Revenue Resources For County Government

2018 Supplement
File With the 2016 Revenue Resources
For County Government

SOUTH CAROLINA ASSOCIATION OF COUNTIES

PREFACE

Store this supplement with the 2016 Edition of Revenue Resources for County Government. Any time the 2016 Edition of Revenue Resources for County Government is consulted, this supplement must also be checked. This supplement contains statutory amendments, case law, and Attorney General's opinions published after the main volume was printed.

The 2016 Edition of Revenue Resources for County Government addressed the revenue raising authority granted to counties by statutes other than those in the Home Rule Act. This 2018 supplement follows the same pattern.

This publication is intended to give you a readily available reference to begin your search for information and is not designed to be the final word on the law affecting county government revenue raising ability. The statutes, case notes, and summaries of Attorney General's opinions are not a complete source of the law which may affect the answer to a question you may have. Neither the Attorney General's opinions and editorial material in this supplement are binding legal authority, but are sometimes the only guidance on a particular point of law. In other instances, the Attorney General's opinions and editorial material attempt to help the reader harmonize two legal authorities which may appear to be conflicting or in a similar situation with significantly different facts. It is important to consult your county attorney when you have a question regarding the law.

Should you need additional assistance, the South Carolina Association of Counties staff is available to help all county officials and employees with any questions that might arise regarding revenue raising authority of local governments or any other matter that affects county government. You may call the Association of Counties at 1-800-922-6081 or email us at scac@scac.sc.

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P. 2 SECTION 6-1-50: FINANCIAL REPORTS

EDITOR'S NOTE: Counties and municipalities are required to submit a financial report to the Revenue and Fiscal Affairs Office. The Revenue and Fiscal Affairs Office is to determine the content and form of the report. The 2018 amendment to this section modified the deadline date in the statute.

§6-1-50. Financial report required.

Counties and municipalities receiving revenues from state aid, currently known as Aid to Subdivisions, shall submit annually to the Revenue and Fiscal Affairs Office a financial report detailing their sources of revenue, expenditures by category, indebtedness, and other information as the Revenue and Fiscal Affairs Office requires. The Revenue and Fiscal Affairs Office shall determine the content and format of the annual financial report. The financial report for the most recently completed fiscal year must be submitted to the Revenue and Fiscal Affairs Office by March fifteenth of each year. If an entity fails to file the financial report by March fifteenth, then the chief administrative officer of the entity shall be notified in writing that the entity has thirty days to comply with the requirements of this section. The Director of the Revenue and Fiscal Affairs Office may, for good cause, grant a local entity an extension of time to file the annual financial report. Notification by the Director of the Revenue and Fiscal Affairs Office to the Comptroller General and the State treasurer that an entity has failed to file the annual financial report thirty days after written notification to the chief administrative officer of the entity must result in the withholding of ten percent of subsequent payments of state aid to the entity until the report is filed. The Revenue and Fiscal Affairs Office is responsible for collecting, maintaining, and compiling the financial data provided by counties and municipalities in the annual financial report required by this section.

HISTORY: 1988 Act No. 365, Part I, §2; 2006 Act No. 388, Part IV §2.C; 2007 Act No. 57 §2.A; 2018 Act No. 246, § 5.

P. 6 SECTION 6-1-300: DEFINITIONS

CASE NOTE

A "new tax" means legislation where there has not previously been "an amount or rate [previously] imposed." This is based upon the definition set forth in Myers v. Patterson, 315 S.C. 248, 433 S.E.2d 841 (1993). S.C. Op. Att'y Gen., 2017 WL 5203264 (Oct. 30, 2017).

ATTORNEY GENERAL'S OPINIONS

In order to qualify as a fee, it must meet three criteria: (1) It must be charged in exchange for a particular service which benefits the payer in a manner not shared by other members of society. (2) It must be paid by choice and may be avoided by not utilizing the service. (3) Charges collected must

be to compensate the governmental entity providing the service for its expenses and not to raise revenues. S.C. Op. Att'y Gen., 2017 WL 5203264 (Oct. 30, 2017). *[EDITOR'S NOTE: The first and third prongs of the test quoted above appear in the definition of a service or user fee in S.C. Code §§ 6-1-300 and -330. The second prong relating to "voluntariness" does not appear in those Code sections. In Brown v. County of Horry, 308 S.C. 180, 417 S.E.2d 565 (1992), the court adopted a definition of service charge or user fee which included the first and third prongs of the test, but did not include the second prong. Brown preceded the statutory definitions in §§ 6-1-300 and -330 but mirrors the content of the codification.]*

P. 7 SECTION 6-1-310: PROHIBITION ON NEW LOCAL TAXES

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P. 7 SECTION 6-1-310: PROHIBITION ON NEW LOCAL TAXES

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A "percent for art" program most likely may not be implemented by a municipality. The Attorney General found no authorization for a municipality to charge a fee for art as part of a building permit fee nor a specific statutory authorization to implement a new tax for art. S.C. Op. Att'y Gen., 2017 WL 1290051 (March 28, 2017).

A new local government entity is prohibited by S.C. Code § 6-1-310 from imposing a new tax [a tax that the local governing body had not enacted as of December 31, 1996] without specific statutory authorization, such as those found in S.C. Code § 6-1-320. S.C. Op. Att'y Gen., 2017 WL 569539 (Jan. 20, 2017).

ARTICLE 3: AUTHORITY OF LOCAL GOVERNMENTS TO ASSESS TAXES AND FEES

P. 11 SECTION 6-1-320: MILLAGE RATE LIMITATIONS AND EXCEPTIONS

ATTORNEY GENERAL'S OPINIONS

S.C. Code § 6-1-320 applies to a town with zero millage rate. A town which previously imposed a property tax, but currently has a zero mill tax rate may increase its millage rate over the previous year millage rate pursuant to one of the exceptions to the millage rate limitation found in S.C. Code § 6-1-320(B). S.C. Op. Att'y Gen., 2017 WL 569539 (Jan. 20, 2017).

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S.C. Code § 4-23-40 requires the auditor and treasurer of both Horry and Georgetown Counties to levy and collect 10 mills for the Murrell's Inlet-Garden City Fire District. Any increase in millage must be done in accord with a statute such as S.C. Code § 6-1-320 or § 6-11-271. However, the board cannot raise millage pursuant to § 6-1-320 in violation of S.C. Const. Art. X, § 5, requiring the board members to be elected in order to raise millage without a referendum or action by the General Assembly. S.C. Op. Att'y Gen., 2017 WL 7425911 (December 9, 2016).

There are four statewide statutes authorizing special purpose districts to raise millage rates: §§ 6-1-320, 6-11-271, 6-11-273 and 6-11-275. S.C. Code § 6-1-320 is the one which does not require a referendum or action by the General Assembly. It allows a limited increase in the millage rate. However, S.C. Const. Art. X, § 5 requires that the governing board be elected in order to change the tax rate without a referendum or action by the General Assembly. S.C. Op. Att'y Gen., 2016 WL 4698868 (Aug. 19, 2016).

P. 16 SECTION 6-1-330: LOCAL FEE IMPOSITION LIMITATIONS

ATTORNEY GENERAL'S OPINIONS

In order to qualify as a fee, it must meet three criteria: (1) It must be charged in exchange for a particular service which benefits the payer in a manner not shared by other members of society. (2) It must be paid by choice and may be avoided by not utilizing the service. (3) Charges collected must be to compensate the governmental entity providing the service for its expenses and not to raise revenues. S.C. Op. Att'y Gen., 2017 WL 5203264 (Oct. 30, 2017). *[EDITOR'S NOTE: The first and third prongs of the test quoted above appear in the definition of a service or user fee in S.C. Code §§ 6-1-300 and -330. The second prong relating to "voluntariness" does not appear in those Code sections. In Brown v. County of Horry, 308 S.C. 180, 417 S.E.2d 565 (1992), the court adopted a definition of service charge or user fee which included the first and third prongs of the test, but did not include the second prong. Brown preceded the statutory definitions in §§ 6-1-300 and -330 but mirrors the content of the codification.]*

A "percent for art" program most likely may not be implemented by a municipality. The Attorney General found no authorization for a municipality to charge a fee for art as part of a building permit fee nor a specific statutory authorization to implement a new tax for art. S.C. Op. Att'y Gen., 2017 WL 1290051 (March 28, 2017).

The requirements of § 6-1-330 are a methodology by which a uniform service charge or fee is charged and do not conflict with the authority given to counties in § 4-9-30. The positive majority vote requirement in § 6-1-330(A) is a floor for the adoption of a service charge. There is no expression of legislative intent to prohibit a county adopting a super-majority requirement for the adoption of a service charge. S.C. Op. Att'y Gen., 2017 WL 1095386 (March 14, 2017).

ARTICLE 5: LOCAL ACCOMMODATIONS TAX ACT

P. 21 SECTION 6-1-530: PROJECTS FOR WHICH THE LOCAL ACCOMMODATIONS TAX MAY BE USED

ATTORNEY GENERAL'S OPINIONS

The Local Accommodations Tax must exclusively be used for one of the purposes listed in S.C. Code § 6-1-530. S.C. Op. Att'y Gen., 2017 WL 3923120 (Aug. 30, 2017). *[EDITOR'S NOTE: This opinion appears to rely heavily upon case law and other sources interpreting the state accommodations tax found in Chapter 4 of Title 6. We are unable to find any authority that would make the case law involving Chapter 4 of Title 6 binding in a question involving Chapter 1 of Title 6. Neither DOR nor the State Treasurer administers the Local Accommodations Tax, absent an agreement contrary to § 6-1-570. Local Accommodations Tax revenue is not subject to Tourism Expenditure Review Committee review or subject to the local advisory committee created to suggest expenditures of the state accommodations tax revenue.]*

ARTICLE 7: LOCAL HOSPITALITY ACT

P. 25 SECTION 6-1-730: USE OF LOCAL HOSPITALITY TAX REVENUE

ATTORNEY GENERAL'S OPINIONS

We believe a court will find that there must be a direct and causal connection between tourism and the promotion thereof for the Local Hospitality Funds to be used for a recreational facility. We believe Local Hospitality Tax funds could be used for a tourism facility and that a culinary tourism center could serve as a purpose set out in § 6-1-730. S.C. Op. Att'y Gen., 2017 WL 3923120 (Aug. 30, 2017). *[EDITOR'S NOTE: This opinion suggests following DOR revenue rulings and state Accommodations Tax advisory committee guidance, founded in Chapter 4 of Title 6, when dealing with Local Hospitality Tax revenue. We are unable to find any authority that would make the case law involving Chapter of Title 6 binding in a question involving Chapter 1 of Title 6. The statutes outlining permissible uses and procedures for state accommodations tax differ from those set out in Chapter 4 of Title 6. DOR does not administer the Local Accommodations Tax or the Local*

Hospitality Tax, absent an agreement contrary to § 6-1-570. Local Hospitality Tax revenue is not subject to Tourism Expenditure Review Committee review or subject to the local advisory committee created to suggest expenditures of the state accommodations tax revenue.]

P. 77 SECTION 4-10-50: DISTRIBUTION OF COUNTY/MUNICIPAL REVENUE FUND

ATTORNEY GENERAL'S OPINIONS

We believe the county has no authority to divert funds which would otherwise flow to the county school board under the agreement between the county and the school board to divide the county's share of the proceeds from the Local Option Sales Tax equally. A court would likely conclude that the agreement was widely known and understood by voters prior to the referendum approving the sales tax and that a tax levied for a specific purpose cannot diverted to another purpose. S.C. Op. Att'y Gen., 2017 WL 3105901 (July 13, 2017).

P. 93 SECTION 4-10-390: REIMPOSITION OF CAPITAL PROJECTS SALES TAX

§ 4-10-390. Reimposition of capital projects sales tax.

For any county which began the reimposition of a tax authorized by this article on April 1, 2013, and reimposed the tax at the 2016 General Election:

(1) the reimposed tax that commenced on April 1, 2013, is extended until April 30, 2020; and

(2) the commencement of the tax that was reimposed at the 2016 General Election is delayed until May 1, 2020, and expires on April 30, 2027.

HISTORY: 2018 Act No. 155.

P. 108 SECTION 4-10-790: FURNISHING OF DATA

EDITOR'S NOTE: The 2018 amendment transferred the duty to provide data to the State Treasurer from the Revenue and Fiscal Affairs Office to the Department of Revenue. The amendment also gave the Revenue and Fiscal Affairs Office the duty to provide technical assistance to political subdivisions in the determining the distribution of revenues and estimating revenues.

§4-10-790. Calculating distributions and estimating revenues; use of data furnished by Office of Research and Statistics.

The Department of Revenue shall furnish data to the State Treasurer and to the applicable political subdivisions receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to political subdivisions upon request includes, but

is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12-54-240. A person violating this section is subject to the penalties provided in Section 12-54-240. The Revenue and Fiscal Affairs Office shall provide technical assistance to the applicable political subdivisions receiving revenues for the purposes of calculating distributions and estimating revenues.

HISTORY: 2006 Act No. 388, Part III, § 1; 2018 Act No. 246, § 4.

P. 122 SECTION 4-37-30: SALES TAXES OR TOLLS AS REVENUE

CASE NOTES

DOR's extensive administrative, oversight, and enforcement responsibilities in the Transportation Sales Tax ("Act") and throughout Title 12 confer upon DOR a duty of ensuring expenditures of the Act revenues comply with the revenue laws DOR is charged with enforcing. In addition, the court specifically found that monies generated through the Act are considered to be state tax revenues - not local tax revenues. Richland County v. S.C. Department of Revenue, __ S.C. __, __ S.E.2d __ (2018) [2018 WL 1177700].

The types of projects permitted to be funded with the Transportation Sales Tax ("Act") are the capital costs of "highways, roads, streets, bridges, mass transit systems greenbelts, and other transportation-related projects." While some "administrative costs" may be appropriate under the Act, such administrative costs unrelated to any specific transportation project exceed the scope of the Act. Richland County v. S.C. Department of Revenue, __ S.C. __, __ S.E.2d __ (2018) [2018 WL 1177700].

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