



**The Town of Hilton Head Island
Special Town Council Meeting**

July 11, 2014

8:00 A.M.

AGENDA

**As a Courtesy to Others Please Turn Off/Silence All Mobile Devices During
the Town Council Meeting**

- 1) Call to Order**
- 2) Business License Appeal Hearing**
 - a. Kigre Inc./Appeal of Denial of Business License and Calculation of Business License Fee**
- 3) Executive Session**
- 4) Adjournment**



Town of Hilton Head Island

One Town Center Court
Hilton Head Island, SC 29928

MEMORANDUM

June 26, 2014

FROM: Staff Attorney

TO: Town Council

Via: Town Manager
Susan Simmons, Director of Financing

RE: Kigre, Inc. Appeal of Denial of Business License for Year 2014 and Recalculation of Year 2013 Business License Fee.

Recommendation: Staff recommends Town Council deny the appeal.

Summary: The Town has not denied Kigre, Inc. a 2014 business license. The Town has merely requested additional information and revised business license renewal forms from Kigre, Inc. and informed them that “until the matters are resolved, a business license would not be issued.” Kigre, Inc. has interpreted this statement as a denial of their business license.

Kigre, Inc. continues to challenge the legal requirement to pay a business license fee to the Town of Hilton Head Island based upon their gross income. Additionally, they assert that they should be a Class 2 SIC Class 39 “Miscellaneous manufacturing industry”.

Background:

On April 9, 2013 Kigre, Inc. submitted a renewal application which reported \$0.00 gross income. The renewal form was submitted with the same local code rate and classification as was used in prior years, Class 5A and SIC 3845. They paid the base fee for Class 5 of \$62.50. In 2014, Kigre, Inc. modified the business license renewal form to reflect Class 3 and a Type of business as Electrical, & Electronic Machinery, Equipment and Supplies. They also noted on the form that all gross receipts were reported to City of Savannah Revenue Department. They again reported \$0.00 gross income for the Town of Hilton Head Island and paid the base fee for Class 3 of \$50.00.

Upon receipt and review of the 2014 Kigre, Inc. business license renewal form, the Town responded to Kigre, Inc. by informing them that the license inspector was the determining authority for what the appropriate classification was for each business and that if they wished they could submit documentation to substantiate a change. Additionally, the Town requested documentation to support the full gross income for years 2013 and 2014 with any requests for

deductions based upon income from business done elsewhere upon which a business license fee was paid to another local government. Further the Town informed Kigre, Inc. that they could request an apportionment of the business license fee, but that they must provide documentation to support the apportionment.

On June 2, Kigre, Inc. responded by asserting that they had made a good faith application for its 2014 business license and demanded the Town issue a 2014 business license immediately. They then asserted the rate code/structure should be a SIC class designation of 36, defined as Electrical and electronic machinery, equipment & supplies. Kigre, Inc insisted upon the Town using this classification unless the Town could show that it is inaccurate for some reason, essentially shifting the burden on the Town to refute their reclassification.

On June 3, the Town responded by again requesting the information needed and informing Kigre, Inc. that a license would not be issued until the matters were resolved. The Town reiterated that the license inspector was the appropriate authority designated by Town Council to determine the appropriate classification for each business. Kigre, Inc. was again afforded the opportunity to support a request to change the rate code/structure and was assured that the license inspector would consider the information and make a ruling.

On June 6, Kigre, Inc. responded by informing the Town that it considered its previous correspondence as a denial of their 2014 business license. They then submitted payment for business license fees for years 2013 and 2014 under protest. Kigre, Inc. again asserted that the Town classification of Kigre into a Rate Class 5 was arbitrary and capricious and asserted that the manufacturing business conducted by Kigre, Inc. falls within Class 2 (because it is clearly a SIC Class 39 "Miscellaneous manufacturing industry"). This notwithstanding that they had just days before asserted it was a Class 36 Electrical and electronic machinery, equipment & supplies, and had placed that same Class on their 2014 business license renewal form. They informed the Town of their intent to appeal and again demanded immediate issuance of a 2014 business license. On June 13 Kigre, Inc. submitted the appeal before Town Council now.

The Town is more than willing to consider any information Kigre, Inc. will submit to substantiate a rate classification change. To date they have refused to submit any documentation which the Town could consider. Kigre, Inc. has been in its current Class since at least 1999. Additionally, the Town is willing to apportion business license fees if the appropriate documentation is submitted for it to consider. To date, Kigre, Inc. has refused to submit any documentation which would support apportionment. Town Code requires that a business license fee be paid upon all gross income earned within the Town. No deductions may be from gross income except for income from business done wholly outside the Town on which a business license tax is paid to some other municipality or county, or excluded by state law. The applicant has the burden to establish a right to a deduction by satisfactory records and proof. To date no records or proof has been submitted for the Town to consider any deductions.

CERTIFIED CIRCUIT
COURT MEDIATOR

ALSO ADMITTED
GEORGIA BAR

LAW OFFICE OF
THOMAS C. TAYLOR, LLC

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June 13, 2014

Via Hand-Delivery

Honorable Drew Laughlin, Mayor, and
Town of Hilton Head Island Town Council
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

**Re: Kigre, Inc., Town Business Account Number 1211;
Notice of Appeal pursuant to Municipal Code Section 10-1-140**

Dear Mayor Laughlin and Town Council Members:

As each of you know, I represent Kigre, Inc., and I have been requested by Jeffrey Myers, Kigre's COO, to file this Notice of Appeal to Town Council of the Town's June 3, 2014 denial of Kigre's requested 2014 Business License. Please allow this letter to also serve as a formal appeal to the Town Council of the Town's recalculation of Kigre's 2013 Business License Fee. Checks for the full amounts alleged due by the Town were delivered to the Town under protest on June 6, 2014, as is detailed below. This appeal follows eight (8) days later. Pursuant to the Town's Municipal Code, Kigre demands an appropriate hearing before Town Council within the time frame set forth by the Town's Code.

To properly frame this appeal and make clear for the record how Kigre, Inc. once again arrived at the Town's doorstep for an appeal hearing, please allow me to set forth the following undisputed facts:

- a. For years, Kigre, Inc. has maintained that the Town has improperly classified Kigre, Inc. under the Standard Industrial Code (SIC), the Town's antiquated classification system. Kigre contends the Town has intentionally placed it in a "Class 5" designation to increase the amount of business license tax Kigre must pay, when in fact, Kigre's manufacturing business clearly falls under a "Class 2" designation, that would be taxed at a lower rate. Although the Town Code does not provide for a specific avenue of appeal of a business' classification by the Town, on July 31, 2012, Kigre hand-delivered a formal letter of appeal as to its then (and current) designation as a "Section 3845 type business." Please refer to my letter of July 31, 2012 to Susan Simmons (copy attached), which specifically pointed out the Town's error in classifying Kigre as a Section 3845 manufacturer of "Electromedical and

Electrotherapeutic Apparatus.” I drew to the Town’s attention the fact that Kigre made no medical apparatus, such as the Section 3845 listed cardiographs, pacemakers and ultrasonic scanning devices. I further acknowledged that while the Section 3845 list did include “laser systems and equipment, medical,” it would be completely wrong to place Kiger in the Section just because someone at the Town found the word “laser” in the list. I specifically advised Mrs. Simmons that “Kigre does not manufacture laser systems nor medical equipment,” and wrote her: **“Kigre, Inc. hereby demands that the Town of Hilton Head Island properly classify it as an SIC Section 3999 business for all past and future purposes.”**

- b. The most appropriate SIC Section for Kigre, Inc. is Section 3999, entitled “Manufacturing Industries, Not Elsewhere Classified.” I included a copy of the Section 3999 detailed list with the July 31, 2012 letter, which contains the specific description of the group of included industries as “Establishments primarily engaged in manufacturing miscellaneous fabricated products... not elsewhere classified.”
- c. The only other conceivably correct classification for Kigre, Inc. would be Section 3229, “Pressed and Blown Glass and Glassware, Not Elsewhere Classified.”
- d. From July 31, 2012 until today, there has existed no other SIC classifications (besides 3999 or 3229) that would be appropriate for Kigre’s inclusion.
- e. Under the Town of Hilton Head Island’s Municipal Code, Section 10-1-190, an SIC Section 3845 designated business falls under the Town’s Class 5 business designation.
- f. Under the Town of Hilton Head Island’s Municipal Code, Section 10-1-190, an SIC Section 3999 or Section 3229 designated business falls under the Town’s Class 2 business designation.
- g. Under the Town of Hilton Head Island’s Municipal Code, a Class 5 designated business must pay a higher business license fee than a Class 2 designated business with the same reported gross income.
- h. Notwithstanding the formal appeal by Kigre, Inc. of the Section 3845 classification on July 31, 2012, the Town of Hilton Head Island has failed and refused to reclassify Kigre into the appropriate Section 3999 or 3229 designations.
- i. Notwithstanding the formal appeal by Kigre, Inc. of the Section 3845 classification on July 31, 2012, the Town of Hilton Head Island has failed to take any action

whatsoever to request further information or input from Kigre as to the demand that Kigre be classified as a Section 3999 manufacturing entity. Nor to Kigre's knowledge or belief, has the Town undertaken any good-faith investigation or consideration of the requested reclassification.

- j. Kigre, Inc. timely filed a 2013 Business License Renewal Form and thereon advised the Town of the continuous, erroneous classification of Kigre as a Section 3845 business, and also advised the Town that Kigre, Inc. only owed the minimum business license tax due (on a minimum of \$5,000 gross income), because all of its sales occurred outside of the state of South Carolina. The Town accepted the application, the payment and issued a Business License to Kigre for 2013.
- k. On May 20, 2014, Kigre, Inc. timely filed a 2014 Business License Renewal Form and thereon advised the Town of the continuous, erroneous classification of Kigre as a Section 3845 business, and also advised the Town that Kigre, Inc. only owed the minimum business license tax due of \$50 (on a minimum of \$5,000 gross income), because all of its sales occurred outside of the state of South Carolina, through its sales office located in Savannah, Georgia. Kigre, Inc. therein tendered a check to the Town for the amount Kigre in good faith believed it owed under the Business License ordinance and established federal law.
- l. On May 30, 2014, the Town attempted to deliver to Kigre, a letter from Bruce Seeley, Manager of the Inspections Collection and Audit area, which called upon Kigre to "resubmit" the 2013 and 2014 Business License Renewal forms based upon certain "guidance" that the Town was providing in the letter, and demanded that Kigre do so within three days to avoid penalties.
- m. I responded to the Town on June 2, 2014, and advised Mr. Sheeley that Kigre's 2014 application and fee were submitted and computed in good faith, and that the company "demands that a 2014 Business License be issued to Kigre immediately."
- n. My letter of June 2, 2014 to Mr. Sheeley reminded the Town again of the continuing classification error.
- o. On June 3, 2014, Mr. Seeley replied to my letter of June 2, 2014, and referring to the Town's demand for information, revised forms and payments noted in his May 30, 2014 letter, stated "The Town will not issue a business license to Kigre, Inc. until these matters are resolved." This June 3, 2014 letter from the Town was a denial of Kigre's requested 2014 Business License.

- p. The Town Code subjects any business operating without a Business License to both potential civil and criminal penalties.
- q. Because the Town improperly denied Kigre a 2014 Business License on June 3, 2014, operation of Kigre's business as of June 3, 2014, placed the business in violation of the Town's Municipal Code and subjected Kigre to civil and criminal penalties.
- r. On June 6, 2014, Kigre, Inc. delivered to the Town two checks under protest. The checks were Kigre check number 055398 for \$5,798.38 with a "revised" 2013 Business License Renewal Form filled in as demanded by the Town, and Kigre check number 055399 in the amount of \$6,176.38 and a "revised" 2014 Business License Renewal Form filled in as demanded by the Town. Both checks and the "revised" applications were tendered under written protest.
- s. I also delivered a letter dated June 6, 2014 with the checks, copy attached. In that letter, I noted the fact that the checks were tendered under protest and demanded that a 2014 Business License issue to Kigre immediately.

Under Municipal Code Section 10-1-140, a decision by the "license inspector" to deny a business license "shall be subject to appeal to Town Council as herein provided." Code Section 10-1-160 states that any person "aggrieved by... a denial of a business license by the license inspector may appeal the decision to town council by written request stating the reasons therefor." The written request is to be delivered to the town clerk within ten (10) days after payment of the demanded amounts under protest or notice of denial received.

Please accept this letter as Kigre, Inc.'s written request for an appeal hearing before Town Council as to its 2013 and 2014 Business Licenses, which have been paid in full (per the Town's demands and computations) under protest, less than 10 days ago.

The reasons Kigre, Inc. requests this appeal to Town Council are as follows:

- a. As is noted in detail above, Kigre, Inc. has been improperly classified by the Town as a Class 5, Section 3845 business in both 2013 and 2014, despite prior notice on July 31, 2012, from Kigre as to the inaccuracy of that classification. Kigre should be a Class 2, Section 3999 business (or a Section 3229 business), and that continuing "mistake" by the Town directly damages Kigre by increasing the amount of business license tax it is forced to pay.

- b. Because the Town accepted Kigre's Business License application and check in May 2013 for the 2013 year, and issued a 2013 Business License on that application, it would be inequitable to allow the Town to further pursue Kigre, Inc. on those claims.
- c. Kigre, Inc. has complied with the requirements of the Municipal Code of the Town of Hilton Head Island, SC, in all respects regarding the Business License Fee.
- d. The Business License Fee Ordinance, found at Section 10-1-10 et.seq. of the Municipal Code, is in form and enforcement, in violation of both the Constitution of the State of South Carolina and the Constitution of the United States of America.
- e. Under controlling decisions of the U.S. Supreme Court, the Town may not levy a "business license fee" nor any other type of tax upon that portion of Kigre's gross income generated in the sale of its products in interstate commerce.
- f. The Town has intentionally failed to follow the specific dictates of the Revenue and Collections Division of the Town and the Municipal Association of South Carolina's Handbook regarding the necessity of apportioning income generated by Kigre, Inc. in the manufacture and sale of its products through interstate commerce.
- g. The Town of Hilton Head Island arbitrarily and capriciously enforces the provisions of the Business License Fee Ordinance, in a discriminatory manner.
- h. The Town has improperly granted to the Town Manager the authority to arbitrarily grant "exemptions" to certain types of businesses from the Business License Fee.
- i. The Town of Hilton Head Island has failed and refuses to follow the requirements of its own ordinances regarding the Business License Fee.
- j. The Town of Hilton Head Island is intentionally, without valid reason, harassing and damaging Kigre, Inc.
- k. The Town of Hilton Head Island does not enforce the terms of the Business License Fee Ordinance uniformly and fairly.
- l. If the Town desired to properly question or review Kigre, Inc.'s 2013 Business License Renewal Application, there is a specific methodology set forth in the Municipal Code, which may be summarized as follows: Under Section 10-1-100, the Town purportedly has the authority to enter upon the premises of a business upon proper notice, to "make inspections, (and) examine and audit books and records...."

Once the designated official has performed his or her audit or inspection, per Section 10-1-110, a “notice of assessment” may be formulated, and then an appropriate “application for adjustment of the assessment” may be made to the license inspector within five (5) days of the mailing of the “notice of assessment.”

- m. Unless and until such time as the Town performs an “inspection and audit” upon proper notice and then, based on that “inspection and audit,” formulates a good faith, realistic “notice of assessment,” and then hears Kigre’s application for adjustment of assessment, and then issues a final notice of assessment, which by this letter is being appealed to Town Council, there is NO established “correct license fee” for 2013 upon which the Town may charge any late penalty. Thus, the Town’s claim for any penalties is in error. If and when the Town elects to follow its own Municipal Code properly and a final 2013 “assessment” is accurately formulated in good faith, then the Town may be in a position to supposedly seek “late penalties” if any portion of the legitimate assessment remains unpaid after Kigre, Inc. is given the “assessment” and appropriate time to pay.

Kigre, Inc. demands that the appeal herein requested to the Town Council be set in an open, public forum within the time frame set forth in the Municipal Code. Kigre will provide a court reporter to record the proceeding.

The Municipal Code provides that all parties shall have the right to present testimony and evidence. Implicit in that statement is the premise that all parties to the appeal shall have access to all relevant evidence. Thus, I am by this letter requesting that the Town provide me with access to review and copy all documents in the Town’s possession that refer to, relate to or otherwise evidence any and all actions the Town has taken in this matter since the Town Council hearing of June 4, 2013. It is imperative that I get access to all documents relating to the Town’s investigation and formulation of the alleged monies due from Kigre for its 2013 and 2014 Business Licenses at least 10 days prior to the Town Council hearing so that I may properly present Kigre, Inc.’s case. Please let me know when I may review the files. Thank you.

Cordially yours,
LAW OFFICE OF THOMAS C. TAYLOR, LLC.


Thomas C. Taylor

TCT/dpt

Enclosure(s)

cc: Jeffrey Myers
Greg Alford, Esq., via email attachment
Brian Hulbert, Esq., via email attachment