BUSINESS LICENSING Q AND A WITH DANNY

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October 25, 2013

SECTION 61-4-10. Nonalcoholic beverages defined.

The following are declared to be nonalcoholic and nonintoxicating beverages:

(1) all beers, ales, porters, and other similar malt or fermented beverages containing not in excess of five percent of alcohol by weight;

(2) all beers, ales, porters, and other similar malt or fermented beverages containing more than five percent but less than fourteen percent of alcohol by weight that are manufactured, distributed, or sold in containers of six and one-half ounces or more or the metric equivalent; and

(3) all wines containing not in excess of twenty-one percent of alcohol by volume.

HISTORY: 1996 Act No. 415, Section 1; 2007 Act No. 14, Section 1; 2007 Act No. 107, Section 2.

SECTION 61-6-20. Definitions.

As used in the ABC Act, unless the context clearly requires otherwise:

(1)(a) "Alcoholic liquors" or "alcoholic beverages" means any spirituous malt, vinous, fermented, brewed (whether lager or rice beer), or other liquors or a compound or mixture of them by whatever name called or known which contains alcohol and is used as a beverage, but does not include:

(i) wine when manufactured or made for home consumption and which is not sold by the maker of the wine or by another person; or

(ii) a beverage declared by statute to be nonalcoholic or nonintoxicating.

CHAPTER 33.

ALCOHOLIC BEVERAGES TAXES

ARTICLE 1.

GENERAL PROVISIONS

SECTION 12-33-20. Taxes shall be in lieu of certain other taxes and licenses.

The license and excise taxes provided in this chapter for the privilege of engaging in the business of manufacturing and selling alcoholic liquors shall be in lieu of all other taxes and licenses, State, county and municipal, except property, State income and corporation license taxes.

HISTORY: 1962 Code Section 65-1252; 1952 Code Section 65-1252; 1945 (44) 337.

§ 12-21-1080. Taxes shall be in lieu of all other taxes; exception.

Except as provided in §§ 12-21-1310 to 12-21-1350, the taxes provided for in this article shall be in lieu of all other taxes and licenses on beer and wine of the State, the county or the municipality and shall include licenses for its delivery by the wholesaler.

HISTORY: 1962 Code § 65-736; 1952 Code § 65-736; 1942 Code § 2557-7; 1933 (38) 287, 576; 1934 (38) 1439; 1935 (39) 268; 1960 (51) 1779.

REPEALED IN JULY 2001

CASE NOTES

Construction 1

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1. Construction

A municipal ordinance assessing a 1 percent tax on the gross proceeds derived from the sale of food and beverages in establishments that maintain a license for on-premises consumption of alcohol, beer or wine was not preempted by or inconsistent with the State beer, wine, and alcohol tax statutes; since these statutes essentially deal with taxes to be paid by wholesalers or importers of beer and wine, or license taxes to be paid for the privilege of selling alcoholic liquor in the state, they do not address taxes or fees on food or beverage sales in establishments holding an on-premises beer, wine, and/or liquor license. Hospitality Ass'n of South Carolina, Inc. v. County of Charleston (S.C. 1995) 320 S.C. 219, 464 S.E.2d 113.

(A26, R15, S339)

AN ACT TO AMEND ARTICLE 7, CHAPTER 21, TITLE 12, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-21-1085, SO AS TO PROVIDE WITH CERTAIN EXCEPTIONS THAT THE TAXES PROVIDED FOR IN ARTICLE 7 ARE IN LIEU OF ALL OTHER TAXES ON BEER AND WINE.

Be it enacted by the General Assembly of the State of South Carolina:

Taxes on beer and wine

SECTION 1. Article 7, Chapter 21, Title 12 of the 1976 Code is amended by adding:

"Section 12-21-1085. Except as provided in Section 12-21-1035 and Article 9, the taxes provided for in this article are in lieu of all other taxes and licenses on beer and wine of the State, the county, or the municipality, except the sales and use tax or the local hospitality tax, and include licenses for its delivery by the wholesaler."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 17th day of March, 2005.

Approved the 23rd day of March, 2005.

SECTION 12-21-1050. Payment of tax; penalty for nonpayment; extensions of time.

The tax prescribed in this article must be paid by requiring each wholesaler to make a report to the department, in the form the department prescribes, of all beer and wine sold or disposed of within this State by the wholesaler and to pay the tax due thereon not later than the twentieth of the month following the sale of beer or wine. Any wholesaler who fails to file the report or to pay the tax as prescribed in this section must pay a penalty of one quarter of one percent of the amount of the tax due and unpaid or unreported for each day the tax remains unpaid or unreported. The penalty must be assessed and collected by the department in the manner as other taxes are assessed and collected. The department may grant any wholesaler extensions of time for filing the reports and paying the taxes prescribed in this article and no penalties may be assessed or collected to the extent that the extensions of time are granted.

HISTORY: 1962 Code Section 65-734; 1952 Code Section 65-734; 1942 Code Section 2557-3; 1933 (38) 287, 576; 1934 (38) 1439; 1969 (56) 767; 1971 (57) 709; 1980 Act No. 422; 1983 Act No. 24, Section 3; 1992 Act No. 501, Part II, Section 34B.

SECTION 12-21-1070. Tax on persons importing or receiving beer or wine on which tax has not been paid.

Every person, firm, corporation, club, or association, or any organization or individual within this State, importing, receiving, or acquiring from without the State or from any other sources whatever, beer or wine as defined in Section 12-21-1010 on which the tax imposed by this chapter has not been paid, for use or consumption within the State, shall be subject to the payment of a license tax at the same rates provided in Sections 12-21-1020 and 12-21-1030.

HISTORY: 1962 Code Section 65-735.1; 1955 (49) 329; 1967 (55) 248.

SECTION 12-21-1080. Repealed by 2001 Act No. 89, Section 69, eff July 20, 2001.

SECTION 12-21-1085. Taxes provided for in Article 7 in lieu of all other taxes on beer and wine; exceptions.

Except as provided in Section 12-21-1035 and Article 9, the taxes provided for in this article are in lieu of all other taxes and licenses on beer and wine of the State, the county, or the municipality, except the sales and use tax or the local hospitality tax, and include licenses for its delivery by the wholesaler.

HISTORY: 2005 Act No. 26, Section 1, eff March 23, 2005.

LEXSEE 1964 S.C. AG LEXIS 328

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA

1964 S.C. AG LEXIS 328

March 10, 1964

SYLLABUS:
[*1]

RE: Municipalities -- Tax on Beer and Wine - Tax on Banks - Authority

REQUESTBY:

Mr. Robert H. Stoudemire
Bureau of Public Administration
University of South Carolina
Columbia, South Carolina

OPINIONBY:

Joseph C. Coleman, Assistant Attorney General

OPINION:

You have inquired as to the consistency of two opinions of this Office, one, reported on page 192 of the 1958-59 opinions, holding that a municipality may not impose a license fee on banks, and one, reported on page 145 of the 1960-61 opinions, holding that sales of beer and wine may be included in gross receipts used as a measure of retail business license tax imposed by a municipality.

Banking is an activity or occupation and does not involve the sale or manufacture of a product. Any municipal tax on banks or banking is necessarily a tax on the activity or occupation, and any prohibition against a municipal tax on banks can be nothing other than a prohibition against such a tax on the activity of banking.

The prohibition in our State law against a municipal tax on beer and wine is a prohibition against an additional municipal tax on a product, not an activity. The cases cited in the 1960-61 opinion hold clearly that measurement of [*2] an occupation tax by gross sales of a product does not constitute a tax on the product.

LEXSEE 1967 S.C. AG LEXIS 83

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA

1967 S.C. AG LEXIS 83

August 8, 1967

SYLLABUS:
[*1]

Re: Beer and Wine Tax - Gross Income of Municipal Licensee

REQUESTBY:

Mr. T. Doug Youngblood
Executive Director
S. C. Beer Association
1213 Lady Street
Columbia, S. C.

OPINIONBY:

Joseph C. Coleman, Assistant Attorney General

OPINION:

You have referred to this Office certain correspondence between you and Hon. B. A. Lewis, Clerk of Council, York, S. C., relating to the question of whether or not sales of beer and wine should be included in gross sales used to measure municipal business license fee.

As you know, this Office gave an opinion to the South Carolina Tax Commission on March 28, 1961, (Op. Atty. Gen. No. 1077, p. 145, 1961), a copy of which is enclosed, to the effect that such sales were properly includable in gross sales for purposes of municipal license fees. The opinion and the authorities cited therein have been reviewed since receipt of the correspondence mentioned. Such review revealed nothing that would warrant revision of that opinion.

If you have additional legal authority to support your position in this matter, I shall be happy to receive and read it.

LEXSEE 1967 S.C. AG LEXIS 733

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA

1967 S.C. AG LEXIS 733

November 30, 1967

SYLLABUS:
[*1]

Re: Taxation - Alcoholic Beverages - Municipalities

REQUESTBY:

Honorable Max Holland
City Manager
Rock Hill, South Carolina

OPINIONBY:

Joseph C. Coleman, Assistant Attorney General

OPINION:

You have inquired whether or not municipalities may impose a license on dealers in whiskey, beer, and wine, for the privilege of doing business. Mr. J. N. Caldwell, Jr., Executive Director, Municipal Association of South Carolina, has asked this Office to review its opinion, 1960-61, pp. 145-47, holding that gross receipts from sale of beer and wine may be included in determining privilege license tax of a dealer.

The 1960-61 opinion will be reviewed as time permits and a letter will be directed to Mr. Caldwell when that review has been completed.

It is in order at this time, I think, to point out that Section 65-1252, 1962 Code of Laws of South Carolina, relating to license and excise taxes on manufacturing and selling alcoholic liquors (whiskies) is materially different from provisions of our law imposing a tax on beer and wine.

Without so holding at this time pending further study, it appears that the language of Section 65-1252, read together with the whole of Chapter 16, Title 65, Section 65-1251, et seq., [*2] provides that the privilege tax paid to the State under provisions of Section 65-1261 (whiskey) is in lieu of all other license taxes for the privilege of doing business, and that cities may not impose an additional business license tax on whiskey dealers.

In other words, the question as it relates to beer and wine dealers is not necessarily the same as it relates to liquor dealers. The reason for this is the difference in the statutes imposing State taxes on the different beverages.

LEXSEE 1982 S.C. AG LEXIS 321

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA

1982 S.C. AG LEXIS 321

April 22, 1982

SYLLABUS:
[*1]

SUBJECT: Taxation, County Ordinance, License Tax

SYLLABI: 1. Marion County is prohibited from imposing a business license tax on beer, wine and alcoholic beverages.

2. Other than the restrictions imposed by the provisions of § 61-5-150, Marion County is not restricted as to the use of taxes distributed to it from beer, wine and alcoholic beverages.

REQUESTBY:

TO: William H. Seals, Esq.
Marion County Attorney

OPINIONBY:

Ray N. Stevens, Assistant Attorney General

OPINION:

FROM: Ray N. Stevens, Assistant Attorney General

QUESTIONS:

1. May Marion County impose a business license tax on the sale of beer, wine and alcoholic beverages?

2. May Marion County allocate fifty-six (56%) percent of taxes distributed to it from beer, wine and alcoholic beverages to fund the Marion County Commission on Alcohol and Drug Abuse?

STATUTES: § § 4-9-30, 12-21-1080, 12-33-20, 61-5-130 and 61-5-150, 1976 South Carolina Code of Laws, as amended.

DISCUSSION ON QUESTION 1:

The powers vested in the county by the General Assembly are enumerated in § 4-9-30. Section 4-9-30(12) specifically states that the county has the power to levy uniform license taxes upon persons and businesses within the county with such license tax graduated [*2] according to gross income. However, all of the enumerated powers are "subject to the general law of this State".

The general law of the State of South Carolina imposes restrictions upon the powers of a county to impose taxes on beer, wine and alcoholic beverages. Section 12-21-1080 relating to beer and wine states as follows:

"Except as provided in § § 12-21-1310 to 12-21-1350, the taxes provided for in this article shall be in lieu of all other taxes and licenses on beer and wine of the State, the county or the municipality and shall include licenses for its delivery by the wholesaler." (Emphasis added)

Section 12-33-20 relating to alcoholic beverages states:

"The license and excise taxes provided in this chapter [33] for the privilege of engaging in the business of manufacturing and selling alcoholic liquors shall be in lieu of all other taxes and licenses, State, county and municipal, except property, State income and corporation license taxes." (Emphasis added)

Based on these statutes, a county is prohibited from imposing a business license tax on beer, wine and alcoholic beverages. This conclusion is consistent with the opinion of this office in *1966-67 OAG* [*3] *No. 2229, p. 27,* dealing with the powers of municipalities.

DISCUSSION ON QUESTION 2:

The use of the tax funds received by Marion County from State collection of beer, wine and alcoholic beverages may be restricted by the General Assembly. For example, § 61-5-150 specifies that twenty-five (25%) percent of the twenty-five ($ .25) cents mini-bottle tax imposed by § 61-5-130 is to be distributed to the county and imposes the following restriction:

"* * * to be used for educational purposes relating to the use of alcoholic liquors and for the rehabilitation of alcoholics and drug addicts."

Further, it should be noted that the General Assembly may restrict the amount and use of funds appropriated to the counties from beer, wine and alcoholic beverage taxes on an annual basis under the Appropriations Act.

After a review of the existing law, no restrictions as to use other than those imposed by § 61-5-150 have been found, however as noted, the Appropriations Act may restrict the use of such funds. A review of the 1981 Appropriations Act does not reveal any restrictions upon the use of such funds by the counties. Thus, other than the use restrictions imposed by § 61-5-150, there [*4] are currently no restrictions upon the use of taxes distributed to the counties from beer, wine and alcoholic beverages.

CONCLUSIONS:

1. Marion County is prohibited from imposing a business license tax on beer, wine and alcoholic beverages.

2. Other than the restrictions imposed by the provisions of § 61-5-150, Marion County is not restricted as to the use of taxes distributed to it from beer, wine and alcoholic beverages.

LEXSEE 1995 S.C. AG LEXIS 112

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA

1995 S.C. AG LEXIS 112

October 17, 1995

REQUESTBY:
[*1]

Ms. Charlotte Grassmann
Business License Administrator
Finance Department
City of Beaufort
P.O. Drawer 1167
Beaufort, South Carolina 29901-1167

OPINIONBY:

Robert D. Cook, Assistant Deputy Attorney General

OPINION:

You have noted that "we have the Red Dot/ABC Stores which sell alcoholic beverages and with the appropriate dividers they also sell beer and wine. Then we have the party store which only sells beer and wine." You ask the following question:

can we, the municipality require the Red Dot/ABC Store to carry a local business (privilege) license for revenue generated from beer and wine sales? Can we require a party store selling only beer and wine to carry a local business license?

I am enclosing for your information Opinion No. 82-28 (April 22, 1982) which addressed the issue whether "Marion County [may] impose a business license tax on the sale of beer, wine and alcoholic beverages?" The Opinion noted that Section 4-9-30 authorizes counties to impose a business license tax graduated to gross income but subject to the general law of this State. This provision has its equivalent for municipalities at Section 5-7-30. See, *Crenco Food Stores, Inc. v. The City of Lancaster, South* [*2] *Carolina, S.C. , 457 S.E.2d 338 (1995).*

The Opinion further noted that the general law of the State imposes restrictions upon the power of a county to impose taxes on beer, wine, and alcoholic beverages. We cited to Section 12-21-1080 which provides as follows:

'Except as provided in Secs. 12-21-1310 to 12-21-1350, the taxes provided for in this article shall be in lieu of all other taxes and licenses on beer and wine of the State, the county or the municipality and shall include licenses for its delivery by the wholesaler.'

Also cited was Section 12-33-20 which states:

'The license and excise taxes provided in the chapter [33] for the privilege of engaging in the business or manufacturing and selling alcoholic liquors shall be in lieu of all other taxes and licenses, State, county and municipal, except property, State income and corporation license taxes.'

Accordingly, concluded the Opinion,

based on these statutes a county is prohibited from imposing a business license tax on beer, wine and alcoholic beverages. This conclusion is consistent with the opinion of this office in *1966-67 OAG No. 2229, p.27* dealing with the powers of municipalities. [*3] [also enclosed]

The foregoing Opinion has not been altered or amended by this Office and has not been changed by the General Assembly. *Accord, Crenco, supra* [municipality may not impose business license tax on video poker revenues because it conflicts with general law]. Thus, it is presumed to be correct. Op. Atty. Gen., January 21, 1992 [the absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views therein were consistent with the legislative intent.] Legislative amendment would thus be the municipality's remedy if it chooses to seek it.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

Westlaw
457 S.E.2d 338
318 S.C. 278, 457 S.E.2d 338
(Cite as: 318 S.C. 278, 457 S.E.2d 338)

C

Supreme Court of South Carolina.
CRENCO FOOD STORES, INC., Respondent,
v.
The CITY OF LANCASTER, South Carolina, Appellant.
No. 24233.

Heard March 8, 1995.
Decided April 17, 1995.

Taxpayer protested license fees city imposed on video poker machines and gross income from cigarettes and tobacco products. The Circuit Court, Lancaster County, Don S. Rushing, J., entered judgment in favor of taxpayer, and city appealed. The Supreme Court, Waller, J., held that town could not impose business license tax on gross income from video poker machines in addition to business license fee on each machine, but rather, maximum license tax per business city could charge was one half of amount levied by state.

Affirmed in part, reversed in part, and remanded.

West Headnotes

[1] Appeal and Error 30 ⇐883

30 Appeal and Error
30XVI Review
30XVI(C) Parties Entitled to Allege Error
30k881 Estoppel to Allege Error
30k883 k. Assent to Proceeding. Most Cited Cases
City specifically conceded that it could not impose business license fee on that portion of license fee attributable to taxes paid on tobacco products and, therefore, city could not complain of ruling on appeal.

[2] Licenses 238 ⇐7(1)

238 Licenses
238I For Occupations and Privileges
238k7 Constitutionality and Validity of Acts and Ordinances
238k7(1) k. In General. Most Cited Cases
City could not impose business license tax on gross income from video poker machines in addition to business license fee on each machine, but rather, maximum license tax per business city could charge was one half of amount levied by state. Code 1976, § 12-21-2746; § 12-21-2720 (1992).

****338 *278** Phillip E. Wright, Lancaster, for appellant.

William C. Tindal of Bell, Tindal & Freeland, Lancaster, for respondent.

Roy D. Bates, Columbia, for amicus curiae, Municipal Ass'n of South Carolina.

***279** WALLER, Justice:

The City of Lancaster appeals an order invalidating license fees it imposes on video poker machines and gross income from cigarettes and tobacco products. We affirm in part, reverse in part and remand.

***339 FACTS*

Respondent Crenco Food Stores (Crenco) operates two stores in Lancaster. The Lancaster Municipal Code requires every business to obtain a business license, the fee for which is based upon its gross income. In addition, the city requires all businesses which own video poker machines to pay a per machine license fee. Crenco paid its 1993 license fees under protest claiming:

1. the amount of Federal and State taxes it paid on cigarettes and tobacco products should be excluded from the calculation of its gross income on which license fees are imposed,[FN1] and

FN1. It had paid $66,043 in taxes on cigarettes which was included in its total gross sales figure. The portion of the business license fee attributable to these taxes is $129.95.

2. the maximum fee Lancaster could impose on **each video poker machine** was $15.00 and that the city could not, in addition to the per machine charge, impose an additional license fee on **each business'** gross receipts from the machines.[FN2]

FN2. Crenco paid a total of $854.75 in license fees for its 13 poker machines.

Circuit Court agreed with Crenco. It held 1) that Lancaster could not impose a license fee on that portion of the sales price of tobacco products attributable to state and federal taxes paid, 2) that the maximum license fee Lancaster could impose for each poker machine was $15, and 3) that Lancaster could not impose an additional license fee on a business' gross receipts from the poker machines. Lancaster appeals.

ISSUES

1) Did Circuit Court err in ordering Lancaster to refund that portion of the license fee attributable to taxes paid on tobacco products?

***280** 2) May Lancaster impose a business license tax on gross income from video poker machines in **addition to** a business license fee on each ma- chine?

I. CIGARETTE TAXES

Lancaster asserts the trial court erred in ordering it to refund that portion of the license fee relative to state and federal taxes paid on tobacco products. We disagree.

[1] At the hearing before the Circuit Court judge, Lancaster specifically conceded this issue and moved to refund that portion of the license fee representing taxes paid on tobacco products, totalling $129.95. Accordingly, there is nothing for this Court to review. *Floyd v. Thornton,* 220 S.C. 414, 68 S.E.2d 334 (1952) (party may not complain of a ruling which he has invited or induced trial court to make).

II. VIDEO POKER MACHINES

[2] Lancaster concedes that Judge Rushing correctly ruled the maximum amount it could charge as a license fee **on each machine** pursuant to S.C.Code Ann. § 12-21-2720(B) (Supp.1993) was $15.[FN3] However, it contends that it is entitled, in addition to the $15 license fee per machine, to impose a license fee tax on each **business** for the gross income from poker machines. We disagree.

FN3. This amount was increased to $300 every two years by 1993 Act No. 164, Part II.

Essentially, Lancaster's contention is that it is entitled to charge a $15.00 license fee for the **privilege of operating each machine** pursuant to S.C.Code Ann. § 12-21-2720, and, in addition, is entitled to impose a license fee **on each business for revenue generated by the machines.** We reject this contention. The applicable statutes do not permit Lancaster to impose a license fee on **gross receipts** from the machines.

S.C.Code Ann. § 5-7-30 (Supp.1993) permits municipalities to "levy a business license tax on gross income" only to the extent it is not inconsistent with the general law of the State. Lancaster's attempt to levy a tax on a business' gross income pursuant to § 5-7-30 conflicts with the general law applicable to fees on video poker machines.

281** The pertinent statutes are S.C.Code Ann. §§ 12-21-2720 and 12-21-2746 (1993 Supp.). Section 12-21-2720 sets forth the maximum license fee per machine Lancaster is permitted to impose "for the **privilege of making use of the machines** " which all parties concede*340** is $15.[FN4] Section

12-21-2746, entitled "Levy of additional local license tax," provides as follows:

> FN4. Subsection (B) limits cities' license fees per machine to not more than 20% of the maximum amounts allowed before March 28, 1956. That amount was $12.50 (plus 20% = $15). Subsections (C) and (D) were added to § 12-21-2720 in 1993 and now permit cities to impose a fee up to $150 per year for each machine.

Municipalities ... may levy a **license tax on the business** taxed under this article, but in no case may a tax so levied exceed one-half of the amount levied by the State before March 28, 1956. (emphasis supplied).

The license tax levied by the State prior to March 28, 1956 was $25. Accordingly, under § 12-21-2746, the maximum license tax **per business** Lancaster may charge is one-half of $25 or $12.50. Accordingly, Lancaster's attempt to impose a **per business** fee based upon gross income from the video machines conflicts with the general law set forth in § 12-21-2746 permitting a maximum $12.50 per business fee.

CONCLUSION

We affirm, on procedural grounds, Circuit Court's order requiring Lancaster to refund the portion of business license tax attributable to state and federal taxes paid on tobacco products. We reverse the judgment below to the extent the court held Lancaster could impose only a $15 **per machine** license fee. A $12.50 fee **per business** is also permissible under § 12-21-2746. Accordingly, the judgment below is

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

FINNEY, C.J., TOAL and MOORE, JJ., and A. LEE CHANDLER, Acting Associate Justice, concur.

S.C.,1995.

Crenco Food Stores, Inc. v. City of Lancaster
318 S.C. 278, 457 S.E.2d 338

END OF DOCUMENT

Hospitality Association of South Carolina, Inc., v. The County of Charleston

Opinion No. 24346

SUPREME COURT OF SOUTH CAROLINA

320 S.C. 219; 464 S.E.2d 113; 1995 S.C. LEXIS 194

September 21, 1994, Heard
November 13, 1995, Filed

DISPOSITION: [*1]** JUDGMENT FOR DEFENDANTS

CASE SUMMARY
PROCEDURAL POSTURE: In consolidated actions, plaintiffs, a trade association, a citizen and resident, and businesses, challenged certain ordinances enacted by defendants, a county, a town, and a city, which concerned the imposition and collection of fees on the gross proceeds from the rental of accommodations and from the sale of food and beverages sold in establishments that maintained a license for the on-premises consumption of alcohol, beer, or wine.

OVERVIEW: The county's ordinance imposed a fee on the gross proceeds from the rental of accommodations furnished to transients within the county. The town's ordinance imposed a fee on the gross proceeds from the rental of short-term accommodations furnished to transients within the town. The city's ordinance imposed a fee on the gross proceeds derived from the sale of food and beverages sold in establishments that maintained a license for the on-premises consumption of alcohol. In consolidated actions, the trade association, citizen and resident, and businesses argued that the ordinances were invalid. The court entered judgment in favor of the county, the city, and the town. Under S.C. Code Ann. §§ 4-9-25, 5-7-30 (1994), when read in light of the liberal rule of construction mandated by S.C. Const. art. VII, the local governments had the power to enact the ordinances at issue. The ordinances were not inconsistent with either the constitution or the general law of the State of South Carolina, including the local sales and use tax statutes or the statute imposing a statewide tax on accommodations.

OUTCOME: The court entered judgment in favor of the county, the town, and the city.

We also disagree with plaintiffs' argument that the City Ordinance is pre-empted by or inconsistent with the State beer, **[***17]** wine, and alcohol tax statutes. These statutes essentially deal with taxes to be paid by wholesalers or importers of beer and wine, or license taxes to be paid for the privilege of selling alcoholic liquor in this State. See S.C. Code Ann. §§ 12-21-1010 to -1130 and §§ 12-33-10 to -630 (1976 and Supp. 1994). The statutes do not address taxes or fees on food or beverage sales in establishments **[**120]** holding an on-premises beer, wine, and/or liquor license.