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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Carolyn C. Matthews, Administrative Law Judge

Case No. 10-ALJ-30-0421-CC

City of Myrtle Beach,Respondent,

v.

Tourism Expenditure Review Committee,Appellant.

**RECORD ON APPEAL
VOLUME II**

John M.S. Hoefler
Chad N. Johnston
Willoughby & Hoefler, P.A.
Post Office Box 8416
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Tourism Expenditure Review Committee

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Battle & Vaught, P.A.
Post Office Box 530
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843-248-4321

Attorney for Respondent
City of Myrtle Beach

Expenditure Review Committee

P.O. Box 125
Columbia, SC 29214-0120
301 Gervais Street
Columbia, SC 29201
803-898-5400

Frans N. Mustert, CHA
CHAIRMAN
Appointed at the
Recommendation of the
Hospitality Association of SC

Lanueau H. Siegling, CHA
VICE CHAIRMAN
President Pro Tempore
Appointee

Susan Cruse
Appointed at the
Recommendation of the SC
Association of Tourism Regions

John Curry, CHA
Appointed at the
Recommendation of the SC
Association of Convention and
Visitors Bureaus

Lisa Martin
Appointed at the
Recommendation of the SC
Travel and Tourism Coalition

Mark Williams
Appointed at the
Recommendation of the
Municipal Association of SC

Rod Swaim
Speaker of the House
Appointee

Toni Nance
Ex-Officio SCPRT Designee

Suzette Surkamer
Appointed at the
Recommendation of the SC
Arts Commission

Kevin Yorkin
Appointed at the
Recommendation of the SC
Association of Counties

Edward W. Higgs, Sr.
Governor's Appointee

RECEIVED
JAN 30 2009
BY: _____

Exhibit A

January 27, 2009

Mr. Michael D. Price
Budget Analyst
City of Myrtle Beach
Post Office Box 2468
Myrtle Beach, South Carolina
29578-2468

RE: Report of Accommodations Tax 2007-2008 Expenditures

Dear Mr. Price:

At its meeting on January 12, 2009, the Tourism Expenditure Review Committee ("TERC") reviewed the above-referenced report submitted by the City of Myrtle Beach ("City") under cover of your letter dated October 13, 2008. The purpose of this letter is to notify the City that the TERC, pursuant to S.C. Code Ann. §6-4-35(B)(1)(a), questions the reported expenditure(s) and to offer the City an opportunity to submit additional information as permitted by that code section.

The bases upon which the TERC questions the reported expenditure(s) by the City are as follows:

1. At page 2 of its report, the City states that it expended \$4,318,250 of the \$4,558,662 available for "[s]upport of operating expenses for services provided above and beyond permanent population throughout the year, to include additional Police, Fire and Parks personnel." The TERC questions whether this expenditure is lawful in view of S.C. Code Ann. §6-4-10(b), which states that the City may not utilize accommodations tax funds as an additional source of revenue to provide services normally provided by the City. The TERC is of the view that the services for which the accommodations tax funds were used are those services that the City normally provides given its emphasis on attracting and providing for visitors. Thus, unlike a municipality which finds it necessary to provide additional services simply as a result of the presence of tourists, the City routinely provides services at this level. The TERC does not believe comparisons of the City's "permanent population" with those of other municipalities is relevant in view of the statutory proscription against using these funds for services that are "normally" provided.

2. The TERC is informed and believes that a variety of expenditures for "tourism related" projects were funded out of the City's general fund. If the TERC's information is correct, the effect of this practice would appear to be the circumvention of the procedure

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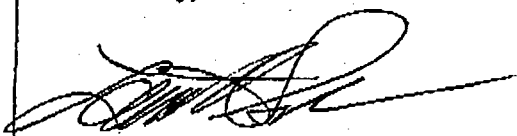
Edward W. Riggs, Sr.
Governor's Appointee

established under S.C. Code Ann. §§6-4-5, et seq. for the use of accommodations taxes for tourism-related expenditures.

Accordingly, the TERC respectfully requests that the City provide additional information with respect to the foregoing within thirty (30) days of the date of this letter. If the TERC does not receive such additional information from the City within that time-frame, it will act based upon the City's October 13, 2008 report at its next meeting, which is scheduled for March 16, 2009.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Lanneau H. Siegling
Tourism Expenditure Review Committee

LHS:lls

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Exhibit B

MICHAEL W. BATTLE
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CYNTHIA GRAHAM HOWE, PA
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JAMES R. BATTLE, II
E-Mail Address: jbattle@sccoast.net

February 9, 2009

Mr. Lanneau H. Siegling, Vice Chairman
Tourism Expenditure Review Committee
P.O. Box 125
Columbia, South Carolina 29214-0120

RE: City of Myrtle Beach vs. Tourism Expenditure Review Committee

Dear Mr. Siegling:

The City of Myrtle Beach (City) is in receipt of the Tourism Expenditure Review Committee's (TERC) letter dated January 27, 2009 to Mr. Michael D. Price. The City appreciates the candor of the letter. The letter makes clear and the City understands TERC's concerns over the City's expenditure of accommodation tax funds for police, fire and public safety protection made necessary by its high concentration of tourism.

However, until TERC's last meeting on January 12, 2009, the City of Myrtle Beach had relied upon the general consensus among the SC Dept. of Revenue and TERC's members that the City's expenditure of accommodation tax funds for police, fire and public safety protection was permitted under the statute controlling the use of accommodation tax funds. That statute states a municipality which has a high concentration of tourism activity may use accommodation tax funds to provide additional municipal services including, but not limited to, law enforcement, traffic control, public facilities, and highway and street maintenance, as well as the continual promotion of tourism... This is based on the estimated percentage of costs directly attributed to tourists. S.C. Code Ann. § 6-4-10(b). The statute is further explained in SC Revenue Ruling #98-22 which contains the following example:

For example, assume that the City of North Myrtle Beach wishes to use some of their Tourism related Funds on their police department. Tourism-related Funds could not be used to fund the police chief's salary, since this is a county expense that would need to be funded whether North Myrtle Beach had *any tourists or not*. However, the money could be used to hire additional police because of the high concentration of tourism in North Myrtle Beach. The amount that can be spent on additional police must be based on the estimated percentage of costs attributable to tourists. (Emphasis added). SC Revenue Ruling #98-22 p. 10

Previously, TERC had approved the City's use of accommodations tax funds in 2007 as illustrated in the minutes of its meeting of December 10, 2007 and its letter to the City dated February 7, 2008. The City's use of accommodation tax funds was the same in 2007 as it has been in 2008, and no fact or law has changed to justify TERC's reversal of position.

The City understands TERC's preference that accommodation tax funds be spent to promote the growth of tourism. However, the City believes the General Assembly was farsighted enough to allow local governments to use the accommodations tax funds to enlarge their economic benefits by promoting sustainable growth. Everyone should recognize that unsustainable growth is not good. Accommodations tax funds used by the City for public safety enhance the City's ability to attract and provide for tourists. If the City could not enhance its police, fire and public safety protection to include the tourists it normally attracted, then the quality of those tourists' experiences would deteriorate. If the City were to acquire a reputation as an unsafe City, then all tourism efforts in the State would suffer from the resulting negative advertising and the tourists who normally come to Myrtle Beach would disappear.

The City takes issue with TERC's assertion that our high concentration of tourism activity is "normal", and therefore the enhanced services made necessary by the high concentration should be "normally" provided. Only cities with high concentrations can use the money for enhanced services. If high concentration cities like Myrtle Beach, Charleston, Hilton Head and others can't use the money for enhanced service, and those who are not high concentration cannot use the money for enhanced service, one must ask what was the point of the General Assembly's use of the terminology in the statute?

The City also takes issue with TERC's belief that comparisons of the City's "permanent population" with those of other municipalities is not relevant to the General Assembly's guidelines for the use of accommodation tax funds. That comparison is the same one implied by the example in Revenue Ruling #98-22. How else would a local government distinguish normal City services from enhanced services necessary to accommodate the presence of tourists if it did not compare its expenditures with other local governments which did not provide those enhanced services for tourists?

The City was surprised that TERC would criticize the City's use of its general fund to promote a variety of "tourism related" projects. The City was under the impression that TERC was formed for the purpose of promoting tourism. The City has in place a legally approved procedure by which it evaluates all applications for funding including applications for accommodations tax funds. That procedure is widely recognized as a model for other cities. In fact, the Municipal Association of South Carolina has included the form on its website for others to copy. From time to time, applications arise which are "tourism related" which the City believes merits funding even though those projects require funding over and above the amount allocated by accommodations tax funds. TERC should encourage the City's use of its general fund for "tourism related" projects.

TERC's sole function is to provide oversight for expenditure of accommodation tax funds. The City's expenditure of those funds for police, fire and public safety is permitted by the Accommodations Tax Act. Prior to 2009, that type of expenditure had been approved by the S.C. Dept. of Revenue and by TERC. If the City uses

accommodation tax funds for a purpose permitted by the Act that should be the end of TERC's oversight responsibility since the boundaries of its jurisdiction are established by the General Assembly. TERC does not have oversight jurisdiction over the general funds of the City, and it cannot dictate to the City Council how it uses its general fund.

The City has submitted a report and application which contains the facts about the City's population, tourist populations and a comparison between the City's expenditures with other municipality's expenditures for police, fire and public safety. The City has shown that the amount it spends on enhanced public safety for tourists is far greater than the accommodations tax funds it receives. In light of those facts, the City requests that TERC clarify what additional information would be useful to it in resolving its questions about the City's expenditure of \$4,318,250 for police, fire and public safety.

Sincerely,



Michael W. Battle
Battle, Vaught & Howe, P.A.

C Tom Ellenburg, Mike Shelton

WILLOUGHBY & HOEFER, P.A.

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AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

TRACEY C. GREEN
ALAN WILSON
SPECIAL COUNSEL

*ALSO ADMITTED IN TX

April 22, 2009

**VIA ELECTRONIC AND
U.S. MAIL**

Michael W. Battle, Esquire
Post Office Box 530
Myrtle Beach, South Carolina 29578-2468

RE: Report of Accommodations Tax 2007-2008 Expenditures

Dear Mr. Battle:

Thank you for your February 9, 2009, letter to the Tourism Expenditure Review Committee ("TERC") written on behalf of the City of Myrtle Beach ("City") regarding the above-referenced matter. I have been requested by the TERC to respond on its behalf. The TERC is pleased to have this opportunity to clarify its position with respect to the matters you have raised.

Unfortunately, it appears that the TERC and the City simply have different interpretations of S.C. Code Ann. §6-4-10(b), particularly in terms of what circumstances can justify the use of accommodations tax funds by a municipality with a high-concentration of tourism activity to provide "additional ...municipal services." The TERC's view is that the pertinent comparison under the statute is the amount of services the City of Myrtle Beach normally provides versus the additional services provided by the City of Myrtle Beach as a result of the presence of tourists.¹ A comparison of what level of services the City would be providing if it had the same permanent population as another municipality not situated in an area with a high concentration of tourism activity is, in TERC's view, inapt since it assumes that two municipalities are similar. If the TERC were to accept the City's interpretation of §6-4-10(4)(b), the City would always have been

¹This view is supported by the plain language of §6-4-10(b) providing that "[t]he funds must not be used as an additional source of revenue to provide services normally provided by the ...municipality." (Emphasis supplied.) In other words, the statute does not call for an examination of service levels among different municipalities, but does require a comparison of service levels within the specific municipality.

justified in expending 100% of the accommodations tax funds allocated to it under §6-4-10(4)(a) on municipal services simply because it is located in a high concentration of tourism area. The TERC does not believe that was the legislature's intent inasmuch as that would lead to municipalities simply supplanting a portion of the municipal tax revenues needed for services normally provided by the municipalities with state accommodations tax revenues.

To the City's point that TERC's interpretation would result in a municipality in a high concentration of tourism area being unable to use accommodations tax funds for additional services, too much has been read into the TERC's letter of January 27th. The TERC recognizes that a municipality has the right to utilize accommodations tax allocations as a source of revenue to provide services beyond those normally provided by the municipality. However, in order to establish that services are being provided beyond those normally provided by the municipality, TERC believes that the municipality must show that the costs associated with providing the additional services (e.g., wages and salaries of municipal personnel) are attributable solely to the presence of tourists. Your letter asks how a municipality would "distinguish normal City services from enhanced services necessary to accommodate the presence of tourists" if not by a "comparison[] of the City's 'permanent population' with those of other municipalities." As noted above, the TERC does not believe that a comparison among dissimilar municipalities is appropriate. Moreover, the TERC disagrees that Revenue Ruling #98-22, which you have referenced in your letter, implies that a comparison among dissimilar municipalities is appropriate for purposes of determining whether an expenditure is appropriate under §6-4-10(4)(b). Further, an answer to your question can be found in Revenue Ruling #98-22. In several places in this document, the DOR opines that a municipality must show that the amount expended on costs for additional municipal services are based upon the estimated percentage of the municipality's total costs incurred in providing the service in question **that are directly attributable to tourists**. One means suggested by Revenue Ruling #98-22 for making such a showing is to determine the difference in costs incurred during the tourist season and the non-tourist season. Neither your letter, nor the City's October 13, 2008 report to the TERC, makes such a showing.

Notwithstanding the foregoing, TERC recognizes that its letter of February 7, 2008, regarding the City's 2006-2007 expenditures did state that same were properly documented and therefore permissible. Although TERC now believes that the documentation was legally not sufficient in view of TERC's interpretation of §6-4-10(4)(b), it recognizes that it would impose a hardship on the City if TERC were to apply its interpretation of the law to the City's 2007-2008 expenditures. Accordingly, TERC will not certify any part of the City's 2007-2008 expenditures to the State Treasurer as non-compliant **on this ground**. The TERC advises the City, however, that any 2008-2009 expenditures made by the City under §6-4-10(4)(b) will be reviewed by TERC in accordance with the interpretation of the statute set forth above.

Your letter states that the City is "surprised that TERC would criticize the City's use of its general fund to promote a variety of 'tourism related' projects" in view of the City's "legally

approved procedure by which it evaluates all applications for ...accommodations tax funding.”² Apparently, the City is referring to the second numbered paragraph of the TERC’s January 27th letter. The TERC appreciates this opportunity to clarify its point in this regard. The TERC’s position is that it is inappropriate for the City to put 100% of the allocated funds in the general fund account and then employ a City-created process to make a portion of these funds available for “tourism-related” projects. This circumvents the local advisory committee process mandated by §6-4-25. To the extent there have been expenditures from the City’s general fund for this purpose utilizing accommodations tax revenues in excess of those permitted under §6-4-10(1) and (2), this would be improper. Further, the TERC is not aware of any “legally approved procedure” which would allow the City to eliminate the local advisory review process.³

With respect to the City’s position regarding TERC’s authority and jurisdiction over the City’s “general fund, the TERC would note as follows: the legislature has vested in TERC the authority to oversee all questionable expenditures under §6-4-35(B)(1)(a) and the City has deposited approximately \$4.3 million worth of state accommodations tax revenues in its general fund, purportedly under §6-4-10(4)(a). The TERC is not attempting “to dictate to the City Council how it uses its general fund.” The TERC is simply questioning if the City’s devotion of all accommodations tax revenues for the period in question to the general fund to be used “for police, fire and public safety” in tandem with an extra-statutory process by which tourism-related projects may be funded out of the general fund, comports with state law.⁴ You have asked what additional facts would be useful to the TERC in resolving its questions. It would be helpful for TERC to know exactly what type of “tourism-related” projects the City has funded with general fund monies and the amount dedicated to that. The TERC will need to receive any additional information from the City before its next meeting, which is scheduled for May 6, 2009.

²Your letter appears to confirm the information that TERC had regarding the City’s practice in this regard. The City’s report suggests to TERC that \$1,337,000 in accommodations tax funds were used for this purpose as that represents the amount recommended by the local advisory committee for “tourism-related projects” as shown in the City’s report. If the TERC is incorrect in regard to the amount taken from the general fund to support these projects, please so advise and provide to TERC the correct amount.

³Although the City’s internal review process is discussed in an order of the Administrative Law Court (presently on appeal, as you are aware), that order does not sanction a procedure under which a municipality places 100% of accommodations tax revenues in its general fund under the guise of it being for additional municipal services and then later awards monies from the general fund to applicants for tourism-related projects which have not been reviewed by the local advisory committee. It appears to TERC that this may be being done to avoid the local advisory committee process.

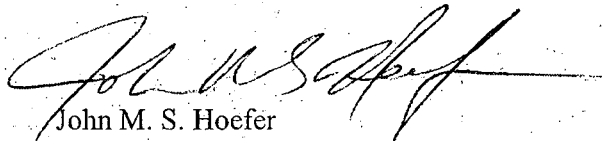
⁴TERC notes that the City’s report states that used \$4,318,250 for “additional Police, Fire and Parks personnel.” Your letter states that these funds were used for “police, fire and public safety.” The TERC would like clarification in this regard.

Michael W. Battle, Esquire
April 22, 2009
Page 4

If you have any questions, please do not hesitate to contact me. With best regards, I am

Sincerely,

Willoughby & Hoefler, P.A.



John M. S. Hoefler

JMSH/cf

cc: Ms. Lauren Sponseller



City of Myrtle Beach
SOUTH CAROLINA

September 30, 2009

Ms. Damita Jeter
Tourism Expenditure Review Committee
P.O. Box 125
Columbia, SC 29214-0120

Re: Accommodations Tax Expenditure Reporting Forms

Dear Ms. Jeter,

Please find enclosed the Accommodations Tax Expenditure Reporting Forms as required by the South Carolina Code of Laws, Title 6, Chapter 4, Section 6-4-25, detailing the expenditures for the fiscal year 2008-2009. Detailed information, as requested, has been included on the forms when available.

If you have any questions with regards to this letter or information attached, please do not hesitate to contact me.

Sincerely,

Michael D. Price
Budget & Evaluation Analyst

65% Tourism-Related Expenditures Special Fund Organizations Making Application to Accommodations Tax Advisory Committee			Amount Requested by Organization	Amount Rec. by Advisory Committee	Amount approved by Local Government	Amount disbursed by Local Government
Report all applications whether they were approved or not		B=Total Budget; N= #of Attendees; T=# of Tourists ***ALL INFORMATION PROVIDED BY APPLICANT***				
Organization(s)	Cat.	Project Description				
Carolina Master Chorale	2	Promotion of the arts through professional performances of choral masterworks in concert; (B) \$124,500 (T) 1,600 total with 25% of attendees tourists (375)	30,000	15,000		
Art Museum	2	Promotion of the Arts and MB; showcasing regional and national artist; (B) \$592,161; (N) Est 28,000 attendees (T)17,000 tourists	120,000	100,000		
First Presbyterian Church	2	Promotion of Professional Orchestra concerts; (B) \$60,750 (N) 4,000 total attendees (T) Approx 50% of audience nonresidents of Myrtle Beach (1,200-1,500)	10,000	10,000		
Grand Strand YMCA	2	Promotion of Soccer Tournaments; (B) \$168,213 (N) 4,086 (T) 14,301 tourists in attendance	50,000	40,000		
Waccamaw Arts & Crafts Guild	2	Promotion of the Arts through Arts Shows, Programs & Exhibits; (B) \$47,000 (N) 15,000 attendees (T) 10,000 tourist	36,000	20,000		
Myrtle Beach Golf Holiday	2	Promotion of Golf Tournament (T) Approx. 3,650 golfers compete & approx. 6,500 tourists in attendance (B)\$2,034,500	50,000	50,000		
Long Bay Symphony	2	attendees annually (T) Approx 40% of audience nonresidents of Myrtle Beach	72,500	72,500		
Beach Ball Classic, Inc.	2	Promotion for Basketball Tournament with live television coverage promoting MB to over 12 million cable households; (N) 30,000 ~ 10 day tournament; 32 teams from 12 States & Canada (B) \$467,000 (T)1,750	60,000	40,000		
Baseball At the Beach Tournament	2	Promotion of 3 high school and college baseball tournaments; (T) approx 6,000; (B) \$115,000	60,000	40,000		
North South Game Committee	2	Promotion of North South Football Games (high school seniors) with live television coverage (B) \$100,000 (N) 6,500 (T) Approx 4,500	30,000	10,000		
Childrens Museum of SC	2	Advertising/Marketing for museum and MB; (B) \$481,806; (N) 36,000 (08-09) (T) 18,360 (08-09)	127,384	100,000		
Horry Cultural Arts & Cultural Events	2	Promotion of Cultural Arts (advertising) (B) \$95,415 - Umbrella Organization promoting arts (does not act as pass through for accommodations tax granting to other agencies).	9,000	9,000		
Mingo Bay Classic Baseball Tournament	2	Promotion of baseball tournament; (B) \$88,144 (N) 3,200 (T) 3,200	20,000	10,000		
Omar Shriners	2	Advertising of 2 professionally judged Shrine BBQ Competition(national & international); (B) \$87,741 (N) 10,000 (T) 9,800	50,000	25,000		
Myrtle Beach Corporation for the Arts	3	Design & Renovation of facilities for civic and cultural activities to provide for and promote tourism (B) \$390,000 (T) not yet constructed	100,000			
Ocean Front Merchants Association	2	Regional and International Promotion of the businesses and events of Downtown Myrtle Beach (B)\$174,737 (T) New organization, no estimates at this time	85,000	85,000		

Offense-Defense All American Bowl	2	Promote an All-American Bowl by providing competition for top high school football players in the nation; (B) \$329,652 (N) 7,500 (T) 1,057	35,000	10,000		
Triple Crown Sports	2	Promotion of baseball tournaments; (B) \$367,406; (N) 10,800 (T) 10,800	43,000	-		
City of Myrtle Beach - Beach Renourishment	6	Reach II Beach Renourishment Project in Conjunction with Army Corp. of Engineers (B) \$2,243,000	147,424	147,424		
City of Myrtle Beach - Beach Monitoring	6	Beach Maintenance/Water Quality Monitoring & Posting	62,000	62,000		
City of Myrtle Beach - Convention Center	1	Advertising/Marketing Program thru MB Conv. Ctr.; (B) \$1,251,990	753,733	753,733		
City of Myrtle Beach - General Fund	4	Support of operating expenses for services provided above and beyond permanent population throughout the year, to include additional Police, Fire and Parks personnel (B) General Fund \$51.7 Million (T) MB Chamber estimates 13.7 million visitors annually	3,977,794	3,065,294	4,664,951	4,664,951
Totals:			5,928,835	4,664,951	4,664,951	4,664,951

*Project Name/Description should address the specific use of requested funds. A summary of the organization's request may also be attached.

**Amount approved must be based exclusively on the estimated percentage of costs directly attributed to attracting or serving tourists.

Return to: A-Tax Expenditure Review Committee PO Box 125 Columbia, SC 29214-0120	Project Categories - All must attract or provide for tourists. 1- Destination advertising/promotion 2- Tourism - Related Events 3- Tourism - Related Facilities 4- Tourism - Related Public Services 5- Tourism Public Transportation 6- Waterfront Erosion/Control/Repair 7- Operation of Visitor Information Centers
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R - 508

LOCAL ACCOMMODATIONS TAX ADVISORY COMMITTEE MEMBERSHIP

Pursuant to Section 6-4-25, Code of Laws of South Carolina, there shall be a local advisory committee consisting of seven members. The majority of these members shall be selected from the hospitality industry, of which at least two must be the lodging industry, where applicable, and one member shall represent the cultural organizations. Please place an asterisk (*) to indicate the Chairperson.

List below the four designated hospitality industry representatives, two of which must be from the lodging sector of the hospitality industry:

- 1- Mary Frances Tall - Owner Sea Dip Motel, 6707 Procher Drive, 68th Ave. North - MBSC 29572
(Name) (Business Name & Address)
- 2- James Edward Patrick - Boardwalk Motel, 5001 Camelia Drive, MBSC 29577
(Name) (Business Name & Address)
- 3- David Brittain - Oceanfront Investors, PO Box 1948, MBSC 29579
(Name) (Business Name & Address)
- 4- *Mary B. Henry - Mary B. Henry, Inc., 1210 E Benna Drive, MBSC 29577
(Name) (Business Name & Address)

Please list below the designated cultural interest representative and affiliation:

- 5- Steve Marino Mills - Professional Musician 801 Burcale Rd. Courtyard 2, Unit M-3, MBSC 29577
(Name) (Business Name & Address)

Please list below the other two designated members of the committee:

- 6- James McIlrath, CPA - 1004 29th Avenue N., MBSC 29577
(Name) (Business Name & Address)
- 7- Harry Charles - Professional Attorney *Retired*, PO Box 1204, MBSC 29578
(Name) (Business Name & Address)

Please return to Tourism Expenditure Review Committee
Attn: Damita Jeter
PO Box 125
Columbia, SC 29214-0120

No later than October 15, 2008

Submitted by: Michael D. Price (843) 918-1135 **Date:** 9/30/09
Budget Analyst
mprice@cityofmyrtlebeach.com
Name of County/Municipal Government: City of Myrtle Beach

LOCAL ACCOMMODATIONS TAX ADVISORY COMMITTEE MEMBERSHIP (CURRENT)

Pursuant to Section 6-4-25, Code of Laws of South Carolina, there shall be a local advisory committee consisting of seven members. The majority of these members shall be selected from the hospitality industry, of which at least two must be the lodging industry, where applicable, and one member shall represent the cultural organizations. Please place an asterisk (*) to indicate the Chairperson.

List below the four designated hospitality industry representatives, two of which must be from the lodging sector of the hospitality industry:

- 1- Mary Frances Tall - Owner Sea Dip Motel, 66707 Procher Drive - MBSC 29577
(Name) (Business Name & Address)
- 2- James Edward Patrick - Boardwalk Motel, 5001 Camelia Drive, MBSC 29577
(Name) (Business Name & Address)
- 3- David Brittain - Oceanfront Investors, PO Box 1948, MBSC 29579
(Name) (Business Name & Address)
- 4- *Mary B. Henry - Mary B. Henry, Inc., 1210 E Benna Drive, MBSC 29577
(Name) (Business Name & Address)

Please list below the designated cultural interest representative and affiliation:

- 5- Steve Marino Mills - Professional Musician 600 Calhoun Road, MBSC 29577
(Name) (Business Name & Address)

Please list below the other two designated members of the committee:

- 6- Debbie Harwell, Adobe Palm Communications, PO Box 7769, MBSC 29572
(Name) (Business Name & Address)
- 7- Harry G. Charles, Former City Council Member, 6203 N. Ocean Blvd., MBSC 29572
(Name) (Business Name & Address)

Please return to Tourism Expenditure Review Committee
Attn: Damita Jeter
PO Box 125
Columbia, SC 29214-0120

No later than October 15, 2008

Submitted by: Michael D. Price **Phone:** (843) 918-1135 **Date:** 9/30/09
Budget Analyst
mprice@cityofmyrtlebeach.com

Name of County/Municipal Government:
City of Myrtle Beach

65% Tourism-Related Expenditures Special Fund Organizations Making Application to Accommodations Tax Advisory Committee			Amount Requested by Organization	Amount Rec. by Advisory Committee	Amount approved by Local Government	Amount disbursed by Local Government
Report all applications whether they were approved or not		B=Total Budget; N= #of Attendees; T=# of Tourists ***ALL INFORMATION PROVIDED BY APPLICANT***				
Organization(s)	Cat.	Project Description				
Carolina Master Chorale	2	Promotion of the arts through professional performances of choral masterworks in concert; (B) \$124,500 (T) 1,600 total with 25% of attendees tourists (375)	30,000	15,000		
Art Museum	2	Promotion of the Arts and MB; showcasing regional and national artist; (B) \$592,161; (N) Est 28,000 attendees (T)17,000 tourists	120,000	100,000		
First Presbyterian Church	2	Promotion of Professional Orchestra concerts; (B) \$60,750 (N) 4,000 total attendees (T) Approx 50% of audience nonresidents of Myrtle Beach (1,200-1,500)	10,000	10,000		
Grand Strand YMCA	2	Promotion of Soccer Tournaments; (B) \$168,213 (N) 4,086 (T) 14,301 tourists in attendance	50,000	40,000		
Waccamaw Arts & Crafts Guild	2	Promotion of the Arts through Arts Shows, Programs & Exhibits; (B) \$47,000 (N) 15,000 attendees (T) 10,000 tourist	36,000	20,000		
Myrtle Beach Golf Holiday	2	Promotion of Golf Tournament (T) Approx. 3,650 golfers compete & approx. 6,500 tourists in attendance (B)\$2,034,500	50,000	50,000		
Long Bay Symphony	2	attendees annually (T) Approx 40% of audience nonresidents of Myrtle Beach	72,500	72,500		
R Beach Ball Classic, Inc.	2	Promotion for Basketball Tournament with live television coverage promoting MB to over 12 million cable households; (N) 30,000 ~ 10 day tournament; 32 teams from 12 States & Canada (B) \$467,000 (T)1,750	60,000	40,000		
S Baseball At the Beach Tournament	2	Promotion of 3 high school and college baseball tournaments; (T) approx 6,000; (B) \$115,000	60,000	40,000		
North South Game Committee	2	Promotion of North South Football Games (high school seniors) with live television coverage (B) \$100,000 (N) 6,500 (T) Approx 4,500	30,000	10,000		
Childrens Museum of SC	2	Advertising/Marketing for museum and MB; (B) \$481,806; (N) 36,000 (08-09) (T) 18,360 (08-09)	127,384	100,000		
Horry Cultural Arts & Cultural Events	2	Promotion of Cultural Arts (advertising) (B) \$95,415 - Umbrella Organization promoting arts (does not act as pass through for accommodations tax granting to other agencies).	9,000	9,000		
Mingo Bay Classic Baseball Tournament	2	Promotion of baseball tournament; (B) \$88,144 (N) 3,200 (T) 3,200	20,000	10,000		
Omar Shriners	2	Advertising of 2 professionally judged Shrine BBQ Competition(national & international); (B) \$87,741 (N) 10,000 (T) 9,800	50,000	25,000		
Myrtle Beach Corporation for the Arts	3	Design & Renovation of facilities for civic and cultural activities to provide for and promote tourism (B) \$390,000 (T) not yet constructed	100,000			
Ocean Front Merchants Association	2	Regional and International Promotion of the businesses and events of Downtown Myrtle Beach (B)\$174,737 (T) New organization, no estimates at this time	85,000	85,000		
Offense-Defense All American Bowl	2	Promote an All-American Bowl by providing competition for top high school football players in the nation; (B) \$329,652 (N) 7,500 (T) 1,057	35,000	10,000		

Triple Crown Sports	2	Promotion of baseball tournaments: (B) \$367,406; (N) 10,800 (T) 10,800	43,000	-		
City of Myrtle Beach - Beach Renourishment	6	Reach II Beach Renourishment Project in Conjunction with Army Corp. of Engineers (B) \$2,243,000	147,424	147,424		
City of Myrtle Beach - Beach Monitoring	6	Beach Maintenance/Water Quality Monitoring & Posting	62,000	62,000		
City of Myrtle Beach - Convention Center	1	Advertising/Marketing Program thru MB Conv. Ctr.; (B) \$1,251,990	753,733	753,733		
City of Myrtle Beach - General Fund	4	Support of operating expenses for services provided above and beyond permanent population throughout the year, to include additional Police, Fire and Parks personnel (B) General Fund \$51.7 Million (T) MB Chamber estimates 13.7 million visitors annually	3,977,794	3,065,294	4,664,951	4,664,951
Totals:			5,928,835	4,664,951	4,664,951	4,664,951

*Project Name/Description should address the specific use of requested funds. A summary of the organization's request may also be attached.

**Amount approved must be based exclusively on the estimated percentage of costs directly attributed to attracting or serving tourists.

Return to: A-Tax Expenditure Review Committee PO Box 125 Columbia, SC 29214-0120	Project Categories - All must attract or provide for tourists. 1- Destination advertising/promotion 2- Tourism - Related Events 3- Tourism - Related Facilities 4- Tourism - Related Public Services 5- Tourism Public Transportation 6- Waterfront Erosion/Control/Repair 7- Operation of Visitor Information Centers
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NOTE: Items with no recommendations or approvals that have expenditures were approved in the prior fiscal year. Approved unpaid awards will be disbursed in the next fiscal year, providing that all requirements are met by the recipient agencies.

ALL agencies listed above claimed non-profit (501(3)(c) status.

LOCAL ACCOMMODATIONS TAX ADVISORY COMMITTEE MEMBERSHIP (CURRENT)

Pursuant to Section 6-4-25, Code of Laws of South Carolina, there shall be a local advisory committee consisting of seven members. The majority of these members shall be selected from the hospitality industry, of which at least two must be the lodging industry, where applicable, and one member shall represent the cultural organizations. Please place an asterisk (*) to indicate the Chairperson.

List below the four designated hospitality industry representatives, two of which must be from the lodging sector of the hospitality industry:

- 1- Mary Frances Tall - Owner Sea Dip Motel, 66707 Procher Drive - MBSC 29577
(Name) (Business Name & Address)
- 2- James Edward Patrick - Boardwalk Motel, 5001 Camelia Drive, MBSC 29577
(Name) (Business Name & Address)
- 3- David Brittain - Oceanfront Investors, PO Box 1948, MBSC 29579
(Name) (Business Name & Address)
- 4- *Mary B. Henry - Mary B. Henry, Inc., 1210 E Benna Drive, MBSC 29577
(Name) (Business Name & Address)

Please list below the designated cultural interest representative and affiliation:

- 5- Steve Marino Mills - Professional Musician 600 Calhoun Road, MBSC 29577
(Name) (Business Name & Address)

Please list below the other two designated members of the committee:

- 6- Debbie Harwell, Adobe Palm Communications, PO Box 7769, MBSC 29572
(Name) (Business Name & Address)
- 7- Harry G. Charles, Former City Council Member, 6203 N. Ocean Blvd., MBSC 29572
(Name) (Business Name & Address)

**Please return to Tourism Expenditure Review Committee
Attn: Damita Jeter
PO Box 125
Columbia, SC 29214-0120**

No later than October 15, 2008

Submitted by: Michael D. Price **Phone:** (843) 918-1135 **Date:** 9/30/09
Budget Analyst
mprice@cityofmyrtlebeach.com
Name of County/Municipal Government: City of Myrtle Beach

LOCAL ACCOMMODATIONS TAX ADVISORY COMMITTEE MEMBERSHIP 2008-2009

Pursuant to Section 6-4-25, Code of Laws of South Carolina, there shall be a local advisory committee consisting of seven members. The majority of these members shall be selected from the hospitality industry, of which at least two must be the lodging industry, where applicable, and one member shall represent the cultural organizations. Please place an asterisk (*) to indicate the Chairperson.

List below the four designated hospitality industry representatives, two of which must be from the lodging sector of the hospitality industry:

- 1- Mary Frances Tall - Owner Sea Dip Motel, 6707 Procher Drive, 68th Ave. North - MBSC 29572
(Name) (Business Name & Address)
- 2- James Edward Patrick - Boardwalk Motel, 5001 Camelia Drive, MBSC 29577
(Name) (Business Name & Address)
- 3- David Brittain - Oceanfront Investors, PO Box 1948, MBSC 29579
(Name) (Business Name & Address)
- 4- *Mary B. Henry - Mary B. Henry, Inc., 1210 E Benna Drive, MBSC 29577
(Name) (Business Name & Address)

Please list below the designated cultural interest representative and affiliation:

- 5- Steve Marino Mills - Professional Musician 801 Burcale Rd. Courtyard 2, Unit M-3, MBSC 29577
(Name) (Business Name & Address)

Please list below the other two designated members of the committee:

- 6- James McIlrath, CPA - 1004 29th Avenue N., MBSC 29577
(Name) (Business Name & Address)
- 7- Harry Charles - Professional Attorney *Retired*, PO Box 1204, MBSC 29578
(Name) (Business Name & Address)

**Please return to Tourism Expenditure Review Committee
Attn: Damita Jeter
PO Box 125
Columbia, SC 29214-0120**

No later than October 15, 2008

Submitted by: Michael D. Price **Phone:** (843) 918-1135 **Date:** 9/30/09
Budget Analyst
mprice@cityofmyrtlebeach.com
Name of County/Municipal Government: City of Myrtle Beach

January 4, 2010

Mr. Michael D. Price
Budget Analyst
City of Myrtle Beach
PO Box 2468
Myrtle Beach, SC 29578

Dear Mr. Price:

At its meeting on November 2, 2009, the Tourism Expenditure Review Committee (TERC) reviewed the September 30, 2009 report submitted by the City of Myrtle Beach pursuant to S.C. Code Section 6-4-25(D) regarding the City's FY 08-09 Expenditures. As a result of this review, the TERC questions whether the City's expenditure of approximately \$4.6 Million on police, fire and parks personnel complies with the requirement of S.C. Code Ann. §6-4-10(4)(b) that monies in the fund created under S.C. Code Section 6-4-10(4)(a) not be used as an additional source of revenue to provide services normally provided by the City. The TERC also questions whether, by dedicating this amount to the City's general fund and subsequently approving expenditures on various events and projects from the City's general fund, the City is employing a procedure to authorize expenditures of local accommodations tax funds, generated under S.C. Code Section 12-36-2630(3), which is contrary to the requirements of S.C. Code Section 6-4-25(A-C).

In view of the City's recent filing with the Administrative Law Court, the TERC assumes that the City has already made known to the TERC the City's reasons for believing that this expenditure is compliant with the law. However, the TERC is scheduled to meet on January 11, 2010 and will be glad to consider at that time any additional information that the City may wish to submit regarding this matter and act upon it at that time. Should the City desire additional time to consider whether it will provide additional information, please let me know so that I may so advise the other members of the TERC.

Please respond in writing regarding this issue before January 11, 2010. Questions may be directed to me at sponseL@sctax.org or by calling 803-898-5400. Thank you.

Sincerely,



Lauren L. Sponseller, TERC Staff Liaison
Tourism Expenditure Review Committee

Review Committee

P.O. Box 125
Columbia, SC 29214-0120
301 Gervais Street
Columbia, SC 29201
803-898-5400

Frans N. Mustert, CHA
CHAIRMAN
Appointed at the
Recommendation of the
Hospitality Association of SC

Lanneau H. Siegling, CHA
VICE CHAIRMAN
President Pro Tempore
Appointee

Susan Cruse
Appointed at the
Recommendation of the SC
Association of Tourism Regions

John Curry, CHA
Appointed at the
Recommendation of the SC
Association of Convention and
Visitors Bureaus

Lisa Martin
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Mark Williams
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Speaker of the House
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Suzette Surkamer
Appointed at the
Recommendation of the SC
Arts Commission

Kevin Yokim
Appointed at the
Recommendation of the SC
Association of Counties

Edward W. Riggs, Sr.
Governor's Appointee



City of Myrtle Beach
SOUTH CAROLINA

January 7, 2010

OFFICE OF BUDGET & EVALUATION
(843)918-1126 / Facsimile: (843) 918-1137
921 Oak Street • 29577 (parcel)

Ms. Lauren L. Sponseller, TERC Staff Liaison
Tourism Expenditure Review Committee
P.O. Box 125
Columbia, SC 29214-0120

Re: Response to TERC letter dated January 4, 2010

Dear Ms. Sponseller:

I have received your letter dated January 4, 2010, informing us that TERC has questioned whether the City's expenditure of funds as reported in the September 30, 2009 report is compliant under two sections of the statute. I would like to provide the following for TERC's consideration and for the record.

Question regarding compliance under Sec. 6-4-10(4)(b)

In the first paragraph of that letter, you state that TERC "questions whether the City's expenditure of approximately \$4.6 million on police, fire and parks personnel complies with the requirement of S.C. Code Sec. 6-4-10(4)(b) that monies in the fund created under S.C. Code Sec. 6-4-10(4)(a) not be used as an additional source of revenue to provide services normally provided by the City." The City's action was based upon the fact that the same section further states that the funds in question, i.e., those used "to provide additional county and municipal services including, but not limited to, law enforcement, traffic control, public facilities, and highway and street maintenance, as well as the continual promotion of tourism," must be used "to promote tourism and enlarge its economic benefits through advertising, promotion, and providing those facilities and services which enhance the ability of the county or municipality to attract and provide for tourists."

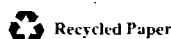
The method the City has used to evaluate its own compliance is consistent with Revenue ruling No 98-22, which provides as follows:

Examples of qualifying expenditures under this category would include salaries for extra police during the peak tourist season, monies spent to hire extra garbage service around tourist facilities during the tourist season or to provide other services that are required because of the high concentration of tourism.

When considering the percentage of costs that are attributable to tourism, the Department of Revenue will consider the number of permanent residents for the county or municipality as compared to the number of tourists that visit the locality, taking into consideration the average length of stay for such tourists.

Based upon an estimate of the number of annual visitors to the Myrtle Beach area conducted by D.K. Shiflett & Associates, Ltd. for the Myrtle Beach Area Chamber of Commerce,

CITY OF MYRTLE BEACH / P.O. Box 2468 / MYRTLE BEACH, SOUTH CAROLINA 29578-2468



R - 517

approximately 15.2 million people visited the area in 2007. The average length of stay for leisure travelers was 5 days (3 days for business travelers) according to data presented in the Chamber's 19th Annual Statistical Abstract, available on that organization's web site. Conservatively, that may amount to the equivalent of an *average* daily population of 208,000 people in addition to the area's permanent residents. In terms of orders of magnitude, this is fairly consistent with information prepared by a consultant to a local developer and provided to the City in 2004 in which the City of Myrtle Beach was estimated to have had an *average* daily population of about 105,000, approximately 4.3 times the size of its permanent population. If peak tourist months alone were considered, the ratio of tourists to residents would be entirely overwhelming during those months.

Thus at a ratio of 3.3:1, tourist-related expenditures may be estimated to account for approximately 76.7% of expenditures in a department such as Police or Fire. The ratio would be somewhat less in Parks and Recreation given that many recreation programs serve primarily residents.

For FY2008-09, total expenditures for the departments in question were:

Police Department	\$20,008,175
Fire Department	11,138,096
Cultural & Leisure Services	<u>10,998,109</u>
Total	\$42,144,380

Thus in the Police Department, at 76.7% of total, tourist-related expenditures amount to more than \$15 million—far greater than the \$4.6 million of accommodations tax money spent for such services.

I would also point out that we have been reviewing our reports to TERC and to the Accommodations Tax Oversight Committee, which existed prior to TERC's formation. Thus far, we have located records going as far back as the 1998-99 fiscal year. In each case, the reports show that the City spent substantial amounts of these funds for these identical purposes. The expenditures were not questioned until the 2006-07 fiscal year, at which time we provided additional information regarding our rationale for the expenditures and TERC found them to be compliant. I have attached a copy of the correspondence between the City and TERC regarding the FY2006-07 expenditure of funds.

Question regarding compliance under Sec. 6-4-25(A-C)

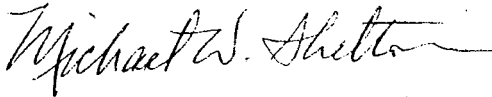
Your letter also states that the Committee questioned whether the City were making these expenditures and subsequently making grants to outside agencies, some of which were among those that had applied for accommodations tax funding, contrary to the requirements of S.C. Code Sec. 6-4-25(A-C). I have reviewed the referenced sections, which have to do with the local accommodations tax advisory committee and the requirements that the Committee review all applications for Accommodations Tax funding, make recommendations to the governing body regarding the disposition of those applications and that the governing body consider the local advisory committee's recommendations in this regard. As our report shows, we do maintain a properly constituted local advisory committee, the committee did review each of the applications as reported in the column headed "Amount Requested by Organization" on Side B of the reporting form (Side B consisting of pages 1 of 2 and 2 of 2) and The Advisory Committee did make recommendations regarding each expenditure as reported under the heading "Amount Rec. by Advisory Committee" of the same report. All of these recommendations were considered by

City Council when they voted on the motion to distribute the Accommodations Tax funds.

Furthermore, Council considered the local advisory committee's recommendations regarding the funding of the agencies and projects for which applications were filed when it subsequently considered the allocation of grant money from its General Fund.

In summary, we appreciate that the Committee found this expenditure to be compliant in prior periods. The City's reliance upon that determination in many previous years was important in its decision to continue to allocate funds on the same basis in 2008-09, the year now in question. I would ask that you reconsider your evaluation of the 2009 expenditure and recognize that it, too, is compliant.

Sincerely,

A handwritten signature in cursive script that reads "Michael W. Shelton". The signature is written in black ink and is positioned above the typed name.

Michael W. Shelton, CGFO
Budget & Evaluation Director

Attachments

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL
ELIZABETH ZECK*
BENJAMIN P. MUSTIAN
MICHAEL R. BURCHSTEAD
ANDREW J. MACLEOD

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

TRACEY C. GREEN
ALAN WILSON
SPECIAL COUNSEL

*ALSO ADMITTED IN TX

January 11, 2010

***COMPROMISE AND SETTLEMENT
PRIVILEGED COMMUNICATION***

VIA ELECTRONIC AND

U.S. MAIL

Michael W. Battle, Esquire
Post Office Box 530
Myrtle Beach, South Carolina 29578-2468

RE: City of Myrtle Beach v. Tourism Expenditure Review Committee;
Docket No. 09-ALJ-30-0435-IJ

Dear Mr. Battle:

I am writing to you on behalf of Respondent Tourism Expenditure Review Committee ("TERC") regarding the above-referenced matter.

The TERC is in receipt of the January 7, 2010, letter from Mr. Shelton on behalf of the City of Myrtle Beach ("City") responding to the January 4, 2010, letter from TERC's Vice Chairman, Lanneau H. Siegling, CHA. The TERC did not act today upon the issue subject of the above-referenced docket in view of the fact that Mr. Shelton's letter raises additional matter that TERC will need to investigate and further consider.

The TERC did, however, vote to direct that I correspond with you to propose that a three person subcommittee of TERC and a three person subcommittee of the City Council meet to discuss the above-referenced case, such discussion to be held pursuant to the settlement and compromise privilege. The TERC proposes that such a meeting not include staff or counsel and is willing to engage in such a discussion at the City's earliest convenience.

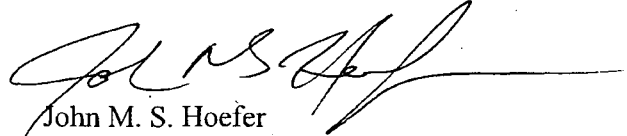
Please present this proposal to your client and advise me of its response at your earliest convenience.

Michael W. Battle, Esquire
January 11, 2010
Page 2

If you have any questions, please do not hesitate to contact me. With best regards, I am

Sincerely,

Willoughby & Hoefler, P.A.



John M. S. Hoefler

JMSH/cf

cc: Ms. Lauren Sponseller

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

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AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

TRACEY C. GREEN
ALAN WILSON
SPECIAL COUNSEL

*ALSO ADMITTED IN TX

February 11, 2010

VIA ELECTRONIC & U.S. MAIL

Michael W. Battle, Esquire
Battle Vaught & Howe, PA
Post Office Box 530
Conway, South Carolina 29526

RE: City of Myrtle Beach 2008-2009 Accommodations Tax Report

Dear Mr. Battle:

I am writing to you on behalf of the Tourism Expenditure Review Committee ("TERC") regarding the above-referenced matter.

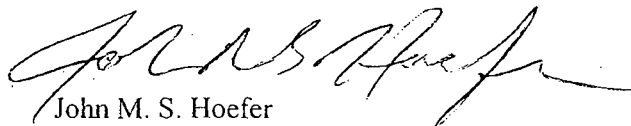
In considering the information provided by the City of Myrtle Beach ("City") with its September 30, 2009, Accommodations Tax Reporting Form, and in the City's January 7, 2010, letter pertaining thereto, TERC is trying to determine the amount of accommodations tax fund expenditures by the City during the pertinent period which were associated with "the funding of the agencies and projects for which applications were filed when [City Council] subsequently considered the allocation of grant money from its General Fund."

Please provide this information to me at your earliest possible convenience.

If you have any questions, please do not hesitate to contact me. With best regards, I am

Sincerely,

Willoughby & Hoefer, P.A.



John M. S. Hoefer

JMSH/cf

cc: Ms. Lauren Sponseller

BATTLE & VAUGHT P.A.
ATTORNEYS AND COUNSELORS AT LAW
1200 MAIN STREET
POST OFFICE BOX 530
CONWAY, SOUTH CAROLINA 29528
TELEPHONE (843) 248-4321
FACSIMILE (843) 248-4512
www.battlevaught.com

MICHAEL W. BATTLE
E-Mail Address: mbattle@battlevaught.com
VICTORIA T. VAUGHT
E-Mail Address: vvaught@battlevaught.com

JAMES R. BATTLE, II
E-Mail Address: jbattle@battlevaught.com

February 10, 2010

John M.S. Hoefler
Willoughby & Hoefler, P.A.
P.O. Box 8416
Columbia, South Carolina 29202-8416


RE: City of Myrtle Beach vs. Tourism Expenditure Review Committee

Dear John:

This will acknowledge your letter dated February 11, 2010. The City's position is all accommodations tax funds expenditures were made to the City as shown in the City's report previously furnished to TERC. Expenditures from the City's general fund are not considered to be expenditures of accommodations tax funds. General fund expenditures are outside the scope of S.C. Code Ann. § 6-4-35.

With best regards.

Sincerely,


Michael W. Battle
Battle & Vaught, P.A.

C Tom Ellenburg

RECEIVED

FEB 19 2010

Willoughby & Hoefler, P.A.

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
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ELIZABETH ZECK*
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ANDREW J. MACLEOD

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

TRACEY C. GREEN
ALAN WILSON
SPECIAL COUNSEL

February 24, 2010

*ALSO ADMITTED IN TX

Mr. Tom Leath
City Manager
City of Myrtle Beach
Post Office Drawer 2468
Myrtle Beach, South Carolina 29578

Dear Mr. Leath:

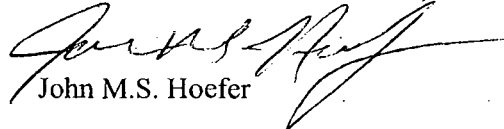
Pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §30-4-30(c), I am requesting copies of the following public documents:

1. Any and all applications made to the City of Myrtle Beach ("City") for grants from its general fund during the 2008-2009 budget year for "funding of the agencies and projects for which applications were filed when [City Council] subsequently considered the allocation of grant money for its General Fund" as described in the attached January 7, 2010, letter from Michael W. Shelton, CGFO, to Lauren Sponseller.
2. Any document containing communications between the City and any grant applicants regarding the applications described in paragraph 1 above.
3. Any document containing recommendations made by the City's local advisory committee regarding the grants as referenced in the letter from Mr. Shelton to Ms. Sponseller.
4. Any document which lists the amounts requested in the applications described in paragraph 1 above and the amounts granted by the City to the applicants described in item 1 above.
5. Any document not otherwise described above which pertains to the applications for and grants of funds described in paragraph 1 above.

Please inform me of any fees associated with complying with this request, and I will remit payment promptly.

Sincerely,

WILLOUGHBY & HOEFER, P.A.


John M.S. Hoefer

JMSH/ccm

R - 524

Expenditure Review Committee

P.O. Box 125
Columbia, SC 29214-0120
301 Gervais Street
Columbia, SC 29201
803-898-5400

Frans N. Mustert, CHA

CHAIRMAN

Appointed at the
Recommendation of the
Hospitality Association of SC

Lanneau H. Siegling, CHA

VICE CHAIRMAN

President Pro Tempore
Appointee

Susan Cruse

Appointed at the
Recommendation of the SC
Association of Tourism Regions

John Munro

Appointed at the
Recommendation of the SC
Association of Convention and
Visitors Bureaus

Andy Cajka

Appointed at the
Recommendation of the SC
Travel and Tourism Coalition

Mark Williams

Appointed at the
Recommendation of the
Municipal Association of SC

Rod Svaim

Speaker of the House
Appointee

Toni Nance

Ex-Officio SCPRT Designee

Harriett Green

Appointed at the
Recommendation of the SC
Arts Commission

Kevin Yokim

Appointed at the
Recommendation of the SC
Association of Counties

Edward W. Riggs, Sr.

Governor's Appointee

May 6, 2010

Mr. Michael Shelton
Budget and Evaluation Director
City of Myrtle Beach
PO Box 2468
Myrtle Beach, SC 29578

RE: September 30, 2009, report of City of Myrtle Beach
(the "City") pursuant to S.C. Code Ann. § 6-4-25(D)

Dear Mr. Shelton:

This follows up on my letter to Mr. Michael D. Price of January 4, 2010, regarding the Tourism Expenditure Review Committee (TERC) review of the above-referenced report of the City's FY 08-09 expenditures of accommodations tax revenues.

As a result of its review of this report, your January 7, 2010, letter to the TERC, and public records of the City pertaining to the funding of projects for which applications were filed when the City subsequently considered the allocation of grant money from its general fund, the TERC determined at its meeting held in Columbia on April 26, 2010, that the City's expenditures totaling \$312,545 (reflected on the attached Schedule 1) are tourism related expenditures that do not comply with the requirements of S.C. Code Ann. §§6-4-5, *et seq.* Accordingly, the TERC is hereby certifying to the State Treasurer that this amount was not expended in compliance with the statutes and should therefore be withheld from subsequent distributions of accommodations tax funds to the City and reallocated proportionately to all other recipients. See S.C. Code Ann. §6-4-35(B)(1)(a) and (c).

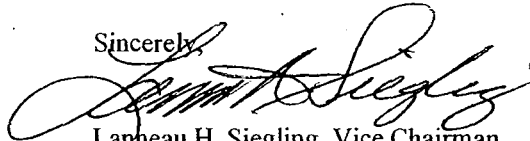
The reason for TERC's determination is that the expenditures listed on Schedule 1 have been made for one or more purposes that are consistent with S.C. Code Ann. §6-4-10(4)(b)(1-8), but were not submitted to the City's local advisory committee for review and recommendation to the City Council. It is the TERC's view that the deposit of accommodations tax funds into the City's general fund and subsequent disbursement of funds for the listed events and projects was intended to avoid the requirements of S.C. Code Section 6-4-25(A-C). The TERC notes from the City's September 30, 2009, report that approximately \$700,000 more

in accommodations tax revenues were devoted to the City's general fund than was requested for the City's general fund.¹

With respect to the City's reported expenditure of approximately \$4.6 Million on personnel expenditures for the police, fire and parks departments, the TERC has concluded that it would be arbitrary to certify this expenditure as non-compliant at this time in view of the fact that TERC has previously approved significant expenditures of this type in the past. However, because TERC now believes that such expenditures are not consistent with the legislative intent of S.C. Code Ann. §§6-4-5, *et seq.*, TERC has this day filed a declaratory judgment action against the City in the Court of Common Pleas for the Fifth Judicial Circuit seeking a determination as to the meaning of S.C. Code Ann. §6-4-10(4)(b) with respect to such expenditures of accommodations tax funds. TERC is taking this action because, like the City, TERC believes that a judicial determination of the meaning of this statute is necessary. Because it is TERC's view that the Administrative Law Court lacks jurisdiction to issue declaratory judgments, it believes that the circuit court is the appropriate forum to address this question.

If you have any questions, you may direct them to our staff liaison, Mrs. Lauren Sponseller, by emailing her at sponseL@sctax.org.

Sincerely,



Lanneau H. Siegling, Vice Chairman
Tourism Expenditure Review Committee

LHS:lls

cc: State Treasurer's Office

¹ Although the City appears to have made other tourism-related expenditures in this manner, they were reflected on the September 30, 2009, report as having been reviewed by the local advisory committee. Although the TERC does not endorse the use of this procedure because it does not comply with the statutory requirements, TERC has concluded that to determine these expenditures as being non-compliant would be to elevate form over substance. TERC reserves its right, however, to disallow any future disbursements of accommodations tax funds which are not made in compliance with the procedures set out S.C. Code Ann. § 6-4-25.

SCHEDULE 1

Grant Recipient	Amount Disbursed
FPC Concert Series	\$10,000
Children's Museum of SC (for expansion of programs)	\$20,000
Coast Rapid Transit Authority	\$252,545
Coastal Carolina University Tourism Studies	\$15,000
SC Hall of Fame	\$15,000

TOTAL: \$312,545

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL
ELIZABETH ZECK*
BENJAMIN P. MUSTIAN
MICHAEL R. BURCHSTEAD
ANDREW J. MACLEOD

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

TRACEY C. GREEN
ALAN WILSON
SPECIAL COUNSEL

*ALSO ADMITTED IN TX

May 6, 2010

VIA HAND DELIVERY

The Honorable Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street, Room 205
Columbia, South Carolina 29202

RE: Tourism Expenditure Review Committee, Plaintiff, vs. City of Myrtle
Beach, Defendant.

Dear Ms. McBride:

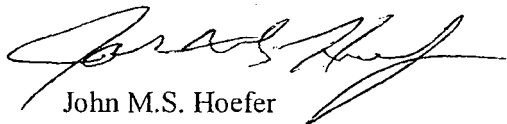
Enclosed please find the original and one (1) copy of the Summons and Complaint, a Civil Action Cover Sheet, and Certificate of Exemption from ADR in the above referenced action. I would appreciate your accepting the originals for filing and returning the extra copy enclosed bearing your file-stamp via our courier.

Also enclosed is a check in the amount of One Hundred Fifty Dollars (\$150.00) for the cost of the filing fee.

If you have any questions, or need additional information, please do not hesitate to contact me.

Very truly yours,

WILLOUGHBY & HOEFER, P.A.


John M.S. Hoefer

JMSH/ccm
Enclosure

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

Tourism Expenditure Review Committee,)

2010 CP 4003001

Plaintiff,)

(Non-Jury)

vs.)

Summons

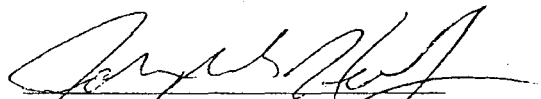
City of Myrtle Beach,)

RICHLAND COUNTY
FILED
2010 MAY -6 PM 4:16
JEANETTE W. McBRIDE
C.C.P. & G.S.

Defendant.)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at their offices, Post Office Box 8416, Columbia, South Carolina, 29202-8416, within thirty (30) days after service hereof, excluding the date of service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in said Complaint.



John M. S. Hoefler
WILLOUGHBY & HOEFER, PA
Post Office Box 8416
Columbia, South Carolina 29202
803-252-3300

Attorneys for Plaintiff

Columbia, South Carolina
May 6, 2010

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
)
 Tourism Expenditure Review Committee,)
)
)
)
 Plaintiff,)
 vs.)
)
 City of Myrtle Beach,)
)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

C/A No.

(Non-Jury)

COMPLAINT

(Action for Declaratory Judgment)

JEANETTE W. MCBRIDE
 C.C.P. & G.S.

2010 MAY -6 PM 4:17

RICHLAND COUNTY
 FILED

Plaintiff, the Tourism Expenditure Review Committee ("TERC"), through undersigned counsel, pursuant to S.C. Code Ann. §15-53-20 and South Carolina Rule of Civil Procedure 57, complains of Defendant, the City of Myrtle Beach ("City"), and would respectfully show as follows:

1. TERC is a committee created by and existing under the laws of the State of South Carolina, specifically S.C. Code Ann. § 6-4-35 (2004 & Supp. 2009).
2. The City is a political subdivision and municipality organized and existing under S.C. Const. art. VIII and Title 5 of the Code of Laws of South Carolina.
3. The Court has jurisdiction over this Action under S.C. Code Ann. §15-53-20 (2005) because the Plaintiff herein presents a justiciable controversy appropriate for judicial determination.
4. Venue is proper in this Court pursuant to, *inter alia*, S.C. Code Ann. § 15-7-20(1) (2005 & Supp. 2009).

5. Under S.C. Code Ann. § 12-36-920(A), a sales tax of seven percent is imposed by the state on accommodations provided to transients in South Carolina. One component of that tax is a two percent “local” accommodations tax (the “A Tax”) which, pursuant to S.C. Code Ann. § 12-36-2630(3), must be credited to cities and counties in accordance with S.C. Code Ann. §§ 6-4-5, *et seq.* (2004 and Supp. 2009).
6. In counties where more than \$50,000.00 in A Tax revenues is generated, these revenues are required to be allocated among the local government entity’s general fund and two special funds in specified amounts and percentages. *See* S.C. Code Ann. § 6-4-10 (2004). After A Tax proceeds are allocated to the local government entity’s general fund and a special fund for advertising and promotion of tourism, the remaining 65% of the total distributed is to be allocated to a special fund to be used for “tourism-related expenditures” (the “65% Fund”). *See* S.C. Code Ann. § 6-4-10(4)(a) (2004).
7. For counties or municipalities having “a high concentration of tourism activity,” A Tax proceeds allocated to the 65% Fund may be used to “provide additional county and municipal services including, but not limited to, law enforcement, traffic control, public facilities, and highway and street maintenance.” However, the 65% Fund proceeds “must *not* be used as an additional source of revenue to provide services *normally* provided by *the* county or *municipality* but to promote tourism and enlarge its economic benefits through advertising, promotion, and providing those facilities and services which enhance the ability of the county or municipality

to attract and provide for tourists.” S.C. Code Ann. § 6-4-10(4)(b) (2004) (emphasis added).

8. The TERC was established by the General Assembly in S.C. Code Ann. § 6-4-35 “to serve as the oversight authority on all questionable tourism-related expenditures.” In order for the TERC to be able to discharge its duties and determine whether this City’s disbursements of A Tax revenues comply with §§ 6-4-5, *et seq.*, the City is required to forward to the TERC certain reports required under § 6-4-25(D), including details of expenditures by the City from the 65% Fund and the recommendation made regarding same by the local advisory committee.
9. If, upon review of the City’s report, the TERC finds an expenditure to be noncompliant with the requirements of §§ 6-4-5 *et seq.*, it is required to so notify the State Treasurer, who must then withhold from future distributions of accommodations tax revenues to the city or county involved an amount equal to the non-compliant expenditure. *See* S.C. Code Ann. § 6-4-35(B)(1)(a). In that circumstance, the City may seek relief from the TERC’s determination in the South Carolina Administrative Law Court. *See* S.C. Code Ann. §6-4-35(B)(1)(a).
10. In years prior to 2008-2009, the City has reported to TERC that the City has used a substantial portion of the 65% Fund proceeds to defray expenses associated with its police, fires and parks personnel. The TERC has not, however, certified these expenditures to the State Treasurer as being non-compliant.

11. In 2008-2009, the City reported to TERC that it used the entirety of the 65% Fund proceeds to defray expenses associated with its police, fire and parks personnel.
12. The City and TERC each have unique and contradictory understandings of S.C. Code Ann. § 6-4-10(4)(b) and its application to the City's A Tax expenditures with respect to the circumstances under which the City may properly disburse proceeds of the 65% Fund on police, fire and parks personnel. However, TERC has chosen not to act upon its interpretation of § 6-4-10(4)(b) by finding the City's 2008-2009 expenditures non-compliant under S.C. Code Ann. §6-4-35(B)(1)(a) because it has previously permitted similar expenditures, albeit in lesser amounts, and does not believe that it would be reasonable to certify as non-compliant the City's 2008-2009 A Tax expenditures on police, fire and parks personnel.

FOR A FIRST AND SOLE CAUSE OF ACTION
(Declaratory Judgment)

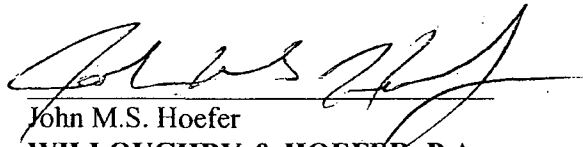
13. Each and every relevant and consistent allegation of this complaint is incorporated and included herein as fully as if repeated verbatim.
14. The Plaintiff requests a declaration that S.C. Code Ann. § 6-4-10(4)(b) means (a) that the 65% Fund may only be used by the City as a source of revenue to fund additional police, fire, and parks personnel expenses, over and above what the City *itself* normally spends on police, fire, and parks personnel, and (b) that the fact that the City has a high concentration of tourism activity does not in and of itself permit the City to expend the entire 65% Fund proceeds on police, fire, and parks personnel.

15. Such a declaration is necessary to determine the rights and liabilities of the parties.

WHEREFORE, having fully set forth its Complaint, the Plaintiff respectfully requests that this Court enter judgment as follows:

- A. Declaring that S.C. Code Ann. § 6-4-10(4)(b) allows the City to use the 65% Fund proceeds as an additional source of revenue to fund police, fire, and parks personnel expenses, over and above what the City itself normally spends on police, fire, and parks personnel, and that the fact that the City has a high concentration of tourism activity does not in and of itself permit the City to expend the entire 65% Fund proceeds on police, fire, and parks personnel; and
- B. Granting such other relief as the Court may find just and proper.

Respectfully submitted,



John M.S. Hoefler
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
803-252-3300

Attorney for Tourism Expenditure
Review Committee

This 13 day of April, 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)

Tourism Expenditure Review Committee,)

Plaintiff(s))

vs.)

City of Myrtle Beach,)

Defendant(s))

(Please Print)

Submitted By: John M.S. Hoefler

Address: P.O. Box 8416, Columbia, SC 29202-8416

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET
2010CP4003001

2010-CP-

JEANETTE W. HOBRIDE
C.C.P. & G.S.

2010 MAY -6 PM 4:17

FILED
RICHLAND COUNTY

SC Bar #: 2549

Telephone #: 803-252-3300

Fax #: 803-771-2410

Other:

E-mail: jhoefler@willoughbyhoefler.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

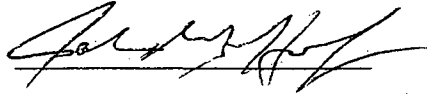
NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20____-CP-_____ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SC DOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input checked="" type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) | | | |

Declaratory

Judgement

Submitting Party Signature:



Date:

May 6, 2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Tourism Expenditure Review Committee,)
 Plaintiff,)
)
 vs.)
)
 City of Myrtle Beach,)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 PROOF OF ADR OR EXEMPTION

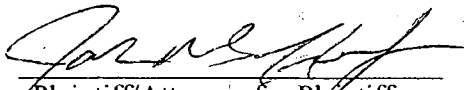
FILE NO.:

JEANNETTE W. MCBRIDE
 C.C.P. & C.S.
 2010 MAY -6 PM 4:17
 FILED
 RICHLAND COUNTY

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

PURSUANT to the Court's Standing Order for Alternative Dispute Resolution dated _____

A. X I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption: Declaratory Judgment, Special Proceeeding/Extraordinary Relief Rule 3(b) ADR Rule



 Plaintiff/Attorney for Plaintiff

 Defendant/Attorney for Defendant

John M. S. Hoefer

 Print Name

 Print Name

803-252-3300

 Phone/Fax
Date: 5-6-2010

 Phone/Fax

B. _____ 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

 (Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

3. The ADR was conducted on _____, 200 _____

4. As a result of ADR, this case should be considered (please check one);

() Fully Settled.

() by Consent Judgment, to be filed by _____

or () Voluntary Dismissal to be filed by _____

() Partially Settled.

() At an Impasse.

() In need of further ADR I am am not willing to continue as a neutral. I recommend that ADR resume as of _____

5. Plaintiff was present was not present

Defendant was present was not present

6. Other participants were:

- _____ Lawyer for Defendant _____
- _____ Lawyer for Plaintiff _____
- _____ Representative for Insurance Carrier _____
- _____ Guardian *ad Litem* _____
- _____ Experts _____
- _____ Others _____

7. Choice of the neutral was by:

- _____ Stipulation
- _____ Court Order

8. The total number of hours spent in ADR was: _____ hours.

9. Further comments of the neutral:

Neutral's Signature

Date: _____

BATTLE & VAUGHT P.A.
ATTORNEYS AND COUNSELORS AT LAW
1200 MAIN STREET
POST OFFICE BOX 530
CONWAY, SOUTH CAROLINA 29528
TELEPHONE (843) 248-4321
FACSIMILE (843) 248-4512
www.battlevaught.com

MICHAEL W. BATTLE
E-Mail Address: mbattle@battlevaught.com
VICTORIA T. VAUGHT
E-Mail Address: vvaught@battlevaught.com

JAMES R. BATTLE, II
E-Mail Address: jbattle@battlevaught.com

May 11, 2010

Mr. Paul D. Jarvis, Jr.
Senior Assistant State Treasurer
Office of State Treasurer
P.O. Box 11778
Columbia, South Carolina 29211

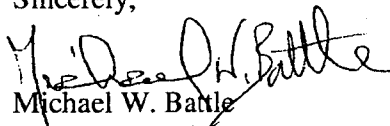
RE: September 30, 2009, Report of City of Myrtle Beach to Tourism Expenditure
Review Committee

Dear Mr. Jarvis:

The City of Myrtle Beach has been informed that the Tourism Expenditure Expenditure Review Committee (TERC) is certifying or has certified to the State Treasurer that City expenditures of \$312,545 do not comply with S.C. Code Ann. §§ 6-4-5, et. seq. and that amount should be withheld from subsequent distributions of accommodations tax funds to the City. The City is appealing TERC's certification to the Administrative Law Judge pursuant to S.C. Code Ann. §§ 6-4-35, on the grounds that the certification is erroneous, arbitrary and/or capricious.

Since TERC's certification is on appeal, the City requests that the State Treasurer refrain from withholding the \$312,545 amount of accommodations tax funds from the City until a final order has been made on the propriety of TERC's certification of noncompliance. If TERC is successful in obtaining a final order in its favor, the funds may be withheld at that time.

Sincerely,


Michael W. Battle
Battle & Vaught, P.A.

C Tom Ellenburg
John Hoefler

RECEIVED

MAY 13 2010

Willoughby & Hoefler, P.A.

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

SC REVENUE RULING #98-22

SUBJECT: Use of Accommodations Tax Funds

EFFECTIVE DATE: Applies to all fiscal years beginning after December 1, 1998.

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

REFERENCES: S. C. Code Ann. Chapter 4, Title 6 (Supp. 1997)
S.C. Code Ann. 53-1-150 (Supp. 1997)

AUTHORITY: S. C. Code Ann. Section 6-4-30 (Supp. 1997)
SC Revenue Procedure #97-8

SCOPE: A Revenue Ruling is the Department of Revenue's official
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.

Allocation of Accommodation Tax Funds

Chapter 4 of Title 6 of the South Carolina Code of Laws ("Code") provides a procedure for handling accommodations tax revenues collected by taxpayers within a county or municipality. If a county or municipality is located in a "County Area" that collects over \$50,000 in Accommodations Tax ("Accommodations Tax Funds"), each county or municipality in that County Area will be required to allocate and spend all Accommodations Tax Funds that they collect in the manner required by the statute. A "County Area" is defined as a county and the municipalities located within the geographic boundaries of the county. See Code Section 6-4-5(1).

For example, if County A has within its boundaries Municipalities X, Y, and Z and County A collects \$25,000 in Accommodations Tax Funds, Municipality X collects \$10,000, Municipality Y collects \$20,000 and Municipality Z collects \$5,000, the county and each of the municipalities will be required to allocate and spend their Accommodations Tax Funds as required by the statute.

Under Code Section 6-4-10, the first \$25,000 of all Accommodations Tax Funds collected by a county or municipality is allocated to the general fund of the county or municipality. Whatever is

left after allocating the original \$25,000 is the balance. Five percent of the balance is allocated to the general fund of the county or municipality and 30% of the balance is allocated to a special fund which must be used for the advertising and promotion of tourism ("Promotion Fund"). The monies in the Promotion Fund must be administered by one or more non-profit organizations that have an existing, ongoing tourism promotion program, or if the organization does not currently have a program, it must show that it can develop an effective program. Any Accommodations Tax Funds remaining after allocation to the Promotion Fund, plus any interest earned on the "balance" (i.e., 65% of the balance) must be allocated to a special fund that must be used for "tourism-related expenditures" ("Tourism-related Fund").

For example, assume that a county collects \$125,000 in Accommodations Tax Funds.

Step 1 - The first \$25,000 of Accommodations Tax Funds is allocated to the general fund of the county or municipality. This leaves a balance of \$100,000. (This \$100,000 will be referred to as the "balance" throughout this example.)

Step 2 - Five percent of the balance ($\$100,000 \times .05 = \$5,000$) is also allocated to the general fund of the county or municipality.

Step 3 - Thirty percent of the balance ($\$100,000 \times .30 = \$30,000$) is allocated to the Promotion Fund.

Step 4 - Any remaining money left after subtracting the \$25,000 allocated to the general fund, the five percent of the balance that is allocated to the general fund and the thirty percent of the balance allocated to the Promotion Fund, goes into the Tourism-related Fund and must be used for tourism-related expenditures. Any interest that has accrued on the Accommodations Tax Funds prior to the amounts being divided as described in steps (1) through (4) above, is also allocated to the Tourism-related Fund.

Requirements for Tourism-related Expenditures

As stated above, any money in the Tourism-related Fund must be spent on tourism-related expenditures. Section 6-4-10(4)(b)-(d) states:

(b)The funds received by a county or municipality which has a high concentration of tourism activity may be used to provide additional county and municipal services, including, but not limited to, law enforcement, traffic control, public facilities, and highway and street maintenance, as well as the continual promotion of tourism. The funds must not be used as a additional source of revenue to provide services normally provided by the county or municipality but to promote tourism and enlarge its economic benefits through advertising, promotion, and providing those facilities and services which enhance the ability of the county to attract and provide for tourists.

"Tourism-related expenditures" include:

- 1 advertising and promotion of tourism so as to develop and increase tourist attendance through the generation of publicity;

2. promotion of the arts and cultural events;
3. construction, maintenance, and operation of facilities for civic and cultural activities including construction and maintenance of access and the nearby roads and utilities for the facilities;
4. the criminal justice system, law enforcement, fire protection, solid waste collection, and health facilities when required to serve tourists and tourist facilities. This is based on the estimated percentage of costs directly attributed to tourists;
5. public facilities such as restrooms, dressing rooms, parks, and parking lots;
6. tourist shuttle transportation;
7. control and repair of waterfront erosion;
8. operating visitor information centers.

(c) Allocations to the special fund must be spent by the municipality or county within two years of receipt. If the allocations are not spent within two years, the municipality or county is subject to the provisions of Section 6-4-30(6). However, the time limit may be extended upon the recommendation of the county or municipality and approval of the South Carolina Accommodations Tax Oversight Committee in Section 6-4-30. An extension must include provisions that funds be committed for a specific project or program.

(d) In the expenditure of these funds, counties and municipalities are required to promote tourism and make tourism-related expenditures primarily in geographical areas of the county or municipality in which the proceeds of the tax are collected where it is practical.

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ANSWER: No. The monies in the Promotion Fund are overseen by the non-profit organization or organizations chosen by the county to administer the Promotion Fund. However, if there is no non-profit organization to whom the county or municipality can grant its Promotion Fund, the county or municipality must create an organization using the same membership standard as those used for appointing members to the advisory committee. Additionally, the non-profit organization that is chosen to oversee the Promotion Fund is required to submit a budget and an accounting to the county or municipality on an annual basis for approval. Nothing, of course, prevents the county or municipal council from consulting with other organizations, including the Accommodations Advisory Committee, concerning proposed expenditures from the Promotion Fund.

Question 3: What is the definition of "tourism" or "tourist"?

ANSWER: Under Code Section 6-4-5, "travel" and "tourism" means the action and activities of people taking trips outside their home communities for any purpose, except daily commuting to and from work. Thus, under this definition, a "tourist" would be a person who is taking trips outside his or her home community for any purpose other than daily commuting to and from work.

QUESTION 4: When will a county or municipality be considered to have a "high concentration of tourism activity"?

ANSWER: Chapter 4 of Title 6 does not provide any guidance as to when a county or municipality will be deemed to have a high concentration of tourism activity. However, Code Section 53-1-150, which exempts certain counties from the Sunday "blue laws", appears to be relevant to this inquiry. Code Section 53-1-150(A) reads as follows:

"The General Assembly finds that certain areas of the State would benefit greatly from a complete exemption from Chapter 1 of Title 53 [the Sunday "blue laws"]. This benefit would be a result of an expanded tax base thereby reducing the burden placed on property owners through the property tax. Allowing the operation of establishments on Sunday in these areas also would reduce the property tax burden through additional accommodations tax revenue which allows these areas to provide necessary governmental service from these revenues"[emphasis added].

Code Section 53-1-150(B) reads, in part:

"The provisions of Chapter 1 of Title 53 do not apply to any county area, as defined in Section 6-4-5(1), which collects more than nine hundred thousand dollars in one fiscal year in revenues from the accommodations tax provided for in Section 12-36-2630(3) and imposed in Section 12-36-920(A)...."

These two provisions read together conclude that "county areas" collecting over \$900,000 would benefit from additional accommodations tax revenues which would allow these areas to provide necessary governmental service from these revenues. Under Code Section 6-4-10, only counties or municipalities with a high concentration of tourism activity are allowed to use Accommod-

ations Tax Funds for providing county or municipal services. Accordingly, the Department concludes that counties and municipalities in county areas collecting over \$900,000 in accommodations tax revenues are considered to have a high concentration of tourism activity.

QUESTION 5: Can the Department provide some guidance on the different categories of tourism-related expenditures?

ANSWER: For purposes of determining what qualifies under the different categories of tourism-related expenditures, the Department has adopted the following descriptions of qualifying expenditures in each of the categories listed in the statute.

1. Advertising and Promotion of Tourism

Under Code Section 6-4-10(4)(b)(1), monies in the Tourism-related Fund can be used for advertising and promotion of tourism to increase tourism in the county or municipality. Expenditures that would qualify under this category would include monies spent on magazine, newspaper, radio or television advertising in an attempt to promote the county or municipality to tourists. Qualifying expenditures also include revenues spent to promote the county or municipality to entities that specialize in tourism, such as bus tour companies and travel agencies. Examples of qualifying expenditures under this category include advertising in magazines such as *Southern Living*.

2. Arts and Cultural Events

Under Code Section 6-4-10(4)(b)(2), monies in the Tourism-related Fund can be used for the promotion of the arts and cultural events. Expenditures that can qualify under this category include money used for advertising or promotion of a particular festival (examples of such festivals might be the Spoleto Festival, the Lexington Peach Festival, or the Salley Chitlin Strut) or, money used for advertising and promoting arts and cultural events held in the county or municipality in an effort to attract tourists. Examples of events qualifying under this category include symphony orchestras, art shows, theater productions, home and garden or touring shows.

3. Facilities for Civic and Cultural Events

Under Code Section 6-4-10(4)(b)(3), monies in the Tourism-related Fund can be used for the construction, maintenance and operation of facilities for cultural and civic activities including construction and maintenance of access and other nearby roads and utilities for the facilities. Eligible expenditures under this category can include the costs incurred in building a civic center, a museum, or a coliseum. Tourism-related monies can also be used to fund the continued operation of such facilities including management fees or to pay the salaries of those who work at the facility, as well as the cost of repairs and necessary additions to such facilities. Please note, the facility must enhance the ability of the county or municipality to attract and provide for tourists and cannot provide a purely local function or benefit.

4. Municipality and County Services

Under Code Section 6-4-10(4)(b)(4), monies in the Tourism-related Fund can be used for the criminal justice system, law enforcement, fire protection, solid waste collection, and health facilities when required to serve tourists and tourist facilities. The amount that may be expended on this category must be based on the estimated percentage of costs directly attributable to tourists. Tourism-related funds cannot be used for these purposes by counties or municipalities that do not have high concentration of tourism activity. Examples of qualifying expenditures under this category would include salaries for extra police during the peak tourist season, monies spent to hire extra garbage service around tourist facilities during the tourist season or to provide other services that are required because of the high concentration of tourism.

When considering the percentage of costs that are attributable to tourism, the Department of Revenue will consider the number of permanent residents for the county or municipality as compared to the number of tourists that visit the locality, taking into consideration the average length of stay for such tourists.

5. Public Facilities

Under Code Section 6-4-10(4)(b)(5), monies in the Tourism-related Fund may be used for public facilities such as restrooms, dressing rooms, parks and parking lots. These public facilities must enhance the ability of the county to attract and provide for tourists. Tourism-related funds cannot be used for these purposes by counties or municipalities that do not have high concentration of tourism activity. Example of a qualifying expenditures under this category might include dressing rooms and restrooms at a public beach, a public park that would be frequented by tourists or a public parking lot adjacent to a major tourist attraction.

6. Tourist Transportation

Under Code Section 6-4-10(4)(b)(6), monies in the Tourism-related Fund may be used for tourist shuttle transportation. Qualifying expenditures in this category will include any monies spent to provide public transportation to tourists, such as shuttle buses or trolleys. For example, shuttles to transport persons from the airports to hotels or from the hotels to tourists attractions would qualify, as well as transportation from conventions or tourist attractions to other tourist facilities.

7. Waterfront Erosion

Under Code Section 6-4-10(4)(b)(7), monies in the Tourism-related Fund may be used for control and repair of waterfront erosion. Repairs for waterfront erosion are a municipal or county service. Thus, in order to use Tourism-related Funds for this purpose, a county or municipality must have a high concentration of tourism. Expenditures qualifying under this category include monies spent for beach renourishment projects, and other ocean front repairs in those areas frequented by tourists.

8. Visitors Centers

Under Code Section 6-4-10(4)(b)(8), monies in the Tourism-related Fund may be used for operating visitors centers. Expenditures that will qualify under this category are any monies spent to operate and maintain centers whose primary purpose is to provide information, brochures, and other services to tourists.

QUESTION 6: Are the eight categories listed in the statute, all inclusive, or might there be other items that could qualify as tourism-related expenditures?

ANSWER: The use of the term "includes" in the statute leads to the conclusion that the listed items are not all inclusive, therefore, there are other items that may qualify as tourism-related expenditures. Under the statute, in order to qualify as a tourism-related expenditure an expenditure must meet the following two tests: (1) The expenditure must be used to attract or provide for tourists. (2) The expenditure cannot be used for an item that would normally need to be provided by the county or municipality. Additionally, if a county or municipality wishes to use Tourism-related Funds to provide additional county or municipal services, including, but not limited to, law enforcement, traffic control, public facilities and highway and street maintenance, the expenditure must: (a) be for items that would normally not be provided by the county; (b) the county or municipality must have a high concentration of tourism activity; and (c) the amount of the expenditure must be based on the estimated percentage of costs attributable to tourists.

Some items that might qualify as tourism-related expenditures which are not listed in the statute include, the development of a public garden designed to attract tourists, a major exhibition which is designed to attract tourists, or the acquisition of a historical landmark designed to attract tourists.

QUESTION 7: Is there a formula that would dictate what percentage of Tourism-related Funds should be spent on the different categories of tourism-related expenditures?

ANSWER: The statute does not require that the Tourism-related Fund be divided in any particular way. Provided that the expenditure meets the requirements of the law as described in the discussion, a county or municipality can use all of its Tourism-related Funds on a single category of eligible expenditures.

QUESTION 8: Is there a formula for determining whether a specific expenditure benefits tourism and tourists?

ANSWER: No. Under the statute, there is no specific formula that determines whether a particular expenditure benefits tourists.

QUESTION 9: What will the Department consider important in determining whether an expenditure for an event or a facility enhances the ability of the county or municipality to attract or provide for tourists?

ANSWER: If the expenditure is incurred in connection with an event, the Department will look at all the facts and circumstances including where and how the event will be advertised, the number of tourists that an event has attracted in the past, the nature of the event, where the event will occur, and the purpose of the event to determine if the event is designed to attract tourists. If the expenditure is incurred for a facility, the Department will look at all the facts and circumstances including the nature of the facility, where the facility is located and the purpose of the facility to determine if the facility is designed to attract and serve tourists.

QUESTION 10: Can Accommodations Tax Funds be used to promote events staged by colleges, senior centers or local choirs?

ANSWER: Whether Accommodations Tax Funds can be used to promote such an event depends on what, if any, effect such a show would have on tourism. If the show is strictly a local event attended by those in the community, Accommodations Tax Funds could not be spent on the show. However, if the show was advertised and was intended to attract tourists from outside the community, then Accommodations Tax Funds could be used to advertise the show.

QUESTION 11: Can Tourism-related Funds be used for acquisitions by local museums?

ANSWER: Possibly, provided that the acquisition can be shown to enhance the ability of the county or municipality to attract tourists. Tourism-related Funds must be used to promote tourism and enlarge its economic benefits through advertising, promotion, and providing those facilities and services which enhance the ability of the county or municipality to attract and provide for tourists, thus the expenditure of Tourism-related Funds must be guided by this principle. Whether the museum acquisition is designed to enhance the ability of the county and municipality to attract tourists is a question of fact to be determined from all the facts and circumstances.

QUESTION 12: Can Tourism-related Funds be used to support local art or music programs, such as Jazz in the Schools, that improve the cultural climate of the county or municipality?

ANSWER: No. While such arts programs are educational and promote culture, they do not enhance the ability of the county or municipality to attract and provide for tourists. These types of programs primarily benefit the local population by exposing them to new experiences, however, tourists rarely participate or experience the benefits of these programs.

QUESTION 13: Is it proper to use Tourism-related Funds for promotion of conventions or meetings?

ANSWER: Yes, provided that the convention or meeting is designed to attract tourists to the community and the expenditure is found to serve a public purpose. Note, that the Department of Revenue will consider all the facts and circumstances in determining whether the expenditure qualifies as a tourism-related expenditure included whether such meeting is designed to attract tourists to the county or is primarily a local event.

QUESTION 14: In a small town with a large amount of Tourism-related Funds and a high concentration of tourism activity, is there a limit on how many police cars, fire trucks, and related equipment can be purchased over a five or ten year period of time?

ANSWER: The first question that must be answered is whether Tourism-related Funds may be used for tangible property such as police cars and fire trucks. The statute states that "funds received by a county or municipality which has a high concentration of tourism activity may be used to provide additional county and municipal services, including, but not limited to, law enforcement, traffic control, public facilities, and highway and street maintenance as well as the continual promotion of tourism". While the use of the term "services" in a statute generally connotes "the performance of activities benefiting another", this is not the exclusive use of the term. The American Heritage Dictionary (2nd College Ed. 1985) includes among the definition of "services" the following definition: "a facility providing the public with the use of something such as water or transportation". The statute specifically contemplates the application of this definition of services in the statute by using the term "public facilities" in listing those items of county or municipal services which may be paid for with tourism-related funds. Thus, the Department concludes that county and municipal services, for purposes of this statute, may include using tourism-related funds to pay for tangible property of the county or municipality when such property is necessary to serve tourists.

However, not all expenditures for police car, fire trucks, public facilities, etc. may be paid for from Tourism-related funds. ***Tourism-related Funds may only be used to provide additional county and municipality services, such as fire and police protection, in areas with a high concentration of tourism activity and such expenditures may not pay for services that would normally be provided by a county or municipality. Thus, to the extent that a county or municipality would have been required, or planned to buy, a police car or fire truck irrespective of the number of tourists that visit the municipality or county, Tourism-related Funds could not be used to fund that purchase.*** In order to use Tourism-related Funds to provide for fire trucks or police cars, the county or municipality must show that: (1) it has a high concentration of tourism and (2) the trucks and cars are only needed because of the additional tourist activity. Even though there is no set numerical limit on the number of police cars or fire trucks that may be purchased using Tourism-related funds, the county or municipality must be guided by the principles stated above.

Additionally, to the extent that Tourism-related Funds will be used to provide additional services, such as extra police or additional firemen or garbage collectors, there is an additional requirement. The costs spent on wages and salaries for such personnel must be based on the estimated percentage of costs attributable to tourists.

For example, assume that the City of North Myrtle Beach wishes to use some of their Tourism-related Funds on their police department. Tourism-related Funds could not be used to fund the police chief's salary, since this is a county expense that would be need to be funded whether North Myrtle Beach had any tourists or not. However, the money could be used to hire additional police because of the high concentration of tourism in North Myrtle Beach. The amount that can be spent on additional police must be based on the estimated percentage of costs attributable to tourists.

QUESTION 15: May a county or municipality which does not have a high concentration of tourism activity, use Tourism-related Funds for fire and police protection?

ANSWER: No. See discussion in question 14.

QUESTION 16: Can Tourism-related Funds be used for local transportation for senior citizens' programs, or programs related to drug abuse, AIDS awareness or similar items for residents?

ANSWER: No. While such programs do benefit the local community, they do not fit into any of the categories of tourism-related expenditures and they do not attract or promote tourism within the county or municipality. However, to the extent that a particular program is primarily designed to serve tourists, the program would be eligible as a tourism-related expenditure. For example, senior citizens transportation for elderly tourists may be able to qualify as a tourism-related expenditure.

QUESTION 17: Is it appropriate to use Tourism-related Funds to fund monuments?

ANSWER: It will depend on the nature of the monument and the impact it will have on tourism. If it is a single statute dedicated to a local figure, it is unlikely that such a monument will have any impact on tourism. However, if the monument is in the nature of a large structure designed to honor a group or entity, then it may be permissible to use Tourism-related Funds for such monument. For example, a monument along the lines of the United States Holocaust Memorial Museum or the Vietnam Veterans Memorial may have a sufficient impact on tourism to warrant receiving Tourism-related Funds.

QUESTION 18: Can Tourism-related Funds be used to pick up garbage and debris?

ANSWER: Garbage removal is a county or municipal service that is ordinarily funded by the county or municipality. In order to use Tourism-related Funds for garbage and yard debris removal, the county or municipality must show that: (1) it has a high concentration of tourism; (2) the trash removal and clean-up services are only needed because of the additional tourist activity (they are not a normal service provided by the county or municipality) and (3) the amount that they spend on such costs are based on the estimated percentage of costs directly attributable to tourists. For example, Tourism-related Funds may be able to be used to pick up trash at a public beach in Myrtle Beach, however, those same funds could not be used to pick up garbage and trash from yards in a small private subdivision in Myrtle Beach.

QUESTION 19: Can Accommodations Tax Funds be used to fund local government salaries?

ANSWER: As a general rule, no unless the county or municipality can show that the employee's position is necessary to attract or provide for tourists. Additionally, since these employees are providing a county or municipal service, the salary or wage must: (a) be for services that would normally not be provided by the county; (b) the county or municipality must have a high concentration of tourism activity; and (c) the amount of Tourism-related Funds spent on the salary or wages must be based on the estimated percentage of costs attributable to tourists. To the extent that only a portion of the employee's salary or wages meets the requirements listed

above, only that portion of the salary or wages that would satisfy these requirements may be paid for out of Tourism-related Funds. If a staff person's entire time is not devoted to the promotion of tourism or the furnishing of services to tourists, the Department would expect the employee and the county or municipality to determine the amount of time the employee devotes to tourism and to treat an appropriate amount of the employee's salary as a tourism-related expenditure.

For example, Tourism-related Funds could not be used to pay for the mayor's salary even if a portion of his time is spent on tourism matters, since this is a position that would need to be filled, whether or not the municipality had any tourism activity at all.

QUESTION 20: Is it appropriate to use Accommodations Tax Funds to fund billboards or advertising relating to anniversaries or other non-tourist related promotions for schools, colleges, universities, or towns and municipalities?

ANSWER: As a general rule, no. However, if the billboard was designed to advertise the area and attract tourists to the county or municipality, then Accommodations Tax Funds could be used. For example, a billboard that reads "Come see Charleston and celebrate our 350th Anniversary" listing events to be held celebrating the anniversary, would qualify for the use of Accommodations Tax Funds, however, a billboard recognizing the anniversary of a private high school would not.

QUESTION 21: Can Tourism-related Funds be used to pay the expenses (such as trash removal and police protection) of local markets?

ANSWER: Generally, no. In order to use Tourism-related Funds to fund expenses of farmers' markets the county or municipality must show that: (1) it has a high concentration of tourism; (2) the services are only needed because of the additional tourist activity (they are not a normal service provided by the county or municipality); and (3) the amount that they spend on such costs are based on the estimated percentage of costs directly attributable to tourists. For example, the market in historic Charleston functions as much as a tourist attraction as it does a local farmer's market, thus Tourism-related Funds could be used to offset expenses of running and upkeep on that market. However, a local market in Lexington probably would not be eligible to receive Tourism-related Funds since it does not generally attract tourists.

QUESTION 22: Can Tourism-related Funds be used to fund buildings or operations for the local chamber of commerce?

ANSWER: As a general rule, no. Chambers of commerce usually benefit the local members and are not designed to accommodate or benefit tourists. However, if the local chamber of commerce operates the Visitor's Bureau or Visitor's Center it may be possible that Tourism-related Funds could be used for the operations of the Visitor Center.

QUESTION 23: Can Tourism-related Funds be used for the county's or municipality's employees to attend educational workshops, conferences or programs involving tourism?

ANSWER: No. While the county or municipality may receive an indirect benefit from its employees attending workshops, conferences, or programs that discuss tourism issues, these programs do not directly contribute to the county's or municipality's ability to attract or provide for tourists.

QUESTION 24: Can Tourism-related Funds be used for the administrative expenses of advisory committees?

ANSWER: No. While the law requires that the Accommodations Tax Advisory Committee meet and take actions, it does not provide for the reimbursement of the expenses incurred by such a committee. Additionally, the Accommodations Tax Advisory Committee does not directly contribute to the county's or municipality's ability to attract or provide for tourists, but merely provides guidance as to the allocation and expenditure of Tourism-Related Funds. Unfortunately, the statute does not appear to allow Tourism-related Funds to be used to cover the expenses of such committees. Note, however, this does not prevent a county or municipality from paying for expenses of the Accommodations Tax Advisory Committee from other sources.

QUESTION 25: May Tourism-related Funds be used for mosquito control?

ANSWER: No. Mosquito control is a health service that would normally be provided by the county or municipality. Furthermore, this is not the type of service that will need to be varied depending on the number of tourists that visit the county or municipality. Accordingly, Tourism-related Funds may not be used for mosquito control.

QUESTION 26: May Tourism-related Funds be used for travel and lodging expenses of local high school bands that perform in events such as the Macy's Thanksgiving Day parade?

ANSWER: No. These events do not serve to attract tourists to the band's county or municipality, rather they only serve to attract tourists to the locality where such event is being held.

QUESTION 27: A sporting or other type of similar event which otherwise qualifies for Accommodations Tax Funds for promoting its events, wishes to use Tourism-related Funds to fund scholarships to attract better players and teams. May Tourism-related Funds be used to provide these scholarships?

ANSWER: No. The scholarships do not qualify as tourism-related expenditures under the statute.

QUESTION 28: Can Accommodations Tax Funds be used to develop a formal training program to attract and train entry level positions in the hospitality industry?

ANSWER: No. The training program does not qualify as a tourism-related expenditure under the statute. Such a training program does not directly effect the ability of the county to attract and provide for tourists, although it may provide an indirect benefit to those tourist facilities that hire graduates of such a program.

QUESTION 29: May Accommodations Tax Funds be used for a county's or municipality's supplies such as checks, paper, copier machines, etc.?

ANSWER: As a general rule, no, these do not qualify as tourism-related expenditures. However, if paper or postage is used to advertise or promote tourism, Tourism-related funds could be used to pay for these expenditures. For example, if a county or municipality used paper and postage to send brochures about upcoming events to tourists that have visited the area in the past, this would be an appropriate tourism-related expenditure.

QUESTION 30: A county wishes to grant Tourism-related Funds to a local clinic. A quarter of the patients seen by this clinic are employed in the tourism industry, a low paying industry that typically does not provide health insurance to its employees. Is this an appropriate expenditure of Tourism-related Funds?

ANSWER: While the statute does allow the use of Tourism-related Funds for health facilities, these facilities must be required to serve tourist or tourist facilities. The statute does not allow the use of such funds for providing health care to the tourism industry's employees.

QUESTION 31: May a county or municipality use Tourism-related Funds for beautification projects?

ANSWER: It depends. Two factors must be evaluated. First, is the project designed to attract or provide for tourists. Secondly, is the beautification a service that would normally be provided by the county or municipality. For example, beautification projects around county or municipal service buildings (such as the courthouse) is a county or municipal service that is normally provided by the county or municipality, therefore, it cannot be paid for with Tourism-related Funds. However, the creation of a public garden such as Edisto Gardens in Orangeburg or Brookgreen Gardens in Horry County is the creation of destination tourist facility and would not be considered a normal county or municipal service. Provided such a location was designed to attract tourists or enhance the ability of the county or municipality to attract and provide for tourists, Tourism-related Funds could be used to cover the expenses of the garden.

QUESTION 32: Is a county required to allocate and spend all of its Tourism-related Funds accumulated during the fiscal year?

ANSWER: No. Pursuant to Code Section 6-4-10(4)(c), allocations to the Tourism-related Fund must be spent within two years of receipt. The two year time limit may be extended upon the recommendation of the county or municipality and must be approved by the Department of Revenue. Any extension must include information about the specific project or program to which the funds will be committed.

QUESTION 33: Is the county or municipality required to expend all of its Tourism-related Funds in the geographical area or areas where the proceeds of the tax are collected?

ANSWER: No. However, counties and municipalities are required to make such expenditures primarily in the geographical areas of the county or municipality where the tax was collected, if practicable. In Thompson v. County of Horry, 294 SC 81, 362 SE 2d 646 (S.C. App. 1987) the court considered language in Code Section 12-35-720 that is substantially similar to the current language of Code Section 6-4-10(4)(d). The court found that the statute did not require that all Tourism-related Funds be returned exclusively to the area from which they are collected. It was sufficient if the funds were for the most part spent in these geographic areas.

QUESTION 34: Can Tourism-related Funds be used to pay the legal fees of a county or municipality?

ANSWER: No. This expense, even if incurred in connection with issues relating to the accommodations tax, is for an activity that does not attract, or provide for, tourists.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank, III, Director

Columbia, South Carolina
October 27, 1998

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Carolyn C. Matthews, Administrative Law Judge

Case No. 10-ALJ-30-0421-CC

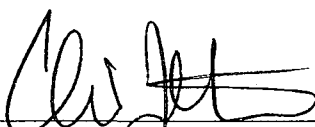
City of Myrtle Beach, Respondent,

v.

Tourism Expenditure Review Committee, Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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Columbia, South Carolina
November 28, 2011