

June 20, 2007

The Honorable Richard Eckstrom
Comptroller General
1200 Senate Street
305 Wade Hampton Office Building
Columbia, South Carolina 29201

Dear Mr. Eckstrom:

We understand from your letter to Attorney General Henry McMaster that you seek an opinion of this Office concerning section 4-9-150 of the South Carolina Code. You provided us with the following information:

For many years, the Comptroller General's Office has been charged with the responsibility of disbursing funds to the counties from the State Trust Fund for Tax Relief to reimburse the counties for taxes lost as a result of the application of several statewide tax exemptions. The specific statutes in question that control these reimbursements are S.C. Code Ann. § 12-37-270 (reimbursement for tax loss to counties allowing homestead exemptions); S.C. Code Ann. § 12-37-450 (merchants' inventory tax exemption; reimbursement of counties and municipalities); and S.C. Code Ann. § 12-37-935 (allowance for manufacturer's machinery and equipment; maximum percentage depreciation; trust fund for tax relief). In the past, if a county's annual audited financial statements were not timely filed with this Office, then these State Tax Relief Trust Funds authorized for payment by these statutes have been withheld by this Office pursuant to § 4-9-150 pending receipt of a copy of the county's audited financial statements.

In 2006 Act No. 386, the General Assembly amended this statutory framework to substitute the Department of Revenue for the Comptroller General's Office as the agency responsible for making the reimbursements to the counties for tax loss resulting from the application of the State's Homestead Exemption, Manufacturer's Depreciation Exemption, and the Merchants' Inventory Tax

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Exemption. The Comptroller General's Office, after these amendments, no longer distributes these funds.

Based on this information, you ask: "Should the Comptroller General's Office continue to direct Department of Revenue to withhold payments of Tax Relief Trust Funds if counties are delinquent in filing their audited financial statements since § 4-9-150, which refers to 'funds distributed by the Comptroller General,' was not amended by the General Assembly in 2006 to accurately refer to funds distributed by the Department of Revenue?"

Law/Analysis

Section 4-9-150 of the South Carolina Code (Supp. 2006), requires county governments to maintain annual audited financial statements, which each county must make available to the public for inspection. In addition, this provision requires counties to submit an annual audit report to the Comptroller General "no later than January first each year following the close of the books of the previous fiscal year." S.C. Code § 4-9-150. Section 4-9-150 also imposes a penalty against those county governments failing to file their audit reports with the Comptroller General's Office in a timely fashion. This portion states: "If the report is not timely filed, or within the time extended for filing the report, funds distributed by the Comptroller General to the county in the current fiscal year must be withheld pending receipt of a copy of the report." *Id.* (emphasis added).

As you mentioned in your letter, several provisions of the South Carolina Code provide counties and municipalities with reimbursements for taxes not collected due to various tax exemptions and allowances given to taxpayers. S.C. Code Ann. §§ 12-37-270 (Supp. 2006) (homestead exemption); 12-37-450 (Supp. 2006) (merchants' inventory tax exemption); 12-37-935 (Supp. 2006) (allowance for machinery used by certain manufacturers of electrical components and tires). Prior to the enactment of act 386 in 2006, these statutes called for the Comptroller General to pay these reimbursements to the counties. However, act 386 of 2006 amended these provisions to require the Department of Revenue, rather the Comptroller General, to remit these amounts to the counties. 2006 S.C. Acts 3018. Based on these amendments, you question whether section 4-9-150 allows the Comptroller to direct the Department of Revenue to withhold payment to counties failing to timely file a copy of their annual audited financial statements with the Comptroller General.

Before looking to section 4-9-150 to determine the impact of the amendments contained in act 386, we look to the rules of statutory interpretation. Our Supreme Court recently stated as follows in Vaughan v. McLeod Regional Medical Center, 372 S.C. 505, 510642 S.E.2d 744, 746-47 (2007):

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). If a statute's language is plain, unambiguous, and conveys a clear

meaning, then “the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

In interpreting statutes, our courts must take statutes as they find them, “giving effect to the legislative intent as expressed in its language.” State v. White, 338 S.C. 56, 58, 525 S.E.2d 261, 263 (Ct. App. 1999). Courts cannot, by their power of construction, supply an omission in a statute. Id. Moreover, our courts recognize the presumption that “the legislature has knowledge of previous legislation when later statutes are enacted concerning related subjects.” City of Camden v. Fairfield Elec. Co-op., Inc., 372 S.C. 543, 548, 643 S.E.2d 687, 690 (2007).

From a plain reading of the portion of section 4-9-150 allowing the Comptroller General to withhold payments to counties based upon their failure to submit annual reports, we gather the Legislature intended to create a mechanism to enforce the remaining portion of section 4-9-150 requiring counties to submit such reports. However, by the plain language used in this provision, the Legislature limits the Comptroller General’s authority by specifying that he or she may withhold “funds distributed by the Comptroller General.” Thus, we interpret the Legislature’s intent with regard to this provision as allowing the Comptroller General to halt distribution of only those funds he or she has authority to distribute. Thus, based on a plain reading of section 4-9-150, we do not believe the Legislature gave the Comptroller General the authority halt the distribution of funds paid to counties by other agencies, including the Department of Revenue. Nor do we find any provision in the Code authorizing the Department of Revenue to halt such distributions due to a county’s failure to file an annual report.

In addition, with the passage of the amendments to title 12, we find no evidence of the Legislature’s intent to amend or repeal section 4-9-150. Moreover, we must presume the Legislature was aware of the plain language used in section 4-9-150 when it amended the provisions in title 12. Accordingly, we do not believe the Legislature intended to change the language contained in this provision. Furthermore, if we were to read section 4-9-150 as allowing the Comptroller to prevent the disbursement of funds distributable by the Department of Revenue, we would be required to add the Department of Revenue in reading section 4-9-150. As explained above, the rules of statutory interpretation do not allow courts or this Office to read additional terms into statutes not provided by the Legislature. Accordingly, the rules of statutory construction provide us with further assurance that the Legislature did not intend to affect section 4-9-150 with its amendments to title 12 contained in act 386.

However, we note that passage of the amendments contained in act 386 significantly impact the Comptroller General’s enforcement authority under section 4-9-150. While the Comptroller

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General no longer distributes funds as provided under sections 12-37-270, 12-37-450, and 12-37-935, he or she continues to distribute funds to counties under other provisions of the South Carolina Code. See S.C. Code Ann. §§ 8-15-65 (Supp. 2006) (salary supplements); 11-3-240 (Supp. 2006) (expenses of printing tax forms and supplies); 38-45-60 (2002) (insurance taxes); 59-21-130 (2004) (State aid for schools). Thus, the Comptroller General's enforcement authority remains intact. However, given that those funds disbursed under sections 12-37-270, 12-37-450, and 12-37-935 constituted a considerable amount of funds distributable by the Comptroller General, the amendments to these provisions diminish the enforcement authority the Legislature sought to provide to the Comptroller General through section 4-9-150. Thus, if the Legislature did not intend to abrogate such authority, we suggest it amend section 4-9-150.

Conclusion

Based on the plain language used in section 4-9-150, we believe the Comptroller General may only prohibit the disbursement of funds he or she distributes when a county fails to meet the annual audit report filing requirement imposed by this provision. Furthermore, we do not believe the Legislature effectively amended section 4-9-150 when it amended the provisions contained in title 12 placing the responsibility on the Department of Revenue to distribute funds formerly distributed by the Comptroller General. In amending these provisions, the Legislature did not completely abrogate the Comptroller General's authority to enforce the annual audit requirement under section 4-9-150. However, because these amendments have a significant effect on the Comptroller General's authority, which the Legislature may not have intended, we suggest you seek guidance from the Legislature on this matter and possibly, an amendment to section 4-9-150.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
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REVIEWED AND APPROVED BY:

Robert D. Cook
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