ALAN WILSON
ATTORNEY GENERAL

August 31, 2026

Mr. D. Malloy McEachin, Jr., Esquire
County Attorney for Florence County
180 N. Irby Street MSC-G
Florence, SC 29501

Dear Mr. McEachin:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. You seek an opinion regarding whether the State Treasurer may withhold certain tax revenues from the Town of Pamplico. In your letter and follow-up conversations, you explained that Florence County imposes a local option sales tax. The tax is collected by the Department of Revenue, remitted to the State Treasurer, and distributed according to South Carolina Code Section 4-10-90. Portions of the revenues are due to the Town of Pamplico. You explain that pursuant to Proviso 98.9 of the 2025 – 2026 Appropriations Act, the State Treasurer is withholding this tax revenue from the Town of Pamplico. Proviso 98.9 states, "If a municipality fails to submit the audited financial statements required under Section 14-1-208 to the State Treasurer within thirteen months of the end of their fiscal year, the State Treasurer must withhold all state payments to that municipality until the required audited financial statement is received."

We believe that, pursuant to Proviso 98.9, the State Treasurer must withhold local option sales tax revenues from municipalities which have not submitted an audit in accordance with South Carolina Code Section 14-1-208.

Law/Analysis

Thorough financial recordkeeping and regular audits are a cornerstone of good governance. As a result, our General Assembly has provided that "The council of each municipality having total recurring revenues at or above the threshold in Section 5-7-240(D) shall provide for an annual audit of financial statements." S.C. Code Ann. § 5-7-240(A) (Supp. 2025). Further, Section 14-1-208(E) specifies that "[t]o ensure that fines and assessments imposed pursuant to this section and Section 14-1-209(A) are properly collected and remitted to the State Treasurer, the audit or compilation performed for each municipality pursuant to Section 5-7-240 must include a Uniform Supplemental Schedule Form detailing all fines and assessments collected at the court level, the amount remitted to the municipal treasurer, and the amount remitted to the State Treasurer." S.C. Code Ann. § 14-1-208(E) (Supp. 2025).

In order to encourage compliance with these requirements, the General Assembly included in the 2025 – 2026 Appropriations Act Proviso 98.9 which reads:

> 98.9. (TREAS: Penalties for Non-reporting) (A) If a municipality fails to submit the audited financial statements required under Section 14-1-208 to the State Treasurer within thirteen months of the end of their fiscal year, the State Treasurer must withhold all state payments to that municipality until the required audited financial statement is received.
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> (B) If the State Treasurer receives an audit report from either a county or municipality that contains a significant finding related to court fine reports or remittances to the Office of State Treasurer, the requirements of Proviso 117.48 shall be followed if an amount due is specified, otherwise the State Treasurer shall withhold twenty-five percent of all state payments to the county or municipality until the estimated deficiency has been satisfied.
>
> (C) If a county or municipality is more than ninety days delinquent in remitting a monthly court fines report, the State Treasurer shall withhold twenty-five percent of state funding for that county or municipality until all monthly reports are current.
>
> (D) After ninety days, any funds held by the Office of State Treasurer will be made available to the State Auditor to conduct an audit of the entity for the purpose of determining an amount due to the Office of State Treasurer, if any.

Act No. 69, 2025 S.C. Acts 431. This Proviso has been included in the annual appropriations act in substantially the same form since fiscal year 2009 – 2010.[1] While additional subsections have been added throughout the years, the operative language for the proviso has not changed. Since your request was submitted, the 2026 – 2027 Appropriations Act was ratified. It amended the Proviso to include the language underlined below:

> If a municipality fails to submit the audited <u>or compiled financial statements</u> required under Section 14-1-208 to the State Treasurer within thirteen months of the end of their fiscal year, the State Treasurer must withhold all state payments to that municipality until the required audited <u>or compiled financial statement</u> is received.

H. 5126, 126th Session of the General Assembly, R. 276 (emphasis added). This amendment allows for an additional method of compliance but does not change the operative language regarding the withholding of state payments.

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[1] <u>See</u>, <u>e.g.</u>, Act No. 21, 2009 S.C. Acts 104 (Proviso 76.11); Act No. 291, 2010 S.C. Acts 2195 (Proviso 76.10); Act No. 91, 2015 S.C. Acts 429 (Proviso 98.9); Act No. 94, 2021 S.C. Acts 367 (Proviso 98.9); Act No. 69, 2025 S.C. Acts 431 (Proviso 98.9).

We understand from your request, follow up conversations, and recent reporting that the Town of Pamplico, like a multitude of other municipalities, has not submitted audit statements as required by Sections 5-7-240(D) and 14-1-208(E). Tony Bartelme, TownFall: A South Carolina city could have $5 million more in its coffers if it did its audits. It's not alone., The Post and Courier, July 19, 2026, https://www.postandcourier.com/news/special_reports/sc-treasurer-loftis-failed-audits-delinquent-townfall/article_d01eadaa-24a9-4e5e-afc2-180936812a6d.html. Thus, your request turns not on the factual question of whether the Town has complied with its audit requirements but on the legal question of whether the local option sales tax revenues constitute "state payments" which may be withheld under the Proviso.

The South Carolina Supreme Court discussed an analogous question in Richland County v. Department of Revenue. 422 S.C. 292, 811 S.E.2d 758 (2018). Richland County dealt with a local transportation tax levied under Title 4 Chapter 37. In discussing the posture of the case, the Supreme Court explained in its introduction that:

> DOR administers and collects the penny tax in "the same manner that other sales and use taxes are collected." [S.C. Code Ann.] § 4-37-30(A)(8); id. § 12-36-2660 (2014) (providing DOR "shall administer and enforce" the provisions of the Sales and Use Tax Act). Monies generated through a tax imposed under the Transportation Act are considered to be state tax revenues—not local tax revenues.[2] [Footnote 2: In this regard, an "action may be brought at any time by the Attorney General, in the name of the State, to recover taxes, penalties, and interest due under Title 12." S.C. Code Ann. § 12-54-17 (2014).] See id. § 12-54-15 (2014) (providing every tax imposed, along with increases, interest, and penalties are considered owed "to the State"); id. § 4-37-30(A)(9) (providing taxes authorized by the Transportation Act are subject to the general enforcement provisions of the tax code).

Id. at 299, 811 S.E.2d at 762. Thus, the Supreme Court implied that transportation taxes which the Department of Revenue is responsible for collecting pursuant to the rules of Chapter 36 of Title 12 constitute state tax revenues because Sections 12-54-15 and 12-54-17 make all taxes governed by Title 12 state revenues.[2]

The local option sales tax at issue here is collected in a similar manner and therefore should also be considered state revenues. While local option sales taxes must be adopted by localities, see S.C. Code Ann. § 4-10-20 (2021), Section 4-10-90 makes the Department of Revenue responsible for administering and collecting revenues due under local option sales taxes. S.C. Code Ann. § 4-

[2] Notably, the Supreme Court ultimately held that while the transportation revenues were "state revenues" the Department of Revenue lacked authority to withhold them from Richland County. Id. at 308-309, 811 S.E.2d at 767-768. However, that outcome is distinguishable from your question because of Proviso 98.9, which expressly grants the State Treasurer to withhold payments in certain circumstances.

10-90 (2021) ("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."). While worded differently, this is the same authority given to the Department regarding the transportation tax in Richland County. See S.C. Code Ann. § 4-37-30(A)(8) ("The tax levied pursuant to this section must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected."). Thus, under the logic of Richland County, the General Assembly applied the laws of Title 12 to the collection and administration of local option sales tax and, pursuant to Section 12-54-15, "Every tax imposed by this title and all increases, interest, and penalties on the tax is from the time it is due and payable, a personal debt from the person liable to pay it to the State." S.C. Code Ann. § 12-54-15 (2014). As a result, we think the State Treasurer transferring local option sales tax revenues to municipalities constitutes state payments.

Admittedly, this interpretation is not free from doubt. Section 4-10-90(B) goes on to state, "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." S.C. Code Ann. § 4-10-90(B) (2021). The fact that local option sales tax revenues are not put into the state's general fund provides an argument against considering them state payments subject to Proviso 98.9. However, in light of the Supreme Court's statements in Richland County and the public policy considerations which weigh strongly in favor of encouraging regular financial audits, we do not find this argument compelling.

Finally, we note that your request is premised on the idea that the State Treasurer's Office interprets the Proviso as we do (i.e., the Treasurer's Office believes the revenues constitute state payments which must be withheld). Opinions from this Office are purely advisory. Even if we were to reach a contrary view (namely, that these revenues should not be withheld), we could not require or instruct the Treasurer's Office to change its position.

Conclusion

We believe that, pursuant to Proviso 98.9 of the 2025 – 2026 Appropriations Act, the State Treasurer must withhold local option sales tax revenues from municipalities which have not submitted an audit in accordance with S.C. Code Section 14-1-208. A court would likely find that, similar to the transportation tax revenues in Richland County, such revenues are state payments covered by Proviso 98.9.

Thorough financial recordkeeping and regular audits are a cornerstone of good governance. As a result, we strongly encourage the Town of Pamplico, and any other similarly situated municipalities, to comply with their statutory obligations and timely complete the audits required by Sections 5-7-240 and 14-1-208. In light of the obstacles many municipalities have faced when trying to complete the required audits, the General Assembly adopted in the 2026 – 2027 Appropriations Act an alternative method for municipalities to comply with the requirements of

Section 14-1-208. We hope that the modifications enacted by the General Assembly in the 2026 - 2027 Appropriations Act will lessen the burden on small municipalities and lead to Proviso 98.9 being used less and less often.

Sincerely,

David Leggett
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General Emeritus