

Agency Name: Department of Revenue  
Statutory Authority: 4-37-30 and 12-4-320  
Document Number: 4660  
Proposed in State Register Volume and Issue: 40/8  
Status: Proposed  
Subject: Local Transportation Sales and Use Tax - Eligible Costs

History: 4660

<u>By</u>	<u>Date</u>	<u>Action Description</u>	<u>Jt. Res. No.</u>	<u>Expiration Date</u>
-	08/26/2016	Proposed Reg Published in SR		

Document No. 4660  
**DEPARTMENT OF REVENUE**  
CHAPTER 117  
Statutory Authority: 1976 Code Sections 4-37-30 and 12-4-320

**Preamble:**

The South Carolina Department of Revenue is considering adding SC Regulation 117-338 to provide guidance to counties that adopt the local transportation sales and use tax under Chapter 37, Title 4, to finance the costs of highways, roads, streets, bridges, and other transportation-related projects. The Department of Revenue administers and collects the local transportation sales and use tax and is authorized to promulgate regulations.

In order to ensure that the proceeds of the tax are used solely for transportation-related projects, the proposed regulation would require that a county imposing the tax adopt a reasonable standard to be applied in determining eligible costs that may be paid from the revenue derived from the tax. The proposed regulation would approve a safe harbor standard that defines eligible costs as those costs that would be capitalized into a specific transportation-related project under the principles of Section 263A of the Internal Revenue Code. This safe harbor standard, however, is modified to allow certain reasonable costs incurred for the dissemination of information to the public, community outreach, and public relations, provided that such costs are related to a specific transportation-related project and are consistent with the purpose stated in the county's imposition ordinance and Chapter 37, Title 4. In lieu of the standard incorporating the principles of Section 263A, a county would be able to request the use of an alternative standard for Department approval.

Ineligible costs include, but are not limited to, costs incurred for training, establishment or support of programs to benefit constituents or persons that are not directly related to a specific transportation-related project, or excessive amounts not based on a competitive bidding arrangement.

Section-by-Section Discussion

117-338. Local Transportation Sales and Use Tax – Eligible Costs.

This proposal adds SC Regulation 117-338 to provide guidance to counties that adopt the local transportation sales and use tax under Chapter 37, Title 4, to finance the costs of highways, roads, streets, bridges, and other transportation-related projects.

Under this proposal, a county imposing the local transportation sales and use tax shall adopt a reasonable standard to be applied in determining eligible costs that may be paid from the revenue derived from the tax. The Department has approved a safe harbor standard that defines eligible costs as those costs that would be capitalized into a transportation-related project under the principles of Section 263A of the Internal Revenue Code. This safe harbor standard, however, is modified to allow certain reasonable costs incurred for the dissemination of information to the public, community outreach, and public relations, provided that such costs are related to a specific transportation-related project and are consistent with the purpose stated in the county's imposition ordinance and Chapter 37, Title 4.

In lieu of the standard incorporating the principles of Section 263A of the Internal Revenue Code, a county may request the use of an alternative standard for Department approval. The alternative standard must be justifiable, reflect the public purpose of the county's imposition ordinance and Chapter 37, Title 4, and be reasonable in the type and amount of eligible costs. If the Department denies the county's alternative standard proposal, the county may appeal the denial.

Ineligible costs include, but are not limited to, costs incurred for training, establishment or support of programs to benefit constituents or persons that are not directly related to a specific transportation-related project, or excessive amounts not based on a competitive bidding arrangement.

The Notice of Drafting was published in the *State Register* on May 27, 2016.

**Notice of Public Hearing and Opportunity for Public Comment:**

All comments concerning this proposal should be mailed to the following address by 5:00 p.m. on Monday, September 26, 2016: S.C. Department of Revenue, Legislative Services - Mr. Meredith Cleland, P.O. Box 125, Columbia, South Carolina 29214.

The S.C. Department of Revenue has scheduled a public hearing before the Administrative Law Court in the Edgar Brown Building (Suite 224) on the Capitol Complex (1205 Pendleton Street) in Columbia, South Carolina for Tuesday, October 25, 2016 at 10:00a.m. if the requests for a hearing meet the requirements of Code Section 1-23-110(A)(3). The public hearing, if held, will address a proposal by the Department to add SC Regulation 117-338 to provide guidance to counties that adopt the local transportation sales and use tax under Chapter 37, Title 4, to finance the costs of highways, roads, streets, bridges, and other transportation-related projects. The department will be asking the Administrative Law Court, in accordance with S.C. Code Ann. Section 1-23-111 (2005), to issue a report that the proposal to add the regulation is needed and reasonable.

**Preliminary Fiscal Impact Statement:**

There will be no impact on state or local political subdivisions expenditures in complying with this proposed regulation.

**Statement of Need and Reasonableness:**

DESCRIPTION OF REGULATION: For 117-338: Local Transportation Sales and Use Tax – Eligible Costs.

Purpose: To add SC Regulation 117-338 to provide that a county imposing the local transportation sales and use tax under Chapter 37, Title 4, adopt a reasonable standard in determining eligible costs that may be paid from the revenue derived from the local transportation sales and use tax.

Legal Authority: Code Sections 12-4-320 and 4-37-30.

Plan for Implementation: After approval by the General Assembly and publication in the State Register, the regulation would apply to all contracts and agreements entered into on or after July 1, 2018, for any transportation-related project authorized under Chapter 37, Title 4.

**DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:**

The proposal to add SC Regulation 117-338 is needed to ensure that counties that adopt the local transportation sales and use tax under Chapter 37, Title 4 adopt a reasonable standard for determining eligible costs that may be paid from the revenue derived from the local transportation sales and use tax. The proposal is reasonable in that the Department’s safe harbor standard incorporates the principles of Internal Revenue Code Section 263A, which are well known and documented through Treasury

regulations and other material published by the Internal Revenue Service. The proposal is also reasonable because it allows counties to submit an alternative standard for review and approval by the Department.

**DETERMINATION OF COSTS AND BENEFITS:**

Promulgation of this regulation will not have an impact on state or local political subdivisions expenditures. Promulgation of this regulation will benefit the State and taxpayers by ensuring that the county and public have clarity in determining eligible costs that may be paid from the revenue derived from the local transportation sales and use tax authorized under Chapter 37, Title 4.

**UNCERTAINTIES OF ESTIMATES:**

None.

**EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:**

None.

**DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF REGULATION IS NOT IMPLEMENTED:**

None.

**Statement of Rationale:**

The purpose of adding SC Regulation 117-338 is to provide guidance to counties that adopt the local transportation sales and use tax under Chapter 37, Title 4, to finance the costs of highways, roads, streets, bridges, and other transportation-related projects. The proposal to add SC Regulation 117-338 is needed to ensure that counties adopting the local transportation sales and use tax under Chapter 37, Title 4 adopt a reasonable standard for determining eligible costs that may be paid from the revenue derived from the local transportation sales and use tax. The proposal is reasonable in that the Department's safe harbor standard incorporates the principles of Internal Revenue Code Section 263A, which are well known and documented through Treasury regulations and other material published by the Internal Revenue Service. The proposal is also reasonable because it allows counties to submit an alternative standard for review and approval by the Department.

~~Indicates Matter Stricken~~

Indicates New Matter

**Text:**

117-338. Local Transportation Sales and Use Tax – Eligible Costs.

Chapter 37, Title 4, provides that the governing body of a county may impose by ordinance a local transportation sales and use tax in an amount not to exceed one percent to finance the costs of highways, roads, streets, bridges, and other transportation-related projects. The Department of Revenue administers and collects the local transportation sales and use tax and is authorized to promulgate regulations.

The purpose of this regulation is to ensure that counties adopting the local transportation sales and use tax under Chapter 37, Title 4, adopt a reasonable standard for determining eligible costs that may be paid from the revenue derived from the local transportation sales and use tax.

#### 117-338.1. Adoption of Standard for Determining Eligible Costs by County Imposing Local Transportation Sales and Use Tax.

In order to ensure that proceeds of the local transportation sales and use tax are used solely for transportation-related projects authorized under Chapter 37, Title 4, a county imposing the tax shall adopt a reasonable standard to be applied in determining eligible costs that may be paid from the revenue derived from the local transportation sales and use tax.

#### 117-338.2. Safe Harbor Standard.

The Department has determined that a standard that defines eligible costs as those costs that would be capitalized into a specific transportation-related project under the principles of Section 263A of the Internal Revenue Code is an acceptable standard. Section 263A generally requires that taxpayers that produce real or tangible personal property capitalize direct material costs, direct labor costs, and indirect costs that are properly allocable to the produced property, including the allocable portion of most indirect costs that benefit the assets produced. The term produce includes construct, build, install, manufacture, develop or improve.

Under this standard, eligible costs are direct costs and indirect costs properly allocable to a specific project. If a project involves the construction of a capital asset, all direct construction costs for materials and labor are eligible costs. In addition, operating costs relating to any equipment used to produce the capital asset are eligible costs. Furthermore, the allocable portion of costs related to personnel directly involved in the planning, supervision, or construction of the project, including vacation pay, payroll taxes, and benefits, are eligible costs. Eligible indirect costs may also include costs for pension, benefits, purchasing, handling, storage, rent, insurance, engineering and design, and repairs and maintenance on equipment used in the project.

Under Section 263A, indirect costs for marketing, selling, advertising, and distribution are generally not required to be capitalized. Notwithstanding the foregoing, certain reasonable costs incurred for the dissemination of information to the public, community outreach, and public relations are eligible costs, provided that such costs are related to a specific transportation-related project and are consistent with the purpose stated in the county's imposition ordinance and Chapter 37, Title 4.

#### 117-338.3. Alternative Standard.

In lieu of the standard set forth in subsection 117-338.2 of this regulation, a county may request the use of an alternative standard for Department approval. The alternative standard must be justifiable, reflect the public purpose stated in the imposition ordinance and Chapter 37, Title 4, and be reasonable in the type and amount of eligible costs.

The cost eligibility standard under 117-338.2 of this regulation is applicable unless and until the Department approves an alternative standard submitted by the county. Once approved, the county and Department shall publish the standard on their public websites. The approved alternative standard shall be available for prospective use only.

If the county disagrees with the Department's denial of the county's alternative standard, the county may appeal the denial.

117-338.4. Ineligible Costs.

Ineligible costs include, but are not limited to, costs incurred for training, establishment or support of programs to benefit constituents or persons that are not directly related to a specific transportation-related project, or excessive amounts not based on a competitive bidding arrangement.

Effective Date: This regulation applies to all contracts and agreements entered into on or after July 1, 2018, for any transportation-related project authorized under Chapter 37, Title 4.