

Memorandum / Legal Opinion

To: Jamie Smith, Revenue Director
From: KRC
Date: July 29, 2025
Re: Anthony's Bridal / Successor Business

I. Executive Summary

The City Council has the discretion to deny the business license (uphold the decision to deny the business license) of Southern Grace to provide for the safety, health, prosperity, morals, order, comfort, or convenience of the City. Making it clear that businesses cannot walk away from City-owed fees by incorporating a new entity, shutting down the debtor entity, and continuing operations without liability would be justified.

If the business license is issued, the Revenue Department can state its position that it will seek to collect the money owed from all possible sources, and one of those will be against Southern Grace on the theory of successor liability. Ultimately a Court of law would decide the outcome of that proceeding. In addition to this collection method, other methods directly against the remaining inventory and against the business assets or business owner may also be pursued.

II. Background

City of Foley resident Anthony Solarzano has operated Anthony's Bridal and Tuxedo at 1021 North McKenzie Avenue for several years. Over the last year, Anthony's Bridal failed to remit City of Foley sales and use taxes and business license taxes. Throughout 2024 and 2025, the City has been actively pursuing these unpaid taxes. Efforts were complicated by Mr. Solarzano's Chapter 13 petition for bankruptcy.

Further, on June 14, 2025, Anthony's Bridal was issued a citation for operating a business license without a business license for the years of 2023, 2024 and 2025.

Thereafter, on June 30, 2025, Anthony's Bridal closed its business' however, fixtures, equipment and inventory remained inside the shop located 1021 North McKenzie Street.

On July 7, 2025, Kayla Shepard, Anthony's sister in law, applied for a business license to operate a new bridal and formalwear retail store, Southern Grace Bridal & Tuxedo, LLC ("Southern Grace"), at the same location.

On July 14, 2025, the City denied Ms. Shepard's business license application. Ms. Shepard appealed the denial and a hearing we held on July 21, 2025. A decision on the appeal has been held over until August 4, 2025.

On July 24, 2005, the bankruptcy judge dismissed Mr. Solarzano's petition for bankruptcy, clearing the way for the City to continue its collection actions against Mr. Solarzano. The City collected the remaining inventory on Monday, July 28, after being informed by the landlord that he intended to discard it.

Anthony's Bridal currently owes \$32,371.45 in sales tax and an additional \$2,651.70 for unpaid business license fees.

III. Applicable Ordinances and Statutes

Section 20 of Chapter Five of the City of Foley Code of Ordinances sets forth the procedure by which the City Council May deny a new business license. This section also authorizes the City Council to deny applications for new business licenses if it finds that such denial is necessary to provide for the safety, preserve the health, promote the prosperity, or improve the morals, order, comfort, or convenience of the city's residents. The applicable section is restated here for your convenience:

Sec. 5-20. - Procedure for denial of new applications.

- a) The municipal designee shall have the authority to investigate all applications and may refer any application to the municipal governing body for a determination of whether such license should or should not be issued.
- b) If the municipal governing body denies the issuance of any license referred to it, the municipal clerk shall promptly notify the applicant of the municipal governing body's decision.
- c) If said applicant desires to appear before the municipal governing body to show cause why said license should be issued, he shall file a written notice with the municipal clerk, said notice to be filed within two (2) weeks from the date of mailing by the municipal clerk of the notice of the denial of such license by the municipal governing body.
- d) Upon receipt of said notice the municipal clerk shall promptly schedule a hearing, to be held within fifteen (15) days from the date of receipt of such notice, before the municipal governing body and shall give the notice of the date, time and place of said hearing to the applicant.
- e) The applicant shall be given the opportunity to appear personally, or through his counsel, or both, and the municipal governing body shall proceed to hear any evidence which may be presented both for and against the issuance of said license.
- f) If the municipal governing body determines from the evidence presented that in order **to either provide for the safety, preserve the health, promote the prosperity, or improve the morals, order, comfort and convenience of the inhabitants of the municipality said license should not be granted.** It shall enter an order to that effect; otherwise, said license shall be ordered issued upon payment of any required license fees. (Ord. No. 1018-07, § 20, 11-19-07)

IV. Issue / Questions

- 1) May the City deny Southern Grace's business license at this location because of Anthony's Bridal tax liability? In other words, do the present circumstances warrant the denial of the business license?**

The language in Section 5-20(f) mimics Ala. Code § 11-45-1 which grants municipalities the power to "adopt ordinances, not inconsistent with the laws of the state, to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort and convenience of the inhabitants of the municipality." See also *Eidge v. City of Bessemer*, 51 So. 246, 248, 164 Ala. 599, 606 (Ala. 1909) (citing Code 1907, § 1251).

The City of Foley has determined that a license may be revoked (or a renewal denied) for the following reasons:

- (a) Any lawful license. . . shall be subject to revocation by the municipal governing body for the violation by the licensee, his agent, servant, or employee of any provision of this article or of any ordinance of the municipality, or any statute of the State of Alabama relating to the business for which such license is issued; . . . and shall also be subject to revocation by the municipal governing body if, in connection with the issuance or renewal of any license, the licensee or his agent filed or caused to be filed any application, affidavit, statement, certificate, book, or any other data containing any false, deceptive or other misleading information or omission of material fact.
- (b) The conditions hereinabove set forth as grounds for the revocation of a license shall also constitute grounds for refusing to renew a license.

Sec. 5-21 (a) and (b). Further, no business license may be renewed until any debts the licensee owes to the municipality are paid in full. Sec. 5-5(d)(4). A hearing shall also be set on any decision to revoke or refuse to renew a license. Sec. 5-21 (c), City of Foley Code of Ordinances.

As such, because of its outstanding tax debt, Anthony's Bridal was not able to renew its business license.

In support of the decision to deny a business license to Southern Grace, City staff points out there are numerous connections between Anthony's Bridal and Southern Grace. These are:

- 1) Southern Grace was formed by Anthony's sister-in-law, Kayla Sheperd and is being managed or operated by his mother-in-law, Patricia Lassiter;
- 2) Anthony's mother-in-law was also a former employee of Anthony's Bridal;
- 3) Southern Grace intends to operate at the same location as Anthony's Bridal; and,
- 4) At the time of submitting the business license application, Southern Grace intended to use the furnishings, equipment and inventory leftover by Anthony's Bridal.

As a successor business, Southern Grace is responsible for the outstanding sales and use tax obligations. Therefore, under its general police powers and duty to promote prosperity, the City may deny Southern Grace's business license based on its connection to Anthony's Bridal.

2) What is successor business liability for tax debt?

Ala. Code § 40-23-25¹ requires any successor in business to withhold sufficient purchase money to satisfy the former business' tax liability. If the successor business fails to do so, the successor business becomes "liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner."

Though there is limited Alabama authority on this code section, most states have a similar statute. The Tennessee Supreme Court has explained: "The clear intention of statutes such as T.C.A. s 67-3025(a) is to provide that the 'tax debt . . . follow the business, its assets or any portion of them.'" *Bank of Commerce v. Woods*, 585 S.W.2d 577, 580 (Tenn., 1979) (quoting *Tri-Financial Corp. v. Department of Revenue*, 6 Wash.App. 637, 641, 495 P.2d 690, 692 (Ct.App.1972); See also *Annot.: Validity and Construction Of State Statute Making Successor Corporation Liable For Taxes Of Predecessor*, 65 A.L.R.3d 1181, 1184-87 (1975)).

¹ Ala. Code § 40-23-25. Person selling out or quitting business to file return; part of purchase money to be withheld.

Any person subject to the provisions hereof who shall sell out his business or stock of goods, or shall quit business, shall be required to make out the return provided for under [Section 40-23-7](#) within 30 days after the date he sold out his business or stock of goods, or quit business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the Department of Revenue showing that the taxes have been paid, or a certificate that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided the taxes shall be due and unpaid after the 30-day period allowed, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner. If in such cases the department deems it necessary in order to collect the taxes due the state, it may make a jeopardy assessment as provided in Chapter 29 of this title.

In 2011, Alabama's Chief Administrative Law Judge observed: "...the outstanding sales tax liability of a business is transferred by operation of law by § 40-23-25 to any subsequent buyer of the business, whether the buyer agrees to assume liability or not. The facts clearly establish that the individuals that purchased the Taxpayer's stone business were successors to that business as envisioned by § 40-23-25. The Department could, and perhaps in equity should, assess the successors for at least the sales tax in issue." *Rodger & Belinda Garner, Taxpayers v. State of Alabama Department of Revenue*, 2011 WL 487749, at *3 (emphasis added).

Generally, in order for the successor business to be liable, it must have purchased the business and failed to withhold funds [from the purchase money paid to the seller] necessary to satisfy the tax debt. See *Bates v. Director of Revenue*, 691 S.W.2d 273, 276 (Mo., 1985) ("To be a successor one must be a purchaser of the business property in question.") (citing *Knudsen Dairy Products Company v. State Board of Equalization*, 12 Cal.App.3d 47, 53, 90 Cal.Rptr. 533, 538 (1970); see *State v. Standard Oil Company*, 39 Ohio St.2d 41, 313 N.E.2d 838 (Ohio 1974); *Bank of Commerce*, supra.)).

However, a successor business may be liable for the outstanding tax debt of its predecessor even when "there was no money to withhold." See *Collins v. Lesters, Inc.*, 484 S.E.2d 62, 64–65, 225 Ga.App. 405, 406–08 (Ga.App., 1997) ("The Lesters also argue that OCGA § 48–8–46 cannot apply to this type of transaction because no purchase money actually passed to the seller, leaving the purchaser with nothing to withhold.") In *Collins*, the Georgia Supreme Court disagreed with purchaser's claim that they were unable to withhold any funds to satisfy its predecessor's tax debt given its insolvency. The court found the purchasers had a duty to figure out the order of debt priority before satisfying any other debts.

"Further, the direct payment of 'purchase money' from the purchaser to the seller is not necessary for the successor to be liable for any delinquent sales tax owed by its predecessor." *Daniel and Daniel Enterprises, Inc. As Successor To Optique Boutique, Inc., Taxpayer v. State of Alabama Department of Revenue*, 1994 WL 606115, at *5 (citing *Bank of Commerce v. Woods*, 585 SW.2d 577; *A. Copeland Enterprises v. Commissioner of Revenue*, 703 SW.2d 624) ("The clear intent of such statutes is for the tax debt to follow the business and its assets when sold.").

3) Is Southern Grace a successor business under Ala. Code § 40-23-25?

Here, certain factors (location of business, familial connections, former employees) support a finding that Southern Grace is a successor business and liable for Anthony's Bridal tax debt. In the event a business license is issued to Southern Grace, at this location, the City may proceed with collection efforts against Southern Grace.

Ultimately, however, whether Southern Grace is a successor business is a question of law. Without a purchase and sale agreement in place, it would be useful to better understand if

there are any other fiscal arrangements between Anthony's Bridal and Southern Grace. For example, has Southern Grace agreed to be responsible for any debts of Anthony's Bridal? To its vendors for any accounts receivable or landlord for unpaid rent? Will Southern Grace receive the benefit of any clients with upcoming events?

In the event the Council denies the business license, and Southern Grace does not receive the benefit of, at a minimum, the "goodwill" created in the community by Anthony's Bridal (after doing business at that location for so many years), more likely than not Southern Grace is not a successor business and should be permitted a business license to operate elsewhere.

4) What collection methods may the City employ to collect the outstanding tax debt?

In 2024, City placed a lien on real property owned by Anthony Solarzano. The City will continue its collection efforts by obtaining a judgment and executing on the judgment. Once a writ of execution has been obtained, the City may garnish Mr. Solarzano's pay, sell the residual inventory and investigate whether it can sell his personal real property.

In the event a business license is issued to Southern Grace, the City may also proceed with collection efforts against Southern Grace.