

LEGAL ARGUMENT**I. Respondent incorrectly identifies that FOIA and the A-Tax statutory framework deal with an identical issue**

Respondent cites to *Capco of Summerville, Inc. v. J.H. Gayle Const. Co.*, for the principle of statutory interpretation that “[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.” *Capco of Summerville, Inc. v. J.H. Gayle Const. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (quoting *Wilder v. S.C. Hwy. Dep’t*, 228 S.C. 448, 454, 90 S.E.2d 635, 638 (1955)). The problem with *Capco*’s application to this controversy is that FOIA and the A-Tax statutory framework do not “deal with identical issues.”

The General Assembly found "it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy." S.C. Code § 30-4-15. Therefore, the General Assembly enacted the FOIA "to make it possible for citizens ... to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings." *Id.* ; see also *Brock v. Town of Mount Pleasant*, 415 S.C. 625, 628, 785 S.E.2d 198, 200 (2016) ("The essential purpose of FOIA is to protect the public from secret government activity.").

There is neither a codified purpose nor a judicially recognized thrust of what Title 6, Chapter 1 provides other than the ability of local governments to assess taxes, the collection of those taxes, the disbursement and then some oversight by additional

executive functions. As Justice Few provided in his dissent of *DomainsNewMedia.com LLC*, “The FOIA requires that a public body disclose its records; the accommodations tax statute does not even address that issue.” *Id.* at 521. FOIA is a general statute but *DomainsNewMedia.com LLC* does not control this Court’s interpretation of this issue for these reasons and those stated in Appellant’s brief.

II. Respondent’s argument that, even if the Court determines that it is a public body, it did fully comply with Appellant’s FOIA request is not preserved

To be preserved for appellate review, an argument must have been both raised to and ruled upon by the trial court. *E.g., Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998). “Where a matter is not ruled on by the circuit court, the issue is not preserved for appellate review unless the complaining party moves to amend the judgment pursuant to Rule 59(e).” *Vespazziani v. McAlister*, 307 S.C. 411, 413, 415 S.E.2d 427, 428 (Ct. App. 1992). If the appealing party made the argument to the trial court in the first instance and did not receive a ruling on it, if he presents the argument again in a Rule 59 motion, it is then preserved for review, even if the trial court does not rule on it in response to that motion. *Id.*

The trial court’s order did not address an argument that the Respondent makes in its brief, that, even if the Court determines that it is a public body, it did fully comply with Appellant’s FOIA request, is not preserved that argument is not preserved for review by this Court.

III. Respondent concedes that a contract between it and County may exist that could contractually require it comply with FOIA but wrongly indicates the lower court properly denied Appellant’s motion to compel

Appellant counsel stated during the motion to compel hearing that Appellant had asked in her interrogatories numerous questions about what type of funding Respondent possessed, how it came to its agreement with Charleston County to serve as destination marketing organization or even for an explanation of the “numerical figures contained in the document ‘Charleston Area Convention and Visitor’s Bureau Exhibit A’ filed in this matter on January 14, 2022” to which Respondent objected on the grounds that such a request is overly broad, unduly burdensome and was not reasonably designed to lead to the discovery of admissible evidence. *See Motion Hearing transcript* _____. A response to how those numerical figures were comprised, that it supplied to Charleston County, would certainly aid this Court in determining what type of funds Respondent actually receives – a central inquiry in whether Respondent is a public body for FOIA purposes. But the Court determined both that Appellant’s motion to compel this agreement was denied but also that there was no issue of material fact regarding Respondent’s funding such that summary judgment was appropriate.

CONCLUSION

This court should reverse the lower court’s orders granting summary judgment and denying Appellant’s motion to compel discovery.

Respectfully submitted,

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