

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Richland County, South Carolina, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 The South Carolina Department of Revenue, )  
 and Rick Reames, III in his official )  
 capacity as its Director, )  
 )  
 Defendants/Third Party Plaintiffs. )  
 )  
 v. )  
 )  
 Richland PDT, a joint venture consisting )  
 of M.B. Kahn Construction Co., Inc., ICA )  
 Engineering, Inc., and Brownstone )  
 Construction Group, I.L.C. as a unit and )  
 individually, )  
 )  
 Third Party Defendants. )

IN THE COURT OF COMMON PLEAS  
 IN THE FIFTH JUDICIAL CIRCUIT

Docket No.: 2016-CP-40-3102

**RECEIVED**  
 SEP 02 2016  
 SC Court of Appeals

AMENDED

ORDER GRANTING PLAINTIFF'S  
 PETITION FOR WRIT OF  
 MANDAMUS, DENYING PLAINTIFF'S  
 MOTION FOR TEMPORARY  
 INJUNCTION, AND DENYING  
 DEFENDANTS' MOTION FOR  
 INJUNCTION AND IN THE  
 ALTERNATIVE APPOINTMENT OF  
 RECEIVER

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CLERK OF COURT

This matter comes before the Court by way of three Motions to Reconsider, pursuant to Rules 52, 59(e), and 60(b), SCRCF, filed by Plaintiff Richland County, South Carolina, Defendants and Third Party Plaintiffs the South Carolina Department of Revenue and Rick Reames, III in his official capacity as its director, and Third Party Defendant Richland PDT. Specifically, all three parties asked this Court to reconsider its June 30, 2016, Order Granting Plaintiff's Petition for Writ of Mandamus, Denying Plaintiff's Motion for Temporary Injunction, and Denying Defendants' Motion for Injunction and in the Alternative Appointment of Receiver. Having considered the parties' pleadings and memoranda of law, this Court GRANTS IN PART Plaintiff, Defendants, and Third Party Defendants' Motions to Reconsider. Accordingly, the Court's June 30, 2016 Order has been amended as follows:

This matter came before the Court on June 28, 2016, by way of a Petition for Writ of Mandamus and/or Motion For Temporary Injunction ("Plaintiff's Motion") brought by Plaintiff, Richland County, South Carolina, ("County," "Richland County," or "Plaintiff") pursuant to Rule 65, SCRPC, seeking to require Defendants, the South Carolina Department of Revenue and Rick Reames, III in his official capacity as its director, ("SCDOR, "Director," or collectively "Defendants") to carry out its statutorily prescribed duties under the Optional Methods for Financing Transportation Facilities, S.C. Code Ann. §§ 4-37-10, et seq. ("Transportation Act" or "Act"). Plaintiff's Motion vis a vis the Writ of Mandamus requests that this Court direct "Defendants to remit to the Treasurer collected Penny Tax Revenues for sales and use tax transactions within Richland County, including the July 2016 allocation and remittance due and all future allocations and remittances." Plaintiff's Motion vis a vis the Temporary Injunction requests that this Court "enjoin or otherwise prohibit Defendant from issuing directives, demands, or order on any matter related to Richland County's spending of the Penny Tax Revenues."

Additionally, the Court heard SCDOR and the Director's Motion for Injunction or Alternatively for the Appointment of a Receiver. Defendants' Motion is based on its interpretation of the Transportation Act to only authorize Plaintiff<sup>1</sup> to expend Penny Tax Revenues on capital costs. SCDOR and the Director assert that because Richland County's expenditures include expenditures for administrative costs (non-capital costs), Defendants are statutorily and equitably authorized to withhold the Penny Tax Revenue.

Benjamin F. Nicholson, IV, Esquire, M. Elizabeth Crum, Esquire, Ray N. Stevens, Esquire and Ray E. Jones, Esquire, appeared for Richland County. James E. Smith, Esquire,

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<sup>1</sup> Presumably this interpretation would apply to any other counties adopting a sales and use tax ordinance pursuant to the Transportation Act.

Dylan W. Goff, Esquire, Dana R. Krajack, Esquire, and Nichole M. Wooten, Esquire appeared for Defendants.

For the reasons set forth below, I GRANT Plaintiff's Petition for Writ of Mandamus.

### FACTUAL/PROCEDURAL BACKGROUND

On July 18, 2012, pursuant to the Transportation Act, Council enacted Ordinance No. 039-12HR ("the Ordinance") scheduling a referendum on November 6, 2012, ("the Referendum") for the purpose of seeking approval of the electors of the County of a penny sales and use tax ("Penny Tax."). The Ordinance provided for the County's implementation of the Penny Tax upon approval by the electorate of the referendum. On November 6, 2012, the voters approved the referendum. The results of the Referendum were challenged in *Letts v. Richland County et al.*, Appellate Case No. 2012-213679, and on March 21, 2013, the South Carolina Supreme Court ("Supreme Court") unanimously denied *certiorari* to the Letts challenge of the Referendum. Prior to the County bringing this action, there have been no other court challenges to the Ordinance in the almost four (4) years it has been in effect.

Following approval of the Referendum, Richland County established the framework for the implementation of the transportation improvement program ("Transportation Penny Program") to be paid for by the Penny Tax collected pursuant to the Referendum ("Penny Tax Revenues"). The Penny Tax became effective on May 1, 2013, and SCDOR began collecting the Penny Tax Revenue at that time. From May 1, 2013, to date, SCDOR has remitted the Richland County Penny Tax Revenue allocation to the South Carolina State Treasurer (the "Treasurer") as required by S.C. Code Ann. §4-37-30(15).

The chronology leading to this action began in April 2015, when the Director informed the County Administrator that SCDOR intended to initiate a "review" of the "Richland County



Transportation Sales Tax" passed by voter referendum in November 2012." On December 3, 2015, the Director sent a letter to the County requesting the County "correct" its actions "prospectively and by reimbursement for previously paid amounts" from the Penny Tax, taking the position that administrative expenses associated with the Penny Tax Program could not be paid from the Penny Tax Revenues.<sup>2</sup> On February 24, 2016, SCDOR sent a letter to the County, reiterating its position that administrative expenses could not be paid with the Penny Tax Revenues and that Penny Tax Revenues could only be used for capital projects. SCDOR attached its "Report on Sales and Use Tax for Transportation Facilities in Richland County" ("Report") to the letter. This Report contained SCDOR and the Director's instructions to the County as to how the Penny Tax Revenues must be spent and allocated. On April 1, 2016, SCDOR provided the County with a list of twelve action items, including recommending the County use IRC § 263 and § 263(A) under the Penny Tax Program.

On April 27, 2016, SCDOR informed the County that unless it complied with SCDOR and the Director's recommendations regarding expenditures of the Penny Tax Revenues and other matters, SCDOR's monthly allocation of the County's Penny Tax Revenues and July tax distribution would be zero. In other words, SCDOR would withhold the Penny Tax Revenues it had collected from sales in Richland County. In its Answer, SCDOR and the Director state that Penny Tax Revenues could only be expended for capital projects and it would withhold remittance of the Penny Tax Revenues to the County until the County put into place the action items SCDOR and the Director recommended.

<sup>2</sup> Defendants assert that this letter gave the County the results of its review and put the County on notice that: (1) the review had found elements of public corruption which had been turned over to law enforcement, (2) there were elements of criminal tax activity which SCDOR's tax enforcement division was investigating, and (3) there were improper and excessive expenditures of Penny Tax Revenues which fell outside the Transportation Act. Only the allegation regarding Penny Tax Revenues expenditure outside the Transportation Act is properly before this Court.



The County has consistently contended that it has the necessary safeguards in place through *Government Accounting Standards* and other measures, that SCDOR and the Director do not have the statutory authority to withhold the Richland County Penny Tax Revenues, and that SCDOR and the Director have a ministerial duty under the Transportation Act to remit the quarterly Penny Tax Revenues for the second quarter of 2016 and thereafter to the Treasurer.

#### LAW/ANALYSIS

##### **I. Plaintiff's Petition for Writ of Mandamus is Granted.**

This Court is authorized to issue a Writ of Mandamus by Art. V, § 20 of the Constitution of South Carolina ("Constitution"). Rule 65, SCRPC sets out the procedure for issuing a Mandamus. A Mandamus is a remedial writ that courts issue to order a governmental official or agency to perform his/its ministerial duties. "Its principal function is to command and execute, and not to inquire and adjudicate; therefore, it is not the purpose of the writ to establish a legal right, but to enforce one which has already been established." *Wilimon v. Greenville*, 243 S.C. 82, 132 S.E.2d 169, 171 (1963); *see also Knight v. Austin*, 396 S.C. 518, 522, 722 S.E.2d 802, 804 (2012); *Porter v. Jedziniak*, 334 S.C. 16, 18, 512 S.E.2d 497 (1999) ("The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law"); *Redmond v. Lexington County Sch. Dist. No. 4*, 314 S.C. 431, 445 S.E.2d 441 (1994) (a writ of mandamus is not appropriate for a discretionary authority); *Sanford v. S.C. State Ethics Comm'n.*, 385 S.C. 483, 493-494, 685 S.E.2d 600, 605-606 (2009).

For this Court to issue a Writ of Mandamus, the County must show:

(1) a duty of the Respondent[s] to perform the act; (2) the ministerial nature of the act; (3) the Petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy. A ministerial act or duty is

one which a person performs because of a legal mandate which is defined with such precision as to leave nothing to the exercise of discretion.

*Edwards v. State*, 383 S.C. 82, 96, 678 S.E.2d 412, 419 (2009)(citing *Wilson v. Preston*, 378 S.C. at 354, 662 S.E.2d at 583); see also *Sanford*, 685 S.E.2d at 606.

In deciding whether to grant the Petition for Writ of Mandamus, this Court must review the statutes at issue. The provisions in the Transportation Act that the County contends give rise to Defendants' ministerial duty to remit the Penny Tax Revenues to the Treasurer are as follows.

The County is a political subdivision of the State of South Carolina (the "State") and is a creature of statute. SCDOR is also a creature of statute, operating as part of the executive branch of government. S.C. Code Ann. § 12-4-10 (2014). SCDOR's general powers are found in S.C. Code Ann. § 12-4-310 (2014). The position as the Director of the SCDOR is also created by statute. S.C. Code Ann. § 12-4-30 (2014). "As a creature of statute, a regulatory body is possessed of only those powers expressly conferred or necessarily implied for it to effectively fulfill the duties with which it is charged." *Captain's Quarters Motor Inn, Inc. v. S. Carolina Coastal Council*, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991); see also *Buzzle v. Huff (in re John W. Heaton, Inc.)*, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995)("An administrative agency has only such powers as have been conferred by law and must act within the authority granted for that purpose."). Any authority Richland County, SCDOR, or the Director has with regard to regulation of the Penny Tax Revenues, the Penny Tax, or the Penny Tax Program is derived from the Transportation Act.

In construing a statute, the cardinal rule of statutory construction is that the intent of the legislature must be ascertained and must prevail. *State v. City of Florence*, 406 S.C. 169, 173-74, 749 S.E.2d 516, 518 (2013). Language in a statute should be given its plain and ordinary meaning. *Adoptive Parents v. Biological Parents*, 315 S.C. 535, 446 S.E.2d 404 (1994). The

statute must be read as a whole with each section construed together. *South Carolina State Ports Authority v. Jasper County*, 368 SC 388, 398, 629 S.E. 2d 624, 629 (2006). Finally, deference must be given to a specific statutory provision compared to a statute addressing an issue in general terms. *Spectre, LLC v. South Carolina Dept. of Health and Environmental Control*, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010).

SCDOR is mentioned a limited number of times in the Transportation Act. Richland County contends that under provisions of the Transportation Act, SCDOR has the duty to: (1) administer and collect Penny Tax Revenues (§4-37-30(A)(8)); (2) remit the Penny Tax Revenues to the Treasurer (§4-37-30(A)(15)); (3) remit unidentified Penny Tax funds to the Treasurer (§4-37-50); and (4) notify the County when "the tax has raised revenues sufficient to provide the greater of either the cost of the project or projects as approved in the referendum or the cost to amortize all debts related to the approved projects" (§4-37-30(A)(5)).<sup>3</sup> The County further contends that, as the executive director of SCDOR, the Director has a duty to see that the statutory duties of SCDOR are carried out.

**A. THE TRANSPORTATION ACT**

Art. VIII, Constitution, "Home Rule," and the provisions of Act 52 place the ability to raise and expend revenue for a county transportation tax squarely in the hands of Richland County and its citizens following a referendum. Article VIII of the S.C. Constitution provides: "The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties." S.C. Const., Art. VIII, sec. 7.

The General Assembly, after the constitutional amendment was approved by the electorate of South Carolina, enacted the general law implementing Home Rule for local

<sup>3</sup> Other than §§ 4-37-30(A)(5), (8), (15) and 4-37-50 discussed herein, §§4-37-30(A)(4)(b) and (13) prescribe the other limited duties Defendants have in administering the Penny Tax that are not applicable here.



government in South Carolina so that counties and other local governments can govern themselves and not be subject to direction and control by the South Carolina legislative delegations or State government. See *Hosp. Ass'n v. City of Charleston*, 320 S.C. 219, 464 S.E.2d 113, 117 (1995); *Knight v. Salisbury*, 262 S.C. 565, 571, 206 S.E. 2d 875, 877 (1974).

Title 4 is the title of the South Carolina Code of Laws enacted by the General Assembly to implement the general laws granting powers and duties to county governments. In codifying the Transportation Act, the General Assembly made it a part of Title 4--Counties-- S.C. Code Ann. §§ 4-37-10, et seq. (Supp. 2015). The General Assembly's intent in passing the Act was to grant additional taxing power and authority to counties to provide alternate means of funding for the counties' transportation needs.

The General Assembly adopted Act 52, 1995 Acts and Joint Resolutions The Transportation Act and made the following legislative finding:

In furtherance of the powers granted to the counties of this State pursuant to the provisions of Section 4-9-30, and Section 6-21-10 et seq., of the 1976 Code, each of the counties of this State is authorized to establish transportation authorities and to finance, following the public hearing and referendum required in this act, the cost of acquiring, designing, constructing, equipping and operating highways, roads, streets, and bridges, and other transportation-related projects, either alone or in partnership with other governmental entities including, but not limited to, the South Carolina Department of Transportation.

Act 52, Section 1, S.C. Acts and Joint Resolutions 1995. This language is the preamble and introductory statement as to the purpose of the Act.

S.C. Code Ann. §4-37-30(A) provides, in pertinent part:

To accomplish the purposes of this chapter, counties are empowered to impose . . . : a sales and use tax as provided in item (A) . . . :

(A) Subject to the requirements of this section, the governing body of a county may impose by ordinance a sales and use tax in an amount not to exceed one percent within its jurisdiction for a single project or for multiple projects and for a specific period of time to collect a limited amount of money.

Richland County chose to use the sales and use tax provided for in §4-37-30(A) when it adopted the Ordinance. I find that the Transportation Act was adopted by the General Assembly in furtherance of Home Rule to give counties the authority to adopt an alternate funding source to pay the cost associated with transportation-related projects.

**B. DEFENDANTS MUST PERFORM ITS DUTIES UNDER THE TRANSPORTATION ACT.**

Once Richland County Council enacted the Ordinance, the Referendum passed, and SCDOR was notified of the passage of the Referendum (§4-37-30(A)(4)(b)), SCDOR and the Director have certain mandatory or ministerial duties they must perform under the Transportation Act. A duty is "ministerial when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts." *Wilson v. Preston*, 378 S.C. 348, 354, 662 S.E.2d 580, 583 (2008).

The General Assembly chose to use the word "must" vis a vis the SCDOR's duties prescribed in §§ 4-37-30(A)(8) and (15) and the word "shall" regarding SCDOR's duties under §§ 4-37-30(A)(16) and 4-37-50. Both the words "must" and "shall" are mandatory words and direct an agency to do something. "Must" is mandatory language. *Starnes v. South Carolina Dep't of Pub. Safety*, 342 S.C. 216, 221, 535 S.E.2d 665, 667 (Ct. App. 2000). Equally, "shall" is mandatory language. *South Carolina Dep't of Highways & Public Transp. v. Dickinson*, 288 S.C. 189, 190, 341 S.E.2d 134, 135 (1986).

**I. Defendants' Have the Duty to Administer and Collect.**

In support of its Petition for Writ of Mandamus, the County cites to § 4-37-30(A)(8). This statute provides, in pertinent part: "[t]he tax levied pursuant to this section must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected. The Department may prescribe the amounts which may be added to

the sales price because of the tax." Certainly, the clear and unambiguous language of § 4-37-30(A)(8), established SCDOR and the Director's duty to collect and administer the Penny Tax on behalf of Richland County, as the governmental entity imposing the Penny Tax.

In *Owen Industrial Products, Inc. v. Sharpe*, 274 S.C. 193, 197, 262 S.E.2d 33, 35 (1980), the Supreme Court addressed the administration and collection of taxes and held: "The fact that all taxes, whether county or school district, are levied by the county auditor and collected and disbursed by the county treasurer is of no relevance in determining the present question. The mere act of administering the tax does not change the status of the tax." As noted by the Supreme Court years ago in issuing a writ of mandamus to compel a public official to pay money to a county: "there can be no dispute of the proposition that when a public officer receives money for the public use, he is trustee to receive such monies and to pay them to the public official or function for whom or which they were intended." *Sumter County v. Hurst*, 189 S.C. 316, 319, 1 S.E.2d 242, 244 (1939). SCDOR and the Director have not asserted that they are not collecting the Penny Tax for Richland County's use for public transportation related projects. SCDOR and the Director simply disagree with the County as to how the funds can be expended under the Transportation Act.

I find that §4-37-30(A)(8) imposes on SCDOR and the Director the duty to levy the Penny Tax, collect the Penny Tax Revenue, and assure that the Penny Tax Revenues collected in Richland County are properly accounted for as funds belonging to Richland County.

2. Defendants' Duty to Remit the Penny Tax Revenues.

SCDOR and the Director also have a duty to remit the Penny Tax Revenues they collect to the Treasurer. S.C. Code Ann. § 4-37-30(A)(15) provides, in pertinent part: "The revenues of the tax collected in each county [by the Department] pursuant to this section must be remitted to

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the State Treasurer and credited to a fund separate and distinct from the general fund of the State.”

In its plain and ordinary meaning, “remit” means “to send (money) as a payment.” *See* <http://www.merriam-webster.com/dictionary/remit> (June 23, 2016). Section 4-37-30(A)(15) imposes the ministerial duty on SCDOR and the Director to send the Penny Tax Revenues SCDOR collects for Richland County to the Treasurer on a quarterly basis. This same statute also imposes a duty on Richland County to use these revenues and interest earnings “only for the purpose stated in the imposition ordinance.” S.C. Code Ann. §4-37-30(A)(15).

I find that the plain and unambiguous language of §4-37-30(A)(15) imposes on SCDOR and the Director the ministerial duty to remit the 2016 Second Quarter Penny Tax Revenue it collects on behalf of Richland County to the Treasurer.

3. The Legislative Intent of the Transportation Act Is to Authorize Defendants to Exercise a Duty to Remit the Penny Tax to the Treasurer.

The cardinal rule of statutory construction is to ascertain the intent of the Legislature. Section 1 of Act 52 specifically states the legislative intent behind the adoption of the Transportation Act. The Legislature found that each county is authorized to finance “the cost of acquiring, designing, constructing, equipping and operating highways, roads, streets, and bridges, and other transportation-related projects.” These legislative findings are of importance in determining whether SCDOR and the Director have any discretionary authority to exercise control over the Penny Tax as they claim. The County is given the authority to exercise control over its Penny Tax Program. The words “acquiring, designing, ... and operating” cannot be ignored. *See e.g., State v. Thift*, 312 S.C. 282, 440 S.E.2d 341, 354 (1994) (“preamble of an act may be used as a guide in determining legislative intent” and “[t]o define the purpose of the 1991

Ethics Act, one need look no further than the preamble"); *Sloan v. Friends of Hunley, Inc.*, 393 S.C. 152, 711 S.E.2d 895, 898 (2011) (Supreme Court addressed legislative intent "as expressed in the preamble to our FOIA statute"); *Benjamin v. Housing Authority of Darlington County*, 198 S.C. 79, 15 S.E.2d 737, 738 (1941) (legislative findings are accorded "great weight because of the high regard we hold for a coordinate branch of the government"); and *Watson v. Sellers*, 299 S.C. 426, 385 S.E.2d 369, 374 (Cl. App. 1989) (Court of Appeals cited Act's preamble as "expressly stating" legislative intent). I find that the legislative intent of the Transportation Act is to give authority to the County to administer and operate the Penny Tax Program and to use the Penny Tax Revenues and interest earnings only for the purpose stated in the Ordinance.

**C. THE COUNTY HAS A SPECIFIC LEGAL RIGHT FOR WHICH THE DISCHARGE OF DEFENDANTS' DUTIES ARE NECESSARY.**

S.C. Code Ann. § 4-37-30(A) gives the County the authority to impose the Penny Tax. Richland County has the express statutory right to have Penny Tax Revenues generated in the County collected, held, and accounted for distinctly from any other taxes which SCDOR collects and administers. S.C. Code Ann. § 4-30-37(A)(8). Richland County, as the county imposing the Penny Tax, has the express statutory right to receive the quarterly distributions from the Treasurer based upon SCDOR's remittance of Penny Tax Revenues to the Treasurer. S.C. Code Ann. § 4-37-30(15) ("The State Treasurer shall distribute the revenues and all interest earned on the revenues while on deposit with him quarterly to the county in which the tax is imposed."). SCDOR's statutory mandate to remit the Penny Tax Revenues is "a corresponding imperative duty created or imposed by law." *Porter*, 334 S.C. at 18, 512 S.E.2d at 497.

I find pursuant to the provisions of §§ 4-37-30(A)(8) and (15), the County has a specific legal right to receive the Penny Tax Revenues collected in Richland County.

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**D. THERE IS NO OTHER LEGAL REMEDY FOR THE COUNTY.**

The Transportation Act does not provide an administrative remedy for the County to challenge the recommendations of SCDOR and the Director. Defendants have stated in its Answer that unless the County complies with the standards SCDOR and the Director recommend, the funds rightfully due the County will be withheld. While SCDOR is an administrative agency of the State, its demands that Richland County comply with Defendants' recommendations do not fall within the definition of a "contested case" under the South Carolina Administrative Procedures Act. See S.C. Code Ann. §§ 1-23-310(3) and 1-23-505(3) (2005). There is no other legal remedy for the County than mandamus.

This Court issues a Writ of Mandamus against the Director requiring him to direct the Department to allocate and remit all Penny Tax Revenues collected within Richland County, including the July 2016 allocation and remittance due for the second quarter of 2016 and all future allocations and remittances.

**II. DEFENDANTS HAVE STANDING TO ASSERT ITS DEFENSE AND COUNTERCLAIMS.**

"To have standing, one must have a personal stake in the subject matter of the lawsuit." *Sloan v. Greenville Cnty.*, 356 S.C. 531, 544, 590 S.E.2d 338, 345-46 (Cl. App. 2003). "Standing may be acquired: (1) by statute; (2) through the rubric of 'constitutional standing'; or (3) under the 'public importance' exception." *S. Carolina Pub. Interest Found. v. S. Carolina Dep't of Transp.*, 412 S.C. 18, 24, 770 S.E.2d 399, 402 (Cl. App. 2015)(citing *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 91, 195, 669 S.E.2d 337, 339 (2008)). When addressing standing in a dispute between two governmental agencies, the Supreme Court has held that if one public agency attacked "the action of another, the complaining agency must at least show that it has some special interest from which it is charged with responsibility that may be adversely affected

by the action attacked." *Camp v. Board of Public Works*, 238 S.C. 461, 469, 120 S.E.2d 681, 684-85 (1961).

It is axiomatic that when sued, a defendant has standing to fully defend itself and, if necessary, file Counterclaims to accomplish that purpose.

Additionally, SCDOR and the Director have a level of statutory authority to oversee the County's use of the Penny Tax Revenues. S.C. Code Ann. § 12-4-10 charges SCDOR with the right and duty to administer and enforce the revenue laws of this State. Furthermore, pursuant to S.C. Code Ann. § 12-4-310, SCDOR has broad authority to facilitate tax administration, regulation, and enforcement. The Transportation Act, in S.C. Code Ann. § 4-37-30(8), specifically provides that the "tax levied pursuant to this section must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected." SCDOR's authority for tax administration, regulation, and enforcement as it relates to sales and use taxes is provided for by S.C. Code Ann. § 12-36-2660, which states that the "Department of Revenue shall administer and enforce the provisions of this chapter [Chapter 36]." Given this level of statutory authority, SCDOR and the Director have a "special interest" in the County's use of the Penny Tax Revenues sufficient to confer standing upon Defendants' for the limited purpose of presenting the claims in its Defense and Counterclaims.

Furthermore, SCDOR and the Director have standing based on the public importance exception.<sup>4</sup> South Carolina has long recognized the public importance exception to the general standing requirements. *ATC South, Inc. v. Charleston Cnty.*, 380 S.C. 191, 198, 669 S.E.2d 337, 341 (2008). Standing is not inflexible and may be conferred upon a party when an issue is of

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<sup>4</sup> The County argues the public interest exception applies only to private individuals and not to state agencies and officials based upon the court's holding in *Shan v. Greenville Cnty.*, 356 S.C. 531, 548-49, 590 S.E.2d 338, 347 (2003). After a review of South Carolina case law establishing the public interest exception, this Court could not find any evidence of such a limitation.

such public importance as to require its resolution for future guidance. *Id.* The need for future guidance through a court resolution is the key to public importance analysis. *S. Carolina Pub. Interest Found.*, 412 S.C. at 24, 770 S.E.2d at 402 (citing *Baird v. Charleston Cnty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999)). "It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance." *Id.* "For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance." *Id.*

In this case, the public interest involved is the prevention of the unlawful expenditure of money raised by taxation. *See Sloan v. School Dist. Of Greenville Cnty.*, 342 S.C. 515, 522, 537 S.E.2d 299, 303 (2000). The method in which the Penny Tax Revenues are spent is a matter so important to the citizens of Richland County that it is inextricably connected to the need for court resolution for future guidance. As discussed above, the resolution of this issue will not only impact the taxpayers of Richland County, but counties throughout the State with its own penny tax programs. Thus, the County's spending of the Penny Tax Revenues is of sufficient public importance to confer standing upon SCDOR and the Director for the limited purpose of the resolution of the unique issues concerning Richland County raised by this case.

### **III. MOTIONS FOR INJUNCTIVE RELIEF**

The parties seeking to be enjoined in this case are both governmental entities one a county and political subdivision of the State and the other a State agency and its Director, an officer of the State. Courts will restrain governmental agency actions "when they are clearly outside its statutory powers, inconsistent with legislative intent, or if it can be shown that the pending action of the agency is ultra vires or without authority." Am. Jur.2d, *Injunctions*, § 158, p. 754 (fnnts. omitted). Further, "[i]njunctions against government agencies will be granted when

the request ... seeks to enjoin an agency from executing a law in an unlawful manner or from executing an illegal measure." *Id.* at § 159, p. 754 (fnnts. omitted). Finally,

[i]njunctive relief is available against agency actions when they will result in irreparable injury or an extraordinary irreparable harm. However, an injunction will not be granted when the complainant has an adequate remedy at law. As a general matter, a plaintiff seeking to enjoin a governmental agency must demonstrate that it has no access to the ordinary remedy of monetary relief.

*Id.* at § 157, p. 753.

In order to receive an injunction, a party must demonstrate that the opposing party's threatened actions will cause the party irreparable harm, it has a likelihood of success on the merits, and it has no adequate remedy at law. *Denman v. City of Columbia*, 387 S.C. 131, 140-41, 691 S.E.2d 465, 470 (2010); see also *Rawlison Road Homeowners Ass'n Inc. v. Jackson*, 395 S.C. 25, 35, 716 S.E.2d 337, 343 (Ct. App. 2011).

Richland County's Declaratory Judgment Complaint seeks a declaration "declaring Richland County is not subject to Defendants' directives, demands, or orders on any matter related to Richland County's spending of the Penny Tax Revenues." Richland County seeks to "enjoin or otherwise prohibit Defendants from issuing directives, demands, or orders on any matter related to Richland County's spending of the Penny Tax Revenues."

SCDOR and the Director's Declaratory Judgment seek a declaration that: (1) the Ordinance is void on its face; (2) the County has applied the Ordinance in a manner inconsistent with the Transportation Act; (3) the Penny Tax Revenues have been expended in an improper manner that is inconsistent with the Transportation Act; (4) the County's unrestricted spending prevents the SCDOR from fulfilling its duties and responsibilities under the Transportation Act; (5) the County and Third Party Defendants have engaged in a civil conspiracy and the Department and Richland County Tax Payers have suffered special damages so that the County

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should reimburse the Penny Tax Revenues and Third Party Defendants should disgorge profits; and (6) County and Third Party Defendants have engaged in a constructive fraud and the Department and Richland County Tax Payers have suffered special damages so that the County should reimburse the Penny Tax Revenues and third party defendants should disgorge profits.

Defendants seek a permanent injunction:

Enjoining Plaintiff, and Third-party Defendants, from making any further payments, expenditures, funding, contracts, or other obligations of Penny Tax Funds unless and until Plaintiff adopts and implements IRC 263/263A as a standard, some other acceptable uniform standard, and/or other appropriate safeguards to ensure that expenditures of Penny Tax Funds qualify as allowable costs under the Act and therefore, are a proper use of Penny Tax dollars.

**A. PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION IS DENIED.**

Plaintiff's Motion for Temporary Injunction is denied because the County is unable to sufficiently show it will suffer irreparable harm in light of the Court's decision above granting Plaintiff's Petition for a Writ of Mandamus. This Order requires the Director to direct the Department to remit and allocate to the Treasurer the Penny Tax Revenues collected within Richland County as it routinely has since the Ordinance became effective. Therefore, it is not necessary for the Court to further enjoin Defendants from taking actions to harm the County, and Defendants Motion for Temporary Injunction is denied.

**B. DEFENDANTS' MOTION FOR AN INJUNCTION IS DENIED.**

Defendants' Motion for Injunctive Relief is denied because SCDOR and the Director will not suffer irreparable harm if the Injunction is not issued against Plaintiff. SCDOR and the Director have alleged they will be irreparably harmed, but they have failed to carry its burden. None of the affidavits provided to the Court in support of Defendants' Motion discuss any injury that either the Department or the Director will suffer if the County continues its Penny Tax Program. Consequently, Defendants' Motion for Injunctive Relief is denied.

**IV. DEFENDANTS' MOTION FOR APPOINTMENT OF RECEIVER IS DENIED.**

I find that SCDOR and the Director do not have the authority to seek appointment of a receiver. Defendants are creatures of statute operating as part of the executive branch of government. S.C. Code Ann. § 12-4-10 (2014). Neither SCDOR nor the Director have the statutory authority to petition the Court for appointment of a receiver to marshal, administer, and enforce the Penny Tax Revenues collected in Richland County. There is no statement in any statute governing SCDOR that mentions appointment of a receiver. Therefore, neither the Director nor the Department has the authority to request that the Court appoint a receiver.

The Legislature can expressly grant such authority to Defendants, but it has not done so. Other state agencies are given statutory authority to request that a court appoint a receiver. For example, the director of the Department of Insurance ("DOI") is given the authority to request the appointment of a receiver.

If he considers it necessary, the director or his designee may apply to a judge of the circuit court to issue an injunction restraining a domestic insurer whose certificate of authority has been suspended, in whole or in part, from proceeding further with its business. The judge may immediately issue the injunction and, upon notice and after a full hearing of the matter, may (a) dissolve or modify the injunction or make it permanent, (b) make all orders and judgments necessary in the matter, and (c) appoint agents or a receiver to take possession of the property and effects of the insurer and to settle its affairs, subject to any rules and orders the court prescribes.

S.C. Code Ann. § 38-5-160. If the General Assembly had intended to give the statutory authority to the SCDOR Director, it could have and would have done so, just as it did the Director of DOI. SCDOR and the Director do not have authority to request that this Court place the Penny Tax Revenues with a Receiver. Defendants' Motion for Appointment of a Receiver is denied.

I further find that SCDOR and the Director's request for appointment of a receiver is untimely. Defendants clearly acquiesced in the County's adoption of the Ordinance passage of the Referendum in 2012. SCDOR implemented levying and collecting of the Penny Tax in May,



2013. Defendants do not dispute that SCDOR began collecting and administering the Penny Tax in May 2013<sup>5</sup> and began remitting the Penny Tax Revenue to the Treasurer in July 2013. I find that having made quarterly remittance to the Treasurer pursuant to its statutory duties under the Transportation Act for some three years, SCDOR and the Director are not entitled, under any equitable theory, for the appointment of a receiver.

V. CONCLUSION

ACCORDINGLY, THIS COURT FINDS:

1. SCDOR and the Director's duty to remit the Penny Tax Revenues to the Treasurer pursuant to S.C. Code Ann. § 4-30-37(A)(15) is a ministerial duty which Defendants are bound by law to carry out.
2. SCDOR and the Director's duty pursuant to S.C. Code Ann. § 4-30-37(A)(8) to administer and collect the Penny Tax Revenues raised in Richland County requires Defendants to administer the levying and collecting of the Penny Tax Revenues.
3. SCDOR and the Director's duty pursuant to S.C. Code Ann. § 4-37-30(A)(15) is to remit the Penny Tax Revenues collected in Richland County to the Treasurer, and this statute describes the method by which the revenues are to be distributed to the county in which the tax is imposed.
4. SCDOR and the Director's duties pursuant to S.C. Code Ann. §§ 12-36-2660, 12-4-10, 310(9) and 387. 12-36-2660 are general authority under Title 12-Taxation. These statutes do not change the specific nature of the duties imposed on Defendants pursuant to the Transportation Act to remit Penny Tax Revenues to the Treasurer on a quarterly basis.
5. SCDOR and the Director have a level of statutory authority to oversee Richland County's use of the Penny Tax Revenues.

<sup>5</sup>The Director had not yet been appointed as the director of SCDOR and became agency director in January 2014.

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6. SCDOR and the Director have a "special interest" in the County's use of the Penny Tax Revenues sufficient to confer standing upon Defendants' for the purpose of presenting the claims in its Defense and Counterclaims.

7. SCDOR and the Director have standing based on the public importance exception for the limited purpose of the resolution of the unique issues concerning Richland County raised by this case.

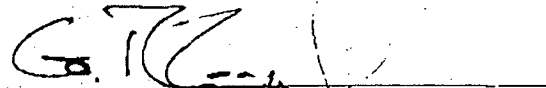
8. Other than to request the issuance of a Writ of Mandamus, Richland County does not have an adequate remedy at law to recover the monetary damages done to it if Defendants fail to carry out its duties under the Transportation Act.

9. Defendants do not have the statutory authority to move this Court for the appointment of a receiver.

**IT IS FURTHER ORDERED THAT:**

A Writ of Mandamus is issued against the Director requiring him to direct the Department to allocate and remit all Penny Tax Revenues collected within Richland County, including the July 2016 allocation and remittance due for the second quarter of 2016 and *all future allocations and remittances.*

**AND IT IS SO ORDERED.**



Judge G. Thomas Cooper, Jr.  
Fifth Judicial Circuit

August 2, 2016  
Columbia, SC