

Business License Fees

Before 1997, a Utah municipality had the authority to license businesses for both revenue and regulatory purposes.¹ A revenue purpose is the raising of money for the general fund of the city. A regulatory purpose is the control of where, when, and how a business operates.

The Utah courts upheld this licensing authority. Examples of cases supporting Utah municipalities include *Davis v. Ogden City*, 215 P.2d 616 (Utah 1950), which upheld the City's right to license attorneys, and *Little America Hotel Corp. v. Salt Lake City*, 785 P.2d 1106 (Utah 1989), which upheld Salt Lake City's 1 percent room tax on the rental of hotel rooms.

The courts did not always side with the municipality. The courts struck down ordinances that discriminated between people engaged in the same businesses or ordinances that had fees that differed for substantially the same businesses. These decisions were based on the theory that it was a violation of equal protection the law under the state and federal constitutions. The fees had to be applied equally to all persons of a given class and be uniform and equal.

Various business licensing schemes were adopted by Utah municipalities including flat fees by class of business, fees based on the number of employees, fees based on the size of the business, and fees based on the gross receipts of the business. Since the municipality had authority to license for both revenue and regulation, there was no required link between the amount of the fee charged to the services supplied by the municipality to the business, or the burden created by the business on the municipality. All this changed in 1996.

A few municipalities had adopted a gross receipts business licensing scheme that appeared and was applied like a sales tax. Moab City was probably the most aggressive in this approach. The revenue from its business licenses was sufficient for the city to not have a local property tax levy. The gross receipts business license fee aroused the anger of the Utah Tax Payers Association and, therefore, the Utah Legislature. Once the legislature became aware of the municipalities broad power and discretion in business licenses, it determined to take the power and discretion away. In 1996, the legislature amended the Utah municipal code to create a "mother may I" system of revenue licensing. The state law is intended to limit a municipality's ability to license for revenue purposes to only those specific businesses or class of businesses allowed by the state legislature.

The state law specifically allows licensing for revenue purposes to certain parking services businesses, to a public assembly facility, to a business that causes a disproportionate cost of municipal services, to a business for which a city provides

¹ The enabling act was Utah Code 10-1-203.

enhanced levels of services,² to certain energy utility companies,³ to telephone utility companies,⁴ and hotel/motels.⁵ Each of these allowed revenue sources has its own special rules and definitions.

If a city or town is going to license for revenue purposes under the disproportionate services or enhanced level of services rubric, then it must do so by ordinance. The ordinance to justify a disproportionate cost of services must define what constitutes disproportionate costs and what “amounts are reasonably related to the costs of the municipal services provided by the municipality.”⁶

If a city or town is going to license for revenue purposes for enhanced level of services, the ordinance must define what is the base level of service and what amounts are reasonably related to the cost of providing the business for the enhanced level of services.⁷

Obviously, both the disproportionate costs and enhanced services ordinance require a study to generate the information to support the need and amount of the revenue to be raised by these ordinances. If a city or town enacts these ordinances without the underlying supporting data, the ordinances will not survive a court challenge.

Municipal services for both these types of business licensing ordinances are defined as including police, fire, storm water runoff, traffic control, parking, transportation, beautification, or snow removal.⁸

The energy utility companies can be taxed through the energy sales and use tax or under a franchise agreement. Cities can charge the telephone utilities a fee either through a business license ordinance or a franchise agreement. In either case, the limit on the tax or fee is 6 percent of the delivered value of the taxable energy⁹ for energy companies and 3.5 percent of the gross revenue of the telephone utility. Gross revenue for telephone utilities does not include private line services, long distance charges, carrier access services, and non-regulated telephone services.¹⁰ Both of these taxes require the passage of a specific ordinance. Model ordinances enacting these taxes can be obtained through the Utah League of Cities and Towns.

The hotel/motel business license fee has been changed to a local option 1 percent transient room tax. It is a tax on room rents for short term (less than 30 days) rentals. This is enacted by ordinance and can be collected either by the city or town itself or through the Utah State Tax Commission at the city or town’s option. A special provision allows an additional 1/2 percent transient room tax for a city or town which had a

² Utah Code 10-1-203 as amended.

³ This is called the energy sales and use tax as authorized by Utah Code 10-1-301 et seq.

⁴ Utah Code 10-1-401 et seq.

⁵ Utah Code 59-12-351.

⁶ Utah Code 10-1-203(5)(c).

⁷ Utah Code 10-1-203(5) (d).

⁸ Utah Code 10-1-203(5) (b).

⁹ Utah Code 10-1-304.

¹⁰ Utah Code 10-1-402(10).

business license gross receipts tax on transient rooms before January 1, 1996, and had pledged the proceeds of that tax to bond repayment.

A city or town may still have business licenses for regulation purposes only. These licenses must be uniform as to class of business, and the fee amount must be rationally related to the actual costs of regulating the business. These costs may include things such as the paper work cost of processing the license and safety and fire inspection. These types of regulatory licenses should not be a profit center for the municipality and, if they are, would be subject to challenge.

Special rules apply to the licensing of apartment complexes. These include limitations on a municipalities' ability to require inspections of apartments (for a fee) before they are rented and limitations on the amount of the fee that can be charged and requirements to implement a good landlord program.¹¹ Of course a study is required to implement any such fee and an actual ordinance is required. There are certain provisions that do not apply if the city or town had already adopted its apartment ordinance before May 2, 2005, and it does not raise its fee.

¹¹ Utah Code 10-1-203(5)(e).