

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

September 17, 1993

SUBJECT: Taxation and Revenue - Distribution of Local Option Sales Tax to Eligible Units Within a County Area.

SYLLABUS: An eligible unit within a county area may not receive in a current fiscal year any less of a distribution of LOST funds than that unit received in the previous fiscal year unless there is a reduction in collections from the previous year. This result applies to municipalities in Charleston County notwithstanding the incorporation during the current year of the Town of James Island, which town is located in the County of Charleston. Accordingly, the municipalities in Charleston County are required to receive in the current fiscal year at least as much LOST revenues as those entities received in the prior fiscal year.

TO: Mr. E. Gregorie Frampton
Executive Director
S.C. Department of Revenue and Taxation

FROM: Ray N. Stevens *RNS*
Chief Deputy Attorney General

QUESTION: What is the effect on the amount of revenues to be received by an existing municipality from the Local Option Sales Tax (LOST) in a year in which a new municipality is incorporated?

APPLICABLE LAW: S.C. Code Ann. Sections 4-10-20, 4-10-30, 4-10-40, 4-10-70, and 4-10-90 (Supp. 1992).

DISCUSSION:
A county is authorized to impose taxes under LOST after a referendum approval, with such approval being determined in a referendum held on the Tuesday following the first Monday in November. (See Sections 4-10-20 and 4-10-30). Once the county approves the tax, the tax is applicable to all sales within the county area (Section 4-10-20) with county area including all municipalities within the geographical

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boundaries of the county. (See Section 4-10-10(1)). A municipality is defined as any municipal corporation created pursuant to Chapter 1 of Title 5.

Charleston County adopted the local option sales tax, and accordingly the county and the municipalities within the county share in the revenue produced by such tax. Subsequent to the adoption of the tax, the Town of James Island was chartered as a municipality by the Secretary of State, with such charter being issued on January 8, 1993. Here, James Island is a municipality within Chapter 1 of Title 5, and thus is entitled to share in the LOST revenue to the extent allowed by law. Your inquiry involves the method for determining how the revenue from LOST is to be shared when a new municipality is created.

The funds resulting from LOST (e.g. \$100) are first collected by the Department of Revenue and then remitted to the State Treasurer who credits the funds to the Local Sales and Use Tax Fund (the LOST Fund). See Section 4-10-90. The LOST Fund is further divided into two separate sub-funds known as the Property Tax Credit Fund (Credit Fund) and the County/Municipal Revenue Fund (Revenue Fund) with an allocation to each sub-fund which will eventually allocate 71% to the Credit Fund (\$71) and 29% (\$29) to the Revenue Fund. The Credit Fund and the Revenue Fund have specific requirements governing the use of the funds.

The Credit Fund is distributed by allocating 67% to the county (67% of \$71 equals \$47.57) and 33% to the municipalities (33% of \$71 equals \$23.43) with each municipality receiving its portion based upon a percentage which is the population of the municipality as a percentage of the total population of all municipalities in the county (Section 4-10-40(A)(2)). The Revenue Fund is divided between the county and the municipalities by allocating 50% to the location of the sale (50% of \$29 equals \$14.50) and 50% based upon population (50% of \$29 equals \$14.50). Population for the county is the total of all residents in the county whether such reside within a municipality or outside a municipality. Municipalities determine their population based upon residents within the corporate boundaries of each municipality.

The issue here is what happens to the funds received by the municipalities when a new city is incorporated within a county. In the absence of any contrary provision and in the absence of any increase in funds, the amount to each municipality would be reduced. The reduction would occur in the Credit Fund since that fund would then be utilized by more municipalities, and thus more participants mean fewer dollars for each participant. The same is true of the

Revenue Fund in that the population of participating municipalities is the base upon which the fund is shared. If the total population increases due to a new participant, then each municipality would receive less than if there were fewer participants.

Section 4-10-70, however, prevents such a decrease in funds:

No eligible unit within a county area may receive less from the distribution of the sales and use tax authorized by this chapter than it received in the previous fiscal year. However, if the amount of collections from the sales and use tax in the county area is less than the preceding fiscal year's collections, then the distributions to the eligible units within the county area must be reduced on a proportional basis.

This section establishes that a municipality within a county area must receive in each fiscal year at least as much as it received the prior fiscal year. Only where there is a decrease in LOST collections do municipalities receive a reduced amount, and in that case the municipalities within the county area absorb the reduction on a proportional basis. A decrease in LOST collections is the only event that allows the reduction of funds received.

Where the words of a statute are plainly expressive of an intent, not rendered dubious by the context, the interpretation must conform to and carry out that intent. Beaty v. Richardson, 56 S.C. 173, 34 S.E. 73, 76 (1899). Further, it is presumed that the General Assembly fully understood the import of the words used in a statute and intended to use them in their ordinary and common meaning. Powers v. Fidelity & Deposit Co. of Maryland, 180 S.C. 501, 186 S.E. 523 (1936). Finally, where a statute presents exceptions to the general dictates of the statute, a strong inference arises that no other exceptions are intended. Pennsylvania Nat. Mut. Cas. Ins. Co. v. Montgomery, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984).

Here, the statute is plain and is capable of being executed in a rational manner by applying its literal language. Under the statute, no entity is to receive less in a current year than that entity received in the prior year. The only exception to this rule is a reduction caused by a drop in collections. Here, the addition of a new entity is not within the exception, and thus the application of the general rule is required.

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By applying the plain language of the statute, minimum distributions in the current year are to be made to the entities, with such minimum distribution being the amount the entity received during the prior fiscal year. Under this standard, the minimum required distribution to James Island is zero since in the prior fiscal year, it received no LOST funds. Accordingly the minimum distribution statute is satisfied even if no funds are distributed to James Island. Of course, once the minimum distribution level is satisfied, James Island is entitled to share the LOST revenues as prescribed by the normal distribution statutes.

It is acknowledged that such a statutory scheme leads to potential problems. For example, such leads to situations in which some municipalities, such as James Island, may receive less than other municipalities in the same county area due to the date of the incorporation of the municipality. Additionally, a similar result is reached if there is a large population shift from one municipality to another. For example, City A and City B each have populations of 100 residents, and thus share equally in LOST funds in Year 1. In Year 2, 90% of the residents of City A move to City B so that the population of City A is now 10 and the population of City B is now 190. While the increased population of City B requires an increase in LOST funds, such an increase cannot be made until City A receives the minimum distribution of the amount it received in Year 1 as required by Section 4-10-70. Under this method, City A, despite its significantly reduced population, will continue to receive LOST revenues equal to the amount that it received in the prior year even though its population has decreased.

While we recognize these problems, neither our office nor a court can legislate.

It is perhaps unnecessary to say that Courts have no legislative powers, and in the interpretation and construction of statutes their sole function is to determine, and within the constitutional limits of the legislative power to give effect to, the intention of the Legislature. They cannot read into a statute something that is not within the manifest intention of the Legislature as gathered from the statute itself. To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret. The responsibility for the justice or wisdom

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of legislation rests with the Legislature, and it is the province of the Courts to construe, not to make, the laws. . . .

Creech v. South Carolina Pub. Serv. Auth., 200 S.C. 127, 146, 20 S.E.2d 645, 652 (1942).

Additionally, we recognize the rule of construction that the literal language of a statute will not be followed if such an interpretation leads to absurd results.

"However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature, or would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity and carry the intention into effect." . . .

State ex rel. McLeod v. Montgomery, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964), citing Stackhouse v. County Board, 86 S.C. 419, 68 S.E. 561 (1910).

Here, however, there is no absurd result reached by a literal application of Section 4-10-70. On the contrary, the result reached provides stability for budgeting processes for the entities receiving LOST revenue. For example, an eligible unit is assured that it will receive in the current year at least as much as it received in the prior year. The intent of the General Assembly may have been to foster stability in budgeting for LOST revenues. The obvious benefit of a literal application of Section 4-10-70 is that for budgeting purposes the entity has some assurance as to the minimum amount of revenue it will receive from LOST sources. It is a policy decision for the General Assembly to determine whether the certainty gained by the rule of Section 4-10-70 is offset by other considerations. Neither this office nor a court can substitute its judgment for that of the General Assembly.

CONCLUSION:

An eligible unit within a county area may not receive in a current fiscal year any less of a distribution of LOST funds than that unit received in the previous fiscal year unless there is a reduction in collections from the previous year. This result applies to municipalities in Charleston County

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notwithstanding the incorporation during the current year of the Town of James Island, which town is located in the County of Charleston. Accordingly, the municipalities in Charleston County are required to receive in the current fiscal year at least as much LOST revenues as those entities received in the prior fiscal year.

RNS:wcg