Revenue Resources For County Government

2022 Supplement
File With the 2016 Revenue Resources for County Government

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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 2022 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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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.

SECTION 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.

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

P. 6 SECTION 6-1-300: DEFINITIONS

EDITOR'S NOTE: Act 236 of 2022 changes the definition of "service or user fee" in § 6-1-300(A)(6) to provide that the fee must be used to the benefit of the payers, *even if the general public also benefits*. This Act is in response to the Supreme Court Decision in *Burns v. Greenville Cty. Council*.

SECTION 6-1-300. Definitions.

(A)(6) “Service or user fee” means a charge required to be paid in return for a particular government service or program. “Service or user fee” also includes “uniform service charges.” The revenue generated from the fee must:

(a) be used to the benefit of the payers, even if the general public also benefits;

(b) only be used for the specific improvement contemplated;

(c) not exceed the cost of the improvement; and

(d) be uniformly imposed on all payers.

HISTORY: 1997 Act No. 138, Section 7; 2022 Act No. 236 (S. 233), Section 2.A, eff June 22, 2022.

Editor's Note

2022 Act No. 236, Sections 2.D, 2.E, provide as follows:

"[SECTION 2.]D. Notwithstanding Section 8-21-30, et seq., no public officer shall be personally liable for any amount charged pursuant to SECTION 2.A.

"[SECTION 2.]E. This SECTION takes effect upon approval by the Governor and applies retroactively to any service or fee imposed after December 31, 1996."

Effect of Amendment

2022 Act No. 236, Section 2.A, rewrote (6).

CASE NOTES

Service or user fees must benefit the payer of the fee in a way different than members of the general public. Greenville County’s road maintenance fee and telecommunications network fee were deemed unlawful taxes, because according to the South Carolina Supreme Court, the fees violate Section 6-1-310 of the S.C. Code. The Court relied on *Brown v. Cty of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992) and a 1997 amendment to Section 6-1-300 when determining that the fees are invalid. While the fees met the four factors of the *Brown* test as described below, the Court concluded the fees did not benefit the payer in some manner **different** than members of the general public, and thus, do not qualify as service or user fees permitted pursuant to the Code. *Burns v. Greenville Cty. Council*, 433 S.C. 583, 861 S.E.2d 31, 32 (2021) (emphasis added). *[NOTE: The Court described “different” as meaning “unique” or “peculiar” to the payer of the fee.]*

ATTORNEY GENERAL’S OPINIONS

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).

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

ATTORNEY GENERAL'S OPINIONS

A municipality needs specific statutory authority to implement zoning ordinances that are separate from the policing powers of the State especially in light of the prohibition against new taxes by a local government pursuant to South Carolina Code Ann. § 6-1-310. S.C. Op. Att'y Gen., 2019 WL946264 (Jan. 14, 2019).

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).

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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).

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

EDITOR'S NOTE: Act No. 44 of 2021 provides that the State Superintendent of Education may seek a state-of-education emergency declaration for a district under certain circumstances. A district in a state-of-education emergency shall have its fiscal authority relating to taxing authority and levying millage transferred to its county council until the state-of-education emergency is lifted. The county council may not exceed millage limitations established pursuant to Section 6-1-320 or otherwise established prior to the state-of-education emergency.

ATTORNEY GENERAL'S OPINIONS

It is believed that the legislature intended to allow local governing bodies the ability to exceed the millage rate limitation found in section 6-1-320(A) when there is a specific need to set funds aside for a future use. In this specific case, Pickens County exceeded the millage rate limitations to create a reserve account for the county's road department in order to make up for the shortfall resulting from their road use fee's repeal. The AG's office opined that while Pickens County may very well find it necessary to set funds aside for future road-related needs, the office does not believe the county may use the exception to exceed the milage rate limitation to fund ongoing road operating expenses. S.C. Op. Att'y Gen., 2021 WL 5034371 (Oct. 18, 2021).

It is believed that a court could determine the millage rate cap contained in Section 6-1-320 of the South Carolina Code, as amended by Act 388, is applicable to the Legislature that acted as a taxing authority and levied the millage rate through the enactment of local legislation. However, it is believed that the Legislature nevertheless has the authority to set the millage at any rate it desires as long as it does not run afoul of the Constitution. It is also believed that the Legislature intended Section 12-37-220(B)(47), exempting owner-occupied residential property from taxes imposed for school operating purposes, to apply to counties that previously imposed a tax on all property. S.C. Op. Att'y Gen., 2020 WL 1068930 (Feb. 25, 2020).

A special purpose district with elected board members that seeks to raise its millage rate above its normal millage or taxing authority must do so in accordance with the procedures established in S.C. Code Ann. § § 6-1-320., 6-11-271, 6-11-273 or 6-11-275. S.C. Op. Att'y Gen., 2019 WL2369081 (May 3, 2019).

If a governing body wishes to exceed the millage rate allowed pursuant to Section 6-1-320(A), it must establish the applicability of one of the exceptions in subsection (B) for that particular year. In the case of a deficiency, the Legislature makes clear that the excess millage levied to cure the deficiency is further limited in that it may only be imposed until the deficiency is cured. Under no circumstances should a political subdivision subvert the plain purpose of this constitutional mandate by deliberately and consistently running a deficit every year. S.C. Op. Att'y Gen., 2019 WL1644925 (Feb. 27, 2019).

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).

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).

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

EDITOR'S NOTE: Act 236 of 2022 amended § 6-1-330(A) to explicitly state that a fee adopted or imposed by a local government prior to December 31, 1996, remains in force and effect until repealed by the enacting local governing body, notwithstanding the provisions of this article, thereby validating all user fees protected under Article 6. The Act also added § 6-1-330(E) to ban counties that repealed their road maintenance fee after June 30, 2021, and subsequently approved a millage increase for road maintenance, from reimposing the road maintenance fee without first repealing the millage increase. Finally, Act 236 added § 6-1-330(F) to require local governments that impose a service or user fee to publish the amount of dollars collected on each fee on the county's website.

SECTION 6-1-330. Local fee imposition limitations.

(A) A local governing body, by ordinance approved by a positive majority, is authorized to charge and collect a service or user fee. A local governing body must provide public notice of any new service or user fee being considered and the governing body is required to hold a public hearing on any proposed new service or user fee prior to final adoption of any new service or user fee. Public comment must be received by the governing body prior to the final reading of the ordinance to adopt a new service or user fee. A fee adopted or imposed by a local governing body prior to December 31, 1996, remains in force and effect until repealed by the enacting local governing body, notwithstanding the provisions of this article.

(B) The revenue derived from a service or user fee imposed to finance the provision of public services must be used to pay costs related to the provision of the service or program for which the fee was paid. If the revenue generated by a fee is five percent or more of the imposing entity's prior fiscal year's total budget, the proceeds of the fee must be kept in a separate and segregated fund from the general fund of the imposing governmental entity.

(C) If a governmental entity proposes to adopt a service or user fee to fund a service that was previously funded by property tax revenue, the notice required pursuant to Section 6-1-80 must include that fact in the text of the published notice.

(D) The governing body of a county may not impose a fee on agricultural lands, forestlands, or undeveloped lands for a stormwater, sediment, or erosion control program unless Chapter 14, Title 48 allows for the imposition of this fee on these lands; provided, that any county which imposes such a fee on these lands on the effective date of this subsection may continue to impose that fee under its same terms, conditions, and amounts.

(E) A local governing body that repealed a road maintenance fee after June 30, 2021, and subsequently approved a millage increase for road maintenance, must repeal the millage imposed to replace the previous road maintenance fee before reimposing the road maintenance fee.

(F) A local governing body that imposes a user or service fee pursuant to Section 6-1-300(6) must publish the amount of dollars annually collected on each fee on the county's website.

HISTORY: 1997 Act No. 138, Section 7; 2009 Act No. 75, Section 2, eff June 16, 2009; 2022 Act No. 236 (S.233), Sections 2.B, 2.C, eff June 22, 2022.

Editor's Note

2022 Act No. 236, Section 2.E, provides as follows:

"[SECTION 2.]E. This SECTION takes effect upon approval by the Governor and applies retroactively to any service or fee imposed after December 31, 1996."

Effect of Amendment

The 2009 amendment added subsection (D) relating to imposition of stormwater, sediment, or erosion control fees on agricultural, forest, or undeveloped lands.

2022 Act No. 236, Section 2.B, in (A), in the fourth sentence, substituted "article" for "section".

2022 Act No. 236, Section 2.C, added (E) and (F).

CASE NOTES

While S.C. Code Ann § 6-1-330(A) grandfathers service or user fees enacted by a local government prior to December 31, 1996, these fees are grandfathered "until repealed by the enacting local governing body." In *Burns v. Greenville Cty. Council*, the fee ultimately invalidated by the South Carolina Supreme Court was one that increased a previously existing fee that was enacted in 1993. *Burns v. Greenville Cty. Council*, 433 S.C. 583, 861 S.E.2d 31, 32 (2021).

ATTORNEY GENERAL'S OPINIONS

While Section 6-1-330 requires that service-fee revenue must be kept in a separate fund from a local government's general fund when the service-fee revenue amounts to five percent or more of the local government's total budget, there is no statutory or regulatory requirement that stormwater fee revenue be kept in an account for each payor. Further, it is this Office's opinion that a court would not hold a local government's stormwater utility ordinance or stormwater user fee is invalid because a public referendum was not held prior to its adoption. See S.C. Code §§ 6-1-330(A); 48-14-120(C). S.C. Op. Att'y Gen., 2020 WL 5445895, (Aug. 24, 2020).

Pursuant to *Azar v. City of Columbia*, 414 S.C. 307 (2015), a municipality's transfer of its utility revenues to its general fund is lawful if it constitutes either "surplus revenues" pursuant to S.C. Code Ann. § 6-21-440 or "related" costs under S.C. Code Ann. § 6-1-330(B). In order to be related costs, the utility revenues must be used to pay costs sufficiently related to the provision of the utility services. If those mandatory reserves have not been met as required by law, the transfer of those funds is most likely unlawful. S.C. Op. Att'y Gen., 2019 WL2369076 (May 23, 2019).

Fees are limited to their actual costs and should not be used as a "slush fund" for a local government. S.C. Op. Att'y Gen., 2019 WL946264 (Jan. 14, 2019).

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

There must be at minimum an implied nexus between the tax funds spent on the patrol cars and the use of the cars for "operations directly attendant to those facilities" listed in § 6-1-530 and directly related to the tourist destination. S.C. Op. Att'y Gen., 2018 WL1160093 (Jan. 9, 2018). *[EDITOR'S NOTE: This opinion suggests following DOR Revenue Ruling 98-22, 1998 WL 34058107 as a court may find it helpful in the interpretation of Accommodations Taxes. However, the Office opines that neither the revenue ruling nor the statutes are binding, and neither should be followed for the allocation of Local Accommodations Tax funds and Local Hospitality Tax funds.]*

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

EDITOR'S NOTE: Act No. 146 of 2020 adds two additional permissible uses of revenue from local hospitality tax with the addition of Section 6-1-730 (A)(7-8). Under § 6-1-730 (A)(7), local governments are allowed to use local hospitality taxes for the control and repair of flooding and drainage at tourism-related lands or areas. However, § 6-1-730 (C) provides limitations on the expenditure of these revenues.

SECTION 6-1-730. Use of revenue from local hospitality tax.

(A) The revenue generated by the hospitality tax must be used exclusively for the following purposes:

1) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;

(2) tourism-related cultural, recreational, or historic facilities;

(3) beach access and renourishment;

(4) highways, roads, streets, and bridges providing access to tourist destinations;

(5) advertisements and promotions related to tourism development;

(6) water and sewer infrastructure to serve tourism-related demand;

(7) control and repair of flooding and drainage within or on tourism-related lands or areas; or

(8) site preparation for items in this section, including, but not limited to, demolition, repair, or construction.

(B)(1) In a county in which at least nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, the revenues of the hospitality tax authorized in this article may be used for the operation and maintenance of those items provided in (A)(1) through (6) including police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities.

(2) In a county in which less than nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, an amount not to exceed fifty percent of the revenue in the preceding fiscal year of the local hospitality tax authorized pursuant to this article may be used for the additional purposes provided in item (1) of this subsection.

(C) If applying the provisions of subsection (A)(7), then the revenues must be expended exclusively on public works projects designed to eliminate or mitigate the adverse effects of recurrent nuisance flooding, including that which is attributable to sea-level rise, or other recurrent flooding. Such adverse effects include road closures and other transportation disruptions, storm-water drainage issues, and compromised public infrastructure. The public works projects must be within or on tourism-related lands or areas. Revenues must not be used to pay claims or otherwise settle litigation that may arise from time to time due to the harmful impacts of nuisance or other flooding.

HISTORY: 1997 Act No. 138, §9; 1999 Act No. 93, §14; 2006 Act No. 314, §2; 2010 Act No. 290, §36; 2020 Act No. 146, §1.

A court would likely find that Section 6-1-730(A) permits local governments to use local hospitality tax revenue to purchase land to be used for tourism-related recreational facilities and to control flooding and drainage within or on tourism-related lands or areas. Because revenue is authorized to be spent on tourism-related buildings, facilities, water and sewer infrastructure, and roads, the ability to acquire the land on which these assets sit can be fairly implied. Also, a court would likely find that § 6-1-730(A)(8) authorizes the use of local hospitality tax revenue for site preparation including demolition, repair, or construction of such facilities. S.C. Op. Att'y Gen., 2022 WL 802265 (March 7, 2022). *[EDITOR'S NOTE: The opinion expressed concern over the potential use of hospitality tax revenue on school district facilities. Prior opinions have opined that local hospitality tax revenue could not be used to improve school district recreational facilities where "such facilities are solely used by the students and staff of the school, rather than by tourists."]*

There must be at minimum an implied nexus between the tax funds spent on the patrol cars and the use of the cars for "operations directly attendant to those facilities" listed in § 6-1-730 and directly related to the tourist destination. S.C. Op. Att'y Gen., 2018 WL1160093 (Jan. 9, 2018).

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, found 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 4 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.]*

ARTICLE 9: DEVELOPMENT IMPACT FEE ACT

SECTION 6-1-2020: AMBULANCE SERVICE DESIGNATED AS ESSENTIAL SERVICE

EDITOR'S NOTE: Act 164 of 2022 added § 6-1-2020 to the S.C. Code so as to designate ambulance service as an essential service in South Carolina and to require that each county governing body ensures that at least one licensed ambulance service is operating within the county.

SECTION 6-1-2020. Ambulance service designated as an essential service.

(A) As used in this section:

(1) ‘Ambulance service' means a public or private entity that is a licensed provider who has obtained the necessary permits and licenses for the transportation of persons who are sick, injured, wounded, or otherwise incapacitated.

(2) ‘County' means a county of this State.

(3) 'Municipality' means a municipal corporation created pursuant to Chapter 1, Title 5 or a municipal government or governing body as the use of the term dictates.

(B) (1) Ambulance service is hereby designated as an essential service in this State.

(2) Each county governing body in this State shall ensure that at least one licensed ambulance service is available within the county. This may be provided as a county service, but also may be accomplished through other means including, but not limited to:

(a) providing a license or franchise to a private company;
(b) contracting with a public, private, or nonprofit entity for the service;
(c) entering into an intergovernmental agreement with one or more local governments; or
(d) entering into an agreement with a hospital or other health care facility.

(3) A county is not required to appropriate county revenues for ambulance service if the service can be provided by any other means.

(C) Municipal governing bodies also are authorized to make provisions for ambulance service within the boundaries of the municipality. A municipality may not provide and maintain, license, franchise, or contract for ambulance service outside its corporate boundaries without the approval of the county governing body, in the case of unincorporated areas, or the municipal governing body if the area to be served lies within the boundaries of another municipality.

(D) A county may not provide and maintain, license, franchise, or contract for ambulance service within the boundaries of a municipality that has made provisions for ambulance service without the approval of the municipal governing body of the area to be served.

(E) The governing body of any county or municipality may adopt and enforce reasonable regulations to control the provision of private or nonprofit ambulance service.

(F) Two or more counties and municipalities may enter into agreements with each other and with persons providing both emergency and nonemergency ambulance service for a county or counties on a countywide basis, for joint or cooperative action to provide for ambulance service.

HISTORY: 2022 Act No. 164 (H.4601), Section 1, eff May 13, 2022.

PART II LOCAL SALES AND USE TAXES

ARTICLE 1: LOCAL OPTION SALES TAX

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

ATTORNEY GENERAL'S OPINIONS

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).

ARTICLE 3: CAPITAL PROJECT SALES TAX ACT

P. 82 SECTION 4-10-300: CAPITAL PROJECT SALES TAX ACT

CASE NOTES

A governing body is not required to obtain and issue separate general obligation bonds for each project it seeks to undertake, However, a ballot referendum proposing bonded indebtedness must contain a single question for each proposal to which voters can respond affirmatively or negatively. Each proposal requires a separate vote. Ziegler v. Dorchester County, 426 S.C. 615, 828 S.E. 2d 218 (2019) [2019 WL 2022648]. *[EDITOR'S NOTE: This case dealt solely with general obligation bonds and the Court specifically stated that nothing in the holding impacts the Capital Project Sales Tax Act.]*

P. 83 SECTION 4-10-310: IMPOSITION OF TAX

EDITOR'S NOTE: Act 189 of 2022 amended Section 4-10-310 and added Section 4-10-315 to allow a county which has imposed by ordinance a sales and use tax in an amount not to exceed one percent within its jurisdiction to impose an additional one percent sales and use tax within its jurisdiction.

Section 4-10-310. Imposition of tax.

Subject to the requirements of this article, the county governing body may impose a one percent sales and use tax by ordinance, subject to a referendum, within the county area for a specific purpose or purposes and for a limited amount of time. The revenues collected pursuant to this article may be used to defray debt service on bonds issued to pay for projects authorized in this article. However, at no time may any portion of the county area be subject to more than one percent sales tax levied pursuant to this article or pursuant to any local law enacted by the General Assembly. This limitation does not apply in a county area in which, as of July 1, 2012, a local sales and use tax was imposed

pursuant to a local act of the General Assembly, the revenues of which are used to offset the costs of school construction, or other school purposes, or other government expenses, or for any combination of these uses.

HISTORY: 1997 Act No. 138, Section 3, eff July 1, 1997; 2009 Act No. 49, Section 1, eff upon approval (became law without the Governor's signature on June 3, 2009); 2012 Act No. 267, Section 4, eff June 20, 2012; 2022 Act No. 189 (H.3948), Section 3, eff May 16, 2022.

Effect of Amendment

The 2009 amendment deleted "to collect a limited amount of money" from the end of the first sentence.

The 2012 amendment added the last sentence which provides an exception.

2022 Act No. 189, Section 3, in the third sentence, deleted ", pursuant to Chapter 37, Title 4," following "pursuant to this article".

SECTION 4-10-315: ADDITIONAL SALE AND USE TAX NOT EXCEEDING ONE PERCENT

Notwithstanding Section 4-10-310, Section 4-37-40, or any other provision of law, a county which has imposed by ordinance a sales and use tax in an amount not to exceed one percent within its jurisdiction pursuant to this chapter may utilize the provisions of Chapter 37, Title 4 to impose an additional sales and use tax in an amount not to exceed one percent within its jurisdiction.

HISTORY: 2022 Act No. 189 (H.3948), Section 4, eff May 16, 2022.

P. 85 SECTION 4-10-330: BALLOT QUESTION AND USE OF TAX REVENUE

CASE NOTES

An advocacy group challenged a November 2018 referendum in April of the following year. The Court held that those who wish to challenge the results of a referendum must bring their action within thirty days of the referendum regardless of if they are challenging the results or procedural aspects of the referendum. S.C. Code Ann. § 4-10-330(F) "does not contain any express language limiting 'the results of the referendum' only to procedural aspects, such as the vote count." Therefore, the thirty-day statute of limitations begins once a county has certified the result of a referendum. The code section "does not distinguish between procedural and substantive challenges." *S.C. Pub. Int. Foundation v. Calhoun Cnty. Council*, 432 S.C. 492, 854 S.E.2d 836 (2021).

ATTORNEY GENERAL'S OPINIONS

The statute's use of the words "may include" suggests that the legislature did not intend to limit the permissible projects to only those listed. Therefore, a court would likely find that the statute

authorizes the use of Capital Project Sales Tax funds to purchase land for administrative building, public garages, and other such projects for economic development as long as the development is one of the purposes within § 4-10-330(A)(1) and as long as: (1) the tax is not "reimposed" and as long as (2) the county issues an ordinance authorizing a purpose or purposes outlined in § 4-10-330(A)(1). WL 4182315 (Aug. 21, 2019).

P. 89 SECTION 4-10-340: TAX IMPOSITION AND TERMINATION

ATTORNEY GENERAL'S OPINIONS

Funds originally taxed (before the tax expires pursuant to S.C. Code § 4-10-340(A)-(B)) for a project that was not completed due to impossibility must first be used to complete projects for which the original tax was imposed, then any projects voted on to reimpose the tax, then the excess may be used for such a purpose as described in the ordinance and listed in § 4-10-330(A)(1) WL 4182315 (Aug. 21, 2019).

P. 93 SECTION 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.

ARTICLE 7: LOCAL OPTION SALES AND USE TAX FOR LOCAL PROPERTY TAX CREDITS

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.

SECTION 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.

ARTICLE 10: COUNTY GREEN SPACE SALES TAX ACT

Editor's Note

2022 Act No. 166, preamble and Section 1, provide as follows:

"Whereas, South Carolina is blessed with a broad array of natural resources, from the Blue Ridge Escarpment in the Upstate, to the sandhills of the Midlands, to the farmland and woodlands of the Pee Dee, and to the iconic shoreline and marshes of the coastal plain; and

Whereas, South Carolina's coastal geography consists of 187 miles of oceanfront shoreline and 2,876 miles of tidal shorelines, and includes 500,000 acres of salt marshes that represent twenty percent of all the salt marshes on the United States' Atlantic coast, all of which underpin extensive recreational and commercial fisheries, thriving coastal tourism, important maritime industries, and critical natural defenses for people against storms; and

Whereas, South Carolina's Upstate consists of the 10,000-acre Mountain Bridge Wilderness Area that encompasses the Blue Ridge Escarpment and its vast array of waterfalls, hardwood forests, headwaters, and mountain streams, as well as a diversity of plant and animal life, including the exceptionally rare and endangered bunched arrowhead; and

Whereas, South Carolina's Midlands region is home to the sandhills and longleaf pine habitat, which supports over 30 threatened or endangered plant and animal species, including the red-cockaded woodpecker; and

Whereas, South Carolina's Pee Dee is a region with rich geographic variations, including deep woodlands, a patchwork of timber forests and agricultural fields, black-water swamps and creeks that intermingle with red rivers and high bluffs, historic sites, and one of the most productive agricultural areas in the State; and

Whereas, the quality of life of all South Carolinians is tied to conservation, with homes, businesses, and recreation being drawn to areas with abundant and accessible green space and natural areas; and

Whereas, according to the Census Bureau, South Carolina is the tenth-fastest-growing State in the nation, and in particular, the State contains a number of the fastest-growing metropolitan areas in the nation, including Myrtle Beach, York County, and Charleston,

and is projected in the coming years to continue experiencing steady population growth and the expansion of urban and suburban land uses; and

Whereas, studies conducted by City Explained suggest that the amount of developed land in some regions of South Carolina will increase by 250% by 2040 if current development trends continue; and

Whereas, although this rapid growth will bring prosperity and new opportunities to South Carolina, it will also put additional pressures on our state's lands and waters, in that the development and the accompanying infrastructure will result in the destruction of natural wetlands, marshes, headwaters, and other waterways, thereby hampering the functioning of these systems and eliminating valuable and effective natural storm protection and flood abatement, and fish and wildlife habitat; and

Whereas, this growth increases the amount of impervious surfaces throughout our State, which in turn creates new runoff and carries pollutants into our waterways. For example, a 2019 study found that development in the Town of Bluffton has increased levels of fecal coliform in the May River 3,150% since 1999 and Upstate studies found that sediment from land development is a leading cause of water quality degradation, resulting in flooding, increased costs for drinking water treatment, and harm to aquatic life; and

Whereas, there are significant economic benefits that result from protecting land, including tourism and recreation; and

Whereas, farmland protection helps promote agritourism and boosts the local food economy, as demonstrated by a 2013 SC Department of Agriculture study that found that if every South Carolina resident purchased $5 worth of food each week directly from a farmer in the State the potential impact would be about $1.2 billion; and

Whereas, the Southeast United States coast has experienced some of the highest rates of sea level rise and coastal flooding in the world, with some areas losing as much as three feet of bank each year, and additional sea level rises and coastal flooding will adversely impact existing residential and commercial uses on our state's coast and has been cited by the United States Department of Defense as a threat to the viability of the Marine Corps Recruit Depot Parris Island, which employs 6,100 people and has an annual economic impact of $739.8 million; and

Whereas, flooding has significantly affected South Carolina's inland communities, with over 80 dam failures from 2015 to 2018 resulting from extreme weather and flooding that our riverine systems and floodplains were unable to attenuate, leading to significant impacts on transportation and drinking water infrastructure and the loss of homes, livelihoods, and lives; and

Whereas, the topography of our State, whether the low-lying topography of our coastal areas or the small incised streams of the Upstate prone to flash flooding and erosion, our state's development patterns makes our communities highly vulnerable to inland and riverine flooding if the flow of rainwater runoff is greater than the carrying capacities of the natural drainage systems, and over the past six years, major flooding and storm events have caused over one billion dollars in total damages

to residential and commercial properties and have imposed substantial burdens on South Carolina taxpayers through general fund disbursements; and

Whereas, an effective way to avoid incurring such liabilities is to limit development within the floodplain and in areas that are at significant risk from sea level rise and flooding, and there is a need to empower local governments to undertake land preservation efforts that are supportive of, respectful to, and consistent with the principle of private property rights, as opposed to limiting them to the use of traditional land use regulations, which, in order to attain the necessary level of relief, could give rise to inverse condemnation claims; and

Whereas, counties in South Carolina have implemented local land conservation programs including, but not limited to, Beaufort County's Rural and Critical Lands Program, Charleston County's Greenbelt Program, Greenville County's Historic and Natural Resources Trust Initiative, the Oconee County Conservation Bank, and extensive parks and greenspace funding efforts in York County, indicating that such programs enjoy overwhelming public support in all corners of the State. Now, therefore, [text of Act]"

EDITOR'S NOTE: Act 166 of 2022 added Section 4-10-1010 et seq. to create the County Green Space Sales Act, granting counties with the authority to impose a sales and use tax by ordinance, subject to a referendum, within the county area for preservation procurements.

SECTION 4-10-1010: PRESERVATION PROCUREMENTS DEFINED; SALES AND USE TAX

(A) For the purposes of this article, "preservation procurements" means procuring open lands or green space for preservation, by and through the acquisition of interests in real property, including:

(1) the acquisition of fee simple titles;

(2) conservation easements;

(3) development rights;

(4) rights of first refusal;

(5) options;

(6) leases with options to purchase; and

(7) any other interests in real property.

(B)(1) Subject to the requirements of this article, a county's governing body may impose a sales and use tax by ordinance, subject to a referendum, within the county area for preservation procurements.

(2) Revenues collected pursuant to this article may be used to defray debt service on bonds issued to pay for preservation procurements authorized in this article. This authorization is in addition to any other locally imposed sales and use taxes.

HISTORY: 2022 Act No. 166 (S.152), Section 2, eff May 16, 2022.

SECTION 4-10-1020: IMPOSITION OF SALES AND USE TAX; ENACTING ORDINANCE REQUIREMENTS; REFERENDUM; RESULTS

(A) A county governing body may impose a sales and use tax up to one percent authorized by this article, by ordinance, subject to a referendum. An enacting ordinance must specify:

(1) the purpose for which the proceeds of the tax are to be used, which may include preservation procurements located within or without, or both within and without, the boundaries of the local governmental entities, including the county, municipalities, and special purpose districts located in the county area;

(2) if the county proposes to issue bonds to provide for the payment of any costs of the preservation procurements, the maximum amount of bonds to be issued, whether the sales tax proceeds are to be pledged to the payment of the bonds and, if other sources of funds are to be used for the preservation procurements, a list of the other sources;

(3) the maximum cost of the preservation procurements, to be funded from the proceeds of the tax or bonds issued as provided in this article and the maximum amount of net proceeds expected to be used to pay the cost or debt service on the bonds, as the case may be; and

(4) the fact that preservation procurements may pertain to real property situated outside of the boundaries of the taxing jurisdiction.

(B) Upon receipt of an ordinance, a county's election commission must conduct a referendum on the question of imposing the sales and use tax in the area of the county that is to be subject to the tax. A referendum for imposition or reimposition of the tax must be held at the time of the next general election in an even-numbered year. Two weeks before a referendum, a county's election commission must publish in a newspaper of general circulation the question that is to appear on the ballot, with a description of the methods by which the county's governing body intends to procure open lands and green space for preservation. If the proposed question includes the use of sales taxes to defray debt service on bonds issued to pay the costs of any preservation procurements, then the notice must include a statement indicating the principal amount of the bonds proposed to be issued for the purpose and, if the issuance of the bonds is to be approved as part of the referendum, stating that the referendum includes the authorization of the issuance of bonds in that amount. This notice is in lieu of any other notice otherwise required by law.

(C) The referendum question to be on the ballot must read substantially as follows:

"Must a special [percent] sales and use tax be imposed in [county] for not more than [time] to raise the amounts specified for preservation procurements for the purpose of procuring open lands and green space by and through the acquisition of interests in real property, such interests to include:

(a) the acquisition of fee simple titles;

(b) conservation easements;

(c) development rights;

(d) rights of first refusal;

(e) options;

(f) leases with options to purchase; or

(g) any other interests in real property?

Yes [] No []"

If the referendum includes the issuance of bonds, then the question must be revised to include the principal amount of bonds proposed to be authorized by the referendum and the sources of payment of the bonds if the sales tax approved in the referendum is inadequate for the payment of the bonds.

(D) All qualified electors desiring to vote in favor of imposing the tax for the stated purposes shall vote "yes", and all qualified electors opposed to levying the tax shall vote "no". If a majority of the votes cast are in favor of imposing the tax, then the tax is imposed as provided in this article and the enacting ordinance. Any subsequent referendum on this question must be held on the date prescribed in subsection (B). The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the result no later than November thirtieth to the county governing body and to the Department of Revenue. Expenses of the referendum must be paid by the governmental entities that would receive the proceeds of the tax in the same proportion as those entities would receive the net proceeds of the tax.

(E) Upon receipt of the returns of a referendum, a county's governing body must, by resolution, declare the results thereof. In such event, the results of the referendum, as declared by resolution of the county's governing body, are not open to question except by a suit or proceeding instituted within thirty days from the date such resolution is adopted.

(F) The provisions of this section are not available to a county with more than two existing sales and use taxes currently in effect.

HISTORY: 2022 Act No. 166 (S.152), Section 2, eff May 16, 2022.

SECTION 4-10-1030: IMPOSITION AND TERMINATION OF THE TAX

(A) If the sales and use tax is approved in a referendum, then the tax shall be imposed on the first of May following the date of the referendum. If the reimposition of an existing sales and use tax imposed pursuant to this article is approved in a referendum, then the new tax is imposed immediately following the termination of the earlier imposed tax, and the reimposed tax terminates on the applicable thirtieth of April, not to exceed seven years from the date of reimposition. If the certification is not timely made to the Department of Revenue, then the imposition is postponed for twelve months.

(B) The tax terminates the final day of the maximum time period specified for the imposition.

(C) Amounts collected in excess of the required net proceeds must first be applied, if applicable, to complete the preservation procurements for which the tax was imposed.

(D) If the sales and use tax is approved in a referendum, then the Department of Revenue must make available to the public, upon request, all information regarding the amount of the tax that is collected, expenditures, and any remaining funds at the time of the information request to ensure transparency and accountability.

HISTORY: 2022 Act No. 166 (S.152), Section 2, eff May 16, 2022.

SECTION 4-10-1040: ADMINISTRATION AND COLLECTION OF THE TAX

(A)(1) The tax levied pursuant to this article must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected. The Department of Revenue may prescribe amounts that may be added to sales prices because of the tax.

(2) The county in which a referendum is passed shall assemble an advisory committee to assist the Department of Revenue with directing the distribution of the taxes collected to ensure a transparent and equal distribution within the county. The advisory committee shall include seven members:

(a) one member who is a member of the county council;

(b) one member who is a member of the legislative delegation;

(c) one member who is knowledgeable about the geography and condition of the county's land; and

(d) four citizen members, each representing the northern, southern, eastern, and western portions of the county.

(B) The tax authorized by this article is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36, Title 12 and the enforcement provisions of Chapter 54, Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 are exempt from the tax imposed by this article. Unprepared food items eligible for purchase with United States Department of Agriculture

food coupons are exempt from the tax imposed pursuant to this article. The tax imposed by this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36, Title 12.

(C) A taxpayer required to remit taxes under Article 13, Chapter 36, Title 12 must identify the county in which the personal property purchased at retail is stored, used, or consumed in this State.

(D) A utility is required to report sales in the county in which the consumption of the tangible personal property occurs.

(E) A taxpayer subject to the tax imposed by Section 12-36-920, who owns or manages rental units in more than one county, must separately report in his sales tax return the total gross proceeds from business done in each county.

(F) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under this article in a county, either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the sales and use tax provided in this article if a verified copy of the contract is filed with the Department of Revenue within six months after the imposition date of the sales and use tax provided for in this article.

(G) Notwithstanding the imposition date of the sales and use tax authorized pursuant to this chapter, with respect to services that are billed regularly on a monthly basis, the sales and use tax authorized pursuant to this article is imposed beginning on the first day of the billing period beginning on or after the imposition date.

HISTORY: 2022 Act No. 166 (S.152), Section 2, eff May 16, 2022.

SECTION 4-10-1050: DISTRIBUTIONS TO COUNTIES; CONFIDENTIALITY

The Department of Revenue shall furnish data to the State Treasurer and to the county treasurers receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to counties and municipalities 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.

HISTORY: 2022 Act No. 166 (S.152), Section 2, eff May 16, 2022.

SECTION 4-10-1060: UNIDENTIFIED FUNDS, TRANSFERS, AND SUPPLEMENTAL DISTRIBUTIONS

Annually, and only in the month of June, funds collected by the Department of Revenue from the county green space sales tax, which are not identified as to the governmental unit due the tax, must be transferred, after reasonable effort by the Department of Revenue to determine the appropriate governmental unit, to the State Treasurer's Office. The State Treasurer shall distribute these funds

to the county treasurer in the county area in which the tax is imposed, and the revenues must be only used for the purposes stated in the enacting ordinance. The State Treasurer shall calculate this supplemental distribution on a proportional basis, based on the current fiscal year's county area revenue collections.

HISTORY: 2022 Act No. 166 (S.152), Section 2, eff May 16, 2022.

CHAPTER 37, TITLE 4: OPTIONAL METHODS FOR FINANCING TRANSPORTATION FACILTIES

P. 112 SECTION 4-37-30: SALES TAXES OR TOLLS AS REVENUE

CASE NOTES

The language of Section 4-37-30(A) authorizes spending penny tax funds (tax revenue) on operating transportation-related projects, including mass transit systems like the COMET in Richland County. Appellants argued the revenues from the penny tax may only be used for "capital expenditures" and may not be used for the continued operation of a mass transit system, such as the COMET. The statute only references "capital expenditures" in passing and using the funds for transportation-related projects is expressly permitted by the statutory language. *S.C. Pub. Int. Found. v. Richland Cty.*, No. 2018-000794, 2021 WL 4566752 (S.C. Ct. App. Oct. 6, 2021).

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, 422 S.C. 292, 811 S.E.2d 758 (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, 422 S.C. 292, 811 S.E.2d 758 (2018) [2018 WL 1177700].

ATTORNEY GENERAL'S OPINIONS

The interest earned on monies for projects listed in an ordinance enacted pursuant to the Financing Transportation Facilities Act should be allocated and used for the purpose stated in the ordinance. The code section does not address whether interest accumulated should be distributed among the particular projects listed in the ordinance. 2021 WL 1832307 (S.C.A.G. Apr. 5, 2021).

AG's office advises the County to be as specific as possible so as to provide the public with the information required to make an informed decision on each of the bond referendum questions. The County does not need to list every possible use for the bond proceeds but should provide enough

information to avoid misleading the average voter. S.C. Op. Att'y Gen., 2019 WL3523690 (July 22, 2019).

EDITOR'S NOTE: Act 189 of 2022 adds Section 4-37-60 and amends Section 4-37-40 to allow a county which has imposed by ordinance a Transportation Penny Tax pursuant to Chapter 37, Title 4 to also conduct a referendum to impose a one percent Capital Project Sales Tax. This Act deletes the restriction that the area of the county can only be subject to one of those authorizations. Counties with the Capital Project Sales Tax may also conduct a referendum to impose the Transportation Penny Tax as well.

P. 123 SECTION 4-37-40: LIMITATION ON SALES TAX RATE

At no time may any portion of the county area be subject to more than one percent sales tax levied pursuant to this chapter or pursuant to any local legislation enacted by the General Assembly.

HISTORY: 1995 Act No. 52, Section 2, eff upon approval (became law without the Governor's signature May 18, 1995); 2000 Act No. 368, Section 2, eff June 14, 2000; 2022 Act No. 189 (H.3948), Section 2, eff May 16, 2022.

Effect of Amendment

The 2000 amendment rewrote this section.

2022 Act No. 189, Section 2, deleted ", Article 3, Chapter 10 of this title," following "pursuant to this chapter".

SECTION 4-37-60: ADDITIONAL SALES AND USE TAX NOT EXCEEDING ONE PERCENT

Notwithstanding Sections 4-10-310 and 4-37-40, or any other provision of law, a county which has imposed by ordinance a sales and use tax in an amount not to exceed one percent within its jurisdiction pursuant to this chapter may utilize the provisions of Article 3, Chapter 10, Title 4 to impose an additional sales and use tax in an amount not to exceed one percent within its jurisdiction.

HISTORY: 2022 Act No. 189 (H.3948), Section 1, eff May 16, 2022.

PART IV STATE AID TO SUBDIVISIONS ACT

CHAPTER 27, TITLE 6: STATE AID TO SUBDIVISION ACT

P. 137 SECTION 6-27-20. LOCAL GOVERNMENT FUND

There is created the Local Government Fund administered by the State Treasurer. This fund is part of the general fund of the State. The Local Government Fund must be financed as provided in this chapter.

HISTORY: 1991 Act No. 171, Part II, Section 22A; 2019 Act No. 84 (H.3137), Section 1, eff May 24, 2019.

P. 138 SECTION 6-27-30. FUNDING OF LOCAL GOVERNMENT FUND; ADJUSTMENTS BASED ON GENERAL FUND REVENUES; DEFINITIONS

(A) In the annual general appropriations act, the General Assembly must appropriate funds to the Local Government Fund.

(B)(1) In any fiscal year in which general fund revenues are projected to increase or decrease, the appropriation to the Local Government Fund for the upcoming fiscal year must be adjusted by the same projected percentage change, but not to exceed five percent, when compared to the appropriation in the current fiscal year. For purposes of this subsection, beginning with the initial forecast required pursuant to Section 11-9-1130, the percentage adjustment in general fund revenues must be determined by the Revenue and Fiscal Affairs Office by comparing the current fiscal year's recurring general fund expenditure base with the Board of Economic Advisors' most recent projection of recurring general fund revenue for the upcoming fiscal year. Upon the issuance of the initial forecast, the Executive Director of the Revenue and Fiscal Affairs Office, or his designee, shall notify the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Governor of the projected percentage adjustment. The executive director, or his designee, shall provide similar notice if subsequent modifications to the forecast change the projected percentage adjustment. However, the forecast in effect on February fifteenth of the current fiscal year is the final forecast for which the percentage adjustment is determined, and no subsequent forecast modifications shall have any effect on that determination.

(2) The Governor shall include the appropriation required by this chapter to the Local Government Fund in the Executive Budget.

(3) The Revenue and Fiscal Affairs Office shall determine the current fiscal year's recurring general fund expenditure base, and determine any projected adjustment in general fund revenues. If a change is projected, the appropriation for the upcoming fiscal year must be adjusted accordingly.

(C) For purposes of this section:

(1) "Recurring general fund revenue" means the forecast of recurring general fund revenues pursuant to Section 11-9-1130 after the amount apportioned to the Trust Fund for Tax Relief, as required in Section 11-11-150, is deducted.

(2) "Recurring general fund expenditure base" means the total recurring general fund appropriations authorized in the current general appropriations act less any reduced appropriations mandated by the General Assembly or the Executive Budget Office pursuant to Section 11-9-1140(B).

HISTORY: 1991 Act No. 171, Part II, Section 22A; 2019 Act No. 84 (H.3137), Section 1, eff May 24, 2019.

A proviso in the 2019 General Appropriations Act references the Local Government Fund and is discussed here.

Proviso 113.5 provides that for Fiscal Year 2019-20, the provisions of Section 6-27-30 and Section 6-27-50 of the 1976 Code are suspended.

P. 141 SECTION 6-27-50. AMENDMENT BY SEPARATE ACT ONLY

EDITOR'S NOTE: This section was deleted by Act No. 84 (H. 3137), eff May 24, 2019.

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