



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

SC INFORMATION LETTER #18-10

SUBJECT: Local Transportation Tax – Guidelines
(Sales and Use Tax)

DATE: August 14, 2018

REFERENCE: Title 4, Chapter 37 (Supp. 2017)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2014)
SC Revenue Procedure #09-3

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

Title 4, Chapter 37, “Optional Methods for Financing Transportation Facilities Act,” allows counties to impose a local 1% sales and use tax in order to fund permitted transportation projects in a county, such a highways, roads, streets, bridges, mass transit systems, and greenbelts.

Guidelines applicable to the use of transportation tax funds are attached.



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GUIDELINES FOR USE OF TRANSPORTATION TAX REVENUE

WHEREAS, the Optional Methods for Financing Transportation Facilities Act (the “Transportation Act”), codified at Title 4, Chapter 37 of the Code of Laws of South Carolina 1976, as amended, authorizes the governing body of a county to impose a sales and use tax in an amount not to exceed one percent (the “Transportation Tax,” sometimes commonly referred to as the Penny Tax) within its jurisdiction for a single project or for multiple projects for a specific period of time to collect a limited amount of money, *see* S.C. Code Ann. § 4-37-30(A) (Supp. 2017); and

WHEREAS, the Transportation Act provides that the types of projects permitted to be funded with Transportation Tax revenues are highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities, *see* S.C. Code Ann. § 4-37-30(A)(1)(a); and

WHEREAS, the South Carolina Department of Revenue (the “Department”) administers and collects the Transportation Tax and the revenues are periodically remitted to the county by the State Treasurer in accordance with the provisions of the Transportation Act. S.C. Code Ann. § 4-37-30(A)(15) (Supp. 2017); and

WHEREAS, the South Carolina Supreme Court in *Richland County and the Central Midlands Regional Transit Authority v. S.C. Department of Revenue*, -- S.E.2d -- , 2018 WL 1177700 (March 7, 2018) held that the Department has extensive administrative, oversight, and enforcement responsibilities in the Transportation Act and throughout Title 12 of the South Carolina Code, which confers upon the Department a duty to ensure that a county’s expenditures of Transportation Tax revenues comply with the revenue laws the Department is charged with enforcing; and

WHEREAS, the Department is the agency statutorily tasked with administering a Transportation Tax program, and the expenditure of millions of dollars of Transportation Tax revenues is an issue of wide concern both to the Department and to the residents and taxpayers of the county implementing the Transportation Tax; and

WHEREAS, Transportation Tax revenues must be used in accordance with statutory restrictions imposed by the General Assembly, namely, proceeds must be used for the types of transportation-related projects identified in the Transportation Act; and

WHEREAS, the Supreme Court determined that a proper expenditure of Transportation Tax funds must be tethered to a specific transportation-related capital project or the administration of a specific transportation project; and

WHEREAS, the Supreme Court has determined that objective criteria are necessary to establish compliance with the Transportation Act, and has ordered that a county that has implemented a Transportation Tax program shall be subject to guidelines for determining whether expenses are properly allocable to a specific transportation project, or the direct administration of a specific transportation project; and

WHEREAS, the Department is authorized to conduct audits involving the taxes it administers and collects, including the Transportation Tax; and

WHEREAS, upon a determination that a county has expended Transportation Tax funds contrary to the Transportation Act, the county shall repay the improper expenditures from other legally available sources; and

NOW THEREFORE, a county shall be subject to the following guidelines and standards for determining whether expenditures of Transportation Tax revenues are proper:

GENERAL GUIDELINES

The revenues generated from the Transportation Tax must be used in accordance with statutory restrictions imposed by the General Assembly – namely, proceeds must be used for “capital costs” of the types of transportation projects identified in the Transportation Act or the administration of a specific transportation project.

“Capital Costs” means expenditures that are treated as “capital” expenditures under generally accepted accounting principles. In general, costs are treated as Capital Costs if they are incurred for the planning, acquisition, construction, or improvement of property having a useful life of more than one year and include, without limitation, costs related to the planning, acquisition, construction, or improvement of land, buildings, vehicles, equipment, infrastructure improvements, and intangible assets (*e.g.*, software and intellectual property with a useful life of more than one year). Capital Costs also include costs and expenditures that increase the value of existing property with a useful life of more than one year or that extend the useful life of existing property for a period of more than one year. “Capital Costs” consist of both Direct Costs and Indirect Costs (as each term is described below).

ELIGIBLE COSTS

For purposes of these guidelines, “Eligible Costs” are Capital Costs, whether Direct Costs or Indirect Costs, and costs for Mass Transit Systems as further described in (C) below.

All Eligible Costs must be “reasonable.” A cost is reasonable if, in its nature and amount, it does not exceed that amount which would be incurred by a prudent person under the circumstances then and there prevailing in the conduct of government business; duplicative costs are not reasonable. The reasonableness standard for Eligible Costs includes, but is not limited to, a consideration of:

- Whether the cost is generally recognized as ordinary and necessary for the project;
- Whether the cost is in compliance with generally accepted sound business practices;

- Whether the cost is the result of arms-length bargaining;
- Federal and state laws and regulations, as applicable;
- Market prices for comparable goods or services;
- The county’s fiduciary responsibilities to the public; and
- Whether the cost constitutes a significant deviation from the county’s established practices.

A. Direct Costs

“Direct Costs” are expenditures for material, labor, and financing for transportation-related projects that would be properly chargeable to a capital asset account as distinguished from current expenditures and ordinary maintenance expenses.

“Project(s)” means those transportation-related projects described in the imposition ordinance and ratified in the referendum question in accordance with the provisions of the Transportation Act, specifically: highways, roads, streets and adjacent sidewalks, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets and adjacent sidewalks, bridges, and other transportation-related projects.

Examples: The following, to the extent directly related to the planning, acquiring, constructing, or improving a Project or any portion thereof, are examples of eligible Direct Costs:

- The purchase price of the property (*e.g.*, land and interests in land, existing buildings and structures).
- The amounts paid a construction company for the construction of a Project (*e.g.* highways, roads, streets and adjacent sidewalks, bridges, bus terminals, train terminals, greenbelts, and other transportation-related facilities).
- Direct labor costs.
- Construction material costs (*e.g.*, asphalt, concrete, steel, electrical wiring, and piping including related shipping, freight, and insurance charges).
- Equipment costs directly used in the construction or improvement of a Project, including lease payments and depreciation.
- Site preparation costs (*e.g.*, demolition, environmental remediation, and utility relocation).
- Engineering, architectural, and design costs.

- Cost of permits, licenses, performance bonds, surety bonds, easements, and rights-of-way.
- Legal, accounting, and other professional service fees incurred in connection with the planning, acquisition, construction, and improvement of a specific transportation related project (*e.g.* right of way acquisition and condemnation).
- Inspection costs.
- Interest accrued on debt incurred to finance a Project, up to the time it (or the portion thereof that is financed) is placed in service. A Project (or portion thereof) shall be treated as “placed in service” at the time at which, based on all the facts and circumstances, (i) the Project (or portion thereof) has reached a degree of completion which would permit its operation at substantially its design level and (ii) the Project (or portion thereof) is in fact in operation at such level.
- Debt service on bonds or other obligations issued to finance a Project or Projects, including the costs of issuance of such bonds or obligations.

B. Indirect Costs

“Indirect Costs” are costs that benefit (i) the construction and improvement of authorized Projects or (ii) the construction and improvement of authorized Projects and other county operations. Only the portion of the Indirect Costs related to Projects are Eligible Indirect Costs.

“Eligible Indirect Costs” are costs that directly benefit or are incurred by reason of the planning, acquisition, construction or improvement of a Project.

The determination of whether an expense is an Eligible Indirect Cost must be based on a reasonable and appropriate allocation method (*e.g.*, a burden rate or similar allocation method based on labor hours, salary costs, or material costs that are relevant to the function of the mixed service department). Eligible Indirect Costs do not include costs that are otherwise listed as Ineligible Costs (as defined and described herein below).

Examples:

The following are examples of Eligible Indirect Costs:

- Portion of an employee’s salary and benefits whose time is allocable to administering the planning, acquisition, construction and improvement of Projects.
- Portion of reasonable and necessary costs of office equipment and supplies, telephone, transportation, fuel, and similar daily costs for employees devoted to administering the planning, acquisition, construction and improvement of Projects.
- Where a county department provides services to employees directly engaged in the transportation program, including the provision of public information to affected citizens or communities impacted by one or more Projects, and other county departments (*i.e.* a

mixed service department), a portion of the county department's costs may be allocated as Eligible Indirect Costs based on either labor cost or labor hours.

C. Mass Transit Systems Costs

"Mass Transit System" as used herein refers only to a mass transit system.

Eligible Costs include costs incurred for the acquisition, design, construction, equipping, and operation of Mass Transit Systems, provided that such costs are consistent with the public purpose of the Transportation Act, the county's imposition ordinance and the referendum approved by voters.

Eligible Costs for Mass Transit Systems must be tethered to the administration of the Mass Transit System and must be reasonable and not excessive. Eligible Costs include purchases of capital assets. Eligible Costs also include costs and expenses paid or incurred in connection with the day to day operation of the Mass Transit System.

Additionally, the Mass Transit System must comply with certain Federal and State requirements in the operation of the Mass Transit System. The expenditures necessary to fulfill these Federal and State requirements are also Eligible Costs, provided the expenditures are reasonable and not excessive.

INELIGIBLE COSTS

"Ineligible Costs" are all costs that are not tethered to a Project or the direct administration of a Project. Furthermore, costs that are excessive or unreasonable or that do not directly benefit or are not incurred by reason of the planning, acquisition, construction or improvement of a Project are Ineligible Costs.

Examples:

The following are examples of Ineligible Costs:

- Excessive amounts not based on a competitive bidding arrangement or amounts paid in transactions involving conflicts of interest.
- County wide programs intended to support all facets of county operations.
- County costs for the routine maintenance or upkeep of roads, streets, thoroughfares, bridges and highways.
- Expenditure for training, establishment or support of programs to benefit constituents or persons.
- Any costs associated with a mentor/mentee program.
- Legal fees and other professional costs incurred in prosecuting or defending a lawsuit or claim related to an alleged improper expenditure of Transportation Tax revenues.

- County overhead costs (e.g. utilities, office supplies, telephone, office facilities, salaries).
- Costs associated with a county's normal cost of doing business (e.g., finance and accounting, procurement, executive management, human resources, budget and grants management, etc.).
- County support costs (e.g. support for the small local business enterprise program of the office of small businesses opportunities, procurement, human resources, budget and grants management, and finance-related functions).
- Professional fees (e.g. legal, accounting, and engineering) not directly related to a Project.
- Costs that are not reasonable or are duplicative.

COMPLIANCE WITH GUIDELINES

These guidelines apply to all counties and political subdivisions that receive Transportation Tax funds, including through intergovernmental agreements, contracts, or agreements with firms or a consortium of firms. Nothing herein shall be construed so as to permit a county to apply funds from the Transportation Tax revenue for other county purposes.

Based on the Department's extensive administrative, oversight, and enforcement responsibilities in the Transportation Act and throughout Title 12 of the South Carolina Code, the Department is authorized to conduct audits to ensure a county's expenditures of Transportation Tax revenues comply with the provisions of the Transportation Act and the South Carolina Code. All improper expenditures of Transportation Tax revenue shall be reimbursed from other legally available sources within the current fiscal year.

In addition, a county or political subdivision that receives any Transportation Tax funds shall conduct an independent annual audit of the financial records and transactions and expenditures of Transportation Tax funds. The results of the annual audit will be made available to the public on the county's website.