: So what is ya'll's role?

MR. QUATTLEBAUM: We're still defining that.

CHAIRMAN WEST: We're working very diligently.

MR. GRIER: Do, do, do you make recommendations to them?

CHAIRMAN WEST: We intend to do that, yes, sir. I mean, we, we apparently can make decisions with regard to the classification of your business into which category it would fall under the rate. We can make classifications or decisions, I guess as to, what was that?

MR. QUATTLEBAUM: Yeah computations.

CHAIRMAN WEST: Yeah, the computational issues of the tax. In other words if the Business Service Center had just, you know, messed up computationally and you said hey this is, this isn't correct, you know, we could come in and, and fix that so to speak. Unfortunately, we're not, as it, as our charter currently exists, it does not appear that we are allowed to address Constitutional issues.

MR. GRIER: Yes, I knew that. Only the courts can do that anyway, but here's my problem. Before we can get into the courts, the courts require us to exhaust administrative remedies. So, you know, even if you would say that we can't deal with the Constitutional issue, I need that in writing that I made the argument and that you can't deal with it. That sounds silly doesn't it?

CHAIRMAN WEST: Right, right, I do understand.

MS. SALANE: Right.

MR. GRIER: But I've got to have that before I can get into the court.

MS. SALANE: Or otherwise they will send you back.

MR. GRIER: That's right, that's, that's right.

MS. SALANE: You see where we are?

MR. GRIER: I do, but I'm hoping you can make recommendations because otherwise I have wasted your time and mine.

MR. QUATTLEBAUM: We're in the process of trying to have a dialogue with County Council right now as far as what our role should or should not be or how it should or should not be expanded.

MR. GRIER: I understand, I understand. Well, I certainly appreciate ya'll's time this morning.

MS. VITON: I do believe that you have an opportunity to have a hearing in front of Council. Is that correct?

MS. DAVIS: Um-hum (affirmative).

MR. GRIER: After this hearing?

MS. VITON: After this hearing.

MR. GRIER: Okay, so -

MS. VITON: So you still have another opportunity before you actually have to go to court.

MR. GRIER: Okay, good, that's good, but if ya'll make recommendations, I hope they will be favorable that will certainly go a long way to help us get this resolved. Thank you so much.

MS. VITON: Yes, sir, thank you.

MR. GRIER: I appreciate your time.

CHAIRMAN WEST: Well hang on, hang on once second. I guess we do need to have a formal vote.

MR. GRIER: Oh, okay.

CHAIRMAN WEST: Do I have a motion concerning the appeal to reject or accept or deny?

MS. VITON: I'll make a motion to deny.

CHAIRMAN WEST: A second?

MS. WILLIS: I second.

MR. QUATTLEBAUM: I second.

MS. SALANE: Do we have our, I think we've been encouraged to state a basis for our appeal denial a little bit more than just, you know, a one line. So I, I guess I would just encourage us to say that we're denying the appeal because of the, the appeal has been made without a basis upon which we can render a decision in favor of the appellant, and we have limited authority. And I, I guess on the technical part that they didn't meet the requirements; that's the simplest thing because of the timing of the check and all that kind of stuff. So, at least that's the county's position.

MR. QUATTLEBAUM: But you did pay, but you did pay the business license tax.

MR. GRIER: And the penalty.

MR. QUATTLEBAUM: And the penalty, timely?

MR. GRIER: Yes, well actually we paid the \$25.00 fee timely if, if you look at it from the date of the penalty.

MR. QUATTLEBAUM: Right, the penalty payment. I believe, at least would like to put into the record, just kind of a new process for businesses and, and that I think some leeway should be given as far as the timing.

MS. SALANE: Right, the timing, okay.

CHAIRMAN WEST: And there were some doubts as to the efficacy of its publication and, and, and -

MS. SALANE: I, right, I, I, I remember that, I remember.

CHAIRMAN WEST: - and putting out to the community, the business community.

MR. QUATTLEBAUM: So I hate to just deny their request because they weren't timely.

MS. SALANE: Okay, we'll give it more substance than that.

CHAIRMAN WEST: I'd, I'd, I would, can we amend your, your thing to deny it based on the, the, that they've asked us to, to consider Federal Government Regulations which is outside the scope of our field?

MS. VITON: Scope of limitations.

MS. SALANE: That's perfectly fine.

CHAIRMAN WEST: Okay. Alright, we have a motion to deny the appeal based on the fact that it was submitted requesting consideration of governmental regulations, Federal Government Regulations, with which we are not familiar or capable of making a decision. Do I have a second?

MS. VITON: I second.

CHAIRMAN WEST: For? Or actually voting to reject?

[Approved to deny: Willis, Viton, Salane, Quattlebaum, West]

CHAIRMAN WEST: Okay, five to nothing rejecting the appeal for the above-stated reason.

MR. GRIER: Alright.

CHAIRMAN WEST: Sorry, sir.

MR. GRIER: Thank you so much for your time.

MR. QUATTLEBAUM: Thank you.

MR. GRIER: Have a good day.

MS. SALANE: Thank you, have a good day.

CHAIRMAN WEST: We're getting better at this I suppose.

MS. SALANE: Efficiency wise.

Richland County Council Request of Action

Subject: Amendment to County Holiday Schedule

A. Purpose

Council is requested to consider an ordinance that would amend the county's holiday schedule.

B. Background / Discussion

The Richland County Code of Ordinances authorizes a county holiday on Christmas Day and either Christmas Eve or the day following. In June 2008, Richland County Council voted to amend the Richland County Holiday Schedule to change the originally scheduled Christmas Holiday from Christmas Eve and Christmas Day (Wednesday 24th and Thursday 25th) to Christmas Day and the day following (Thursday 25th and Friday 26th), thus giving employees a four-day weekend over the Christmas holiday.

During the motion period on November 18, 2008, Councilman Norman Jackson made a motion to amend the county's holiday ordinance to include language authorizing an additional holiday in the event that the Governor declares Christmas Eve a holiday for state employees. According the South Carolina Association of Counties Survey, six other counties (including Lexington) follow the state's lead when declaring Christmas Eve a county holiday. In years when the Governor makes such a declaration, this would add one additional day to the county's holiday schedule and increase the total number of holidays from 11 to 12. A draft ordinance is attached.

C. Financial Impact

In years when the Governor declares Christmas Eve a holiday, this ordinance would result in one fewer business day per year. There would be no direct increase in cost for non-public safety employees. Closing county offices on this day may also result in marginal cost savings for utilities and other operating expenses.

Section 2-434(c) of the Richland County Code of Ordinances states that "Employees who, for reasons in the best interest of the public, are required to work on a holiday shall, in accordance with federal law or resulting regulations, be paid for or given compensatory time off in lieu of the holiday as may be required." Such employees (including Sheriff's Department, Emergency Services and Detention Center employees) would be eligible for an additional day's pay in lieu of the holiday (resulting in a financial impact to the county), or compensatory time off.

D. Alternatives

1. Approve the amendment to the ordinance.
2. Do not approve the amendment.

E. Recommendation

This request is at the discretion of county council.

Recommended by: Staff

Department: Administration

Date: 11/13/2008

F. Reviews

Finance

Reviewed by: Daniel Driggers

Date: 11/19/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: No recommendation.

Legal

Reviewed by: Larry Smith

Date: 11-20-08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Council's discretion.

Administration

Reviewed by: J. Milton Pope

Date: 11-20-08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Policy decision of Council.

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. _____-08HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION; ARTICLE VIII, PERSONNEL REGULATIONS; DIVISION 6, CONDITIONS OF EMPLOYMENT; SO AS TO AMEND THE COUNTY'S HOLIDAY SCHEDULE.

Pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, BE IT ENACTED BY THE COUNTY COUNCIL FOR RICHLAND COUNTY:

SECTION I. The Richland County Code of Ordinances, Chapter 2, Administration; Article VII, Personnel Regulations; Division 6, Conditions of Employment; is hereby amended to read as follows:

Sec. 2-434. Holidays.

(a) *Designated.* The following days shall be designated as nonworking holidays for county employees: New Year's Day, Martin Luther King Jr. Day, George Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day (and the Friday following), Christmas Day (and ~~Christmas Eve~~ or the next business day following). Christmas Eve shall be designated a nonworking holiday for county employees if the Governor declares a holiday for state government employees.

(b) Whenever a holiday falls on a Saturday, the preceding Friday shall be observed, unless the preceding Friday shall also be a holiday, in which case the next business day shall be observed. If a holiday falls on a Sunday, the following Monday shall normally be observed as a holiday, unless the following Monday shall also be a holiday, in which case the following Tuesday day shall be observed.

(c) Employees who, for reasons in the best interest of the public, are required to work on a holiday shall, in accordance with federal law or resulting regulations, be paid for or given compensatory time off in lieu of the holiday as may be required.

(d) In order for any county employee to be paid for holidays as provided in this section, such employee shall be required to work the day before and the day after said holiday, or shall be on annual leave, sick leave, or be duly excused from work by proper authority.

SECTION II. Severability. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION IV. Effective Date. This ordinance shall be enforced from and after _____.

RICHLAND COUNTY COUNCIL

BY: _____
Joseph McEachern, Chairperson

ATTEST THIS THE _____ DAY

OF _____, 2008

Michielle R. Cannon-Finch
Clerk of Council

Richland County Council Item for Discussion / Information

Subject: Business Service Center Appeals Board – Letter to Council

A. Purpose

The Business Service Center Appeals Board wishes to express some of its concerns to the County Council regarding its authority to render decisions in appeals which are brought before them.

B. Background / Discussion

The Business Service Center Appeals Board was established to hear appeals relating to business licenses by businesses. The Appeals Board would serve as the first step for businesses wishing to make an appeal. Any business wishing to appeal the decision of the Board may appeal to the County Council.

The Business Service Center Appeals Board serves as the Appeals function in the business license ordinance. The Board may hear appeals resulting from any person aggrieved by a final assessment, charge backs from an audit, or a denial of a business license by the License Official.

In that capacity and as a finder of fact, the Appeals Board has the following responsibilities:

- Adopting procedures relating to the execution of the Appeal's Board function;
- Receiving written appeals from businesses;
- Holding meetings to receive testimony by the business, the Business Service Center official, and any other official approved by the Appeals Board;
- Reviewing and analyzing the information presented in the testimonies provided;
- Making a factual conclusion as to the issue in question based upon the review and analysis; and
- Writing a formal determination regarding the decision made as to the issue in question.

Following appeals by several businesses, the Appeals Board has some concerns regarding its authority to respond to the appeals it is authorized to hear.

The letter from the Appeals Board Chairman, William West, is attached.

C. Financial Impact

There is no financial impact, positive or negative, to the expression of the Board's concerns. However, there could potentially be financial impact to the County if the Board is granted authority to exercise discretion in matters that impact business license fees and/or penalties paid by businesses.

D. Alternatives

1. Receive the letter from the Appeals Board as information.
2. Identify how the County Council would like to specifically address each issue raised.

E. Recommendation

Council is recommended to receive the letter from the Business Service Center Appeals Board as information. Any action is at council's discretion.

Recommended by: Pam Davis, Director Dept: Business Service Center Date: 09/13/08

William C. West III, CPA
1441 Main Street, Suite 800
Columbia, SC 29201

October 13, 2008

The Honorable Mr. Joseph McEachern
Chairman Richland County Council
2020 Hampton Street
Columbia, SC 29202

Re: Richland County Business Services Appeals Board

Dear Mr. McEachern:

On behalf of the Richland County Council Business Services Appeals Board and as its chair, we would appreciate the opportunity to verbally report to County Council our concerns after our first round of appeals. More specifically, we wish to address with County Council its purpose in creating us and its' collective thoughts on the power, if any, with which it intended to invest our board. Our initial deliberations and adoption of our operating rules have raised five particular issues in the minds of our members with regard to the ordinance giving rise to the Business License fee and our ability to hear and decide appeals which include:

1. The strict ten day appeal limit as specified in the ordinance which we believe is too short and the application of which we have waived in our initial round of hearings.
2. The lack of reasonable cause exception to waive any penalties, apparently, based upon advice of our counsel, we could not waive a penalty even if actions of county officials contributed to its imposition.
3. The definition of Gross Receipts and the lack of a reduction for like-kind exchanges for retail businesses which engage in those types of transactions resulting in a disproportionate tax on those businesses versus retail establishments that do not engage in like-kind exchanges.
4. The definition of Gross receipts as it is applied to a business engaged in Inter-State Commerce and the potential for inequitable tax results for businesses in potential violation of the US Supreme Court's holding in Complete Auto Transit.
5. The Appeals Board inability to grant relief for any reason other than classification or computation errors thereby serving as another administrative hurdle to the appellant rather than providing a forum for the resolution of legitimate business tax complaints. County Council does not need a collection of CPAs, an Attorney, and a college professor to just to stand between them and an aggrieved taxpayer just to say no. As it stands now, we simply serve to draw out the administrative process and increase the costs to businesses in any attempt they may make to obtain relief.

Accordingly, we would appreciate the opportunity to discuss these matters more fully with you in an attempt to craft a more useful and functional appeals process and board and a more fair and equitable tax system.

Sincerely Yours,



William C. West III, CPA
Chair