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License Exemptions and Limitations

Authority to charge license fees is granted by Section 11-51-90, Code of Alabama 1975. Section 11-51-90 is a broad grant of power to license any trade, business or occupation conducted in the city limits. Unless limited by the Legislature, the amount of the license tax is at the discretion of the council. Where the power to tax has been granted by the state without limitation, it includes all taxing power possessed by the state. *Hackleburg v. Northwest Alabama Gas Dist.,* 170 So.2d 792 (Ala. 1964). A number of limitations and exceptions have been granted by the Legislature. This article examines these restrictions on municipal power.

Reasonableness

As with all municipal ordinances, licensing ordinances are presumed valid. Courts will defer to the council unless it abuses its power in some way. For instance, a court will invalidate a license when the amount of the license is unreasonable. A license can be either for police power (regulation) or to raise revenue, but it cannot be used to prevent legitimate businesses from operating. *American Bakeries Co. v. Huntsville*, 168 So. 880 (Ala. 1936).

Although the burden is on the party challenging the license to prove it is unreasonable, a municipality should be able to justify imposing a high fee on a class of businesses. Studies showing a need for a stronger police presence at the business, or an anticipated increase in police calls (based on reasonable evidence) to the location can help. The council might also be able to demonstrate a need for increased regulation of the business in question. Similarly, circumstances may show that the business will have a negative impact on the public.

The council should be able to relate a high fee charged for a classification to a legitimate need to protect the public health, safety and welfare. In *State v. Armstrong,* 117 So. 187 (Ala. 1928), the court said that a business, in this case a dance hall, must show that the municipality acted without any consideration of protecting the "public safety, peace, good or good order" to invalidate the ordinance in question. Because the council could point to a need for a large fee on dance halls, the court refused to intervene.

This case demonstrates the need for a municipality to have sufficient evidence to justify imposing the fee charged. When a municipality sets a high license fee or uses the licensing power for police power purposes, the council should affirmatively state the reason for the action on the minutes and conduct fact-finding activities to justify its action. When it does so, the burden facing the challenger becomes almost insurmountable.

Reporting Requirement

The Business License Tax Reporting and Appeals Act (Act 2025-408) requires each municipality that levies a business privilege tax or business license tax to file an annual fiscal year report with the Department of Revenue that includes (1) the classifications and schedules for business license taxes for the previous fiscal year and (2) whether any changes were, or will be, made to those classifications and schedules for the next fiscal year. Failure to file this report will result in the escrow of subsequent business license taxes and business privilege taxes collected by the municipality until compliance is achieved. Section 11-108-3, Code of Alabama 1975.

Presumptions and Proof

Tax exemptions are construed against the taxpayer and in favor of the authority to tax. The person claiming an exemption bears the burden of proving that he or she is protected by the exemption. Alabama Farm Bureau Mut. *Cas. Co. v. Hartselle*, 460 So.2d 1219 (Ala. 1984). When a taxpayer generates income, some of which is taxable and some of which is not taxable, the burden rests on the taxpayer to prove that portion which is not taxable. *Alabama Dept. of Revenue v. National Peanut Festival Ass'n, Inc.,* 51 So.3d 353 (Ala.Civ.App.2010)

A municipality may require persons claiming an exemption to provide the clerk with adequate evidence that they meet the statutory conditions which entitle them to the exemption. Many cities and towns have granted the clerk the authority to require the filing of affidavits before granting an exemption. Some ordinances even set out the affidavit to be used.

Occupational Taxes and Licensing Other Governments

Can a municipality license the federal, state, county or other municipal governments and their employees?

This is a very broad question, for which there is no easy, uniform answer. Many of the opinions and cases in this area construe municipal occupational taxes. Occupational taxes show just how broad the licensing power is. Act 2020-14 prohibits a municipality that does not have an occupational tax prior to February 1, 2020 from imposing an occupational tax unless the tax is authorized by local law. Section 11-51-106, Code of Alabama 1975.

Occupational taxes are based on the income a person receives but are not an income tax. Courts hold that the occupational tax is owed for the performance of services within the municipality. *McPheeter v. Auburn*, 259 So. 2d 833 (Ala. 1972). An occupational tax taxes the privilege of working within a municipality. The fact that it is based on the salary received is merely the method a municipality has available to measure the worth of that privilege. The employee owes the tax because he or she takes advantage of municipal services and amenities in pursuit of business activities. Because the occupational tax is based on the licensing power, opinions on the occupational tax are instructional for other types of licenses as well.

Government employees are not exempt from paying an occupational tax. In AGO 1992-0119, the Attorney General ruled that postal employees who are not regular employees of the postal service are not exempt from an occupational tax. And in *McPheeter v. Auburn*, the city of Auburn wanted to assess its occupational tax against employees of Auburn University. The court said that "there is no principle of law clothing governmental employees with immunity ... from a tax that others bear." The court found no merit in the argument that taxing state employees interferes with or adds additional qualifications for state employment.

Similarly, in *Hayes v. Hamilton*, 572 So.2d 486 (Ala. Civ. App. 1990), an employee of the state's Corrections Department argued that he should not have to pay a municipal occupational tax to the city of Hamilton. The amount of the tax owed was assessed at $26.97, plus accrued interest and penalties. The employee filed a counterclaim against the municipality for $10,000,000 in damages. The court found no merit in the employee's argument that he was exempt from taxation as a state employee. Thus, he had to pay the tax.

The United States Supreme Court has also upheld the assessment of Jefferson County's occupational tax against federal judges. *Jefferson County, Ala. v. Acker*, 527 U.S. 423 (1999).

But what about directly licensing governmental agencies?

It appears to be improper to license the federal government. In *Texas Co. v. Carmichael,* 13 F.Supp. 242 (M.D. Ala.), aff'd, *Graves v. Texas Co.*, 298 U.S. 393 (D.C. 1936), a federal court held that the U.S. government was immune from a state license tax for the business of selling, distributing, storing or withdrawing gasoline. And in *O'Pry Heating & Plumbing Co. v. State,* 3 So.2d 316 (Ala. 1941), the court held that where the federal government has exclusive control over territory such as through the purchase of the land, the state has no power to license activities which take place on that property. Essentially, the court held that this property is no longer part of the state, so the state has no financial or regulatory interest which justifies imposing the license.

What about taxing the state? Or the county? Or another municipality? In *McPheeter*, the court allowed taxing the employee, but pointed out that imposing the tax on an employee did not burden Auburn University or the state or federal government. The court in Hayes expressed a similar opinion. The key may depend on whether the action being performed is governmental or proprietary in nature.

Municipalities are not exempt from paying a lodging tax when paying for the accommodations of employees or officers. AGO 1987-0077.

And in *Mulga v. Maytown*, 502 So.2d 731 (Ala. 1987), Maytown imposed a license tax on the manufacture or distribution of gas within the municipal limits. Mulga sold gas to customers living in Maytown, but claimed it was exempt from purchasing a license, pointing to Section 91, Alabama Constitution, 1901. Section 91 exempts from taxation real and personal property of the state, counties and municipalities. The court stated that this section does not prohibit imposing a license tax. Thus, Mulga had to purchase a license. In this case, Mulga was engaging in a corporate and not a governmental function. The rule may be different if a governmental activity is involved.

Distinguishing between governmental and corporate power is not always easy. Governmental purposes are those traditionally performed by local governments which are done for the good of the public as a whole and are not related to a profit motive. Governmental activities include things such as providing police and fire protection, enacting ordinances, protecting the public health through sanitation regulations, preventing nuisances, and constructing and maintaining streets.

Corporate activities include operation of utility systems and other activities that may have a public purpose but are not related to the police or legislative power of the municipality.

Note, however, that the rule may be different for state activities. In several opinions, the Attorney General has ruled that municipalities have no power to assess late charges against state agencies for the failure to pay utility bills. Also, property owned by state agencies and departments is not subject to zoning ordinances. Thus, the state is often exempt from municipal regulation. This exemption may extend to the taxing power as well.

Delivery License

Section 11-51-194, Code of Alabama 1975, requires municipalities to establish a special delivery license that allows certain out-of-town taxpayers to make deliveries into the municipality and police jurisdiction. The purchase of the special delivery license permits businesses with no physical presence in the municipality or its police jurisdiction to deliver merchandise, whether for rental or final sale, into the police jurisdiction or municipality without having to purchase any other license for delivery. The amount of the license cannot exceed $100.00 for the business, although this amount may be adjusted every five years. A municipality may charge a taxpayer an issuance fee for a business delivery license not to exceed $10.

In order to qualify for the special delivery license fee, the gross receipts from all deliveries into the municipality or its police jurisdiction must exceed ten thousand dollars ($10,000) during the preceding license year, and the taxpayer must have no other physical presence within the municipality or its police jurisdiction during the year. If deliveries exceed $75,000, the taxpayer does not qualify for this special license and would instead need to purchase a regular business license. The delivery license shall be calculated in arrears, based on the related gross receipts during the preceding license year.

At its discretion, a municipality may, by ordinance, increase the amount of permitted deliveries up to $150,000. Again, this figure may be revisited every five years as provided in Section 11-51-194. Common carriers, contract carriers, or similar delivery services making deliveries on behalf of others do not qualify for the delivery license.

Delivery includes any requisite set-up and installation. To be included, set-up or installation must be required by the contract between the taxpayer and the customer or be required by state or local law. In addition, any set-up or installation must relate solely to the merchandise that is delivered. If the taxpayer or the taxpayer's agents perform set-up or installation that does not qualify under this definition, the taxpayer must pay any required license fee rather than the delivery license.

Municipalities may, by ordinance, require the taxpayer to purchase a decal for each delivery vehicle that will make deliveries within the municipality or its police jurisdiction. The charge for such decal cannot exceed the municipality's actual cost.

If the taxpayer fails to meet the criteria that qualify him or her for the special delivery license at any time during the license year, the taxpayer must purchase a delivery license and all other appropriate licenses for the entire license year within 45 days of the failure.

Branch Offices

A taxpayer engaged in business in more than one municipality shall be permitted to account for its gross receipts so that the part of its gross receipts attributable to one or more branch offices will not be subject to the business license tax imposed on the principal business office required to obtain a business license. Section 11-51-90(b), Code of Alabama 1975. Branch office gross receipts are those receipts that are the result of business conducted at or from a qualifying branch office. To establish the existence of a qualifying branch office, the taxpayer shall meet all the following criteria:

1. Demonstrate the continuing existence of an actual physical facility located outside the police jurisdiction of the municipality in which its principal business office is located, such as a retail store, outlet, business office, showroom, or warehouse, to which employees or independent contractors, or both, are assigned or located during regular normal working hours.
2. Maintain books and records which reasonably indicate a segregation or allocation of the taxpayer's gross receipts to the particular facility or facilities.
3. Provide reasonable proof that separate telephone listings, signs, or other indications of its separate activity are in existence.
4. Billing or collection activities, or both, relating to the business conducted at the branch office or offices are performed by an employee or other representative of the taxpayer who has such responsibility for the branch office, whether or not the representative is physically located at the branch office.
5. All business claimed by a branch office or offices must be conducted by and through the office or offices.
6. Supply proof that all applicable business licenses with respect to the branch office or offices have been issued.

A business license is not required for a person traveling through a municipality on business if the person is not operating a branch office or doing business in the municipality. Section 11-51-90.2(a)(3), Code of Alabama 1975.

Co-ops

Farmers' cooperatives are authorized by Sections 2-10-90 through 2-10-108, Code of Alabama 1975, and are created to "promote the general welfare of agriculture" in Alabama. The idea is to allow farmers to band together to acquire and market agricultural products and machinery or to finance these activities in order to help the members of the cooperative obtain low-priced supplies.

Section 2-10-105, Code of Alabama 1975, states that cooperatives organized under these sections must pay an annual fee of $10 to the state. Payment of this fee exempts all goods and articles purchased or acquired by the co-op from taxation. Additionally, permitted co-ops are not required to purchase any license or privilege fee for "engaging in or transacting business or otherwise in this state."

An early opinion from the Attorney General's office held that although co-ops are exempt from obtaining a license for selling goods necessary and useful to the production of agricultural products, the co-op must buy a license to sell items unrelated to agriculture. AGO 1983-0472. However, in *State v. Franklin County* Co-op, 464 So.2d 120 (1985), the Alabama Court of Civil Appeals held that Section 2-10-105 exempts farmers' cooperatives organized under Chapter 10 of Title 2 from paying any license fees. In this case, the state assessed the co-op for a store license fee. The state alleged the co-op owed the fee because it offered services to non-members as well as members and because it sold items unrelated to agricultural purposes, such as tires and soft drinks. The court refused to accept this argument, holding that the language of Section 2-10-105 which exempts co-ops from all licensing requirements was conclusive.

Interestingly, a few months after the Franklin County Co-op case, the Alabama Supreme Court issued an opinion in *Flav-O-Rich, Inc. v. Birmingham*, 476 So.2d 46 (1985). Here, the court found that Birmingham could assess a license fee from Flav-O-Rich, which argued that it was a valid Alabama cooperative. However, the court specifically found that Section 2-10-105 did not apply in this case because Flav-O-Rich had failed to comply with the provisions of that section. In any event, pursuant to the Franklin County Co-op case, co-ops are exempt from municipal licensing. AGO 1992-0031.

Farmers

The Alabama Code protects agricultural interests in Alabama in other ways as well. Not only are co-ops sheltered from taxation, farmers themselves are granted an exemption by Section 11-51-105, Code of Alabama 1975. This section states, "It shall be unlawful for any municipality to charge the farmers or others engaged in the production of farm products of whatever nature any license or fee for the sale or other disposition of said articles produced by them at any place."

In *Flav-O-Rich Inc. v. Birmingham,* 476 So.2d 46 (1985), the court said that this section does not protect a farmer's co-op which is engaged in selling nonfarm products nor where the co-op purchases products, then processes them and markets them under the name of a subsidiary. Additionally, the Attorney General has ruled that this section does not exempt peddlers of farm products where the peddlers sell for farmers on a commission basis. AGO to Hon. L.B. Davidson, December 12, 1960.

Similarly, the Attorney General has held that a company that supplies baby chickens to farmers, pays the farmers for their service and later collects and processes the chickens to various retailers is not exempt from purchasing a business license under Section 11-51-105 of the Code. AGO 2000-0120

Section 11-51-105, however, is usually given a very broad interpretation. In an opinion to Hon. H.L. Callahan, November 17, 1980, the Attorney General ruled that nurseries were protected from taxation as are other farmers. The Attorney General based his opinion, in part, on the definition of the term "farm products" found in Section 2-29-1(2). This definition states:

"(2) FARM PRODUCTS. Except as otherwise provided, such term shall include all agricultural, horticultural, vegetable and fruit products of the soil, meats, marine food products, poultry, eggs, dairy products, wool, hides, feathers, nuts and honey."

The Attorney General ruled this definition was broad enough to include all horticultural, vegetable or fruit products produced by a nursery. Further, the term "horticultural" was read to include ornamental plants such as decorative shrubs and flowers.

The key, then, to whether someone can validly claim to be a farmer is whether they are selling products that they produce themselves. If they sell the products to someone else for sale at retail, the person who then sells the products must obtain a license, especially if the products are further processed.

As stated above, this is a very broad exemption. In AGO 1990-0296, the Attorney General held that "the use of streets by farmers and others producing farm products for the purpose of marketing or delivering their products is merely incidental to the sale or disposition of such products." Therefore, a municipality may not charge a farmer a delivery license for delivering goods he or she produces. The Attorney General also held that an agricultural or horticultural product ceases to be a "farm

product"– and thus is subject to municipal licensing – when it is "not directly produced and sold by a farmer or other person engaged in the production of farm products or when the products have been substantially processed, or commercially bottled, packaged or canned." This opinion overruled a previous AGO, 1989-0246, which held that municipalities may charge farmers a delivery license.

Professionals

Doctors are granted a two-year exemption from obtaining a state license by Section 40-12-126, Code of Alabama 1975. A similar exemption applies to oculists, optometrists and opticians in Section 40-12-135, Code of Alabama 1975, and to osteopaths and chiropractors in Section 40-12-136, Code of Alabama 1975. These sections all apply specifically to the state and do not mention municipalities. Many municipalities, however, follow state law and grant these professionals a temporary exemption in the licensing ordinance.

Attorneys, architects and realtors also present licensing problems for municipalities. Although there are no specific statutory provisions which limit municipal licensing of these professions, the Attorney General has issued several opinions construing this power. In an opinion to Hon. Charles Murphree, March 18, 1980, the Attorney General held that a municipality may not license out-of-town architects for a single project when the architect has no offices in the municipality, unless the facts establish more of a nexus between the architect and the municipality.

What facts might establish this nexus? In an opinion dealing with attorneys, the Attorney General held that a municipality may require an attorney to purchase a license if he or she practices in that municipality on a regular basis. AGO 1986-0163. Even though the Attorney General later modified this opinion to hold that a municipality may not license an attorney who merely has a case pending in municipal court, but who has no office within the municipality (AGO 1990-0399), factors such as a regular presence within the municipality may establish a sufficient nexus. This would have to be determined on a case-by-case basis.

Limitations on Certain Businesses and County Government Work

Effective on January 1, 2027, state law places limits on business license assessment amounts on specific building trade businesses that maintain a physical place of business in a municipality but also pays a business license fee in other municipalities.

A municipality may impose a business license on a business on any of the following businesses that perform work within the municipality but do not maintain a physical business location within the municipality:

- a certified heating and air conditioning contractor;
- a certified refrigeration contractor;
- a concrete provider;
- a duct air tightness testing contractor;
- an electrical contractor;
- a journeyman electrician;
- a master gas fitter;
- a master plumber;
- an onsite wastewater licensee;
- a residential home builder;
- a subcontractor. Section 11-51-133(b)(1), Code of Alabama 1975.

In these circumstances, the business license shall be a flat fee or be calculated on the basis of gross receipts derived from the work performed in the municipality. Gross receipts derived from construction, contracting, installation, or service activities shall be attributed to the municipality where the job site is located and where the labor, materials, or services are performed, regardless of the business' physical location. Section 11-51-133(b)(2).

A municipality may impose a business license on any business listed above that maintains a physical business location in that municipality and performs work in that municipality. The amount of the business license shall be one of the following options:

- a flat fee not to exceed five hundred dollars ($500);
- a flat fee not to exceed five hundred dollars ($500) plus a fee calculated on the basis of the gross receipts derived from the work performed by the business within the municipality; or

- a fee calculated on the basis of the gross receipts derived from the work performed by the business within the municipality. Section 11-51-133(c)(2), Code of Alabama 1975.

Additionally, municipalities are prohibited from requiring a business license for work performed on behalf of a county government when the project is located on county property or on a county-maintained road, bridge, right-of-way or easement. Section 11-51-133(d).

Realtors

Section 11-51-132, Code of Alabama 1975, prohibits the licensing of out of town realtors. Specifically, this section provides that a municipality may only levy or collect a business privilege tax from or require the licensing of a real estate company if the real estate company's place of business is located within the municipality. Further, no municipality may levy any business privilege tax from or require the licensing of a real estate salesperson or broker separate from the privilege tax or license levied upon the company of the salesperson or broker, except that salespersons or brokers who form a legally constituted business organization pursuant to subdivision (11) of subsection (a) of Section 34-27-36 may be subject to such business privilege tax or license.

Auctioneers

Auctioneers are exempt from municipal licensing by Section 34-4-6, Code of Alabama 1975. If an auctioneer is licensed by the state, a municipality may not assess a license fee for operating within the municipality. Auctioneers who engage in other businesses must obtain a license in order to conduct the second business. AGO 1992-0026 (licensed auctioneers who are also real estate brokers must purchase a real estate broker's license).

The Attorney General has also held that a municipality may not impose a business license fee on an auctioneer or an auction company licensed by the state. AGO 1998-0035.

Internet consignment shops are not acting as auctioneers and are not subject to regulation by the Board of Auctioneers when the Internet consignment shops are merely acting as an intermediary between the seller of goods and an Internet sales or auction website if the Internet sales or auction website does not engage in bid calling or the sale of things of value at public outcry as those terms are used in Sections 34-4-2 and 34-4-27 of the Code of Alabama. Internet consignment shops that hold themselves out as auctioneers are subject to regulation by the Board of Auctioneers. AGO 2008-0109.

Financial Institutions

Financial institutions such as banks, credit unions and savings and loan associations are granted special status by the Code of Alabama. Section 11-51-130, Code of Alabama 1975, authorizes municipalities to levy a graduated license fee on banks, based on the institution's capital, surplus and undivided profits. "Undivided profits" is defined as "the undivided profits as shown by the books of the bank, and all payments shall be based on the report made by the banks to the Superintendent of Banks next preceding January 1."

Section 11-51-131, Code of Alabama 1975, allows municipalities to assess a license tax against savings and loan associations on the same schedule which applies to banks.

Branch banks and savings and loans pay only a $10 fee. There is no definition in the Code as to what constitutes a branch, and different institutions seem to define the term in different ways. For instance, in some cases financial institutions have one main office in the state and consider all other offices as branches. Other institutions treat the first office in a municipality as the main office and all others in the same city or town as branches. No courts have ever construed this Code section.

Out of an abundance of caution, the League recommends following the definition contained in the institution's by-laws. In other words, municipalities should define these terms in the same manner as does the institution and assess the maximum $10 fee against offices the institution calls branches and apply the full schedule to all main offices, at least until a court or the Attorney General rules otherwise or until legislation passes defining these terms.

Prior to 1991, only municipalities which were assessing license taxes from financial institutions in 1951 could do so. In 1991, the League was successful in amending the Code to remove this restriction, allowing all municipalities to levy a license tax against banks and savings and loans pursuant to Section 11-51-130, Code of Alabama 1975.

Credit unions are treated differently under the Code. Section 5-17-24, Code of Alabama 1975, states that credit unions are not subject to taxation, except for ad valorem taxation. The Attorney General has ruled that this section also exempts credit unions from purchasing municipal business licenses. AGO 1990-0197. Credit unions are also exempt from the financial institutions excise tax.

Financial Institutions Excise Tax

Section 40-16-6, Code of Alabama 1975, provides that each municipality shall receive thirty-three and three-tenths percent (33.3%) of the State Financial Institutions Excise Tax, which is levied on banks, savings and loans, and similar institutions located within the municipality. This tax is an income tax levied on the net taxable income of the financial institutions. Beginning with the 2019 municipal financial institution excise tax distribution, each municipality shall receive a percentage share of the total municipal financial institution excise tax revenue equal to its average percentage share to the total municipal financial institution revenue distribution over the five years ending in 2018. The Income Tax Division of the State Revenue Department administers the tax.

The municipal share of the Financial Institutions Excise Tax is received each calendar quarter. Financial institutions are entitled to a deduction for the amount of the license tax they pay to a municipality.

Insurance Companies

Municipal license fees on insurance companies are also limited by state law. Section 11-51-120, Code of Alabama 1975, states that the maximum license collectable from fire and marine insurance companies is four percent on each $100 and major fraction thereof of gross premiums, less return premiums. Section 11-51-121 establishes a fee for insurance companies other than fire and marine companies based on the population of the municipality. The following chart illustrates this:

Population	**License Due**
5,000 or less	$10
5,000-10,000	$15
10,000-15,000	$20
50,000 or above	$50

In addition, each municipality is entitled to $1 on each $100 and major fraction thereof of gross premiums, less return premiums.

Several issues arise from these sections. First, how does a municipality differentiate between the various types of insurance companies in order to determine which schedule to apply? The Alabama Supreme Court discussed this question in *Birmingham v. State Farm Mut. Automobile Ins. Co.,* 382 So.2d 1111 (1980).

In this case, State Farm sought to be classified as a casualty company, and thus taxable under Section 11-51-121, rather than Section 11-51-120. Birmingham claimed that because State Farm wrote fire insurance in the city, Section 11-51-120, licensing fire and marine insurance companies, applied. The court found in favor of State Farm, stating that the fact it wrote fire insurance was not determinant. Instead, the court stated that the character of the insurance company itself determined which schedule to apply. The court held that "the nature of the principal business endeavor, as manifested by its charter, its activities and its operations, will control the application of the classifications established by Sections 11-51-120, -121." Thus, deciding which schedule to apply requires knowing the types of policies the company issues plus an examination of the company's charter.

In *Alfa Mutual Ins. Co. v. City of Mobile,* 981 So.2d 371 (Ala.2007) the Alabama Supreme Court held that a functionality test determines whether an insurance company is a fire or marine insurer or an insurer other than a fire and marine insurer for purposes of the statutory caps on municipal license fees. In this case, the court found that the taxpayers were not fire insurance companies, and, thus, one percent, rather than four percent, cap applied to municipal license taxes. The articles of incorporation for the businesses allowed the taxpayers to sell fire insurance, however 65% of the premiums earned by one taxpayer and 55% of the premiums earned by the other taxpayer were attributable to automobile insurance, and the sale of fire insurance was not the principal business endeavor.

Another major issue raised by these sections is the meaning of the phrase "return premiums." This issue was decided in *Alabama Farm Bureau Mut. Ins. Co. v. Hartselle,* 460 So.2d 1219 (Ala. 1984). In Hartselle, Farm Bureau reported and paid tax on the total amount of premiums on new policies actually issued during the year. Farm Bureau did not include premiums on policies which were simply renewed during the year.

The court again agreed with Farm Bureau, stating that renewal policies were not issued during the year. The court stated that:

> "A renewal premium which simply continues in effect an existing policy of insurance with no change in coverage is not subject to Hartselle's municipal license tax. Where a policy is renewed, however, and additional property or persons are insured, then the renewal premium received from such a policy is subject to this tax."

Thus, amendments to an insurance policy, under this case, subject the policy to the municipal license tax, while a simple renewal based on exactly the same terms as the previous year's policy does not.

The Code grants insurance companies additional protections. For instance, Section 11-51-123 exempts agents from paying a license fee in addition to that assessed to the company. This is an exception to the general rule that agents may be licensed separately from the company for which they work. *American Bakeries Co. v. Huntsville,* 232 Ala. 612, 168 So. 880 (1936). Also, fire and marine insurance companies have until 60 days after December 31 of each year to pay license fees. Other insurance companies have 60 days after January 1. See, Sections 11-51-121 and 11-51-123, Code of Alabama 1975.

Insurance companies which are organized under the Health Care Service Plan Act (Sections 10-4-100 through 10-4115, Code of Alabama 1975), such as Blue Cross/Blue Shield, are exempt from municipal taxation and licensing by Section 10-4-107.

Payment of a license fee by an insurance company assessed pursuant to Section 11-51-121, Code of Alabama 1975, enables it to do business in the municipality by its agents who are not required to buy an additional license to represent the company. AGO 1998-0025.

Utilities

Section 11-51-129, Code of Alabama 1975, limits municipal licenses on street railroads, electric, gas, waterworks companies and other utilities to a maximum of three percent of the company's gross receipts. In *Birmingham v. ALAGASCO,* 564 So.2d 416 (1990), the Alabama Supreme Court held that utilities are entitled to deduct amounts paid to the state under the Utility Gross Receipts Act when computing their municipal license fees.

Waste Grease

Section 11-40-23 grants waste grease handlers, those persons engaged in purchasing, receiving or collecting waste grease and animal by-products for rendering or recycling, a license limitation based on the population of the municipality within which they operate. The annual license fee ranges from $50 in municipalities with populations over 100,000, to $5.00 in municipalities with populations of 2,000 and under.

Boards and Authorities

Many publicly created boards and agencies are also exempt from municipal licenses. Any board, agency or entity claiming an exemption should be required to furnish proof of the exemption as well as proof that they qualify for the exemption. Proof of exemption is usually found in the statute under which a board was created.

In *Millbrook v. Tri-Community Water System,* 692 So.2d 866 (1997), the Alabama Court of Civil Appeals held that a corporation which maintains and operates a system to provide water to its members and not to the general public is not a public utility subject to the municipality's business license tax.

A municipality may require a gas district who is doing business within the municipality to purchase a privilege license and/or a franchise. AGO 1997-0125.

The municipal utilities board is required to pay a city license tax of three percent of the total revenue collected by the utilities board. AGO 1999-0275.

A city may impose a privilege license tax on another municipality's utility board doing business within the city and whether the board passes the tax on to the customer is within the board's discretion. AGO 2003-0138. NOTE: This opinion applies to utility boards established pursuant to Section 11-50-310 et. seq., of the Code of Alabama 1975.

A County Water Authority organized and existing under section 11-88-1, et seq., is exempt from payment of a gross receipts license tax imposed by a municipality under an ordinance adopted pursuant to section 11-51-129 of the Code of Alabama. Section 11-88-16 of the Code of Alabama, exempts Water, Sewer and Fire Protection Authorities from any license or excise tax imposed on such authorities with respect to the privilege of engaging in any of the activities authorized by that chapter. AGO 2008-0015

Towing Companies

A provision of the Interstate Commerce Act, 49 U.S.C. Section 14501(c)(1), preempts any state or local regulation "related to a price, route, or service of any motor carrier." In *R. Mayer of Atlanta, Inc. v. Atlanta*, 158 F.3d 538 (1998), the Eleventh Circuit Court of Appeals held that this federal law preempts municipal licensing of consensual towing services, although there is an argument that the ordinance in question in this case went far beyond merely assessing a fee against tow truck operators and that merely assessing a license fee would be upheld. In any event, this case clearly does not prevent licensing of non-consensual (those operators chosen by the governmental entity) towing services.

Small Farm Winery

A county or a municipality may not require a small farm winery to pay any fees, including business licensure fees, to make sales or deliveries, or any additional local tax other than the state and local sales or use taxes and excise taxes due on the sale of table wine to consumers. Section 28-6A-2, Code of Alabama 1975.

Limitations on Additional Local Motor Fuel Tax Levied after August 1, 2023

In Act 2023-288, the Alabama Legislature placed a limitation on the use of municipal local taxes on motor fuels defined in Section 40-17-322, Code of Alabama 1975, levied after August 1, 2023. Pursuant to this Act, any additional local tax amount levied on motor fuels after August 1, 2023 may be used only for the cost of administering the tax, cost of construction, reconstruction, maintenance, mass transit, and repair of roads, bridges, and rights-of-ways, cost of traffic regulation, and the cost of enforcing traffic and motor vehicle laws. Any local motor fuel taxes levied prior to August 1, 2023 are not subject to this restriction and can be treated as general fund revenue.

Miscellaneous Limitations and Exemptions

All references are to the Code of Alabama 1975. Railroads (Section 11-51-124), railway sleeping car companies (Section 11-51-125), express companies (Section 11-51-126), telegraph companies (Section 11-51-127), and telephone companies (Section 11-51-128) are all granted express limitations on the amount of license fees a municipality can collect from them. These licenses, for the most part, are based on the population of the municipality and exclude these companies from paying any additional license fee for conducting their protected business.

Additional exemptions exist for blind persons (Section 40-12-330) and for disabled veterans (Section 40-12-343). Blind persons who have filed a certificate with the probate judge are entitled to an exemption from the first $75 of any municipal license. To claim this exemption, a person must have resided within Alabama for two years and must furnish a vision certificate from a regularly licensed physician in the county where the exemption is claimed.

Disabled veterans who conduct business in their own name with no more than one employee or helper, are granted an exemption from the first $25 of the municipal license.

Section 34-14A-13 prohibits municipalities from withholding building permits and certificates of occupancy from contractors simply because the license fees of subcontractors have not been paid. A contractor must, however, submit a list of all subcontractors involved in a project within 15 days of the issuance of the building permit and update this list before the certificate of occupancy is issued. Also, a municipality may, by ordinance, levy an additional fee of $20, in addition to any other fees authorized by law, for the issuance of a permit connected to the construction of a residence or structure as defined in Section 34-14A-2. Such permits include building permits, plumbing permits, mechanical permits, electrical permits, or any combination of the foregoing, and any other required permits to construct or remodel new or existing residences or structures.

Under Act 2025-377, municipalities may still issue business licenses for the privilege of doing business as a consumable vapor products wholesaler, importer, or retailer. However, such business licenses must be measured by gross receipts of sale for selling consumable vapor products and no additional local taxes or license fees may be levied after October 1, 2025.

In addition to the above, municipal licensing officials should be aware that Section 40-9-12 provides a long list of civic, charitable and eleemosynary organizations and institutions which are exempt from all taxation including license taxation.

Additional Exemptions

Municipalities may grant exemptions to business classifications in addition to those granted by the state. However, a municipality cannot grant an exemption to an individual while not granting the exemption to other persons who fall within the same license classification. Additionally, any exemptions should be granted prospectively only, by a valid amendment to the municipal license ordinance.