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

SC REVENUE RULING # 97-19

SUBJECT: ALLOCATION OF REVENUES RECEIVED FROM A PROPERTY LOCATED IN A JOINT COUNTY INDUSTRIAL OR BUSINESS PARK (PARK)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCES: S.C. Constitution, Article VIII, Section 13(D)
S.C. Code Ann. Section 4-1-170 (Supp. 1996)
S.C. Code Ann. Section 4-12-20 (Supp. 1996)
S.C. Code Ann. Section 4-12-30(K)(1) (Supp. 1996)
S.C. Code Ann. Section 4-12-30(K)(2) (Supp. 1996)
S.C. Code Ann. Section 4-29-67(L)(1) (Supp. 1996)
S.C. Code Ann. Section 4-29-67(L)(2) (Supp. 1996)
S.C. Code Ann. Section 4-29-68

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1996)
SC Revenue Procedure #97-8

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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Question:

Can an agreement between two counties establishing a joint industrial or business park¹ [hereinafter park] pursuant to S.C. Code Ann. Section 4-1-170 (Supp. 1996) provide that only revenues from new properties attracted to the park after such park is formed will be shared between the two counties and that revenues from pre-existing properties, located in the county where the park is established and incorporated into the park, will not be shared?

¹A joint industrial or business park sometimes is referred to as a multi-county industrial park. The terms are interchangeable.

Conclusion:

No. All revenue generated by a joint industrial park must be shared between the participating counties; revenue from pre-existing property incorporated within the park must not be excluded from such distribution.

Facts:

County A plans to establish a joint industrial or business park pursuant to S.C. Code Ann. Section 4-1-170 with neighboring County B. ABC is currently operating a facility in County A under a fee-in-lieu of property taxes and is considering a substantial expansion at this location. In order to induce ABC to locate the new investment in County A, and to otherwise establish a regional industrial recruitment effort, County A and County B desire to form a joint industrial or business park through the execution of a joint industrial or business park agreement.

County A and County B desire to share the revenues and expenses associated with the joint development of a park for their regional industrial recruitment effort. However, they wish to exclude County B from sharing in any revenue generated by pre-existing fee-in-lieu of tax property, like ABC's initial investment, which may be incorporated into the park, since County B played no part in the recruitment or development of this property. Is such an agreement providing for this type of sharing of revenues possible in establishing the park?

Discussion:

Article VIII, Section 13(D) of the S.C. Constitution provides:

Counties may jointly develop an industrial or business park with other counties within the geographical boundaries of one or more of the member counties. The area comprising the parks and all property having a situs therein is exempt from all ad valorem taxation. The owners or lessees of any property situated in the park shall pay an amount equivalent to the property taxes or other in-lieu-of payments that would have been due and payable except for the exemption herein provided. The participating counties shall reduce the agreement to develop and share expenses and revenues of the park to a written instrument which is binding on all participating counties.

This Constitutional provision recognizes that property subject to a fee-in-lieu of property taxes as well as other existing facilities may be incorporated into a newly formed joint industrial or business park. See also Op. Atty. Gen. No. 93-55, September 7, 1993, which recognized that pre-existing properties could be incorporated into a joint industrial or business park.

In implementing Section 13(D) of Article VIII of the S.C. Constitution, the South Carolina legislature has provided in S.C. Code Ann. Section 4-1-170 that:

By written agreement, counties may develop jointly an industrial or business park with other counties within the geographical boundaries of one or more of the member counties as provided in Section 13 of Article VIII of the Constitution of this State. The written agreement entered into by the participating counties must include provisions which:

- (1) address sharing expenses of the park;
- (2) specify by percentage the revenue [of the park] to be allocated to each county;
- (3) specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties.

Section 4-1-170 thus provides that the agreement by participating counties setting up a park specify “by percentage” the revenue of the park to be allocated to each county. The S.C. Constitution also speaks to the “revenues of the park.” Neither contemplates or allows for an agreement involving the sharing of revenues from individual properties or projects within the park. As previously noted by the Attorney General:

The purpose of the constitutional and statutory provisions for establishing industrial parks is to allow the joint development of a park between participating counties. Counties which are not sharing in the revenues and expenses of the park are not participating in the park’s development and, therefore, could not be parties to the agreement.

Op. Atty. Gen. No. 93-55 of September 7, 1993. (Emphasis added).

Therefore, each county must receive a percentage of the revenue generated by the park, not of revenue generated by individual properties within the park.

That is not to say that revenues that are generated by pre-existing fee-in-lieu of property tax properties incorporated in such a park cannot be taken into consideration in deciding the applicable percentage of park revenue that goes to each county. They can be considered by increasing or decreasing the percentage of the park revenue distributed to the individual participating counties. However, the revenue generated by a pre-existing fee property incorporated into a park cannot be segregated and allocated to one county. Each county gets a percentage of the overall revenue generated by all property within the park.

Additionally, if the existing facility can be delineated from the expansion, the pre-existing facility currently under a fee-in-lieu arrangement could be left outside of any park and only the expansion included in the park. This solution would accomplish the result sought by allowing the county where the fee-in-lieu property resides to retain all the revenues generated by the project since that property would not be incorporated into the park. See Op. Atty. Gen. No. 93-55 of September 7, 1993.

Of course the revenues, obtained from a fee-in-lieu property, which is not in a joint industrial park, must be distributed as mandated by Section 4-12-30(K)(1), Section 4-29-67(L)(1), or Section 12-44-80(A). These sections provide:

For a project **not** located in an industrial development park as defined in Section 4-1-170, distribution of the fee-in-lieu of taxes on the project must be made in the same manner and proportion that the millage levied for school and other purposes would be distributed if the property were taxable (Emphasis added.)

Revenue from property in a joint industrial park may be distributed as the counties agree pursuant to Sections 4-12-30(K)(2), 4-29-67(L)(2), or 12-44-80(B). These sections provide:

For a project located **in an industrial park** as defined in Section 4-1-170, distribution of the fee-in-lieu of taxes on the project must be made in the manner provided for by the agreement establishing the industrial development park. (Emphasis added.)

If a fee-in-lieu property is included in a park, there is another factor that must be considered. Because the industrial park agreement specifies how revenue is to be distributed between taxing entities, the distribution of the fee payment received in-lieu-of taxes may be different from the distribution of fee-in-lieu payments previously associated with the same property.

A county, municipality, school district or other political subdivision which was receiving revenues from fee-in-lieu payments may no longer receive the same revenue once the property becomes part of the park. To the extent that a county or other political subdivision has issued bonds², relying on revenues generated by fee-in-lieu property now incorporated within a park to fund such indebtedness, the county or other political subdivision must continue to receive its proportionate share of the revenues generated by such property expected to be incorporated within the park. Op. Atty. Gen. No. 93-55 of September 7, 1993; see also S.C. Code Ann. Sections 4-1-170; 4-29-68(E). “Failure to allow the political subdivision to continue receiving this amount would jeopardize the political subdivision’s bond status, as well as possibly result in an impairment of contract for the bondholders.” Op. Atty. Gen. No. 93-55 of September 7, 1993. If the political subdivision cannot continue to receive such payments because of the park agreement requiring the sharing, by percentage, of park revenue between counties, as mandated by Section 4-1-170, it may be that such property cannot be transferred into a joint industrial park, absent a renegotiation of the terms of the bonds with the bondholders allowing such transfer.

Additionally, the county or other political subdivision may have issued general obligation debt based on the assessed value of the property in question. To the extent that the value of this property is necessary to permit the outstanding general obligation debt to remain within the debt limit of the political subdivision, the political subdivision must continue to receive income from the existing property to the extent that such income represents the value of the property necessary to remain within the debt limit. Op. Atty. Gen. No. 93-55 of September 7, 1993³. Again, if such cannot be accomplished because of the park agreement mandated by Section 4-1-170, such property should not be incorporated within the park.

²A county, municipality, or special purpose district may have issued special source or other revenue bonds anticipating making payments from the revenues received from a payment in-lieu-of taxes. See S.C. Code Ann. Section 4-29-68 (Supp. 1996).

³Failure to do so may result in a violation of the S.C. Constitution which provides that “general obligation debt may . . . be incurred by the governing body of each political subdivision: (a) For any of its corporate purposes in an amount not exceeding eight percent of the assessed value of all taxable property of such political subdivision” Article X, Section 14(7) of the S.C. Constitution.

There may be other statutory provisions that would affect the amount of fees a taxing entity is required to receive from revenue generated by a jointly developed industrial park. “For example, if a park is financed by the Industrial Revenue Bond Act, Section 4-29-60 would require that a school district receive fees in the same amount as would result from taxes levied on the project.” Op. Atty. Gen. No. 90-29 of March 14, 1990.

Accordingly, statutory provisions contained in the S.C. Code need to be carefully considered prior to transferring pre-existing fee-in-lieu property into such a park.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank III, Director

Columbia, South Carolina
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