Revenue Resources For County Government

2021 Supplement
File With the 2016 Revenue Resources for County Government

Published by
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 2021 supplement follows the same pattern.

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

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

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

§6-1-50. Financial report required.

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

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

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P. 6 SECTION 6-1-300: DEFINITIONS

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Service or user fees must benefit the payer of the fee in a way different than members of the general public. Greenville County's road maintenance fee and telecommunications network fee were deemed unlawful taxes, because according to the South Carolina Supreme Court, the fees violate Section 6-1-310 of the S.C. Code. The Court relied on *Brown v. Cty of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992) and a 1997 amendment to Section 6-1-300 when determining that the fees are

invalid. While the fees met the four factors of the *Brown* test as described below, the Court concluded the fees did not benefit the payer in some manner **different** than members of the general public, and thus, do not qualify as service or user fees permitted pursuant to the Code. *Burns v. Greenville Cty. Council*, 433 S.C. 583, 861 S.E.2d 31, 32 (2021) (emphasis added). *[NOTE: The Court described "different" as meaning "unique" or "peculiar" to the payer of the fee.]*

ATTORNEY GENERAL'S OPINIONS

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

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

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

ATTORNEY GENERAL'S OPINIONS

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

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

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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

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

CASE NOTES

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

ATTORNEY GENERAL'S OPINIONS

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

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

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

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

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

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

ARTICLE 5: LOCAL ACCOMMODATIONS TAX ACT

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

ATTORNEY GENERAL'S OPINIONS

There must be at minimum an implied nexus between the tax funds spent on the patrol cars and the use of the cars for "operations directly attendant to those facilities" listed in § 6-1-530 and directly related to the tourist destination. S.C. Op. Att'y Gen., 2018 WL1160093 (Jan. 9, 2018). *[EDITOR'S NOTE: This opinion suggests following DOR Revenue Ruling 98-22, 1998 WL 34058107 as a court may find it helpful in the interpretation of Accommodations Taxes. However, the Office opines that*

neither the revenue ruling nor the statutes are binding, and neither should be followed for the allocation of Local Accommodations Tax funds and Local Hospitality Tax funds.]

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

ARTICLE 7: LOCAL HOSPITALITY ACT

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

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

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

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

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

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

(3) beach access and renourishment;

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

(5) advertisements and promotions related to tourism development;

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

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

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

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

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

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

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

ATTORNEY GENERAL'S OPINIONS

There must be at minimum an implied nexus between the tax funds spent on the patrol cars and the use of the cars for "operations directly attendant to those facilities" listed in § 6-1-730 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.]*

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

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

CASE NOTES

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

ATTORNEY GENERAL'S OPINIONS

The statute's use of the words "may include" suggests that the legislature did not intend to limit the permissible projects to only those listed. Therefore, a court would likely find that the statute authorizes the use of Capital Project Sales Tax funds to purchase land for administrative building, public garages, and other such projects for economic development as long as the development is one of the purposes within § 4-10-330(A)(1) and as long as: (1) the tax is not "reimposed" and as long as (2) the county issues an ordinance authorizing a purpose or purposes outlined in § 4-10-330(A)(1). WL 4182315 (Aug. 21, 2019).

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

ATTORNEY GENERAL'S OPINIONS

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

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

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

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

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

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

HISTORY: 2018 Act No. 155.

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

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

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

§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.

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

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

CASE NOTES

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

DOR's extensive administrative, oversight, and enforcement responsibilities in the Transportation Sales Tax ("Act") and throughout Title 12 confer upon DOR a duty of ensuring expenditures of the Act revenues comply with the revenue laws DOR is charged with enforcing. In addition, the court specifically found that monies generated through the Act are considered to be state tax revenues - not local tax revenues. Richland County v. S.C. Department of Revenue, 422 S.C. 292, 811 S.E.2d 758 (2018) [2018 WL 1177700].

The types of projects permitted to be funded with the Transportation Sales Tax ("Act") are the capital costs of "highways, roads, streets, bridges, mass transit systems greenbelts, and other transportation-related projects." While some "administrative costs" may be appropriate under the Act, such administrative costs unrelated to any specific transportation project exceed the scope of the Act. Richland County v. S.C. Department of Revenue, 422 S.C. 292, 811 S.E.2d 758 (2018) [2018 WL 1177700].

ATTORNEY GENERAL'S OPINIONS

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

AG's office advises the County to be as specific as possible so as to provide the public with the information required to make an informed decision on each of the bond referendum questions. The County does not need to list every possible use for the bond proceeds but should provide enough information to avoid misleading the average voter. S.C. Op. Att'y Gen., 2019 WL3523690 (July 22, 2019).

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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