

Interpretation

The Ordinance does not cover Every Situation

License officials must interpret and apply the ordinance in accordance with principles of statutory construction and administration of Local, State and Federal Laws

- Do they need a license
- Do they need more than 1 license
- What is their classification
- Do they report the correct Gross

Doing Business

- Place of Business
- Nonresident Business
- Limited Activities
- Collection of Money / Mail Order
- Sales
- Regular Conduct

Place of Business: License tax may be charged for the privilege of doing business in your jurisdiction regardless of the location of the Business unless statute provides for special treatment.

Resident businesses have a brick and mortar establishment but **Nonresident businesses** without a physical location established in your jurisdiction are also subject to the business license tax. Reported Income is dependent on a business's domicile or location:

Resident businesses: Total Gross for business reported to Jurisdiction with allowed deductions of amounts that have been reported to other jurisdictions and license tax remitted

Nonresident Businesses: Gross reported is what is earned from activity within that jurisdiction only.

Limited Activities

A company coming to your municipality or county one time does not constitute doing business

Collection of Money / Mail Order

A collection site of funds within a municipality or county would require a business license, however funds collected from within your jurisdiction mailed out of the jurisdiction and reported elsewhere would not be subject to a tax.

Mail Order: Insufficient activity to provide a nexus

Sales and Regular Conduct

Direct Sales by peddlers and sales representatives receiving a 1099 would require a business license. Taking orders for a supplier may be subject to license for the AGENT or Salesperson but only on the commissions he or she makes. The sale and delivery of materials to a construction site is subject to a license tax. Regular Conduct of activity definitely constitutes doing business.

TESTS for DOING BUSINESS

- How frequent?
- Is an office/equipment present?
- Are city services utilized?
- Regular activity with people or property on continuing basis?
- Is it regulated by the city or county? (building codes and permits)
- Is it listed in local directories as serving your area?
- Is there advertising for your jurisdiction?
- Does it derive a substantial portion of its income in your jurisdiction?

THE ISSUANCE OF STATE AND FEDERAL LICENSES DOES NOT EXEMPT A BUSINESS FROM PAYING A BUSINESS LICENSE TAX IN YOUR JURISDICTION

Classification

- Standardized Business License Class Schedule

Act 176 requires all jurisdictions use the standardized schedule provided and updated by the MASC. This schedule is based on the NAICS Manual and must be adopted by cities and counties every odd year.

- Equal Protection

State and Federal Constitutions require classifications not be arbitrary and bear a reasonable relation to the legislative purpose sought. The tax must be fair and non discriminatory.

- Non-Resident

The State Supreme Court has upheld increased rates for nonresidents as justified as long as it is not unreasonable, capricious, or confiscatory.

- Ability to Pay

The Classification schedule that is required by Act 176 to be used by cities and counties is based on ability to pay as determined by an index of profitability from nationwide IRS statistics.

Gross Income

Basis for Tax

The general statutory basis for levying a business license tax requires it to be measured by gross income

Gross Income Defined

Act 176 standardizes the definition as '*gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from business done within a taxing jurisdiction*'

Exempt Income (or to be deducted)

Income received from activities in another jurisdiction on which a license tax has been paid

Taxes collected for Governmental units

Refunds issued to customers

3rd party funds such as Commissions to be shared with agents

Escrow Funds

Income from Government Projects

Income from contracts or activities performed for Government is not exempt unless the work is performed on territory or property of the federal government

Outside Income Included

A resident business may be taxed on all income on which a tax has not been paid to another municipality or county.

RATES AND TAXES

Flat Tax

Not based on Gross Income so: **not legal**

New Owner

The previous year gross income may be used as basis for the new license

Proration

Annexed business shall be prorated for the annexation year

New business prorated based on the number of months remaining in license year

Nonresident Rates

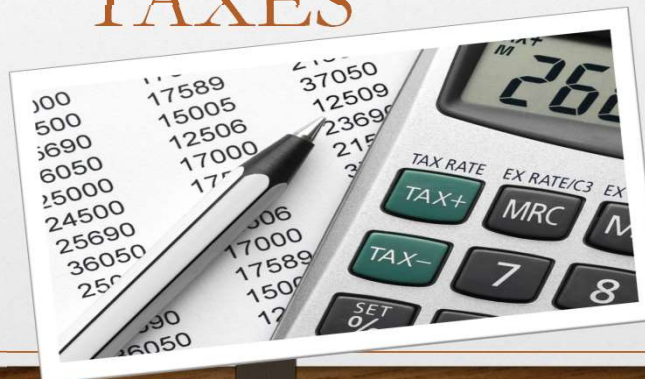
Legal to charge higher rate as long as it is not unreasonable, capricious or confiscatory

Multiple Operations

One license for all activity under one roof charged at the higher rate OR separate licenses for each activity

Multiple locations need either separate licenses OR duplicate licenses for display

CALCULATION OF TAXES



www.masc.sc

Search:
Business License Handbook

THANK YOU

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