

FINANCIAL AFFAIRS

May we charge a license fee or tax on businesses from out of town doing business in our city?

Business licenses and fees are authorized by Ark. Code Ann. § 26-77-102. However, that law does not permit the city to charge a license fee or tax if the business has a license from another Arkansas city, unless it has a place of business in more than one city.

In addition, the U.S. Supreme Court has held that a city may not charge a business license fee or tax on a person who is soliciting orders that are solely in interstate commerce. The court has held that the Commerce Clause of the Constitution prohibits a “flat sum privilege tax on an interstate enterprise whose only contact with the taxing State is the solicitation of orders and the subsequent delivery of merchandise within the taxing State. Such taxes have a substantial inhibitory effect on commerce which is essentially interstate.” *Dunbar-Stanley Studios, Inc. v. Alabama*, 393 U.S. 537 (1969) (citing *West Point Wholesale Grocery Co. v. City of Opelika*, 354 U.S. 390, (1957); *Memphis Steam Laundry Cleaner, Inc. v. Stone*, 342 U.S. 389 (1952); *Nippert v. City of Richmond*, 327 U.S. 416 (1946).

On the other hand, the Court held that the Commerce Clause did not prohibit a tax on photographers who took pictures in stores and transmitted exposed film out of state for developing, with finished pictures mailed to stores for delivery to customers. The Court found that this was not purely interstate commerce since the act of photographing the customers took place locally. *Dunbar-Stanley Studios, Inc.*, *supra*.