

**TOWN OF MOUNT PLEASANT, SOUTH CAROLINA**

**SPECIAL MEETING**

**FINANCE COMMITTEE**

**Tuesday, November 13, 2018**

**Municipal Complex, Committee Meeting Room, 3<sup>rd</sup> Floor**

**100 Ann Edwards Lane, Mount Pleasant, SC 29464**

**MINUTES**

**PRESENT:** Tom O'Rourke, Chair; Gary Santos, Joe Bustos, Kathy Landing

**STAFF PRESENT:** Eric DeMoura, Town Administrator; Marcy Cotov, Chief Financial Officer, Melinda Turner, Business License Official, Jim Hinchey, Town Attorney, Julia Copeland, Town Attorney

Mr. O'Rourke called the meeting to order at 5:00 p.m.

**1. Public Comments**

**[None]**

**2. Appeal hearing of business license tax**

Mr. O'Rourke stated that the meeting is regarding an appeal hearing of the business license tax. FirstString representatives were in attendance to speak at the last Finance Committee meeting. He stated that if there are any legal questions from the Committee they will go into Executive Session.

Ms. Landing stated that we want to attract businesses in the life science field. She stated that the presence of FirstString in our community may bring more research and development companies into Mount Pleasant which helps the economic development plan. Ms. Landing stated that according to how the IRS defines grants that the Committee cannot make any changes. Going forward the Committee can discuss other possibilities for this company.

*Mr. Santos made a motion that we deny the appeal by FirstString based on the decision which is hereby included in this record. Ms. Landing seconded. All present were in favor of the decision.*

Mr. O'Rourke stated that there is no need for executive session. The basis for the denial will be part of the public record.

Mr. Santos stated that he hopes FirstString continues to stay with the Town which will encourage other businesses to come.

**Ms. Stefanie Cuebas**, Director of Operations at FirstString Research stated that they are open to meeting with the Town to discuss any ideas the Town may have.

**Final Decision**  
**Business License Appeal of FirstString Research, Inc.**  
**Finance Committee**  
**Town of Mount Pleasant, South Carolina**

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**Date Decision Filed: November 13, 2018**

The Finance Committee of the Mount Pleasant Town Council met on November 5, 2018 and November 13, 2018, to consider the appeal of FirstString Research Inc. (hereafter "FirstString") regarding the application of the Business License Ordinance to FirstString by the Business License Official. After consideration of the evidence and testimony presented, the Committee's decision is as follows:

1. The Finance Committee makes the following findings of fact:
  - a. Dr. Gautam Ghatnekar, on behalf of FirstString, filed an Appeal Application with the Town of Mount Pleasant on October 1, 2018;
  - b. FirstString conducts research and development in biotechnology. The business is located at 300 West Coleman Boulevard, Suite 203, in Mount Pleasant;
  - c. The only business license FirstString obtained is from Mount Pleasant;
  - d. FirstString takes the position that federal grant funds are not gross income for business license purposes and the Business License Official's assessment was therefore in error;
  - e. On January 23, 2018, Melody Dangerfield (Assistant Business License Official) sent a letter notifying FirstString of a business license audit scheduled for February 9, 2018, for the license years 2015/2016, 2016/2017, and 2017/2018;
  - f. On July 23, 2018, Ms. Dangerfield sent an email acknowledging receipt of the business license renewal payment for 2018/2019 and explained that the business license would not be issued until they responded to the audit letter;
  - g. Ms. Dangerfield conducted the audit on August 9, 2018, and results were sent to FirstString on August 15, 2018;
  - h. Ms. Dangerfield, Jonathan Edwards (Deputy Chief Financial Officer) Lauren

- Sims, (Community and Government Affairs Chief), and Melinda Turner (Business License Official) met with Dr. Ghatnekar and Stefanie Cuebas to discuss the audit results on August 28, 2018;
- i. During this meeting Dr. Ghatnekar explained that the majority of the income declared on the business tax returns is from grant funds awarded by the U.S. Department of Health and Human Services together with the Department of Defense. Dr. Ghatnekar provided contact information for his accountant, Collin Hill, with Cherry Bekaert, LLP located in Raleigh, N.C.;
  - j. On August 28, 2018, Mr. Edwards and Ms. Turner talked with Mr. Hill who confirmed that the Internal Revenue Service's definition provides that grant funds are included in gross income;
  - k. On September 5, 2018, Mr. Edwards and Ms. Turner talked to Lisa Beddin, with Greene Finney, LLP, the Town's external audit firm. Ms. Beddin agreed with staff's position that grant proceeds are gross income, according to both the Internal Revenue Code and the Mount Pleasant Business License Ordinance. She also pointed out that the entity is a "business" as defined in the Town Ordinance, Section 2;
  - l. On September 7, 2018, staff corresponded with Dr. Ghatnekar and provided the amounts due the Town;
  - m. A meeting that included Marcy Cotov (Chief Financial Officer) was scheduled for September 19, 2018. During this meeting Dr. Ghatnekar was accompanied by Jim McNab, Chairman of the Board of FirstString who explained their position that the business is unique to Mount Pleasant. They also said that the grants stipulate how funds will be spent for clinical trials, which are partly conducted by the Medical University of South Carolina and that paying taxes is not included as part of the grants. FirstString requested special consideration in the application of the business license ordinance;
  - n. Ms. Cotov explained at the meeting that the Town also deals with large federal grants and that various expenses are allowable. She further stated that staff is tasked with administering the Ordinance fairly and equitably to all businesses operating in the Town;
  - o. The Town was unable to identify ordinance language which permits or requires the Town to treat FirstString differently;
  - p. During the meeting Town staff also discussed that pursuant to SC Code Section 5-7-30, municipalities are required to perform business license tax calculations on gross income. A business license tax is not a property tax, income tax, or sales tax. Business licensing is an excise tax for the privilege of doing business, and the value of the privilege extended is measured by the business's gross income;
  - q. On September 20, 2018, payment was made for license years 2015/2016, 2016/2017, 2017/2018, and 2018/2019 under protest; and
  - r. On October 1, 2018, FirstString filed the business license appeal.
2. The Finance Committee makes the following conclusions of law:
- a. FirstString's position that federal grant funds are not gross income for business license purposes is flawed, because South Carolina Code Section 5-7-30 together

with the Town of Mount Pleasant’s Business License Ordinance explains that business licensing is based on gross income.

- b. Mount Pleasant’s ordinance, Section 2, page 2, includes the following definition: **“Gross Income”** means gross receipts which consist of the **total revenue of a business, received or accrued, for one calendar year collected or to be collected from business done within the Town**, excepting therefrom income from business done wholly outside of the Town on which a license tax is paid to some other City or a county and fully reported to the Town.
- c. The gross receipts for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Department of Insurance, or other government agency.
- d. Town Staff relied on federal income tax returns to compile the business license audit findings. The **IRS definition** states in part: “...**gross income means all income from whatever source derived.**”
- e. FirstString’s accountants as well as the Town’s auditors were unable to find a reason to exclude the grant funds as income for business licensing.
- f. A business license tax is a method of requiring a business to contribute/pay its share in support of government services.
- g. Three South Carolina court cases fully support the position taken by the Town:  
Eli Witt Co. vs. City of West Columbia;  
The Town of Hilton Head Island vs. Kigre, Inc.; and  
Olds vs. the City of Goose Creek.

3. **Summary:** South Carolina law allows for business license taxation on gross income of a business not declared elsewhere for license purposes. **Gross income includes “all income from whatever source derived” and grant funds are not excluded.** Pursuant to the Mount Pleasant Business License Ordinance, appropriate formulas and methodologies were used to calculate Business License Taxes involved in this matter. Accordingly, the Committee finds in favor of the Business License Official. As such, the decision of the Mount Pleasant Business License Official is upheld, and the appeal of the applicant/licensee is denied.

Date Issued: \_\_\_\_\_

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Tom O’Rourke, Chairman

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Gary Santos

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Kathy Landing

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Joseph Bustos

**The decision shall be final unless appealed in writing to a court of competent jurisdiction.**

**3. Executive session to receive legal advice on any issue related to the appellate hearing, if needed**

**4. Post Executive Session**

**Committee may take action on any item listed on an executive session agenda or discussed in an executive session during a properly noticed meeting**

**5. Adjourn**

There being no further business, the meeting was adjourned at 5:04 p.m.

Respectfully submitted,  
Gina Artrip  
November 14, 2018