

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

January 24, 1991

SUBJECT: Taxation and Revenue - Distribution of the
Local Sales Tax.

SYLLABI: (1) The local sales tax that is withheld under Section 4-10-60(A) must be distributed to county areas that levy the tax but collect less than the amount of the minimum distribution. The distribution to a qualifying county area cannot exceed the sum needed to equal the difference between the tax collected and the amount of the minimum distribution. Any taxes withheld in excess of the amount needed to fund the minimum distribution for qualifying county areas must be returned to the contributing county areas.

(2) The local sales tax that is withheld under Section 4-10-60(D) must be distributed to county areas that levy the tax but collect less than the amount of the minimum distribution. The amount distributed to such an area is the percentage of the tax determined by applying the percentage of the population of the receiving county area to the total population of all county areas that collect less than the minimum distribution.

The distribution to a county area, however, cannot exceed the difference between the tax collected by the county area and the amount of the minimum distribution. Any withholding tax in excess of the amount needed to fund the disbursements must be returned to the contributing county areas.

TO: Honorable Grady L. Patterson, Jr.
South Carolina State Treasurer

FROM: Joe L. Allen, Jr. *JAL*
Chief Deputy Attorney General

January 24, 1991

QUESTION: Section 4-10-60 provides for the distribution of the local sales tax that is withheld from a county area that collects five million or more dollars. The inquiry concerns the proper method for such distribution.

APPLICABLE LAW: Act 317, Acts of 1990, codified as S.C. Code Ann. Section 4-10-60 (Supp. 1990)

DISCUSSION:

Section 4-10-60(A) provides the method for distributing the tax withheld from those county areas that collect five million or more dollars from the local sales and use tax. Section 4-10-60(D) further provides an additional method to be used under certain contingent conditions. In order to respond to the inquiry, we separately treat each method.

Subsection (A) of Section 4-10-60 requires the State Treasurer to determine before August 1st a percentage not to exceed five percent of the tax that is to be withheld from those county areas anticipated to collect five million or more dollars in tax. The amount so withheld must then be distributed to insure that each county area that levies the tax receives a minimum distribution. Section 4-10-10(4) defines a "minimum distribution" to mean an amount equal to two million dollars. That amount is thereafter adjusted as provided by this provision. Under subsection (B) of Section 4-10-60, any funds in excess of the amount needed to insure payment of the minimum distribution are to be returned to the contributing county areas.¹

The provision of subsection (D) is triggered when those county areas that collect five million or more dollars do

¹It is understood that under present circumstances the amount to be withheld from those county areas that collect five or more million dollars will not be sufficient to satisfy the requirement that each county area receives the "minimum distribution." The statute does not address this contingency and hence it is necessary that clarifying language be adopted by the General Assembly or that an action be instituted to determine the method of apportionment.

January 24, 1991

not generate more than fifty percent of the total local sales tax collections of all county areas that levy the tax. When this circumstance occurs, five percent of the tax collections of county areas that collect five million or more dollars must be withheld. The amount withheld under this section is then distributed to all county areas that collect less than the amount of the minimum distribution. The distribution for these county areas is in an amount that is in proportion to the population of the receiving county area to the total population of those county areas that generate less than the amount of the minimum distribution. The amount distributed to a county area, however, cannot exceed the difference between the amount of tax collected by the area and the amount of the minimum distribution. Any excess in the tax withheld above the amount required to be distributed is to be returned to the county areas from which the tax was withheld.

CONCLUSION:

(1) The local sales tax that is withheld under Section 4-10-60(A) must be distributed to county areas that levy the tax but collect less than the amount of the minimum distribution. The distribution to a qualifying county area cannot exceed the sum needed to equal the difference between the tax collected and the amount of the minimum distribution. Any taxes withheld in excess of the amount needed to fund the minimum distribution for qualifying county areas must be returned to the contributing county areas.

(2) The local sales tax that is withheld under Section 4-10-60(D) must be distributed to county areas that levy the tax but collect less than the amount of the minimum distribution. The amount distributed to such an area is the percentage of the tax determined by applying the percentage of the population of the receiving county area to the total population of all county areas that collect less than the minimum distribution.

The distribution to a county area, however, cannot exceed the difference between the tax collected by the county area and the amount of the minimum distribution. Any withholding tax in excess of the amount needed to fund the disbursements must be returned to the contributing county areas.

JLAJr:wcg