REVENUE RESOURCES FOR COUNTY GOVERNMENT

2025 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 2025 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 SCAC staff 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.

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 30 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 30 days after written notification to the chief administrative officer of the entity must result in the withholding of 10% 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. 4 SECTION 6-1-80: PUBLIC NOTICE AND HEARING BEFORE BUDGET ADOPTION

ATTORNEY GENERAL'S OPINIONS

Section 6-1-80 establishes that counties, municipalities, special purpose districts, and school districts must provide public notice and hold a public hearing before adopting their budgets. It serves as an alternative to the hearing requirements of Section 4-9-130, which governs county councils' adoption of budgets. Interpreting these provisions together, the opinion concludes that both the school district and the county council must each hold public hearings: one before the district adopts and submits its proposed budget, and another before the council considers and adopts it. S.C. Op. Att'y Gen., 2025 WL 1287707 (April 15, 2025).

When no local law pertains to the budgetary authority of a school district, Article X, Section 7(b) of the South Carolina Constitution requires notice and a public hearing for a school district to adopt a budget. The legislature's intent under Section 6-1-80 is for the budgetary authority to rest with school boards which are charged with management and control of school districts. It is opined that the school district's board may not delegate the responsibility of creating and maintaining a budget to district employees without the approval of the board. S.C. Op. Att'y Gen., 2024 WL 2273338 (May 6, 2024).

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.]*

The Court in *Thompson v. Killian* determined that the Revenue Procedures Act (Act) did not apply to the challenge that the road maintenance fee was actually a tax. The Act defines "tax" or "taxes" as "taxes, licenses, permits, fees, or other amounts, including interest, regulatory and other penalties, and civil fines, imposed by this title, or subject to assessment or collection by the department." The Court determined this to mean that a tax must either be established under Title 12 or be assessable or collectable by the Department of Revenue. The road maintenance fee in question was established under title 6 and was assessed and collected by the local government, therefore, neither above requirement was met and the Act did not apply. *Thompson v. Killian,* 2025 WL 3085990 (S.C. Supreme Ct. Nov. 5, 2025).

Snee Farm Lakes Homeowner's Association (HOA) challenged the Commission of Public Works for the Town of Mount Pleasant's (MPW) water and sewer basic facility charges (BFCs) that were assessed on commercial customers based on a measure of reserved capacity, not actual monthly units, also referred to as residential equivalent units. Snee Farm argued that MPW's BFCs were unlawful because they were overcharged for unused capacity as a result of MPW's failure to amend residential equivalent units to actual consumption and therefore violated South Carolina law governing service or user fees under Sections 6-1-300(6) and 6-1-330(B). The Court held that MPW's BFCs satisfied § 6-1-300(6) because: (1) A distinct benefit was received by the payer as a result of the HOA's refusal to relinquish residential equivalent units, even after MPW offered to reduce them, demonstrating that the reserved system capacity itself had value. (2) BFCs do not provide a general public benefit, as the general public does not receive the reserved capacity that was specific to MPW commercial customers. (3) Unlike the road maintenance fee in *Burns*, which benefited all drivers equally, MPW's BFCs provided a **specialized, individual benefit** that was unavailable to non-payers. Challenges under §§ 6-1-300 and 6-1-330 must show a disconnect between the fee and the benefit or misuses of revenues, not merely that customers paid for the unused capacity included in residential equivalent units. *Snee Farm Lakes Homeowner's Association, Inc., v. The Commission of Public Works for the Town of Mount Pleasant,* 2025 WL 986297 (S.C. Ct. App. 2025). *[NOTE: This opinion has no precedential value. It should not be relied on as precedent in any proceeding except in proceedings in which it is directly involved.]*

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

The City of Travelers Rest considered enacting an ordinance to impose a Fire Protection Fee for certain tax-exempt properties located within the city, including college and university residential buildings, apartments, assisted living facilities, dormitories, barracks, sorority houses, fraternity houses, continuing care facilities that house more than 10 individuals on the property on an overnight basis more than 50% of the year. The rationale behind the fee is that these properties result in the vast majority of fire department response calls. The fee would be imposed on a per square footage rate of 50 cents. A court may very well find the classification (these owners use the services much more frequently than others) is reasonably related to a proper legislative purpose and the members of each class are treated equally. Section 12-37-235 gives municipalities authority to impose fire protection fees on property exempt from ad valorem taxation as long as the fees are based on the protection and services provided. "We believe this provision gives the City authority to impose fire protection fees based on the services an exempt owner receives allowing it to charge different property owners different amounts." S.C. Op. Att'y Gen., 2023 WL 6853062 (Oct. 9, 2023).

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).

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).

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

Under Act No. 184 of 2020, the Hampton County School District's Board of Trustees alone is responsible for adopting the school district's annual budget, while the county council retains discretionary, not merely ministerial authority, to approve or reject the proposed millage rate, provided its actions are taken in good faith, for appropriate purposes, and in compliance with state-mandated funding levels. The Board qualifies as the "local governing body" authorized to levy school taxes under state law, though council approval is still required. Regarding potential conflicts between Section 5(B) of the 2020 Act and S.C. Code § 6-1-320, the opinion finds no definitive statutory resolution and advises judicial or legislative clarification. However, it interprets the "conflict clause" to mean that only the millage rate increase limitation, not the procedural requirements of § 6-1-320, controls where its rate limit exceeds the Act's two-mill cap, preserving the existing structure of county approval and referendum for increases beyond that limit. S.C. Op. Att'y Gen., 2025 WL 1789519 (June 19, 2025).

While the Hampton County School District's Board of Trustees is authorized to impose a tax levy, it may do so only with county council approval. Similarly, any millage increase beyond the statutory cap requires a referendum called by the county council and approved by a majority of district voters. The plain language of the Act No. 184 of 2020 clearly expresses the General Assembly's intent for Hampton County Council, not the school board, to hold final approval power over tax levies and limited millage increases. S.C. Op. Att'y Gen., 2025 WL 1421483 (May 5, 2025).

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

Section 6-1-330(B) requires that revenue from service or user fees must be used to pay costs related to the services provided and must be segregated if the revenue exceeds certain budget thresholds. The Court in *Snee Farm v. Mount Pleasant Public Works (MPW)* held that Snee Farm Lakes HOA did not allege a misuse of service or user fee revenues, excess collection, or improper commingling. MPW's water and sewer basic facility charges (BFCs) were used to recover fixed system costs, as outlined in their cost recovery policy, which were directly linked to providing reserved system capacity. As a result, because Snee Farm did not contest how the service or user fees were spent, the Court held that there was no factual issue to analyze under § 6-1-330(B). *Snee Farm Lakes Homeowner's Association, Inc., v. The Commission of Public Works for the Town of Mount*

Pleasant, 2025 WL 986297 (S.C. Ct. App. 2025). *[NOTE: This opinion has no precedential value. It should not be relied on as precedent in any proceeding except in proceedings in which it is directly involved.]*

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. 19 SECTION 6-1-510: Definitions

EDITOR'S NOTE: Act 57 of 2023 adds § 6-1-510(4) to the Code of Laws as a definition of "workforce housing" to be used throughout Article 5, Chapter 1, of Title 6, relating to local accommodation taxes.

Section 6-1-510: Definitions.

(1) "Local accommodations tax" means a tax on the gross proceeds derived from the rental or charges for accommodations furnished to transients as provided in Section 12-36-920(A) and which is imposed on every person engaged or continuing within the jurisdiction of the imposing local governmental body in the business of furnishing accommodations to transients for consideration.

(2) "Local governing body" means the governing body of a county or municipality.

(3) "Positive majority" means a vote for adoption by the majority of the members of the entire governing body, whether present or not. However, if there is a vacancy in the membership of the governing body, a positive majority vote of the entire governing body as constituted on the date of the final vote on the imposition is required.

(4) "Workforce housing" means residential housing for rent or sale that is reasonably and appropriately priced for rent or sale to a person or family whose income falls within 30% and one 120% of the median income for the local area, with adjustments for household size, according to the latest figures available from the United States Department of Housing and Urban Development (HUD).

HISTORY: 1997 Act No. 138, § 8.; 2023 Act No. 57, § 6.

P. 20 SECTION 6-1-530: PROJECTS FOR WHICH THE LOCAL ACCOMMODATIONS TAX MAY BE USED

EDITOR'S NOTE: Act 57 of 2023 adds an additional permissible use of revenue from local accommodation taxes with the addition of Section 6-1-530(7). Under § 6-1-530(7), local governments are allowed to use up to 15% of their local accommodation tax revenue for the development of workforce housing. Act 57 of 2023 also amends § 6-29-510(D)(6) of the South

Carolina Local Comprehensive Planning Enabling Act, to require local comprehensive plans to include updated housing considerations by soliciting input from homebuilders, developers, contractors, and housing finance experts if a county elects to use local accommodation taxes for workforce housing. The Act also creates a Land Development Study Committee to examine current and prospective methods to plan for and manage land development in South Carolina.

Section 6-1-530. Use of revenue from local accommodations tax.

(A) The revenue generated by the local accommodations 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, renourishment, or other tourism-related lands and water access;

(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; or

(7) development of workforce housing, which must include programs to promote home ownership. However, a county or municipality may not expend or dedicate more than 15% of its annual local accommodations tax revenue for the purposes set forth in this item. The provisions of this item are no longer effective after December 31, 2023.

HISTORY: 1997 Act No. 138, § 8; 1999 Act No. 93, § 13; 2002 Act No. 312, § 1; 2006 Act No. 314, § 1; 2010 Act No. 290, § 35; 2023 Act No. 57, § 1.

Cross References –

South Carolina Local Comprehensive Planning Enabling Act must include updated housing considerations, see § 6-29-510(D)(6).

ATTORNEY GENERAL'S OPINIONS

"[T]he plain language of section 6-4-10(4)(b)(ix) indicates the legislature's intent for the 15% limitation on expenditures of accommodation tax revenue on the development of workforce housing to be based on 15% of the annual local accommodations tax revenue allocated to the local government under section 6-4-10, rather than the amount of funds allocated just for tourism-related expenditures. We are also of the opinion that a local government can allocate funds for the development of workforce housing to non-profit and for-profit entities so long as the expenditure

satisfies the four-part test expressed by our Supreme Court in *Nichols v. South Carolina Research Authority*, 290 S.C. 415, 351 S.E.2d 155 (1986). We also come to the same conclusion regarding the expenditure of accommodation tax revenues imposed by local government pursuant to section 6-1-520 of the South Carolina Code. Lastly, we believe a donation or grant to a non-profit entity for the development of workforce housing from a local government's general fund is permissible under Sections 5 and 11 of Article X so long as the donation or grant serves a public purpose and the funds are used in the performance of a public function which is within the authority of the local government and the local government maintains some level of control to ensure the funds are used for the purposes for which they were allocated." S.C. Op. Att'y Gen., 2023 WL 6932054 (Oct. 16, 2023).

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 Department of Revenue (DOR) 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 50% 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.

ATTORNEY GENERAL'S OPINIONS

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 6-1-1020: REFUNDS OF IMPACT FEES

SECTION 6-1-1020. Refunds of Impact Fees.

(A) An impact fee must be refunded to the owner of record of property on which a development impact fee has been paid if:

(1) the impact fees have not been expended within three years of the date they were scheduled to be expended on a first-in, first-out basis; or

(2) a building permit or permit for installation of a manufactured home is denied.

(B) When the right to a refund exists, the governmental entity shall send a refund to the owner of record within 90 days after it is determined by the entity that a refund is due.

(C) A refund must include the pro rata portion of interest earned while on deposit in the impact fee account.

(D) A person entitled to a refund has standing to sue for a refund pursuant to this article if there has not been a timely payment of a refund pursuant to subsection (B) of this section.

HISTORY: 1999 Act No. 118, § 1.

CASE NOTES

Summerville Retail Investment, LLC (SRI) disputed Dorchester County issuing a refund of its transportation impact fee to Montebello JTA Group, LLC, who acquired the property from SRI after the fee was paid. Dorchester County's ordinance stated "[t]he owner of property eligible for a refund" is "the *current* owner of the property" based on the latest recorded deed and most recent tax record. The Court found that the county had "explicit authority to administer these refunds and also interpreted the ordinance as requiring refund payment to *current* owners, not prior owners that may have paid the fees." *Summerville Retail Investment, LLC v. Dorchester County,* 2024 WL 36073 (S.C. Ct. App. 2024). *[Note: This opinion has no precedential value. It should not be relied on as precedent in any proceeding except in proceedings in which it is directly involved.]*

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 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.

SECTION 4-10-320: COMMISSION CREATION; COMPOSITION

ATTORNEY GENERAL'S OPINIONS

If a county governing body choses to use the provisions of the Capital Project Sales Tax Act, Section 4-10-320 authorizes the creation of a commission by county council to "consider proposals for funding capital projects within the county area." The commission is responsible for formulating the referendum question that is to appear on the ballot. Reading Section 4-10-320(C) in isolation suggests there are no intervening legislative actions between the commission's formulation and submitting the referendum question to the voters. However, a court would likely find that a county council may pass a 1% sales and use tax ordinance and ultimately choose not to proceed with imposing the sales and use tax without proceeding with a referendum. S.C. Op. Att'y Gen., 2023 WL 3304098 (May 1, 2023).

When using the appointive indexing process to select members to a commission that is created under the Capital Project Sales Tax Act, if less than three municipal members are appointed using the latest census numbers, the remaining member or members must be selected in a joint meeting of the commission appointees of the municipalities in the county. A court would likely hold that when only one municipal member is appointed to the commission using the appointive indexing process, the legislature gives that single member the authority to appoint the remaining two members to the commission pursuant to § 4-10-320(A)(2). S.C. Op. Att'y Gen., 2022 WL 17170236 (Nov. 15, 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 30 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 30-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). S.C. Op. Att'y Gen.,WL 4182315 (Aug. 21, 2019).

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

ATTORNEY GENERAL'S OPINIONS

In situations where "remaining funds" are available due to excess revenue collected from a prior sales tax imposition, and a subsequent sales tax ordinance has been imposed by a county and is in effect, the "remaining funds" must be used first for "current projects" that are listed in the subsequent sales tax ordinance in priority as the projects appear listed as governed by § 4-10-340(C). The "remaining funds" can also be used in addition to the anticipated revenues resulting from the imposition of the subsequent sales tax ordinance. The legislature's intent to expend "remaining funds" in this manner is further supported by proviso 113.9 (AS-TREAS: Excess Sales Tax Collections) in the FY 2021-22 South Carolina State Budget:

> In the current fiscal year, if a county has capital projects sales tax collections in excess of the amount necessary to complete all projects for which the tax was imposed and the tax has not yet expired, the county may pledge and use the excess collections to fund road improvements, intersection improvements, and pedestrian transportation. However, prior to the expiration of the tax, an eligible county must adopt an ordinance specifying the purposes for which the excess funds will be used. A county may expend distributions received pursuant to the Aid to Subdivisions, State Treasurer section to meet the requirements of this provision.

S.C. Op. Att'y Gen., 2022 WL 1039564 (Mar. 31, 2022).

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). S.C. Op. Att'y Gen., S.C. Op. Att'y Gen., 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 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 20% 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), § 2, eff May 16, 2022.

ATTORNEY GENERAL'S OPINIONS

A lease is one of several options under the "County Green Space Sales Tax Act" that a county may pursue, in the discretion of the county, to establish a preservation procurement. Any interest in real property might be acquired as a preservation procurement; no one type of interest is required over another by the Act. The county retains the authority to identify what property it wishes to target for preservation procurements and to elect what type of property interest in real property it seeks to acquire. The evident intent here is to give counties a "toolbox" with a variety of options, any one of which a county may elect to use in a particular situation if deemed appropriate. Ultimately, it is the county governing body that is levying the tax and procuring the property interests. S.C. Op. Att'y Gen., 2022 WL 3452223 (Aug. 8, 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 30 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 30 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), § 2, eff May 16, 2022.

ATTORNEY GENERAL'S OPINIONS

A municipality within the county would only receive County Green Space Sales Tax funds incidental to a county preservation procurement. Revenues from the tax are only to be used for preservation procurements made pursuant to a county's ordinance. S.C. Op. Att'y Gen., 2022 WL 3452223 (Aug. 8, 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 30th 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 12 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), § 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.

ATTORNEY GENERAL'S OPINIONS

The Department of Revenue and the statutory Advisory Committee are each involved in the administration of the Green Space Sales Tax. The Advisory Committee is charged with assisting the Department of Revenue with the distribution of the revenue to insure a "transparent and equal distribution within the county." The Department of Revenue shall administer and collect the tax "in the same manner that other sales and use taxes are collected." S.C. Op. Att'y Gen., 2022 WL 3452223 (Aug. 8, 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), § 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), § 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

SECTION 4-37-30. Sales Taxes or Tolls as Revenue

(A)(9) The tax authorized by this section is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable jurisdiction which are 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 section. The gross proceeds of the sale of food lawfully purchased with United States Department of Agriculture food stamps are exempt from the tax imposed by this section. For any tax authorized by this section pursuant to a referendum held on or after November 5, 2024, unprepared food items eligible for purchase with United States Department of Agriculture food coupons may be exempt from the tax imposed pursuant to this section at the election of the governing body of a county as may be provided in the authorizing ordinance required by item (1). The tax imposed by this section also applies to tangible personal property subject to the use tax in Article 13, Chapter 36, Title 12.

HISTORY: 1995 Act No. 52, SECTION 2, eff upon approval (became law without the Governor's signature May 18, 1995); 1997 Act No. 122, SECTION 1, eff June 13, 1997; 1999 Act No. 93, SECTION 6, eff June 11, 1999; 2000 Act No. 368, SECTION 1, eff June 14, 2000; 2001 Act No. 89, SECTION 41, eff July 20, 2001; 2014 Act No. 229 (S.1085), SECTION 1, eff June 2, 2014; 2024 Act No. 217 (S.969), SECTION 4.A, eff July 2, 2024.

2024 Act No. 217, SECTION 4.A, in (A)(9), inserted the fourth sentence, and made non-substantive changes.

ATTORNEY GENERAL'S OPINIONS

The referendum required under S.C. Code § 4-37-30(A)(2) which must be held "at the time of the general election" may take place in either even-or-odd numbered years. Therefore, a county referendum authorized under § 4-37-30(A)(2) may validly be held during a November general election in any year, not solely during federal election cycles. S.C. Op. Att'y Gen., 2025 WL 735625 (Feb. 26, 2025).

Section 4-10-315 was adopted in 2022 as part of Act No. 189. Prior to the adoption of Act No. 189, no portion of any county could be subject to both a Capital Project Sales Tax and a Transportation Penny Tax. As previously codified, section 4-37-40 stated, "At no time may any portion of the county area be subject to more than one percent sales tax levied pursuant to this chapter, Article 3. Chapter 10 of this title, or pursuant to any local legislation enacted by the General Assembly." Act No. 189 struck the portions in both statutes that prohibited adopting the other tax. Act No. 189 also added section 4-37-60 to explicitly permit a county, which has adopted a Transportation Penny Tax, to also adopt a Capital Project Sales Tax. Therefore, a county which has adopted both a Local Option Sales Tax, S.C. Code § 4-10-10 et seq., and a Capital Project Sales Tax, S.C. Code § 4-10-300 et seq., may also adopt a sales and use tax to finance transportation facilities ("Transportation Penny Tax") according to the provisions in Chapter 37, Title 4 of the South Carolina Code of Laws. A county seeking to adopt one or more of these sales and use taxes may not do so unless a majority of the qualified electors voting in the referendum approve it. S.C. Op. Att'y Gen., 2023 WL 7309436 (Oct. 31, 2023).

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. S.C. Op. Att'y Gen., 2021 WL 1832307 (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.

CASE NOTES

The South Carolina Coastal Conservation League, LLC (CCL) argued that Charleston County could not spend penny tax dollars on the Mark Clark Extension because that project was not listed in either the 2004 or 2016 ordinances and was therefore not contemplated in the referenda that voters approved. The court mentioned the broadness of the projects listed and the exclusion of the Extension, specifically, in the ordinances. However, the Court determined that the CCL did not have standing to bring a claim because state election law requires any protest or contest of a countywide election be filed by noon on the Wednesday following the election's certification. *South Carolina Conservation League, Inc., v. Charleston County,* 442 S.C. 409, 899 S.E.2d 609 (S.C. Ct. App. 2024).

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].

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 III OTHER REVENUE SOURCES

ARTICLE 1, CHAPTER 37, TITLE 12: ASSESSMENT OF PROPERTY TAXES – GENERAL PROVISIONS

P. 136 SECTION 12-37-135. Countywide Business Registration

ATTORNEY GENERAL'S OPINIONS

A court would likely find that a county governing body may except agricultural businesses from a business registration fee ordinance as authorized by Section 12-37-135 if it can identify another law which would exempt those businesses from business license taxes under § 4-9-30. Section 4-9-30(12) lists several exceptions for specific named professions and types of businesses, but it does not contain an express exception for agricultural businesses. However, § 4-9-30(12) does include an exception for "an entity which is exempt from license tax under another law." Therefore, for a county governing body to authorize an exception to business registration fees under a § 12-37-135 ordinance, the exception must be based on an exemption from license tax under another law. S.C. Op. Att'y Gen., 2023 WL 2025305 (Feb. 7, 2023).

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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