

April 21, 2008

The Honorable Ted Pitts  
Member, House of Representatives  
323-A Blatt Building  
Columbia, South Carolina 29211

Dear Representative Pitts:

We received your letter requesting an opinion of this Office concerning the one-cent local option sales tax statute. In your letter, you explain:

There is a one-cent local option sales tax in Lexington County for school buildings and debt service. Does current law allow for a second local option sales tax for road improvements? I know there are several counties that have one of these sales taxes in place whether it is for roads in York County and Horry County or for schools in Richland and Lexington County, but I am unaware of any county that has both in place.

Thus, you ask us to clarify “whether the current statute permits voters in a single county to put both one-penny local option sales taxes in place.”

#### **Law/Analysis**

Initially, we believe your reference to a one-cent local option sales tax for school buildings and debt service involves local sales and use tax imposed in Lexington County by the Lexington County School District Property Tax Relief Act (the “Act”) originally enacted by the Legislature in 2004. 2004 S.C. Acts 3142. The Act provides for the imposition of a one-percent sales and use tax upon approval of Lexington County voters to be used to off-set school property tax liabilities on property located in Lexington County. *Id.* According to a revised version of the Act, the revenue collected from the additional sales and use tax is used to provide a nonrefundable credit against school property taxes for “the liability arising from millage imposed for debt service for schools,

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then against any liability arising from other methods of financing school capital projects, then against school building lease-purchase obligations, and finally against any liability arising from school operations.” 2006 S.C. Acts 3841.

The Act contains a provision addressing the imposition of other local option sales and use taxes. According to section 6(B) of the Act:

The tax authorized by this act is in addition to all other local sales and use taxes and applies to the gross proceeds of the sales in the applicable jurisdiction which are subject to the tax imposed by Chapter 36, Title 12 of the 1976 Code and the enforcement provisions of Chapter 54, Title 12 of the 1976 Code. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 of the 1976 Code are exempt from the tax imposed by this act. The gross proceeds of the sale of food which may lawfully be purchased with United States Department of Agriculture food coupons are exempt from the tax imposed by this act. The tax imposed by this act also applies to tangible personal property subject to the use tax in Article 13, Chapter 36 of Title 12 of the 1976 Code.

Id. Thus, according to this provision, other local option sales and use taxes may be imposed and are in addition to the sales and use tax imposed under the Act.

Furthermore, we presume by the local option sales tax for “road improvements,” you are referring to local option sales tax for transportation facilities found under chapter 37 of title 4 of the South Carolina Code. S.C. Code Ann. § 4-37-10 et seq. (Supp. 2007). These provisions allow counties to impose, with approval of the county’s electorate, up to a one-percent sales and use tax to fund one or more transportation projects. Id.

Similar to the provision found in the Act, section 4-37-30(A)(9) of the South Carolina Code (Supp. 2007) states as follows:

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 of Title 12 and the enforcement provisions of Chapter 54 of Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of 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. The tax imposed by this section also applies to tangible personal property subject to the use tax in Article 13, Chapter 36 of Title 12.

“The primary rule of statutory construction is to ascertain and give effect to the intent of legislature.” Peake v. South Carolina Dept. of Motor Vehicles, 375 S.C. 589, 597, 654 S.E.2d 284, 289 (Ct. App. 2007). Our courts have held that “[w]here the language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning.” Pee Dee Reg’l Transp. v. South Carolina Second Injury Fund, 375 S.C. 60, 62, 650 S.E.2d 464, 465 (2007). In addition, “statutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable.” State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007).

In reading these two provisions together, we believe the plain and ordinary language used allows Lexington County to impose both a one-percent local sales and use tax under the Act as well as a local sales and use tax up to one-percent pursuant to chapter 37 of title 4. However, in our review of the provisions contained in chapter 37 or title 4, we discovered a limitation on the amount of transportation tax a county may impose.

Section 4-37-40 of the South Carolina Code (Supp. 2007) provides: “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.” (emphasis added). According to this provision, the amount of transportation tax a county may impose is reduced by other local sales and use taxes imposed pursuant to legislative enactments. In the case of Lexington County, because the Act provides for a one-percent sales and use tax, the amount of transportation tax Lexington County may impose is reduced by one-percent. Thus, if Lexington County imposed any amount of transportation tax, it would exceed the one-percent limitation found in section 4-37-40. Accordingly, this provision effectively prohibits the imposition of both local option sales and use taxes in Lexington County.

### **Conclusion**

Based on our reading of both the local legislation allowing Lexington County to impose a one-percent local sales and use tax and the statutes governing local transportation taxes, we find the provisions of both bodies of law allow for the imposition of both taxes. However section 4-37-40 limits the transportation tax imposed by requiring such tax, when combined with taxes imposed pursuant to local legislation, not to exceed one-percent. Because the local option sales tax imposed

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under the Act is one-percent, we do not believe Lexington County currently has the ability to impose a transportation tax.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Deputy Attorney General