State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #95-16 (TAX)

SUBJECT:	Use of Tax From Major Tourism Facilities (Admissions Tax)
EFFECTIVE DATE:	Applies to all periods open under the statute.
SUPERSEDES:	All previous documents and any oral directives in conflict herewith.
REFERENCES:	S. C. Code Ann. Section 12-21-2423 (Supp. 1994)
AUTHORITY:	S. C. Code Ann. Section 12-4-320 (Supp. 1994) SC Revenue Procedure #94-1
SCOPE:	A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Code Section 12-21-2423 provides requirements for the collection, distribution and use of the license tax on admissions to major tourism or recreation facilities. Effective July 1, 1993, this statute applies to any major tourism or recreation facility, as defined below, which opened to the general public on or after January 1, 1993.

For major tourism and recreation facilities that meet the minimum investment requirement of the statute, one-fourth of the license tax on admissions is paid to the county or municipality in which the facility is located and one-fourth is paid to a special State fund. If the facility is located in an unincorporated area of a county, the payment is made to the county governing body and, if located within the corporate limits of a municipality, the payment must be made to the municipal governing body. Funds transferred to a State fund are transferred to the State Treasurer to be deposited in a special tourism infrastructure development fund and distributed as infrastructure development grants by the Advisory Coordinating Council for Economic Development of the Department of Commerce. These portions of the license tax are remitted to the counties or municipalities, and the State Treasurer beginning when the facility is open to the general public and ending fifteen years thereafter. These funds are to be used for additional infrastructure improvements.

The statute defines a "major tourism or recreation facility" as an "establishment or predetermined 'designated development area' to which an aggregate investment in land and new capital assets or in refurbishing or expanding an existing facility of at least twenty million dollars is made within a five-year period and which is used for a theme park, an amusement park, an historical, educational, or trade museum, a botanical or zoological garden, an aquarium, a cultural center, a theater, a motion picture production studio, a convention center, an arena, a coliseum, an auditorium, a golf course, or a spectator or participatory sports facility and similar establishments." The statute also provides a designated development area "includes, but is not limited to, a downtown or waterfront redevelopment area, a local historic district, redevelopment of a closed military facility, or a newly-designated economic development site that includes tourism or recreation facilities as described in this section."

Numerous questions have arisen concerning the administration of the funds pursuant to this statute. The following addresses these questions.

Q1. What is the minimum investment that must be made for an establishment to qualify as a "major tourism or recreation facility"?

A1. An aggregate investment in land and new capital assets or in refurbishing or expanding an existing facility of at least $20,000,000 within a five year period must be made to a major tourism or recreation facility.

Q2. How long does a business have to meet the $20,000,000 investment requirement?

A2. The statute provides that the minimum investment must be made within a five-year period. Any investments made after the five-year period may be applied to another investment.

Q3. How is the five-year investment period determined?

A3. The five-year investment period can be any consecutive five year period, provided the facilities are opened to the public after December 31, 1992.

Q4. Who certifies that the minimum investment level has been met?

A4. The Department of Revenue, with the assistance of local assessors.

Q5. Does an investment in residential property development that directly supports a recreational facility apply towards the minimum investment?

A5. No, this is not permitted by the statute. However, secondary support facilities such as hotels, food, and retail services located within the establishment or the designated development area or immediately adjacent to and which directly support the primary tourism or recreation facility are included as part of the minimum investment.

Q6. Does the purchase of an existing operation qualify as a "major tourism or recreation facility" eligible for the infrastructure incentives?

A6. No, acquisitions do not qualify. The statute provides for a required investment in land and new capital assets or in refurbishing or expanding an existing facility. However, the fifteen year period continues to run when a business purchases a qualifying business and continues to operate it in substantially the same manner.

Q7. Are there any restrictions on a county's or municipality's use of the admission taxes from major tourism or recreation facilities paid to them in accordance with Code Section 12-21-2423?

A7. These funds must be used directly or indirectly for additional infrastructure improvements. In addition, the county or municipality may share funds received from these payments with another county, special purpose district, or municipal governing body to provide additional infrastructure facilities or services in support of the tourism or recreation facility that generates the admission tax revenues responsible for the payments.

Q8. What happens to revenue collected but unused after the 15 year period?

A8. The revenue will remain in the appropriate fund and continue to be used for permitted infrastructure projects until depleted.

Q9. Where will interest or other earnings on the revenue deposited in the local county or municipal fund and revenue deposited in the State fund be credited?

A9. Interest or other earnings on the funds will be credited to the local fund or State fund which earns the interest. A separate accounting should be maintained to insure proper distribution of the interest. The funds and interest earned must be used for permitted infrastructure projects until depleted.

Q10. May local governments receive fund distributions before the business meets the minimum investment requirement?

A10. Yes, if the facility is opened to the general public and the business guarantees the minimum investment will be made within the required period, funds may be distributed to local governments for approved infrastructure improvements even if a business has not met the minimum investment.

Q11. May local governments receive funds for prior periods if the application for "Certificate of Eligibility for Portion of Admissions Tax for Infrastructure Improvements" is not approved by the Department before the facility opens?

A11. Local governments may receive funds for prior periods when the application for "Certificate of Eligibility for Portion of Admissions Tax for Infrastructure Improvements" is approved after the facility opens to the extent that admissions taxes collected after the approval

and during the same fiscal year can be allocated to correct the prior distribution. However, admissions taxes cannot be reallocated to correct distributions for prior fiscal years. It has been the longstanding policy of the State Treasurer and the Department to correct misallocations by adjusting subsequent allocations, providing these adjustments may be made only in allocations made in the same fiscal year as the misallocation.

Q12. May the boundaries of a Designated Development Area cross over the boundaries of a tax increment finance district?

A12. Yes.

Q13. When should the ordinance establishing the Designated Development Area be adopted?

A13. The statute provides that a designated development area and its boundaries must be determined in advance of the opening of the new or expanded facilities by municipal ordinance, if located in a municipality, and otherwise by county ordinance, if located in an unincorporated county area, or by more than one ordinance by municipal or county governments, or both, if it embraces areas within two or more governmental jurisdictions.

Q14. May the property boundaries of a Designated Development Area be amended?

A14. The ordinance may be amended prior to the opening of the new or expanded facility.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
Burnet R. Maybank, III, Director

Columbia, South Carolina
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