



ALAN WILSON
ATTORNEY GENERAL

October 31, 2023

Virginia L. Merck-Dupont, Esq.
County Attorney
Lancaster County
101 N. Main St.
Lancaster, SC 29720

Dear Ms. Merck-Dupont:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

I am writing you today to request an expedited opinion regarding the ability for a County to impose three local sales and use taxes at one time. Currently Lancaster County has a Local Option Sales Tax imposed pursuant to S.C. Code Ann. 4-10-10 *et seq.* In addition, the County has imposed a Capital Project Sales Tax following a successful referendum in accordance with S.C. Code Ann. 4-10-310 *et seq.* The current Capital Project Sales Tax is set to expire in 2028 but County Council is contemplating proceeding with the imposition of another penny provided there is a successful referendum. As such, Lancaster County currently has two local sales and use taxes on the books. County Council is contemplating a third local sales and use tax in the form of the Transportation Penny pursuant to S.C. Code Ann. 4-37-30 *et seq.* and our intention is to make sure that a possible third local sales and use tax is allowed pursuant to the South Carolina Code.

In May 2022, the Governor signed into law Act No. 189 which added S.C. Code Ann. 4-37-60 to provide that a county that has imposed a tax pursuant to Chapter 37, Title 4 (the Transportation Tax) might also impose a Capital Projects Sales and Use Tax. That Act further added S.C. Code Ann. 4-10-315 which would provide that a County that has imposed another sales and use tax also may impose a tax pursuant to Chapter 37, Title 4. In looking at this Act and the new sections of the Code which were added, it seems apparent that the legislature has allowed for the imposition of both a Transportation Tax and a Capital Projects Sales and Use Tax.

What gives Lancaster County concern, however, is the language in S.C. Code Ann. 4-10-315 which was added and states: “Notwithstanding Section 4-10-310, Section 4-37-40, or any other provision of law, a county which has imposed by ordinance a sales and use tax in an amount not to exceed one percent within its jurisdiction pursuant to this chapter may utilize the provisions of Chapter 37, Title 4 to impose an additional sales and use tax in an amount not to exceed one percent within its jurisdiction.” Again, it seems apparent that both a Capital Projects Sales Tax and Transportation Tax may be imposed at the same time, but what is less clear for Lancaster County is whether the Local Option Sales Tax and the Capital Projects Sales Tax, both authorized under Title 4, Chapter 10 can be in place and then the Transportation Penny authorized under Title 4, Chapter 37 be imposed - particularly in light of the language that states “a county which has imposed by ordinance a sales and use tax in an amount not to exceed one percent . . . may utilize the provisions of Chapter 37, Title 4 to impose an additional sales and use tax in an amount not to exceed one percent within its jurisdiction.” (emphasis upon the use of “a” sales tax under Chapter 10, Title 4).

According to information received by Lancaster County, when the legislation was being discussed by the General Assembly, it was a common reference that this legislation would allow for two pennies at the local level, but the County also recognizes that may have been more focused on the ability to have the two pennies for capital projects and transportation and not considered the other penny in the local option sales tax. Lancaster County’s concern is that the state of the law and more particularly, the language included in the newly added S.C. Code Ann., particularly in 4-10-315 may limit the County to only imposing one local sales and use tax under Title 4, Chapter 10 (either the local option sales tax or the capital penny sales tax) and the transportation penny.

The County is aware that several other counties currently do or are in the process of imposing a third penny, however, the County also recognizes that those counties do not have the local options sales tax, the transportation tax and the capital penny sales tax - those counties that already have three taxes have the local option sales tax, transportation tax and education capital improvement tax and the one considering has the capital penny and the education capital penny. While Lancaster County recognizes that the education capital improvement tax is included under Title 4, Chapter 10 similar to the local option sales tax and capital improvement tax, does the fact that the education capital improvement tax is imposed by the school district as opposed to the County Council change the nature of the imposition

of more than two 1% penny taxes at the local level and thus allow for the three pennies which exist in certain counties?

Law/Analysis

It is this Office's opinion that a county which has adopted both a Local Option Sales Tax, S.C. Code § 4-10-10 *et seq.*, and a Capital Project Sales Tax, S.C. Code § 4-10-300 *et seq.*, may also adopt a sales and use tax to finance transportation facilities ("Transportation Penny Tax") according to the provisions in Chapter 37, Title 4 of the South Carolina Code of Laws.

Your letter's stated concern is that section 4-10-315 may prohibit a county from adopting a Transportation Penny Tax if it had previously adopted more than one local sales and use tax. Section 4-10-315 is codified within Article 3, Chapter 10, Title 4 which contains the provisions of the Capital Project Sales Tax Act. It states:

Notwithstanding Section 4-10-310, Section 4-37-40, or any other provision of law, a county which has imposed by ordinance a sales and use tax in an amount not to exceed one percent within its jurisdiction pursuant to this chapter may utilize the provisions of Chapter 37, Title 4 to impose an additional sales and use tax in an amount not to exceed one percent within its jurisdiction.

S.C. Code § 4-10-315 (emphasis added). The reference in section 4-10-315 to a sales and use tax imposed "pursuant to this chapter," could be seen as a potential limitation for the counties because Chapter 10 of Title 4 contains several chapters authorizing sales and use taxes and development fees.¹ If "a sales and use tax" is interpreted to mean "only one" sales and use tax, a county that adopted any combination of sales and use taxes authorized under Chapter 10 of Title 4 would be prohibited from later adopting a Transportation Penny Tax until only one such tax remains effective.

This opinion, therefore, will analyze the statute according to the principles of statutory construction. When interpreting a statute, the primary goal is to determine the General Assembly's intent. See Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Further, "[a] statute as a whole must receive a practical, reasonable

¹ Your letter mentions several sales and use taxes which are codified in Chapter 10, Title 4; namely Article 1- Local Option Sales Tax; Article 3- Capital Project Sales Tax Act; Article 4- Education Capital Improvements Sales and Use Tax Act. Additionally, the General Assembly recently passed another such sales and use tax within this chapter at Article 10, the "County Green Space Sales Tax Act." 2022 Act No. 166.

and fair interpretation consonant with the purpose, design, and policy of lawmakers.” State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), reh’g denied (Aug. 5, 2015). Where statutes deal with the same subject matter, it is well established that they “are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result.” Penman v. City of Columbia, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010).

The plain language of section 4-10-315 suggests the General Assembly intended for the statute to allow those counties that had already adopted a Capital Projects Sales Tax “pursuant to” Chapter 10 to adopt a Transportation Penny Tax. The limiting language within the text of the statute itself is “an amount not to exceed one percent.” Id. This limitation applies to both “a sales and use tax” adopted under Chapter 10 and the “additional” sales and use tax under Chapter 37. This language does not, however, modify the number of sales and use taxes adopted. The phrase “an amount not to exceed one percent” appears to describe and reinforce the maximum tax percentage allowed under those separate sales and use tax statutory schemes.

Moreover, the related statutes and legislative history suggest that section 4-10-315 was meant to mirror the provisions in section 4-37-60 which allowed a county that had previously adopted a Transportation Penny Tax to adopt an additional Capital Projects Sales Tax. Section 4-10-315 was adopted in 2022 as part of Act Number 189. In relevant part, the title of the act states it was adopted with the intent “TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ... SECTION 4-10-315 SO AS TO PROVIDE THAT A COUNTY THAT HAS IMPOSED ANOTHER SALES AND USE TAX ALSO MAY IMPOSE A TAX PURSUANT TO CHAPTER 37, TITLE 4.” 2022 Act No. 189. Prior to the adoption of Act 189, no portion of any county could be subject to both a Capital Project Sales Tax and a Transportation Penny Tax. As previously codified, section 4-37-40 stated, “At no time may any portion of the county area be subject to more than one percent sales tax levied pursuant to this chapter, Article 3, Chapter 10 of this title, or pursuant to any local legislation enacted by the General Assembly.” S.C. Code § 4-37-40 (2021) (emphasis added).² Act 189 struck the portions in both statutes that prohibited adopting the other tax.³ Act 189 also added section 4-37-60 to explicitly permit a county, which has adopted a Transportation Penny Tax, to also adopt a Capital Project Sales Tax.

Notwithstanding Sections 4-10-310 and 4-37-40, or any other provision of law, a county which has imposed by ordinance a sales and use tax in an amount not to exceed one percent within its jurisdiction pursuant to this chapter may utilize the provisions of Article 3, Chapter 10, Title 4 to impose an additional sales and use tax in an amount not to exceed one percent within its jurisdiction.

² See also S.C. Code § 4-10-310 (2021) (“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.”) (emphasis added).

³ See 2022 Act No. 189, §§ 2,3.

S.C. Code § 4-37-60 (Supp. 2023) (emphasis added).⁴ Unlike section 4-10-315, this statute does not reference any sales and use taxes codified within Chapter 10 of Title 4 other than the Capital Project Sales Tax.⁵ Its plain language clearly permits adopting a Capital Project Sales Tax with the limitation that it “not ... exceed one percent.” Because the related statutes adopted in Act 189 struck restrictions on having a Capital Projects Sales Tax and a Transportation Penny while also making no mention of other sales and use taxes in Chapter 10 of Title 4, it seems unlikely that the General Assembly intended for the phrase “a sales and use tax [imposed]...pursuant to this chapter” in section 4-10-315 to restrict counties that have other sales and use taxes. Indeed, had the legislature intended for this phrase to restrict counties from adopting more than one sales and use tax authorized in Chapter 10, the amendment to section 4-10-310 in Act 189 would likely contain a restriction similarly reflecting this intent. However, the restriction in section 4-10-310 is only concerned with “sales tax levied pursuant to this article” and local laws previously passed by the General Assembly. S.C. Code § 4-10-310 (Supp. 2023). Because section 4-10-310 restricts Capital Project Sales Taxes adopted pursuant to Article 3, Chapter 10, Title 4, rather than all sales and use taxes in Chapter 10, Title 4, this Office does not read section 4-10-315 as a prohibition on counties that have adopted more than one sales and use tax authorized under Chapter 10, Title 4. Therefore, it is this Office’s opinion that a court would likely construe section 4-10-315 to allow a county that has adopted a Capital Project Sales Tax to also adopt a Transportation Penny Tax even if the county has also adopted other sales and use taxes codified in Chapter 10 of Title 4.

Conclusion

As is discussed more fully above, it is this Offices opinion that a county which has adopted both a Local Option Sales Tax, S.C. Code § 4-10-10 *et seq.*, and a Capital Project Sales Tax, S.C. Code § 4-10-300 *et seq.*, may also adopt a sales and use tax to finance transportation facilities (“Transportation Penny Tax”) according to the provisions in Chapter 37, Title 4 of the South Carolina Code of Laws. A county seeking to adopt one or more of these sales and use taxes may not do so unless a majority of the qualified electors voting in the referendum approve it.

Sincerely,



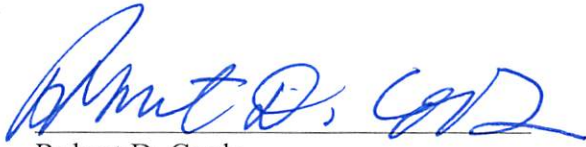
Matthew Houck
Assistant Attorney General

⁴ 2022 Act No. 189, § 1.

⁵ Because the Transportation Penny Tax is the sole sales and use tax in Chapter 37 of Title 4, the parallel reference in section 4-37-60 to a sales and use tax adopted “pursuant to this chapter” does not implicate any other sales and use taxes.

Virginia L. Merck-Dupont, Esq.
Page 6
October 31, 2023

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook". The signature is written in a cursive style with a large initial "R" and "C".

Robert D. Cook
Solicitor General