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Comments Due by: **February 20, 2025**

SC REVENUE PROCEDURE #25-x [DRAFT – 1/27/2025]

- SUBJECT:** Compliance Audits of the Capital Project Sales Tax
(Local Option Sales Tax)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** All previous advisory opinions and any oral directives in conflict herewith.
- REFERENCES:** Capital Project Sales Tax Act, S.C. Code Ann. § 4-10-300, et seq.
- AUTHORITY:** S.C. Code Ann. § 12-4-320 (2014)
S.C. Code Ann. § 1-23-10(4) (2005)
SC Revenue Procedure #09-3
- SCOPE:** The purpose of a Revenue Procedure is to provide procedural guidance to the public. It is an advisory opinion issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. It is effective until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

OVERVIEW OF THE CAPITAL PROJECT SALES TAX

The Capital Project Sales Tax Act allows a county to impose a sales and use tax not to exceed 1% if the county’s governing body enacts an ordinance and the ordinance is approved in a referendum. The tax must be for a specific purpose and for a limited amount of time. The funds raised by the tax may be used to pay for the projects authorized by the ordinance and referendum or may be used to defray debt on bonds issued to pay for the authorized projects.

The types of projects that may be funded by the Capital Project Sales Tax (“CPST”) include the following:

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

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- (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;

S.C. Code Ann. § 4-10-330(A)(1).

The Department is tasked with administering and collecting the CPST “in the same manner that other sales and use taxes are collected.” S.C. Code Ann. § 4-10-350. The Department has full authority to “administer and enforce the provisions of” the Sales and Use Tax Act. S.C. Code Ann. § 12-36-2660. The Department collects the revenues of the CPST and remits them to the State Treasurer. The State Treasurer distributes the revenues to the county treasurer of the county in which the tax is imposed on a quarterly basis. S.C. Code Ann. § 4-10-360.

As the South Carolina Supreme Court has previously recognized, the Department has “extensive administrative, oversight, and enforcement responsibilities” related to local option sales tax. *Richland Co. v. Dep’t of Revenue*, 422 S.C. 292, 306, 811 S.E.2d 758, 766. Thus, in addition to its responsibility to collect the CPST revenue, the Department has a statutory duty to ensure that a county’s expenditures of CPST funds comply with the Capital Project Sales Tax Act.

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ADMINISTRATIVE REQUIREMENTS FOR COUNTIES

Quarterly Reports

The State Treasurer's Office typically distributes CPST revenues to the counties in October, January, April, and July. Within 30 days of the receipt of the quarterly distribution, counties must certify to the Department

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.

S.C. Code Ann. § 4-10-360. Therefore, in most circumstances the county will need to submit its quarterly certifications to the Department in November, February, May, and August.¹

During the month in which the Treasurer distributes CPST funds, the Department will send counties the information necessary to submit the certification using the Department's electronic secure file transfer system.

Document Retention

There is no statutorily mandated document retention period with respect to documents related to a county's CPST. The Department recommends that a county maintain documents for the entire length of the imposition of the tax, including any renewal, plus an additional three years.²

¹ This is a guideline based on typical practice. The date that any particular county must submit its certification may vary from quarter to quarter based on the distribution from the Treasurer. Regardless, the 30-day deadline for submission of the certification is unqualified.

² For example, if the initial CPST is authorized for eight years, the county should maintain documents related to the projects started during the first authorization for eleven years. If the tax is renewed for an additional seven years, the documents related to the projects undertaken during the renewal period should be retained for ten years.

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THE DEPARTMENT'S AUDIT PROCESS

The Department of Revenue administers and collects the CPST “in the same manner that other sales and use taxes are collected.” S.C. Code Ann. § 4-10-350. With respect to the administration of state tax law, the Department is authorized to “employ proper and reasonable audit methods.” S.C. Code Ann. § 12-54-100.

The Department will audit all counties that have adopted a CPST on a periodic basis. All parts of the CPST are subject to audit including, but not limited to, amounts collected, the use of bond proceeds, administrative expenses and processes,³ and costs of ongoing and completed projects.

At the commencement of an audit, the Department will notify the county in writing that the county’s CPST program has been selected for an audit to determine compliance with the statutory requirements. Simultaneously with the notice, the Department will request specific information from the county that is relevant to the administration of the tax and the use of tax proceeds for the projects identified in the referendum.⁴ The Department may also choose to meet with county personnel and, where appropriate, with outside contractors working for the county who can provide information relevant to the audit. As the audit progresses, the Department may make one or more supplemental requests for information concerning the county’s CPST.

At the conclusion of the audit, the Department will provide the county with a written Audit Report explaining whether and to what extent the county is in compliance with the CPST statute. Although the information contained in the Audit Report will vary by county and by audit, if a county is not in compliance, it should expect that the Audit Report will contain findings related to any improper expenditures discovered during the audit, whether there is any amount that should be repaid to the CPST, whether there are other remedial measures that should be undertaken by the county with respect to the administration of the CPST, and whether the county failed to cooperate with the Department’s auditor in a way that inhibited the Department’s audit.

³ Documents and information relevant to the administration of the CPST may include minutes of meetings concerning the CPST or projects to be paid for by the CPST, the county’s procurement policies, the county’s audited financial statements, and documents relevant to the status of projects ongoing at the time of the audit.

⁴ If the county fails to voluntarily comply with the Department’s request for information, the Department will issue an administrative summons requiring the production of the requested information as allowed for by S.C. Code Ann. § 12-54-110.

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PROTESTING THE DEPARTMENT'S AUDIT REPORT

Upon receipt of the Audit Report, if the county disagrees with any of the Department's findings, the county may protest all or part of the Audit Report according to the procedures established in the Revenue Procedures Act, S.C. Code Ann. § 12-60-10, et seq. Once the county submits a timely protest to the Department, the Department will adhere to the appeals process as established in Revenue Procedure #20-1. For purposes of the application of Revenue Procedure #20-1, including review by the Appeals Section of the Department, the Department's Audit Report should be treated as a "division decision" as provided for in Revenue Procedure #20-1, which means that it will be handled in the same manner as a protest of a "proposed assessment."⁵ If the county does not timely protest the Audit Report, the Department's Audit Report becomes final automatically.

When a county timely protests the Audit Report and after the Department makes a written department determination, the county may seek review of the department determination by requesting a contested case hearing before the Administrative Law Court according to S.C. Code Ann. § 12-60-460 and the Rules of the Administrative Law Court.

⁵ See Revenue Procedure #20-1, p. 10.