



AGENDA

FAIRFIELD COUNTY COUNCIL

SPECIAL MEETING

PLEASE NOTE LOCATION

**FAIRFIELD CENTRAL HIGH SCHOOL AUDITORIUM
836 U. S. HIGHWAY 321 BY-PASS SOUTH
WINNSBORO, SOUTH CAROLINA 29180**

MONDAY, SEPTEMBER 30, 2013

7:00 P.M.

- I. CALL TO ORDER.....Chairman Ferguson
- II. INVOCATION.....Council Member Kinley
- III. MEETING DESCRIPTION FORMAT.....Mr. J. Milton Pope
- IV. LOCAL OPTION SALES TAX PRESENTATION
- V. QUESTION AND ANSWER PERIOD.....County Council
- VI. QUESTION AND ANSWER PERIOD.....Citizens
- VII. NEXT STEPS
- VIII. ADJOURN

ALL INTERESTED PARTIES ARE INVITED TO ATTEND

AGENDA

- A. Call to Order Chair

 - B. Invocation Kinley

 - C. Introduction: subject matter and meeting format
 - J. Milton Pope

 - D. Presentations:
 - I. Parker Poe Adams & Bernstein LLP (Ray Stevens & Michael Kozlarek)
 - a. LOST background/operation
 - b. Fairfield County LOST application
 - i. Millage reduction (Budget method)
 - ii. Factor credit (Tax bill method)
 - c. Conclusions/Recommendations
 - i. County granted LOST by two methods
 - ii. Continue refining estimates and estimating process
 - iii. Ensure any revenue carried forward is applied following year
 - iv. Apply LOST credit using only tax bill method
 - II. Elliott Davis LLC (Tom McNeish & Brian D’Amico)
 - a. Review: agreed upon procedures
 - b. Presentation: Millage reduction and factor credit applied against STO disbursements
 - c. Discussion: findings and recommendations
 - i. County used LOST funds to reduce millage and as “on bill” credit
 - ii. Should apply LOST credit using only tax bill method
 - iii. Continue refining estimates and estimating process
 - iv. Ensure any revenue carried forward is applied following year

 - D. Question & Answer Period
 - I. County Council
 - II. Public

 - E. Adjourn
-

**FAIRFIELD COUNTY LOCAL OPTION SALES TAX RESOLVED:
NO DISCREPANCIES FOUND**

Winnsboro, South Carolina

September 30, 2013

Fairfield County Council met in public session, September 30, 2013, 7:00 p.m., to hear reports on the county's local option sales tax, a tax commonly identified by its acronym, LOST. The county engaged the law firm of Parker Poe Adams & Bernstein LLP to review the County's practices related to LOST and engaged the accounting firm of Elliott Davis, LLC to review the County's accounting for the local option sales tax funds.

Michael Kozlarek and Ray Stevens from Parker Poe explained the budgeting process relative to LOST sales tax revenues. In that process, each year the county administrator presents a proposed budget to County Council describing the sources of revenue available along with the tax revenue needed to meet the county's planned expenditures. After review and debate, but before the fiscal year begins on July 1, County Council, by ordinance, adopts a budget identifying the sources of anticipated revenue along with the taxes needed to fund the budget.

With that budgeting process in place, Parker Poe noted adopting LOST in 2006 introduced a new budgeting element for Fairfield: LOST funds. When Fairfield adopted LOST, it opted to use 100% of the LOST funding for property tax relief. In seeking to meet that duty, each budget ordinance from 2007 through the present relied on anticipated future LOST revenues to provide a millage reduction for property tax relief. Ray Stevens explained the millage reduction practice in a basic example. If one supposed the County needed \$100 to fund General Fund expenditures, the County knew a 10 mill levy against taxable property would produce \$100 in property taxes. However, to grant property tax relief, the ordinance imposed only 9 mills (a levy raising \$90 in property tax funds) with the County relying upon an anticipated \$10 of revenue it hoped to receive in future LOST funds distributed to the County by the State.

Parker Poe noted the County also granted property tax relief utilizing LOST funds by providing a tax credit against property taxes on the tax bill. The credit on the tax bills added to the millage reduction utilized in the millage resolution provides the total property tax relief granted. If that sum is less than the LOST funds ultimately collected by the State and transmitted to the County, the difference is carried forward to the next year and represents the first funds used for property tax relief in the next fiscal year.

Following Parker Poe, Tom McNeish and Brian D'Amico of Elliott Davis explained the results of their review for the 2007 through 2013 fiscal years of LOST funds received by the County from the State Treasurer's Office.

In the review, for each fiscal year Elliott Davis used 100 taxpayer bills selected at random. Each bill's millage agreed with the County's annual millage resolution and showed a millage reduced by a sales tax credit.

Using the same 100 taxpayer bills for each fiscal year, Elliott Davis found each bill reflected a sales tax credit in agreement with the credit shown on the County's general ledger:

Given no discrepancies in the sample, Elliott Davis then summed the total property tax relief from the millage reduction method and the total property tax relief from the tax bills method. The

sum of tax credits given by both methods compared to remittances of LOST funds to Fairfield County by the State Treasurer's Office shows Fairfield accounted for all LOST revenues received, used LOST revenues only for property tax relief, and now has a balance of unused LOST revenues of \$805,000.

Parker Poe concluded by offering some conclusions and recommendations:

Conclusions

1. The County granted property tax relief from LOST revenues in two steps: as a millage reduction at the budget stage and as a sales tax credit at the tax bill stage.
2. The County placed LOST on the referendum ballot as property tax relief at all levels of taxation to include county residents at the county level and city residents at both the county and city level.
3. The 8-year aggregate of LOST Funds received compared to property tax relief granted shows excess funds are available for future property tax relief of \$805,000.
4. No LOST revenue funds are unaccounted for

Recommendations

1. At the budget stage, continue refining the estimation of LOST revenues.
2. Continue to ensure excess LOST collections are provided as credits in the following year
3. Show excess LOST collections from the prior year as a committed fund balance in the current year.
4. Grant sales tax credit only at the tax bill stage
5. Amend the millage resolution to reflect elimination of LOST property tax relief at the budget stage



**Independent Accountants' Report
On Applying Agreed upon Procedures**

Fairfield County
350 Columbia Road
Winnsboro, South Carolina 29180

We have performed the procedures enumerated below, which were agreed to by Fairfield County (the County), solely to assist the County in comparing property tax relief calculated by the County's tax ledger system (the ledger) to remittances reflected in the schedule of "Local Option Sales Tax Fairfield County" (Attachment 1) as prepared by the Office of the South Carolina State Treasurer (the State Treasurer's Office). The County is responsible for the computation and application of all required property tax credits. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of Fairfield County. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures we performed and the associated findings are as follows:

1. **Procedure:** For each fiscal year 2007 through 2013, we re-calculated the total portion of property tax relief attributable to the "sales tax credit" millage reduction per the County resolution, by applying the following formula to all tax payer accounts which were granted a sales tax credit as reflected in column "TXCSLE" of the ledger:

Assessed value
Less: Homestead exemption (if applicable)
Adjusted assessed value
Times: "Sales tax credit" millage reduction per County Resolution
Property tax relief attributable to "sales tax credit" millage reduction

Finding: See Attachment 2.

2. **Procedure:** For each fiscal year 2007 through 2013, we summed the total property tax relief attributable to the "sales tax credit" millage reduction and the total sales tax credits reflected in the column labeled "TXCSLE" of the ledger.

Finding: See Attachment 2.

3. **Procedure:** We compared, for each fiscal year 2007 through 2013, the "sum" described in procedure 2 above to Attachment 1 as provided by the State Treasurer's Office

Finding: See Attachment 2.

4. **Procedure:** We selected a random sample of 100 tax payer bills as reflected in the ledger for the fiscal years 2007 through 2013 and performed the following for each tax payer bill (the bill):

- a. Agreed the total millage reflected on the bill to documents indicating the County's authorization of the millage. Such documents may include the County's Resolutions and/or the millage worksheet prepared by the County Auditor's office.
- b. Agreed the following items reflected on the bill to the ledger.
 - i. Appraised value
 - ii. Assessed value
 - iii. Millage
 - iv. Total tax
 - v. Sales tax credit
 - vi. Account number

Finding: We noted no exceptions as a result of this procedure.

We were not engaged to and did not conduct an audit, the objective of which would be the expression of an opinion on the accounting records. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Fairfield County, and is not intended to be and should not be used by anyone other than this specified party.

Columbia, South Carolina
September 26, 2013

Elliott Davis, LLC

Office of State Treasurer
 Local Option Sales Tax
 Fairfield County
 For the Fiscal Years Indicated

	2007	2008	2009	2010	2011	2012	2013
Collections	726,600.00	731,008.08	764,838.75	1,094,584.16	1,652,617.46	1,819,963.98	1,313,995.61
Property Tax Credit Fund (including supplement)	930,148.02	932,833.42	958,910.24	1,111,091.35	1,420,245.25	1,497,513.01	1,327,809.14
Sec. 4-10-65 Property Tax Credit Fund	16,607.87	76,920.82	91,920.46	108,576.80	76,874.67	56,267.45	28,601.78
Total Property Tax Credit Fund	946,755.89	1,009,754.24	1,050,830.70	1,219,768.15	1,497,119.92	1,553,780.46	1,356,410.92
County/Muni Revenue Fund (including supplement)	385,462.94	387,422.65	401,967.95	491,906.68	655,337.40	703,215.96	583,104.41
Sec. 4-10-65 County/Muni Revenue Fund	6,783.50	31,418.36	37,544.97	44,389.11	31,399.52	22,982.48	11,682.42
Total County/Muni Revenue Fund	392,246.44	418,841.01	439,512.92	536,295.79	686,736.92	726,198.44	594,786.83
Sec. 4-10-70 Adjustments	-	-	-	-	-	-	37,779.87
Grand Total Local Option Sales Tax	1,339,002.33	1,428,595.25	1,490,343.62	1,756,063.94	2,183,856.84	2,279,978.90	1,988,977.62

Attachment 2

Fiscal Year	Property tax relief			Carry forward from prior year	Remittances per State Treasurer's schedule	Carry forward
	Attributable to the "sales tax credit" millage reduction	Sales tax credit per the County's tax ledger	Total			
2007	\$ -	\$ 844,157	\$ 844,157	\$ -	\$ 1,339,002	\$ (494,845)
2008	844,137	869,303	1,713,440	494,845	1,428,595	(210,000)
2009	889,247	887,409	1,776,656	210,000	1,490,344	76,312
2010	878,851	882,724	1,761,575	(76,312)	1,756,064	81,823
2011	854,094	910,829	1,764,923	(81,823)	2,183,857	(337,111)
2012	879,681	938,529	1,818,210	337,111	2,279,979	(798,880)
2013	1,007,523	974,675	1,982,198	798,880	1,988,978	(805,660)
			<u>\$ 11,661,159</u>		<u>\$ 12,466,819</u>	



Fairfield County
350 Columbia Road
Winnsboro, South Carolina 29180

As stated in our arrangement letter dated August 15, 2013, we have provided our report outlining our procedures and findings resulting from those procedures. In addition to that report, this letter provides additional comments and recommendations based on the results of procedures that we performed as described in our arrangement letter.

1. Millage reduction

Comment: The County's annual budget resolution to establish millage rates reflects a reduction of operating millage described as a "sales tax credit". While this millage reduction had the effect of reducing the net tax billed, property tax relief to be provided via the local option sales tax should not be applied through the reduction of millage rates.

Recommendation: The County should calculate a sales tax credit for each taxpayer by multiplying the appraised value of the taxpayer's taxable property by a fraction in which the numerator is the total estimated sales tax revenue received from the State during the applicable fiscal year of the County, and the denominator is the total appraised value of taxable property in the County as of January 1 of the applicable taxable year. The resulting credit should be included as a reduction to arrive at the net tax billed for each qualifying tax payer.

2. Revenue estimate

Comment: The County has not applied a clear, consistent methodology for calculating its local option sales tax credit. The County is required to estimate the amount of local option sales tax revenue it will collect from the State. This estimate should be applied as described above to calculate the County's annual sales tax credit. Because the sales tax credit is required to be granted in advance of knowing the amount of sales tax revenue that will be received, there will typically be differences between the County's calculation and actual revenue collected from the State. As described in our agreed upon procedures report dated September 26, 2013, we summed the County's calculation of total property tax relief attributable to the "sales tax credit" millage reduction and the total of the sales tax credits reflected in the County's tax ledger for the fiscal years ended June 30, 2007 through 2013. We then compared these annual sums to the State's remittances of local option sales tax revenue as reported by the State Treasurer's Office for the corresponding fiscal years. The comparison reflected annual differences ranging from an over-estimate of \$286,000 to an under-estimate of \$495,000.

2. Revenue estimate, continued

Recommendation: The County should develop a calculation methodology that considers historical receipts of local option sales tax revenue and incorporates over (under) estimates from previous fiscal years. The methodology should be adequately documented to demonstrate that it was applied consistently from year to year.

It is the County's responsibility to establish internal controls over the policies, procedures, and processes related to property tax credits and the local option sales tax. It is also the County's responsibility to monitor the controls established over these areas to determine it is in compliance with applicable laws, regulations, and County policy. Because of inherent limitations in any internal controls, including collusion, management override and neglect to follow applicable laws, regulations, and County policies, errors or irregularities may occur and not be detected.

We were not engaged to and did not perform an audit, the objective of which would be the expression of an opinion on the County's policies, procedures, and processes related to property tax credits and the local option sales tax. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is solely for the information and use of Fairfield County and is not intended to be, and should not be, used by anyone other than that specified party.

A handwritten signature in black ink that reads "Elliott Davis, LLC". The signature is written in a cursive style with a long, sweeping underline.

Columbia, South Carolina
September 26, 2013

PART II

LOCAL SALES AND USE TAXES

Part II of this publication contains provisions which may be implemented or initiated by the county governing body in order to impose the sales and use tax. The revenues then may be used for various purposes as defined in the statutes. These include the Capital Project Sales Tax Act which is a local option sales tax for use in constructing capital projects such as roads, civic centers, police and fire facilities, jails, and a number of other projects, the Local Option Sales Tax (LOST) which may be used to both reduce the property tax and diversify local government revenue streams, and the Transportation Project Sales Tax which is utilized for transportation related purposes. The Personal Property Tax Exemption Sales Tax and the Local Property Tax Credit Sales Tax are intended to be used as a replacement mechanism to swap ad valorem taxation for sales and use tax. All of these statutes grant counties sources of revenue other than the property tax.

All referenda, including the various local option sales taxes, must be pre-cleared by the U.S. Justice Department pursuant to the Voting Rights Act. The Justice Department has the right to review for 60 days and an automatic 60 day extension, if additional information is requested.

In *Shelby v. Holder*, 570 U.S. ____ (2013), the U.S. Supreme Court held that the formula in §4 that determines the states that are subject to the pre-clearance requirements in §5 is unconstitutional. Technically the pre-clearance provisions in §5 still apply but with no formula to determine which jurisdictions are subject to §5, the pre-clearance requirements of the Voting Rights Act are practically suspended. Congress can adopt a new formula in §4 at any time, which would re-activate the pre-clearance requirements found in §5.

ARTICLE 1: LOCAL OPTION SALES TAX

EDITOR'S NOTE: Part II, §3(A) of Act No. 388 of 2006 allows for a county by ordinance, or upon a petition of 5% of the qualified electors in a county to hold a referendum on the November 2006 ballot to rescind the Local Option Sales Tax.

The language of this part reads as follows:

“(A) Notwithstanding any other provision of law, a county governing body by ordinance or upon petition signed by five percent of the qualified electors of the county submitted to the county governing body with all signatures verified at least sixty days before the 2006 general election shall conduct a referendum at the same time as the 2006 general election as to whether or not a local option sales

tax presently imposed in that county should be repealed. If the qualified electors of the county vote in favor of repealing the local option sales tax, the tax shall be repealed as of January 1, 2007.”

Part II, §3(B) of Act No. 388 of 2006 alters the distribution of revenues derived from a local option sales tax used to reduce property tax on owner-occupied property for school operating taxes. This section states that funds received from these sales taxes must be applied on a pro-rata basis to reduce all other property taxes. The actual language of the section reads as follows: “(B) Beginning June 1, 2007, funds derived from a one percent local option sales tax imposed in a county which are used to reduce ad valorem property taxes imposed on owner-occupied residential property for school operating purposes must be thereafter applied on a pro rata basis to reduce ad valorem property taxes levied for other purposes as the county governing body shall provide.”

SECTION 4-10-10: DEFINITIONS

EDITOR’S NOTE: This section is self explanatory. Note that “ County area” means all the area within the geographical boundaries of a county, including the incorporated areas of the county.

§4-10-10. Definitions.

For purposes of this chapter:

(1) " County area" means a county and all municipalities within its geographical boundaries.

(2) " County" means the unincorporated areas of a county area or county government as the use of the term dictates.

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

(4) " Minimum distribution" means an amount equal to two million dollars for the first distribution and after that adjusted annually on a cumulative basis by a percentage equal to the increase in revenues credited to the Education Improvement Act Fund for the most recently completed fiscal year over the revenues credited to that fund in the preceding fiscal year.

(5) " Population" means population as determined in the most recent official United States Census.

HISTORY: 1990 Act No. 317, §1.

Cross references --

Definition of county area given in §4-10-10(1) used elsewhere, see §4-10-330.

ATTORNEY GENERAL'S OPINION

§ 4-10-10

It is likely a court would find proposed ordinance is within authority of municipality to provide for government services deemed necessary and proper for security, general welfare, and convenience of municipality or for preserving health, peace, order, and good government. A court, however, would most likely find proposed ordinance invalid since purposes and uses of funds from municipal accommodations tax and state local option sales tax are in conflict. 1993 Op. Atty. Gen., No. 93-76.

CASE NOTES

The title of the Local Option Sale Tax (LOST) legislation, §4-10-20, meets the requirements of S.C. Const. Art. III, §17. The title (1) states the general subject, local option sales tax, (2) states the requirements for a "referendum, collection, use and distribution" of such a tax, and (3) conveys reasonable notice that the distribution scheme of the local option sales tax is within the Act. *Westvaco Corp. v. S.C. Dept. of Revenue*, 321 S.C. 59, 467 S.E.2d 739 (1995), rehearing denied.

A county ordinance assessing a tax upon transient accommodations did not conflict with local sales taxes or the statute imposing a statewide tax on accommodations where the ordinance did not attempt to change or circumvent any of the requirements of the State statutes, and nothing in the State statutes prohibited the county from imposing an additional and separate charge on accommodations rentals. *Hospitality Ass'n of South Carolina, Inc. v. County of Charleston*, 320 S.C. 219, 464 S.E.2d 113 (1995).

SECTION 4-10-20: IMPOSITION IF TAX AND EXEMPTIONS

EDITOR'S NOTE: This section grants a county the authority, subject to referendum approval, to impose a one cent sales tax on the same goods which are subject to the state sales tax.

§4-10-20. Rate of tax; exemptions; reports by utilities; rental units.

A county, upon referendum approval, may levy a sales and use tax of one percent on the gross proceeds of sales within the county area which are subject to tax under Chapter 36 of Title 12 and the enforcement provisions of Chapter 54 of Title 12. The sale of items with a maximum tax levied in accordance with Section 12-36-2110 and Article 17 of Chapter 36 of Title 12 is exempt from the local sales and use tax. The adopted rate also applies to tangible personal property subject to the use tax in Section 12-36-1310. Taxpayers required to remit taxes under Section 12-36-1310 shall identify the county or municipality in the county area in which tangible personal property purchased at retail is stored, used, or consumed in this State. Utilities are required to report sales in the county or municipality in which consumption of the tangible personal property occurs. A taxpayer subject to the tax imposed by Section 12-36-920, who owns or manages rental units in more than one county or municipality, shall report separately in his sales tax return the total gross proceeds from business done in each county or municipality.

§ 4-10-20

HISTORY: 1990 Act No. 317, §1; 1997 Act No. 149, §9A; 1997 Act No. 151, §1A.

Cross references --

Construction contracts, see §4-10-25.

Payment in lieu of taxes, see §4-29-69.

Use of LOST in estimated tax liability, see §12-35-580.

ATTORNEY GENERAL'S OPINIONS

Eligible unit within county area may not receive in current fiscal year any less of distribution of LOST funds than that unit received in previous fiscal year unless there is reduction in collections from previous year. This result applies to municipalities in Charleston County notwithstanding incorporation during current year of James Island. Municipalities in Charleston County are required to receive in current fiscal year at least as much LOST revenues as those entities received in prior fiscal year. 1993 Op. Atty. Gen. No. 93-59.

Retail sale of tangible personal property is not subject to local option sales tax when seller located within county that imposes tax is required to deliver property to purchaser outside that county. 1991 Op. Atty. Gen. No 91-47, p. 121.

CASE NOTES

The Local Option Sale Tax (LOST) scheme does not alter the levying of property taxes nor the assessment of property; rather, the scheme merely levies a sales tax and distributes the revenue in the form of a property tax credit. *Westvaco Corp. v. S.C. Dept. of Revenue*, 321 S.C. 59, 467 S.E.2d 739 (1995), rehearing denied.

A county ordinance assessing a tax upon transient accommodations did not conflict with local sales taxes or the statute imposing a statewide tax on accommodations where the ordinance did not attempt to change or circumvent any of the requirements of the State statutes, and nothing in the statutes prohibited the county from imposing an additional and separate charge on accommodations rentals. *Hospitality Ass'n of S. C., Inc. v. County of Charleston*, 320 S.C. 219, 464 S.E.2d 113 (1995).

SECTION 4-10-25: CONSTRUCTION CONTRACTS

EDITOR'S NOTE: Construction contracts entered into either executed prior to the imposition of the LOST or in which the written bid was submitted prior to the imposition of the LOST are exempt from the local sales and use tax if a copy of the bill is filed with the Department of Revenue within six months.

§4-10-25. Construction contracts; application.

§ 4-10-20

The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under Section 4-10-20 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 local sales and use tax provided in Section 4-10-20 if a verified copy of the contract is filed with the South Carolina Department of Revenue within six months after the imposition of the local sales and use tax.

HISTORY: 1990 Act No. 317, §1; 1993 Act No. 181, §54.

SECTION 4-10-30: REFERENDUM TO ADOPT TAX

EDITOR'S NOTE: This section authorizes a referendum on the question of implementing the LOST. If the initial referendum fails, a county council may call for another referendum. A referendum after the initial referendum may only be held once in twelve months and must be held on the Tuesday following the first Monday in November.

Two weeks before the referendum the county council and the municipal councils must publish in a newspaper of general circulation the anticipated credit against property taxes in the first year of implementation of the property tax credit fund. The notice must show the anticipated credit on a primary residence, personal property, a commercial facility and an industrial facility. This is in addition to the ordinary notice required under §7-13-35.

§4-10-30. Referendum on question of implementing local option sales and use tax within county.

(A) The county election commission in each county shall conduct a referendum on the Tuesday following the first Monday in November on the question of implementing the local option sales and use tax within the county area. The state election laws apply to the referendum mutatis mutandis. The county election commission shall publish the results of the referendum and certify them to the county council. The sales and use tax must not be imposed in the county area, unless a majority of the qualified electors voting in the referendum approve the question.

(B) The ballot must read substantially as follows:

"Must a one percent sales and use tax be levied in _____ County for the purpose of allowing a credit against a taxpayer's county and municipal ad valorem tax liability and for the purpose of funding county and municipal operations in the _____ County area?

Yes []

§ 4-10-30

No []"

(C) If the question is not approved at the initial referendum, the county council may call for another referendum on the question. However, following the initial referendum, a referendum for this purpose must not be held more often than once in twelve months and must be held on the Tuesday following the first Monday in November.

(D) Two weeks before the referendum the county council and the municipal councils in the

county area shall publish in a newspaper of general circulation within the jurisdiction the anticipated credit against property taxes in the first year of implementation of the property tax credit fund. The notice must show the anticipated credit on the following classes of property:

- (1) a primary residence;
- (2) personal property including, but not limited to, an automobile;
- (3) a commercial facility;
- (4) an industrial facility.

HISTORY: 1990 Act No. 317, §1.

Cross references --

Ordinary notice requirement of general, municipal, special and primary elections, see §7-13-35.

CASE NOTES

Section 7-13-400 provides for the form of the ballot when questions are submitted. The purpose of §7-13-400 is to aid the voter in understanding the *meaning* of his vote, not the *reason* for it. Instead of explaining *how* the voter could vote for or against the sales tax, the instructions to the voter in this case attributed *reasons* to vote in favor of the measure. Section 7-13-400 sets forth the format to create a neutrally worded ballot and does not contemplate words of advocacy. Accordingly, the election results in this case must be voided. Douan v. Charleston County Council, 357 S.C. 601, 594 S.E.2d 261(2003).

ATTORNEY GENERAL'S OPINION

Eligible unit within county area may not receive in current fiscal year any less of distribution of LOST funds than that unit received in previous fiscal year unless there is

§ 4-10-30

reduction in collections from previous year. This result applies to municipalities in Charleston County notwithstanding incorporation during current year of James Island. Municipalities in Charleston County are required to receive in current fiscal year at least as much LOST revenues as those entities received in prior fiscal year. 1993 Op. Atty. Gen., No. 93-59.

SECTION 4-10-35: REPEAL OF TAX

EDITOR'S NOTE: This section describes how to rescind the LOST. A referendum will be held on the question of rescission upon the petition of 15 percent of the qualified electors. This referendum

may not be held earlier than two years after the tax has been levied in the county. If a majority of electors vote against rescinding the tax, no further rescission referendums may be held for a period

of two years. If they vote in favor of rescinding the tax, the tax may not be reimposed in the county for a period of two years

§4-10-35. Petition to rescind tax; referendum.

(A) Upon petition of fifteen percent of the qualified electors of a county presented to the governing body of that county which has implemented the one percent sales and use tax authorized by this chapter requesting that this tax be rescinded, the county governing body shall conduct a referendum on the Tuesday following the first Monday in November next following on the question of rescinding the local option sales and use tax within the county area. The state election laws apply to the referendum mutatis mutandis. The county election commission shall publish the results of the referendum and certify them to the county council. The sales and use tax must be rescinded in the county area upon the certification of the results if a majority of the qualified electors voting in the referendum vote in favor of rescinding the tax.

(B) The ballot must read substantially as follows:

"Must the one percent local option sales and use tax levied in _____ County pursuant to Chapter 10, Title 4 of the 1976 Code be rescinded?

Yes []

No []"

(C) A referendum for rescission of this tax may not be held earlier than two years after the tax has been levied in the county. If a majority of the qualified electors voting in the rescission referendum vote against rescinding the tax, no further rescission referendums may be held for a period of two years. If a majority of the qualified electors vote in favor of rescinding the tax, the tax may not be reimposed in the county for a period of two years. The petition

requesting rescission must be presented to the county governing body at least one hundred twenty days before the Tuesday following the first Monday of November of that year or the referendum must be held on the Tuesday following the first Monday of November of the following year.

HISTORY: 1990 Act No. 317, §1.

CASE NOTES

Section 7-13-400 provides for the form of the ballot when questions are submitted. The purpose of §7-13-400 is to aid the voter in understanding the *meaning* of his vote, not the *reason* for it. Instead of explaining *how* the voter could vote for or against the sales tax, the instructions to the voter in this case attributed *reasons* to vote in favor of the measure. Section 7-13-400 sets forth the format to create a neutrally worded ballot and does not contemplate words of advocacy. Accordingly, the election results in this case must be voided. *Douan v. Charleston County Council*, 357 S.C. 601, 594 S.E.2d 261(2003).

SECTION 4-10-40: PROPERTY TAX CREDIT FUND DISTRIBUTION

EDITOR'S NOTE: Section 4-10-40 explains how revenue from the Property Tax Credit Fund is to be distributed. Seventy-one percent of the LOST collected goes into the Property Tax Credit Fund (see §4-10-90). The revenue collected in this fund is distributed 67 percent to the county and 33 percent to the municipalities in the county area.

§4-10-40. Distribution of revenue allocated to Property Tax Credit Fund.

(A) The revenue allocated to the Property Tax Credit Fund, as provided in Section 4-10-90, must be distributed to the county and the municipalities in the county area as follows:

- (1) sixty-seven percent to the county;
- (2) thirty-three percent to the municipalities in the county area so that each municipality receives an amount equal to what its percentage of population bears to the total population in all the municipalities in the county area.

(B)(1) All of the revenue received by a county and municipality from the Property Tax Credit Fund must be used to provide a credit against the property tax liability of taxpayers in the county and municipality in an amount determined by multiplying the appraised value of the taxpayer's taxable property by a fraction in which the numerator is the total estimated revenue received by the county or municipality from the Property Tax Credit Fund during the applicable fiscal year of the political subdivision and the denominator is the total of the appraised value of taxable property in the county or municipality as of January 1 of the applicable taxable year.

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(2) For purposes of this chapter:

- (a) property tax liability includes liability to pay fees in lieu of property taxes;
- (b) taxable property includes exempt property for which the owner must pay fees in lieu of property taxes; and
- (c) reference to liability for fees in lieu of tax applies to fees arising pursuant to Section 4-1-170 in connection with location in a multi-county industrial or business park as provided in Section 13 of Article VIII of the Constitution of the State of South Carolina.

(C) All interest accruing to the credit funds received by a county or a municipality from the Property Tax Credit Fund must be used to provide an additional credit as provided in this section.

(D) If a municipality has adopted or adopts a redevelopment plan for a tax increment financed redevelopment project pursuant to Chapter 6 of Title 31, a deficiency resulting from the application of this section in the tax allocation fund or separate fund established to pay project costs must be funded from the municipality's allocation from the County/Municipal Revenue Fund each year so as to provide full funding for the project. A tax increment financing bond holder, agent, or trustee may enforce this requirement.

(E) For motor vehicles subject to the payment of property taxes pursuant to Article 21, Chapter 37 of Title 12, the credit provided under this section applies against the tax liability for motor vehicle tax years beginning after December of the year in which the credit is calculated.

HISTORY: 1990 Act No. 317, §1; 1991 Act No. 109, §8; 1991 Act No. 168, §12; 1998 Act No. 442, §13.

Cross references --

Additional property tax credit, see §4-10-50.

ATTORNEY GENERAL'S OPINIONS

Eligible unit within county area may not receive in current fiscal year any less of distribution of LOST funds than that unit received in previous fiscal year unless there is reduction in collections from previous year. This result applies to municipalities in Charleston County notwithstanding incorporation during current year of James Island. Municipalities in Charleston County are required to receive in current fiscal year at least as much LOST revenues as those entities received in prior fiscal year. 1993 Op. Atty. Gen., No. 93-59.

Property qualifying for homestead exemption is not taxable property and hence is not included in determining ratio for calculating tax credit provided by local option sales tax. 1991 Op. Atty. Gen., No. 91-28 p. 81.

Credit for county ad valorem taxes to be funded from local option sales tax applies to taxable property throughout county, including property situate within and without corporate limits of municipalities within county. 1990 Op. Atty. Gen., No. 90-59.

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

EDITOR'S NOTE: Section 4-10-50 explains how revenue from the County/Municipal Revenue Fund is to be distributed. Twenty-nine percent of the LOST collected goes into the County/Municipal Revenue Fund (see §4-10-90). The statute dictates that the proceeds contained in the County/Municipal Revenue Fund are distributed to the county and municipalities: 50 percent

based upon location of sale and 50 percent based upon population. It is important to note that the county's population is based upon the entire county area. Also important is that some or all of the revenue distributed under this section may be used as an additional property tax credit.

§4-10-50. Distribution of revenue set aside for the County/Municipal Revenue Fund.

(A) The revenue generated in a county area and set aside and allocated to the County/Municipal Revenue Fund must be distributed to the county and the municipalities in the county area as follows:

- (1) fifty percent based upon the location of the sale;
- (2) fifty percent based on population.

(B) The population of the county is the population of the county area, and the population of the municipalities is the population within the corporate boundaries of the municipalities in the county area.

(C) Revenue distributed to a county or municipality under this section may be used to provide an additional property tax credit in the manner provided in Section 4-10-40(B).

HISTORY: 1990 Act No. 317, §1; 1991 Act No. 168, §14.

SECTION 4-10-60: SHARED REVENUE FUND

EDITOR'S NOTE: This section distributes from county areas which receive more than \$5 million from LOST a percentage of their revenues to counties which receive less than a minimum distribution under LOST.

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§4-10-60. Withholdings from amount collected by counties; apportionment amongst other counties.

(A) At the end of each fiscal year and before August first a percentage, to be determined by the State Treasurer and not to exceed five percent of collections, must be withheld from those county areas collecting five million dollars or more from the sales and use tax authorized by this chapter, and that amount must be distributed to assure that each county area receives a minimum distribution. The difference between the minimum distribution and the actual collections within a county area must be distributed to the eligible units within the county area based on population as provided for in this chapter.

(B) The amount withheld from those county areas collecting five million dollars or more must be apportioned among the county and the municipalities in the county area in the same proportion as those units received remittances as provided in this chapter. An amount withheld in excess must be distributed back to the county areas whose collections exceed five million dollars based on the ratio of the funds available to the collections by each county area.

(C) As a condition precedent to a county area being subject to an assessment by the State Treasurer or being a recipient of revenue pursuant to this section, the county area must have implemented the sales and use tax as authorized by this chapter.

(D) The provisions of subsection (A) do not apply if the total number of county areas adopting the sales and use tax authorized by this chapter, which are projected by the Department of Revenue to collect five million dollars or more, generated fifty percent or less during the most currently available fiscal year of the total statewide collections from the levy of a one percent sales and use tax, then those county areas generating five million dollars or more must be assessed five percent of the amount generated in the county area, and that amount must be used as a supplement to those county areas generating less than the minimum distribution. The supplement to those county areas generating less than the minimum distribution must be distributed so that each county area receives an amount equal to what its percentage of population bears to the total population in all of the county areas generating less than the minimum distribution which have implemented the sales and use tax authorized by this chapter. Once the amount of the supplement has been determined for each of the county areas to be supplemented, then the supplement must be distributed to the eligible units within the county area based on population as provided for in this chapter. However, the supplement to the county area combined with collections within the county area may not exceed the minimum distribution.

HISTORY: 1990 Act No. 317, §1; 1993 Act No. 181, §55.

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Local sales tax which is withheld under §4-10-60(D) must be distributed to county areas that levy tax but collect less than amount of minimum distribution. Amount distributed to such area is percentage of tax determined by applying percentage of population of receiving county area to total population of all county areas that collect less than minimum distribution. Distribution to a county area, however, may not exceed difference between tax collected by county area and amount of minimum distribution. Any withholding tax in excess of amount needed to fund disbursements must be returned to contributing county areas. 1991 Op. Atty. Gen., No. 91-9.

SECTION 4-10-65: UNIDENTIFIED REVENUE DISTRIBUTION

EDITOR'S NOTE: Unidentified revenue can result from an error by the merchant in identifying the proper governmental unit, especially in terms of proper municipal identification.

§4-10-65. Local option tax revenues not identified as to unit shall go to local option supplemental revenue fund.

Funds collected by the department from the local option sales tax which are not identified as to the governmental unit due the tax, and cannot be so identified after a reasonable effort by the department to determine the appropriate governmental unit, must be deposited to a local option supplemental revenue fund. These funds must be distributed in accordance with Section 4-10-60 to those counties generating less than the minimum distribution.

HISTORY: 1993 Act No. 164, Part II, §99; 1999 Act No. 93, §1.

SECTION 4-10-67: LOCAL OPTION USE TAX DISTRIBUTION

EDITOR'S NOTE: This section is self-explanatory.

§4-10-67. Deposit and distribution of local option use tax.

Local option use tax collected by the department in conjunction with the filing of individual income tax returns must be deposited to a local option supplemental revenue fund and distributed in accordance with Section 4-10-60 to those counties generating less than their minimum distribution.

HISTORY: 2000 Act No. 399, §3(S).

SECTION 4-10-70: DETERMINATION OF AMOUNT TO BE RECEIVED BY ELIGIBLE UNIT WITHIN COUNTY AREA

EDITOR'S NOTE: This section states that no eligible unit within a county area may receive less from the distribution of LOST than it received in the previous fiscal year unless the amount of

collections is less than the preceding years collections. According to the Attorney General's Opinion cited below, if a new municipality is introduced into the county area, each municipality will receive its minimum distribution (The same amount it received in the previous fiscal year, for the new entity this would be \$ 0), then the revenue would be distributed as prescribed by the normal distribution statutes.

§4-10-70. Determination of amount to be received by eligible unit within county area.

No eligible unit within a county area may receive less from the distribution of the sales and use tax authorized by this chapter than it received in the previous fiscal year. However, if the amount of collections from the sales and use tax in the county area is less than the preceding fiscal year's collections, then the distributions to the eligible units within the county area must be reduced on a proportional basis.

HISTORY: 1990 Act No. 317, §1.

ATTORNEY GENERAL'S OPINION

Eligible unit within county area may not receive in current fiscal year any less of distribution of LOST funds than that unit received in previous fiscal year unless there is reduction in collections from previous year. This result applies to municipalities in Charleston County notwithstanding incorporation during current year of James Island. Municipalities in Charleston County are required to receive in current fiscal year at least as much LOST revenues as those entities received in prior fiscal year. 1993 Op. Atty. Gen., No. 93-59.

SECTION 4-10-80: REVENUE COLLECTION REPORTS

EDITOR'S NOTE: By August 15 the State Treasurer must report to the county chief administrative officers, county treasurers, and municipal clerks the total amount of LOST revenue collected in their county area.

§4-10-80. Reports as to total amount of revenue collected.

Annually by August fifteenth the State Treasurer shall report to the county chief administrative officers, county treasurers, and municipal clerks in those county areas which levy the sales and use tax authorized by this chapter the total amount of revenue collected as reported by the Department of Revenue in the county area for the preceding fiscal year.

HISTORY: 1990 Act No. 317, §1; 1993 Act No. 181, §56.

SECTION 4-10-90: TAX ADMINISTRATION AND COLLECTION AND NOTIFICATION OF ADOPTION

EDITOR'S NOTE: The purpose of this section is to explain how the state is to administer and collect the local option sales tax. The Department of Revenue is responsible for collecting LOST. After a county adopts the LOST by referendum, the county must notify the Department of Revenue by December 31 for the tax to be imposed on May 1. If the county fails to notify the Department by December 31, then the imposition is delayed for a year. Subsections (3)(1) through (5) contain a sliding scale for distribution between the Revenue Fund and the Credit Fund. The phase in occurred in the first years after adoption of the LOST statute. The division is now 71 percent to the Property Tax Credit Fund and 29 percent to the County/Municipal Revenue Fund.

§4-10-90. Department of Revenue to administer and collect local sales and use tax; forms; regulations; notice by county that tax has been approved; revenues to be credited to Local Sales and Use Tax Fund; reports to State Treasurer; refunds.

(A) The Department of Revenue shall administer and collect the local sales and use tax in the manner that sales and use taxes are administered and collected pursuant to Chapter 36 of Title 12. The commission may prescribe forms and promulgate regulations in conformity with this chapter, including tables prescribing the amount to be added to the sales price. The county

shall notify the Department of Revenue and the State Treasurer through delivery of a certified copy of a resolution adopted by the county by December thirty-first following the referendum for the tax to be imposed May first. Failure to deliver the resolution by December thirty-first causes a delay of the imposition until the first day of May of the next calendar year. Notwithstanding the provisions of this subsection, the local sales and use tax must not be imposed before July first following the first referendum held pursuant to Section 4-10-30.

(B) All revenues collected by the Department of Revenue on behalf of a county area pursuant to this chapter must be remitted to the State Treasurer to be credited to a Local Sales and Use Tax Fund which is separate and distinct from the state general fund. After deducting the amount of refunds made and the costs to the Department of Revenue of administering the tax, not to exceed one-half of one percent of the fund or seven hundred fifty thousand dollars, whichever is greater, the State Treasurer shall deposit the revenue into the Local Sales and Use Tax Fund which consists of two separate funds: the Property Tax Credit Fund and the County/Municipal Revenue Fund. The revenue collected pursuant to this chapter must be allocated to each fund as follows:

- (1) During the first year after the effective date of this act, sixty-three percent to the Property Tax Credit Fund and thirty-seven percent to the County/Municipal Revenue Fund.
- (2) During the second year after the effective date of this act, sixty-five percent to the Property Tax Credit Fund and thirty-five percent to the County/Municipal Revenue Fund.
- (3) During the third year after the effective date of this act, sixty-seven percent to the Property Tax Credit Fund and thirty-three percent to the County/Municipal Revenue Fund.
- (4) During the fourth year after the effective date of this act, sixty-nine percent to the Property Tax Credit Fund and thirty-one percent to the County/Municipal Revenue Fund.
- (5) During the fifth year after the effective date of this act, and each year thereafter, seventy-one percent to the Property Tax Credit Fund and twenty-nine percent to the County/Municipal Revenue Fund. The allocation of revenue to each fund provided for in this section must remain uniform as to the percentage allocated to each fund regardless of the year in which a county adopts the local sales and use tax. The State Treasurer shall distribute monthly the revenues according to the provisions of this chapter.

(C) The Department of Revenue shall furnish data to the State Treasurer and to the governing bodies of the counties and municipalities receiving revenues for the purpose of calculating distributions and estimating revenues. The information which may be supplied to counties and municipalities includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information by taxpayer received by appropriate county or municipal officials 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 State Treasurer may correct misallocations from the Property Tax Credit Fund and County/Municipal Revenue Fund by adjusting subsequent allocations, but these adjustments may be made only in

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allocations made in the same fiscal year as the misallocation. However, allocations made as a result of city or county code errors must be corrected prospectively.

HISTORY: 1990 Act No. 317, §1; 1991 Act No. 168, §§1, 13; 1993 Act No. 181, §57; 1998 Act No. 432, §18A.

Cross references --

Discount allowed on amount of sales or use tax owed to state upon timely filing and payment of tax, see §12-36-2610.

ATTORNEY GENERAL'S OPINION

Eligible unit within county area may not receive in current fiscal year any less of distribution of LOST funds than that unit received in previous fiscal year unless there is reduction in collections from previous year. This result applies to municipalities in Charleston County notwithstanding incorporation during current year of James Island. Municipalities in Charleston County are required to receive in current fiscal year at least as much LOST revenues as those entities received in prior fiscal year. 1993 Op. Atty. Gen., No. 93-59.

SECTION 4-10-100: COMMENCEMENT OF LOCAL SALES AND USE TAX

EDITOR'S NOTE: This section deals with those services that are billed monthly. If a service is billed monthly, then the local sales and use tax begins with the first day of the billing period after the date of general imposition of the local sales and use tax.

§4-10-100. Commencement of local sales and use tax.

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

HISTORY: 1990 Act No. 317, §1.
