ALAN WILSON
ATTORNEY GENERAL

July 22, 2026

The Honorable Wallace H. (Jay) Jordan
South Carolina House of Representatives
626 West Evans Street
PO Box 2010
Florence, SC 29503-2010

Dear Representative Jordan,

You seek our opinion concerning the Department of Revenue's (DOR) authority "… particularly where the ORS (Office of Regulatory Staff) is short staffed, to conduct audits of electric cooperatives regarding governance, compliance, financial disclosures and patronage capital." You seek answers to several specific questions in this regard. These will be discussed below. In short, you ask whether "DOR's jurisdiction to audit cooperatives [is] limited to … tax matters" or "can it audit operational or governance oversight?" You note that "[a]ll sides concede the DOR has the authority to audit unrelated business income under section 12-6-550 and license taxes on the fair market value of their property under section 12-20-100," but your question is based upon the issue of whether "the DOR [can] also audit matters substantively under the jurisdiction of the ORS." The short answer to this question is "no."

By way of background, you state the following:

> [a]s you know, electric co-ops come under the jurisdiction of ORS, PSC [Public Service Commission] and DOR. Section 58-4-10 establishes the ORS and gives it authority and jurisdiction to inspect, audit, and examine electric cooperatives for compliance with specified statutory provisions, as authorized by Act 56 of 2019 and codified in section 33-49-150.
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> The DOR's authority is found in several Title 12 sections. Section 12-6-540(5) exempts from corporate income tax organizations exempt under section 33-49-120 (i.e. electric cooperatives.) See also section 33-49-120. Section 12-6-550 imposed on income tax on cooperatives under IRC § 1381 on unrelated business income. Section 12-20-100 imposes a license tax on utilities and electric cooperatives based on the fair market value of property and gross receipts. Only distribution electric cooperatives are subject to the gross receipts portion which is irrelevant to this opinion request. Section 12-20-110(3) exempts cooperatives from the general license fee provisions. Two other Title 12 provisions (sections 12-20-105 and 12-23-10) apply to electric cooperatives but they are irrelevant.

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> The PSC has certain jurisdiction, but it is irrelevant.
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> In summary, the DOR has fiscal jurisdiction, tax assessment, collection and tax enforcement. The PSC has regulation and adjudicatory jurisdiction over service territories rates and certain dispute resolutions. The ORS has jurisdiction over compliance monitoring, auditing, consumer protection and investigation. The ORS's focus areas are governance compliance, financial disclosures, patronage capital and termination protection.

We agree with you that DOR may not assume the authority and jurisdiction of ORS to audit governance and oversight of electric cooperatives, but is limited to tax matters pursuant to its specified statutory authority. We will discuss each of your specific questions in turn. Please note, however, that, in certain instances, there is no "one size fits all" answer and will depend upon the applicable facts. We cannot, in other words, foresee all factual circumstances which might arise.

Law/Analysis

We begin our analysis with fundamental principles of law. As we stated in Op. S.C. Atty. Gen., 1988 WL 485230 (Feb. 19, 1988),

> [a]xiomatically, administrative agencies, which are creatures of statutes, have no common-law or inherent jurisdiction or powers; therefore, they have only such powers as have been granted to or conferred upon them, by statute, expressly or by implication. See Piedmont & Northern Ry. Co. v. Scott, 202 S.C. 207, 245 S.E. 2d 353 (1943). Accord 1 Am. Jur. 2d Administrative Law § 70; 73 C.J.S. Public Administrative Law and Procedure § 49; Sutherland Stat. Constr. §§65.01 & 65.02 (4^{th} ed. 1986). In Bostic v. City of W. Columbia, 268 S.C. 386, 390, 234 S.E. 2d 224, 226 (1977), the South Carolina Supreme Court stated that 'enabling legislation is not merely precatory, but prescribes the parameters of conferred authority.' According to 73 C.J.S. Public Administrative Law and Procedure, § 51,
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>> [t]he powers of administrative agencies, bodies, or officials are not to be derived from mere inference, and their jurisdiction cannot be conferred by implication. As a general rule, however, in addition to the powers expressly conferred on them by organic or legislative enactment, such officials and bodies, in the absence of restricting limitations of public policy or express prohibitions, or express provisions as to the manner of exercise of the powers given, have such implied powers, and only such implied powers, as are necessarily inferred or implied from, or incident to, the express powers granted to, or duties imposed on them. Thus, they possess the powers reasonably, necessary and fairly appropriate to make

> effective the express powers granted to, or duties imposed on them, and to accomplish the purposes of the legislation which established them.
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> The implied powers of administrative agencies and bodies are not to be extended beyond fair and reasonable inferences, or what may be necessary for the just and reasonable execution of the powers expressly granted.

In short, it is well established that the supervision and enforcement of laws by one agency "can only be vested in another agency by virtue of the authority of the General Assembly." Op. S.C. Atty Gen., 1966 WL 11735 (January 11, 1966). Thus, "[a]n administrative agency has only such powers as have been conferred upon it by law and must act within the granted authority for an authorized purpose." South Carolina Tax Comm. v. S.C. Tax Bd. of Review, 278 S.C. 556, 560, 299 S.E. 2d 489, 491 (1983). In our view, DOR has not been given the power to audit electric cooperatives concerning compliance with the laws generally. Such authority, in a limited form, has been delegated to ORS. This power, if it be given to ORS, must come from the General Assembly explicitly. Thus, we find that the Legislature has not conferred upon DOR these general powers. While DOR has broad audit authority within its own sphere, it is the state's tax agency, not a general audit authority.

We turn now to your specific questions.

1. Does the DOR have the authority to audit an electric cooperative under South Carolina law seeking information and data on subjects under ORS (and not DOR) jurisdiction?

The cornerstone of general audit authority of an electric cooperative for compliance with South Carolina law is Act 56 of 2019. Act 56 was proposed by now Senator Russell Ott as a bill which "would allow the Office of Regulatory Staff to audit a co-op and let them know if they were spending their money properly and following state law." See "South Carolina bill would reform electric co-ops after spending scandal," AP article, February 17, 2019. In other words, Senator Ott, when a House member, sought to bestow certain limited compliance audit authority for electric cooperatives upon ORS and ORS only. The legislation was described as a "major shift in state utility policy, as cooperatives are not currently subject to state oversight. Under this legislation, the Office of Regulatory Staff (ORS) would audit electric cooperatives in order to ensure compliance with the law, and the Public Service Commission would have jurisdiction to resolve disputes between the ORS and the cooperatives." Berkeley Independent, May 22, 2019, updated August 21, 2020. Indeed, the ORS website describes Act No. 56 this way:

> Act 56
>
> The General Assembly passed Act 56 in 2019, giving the ORS the ability to inspect, audit, and examine the 22 electric cooperatives to make sure they are

> following certain laws. Act 56 also allows the ORS to investigate consumer complaints against electric cooperatives related to disconnection for not paying a bill. The ORS can inspect, audit, and examine an association of electric cooperatives for compliance with certain laws and an association's bylaws.
>
> After an inspection, audit, or examination, the ORS must send its findings to the management and board of the electric cooperative of association and try to resolve any compliance issues. The PSC has the authority and jurisdiction to resolve any disputes resulting from an inspection, audit or examination.

Nowhere does ORS's description mention DOR as part of this audit process. Nor is there any reference to DOR in Act 56's authorization to ORS to inspect, audit, and examine a co-op for compliance with the law. Indeed, pursuant to section 33-49-150, (Section 2),

> [t]he Office of Regulatory Staff under the provisions of this section is hereby vested with the authority and jurisdiction to make inspections, audits and examinations of electric cooperatives of Chapter 4, title 58 relating to the compliance of electric cooperatives with the provisions of Sections 33-49-255, 33-49-280, 33-49-420, 33-49-430, 33-49-440, 33-49-450, 33-49-610, 33-49-615, 33-49-620, 33-49-625, 33-49-630, 33-49-640, 33-49-645, 33-49-1410, 33-49-1420, 33-49-1430, 33-49-1440, 58-27-820, and 58-27-840. The Office of Regulatory Staff is granted authority and jurisdiction over electric cooperatives that provide only wholesale services with regard to any of the foregoing statutory provisions to the extent that those provisions are applicable to the wholesale electric cooperatives. The Office of Regulatory Staff does not have the authority or jurisdiction to make inspections, audits, or examinations of subsidiaries of an electric cooperative provided that the subsidiary is not subsidized by, or any financial credit risk to, electric cooperative rate payers and that the subsidiary has not taken action, on behalf of the electric cooperative, on any of the electric cooperative's duties as provided in the sections listed above.... The Public Service Commission is vested with the authority and jurisdiction to resolve any disputed issues arising from the inspections, audits, or examinations. (emphasis added).

As far as we are aware, Act 56 of 2019 has not been construed as vesting general, or even limited, compliance audit authority in DOR. Only ORS possesses such authority and it is limited. That is not to say, however, that DOR does not possess broad audit authority within the state tax sphere; only that DOR may not act in place of ORS in its exercise of those compliance audit powers bestowed upon ORS.

As our Supreme Court stated in Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E. 2d 578, 581 (2000),

> [t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.... Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.... Where the statute's 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.

Here, the Legislature, if it so desired, could easily have included DOR with respect to the delegated compliance audit authority. Yet, it did not. We assume the Legislature did not wish to transform DOR from a tax agency to a compliance audit agency. Thus, we cannot read into Act 56 what is not there. Thus, we are of the opinion that the DOR has the authority to audit statutory provisions which impose a tax administered by the DOR. Yet, DOR has no authority to audit statutory provisions for compliance which has been placed under the jurisdiction of or administered by ORS.

2. Can the DOR audit IRC provisions not adopted by the South Carolina General Assembly?

Your letter provides the following background:

> [a]s you know, the General Assembly annually adopts federal tax conformity. It has been doing this since the 1980s; alas, it did not this year but that is irrelevant. The General Assembly adopts conformity in two different code sections. It annually amends section 12-6-40 to pick up certain newly enacted federal provisions. (This is called conformity.) It also annually adopts section 12-6-50 titled "Internal Revenue Code sections specifically not adopted by the state." (This is typically referred to as the decoupling statute.) The legislators in many, if not most, states use this same procedure.
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> Subsection (16) of the decoupling statute, section 12-6-50, includes IRC sections 2001 through 7655, meaning SC does not adopt these sections. Some of these apply to nonprofits. Given the explicit decoupling statute does the DOR have jurisdiction to audit the provisions of IRC section 4951?
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> In addition, electric cooperatives organize and are granted exemption by the IRS under IRC § 501(c)(12), and not 501(c)(3). Does the DOR have the authority to audit an electric cooperative under provisions such as IRC section 4951 which do not apply to 501(c)(12)? However well-meaning their audit requests may be, their audits can require hundreds of hours to respond.

As the DOR has likewise explained in its 2021 Revenue Ruling, "South Carolina's adoption of the Internal Revenue Code is not automatic and is not all inclusive." SC Revenue Ruling 21-2, 2021 WL 1330700 (January 26, 2021). The General Assembly determines which provisions of the Internal Revenue Code are applicable to South Carolina for purposes of state taxation.

To reiterate, DOR possesses the authority to audit based only upon statutory provisions which impose a tax or tax liability administered by that agency. Thus, DOR audits are based upon information provided by the taxpayer or information which should have been provided in the taxpayer's return. Where IRC provisions have been decoupled or IRC provisions do not apply to electric cooperatives organized under 501(c)(12), such provisions are not part of South Carolina state tax law and DOR does not audit those. We have been informed that DOR would not seek to assume the authority and jurisdiction of ORS.

3. Can the DOR share its audit findings of an electric cooperative or electric utility with the ORS or PSC?

As we noted in Op. S.C. Atty Gen., 2008 WL 4870544 (October 20, 2008), section 12-54-240 "prohibits the divulging of tax returns and other tax documents except upon 'proper judicial order or otherwise provided by law.'" This opinion further states:

> [w]e have advised that § 12-54-240 (previously § 12-7-1680) "is explicit in its mandate that… returns and the information contained therein, shall not be released by [Department of Revenue] employees." Op. S.C. Atty. Gen. No. 86-11 (January 23, 1986). Moreover, we have noted that this state "further provides for criminal and civil sanctions for the unlawful production or disclosure of income tax records." Id. Such is to enforce the "strong public policy against disclosure of income tax records filed with the [Department of Revenue]" because such policy "serves the public good by encouraging voluntary and truthful reporting by the taxpayer, since the taxpayer is assured that disclosures in his return will remain confidential." Id. In the 1986 Opinion, we noted also that the language of § 12-54-240 "is similar to that found in other states' provisions," (citing New York State Dept. of Taxation v. N.Y. State Dept. of Law, 378 N.E. 2d 110 (N.Y. 1978) and Garrett v. State, 253 S.E. 2d 741 (Ga. 1979).

Section 12-54-240, however, does permit disclosure in certain specific authorized instances. As our Supreme Court noted, "Section 12-54-240, which generally prevents disclosure, includes specific provisions allowing disclosure only in certain defined circumstances. For instance, § 12-54-240(B)(9) allows the Tax Commission's (DOR) disclosure of sales and use tax information to county and municipal officials even though sales and used information is generally not disclosable." S.C. Tax Comm'n v. Gaston Copper Recycling Corp., 316 S.C. 163, 167, 447 S.E. 2d 843, 846 (1994).

In Op. S.C. Atty Gen., 2023 WL 2025305 (Feb. 7, 2023), we addressed a situation in which the General Assembly adopted specific exceptions for agricultural businesses from business license taxes. We stated the following as the general rule governing enumerated exceptions in a statute:

> [a]s a matter of first impression, we must interpret the provisions in S.C. Code § 12-37-135 according to the rules of statutory construction. It should be emphasized that the General Assembly's intent is the primary consideration in interpreting the terms of a statute.... Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E. 2d 578, 581 (2000). The rule of statutory construction "'expressio unius est exclusio alterius' or 'inclusio unius est exclusio alterius'... holds that 'to express or include one thing implies the exclusion of another or the alternative.'" Id. at 86, 533 S.E. 2d at 582. This rule of construction generally means if the General Assembly creates a list of exceptions from a statute, courts generally find that list is meant to be finite and are not inclined to find additional implied exceptions.

Applying such analysis, we find no exception for DOR to share its audit findings with ORS and the PSC. As noted above, § 12-54-240 absolutely prohibits the Department of Revenue from divulging, disclosing or making known in any manner the particulars disclosed in any audit or return. Violation of this statute subjects the offender to severe criminal and civil penalties. Absent an exception, and find none, the DOR may not share an audit or audit findings with the ORS or PSC. Even if the person performing the audit concludes that ORS provisions have not been complied with, state law prohibits disclosure of the relevant information.

4. Is the DOR limited to auditing unrelated business income and FMV (Fair Market Value), of assets held by an electric cooperative or may it conduct a C Corp audit of a cooperative?

As we understand it, electric cooperatives are exempt under 501(c)(12) and do not file a C Corp return. As you state in your letter,

> ... electric cooperatives are taxed on two items, unrelated business income and FMV [Fair Market Value] of assets. Is the DOR limited in auditing [to] these matters or may it conduct a regular C Corporation audit of a cooperative? In a C Corporation audit the auditor (quite properly) looks at all income and expense items, including bank account statements, sales tax returns, employee W-2s and K-1s, etc. Producing these records requires countless hours of employee time and sometimes hundreds if not thousands of pages of documents. Certainly, the Department may request documents verifying unrelated business income and FMV of assets but presumably not documents unrelated.

> In fairness to the Department, the auditor in many cases submits document requests it uses in C Corporation audits (as a boiler plate, and not with the intention to unnecessarily burden the taxpayer but that's the result.).

Of course, DOR possesses broad audit authority pursuant to statute, but such powers certainly are not unlimited. As stated above, § 12-54-100(A) empowers DOR to conduct examinations and require the production of books and records, but only for the purposes of "ascertaining the correctness of a return or making a determination of or fixing tax liability…."

Section 12-4-387 authorizes DOR "to conduct audits involving taxes." Included in § 12-54-100(A) is the authority to examine both physical operations of a place of business in addition to various records including invoices, paper, memoranda, vouchers, documents of the taxpayer or any other person bearing upon matters required to be included in the return. Further, § 12-54-110 gives DOR the authority to issue administrative summons to taxpayers should they fail voluntarily to comply with DOR's requests. Thus, DOR's authority to conduct audits is broad and, of course, the scope of an audit may vary depending upon the returns filed and the taxes owed. The information to substantiate the return may vary as well. We may not speak to specific factual circumstances.

We have been referred to the decision of Palmetto Kids FIRST Scholarship Program v. SCDOR (14 ALJ-17-059) 2015 WL 2159509 (April 30, 2015) as relevant to your question. At issue in Palmetto Kids was the propriety of a subpoena and document requests issued by DOR to a 501(c)(3) corporation. It was argued that § 12-54-100 limited DOR's inquiry to matters included on a return and that DOR possessed no jurisdiction to audit 501(c)(3)'s. The ALJ concluded that petitioner was correct that generally "only the IRS, the SOS [Secretary of State], the Attorney General, or the EOC [Education Oversight Committee] may review the operational activities of a 501(c)(3) pursuant to statute."

Nevertheless, the ALC concluded that a budget proviso granted a tax credit to donors of the 501(c)(3) and the proviso was controlling. According to the ALC, the proviso "makes it clear that the Department [of Revenue] has the authority to review the activities… relating to the tax credit allowed under the proviso." Thus, the ALC concluded that the subpoenas were valid based exclusively upon the proviso's authorization of the tax credit.

As the South Carolina Supreme Court has stated, DOR was "created to administer and enforce the revenue laws of this state… and is authorized to conduct audits involving all taxes." Rich. Co. v. S.C. DOR, 422 S.C. 292, 298-99, 811 S.E. 2d 758, 761 (2018). Thus, such authority is broad and will undoubtedly depend upon the information provided. Even so, DOR may not intrude upon ORS's authority. It may not conduct a compliance audit. As the ALC concluded in Palmetto Kids, a decision rendered prior to Act 56 of 2019, (in which ORS was given the authority to audit compliance) "only the IRS, the SOS, the Attorney General, or the EOC may review the operational activities of 501(c)(3) organization pursuant to statute." The same reasoning is applicable here, to a 501(c)(12) corporation- in this instance, an electric co-op.

Conclusion

As we have emphasized throughout, "[i]t is the general law in this state that the various state agencies are created by the Legislature and have only those powers expressly granted by the Legislature and are reasonably incidental to those granted. Piedmont and Northern Ry. Co. v. Scott, 202 S.C. 207, 24 S.E. 2d 353. Any doubt as to the existence of a particular power should ordinarily be resolved against its existence." Op. S.C. Atty. Gen., 1975 WL 29136, at *1 (October 15, 1975).

Applying this basic principle to the situation at hand, we are of the opinion that DOR does not possess general compliance audit authority; but only the authority to audit matters related to tax statutes and tax liability for taxes administered by DOR. As the Supreme Court has stated, DOR was "created to administer and enforce the revenue law of this state… and is authorized to conduct audits involving all taxes." Rich. Co., *supra*. While DOR possesses broad audit authority in this area, by contrast, it does not possess the authority to audit statutory provisions under the jurisdiction of ORS. In essence, DOR is the State's tax agency, not a compliance audit agency. As we understand it, DOR is of the view that it would not attempt to assume ORS powers.

Act 56 of 2019 was enacted with the clear intent of the General Assembly to bestow upon ORS compliance audit authority with respect to electric cooperatives and, in certain limited instances, its subsidiaries. Indeed, § 33-49-150 vested the Office of Regulatory Staff "with the authority and jurisdiction to make inspections, audits, and examination of electric cooperatives… relating to the compliance of electric cooperatives" with various statutory provisions. Further, Act 56 states that ORS has no authority and jurisdiction to audit subsidiaries of an electric cooperative provided that the subsidiary is "not subsidized by or any financial credit risk to, electric cooperative rate payers and that the subsidiary has not taken action, on behalf of the electric cooperative, on any of the electric cooperative's duties…." Nowhere in this Act, or any other of which we are aware, is DOR given similar authority. Compare § 12-4-330(A) [DOR may summon witnesses to appear and give testimony and to produce records, books, papers, and documents "relating to any matters which the department has authority to investigate and determine."]; § 12-54-100 [DOR "may examine or investigate the place of business, tangible personal programs, facilities, computers, computer programs, electronic data, books, invoices, papers, records, memoranda, vouchers, other documents, equipment or licenses of the taxpayer or other person bearing upon the matters required to be included on a return."]. Surely, if the General Assembly had intended that DOR could act pursuant to the powers or jurisdiction delegated to the ORS with respect to electric cooperatives, such authority would have been so specifically conveyed. Absent any indicia of such authority, we do not think the General Assembly has given it.

The answers to your specific questions are contained above, but, our bottom line conclusion is that, the General Assembly has not bestowed compliance audit authority, now possessed by ORS, pursuant to Act 56 of 2019, to the Department of Revenue. We understand DOR does not seek to assume such authority. This opinion should in no sense be taken to undermine DOR's broad audit authority in the tax area, however.

Our opinion herein relates only to questions of law and does not comment upon any particular set of facts or any specific electric cooperative. We are unable to address factual situations, but we have made every effort to provide you with the applicable law related to your questions.

Sincerely,

Robert D. Cook
Solicitor General Emeritus