CHAPTER 10

Local Sales and Use Tax

ARTICLE 1

Local Option Sales Tax

Editor’s Note

1997 Act No. 138, Section 2, eff July 1, 1997, provides as follows:

“SECTION 2. Sections 4‑10‑10 through 4‑10‑100 of the 1976 Code are hereby designated as Article 1, entitled ‘Local Option Sales Tax’”.

**SECTION 4‑10‑10.** Definitions.

 For purposes of this chapter:

 (1) “County area” means a county and all municipalities within its geographical boundaries.

 (2) “County” means the unincorporated areas of a county area or county government as the use of the term dictates.

 (3) “Municipality” means a municipal corporation created pursuant to Chapter 1 of Title 5 or a municipal government as the use of the term dictates.

 (4) “Minimum distribution” means an amount equal to two million dollars for the first distribution and after that adjusted annually on a cumulative basis by a percentage equal to the increase in revenues credited to the Education Improvement Act Fund for the most recently completed fiscal year over the revenues credited to that fund in the preceding fiscal year.

 (5) “Population” means population as determined in the most recent official United States Census.

 (6) “General election” means the Tuesday following the first Monday in November in any year.

HISTORY: 1990 Act No. 317, Section 1, eff February 2, 1990; 2016 Act No. 250 (H.5078), Section 1, eff June 6, 2016.

Editor’s Note

1990 Act No. 317, Section 3, provides as follows:

“(A) Of the funds appropriated in Part I of the 1990‑91 General Appropriations Act under formula funded Aid to Counties and Municipalities, an amount not to exceed seven hundred fifty thousand dollars must be allocated to the South Carolina Tax Commission to defray the administrative start‑up expenses incurred by the commission in fiscal year 1990‑91 for the implementation of the local sales and use tax provided for in Chapter 10 of Title 4 of the 1976 Code and as added in Section 1 of this act. The State Treasurer shall withhold this amount from the income tax distribution with counties and municipalities sharing equally. No funds provided for in this section may be drawn upon by the commission before November, 1990. However, no funds may be drawn unless at least one favorable referendum has been conducted in which the electors of that county have approved the imposition of the tax. If the expenses are not incurred by the commission by May 31, 1991, the funds must be distributed to the counties and municipalities.

“(B) The amount allocated to the commission pursuant to subsection (A) must be reimbursed by the commission from the administrative expense provided to the commission in Section 4‑10‑90(B) of the 1976 Code, as added in Section 1 of this act.”

Effect of Amendment

2016 Act No. 250, Section 1, added (6), definition of “general election”.

Attorney General’s Opinions

It is likely court would find proposed ordinance is within authority of municipality to provide for government services deemed necessary and proper for security, general welfare, and convenience of municipality or for preserving health, peace, order, and good government. Court, however, would most likely find proposed ordinance invalid since purposes and uses of funds from municipal accommodations tax and state local option sales tax are in conflict. 1993 Op Atty Gen No. 93‑76.

NOTES OF DECISIONS

In general 1

1. In general

The title of the Local Option Sale Tax (LOST) legislation, Section 4‑10‑20, meets the requirements of S.C. Const. Art. III, Section 17; the title of the LOST legislation (1) states the general subject, local option sales tax, (2) states the requirements for a “referendum, collection, use and distribution” of such a tax, and (3) conveys reasonable notice that the distribution scheme of the local option sales tax is within the Act. Westvaco Corp. v. South Carolina Dept. of Revenue (S.C. 1995) 321 S.C. 59, 467 S.E.2d 739, rehearing denied. Statutes 1617(14); Statutes 1624(14); Taxation 3626; Taxation 3632

A county ordinance assessing a tax upon transient accommodations did not conflict with local and use taxes or the statute imposing a statewide tax on accommodations where the ordinance did not attempt to change or circumvent any of the requirements of the State statutes, and nothing in the State statutes prohibited the county from imposing an additional and separate charge on accommodations rentals. Hospitality Ass’n of South Carolina, Inc. v. County of Charleston (S.C. 1995) 320 S.C. 219, 464 S.E.2d 113. Counties 24; Innkeepers 4

**SECTION 4‑10‑20.** Rate of tax; exemptions; reports by utilities; rental units.

 A county, upon referendum approval, may levy a sales and use tax of one percent on the gross proceeds of sales within the county area which are subject to tax under Chapter 36 of Title 12 and the enforcement provisions of Chapter 54 of Title 12. The sale of items with a maximum tax levied in accordance with Section 12‑36‑2110 and Article 17 of Chapter 36 of Title 12 is exempt from the local sales and use tax. The adopted rate also applies to tangible personal property subject to the use tax in Section 12‑36‑1310. Taxpayers required to remit taxes under Section 12‑36‑1310 shall identify the county or municipality in the county area in which tangible personal property purchased at retail is stored, used, or consumed in this State. Utilities are required to report sales in the county or municipality in which consumption of the tangible personal property occurs. A taxpayer subject to the tax imposed by Section 12‑36‑920, who owns or manages rental units in more than one county or municipality, shall report separately in his sales tax return the total gross proceeds from business done in each county or municipality.

HISTORY: 1990 Act No. 317, Section 1, eff February 2, 1990; 1997 Act No. 149, Section 9A, eff for sales or use made on or after December 1, 1992; 1997 Act No. 151, Section 1A, eff for sales or use made on or after December 1, 1992.

Code Commissioner’s Note

The references in this section, as amended by 1990 Act No. 317, to various sections in Chapter 35 of Title 12 are incorrect. Chapter 35 was repealed and replaced with a new Chapter 36. At the Direction of the Code Commissioner these references have been corrected.

1997 Act No. 149, Section 9C, provides as follows:

“SECTION 1C. Notwithstanding any other effective date provided in this act, this section is effective for sales or use made on or after December 1, 1992.”

1997 Act No. 151, Section 1C, provides as follows:

“SECTION 9C. Notwithstanding any other effective date provided in this act, this section is effective for sales or use made on or after December 1, 1992.”

Effect of Amendment

The first 1997 amendment (by Act No. 149), in the second sentence, deleted “(A), (B) and (C)” following “Section 12‑36‑2110”; and, in the sixth sentence, inserted “Section”.

The second 1997 amendment (by Act No. 151), effected the same change as the first 1997 amendment.

CROSS REFERENCES

Construction contracts, application to, see Section 4‑10‑25.

To extent this section or any provision of Title 4 is inconsistent with provisions governing inducement agreements providing for payment in lieu of taxes, such other provisions control, see Section 4‑29‑69.

Attorney General’s Opinions

Discussion of whether Dillon County Council’s termination of its practice of twenty‑one years of dividing Dillon County’s portion proceeds from the local option sales tax equally between the County and County School Board is lawfully appropriate. S.C. Op.Atty.Gen. (July 13, 2017). 2017 WL 3105901.

A portion of monies collected from a sales tax by the City of Florence can be used to support a facility for teaching third and fourth year medical students. S.C. Op.Atty.Gen. (April 29, 2014) 2014 WL 1909729.

Eligible unit within county area may not receive in current fiscal year any less of distribution of LOST funds than that unit received in previous fiscal year unless there is reduction in collections from previous year. This result applies to municipalities in Charleston County notwithstanding incorporation during current year of Town of James Island, which is located in County of Charleston. Accordingly, municipalities in Charleston County are required to receive in current fiscal year at least as must LOST revenues as those entities received in prior fiscal year. 1993 Op Atty Gen No. 93‑59.

Retail sale of tangible personal property is not subject to local option sales tax when seller located within county that imposes tax is required to deliver property to purchaser outside that county. 1991 Op Atty Gen No 91‑47, p 121.

NOTES OF DECISIONS

In general 1

1. In general

The Local Option Sale Tax (LOST) scheme, Sections 4‑10‑10 et seq., does not alter the levying of property taxes nor the assessment of property; rather, the scheme merely levies a sales tax and distributes the sales tax in the form of a property tax credit. Westvaco Corp. v. South Carolina Dept. of Revenue (S.C. 1995) 321 S.C. 59, 467 S.E.2d 739, rehearing denied.

A county ordinance assessing a tax upon transient accommodations did not conflict with local and use taxes or the statute imposing a statewide tax on accommodations where the ordinance did not attempt to change or circumvent any of the requirements of the State statutes, and nothing in the State statutes prohibited the county from imposing an additional and separate charge on accommodations rentals. Hospitality Ass’n of South Carolina, Inc. v. County of Charleston (S.C. 1995) 320 S.C. 219, 464 S.E.2d 113. Counties 24; Innkeepers 4

**SECTION 4‑10‑25.** Construction contracts; application.

 The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under Section 4‑10‑20 in a county, either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the local sales and use tax provided in Section 4‑10‑20 if a verified copy of the contract is filed with the South Carolina Department of Revenue within six months after the imposition of the local sales and use tax.

HISTORY: 1990 Act No. 317, Section 1, eff February 2, 1990; 1993 Act No 181 Section 54, eff July 1, 1993.

Effect of Amendment

The 1993 amendment changed “Tax Commission” to “Department of Revenue.”

**SECTION 4‑10‑30.** Referendum on question of implementing local option sales and use tax within county.

 (A) The county election commission in each county shall conduct a referendum on the Tuesday following the first Monday in November on the question of implementing the local option sales and use tax within the county area. The state election laws apply to the referendum mutatis mutandis. The county election commission shall publish the results of the referendum and certify them to the county council. The sales and use tax must not be imposed in the county area, unless a majority of the qualified electors voting in the referendum approve the question.

 (B) The ballot must read substantially as follows:

 “Must a one percent sales and use tax be levied in \_\_\_\_\_\_\_\_\_\_ County for the purpose of allowing a credit against a taxpayer’s county and municipal ad valorem tax liability and for the purpose of funding county and municipal operations in the \_\_\_\_\_\_\_\_\_\_ County area?

Yes []

No []”

 (C) If the question is not approved at the initial referendum, the county council may call for another referendum on the question. However, following the initial referendum, a referendum for this purpose must not be held more often than once in twelve months and must be held on the Tuesday following the first Monday in November.

 (D) Two weeks before the referendum the county council and the municipal councils in the county area shall publish in a newspaper of general circulation within the jurisdiction the anticipated credit against property taxes in the first year of implementation of the property tax credit fund. The notice must show the anticipated credit on the following classes of property:

 (1) a primary residence;

 (2) personal property including, but not limited to, an automobile;

 (3) a commercial facility;

 (4) an industrial facility.

HISTORY: 1990 Act No. 317, Section 1, eff February 2, 1990.

Attorney General’s Opinions

Eligible unit within county area may not receive in current fiscal year any less of distribution of LOST funds than that unit received in previous fiscal year unless there is reduction in collections from previous year. This result applies to municipalities in Charleston County notwithstanding incorporation during current year of Town of James Island, which is located in County of Charleston. Accordingly, municipalities in Charleston County are required to receive in current fiscal year at least as must LOST revenues as those entities received in prior fiscal year. 1993 Op Atty Gen No. 93‑59.

**SECTION 4‑10‑35.** Petition to rescind tax; referendum.

 (A) Upon petition of fifteen percent of the qualified electors of a county presented to the governing body of that county which has implemented the one percent sales and use tax authorized by this chapter requesting that this tax be rescinded, the county governing body shall conduct a referendum on the Tuesday following the first Monday in November next following on the question of rescinding the local option sales and use tax within the county area. The state election laws apply to the referendum mutatis mutandis. The county election commission shall publish the results of the referendum and certify them to the county council. The sales and use tax must be rescinded in the county area upon the certification of the results if a majority of the qualified electors voting in the referendum vote in favor of rescinding the tax.

 (B) The ballot must read substantially as follows:

 “Must the one percent local option sales and use tax levied in \_\_\_\_\_\_\_\_\_\_ County pursuant to Chapter 10, Title 4 of the 1976 Code be rescinded?

Yes []

No []”

 (C) A referendum for rescission of this tax may not be held earlier than two years after the tax has been levied in the county. If a majority of the qualified electors voting in the rescission referendum vote against rescinding the tax, no further rescission referendums may be held for a period of two years. If a majority of the qualified electors vote in favor of rescinding the tax, the tax may not be reimposed in the county for a period of two years. The petition requesting rescission must be presented to the county governing body at least one hundred twenty days before the Tuesday following the first Monday of November of that year or the referendum must be held on the Tuesday following the first Monday of November of the following year.

HISTORY: 1990 Act No. 317, Section 1, eff February 2, 1990.

Editor’s Note

2006 Act No. 388, Section 3.(A), provides as follows:

“Notwithstanding any other provision of law, a county governing body by ordinance or upon petition signed by five percent of the qualified electors of the county submitted to the county governing body with all signatures verified at least sixty days before the 2006 general election shall conduct a referendum at the same time as the 2006 general election as to whether or not a local option sales tax presently imposed in that county should be repealed. If the qualified electors of the county vote in favor of repealing the local option sales tax, the tax shall be repealed as of January 1, 2007.”

**SECTION 4‑10‑40.** Distribution of revenue allocated to Property Tax Credit Fund.

 (A) The revenue allocated to the Property Tax Credit Fund, as provided in Section 4‑10‑90, must be distributed to the county and the municipalities in the county area as follows:

 (1) sixty‑seven percent to the county;

 (2) thirty‑three percent to the municipalities in the county area so that each municipality receives an amount equal to what its percentage of population bears to the total population in all the municipalities in the county area.

 (B)(1) All of the revenue received by a county and municipality from the Property Tax Credit Fund must be used to provide a credit against the property tax liability of taxpayers in the county and municipality in an amount determined by multiplying the appraised value of the taxpayer’s taxable property by a fraction in which the numerator is the total estimated revenue received by the county or municipality from the Property Tax Credit Fund during the applicable fiscal year of the political subdivision and the denominator is the total of the appraised value of taxable property in the county or municipality as of January 1 of the applicable taxable year.

 (2) For purposes of this chapter:

 (a) property tax liability includes liability to pay fees in lieu of property taxes;

 (b) taxable property includes exempt property for which the owner must pay fees in lieu of property taxes; and

 (c) reference to liability for fees in lieu of tax applies to fees arising pursuant to Section 4‑1‑170 in connection with location in a multi‑county industrial or business park as provided in Section 13 of Article VIII of the Constitution of the State of South Carolina.

 (C) All interest accruing to the credit funds received by a county or a municipality from the Property Tax Credit Fund must be used to provide an additional credit as provided in this section.

 (D) If a municipality has adopted or adopts a redevelopment plan for a tax increment financed redevelopment project pursuant to Chapter 6 of Title 31, a deficiency resulting from the application of this section in the tax allocation fund or separate fund established to pay project costs must be funded from the municipality’s allocation from the County/Municipal Revenue Fund each year so as to provide full funding for the project. A tax increment financing bond holder, agent, or trustee may enforce this requirement.

 (E) For motor vehicles subject to the payment of property taxes pursuant to Article 21, Chapter 37 of Title 12, the credit provided under this section applies against the tax liability for motor vehicle tax years beginning after December of the year in which the credit is calculated.

HISTORY: 1990 Act No. 317, Section 1, eff February 2, 1990; 1991 Act No. 109, Section 8, eff May 30, 1991; 1991 Act No. 168, Section 12, eff June 28, 1991; 1998 Act No. 442, Section 13, eff August 31, 1998.

Effect of Amendment

The 1991 amendment, by Act No. 109, in subsection (B), changed “tax year” to “fiscal year of the political subdivision.”

The 1991 amendment by Act No. 168, added subsection (E) relating to motor vehicle tax credit.

The 1998 amendment, in subsection (B), designated the existing text as paragraph (1) and added paragraph (2).

CROSS REFERENCES

Additional property tax credit, see Section 4‑10‑50.

Attorney General’s Opinions

As long as all municipal property taxes (if any) have been credited to the taxpayers and as long as it serves a valid public purpose, the Local Option Sales Tax would not preclude a municipality from coming to an agreement with a county to use funds received by the municipality for the Property Tax Credit Fund to reduce ad valorem taxes to the county owed by residents of the municipality and that excess funds from the municipality’s Property Tax Credit Fund may also be distributed in the same manner to pay for public services (such as water and sewer fees) for its citizens by a special purpose district, whether directly or indirectly. S.C. Op.Atty.Gen. (June 13, 2014) 2014 WL 3414955.

Eligible unit within county area may not receive in current fiscal year any less of distribution of LOST funds than that unit received in previous fiscal year unless there is reduction in collections from previous year. This result applies to municipalities in Charleston County notwithstanding incorporation during current year of Town of James Island, which is located in County of Charleston. Accordingly, municipalities in Charleston County are required to receive in current fiscal year at least as must LOST revenues as those entities received in prior fiscal year. 1993 Op Atty Gen No. 93‑59.

Property qualifying for homestead exemption is not taxable property and hence is not included in determining ratio for calculating tax credit provided by local option sales tax. 1991 Op Atty Gen, No. 91‑28 p 81.

Credit for county ad valorem taxes to be funded from local option sales tax applies to taxable property throughout county, including property situate within and without corporate limits of municipalities within county. 1990 Op Atty Gen No. 90‑59.

**SECTION 4‑10‑50.** Distribution of revenue set aside for the County/Municipal Revenue Fund.

 (A) The revenue generated in a county area and set aside and allocated to the County/Municipal Revenue Fund must be distributed to the county and the municipalities in the county area as follows:

 (1) fifty percent based upon the location of the sale;

 (2) fifty percent based on population.

 (B) The population of the county is the population of the county area, and the population of the municipalities is the population within the corporate boundaries of the municipalities in the county area.

 (C) Revenue distributed to a county or municipality under this section may be used to provide an additional property tax credit in the manner provided in Section 4‑10‑40(B).

HISTORY: 1990 Act No. 317, Section 1, eff February 2, 1990; 1991 Act No. 168, Section 14, eff June 28, 1991.

Effect of Amendment

The 1991 amendment added subsection (C), providing for additional property tax credit from revenue distributed to a county or municipality under this section.

Attorney General’s Opinions

As long as all municipal property taxes (if any) have been credited to the taxpayers and as long as it serves a valid public purpose, the Local Option Sales Tax would not preclude a municipality from coming to an agreement with a county to use funds received by the municipality for the Property Tax Credit Fund to reduce ad valorem taxes to the county owed by residents of the municipality and that excess funds from the municipality’s Property Tax Credit Fund may also be distributed in the same manner to pay for public services (such as water and sewer fees) for its citizens by a special purpose district, whether directly or indirectly. S.C. Op.Atty.Gen. (June 13, 2014) 2014 WL 3414955.

**SECTION 4‑10‑60.** Withholdings from amount collected by counties; apportionment amongst other counties.

 (A) At the end of each fiscal year and before August first a percentage, to be determined by the State Treasurer and not to exceed five percent of collections, must be withheld from those county areas collecting five million dollars or more from the sales and use tax authorized by this chapter, and that amount must be distributed to assure that each county area receives a minimum distribution. The difference between the minimum distribution and the actual collections within a county area must be distributed to the eligible units within the county area based on population as provided for in this chapter.

 (B) The amount withheld from those county areas collecting five million dollars or more must be apportioned among the county and the municipalities in the county area in the same proportion as those units received remittances as provided in this chapter. An amount withheld in excess must be distributed back to the county areas whose collections exceed five million dollars based on the ratio of the funds available to the collections by each county area.

 (C) As a condition precedent to a county area being subject to an assessment by the State Treasurer or being a recipient of revenue pursuant to this section, the county area must have implemented the sales and use tax as authorized by this chapter.

 (D) The provisions of subsection (A) do not apply if the total number of county areas adopting the sales and use tax authorized by this chapter, which are projected by the Department of Revenue to collect five million dollars or more, generated fifty percent or less during the most currently available fiscal year of the total statewide collections from the levy of a one percent sales and use tax, then those county areas generating five million dollars or more must be assessed five percent of the amount generated in the county area, and that amount must be used as a supplement to those county areas generating less than the minimum distribution. The supplement to those county areas generating less than the minimum distribution must be distributed so that each county area receives an amount equal to what its percentage of population bears to the total population in all of the county areas generating less than the minimum distribution which have implemented the sales and use tax authorized by this chapter. Once the amount of the supplement has been determined for each of the county areas to be supplemented, then the supplement must be distributed to the eligible units within the county area based on population as provided for in this chapter. However, the supplement to the county area combined with collections within the county area may not exceed the minimum distribution.

HISTORY: 1990 Act No. 317, Section 1, eff February 2, 1990; 1993 Act No 181, Section 55, eff July 1, 1993.

Effect of Amendment

The 1993 amendment in subsection (D), changed “Tax Commission” to “Department of Revenue.”

CROSS REFERENCES

Certain funds collected by Tax Commission from local option sales tax to be distributed in accordance with this section, see Section 4‑10‑65.

Attorney General’s Opinions

Local sales tax that is withheld under Section 4‑10‑60(A) must be distributed to county areas that levy tax but collect less than amount of minimum distribution. Distribution to a qualifying county area cannot exceed sum needed to equal difference between tax collected and amount of minimum distribution. Any taxes withheld in excess of amount needed to fund minimum distribution for qualifying county areas must be returned to contributing county areas. 1991 Op Atty Gen, No 91‑9, p 40.

Local sales tax which is withheld under Section 4‑10‑60(D) must be distributed to county areas that levy tax but collect less than amount of minimum distribution. Amount distributed to such area is percentage of tax determined by applying percentage of population of receiving county area to total population of all county areas that collect less than minimum distribution. Distribution to a county area, however, may not exceed difference between tax collected by county area and amount of minimum distribution. Any withholding tax in excess of amount needed to fund disbursements must be returned to contributing county areas. 1991 Op Atty Gen, No 91‑9, p 40.

**SECTION 4‑10‑65.** Local option tax revenues not identified as to unit shall go to local option supplemental revenue fund.

 Funds collected by the department from the local option sales tax which are not identified as to the governmental unit due the tax, and cannot be so identified after a reasonable effort by the department to determine the appropriate governmental unit, must be deposited to a local option supplemental revenue fund. These funds must be distributed in accordance with Section 4‑10‑60 to those counties generating less than the minimum distribution.

HISTORY: 1993 Act No. 164, Part II, Section 99, eff June 21, 1993; 1999 Act No. 93, Section 1, eff June 11, 1999.

Effect of Amendment

The 1999 amendment changed “Tax Commission” and “commission” to “department” and made grammatical changes in the first sentence.

**SECTION 4‑10‑67.** Deposit and distribution of local option use tax.

 Local option use tax collected by the department in conjunction with the filing of individual income tax returns must be deposited to a local option supplemental revenue fund and distributed in accordance with Section 4‑10‑60 to those counties generating less than their minimum distribution.

HISTORY: 2000 Act No. 399, Section 3(S), eff August 17, 2000.

**SECTION 4‑10‑70.** Determination of amount to be received by eligible unit within county area.

 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.

HISTORY: 1990 Act No. 317, Section 1, eff February 2, 1990.

Attorney General’s Opinions

Eligible unit within county area may not receive in current fiscal year any less of distribution of LOST funds than that unit received in previous fiscal year unless there is reduction in collections from previous year. This result applies to municipalities in Charleston County notwithstanding incorporation during current year of Town of James Island, which is located in County of Charleston. Accordingly, municipalities in Charleston County are required to receive in current fiscal year at least as must LOST revenues as those entities received in prior fiscal year. 1993 Op Atty Gen No. 93‑59.

Eligible unit within county area may not receive in current fiscal year any less of distribution of LOST funds than that unit received in previous fiscal year unless there is reduction in collections from previous year. This result applies to municipalities in Charleston County notwithstanding incorporation during current year of Town of James Island, which is located in County of Charleston. Accordingly, municipalities in Charleston County are required to receive in current fiscal year at least as must LOST revenues as those entities received in prior fiscal year. 1993 Op Atty Gen No. 93‑59.

**SECTION 4‑10‑80.** Reports as to total amount of revenue collected.

 Annually by August fifteenth the State Treasurer shall report to the county chief administrative officers, county treasurers, and municipal clerks in those county areas which levy the sales and use tax authorized by this chapter the total amount of revenue collected as reported by the Department of Revenue in the county area for the preceding fiscal year.

HISTORY: 1990 Act No. 317, Section 1, eff February 2, 1990; 1993 Act No 181, Section 56, eff July 1, 1993.

Effect of Amendment

The 1993 amendment changed “Tax Commission” to “Department of Revenue.”

**SECTION 4‑10‑90.** Department of Revenue to administer and collect local sales and use tax; forms; regulations; notice by county that tax has been approved; revenues to be credited to Local Sales and Use Tax Fund; reports to State Treasurer; refunds.

 (A) 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. The commission may prescribe forms and promulgate regulations in conformity with this chapter, including tables prescribing the amount to be added to the sales price. The county shall notify the Department of Revenue and the State Treasurer through delivery of a certified copy of a resolution adopted by the county by December thirty‑first following the referendum for the tax to be imposed May first. Failure to deliver the resolution by December thirty‑first causes a delay of the imposition until the first day of May of the next calendar year. Notwithstanding the provisions of this subsection, the local sales and use tax must not be imposed before July first following the first referendum held pursuant to Section 4‑10‑30.

 (B) 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. After deducting the amount of refunds made and the costs to the Department of Revenue of administering the tax, not to exceed one‑half of one percent of the fund or seven hundred fifty thousand dollars, whichever is greater, the State Treasurer shall deposit the revenue into the Local Sales and Use Tax Fund which consists of two separate funds: the Property Tax Credit Fund and the County/Municipal Revenue Fund. The revenue collected pursuant to this chapter must be allocated to each fund as follows:

 (1) During the first year after the effective date of this act, sixty‑three percent to the Property Tax Credit Fund and thirty‑seven percent to the County/Municipal Revenue Fund.

 (2) During the second year after the effective date of this act, sixty‑five percent to the Property Tax Credit Fund and thirty‑five percent to the County/Municipal Revenue Fund.

 (3) During the third year after the effective date of this act, sixty‑seven percent to the Property Tax Credit Fund and thirty‑three percent to the County/Municipal Revenue Fund.

 (4) During the fourth year after the effective date of this act, sixty‑nine percent to the Property Tax Credit Fund and thirty‑one percent to the County/Municipal Revenue Fund.

 (5) During the fifth year after the effective date of this act, and each year thereafter, seventy‑one percent to the Property Tax Credit Fund and twenty‑nine percent to the County/Municipal Revenue Fund. The allocation of revenue to each fund provided for in this section must remain uniform as to the percentage allocated to each fund regardless of the year in which a county adopts the local sales and use tax. The State Treasurer shall distribute monthly the revenues according to the provisions of this chapter.

 (C) The Department of Revenue shall furnish data to the State Treasurer and to the governing bodies of the counties and municipalities receiving revenues for the purpose of calculating distributions and estimating revenues. The information which may be supplied to counties and municipalities includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information by taxpayer received by appropriate county or municipal officials is considered confidential and is governed by the provisions of Section 12‑54‑240. A person violating this section is subject to the penalties provided in Section 12‑54‑240. The State Treasurer may correct misallocations from the Property Tax Credit Fund and County/Municipal Revenue Fund by adjusting subsequent allocations, but these adjustments may be made only in allocations made in the same fiscal year as the misallocation. However, allocations made as a result of city or county code errors must be corrected prospectively.

HISTORY: 1990 Act No. 317, Section 1, eff February 2, 1990; 1991 Act No. 168, Sections 1, 13, eff June 28, 1991; 1993 Act No 181 Section 57, eff July 1, 1993; 1998 Act No. 432, Section 18A, eff for tax years beginning after December 31, 1998.

Code Commissioner’s Note

This section, as amended by 1993 Act No. 181, Section 57, contained a reference in subsection (A) to Chapter 35 of Title 12. This reference is incorrect. Chapter 35 of Title 12 was repealed and replaced with a new Chapter 36. At the direction of the Code Commissioner, the reference to Chapter 35 was changed to Chapter 36.

Editor’s Note

1990 Act No. 317, Section 3, provides as follows:

“SECTION 3. (A) Of the funds appropriated in Part I of the 1990‑91 General Appropriations Act under formula funded Aid to Counties and Municipalities, an amount not to exceed seven hundred fifty thousand dollars must be allocated to the South Carolina Tax Commission to defray the administrative start‑up expenses incurred by the commission in fiscal year 1990‑91 for the implementation of the local sales and use tax provided for in Chapter 10 of Title 4 of the 1976 Code and as added in Section 1 of this act. The State Treasurer shall withhold this amount from the income tax distribution with counties and municipalities sharing equally. No funds provided for in this section may be drawn upon by the commission before November, 1990. However, no funds may be drawn unless at least one favorable referendum has been conducted in which the electors of that county have approved the imposition of the tax. If the expenses are not incurred by the commission by May 31, 1991, the funds must be distributed to the counties and municipalities.

“(B) The amount allocated to the commission pursuant to subsection (A) must be reimbursed by the commission from the administrative expense provided to the commission in Section 4‑10‑90(B) of the 1976 Code, as added in Section 1 of this act.”

Act No. 458, Part II, Section 88 of 1996 provides that whenever the term “Department of Revenue and Taxation” appears in the Acts and Joint Resolutions of the General Assembly or the 1976 Code of Laws of South Carolina, it shall mean the “Department of Revenue.”

Effect of Amendment

The 1991 amendment by Section 13, in subsection (A), inserted specific dates, such as December thirty‑first and May first, in place of dates measured from a referendum or calendar quarter; by Section 1, in subsection (C) deleted the former fifth and sixth sentences and replaced them with one sentence.

The 1993 amendment changed “Tax Commission” to “Department of Revenue.”

The 1998 amendment, in subsection (C), added the last sentence.

CROSS REFERENCES

Discount allowed on amount of sales or use tax owed to state upon timely filing and payment of tax, see Section 12‑36‑2610.

Distribution of revenue of allocated to Property Tax Credit Fund, see Section 4‑10‑40.

Attorney General’s Opinions

As long as all municipal property taxes (if any) have been credited to the taxpayers and as long as it serves a valid public purpose, the Local Option Sales Tax would not preclude a municipality from coming to an agreement with a county to use funds received by the municipality for the Property Tax Credit Fund to reduce ad valorem taxes to the county owed by residents of the municipality and that excess funds from the municipality’s Property Tax Credit Fund may also be distributed in the same manner to pay for public services (such as water and sewer fees) for its citizens by a special purpose district, whether directly or indirectly. S.C. Op.Atty.Gen. (June 13, 2014) 2014 WL 3414955.

The South Carolina Department of Revenue is the agency in charge of administering and collecting the Local Options Sales Tax. S.C. Op.Atty.Gen. (April 28, 2014) 2014 WL 1809641.

Eligible unit within county area may not receive in current fiscal year any less of distribution of LOST funds than that unit received in previous fiscal year unless there is reduction in collections from previous year. This result applies to municipalities in Charleston County notwithstanding incorporation during current year of Town of James Island, which is located in County of Charleston. Accordingly, municipalities in Charleston County are required to receive in current fiscal year at least as must LOST revenues as those entities received in prior fiscal year. 1993 Op Atty Gen No. 93‑59.

**SECTION 4‑10‑100.** Commencement of local sales and use tax.

 Notwithstanding the date of general imposition of the local sales and use tax authorized pursuant to this chapter, with respect to services that are regularly billed on a monthly basis, the local sales and use tax is imposed beginning on the first day of the billing period beginning on or after the date of general imposition.

HISTORY: 1990 Act No. 317, Section 1, eff February 2, 1990.

Code Commissioner’s Note

The reference in subsection (A) of this section, as amended by 1990 Act No. 317, to Chapter 35 of Title 12 is incorrect. Chapter 35 was repealed and replaced with a new Chapter 36. At the direction of the Code Commissioner, this reference has been corrected.

ARTICLE 3

Capital Project Sales Tax Act

Editor’s Note

2002 Act No. 334, Section 22.G, provides as follows:

“A county holding a referendum and adopting an ordinance pursuant to Article 3, Chapter 10, Title 4 of the 1976 Code, before the effective date of this section in which the ordinance provides that the proceeds of the sales tax would be used to repay bonds issued to fund project costs may continue to collect the tax and apply the revenue to the repayment of the bonds while any of these bonds remain outstanding, but in no event may the tax be collected for any period longer than the maximum term of the tax provided in the referendum.”

**SECTION 4‑10‑300.** Short title.

 This article may be cited as the “Capital Project Sales Tax Act”.

HISTORY: 1997 Act No. 138, Section 3, eff July 1, 1997.

Attorney General’s Opinions

Discussion of the effects on projects approved in an initial referendum to impose a one cent sale tax pursuant to Section 4‑10‑300, et seq. S.C. Op.Atty.Gen. (April 23, 2013) 2013 WL 1803941.

**SECTION 4‑10‑310.** Imposition of tax.

 Subject to the requirements of this article, the county governing body may impose a one percent sales and use tax by ordinance, subject to a referendum, within the county area for a specific purpose or purposes and for a limited amount of time. The revenues collected pursuant to this article may be used to defray debt service on bonds issued to pay for projects authorized in this article. However, at no time may any portion of the county area be subject to more than one percent sales tax levied pursuant to this article, pursuant to Chapter 37, Title 4, or pursuant to any local law enacted by the General Assembly. This limitation does not apply in a county area in which, as of July 1, 2012, a local sales and use tax was imposed pursuant to a local act of the General Assembly, the revenues of which are used to offset the costs of school construction, or other school purposes, or other government expenses, or for any combination of these uses.

HISTORY: 1997 Act No. 138, Section 3, eff July 1, 1997; 2009 Act No. 49, Section 1, eff upon approval (became law without the Governor’s signature on June 3, 2009); 2012 Act No. 267, Section 4, eff June 20, 2012.

Effect of Amendment

The 2009 amendment deleted “to collect a limited amount of money” from the end of the first sentence.

The 2012 amendment added the last sentence which provides an exception.

Notes of Decisions

In general 1

1. In general

Failure to complete road projects originally authorized did not preclude county, pursuant to statute governing application of amounts collected in excess of required net proceeds, from seeking proposed tax referendum for reimposition of sales and use tax increase to fund six road projects, where statute expressly only applied when a county collected revenue in excess of the funds necessary to complete projects involved in original referendum, statute did not require the completion of those projects identified in a referendum, nor did it make completion a prerequisite for reimposition, and “remaining funds” referred to excess funds raised by the original tax, not to funds raised by the reimposition. State v. County of Florence (S.C. 2013) 406 S.C. 169, 749 S.E.2d 516. Counties 190

County’s proposed tax referendum for sales and use tax increase to fund six road projects constituted a reimposition, rather than a new tax, and therefore referendum was permitted on ballot for special county election, rather than on ballot for general election, by the Capital Project Sales Tax Act, where, although only one of the six road projects had been completed, the tax had been collected for approximately seven years prior to proposed referendum to reimpose the tax. State v. County of Florence (S.C. 2013) 406 S.C. 169, 749 S.E.2d 516. Counties 190

**SECTION 4‑10‑320.** Commission creation; composition.

 (A) The governing body of any county is authorized to create a commission subject to the provisions of this section. The commission consists of six members, all of whom must be residents of the county, appointed as follows:

 (1) The governing body of the county must appoint three members of the commission.

 (2) The municipalities in the county must appoint three members, who must be residents of incorporated municipalities within the county, and who are selected according to the following mechanism:

 (a) The total population of all incorporated municipalities within the county, as determined by the most recent United States census, must be divided by three, the result being an apportionate average.

 (b) The respective population of each municipality in the county must be divided by the apportionate average to determine an appointive index.

 (c) Each municipality in the county appoints a number of members to the commission equal to the whole number indicated by their appointive index. However, no single municipality may appoint more than two members to the commission; unless there is only one municipality in the county, and in such case the municipality is entitled to three appointments to the commission.

 (d) When less than three members are selected to the commission in accordance with the prescribed appointive index method, the remaining member or members must be selected in a joint meeting of the commission appointees of the municipalities in the county. The member or members must be chosen from among the residents of the municipalities in the county that before this time have not provided a representative for the commission.

 (e) In the event no municipality is entitled to appoint a member to the commission pursuant to the formula in subitem (c) of this subsection, the municipality with the highest appointive index must be deemed to have an appointive index of one.

 (B) When the governing body of any county creates a commission, it must be created in accordance with the procedures specified in subsection (A) and only upon the request of the governing body of the county. If within the thirty‑day period following the adoption of a resolution to create the commission, one or more of the municipalities fails or refuses to appoint their proportionate number of members to the commission, the county governing body must appoint an additional number of members equal to the number that any such municipality is entitled to appoint. A vacancy on the commission must be filled in the manner of the original appointment.

 (C) The commission created pursuant to this section must consider proposals for funding capital projects within the county area. The commission then formulates the referendum question that is to appear on the ballot pursuant to Section 4‑10‑330(D).

HISTORY: 1997 Act No. 138, Section 3, eff July 1, 1997.

CROSS REFERENCES

Contents of ballot question, purpose for which proceeds of tax to be used, see Section 4‑10‑330.

Attorney General’s Opinions

Beaufort County Council must use a ballot question formulated by its Capital Project Sales Tax Commission but it has the authority to remove any members of the Commission it appointed and even abolish the Commission itself and may also choose not to proceed in the process of implementing a Capital Project Sales Tax. S.C. Op.Atty.Gen. (July 28, 2014) 2014 WL 3886691.

**SECTION 4‑10‑330.** Contents of ballot question; purpose for which proceeds of tax to be used.

 (A) The sales and use tax authorized by this article is imposed by an enacting ordinance of the county governing body containing the ballot question formulated by the commission pursuant to Section 4‑10‑320(C), subject to referendum approval in the county. The ordinance must specify:

 (1) the purpose for which the proceeds of the tax are to be used, which may include projects located within or without, or both within and without, the boundaries of the local governmental entities, including the county, municipalities, and special purpose districts located in the county area, and may include the following types of projects:

 (a) highways, roads, streets, bridges, and public parking garages and related facilities;

 (b) courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, educational facilities under the direction of an area commission for technical education, or any combination of these projects;

 (c) cultural, recreational, or historic facilities, or any combination of these facilities;

 (d) water, sewer, or water and sewer projects;

 (e) flood control projects and storm water management facilities;

 (f) beach access and beach renourishment;

 (g) dredging, dewatering, and constructing spoil sites, disposing of spoil materials, and other matters directly related to the act of dredging;

 (h) jointly operated projects of the county, a municipality, special purpose district, and school district, or any combination of those entities, for the projects delineated in subitems (a) through (g) of this item;

 (i) any combination of the projects described in subitems (a) through (h) of this item;

 (2) the maximum time, in two‑year increments not to exceed eight years from the date of imposition, or in the case of a reimposed tax, a period ending on April thirtieth, not to exceed seven years, for which the tax may be imposed;

 (3)(a) if the county proposes to issue bonds to provide for the payment of any costs of the projects, the maximum amount of bonds to be issued, whether the sales tax proceeds are to be pledged to the payment of the bonds and, if other sources of funds are to be used for the projects, specifying the other sources;

 (b) the maximum cost of the project or facilities or portion of the project or portion of the facilities, to be funded from proceeds of the tax or bonds issued as provided in this article and the maximum amount of net proceeds expected to be used to pay the cost or debt service on the bonds, as the case may be; and

 (4) any other condition precedent, as determined by the commission, to the imposition of the sales and use tax authorized by this article or condition or restriction on the use of sales and use tax revenue collected pursuant to this article.

 (B) When the tax authorized by this article is imposed for more than one purpose, the enacting ordinance must set forth the priority in which the net proceeds are to be expended for the purposes stated. The enacting ordinance may set forth a formula or system by which multiple projects are funded simultaneously.

 (C)(1) Upon receipt of the ordinance, the county election commission must conduct a referendum on the question of imposing the sales and use tax in the area of the county that is to be subject to the tax. The referendum for imposition or reimposition of the tax must be held at the time of the general election. Subject to item (2), two weeks before the referendum the election commission must publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of projects and the cost of the projects. If the proposed question includes the use of sales taxes to defray debt service on bonds issued to pay the costs of any project, the notice must include a statement indicating that principal amount of the bonds proposed to be issued for the purpose and, if the issuance of the bonds is to be approved as part of the referendum, stating that the referendum includes the authorization of the issuance of bonds in that amount. This notice is in lieu of any other notice otherwise required by law.

 (2) If the referendum on the question of imposing sales and use tax is conducted in an odd‑numbered year, and it is the only matter being considered at the general election, then six weeks before the referendum, the election commission must publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of projects and the cost of the projects.

 (D) The referendum question to be on the ballot must read substantially as follows:

 “Must a special one percent sales and use tax be imposed in (county) for not more than (time) to raise the amounts specified for the following purposes?

|  |  |  |
| --- | --- | --- |
|  |  |  |
|   | (1) $\_\_\_\_\_\_\_\_ for \_\_\_\_\_\_\_\_\_\_ |   |
|   | (2) $\_\_\_\_\_\_\_\_ for \_\_\_\_\_\_\_\_\_\_ |   |
|   | (3) etc. |   |
|   |   |   |
|   |   | Yes [] |
|   |   | No []” |

 If the referendum includes the issuance of bonds, the question must be revised to include the principal amount of bonds proposed to be authorized by the referendum and the sources of payment of the bonds if the sales tax approved in the referendum is inadequate for the payment of the bonds.

 (E) All qualified electors desiring to vote in favor of imposing the tax for the stated purposes shall vote “yes” and all qualified electors opposed to levying the tax shall vote “no”. If a majority of the votes cast are in favor of imposing the tax, then the tax is imposed as provided in this article and the enacting ordinance. A subsequent referendum on this question must be held on the date prescribed in subsection (C). The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the result no later than November thirtieth to the county governing body and to the Department of Revenue. Expenses of the referendum must be paid by the governmental entities that would receive the proceeds of the tax in the same proportion that those entities would receive the net proceeds of the tax.

 (F) Upon receipt of the returns of the referendum, the county governing body must, by resolution, declare the results thereof. In such event, the results of the referendum, as declared by resolution of the county governing body, are not open to question except by a suit or proceeding instituted within thirty days from the date such resolution is adopted.

HISTORY: 1997 Act No. 138, Section 3, eff July 1, 1997; 1999 Act No. 93, Section 2, eff June 11, 1999; 2002 Act No. 334, Sections 22.A, 22.B and 22.E, eff June 24, 2002; 2004 Act No. 244, Section 2, eff May 24, 2004; 2004 Act No. 292, Section 2, eff August 16, 2004; 2009 Act No. 49, Section 2, eff upon approval (became law without the Governor’s signature on June 3, 2009); 2012 Act No. 268, Section 1, eff June 20, 2012; 2014 Act No. 243 (S.809), Section 1, eff June 6, 2014; 2016 Act No. 250 (H.5078), Sections 2, 4, eff June 6, 2016.

Editor’s Note

2009 Act No. 49 Section 5 provides as follows:

“This act takes effect upon approval by the Governor; provided, that the amendments to Section 4‑10‑330(A)(1)(b) of the 1976 Code, as contained in Section 2, apply with respect to Capital Project Sales and Use Tax Act taxes imposed or reimposed pursuant to a referendum held after the effective date of this act.”

2014 Act No. 243, Section 2, provides as follows:

“SECTION 2. This act takes effect upon approval by the Governor and first applies to a referendum for which a referendum date is not set as of the time of approval.”

Effect of Amendment

The 1999 amendment changed the election commission certification deadline in subsection (E) from “December thirty‑first” to “November thirtieth”.

The first 2002 amendment rewrote paragraph (A)(3) and subsection (C); and in subsection (D), added the last undesignated paragraph.

The first 2004 amendment, in paragraph (A)(1), in subparagraph (a) added “and public parking garages and related facilities”, added subparagraph (f) relating to beaches, redesignated subparagraphs (f) and (g) as subparagraphs (g) and (h), and made conforming changes throughout.

The second 2004 amendment in subparagraph (A)(1)(a), made identical changes to those made by 2004 act No. 244, Section 2.

The 2009 amendment, in subsection (A), in subparagraph (1)(b) added “educational facilities under the direction of an area commission for technical education,” and in subparagraph (2) substituted “in two‑year increments” for “stated in terms of calendar or fiscal years or quarters, or a combination thereof,”, “eight years” for “seven years”, and added “or in the case of a reimposed tax, a period ending on April thirtieth of an odd‑numbered year, not to exceed seven years”; and, in subsection (C), in the second sentence substituted “imposition or reimposition of the tax” for “this purpose” and “2009” for “2002.

The 2012 amendment in subsection (A)(1), added a new subitem (g) relating to dredging, and redesignated former subitems (g) and (h) as (h) and (i).

2014 Act No. 243, Section 1, rewrote subsection (C), deleting a provision allowing the referendum for imposition or reimposition to be held at a time other than at the time of the general election.

2016 Act No. 250, Sections 2, 4 in (A)(2), deleted “of an odd‑numbered year” following “ending on April thirtieth”; in (C), added designator (1); in (C)(1), substituted “Subject to item (2), two” for “Two”; and added (C)(2), relating to particular referendum publication requirements for certain sales and use tax questions.

Attorney General’s Opinions

Beaufort County Council must use a ballot question formulated by its Capital Project Sales Tax Commission but it has the authority to remove any members of the Commission it appointed and even abolish the Commission itself and may also choose not to proceed in the process of implementing a Capital Project Sales Tax. S.C. Op.Atty.Gen. (July 28, 2014) 2014 WL 3886691.

Infrastructure improvements to the Cumbee Center, a center for domestically abused women, would likely be found by a court to fall within the projects listed in Section 4‑10‑330(A)(1). S.C. Op.Atty.Gen. (April 22, 2010) 2010 WL 1808731.

**SECTION 4‑10‑340.** Tax imposition and termination.

 (A) If the sales and use tax is approved in the referendum, the tax is imposed on the first of May following the date of the referendum. If the reimposition of an existing sales and use tax imposed pursuant to this article is approved in the referendum, the new tax is imposed immediately following the termination of the earlier imposed tax and the reimposed tax terminates on the applicable thirtieth of April, not to exceed seven years from the date of reimposition. If the certification is not timely made to the Department of Revenue, the imposition is postponed for twelve months.

 (B) The tax terminates the final day of the maximum time period specified for the imposition.

 (C)(1) Amounts collected in excess of the required net proceeds must first be applied, if necessary, to complete a project for which the tax was imposed.

 (2) If funds still remain after first using the funds as described in item (1) and the tax is reimposed, the remaining funds must be used to fund the projects approved by the voters in the referendum to reimpose the tax, in priority order as the projects appeared on the enacting ordinance.

 (3) If funds still remain after first using the funds as described in item (1) and the tax is not reimposed, the remaining funds must be used for the purposes set forth in Section 4‑10‑330(A)(1). These remaining funds only may be expended for the purposes set forth in Section 4‑10‑330(A)(1) following an ordinance specifying the authorized purpose or purposes for which the funds will be used.

HISTORY: 1997 Act No. 138, Section 3, eff July 1, 1997; 2002 Act No. 334, Sections 22.C and 22.F, eff June 24, 2002; 2009 Act No. 49, Section 3, eff upon approval (became law without the Governor’s signature on June 3, 2009); 2016 Act No. 250 (H.5078), Section 3, eff June 6, 2016.

Effect of Amendment

The 2002 amendment, in subsection (A), added the second sentence relating to the reimposition of an existing sales and use tax; and rewrote paragraph (B)(2).

The 2009 amendment, in subsection (A), in the second sentence added “and the reimposed tax terminates on the thirtieth of April in an odd‑numbered year, not to exceed seven years from the date of reimposition”; and rewrote subsections (B) and (C).

2016 Act No. 250, Section 3, in (A), substituted “applicable thirtieth of April” for “thirtieth of April in an odd‑numbered year” in the second sentence.

**SECTION 4‑10‑350.** Department of Revenue to administer and collect local tax.

 (A) The tax levied pursuant to this article must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected. The department may prescribe amounts that may be added to the sales price because of the tax.

 (B) The tax authorized by this article is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36, Title 12 and the enforcement provisions of Chapter 54, Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 are exempt from the tax imposed by this article. Unprepared food items eligible for purchase with United States Department of Agriculture food coupons are exempt from the tax imposed pursuant to this article. The tax imposed by this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36, Title 12.

 (C) A taxpayer required to remit taxes under Article 13, Chapter 36 of Title 12 must identify the county in which the personal property purchased at retail is stored, used, or consumed in this State.

 (D) A utility is required to report sales in the county in which the consumption of the tangible personal property occurs.

 (E) A taxpayer subject to the tax imposed by Section 12‑36‑920, who owns or manages rental units in more than one county, must report separately in his sales tax return the total gross proceeds from business done in each county.

 (F) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under this article in a county, either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the sales and use tax provided in this article if a verified copy of the contract is filed with the Department of Revenue within six months after the imposition date of the sales and use tax provided for in this article.

 (G) Notwithstanding the imposition date of the sales and use tax authorized pursuant to this chapter, with respect to services that are billed regularly on a monthly basis, the sales and use tax authorized pursuant to this article is imposed beginning on the first day of the billing period beginning on or after the imposition date.

HISTORY: 1997 Act No. 138, Section 3, eff July 1, 1997; 1999 Act No. 93, Section 3, eff June 11, 1999; 2009 Act No. 49, Section 4.A, eff upon approval (became law without the Governor’s signature on June 3, 2009).

Editor’s Note

2009 Act No. 49 Section 4.B provides as follows:

“Notwithstanding the general effective date of this act, this section takes effect on the approval of this act by the Governor and applies with respect to Capital Project Sales Tax Act taxes imposed or reimposed pursuant to a referendum held after that date.”

Effect of Amendment

The 1999 amendment deleted provisions relating to municipalities and made grammatical changes in subsections (C) through (E).

The 2009 amendment, in subsection (B), added the third sentence relating to unprepared food items.

**SECTION 4‑10‑360.** Revenue remitted to State Treasurer and held in a separate fund.

 The revenues of the tax collected under this article must be remitted to the Department of Revenue and placed on deposit with the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues quarterly to the county treasurer in the county area in which the tax is imposed and the revenues must be used only for the purposes stated in the imposition ordinance. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocations. However, allocations made as a result of city or county code errors must be corrected prospectively. Within thirty days of the receipt of any quarterly payment, the county treasurer or the county administrator shall certify to the Department of Revenue amounts of net proceeds applied to the costs of each project and the amount of project costs remaining to be paid and, if bonds have been issued that were approved in the referendum, a schedule of payments remaining due on the bonds that are payable from the net proceeds of the sales tax authorized in the referendum.

HISTORY: 1997 Act No. 138, Section 3, eff July 1, 1997; 1999 Act No. 93, Section 4, eff June 11, 1999; 2002 Act No. 334, Section 22D, eff June 24, 2002.

Effect of Amendment

The 1999 amendment added the last sentence.

The 2002 amendment added the last sentence relating to certification of net proceeds.

**SECTION 4‑10‑370.** Calculating distributions to counties; confidentiality.

 The Department of Revenue shall furnish data to the State Treasurer and to the county treasurers receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to counties and municipalities upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12‑54‑240. A person violating this section is subject to the penalties provided in Section 12‑54‑240.

HISTORY: 1997 Act No. 138, Section 3, eff July 1, 1997.

**SECTION 4‑10‑380.** Unidentified funds; transfer and supplemental distributions.

 Annually, and only in the month of June, funds collected by the department from the local option capital project sales tax, which are not identified as to the governmental unit due the tax, must be transferred, after reasonable effort by the department to determine the appropriate governmental unit, to the State Treasurer’s Office. The State Treasurer shall distribute these funds to the county treasurer in the county area in which the tax is imposed and the revenues must be used only for the purposes stated in the imposition ordinance. The State Treasurer shall calculate this supplemental distribution on a proportional basis, based on the current fiscal year’s county area revenue collections.

HISTORY: 1999 Act No. 93, Section 5, eff June 11, 1999.

ARTICLE 4

Education Capital Improvements Sales and Use Tax Act

**SECTION 4‑10‑410.** Citation of act.

 This act may be cited as the “Education Capital Improvements Sales and Use Tax Act”.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor’s signature on June 12, 2008).

**SECTION 4‑10‑415.** Definitions.

 For purposes of this article, the following terms and words are defined as follows:

 (1) “Area commission” means the governing body, however described, of a technical college under the jurisdiction of the State Board for Technical and Comprehensive Education which has a campus located in the county which contains the site of a capital improvement financed by revenue of the tax authorized pursuant to this article.

 (2) “School district board of trustees” means the governing body of a school district.

 (3) “County” means a county within which the sales and use tax authorized by this article is imposed.

 (4) “County auditor” means the county auditor of the county.

 (5) “County treasurer” means the county treasurer of the county.

 (6) “Election authority” means the authority charged with the conduct of countywide elections within the county.

 (7) “Higher education board of trustees” means the governing body of a public institution of higher learning, other than a technical college, as defined in Section 59‑103‑5, which has a campus located in the county which contains the site of a capital improvement financed by revenue of the tax authorized pursuant to this article.

 (8) “Memorandum of agreement” means a written document executed by the school district board of trustees and the area commission or higher education board of trustees, or both of these entities, to provide for the school district’s sharing of the revenue of the tax authorized pursuant to this article. The agreement must contain, inter alia, the revenue distribution formula expressed in percentages and the specific capital improvement projects for which the shared revenue must be used. The memorandum of agreement is not effective unless it has been ratified by a recorded vote of at least two‑thirds of the membership of the school district board of trustees and a recorded vote of at least two‑thirds of the membership of the area commission or higher education board of trustees, or both, as applicable. When ratified by all parties and incorporated into the resolution adopted by the school district board of trustees, the memorandum of agreement is binding on all parties.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor’s signature on June 12, 2008).

**SECTION 4‑10‑420.** Authority to impose county sales and use tax; sharing revenues among school districts.

 (A) Subject to the requirements of this article, there may be imposed a one percent sales and use tax within a county for specific education capital improvements for the school district or school districts listed in the referendum question as provided pursuant to Section 4‑10‑425(C). Pursuant to a memorandum of agreement, a portion of the revenue of the tax may be shared with and distributed to the area commission or higher education board of trustees, or both such governing bodies for specific education capital improvements on the campus or campuses of the recipient governing body located in the county as listed in the referendum question pursuant to Section 4‑10‑425(C). The proceeds of the tax must be distributed as provided in this article. The boards of trustees of the school districts, in the resolution adopted pursuant to Section 4‑10‑425, shall provide specific capital improvement projects for which the proceeds of the tax distributed to those school districts must be expended. Where an area commission or higher education board of trustees shares in the revenues, the resolution must incorporate the memorandum of agreement.

 A school district board of trustees shall use the school district’s share of the distribution only to pay for those capital improvements provided in the resolution and included in the referendum question directly, or to service general obligation debt incurred by the districts for such improvements, or a combination of these purposes.

 An area commission or higher education board of trustees, or both, shall use its share of the distribution only to pay for its capital improvements provided in the memorandum of agreement and included in the referendum question directly, or to replace tuition revenues pledged to service state institution bonds issued for such improvements, for some other applicable method of financing capital improvements provided by law, or a combination of these purposes. If any necessary approvals required by law for the issuing of state institution bonds or other method of financing are not forthcoming, the area commission and higher education board of trustees, as appropriate, shall then use the revenue for the projects approved to the extent possible and may prioritize among their projects for their completion.

 (B)(1) The tax allowed by this article may not be imposed in a county in which there is currently imposed or scheduled to be imposed a local sales and use tax for public school capital improvements authorized pursuant to any local law enacted by the General Assembly.

 (2) Notwithstanding any other provision of law, a local sales and use tax for public school capital improvements authorized by a local law enacted by the General Assembly may not be imposed in a county while the tax authorized pursuant to this article is imposed in that county.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor’s signature on June 12, 2008).

**SECTION 4‑10‑425.** Procedure for imposing tax; referendum; ballot.

 (A) The tax authorized by this article may be imposed in the county upon the adoption of an approving resolution by the board of trustees of a school district, and the subsequent approval of the imposition of the tax by referendum open to all qualified electors residing in the county in which the question includes each specific education capital improvement included in the resolution and any incorporated memorandum of agreement.

 The approving resolution must specify some period, stated in calendar years, not to exceed fifteen years, for which the tax must be imposed, the date of the referendum, and the question to appear on the referendum ballot. The approving resolution, upon adoption, must be forwarded to the election authority. The referendum required by this article may only be conducted in even‑numbered years at the time of the general election.

 (B) Upon receipt of a resolution from the board of trustees of a school district, the election authority shall conduct a referendum on the question of imposing the tax in the county. Notice of the election must be provided in the manner provided by the general election law and include the question to be voted upon in the referendum. Expenses of the referendum must be paid by the school district or school districts for which the referendum is being held.

 (C) The ballot to be voted upon in the referendum must read substantially as follows:

EDUCATION CAPITAL IMPROVEMENTS SALES AND USE TAX ACT REFERENDUM FOR \_\_\_\_\_\_\_\_\_\_\_\_ COUNTY

 Must a special one percent sales and use tax be imposed in \_\_\_\_\_ County for not more than \_\_\_\_ years with the revenue of the tax used to pay, directly or indirectly, the cost of the following education capital improvement projects in \_\_\_\_\_\_\_\_\_\_\_\_\_ County

 (1) \_\_\_\_\_\_\_\_\_\_\_\_\_

 (2) \_\_\_\_\_\_\_\_\_\_\_\_\_ etc.?

Yes []

No []

 Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square after the word “Yes”, and those voting against the question shall deposit a ballot with a check or cross mark in the square after the word “No”.

 The ballot may contain a short explanation of the question to be voted upon in this referendum.

 (D) Upon receipt and certification of the returns of the referendum, the election authority shall by resolution certify the results of the referendum by resolution and within ten days thereafter file the resolution with the clerk of court for the county and with the South Carolina Department of Revenue. The result of the referendum, as declared by resolution of the election authority and as filed with the clerk of court, is not open to question except by a civil action instituted in the county within twenty days of the filing of the resolution. If a majority of the total votes cast is in favor of imposing the tax, then the tax is imposed as provided in this section; otherwise the tax is not imposed.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor’s signature on June 12, 2008).

**SECTION 4‑10‑430.** Commencement and termination.

 (A) If the tax is approved in the referendum, the tax must be imposed beginning upon the first day of the fourth full month following the filing of the declaration of results of the referendum with the Department of Revenue.

 (B) The tax terminates upon the earlier of:

 (1) the final day of the maximum time specified for the imposition; or

 (2) sixty days following the filing with the Department of Revenue of certified copies of a resolution adopted by the board of trustees of the school district requesting termination of the tax. Where revenues of the tax are shared pursuant to a memorandum of agreement as provided pursuant to Section 4‑10‑420, the termination resolution must be adopted by all parties to the memorandum of agreement.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor’s signature on June 12, 2008).

**SECTION 4‑10‑435.** Collection and administration by Department of Revenue.

 (A) The tax levied pursuant to this article must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected. The Department of Revenue may prescribe the amounts which may be added to the sales price because of the tax.

 (B) The tax authorized by this article is in addition to all other local sales and use taxes and applies to the gross proceeds of the sales in the county which are subject to the tax imposed by Chapter 36 of Title 12 and the enforcement provisions of Chapter 54 of Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 are exempt from the tax imposed by this article. The gross proceeds of the sale of unprepared food items which may lawfully be purchased with United States Department of Agriculture food coupons are exempt from the tax imposed by this article. The tax imposed by this article also applies to tangible personal property subject to the use tax in Chapter 36 of Title 12.

 (C) Taxpayers required to remit use taxes under Chapter 36 of Title 12 shall identify the county in which the tangible personal property purchased at retail is stored, used, or consumed in this State.

 (D) Utilities are required to report sales in the county in which consumption of the tangible personal property occurs.

 (E) A taxpayer subject to the tax imposed by Section 12‑36‑920 who owns or manages rental units in more than one county shall separately report in his sales tax return the total gross proceeds from business done in each county.

 (F) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under this article in the county, either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the special local sales and use tax provided in this section if a verified copy of the contract is filed with the Department of Revenue within six months after the imposition of the special local sales and use tax.

 (G) Notwithstanding the imposition date of the sales and use tax authorized pursuant to this article, with respect to services that are regularly billed on a monthly basis, the sales and use tax is imposed beginning on the first day of the billing period beginning on or after the imposition date.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor’s signature on June 12, 2008).

**SECTION 4‑10‑440.** Remitting revenues to State Treasurer; distribution and use of proceeds.

 (A) The revenues of the sales and use tax collected under this article must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund of the State. If revenue of the tax is shared, the school district shall forward a certified copy of the resolution and an incorporated memorandum of agreement to the State Treasurer. After deducting the amount of refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues monthly as provided pursuant to subsection (B) of this section. The State Treasurer may correct misallocation costs or refunds by adjusting proportionately subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocation.

 (B) The State Treasurer shall distribute proceeds of the tax due the school district to the county treasurer for the benefit of the school district. If revenues are shared, any revenue due the area commission or higher education board of trustees, or both of these entities, must be distributed by the State Treasurer monthly to approved accounts of those entities. All such distributions must be proportionately reduced by amounts attributable to refunds and administration as provided pursuant to subsection (A) of this section.

 (C) Except as provided in Section 4‑10‑445, withdrawals by a school district of tax proceeds from the county treasurer must be made in the same manner as are funds appropriated to the school districts by the State. Pending these withdrawals, taxes must be deposited in an account for the school district, separate and distinct from accounts established for any other purpose, and investment earnings derived from monies in such an account must be credited to the account. The school district shall maintain records which demonstrate that tax proceeds are spent only for the purposes as approved by its board of trustees and in accordance with this article.

 (D) The proceeds of the sales and use tax paid to the county treasurer for the benefit of a school district must be applied only for the purposes set forth in the resolution adopted pursuant to Section 4‑10‑425.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor’s signature on June 12, 2008).

**SECTION 4‑10‑445.** Application of proceeds to debt service.

 (A) If a school district has provided in its resolution adopted pursuant to Section 4‑10‑425, that any portion of the proceeds of the sales and use tax allocated to it must be applied to debt service on general obligation bonds, the school district shall notify the county treasurer in writing no later than the first day of August of each year of the amount of sales and use taxes to be applied to offset the debt service millage levy for such general obligation bonds. The amount so specified must not exceed the amount of sales and use tax proceeds held by the county treasurer for the school district as of the June thirtieth immediately preceding such first day of August. The notice applies only to debt service payments to be made in the eighteen‑month period following that June thirtieth.

 Upon receipt of notice from a school district pursuant to this section, the county treasurer shall certify to the county auditor, by the fifteenth day of August of the amount of sales and use taxes designated by the school district for application to general obligation bond debt service payments. The county auditor shall reduce the next levy of property taxes required to pay debt service on such general obligation bonds by the amount of sales and use tax revenues certified as held by the county treasurer and designated by the school district for the purpose. This amount of sales and use taxes thereafter must not be released to the school district, but must be held by the county treasurer to pay debt service on general obligation bonds. However, any sales and use taxes held by the county treasurer in excess of the amounts designated by the school district for payment of debt service on such general obligation bonds must be expended as directed by the school district in accordance with this article. Any investment earnings derived from the sales and use tax must be expended as directed by the school district in accordance with this article. Any sales and use taxes allocated to a school district and not required to accomplish the purposes described in the resolution of the school district adopted pursuant to Section 4‑10‑425 may be applied to debt service on any general obligation bonds of the school district.

 (B) If the school district presents the county treasurer with a surety bond or letter of credit from a financial institution which is rated in one of the two highest rating categories by two national ratings agencies, the county treasurer may treat the amount available under such surety as if it were taxes held by the county treasurer and shall provide the certificate called for in the foregoing paragraph to the auditor by including the amount available under the surety or letter of credit so long as such amount is not in excess of ninety percent of the actual sales and use taxes allocated to the school district in the prior fiscal year, or which would have been allocated if the sales and use tax had been in force for all of the prior fiscal year. The county auditor shall reduce the next levy of ad valorem property taxes required to pay debt service on bonds to which the tax is applicable by the amount so certified by the county treasurer. If the sales and use taxes thereafter allocated to the school district are less than the amount required to pay debt service on bonds during the eighteen‑month period established in Section 4‑10‑445(A), the county treasurer shall draw upon the surety to provide for timely payment of such general obligation bonds. The costs of such surety, including any reimbursements for payments thereon, are deemed to be part of the debt service requirements for such general obligation bonds covered by such surety and may be paid from amounts available in the fund created in accordance with Section 4‑10‑445(A). Any reimbursement to the financial institution providing such surety may be paid from the fund from taxes collected in the year after any draw.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor’s signature on June 12, 2008).

**SECTION 4‑10‑450.** Availability of data to calculate distributions and estimate revenues.

 The Department of Revenue shall furnish data to the State Treasurer and to a school district and others receiving tax revenues pursuant to this article for the purpose of calculating distributions and estimating revenues. The information which must be supplied to the school district upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12‑54‑240. A person violating this section is subject to the penalties provided in Section 12‑54‑240.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor’s signature on June 12, 2008).

**SECTION 4‑10‑460.** Renewal or reimposition of tax.

 The tax authorized in this article may be renewed and imposed within a county in the same manner as proceedings for the initial imposition of the tax. A referendum on the question of reimposition of a tax must not be held earlier than within the calendar year which is two years before the calendar year in which the tax then in effect is scheduled to terminate, but any reimposition is effective immediately upon the termination of the tax previously imposed.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor’s signature on June 12, 2008); 2014 Act No. 290 (S.940), Section 2, eff June 24, 2014.

Effect of Amendment

2014 Act No. 290, Section 2, substituted “earlier than within the calendar year which is two years before the calendar year in which” for “more than two years before the date upon”.

**SECTION 4‑10‑470.** Counties in which sales and use tax may be imposed.

 (A) The Education Capital Improvements Sales and Use Tax authorized by this article may only be imposed in counties which have collected at least seven million dollars in state accommodations taxes as imposed pursuant to Section 12‑36‑920(A) in the most recent fiscal year for which full collection figures are available. Once a county meets this threshold it thereafter remains eligible to impose this tax.

 (B)(1) The Education Capital Improvements Sales and Use Tax authorized by this article also may be imposed in a county without regard to the requirements of subsection (A) if:

 (a) at the time of the referendum, no portion of the county in which the tax is to be imposed is subject to more than two percent total local sales tax; and

 (b) the county in which the tax is to be imposed is encompassed completely by one entire school district, and that school district also extends into one adjacent county.

 (2) Notwithstanding any other provision of this article, if the Education Capital Improvements Sales and Use Tax is imposed pursuant to this subsection, then:

 (a) stated in calendar years, the tax may not be imposed for more than ten years;

 (b) at least ten percent of the proceeds must be used to provide a credit against existing debt service millage on general obligation bonds in the same manner as in item (3) with the applicable adjustment to the numerator. The offset only may be applied within the county, and not to the portion of the adjacent county, in a manner similar to item (3); and

 (c) the total debt service on bonds issued by the school district resulting from the imposition, net of any premium or accrued interest, shall not exceed ninety percent of the total amount of Education Capital Improvements Sales and Use Tax proceeds estimated to be allocated to the school district during the imposition, minus any amounts dedicated to the credit required pursuant to subitem (b). The Board of Economic Advisors shall provide the estimate of the total amount.

 (3)(a) The revenues allotted to the district must be used to provide a nonrefundable credit against the millage imposed for debt service to service bonds issued by the district resulting from the imposition, on property taxable in the county only. The amount of the credit is determined by multiplying the value of the taxable property, before the exemption provided in Section 12‑37‑250, by a fraction in which the numerator is the total estimated revenue allotted to the district during the applicable fiscal year of the district minus the amounts set forth in item (2), and the denominator is the total of the property tax value of taxable property in the county as defined pursuant to Section 12‑37‑3135(5), including the value exempted in Section 12‑37‑250, in the district as of January first of the applicable property tax year. For motor vehicles subject to the payment of property taxes pursuant to Article 21, Chapter 37, Title 12, the credit provided pursuant to this subsection applies against the tax liability for motor vehicle tax years beginning after December of the year in which the credit is calculated. The credit applies first against the liability arising from millage imposed for debt obligations for schools, and then against any liability arising from school operations.

 (b) The credit provided by this article is in addition to any credits allowed pursuant to Article 1 of this chapter, and to the extent that there is unused credit, then the credit provided by this article may be applied proportionately against other property tax liability.

 (c) Before the provisions of subitem (b) apply, an amount equal to the credit that would apply against the property tax liability for school operations imposed on an owner‑occupied residence but for the exemption allowed pursuant to Section 12‑37‑220(B)(47) is allowed as a credit to be applied proportionately against all nonschool‑related property tax otherwise due on the residence.

 (d) If proceeds from the imposition are unused after the termination of the tax, then the unused funds must be used to provide a credit in the same manner as provided in subitem (a) over the next three property tax years.

 (4) Notwithstanding any other provision of law, if, within a county there is imposed the Education Capital Improvements Sales and Use Tax pursuant to this subsection, then no other local sales tax may be imposed in that county if the subsequent imposition causes the total sales tax to exceed two percent in any portion of the county. This limitation applies so long as this subsection is utilized to impose the Education Capital Improvements Sales and Use Tax.

 (5) Notwithstanding any other provision of law, if the tax imposed pursuant to this subsection and another sales tax are approved at the same referendum, and the approval of both subjects any portion of the county to more than two percent total local sales tax, then only the tax whose approving resolution was adopted first may be imposed, and the other tax is deemed to not have been approved.

 (6) For purposes of this subsection, a sales tax is a tax levied pursuant to this chapter, pursuant to Chapter 37, Title 4, or pursuant to any local law enacted by the General Assembly.

 (C) Notwithstanding any other provision of this section, the Education Capital Improvements Sales and Use Tax authorized by this article also may be imposed in a county so long as the county or school district imposed a local sales and use tax to fund education capital improvements on January 1, 2014. The Education Capital Improvements Sales and Use Tax may be imposed pursuant to this subsection at any time after the local sales and use tax terminates.

 (D) The Education Capital Improvements Sales and Use Tax authorized by this article also may be imposed in a county which does not meet the collection requirements of subsection (A) so long as:

 (1) the county only has one school district which encompasses the entire county area in which the tax is to be imposed; and

 (2) the county collected at least one million dollars in state accommodations taxes as imposed pursuant to Section 12‑36‑920(A) in the most recent fiscal year for which full collection figures are available. Once a county meets this threshold, it thereafter remains eligible to impose this tax pursuant to this subsection.

 (E)(1) The Education Capital Improvements Sales and Use Tax authorized by this article also may be imposed in a county which does not meet the collection requirements of subsection (A) so long as the county in which the tax is to be imposed:

 (a) is comprised of more than one school district and the county has a county board of education; and

 (b) has no other local sales tax imposition at the time of the referendum.

 (2) Notwithstanding any other provision of this article, if the Education Capital Improvements Sales and Use Tax is imposed pursuant to this subsection, then:

 (a) at least ten percent of the proceeds must be used to provide property tax relief by using the proceeds to offset the existing debt service millage levy on general obligation bonds pursuant to Section 4‑10‑445; and

 (b) the tax revenue distributed to each district must be in the proportion that the district’s average daily membership (ADM) attributes to the total ADM of all the school districts in the county, limited to ADM attributable to the county.

 (3) The resolution required pursuant to Section 4‑10‑425 must be agreed to by a majority vote of the board of trustees of each school district located in whole or in part in the county.

 (4) For purposes of this subsection, a sales tax is a tax levied pursuant to this chapter, pursuant to Chapter 37, Title 4, or pursuant to any local law enacted by the General Assembly.

 (5) Once a county meets the provisions of item (1) and imposes the Education Capital Improvements Sales and Use Tax, it thereafter remains eligible to impose this tax pursuant to this subsection.

 (F) The Education Capital Improvements Sales and Use Tax authorized by this article also may be imposed in a county which does not meet the collection requirements of subsection (A) so long as:

 (1) immediately prior to the imposition date, if approved, the county is imposing the local option sales tax imposed pursuant to Article 1, and the county had not imposed that tax for twenty years or more as of the date the imposition of the education capital improvements sales tax authorized in this article was first proposed in that county in a 2014 referendum, in which any portion of a calendar year counts as a year, and no other local sales and use tax that is administered by the Department of Revenue is imposed in the county; and

 (2) the county collected at least one hundred thousand dollars in state accommodations taxes as imposed pursuant to Section 12‑36‑920(A) in the most recent fiscal year for which full collection figures are available.

 Once a county meets the provisions of item (1) and the threshold in item (2), it thereafter remains eligible to impose this tax pursuant to this subsection.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor’s signature on June 12, 2008); 2014 Act No. 290 (S.940), Section 1, eff June 24, 2014; 2016 Act No. 182 (S.1233), Section 1, eff May 25, 2016.

Effect of Amendment

2014 Act No. 290, Section 1, added subsection designator (A), and added subsections (B) through (F).

2016 Act No. 182, Section 1, in (F)(1), substituted “had not” for “has not”, and inserted reference to the education capital improvements sales tax.

ARTICLE 5

Personal Property Tax Exemption Sales Tax Act

**SECTION 4‑10‑510.** Article title.

 This article may be cited as the “Personal Property Tax Exemption Sales Tax Act”.

HISTORY: 2000 Act No. 387, Part II, Section 99A, eff March 6, 2001.

**SECTION 4‑10‑520.** Purpose.

 This article provides the only method in which the governing body of a county by ordinance may exempt private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors from property taxes levied in the county as provided in Section 3, Article X of the Constitution of this State.

HISTORY: 2000 Act No. 387, Part II, Section 99A, eff March 6, 2001.

**SECTION 4‑10‑530.** Meaning of “county”.

 As used in this article, a county has the meaning provided for “county areas” in Section 4‑10‑10(1).

HISTORY: 2000 Act No. 387, Part II, Section 99A, eff March 6, 2001.

**SECTION 4‑10‑540.** Imposition of sales and use tax to replace vehicle tax.

 (A) Subject to the requirements of this article, the county council by ordinance may impose a sales and use tax in increments of one‑tenth of one percent, not to exceed two percent, subject to referendum approval. The rate of the tax must be set at an amount expressed in tenths of one percent estimated to be sufficient to produce revenues that do not exceed those necessary to replace private passenger motor vehicle, motorcycle, general aviation aircraft, boat, and boat motor property tax revenue in the county in the most recently completed fiscal year, but in no case more than two percent. The county council must obtain from the Board of Economic Advisors the board’s certified estimate of the rate of sales and use tax necessary in the county to equal property tax revenues derived from private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors in the latest completed fiscal year. If this rate exceeds two percent, the maximum rate the board may certify is two percent. This certified rate is the rate of tax that must appear in the referendum question. If the revenue of a two percent tax does not at least equal the revenue not collected, then for the first year of implementation, the shortfall must be made up by a distribution to the county from the Trust Fund for Tax Relief, and this distribution is considered additional sales tax revenue pursuant to this article. Thereafter, this distribution must be adjusted by an amount equal to any increase in the consumer price index in the most recently completed calendar year, but in no case may this distribution result in a reimbursement to a county that exceeds the personal property tax revenue not collected because of the exemption allowed by this article.

 (B) If the property tax assessment ratio applicable to private passenger motor vehicles and motorcycles is reduced, then for a county where the tax allowed by this article is imposed, the board shall certify a new tax rate applying the reduced assessment ratio to the assessed value of vehicles in the county in the most recently completed fiscal year, using the millage applicable for that fiscal year, and calculate a tax rate sufficient to produce that revenue in a fiscal year plus the revenue not collected because of the exemption for general aviation aircraft, boats, and boat motors from the original calculation, not to exceed two percent. This new rate applies effective beginning with the month the assessment ratio changes and continues to apply while that assessment ratio applies or until the tax is rescinded.

HISTORY: 2000 Act No. 387, Part II, Section 99A, eff March 6, 2001.

**SECTION 4‑10‑550.** Ordinance and referendum; certification of results.

 (A) The sales and use tax authorized by this article is imposed by an enacting ordinance of the county council.

 (B) Upon receipt of the ordinance, the county election commission shall conduct a referendum on the question of imposing the sales and use tax. A referendum for this purpose must be held at the time of the general election. Two weeks before the referendum the election commission shall publish in a newspaper of general circulation the question that is to appear on the ballot. This notice is in lieu of any other notice otherwise required by law.

 (C) The referendum question to be on the ballot must read substantially as follows:

 “Must a (rate) sales and use tax be imposed in (county) to replace property tax revenues not collected because of a one hundred percent property tax exemption for private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors otherwise taxable in the county?

Yes [ ]

No [ ]”

 (D) All qualified electors desiring to vote in favor of imposing the tax shall vote “Yes” and all qualified electors opposed to imposing the tax shall vote “No”. If a majority of the votes cast are in favor of imposing the tax, then the tax is imposed as provided in this article and beginning for motor vehicle tax years beginning on and after that date, and all other property tax years beginning after the year in which the referendum is held, all private passenger motor vehicles as defined in Section 56‑3‑630, motorcycles, general aviation aircraft, boats, and boat motors otherwise taxable in the county are exempt from property taxes levied in the county. The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the result no later than December thirty‑first to the county governing body and to the Department of Revenue.

 (E) Upon receipt of the returns of the referendum, the county council, by resolution, shall declare the results thereof. The results of the referendum may not be questioned except by a suit or proceeding instituted within thirty days from the date the resolution is adopted.

HISTORY: 2000 Act No. 387, Part II, Section 99A, eff March 6, 2001.

**SECTION 4‑10‑560.** Date of imposition.

 If the sales and use tax is approved in the referendum, the tax is imposed on the first of July following the date of the referendum. If the certification is not timely made to the Department of Revenue, the imposition and property tax exemption is postponed for twelve months.

HISTORY: 2000 Act No. 387, Part II, Section 99A, eff March 6, 2001.

**SECTION 4‑10‑570.** Petition to rescind; referendum.

 (A) Upon petition of at least fifteen percent of the qualified electors of a county presented to the county council of the county which has implemented the sales and use tax authorized by this article requesting that this tax be rescinded, the council shall direct the county election commission to conduct a referendum on the question of rescinding the sales and use tax. A referendum for this purpose must be held on the Tuesday following the first Monday in November following verification of the petition. Two weeks before the referendum the election commission shall publish in a newspaper of general circulation the question that is to appear on the ballot. This notice is in lieu of any other notice otherwise required by law.

 (B) The referendum question to be on the ballot must read substantially as follows:

 “Must the (rate) sales and use tax imposed in (county) be rescinded with the revenue not collected replaced by extending the property tax to private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors previously not subject to property tax in this county?

Yes [ ]

No [ ]”

 (C)(1) All qualified electors desiring to vote in favor of rescinding the tax shall vote “Yes” and all qualified electors opposed to rescinding the tax shall vote “No”. If a majority of the votes cast are in favor of rescinding the tax, then the tax is rescinded effective July first following the referendum and property taxes apply to all private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors taxable in the county for motor vehicle tax years beginning after June 30 following the referendum and other property tax years beginning after the year in which the referendum is held. The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the result no later than December thirty‑first to the county council. If a majority “Yes” vote is certified, it must be certified to the Department of Revenue by the same date.

 (2) Upon receipt of the return of the referendum, the county council shall declare the results thereof by resolution. The results of the referendum may not be questioned except by a suit or proceeding instituted within thirty days from the date the resolution is adopted.

 (D) A referendum for rescission of this tax may not be held earlier than two years after the tax has been imposed in the county. If a majority of the qualified electors voting in the rescission referendum vote against rescinding the tax, no further rescission referendums may be held for a period of two years. If a majority of the qualified electors vote in favor of rescinding the tax, the tax may not be reimposed in the county for a period of two years. The petition requesting rescission must be presented to the county governing body at least one hundred twenty days before the Tuesday following the first Monday of November of that year or the referendum must be held on the Tuesday following the first Monday of November of the following year.

HISTORY: 2000 Act No. 387, Part II, Section 99A, eff March 6, 2001.

**SECTION 4‑10‑580.** Administration and collection.

 (A) The tax levied pursuant to this article must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected. The department may prescribe amounts that may be added to the sales price because of the tax.

 (B) The tax authorized by this article is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36 of Title 12 and the enforcement provisions of Chapter 54 of Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 are exempt from the tax imposed by this article. The tax imposed by this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36 of Title 12.

 (C) Taxpayers required to remit taxes under Article 13, Chapter 36 of Title 12 shall identify the county in which the personal property purchased at retail is stored, used, or consumed in this State.

 (D) Utilities shall report sales in the county in which the consumption of the tangible personal property occurs.

 (E) A taxpayer subject to the tax imposed by Section 12‑36‑920, who owns or manages rental units in more than one county shall report separately in his sales tax return the total gross proceeds from business done in each county.

 (F) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under this article in a county, either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the sales and use tax provided in this article if a verified copy of the contract is filed with the Department of Revenue within six months after the imposition date of the sales and use tax provided for in this article.

 (G) Notwithstanding the imposition date of the sales and use tax authorized pursuant to this chapter, with respect to services that are billed regularly on a monthly basis, the sales and use tax authorized pursuant to this article is imposed beginning on the first day of the billing period beginning on or after the imposition date.

HISTORY: 2000 Act No. 387, Part II, Section 99A, eff March 6, 2001.

**SECTION 4‑10‑590.** Distribution of revenues.

 (A) The revenues of the tax collected under this article must be remitted to the Department of Revenue and placed on deposit with the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues quarterly to the county treasurer of the county in which the tax is imposed. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocations.

 (B) Revenues of the tax must be distributed by the county treasurer to the general funds of property taxing entities in the county in the proportion that each such entity collects of all property taxes levied in the county.

HISTORY: 2000 Act No. 387, Part II, Section 99A, eff March 6, 2001.

**SECTION 4‑10‑600.** Availability of data to calculate distributions.

 The Board of Economic Advisors shall furnish data to the State Treasurer and to the counties receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to counties upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12‑54‑240. A person violating this section is subject to the penalties provided in Section 12‑54‑240.

HISTORY: 2000 Act No. 387, Part II, Section 99A, eff March 6, 2001.

ARTICLE 7

Local Option Sales and Use Tax

For Local Property Tax Credits

**SECTION 4‑10‑720.** Definitions.

 As used in this article:

 (1) “Class of property” means property classified for property tax purposes as provided pursuant to Section 1, Article X of the Constitution of this State and as further permitted in Section 12‑43‑220. Property subject to a fee in lieu of property taxes, as defined in Chapter 12, Title 4 is not included in this definition of a class of property. All classes of property are provided a credit against property tax liability as provided in this article.

 (2) “Political subdivision” means a county, or a school district located wholly or partly within a county area, or both the county and a school district so located.

 (3) “Property tax” means all property tax millage imposed for operating purposes by a political subdivision.

 (4) “Property tax liability” means the amount of tax due as a result of the imposition of property tax.

 (5) “ORS” means the Office of Research and Statistics of the Revenue and Fiscal Affairs Office.

HISTORY: 2006 Act No. 388, Pt III, Section 1, eff January 1, 2007.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

**SECTION 4‑10‑730.** Local option sales and use tax; credit against property tax liability.

 (A)(1) Subject to the requirements of this article, the governing body of the county by a county council ordinance or by an initiated ordinance submitted to the governing body of the county by a petition signed by qualified electors of the county, equal in number to at least seven percent of the qualified electors of the county, may impose a sales and use tax in increments of one‑tenth of one percent, not to exceed one percent, subject to referendum approval in order to provide a credit against property tax imposed by a political subdivision for all classes of property subject to such tax. The ordinance may provide for a credit against the property tax liability for the county or the school district(s) in the county, or the property tax liability for both the county and the school district(s) in the county. An ordinance must be enacted or a petition initiating an ordinance must be presented to the county governing body at least one hundred twenty days before the Tuesday following the first Monday of November of that year.

 (2) The rate of the tax must be set at an amount expressed in tenths of one percent estimated to be sufficient to produce revenues that do not exceed those necessary to replace property tax revenue in the county for the affected political subdivisions in the most recently completed fiscal year, but not more than one percent and must take into account reimbursements received by political subdivisions for property tax exemptions.

 (3) If the county or municipality within the county has enacted a tax increment financing redevelopment plan, or other financing plan that relies upon property tax for its funding to retire indebtedness or pay for project costs, the rate of tax must be set in an amount that must consider full funding for the project or retirement of indebtedness, which must include compliance with any covenants in the governing documents authorizing this indebtedness or future indebtedness heretofore authorized by the tax increment financing redevelopment plan that relies upon property tax for its funding for the amount that the sales tax would substitute for the property tax payments. The revenues of such tax attributable to the funding replacement for a tax increment redevelopment financing plan that relies upon property tax for its funding must be distributed by the county treasurer pursuant to Section 4‑10‑780.

 (4) The governing body of the county shall obtain from ORS after ORS has obtained all information necessary to provide such estimate, a certified estimate of the rate of sales and use tax necessary in the county to equal the property tax not collected, and for the amount, if applicable, for the funding replacement for the tax increment financing redevelopment plan or other financing plan that relies upon property tax for its funding. This certified rate, not to exceed one percent, is the rate of tax that must appear in the referendum question.

 (5) A qualified elector of the county desiring to circulate a petition shall file a written request with the governing body of the county detailing the property tax liability or liabilities to which the credit will apply and the governing body shall forward the request to ORS, which shall design the petition form in consultation with the State Election Commission and calculate and certify the tax rate necessary to provide the credits proposed in the petition. The petition form and a copy of the certification must be forwarded to the governing body of the county and the governing body shall provide the petition form to the qualified elector requesting the petition form.

 (6) If competing petitions are timely filed with the governing body of the county and the signatures verified, the governing body may determine which petition initiated ordinance shall go on the ballot or it may substitute its own ordinance in lieu of any petition initiated ordinance.

 (B) If the sales and use tax authorized pursuant to this article is imposed in a county, then the sales and use tax revenue must be used to provide a credit against the property tax liability on all classes of property by the affected political subdivision.

HISTORY: 2006 Act No. 388, Pt III, Section 1, eff January 1, 2007.

**SECTION 4‑10‑740.** Referendum.

 (A) Upon receipt of the ordinance, the county election commission shall conduct a referendum on the question of imposing the sales and use tax. A referendum for this purpose must be held on the first Tuesday after the first Monday in November in any year. Two weeks before the referendum, the election commission shall publish in a newspaper of general circulation the question that is to appear on the ballot. This notice is in lieu of any other notice otherwise required by law.

 (B) The referendum question to be on the ballot must read substantially as follows:

 “Must a (rate) sales and use tax be levied in \_\_\_\_\_\_\_ County for the purpose of allowing a credit for all classes of property against the property tax liability for [affected political subdivision(s)] operations?

Yes []

No []”

 (C) All qualified electors desiring to vote in favor of imposing the tax shall vote “Yes” and all qualified electors opposed to imposing the tax shall vote “No”. If a majority of the votes cast are in favor of imposing the tax, the tax is imposed as provided in this article, and beginning after the fiscal year in which the referendum is held, all classes of property in the county shall receive a credit against the property tax liability of the political subdivision. The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the results no later than December thirty‑first to the county governing body and to the Department of Revenue. The credit must be calculated in the manner provided pursuant to Section 4‑10‑40(B), mutatis mutandis.

 (D) Upon receipt of the returns of the referendum, the county council, by resolution, shall declare the results thereof. The results of the referendum may not be questioned except by a suit or proceeding instituted within thirty days from the date the resolution is adopted.

HISTORY: 2006 Act No. 388, Pt III, Section 1, eff January 1, 2007.

**SECTION 4‑10‑750.** Subsequent referendum.

 (A) If the sales and use tax is approved in the referendum, the tax must be imposed by ordinance on the first of July following the date of the referendum. If the certification is not timely made to the Department of Revenue, the imposition of the tax and the property tax credits are postponed for twelve months.

 (B) If the sales and use tax is not approved in the referendum, the county governing body by ordinance, or seven percent of the qualified electors of the county, by an initiated ordinance submitted to the governing body of the county, may provide for a subsequent referendum held in the manner provided pursuant to Section 4‑10‑740, but such a referendum may be held only on the first Tuesday after the first Monday in November in any year.

HISTORY: 2006 Act No. 388, Pt III, Section 1, eff January 1, 2007.

**SECTION 4‑10‑760.** Referendum on question of rescinding tax.

 (A) Upon petition of at least seven percent of the qualified electors of a county presented to the county council of the county which has implemented the sales and use tax authorized by this article requesting that this tax be rescinded, the council shall direct the county election commission to conduct a referendum on the question of rescinding the sales and use tax. A referendum for this purpose must be held on the Tuesday following the first Monday in November following verification of the petition. Two weeks before the referendum, the election commission shall publish in a newspaper of general circulation the question that is to appear on the ballot. This notice is in lieu of any other notice otherwise required by law.

 (B) The referendum question to be on the ballot must read substantially as follows:

 “Must the (rate) sales and use tax levied in \_\_\_\_\_\_\_\_\_\_ County for the purpose of allowing a credit for all classes of property against the property tax liability imposed for [affected political subdivision(s)] operations be rescinded?

Yes []

No []”

 (C)(1) All qualified electors desiring to vote in favor of rescinding the tax shall vote “Yes” and all qualified electors opposed to rescinding the tax shall vote “No”. If a majority of the votes cast are in favor of rescinding the tax, the tax is rescinded effective July first following the referendum and the applicable property taxes apply without credit beginning after the year in which the referendum is held. The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the result no later than December thirty‑first to the county council. If a majority “Yes” vote is certified, it must be certified to the Department of Revenue by the same date.

 (2) Upon receipt of the return of the referendum, the county council shall declare the results thereof by resolution. The results of the referendum may not be questioned except by a suit or proceeding instituted within thirty days from the date the resolution is adopted.

 (D) A referendum for rescission of this tax may not be held earlier than two years after the tax has been imposed in the county. If a majority of the qualified electors voting in the rescission referendum vote against rescinding the tax, no further rescission referendums may be held for a period of two years. If a majority of the qualified electors vote in favor of rescinding the tax, the tax may not be reimposed in the county for a period of two years. The petition requesting rescission must be presented to the county governing body at least one hundred twenty days before the Tuesday following the first Monday of November of that year or the referendum must be held on the Tuesday following the first Monday of November of the following year.

HISTORY: 2006 Act No. 388, Pt III, Section 1, eff January 1, 2007.

**SECTION 4‑10‑770.** Collection process.

 (A) The tax levied pursuant to this article must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected. The department may prescribe amounts that may be added to the sales price because of the tax.

 (B)(1) The tax authorized by this article is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36 of Title 12 and the enforcement provisions of Chapter 54 of Title 12.

 (2) The tax imposed by this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36 of Title 12.

 (3) Any additional local sales and use tax imposed by this article does not apply to:

 (a) amounts taxed pursuant to Section 12‑36‑920(A), the tax on accommodations for transients;

 (b) items subject to a maximum sales and use tax pursuant to Section 12‑36‑2110; and

 (c) unprepared food that may be lawfully purchased with United States Department of Agriculture food coupons.

 (C) Taxpayers required to remit taxes under Article 13, Chapter 36 of Title 12 shall identify the county in which the personal property purchased at retail is stored, used, or consumed in this State.

 (D) Utilities shall report sales in the county in which the consumption of the tangible personal property occurs.

 (E) A taxpayer subject to the tax imposed by Section 12‑36‑920, who owns or manages rental units in more than one county, shall report separately in his sales tax return the total gross proceeds from business done in each county.

 (F) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under this article in a county, either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the sales and use tax provided for in this article if a verified copy of the contract is filed with the Department of Revenue within six months after the imposition date of the sales and use tax provided for in this article.

 (G) Notwithstanding the imposition date of the sales and use tax authorized pursuant to this chapter, with respect to services that are billed regularly on a monthly basis, the sales and use tax authorized pursuant to this article is imposed beginning on the first day of the billing period beginning on or after the imposition date.

HISTORY: 2006 Act No. 388, Pt III, Section 1, eff January 1, 2007.

**SECTION 4‑10‑780.** Distribution of revenues.

 (A) The revenues of the tax collected under this article must be remitted to the Department of Revenue and placed on deposit with the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues quarterly to the county treasurer of the county in which the tax is imposed. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocations.

 (B)(1) Revenues of the tax collected and deposited pursuant to subsection (A) of this section must be distributed by the county treasurer to the political subdivisions as determined by the ordinance establishing the referendum.

 (2) The amount of the revenues of the tax collected that is attributable to the funding replacement for the tax increment financing redevelopment plan or other financing plan that relies upon property tax for its funding for a particular political subdivision must be distributed by the county treasurer to the political subdivision that has enacted this financing plan to be deposited into the special tax allocation fund or other similar fund of that political subdivision as may be required by the tax increment financing law, as applicable to counties or municipalities, or by other applicable law.

 (3) For counties in which there is more than one school district, the county treasurer shall distribute the revenues of the tax:

 (a) in direct proportion to the one‑hundred‑thirty‑five‑day average daily membership as referenced in Section 59‑20‑40(1)(a) for each of the school districts for the fiscal year immediately preceding that in which a distribution is made, as certified by the State Treasurer, upon advice of the State Department of Education;

 (b) pursuant to a distribution plan unanimously agreed upon by all entities with fiscal authority over the school districts within the county; or

 (c) pursuant to a distribution plan authorized by local act of the General Assembly or local ordinance.

 (4) For school districts that are composed of more than one county, the county treasurer shall distribute the revenues of the tax:

 (a) to the portion of the school district that resides in the county adopting the provisions of this article in proportion to the district’s one‑hundred‑thirty‑five‑day average daily membership, as referenced in Section 59‑20‑40(1)(a), in comparison to the remainder of the school district outside of the county; or

 (b) pursuant to a distribution plan authorized by agreement of the multiple counties comprising the school district through local act of the General Assembly or local ordinance. For purposes of this section, the one‑hundred‑thirty‑five‑day average daily membership as referenced in Section 59‑20‑40(1)(a) excludes any student not residing in the county.

HISTORY: 2006 Act No. 388, Pt III, Section 1, eff January 1, 2007.

**SECTION 4‑10‑790.** Calculating distributions and estimating revenues; use of data furnished by Revenue and Fiscal Affairs Office.

 The Revenue and Fiscal Affairs Office shall furnish data to the State Treasurer and to the applicable political subdivisions receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to political subdivisions upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12‑54‑240. A person violating this section is subject to the penalties provided in Section 12‑54‑240.

HISTORY: 2006 Act No. 388, Pt III, Section 1, eff January 1, 2007.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

**SECTION 4‑10‑800.** Millage limits.

 Nothing in this article in anyway alters the property tax millage limits imposed on political subdivisions pursuant to Section 6‑1‑320.

HISTORY: 2006 Act No. 388, Pt III, Section 1, eff January 1, 2007.

**SECTION 4‑10‑810.** Revenues as one of local revenues used in computation of Education Improvement Act maintenance of local effort.

 Where applicable, the actual revenues of the sales and use tax collected pursuant to this article that are used to provide a credit against the property tax liability for school operations must be considered, pursuant to the requirements of Section 59‑21‑1030, one of the local revenues used in computation of the required Education Improvement Act maintenance of local effort.

HISTORY: 2006 Act No. 388, Pt III, Section 1, eff January 1, 2007.

ARTICLE 9

Local Option Tourism Development Fee

**SECTION 4‑10‑910.** Citation of article.

 This article may be cited as the “Local Option Tourism Development Fee Act”.

HISTORY: 2009 Act No. 3, Section 1, eff upon approval (became law without the Governor’s signature on April 9, 2009).

**SECTION 4‑10‑920.** Definitions.

 For purposes of this article:

 (1) “County” means a county in which revenues of the state accommodations tax imposed pursuant to Section 12‑36‑920 have aggregated at least fourteen million dollars in a fiscal year.

 (2) “Fee” means the local option tourism development fee allowed to be imposed as provided in this article.

 (3) “Municipality” means a municipal corporation created pursuant to Chapter 1, Title 5 or a municipal government as the use of the term dictates, located in a county as defined by subsection (1).

HISTORY: 2009 Act No. 3, Section 1, eff upon approval (became law without the Governor’s signature on April 9, 2009).

**SECTION 4‑10‑930.** Imposition of fee; referendum and ballot; recision; filing results with Department of Revenue.

 (A) Subject to the requirements of this article, a municipality may impose in the municipality a fee not to exceed one percent for not more than ten years for the purposes provided in Section 4‑10‑970 by:

 (1) an ordinance adopted by a supermajority of the municipal council which must be at least two‑thirds of the members of a municipal council; or

 (2) the approval of a majority of qualified electors voting in a referendum held pursuant to this section called by a majority of the members of the municipal council.

 (B)(1) Upon the adoption of a resolution calling for a referendum by the municipal council, the municipal election commission in each municipality shall conduct a referendum on the first Tuesday ninety days after the adoption of the resolution on the question of implementing the fee within the municipality. The state election laws apply to the referendum, mutatis mutandis. The municipal election commission shall publish the results of the referendum and certify them to the municipal council. The fee must not be imposed in the municipality, unless a majority of the qualified electors voting in the referendum approve the question.

 (2) The ballot must read substantially as follows:

 “Must a one percent fee on the gross proceeds of sales or sales price of all amounts subject to the sales and use tax imposed pursuant to Chapter 36, Title 12, but not the gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 and the gross proceeds of sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons, be levied in \_\_\_\_\_\_\_\_\_\_ for the purpose of tourism advertisement and promotion directed at non‑South Carolina residents?

Yes []

No []”

 (3) If the question is not approved at the initial referendum, the municipal council may call for another referendum on the question. However, following the initial referendum, a referendum for this purpose must not be held more often than once in a twenty‑four month period on the Tuesday following the first Monday in November in even‑numbered years.

 (4) Two weeks before the referendum, the municipal council shall publish in a newspaper of general circulation within the jurisdiction a description of and the uses for the fee.

 (C)(1) Upon the adoption of a resolution calling for a referendum to rescind the fee by the municipal council, the municipal election commission shall conduct a referendum in the same manner provided in subsection (B) on the question of rescinding the fee imposed by this section. The state election laws apply to the referendum, mutatis mutandis. The municipal election commission shall publish the results of the referendum and certify them to the municipal council. The fee must be rescinded in the municipality upon the certification of the results if a majority of the qualified electors voting in the referendum vote in favor of rescinding the fee.

 (2) The ballot must read substantially as follows:

 “Must the one percent local fee levied in \_\_\_\_\_\_\_\_\_\_ pursuant to Section 4‑10‑930 of the 1976 Code be rescinded?

Yes []

No []”

 (3) A referendum for rescission of this fee may not be held earlier than two years after the fee has been levied in the municipality. If a majority of the qualified electors voting in the rescission referendum vote against rescinding the fee, no further rescission referendums may be held for a period of twenty‑four months on the first Tuesday following the first Monday in November of even‑numbered years. If a majority of the qualified electors vote in favor of rescinding the tax, the fee may not be reimposed in the municipality for a period of two years.

 (D) The imposition date of the fee allowed pursuant to this article is the first day of the first month beginning more than sixty days after the municipality files a certified copy of the imposition ordinance or the certification of the results of the referendum with the South Carolina Department of Revenue.

 (E) Once a certified copy of the ordinance or referendum results is filed with the Department of Revenue, for the period of imposition provided in that ordinance or referendum, the department may not accept as filed any additional ordinance or referendum results from the municipality that in any way relates to the fee allowed to be imposed pursuant to this chapter except an ordinance or the referendum results reducing or repealing the existing fee. The department shall accept for filing a certified copy of an ordinance or referendum results reducing or repealing the fee and that reduction or repeal applies in the manner provided in Section 4‑10‑930(D) for imposition.

HISTORY: 2009 Act No. 3, Section 1, eff upon approval (became law without the Governor’s signature on April 9, 2009).

CROSS REFERENCES

Reimposition of local option tourism development fee, see Section 4‑10‑980.

**SECTION 4‑10‑940.** Allowable fee; administration and collection.

 (A) The fee allowed by this article is an amount not to exceed one percent of the gross proceeds of sales or sales price of all amounts subject to the sales and use tax imposed pursuant to Chapter 36, Title 12.

 (B) The fee imposed pursuant to this article must be administered and collected by the Department of Revenue in the same manner that sales and use taxes are collected. The department may prescribe amounts that may be added to the sales price because of the fee.

 (C) The fee authorized by this article is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36, Title 12 and the enforcement provisions of Chapter 54, Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 and the gross proceeds of sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons are exempt from the fee imposed by this article. The fee imposed by this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36, Title 12.

 (D) The provisions of subsections (C), (D), (E), (F), and (G) of Section 4‑10‑350 apply for fee payors and the fee allowed to be imposed pursuant to this article, including further identification of point of sale jurisdictions, mutatis mutandis.

 (E) The revenues of the fee imposed pursuant to this article must be remitted to the Department of Revenue and placed on deposit with the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues and interest quarterly based on point of collection to the treasurer of the municipality in which the fee is imposed and the revenues must be used only for the purposes provided in Section 4‑10‑970. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocations. However, allocations made as a result of municipal code errors must be corrected prospectively.

HISTORY: 2009 Act No. 3, Section 1, eff upon approval (became law without the Governor’s signature on April 9, 2009).

**SECTION 4‑10‑960.** Information for purpose of calculating distributions and estimating revenues.

 The Department of Revenue shall furnish data to the State Treasurer and to the municipal treasurers receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to municipalities upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12‑54‑240. A person violating this section is subject to the penalties provided in Section 12‑54‑240.

HISTORY: 2009 Act No. 3, Section 1, eff upon approval (became law without the Governor’s signature on April 9, 2009).

**SECTION 4‑10‑970.** Use of revenues; designation of receiving organizations and regional tourism promoters; report required.

 (A)(1) Except as provided in item (2) of this subsection, all revenues and interest of the fee must be used exclusively for tourism advertisement and promotion directed at non‑South Carolina residents.

 (2) Revenues received in the second and subsequent years of imposition must be used as provided in item (1) except that up to twenty percent may be retained by the municipality and used as follows:

 (a) at least twenty percent of the amount retained must be used to provide a credit against the property tax liability imposed by the municipality on parcels of owner‑occupied residential property located in the municipality classified for property taxes pursuant to Section 12‑43‑220(c). The credit is an amount determined by multiplying the appraised value of the residence by a fraction in which the numerator is the total estimated revenue retained by the municipality allocated to the credit and the denominator is the total of the appraised value of all such property in the municipality as of January first of the applicable property tax year. For purposes of this calculation, appraised value is as defined in Section 12‑37‑3130(3) reduced by the limitation provided pursuant to Section 12‑37‑3140(B);

 (b) the balance for tourism‑related capital projects. No capital project is eligible to be funded directly or indirectly with fee revenues unless the project consists of construction of new or renovation of existing tourism‑related facilities intended to grow or maintain the overnight tourism market in the municipality; and

 (c) the credit allowed pursuant to subitem (a) of this item applies after all other credits have been applied. To the extent that the credit amount allowed by this item exceeds the municipal property tax liability, the excess credit is added to the amount set aside for use as provided in subitem (b) of this item. If no projects are funded pursuant to subitem (b) of this item, the excess credit must be used to provide a credit against the municipal tax liability of all taxable property in the municipality ineligible for the credit allowed by subitem (a) of this item. This credit must be calculated in the same manner as the credit provided in subitem (a), mutatis mutandis.

 (B) The municipality shall designate no more than two organizations within the county to receive the revenues and interest and conduct the promotional activities provided pursuant to subsection (A)(1). These organizations must be nonprofit destination marketing organizations representing a broad cross‑section of tourism interests within the county. In addition, before an organization may be designated, it must certify to the imposing municipality that:

 (1) its promotional and advertising programs are based on research based outcomes;

 (2) the organization has a proven record of success in creating new and repeat visitation to the county;

 (3) it has sufficient resources to create, plan, implement, and measure the marketing program generated by the fee revenues;

 (4) it will use the funds only for the purposes provided pursuant to subsection (B)(1) of this section.

 (C) Municipalities located in the same county that are imposing a fee pursuant to this article jointly may designate a regional tourism promoter located in the county to jointly promote tourism in the municipalities imposing the fee. The regional tourism promoter must be designated in the manner provided in subsection (B) and only may promote tourism to non‑South Carolina residents.

 (D) At least quarterly, an organization designated by the municipality pursuant to this section shall provide a report to the municipality that includes identification of revenues received from the Local Option Tourism Development Fee during the previous quarter, as well as expenditures made from those funds during the previous quarter. Each report also shall be posted by the organization on its website.

HISTORY: 2009 Act No. 3, Section 1, eff upon approval (became law without the Governor’s signature on April 9, 2009); 2010 Act No. 130, Sections 1, 2, eff upon approval (became law without the Governor’s signature on February 25, 2010).

Effect of Amendment

The 2010 amendment rewrote subsection (A) and added subsection (D).

CROSS REFERENCES

Reimposition of local option tourism development fee, see Section 4‑10‑980.

**SECTION 4‑10‑980.** Reimposition of local option tourism development fee.

 The fee authorized in this article may be renewed and imposed within a municipality in the same manner as authorized by this article for the initial imposition of the fee. If the fee is reimposed pursuant to Section 4‑10‑930(A)(2), the referendum on the question of reimposition of the fee must not be held earlier than within the calendar year which is two years before the calendar year in which the fee then in effect is scheduled to terminate. Notwithstanding Section 4‑10‑930(D) and (E), any reimposition of the fee is effective immediately upon the termination of the fee previously imposed. Revenues from the reimposition must be expended for the same purposes as set forth in this article, and the provisions of Section 4‑10‑970(A)(2) apply immediately upon reimposition.

HISTORY: 2016 Act No. 249 (H.5011), Section 1, eff June 1, 2016.