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**South Carolina
Business Licensing Officials
Association**

SPRING TRAINING INSTITUTE
March 06, 2024
Chapter 5 – Enforcement

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THE HANDBOOK IS A WORKING TOOL FOR LICENSE OFFICIALS TO ***INTERPRET AND ADMINISTER*** THE BUSINESS LICENSE ORDINANCE. IT IS ALSO A ***TRAINING TOOL*** FOR THE ELECTED OFFICIALS & BUSINESS LICENSE OFFICIALS, AND A ***RESOURCE*** FOR LICENSE OFFICIALS PARTICIPATING IN THE SC BUSINESS LICENSING OFFICIALS' CERTIFICATION PROGRAM.

THE HANDBOOK DOES NOT ADDRESS EVERY PROBLEM THAT COULD ARISE, BUT IT DOES OFFER GUIDANCE IN HOW TO DEAL WITH THE MOST FREQUENTLY ENCOUNTERED ISSUES.

**Administrative and Field Inspection
are Two (2) Types of Enforcement**

Depending on personnel, municipalities offer varying types of enforcement supported by the guidelines offered within the business license handbook and your municipality's business license ordinance. We must afford equal protection for all businesses.

Difficult Types of Enforcement License Officials Cope with

- Income Verification
- Verification of Employees
- Assessments
- Audits
- Regular Conduct
- Ordinance Summons
- Delinquent BL tax
- Revocation of a license



Income Verification

A city or county may levy a license tax based on total gross income without regard to other forms of taxation and without regard to where the income is earned when the business is based within the city or unincorporated area of the county.

****Exemption allowed for gross income reported to another city or county for a business license.***

How Do We Verify Income?

- ✓ Request Federal or State Tax Returns at Renewal Time
- ✓ SC Retail Sales Report
- ✓ Audit
- ✓ Field Inspections



Additional Tools for Verifying Income

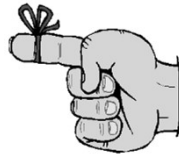
- Compare Quarterly Hospitality Tax Submission to Income Claimed on Business License
- Review Building Permits Against Income Claimed on Business License
- Request Copies of 1099's
 - Useful when verifying rental income
 - Also useful to determine independent contractor criteria

Request for Tax Returns at Renewal

- Easy and effective way to verify income for many businesses.
- Request copies of other business licenses held with gross revenue amounts reported.



Remember !



Some municipalities do not have the ability or staff to request tax returns at time of renewal

Check your Ordinance to be sure that they will approve the request.

Audits

- License ordinances usually include a statement pointing out that the municipality may audit the accounts of businesses or individuals when the accuracy of the gross amount reported is in doubt.
- Auditing may be done to check on accounts expected to be fraudulent or as a routine check on the accuracy of all license reports.
- Be sure your ordinance, and or Business License Renewals and Applications include verbiage regarding audits

Audit Criteria



It is important to be fair and consistent when determining audit criteria; otherwise, businesses may feel they are being "singled out"



Be sure to define and know the parameters used to determine audit criteria



A systematic random procedure will work. Be sure to document the parameters of the criteria to protect yourself

Audit Notification

When an audit is deemed appropriate, the following steps are suggested:

- Notify the owner of the business and set a time to respond
- Give a list of records to be inspected
- Do not disturb normal business activity
- Be firm ... Be polite
- Explain the purpose of the audit
- Let them know refusal to allow an audit is grounds for prosecution
- Inspect only those records necessary. Ex: tax returns only may suffice for the audit

What are your options, if no response?

- If your ordinance allows, you may complete an assessment for the amount owed
- Depending upon the type of audit, if you have exhausted all other avenues, you may have the ability to place a lien(s) on property

IMPORTANT NOTICE

THE MASC MODEL BUSINESS LICENSE ORDINANCE DOES NOT PROVIDE FOR A LIEN

Assessment and Appeals Process After Act 176

DELINQUENTS

- License year is May 1 to April 30
- Due date is set by law - April 30
- Penalty is not standardized

SECTION 6-1-410. Service of notice of assessment of business license tax; appealing notice of final assessment.

(A) If a taxpayer fails or refuses to pay a business license tax by May first or, for business license taxes collected pursuant to Article 20, Chapter 9, Title 58 and Chapters 7 and 45, Title 38, the date on which the business license tax is due, the taxing jurisdiction business license official may serve notice of assessment of the business license tax due on the taxpayer by mail or personal service. Within thirty days after the date of postmark or personal service, a taxpayer may request, in writing with reasons stated, an adjustment of the assessment. An informal conference between the taxing jurisdiction business license official and the taxpayer must be held within fifteen days of the receipt of the request, at which time the taxpayer may present any information or documents in support of the requested adjustment. Within five days after the conference, the taxing jurisdiction business license official shall issue a notice of final assessment and serve the taxpayer by mail or personal service with the notice and provide a form for any further appeal of the assessment by the taxpayer.

(B) Within thirty days after the date of postmark or personal service, the taxpayer may appeal the notice of final assessment by filing the completed appeal form with the taxing jurisdiction business license official, by mail or personal service, and by paying to the taxing jurisdiction in protest at least eighty percent of the business license tax based on the final assessment. The appeal must be heard and determined by the taxing jurisdiction council or its designated appeals officer or appeals board. The taxing jurisdiction council or its designee shall provide the taxpayer with written notice of the hearing and with any rules of evidence or procedure prescribed by the taxing jurisdiction council or its designee. The hearing must be held within thirty days after receipt of the appeal form unless continued to another date by agreement of the parties. A hearing by the taxing jurisdiction council, its designee, or the appeals board must be held at a regular or special meeting of the taxing jurisdiction council or appeals board. At the appeals hearing, the taxpayer and the taxing jurisdiction have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The hearing must be recorded and must be transcribed at the expense of the party so requesting. The taxing jurisdiction council, its designee, or the appeals board shall decide the assessment by majority vote. The taxing jurisdiction council, its designee, the appeals board, or the designated appeals officer shall issue a written decision explaining the basis for the decision with findings of fact and conclusions and shall inform the taxpayer of the right to request a contested case hearing before the Administrative Law Court. The written decision must be filed with the taxing jurisdiction business license official and served on the taxpayer by mail or personal service. The decision is the final decision of the taxing jurisdiction on the assessment.

(C) Within thirty days after the date of postmark or personal service of the taxing jurisdiction's written decision on the assessment, a taxpayer may appeal the decision to the Administrative Law Court in accordance with the rules of the Administrative Law Court.

(D) For the purposes of this section, "business license official" means the officer, employee, or agent designated by the taxing jurisdiction as having primary responsibility for business licensing within the taxing jurisdiction.



INITIAL ASSESSMENT §6-1-410

Step 1: Serve a notice of assessment. If a taxpayer fails or refuses to pay a business license tax by May 1, the taxing jurisdiction’s business license official may serve notice of assessment of the business license tax due on the taxpayer by mail or personal service.

For the purposes of this section, "business license official" means the officer, employee, or agent designated by the taxing jurisdiction as having primary responsibility for business licensing within the taxing jurisdiction.

NOTICE OF ASSESSMENT

- The title/subject – Notice of Assessment
- An explanation of why they are receiving this assessment
- The amount of the assessment
- How you arrived at this amount
- Information on next steps including that the taxpayer may request, in writing with reasons stated, an adjustment of the assessment
- It’s a good idea to include the state law citation § 6-1-410(A)

REQUEST FOR ADJUSTMENT §6-1-410

Step 2: Within 30 days after the date of postmark or personal service, a taxpayer may request, in writing with reasons stated, an adjustment of the assessment.

Step 3: Within 15 days of the receipt of the request, an informal conference between the taxing jurisdiction business license official and the taxpayer must be held.

APPEALS PROCESS §6-1-410

Step 6: Within 30 days after the date of postmark or personal service, the taxpayer may appeal the notice of final assessment by filing the completed appeal form with the taxing jurisdiction business license official, by mail or personal service, and by paying to the taxing jurisdiction in protest at least eighty percent of the business license tax based on the final assessment.

Step 7: Within 30 days after receipt of the appeal form, a hearing by the taxing council or its designee, must be held. A written decision must be filed with the taxing jurisdiction business license official and served on the taxpayer by mail or personal service. This is the final decision of the taxing jurisdiction.

**PROCEDURES AND RULES FOR
BUSINESS LICENSE TAX ASSESSMENTS AND APPEALS
CITY/TOWN OF _____, SOUTH CAROLINA**

This policy sets forth the procedures and rules for business license tax assessments and appeals (this "Policy") within the Town/City of _____, South Carolina (the "Municipality"). This Policy shall be read in conjunction with Sections 6-1-400 through 6-1-420 of the Code of Laws of South Carolina 1976, as amended (the "S.C. Code") and the Municipality's business license program (the "Business License Program"). In the event of any inconsistency or conflict between the provisions of this Policy and the S.C. Code, the S.C. Code shall be controlling as to the extent of the conflict or inconsistency.

I. Definitions

Business: shall have the meaning set forth in the Business License Program.

Council: means the Town/City Council of _____, as the governing body of the Municipality.

Hearing Officer: means the individual or body designated by the Municipality to oversee the general adjudication of the hearing in order to ensure compliance with this Policy. As necessary, the Hearing Officer may engage separate legal counsel to assist in the administration of the proceedings of any hearing to be held hereunder.

License Official: shall have the meaning set forth in the Business License Program.

Taxpayer: means an individual, firm, partnership, limited liability partnership, limited liability corporation, corporation, trust, estate, association, or company that is acting, or is authorized to act, on behalf of the Business.

APPEAL HEARING §6-1-410

Step 8: Hearing by appeals board or officer.

- A hearing by the taxing jurisdiction council, its designee, or the appeals board must be held at a regular or special meeting of the taxing jurisdiction council or appeals board.
- At the appeals hearing, the taxpayer and the taxing jurisdiction have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses.
- The hearing must be recorded and must be transcribed at the expense of the party so requesting.
- The taxing jurisdiction council, its designee, or the appeals board shall decide the assessment by majority vote

FINAL DECISION AND ALC §6-1-410

Step 9: A written decision must be filed with the license official and served on the taxpayer by mail or personal service.

- The taxing jurisdiction council, its designee, the appeals board, or the designated appeals officer shall write the decision.
- The written statement should include the basis for the decision with findings of fact and conclusions and shall inform the taxpayer of the right to request a contested case hearing before the Administrative Law Court.
- The decision is the final decision of the taxing jurisdiction on the assessment.

Step 10: Within 30 days of the postmark or personal service, the taxpayer may appeal to the Administrative Law Court in accordance with the rules of the Administrative Law Court.

TOOLS TO CALCULATE ASSESSMENT

- State Sales Tax Report
- Comparable Business/Property in Area
- Websites:
 - Sales Fuel
 - Manta
 - Defense Spending.org
 - VRBO Listings
 - Homeaway

NOW WHAT CAN WE DO?



Field Inspections

- Field inspections are a useful way to obtain information and to verify license records.



- A field inspection is a great way to improve public relations and it can provide an opportunity to answer questions, give information, and let the business community know that the license ordinance is uniformly applied and enforced.
- A field inspection also can determine whether more than one type of business activity is conducted at the location.
- Every retail business, including rooming houses and motels (unless 6 or less rooms in same building – owner lives on premise) must have a retail license.

PENALTIES



How far back can we go?

SC Code Sec 15-530:
Recovery of delinquent license taxes by civil action is limited to the taxes due for three years preceding the date of filing the action

Civil Penalties

- State Law does not specifically mention civil penalties for unpaid license taxes, but it is generally accepted that penalties may be imposed.
- Delinquent fees ***are a form of civil penalty*** which are widely used.
- Civil penalties that accrue monthly for unpaid business license taxes provide a strong incentive for prompt payment.

Example: Late Renewal Letter



Mar 4, 2019

Dear Business Owner:

Our records indicate that you have not renewed your business license for the current period. If your business is no longer operating, have changed business, or you had the letter in front please contact us, so that we may adjust our records accordingly.

If you continue to not re-licensure, your license renewal **penalty starts at 6%**, **penalty through May 31, 2019**. This penalty will increase by an additional 5% for each month of delinquency thereafter.

Please renew your license immediately in order to avoid additional penalties and possible suspension of your license.

If we can be of any assistance, please contact our office at 864.669.2300.

Sincerely,

101011 - Admin
 Director, Contract Inspector
 City of Greenville
 864.669.2300
 www.greenville.org

Denial or Revocation of License

- Most license ordinances have some provision for denying or revoking a license for cause
- Any business must be issued a license if they comply with the ordinance and pay the proper fee for operating a lawful business
- We must follow the standards established by ordinance
- The power to deny or revoke a license for cause must be exercised for legally sufficient and specific reasons

State License Regulations

Contractors

A state license issued by LLR for contractors does not exempt a contractor from local licensing requirements, regardless of the contract price or cost of construction.





Contractors

A business license should not be issued to a contractor who does not have the required state license. This helps enforce state laws and protects the public from unqualified contractors to the extent possible locally.

General Contractors

GENERAL CONTRACTOR INFO:
SECTION 40-11-270. Licensee confined to limitations of license group; licenses in more than one classification; use of unlicensed subcontractors.

- (A) A licensee is confined to the limitations of the licensee's license group and license classifications, or sub-classifications as provided in this chapter.
- (B) An entity may apply for and be licensed in more than one classification or sub-classification if all qualifications for licensure prescribed by this chapter have been met. An applicant may apply for a license in more than one classification or sub-classification on the same application form.
- (C) Licensees may utilize the services of unlicensed subcontractors to perform work within the limitations of the licensee's license group and license classification or sub-classification; provided, the licensee provides supervision. The licensee is fully responsible for any violations of this chapter resulting from the actions of unlicensed subcontractors performing work for the licensee.

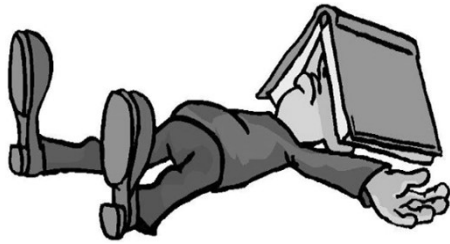
Residential Builders

RESIDENTIAL BUILDER INFO:

SECTION 40-59-220. Licenses and certificates of registration; application; qualifications; bonds; examinations; reciprocity.

(A) All residential builders must be licensed, and all residential specialty contractors must be registered, by the commission for a period established by the commission in regulation. Licensees and registrants must pay an annual fee established by the department and based upon the department's costs in carrying out the provisions of this chapter.

STUDY QUESTIONS



How to Study

All of the ABL Exam questions are based on the *SC Business License Handbook* and the Business License Model Ordinance.

- Read the question.
- Find the answer in the *Handbook*.
- Write down the page number(s) where to find the answer and/or a short answer under each question.

- What state records are available for gross income verification?
- What tax returns are subject to inspection to verify gross income?
- What are the benefits of field inspections?
- When can an assessment of license taxes be made?
- What are some steps that can be taken to audit business records?
- When would a civil suit be appropriate to collect a business license tax?
- What is the statute of limitation for collection of delinquent license taxes?

- What are the advantages of using a uniform ordinance summons, as compared to other methods of enforcement?
- What civil penalties may be levied for delinquent license taxes?
- What are the maximum criminal penalties that may be imposed for violations?
- When can a license official revoke a business license?
- Should a business be closed for suspension of a business license, pending a hearing for permanent revocation?
- What methods are available to deal with a business operated as nuisance?
- What actions may be taken by a taxpayer to recover contested license taxes?

Resources

www.masc.sc
Search:

- **BLOA**
 - On the SC Business Licensing Officials Association page, you will find links to the *SC Business License Handbook*, ABL and MBL programs, and the Business Licensing Essentials recordings
- **SC Business License Tax Standardization Act**
 - On this page you will find a summary of Act 176 and links to the Act, model ordinances, the Renewal Center, and the Assessment and Appeals process
